

# Griffiths v TUI

## APIL International SIG

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## Wood v TUI – background...

*Wood v TUI* [2018] 2 WLR 1051: the facts:

- The couple stayed at the Gran Bahia Principe hotel in the Dominican Republic in 2011 on an all inclusive basis.
- They fell ill with food poisoning.
- The judge at first instance found that they acquired their illness through eating food or drinking a beverage provided by the hotel.
- That food or drink was contaminated, which is what caused the illness.

## Wood v TUI – a recap

***Wood v TUI [2018] 2 WLR 1051 - the decision on appeal:***

The Claimants claimed under s.4(2) of the Supply of Goods and Services Act 1982:

*“there is an implied condition that the goods supplied under the contract are of satisfactory quality.”*

Contaminated food cannot be of satisfactory quality.

## Wood v TUI – the decision on appeal

*Wood v TUI [2018] 2 WLR 1051*: the decision on appeal:

The Defendant denied that s.4(2) was engaged, because the package holiday contract was not a contract for the supply of goods; and denied that property in the food ever passed to the Claimants.

The Defendant's argument failed on all counts and the appeal failed.

This is the *ratio decidendi* of the decision.

## Wood v TUI – the famous dicta

*“Whether goods are of satisfactory quality is a question of fact but where food is contaminated with bacteria that causes severe illness it is difficult to imagine that it could be described as of satisfactory quality.”*

*“Proving that an episode of this sort was caused by food which was unfit is far from easy. It would not be enough to invite a court to draw an inference from the fact that someone was sick. Contamination must be proved; and it might be difficult to prove that food (or drink) was not of satisfactory quality in this sense in the absence of evidence of others who had consumed the food being similarly afflicted. Additionally, other potential causes of the illness would have to be considered such as a vomiting virus.”*

## Wood v TUI – a token for Defendants:

*“it will always be difficult (indeed, very difficult) to prove that an illness is a consequence of food or drink which was not of a satisfactory quality, unless there is cogent evidence that others have been similarly affected and alternative explanations would have to be excluded.”*

## Griffiths v TUI – the background facts

- The Claimant stayed at the Aqua Fantasy Aqua Park Hotel in Izmir in 2014 on an all inclusive basis.
- He fell ill with food poisoning.
- The expert evidence of Professor Pennington supported the claim.
- The Defendant raised Part 35 Questions but did not seek to cross examine Professor Pennington.

## Griffiths v TUI – on first instance:

*Griffiths v TUI [2020] EWHC 2268 (QB)*: the decision at first instance:

The Claimant's evidence as to his not having eaten outside the hotel prior to falling ill was accepted.

This underpinned Professor Pennington's report.

Therefore the factual basis for the report remained unshaken at trial;

**BUT...**

The Defendant's counsel criticised Professor Pennington's report in a number of ways.

The trial judge referred to the *dicta* in *Wood v TUI* and accepted these criticisms. As a result of them, she held, the reasoning in the report did not hold up to scrutiny, and the claim was dismissed.