

Chapter 4

The Ethics of Manufacturing and Marketing

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Questions for Thought

- **How far** must manufacturers go to make their products and services completely safe?
- **WHAT Is** the relationship between a business and its customers? a contract, or is there more to it than that?
- **How does** the fact that companies usually know more about their products than their customers **impact** their duty to protect customers from injury or harm?
- **What responsibility** do businesses have for customer injuries no one could practically have predict or prevented?

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Ethical Criticisms of Marketing

- Poor service to consumers.
- Dangerous and risky products.
- Misleading selling practices.
- Poorly constructed products.
- Failure to respect warranties.
- Misleading and unpleasant advertising.

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Markets and Consumer Protection

- Firms that wish to be morally responsible in providing products that meet a high standard of safety may face problems competing against firms that make unsafe products and sell these products at cheap prices.
- Producers must produce more safety products or they risk losing customers to competitors.
- There are lots of cases about the injuries happen to the consumers, each year some 20 million people suffer serious accidental injuries and about 100.000 are killed, more than half of them in accidents involving consumer products.

Theories of Ethical Duties of Manufacturers

1. Contract Theory
2. Due Care Theory
3. Social Costs Theory

1. Contract Theory

- **Contract View of Firm's Duties to Customer:**
- The view that the relationship between a business firm and its customers is essentially a contractual relationship, and the firm's moral duties to the customer are those created by this contractual relationship.

1.1 Moral Duties to Consumers Under Contractual Theory

1. Complying with the terms of the sales contract (**Duty to comply**) . and apply the claims of:
 - **Reliability.**
 - **Service life.**
 - **Maintainability.**
 - **Safety.**
2. Disclosing the nature of the product (**Duty of Disclosure**).
3. Avoiding misrepresentation (**Duty Not to Misrepresent**).
4. Avoiding the use of force and unwanted influence (**Duty not to Coerce**).

1. Duty To Comply:

- is the duty to provide consumers with a product that respect the claims that the firms expressly made about the product which led the customers to enter the contract freely. **The claims of :**
- **(a) Reliability**
 - The probability that the product will function as the consumer is led to expect that it will function.
- **(b) Service Life**
 - The period of time during which the product will function as effectively as the consumer is lead to expect it to function.

- **(c) Maintainability:**
 - The ease with which the product can be repaired and kept in operating condition;
 - Eg. Warranty
- **(d) Product Safety:**
 - The degree of risk associated with using a product.

- **1. Duty to comply: Example**
 - **Eg. Winthrop Labs** - marketed a **painkiller** that it advertised as nonaddictive. A patient using the painkiller became addicted to it and died of overdose.
 - **Court found** Winthrop responsible for the patient's death because
 - Although it had expressly stated that the drug as non addictive Winthrop Labs
 - Had failed to respect its duty to comply with this express contractual claim.

2. The Duty Of Disclosure:

- An agreement is not obligatory unless both parties to the agreement knows what they are doing and freely choose to do it.
- The seller who intends to enter to contract with a customer has a duty to disclose exactly what the customer is buying and what the terms of the sale are.
- The seller has a duty to inform the buyer of any characteristics of the product that could affect the customer's decision to purchase the product.

- **For Example:-**
 - if the product the consumer is buying possesses a fault that causes a risk to the user's health or safety, the consumer should be so informed.
- Seller's should also disclose a product's components or ingredients, its performance characteristics, cost of operation, product ratings and any other applicable standards.

3. The Duty Not To Misrepresent:

- Misrepresentation makes freedom of choice impossible.
- Misrepresentation is coercive.
- A person who purposely misled, acts not as HE would freely have chosen to act if he had known the truth.

4. Duty Not To Coerce:

- People act irrationally when under the influence of fear or emotional stress.
- When a seller takes advantage of a buyer's fear or emotional stress to get authority to an agreement that the buyer would not make if the buyer was thinking rationally,
- the seller is using pressure or unwanted influence to coerce.

1.2 Criticisms of the Contractual Theory

1. Assumes makers of products deal directly with consumers but they do not deal directly with them.
2. Sellers can remove all their duties to buyers by getting them to agree to disclaimers of responsibility.
3. Assumes consumer and seller meet as equals by information about the product , but seller has more knowledge so consumer must rely on the seller.

2. Due Care Theory

- The view that because manufacturers are in a more advantaged position and consumers must rely on them, they have a duty to take special care to ensure that consumers' interests are not harmed by the products that they offer them.
- They have a duty to exercise due care to prevent others from being injured by the product, even if they clearly disclaim such responsibility.

2.1 Manufacturer's Duties in Due Care Theory

- **In designing product:**
 - Research its risks in conditions of use.
 - Design it so risks are minimized.
 - Take capacities of users into account.
- **In production:**
 - Use strict quality control to eliminate defects.
 - Ensure materials and manufacturing do not add faults or risk.
- **In marketing:**
 - Provide users with information about using product safely.
 - Warn of all dangers.
 - Do not market to those unable to avoid risk.

2.2 Criticisms of the Due Care Theory

1. Does not indicate who should pay for product injuries that can not be foreseen.
2. there is no way to determine when one has exercised enough due care. Every product involves some small risk.
3. the theory assumes that the manufacturer can indeed discover all the risks attendant upon using a product before it is actually used and this may not be possible.

3. Social Costs Theory

- The view that a manufacturer should pay the costs of any injuries caused by faults in the product, even if the manufacturer exercised all due care in designing, making, and marketing it, and the injury could not have been foreseen.(expected).
- Product injuries are external costs that should be internalized as a cost of bringing the product to market, this maximizes utility and distributes costs more fairly.

3.1 Criticisms of the Social Costs theory

1. Unjust to manufacturers since compensatory justice says one should compensate (**pay**) injured parties only if the injury was foreseeable and preventable.
2. Falsely assumes that the social cost view prevents accidents.
 - Instead, it encourages consumer carelessness by relieving them of responsibility for their injuries.
