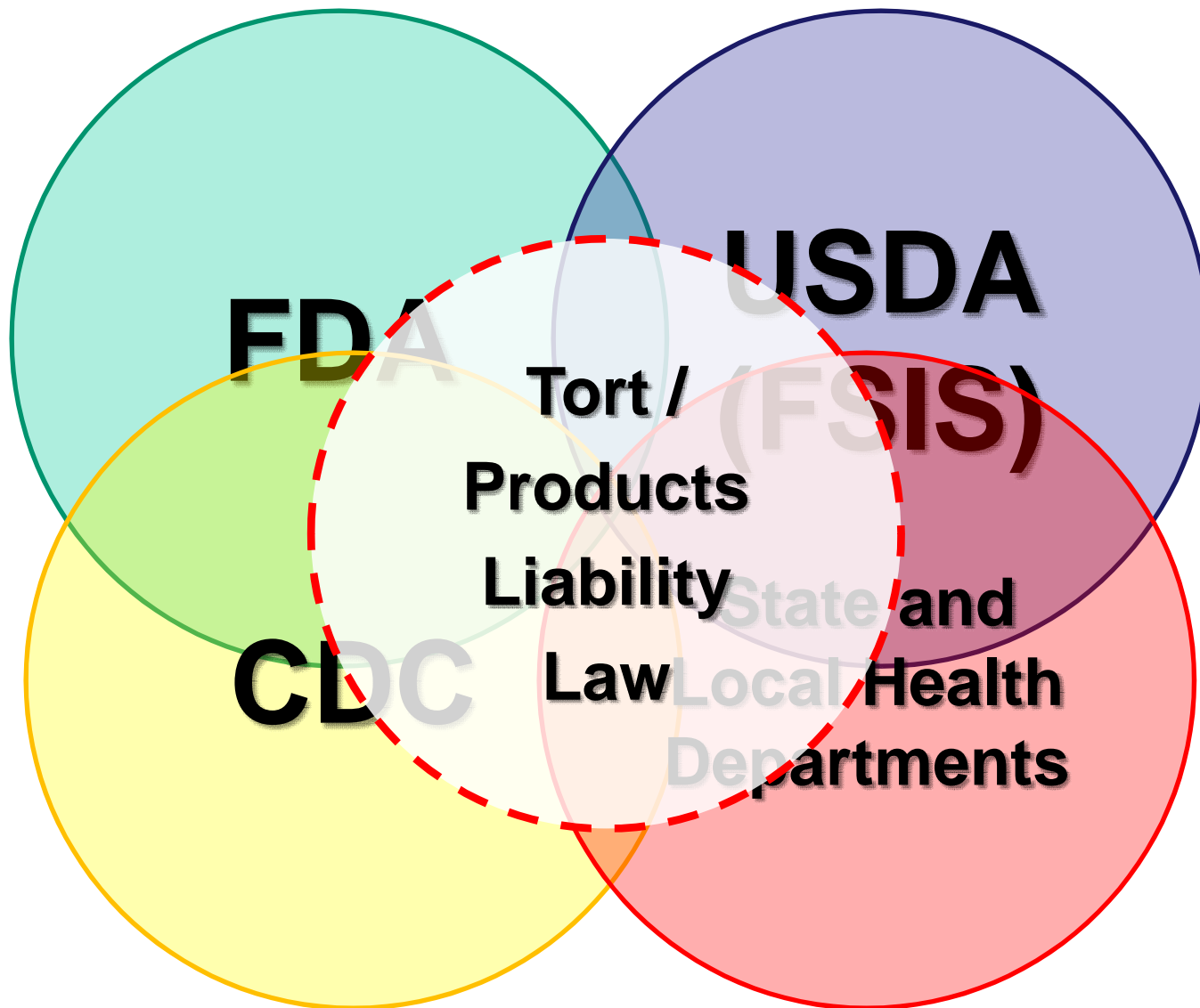


Consumers vs. Food Companies: Intersection of the Court System and Food Science

**University of Minnesota
Department of Food Science and Nutrition**

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How Does Tort System Regulate Food Industry?

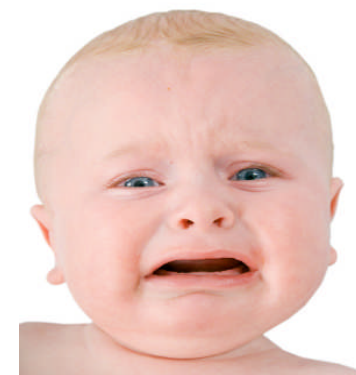


Effective?

Efficient?

Three Types of Cases

MARLERCLARK
ATTORNEYS AT LAW L.L.P., P.S.



Type 1 – Strict Liability

**Sick Victim +
Nexus With Food Product =
Liability
(*Fault Not Relevant*)**

What Can You Do in A Type 1 Case?

- Assess damages
- Attempt to settle
- Chase others in supply chain

Special Damages

- Appropriate medical experts
- Life care planner
- Appropriate mental health professionals

General Damages

- Jury verdict information
- Other available settlement data
- Mock juries and focus groups (but be aware of what you ask for)

Firing Squad Strategy

Where liability will almost certainly be established,
damages are severe and
plaintiff won't settle?

What do you do?



Pursuit of Third Parties

- Someone else's fault?
- Contractual liability?
- Creating enemies?

Type 2 Characteristics

- Usually sick (or at least a credible diagnosis)
- Plaintiff believes product is source of illness
- Product not the source of illness



Example

Plaintiff sues national quick service restaurant

- Ate burger at restaurant
 - Developed diarrhea and severe abdominal cramping next day
 - Claimed E. Coli and HUS
 - Actually Recurrent TTP
-

= DEFENSE VERDICT (Actual case)

Type 2 Strategy

- Health Department Position?
- Illness Consistent with Food Poisoning
- Alternative Cause(s) of Illness?
- Strength of Other Facts Pointing Liability?
- Other Plaintiffs?

Type 3 Characteristics

- Aggrieved claimant
- May not be ill
- Often motivated by emotions
- Food is blamed but communication is often the source of anger

Example

- BSE Claimants
 - Contradictory information given by store managers
 - Difficulty getting Loyalty Card information
 - Felt let down by their favorite Supermarket
 - Claimed fear of illness (though odds were very slim)
-

= CLAIMS DISMISSED ON SUMMARY JUDGMENT

Responding to Type 3

- Depose plaintiffs ASAP – “Lock them into a story”
- Summary judgment successful If:
 - No damages
 - No duty
 - No breach of duty
 - No causation (Nexus – like type 2)

What's the Big Deal?

Aren't Food Companies Insured?

- Possibly for some things
 - \$ limits
 - Exclusions
- Probably not for everything
 - Recalls
 - Damage to Brand/Consumer image
 - Stock value

Importance of Investigating Public Health Agency

Reach Out to the Health Department





'Team Diarrhea'

'Team Diarrhea'

Food-borne illness investigations start after someone gets sick, goes to a doctor and submits a stool sample. If that sample comes up positive for potential food-borne illness, such as E.coli or salmonella, state investigators go to work.

In about three-quarters of the states, patient interviews are done by workers in hundreds of local or regional health departments. In other states, work is centralized at the state level.

In Minnesota, things happen that don't always happen elsewhere. Every salmonella or E.coli victim is interviewed by a state health worker. A standardized form, which takes 25 to 30 minutes to fill out, collects data on activities such as what the person ate during the past seven days, where they bought groceries, traveled or came in contact with animals.

"We assume that every potential case is the first of an outbreak we haven't identified yet," says Carlota Medus, Minnesota state epidemiologist.

In other places, officials won't get deep histories until an outbreak is suspected.

"If somebody calls and says, 'I got sick, and I think it was McDonald's,' nothing happens," says Chris LeFevre, environmental director for Ohio's Carroll County Health Department, which investigates food-borne illnesses. "You need at least two people to start an investigation."

Even with three calls in an afternoon, "Good luck solving that mystery," he says.

By law, Minnesota requires that salmonella samples collected by hospital and clinic laboratories be sent to the state lab for further testing to see if they match other cases nationwide. That's not true for 40% of states, says the Association of Public Health Laboratories.

Minnesota's lab turns test results in one or two days, says Kirk Smith, supervisor of the Foodborne Diseases Unit at the Minnesota Department of Health.

Some state labs batch samples, meaning officials wait for several before they run tests. That saves money, but samples can sit for days, says Ali Khan, assistant surgeon general at the Centers for Disease Control and Prevention, which monitor such illnesses.

Every day, Minnesota's lab issues a report to the state's epidemiologists about new cases, and how they match with older and national ones. That gives a quick read on connections. Medus says.

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Minnesota's first victims didn't recall eating at a restaurant that eventually pointed to peppers until he was asked about it after other victims mentioned it.

Minnesota "has a lot of best practices ... to get to people quickly to find out what they ate," the CDC's Khan says.

Myths and Misunderstandings About Food Safety

- Home Preparation



Myths and Misunderstandings About Food Safety

- Organics ≠ food safety
 - PCA
 - 2006 Spinach Outbreak



Myths and Misunderstandings About Food Safety

- Locavore ≠ food safety



Retaining Experts

Age of Specialists

- Retain the most recognized name in the field



Consider Avoiding The Usual Suspects

- Has expert been successfully challenged before?
- Talk with other experts and lawyers who have worked with expert

Good Teacher

- Juries and judges like experts who can teach
- Experts can teach you
- CAUTION – dep testimony



Good Listener and Attentive to Details

- Listens carefully to opposing experts
- Reviews materials carefully

Team Player



Questions?
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