shown a tendency to put the burden upon the manufacturer to show that he was not at fault.

The memorandum also refers to the effect of manufacturers' advertising which proclaims specific qualities and fitness of the product, on which the public may rely. If the product is not as advertised, the consumer should have direct recourse against the manufacturer even if he would not be liable under contract.

Under the proposed statute, then, the liability of the manufacturer is increased in three ways: (1) The burden of proof has been reversed. Jurisprudence has in some cases already applied this rule.[15] (2) The manufacturer is also at fault if the defect is due to an act or omission of a person not employed by the manufacturer but who has been instrumental in making the product at the instance of the manufacturer. (3) The manufacturer is responsible for failure of his technical and mechanical equipment.

The rule of Section 1401 applies even though the manufacturer did not know of the defect. He will only be exonerated if he shows that the introducing into commerce of a defective product was not due to his own fault or of another acting at his instance nor of a failure of equipment used by him.

The Soviet Union

ISAAC SHAPIRO *

The notion that an automobile manufacturer should be held liable for personal or property injury resulting from manufacturing defects in an automobile sold to a consumer appears to have received no attention either in Soviet judicial practice or in legal commentaries. A search through the reports of the Supreme Courts of the USSR and the RSFSR (the largest of the 15 Soviet Republics) and the major legal periodicals for the past several years has failed to reveal a single case or article in which the problem has been mentioned.[1]

One possible explanation for this dearth of authority is the fact

[15] [1958] N.J. 104 (Court of Appeal, Amsterdam).

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[1] Only a small proportion of Soviet appellate court decisions are reported. The professed reasons for this are that most decisions are not of sufficient general interest and that in any event judicial precedent is not a source of law.

that there are less than 2 million passenger cars registered in the Soviet Union as compared with approximately 75 million in the United States.[2] In 1966 total Soviet production of motor vehicles was only 675,000, of which only 230,000 were passenger cars.[3] During the same year United States production of passenger cars alone amounted to over 8 million.[4]

In the absence of sources dealing with the nature and extent of an automobile manufacturer's liability to either the ultimate purchaser of a motor vehicle or to a third party injured because of defects in manufacture, it would seem futile to speculate how a Soviet court would decide a case in which such a claim was made. It may, however, be useful to review some of the general rules of Soviet contract and tort law which might be applicable in a situation involving the sale of a defective motor car.

Chapter 21 of the Civil Code of the RSFSR [5] deals with obligations which arise from the conclusion of a contract for the sale of property. Article 245, relating to quality requirements, provides as follows:

> The quality of an article sold must correspond to the terms of the contract or, in the absence of specifications in the contract, to customary demands.
>
> An article sold by a trade organization must correspond to the state standards, technical specifications or samples established for articles of that type, unless otherwise indicated by the nature of the particular type of sale.[6]

Article 246 spells out the rights of a purchaser in the event the

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[2] See "Russia Tomorrow," *Wall Street Journal*, May 4, 1967, p. 1, col. 1. In 1965 a total of 90.4 million motor vehicles were registered in the United States, of which 74.9 million were passenger cars. See *Statistical Abstract of the United States* (1966), p. 801.

[3] "Report on Fulfillment of 1966 Ecocomy Plan," *Pravda* and *Izvestia*, January 29, 1967, pp. 1-2. A translation of the report appears in the *Current Digest of the Soviet Press*, Vol. XIX, No. 4, p. 8.

[4] Based on projection of United States production for the first 8 months of 1966. See *Statistical Abstract of the United States* (1966), p. 814.

[5] There is no USSR Civil Code. Each of the 15 Republics has a Civil Code, which are in some cases identical with codes of other republics and in other cases differ in only minor respects. The Civil Code of the RSFSR, which is the principal and largest Republic, is illustrative of general principles applied throughout the USSR and is cited here.

[6] RSFSR 1964 *Grazh Kod.* (Civil Code), hereinafter cited by article number only. The earlier Civil Code adopted in 1922 had analogous provisions.

article he purchases fails to live up to proper quality standards as follows:

> If a buyer is sold an article of improper quality and its defects have not been revealed beforehand by the seller, the buyer may, at his election, demand:
>
> either substitution of a proper article, as defined in the contract by generic characteristics, for the article of improper quality;
>
> or a proportionate reduction in the purchase price;
>
> or removal of the defects in the article without charge by the seller or compensation for the expenses incurred by the buyer in removing them;
>
> or rescission of the contract with compensation to the buyer for damages.
>
> The exercise of these rights by a person who has bought an article from a retail-trade enterprise is carried out in the manner determined by the Council of Ministers of the RSFSR.

Article 247 establishes a six-month cutoff period from the date of delivery of an article (other than a building) for presentation of claims against a seller on the basis of defects in manufacture. Under Article 248 this period may be extended (but not shortened) with respect to articles purchased from retail-trade organizations for the length of any guaranty period, such period being calculated from the date of the retail sale. Likewise the seller is required to repair, replace, or accept the return of the article without charge or accept the return of the article and refund the purchase price.[7] These provisions would appear to limit the liability of the seller of a defective article and exclude liability for injuries which the purchaser or a third party may have suffered as a result of any defect in manufacture based on any contractual or warranty theory. Since the obligation is a contractual one imposed irrespective of any fault on the part of the seller, it would appear to exclude direct liability on the part of the manufacturer. In terms of the Soviet economy this would not appear to be of great significance, since both the manufacturer and the retail organization from which consumers normally purchase articles for personal use are state enterprises, and therefore there would be no particular advantage in being able to bring suit against the manufacturer rather than the organization which sells the article directly to the consumer.

The general principles of tort liability which might be invoked in any action against a retail trade organization or manufacturing

[7] Article 248, para. 2.

enterprise are contained in chapter 40 of the RSFSR Civil Code. Article 444 of that Code provides as follows:

> Injury caused to the person or property of a citizen, as well as injury caused to an organization, is subject to compensation in full by the person who has caused such injury.
>
> A person who has caused injury is relieved of the duty to make compensation if he proves that the injury was not caused through his fault.
>
> Injury caused through lawful acts is subject to compensation only in cases specified by law.

Under Article 445 an organization is liable for injuries caused through the fault of its workers in the performance of their employment or official duties; Article 446 imposes liability on state institutions under the general rules of Articles 444 and 445 for injuries caused to individuals through "improper official acts of their officials in the sphere of administrative management, unless otherwise provided by special statute."

Under the provisions of Article 444 a plaintiff suing in has only to prove injury and a causal connection between it and the act of the defendant to sustain his burden of proof. The alleged tort feasor has the burden of proving absence of fault on his part in order to be exonerated.[8] Moreover, proof of negligence on the part of the injured party will not suffice to exonerate the person causing the injury, but it may be taken into consideration in determining the amount of compensation.[9] The amount of damages may also be reduced depending on the financial means of the tort feasor, although this would presumably not be applicable in any case brought against a state automobile manufacturing enterprise for injuries resulting from defects in manufacture of an automobile.

Article 460 limits recovery for wrongful death to dependents of the deceased who are unable to work or who were entitled to be supported by the decedent at the time of his death (including posthumously-born children). In addition Article 460 provides:

> Compensation is paid:
>
> to minors, until they reach 16 years of age, and to students, until they reach 18 years of age;

[8] Article 403 of the Civil Code of 1922 likewise placed the burden of proving absence of fault on the alleged tort-feasor and permitted exoneration on proof by the person causing the injury that "he was unable to prevent the injury, or that he was privileged to cause the injury, or that the injury occurred as the result of the intentional act or gross negligence of the injured party."

[9] Article 458, Civil Code of 1964.