

Insurance & Personal Injury

Victim of Food Contamination – Know Your Legal Rights and Protection

Introduction

Some Hong Kong people have recently fallen ill after the consumption of contaminated sandwiches from Taiwanese brand Horng Ryen Jen. This incident raised concerns over food safety and protection of consumers. This article will explore the potential liability of different parties to the victims in a normal food-poisoning incident.

Suing the food manufacturer in negligence

If you suspect that the food was contaminated due to unhygienic handling of food by the food manufacturer, you may consider pursuing a claim of negligence against the food manufacturer. You are required to prove that, it is more likely than not that the food manufacturer was negligent in producing safe food for consumption.

Duty of care of food manufacturer

A food manufacturer generally owes a **duty of care** to its ultimate consumers (per landmark case of *Donoghue v Stevenson* [1932] A.C 562). Its fundamental responsibility is to ensure that the food produced is safe and fit for human consumption according to the relevant laws and regulations.

Breach of duty by food manufacturer

The **standard of care** of the food manufacturer is the standard that would be exercised by a reasonably prudent food manufacturer. Normal industrial practices to ensure food quality for safe consumption are usually taken into consideration to determine the standard of care of the food manufacturer. The Trade Guidelines on Safe Production of Buns and Sandwiches issued by Centre for Food Safety of the Hong Kong Government may be one of the reference documents in relation to food safety measures (e.g. purchase and receiving, storage, preparation, cooking, cooling, holding and transporting) expected to be implemented by food manufacturers in their food productions. If the food manufacturer failed to comply with these measures, leading to unhygienic handling of food, the food manufacturer may have breached its duty of care to ensure safe consumption of food. On the contrary, if food contamination was caused by subsequent improper delivery of food, poor storage condition and/or refrigeration by distributors and/or retailers, the food manufacturer may not be liable.

Is your sickness really caused by the food manufacturer?

The next element to prove is **causation**: Is your illness caused by negligent breach of duty of the food manufacturer? In an isolated food-poisoning case where you are the only victim, you may be challenged by the food manufacturer to prove that the food consumed by you was actually contaminated. This may be problematic since you may have consumed the whole food and what is left is just a receipt of the food. You may also be challenged that your sickness does not arise from the alleged contaminated food but other food consumed by you. However, in a massive food-poisoning case, the government may take initiatives to investigate, so that it may be easier for victims to obtain evidence and establish their claims.

What can I get for compensation?

Common items of damages include the price of food, medical expenses, loss of earnings (due to inability to attend work), tonic food and nourishing soup, and pain suffering and loss of amenities.

Suing the food importer / distributor / retailer in negligence

If the food manufacturer is located outside Hong Kong, it may not be cost-effective to pursue your claim against the food manufacturer. You may, instead, consider suing the food **importer** for negligence. A food importer, similar to a food manufacturer, owes a **duty of care** to ultimate consumers in ensuring the quality of imported food safe for consumption. The food importer is expected to comply with relevant legislations, regulations and common industrial practices. If contamination is caused by the food importer, you may have a claim against the food importer.

Suing the food retailer through contract

In relation to a food retailer, other than negligence, you may consider pursuing a claim under contract. Section 16 of the Sales of Good Ordinance states that there is an implied condition that the food sold is of merchantable quality and is reasonably fit for consumption. If the food retailer handles food in an unhygienic way, leading to food contamination, it may have breached the implied condition and, therefore, be liable for your loss.

Conclusion

A victim in a food-poisoning case has different potential legal claims against the food manufacturer / importer / distributor / retailer under negligence and/or contract. In a massive food-poisoning case, it is common for the victims to seek assistance from the Consumer Council to settle the dispute cost-effectively. If there is no constructive progress or outcome under the assistance of the Consumer Council, legal proceedings may be commenced against the relevant parties to enforce the consumers' legal rights.

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Important: The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

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