

# Is a restaurant menu a contract & what liabilities does it incur?<sup>1</sup>

Sarah Safarian

## INTRODUCTION

In this International Contract Management report, I address the question of whether or not a menu in a restaurant is an enforceable contract. The title of my presentation will be as follows: Is a menu a contract & what liabilities does it incur?

**Key words:** The six key words I will consider are: **Liability** - of the restaurant owner to the client; **Termination** - 'sending the meal back'; **Acceptance** - 'does the meal adhere to what it describes on the menu?'; **Guarantee** - 'Are the same ingredients mentioned on the menu being used'; **Disputes**; **Enforceable**

## Menu's enforceability

First, I will present the different elements that make up a menu. Then, I'll address whether or not these confirm a menu is an enforceable contract.

I will examine the **five elements** that make up a valid and enforceable contract, within the menu:

**Offer**  
**Acceptance**  
**Exchange**  
**Capacity**  
**Legality**

The objective of this paper is to benchmark a restaurant menu against the SKEMA PPMD Fall 2017 course materials on International Contracts for Project Managers. This includes the use of FIDIC, AIA, EJCDC and Consensus Docs as benchmark, using the terms and conditions contained in these global contracts as the baseline for comparison purposes.

---

<sup>1</sup> *Editor's note: Student papers are authored by graduate or undergraduate students based on coursework at accredited universities or training programs. This paper was prepared as a deliverable for the course "International Contract Management" facilitated by Dr Paul D. Giammalvo of PT Mitratata Citragraha, Jakarta, Indonesia as an Adjunct Professor under contract to SKEMA Business School for the program Master of Science in Project and Programme Management and Business Development. <http://www.skema.edu/programmes/masters-of-science>. For more information on this global program (Lille and Paris in France; Belo Horizonte in Brazil), contact Dr Paul Gardiner, Global Programme Director, at [paul.gardiner@skema.edu](mailto:paul.gardiner@skema.edu).*

I will also address the issue of whether or not running a restaurant is an example of 'projectized operations,' determining if each meal represents a one-time unique event with a defined start and defined finish, or not.

In order to accomplish the objective listed above, I will use the keywords to conduct in-depth research and to answer the question at hand.

## **I. What is a menu?**

A menu is an implied contract, a contract that arises from one's conduct, and is legally binding; 'a contract that the parties presumably intended as their tacit understanding as inferred from their conduct and other circumstances' (Shake Law, 2014).

In a restaurant, it is implied and understood that when you sit down you agree to pay for the food, and the restaurant agrees to serve you prior to receipt of payment.

The menu we will examine is from a Chicago restaurant called **'Loving Heart Vegan'** (seen below in figure 1) and is comprised of the following elements:

- Product description: menu items, their ingredients, composition
- The prices for a small versus a large order
- Claims such as '100%vegan' or 'Drinks are all gluten free!' or '80% USDA Certified Organic Ingredients'
- A disclaimer at the bottom, mentioning 'note: we don't list every ingredient and they are subject to change, if we cannot source an ingredient. If you have a severe allergy or intolerance, please note that we do not use dedicated equipment for menu items, described as 'gluten free,' 'gluten free option available,' 'nut free,' 'soy free,' etc.'

**Snacks & Shares**

**SUMMER ROLL**  
 (Rice Roll version of Green Deva Salad)  
 special green ginger pesto (contains almond), organic avocado, organic spinach, organic red bell pepper, organic red onion, cilantro, roasted peanuts, seaweed, wrapped in a thin rice paper wrap, cut in half, total 2 pieces 5.99  
 Choose your protein (Select one):  
 ♥ Korean BBQ (non-GMO texturized vegetable protein)  
 ♥ Seasoned organic garbanzo & organic black beans (Gluten free)

**NACHO CHIPS**  
 non-GMO nacho chips, organic tomato, organic avocado, organic red onion, cilantro, organic red bell pepper hummus (contains cashew), tahini hummus (contains cashew), organic special tomato sauce (Gluten free, Soy free)

♥ Small 4.75  
 ♥ Large 8.20

**Sides**

SIDES ARE ALL GLUTEN FREE!

**ORGANIC POTATO CHIPS** 1.75  
**ORGANIC STEAMED BROWN RICE** 1.99  
**SIDE SALAD** 3.45  
 organic spinach, organic romaine lettuce, organic red onion, organic carrot, cilantro, special green ginger pesto

**Sweets**

**DOUBLE CHOCOLATE CAKE** 3.49  
**APPLE GINGER CAKE** 3.49  
**CHOCOLATE CAKE (GLUTEN FREE)** 3.49  
**CARROT CAKE (GLUTEN FREE)** 3.49  
*made with organic flour/ non-GMO gluten free flour and organic sugar*

DRINKS ARE ALL GLUTEN FREE!

**Smoothies**

♥ Add Organic Raw Protein Powder + 1.00  
 ♥ Add Organic Raw Cacao + 1.00

**GREEN SMOOTHIE**  
 organic kale, organic spinach, organic apple, organic banana, organic coconut milk (nut free, gluten free, soy free) 4.98

**COCONUTTY SMOOTHIE**  
 organic banana, almond butter, roasted peanuts, organic coconut milk, organic agave (soy free, gluten free) 4.60

**OCEAN OF LOVE SMOOTHIE**  
 organic spirulina, flax meal, organic banana, raisin, cinnamon, organic coconut milk (soy free, gluten free) 4.60

**BANANA MANGO SMOOTHIE**  
 organic banana, mango, organic soy milk, organic agave (nut free, gluten free) 4.50

**BLUEBERRY BANANA SMOOTHIE**  
 organic banana, blueberry, organic soy milk, organic agave (nut free, gluten free) 4.60

**Coffees & Teas**

**ORGANIC COFFEE - AMERICANO**  
 hot 2.00 / Iced 2.50

**ORGANIC CAFE LATTE**  
 organic espresso with organic soy milk or organic coconut milk hot or iced 3.50

**ORGANIC CHAI LATTE**  
 Organic Rishi Chai with organic soy milk or organic coconut milk hot or iced 3.50

**MATCHA LATTE**  
 Matcha with organic soy milk or organic coconut milk hot or iced 3.50

**ORGANIC ICED TEA**  
 Organic blood orange tea with a fresh lemon slice. Caffeine free, sugar free 2.00

**ORGANIC TEA SACHETS**  
 peppermint, earl gray, gen mai cha, & more on the counter hot or iced 2.00

100% VEGAN &  
 ABOUT 80% USDA CERTIFIED ORGANIC INGREDIENTS

**vegan**

Loving Heart

CHICAGO

LOVINGHEARTVEGAN.COM

773-561-5399

838 WEST MONTROSE AVE  
 CHICAGO IL 60613

OPEN  
 MON THRU SAT  
 11AM-8PM

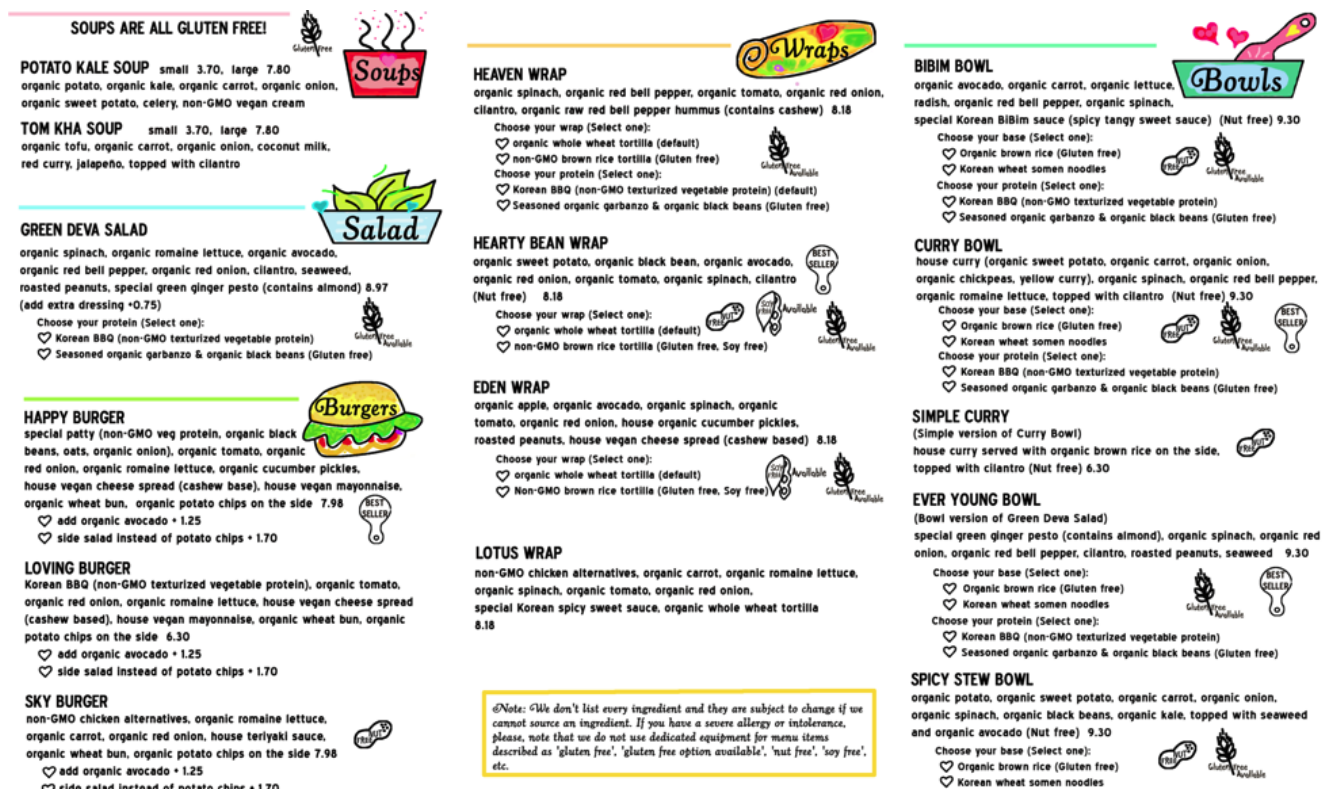
GIFT CARDS AVAILABLE

DELIVERY WITH  
 DOORDASH.COM

EAT-IN TAKE AWAY PICK UP

Figure 1 – Loving Heart Menu Page<sup>2</sup>

<sup>2</sup> loving heart. vegan.chicago. (n.d.). Retrieved from <http://www.lovingheartvegan.com>



**SOUPS ARE ALL GLUTEN FREE**

**POTATO KALE SOUP** small 3.70, large 7.80  
 organic potato, organic kale, organic carrot, organic onion, organic sweet potato, celery, non-GMO vegan cream

**TOM KHA SOUP** small 3.70, large 7.80  
 organic tofu, organic carrot, organic onion, coconut milk, red curry, jalapeño, topped with cilantro

**GREEN DEVA SALAD**  
 organic spinach, organic romaine lettuce, organic avocado, organic red bell pepper, organic red onion, cilantro, seaweed, roasted peanuts, special green ginger pesto (contains almond) 8.97 (add extra dressing +0.75)  
 Choose your protein (Select one):  
 ♥ Korean BBQ (non-GMO texturized vegetable protein)  
 ♥ Seasoned organic garbanzo & organic black beans (Gluten free)

**HAPPY BURGER**  
 special patty (non-GMO veg protein, organic black beans, oats, organic onion), organic tomato, organic red onion, organic romaine lettuce, organic cucumber pickles, house vegan cheese spread (cashew base), house vegan mayonnaise, organic wheat bun, organic potato chips on the side 7.98  
 ♥ add organic avocado + 1.25  
 ♥ side salad instead of potato chips + 1.70

**LOVING BURGER**  
 Korean BBQ (non-GMO texturized vegetable protein), organic tomato, organic red onion, organic romaine lettuce, house vegan cheese spread (cashew based), house vegan mayonnaise, organic wheat bun, organic potato chips on the side 6.30  
 ♥ add organic avocado + 1.25  
 ♥ side salad instead of potato chips + 1.70

**SKY BURGER**  
 non-GMO chicken alternatives, organic romaine lettuce, organic carrot, organic red onion, house teriyaki sauce, organic wheat bun, organic potato chips on the side 7.98  
 ♥ add organic avocado + 1.25  
 ♥ side salad instead of potato chips + 1.70

**HEAVEN WRAP**  
 organic spinach, organic red bell pepper, organic tomato, organic red onion, cilantro, organic raw red bell pepper hummus (contains cashew) 8.18  
 Choose your wrap (Select one):  
 ♥ organic whole wheat tortilla (default)  
 ♥ non-GMO brown rice tortilla (Gluten free)  
 Choose your protein (Select one):  
 ♥ Korean BBQ (non-GMO texturized vegetable protein) (default)  
 ♥ Seasoned organic garbanzo & organic black beans (Gluten free)

**HEARTY BEAN WRAP**  
 organic sweet potato, organic black bean, organic avocado, organic red onion, organic tomato, organic spinach, cilantro (Nut free) 8.18  
 Choose your wrap (Select one):  
 ♥ organic whole wheat tortilla (default)  
 ♥ non-GMO brown rice tortilla (Gluten free, Soy free)

**EDEN WRAP**  
 organic apple, organic avocado, organic spinach, organic tomato, organic red onion, house organic cucumber pickles, roasted peanuts, house vegan cheese spread (cashew based) 8.18  
 Choose your wrap (Select one):  
 ♥ organic whole wheat tortilla (default)  
 ♥ Non-GMO brown rice tortilla (Gluten free, Soy free)

**LOTUS WRAP**  
 non-GMO chicken alternatives, organic carrot, organic romaine lettuce, organic spinach, organic tomato, organic red onion, special Korean spicy sweet sauce, organic whole wheat tortilla 8.18

**BIBIM BOWL**  
 organic avocado, organic carrot, organic lettuce, radish, organic red bell pepper, organic spinach, special Korean Bibim sauce (spicy tangy sweet sauce) (Nut free) 9.30  
 Choose your base (Select one):  
 ♥ Organic brown rice (Gluten free)  
 ♥ Korean wheat somen noodles  
 Choose your protein (Select one):  
 ♥ Korean BBQ (non-GMO texturized vegetable protein)  
 ♥ Seasoned organic garbanzo & organic black beans (Gluten free)

**CURRY BOWL**  
 house curry (organic sweet potato, organic carrot, organic onion, organic chickpeas, yellow curry), organic spinach, organic red bell pepper, organic romaine lettuce, topped with cilantro (Nut free) 9.30  
 Choose your base (Select one):  
 ♥ Organic brown rice (Gluten free)  
 ♥ Korean wheat somen noodles  
 Choose your protein (Select one):  
 ♥ Korean BBQ (non-GMO texturized vegetable protein)  
 ♥ Seasoned organic garbanzo & organic black beans (Gluten free)

**SIMPLE CURRY**  
 (Simple version of Curry Bowl)  
 house curry served with organic brown rice on the side, topped with cilantro (Nut free) 6.30

**EVER YOUNG BOWL**  
 (Bowl version of Green Deva Salad)  
 special green ginger pesto (contains almond), organic spinach, organic red onion, organic red bell pepper, cilantro, roasted peanuts, seaweed 9.30  
 Choose your base (Select one):  
 ♥ Organic brown rice (Gluten free)  
 ♥ Korean wheat somen noodles  
 Choose your protein (Select one):  
 ♥ Korean BBQ (non-GMO texturized vegetable protein)  
 ♥ Seasoned organic garbanzo & organic black beans (Gluten free)

**SPICY STEW BOWL**  
 organic potato, organic sweet potato, organic carrot, organic onion, organic spinach, organic black beans, organic kale, topped with seaweed and organic avocado (Nut free) 9.30  
 Choose your base (Select one):  
 ♥ Organic brown rice (Gluten free)  
 ♥ Korean wheat somen noodles

*Note: We don't list every ingredient and they are subject to change if we cannot source an ingredient. If you have a severe allergy or intolerance, please, note that we do not use dedicated equipment for menu items described as 'gluten free', 'gluten free option available', 'nut free', 'soy free', etc.*

Figure 2 - Loving Heart Menu Page2

Let us take a look at the different contract elements, and evaluate where the menu's enforceability might be lacking, as well as where the client may not be protected.

**PROBLEM / OPPORTUNITY STATEMENT**

To summarize, this paper has been undertaken to answer the following questions:

- 1) When is a menu an enforceable contract?
- 2) How can we understand the liability associated with a menu through FIDIC or other contract benchmarks?
- 3) How can an owner reduce his/her exposure to liability issues?

**METHODOLOGY**

To make progress and obtain information with regards to the question at hand, I used field data from the food & beverage industry.

I also used FIDIC, AIA, EJCDC and Consensus Docs as benchmark, using the terms and conditions contained in these global contracts as the baseline for comparison purposes.

## Development of the feasible alternatives

There are numerous feasible alternatives to a traditional restaurant paper-based menu today:

- **Online menu boards:** an ability to discover the menu prior to accessing the restaurant to decide whether the offer suits the client or not
- **Menus within restaurant ranking websites:** such as trip advisor, where clients can refer to others' opinions, making the offer more or less credible
- **Fixed Price Discovery Menu:** where the menu elements are not provided and the client enters at his/her own risk to try a new experience
- **On-screen or Ipad menus with images of the meals:** which can cater to and strengthen the offer and acceptance likelihood of menu items
- **Menu with detailed and very precise nutritional information**

## Development of the outcomes and CFs for the alternatives

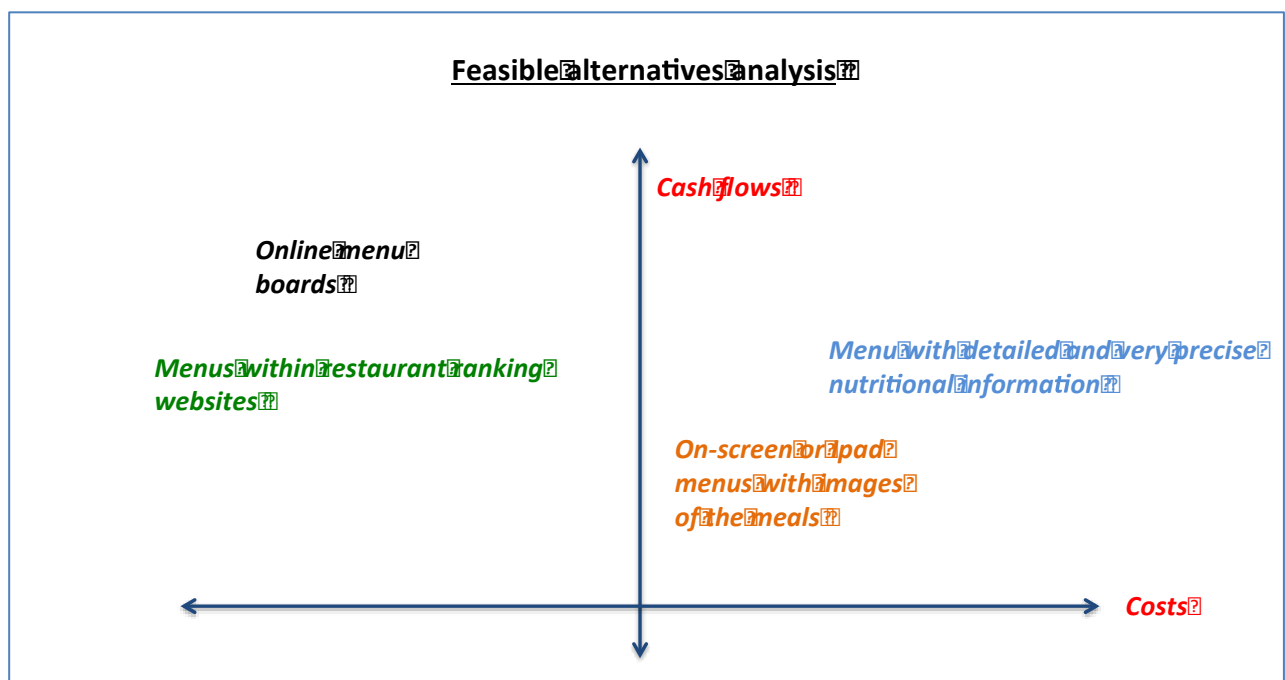


Figure 3 – Feasibility alternatives matrix / analysis

With regards to the feasible alternatives, we have placed them as follows on the above matrix because:

1. An **online menu** does not cost much to upload but can have a significant positive impact on attracting clients to the restaurant, given they will have visibility of the menu and what they can expect to receive
2. The **menu within ranking websites** does not cost anything as many review websites allow clients to comment for free; however it can have a positive or negative impact on cash flows, depending on how the restaurant is ranked; as a result we've placed it in the middle of the cash flow axis
3. The **menu provided on ipads and with images** can be costly as the restaurant would have to invest in ipads to provide to clients upon arrival, and it might be costly also because the restaurant might hire a professional photographer to take the photos. The cash flow here is not estimated as too high as many people enjoy traditional paper or book menus.
4. A **menu with detailed and precise nutritional information** may be costly if the restaurant hires a professional nutritionist to come and provide detailed calorie and nutritional information. And seeing as the minimum average hourly rate of non-salaried nutritionists was of \$27.07 (2013) or \$56,300 annual salary, it can become costly to engage a nutritionist to fortify the menu.

In addition, it is important to note when evaluating menus that:

- Menu revenue is based on analyzing how much do the ingredients cost to make the meal, how much does the staff cost, versus how much should the customer be charged.
- Food cost % must not exceed **20%**
- Cash flows are based on the food cost % to selling price total tax included
- If selling price of meal is \$12 and Ingredients cost \$1.86, then food cost % is 15% which is within a reasonable margin – as a result, this meal can be added to the menu
- Food costs that exceed the 20% mark must not be added to the menu or the price must be adjusted

### **Selection of a criterion (a criteria)**

In this section, we will use the **non-dimensional scaling technique and compensatory method** to select the strongest criteria.



Undesirable - (Worst case - attribut value) / (worst case - bset case)			
Desirable - (Attribute value - worst case) / (best case - worst case)			
Attribute	Value	Formula	Dimensionless value
Costs	10	$=(25-10)/(25-10)$	1
	15	$=(25-15)/(25-10)$	0.666666666666667
	20	$=(25-20)/(25-10)$	0.333333333333333
	25	$=(25-25)/(25-10)$	0
Quality	Poor	Relative rank (4-1)/3	1
	Fair	Relative rank (3-1)/3	0.67
	Good	Relative rank (2-1)/3	0.33
	Excellent	Relative ran (1-1)/3	0
Convenience	Low	Relative rank (4-1)/3	1
	Medium	Relative rank (3-1)/3	0.67
	High	Relative rank (2-1)/3	0.33
	Very High	Relative ran (1-1)/3	0

Attribute	Menu 1 (main dish)	Menu 2 (starter and main dish)	Menu 3 (starter, main dish and dessert)	Menu 4 (2 starters, main dish and dessert)
Costs \$	10	15	20	25
Quality	Poor	Fair	Good	Excellent
Convenience	Low	High	Very High	Very High

**Menu 4 > Menu 3 > Menu 2 > Menu1**

Quality	
Poor	0
Fair	1
Good	2
Excellent	3

Menu options	
Menu 1	0
Menu 2	1
Menu 3	2
Menu 4	3

Attribute	Menu 1 (main dish)	Menu 2 (starter and main dish)	Menu 3 (starter, main dish and dessert)	Menu 4 (2 starters, main dish and dessert)
Costs \$	1	0.6666	0.3333	0
Quality	1	0.67	0.33	0
Convenience	1	0.33	0.33	0
Totals	3	1.663	0,993	0

**Figure 04 – Non dimensional scaling technique and compensatory model / table**

\*Note with regards to the menu, we assume the more costly, the higher the quality.

Therefore high cost is not negative here but rather positive.

## **FINDINGS**

### **Analysis & comparison of the alternatives**

Let us look at the strengths, weaknesses, opportunities and potential threats a menu faces with regards to being enforced, with this **SWOT analysis** table below.

The restaurant menu demonstrates strength when the food served is tasty and customers are repeat, and loyal. A menu paired up with high quality service is even stronger. The pricing scheme at a restaurant can also serve as a strength, allowing for a competitive advantage if other restaurants in the area are offering a higher price. Special promotions & daily specials can also attract traffic to a restaurant. Clients request the offer, and are thus accepting to receive said offer.

In addition, in today's society there are many new restaurant trends to embark upon and numerous opportunities that can be taken advantage of. For example, catering to individuals who suffer from intolerances, by offering gluten-free or lactose-free or vegetarian options on the menu, can allow for growth. There is so much room to be creative within the restaurant business, from plating, to the way ingredients are cooked, to the way they are married, many opportunities and new trends to be made. These opportunities expand the enforceable menu's contract to a wider horizon, a wider reach, a larger clientele.

However, we mustn't shy away from the challenges that restaurant businesses face. From high turnover, leading to inconsistent service, to potential sanitary mishaps. The high turnover can not only impact the quality of service and food, but if new employees are poorly trained due to the chaotic environment of the restaurant, this may make it more difficult to enforce the menu as a contract if clients are increasingly unhappy, harmed or poisoned.

So, although a menu has its few limitations, at the end of the day, it remains an enforceable contract that clients must abide by.



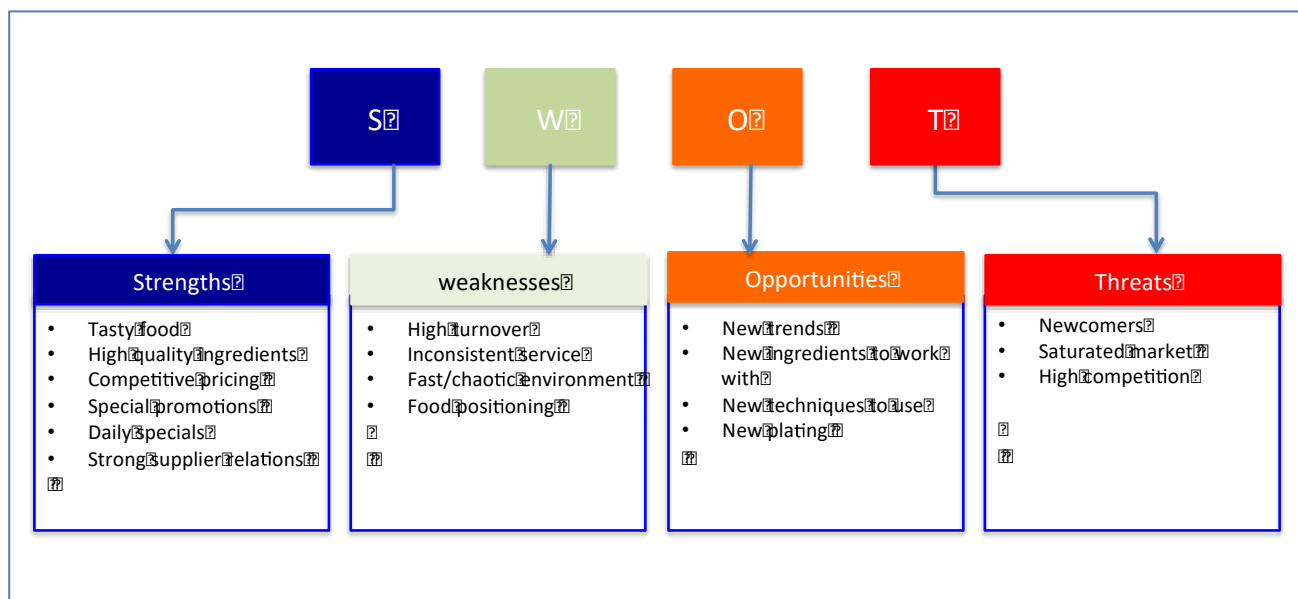


Figure 5 – SWOT Analysis

### Selection of the preferred alternative

A mixture of a high quality menu with images that provides nutritional information, paired with the feedback and guidance of previous customers/visitors to ensure the menu is credible.

### Performance monitoring and post evaluation of results

Following the implementation of a new menu, kitchen and service staff must be monitored for the next 2 weeks to further assess level of comfort with communication to the client, to understand supplier’s effectiveness in delivering new ingredients, and finally to examine customer feedback on new menu implemented. This will be done with assumed learning curve parameters of 85%.

### When can the restaurant owner be held liable?

#### Offer

If the item chosen on the menu does not correspond to the literal product description, as seen above, where the ingredients are listed, in this case, the restaurant has protected itself against liability, as it has included a disclaimer at the bottom of the menu stating ‘note: we don’t list every ingredient and they are subject to change, if we cannot source an ingredient. If you have a severe allergy or intolerance, please note that we do not use dedicated equipment for menu items, described as ‘gluten free,’ ‘gluten free option available,’ ‘nut free,’ ‘soy free,’ etc.’ This permits the restaurant to protect itself from being liable or from refusal of payment.

The restaurant owner must have **product liability coverage** to protect himself/herself from customers accusing the restaurant of food poisoning or any other medical issues.

Both FIDIC & AIA contracts stress the importance of both parties having insurance, and concur that 'the insurances should, in all instances, be reviewed to identify potential coverage limitations.' The disclaimer here is the restaurant owner's insurance and protection against being held liable.

Also, restaurant owners are responsible for keeping their properties safe, as well as their parking lot, if applicable, known as **general liability** with regards to injuries to customers. They can be held responsible for accidents in the dining area such as slip and falls, which are not included in their restaurant experience promise and offer communicated. It may be difficult here for the client to prove that the food or drink had been spilt and just sitting there for a long time, to show the restaurant was being negligent. 'Generally the patron [or restaurant client here] will have to show duty, breach of duty, and actual or constructive notice of a dangerous condition, causation, and damages.' in order to file suit (Justia)

However, now with the 'mode of operation doctrine,' plaintiffs are no longer required to prove actual or constructive notice. They can simply hold the restaurant owner for example accountable, when the mode of operation of the property creates a substantial foreseeable risk of harm to customers.

In addition, it is important to note that quality standards can be affected by a poor supplier; once again showing the importance of proper insurance to mitigate liability disputes. The restaurant owner would still be liable to the customer if its supplier does not deliver; the client does not care about all the back-end work, he/she simply focuses on what is offered on the menu, and what was promised by the restaurant advertisements, or promotional activities.

Delays from the supplier may also cause items on the menu to become unavailable, which would limit the offer availability to the client, and could result in further disputes.

AIA encourages open communication to resolve problems and liability disputes.

Although our restaurant for this report, 'Loving Heart Vegan' does not serve alcohol, if it had, it would be important for the restaurant owner to have a **liquor liability coverage**, as it could be held liable for an inebriated client even after he/she leaves the premises.

### **Acceptance - what constitutes acceptance, there are different types of acceptance**

According to FIDIC, 'a guarantee in amounts and currencies equal to the advance payment. This guarantee shall be issued by an entity and from within a country (or other jurisdiction) approved by the Employer, and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer.'

### **Exchange \$**

Price charged for the meal can be influenced if for instance the supplier raises his/her prices. This may fall back on the customer; thus, a loyal customer may come in one day to find out his usual special that was at \$15 is now selling for \$19.

Moreover, according to the Truth in Consumer Contract Warranty and Notice Act ("TCCWNA"), scope plays an important role in contract enforcement. In a case against House of Pancakes and Applebee's for example, the Court recognized that New Jersey case law interpreting the scope of TCCWNA found that it was intended to prevent the inclusion of illegal provisions, but does not address omissions.

In this instance, the consumer is not protected against the lack of inclusion of prices on the menu, and the individual's rights were deemed not violated.

Therefore, depending on the scope defined, the restaurant owner can be protected from liability issues.

### **Capacity**

The restaurant owner can be held liable if the ingredients are not properly specified or are omitted from the menu, causing a client to have an allergic reaction.

However, if a client walks in knowing that the restaurant does not have capacity to offer him/her gluten free or soy free or nut free products based on the allergy, the restaurant is not responsible for provided meals adhering to the client's intolerances.

The restaurant is only liable if the client asks about a particular dish with regards to the allergy and is misinformed or lied to by the waiter about the possibility to eat the meal, in order to make a profit.

### **Legality**

A restaurant owner must obtain numerous licenses to operate legally.

First, a **business license** is a fundamental requirement in that the restaurant owner must have permission to legally operate his/her restaurant within a defined jurisdiction; this can cost anywhere between \$25 to \$7000 depending on the State. In addition, to maintain the license over the years, the fee may be based on the percentage of sales the restaurant records.

A **food service license**, issued by the appropriate Health Department, which will include an in-person health visit to ensure food safety regulations are followed. The surprise health visits also help ensure the restaurant owner keeps up the health code and does not deceive customers.

A **food handler's permit** is another crucial element in the restaurant business that focuses more on the employment aspect of individuals, who will work in the restaurant. This permit secures an employee health permit and ensures the restaurant meets regulations with regards to food sanitation, storage, protection, and preparation. It can be tied into the 'offer' ingredient of a restaurant, and helps ensure the 'offer' will be met.

A **sign permit** is required too for the owner to put up his/her restaurant sign and advertise the location.

Depending on the country of operation, a tax permit, building permit, health permit may also be required.

Although this license does not apply to the 'Loving Heart' restaurant menu, many restaurants will also need to seek a **liquor license** in order to serve alcohol.

Moreover, a **music license** is required for any establishment over 3,750feet, playing CD music, holding karaoke events, etc.

Finally, restaurant owners must also ensure they adhere to the **fire and safety codes**, to protect their customers as well as their employees.

In Chicago for instance, tying back into the 'Loving Heart' restaurant, the mission of the Chicago Department of Public Health's Food Protection Division is to educate food businesses on the best practices they must follow, inspect food establishments, address food related emergencies, and provide food safety training sessions.

All of these different elements of legality that restaurants must adhere to help further transform the menu into an enforceable contract, because it is at a heart of what’s meant to be a legal place of business. Please refer to table 01 for a brief legality snapshot.

Each license is ranked from one to five; five being the best or highest with regards to specific attributes to better understand the importance of each license.

	Price	Quality	Convenience	Job security	Regulations	Wages & Benefits
Business license	5	5	3	5	5	1
Food service license	1	5	2	3	5	1
Food handler’s permit	1	5	3	4	5	4
Sign permit	5	5	3	5	5	1
Liquor license	3	3	3	4	5	1
Music license	1	1	3	3	4	1
Fire and safety codes	1	5	3	5	5	1
Total scores	17	29	20	29	34	10

**Figure 6 – Multi-attribute simplistic recap table**

	Price	Quality	Convenience	Job security	Regulations	Wages & Benefits	Dominance?
Business license	5	5	3	5	5	1	24
Food service license	1	5	2	3	5	1	17
Food handler’s permit	1	5	3	4	5	4	22
Sign permit	5	5	3	5	5	1	24
Liquor license	3	3	3	4	5	1	19
Music license	1	1	3	3	4	1	13
Fire and safety codes	1	5	3	5	5	1	19
Dominance?	17	29	20	29	34	9	138

**Figure 7 – Multi-attribute with Dominance levels**

**Quality, Job security and Regulations** ranked the highest; because with regards to the legality of the restaurant business:

1. The convenience to obtain these licenses can factor into owners' motivation and can affect a restaurant's quality
2. The quality and safety of customers and staff is crucial
3. The regulation of these licenses is high, therefore restaurants must adhere to obtaining them

## **CONCLUSIONS**

This research paper was undertaken to answer the following questions:

### **1) When is a menu an enforceable contract?**

We have confirmed that a menu is an enforceable contract and that it is an implied contract that clients are well aware of when stepping into the facility. This menu is enforceable via the offer, acceptance, capacity, legality and exchange elements.

### **2) How can we understand the liability associated with a menu through FIDIC or other contract benchmarks?**

FIDIC's conditions of contract for construction looks at liability extensively, but its limitation is that it is focused narrowly on construction. It can be difficult to tailor it to the restaurant business.

Liability does have its limitations, as FIDIC does mention 'Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than under Sub-Clause 16.4 [Payment on Termination ] and Sub-Clause 17.1 [Indemnities ].'

Moreover, ' The insuring Party shall insure against each Party's liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment ]) or to any person (except persons insured under Sub-Clause 18.4 [Insurance for Contractor's Personnel ]), which may arise out of the Contractor's performance of the Contract and occurring before the issue of the Performance Certificate.'

Insurance is a key element for both the restaurant owner, as well as the client.

The client could be liable if any damage is done to the restaurant property.

### **3) How can an owner reduce his/her exposure to liability issues?**

Restaurant owners have many tools and techniques available to them to reduce their exposure to being held liable for any restaurant mishaps:

Restaurant owners must be strategic, in their adoption of new trends, in hiring new talent, in empowering their employees, in their restaurant design and concept; and they must be tactical by rewarding their employees for their hard work and dedication (monetary, events, staff meals, etc.) and establishing strong supplier relationships to support the overall structure too.

We can thus conclude that a menu is a fascinatingly interesting implied and enforceable contract. However, even though it is a contract, it is crucial for restaurants to not take it for granted; they must differentiate themselves, go above and beyond nurturing a strong culture of adherence to health standards and quality, to ensure the restaurant keeps its clients, with all the competition that is tempting clients away more and more, day by day.

### **FOLLOW ON RESEARCH**

It may be interesting in the future to evaluate employee contracts within various restaurants, as well as compare and understand why do some restaurants suffer much less from high turnover, than others do; what constitutes a great restaurant, an 'above and beyond' restaurant, for example looking at a Michelin Star Restaurant.

### **BIBLIOGRAPHY**

Restaurant Liability Overview: Justia. (n.d.). Retrieved from <https://www.justia.com/injury/premises-liability/restaurant-liability/>

Restaurant menus may fall within the purview of New Jersey's Truth in Consumer Contract Warranty and Notice Act | Saul Ewing Arnstein & Lehr LLP. (n.d.). Retrieved from <https://www.saul.com/publications/alerts/restaurant-menus-may-fall-within-purview-new-jerseys-truth-consumer-contract>

Shake. (n.d.). Implied Contracts: When What You Do Legally Binds You - Shake by LegalShield. Retrieved from <http://www.shakelaw.com/blog/implied-contracts-legally-binds/>

What Licenses Do I Need to Open a Restaurant? (2017, July 25). Retrieved from <http://smallbusiness.chron.com/licenses-need-open-restaurant-10956.html>



What You Need to Know About Restaurant Liability. (n.d.). Retrieved from

<https://www.easterninsurance.com/blog/entryid/9689/restaurant-insurance-liability>

Restaurant Licenses And Permits You Need To Open - Restaurant Insider. (2017, June 9). Retrieved from

<https://upserve.com/restaurant-insider/restaurant-licenses-permits-need-start-restaurant/>

Menu. – Loving Heart Vegan. Retrieved from <http://www.lovingheartvegan.com/menu.html>

Nutritionist and Dietitian Salary | How Much Do Nutritionists Make? (n.d.). Retrieved from

<https://www.nutritioned.org/nutritionist-salary.html>

The 5 Essential Elements of Commercial Contracts. (n.d.).

Retrieved from <https://pbl-law.com/the-5-essential-elements-of-commercial-contracts/>

GUILD OF PROJECT CONTROLS COMPENDIUM and REFERENCE (CaR) | Project Controls - planning, scheduling, cost management and forensic analysis (Planning Planet). (n.d.). Retrieved from

<http://www.planningplanet.com/guild/gpccar/managing-change-the-owners-perspective>

## About the Author



### **Sarah Safarian**

Paris, France



**Sarah Safarian** is an MSc Project Management for Business Excellence student at Skema Business School in Paris. She grew up in Dubai in the United Arab Emirates and is originally from there. She has worked in New York, Dubai and now Paris. She has five years of work experience and started her career in hospitality at the Jumeirah Essex House Hotel New York, but then moved on to work for L'Oreal and General Electric in Dubai. It took a few years, but she eventually found her true passion for the Food & Beverage sector. She is now re-tailoring her career towards project management, focusing on the F&B industry. She is currently working for Wild & The Moon, a vegan restaurant based in Paris. Plant based cuisine is her passion and she hopes to one day open her own restaurant, wellness center or even plant-based food consulting firm. She is the creator of a food and wellness blog, called [humblyhealthy.org](http://humblyhealthy.org), is a professional recipe developer, and certified holistic nutritionist via American Fitness Professionals & Associates (AFPA). She was recently featured in Women's Health Magazine Middle East November 2017 issue. She can be contacted at [sarahsafarian@gmail.com](mailto:sarahsafarian@gmail.com) or [sarah.humblyhealthy@gmail.com](mailto:sarah.humblyhealthy@gmail.com)