

“eviction,” approximately equivalent to a warranty of quiet enjoyment, and the warranty against hidden defects. By virtue of the latter warranty, the seller is responsible for latent defects which either render the product unfit for its intended use or would have affected the determination of the purchase price.¹⁶ The warranty applies to “commercial” as well as “civil” sales.¹⁷ If the warranty is breached, the buyer may rescind the contract and obtain reimbursement for his “expenses,” notwithstanding the seller’s lack of knowledge of the defect, unless the warranty is waived in good faith.¹⁸ If the seller knew of the defect, the buyer, in addition, has the right to be indemnified for “damages” sustained.¹⁹

Thus, a purchaser of a defective product who as a result of the defect incurs injury to himself or liability to a third person²⁰ may recover from the seller all damages incurred provided the seller “knew” of the defect. Actual knowledge may not be necessary, however, if, from all the circumstances it appears that the seller was negligent.²¹ We have previously described how in such cases the burden of proving negligence is considerably lightened.

Product liability recovery on the basis of such sales law provisions is available only to the purchasers of the defective product. Third parties must resort to the general tort provision of the Civil Code previously discussed.

Sweden

RUTH B. GINSBURG * †

The subject of the European Law Committee’s 1967 Reports—products liability law as applied to motor vehicles—has not yet en-

¹⁶ C. Civ., Art. 1484.

¹⁷ Commercial Code, Art. 345.

¹⁸ C. Civ., Art. 1485.

¹⁹ C. Civ., Art. 1486.

²⁰ Liability to third parties cannot be avoided by establishing the existence of the defect at the time of purchase. Tribunal Supremo Decisions of March 2, 1904 and June 23, 1913.

²¹ 10 Manresa y Navarro, *supra* note 3 at 257.

* Associate Professor of Law, Rutgers Law School; LL.B., Columbia Law School, 1959.

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gaged particular attention among Swedish jurists. No legislation deals with the responsibility of a motor vehicle manufacturer to persons whose injuries were caused or rendered more severe by defects in the construction or design of the vehicle, nor does there appear to be any case in point or even commentary directed specifically to the question.

The absence of legislation or litigation in Sweden concerning an issue that has had so considerable a press coverage in the United States in recent years is hardly indicative of public apathy to the problem of vehicle accidents and car safety. On the contrary, Sweden's stern measure against the combination of intoxicants and driving is well known,¹ as is the recent legislation intended in part to avoid injury by and to foreign drivers, requiring a changeover to right hand traffic.² Also of note is the report that Sweden's two passenger car manufacturers have opened 1967 "with safety as a key word."³

Since Swedish law with respect to products liability generally is in a formative stage and since products liability law with specific respect to motor vehicles is virtually non-existent, any attempt to state the probable outcome of a claim against a manufacturer by a driver, passenger, or pedestrian injured in an accident who is charging defective construction or design would be conjectural in the extreme, and indeed, quite beyond this writer's qualifications. Therefore, the summary below merely states three principal classes of cases in which a question of liability for the defective condition of a motor vehicle may arise under Swedish law and presents some of the relevant considerations with respect to each.

Personal Injuries and Property Damage in Traffic Accidents. Under

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¹ *Lag om straff for vissa trafikbrott*; September 28, 1951, § 4.

² In 1963 the Swedish parliament voted favorably on a change to right hand traffic commencing September 3, 1967. A similar proposal had been rejected by the electorate in a consultative referendum in 1955.

³ See Swedish Information Service Release No. 885, March 17, 1967, p. 4 reporting on safety features incorporated in the first new Volvo sedan model in ten years and the inclusion as standard equipment of safety features in SAAB vehicles. In addition to Volvo and SAAB, a third large industrial company, Scania-Vabis, produces motor vehicles in Sweden. However, its production is limited to trucks and buses. See also Swedish Information Service Release No. 881, October 27, 1966 on proposed city planning with a view to traffic safety.

the Motor Vehicle Accident Law of June 30, 1916, liability to compensate for personal injuries⁴ and property damage⁵ rests with the driver and the vehicle owner. The injured party need not prove negligence. The driver may avoid liability only upon proof that he was not at fault; the owner remains answerable unless it is proved that neither fault on the part of the driver, nor a defect in the vehicle occasioned the accident.⁶ In practice, the compulsory insurance system in force since 1929 has assured adequate recovery to most automobile accident victims. Under the Motor Vehicle Traffic Insurance Law of May 10, 1929, a car owner must insure with a private company against the risk of losses for which he may be held responsible. The compulsory insurance limits are as follows: 1 million crowns (\$200,000) per individual death or injury, 25 million crowns (\$5,000,000) for all personal injuries and deaths in a single accident, and 1 million crowns (\$200,000) for property damage.⁷ Neither misrepresentation nor concealment by the insured relieves the insurer of its obligation to the injured party.⁸ Intentional or grossly negligent conduct by the driver does not affect the victim's right to the insurance proceeds, although such conduct does entitle the insurer to claim over against the owner or driver. While compulsory insurance does not cover injuries to the driver (whether or not he is the owner), the vehicle, or property carried in the vehicle, voluntary insurance is available for this purpose.⁹

Purchaser's Remedy for a Defective Vehicle. A defect in the construction of a motor vehicle, depending upon its character, will justify rescission of the sale, or, at least, compensation for the reduction in value to the purchaser.¹⁰

Defects in Vehicles Causing Injury to persons or property damage

⁴ Other than injury to the driver. Motor Vehicle Accident Law, §2.

⁵ Other than damage to property transported in the vehicle. Motor Vehicle Accident Law, § 2.

⁶ Contributory negligence results in an apportionment of damages.

⁷ Motor Vehicle Traffic Insurance Law, § 11.

⁸ If the vehicle that occasioned the accident is not insured or cannot be ascertained, joint and several liability is imposed upon all of the insurance companies that are authorized to issue policies under the Law. Motor Vehicle Traffic Insurance Law, § 21.

⁹ See generally, Hellner, "Tort Liability and Liability Insurance," 6 *Scandinavian Studies in Law*, especially at 135-36, 148, 153, 156, 158-59 (Schmidt ed. 1962).

¹⁰ *Lag om kop byte av los egendom*, June 20, 1905, §§ 42, 43 (stating the general rules concerning the buyer's rights when purchased good proves defective).

for which full compensation is not available under the motor vehicle accident and insurance legislation.¹¹ Compensation for injuries falling within this category is dependent upon development of the presently uncertain law of liability for a product's "harm inflicting qualities" (*skadebringande egenskaper*).¹² Although this territory remains unexplored, analogy to principles operative in related areas would seem to permit a few tentative remarks. Generally, absent specific legislation, or an express guarantee, proof of fault on the part of the manufacturer or his personnel would probably be considered by the courts as a prerequisite to liability.¹³ However, if the defect was especially dangerous in character, strict liability, *i.e.*, liability without fault, might be imposed. While it is not yet the general rule, compensation, whether based on negligence or strict liability, might be permitted to persons who have no contractual relationship to the defendant-seller or manufacturer.¹⁴ In view of the scant, vague, and somewhat vacillating expressions of the Swedish Supreme Court with respect to compensation for a product's "harm inflicting qualities,"¹⁵ a more precise statement concerning products liability law in Sweden and its potential application to motor vehicles must await further developments, particularly legislative consideration of the matter.

¹¹ The possibility of a claim over by the vehicle owner's insurer against the manufacturer apparently has not been considered in Swedish legal literature. Conceivably, a claim falling within this classification might be brought by an injured owner or driver who is not covered by voluntary "driver's seat insurance."

¹² See Almen, *Om kop och byte av los egendom* 635-37 (4th ed. 1960).

¹³ Presently, Sweden has no broad rule that a master is responsible in tort for the negligence of his servants. In principle, an employer is liable in tort only for the negligent acts of employees who supervise others. See Hellner, *supra* note 9, at 158. However, vicarious liability in most contractual relations extends to the acts of all employees. See Bengtsson, "Contractual Liability and Liability Insurance," in 6 *Scandinavian Studies in Law* 46-48, 54 (Schmidt ed. 1962); Karlgren, *Skadeståndsträtt* 155-156 (1958); *cf.* Szladits, "Products Liability," 16 *Buffalo L. Rev.* 229, 237 (1967) (concerning the impediment in Germany to the development of products liability law caused by the similar gap in the German law of vicarious liability).

¹⁴ *Cf.* Karlgren, *supra* note 13, at 155-156; Rodhe, *Obligationsrätt* 232-34 (1956).

¹⁵ Liability for a product's "harm inflicting qualities" is not a precise counterpart for "products liability" under American law; the Swedish concept includes liability to a person supplied directly by the defendant as well as possible liability to third persons. See Prosser, *Torts* § 95 (1964) (using the term products liability to denote liability of a supplier or manufacturer of goods to third persons).