

Product Safety

1. Due Care and Strict Liability: We use all sorts of products every day. When we do so, we assume or take it for granted that we will not be seriously injured by that product. We use a computer, and assume that it is not going to catch fire when we turn it on. We use a soap or shampoo, and assume that we will not be blinded by it. We drive a car, and assume that it is designed not to flip and roll over easily (say, at the slightest wind, or unevenness in the road). We HAVE to assume these things. For many of us, we HAVE to assume that, if an item is on the shelves, then it is probably safe. We simply do not have the time, knowledge, or resources to thoroughly investigate the history and safety procedures surrounding every single product we use. As such, many believe that consumers are in a very vulnerable position—one where the consumer places their trust in the seller, and gives rise to an important obligation for businesses to ensure that their products are safe. This is a thesis known as “Due Care”.

- **Due Care:** This is the thesis that businesses has a weighty moral obligation independent of, or above and beyond the law, to ensure the safety of their consumers. Since businesses have more knowledge and more expertise regarding their products, and how to properly use them (as well as the sorts of potential defects or hazards that their products might have), the bulk of the responsibility falls upon businesses to prevent harm that could result from the use of their products.

Three Requirements of Due Care:

- (1) Purposeful Deception: It should be obvious that Due Care requires businesses to refrain from KNOWINGLY selling a defective or hazardous product to their customers. This is purposeful deception, because the product is marketed as if it works properly, or is not dangerous, when in fact the company selling it knows that it IS defective or dangerous. This is clearly morally wrong.
- (2) Negligence: But, one can claim not to know about something if they “look the other way” or fail to investigate something. “We didn’t know that our automobiles were death traps,” a CEO might say truthfully—but only because his company did not put its automobiles through any sort of safety inspection in order to FIND OUT if their cars were death traps or not. So, it is unsurprising that Due Care also requires businesses to refrain from being NEGLIGENT about customer safety. That is, businesses must

LOOK FOR defects, or TEST their products in order to FIND OUT if they are defective or potentially hazardous.

- (3) Strict Liability: Interestingly, there has been a legal precedence recently to take the obligations of Due Care even FARTHER. Sometimes, defects occur in products even though the manufacturer has taken reasonable precautions to guarantee that their products are not defective. "Strict Product Liability" is the view that a manufacturer is responsible for harm caused by any of their defective products ***even if the manufacturer put their products through rigorous quality-control procedures.***

Why might we think that "Due Care" extends to item (3) above? That is, what reasons are there for endorsing a "Strict Product Liability" view? Here are some reasons both for and against that view:

Against Strict Product Liability: Some believe that the requirement of "Strict Liability" extends far beyond Due Care and is unjust. If a business has taken reasonable steps to ensure the safety of their product, they say, that business should not be held responsible for some harm or defect that passed these strict quality-control procedures undetected. We might think of it like this:

- **Defective Bicycle**: Imagine that you decide to sell your bicycle to your best friend. Not wanting to sell your friend a defective bike, you take it in to the shop for a tune-up. The bike passes inspection, and you are told by the bike shop employees that it is working great. (Furthermore, let's assume that the bike shop employees are being completely honest, and that the bike really DOES pass inspection, even when put through their thorough examination). However, shortly after you sell your friend the bike, the brakes give out and your friend crashes into a tree and breaks their arm.

Now as: Is it reasonable to blame YOU for your friend's broken arm? Should you pay for the hospital bill? After all, you DID take reasonable precautions to guarantee that the bike was safe and road-worthy (by taking it in to the shop). The claim here is that you are clearly NOT morally responsible for the damages. And therefore, businesses too are NOT morally responsible for the damages that occur, so long as they have taken reasonable measures to prevent defects in their products.

In Defense of Strict Product Liability: We might imagine the above argument as what is called an “Argument by Analogy”, as follows:

1. You are not morally responsible for the harm to your friend in the “Defective Bicycle” case.
2. But, when businesses sell products that (unbeknownst to the business) have harmful defects, despite being put through rigorous quality-control procedures, this is morally analogous to what happens in the “Defective Bicycle” case.
3. Therefore, businesses are not morally responsible for harm that occurs when they sell products that (unbeknownst to the business) have harmful defects, despite being put through rigorous quality-control procedures.

The question is, is claim #2 true? Are the two cases analogous? Those in favor of strict product liability cite two primary differences:

(a) First, businesses are—unlike you in the Bicycle case—primarily motivated by profits. As such, they are more likely to do the **minimum** amount of quality control that they can get away with. However, if a business knows in advance that they will be blamed for ANY and ALL harms resulting from defects REGARDLESS of whether or not they can demonstrate that they put their products through reasonable quality-control procedures, this will make it far more likely that the businesses will be as thorough as possible when inspecting their products—because they do not want to pay for customer’s medical bills and so on.

(b) Second, in the Bicycle example, you are just ONE person with limited financial resources. It makes less sense that YOU (as a single person) would be responsible for the damages that occur in that case. But, since businesses are so much larger and have more resources available than individuals customers, it makes more sense to have businesses take on the brunt of the responsibilities. For individual customers, an injury can often be a HUGE financial undertaking, even BANKRUPTING them. Businesses are in a better position to cover the costs (especially if they just raise the price of their product by a few cents in order to spread these costs across ALL of the customers).

For these reasons, we might conclude that businesses SHOULD bear the burden of ANY and ALL harms that result from defective products, REGARDLESS of whether or not their safety inspections were thorough. [What do you think? Please share your thoughts with the class on the discussion board]

2. Cost-Benefit Analysis and Paternalism: For each responsibility for harm that we place upon a business, or safety regulation that we put in place, it costs the business a certain amount. Unfortunately, even WITH laws in place to enforce the "Strict Product Liability" principle, businesses do not often put safety first. For instance, imagine the following:

- **The Worth of a Life:** Imagine that a particular business KNOWS that, if they institute a stricter safety and quality control procedure, this new policy will save approximately 10 lives. They then ask two questions: (1) How much will it cost to put this new policy in place? (2) How much will it cost if we do NOT put this policy in place, but are required to pay damages to the surviving family members of the 10 dead customers? Now imagine that the answer is that the new policy will cost the company **\$11 million**, versus an estimated \$1 million each for damages to the families of each dead customer (for a total of **\$10 million** to the 10 families).

Question: What should the business do? Should they spend an extra one million dollars to save 10 lives?

Answer: What most businesses WILL do in this case is NOT put the new safety procedure in place (because it is estimated to be \$1 million cheaper). **The safety policy costs an extra \$1 million to save 10 lives.** This means that the company would have to spend approximately \$100,000 per person to save 10 lives. Most companies ultimately decide that the additional cost is not worth it. Rather than spend the money on safety, the business would rather save money by allowing the customers' deaths.

This practice of **reducing human lives to a cost-benefit ratio** seems immoral to many people. But, to some extent, there HAS to be a trade-off between product safety and financial cost. For instance, surely it is unreasonable to require a business to initiate a safety procedure that will cost ONE TRILLION dollars, which will only save an estimated ONE LIFE. (Especially given that the company earns, say, only a few hundred thousand dollars each year). But, if a business is NOT required to spend one trillion dollars in attempt to prevent one death, then the only question remaining is, "What is the most that a business IS required to spend in order to save a life?" But, then, as soon as we ask this question, we have already reduced human life to a simple cost-benefit analysis.

Let the Customer Decide: If we require each business to spend as much as they possibly can to prevent as much harm/prevent as many deaths as they can possibly afford, then they will inevitably pass this cost on to the customer. But, then, every product would cost 10 times more than it presently does. For instance, every automobile would cost over \$100,000. But, in that case, almost no one could afford a car. This is unreasonable.

One proposed solution is that we simply pass the buck of the cost-benefit analysis regarding customer safety on to the customer. We could place NO restrictions on product safety, and simply let the customer decide whether they would rather pay less for a more dangerous product, or pay more for a safer product. (This would probably require labels indicating how dangerous each product is). Often times, customers ARE WILLING to take on some additional risk in order to save money (as is evidenced by those who were willing to buy the Ford Pinto—a car with a propensity for exploding when rear-ended—once its price was radically reduced).

What seems to be objectionable about the cost-benefit analysis of lives-versus-money is that the PEOPLE are not involved in the analysis. Rather, the BUSINESSES get to decide how much each life is worth to them. But, most of would find it less objectionable if the customer was INFORMED about the dangers of each product, and then took it upon THEMSELVES to decide how much their own safety was worth to them. Basically, if we allow the customer to decide whether or not to pay less for a more dangerous automobile, they have in some sense CONSENTED to the consequences, should anything harmful happen to them after that. In short, they have taken the responsibility upon THEMSELVES, and so no one is morally at fault, should any harm occur.

In short, if we regulate business too much, people's freedom of choice will be infringed upon. If we regulate LESS, the customer's options will be maximized, and they will be free to assess how much they think each risk is worth to them.

Legal Paternalism: Others disagree to this idea that businesses should go unregulated in order to maximize customer freedom. They believe that **it IS permissible for the law to be used in order to restrict people's freedoms—so long as it is for their own good**. This view is called "Legal Paternalism". For instance, many think that the government should prohibit assault rifles, which—although this would limit our freedom of choice—would in theory result in less harm to innocent people.

Proponents of Legal Paternalism cite three reasons for their position:

(a) First, even if the argument against government regulation succeeds, surely it only succeeds when the harm or risk that the customer is deciding to accept based on cost is a harm or risk only to THEMSELVES. (for instance, as is the case with certain medications) But, most products are not like this. For instance, a CAR that is hazardous runs the risk of not only harming the DRIVER, but OTHERS on the road as well. Surely, even if the customer should have the freedom to decide whether or not to put THEMSELVES at risk, the customer does not have the freedom to put OTHERS at risk. Right?

(b) Second, while the suggestion to let the customer assess the worth of the risk of each product for him or herself may be a good policy in an IDEAL system, the fact is that we are NOT in an ideal system. In reality, customers are seldom in a position to properly assess or consider the harm that will come to them if they buy a certain product. Whether due to irrationality, or mere lack of evidence, customers are often unable to make intelligent cost-benefit assessments on their own.

(c) Finally, the argument for unregulated business assumes that FREEDOM is the most important thing, and that it should NEVER be overridden. But, isn't WELL-BEING **also** important? Is it possible that, sometimes, the risk to well-being is SO great, that a small restriction of freedom or liberty is warranted in order to prevent it? For instance, if no one wore seat belts, approximately 20,000 more people would die each year than if everyone wore seatbelts. Because we have laws in place requiring car passengers to wear seatbelts, as many as 15,000 lives are saved every year (note: this number is less than 20,000 because some people still don't wear them).

Question: Is a law requiring passengers of automobiles to wear seatbelts (which causes a very small restriction of our freedom) justified by the amount of lives that are saved?

3. Six Suggestions for Consumer Safety: Your textbook provides six suggestions for better ensuring customer safety. These are:

1. Priorities: Currently, businesses primarily prioritize the handling of safety issues based solely on cost. But, the prioritization of safety concerns should include more than mere profit: First, they should include the SERIOUSNESS of the potential harm that could occur (for instance, a safety issue that could result in

someone's DEATH should be given greater attention than one which merely gives someone an annoying itch for a day or two). Second, prioritization should take the FREQUENCY of harm into account (for instance, a product for which there is one defect out of every hundred produced should be given more attention than a product which has only one defect out of a million).

2. Foresight: It IS sometimes the case that customers harm themselves with a product by being really stupid with it (for instance, imagine the sort of stupidity which must have led to several of the [Warning Labels](#) listed on this website; for instance, my personal favorite: "Caution: Remove infant before folding for storage." -- *On a portable stroller*).

Currently, however businesses tend to blame the customer for AS MANY INJURIES AS POSSIBLE. But, even if the result of harm to customers is NOT the result of a defect in the product, a business can still be (to some extent) responsible for it; namely, because all it would have taken to prevent the harm is a little foresight on the business's part. For instance, not every example on the website just referenced is ridiculous (consider this one: "Access hole only -- not intended for use in lifting box." -- *On the sides of a shipping carton, just above cut-out openings which one would assume were handholds*). If a company makes a box with holes right where handholds should be, and this results in customer injury—EVEN THOUGH THE ITEM WAS NOT DEFECTIVE—we might still reasonably blame the injury on the business. For, they should have known that the placement of the ventilation holes would likely be mistaken for hand grips, and so (with a bit of foresight) should predict injury and take measures to prevent it (either by re-locating the holes or placing the above warning sign near them).

3. Manufacturing: Businesses often design or create some product, and then send the plans away to manufactured elsewhere. At that point, the designers often think of the product as being "out of their hands". But, if they involved themselves more with the LATER stages of the process as well (e.g., manufacturing), harm to customers would be even further safeguarded against.

4. Advertising: Advertising can play an important role toward encouraging customers to misuse a product or hurt themselves. For instance, imagine that the New York subway—in an effort to emphasize how EASY it is to navigate the various subway routes—says, "It's so simple, even a child can find their way around!" in their advertisement. While this is simply a saying that people use, viewers might mistake this saying for an indication that it is actually ok for children to ride the subways all by themselves (as children sometimes do in

airplanes), when in reality, this would probably be very dangerous. But, with a little foresight, advertisers can attempt to predict how certain advertisements or marketing campaigns will be interpreted by the viewer, or what sorts of inappropriate misuse of the product these ads will encourage.

5. Labels and Instructions: Labels and instructions can go a long way toward preventing harm. For instance, how many human beings had to be electrocuted as a prank by their friends before one brand of cattle prod added this label: ("For use on animals only." -- *On an electric cattle prod*)? However, the most important warnings and cautions need to be placed conspicuously, because (let's face it) people rarely stop to read lengthy instruction manuals when they buy something new.

6. Customer Complaints: Finally, rather than ignoring customer complaints of injuries, or waiting until a hundred identical complaints have been received (as businesses often do), businesses should be faster and more efficient with respect to investigating customer complaints and concerns. The faster a defect or hazard is discovered, the faster a company will be able to address the problem, and the fewer customers will therefore be harmed.

Topic Suggestion: Product Safety #1: Consider the idea of "Strict Product Liability", which states that manufacturers are responsible for any harm caused by one of their defective products ***even if the manufacturer has put their products through rigorous quality-control procedures to ensure their safety.***

What do you think of this view? Are you for it or against it? Consider the bicycle case in the lecture notes. Should the person who sold the bike be held responsible for the damages to their friend? Why or why not? Does your conclusion in the bicycle case carry over to the business case (that is, are the bicycle case and business cases analogous in all of the relevant respects, or is there some difference between the cases that causes you to give one verdict in the bicycle case, but a different verdict in the business case)?

Topic Suggestion: Product Safety #2: How much is a life worth? Recall the example from the lecture notes where a company could spend one million dollars instating and enforcing a safety policy which would save the lives of approximately 10 customers. (Assume further that the company's annual profit is 10 million dollars, so the one million dollars spent on safety would comprise about 10% of the company's annual profits). Now ask: Is the company MORALLY OBLIGATED to spend the one million dollars on safety? Why or why not? Now

ask, should we put laws in place which make the company LEGALLY obligated to spend the one million dollars on safety? Why or why not? (Remember that the question of moral obligation and legal obligation are two entirely distinct questions)

Topic Suggestion: Product Safety #3: Refer back to the discussion of Legal Paternalism in the lecture notes. Should people be maximally free to do **whatever they want** without legal intervention or legal repercussions? Why or why not? To put this question within a specific context, you might ask: If we know that passing a law which requires adults in automobiles to wear seatbelts will save 15,000 lives each year, should we pass the law, EVEN THOUGH it will restrict the freedom of drivers and passengers to some extent? Why or why not?

Note: Please complete "Reading Quiz for Week 10" at this time if you have not already done so.