

## NEW TOPIC

The business world, by definition, involves risk. So what, from the perspective of ethics, do we do about it? That is, what level of risk is acceptable from an ethical point of view? Over the next two weeks, we will look at the relationship between corporations and consumers, as well as between corporations and their employees. What we'll be trying to determine is, when accidents occur, why/how should corporations be held responsible?

Velasquez – How do we hold Corporations responsible for accidents that arise from the risks associated with doing business?

The Point:

There are three standard views with respect to determining when a manufacturer is/ought to be held liable for an injury that has occurred to a consumer. Each will be presented, and objections to each will be considered.

The Strategy:

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

#1 places the bulk of the responsibility for defective products on consumers. #2's and 3 place responsibility with the manufacturer.

#1. The Contract View.

The relationship between a manufacturer and a consumer is contractual, so any moral duties that arise from that relationship will be a result of the contract between the parties.

There are four moral duties that arise based on the explicit or implicit terms of this contract, and they are the duty:

- a. to comply with the terms of the contract
- b. to disclose the nature of the product

- c. to avoid misrepresentation
- d. to avoid undue influence/duress

Satisfying the duty to comply with the terms of the contract is the most important of these requirements. Most simply, it requires that a manufacturer supply the product they said they would provide.

Determining what, exactly, the terms of the contract are can be difficult, since contracts often contain implied terms, on top of the explicit terms. There are typically four aspects of products to which either explicit or implicit terms are attached.

- i. Reliability
- ii. Service Life
- iii. Maintainability
- iv. Safety

Manufacturers, according to the Contract View, also have a ‘Duty to Disclose’; this duty applies to any relevant information that may affect the buyer’s decision to purchase the product.

This duty is justified by the belief that a ‘free agreement’ cannot actually occur without both parties having full knowledge of their situation.

Problems with the Contract View:

1. There are no contracts between manufacturers and consumers.
2. Contracts allow manufacturers to avoid responsibilities they might otherwise have if they can convince the consumer to assume those responsibilities.
3. There is actually no ‘equality of bargaining positions’ between manufacturers and consumers.

#2. The ‘Due Care’ Theory.

Manufacturers have specialized knowledge in respect of their products that consumers simply cannot be expected to have. It is therefore the responsibility of manufacturers to take care to ensure that consumers are not harmed by their products.

A manufacturer violates their duty of care on this view when they *fail to act in a way that a reasonable person could foresee* would be required by the situation in order to avoid harming the buyer.

There are three steps in manufacturing where this view could be thought to apply:

1. Design – safe as possible
2. Production – defect free
3. Information – clear, simple and prominent warnings

Problems with the ‘Due Care Theory’

No clear indication of how much preventative action is enough to satisfy the duty of ‘due care’.

Assumes manufacturers can plausibly predict potential future uses of their products.

It’s paternalistic; manufacturers are required to assess risks on behalf of consumers.

### #3. The Social Costs Theory

A theory of ‘Strict Products Liability’; manufacturers are liable for any accident that yields injury as a result of a product defect, irrespective of any contractual obligations or any attempts by the manufacturer to fulfill their duty to take care.

The justification of this position, according to Vleasquez, is Utilitarian – we will all be better off if strict liability is applied to manufacturers because strict liability is the economically efficient solution.

How is this ‘efficient’?

- i. costs of accidents are internalized
- ii. more care will be taken to avoid costs of accidents
- iii. accident losses will be distributed throughout the market

Problems with the Social Costs view.

1. It's unfair – manufacturers are held liable for outcomes they can't predict, and the costs of accidents are passed on to consumers that are not responsible.
2. It's empirically incorrect – passing accident costs to manufacturers will not reduce the incidents of accidents.
3. The financial burdens on manufacturers and insurance companies could be overwhelming.

The Social Costs view is particularly well-suited to address costs that cannot be predicted, but it doesn't really do it in a 'just' manner.