



Liability Issues with Food Processing

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Arkansas Food Freedom Law

What does it do?

If you meet the requirements than you are exempt from permitting through AR Department of Health

Arkansas Food Freedom Law

What does it not do?

It does **NOT** protect you from legal liability if anybody is injured from consuming your homemade food products.

Food Safety Statistics

The food industry must produce safe food

Annual statistics:

- 48 million people in the U.S. (1 in 6) get sick from a foodborne illness
- 128,000 are hospitalized
- 3,000 die

Product Liability

You are potentially liable for any injuries caused by your product.

- Strict Product Liability
- Negligence
- Implied Warranty for Fitness of Use

It is up to the Plaintiff's attorney to choose their cause of action which means you must prepare to address liability **BEFORE** it happens.

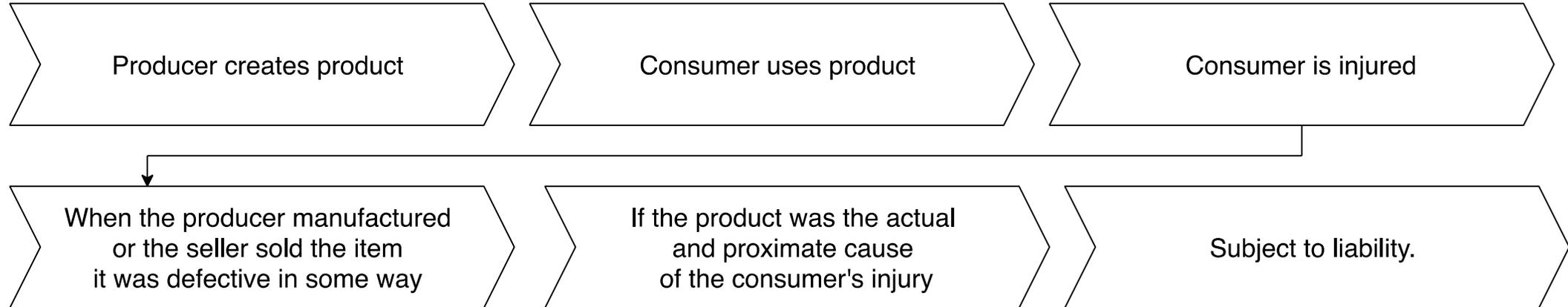
Product Liability

Under Arkansas law, products liability plaintiff must prove that product as supplied was **defective** so as to render it **unreasonably dangerous** and that such defect was **proximate cause** of accident; it must be shown that product was in defective condition at time it left hands of particular seller.

- Ark. Code Ann. § 16-116-102 (West)

Product Liability

General Process for Products Liability



What is Product Liability?

There are three types of products liability claims:

1. Strict Liability
2. Negligence
3. Breach of Warranty



What is Strict Liability?



- Products liability is generally a strict liability tort
 - A producer could do everything correct, follow every precautionary law, impose stringent requirements and regulations on the production process and will still be held liable for any injury the product caused to a consumer.

Negligence

Negligence is a tort that exposes the producer/manufacturer/seller (“processor”) to liability when:

- (1) There is a duty to act in a certain way
- (2) The processor breached that duty
- (3) The breach caused harm
- (4) The result is some harm or injury to the affected person

Often brought with strict liability claims and breach of warranty claims

Rudloff v. Wendy's Restaurant of Rochester, Inc.



- 821 N.Y.S.2d 358 (2006)
- Facts:
 - Plaintiff sued Wendy's because he broke a tooth when he bit into one of Wendy's hamburgers
 - Wendy's indemnified (brought into the lawsuit) the manufacturer of the hamburger patty for negligence.
- "Inference of negligence"
 - "This type of incident should not have occurred absent some negligence on the part of Wendy's or its suppliers."
 - Manufacturer also subject to negligence liability because no evidence of safeguards "during the processing, inspecting and testing of the hamburger patties to guard against potential[] injury"

Breach of Warranty

Breach of warranty claims come from contract law

The Uniform Commercial Code (U.C.C.) applies to all contracts for the sale of goods

Food is a good

There is an implied warranty that goods are merchantable, meaning that the good is “at least of average quality and fit for [its] ordinary purpose.”

Merchantable food is food that does not contain inappropriate objects or poisons, and is fit for human consumption.

Legal Liability

What can you do to protect yourself?

- Nothing is perfect, but risk of legal liability can be reduced through things such as:
 - Business organizations
 - Best Practices/HACCP
 - Insurance

Business Entities

Whether you know it or not...you do have a business entity if you are working to earn a profit (other than working as an employee)

The problem:

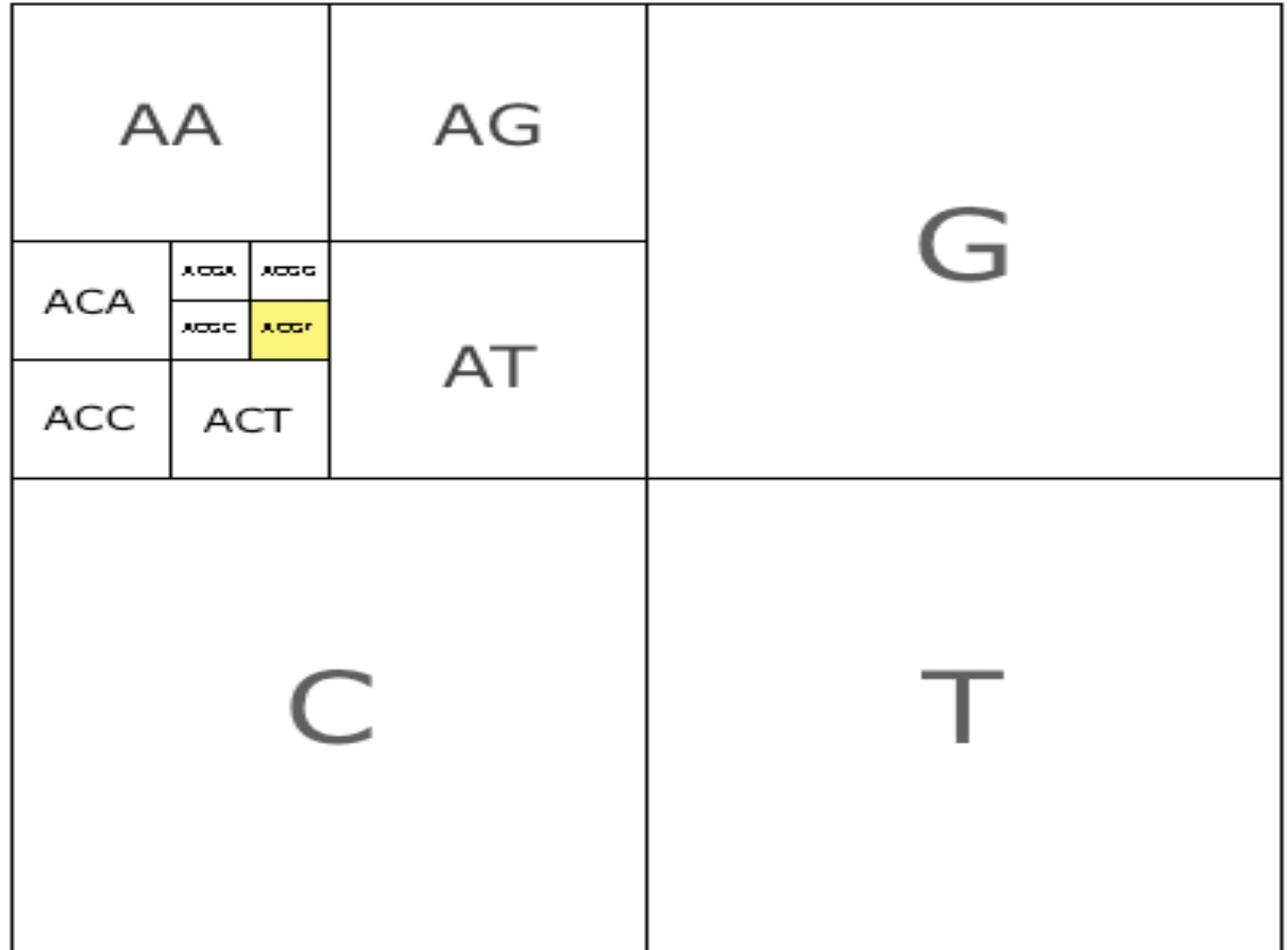
- The default business entities are terrible...

What can you do?

- Use an LLC to help reduce risk!

Business Organizations,
like LLCs, are like “fire
breaks” and not shields

640 Acre section of land.



The Limited Liability Company (LLC)

- Legal Status
 - Recognized as separate legal entity
- Formation
 - Can be formed with 1 or more members
 - Created by delivering Articles of Organization to the Secretary of State's office
 - Must include:
 - Name of LLC
 - Address of LLC
 - Agent for service of process
 - Certain reports must be filed each year to maintain LLC status

Business Entity Tips

- Keep your financial accounting separate from your personal life.
- Ensure that all of the requirements to form a business entity are followed (corporate formalities)
- Pay your annual fee and submit paperwork.

Liability Planning/Training

- There are many resources that provide things to think about BEFORE starting a new business venture.
- Learning from your mistakes is a great idea, but also learn from the mistakes of others because you will never live long enough to make them all yourself!

Liability Planning/Training

- Training
 - Keep records of any training or certifications that you get
 - Why?
- Planning
 - Have a HACCP or similar plan to spot potential problem spots
 - Not just food prep, but where the customers are
 - Talk with other people about their plans on dealing with potential liability
 - Inspections and recordkeeping!

Considerations and Tips

- KNOW THE LAW IN YOUR JURISDICTION
 - Common law across various jurisdictions can differ wildly, make sure that you are familiar with the standards and laws used in your state.
 - A lawyer can assist you with this.
- THINK ABOUT IT FROM A PR PERSPECTIVE
 - It does not look good to be irresponsible when it comes to food products. Make sure to take the utmost care in food processes.



Considerations and Tips

INGREDIENTS: MANZANILLA OLIVES, WATER, MINCED PIMENTO (PIMENTO), SALT, CALCIUM CHLORIDE AND POTASSIUM SORBATE AS A PRESERVATIVE), S

DISTRIBUTED BY: Wal-Mart Stores, Inc., Bentonville, AR 72716

PRODUCT OF SPAIN

**WARNING: DUE TO MECHANICAL PITTING,
AN OCCASIONAL PIT OR FRAGMENT MAY
REMAIN IN THE FRUIT.**

Refrigerate after opening.

- CONSIDER AN INSURANCE POLICY
 - There are various options for food and beverage manufacturing insurance policies.
- WHEN IN DOUBT, WARN.
 - The duty to warn comes up again and again in case law. Make sure that if it is economically feasible and prudent to do so to warn the consumer.
 - Keep track of your preventative actions; these can help show that you did not breach your duty.

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