

# **GARDEN STATE CLE LESSON PLAN**

**A 1.0 credit course**

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## **INTRODUCTION TO HOSPITALITY LAW**

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**With**

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Hospitality Law Expert**

**And featuring**

**Robert Ramsey, Senior Instructor**

### **Program description**

Practically nonexistent 30 years ago, hospitality law is everywhere you look today. This 1.0 CLE credit presentation looks at the body of law governing all the nuances of the travel, foodservice, and lodging industries.

**I. Introduction**

- **Robert Del Sordo, Esq.**

**II. Modern Era of hotel/hospitality law began November 8, 1974**

- **Connie Francis (international recording star) was sexually assaulted in Howard Johnson's motel and won a reported judgment of \$2.5M for failing to provide adequate security – actor was never arrested or charged**
- **Complete new attitude toward responsibility of properties and need for security for people**
- **Connie Francis case was new type of liability that was never before seen in the industry**
- **Attacker entered through sliding glass door and hotel said that they were not responsible because there was a lock – but jury held that you need more than a flimsy lock**
- **As a result, doors are now secured by heavy bolts**
- **This case stands for duty of care owed to guests in terms of basic physical security – hotel has the greatest obligation to protect the security and safety of its people**
- **Highest invitees as possible – paying for safe night in a room – hotel is responsible for everything humanly possible to assure safety**
- **In NJ guests are considered business invitees – therefore high degree of care from hotel toward individuals, and that they are paying for a room – not like a mall...going to hotel for a room and wanting a safe room**
- **Development of hotel security**
- **Hotels don't use keys anymore because the technology has developed – mostly swipe cards – easier to control security to room – duplicate keys are gone**
- **Swipe cards can be changed at the desk**
- **Hotels “comping” rooms – hotel wants you to gamble, possible for hotel to change swipe card so that you cannot access your room because “not gambling enough” – common practice in Las Vegas**
  - **In NJ – not legal to change swipe cards, but maybe after first night they can revoke your license to have the room for another night – depends on the contract – within parameters**

- **Should not be problematic for gaming commission for this type of behavior because gambling is the reason the comp room was given**
  - **Similarly Disney hotels encourages people to go to the parks, etc by not having many amenities in the rooms**
- III. **Hotel room has many legal issues surrounding it**
- **Under 4<sup>th</sup> amendment considered “residence” and therefore police cannot just enter without warrant or consent or emergency**
  - **Entitled to common law and tort law**
  - **Hotel owners should be advised that police cannot just get keys to a room – must have appropriate warrant**
  - **“smell of marijuana” – not enough to allow entrance into room without consent or warrant**
- IV. **Origins of hospitality law**
- **Originated in England – there used to be weigh stations for stage coaches – public houses – pay for a room**
  - **Bigger hotels were close to the rivers for river traffic**
  - **Smaller hotels were nothing more than bars with a few rooms upstairs – no security – problems in the public house**
  - **People were licensed by the King to sell rum**
  - **Legal area was so limited – there was a sheriff and he was a tax collector – did not provide security**
  - **Public houses were getting damaged by people in the bars and that is where these laws came in to say that you have an obligation**
  - **This is where Dram Shop Act began – in 38 states where a business selling alcohol or a host “overserving” liquor is strictly liable to anyone injured by the drunken patron or guest – deter serving people who are visible intoxicated**
  - **Dram Shop is really based on common law solution to problems with public houses interfering with transactions/transportation of rum**
  - **Bar owners were so upset that this damage was occurring that they went to the King for security – King said cannot provide security – but owners were told that they could determine when someone has had too much to drink and they can**

**determine not to serve someone – “you are flagged” – however, how can the bar owner enforce this?**

- **“flagged” by putting union jack flag in their rum bowl advising everyone that he was not to be served anymore and if that was violated then he would be taken to King’s court**
- **Dram – amount of alcohol**

## V. **Hospitality Industry**

- **Billions of dollars a year**
- **Hybrid between business law, criminal law, employment, sanitation**
- **Get a great deal of business because of referrals – need someone who understands their business**
- **Security in common areas (gym, pool, lobby) – same duty of care? High duty of care that extends to outside of hotel if a patron is going to a garage next door – as long as you are a guest**
- **People who are not guests – duty of care?? Duty of care is not as high for someone there on business purposes – Edgewater Motels Inc v. Gatzke, 277 N.W.2d 11 (Minn., 26 Jan 1979) – Walgreens employee smoked in hotel and started fire in hotel and Walgreens was held responsible because they allowed their employee to smoke**
- **Hotel is dealing at a disadvantage because duty to protect those who are in the hotel – whether guest or otherwise**
- **Security issues: fire, flooding, theft – need to take reasonable steps to protect**
- **Necessary to have fire brigade – fire plan in every hotel in event of fire what each employee is supposed to do – every hotel must file plan with local fire department and must do drills to train staff and must maintain fire extinguisher every 75 feet – smoke detectors, carbon monoxide detectors**
- **Theft issues: hotel must provide a secure area where you can keep your valuables, most hotels provide a safe that is behind the desk and you can request that they maintain valuables in a master safe or mini safe deposit boxes, some hotels use in-room safes**
- **Food and drink issues:**
  - **Sanitation is big factor – as attorney should advise clients to maintain this issue – hotel is responsible**

- **Must hire a skilled person – special training – special certificates/education**
- **Food and beverage manager to oversee sanitation**
- **Following health standards**
- **Sewer issues**
- **Vermin issues – extermination programs**
- **Legionnaires issue – 1970s – waterfall system (pour water over condenser to cool – water was contaminated) – airborne contamination through air ducts**
- **Staffing issues:**
  - **I9 form necessary – insure citizenship or ability to work**
  - **Many instances when people are not able to work legally and can be a liability for business people**
  - **Business owners are willing to take a chance because of benefits received from paying people less money**
  - **Advise clients – have to comply with immigration issues**
  - **Industry would collapse without this type of labor**
  - **Restaurants outsource everything, i.e. restaurants, cleaning service**
    - **Pay third party for various services**
    - **This is how hotels can get around liability as a business**
  - **Labor force must keep costs down in order to have a service or product that is appropriately priced for the target market**
  - **Attorney has ethical obligation to tell clients what the law is and the consequences and remedies they can use to avoid being prosecuted – whether client follows suggestion or not that is another issue**
    - **I9 forms**
    - **Social security cards – must verify**
    - **Worker’s compensation**
    - **Check paperwork**
  - **Security issues with staff – impossible to do background checks on most people, names may not be what we think they are (either backwards or not in translation)**

VI. **You want to build a hotel**

- **You have land – title issues, zoning issues**

- **Must be sure zoned for industry if not then need to deal with planning board, zoning, traffic issues**
- **Need proper signage because that brings in business**
- **Can you build on that location?**
- **Parking is generally based on ordinance – hotels generally require 25% of hotel to be ADA available and must have 1 parking space for every 25 regular spaces for handicapped**
- **Construction issues – hotels are astute concerning fire towers, sprinkler systems, fire resistant materials, standpipes – need good architect who is familiar with state regulations**
- **Acquiring the land**
  - **Need minimum acreage needed**
  - **Location, location, location**
  - **Occupancy rate drives business – break even at 50%, make money at 75%, and very well at 80%**
- **Liquor license and hotel – municipality must permit, right to apply for hotel license if have more than 100 rooms, the license is different than what licenses are available to the “public” for a bar, etc.**

**VII. Banquets, meetings, conferences**

- **Contracts are required – must be careful – must document everything – what time can set up, union electricians necessary? What food? Where food to be served? Public address systems?**
- **Must sit down with customer and go over all details, i.e. water? Bottled? Ice? What time are things going to be cleaned up? Extension cords?**
- **Important for both sides to have a contract**
- **Critically important that contract covers all details to protect clients and customers**

**VIII. Swimming Pool liabilities**

- **Problems with pumps in pools for filters - like a vacuum- small children can get caught in them**
- **Lifeguards are the most effective means to protect against liability**
- **Signs are not enough to protect**
- **In NJ – private pool (hotel pool) – if you are within a certain distance of EMTs, etc., then don't need a lifeguard – but**

**attorneys should still encourage lifeguards being used to protect against liability, death, and injuries**

- **Most big hotel operators check pool chemicals every day – keep records**
- **Normal to test water once a week – approx. \$90 per week for lab testing**

**IX. Hotel prices – consumer protections**

- **Every hotel is required to put its “rack rate” posted – this is the maximum rate they can charge for this room**
- **Posted on back of door – done by statute so people are protected**
- **People usually don’t pay rack rate**
- **Negotiating room rates**
  - **Get a better price if call hotel directly**
- **Discrimination issues: Civil Rights Act of 1964**
  - **Heart of Atlanta Motel Inc v. US, 379 US 241 (1964)**
    - **Owner of hotel decided he was not going to allow people of color to come to hotel**
    - **Adopted a white only policy**
    - **Owner put up billboard in South Carolina offering his hotel for travelers – this then put him into interstate commerce which allowed federal government to regulate his business under Civil Rights Act of 1964**
  - **Katzenbach v. McClung, 379 US 294 (1964)**
    - **Extended Heart of Atlanta holding to restaurants**
    - **Restaurants were part of travel industry and therefore fell within commerce clause and were subject to federal Civil Rights Act**

**X. Hotels need attorneys**

- **From time client wants to acquire land to opening day – takes years for attorney’s representation (2-3 years)**
- **Attorney will need staff to do other work if you take a client who is opening a new hotel because it is a daily function and work for attorney**
- **Attorney sees potential liabilities – so attorney should be at job site to work with construction team because some of the issues**

**an engineer may not be so concerned but attorney can protect against future liability**

- **Hotel with free parking in private garage that was not owned by hotel – hotel guest was attacked and sued garage, hotel tried to get out of liability, hotel was held accountable because they provided hotel guests the parking**
- **Enormous amount of knowledge, experience, and expertise to do this type of work**
- **Attorney must charge on hourly basis – you don't know what is going to come up – suggest cheaper for hotel to be put on board as “staff attorney”**
- **Sole practitioner may not be able to handle this type of work without support because need to dedicate time and effort to new hotel development**
- **10-15 years learning curve**