

## THE I-DO'S AND I-DON'TS OF RISK LIMITATION FOR WEDDING VENUES

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Grandma Ginger tripping on the slightly elevated dance floor; DJ Denny's disco lamp falling onto Aunt Linda; the bridal party's bus rear-ending the cake delivery van – some liability risks associated with hosting a wedding or other special events are more straightforward, while others may be as sneaky as the groom's ex-girl-friend planning her sabotage. When the glitz and glamor of the wedding wear off, the last thing that the venue, the vendors, or the bride and groom want to deal with is a hefty lawsuit. While it is impossible to truly inoculate wedding venues from liability, a well-prepared venue can certainly limit and reduce that risk.

One of the biggest risks associated with weddings comes from liquor. It comes as no surprise that wedding guests often over-indulge, which can sometimes lead to property damage, or even worse, injuries. In some states, traditional agency elements can be used to impute liability for liquor service under common law even if there are designated caterers or bartenders 'handling' the service of alcohol. If a venue exercises control over a bartending vendor, profits specifically from the sale or service of liquor, or undertakes duties associated with liquor service, they could be jointly and severally liable for damages caused by a rogue guest either during or after the wedding. Actions as unassuming as allowing venue employees to assist in handing out champagne just for the toast, or as well-intentioned as having managers or dedicated security monitor guest behavior may lay the groundwork for an agency claim. Similarly, while most venues require the wedding party to use a separate liquor vendor for the reception, they may be hard-pressed to prevent bridesmaids from chugging mimosas while they do their hair and makeup in the bridal suite. Additional liability risk could be based on the simple act of providing a security guard to help discourage the craziness that seems to follow the nuptials. Many venues require site security to avert guests from climbing the twinkle-light-lined trees or to dissuade popular couples from sneaking in more guests than the maximum capacity. But what if Big Dave, the venue's security guard, steps in to disrupt a fight between the bride's father and stepfather?

Suddenly that venue faces vicarious liability for Big Dave's fight-stopping techniques, and the training he received from his employer is now under the scrutiny of an aggressive plaintiffs' attorney.

Intoxicated guests and well-meaning security guards aside, wedding venues may also play host to a litany of outside vendors and subcontractors. In fact, a number of different vendors may be involved in any one wedding to handle the delivery and installation of massive tents, bars, tables, lights, and dance floors, and individual vendors are often used to provide the drivers, laborers, waiters, bartenders, photographers, videographers, and DJs, who each may have their own equipment. Every person – whether the bride, guest, caterer, waiter or the videographer's nephew Tommy who is just there to shlep around the equipment – poses risks to the venue for damage and injury to other entrants. Indeed, co-author Erica Spurlock recently spent the morning of her wedding preserving video and gathering names, DOT numbers, and insurance information after two delivery drivers over-loaded a pallet with thousands of pounds of sandbags before ramming it into her venue's expensive security gate.

State law may vary slightly on what constitutes an invitee versus a licensee or trespasser, and the duties to each. But, generally speaking, a possessor of land is liable if they (1) knew or reasonably should have known of an unreasonable risk of harm that (2) they would not have expected guests to have discovered, yet (3) failed to exercise reasonable care in either warning the guest or rectify the risk. Restatement (Second) of Torts § 343 (1965). If My Little Wedding Venue knows that the wing-style leaves of the "Sweetheart Love" tables used by their preferred caterer regularly drop down without warning, but still allow those tables at their weddings, My Little Wedding Venue may have adopted the risk associated with those tables when a leaf suddenly falls and cracks Uncle Kramer's knee caps.

In light of all the risks associated with hosting weddings, many venues have developed lengthy contracts that they require their wedding couples to sign. These often include provisions wherein the renting couple must agree to very broad indemnity agreements; 'as-is' provisions so that the couple must accept the venue with all its possible flaws and risks; and liquor agreements where the venue expressly denies liability for any liquor-related claims. While the validity of these contracts varies state by state, many are pulled from templates found on various websites. The renting couple generally has no bargaining power in the language of such agreements, which may be considered adhesion contracts, and such provisions may not comport with applicable state law. This, of course, could impact the enforceability of such contracts. Further still, while the newlywed couple may have been able to afford the most expensive orchids in their bouquets, the likelihood that they can cover the defense and indemnity costs associated with a significant personal injury claim is quite low. Homeowners' and renters' policies might apply, but nothing also screams "free advertising" quite like suing and bankrupting the beautiful influencer couple who just posted hundreds of pictures of your venue three months before.

To further insulate from risk, many venues will require separately insured and licensed bartenders to handle liquor service, and many will require all vendors to provide certificates of insurance. While this is certainly a recommended practice, as crafty plaintiffs' attorneys look to agency and assumed duties to expand liability, the existence of a vendor's insurance may still not protect that venue in a worst-case scenario. The vendor's liability insurer may also refuse a tender of defense demand if, for example, Big Dave, the venue's security guard, roughly removes Aunt Phillis from the bar after too many signature

cocktails. And what if the venue's insurance policy has a liquor and/or an assault and battery exclusion? The venue could now be on the hook for all of the damages that ultimately resulted from Big Dave's actions against Aunt Phillis.

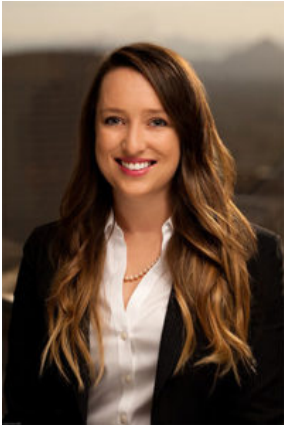
All that risk aside, according to IBIS World Statistics, the wedding service industry market was worth more than \$60 billion in 2022, and the average American wedding in 2022 cost \$25-35,000. So what can a wedding venue (and those that insure wedding venues) really do to limit liability risks? Some practices, such as detailed contracts and insurance requirements of vendors remain strongly recommended, but with some tweaks.

- First, venues should seek legal counsel to create state-specific and venue-specific contracts that can be adjusted to fit the needs of each wedding. Such contracts should allow for some options and bargaining power with the renting Perhaps the couple can specifically opt in or opt out of certain provisions in exchange for a higher rental cost, or allow them to sub-contract out certain aspects such as hiring their own security. The more these contracts constitute a bargained-for agreement, the more likely they are to influence a judge or jury tasked with upholding them.
- Second, venues should continue to require all vendors to provide proof of insurance, but the best practice would be to have vendors specifically name the venue as an additional insured on their policies. While this might increase the cost to the vendor slightly, for repeat or preferred vendor status it may be worth it to the vendor as well.
- Third, venues should require the renting couple to obtain and provide proof of a special event policy or proof that their homeowners or umbrella policies would apply to cover their indemnity agreements. These policies are relatively inexpensive compared to the cost of wedding venue rentals.
- Finally, if venue employees are used to help monitor guests, then such venues should look to best practices of other industries in handling their training and documentation – specifically the restaurant and bar industries. Training employees regarding liquor service safety and event security; basic risk management; and documenting and preserving key evidence following an incident may be crucial in responding to a tragic claim. Maintaining detailed lists of all vendors for each event, including copies of their insurance certificates and lists of all the names of their employees on site for the length of that state's statute of limitations, for example, quickly allows a venue to respond when facing a claim.

The hosting and throwing of weddings is a beautiful and lucrative industry, and one that does not exactly mirror the regulations, risks, or experiences of other industries. Champagne flows and dancing occurs, often in the highest heels that Grandma Ruth has worn in decades, and the risks associated with these gorgeous events are incalculable. With proper preparation, contracts, insurance, training, and record keeping, however, wedding venues can continue to offer fabulous events while still addressing and limiting their risk of liability.

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