prosecuted. This would obviously be an undesirable result. Therefore, the presence of a miniscule amount of filth in a food is insufficient for its condemnation. The contamination of the butter in this case is trifle and does not warrant banning the product. Capital City Foods is not criminally liable. *United States v. Capital City Foods, Inc.*, 345 F.Supp. 277, **Web** 1972 U.S. Dist. Lexis 12796 (United States District Court for North Dakota)

Critical Legal Thinking Cases

23.1 Food Regulation Barry Engel owned and operated the Gel Spice Co., Inc. (Gel Spice), which specialized in the importation and packaging of various food spices for resale. All the spices Gel Spice imported were unloaded at a pier in New York City and taken to a warehouse on McDonald Avenue. Storage and repackaging of the spices took place in the warehouse. During three years, the McDonald Avenue warehouse was inspected four times by investigators from the Food and Drug Administration (FDA). The investigators found live rats in bags of basil leaves, rodent droppings in boxes of chili peppers, and mammalian urine in bags of sesame seeds. The investigators produced additional evidence which showed that spices packaged and sold from the warehouse contained insects, rodent excreta pellets, rodent hair, and rodent urine. The FDA brought criminal charges against Engel and Gel Spice. Are they guilty? *United States v. Gel Spice Co., Inc.*, 601 F.Supp. 1205, **Web** 1984 U.S. Dist. Lexis 21041 (United States District Court for the Eastern District of New York)

23.2 Regulation of Drugs Dey Laboratories, Inc. (Dey), was a drug manufacturer operating in the state of Texas. Dey scientists created an inhalant known as ASI. The only active ingredient in ASI was atropine sulfate. The inhalant was sold to physicians, who then prescribed the medication for patients suffering from asthma, bronchitis, and other pulmonary diseases. Dey filed a new drug application with the Food and Drug Administration (FDA). Four months later, Dey was advised that its application would not be approved. Despite the lack of FDA approval, Dey began marketing ASI. The United States filed a complaint for forfeiture of all ASI manufactured by Dey. The inhalant was seized, and Dey sued to have the FDA's seizure declared illegal. Who wins? *United States v. Atropine Sulfate 1.0 Mg. (Article of Drug)*, 843 F.2d 860, **Web** 1988 U.S. App. Lexis 5817 (United States Court of Appeals for the Fifth Circuit)

23.3 Cosmetics Regulation FBNH Enterprises, Inc. (FBNH), was a distributor of a product known as French Bronze Tablets. The purpose of the tablets was to allow a person to achieve an even tan without exposure to the sun. When ingested, the tablets imparted color to the skin through the use of various ingredients, one of which is canthaxanthin, a coloring agent. The Food and Drug Administration (FDA) had not approved the use of canthaxanthin as a coloring additive. The FDA became aware that FBNH was marketing the tablets and that each contained 30 milligrams of canthaxanthin. The FDA filed a lawsuit, seeking the forfeiture and condemnation of eight cases of the tablets in the possession of FBNH. FBNH challenged the government's right to seize the tablets. Who wins? *United States v. Eight Unlabeled Cases of an Article of Cosmetic*, 888 F.2d 945, **Web** 1989 U.S. App. Lexis 15589 (United States Court of Appeals for the Second Circuit)

23.4 Drug Regulation Joseph Wahba had a prescription filled at Zuckerman's Pharmacy (Zuckerman's) in Brooklyn, New York. The prescription was for Lomotil, a drug used to counteract stomach disorders. The pharmacy dispensed thirty tablets in a small plastic container unequipped with a "childproof" cap. Joseph took the medicine home, where it was discovered by Wahba's 2-year-old son, Mark. Mark opened the container and ingested approximately twenty pills before Mark's mother saw him and stopped him. She rushed him to a hospital but, despite the efforts of the doctors, Mark lapsed into a coma and died. The Wahbas sued H&N Prescription Center, Inc., the company that owns Zuckerman's, for damages. Who wins? *Wahba v. H&N Prescription Center, Inc.*, 539 F.Supp. 352, **Web** 1982 U.S. Dist. Lexis 12327 (United States District Court for the Eastern District of New York)

23.5 Federal Trade Commission Act The Colgate-Palmolive Co. (Colgate) manufactured and sold a shaving cream called Rapid Shave. Colgate hired Ted Bates & Company (Bates), an advertising agency, to prepare television commercials designed to show that Rapid Shave could shave the toughest beards. With Colgate's consent, Bates prepared a television commercial that included the sandpaper test. The announcer informed the audience, "To prove Rapid Shave's super-moisturizing power, we put it right from the can onto this tough, dry sandpaper. And off in a stroke."

While the announcer was speaking, Rapid Shave was applied to a substance that appeared to be sandpaper, and immediately a razor was shown shaving the substance clean. Evidence showed that the substance