**Product Liability & Safety**

* How should the law compensate people for injuries caused by products?
* Individual states have primary jurisdiction over liability law.
* The earliest approach: *caveat emptor* – “buyer beware”.
* A consumer injured by a defective product was unable to sue the manufacturer & recover damages.
* By the turn of the 20th century, state law had become a conjunction of 2 doctrines:

1. **Privity of Contract** allowed suits over product-related injuries only when the parties to the suit had a contractual relationship between them.

* Consumers unable to sue manufacturers.

1. **The Negligence Standard** is understood as a failure to exercise **due care**

* In order to sue retailers, a consumer had to establish negligence *against the retailer.*
* *MacPherson v. Buick Motors in 1916* altered the negligence standard by (1) removing the privity of contract requirement & (2) proving the manufacturer was negligent in letting the product onto market.
* **The Implied Warranty** establishes that manufacturers implicitly warrant their products to be fit for intended use by the very fact of offering them sale.
* *Henningsen v. Bloomfield Motors in 1960*
* Consumers under this doctrine would no long have to establish negligence.
* Ushered in the doctrine of **strict liability**: if the product is defective (unreasonably dangerous) the manufacturer can be required to pay damages regardless of whether it was at fault.
* The shift from a fault-based (negligence) to a compensatory (strict liability) standard:

1. Spreads the cost of *accidental* product defects.
2. Provides incentive for manufacturers to make their products safer.
3. Shifted away from protection of producers towards protection of consumers.

* Opponents of strict liability say:

1. Too expensive (insurance premiums & quality control).
2. Harms competition.
3. The loss of jobs.
4. Denies individual responsibility.
5. Encourages fraudulent or frivolous law suits.
6. Businesses ought not to be held responsible for accidents that are beyond its control (businesses are not morally responsible).

* Is strict liability compatible with fairness?
* McCall says yes: when traditional justifications of safety & cost sharing are joined with an adequate understanding of fairness, they offer sufficient justifications for adopting strict liability as public policy.
* *“Social Products Liability” – Brenkert*
* A moral responsibility which lies behind the legal claim that gun makers are partially liable for the harm caused by those who have illegally used the guns those manufacturers have produced.
* Even though the maker had no direct influence or control of the activity.
* Even though the product was not defective & worked as intended.
* The product does what it is designed to do, but because of the social circumstances under which it is used, imposes significant harms through the actions of those using it in ways it was not supposed to be used.
* Gun makers are partially responsible because of the way they market the product.
* 4 conditions are necessary before gun makers can be held partially responsible:

1. *Harms & Costs* – Harms to others, costs to society.
2. *Contribution* – Beyond simply producing the weapon, gun makers encourage the process that leads to harms & costs through design & marketing decisions.
3. *Foreseeability* – Gun makers could foresee the occurrence of the harm that their products caused & the way this harm is fostered by their own marketing, & do not take measures to protect people from harm caused by their products.
4. *Effective Alternatives* – Gun makers are able to find alternatives that will make a difference with regard to the occurrence of harms & costs: alter the product or service, change the way they market it, or stop production of particular products.

**Product Safety**

* Product safety regulation is about the prevention of accidents.
* The legal approach to product safety regulation is the standards enforcement approach, which mandates that products meet certain safety standards. Agencies can ban products from the market, order recalls, & impose fines for violations.
* The Consumer Product Safety Commission.
* The Food & Drug Administration.
* Critics charge that gov’t regulation is (1) costly & inefficient (2) paternalistic.
* *Costly* – Business become inefficient, products more expensive, & jobs scarcer.
* *Paternalistic* – Goes against our autonomy & right to choose.
* Response– (a) Paternalism is justified because some are incapable of making intelligent choices or social benefits outweigh the harm (b) Paternalism is justified because consumer choice is not really free (i.e., consumers are at a disadvantage when dealing with the marker & regulation offers protections (c)

**Marketing Ethics: Advertising, Sales & Consumerism**

Deceptive Advertising & Sales

* All of us have had the experience of catching ourselves being seduced by a particularly effective ad presentation.
* Examples?
* Between rational persuasion (morally acceptable) & coercion (morally unacceptable), there is manipulation, deception & dishonesty (lying).
* All (except rational persuasion) attempt to interfere with a person’s autonomy by preventing one from making a fully informed & voluntary choice & acting instead on misleading or false beliefs (there are utilitarian concerns as well).

Non-Deceptive Marketing, Autonomy, & Consumer Vulnerability

* John Galbraith, The Affluent Society 1958
* This shaping of consumer demand by marketers is a violation of the consumer’s autonomy.
* Want-creation encourages the consumers to demand, & the economy to produce less important goods instead of goods necessary for satisfying important needs.
* Advertisers do not have control over consumer *behavior* but rather they have unacceptable influence on consumer *desire*.
* Advertisers must appeal to some pre-existing desire & then convince the customer that their products are the best means to satisfy that desire (is this approach consistent with autonomy?)
* Gerald Dworkin on *autonomous desire*.
* The *authenticity condition*: It must be such that we do not try to renounce the desire.
* The *independence condition*: It must be such that we are able to effectively step back & critically evaluate the desire.
* Dworkin finds desires that are acquired based on deception are not autonomous.

Ethical Questions & Concerns

1. Can there be acceptable manipulation in advertising?
2. Can advertisers as groups be responsible for harms when their ads are not individually harm-causing?
3. Can some persons or demographics be more vulnerable to advertising campaigns?
4. Is there a sense in which a specific population, or the society as a whole, is less able to resist consumption of particular products or consumption in general, because of the cumulative exposure to advertising?

**Marketing & Consumerism**

* Why do we consume as much as we do?
* People work in order to earn money to buy what they need.
* However, as industrial economies grew & became more productive, satisfying needs became less of a challenge.
* Thus logic might assume that as people came to satisfy their needs, they would work less in order to enjoy leisure activities.
* In theory, then, economic growth & production contained within it the seeds of its own destruction.
* But this is not what happened:
* As economies grew, the amount of time spent working actually increased because the desire for luxury goods keeps workers in industrialized countries working longer hours.
* Fueled by marketing & advertising, this consumerist culture causes significant social harms including:

1. A “work to spend” cycle which decreases autonomy.
2. An ecological bias in which ecological resources are treated as externalities.