

## **10/20 Hypotheticals**

### **Question I**

Patrick works for Whole Foods as a stock boy. Part of his duties include unloading produce from delivery trucks as they arrive. Joe's Delivery ("JD") is a local distributor of bananas.

One day, JD brings a load of bananas to the store. Patrick immediately comes out of the store and begins to unload the stock. When he picks up the third of five crates, however, five spiders emerged from the box and bite Patrick repeatedly. Patrick has an extreme allergic reaction to the bites and ends up hospitalized for two days with breathing problems.

Patrick has consulted you about the possibility of bringing a suit for negligence against JD. In the course of your research, you find the Georgia statutes identified below. Evaluate the strength of Patrick's claim.

#### **Title 26. Food, Drugs, and Cosmetics**

#### **Chapter 2: Standards, Labeling, & Adulteration of Food**

#### **26-2-22. Prohibited acts**

The following acts and the causing thereof within this state are prohibited:

- (1) The manufacture, sale or delivery, holding, storage, or offering for sale of any food that is adulterated or misbranded;
- (2) The adulteration or misbranding of any food;
- (3) The receipt in commerce of any food that is adulterated or misbranded and the delivery or proffered delivery thereof for pay or otherwise;
- (4) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated pursuant to this article.

#### **§ 26-2-26. Adulterated foods**

A food shall be deemed to be adulterated if:

- (1) It bears or contains any poisonous or deleterious substance or animal which may render it injurious to health; but, in case the substance is not an added substance, such food shall not be considered adulterated under this paragraph if the quantity of such substance in such food does not ordinarily render it injurious to health;
- (2) It bears or contains any added poisonous or added deleterious substance which is unsafe

within the meaning of **Code Section 26-2-27**. In regard to pesticide residues, a food shall be deemed to be adulterated and unsafe if it bears a pesticide residue in excess of a tolerance established by the United States Environmental Protection Agency;

(3) It consists in whole or in part of a diseased or contaminated, filthy, putrid, or decomposed substance or if it is otherwise unfit for food;

(4) Its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health.

### **Question II**

Abby and Ben were in Macy's Department store shopping. When they took the escalator up to the second level, Abby rode the escalator on the right-hand side, holding the moving handrail, one step ahead of Ben. When the two were about halfway up the escalator, the handrail stopped moving, but the steps continued their ascent. Abby lost her balance and fell into Ben, and both tumbled down the step. As a general rule, commercial property owners have a non-delegable duty to maintain the premises in a safe condition.

Abby & Ben come to you to discuss whether they can win a claim for negligence against Macy's. How do you assess their claim?