



# Legal Aspects of Foodservice Management

*John E. H. Sherry*

National Restaurant Association

THE EDUCATIONAL FOUNDATION 

# Legal Aspects of Foodservice Management

John E. H. Sherry, J.D.

*Associate Professor of Law  
School of Hotel Administration  
Cornell University*

National Restaurant Association

---

THE EDUCATIONAL FOUNDATION 



**John Wiley & Sons, Inc.**

New York • Chichester • Brisbane • Toronto • Singapore

*in cooperation with the*  
Educational Foundation of the National Restaurant Association

Copyright © 1984 by the Educational Foundation of the National Restaurant Association.  
All rights reserved.

Library of Congress Catalog Card Number: 84-70308

ISBN 0-471-63654-1

No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of John Wiley & Sons, Inc.

Printed in the United States of America  
10 9 8 7 6 5 4 3 2 1

*On behalf of the  
people in our industry  
who will benefit, the Institute  
is pleased to thank*

COCA-COLA USA

*for the financial support  
which has made possible the  
development of this book and  
related course materials.*

# A Message from the Institute

The National Institute for the Foodservice Industry is proud to present *Legal Aspects of Foodservice Management*, a law book for foodservice operators. This book, written by Professor John E. H. Sherry, is designed to be read and used as a management tool by supervisors and managers of foodservice businesses and by students of foodservice management.

Managing a foodservice operation is a many-faceted job, requiring skills in different fields such as marketing, supervision, and purchasing. These skills are necessary tools used in the process of maintaining a business and making it grow. Too often, operators are not aware of the legal aspects of management until it is too late.

Employee relations, food liability, liquor liability, patron civil rights, and federal regulations are subjects that concern foodservice operators, who know that preventing legal problems is the best way to keep profits from being siphoned off into expensive legal hassles. This book is designed to give readers an opportunity to look at foodservice operations from a legal standpoint and to develop management strategies to prevent legal problems.

Professor Sherry attacks head-on the common reaction of businesspersons that (1) the law is too complex to understand, and (2) ignorance of the law will somehow protect operators from legal pitfalls. He debunks both reactions in the first chapter and carries this theme throughout the rest of the book.

---

*Legal Aspects of Foodservice Management* is a *practical* book, designed for those seeking a down-to-earth explanation of legal subjects relevant to food service. It is a *readable* book. For students and teachers, it contains outlines, chapter objectives, cases, review questions, and footnotes for further study. For operators and students alike, the explanations are thorough and the concepts are illustrated with examples.

Once read, this book should be kept as part of the foodservice operator's personal library. Its chapters and the glossary and appendixes can be referred to as specific questions arise. questions arise.

A few words are in order about the National Institute for the Foodservice Industry

(NIFI), the educational foundation. NIFI is dedicated to the advancement of professionalism in the foodservice industry, fostering and nurturing it through education. NIFI provides vital services to the industry through the development of educational programs and materials and the administration of scholarships and work-study grants, and by promoting industry careers. We at NIFI feel the quality of the foodservice industry is only as good as the quality of its trained personnel, and that the healthy growth of either is tied to education.

It is our hope that *Legal Aspects of Foodservice Management* will contribute to your professional growth.

Richard J. Hauer  
Executive Director

National Institute for the Foodservice Industry

# Preface

---

“Don’t bother me with a legal headache, I have a business to run. Let my lawyer handle it.” This often heard plea illustrates two common fallacies people believe about the law: (1) that the law is the enemy; and (2) that all legal problems are a lawyer’s problems.

The objective of this book is to put to rest the notion that law is a necessary evil intended to undermine foodservice operators in the conduct of their businesses.

*First, the book’s premise is that foodservice operators need help in preventing avoidable legal problems, and in minimizing the harmful effects of unavoidable legal situations.* Second, this book takes the position that the law works best when it is used as a management tool, and not as a last resort. Those

in the foodservice industry, as well as students about to enter it, need to know the legal basics of how to run a business. The law is not something that intrudes when something goes wrong; it is an ongoing factor in running a foodservice operation, or any business.

The traditional limitation of current business law texts is their stress on legal concepts without practical examples of law in action. Moreover, such texts are so general in scope that they lack relevance to the everyday operational needs of the foodservice manager. The pressurized demands of running a food service do not afford managers the luxury of extensive business law training. This book is designed to teach problem solving, not the niceties of legal knowledge for its own sake,

unrelated to the give and take of foodservice management.

Why do we need a business law text for foodservice managers and students about to enter the industry? The answer is that the foodservice industry is representative of the small businessperson in general, as well as a specialized industry, some of whose members cannot afford continuous legal services or costly legal hassles. This book is intended to serve both students about to enter the industry and those who are already running a business.

This is not a theoretical text, although students and operators should be able to determine what legal pitfalls are possible, through both comprehensive explanation and the legal

cases presented. To anticipate and prevent problems, and to obtain the best use of this book, the reader must bring a thinking framework into play. The objective is not to have the reader think like a lawyer, but like a businessperson who (1) is aware of the law regarding major foodservice issues, (2) knows what is needed to prevent serious legal problems, and (3) knows how to make the law work in his or her favor, whether on the job or in a courtroom.

*Legal Aspects of Foodservice Management* is organized into 15 chapters covering the areas of law most likely to confront those managers who are new to business as well as more experienced managers. One chapter has



been developed to help businesspersons choose and work with lawyers, a subject neglected in most business law texts. This chapter enables small businesspersons to put scarce legal funds to the best use.

Specific topics include those usually essential to business law texts, such as forms of business organization and property law. In addition, there is material on foodservice contracts, liability, labor, civil rights, foodservice regulations, and security, all topics of particular relevance to the foodservice industry. The purpose of this coverage is to provide an overview of common business transactions, while examining those areas most likely to confront foodservice managers in their daily activities.

This practical, operational approach to business law for foodservice managers fits the overall theme of the book, which is *early detection and prevention of legal problems*, rather than reaction to those problems later—in court.

Specific learning aids are included to provide students, managers, and teachers with a ready means of understanding foodservice law in action. Chapter outlines highlight the major topics. A “case in point” appears at the beginning of each chapter to put the subject matter into a practical management context. Each chapter also contains objectives, summaries, questions, and excerpts from court decisions relevant to foodservice operators. Foodservice law educators and lawyers are

---

provided with an extensive set of footnotes at the end of each chapter. Figures and legal forms also aid learning. Various state-by-state charts are contained in the appendixes to provide operators with state provisions on key issues. Finally, although any critical legal terms are explained in the text at first mention, a glossary provides a ready reference for the reader.

The preparation of this book was greatly aided by the diligence, perseverance, and constructive criticisms of Marlene R. Chamberlain, Managing Editor, National Institute for the Foodservice Industry. Her eye for the practical, commonsense approach to the legal side of foodservice management made my task much easier.

Dean John J. Clark, Jr., School of Hotel Administration, Cornell University, was generous in his support of this undertaking. Special thanks are due him for his interest and encouragement.

Anthony Marshall, Dean of the School of Hospitality Management at Florida International University, contributed his technical expertise in reviewing the manuscript.

Teresa A. Manheim, my secretary, devoted long hours to the final typing of my manuscript.

Finally, my wife, Margaret Linger Sherry, requires special mention. Her patience and devotion throughout my period of authorship was responsible for making this manuscript a reality.

*John E. H. Sherry*

# Note to Students and Teachers

## *Use of Footnotes*

---

The footnotes at the end of each chapter are included to enable you to find and read the actual statute or opinion referred to.

The reasoning of the court is as important as the principle of law the court states or adopts. Under our common law legal system, the reasoning of the court may serve as a guide to determining the outcome of future cases. In legal language, such a case is called a *precedent*. Teachers and students of foodservice law may find these footnotes helpful for further research.

Very few trial court decisions are published. Rather, they are filed with the clerk of the court, where they are available for inspection. Appellate or appeals court decisions are published in book form. These decisions contain principles of law and help you find trends that may affect foodservice business

decisions. This fact holds true whether or not the problem presented to the court involves a foodservice dispute, since reviewing courts often apply general common law principles to solve specific issues. Only where a statute or specific common law rule governing foodservice operators is involved is the court called upon to use that statute or rule to settle such a dispute.

How then does one find a law decision? These decisions are published in volumes, called Reports, that are numbered in order, starting with volume 1. The West Publishing Company publishes state reports for all states in a National Reporter System: Atlantic (A. or A 2d), Northeastern (N.E. or N.E. 2d), Pacific (P. or P 2d), Southeastern (S.E. or S.E. 2d), Southern (So. or So. 2d), and Southwestern (S.W. or S.W. 2d). For each case, the

title of a decision is *cited*, meaning reported. Let us use the case of *Kauffman v. Royal Orleans, Inc.*, cited as 216 So. 2d 394 (La. 1968), to illustrate how to find such a report.

After the name of the parties, normally plaintiff (the party suing) v. (meaning versus or against) the defendant (the party being sued), the opinion is found in Volume 216 of the Southern Reporter, Second Series (the most recent series) on page 394. The state court is abbreviated (La., for Louisiana, which, standing alone, means the Supreme Court of Louisiana), and the year 1968 (the year the decision was filed).

The majority of federal court decisions are reported in the Federal Supplement (F. Supp. for District Courts) and the Federal Reporter (F. or F 2d, for Circuit Courts of Appeal). The United States Supreme Court Reports (U.S.),

Supreme Court Reporter (S. Ct.), and the Lawyer's Edition (L. Ed.) each contains all United States Supreme Court opinions. The same procedure is followed in finding a particular federal opinion. First, the name, then volume number, page number, District, Circuit, or Supreme Court designation (S.D.N.Y., meaning U.S. District Court for the Southern District of New York), and the date.

In some cases, the names of the parties are switched to reflect the fact that the appellant (party appealing) is bringing an appeal against the respondent (the party against whom the appeal is taken). Therefore, to avoid confusion, you must sort out the parties by reading the opinion carefully. By doing so you will understand which of the parties ultimately prevailed or won the appeal.

# Contents

*A Message from the Institute* viii

*Preface* x

*Note to Students and Teachers: Use of Footnotes* xiv

---

<b>1 Law for Foodservice Operators: Introduction</b>	<b>1</b>	<b>8 Maintaining Security</b>	<b>121</b>
<b>2 Foodservice Operators and the Government: Federal, State, and Local Regulations</b>	<b>9</b>	<b>9 Foodservice Contracts</b>	<b>141</b>
<b>3 Patron Civil Rights</b>	<b>29</b>	<b>10 Property Rights</b>	<b>177</b>
<b>4 Liability I: Liability for the Sale of Foods and Beverages</b>	<b>40</b>	<b>11 Franchising</b>	<b>211</b>
<b>5 Liability II: Liability for Patron Safety and Property</b>	<b>60</b>	<b>12 Forms of Foodservice Organization</b>	<b>226</b>
<b>6 The Law and Your Employees I: Selection and Supervision</b>	<b>83</b>	<b>13 Bankruptcy and Reorganization</b>	<b>249</b>
<b>7 The Law and Your Employees II: Administration</b>	<b>104</b>	<b>14 The Court System and Out-of-Court Settlement</b>	<b>266</b>
		<b>15 Choosing and Managing Your Attorney</b>	<b>277</b>

---

**Appendixes** 289

**Appendix A** *Federal Acts Affecting  
Foodservice Operators* 290

**Appendix B** *Alcohol Beverage Control  
Laws Concerning Minimum Age  
Requirements* 292

**Appendix C** *Accuracy in Menus* 293

**Appendix D** *State Laws Prohibiting  
Discrimination in Places of Public  
Accommodation* 298

**Appendix E** *State-by-State Adoption  
of UCC 2-318* 300

**Appendix F** *State Dramshop Acts* 304

**Appendix G** *State Equal Opportunity  
Laws* 310

**Appendix H** *Polygraph Laws* 312

**Glossary** 313

**Index** 327

# 1

## Law for Foodservice Operators

### *Introduction*

---

#### *Outline*

- I. Foodservice Law in Perspective
  - A. Types of Laws Which Apply to Foodservice Operators
  - B. The Expansion of Consumer Law and the Foodservice Operator
  - C. Types of Operations Affected by Foodservice Law
  - D. Why You Need to Know Foodservice Law
  - E. An Overview of How the Law Affects Foodservice Operators
    - 1. Benefits of Law
- II. Summary

#### *Objectives*

The purpose of this chapter is to:

- 1. Define foodservice law.
- 2. Review the kinds of foodservice establishments the law governs.
- 3. Outline the rights and responsibilities the law creates to protect both foodservice operators and customers.

### Case in Point

*Paul Rourke knew he would have a bad day when he came into the restaurant to open up. First, he had all weekend to think about the shortage in the cash register drawer last week. Then, when he arrived, he found that his order for ten cases of tomatoes was one case short and the weekend inventory clerk had already signed for the order. Also, the safety inspector was coming, and Paul had been cited for a safety violation the week before by the fire inspector. But the day was just beginning.*

*When he went through his mail, Paul noticed that the credit card company had refused to pay an overcharge on a credit card account after Paul's cashier failed to phone the company regarding the credit limit.*

*The seafood restaurant down the street was being picketed by local representatives of a national restaurant workers' union, and Paul was worried that he was next on their list, and wondered what his rights were if he was. Paul had bought the empty lot next door for parking, but the city said the lot, only a few yards from his restaurant, was not zoned for business.*

*Later that night, while Paul was away making a deposit at the bank, a patron became unruly and began verbally to attack other patrons. Not only did the bartender fail to oust the patron, but he leaped into the resulting fray, breaking a bottle over the head of another customer who had only been trying to leave the premises. The next day, the injured patron had his lawyer call Paul, asking him if he wanted to settle out of court or in.*

*Do you think Paul needs a lawyer?*

*Paul does need a lawyer, but a lot of his problems could have been prevented with only rudimentary knowledge about how the law affects his foodservice operation. Such knowledge would allow him to supervise his employees better, stand up for his rights as a businessperson, and prevent future pitfalls*

*from affecting his operation. However, even if Paul gets a lawyer, odds are he won't know how to work with one to obtain the most effective help. Finally, going to an attorney and saying, "Get me out of this," is not much different from closing the barn door after the horse has escaped, and is twice as costly.*

*It's fairly obvious that Paul didn't use his head in every instance. However, it's even more obvious that he isn't using the law to work for him, but allowing it to work against him. Instead of using the law as a management tool to operate his foodservice business properly, he's going to use it as adhesive to patch up some problems he could have prevented.*

### FOODSERVICE LAW IN PERSPECTIVE

*Law is a body of rules that apply to given situations, exist to maintain order in society and in business and personal dealings, and balance your rights with the rights of those with whom you deal. These rules are backed up by an enforcement system to interpret them, mete out punishment for violations, and settle disputes arising out of alleged violations.*

*Foodservice law is the area of consumer law that governs the legal rights of owners and operators of foodservice establishments and their responsibilities to consumers of their products or services. It includes the following duties and corresponding rights: (1) the duty to admit and the legal right to refuse admission to a prospective customer; (2) the duty to construct, maintain, and supervise the premises in a proper manner so as to protect customers and their property against harm, and the right to remove a customer who threatens the person or property of others; and (3) the duty to sell the product or service in a manner fit for the intended purpose and the right to impose lawful restrictions on sales of the product or service.*



### ***Types of Laws Which Apply to Foodservice Operators***

There are different types of laws. Laws vary in the way they come into being, how they are administered, and how they apply to certain segments of the population. Several kinds of laws make up the body of foodservice law. As a foodservice operator, you are concerned with the following types:

1. *Common law* or *case law* refers to rules of law that originate in court decisions rather than in statutes. Common law is judge-made law. American common law is inherited from the English common law, and in many states remains in effect unless altered or repealed by the state legislature.<sup>1</sup> In practice, the common law is usually the law formulated by the highest reviewing court, and these appellate courts have the authority to make legal rules binding on all other courts within that state or federal system.
2. *Statutory law* originates in the lawmaking bodies of the United States. *Statutes* are rules created by legislation at either the local, state, or federal level.
3. In the foodservice business, you are also affected by *administrative law*. Administrative law includes rules created by various federal and state regulatory agencies, has the force of law, and is subject to court interpretation. For foodservice operators, administrative law appears in the form of consumer laws and employer laws. In some cases the system passing out punishment is not the court system but the regulatory agency itself.

### ***The Expansion of Consumer Law and the Foodservice Operator***<sup>2</sup>

Today U.S. consumers in increasing numbers are using the law to recover compensation for wrongs inflicted by manufacturers or sellers

of a product or service that has caused them personal injury or economic harm.<sup>3</sup>

The foodservice industry is not exempt from this trend. On the contrary, it is always a possibility, considering the nature of the product sold. Food services deal in foods and beverages, and while the potential for economic harm to a customer is not as serious as with some other products, the potential to cause injury or illness to patrons is always there, and with it the accompanying potential for legal snarls.

Patrons may also seek legal compensation for injuries that occur to themselves or their property on your premises and are caused by foodservice managers or employees, directly or indirectly.<sup>4</sup>

The traditional approach is for the victim to sue the wrongdoer and obtain a money judgment. However, when the amount involved is inadequate to justify hiring an attorney, or the wrongs are widespread within a particular industry, consumers may lobby for a broad legislative solution. The result of consumer lobbying may be a regulatory agency, created to license industry members, set standards of conduct, and punish violators by fine or license revocation. Whether through a regulatory agency or by statute, the objective of consumer law is to protect the legal rights of consumers.<sup>5</sup> As the next chapter will illustrate, the foodservice industry is a highly regulated industry.

### ***Types of Operations Affected by Foodservice Law***

Many types of foodservice operations exist; all are affected, to varying degrees, by foodservice law.

Commercial foodservice operations are units that compete with each other in the private marketplace for profits from selling food and beverages. The vast majority of