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In Search of New Laws for a Gluten Kingdom

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***Abstract*—**The enthusiasm for gluten avoidance in a growing market is met by improvements in sensitive detection methods for analysing gluten content. Paradoxically, manufacturers employ no such systems in the production process but continue to market their product as gluten free, a significant risk posed to an undetermined coeliac population. This paper resonates with an immunological response that causes gastrointestinal scarring and villous atrophy with the conventional description of personal injury. This thesis divulges into evaluating potential inadequacies of gluten labelling laws which not only present a diagnostic challenge for general practitioners in the UK but it also exposes a less than adequate form of available legal protection to those who suffer adverse reactions as a result of gluten digestion. Central to this discussion is whether a claim brought in misrepresentation, negligence and/or under the Consumer Protection Act 1987 could be sustained. An interesting comparison is then made with the legal regimes of neighboring jurisdictions furthering the theme of a legally un-catered for gluten kingdom.

***Keywords*—**Coeliac, litigation, misrepresentation, negligence.

I. Introduction

GLUTEN sensitive enteropathy [otherwise known as coeliac disease], an autoimmune condition, once described as 'suffering in the bowel' manifested due to an inability to adapt to a 'battery of food antigens previously unknown to man' [1] and included intolerances to protein, milk and cereal etc. Less than a decade ago, conventional descriptions of food acting as 'the staff of life [2]' is, in the year of 2014, known as the primary offender to the health of 1 in 100 people [3]. Unfortunately, since, ongoing campaigns and research [3] have paved the way for a less than innovative approach to treat a sufferer by issuing medical guidance that advises complete withdrawal from gluten products. Some commentators have even suggested that a gluten free diet will fail to treat inflammation, a leaky gut and poor vitamin status [4], to be deemed a confident conventional treatment.

Gluten free products are now widely available, however, a distinction must be drawn between gluten free ingredients that make up a product and 'true' gluten free products. The latter emphasising eliminated risks of cross contamination.

This distinction is further complicated by manufacturers who offer gluten free products without having in place systems that would guarantee compliance with the standard set by UK laws [i.e. for products to contain 20 ppm or less by virtue of Commission Regulation [EC] No 41/2009 as implemented by Foodstuffs Suitable for People Intolerant to Gluten [England] Regulations 2010 [S.I. No. 2281 of 2010]], in order for it to be deemed consumable for the coeliac population. Consequently, an immediate breach of Commission Regulation [EC] 41/2009 has little influence amongst retail and food related corporate structures.

There are but a few reported cases brought to court as a result of gluten poisoning, and in submission, it is thought, the difficulty in evidencing the nexis between the gluten culprit, its digestion and the consequential symptoms, act as a powerful deterrent against issuing legal proceedings. This paper shall stream through the symptoms associated in the moment of accidental or non-accidental gluten digestion, the difficulty in finding a legal avenue that would be viable, and failing this, the search for new laws that would adequately protect the UK's growing gluten kingdom.

A. The Gluten Epidemic

The gluten crisis has shifted from a conventional medical discovery of coeliac disease on one end of the spectrum and non-coeliac disease at the other to gluten sensitivity [5] from anywhere in between. In evaluation, gluten has [6], against basic human genome, journeyed a period of 10,000 years marking a current technological and sociological take on agriculture and hybridization whilst undermining the health of individuals. Due to its level of toxicity for those diagnosed with coeliac disease or gluten sensitivity, the solution is to follow the draconian regiment of our pre 19 century ancestors' diet, against the development of universal cuisine.

In perspective, avoiding gluten is an onerous task for a coeliac patient. Given that gluten exists in wheat, oats, barley, rye, spelt and potentially amongst other grains, it comes as no surprise that Britain's food supply chain is infested with gluten toxins. Digestion or 'accidental' gluten digestion will not only flatten the villi in the small intestines, but it will also prevent them from absorbing nutrients from any digested food, until recovery. Any food item that contains over 20ppm of gluten will 'trigger' this reaction and set off the sequence of events that follow.

The pivotal point of discussion is here, notably that, in preparation of gluten free meals, the presence of gluten would render it unsuitable for consumption. Labelling of gluten free foods is governed by Regulation EC 41/2009 and its motivation to safeguard against gluten is practically inconsistent with manufacturing 'true' gluten free products. By virtue of this Regulation, only foods that contain 20ppm or less may legally be labelled 'gluten free'. The law does not however require examination of a company's product to evidence or measure its gluten content prior to its product entering the market. It is thought that good practice will involve testing and the nature of the testing will depend on the nature of the business [7].

In practice, ladles and spoons are often used to serve all dishes which could lead to cross contamination. During

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investigation, it was found that staff had poor knowledge of the risks associated with cross contamination and the content of certain food ingredients [8]. If one were to conceive a trainee employee in the manufacturing industry to accidentally mix two jars of unlabelled flour or fail to wash cutlery [8] which he now uses to prepare gluten free pastry, would, it is submitted, have rendered the product unsuitable due to cross contamination. This ignorance could be fatal [8]. Regardless, the finished product will continue to be marketed gluten free giving the false perception of compliance with Regulation EC 41/2009. With no knowledge of what triggered the immune systems response, it will often be the case that a sufferer will mistakenly believe that anything but the product labelled gluten free was the cause of this uncompromised gastronomical reaction.

Without the imposition of a legal requirement to test products for its level of gluten, the likelihood of representing a cross contaminated product as gluten free may in fact be epidemic. There are certainly ways of announcing a product's gluten status without placing a label on the product itself, thereby circumventing the legal requirement of a product containing 20ppm or less gluten. Pret A Manager for instance, operates in a similar fashion. The daily prepared soups are brought and placed onto the store shelf to be kept warm behind a display label marking the product gluten free [further incorporating an allergy check list]. Moreover, members of staff are at hand to ease customer enquiries and confirm a products gluten status. A folder documenting allergens is referred to which strategically confirms its suitability for coeliacs. There is further inconsistency when reviewing the same allergen guide online [9] where, in stark contrast it adds 'although we take every reasonable precaution we cannot guarantee that the products will be 100% gluten free as we use gluten ingredients in our kitchens [9]'.

One school of thought is that the presence of warnings or so called representations has little to no influence over a consumer's decision making process prior to purchase. Brickle relies on extensive studies to support this hypothesis, finding that lawnmower safety information and the effect seat belt warnings had over tens of thousands of drives, led to the conclusion that it had no significant impact on their decision. In fact such warnings were thought to be counterproductive in ensuring safety [10]. This can be dismissed in the context of food allergens, where a person *is* seeking such information, representations and warnings. A person calling a restaurant, inquiring into the safety of the product [8] and requesting the product to be free from a certain type of allergen [11], in the absence of available information, is a strong indication that warnings of such a nature *will* affect the influence of a consumer's behavior at the time of purchase. By way of example, at Pret A Manager, the consumer in store is drawn to the product because of a gluten free message and is then persuaded by the car salesman's like tactics employed by the unassuming sales attendant. In closing the sale, the customer is shown a manipulated allergen guide for further assurance. In avoiding a breach of Regulation EC 41/2009, the soup container itself avoids a gluten free label. Aside from mixed representations aforementioned, no information is provided as to what precautions had been taken to ensure that the risk of cross contamination has been reduced to safe levels. The online allergen guide however has been carefully drafted to protect the company from any type of liability and it does so by back pedalling on the gluten status of its products.

In progression of this discussion, it is important to document what symptoms come alight when a person intolerant to gluten, has been exposed to the toxin. The NHS has listed the following symptoms, including but not limited to oedema; anaemia; alopecia; peripheral neuropathy; abdominal pain; bloating; indigestion; vomiting; diarrhoea; constipation; cramps; loss of appetite; weight loss; cramps and muscle spasms [12]. Coeliac UK have identified further conditions that become apparent once gluten has been indigested, and these include dermatitis herpetiformis; ataxia; amenorrhea; infertility; repeated miscarriages; liver abnormality; depression and headaches etc. [13]. Research has also confirmed that continuing on a gluten diet, whether intentional, accidental, or unknown as the case may be, will increase the risk of developing bowel cancer and lymphoma [14]. In overview, it is clear that the health of a coeliac patient is compromised by British laws and strategic marketing employed by unscrupulous businessmen.

The question to be asked is what cause of action would allow the claimant judicial redress. It could be argued that a gluten free label is not a representation but a misrepresentation. Alternatively, where a product is thought to be gluten free, but it has been exposed to traces of gluten, there could be actionable negligence. Due to the nature of the disease there will be physical harm, albeit internal, which would *prima faci* give rise to an action under the Consumer Protection Act 1987 [CPA]. This paper shall consider these possibilities before looking at the American take on coeliac disease.

1. Misrepresentation

From the outset, a misrepresentation claim may only be brought provided the general conditions of liability are satisfied, and once evidenced, a misrepresentation must, as a pre-requisite, occur at the time the agreement is made or before the agreement has been entered into [15]. Many variations of what amounts to a legal misrepresentation have been deliberated upon, but all in one way or another require the representation to be a false statement of an existing fact which induced the other party into the contract.

Robinson avers that a warning might change the behaviour of a person if he: notices; reads; understands the warning; is motivated; and is able to change behaviour [10]. The change in behaviour will improve safety if: the right people change; and the changes reduce accidents. Brickle lists a number of factors controlling warning effectiveness and stated that these were: whether the person is looking for information; and whether the warning is credible, in terms of whether or not a person believes it is relevant to his or her actions at the particular time; and the degree of difficulty or inconvenience associated with following the warning [10].

In an email dated February 2013, Pataks' confirmed that its range of products had its gluten free label removed. Prior to its removal, it represented its tikka masala curry sauce as gluten free. Arguably, this description is an assertion of verifiable facts, because it pertains to a person health [16]. In any event, one would expect the manufacturer to possess special knowledge as to the gluten status of his product before labelling it such. Therefore the representation would be one of fact [17]. A personal response from the company's legal representative, on February 2013, declared:

'Recent tightening of the way gluten free is defined in the law means we can no longer offer this guarantee. Although our process of manufacture and associated controls has not changed, we are unable to guarantee against the risk of adventitious contamination with gluten of the materials we buy' an email received on 12 February 2013 in response to the question: why the gluten free label was removed upon purchasing a product a week later?

The positive assertion is therefore based upon the natural gluten free state of the ingredients used, contrary to Regulation EC 41/2009. This response suggests that the requirements of labeling a product gluten free were changed, however this is not the true position of Regulation EC 41/2009 which came into force in the year 2012.Without testing, it is asserted that the manufacturer has made a half-truth [18]. In overview, there are several means by which one could satisfy the court that the statement constituted a false statement of an existing fact.

A product labelled gluten free on any shelf in the UK would, it is submitted, amount to a material representation because it is one which 'would affect the judgment of a reasonable person in deciding whether, or on what terms, to enter into the contract; or one that would induce him to enter into the contract without making inquiries as he would otherwise make' [19], [20]. It is inconceivable to require a customer to test the accuracy of the representation without entering into the agreement first [21], [22]. Critically, all that would need to be evidenced is that a representation was made and it was capable of inducing the claimant into the contract. The inducement itself need not be sole inducement provided it was actively present in the representees' mind [23], [24]. The burden then shifts to the representor to prove otherwise.

If one were to take into account that a] Regulation EC 41/2009 took full effect on 1 January 2012 [accordingly requiring manufacturers to satisfy the 20ppm or less rule]; b] no systems of checks were in place prior February 2013 and post February 2013 to test for the gluten toxin at Pataks'; and c] the 'process of manufacture and associated controls [had] not changed', there would be persuasive grounds for arguing that the representation was made fraudulently[25].

Lord Herschell defined the circumstances which would give rise to a fraudulent misrepresentation in *Derry v Peek*, holding that a statement is fraudulent if made [i] with knowledge of its falsity, or [ii] without belief in its truth, or [iii] recklessly [recklessness goes beyond mere carelessness [26] not caring whether it is true or false].

Regardless of whether the statement was made in the absence of a bad motive or an intention to cause loss; 'an intention to deceive' would suffice [27].

In the alternative it may be possible to prove that the representation was made either negligently [28] or innocently [29]. Critically, it becomes a matter of whether the cause of action is one that would justify the expense of litigation. The available remedy of recession under s 2 [2] of the Misrepresentation Act 1967 has the benefit of either setting aside the agreement retrospectively and prospectively or restore as far as possible, the parties to the positions they were in before they entered into the agreement. The remedy is somewhat ill fitted for the purchaser of a jar of tikka masala curry sauce or a soup who would only have returned the price paid for the product defeating the purpose of pursuing against either organisation. Deliberating on whether or not to initiate litigation, one must be aware that a lapse of time [30], [31] and affirmation of the contract may act as a bar to the right of recession.

For the claimant that is seeking damages, it must be noted that the representee will not have a right to damages [32]. Such are discretionary and will only be awarded in lieu of recession 'if [the court is] of the opinion that it would be equitable to do so' [32]. It should be noted that damages are a right under the Misrepresentation Act 1967 s 1 [1] for fraudulent and negligent misrepresentation. It could be argued, had the claimant suffered personal injury, it would be more probable than not that the court would award damages. Relying on the opinion of the court on the day however makes the protection available grossly unreliable.

2. Negligence

The tortious claim of defective products would, it is submitted, be a more suitable cause of action because it is a 'special instance of negligence where the law extracts a degree of due diligence so stringent as to amount practically to a guarantee of safety [33]'. In the context of food allergens, it is thought that liability in negligence would not ordinarily arise because food products are generally nutritious and harmless and allergy sufferers can be expected to ask about ingredients prior to consumption. Referring to a case O'Sullivan critiqued [34], he justifies a finding of negligence for the reason that 'a reasonable caterer would know that some people have egg allergies and that such people would relax at a wedding where no egg was meant to be served-is [and was] easily accommodated within fault reasoning [35]'. Bringing this analysis into the context of a gluten allergen, there is little to contend that acoeliac person would be put off guard and accordingly relax his usual vigilance when faced with a product that has been labelled gluten free [with the risk of the product being cross contaminated]. Reference [35], the court explained:

'A manufacturer of products which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him, with no reasonable possibility of intermediate examination, and with the knowledge that the absence of reasonable care in the

preparation or putting up of the product will result in injury to the consumer's life or property, owes a duty to the consumer to take reasonable care' [36].

The principle creates a narrow scope for its application, given that manufacturers are to be found at fault, rather than the intermediary. Harvey adds that it would be better to view the defendant as 'a person who has put the product into circulation, so that anyone in the chain of distribution is capable of owing the duty of care [37]'. In stark contrast, an ultimate consumer is one that can satisfy the test of foreseeability, i.e. anyone who is foreseeably harmed by the product [38].

In light of dangerous products that would give rise to liability, a broad interpretation has been offered, and this draws food and drink into its scope [36]. Interestingly, in contrast to Lord Atkin's judgment, subsequent case law has found that there would be no need for the goods to reach the ultimate consumer in a sealed package to give rise to the duty [39]. Had an opportunity arose for one of Pataks' products to be inspected after leaving the hands of the manufacturer, it would not, it is suggested, extrapolate the duty owed to the ultimate consumer [40]. Given the nature of the product and its labelling, there is little to nothing the manufacturer could rely on to say a warning had been given to the consumer for him to first test the product in order to discharge their duty [41]. In perspective, there would be no means for the average consumer to have the necessary equipment to test for the gluten toxin and it would be unreasonable to expect such when manufacturers such as TRS inform:

'All TRS spices are gluten free as are all packed in designated areas and lines. However, we have not tested in labs the gluten-free test'.

Accordingly, there is a potential breach of duty for failing to test for safe/unsafe traces of gluten in the product prior to labelling it gluten free and distributing it for public consumption. A further possible breach of duty arises when the manufacturer fails to warn the ultimate consumer of the known risk. Taking the example of Pret, no warning is given in the store allergen guide nor is one engraved into the soup container. A warning in the online allergen guide however, although provided, may not be considered adequate for the purposes of discharging the duty [42]. In further guidance, Goddard LJ explained how the operation of this duty would work in the following circumstances:

'Suppose a lifter repairer told the owner that a part was worn out, so that, while he could patch it up, he could not leave it in a safe condition. If he were told to do the best he could, and an accident then happened, I cannot conceive that the repairer would be liable'.

When searching for dental care, the manufactures of Crest Pro-Health Rinse advised that they do not directly add any gluten containing ingredients, though they admit that it may contain trace amounts [43]. It could be argued that this warning is one that is sufficient as it allows consumer an opportunity to examine the defect [41]. However, if the product is still available in the market, as was the case with one of Patak's sauces, the duty will be ongoing even if the defect was realised and the product line was changed to reflect this.

Notably, the breach of duty must be shown to have caused the harm suffered by the claimant. The burden of proof is an onerous one, and failing to satisfy this would consequently discharge the manufacturer of the product in question from his duty [44]. What if product itself only caused harm to a person diagnosed with coeliac disease and not to one who has gluten sensitivity? The law is clear on this point, regardless of the distinction, in a claim for negligence; the 'egg-shell skull' rule indicates that where a claimant is usually prone to a particular type of harm, the defendant must 'take his victim as he finds them' [45]. Evidence would be required to prove that the claimant did in fact consume the product containing gluten, given that symptoms associated with digestion are clear.

In the alternative, a general negligence claim may be brought in limited circumstances. In a recent case, Jamie Oliver's restaurant for instance was fined for serving ordinary pasta to a person who had coeliac disease, after several requests were made for a gluten free meal [under the Food Safety Act] [46].

Regardless of the injuries sustained, the court may rule against a finding of negligence if the defendant is able to supply evidence of the precautions taken to avoid the said type of contingency. Reference [47], the claimant had failed to prove negligence because the defendant was able to prove it had taken the necessary precautions. This is unsurprising for Murphy. When referring to the case of *Donoghue and Stevenson*, he identifies the burden as one that is near impossible to prove, least by direct evidence [48]', for the average consumer with little to no understanding of the manufacturing process. This is further compounded by the problems of causation especially in claims of drug-induced injury [48]. Subsequent case law dispels Murphy's argument, advising, in the appropriate context, 'negligence can be found on a matter of inferences from the existence of defects taken in connection with all known circumstances' [49]. Still, this is far from a presumption of negligence [36]. Inferences may work in favour of the defendant should the defendant regularly serve gluten free meals and have had no prior complainants at the time the claimant suffered from the glutened product. It is not farfetched to believe a single batch of a soup may have been cross contaminated by gluten but to draw an inference to a level that would satisfy negligence is improbable.

3. Consumer Protection Act 1987

Where claimants fall through the compensation net due to an inability to prove negligence, it would be viable to bring an action under the Consumer Protection Act 1987. Part I of the CPA 1987 creates a regime of strict liability for defective products that cause physical harm [50]. Forgoing with the requirement of foreseeability, s 2 [1] confers right of action to any person, 'where damage is caused wholly or partly by a defect in a product'. Damage in this setting includes death and/or personal injury [51].

Of the organisations mentioned earlier, liability would attach on either the producer [52] of the product or anyone

who holds himself out as the producer [52]. Providing the product is defective, the producer would be found liable [53]. A distinction was drawn between standard and non-standard products by Burton J. [53], [54]. In his judgment, he informed, standard products are those that achieve the standard of safety intended and a non-standard product is one which fails to meet that intended standard. For the purposes of this paper, the safety standard is that which Regulation EC 41/2009 declares: 20ppm. The materialization of cross contamination would define a product as a non-standard product for failing to keep gluten at 20ppm or less.

Foreseeable injury would result from the defectiveness of the product in question, since in the language of CPA 1987, s 3 [1], a product is defective if it is not safe as persons are generally entitled to expect. CPA 1987 illustrated, in deciding what persons are generally entitled to expect, regard may be had to: the way in which the product was marketed, the purpose of the chosen method to market the product, and any instructions or warnings given as to how the product is to be used [55]. Reference [56], here, the judge focused on the wording of the European Product Liability Directive [85/374/EEC], and excluded from the assessment of what was legitimately to be expected, impracticality, cost or difficulty of taking precautionary measures and the benefit to society or utility of the product. McAdams finds this strained interpretation of the directive as a form of imposing almost absolute liability, in order to 'achieve a higher and consistent level of consumer protection throughout the Community and render recovery of compensation easier, uncomplicated by the need for proof of negligence [54]'. References [57], [58], Horsey argued it may be unreasonable to interpret the provision as a form of strict liability where manufactures have to absorb the costs and risks of development in other ways [59].

Taking into account that the custom made soup by Pret is marketed gluten free, has an in store allergen guide professing its gluten free status and provides no warning in regards to the risks associated with cross contamination, the customer would, in this respect, be entitled to the expectation that the product contained a safe level of gluten for the purposes of consumption. The expectation is for the soup to be free from a level of gluten that might cause him personal injury. The burden would be for the consumer to prove causation, namely that, the defectiveness of the product caused the harm he suffered [60], [50].

The question that is presented is how one is to prove he consumed the product as oppose to purchasing the product and initiating proceedings. For the purposes of testing for relevant antibodies, medical advice requires the consumption of gluten to take place for a minimum period of six weeks in order to obtain an accurate diagnosis of coeliac disease. Accordingly, a one of consumption would not identify the presence of gluten even if one were to get the coeliac test immediately after digesting gluten. The consequence of this is the potential to make bogus claims. In the same breath, it would be difficult to prove consumption and injury as a result of that consumption, in contrast to the unique set of facts in Jamie Oliver's case.

4. Americans with Disability Act 1990

Unfortunately, the UK does not coincide with the approach taken by America's federal civil rights law, in recognising gluten sensitivity and coeliac disease as a disability. Only as recent as 2011 has the US expanded what comes under the definition of disability. According to this Act, major life activities will include the operation of major bodily functions not limited to functions of the immune system; normal cell growth; digestive; neurological and brain etc. Additionally, coeliac disease and food intolerances would fall into the category of invisible disability, thereby offering formidable protection. Moreover, the ADA affords a person suffering from coeliac and gluten sensitivity the same protection that is given to those on the basis of race, colour, sex, age, national origin and religion. Therefore a gluten sufferer would be guaranteed equal opportunity under the category of disability in public accommodation, transportation, telecommunications, employment, state and local government services. Section 504 of the Rehabilitation Act of 1973 extends such protection to schools and colleges, prohibiting discrimination on the basis of a disability in an educational program or institution. Students would therefore be afforded accommodations and modifications to their educational program to ensure equal access. A recent settlement agreement between the United States Department of Justice and Lesley University Cambridge Massachusetts demonstrated the importance attached to safeguarding against coeliac harm as well as the active steps necessary to ensure equal protection, consequently placing several requirements on the institution including but not limited to the following:

- Provide 'nutritionally comparable' hot and cold gluten and allergen-free meals to students with celiac disease and food allergies;
- Take reasonable steps to avoid cross-contamination of the allergen-free food, including preparing such meals in a dedicated space at one of the dining halls;
- Permit students with celiac disease or allergies to pre-order meals made without gluten or specific allergens by emailing the University's Food Services Manager 24 hours in advance;
- Serve the pre-ordered meals at the central dining hall in which they are prepared, or deliver them [with 24 hours' notice] to students at other dining halls or campus food eateries;
- Provide students with food allergies a separate area to store and prepare food: a room adjacent to the dining hall to which access is limited to those with food allergies, containing a sink and counter area, kitchen supplies, refrigerator and freezer, cabinet space, separate appliances such as a microwave and toaster, and a food warmer to keep pre-ordered meals warm;
- Permit students to submit to the university's food service provider individualized 'shopping lists' of requested food made without allergens;
- Exempt students from the mandatory meal plan as a possible form of reasonable modification;

- Train food service managers and staff to comply with the settlement agreement and provide educational training on celiac disease and food allergies;
- Keep records of all students who request accommodations for food allergies; and
- Pay $50,000 to the complaining students [61].

II. Conclusion

The absence of a legal requirement to measure products for its level of gluten before they are put into circulation creates a relaxed attitude towards the risks associated with cross contamination. It is a constant challenge for a person with gluten sensitivity and coeliac disease to eat cuisine outside, at the risk of suffering personal injury, short of death. Incorrect labelling further precludes a person from the opportunity to make an informed choice as to whether or not one should take the risk of consuming a gluten free product that had been produced in a gluten environment. In recognition of this, the Implementation of the Food Information for Consumer Regulation[EU] No 1169/2011 will require pre-packed foods and non-packed foods for direct sale, to include allergen information. In criticism of this development, Australia and New Zealand for illustration, employ some of the toughest labelling laws, not only requiring consumable products to be labelled gluten free but it goes as far as requiring any ingredient derived from gluten containing grains to be declared on the food label virtue of the Australian New Zealand code. The policy in Italy, conversely, requires every child to get tested for coeliac disease at the age of six and those over the age of 10 will receive a monthly stipend of 140 Euros which can be spent on gluten free foods. In a step further, both the government and the Italian Coeliac Association have educated restaurants on how to deal with coeliac disease, leading to its availability on menus at schools, hospitals and other eating establishments. If litigation is contemplated, it is possible to bring legal action within the UK jurisdiction but there are inherent difficulties in meeting the burden of proof. It is the author's view that prevention is preferred over an open cause of action and if reform is on the agenda, the US approach is the template to strive for when looking for legal means to cater for a coeliac population.

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