

Consumer Comforts of Eden

Products Liability and the Reasonably Safe Product: A Guide for Management, Design, and Marketing

Alvin S. Weinstein, Aaron D. Twerski, Henry R. Piehler, and William A. Donaher

New York: John Wiley & Sons, 1978; xv + 323 pp.; \$19.50.

Reviewed by Marshall Burns

If Adam had read *Products Liability*, he would have sued not only the serpent for willful deception causing economic ruin, but also God for manufacturing the injurious apple. Moreover, according to principles described in this book, the Lord's defense could not be securely based on the fact that Adam had been warned not to eat the apple. For recent developments in civil law now make it necessary for manufacturers to design products which are safe even in the hands of negligent users.

Even though Adam is said to have graciously accepted his ruin, the liability of manufacturers for damages caused by their products is not a modern invention. The ancient records of the Greek Bouleé and the Hebrew Sanhedrin show cases in which restitution was sought for damages occurring to the users of allegedly defective merchandise. Interestingly, the modern approach is not very different from that of the Sanhedrin, whose members tried to devise basic general principles which would apply to every conceivable real and hypothetical situation and would at the same time be permanent, precise, and fewer in number than the number of situations. The Greek approach was different; despite a claim to objectivity, the Bouleé was inclined to award the verdict to the more likeable fellow.

The thrust of modern developments in products liability law is to reduce the risk to the consumer in the purchase and use of commodities. While this goal is a laudable one, its ultimate effect is to reduce the threshold of risk with which the average person can or is willing to cope. If trends indicated in *Products Liability* continue, the American populace will become a race of sheltered, fearful, vengeful creatures in a "no sharp objects" environment. And unless one believes that a utopian level of safety is attainable, one sees that as old dangers disappear we will become increasingly sensitive to new, formerly ineffec-



Anthony Schultz

tual, and minute dangers. The level of human suffering will remain the same; it is our biological integrity that disintegrates.

Foreseeing All Possible Use

Products Liability and the Reasonably Safe Product is not a philosophical book. Soberly written by two lawyers and two engineers, it progressively describes the state of the law in the arena of products liability, and the application of this knowledge to the design of market products. As a book, it speaks highly for the collaboration between parties in diverse and highly technical fields because it neither reads like a law-book nor an engineering text, yet it conveys technical details infused from each discipline. While it may be an appropriate text for a semester course for students of both industrial engineering and commercial law, it also usefully informs the small to medium-sized manufacturer which is concerned about its liability on behalf of its products.

There is good reason for concern. Consider the case of Ritter vs. the Narragansett Electric Co. A four-year-old girl, wishing to look into a pot on top of a small

30-inch gas range, opened the oven door to use it as a stepping stool. This bit of ingenuity caused her serious injury when the stove tipped over on top of her. The manufacturer was held liable for the girl's injuries because the court ruled that the manufacturer *should have foreseen this sort of misuse* of his product.

Consider Garst vs. General Motors Corp. Three workmen were struck by an earthmover at a dam construction site, and one of them was killed. The machine was moving at 10 to 12 miles per hour and its operator did not see the ill-fated men until they were only 15 feet away from his blade. Because the plaintiff's expert testimony showed that the manufacturer *could* have built the earthmover with faster-reacting braking and steering systems, the manufacturer was held liable, despite the fact that *even with these improvements to the machine the men would have been hit*, given the mover's speed and the distance available for stopping. The authors of *Products Liability* criticize this ruling.

Finally, there is the case of Nissen Trampoline Co. vs. Terre Haut National Bank. A 13-year-old boy was injured

when his foot became entangled in the springs supporting the bounce-platform of the small trampoline on which he was jumping. The manufacturer was held liable on the basis of its failure to affix a warning to the device stating that the user's foot could become entangled in the support springs. The authors, with uncharacteristic wit, suggest the warning, "Don't use this product!"

Reflections on Our Society

Admittedly, these are among the more absurd cases featured in *Products Liability*. But they are not uncharacteristic of the others. They must be seen not as exceptional cases, but as cases which indicate a driving trend. The judicial system is reflecting an attitude in the consuming public that says to the manufacturer, "You take the responsibility for my life and well-being. I may not understand your product and I may not use it properly, so you make sure it won't hurt me." While the authors go on to discuss how engineers and managers can attempt to design products that answer that request, I would like to look at the effects of that request on the society which puts it forward.

□ *Inflation*: While it will cost very little to affix a warning to a trampoline, the improved braking and steering systems of the earthmover and a heavier material or ballast for the small gas range will increase the cost of those products. Basically, improvements which are unimpor-

tant for people who will use the products reasonably have been forced onto the products to protect those who will use them negligently or carelessly. The net result is that everyone turns around to find that the prices have gone up (again!).

□ *Decreased Utility*: A 30-inch gas range ought to have the advantage of portability and light weight to reduce vehicle weight when used in a motorhome or trailer. Forcing the manufacturer to add ballast or to construct the stove out of heavier material frustrated this supposed advantage of a small stove.

□ *Stifled Innovation*: The Industrial Revolution and the advancement of the United States came about because people were willing to try new ideas, buy unfamiliar products, and take bold risks. If manufacturers are saddled with the responsibility of ensuring that none of their new products will have any ill effects, who would blame them for staying with old products? If Queen Isabella was liable for all cases of scurvy aboard the *Santa Maria*, Columbus would never have sailed.

□ *A Disinterested Population*: When I was a boy, I learned to test a plank for rigidity before putting all my weight on it. When I learned to drive I was taught how to handle the car if the braking system should fail. When I first used a trampoline, I did not need to be told to stay away from the edge. What will happen to a society in which a basic application of intelligence is superfluous to survival? If I can earn disability income by stepping

into a manhole, why should I watch where I am going?

The responsibility placed on manufacturers by products liability litigation is just one indicator of modern society's removal of responsibility away from individual. Actually, in past centuries people avoided responsibility for unfortunate situations by inventing gods to accept the blame. But since gods could not be relied on for restitution, a person still did all he or she could to avert misfortune.

The acceptance of responsibility is the essence of animal life. If when Adam was expelled from Eden, he had sued God for recompensation he would have reduced himself to the level of the creations of the third day. Instead, he held his head up and said, "All right, God. I'll make it without you." In doing this he established the dignity of the human race which is no greater and no less than the dignity of the eagle leaving the nest and of the lion leaving the den. When a man ceases to guard his own interests, and expects other forces or other people to watch out for him, he abandons that dignity. He is crying for the comfort of Eden.

Marshall Burns is a senior in physics at M.I.T. He has been a writer, researcher, photographer, retailer, efficiency consultant, private investigator, warehouse worker, cab and truck driver and ditch-digger, and is the president of Ennex Corp. □

Long-range career opportunities at Raytheon Co.

Program Managers needed for:

Millimeter Wave Radar
Digital Systems
Signal Processing
Air Traffic Control Systems
Communications Systems

Design Engineers needed for:

Analog/Digital Circuits
Computer Architecture
Microwave Transmitter/Receiver
Radar Modulators/Power Supplies
Digital Control Systems
CRT Display Circuits
Real-time Software Systems
Structural Stress Analysis

Mechanical Packaging:

—Space-borne Electronics
—System Integration Interconnections
—Shipboard and Ground-based Electronics

Hybrid Circuit Technology:

—Crystal Oscillator/LSI Design
—Hybrid Packaging/Ultrasonic Bonding
—SOS/LSI Hardening TREE Effects

Laboratories in Wayland and Sudbury, Massachusetts:

Radar/Ship Directorate
Advanced Development Lab
Radar Systems Lab
Communications Systems Lab
Air Traffic Control Directorate
Mechanical Systems Lab
Engineering Support

Send your resume to:

Mr. Vin Nickerson
Raytheon Company
Box 5A-23
430 Boston Post Road
Wayland, Massachusetts 01778



An equal opportunity employer M/F