Raw Milk Consumption

LEGAL IMPLICATIONS OF RAW MILK AND CASE STUDIES

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Legal Implications
Strict Product Liability

The manufacturer of a defective product is liable if the defect rendered the product unreasonably dangerous, and the defective product caused the victim’s injuries.
The Legal Standard: Strict Liability

The focus is on the product; not conduct. A company is liable if:

1) The product was unsafe and thus defective, and
2) The defective product caused an injury

Strict Liability is Liability Without Regard to Fault
“Manufacturer”

- Many states exclude product sellers
- Non-manufacturers might have risk
- Working definition: entity that designs, constructs, or fabricates the product
Key Elements

• Milk is a “product”—raw or pasteurized
• E. coli O157:H7—contaminated milk is “unreasonably dangerous”
• Thus, the “manufacturer” – i.e. the dairy – is strictly liable for injuries caused
Related Issues

- Comparative fault
- Releases and Waivers
- Trade association liability
- Cow share arrangements
Comparative Fault

Personal injury “damages” are reduced by plaintiff’s share of fault
Examples of Comparative Fault

1. Consumer milks the cow and fails to follow sanitary measures
2. Consumer fails to refrigerate the raw milk
3. Consumer buys raw milk
Releases and Liability Waivers

1. Are they enforceable?
2. If so, what's the effect?
Enforceability

- Rules differ from state to state
- Common elements of enforceability
  - **Conspicuous**—e.g. waiver clause is not in “the fine print”
  - **Clarity**—e.g. waiver clause identifies the risk
  - **Meaningful opportunity to understand**—e.g. the consumer has an opportunity to read and digest the terms of the contract
Legal Effect of Waivers

- Enforceable waivers may bar claims for damages
- Cannot waive an illegal act
- But most outbreaks involve kids who did not sign the waiver

Can a parent sign away his child’s right to sue?
Trade Association Liability:

- Trade associations can be held liable for consumer injuries.
- The crux of trade association liability is whether consumers rely on the association’s information and expertise.
- This depends, in part, on the association’s prominence.
The “Price” of Weston A. Price’s Prominence

A Campaign for Real Milk
PASTURE-FED UNPROCESSED FULL-FAT

Americans!
Go for the Real Thing!
Boycott counterfeits!
Vote with your pocketbooks!
Join A Campaign for Real Milk

A Campaign for Real Milk is a project of The Weston A. Price Foundation. For sources of Real Milk contact your local chapter or visit our WHERE page.

Enter here to find out more about Real Milk

WHY
A Campaign for Real Milk?

WHAT is Real Milk?

WHERE can I find Real Milk?

WHAT’S happening with Real Milk?
Cow Share Agreements

- Agreements that seek to avoid bans on unlicensed sale of raw milk
- Instead of selling raw milk, the farmer sells a “portion of the cow”
- Not a valid interpretation of many States’ licensing requirements

Cow Share = Offshore Tax Shelter
Case Just Finished – Organic Pastures

- E. coli O157:H7, September 2006
- 6 children with O157:H7 and/or HUS residing in 4 California counties; 5 PFGE matches
- Common exposure was consumption of raw dairy products from Organic Pastures
- Outbreak strain NOT found in product taken from store shelves and the dairy
- Farm + for O157 but different strain
Current Case – Town Farm Dairy

- E. coli O157:H7, Sept. 2008
- 5 persons with O157:H7 and/or HUS residing in Simsbury, Connecticut; All PFGE matches
- Common exposure was consumption of raw milk produced at Town Farm Dairy and sold at Whole Foods
- Cooperative dairy certified to sell raw milk in Connecticut
- Outbreak strain found in a cow at the dairy
Current Case – Herb Depot

- **E. coli O157:H7, April 2008**
- 4 children with O157:H7 and/or HUS residing in 4 southwest Missouri counties; Most PFGE matches
- Common exposure was consumption of raw goat milk purchased at Herb Depot
- Illegal to sell raw milk in stores in Missouri
- Farm owner refused to provide investigators with milk samples for testing
Current Case - The Alexandre Eco Farms Dairy Raw Milk Outbreak
Questions?

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