

3204 IMPLIED WARRANTY: SALE OF FOOD

An "implied warranty" is a warranty which arises by operation of law from the acts of the parties or circumstances of the transaction. It requires no intent or particular language or action by the seller to create it.

When food is purchased there is an implied warranty that it is fit for human consumption. The test of fitness for human consumption is what is reasonably to be expected by the consumer in the form in which the food is sold.

COMMENT

The instruction and comment were originally published in their present form in 1971. The comment was updated in 1980. Editorial changes were made in 1994. No substantive changes were made to the instruction.

Wis. Stat. § 402.314(1) and (2)(c); Samson v. Riesing, 62 Wis.2d 698, 711, 215 N.W.2d 662 (1974); Betehia v. Cape Cod Corp., 10 Wis.2d 323, 103 N.W.2d 64 (1960).

This instruction may be used for common law as well as statutory actions under warranty.