Cleveland State Law Review

Volume 15 | Issue 3 Book Review

1966

# Book Review

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UNSAFE AT ANY SPEED, by Ralph Nader (Grossman Publishers, N. Y., 1965) pp. 354; $5.95.

This book is one of the most significant works published in this country in the last decade. It is one of the few that truly can be called socially significant. The major thesis of Mr. Nader is that the frightful carnage on our highways today is largely a direct result of the unsafe design of the American automobile. Glamour and style have displaced safety engineering in the priority system of values in the automobile industry. The automobile industry sells its cars chiefly by appealing to the subconscious desires of the American consumer rather than by offering the best and safest product within its technical competence.

The author also discusses the problem of air pollution by automobiles, the default of the casualty insurance industry in failing to demand safer automobiles, and the failure of other traffic safety groups to bring pressure on the automobile industry to manufacture safer cars.

*Unsafe At Any Speed* is important reading for every attorney, especially if he has a negligence practice. It provides facts and figures which the attorney otherwise might not be able to locate, and it informs him of the sources of further information. Perhaps more important, it starts him thinking about whether or not he should join the automobile manufacturer as a party defendant in a lawsuit involving a personal injury arising out of an automobile accident. Private lawsuits might well force the automobile industry to manufacture safer cars. In many cases the automobile manufacturer *should* be sued.

The Uniform Commercial Code is now law in Ohio and in most states. Under Sec. 1302.27 (UCC 2-314) of the Ohio Revised Code, the seller of a product impliedly warrants that the goods "are fit for the ordinary purposes for which such goods are used." And under Sec. 1302.28 (UCC 2-315) of the same Code, "Where the seller at the time of contracting has reason to know any particular purpose for which the goods are re-

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quired and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is . . . an implied warranty that the goods shall be fit for such purpose."

The case law, both under the Uniform Commercial Code and under the Uniform Sales Act, has not drawn fine distinctions between the implied warranty of merchantability and the implied warranty of fitness for a particular purpose. An automobile would be covered by both sections. These implied warranties are in addition to any express warranties made by the seller.[1] The recent contrary holding of the Supreme Court of Ohio in *Inglis v. American Motors Corp.*,[2] is indisputably wrong as far as a cause of action against a seller under the U.C.C. is concerned. The abandonment of the requirement of privity of contract in *Rogers v. Toni Home Permanent Co.*,[3] should make the expressed and implied warranties cumulative as to manufacturers also.[4]

While Sec. 1302.29 (UCC 2-316) provides how warranties may be excluded and modified, it should be unconscionable as a matter of law for a manufacturer of a product sold new at its full retail price to exclude the implied warranties of merchantability and fitness for a particular purpose under Secs. 1302.15 (UCC 2-302) and 1302.93 (UCC 2-719).[5]

There is a trend towards imposing liability on manufacturers of products for negligent design. The chief difficulty in imposing liability upon automobile manufacturers for injuries sustained in an automobile accident is the defense of intervening cause, namely, the negligence of another party in causing the accident. However, while it may be clear that a driver was the cause of the accident, it does not follow that the negligent design of the manufacturer was not the ultimate cause of the injury. Accidents can occur without injury, and if proper safety engineering were built into the design of automobiles, injury to human beings and property would be neither as frequent nor as severe. Since no automobile now in mass production is truly safely designed, manufacturers should not be permitted to

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[1] Ohio Rev. Code, Sec. 1302.30 (U. C. C. 2—317).

[2] 3 Ohio St. 2d 132, 209 N. E. 2d 583 (1965).

[3] 167 Ohio St. 244, 174 N. E. 2d 612, 75 A. L. R. 2d 103 (1958).

[4] See also Sicard v. Kremer, 133 Ohio St. 291, 13 N. E. 2d 250 (1938).

[5] Henningsen v. Bloomfield Motors, Inc., 32 N. J. 358, 161 A. 2d 69, 75 A. L. R. 2d 1 (1960).

escape liability for the disastrous results of their production of unsafe vehicles merely because the purchasers drive the cars.[6]

The whole area of causation of injury as opposed to causation of the accident must be litigated; and if the courts fail to impose liability on automobile manufacturers for the injuries which result from unsafely designed automobiles becoming involved in accidents, then the public and the bar associations must appeal to the legislatures to hold automobile manufacturers liable for the injuries which result from their defectively designed products.

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[6] But see, Evans v. General Motors Corp., C.C.H. Products Liability Reporter ¶ 5544 (7th Cir., Ind., 1966).