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431 So. 2d 969 (1982)

MORRISON'S CAFETERIA OF MONTGOMERY, INC. v. Inez HADDOX, etc.

Civ. 2867.

Court of Civil Appeals of Alabama.

May 26, 1982.

Rehearing Denied July 7, 1982.

\*970 Robert C. Black of Hill, Hill, Carter, Franco, Cole & Black, Montgomery, for appellant.

W. Stephen Graves and Robert M. Alton, Jr., Montgomery, for appellees Inez Haddox and Rodney Haddox.

Dennis R. Bailey of Rushton, Stakely, Johnston & Garrett, Montgomery, for appellee Pinellas Seafood Co., Inc.

\*971 WRIGHT, Presiding Judge.

Plaintiffs, Mrs. Inez Haddox and her minor son Rodney, recovered jury verdicts totalling $6,000.78 against Morrison's Cafeteria of Montgomery, Inc. (Morrison's) for injuries sustained when Rodney choked on a fish bone while dining at Morrison's. Morrison's appeals.

The record reveals the following:

Mrs. Haddox testified that around 2:00 or 3:00 P.M. one afternoon in May 1980, she and her three-year-old son Rodney went to Morrison's Cafeteria. Rodney wanted some fish. Mrs. Haddox took one tray and she and Rodney proceeded down the food line. Mrs. Haddox's testimony as to how she received a portion of fish almondine is conflicting. At one point in her testimony she stated that she pointed to a piece of fish and told the man behind the counter that she would take that piece of fish. At another point she stated that she asked for fried fish. At yet another point she stated that she asked for fried fish fillet. She received a portion of the fish and put it on her tray, together with other food and drink. She saw no signs advertising the fish dish. No one told her that it was a fillet or that it was boneless. She subjectively believed it to be a fillet because of its shape and her prior experience with eating fish dishes at Morrison's. When she and Rodney were seated, Mrs. Haddox cut off a portion of the fish and put it on a plate for Rodney. She testified that she pulled it apart with her knife and fork into very small pieces. At one point Mrs. Haddox testified that she pulled Rodney's portion apart to check for bones. Later in her testimony she stated that she was merely cutting it into bite-sized pieces and not checking for bones. Rodney apparently became choked on the first bit of fish. When Rodney was taken to the hospital it was discovered that a fishbone approximately one centimeter in length was lodged in his tonsil. The bone was removed after Rodney stayed in the hospital overnight. He suffered no permanent physical injury as a result of the incident. Mrs. Haddox stated that she did not know how Morrison's could have known there was a small bone in the fish. She testified, however, that the manager and other personnel at Morrison's were extremely rude to her during the course of Rodney's difficulty. She could not persuade anyone to take her to the hospital and was told at the checkout counter that she must pay her bill before she left.

The manager of Morrison's at the time of Rodney's injury testified that the fish which Mrs. Haddox bought was Spanish mackerel fillet. Morrison's bought the fish from Pinellas Seafood Company, Inc. (Pinellas). Pinellas ships the fish to Morrison's in five to ten-pound boxes. Morrison's uses this fish to prepare a dish they advertise as fish almondine. It is not advertised as boneless and employees are instructed not to tell customers that the dish is boneless. Morrison's does not offer the fish on a child's plate because the fish does sometimes contain bones.

An employee of Pinellas at the time of Rodney's injury testified that Pinellas used machines to fillet the Spanish mackerel bought by Morrison's. Such machines are commonly used by other wholesale fish processors. Machine filleting strips the sides of the fish away from the backbone. Using this method it is impossible to prevent the occasional presence of small bones in the fillets. Government regulations allow for the presence of small bones in fillets. The employee stated that Morrison's had not been told that Pinellas' fillets were boneless. Approximately ninety-nine percent of the fillets which Pinellas produces are sold to Morrison's, and Pinellas is aware that Morrison's in turn sells the fillets to its customers. He further testified that in order for Pinellas or Morrison's to check for bones in the fillets they would have to cut them into tiny pieces. This would destroy the fillets.

Another witness, an employee of a fish wholesaler and retailer, stated that a whole fillet of Spanish mackerel could be recognized by its shape.

Mrs. Haddox brought suit on behalf of Rodney and herself against Morrison's and Pinellas to recover medical expenses and to \*972 compensate Rodney for his pain and suffering. Her complaint also contained a claim against Morrison's for false imprisonment. Morrison's filed a cross claim against Pinellas. Motions for directed verdicts were denied as to all claims except that for false imprisonment. Mrs. Haddox does not cross appeal the directed verdict in favor of Morrison's on the false imprisonment count.

The trial court submitted the case to the jury on the theories of implied warranty of fitness for human consumption and the Alabama Extended Manufacturer's Liability Doctrine (AEMLD) against Morrison's; the AEMLD as against Pinellas; and implied warranty as to Morrison's cross claim against Pinellas.

The jury returned a verdict in favor of Mrs. Haddox and against Morrison's in the amount of $1,000.78. Rodney was awarded a verdict against Morrison's for $5,000.00. The jury found in favor of Pinellas on the cross claim. Morrison's motions for JNOV and a new trial were denied.

The first issue presented on appeal is whether the trial court erred in denying Morrison's motions for directed verdict and for judgment notwithstanding the verdict (JNOV) against Mrs. Haddox and Rodney on the implied warranty and AEMLD claims.

A motion for JNOV tests the sufficiency of the evidence in the same way as does a motion for directed verdict at the close of the evidence. Williamson v. United Farm Agency of Alabama, Inc., 401 So. 2d 759(Ala.1981). A motion for directed verdict is proper in two instances: (1) where there is a complete absence of pleadings or proof on an issue material to the cause of action or defense; and (2) where there are no controverted issues of fact upon which reasonable minds could differ. Perdue v. Mitchell, 373 So. 2d 650 (Ala.1979).

The implied warranty claim arises out of § 7-2-314, Code of Alabama (1975) which provides in part:

(1) Unless excluded or modified (§ 7-2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. (2) Goods to be merchantable must be at least such as: .... (c) Are fit for the ordinary purposes for which such goods are used....In serving the fish to its customer, Morrison's impliedly warranted that it was fit for human consumption. The rule is well settled that the seller of products that are to be used for human consumption warrants that they are suitable for that purpose. Alabama Coca-Cola Bottling Company v. Ezzell, 22 Ala.App. 210, 114 So. 278 (1927).

The precise facts of this case present a question of first impression in this jurisdiction. Morrison's urges this court to adopt the so-called "foreign-natural" rule and determine as a matter of law that a bone in a piece of fish does not breach the implied warranty. The "foreign-natural" rule has been stated as follows:

Bones which are natural to the type of meat served cannot legitimately be called a foreign substance, and a consumer who eats meat dishes ought to anticipate and be on his guard against the presence of such bones. At least he cannot hold the restaurant keeper whose representation implied by law is that the meat dish is reasonably fit for human consumption, liable for any injury occurring as a result of the presence of [such bones].Shapiro v. Hotel Statler Corporation, 132 F. Supp. 891 (S.D.Cal.1955).

After due consideration, however, we reject the artificial and inflexible "foreignnatural" rule in favor of the "reasonable expectation" test. Under the "reasonable expectation" test, the naturalness of the substance to the food served is only important in determining whether the consumer might reasonably expect to find such substance in the particular style or type of food served. Zabner v. Howard Johnson's, Inc., \*973 201 So. 2d 824 (Fla.App.1967). The key question under the "reasonable expectation" test is not whether the object is foreign or natural but whether the consumer ought to have anticipated the injury-producing object in the final product. Matthews v. Campbell Soup Company, 380 F. Supp. 1061 (S.D.Tex.1974). Furthermore, what a consumer is reasonably justified in expecting is a question for the jury. Hochberg v. O'Donnell's Restaurant, Inc., 272 A.2d 846 (D.C.App.1971).

Mrs. Haddox testified that she believed the fish to be a fillet and evidence in the record supports the reasonableness of this conclusion. The dictionary definition of fillet was shown to be "a boneless piece of fish." The fish almondine sold to Mrs. Haddox was, in fact, a fillet. We find that the question whether Mrs. Haddox as a consumer could reasonably expect the fish as sold by Morrison's to be boneless was properly a question for the jury.

The requisites of a cause of action under the AEMLD were first enunciated in Casrell v. Altec Industries, Inc., 335 So. 2d 128 (Ala.1976) and Atkins v. American Motors Corporation, 335 So. 2d 134 (Ala.1976). In a combination of the principles of merchantability under § 7-2-314, Code (1975) and the "unreasonably dangerous" language found in the Restatement (Second) of Torts, § 402A,[1] the Alabama Supreme Court set out a modified version of strict liability by defining "defect" as:

[T]hat which renders a product "unreasonably dangerous," i.e., not fit for its intended purpose.... "Defective" is interpreted to mean that the product does not meet the reasonable expectations of an ordinary consumer as to its safety. Casrell, supra, at 133.Whether a product is unreasonably dangerous is ordinarily a question for the trier of fact. Atkins, supra. Again, under the facts of this case, we find that the question of whether a one-centimeter bone in a "fillet" is a defect was properly submitted to the jury.

The second issue raised on appeal is whether the trial court erred in denying Morrison's motion for a new trial based on inconsistent verdicts. The rendering of clearly inconsistent verdicts requires a new trial. Lindsay v. Hackney, 283 Ala. 372, 217 So. 2d 238 (1968). When it appears that the verdict cannot be sustained on any reasonable hypothesis of fact founded on the evidence, it must be set aside. Diaz v. Chapman, 373 So. 2d 339 (Ala.Civ.App.1979).

Morrison's submits that if the general verdict against it is predicated on the AEMLD, the failure to find also against Pinellas is inconsistent. In view of the elements necessary to recovery under the AEMLD as set out in § 402A of the Restatement, Morrison's contends that the fillet did reach Mrs. Haddox and Rodney "without substantial change in the condition in which it [was] sold" by Pinellas. Furthermore, Morrison's did not alter or create the alleged defective condition of the fillet. Although we tend to agree that on the instant facts a verdict for Pinellas might be inconsistent with a verdict against Morrison's on the AEMLD claim, we do not find it necessary to make that determination. The jury returned a general verdict without specifying upon which theory liability was imposed. A general verdict referable to one good claim in a complaint is a good verdict. Automotive Acceptance Corporation \*974 v. Powell, 45 Ala.App. 596, 234 So. 2d 593 (1970). The claim for breach of an implied warranty is such a count.

Morrison's argues that recovery against Morrison's on the implied warranty theory is completely inconsistent with a verdict in favor of Pinellas on the cross claim. We do not agree.

Under the "reasonable expectations" test, there was no evidence that Morrison's could have reasonably expected the fillet purchased from Pinellas to be boneless. The record shows that Morrison's was aware of the often presence of small bones in the fillets. Such knowledge could have been determined by the jury to prevent there being extended the same warranty of fitness by Pinellas to Morrison's as was extended by Morrison's to Mrs. Haddox. There is evidence that Mrs. Haddox could have reasonably expected the fillet to be boneless. Morrison's knowledge to the contrary prevented such expectation. Such evidence, if believed by the jury, would support a verdict against Morrison's on breach of the implied warranty to Mrs. Haddox and Rodney.

New trials cannot be granted merely because the court sitting as a jury would have rendered a verdict different from that returned by the jury. Johnson v. Howard, 279 Ala. 16, 181 So. 2d 85 (1965). The denial of Morrison's motion for a new trial was not error.

Though finding sufficient evidence to furnish the required scintilla for affirming the submission to the jury, one would be naive not to recognize that the acts of Morrison's subsequent to the sale possibly contributed greatly to the verdict of the jury. The judgment is affirmed.

AFFIRMED.

BRADLEY, J., concurs.

HOLMES, J., concurs in part and dissents in part.

HOLMES, Judge (concurring in part, dissenting in part).

I agree with the majority opinion insofar as it rejects the "foreign-natural" test in favor of the "reasonable expectation" test. I do not agree, however, that the "reasonable expectation" test, under the present facts, mandates that this court affirm the trial court.

In Mix v. Ingersoll Candy Co., 6 Cal. 2d 674, 59 P.2d 144 (1936), the plaintiff was injured when he swallowed a fragment of a chicken bone while eating a chicken pie. The plaintiff brought action against the restaurant which served the pie alleging breach of the implied warranty of fitness which was imposed upon the restaurant by statute. The California Supreme Court held that a chicken bone in a chicken pie did not breach the warranty. In so holding the court stated:

Although it may frequently be a question for a jury as the trier of facts to determine whether or not the particular defect alleged rendered the food not reasonably fit for human consumption, yet certain cases present facts from which the court itself may say as a matter of law that the alleged defect does not fall within the terms of the statute.6 Cal. 2d at 681-82, 59 P.2d at 148.

It is my position that the facts of this case present an instance wherein this court should find, as a matter of law, that a one centimeter bone that is found in a fish fillet makes that fish neither unfit for human consumption nor unreasonably dangerous.

I base this conclusion on several factors that are present in this case. First of all it is common knowledge that fish have many bones. Furthermore, government regulations regarding fillets recognize this and allow for the presence of some bones in fillets. A one centimeter bone does not violate any of the government regulations regarding fillets. 50 C.F.R. §§ 263.101-.104 (1979). Finally, it was undisputed that, in light of the process used to mass produce fillets, it was commercially impractical to remove all bones.

\*975 I stress that my opinion is based solely upon the facts of this case. For instance, if there had been a representation that the fish was boneless or if the bone had been larger or if there had been many bones, my conclusion might well be different. Under these facts, however, I would hold as a matter of law that the implied warranty of merchantability was not breached and that the AEMLD was not violated.

Needless to say, I would reverse the learned trial judge for his failure to grant Morrison's motion for directed verdict.

NOTES[1] Section 402A provides:

(1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property if,

(a) the seller is engaged in the business of selling such a product, and

(b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(2) The rule stated in Subsection (1) applies although

(a) the seller has exercised all possible care in the preparation and sale of his product, and

(b) the user or consumer has not bought the product from or entered into any contractual relation with the seller.

Rylands v. Fletcher

[HOUSE OF LORDS]

JOHN RYLANDS AND JEHU HORROCKS PLAINTIFFS IN ERROR; AND THOMAS FLETCHER DEFENDANT IN ERROR.

1868 July 6, 7, 17. THE LORD CHANCELLOR (Lord Cairns) , LORD CRANWORTH.

 THE LORD CHANCELLOR (Lord Cairns):—

 My Lords, in this case the Plaintiff (I may use the description of the parties in the action) is the occupier of a mine and works under a close of land. The Defendants are the owners of a mill in his neighbourhood, and they proposed to make a reservoir for the purpose of keeping and storing water to be used about their mill upon another close of land, which, for the purposes of this case, may be taken as being adjoining to the close of the Plaintiff, although, in point of fact, some intervening land lay between the two. Underneath the close of land of the Defendants on which they proposed to construct their reservoir there were certain old and disused mining passages and works. There were five vertical shafts, and some horizontal shafts communicating with them. The vertical shafts had been filled up with soil and rubbish, and it does not appear that any person was aware of the existence either of the vertical shafts or of the horizontal works communicating with them. In the course of the working by the Plaintiff of his mine, he had gradually worked through the seams of coal underneath the close, and had come into contact with the old and disused works underneath the close of the Defendants.

 In that state of things the reservoir of the Defendants was constructed. It was constructed by them through the agency and inspection of an engineer and contractor. Personally, the Defendants appear to have taken no part in the works, or to have been aware of any want of security connected with them. As regards the engineer and the contractor, we must take it from the case that they did not exercise, as far as they were concerned, that reasonable care and caution which they might have exercised, taking notice, as they appear to have taken notice, of the vertical shafts filled up in the manner which I have mentioned. However, my Lords, when the reservoir was constructed, and filled, or partly filled, with water, the weight of the water bearing upon the disused and imperfectly filled-up vertical shafts, broke through those shafts. The water passed down them and into the horizontal workings, and from the horizontal workings under the close of the Defendants it passed on into the workings under the close of the Plaintiff, and flooded his mine, causing considerable damage, for which this action was brought.

 The Court of Exchequer, when the special case stating the facts to which I have referred, was argued, was of opinion that the Plaintiff had established no cause of action. The Court of Exchequer Chamber, before which an appeal from this judgment was argued, was of a contrary opinion, and the Judges there unanimously arrived at the conclusion that there was a cause of action, and that the Plaintiff was entitled to damages.

 My Lords, the principles on which this case must be determined appear to me to be extremely simple. The Defendants, treating them as the owners or occupiers of the close on which the reservoir was constructed, might lawfully have used that close for any purpose for which it might in the ordinary course of the enjoyment of land be used; and if, in what I may term the natural user of that land, there had been any accumulation of water, either on the surface or underground, and if, by the operation of the laws of nature, that accumulation of water had passed off into the close occupied by the Plaintiff, the Plaintiff could not have complained that that result had taken place. If he had desired to guard himself against it, it would have lain upon him to have done so, by leaving, or by interposing, some barrier between his close and the close of the Defendants in order to have prevented that operation of the laws of nature.

 As an illustration of that principle, I may refer to a case which was cited in the argument before your Lordships, the case of Smith v. Kenrick in the Court of Common Pleas 7 CB 515 .

 On the other hand if the Defendants, not stopping at the natural use of their close, had desired to use it for any purpose which I may term a non-natural use, for the purpose of introducing into the close that which in its natural condition was not in or upon it, for the purpose of introducing water either above or below ground in quantities and in a manner not the result of any work or operation on or under the land, — and if in consequence of their doing so, or in consequence of any imperfection in the mode of their doing so, the water came to escape and to pass off into the close of the Plaintiff, then it appears to me that that which the Defendants were doing they were doing at their own peril; and, if in the course of their doing it, the evil arose to which I have referred, the evil, namely, of the escape of the water and its passing away to the close of the Plaintiff and injuring the Plaintiff, then for the consequence of that, in my opinion, the Defendants would be liable. As the case of Smith v. Kenrick is an illustration of the first principle to which I have referred, so also the second principle to which I have referred is well illustrated by another case in the same Court, the case of Baird v. Williamson 15 CB(NS) 317 , which was also cited in the argument at the Bar.

 My Lords, these simple principles, if they are well founded, as it appears to me they are, really dispose of this case.

 The same result is arrived at on the principles referred to by Mr. Justice Blackburn in his judgment, in the Court of Exchequer Chamber, where he states the opinion of that Court as to the law in these words: “We think that the true rule of law is, that the person who, for his own purposes, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril; and if he does not do so, is primâ facieanswerable for all the damage which is the natural consequence of its escape. He can excuse himself by shewing that the escape was owing to the Plaintiff's default; or, perhaps, that the escape was the consequence of vis major, or the act of God; but as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient. The general rule, as above stated, seems on principle just. The person whose grass or corn is eaten down by the escaping cattle of his neighbour, or whose mine is flooded by the water from his neighbour's reservoir, or whose cellar is invaded by the filth of his neighbour's privy, or whose habitation is made unhealthy by the fumes and noisome vapours of his neighbour's alkali works, is damnified without any fault of his own; and it seems but reasonable and just that the neighbour who has brought something on his own property (which was not naturally there), harmless to others so long as it is confined to his own property, but which he knows will be mischievous if it gets on his neighbour's, should be obliged to make good the damage which ensues if he does not succeed in confining it to his own property. But for his act in bringing it there no mischief could have accrued, and it seems but just that he should at his peril keep it there, so that no mischief may accrue, or answer for the natural and anticipated consequence. And upon authority this we think is established to be the law, whether the things so brought be beasts, or water, or filth, or stenches.”

 My Lords, in that opinion, I must say I entirely concur. Therefore, I have to move your Lordships that the judgment of the Court of Exchequer Chamber be affirmed, and that the present appeal be dismissed with costs.

 LORD CRANWORTH:—

 My Lords, I concur with my noble and learned friend in thinking that the rule of law was correctly stated by Mr. Justice Blackburn in delivering the opinion of the Exchequer Chamber. If a person brings, or accumulates, on his land anything which, if it should escape, may cause damage to his neighbour, he does so at his peril. If it does escape, and cause damage, he is responsible, however careful he may have been, and whatever precautions he may have taken to prevent the damage.

 In considering whether a Defendant is liable to a Plaintiff for damage which the Plaintiff may have sustained, the question in general is not whether the Defendant has acted with due care and caution, but whether his acts have occasioned the damage. This is all well explained in the old case of Lambert v. Bessey, reported by Sir Thomas Raymond Sir TRaym 421 . And the doctrine is founded on good sense. For when one person, in managing his own affairs, causes, however innocently, damage to another, it is obviously only just that he should be the party to suffer. He is bound sic uti suo ut non lædat alienum. This is the principle of law applicable to cases like the present, and I do not discover in the authorities which were cited anything conflicting with it.

 The doctrine appears to me to be well illustrated by the two modern cases in the Court of Common Pleas referred to by my noble and learned friend. I allude to the two cases of Smith v. Kenrick 7 CB 564 , and Baird v. Williamson 15 CB (NS) 376 . In the former the owner of a coal mine on the higher level worked out the whole of his coal, leaving no barrier between his mine and the mine on the lower level, so that the water percolating through the upper mine flowed into the lower mine, and obstructed the owner of it in getting his coal. It was held that the owner of the lower mine had no ground of complaint. The Defendant, the owner of the upper mine, had a right to remove all his coal. The damage sustained by the Plaintiff was occasioned by the natural flow or percolation of water from the upper strata. There was no obligation on the Defendant to protect the Plaintiff against this. It was his business to erect or leave a sufficient barrier to keep out the water, or to adopt proper means for so conducting the water as that it should not impede him in his workings. The water, in that case, was only left by the Defendant to flow in its natural course.

 But in the later case of Baird v. Williamson the Defendant, the owner of the upper mine, did not merely suffer the water to flow through his mine without leaving a barrier between it and the mine below, but in order to work his own mine beneficially he pumped up quantities of water which passed into the Plaintiff's mine in addition to that which would have naturally reached it, and so occasioned him damage. Though this was done without negligence, and in the due working of his own mine, yet he was held to be responsible for the damage so occasioned. It was in consequence of his act, whether skilfully or unskilfully performed, that the Plaintiff had been damaged, and he was therefore held liable for the consequences. The damage in the former case may be treated as having arisen from the act of God; in the latter, from the act of the Defendant.

 Applying the principle of these decisions to the case now before the House, I come without hesitation to the conclusion that the judgment of the Exchequer Chamber was right. The Plaintiff had a right to work his coal through the lands of Mr. Whitehead, and up to the old workings. If water naturally rising in the Defendants' lana (we may treat the land as the land of the Defendants for the purpose of this case) had by percolation found its way down to the Plaintiff's mine through the old workings, and so had impeded his operations, that would not have afforded him any ground of complaint. Even if all the old workings had been made by the Plaintiff, he would have done no more than he was entitled to do; for, according to the principle acted on in Smith v. Kenrick, the person working the mine, under the close in which the reservoir was made, had a right to win and carry away all the coal without leaving any wall or barrier against Whitehead's land. But that is not the real state of the case. The Defendants, in order to effect an object of their own, brought on to their land, or on to land which for this purpose may be treated as being theirs, a large accumulated mass of water, and stored it up in a reservoir. The consequence of this was damage to the Plaintiff, and for that damage, however skilfully and carefully the accumulation was made, the Defendants, according to the principles and authorities to which I have adverted, were certainly responsible.

 I concur, therefore, with my noble and learned friend in thinking that the judgment below must be affirmed, and that there must be judgment for the Defendant in Error.

Judgment of the Court of Exchequer Chamber affirmed.

Lord's Journals, 17th July, 1868.

Attorneys for Plaintiffs in Error: N. C. & C. Milne.

Attorneys for Defendant in Error: Norris & Allen.

侵权责任法

第五章 产品责任

 第四十一条 因产品存在缺陷造成他人损害的，生产者应当承担侵权责任。

 第四十二条 因销售者的过错使产品存在缺陷，造成他人损害的，销售者应当承担侵权责任。

 销售者不能指明缺陷产品的生产者也不能指明缺陷产品的供货者的，销售者应当承担侵权责任。

 第四十三条 因产品存在缺陷造成损害的，被侵权人可以向产品的生产者请求赔偿，也可以向产品的销售者请求赔偿。

 产品缺陷由生产者造成的，销售者赔偿后，有权向生产者追偿。

 因销售者的过错使产品存在缺陷的，生产者赔偿后，有权向销售者追偿。

 第四十四条 因运输者、仓储者等第三人的过错使产品存在缺陷，造成他人损害的，产品的生产者、销售者赔偿后，有权向第三人追偿。

 第四十五条 因产品缺陷危及他人人身、财产安全的，被侵权人有权请求生产者、销售者承担排除妨碍、消除危险等侵权责任。

 第四十六条 产品投入流通后发现存在缺陷的，生产者、销售者应当及时采取警示、召回等补救措施。未及时采取补救措施或者补救措施不力造成损害的，应当承担侵权责任。

 第四十七条 明知产品存在缺陷仍然生产、销售，造成他人死亡或者健康严重损害的，被侵权人有权请求相应的惩罚性赔偿。

第九章 高度危险责任

 第六十九条 从事高度危险作业造成他人损害的，应当承担侵权责任。

 第七十条 民用核设施发生核事故造成他人损害的，民用核设施的经营者应当承担侵权责任，但能够证明损害是因战争等情形或者受害人故意造成的，不承担责任。

 第七十一条 民用航空器造成他人损害的，民用航空器的经营者应当承担侵权责任，但能够证明损害是因受害人故意造成的，不承担责任。

 第七十二条 占有或者使用易燃、易爆、剧毒、放射性等高度危险物造成他人损害的，占有人或者使用人应当承担侵权责任，但能够证明损害是因受害人故意或者不可抗力造成的，不承担责任。被侵权人对损害的发生有重大过失的，可以减轻占有人或者使用人的责任。

 第七十三条 从事高空、高压、地下挖掘活动或者使用高速轨道运输工具造成他人损害的，经营者应当承担侵权责任，但能够证明损害是因受害人故意或者不可抗力造成的，不承担责任。被侵权人对损害的发生有过失的，可以减轻经营者的责任。

 第七十四条 遗失、抛弃高度危险物造成他人损害的，由所有人承担侵权责任。所有人将高度危险物交由他人管理的，由管理人承担侵权责任；所有人有过错的，与管理人承担连带责任。

 第七十五条 非法占有高度危险物造成他人损害的，由非法占有人承担侵权责任。所有人、管理人不能证明对防止他人非法占有尽到高度注意义务的，与非法占有人承担连带责任。

 第七十六条 未经许可进入高度危险活动区域或者高度危险物存放区域受到损害，管理人已经采取安全措施并尽到警示义务的，可以减轻或者不承担责任。

 第七十七条 承担高度危险责任，法律规定赔偿限额的，依照其规定。

第十一章 物件损害责任

 第八十五条 建筑物、构筑物或者其他设施及其搁置物、悬挂物发生脱落、坠落造成他人损害，所有人、管理人或者使用人不能证明自己没有过错的，应当承担侵权责任。所有人、管理人或者使用人赔偿后，有其他责任人的，有权向其他责任人追偿。

 第八十六条 建筑物、构筑物或者其他设施倒塌造成他人损害的，由建设单位与施工单位承担连带责任。建设单位、施工单位赔偿后，有其他责任人的，有权向其他责任人追偿。

 因其他责任人的原因，建筑物、构筑物或者其他设施倒塌造成他人损害的，由其他责任人承担侵权责任。

 第八十七条 从建筑物中抛掷物品或者从建筑物上坠落的物品造成他人损害，难以确定具体侵权人的，除能够证明自己不是侵权人的外，由可能加害的建筑物使用人给予补偿。

 第八十八条 堆放物倒塌造成他人损害，堆放人不能证明自己没有过错的，应当承担侵权责任。

 第八十九条 在公共道路上堆放、倾倒、遗撒妨碍通行的物品造成他人损害的，有关单位或者个人应当承担侵权责任。

 第九十条 因林木折断造成他人损害，林木的所有人或者管理人不能证明自己没有过错的，应当承担侵权责任。

 第九十一条 在公共场所或者道路上挖坑、修缮安装地下设施等，没有设置明显标志和采取安全措施造成他人损害的，施工人应当承担侵权责任。

 窨井等地下设施造成他人损害，管理人不能证明尽到管理职责的，应当承担侵权责任。

论文写作题目：

论高度危险责任法律制度的构建

食品异物致人损害法律责任研究