HRIM-482 Module #18: Liability and The Sale Food and Beverage Products

• Goals for Module #18:
  1. Examine Liability for F &B Operations
  2. Discuss Case Examples and practices from Chapter 12

Merchantability of Goods

• Uniform Commercial Code (UCC) governs the sale of goods, adopted by all states and D.C.

• Merchantable goods= must be of “average quality”, fit for ordinary purpose, implied in all contracts for sale of goods, without verbal agreement or writings

• Merchantable food= must be fit for human consumption. What about nutrition/taste?

Objects in Food: Foreign Natural Test

• Foods must be wholesome and free of foreign objects

• Foreign/Natural Test= Some states apply test, if an object is natural to the food, then warranty is not violated. If the object is foreign, warranty is breached. Role of manufacturing process must be considered.
  • see cases on p. 353 of text
Objects in Food:

*Reasonable Expectation Test*

- Alternate test that asks whether the object found in the food should have been reasonably anticipated
- Some objects might be natural, but unexpected
- See Case Example 12-1, how does this apply to other restaurant/retail situations?
- Courts are leaning towards this test, see cases on 356 for more examples

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Raw Fish/Shellfish:

*Applying The Reasonable Expectation Test*

- Clime V. Dewey Beach Enterprises (Del 1993), plaintiff with liver condition suffered serious illness from raw shellfish containing bacteria.
- Court ruled, based on expert testimony, that bacteria is common and expected.
- What are the management implications?

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Strict Product Liability v. Privity of Contract

- Read text p 361-362, discusses privity of contract. Results in uneven application of law.
- Many states have applied Strict Products Liability, based on tort actions as opposed to the common law approach of privity
Strict Product Liability Proofs: Plaintiff Must Prove Three Elements

1. Defendant sold a product in a defective condition, and food was unwholesome
2. Plaintiff was injured;
3. The injury was caused by the defect

What if the cause of illness is inherent in the food?

Plaintiff Approaches to Defect Lawsuits

- Three bases to sue: breach of warranty, strict products liability, and negligence.
- Some state limit plaintiff to one grounds
- Absent statutory limits, plaintiff can sue on all three grounds, collect/recover on one.

Food Allergies

- Must comply with request to eliminate certain ingredients from food.
- If food is rejected by a patron, best practice is to discard rejected food and present a substitute on a clean dish
- Listing/description of ingredients must be accurate
Truth in Menu Laws/Food Labeling Issues

- Many states have truth in menu laws
- False claims lead to lawsuits
- Avoid nutritional claims, if made have to provide supporting info upon request
- When you use descriptors, you must comply with standard as applied by the FDA

Sale of Alcoholic Beverages: General State Wide Rules

- No sales to underage patrons
- No sales to visibly intoxicated persons
- No sales to habitual drunkards
- Laws regulating hours of operation and general rules vary greatly by jurisdiction

Dram Shop v. Common Rules

- Under common law, licensees not liable for damages due to general rules
- Case law evolved that forced Dram shop regulations
- Delaware is still a common law state
- ABC regulations impose some aspects of Dram shop rules
### Liability Under Dram Shop
- Impose higher liability for injuries suffered due to failure to follow general rules
- Many states do not impose penalties for injuries to wrongfully served customers
- Focus is on third person injuries, and underage service
- Some states allow for inclusion of employees

### Liability For Patron Injury
- Must remove patrons who are disruptive, see case 12-5, Gould v. Taco Bell
- Must take remedial action to ensure an orderly establishment
- Test is whether or not you can foresee the conditions that lead to injury

### Adequate Security Measures
- Must provide adequate security based on business circumstance and professional practice
- Cannot use argument of economic burden
- No affirmative duty to comply with robbery demands
- Affirmative duty to provide adequate training
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<th>Management Practice: Preventive Law Tips</th>
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<td>• Inspect products</td>
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<td>• Handle carefully</td>
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<td>• Make sure product claims are accurate</td>
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<td>• Inspect operations of leaseholders</td>
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<td>• Follow alcohol regulations</td>
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<td>• Maintain orderly premises</td>
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<td>• Come to aid of customers in positions of peril</td>
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<td>• Develop government public strategies that create a bank of goodwill</td>
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