has found only one statement which certainly calls for correction, and perhaps censure. The author (a member of Oxford University) tells us at p. 150, apropos of the medieval villein, that rat fleas infected with plague are said still to lurk in the fens of East Anglia. This is error.[26] Nevertheless this does not detract as a whole from the story of unfree tenure, which is one of the greatest interest to the social and economic historian. Indeed this book manages to give the law a context and background so that the discussion of deep doctrine never leads the reader into the unreal fairy-land which some of the greatest texts and classics of the land law have tended to conjure up.[27] This book, learned as it is, has its roots in the land.

DAVID YALE†

PRODUCTS LIABILITY. By Louis R. Frumer† and Melvin I. Friedman.‡ New York: Matthew Bender & Co., 1960 (with 1961 Supplement). Two volumes. $45.00.

AMERICAN LAW OF PRODUCTS LIABILITY. By Robert D. Hursh.†‡ Rochester, N.Y.: Lawyers Co-operative Pub. Co., 1961 (with 1962 Supplement). Four volumes. $70.00.

THE law of products liability has undergone remarkable development since the day in 1842, when the driver of a "frail, weak and infirm" stage-coach was lamed for life after the vehicle gave way because of its latent defects. If Lord Abinger, who decided that case [1] against the plaintiff, had foreseen the advent of jet airplanes, high powered cars, and the countless other products of modern life, most of them advertised nationally in terms of attractiveness and reliability, would he have thought differently about the matter? Doubtless he still would have foreseen the lack of any predictable limit to the consequences of

enfranchised by agreement from early times, usually to facilitate dispositions of land. It also is said that before the Wills Act 1837 "a will only affected land which the testator had at the time of the execution of his will; thus a landowner had continually to make new wills to avoid dying intestate." (p. 256) The law is correctly stated, but the picture of hardship is probably overdone. Republication by codicil was allowed with great latitude.

26. HIRST, THE CONQUEST OF PLAGUE, Ch. XII, 338 (1953): "East Anglia appears to be the only region so far discovered where field rodent plague has disappeared once it had become widespread in the woods and fields."

27. FEARNES, AN ESSAY ON THE LEARNING OF CONTINGENT REMAINDERS AND EXECUTORY DEVISES (2d ed. 1773), is one of the best examples of the law worked out with remorseless mathematical logic.

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1. Winterbottom v. Wright, 10 M. & W. 109, 152 Eng. Rep. 402 (1842).

holding a manufacturer or supplier liable to ultimate users and consumers; but he might well have hesitated to utter his famous dictum that the consequences of liability without privity of contract would be "most absurd and dangerous."

Be that as it may, there are now enough cases in which manufacturers and other suppliers have been found liable to create a real need for the above multivolume treatises on the now far reaching subject of products liability. As Hursh, the author of the longer treatise, points out, the term "products liability" was almost unknown to the legal profession 25 years ago; it is difficult today, however, to find a lawyer handling personal injury matters who is not aware of the significance of this new field. Many lawyers will not realize until they examine these treatises the extent to which the liability of manufacturers and sellers, based on rapidly expanding areas of torts and sales law, has progressed in recent years.

The modern development, of course, received its main impetus back in 1916 from *MacPherson v. Buick Motor Co.*,[2] which discarded Lord Abinger's restrictive dictum and abolished privity requirements as to any product "that is reasonably certain to place life and limb in danger when negligently made." Thirty more years followed, however, before it could be stated in another leading case, *Carter v. Yardley*,[3] concerning the privity rule in negligence cases, that "the time has come for us to recognize that the asserted general rule no longer exists." Furthermore, even courts adopting the *MacPherson* rule hesitated to impose a clear duty to use due care toward remote users of all kinds of products. Apprehensive of large judgments against manufacturers, perhaps on the basis of rather slight evidence of causation and negligence, they often directed verdicts for the defendant on the ground that the particular product was not "inherently" or "intrinsically" dangerous. As a result, much of the development was confined to food and drink, and as recently as 1951, the publication of Dickerson's well known *Products Liability and the Food Consumer* fulfilled the principal need in the field.

During the past decade, however, there has been a striking increase in the number of cases involving general products, culminating in *Henningsen v. Bloomfield Motors, Inc.*,[4] regarded in both of these new treatises as a landmark decision. This case holds that privity is unnecessary in warranty as well as negligence actions, at least in the automobile field, and may open the road to a broad imposition of liability without fault on manufacturers of all kinds of products. Whatever the situation may have been in the past, manufacturers and other suppliers of chattels no longer can be sure of any special judicial protection from the consequences of their mistakes or those of their employees. In fact, under the current trend they may find themselves held to a more rigorous

2. 217 N.Y. 382, 111 N.E. 1050 (1916).
3. 319, Mass, 92, 64 N.E.2d 693 (1946).
4. 32 N.J. 358, 161 A.2d 69 (1960).

standard than other members of society, who ordinarily still escape liability by the use of due care.

Both of these treatises are attractively bound. The Hursh work is supplemented by an occasional *New Case Service* leaflet and by a more substantial cumulative pocket supplement, of the usual type, at the back of each volume. Frumer and Friedman provide for supplementation by use of an easily handled loose page system. This enables the authors to keep the work current by periodic addition of new pages both of text and of footnotes, in such a way that the new material is well integrated with the original book.

Each of the new treatises contains in its first volume a discussion of the two chief bases of products liability, negligence and breach of express or implied warranty, and of the status of privity requirements in both these areas. The Hursh work concentrates almost exclusively on the decisions and statutes. It develops in considerable detail such increasingly significant topics as negligence of design and the duty to give adequate directions and warnings.

Frumer and Friedman approach the problems in this new field with considerable attention to factual as well as legal matters. Thus they start out with a useful questionnaire for products liability cases, designed to assist the attorney in developing a complete factual background, and keyed to relevant legal discussions later on, related to the testing of the product, the adequacy of its design, the duty to warn, contributory fault, intervening causes and the like. Their material on such a topic as liability for an exploding bottle is preceded by a scientific discussion of tension breaks, fracture patterns, design defects, and various glass testing standards. Doubtless a lawyer faced with trying a case of that kind will find this material just as useful as the following analysis of the legal responsibility of the manufacturers of the bottle, of the producers of the beverage, and of the retailer. In connection with products generally, the authors discuss such matters as the role of expert witnesses, the use of chemical analyses of appropriate samples, and the relevance of various industry codes and safety standards. Their discussion of the allergy problem includes considerable medico-legal material of evident usefulness in evaluating an allergy case and in preparing it for trial.

Both works contain substantial sections devoted to food products and drugs. Hursh also gives detailed separate consideration to many general products, such as vehicles, aircraft, building supplies and household equipment. The material about some of these products is presented with reference to particular defects, such as those in the accelerator, brakes, or steering apparatus of vehicles. Frumer and Friedman likewise provide assistance for the attorney looking for cases concerning a particular product, by including a very comprehensive table of cases by product designed to lead the reader to appropriate discussion at various points in the text. In that connection it should be remembered that often a case involving quite a different product may be the one most in point to establish a particular type of negligence, or a warranty of comparable content.

To facilitate this type of research, both works contain abundant cross references, but the one by Frumer and Friedman seems more helpful because of its more analytical treatment of the cases and the more thoughtful character of the indexing.

While both works are clearly written, the style of the Hursh book sometimes involves the dangling sentence with many qualifications so often found in legal writing. It occasionally gives the impression that it has been written on a sentence by sentence basis with the assistance of a sizeable staff. While this does not make for easy reading, it does lead to completeness of citation, and to a clear picture of what the courts have actually held and said in many thousands of cases. The extensive footnotes and the textual material about particular products provide accurate and rather detailed summaries of an enormous number of cases.

Frumer and Friedman is a more individual work and the style is more comparable to that of a scholar's treatise. The authors apply to the discussion of particular cases, or groups of cases, a broad knowledge of tort and sales law, and a specialized familiarity with personal injury actions and defenses. Examples of this occur in the treatment of such problems as contributory negligence and assumption of risk in warranty actions, and in the treatment, in the first annual supplement, of the content of warranty in case of cigarettes, which are fit for their primary intended use, but may be a cause of cancer. These authors also bring out well the distinction, which still needs to be made, between discarding vertical privity to hold a manufacturer liable to a consumer, and relaxing horizontal privity to hold retailers liable to persons other than the immediate purchaser. Their discussion reflects constant awareness of policy considerations, and their detailed discussion of recent decisions brings out effectively the extent to which products liability law has been changing in recent years.

The Hursh book is an integrated member of the family of publications issued by the Lawyers Co-Operative Publishing Company. As such it contains many useful references to *American Jurisprudence* and its related publications dealing with pleading and practice forms and proof of facts, as well as to the *American Law Reports*. Substantial parts of the material in the book are more or less duplicated in the *American Law Reports*.

Frumer and Friedman cite a considerable amount of the relevant law review material. This seems particularly appropriate in a field still under development, where judicial authority often is scant and policy issues often are involved. The Hursh book, like the *American Law Reports*, makes scant use of law review material. Now that such material is more generally available in bar association libraries and the larger law offices, perhaps the editors of *American Law Reports* should consider whether substantial citation of law review material might not add to the value of their excellent analysis of the cases. It should be added that the Hursh book does cite some law review articles, par-

ticularly with reference to the duty to warn, the effect of advertising on liability, and conflict of laws. Perhaps this policy will be expanded in the supplements. Those interested in a very complete reference to law review material will do well to consult Gillam's *Products Liability in The Automobile Industry.* This scholarly one volume work, published in 1960 by the University of Minnesota Press, contains an excellent analysis of many of the problems in the products field, and is by no means confined to automobile cases.

On the central issue of strict liability, both treatises approve the drift in that direction. Hursh refers to the abolition of privity with reference both to the manufacturer and subsequent sellers as the enlightened view. Frumer and Friedman likewise conclude that public policy requires imposition of liability without fault on the manufacturer or seller toward remote users of the product. It is not yet clear, however, to what extent the courts, as distinguished from nearly all the writers, are prepared to adopt this point of view. Some have not yet imposed strict liability without privity even in cases involving food products.[5] Others go as far as food, but balk at cosmetics and other things used almost as intimately as food,[6] and even at food containers.[7] While the general reasoning of the *Henningsen* case and other recent decisions [8] would seem to apply to a wide range of products, courts may prefer to proceed on a case by case basis. That is what they did when applying the *MacPherson* doctrine in negligence cases, by considering the degree of danger involved in the particular product before deciding whether privity should be disregarded. Furthermore, since defectiveness must be established even in a case based on liability without fault, there probably will be considerable difficulty in establishing that some products are defective, or that the defect comes within the warranty. This is particularly apt to be the case when the product that causes harm has been designed and produced by the best available experts, and the users realize that some danger may inevitably be present. It seems evident, however, that the manufacturers of such products should avoid any express or implied representations of complete safety.

Finally it might be observed that products liability is a matter of much current interest to the general public. New legislation frequently is proposed to protect the consumer more adequately from misleading advertising, or from products which have not been sufficiently tested. In the drug area particularly, there is much concern about the risks from side effects or extensive use. In-

5. See FRUMER & FRIEDMAN § 23.01(1)(b); HURSH § 6.59.

6. See Prosser, *The Assault Upon the Citadel (Strict Liability to the Consumer)*, 69 YALE L.J. 1099, 1110-12 (1960).

7. See HURSH § 6.59.

8. State Farm Mut. Automobile Ins. Co. v. Anderson-Weber, Inc., 110 N.W.2d 449 (Iowa, 1961); Chapman v. Brown, 198 F. Supp. 78 (D. Hawaii, 1961); Randy Knitwear, Inc. v. American Cyanamid Co., 11 N.Y.2d 5, 226 N.Y.S.2d 428 (1962), discussed in *Personal Injury Newsletter,* Vol. 4, No. 26, p. 205, March 12, 1962.

creased attention to all of these matters in the public press emphasizes the significance of the policy issues involved. This likewise involves the certainty that more and more persons injured by defective or misrepresented products will be turning to lawyers for assistance. In that connection, these two substantial works will be of invaluable assistance to attorneys seeking resourceful and authoritative guidance in this complicated and rapidly developing field of law.

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