

# **Home-based food businesses: three questions to consider when a customer threatens to sue you for food poisoning**

\*By: Shjoneman Tan

## **I. INTRODUCTION**

Since the onset of COVID-19, you've been running a home-based food business, selling cakes to earn extra money. One day, you're in the kitchen when you hear your phone buzz. You don't recognise the number. Is this a new order? You pick up the phone, ready for the good news. To your horror, you hear an angry lady shouting at you, claiming that she has suffered food poisoning from your cakes. This lady has threatened to sue you, unless you pay her compensation.

This scenario is a nightmare for any home-based food business owner. This article highlights three questions for owners of home-based food businesses to consider when caught in such a situation: (1) when preparing the food, did you adhere to the Singapore Food Agency Guidelines on Food Safety and Hygiene Practices (“**SFA Guidelines**”)?<sup>1</sup> (2) was your food the actual cause of the customer's food poisoning?; and (3) what is the customer seeking compensation for?

## **II. DISCUSSION**

### ***Law of negligence is the legal basis for a food poisoning claim***

Before diving into the three questions, it is first helpful to understand the legal basis for the customer's claim against you. When a customer threatens to sue you for food poisoning, the legal basis of their claim is likely to be the law of negligence. For a negligence claim to succeed, the customer must prove three conditions:<sup>2</sup>

- a. you owe the customer a “duty of care”;
- b. you have *breached* this “duty of care”; and

---

\*Year 4 LL.B. student, Yong Pung How School of Law, Singapore Management University.

<sup>1</sup> Singapore Food Agency website < <https://www.sfa.gov.sg/docs/default-source/covid/guidelines-on-safe-distancing-measures-for-home-based-food-businessesaaf7f788f54145e6b7444f5729d77363.pdf> > (accessed 17 September 2021).

<sup>2</sup> Chan, Kok Yew Gary and Lee, Pey Woan, *The Law of Torts in Singapore*, (Academy Publishing, 2<sup>nd</sup> Ed, 2016) (“*The Law of Torts in Singapore*”) at [03.006].

- c. the breach must have *caused* damage to the customer; and the damage should not be *remote*.

For condition (a), a “duty of care” is your legal duty to avoid harm to the customer.<sup>3</sup> A “duty of care” arises in certain relationships, such as doctor-patient and manufacturer-consumer relationships.<sup>4</sup> For home-based food businesses, condition (a) is easy to prove because of the business-consumer relationship — the business sells food to customers for consumption. Thus, your legal duty is to take *reasonable* care in preparing your food, so as to avoid causing harm (food poisoning) to your customers.

Generally, for food poisoning cases, the customer’s challenge is proving conditions (b) and (c). In this article, the three questions for you (as a home-based food business owner) to consider relate to questions (b) and (c).

***Question 1: Did you adhere to SFA Guidelines when preparing your food?***

Question 1 relates to condition (b): whether you had breached your duty of care, *i.e.* whether you had taken reasonable care that was expected of you.<sup>5</sup> Industry standards or practices are relevant in determining what constitutes as “reasonable care”.<sup>6</sup> Here, “reasonable care” is exemplified by SFA Guidelines<sup>7</sup> which must be abided by all home-based food businesses.<sup>8</sup> One example of the guidelines is practising proper handwashing and sanitation of equipment before preparing food.<sup>9</sup>

Any deviation from these guidelines is likely to constitute a breach. It is important for you to recollect and preferably document whether you had adhered to SFA Guidelines and whether you may have committed any serious breaches, *e.g.* using expired ingredients.<sup>10</sup> This is especially useful in giving you a ‘sensing’ of whether you had likely caused the customer’s food poisoning, which relates to the second question for you to consider.

---

<sup>3</sup> *The Law of Torts in Singapore*, *supra* n 1, at [03.011].

<sup>4</sup> *Donoghue v Stevenson* [1932] AC 562 (“*Donoghue v Stevenson*”).

<sup>5</sup> *The Law of Torts in Singapore*, *supra* n 1, at [06.002].

<sup>6</sup> *Jurong Primewide Pte Ltd v Moh Seng Cranes Pte Ltd* [2014] 2 SLR 360 at [43]; *The Law of Torts in Singapore*, *supra* n 1, at [06.032] and [06.033]; *Tesa Tape Asia Pacific Pte Ltd v Wing Seng Logistics Pte Ltd* [2006] 3 SLR (R) 116 at [14] and [17].

<sup>7</sup> Singapore Food Agency website < <https://www.sfa.gov.sg/docs/default-source/covid/guidelines-on-safe-distancing-measures-for-home-based-food-businessesaaf7f788f54145e6b7444f5729d77363.pdf> > (accessed 17 September 2021).

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

## ***Question 2: Did your food cause the food poisoning?***

Question 2 pertains to condition (c): whether it was your food which *caused* the food poisoning. The legal test for causation is whether the victim would not have suffered harm “but-for” the defendant’s negligence.<sup>11</sup> Essentially, the test looks at whether there are other factors which could have caused the food poisoning.

For food poisoning cases, causation is generally easier to establish when multiple individuals have experienced food poisoning symptoms after consuming your food. An example would be the case where fifteen people experienced gastroenteritis symptoms after consuming cakes from The Peachy Sugarmaker, a home-based food business.<sup>12</sup> In that case, nine of the fifteen victims were hospitalised.<sup>13</sup> However, where there is only a complaint from one customer, causation is harder to establish as it is hard to pinpoint the particular food which caused the food poisoning. Accordingly, there are two steps that business owners should undertake.

Firstly, business owners should check with the customer if there is medical evidence that the customer’s illness was due to food poisoning. The mere fact that the customer fell ill after consuming your food does not mean food poisoning was the cause. For example, in *Fowler*,<sup>14</sup> the plaintiff child sued the defendant manufacturer on the basis that he fell ill after drinking a soda, alleging that the soda contained yeast.<sup>15</sup> However, medical evidence showed that the cause of the plaintiff’s symptoms was due to a prevalent virus affecting children within the community.<sup>16</sup> Therefore, causation was not established.<sup>17</sup>

Secondly, even if there is medical evidence of food poisoning, business owners should consider the possibility of other causes such as:

- a. other foods which the customer had consumed around the same time when they consumed your food;

---

<sup>11</sup> *Sunny Metal Engineering Pte Ltd v Ng Khim Ming Eric* [2007] 3 SLR (R) 782, at [63] – [64].

<sup>12</sup> Shermaine Ang, “15 people get gastroenteritis symptoms after eating food from The Peachy SugarMaker”, (14 August 2021) <<https://www.straitstimes.com/singapore/15-people-with-gastroenteritis-symptoms-after-eating-food-from-the-peachy-sugarmaker>> (accessed 15 September 2021).

<sup>13</sup> *Ibid.*

<sup>14</sup> *Fowler v Coastal Coca-Cola Bottling Company, Inc.*, 252 S.C.579, 167 S.E.2d 572 (1969) (“*Fowler*”).

<sup>15</sup> *Id.*, at [582].

<sup>16</sup> *Id.*, at [583].

<sup>17</sup> *Id.*, at [584].

- b. the customer’s personal hygiene when consuming your food; or
- c. the customer’s failure to consume the food according to the labelled instructions.

For example, picture a scenario where Customer A claims to have suffered food poisoning after eating your sashimi. What if Customer A had eaten other foods around that same time? Alternatively, what if Customer A did not follow the labelled instructions and consumed the sashimi one day later instead of within the same day?

Given the above, the practical step you could take is to try and persuade the customer to carefully “reconsider” their complaint, bearing in mind to do so in a cautious, professional and understanding manner. For instance, you could highlight that other customers have yet to make any complaints of food poisoning. Further, if you had adhered to SFA Guidelines (as discussed in the first question), this is also a useful point to raise to the customer. Altogether, this may “convince” the customer to reconsider their complaint and think about whether their food poisoning could be caused by other factors.

***Question 3: What is the customer seeking compensation for?***

Question 3 requires you to consider what the customer is seeking compensation for: the “type of damages” being claimed from your negligence.<sup>18</sup> Under condition (c), the “type of damage” that the customer is claiming cannot be too *remote*: it must be reasonably foreseeable.<sup>19</sup>

An example of a *remote* “type of damage” was illustrated in *Man Mohan Singh*.<sup>20</sup> In that case, the parents’ only two children were killed in an accident because of the defendant’s negligence. The parents sought compensation for various types of damages: funeral expenses, loss of dependency and interestingly, the cost of fertility treatment.<sup>21</sup> The parents argued there that the accident rendered them childless, and they had resorted to fertility treatment to conceive another child.<sup>22</sup> However, the court found that the cost of fertility treatment was remote. In the first place, the fact that the parents would become childless was not reasonably foreseeable.<sup>23</sup>

---

<sup>18</sup> *The Law of Torts in Singapore*, supra n 1, at p 319.

<sup>19</sup> *Id.*, at [7.094].

<sup>20</sup> *Man Mohan Singh s/o Jothirambal Singh v Zurich Insurance (Singapore) Pte Ltd (now known as QBE Insurance (Singapore) Pte Ltd)* [2008] SGCA 24 (“*Man Mohan Singh*”).

<sup>21</sup> *Id.*, at [1].

<sup>22</sup> *Id.*, at [43] – [44].

<sup>23</sup> *Id.*, at [55].

Accordingly, incurring the costs of fertility treatment to conceive another child was not reasonably foreseeable.<sup>24</sup>

A simpler way to determine if a “type of damage” is foreseeable is to consider whether the damage would be suffered by ordinary persons similar to the victim. For food poisoning, the foreseeable damages to ordinary customers would include medical expenses and lost wages. Conversely, an example of an unforeseeable type of damage would be the loss of potential employment: if the customer claims they lost out on a job because the food poisoning made them ill and unable to attend the job interview, that “type of damage” would likely be remote.

However, where the “type of damage” is foreseeable, a defendant will be liable for the full *extent* of the damage, even if the full extent of the damage could not be foreseen.<sup>25</sup> In our context, it is foreseeable that the customer would incur medical expenses from food poisoning. However, the extent of these expenses could vary from hospitalisation to undergoing surgery, depending on the customer’s reaction to the food poisoning. Therefore, you could be liable for the full extent of such costs, even if the need to undergo surgery could not be foreseen.

### III. CONCLUSION

When confronted with a food poisoning complaint, home-based food businesses should always consider the three questions: (1) whether you had breached SFA Guidelines; (2) whether your food caused the food poisoning; and (3) what the customer is seeking compensation for. These three questions will help you decide whether you should compensate the customer and the amount to compensate them.

However, when dealing with food poisoning complaints, business owners should bear in mind that it is easy for customers to publish negative reviews on social media. Therefore, it may sometimes be ideal to compensate the customer if the requested amount is not substantial. Ultimately, business owners are advised to observe good food and personal hygiene practices by adhering strictly to the SFA guidelines.<sup>26</sup> Failure to do so could lead to facing negligence claims from customers and even penalties under the Sale of Food Act.<sup>27</sup>

---

<sup>24</sup> *Ibid.*

<sup>25</sup> *Saatchi & Saatchi Pte Ltd v Tan Hun Ling* [2006] 1 SLR (R) 670 at [11].

<sup>26</sup> Shermaine Ang, “15 people get gastroenteritis symptoms after eating food from The Peachy SugarMaker”, (14 August 2021) <<https://www.straitstimes.com/singapore/15-people-with-gastroenteritis-symptoms-after-eating-food-from-the-peachy-sugarmaker>> (accessed 15 September 2021).

<sup>27</sup> Sale of Food Act (Chapter 283, 2002 Rev Ed).