

Moral Issues in Business

Chapter 6

Consumers

According to Shaw and Barry

- “Business’s responsibility for understanding and providing for consumer needs derives from the fact that citizen-consumers are completely dependent on business to satisfy their needs.”

Manufacturer Liability – early view

- Contractual Relationship between producer and consumer
 - exchange of money for a commodity of a certain description.
- *Caveat emptor* – Let the buyer beware
 - the consumer was entirely responsible if harmed by a purchased product.
 - This was changed by the 1916 court decision in *MacPherson v. Buick Motor Car*

MacPherson v. Buick Motor Car

- The Buick Motor Company manufactured automobiles that it sold to retailers who, in turn, sold them to consumers. The plaintiff, Donald MacPherson, bought a car from a dealer and was subsequently injured when the car collapsed during a drive. The accident was due to a defective wheel, which the defendant, Buick, did not make but purchased from another manufacturer. Evidence indicated that the defect could have been discovered by reasonable inspection, but none took place.
- The plaintiff sued the defendant for his personal injuries, but the defendant claimed that it was not liable for the wheel manufacturer's negligence. The state trial and intermediate appellate courts found for the plaintiff, and the defendant appealed to the Court of Appeals, the highest court of New York. The court narrowed the issue to whether the defendant owed a duty to anyone but the retailer to whom it sold the car.
- In a majority opinion written by Benjamin Cardozo, the court affirmed the judgment for the plaintiff. Since the defendant was a manufacturer of automobiles that, if defective, are inherently dangerous by virtue of their existence, it had a responsibility for the finished product, which included testing its various parts before placing it on the market for sale. The manufacturer could not avoid liability based upon the fact that it purchased the wheels from a reputable manufacturer, because it had a duty to inspect the car, which it failed to do.

Due Care

- The MacPherson case replaced the doctrine of *caveat emptor* with that of “due care” – the idea consumers and sellers do not meet as equals and that the consumer’s interests are particularly vulnerable to being harmed by the manufacturer, who has knowledge and expertise the consumer does not have.
- According to the due care view, the manufacturers have an obligation above and beyond any contract, to exercise due care to prevent the consumer from being injured by defective products.

Greenman v. Yuba Power Products

- Greenman purchased a combination power tool that could be used as a saw, drill, and wood lathe. He saw it demonstrated and read the brochure prepared by the manufacturer. He subsequently purchased the necessary attachments to use the Shopsmith as a lathe. After he had worked on the piece of wood several times it flew out of the machine and struck him in the forehead, inflicting serious injuries. 10 months later he gave the retailer and manufacturer written notice of claimed breaches of warranties and filed a complaint. Expert testified that inadequate set screws were used to hold parts of the machine together, and there were other positive ways of fastening the parts which would have prevented the accident. Jury trial returned a verdict for Greeman against the manufacturer.

Strict Liability

- “A manufacturer is strictly liable when an article he places on the market, knowing that it is to be used w/o inspection for defects, proves to have a defect that causes an injury to a human being.”

- The manufacturer of a product has legal responsibilities to compensate the user of that product for injuries suffered due to a defective aspect of the product, even though the manufacturer has not been negligent in permitting the defect to occur.
- The argument for strict product liability is basically utilitarian. The public does not have the expertise to inspect and evaluate items purchased and so must be protected by the manufacturer.

Consumer Product Safety Commission

- Created in 1972. Its job is to “protect the public against unreasonable risks associated with consumer products.”
- Compared with many developed European countries, the U.S. regulates fewer products (relying more on media attention, pressure from consumer advocacy groups and the threat of lawsuits to protect consumers), and many products escape effective regulation.

Safety Regulations

- Argument for - They protect consumers.
- Argument against - They add to the cost of products and raise the issue of legal paternalism because they prevent individuals from choosing to purchase a riskier but less expensive product.

Legal Paternalism

- the doctrine that the law may justifiably be used to restrict the freedom of individuals for their own good.

Legal Paternalism – 3 points

- Some products (e.g., brakes) affect third parties. Regulating these products can be defended on non-paternalistic grounds.
- People who oppose paternalistic regulations contend that individuals know their own interests better than anyone else. Paternalists deny this, presumably because individuals are often ignorant or swayed by emotions and irrational feelings and so aren't the best judges in their own cases.
- There is often a conflict between freedom and autonomy on the one hand, and social welfare on the other hand. Shaw and Barry say that “in the end, one may have to examine paternalistic product safety legislation case by case and try to weigh the conflicting values and likely results.”

Moral Responsibilities of Business for Consumer Safety

- Businesses can give safety the priority warranted by the product. Factors in safety control that ought to be considered include:
 - Cost
 - What the laws are
 - The seriousness of the injury that the product can cause
 - The frequency of injuries caused
 - Business should abandon the misconception that accidents occur exclusively as a result of product misuse and abuse, and that they are thereby absolved of all responsibility.
 - Business must monitor the manufacturing process. For example, businesses should periodically review working conditions and the competence of key personnel.
 - When a product is ready to be marketed, businesses should have their product safety staff review advertising for safety related content.
 - When a product reaches the marketplace, businesses should make available to consumers written information about the product's performance.
 - Businesses should investigate consumer complaints.

Other Areas of Business Responsibility

- Quality
 - Warranties are obligations that sellers have to purchasers.
 - express warranties - claims that the seller explicitly makes

- implied warranties - including the implied claim of merchantability, that is, that a particular product is fit for the ordinary use for which it is likely to be used
- Pricing
 - Prices, like wages, should be just and fair, and businesses should refrain from manipulative pricing, the use of price fixing to avoid competition, and price gouging.
- Packaging and Labeling
 - Manufacturers should provide clear, accurate and adequate product information.

Four Deceptive Advertising Techniques

- **Ambiguity:** This is a deceptive advertising technique because it conflicts with businesses' responsibility to provide clear product information.
 - Continental Baking Company said that eating Profile bread would lead to weight loss, but that's because they sliced their pieces of bread more thinly, otherwise by ounce they were not less caloric.
- **Concealed Facts:** This is a deceptive advertising technique because it conflicts with business's responsibility to provide adequate and accurate product information.
 - Shell advertised that its gasoline had "platformate" but did not inform the consumer that all other brands of gasoline also had "platformate".
- **Exaggeration:** This is a deceptive advertising technique because it conflicts with businesses' responsibility to provide accurate information.
 - Shaw and Barry say that if the exaggeration uses harmless superlatives it is called "puffery"—for example, Wheaties is advertised as the "breakfast of champions."
 - If the exaggeration is deliberate and not harmless, then it's deception. For example, to claim that an analgesic pain reliever is 50% more effective than all other analgesic pain relievers contradicts the fact that all analgesic pain relievers are effective to the same degree.
- **Psychological Appeals:** A psychological appeal is one that aims to persuade by appealing to human emotions and not to either reason or evidence.
 - appeals to power, sex or prestige are often psychological appeals.
 - Subliminal advertising: advertising that communicates at a level beneath conscious awareness.