

3248 NEGLIGENCE: DUTY OF RESTAURANT OPERATOR IN SALE OF FOOD CONTAINING HARMFUL NATURAL INGREDIENTS

It is the duty of one engaged in the business of selling or serving food for human consumption, on or off his or her premises, to exercise ordinary care in the preparation and processing of such food so as to render the same reasonably fit for human consumption.

The test, in determining whether a restaurant operator is negligent in permitting harmful natural substances (ingredients) to remain in the final food product, is not whether the substance (ingredient) may have been natural or proper at some time in the preparation of the soup (sandwich) but whether the presence of such substance (ingredient) is natural and ordinarily expected to be found in the final product as served.

A restaurant operator is not an insurer of the reasonable fitness for human consumption of the food prepared by him or her for sale or service but has the duty of ordinary care to eliminate or remove, during the preparation of food he or she serves or sells, such harmful natural substance (ingredients, bones) as the consumer of the food, as served, would not ordinarily anticipate and guard against.

COMMENT

This instruction and comment were originally published in their present form in 1971. Editorial changes were made in 1994 to address gender references in the instruction. No substantive changes were made to the instruction.

Betehia v. Cape Cod Corp., 10 Wis.2d 323, 103 N.W.2d 64 (1960).

See also 2 Hursh, American Law of Products Liability § 12.33 (1961).