

The ignorant artichoke eater



Jonathan Kaplan is a consultant solicitor with Meerkin & Apel Lawyers in Melbourne and is an Accredited Specialist Mediator. Jonathan can be contacted on (03) 9510 0366 or 0418 588 855.

Has the food world been turned upside down? This month legal guru **Jonathan Kaplan** gives us a taste of the more bizarre incidents resulting in litigation.

In the December 2010 edition of foodService I discussed the case of an employee who had sued his employer because he gained weight by having to taste the employer's products. I also discussed the possibility of a customer making a claim should the ingredients in a drink cause ill effects.

In this edition I look at some fairly absurd litigation brought by customers who, on the face of it, seem to be chancing their arm. We all know that other than the requirement to obtain a Certificate of Registration as a food business (and consequently obtain a food handler's certificate), you don't need any particular qualifications to run a food business. Dealing with litigious customers is not necessarily something you might anticipate or, for that matter, learn at chef school.

Take for example the report that appeared on Above the Law, a US-based website that takes a behind-the-scenes look at the world of law and associated news and gossip about the legal profession.

It is reported that in 2009 a Miami doctor ordered the grilled artichoke special on the menu at a restaurant. Never having eaten an artichoke, or having known how to eat one, he consumed the entire vegetable, leaves and all! One would imagine that the experience of swallowing just one leaf would have been an uncomfortable experience. Try it.

Unsurprisingly he became ill with stomach trouble and after undergoing a laparotomy, artichoke leaves were discovered to be lodged in his bowel. The doctor is now suing the restaurant for damages alleging negligence and claiming unspecified damages.

I understand that the doctor has claimed that the server "failed to explain the proper method of consuming an artichoke, namely that the 'outside portion of the leaf should not be eaten; rather only the inside portion of the leaf was safely digestible'".

The consequences of eating the whole artichoke are claimed to be "disability, disfigurement, mental anguish and loss of capacity for the enjoyment of life".

In another case in the US (where else?!), a diner is suing a restaurant over an alleged incident of what has become known as the 'exploding' escargot that marred the diner's birthday dinner.

Steve Righetti, who was being treated to dinner by a long-time friend, Chadwick St.-OHarra, alleged that the snails burst from their plate when cocktail forks were applied, resulting in a spray of hot garlic butter on their faces and polo shirts.

St.-OHarra claims the butter got into one of his tear ducts, causing temporary vision impairment, and the Righetti claims the side of his nose was squirted.

St.-OHarra said the incident caused "a sense of genuine outrage", but the matter would not have been pursued had restaurant personnel displayed sufficient remorse. "It was the indifference," Righetti said. "It was

the friggin' rudeness." Nevertheless it was alleged that the diners continued on with their meal for one and a half hours, but filed a claim with the restaurant, which was rejected by their insurer.

The restaurant owner was quoted as saying: "We didn't do anything wrong," he said. "He made up this story. We sell thousands of escargot a year, I've never heard of anything like this."

Escargot explosion is a rare but periodic phenomenon, according to one industry veteran. Sean Canavan, executive chef at Left Bank, the French restaurant in Larkspur CA, said he does not know what causes the snails to burst, but he suspects air bubbles get trapped inside the cooked mollusc.

The diners, one of them a former law student, rather than paying attorney fees filed a small claims suit against the restaurant and two supervisors as defendants. They represented themselves in a hearing that took place on 3 December 2010.

At the hearing the manager of the restaurant testified that sales of escargots had doubled since the report of the case. The manager told Judge Roy Chernus that sales had hit 743 during the year, and the lawsuit is the only escargot complaint the restaurant has received. "Is that orders, or individual snails?" Chernus asked as the courtroom audience burst into laughter. Orders, the manager noted. "Our primary interest in being here is food safety, not whether we had a bad meal," St.-OHarra remarked. "I couldn't see out of my eye for several minutes due to the grease in my tear duct.

The escargot lawsuit has sparked a huge interest and brought reporters from far and wide to report on this case – even though only in the Small Claims Court.

Judgment was to be delivered before the end of December and has been awaited with keen interest.

What these cases do highlight is the free accessibility of the courts to anyone who feels they deserve compensation where they have suffered an injury through some unavoidable incident or even as a consequence of their own ignorance or stupidity.

To what lengths should one go to avoid such claims? Can you imagine the following disclaimers alongside each menu description:

"Oysters (that's the slippery bit in the shell) should be swallowed, but do not attempt to eat the shell."

"The bones of the rack of lamb must not be ingested; or "Peel banana before eating. Do not consume the peel."

Or how about simply ensuring that prior to being shown a table, the diner be required to sign a disclaimer indemnifying the restaurant from any injury suffered by consuming any part of the meal which is not commonly intended to be eaten.

I await with keen interest the first such claim brought to Australian courts.

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