

Claims for gastric illness contracted during the course of a foreign holiday

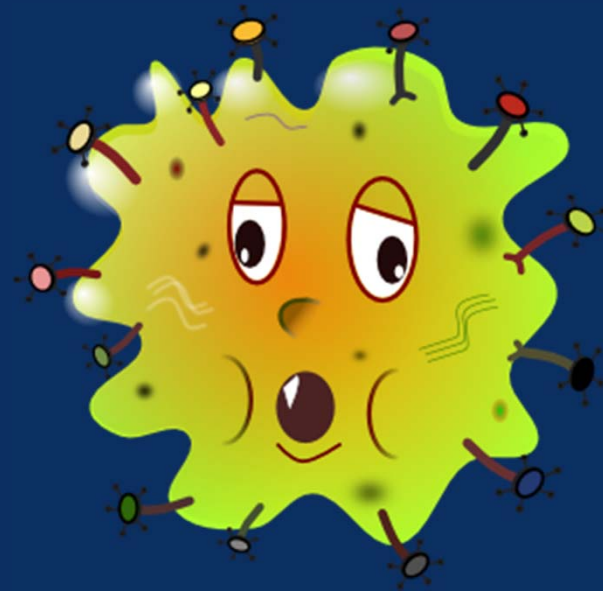


CAUSATION - Viral or Bacterial?

Beware semantics

Identifying the pathogen

- Expert evidence
- C's symptoms
- Incubation periods
- Observable hygiene failures
- Local outbreaks



CAUSATION - Was the food consumed at the hotel?

Different scenarios:

1. All inclusive, only ate package holiday food
2. All inclusive, but still bought food outside hotel or at hotel
3. Half-board, ate outside hotel
4. Half-board, but bought extra food only at hotel
5. B&B, ate outside hotel.
6. B&B, but bought extra food only at hotel

Must give the judge an evidential reason to prefer the index hotel, and the package-holiday food, as the likely source of gastric illness.

Food poisoning - strict liability

- Hone v Going Places (2001) - in the absence of express terms, liability is fault based.
- BUT -Food at hotel may be 'served' but it is still 'goods'
- Section 1(3) of SOGASA 1982: *a contract is a contract for the transfer of goods whether or not services are also provided or to be provided under the contract, and...whatever is the nature of the consideration for the transfer or agreement to transfer"*
- The implied term; section 4(2): *" Where, under such a contract, the transferor transfers the property in goods in the course of a business, there is an implied condition that the goods supplied under the contract are of satisfactory quality".*
- Also section 4(5) - *fit for purpose*
- *Antcliffe v Thomas Cook (2012): "Food is commonly supplied to be eaten. If it makes you this ill, can it be said to be reasonably fit for purpose? In my judgment no it cannot"*
- *Gee v White Spot (Supreme Court of British Columbia)*

Food poisoning - fault-based liability

- Potentially *res ipsa loquitur*? Makes practical sense, since C cannot see into the kitchen.
- But see Lougheed v On the beach (2014)- not applicable in absence of evidence of local standards?



Beware the Athens Convention!

- Exclusive regime
- C must prove fault
- No room for implication of strict terms
- Will need expert microbiology evidence in most cases



Jack Harding

1 Chancery Lane

jharding@1chancerylane.com