

SPRING 2010
SAN JOSE STATE UNIVERSITY

COLLEGE OF APPLIED SCIENCES
HOSPITALITY, RECREATION AND TOURISM MANAGEMENT
One Washington Square
San Jose, CA 95192-0070
[Revised]

COURSE

HRTM 107: Legal Aspects of Hospitality Management

DAY, TIME AND PLACE

Section 1

Mondays: 6:00 p.m. to 8:45 p.m.
Spartan Complex Central, Room 209

INSTRUCTOR

Joseph E. Dworak
Berliner Cohen
Ten Almaden Boulevard, Suite 1100
San Jose, CA 95113
(408) 286-5800

Electronic mail address: jed@berliner.com

OFFICE HOURS

After class or by appointment
Berliner Cohen
Ten Almaden Boulevard, Suite 1100
San Jose, CA 95113
(408) 286-5800

I am available at other times by appointment. My office address is listed above and by contacting my secretary you can make an appointment to meet on campus or at my office, which is located across the street from the DeAnza Hotel.

OFFICIAL TEXT

Hotel, Restaurant and Travel Law ("Text")
(Seventh Edition) by Norman G. Cournoyer, Anthony G. Marshall, Karen L. Morris

REFERENCE TEXT

West's Legal Environment of Business ("West's")
(Tenth Edition) by Frank B. Cross and Roger LeRoy Miller

SJSU CATALOG COURSE DESCRIPTION

HSPM 107. Legal Aspects of Hospitality Management.

* Due to the state's budget problems, the President of SJSU has designated Faculty Furlough days. I have designated February 15, 2010, March 1, 2010, March 8, 2010, April 12, 2010 and May 10, 2010.

Government regulation of the hospitality industry. Rights, obligations and liabilities of hotels, motels, restaurants, transportation services and travel/tourism agencies. Responsibilities for facilities and equipment common in the industry. Prerequisite: HSPM 1. Units: 3.

PURPOSE OF COURSE

The purpose of this course is to educate future hoteliers, restaurateurs and travel personnel and other persons working in the accommodation industry concerning their professional rights and obligations, and the rights and obligations of others. The course is designed to provide the student with a working knowledge of the laws and regulations applicable to the hospitality industry and, in particular, the areas of contracts, employment law, tort law, labor relations, product liability, insurance, and statutory regulations of hotels and food service most likely to be encountered.

SCOPE OF CLASS

This class is designed to introduce the student to the legal principles and issues common to the hotel and travel industry. The goal is to provide the student with a general understanding and working knowledge of typical and reoccurring legal problems that the student may encounter during his or her career.

The course will not follow a law school format, and will not be taught as such. Memorization of strict legal principals and rules is neither warranted nor the purpose of the class. Instead, during the class the student will be required to identify legal issues and learn how to evaluate those legal issues in a structured framework so that the issue can either be resolved informally by management, or presented to counsel. In summary, the student will learn to recognize a number of legal issues concerning hospitality operations, and will be provided the tools to devise management safeguards to limit legal exposure. The student will also be provided actual problems and issues and will be required to display an understanding of the legal principals by solving the presented problems.

CLASS FORMAT

This course will be a blend of lecture, reading, guest lecturers, and class participation. Lectures will not replace, but will supplement the reading materials. The student will be called upon to display both orally and in writing problem solving abilities premised upon the substantive information provided in the readings in class.

Information provided by guest lecturers will be on all examinations. The presentation of the information will be designed to make the student an active participant in the learning process as opposed to a passive recipient of information. Depending upon the availability of guest speakers and other logistic problems, one or more classes may be held off campus at the sites of various hotels or restaurants. At no time will a guest lecturer span the entire class period, and the guest lecturer will either be preceded or followed by class lecture or participation.

CLASS ATTENDANCE

Students should attend all meetings of their classes, not only because they are responsible for material discussed therein, but because active participation is frequently essential to insure maximum benefit for all members of the class. Attendance alone shall not be used as criterion for grading.

If a student has been out of school for one or more days, he should report to his instructors upon his return to inquire about making up the work. Students who know in advance that they will miss one or more classes should inform their instructors about their plans.

ACADEMIC INTEGRITY & COPYRIGHT

Academic Integrity

"Your own commitment to learning, as evidenced by your enrollment at San Jose State University, and the University's Academic Integrity Policy requires you to be honest in all your academic course work. Faculty are required to report all infractions to the office of Judicial Affairs. The policy on academic integrity can be found at <http://www2.sjsu.edu/senate/S04-12.htm>."

Americans with Disabilities Act Compliance

"If you need course adaptations or accommodations because of a disability, or if you need special arrangements in case the building must be evacuated, please make an appointment with The Disability Resource Center (924-6000, located in Adm. 110) as soon as possible. Presidential Directive 97-03 requires that students with disabilities register with DRC to establish a record of their disability.

Academic Policy

As a member of the campus community, you are expected to demonstrate integrity in all of your academic endeavors and will be evaluated on your own merits. Be proud of your academic accomplishments and help to protect and promote academic integrity at SJSU. The consequences of cheating and academic dishonesty—including a formal discipline file, possible loss of future internship, scholarship, or employment opportunities, and denial of admission to graduate school—are simply not worth it. More information can be found at http://www.sa.sjsu.edu/judicial_affairs/index.html

The University emphasizes responsible citizenship and an understanding of ethical choices inherent in human development. Academic honesty and fairness foster ethical standards for all those who depend upon the integrity of the university, its courses, and its degrees. This policy sets the standards for such integrity and shall be used to inform students, faculty and staff of the university's Academic Integrity Policy. The public is defrauded if faculty and/or students knowingly or unwittingly allow dishonest acts to be rewarded academically and the university's degrees are compromised. See <http://www2.sjsu.edu/senate/S04-12.pdf>

Copyright and Fair Use Policies

The University requires all members of the University Community to familiarize themselves with copyright and fair use requirements. You are individually and solely responsible for violations of copyright and fair use laws. The University will neither protect nor defend you nor assume any responsibility for employee or student violations and fair use laws. Violations of copyright laws could subject you to federal and state civil penalties and criminal liability as well as disciplinary action under University policies. To help familiarize yourself with copyright and fair use policies, the University encourages you to visit its copyright web page http://www.sjlibrary.org/services/distance/fac_copyright.htm

STUDENT RESOURCES

Disability Resource Center (DRC)

The DRC houses Disability Services, Tutoring Services, and Learning Strategies. If you have a documented disability that may require assistance, you will need to contact DRC for coordination in your academic accommodations. DRC is located in the Administration Building 110. The phone number is (408) 924-6000 (Main Office); or (408) 924-6542 (Deaf and HoH); or (408) 808-2123 (ATC). You may also visit the DRC website at <http://www.drc.sjsu.edu/index.htm>

The Adaptive Technology Center (ATC)

The ATC is located on the 2nd floor of King Library and is open only to SJSU students, faculty and staff registered with the SJSU Disabilities Resource Center (DRC). ATC hours and phone number are posted on the SJSU Disability Resource Center page.

Student Technology Resources

Computer labs for student use are available in the new Academic Success Center located on the 1st floor of Clark Hall and on the 2nd floor of the Student Union. Additional labs that may be available to students in your department/college. Computers are also available in the Martin Luther King Library.

A wide variety of audio-visual equipment is available for student checkout from Media Services located in IRC 112. These items include digital and VHS camcorders, VHS and Beta video players, 16 mm, slide, overhead, DVD, CD, and audiotape players, sound systems, wireless microphones, screens and monitors.

Learning Assistance Resource Center (LARC)

LARC is designed to assist students in the development of their full academic potential and to motivate them to become self-directed learners. The center provides support services, such as skills assessment, individual or group tutorials, subject advising, learning assistance, summer academic preparation and basic skills development. LARC is located in Room 600 in the Student Services Center. See <http://www.sjsu.edu/larc/>

SJSU Writing Center

The SJSU Writing Center is staffed by professional instructors and upper-division or graduate-level writing specialists from each of the seven SJSU colleges. Our writing specialists have met a rigorous GPA requirement, and they are well trained to assist all students at all levels within all disciplines to become better writers.

Librarian Liaison

The name and contact information for the HRTM librarian liaison: Harry C. Meserve (408) 808-2093.

APPROACH TO CLASS

Relevance of Course Material

My goal is to demonstrate the relevance of the course material content to legal issues you likely will encounter during your business career. I do not intend to merely require you to memorize concepts that are obtained from the book. Rather, I intend to highlight those concepts in each chapter I expect to be relevant to your career as a businessperson and use those concepts as a way to identify potential legal problems. I will do this by relying upon cases and problems that I have encountered over my 25-year career as an attorney. This means, of course, that you will be receiving much information outside the text. I believe that the concepts and the relevance of the concepts and rules in the text can best be explained by applying them to actual situations.

Enhancing Learning

This is not a memorization course. The key to understanding complex legal concepts is to first identify the legal issue. Once the legal issue is identified, then typically the rule of law can be applied and then analysis can be undertaken to obtain a conclusion regarding the likely outcome. This is the approach that I will take in order to enhance your learning experience. I will provide factual situations from which you should be able to identify the controlling principal law, formulate an analysis and come to an appropriate conclusion.

Summary of Important Points

All the material in all the chapters is important. However, as a practical matter, some rules of law and areas of law simply are more common than others are. I do not intend to focus on esoteric areas of law. Rather, as we proceed through each chapter, I will summarize and emphasize the important points and focus on those areas you will encounter in your career. The goal here will be to make sure that you understand the relative importance of each concept addressed in the chapter so that when you proceed with your career you will have received not only meaningful but relevant information.

Questions and Comments

Questions and comments are always welcome and encouraged. Generally, if you do not understand a concept, it is likely that your classmates may fail to understand the concept also. Questions and comments also have a tendency to encourage meaningful discussion in the class regarding the concepts that will be addressed each lecture. However, we must strike a balance between addressing fully and completely any questions and comments and making progress in the class. This means that the questions and comments should be related to the material being presented so that we avoid tangents or spending too much time on an individual, if not esoteric, problem.

Atmosphere in the Class

I am trained as a litigation attorney. This means, as a practical matter, that whenever I present a case, it is important that I do not "lose" the Judge or the jury. Obviously, each lecture will not be a comedy show, but where appropriate, humor and levity will be used. Simply put, to the extent I possibly can, I intend to make learning legal concepts fun.

Assistance

If you need help, please let me know. This is your education and whatever help I can provide commensurate with my obligations as an instructor to other students and making progress in the class, I will attempt to do. Never feel shy in approaching me for any type of assistance.

Diversity of Students

It has been my experience over the last decade in teaching this class that there is great diversity of students at San Jose State University. The diversity is not simply ethnic, racial or cultural diversity, but educational diversity also. I have observed over the years that some students have been well prepared for college and others have been less prepared. I also have recognized that for many students English is a second language, and writing skills vary dramatically. Some students are able to write an essay with clarity. Other students struggle with clearly communicating in writing their knowledge. This class is simply not designed to provide remedial help, but I do recognize that there are special needs that should be focused upon. The best way for me to handle those needs is to be aware of any particular issue that you may have. This will require you to be proactive. It may mean asking questions during class. It may mean asking me to slow down during lectures. It may mean asking me to explain concepts in more detail. It most certainly will mean that you will need to read the material and pay attention.

Interest in Class

I am not a full time instructor. I have had a distinguished legal career with a major law firm in San Jose. Yet, I have a strong belief that education is key to our stability and progress as a society. Each lawyer in my law firm has a commitment to community service. One way I would demonstrate that community service is by teaching this class.

Teaching Methods

My approach will first introduce you to the legal concepts and rules of law. Without a foundation and understanding of the applicable rules of law, it will be difficult to apply those rules to any particular legal question. During the course of the semester, once I have confidence that the rules have been communicated I will, to a certain degree, pose questions to individual students in

the class asking them to apply the rules that we have discussed during class to hypothetical situations. The key to obtaining a solid foundation in any legal studies is being able to apply the concepts learned.

Grading Methods

Grades are an important tool to any education. Grades are one of the few ways by which a student and an instructor can evaluate whether the concepts being discussed have been understood. My goal with grading is to make sure that I meet the challenges of the most dedicated and intelligent of students but at the same time avoiding losing those students which learning is typically a challenge. I also recognize that how well a student performs on a particular examination involves not only the dedication of the student, but how well the instructor has communicated the information. I cannot control the work habits and dedication of the individual students. However, I can control and intend to do so, the mode and method by which I communicate information to you. To evaluate your review of that information, I will grade on a curve. The reason I do so is that this allows me to reward those students who do well, but at the same time providing me some flexibility to avoid losing the students who are struggling.

Analysis of Material

My goal during the semester will provide you with the tools and the insight to allow you to analyze complex, if not abstract, legal rules. My goal is to give you the confidence to analyze these complex and abstract legal issues.

Feedback

I will endeavor whenever possible to provide meaningful feedback to you about your progress. The amount of time that can be spent with each student is inversely proportional to the size of the class. The larger the class, the more difficult it is to give one on one attention to any individual. The smaller the class, the easier it is to do so. Over the years, I have found the best way to provide feedback is immediate response to questions along with class discussions and dialogue. This feedback will also include going over each test that we take so that you understand what the correct answers were.

Confidential Student Questionnaire

I will be providing you with a document entitled Confidential Student Questionnaire. This document is designed to provide me with information about you. Some of the information is of a practical nature. For example, there are times when I will need to communicate with you and by having a telephone number or e-mail address for you, it makes the job much easier. More importantly, for my purposes, I will ask you to provide some general information about yourself concerning your study habits, reading habits and your expectations. No one is obligated to fill out this questionnaire. It is purely voluntary. It is also confidential. I will be using it only for my own information and only for the class.

Class Handouts

Instructor may hand out additional written materials. If student misses a class, the student must obtain copies from other students.

Make-Up Policy

The student must familiarize himself or herself with all the policies of the University and the School of Business regarding make-up policies. These policies if in conflict with mine will control. If a student misses an examination the student will, upon a showing of good cause, be able to take the examination. To ensure fairness, the examination may not be identical to the one presented to the class. Concerning classes that are missed, it will be the student's responsibility to obtain whatever information was presented in class from a classmate. The following policy does not apply to midterm or final examination. You must attend the midterm examination and final examination at the scheduled times. Please do not expect to "make-up" the midterm or final examination.

Due to the size of the class it is impossible for the instructor to accommodate the individual needs of each student. Each student must recognize that it is the student's responsibility to attend class or not attend class and face the consequences of that decision not to attend class. The instructor will try to accommodate students when possible. However, the instructor will not be amenable to students missing classes or quizzes and asking for makeup material. It will be the student's responsibility to make sure that the student either attends class or obtains the information outside of class. The instructor reserves the right not to provide any makeup examinations, quizzes or other materials if the student fails to show good cause for not attending or doing the work at the designated times. Any makeup work shall be conducted at the Law Offices of Berliner Cohen, 10 Almaden Blvd., 11th Floor, San Jose, CA 95112. We will generally cover the following items over the next 15 weeks.

College of Business Policies and Procedures for Use of Boccardo Business Center

To ensure that every student, current and future, who takes courses in the Boccardo Business Center has the opportunity to experience an environment that is safe, attractive, and otherwise conducive to learning, the College of Business at San José State has established the following policies:

Eating

Eating and drinking (except water) are prohibited in the Boccardo Business Center. Students with food will be asked to leave the building. Students who disrupt the course by eating and do not leave the building will be referred to the Judicial Affairs Officer of the University.

Cell Phones

Students will turn their cell phones off or put them on vibrate mode while in class. They will not answer their phones in class. Students whose phones disrupt the course and do not stop when requested by the instructor will be referred to the Judicial Affairs Officer of the University.

Computer Use

In the classroom, faculty allows students to use computers only for class-related activities. These include activities such as taking notes on the lecture underway, following the lecture on Web-based PowerPoint slides that the instructor has posted, and finding Web sites to which the instructor directs students at the time of the lecture. Students who use their computers for other activities or who abuse the equipment in any way, at a minimum, will be asked to leave the class. They will lose participation points for the day, and, at a maximum, will be referred to the Judicial Affairs Officer of the University for disrupting the course. (Such referral can lead to suspension from the University.) Students are urged to report to their instructors computer use that they regard as inappropriate (i.e., used for activities that are not class related).

Academic Honesty

Faculty will make every reasonable effort to foster honest academic conduct in their courses. They will secure examinations and their answers so those students cannot have prior access to them and proctor examinations to prevent students from copying or exchanging information. They will be on the alert for plagiarism. Faculty will provide additional information, ideally on the green sheet, about other unacceptable procedures in class work and examinations. Students who are caught cheating will be reported to the Judicial Affairs Officer of the University, as prescribed by Academic Senate Policy S98-1.

4/04 Mission - The College of Business is the institution of opportunity, providing innovative business education and applied research for the Silicon Valley region.

BASIS OF GRADE

The student's grade and the examination will be based upon the following criteria and allotted the following weight:

<u>Endeavor</u>	<u>Weight of Grade</u>
Court Project	15% - Meaningful & verifiable participation
Midterm Examination #1	25%
Midterm Examination #2	25%
Final Examination	30%

MAKE-UP POLICY

If a student misses an examination the student will, upon a showing of good cause, be able to take the examination. To ensure fairness, the examination may not be identical to the one presented to the class. Concerning classes which are missed, it will be the student's responsibility to obtain whatever information was presented in class from a classmate.

SJSU FIRST DAY OF INSTRUCTION – TUESDAY, JANUARY 26, 2010

SCHEDULE

<u>Date</u>	<u>Topic</u>	<u>Reading</u>
Week 1-2	What happens or what do I do if I am sued or what to sue? Knowing your legal system. Source of Law - generally and hotel; Overview of the judicial system and how a lawsuit is commenced and resolved alternatives to litigation settlement and resolution prior to litigation - dealing with outside counsel - fee agreements - billing procedures	Text-Chap 1 & 2; <u>West's Legal Environment of Business</u> ("West's") Chaps. 1-3
Week 3	I have lost my guest's baggage. Loss of injury and property (nature of innkeepers liability, limitation on amount, property covered) What special duties do I owe to my patron? Duty owed to hotel guests and non-guests or licensees.	Text Chap 8 Text Chap 7
Week 4	What special duties do I have and does the guest have? Lien for compensation, rights of hotel- keeper and restaurateurs (property subject to lien, enforcement of lien, issues about paying the bills, collection procedures)	Text Chap 9 & 10
Week 5	What do I need to know about dealing with the public? Civil Rights, Aspects of Hotel Law, Duty to receive and accommodate, relationship of hotel, patron and innkeeper, Guest rights	Text Chap 3; <u>West's</u> Chap. 4
Week 6	What do I have to look out for to avoid being sued? Review of negligence and other standards of care.	Text - Chap 5; <u>West's</u> Chap. 7
Week 7	What can I do to lessen the risk of being sued and what standards will my conduct be judged by? Standards of care and hospitality practices.	Text Chap 6; <u>West's</u> Chap. 6
Week 8	Your patron was drunk and hit my car! Regulation of alcohol, liabilities of restaurant, bar and tavern owners	Text Chap 11 & 12

Spring Break: March 29 – April 4, 2010

<u>Date</u>	<u>Topic</u>	<u>Reading</u>
Week 9	How do I deal with my vendors and creditors? Knowing about agreements and how and when the agreements are enforceable. Contracts & Sales - formation (offer, acceptance, consideration) - enforcing contracts (damages, rescission, specific performance) - miscellaneous issues (statute of frauds, attorneys fees provisions)	Text Chap 4; <u>West's</u> Chaps. 10-19
Week 10	When am I at risk for not being Paid? How can I collect? Collection issues (temporary protective orders, voluntary security agreements, consumer collection practices) and bankruptcy issues (types of bankruptcies - automatic stays, secured creditor issues) Construction issues (mechanics liens)	<u>West's</u> Chaps. 28-30; hand-outs to be provided
Week 11	Dealing with Intellectual Property Rights and Government Regulation! General aspect of hotel management and new areas of concern, e.g., licensing and regulation; termination of management companies; franchisee – franchiser issues; issues of management.	Text Chap 15; <u>West's</u> Chaps. 43,-46
Week 12	Do I really want to be an employee? Employee relations/wrongful termination (contracts at will, wrongful termination issues, labor code sections, discrimination issues)	Text Chap 14; <u>West's</u> Chaps. 31-34
Week 13	How can I protect myself and limit my liabilities? Forms of Organization Insurance issues (tendering of lawsuits if sued, analysis of policies, reservation of rights) [guest lecturer - 30 minutes]	<u>West's</u> Chaps. 35-42
Week 14	The trip from hell. Are you responsible? Legal issues related to travel agents & franchises	Text Chap 13,
Week 15	Gambling - It's legal even in places where it's illegal! Hospitality Industry and Casinos.	Text Chap. 16

LAST DAY OF INSTRUCTION – MONDAY, MAY 17, 2010

FINAL

Section 1: Monday, May 24, 2010, 5:15 p.m. to 7:30 p.m., Spartan Complex, Central Room 2001

Make-up Examination: Tuesday, May 25, 2010, 5:15 p.m. to 7:30 p.m., BBC 220