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Book Notes

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PRODUCTS LIABILITY IN THE AUTOMOBILE INDUSTRY. By Cornelius W. Gillam. Minneapolis: University of Minnesota Press, 1960. 239 pages. $4.75.

> This book is a study of the products liability of automobile manufacturers, the legal and economic basis of this liability, its meaning to business management, and the measures which should be taken for its refinement.[1]

This brief but inclusive introduction by Gillam puts the reader not only in perspective for the book, but for the examination of this review.

The short introduction into "products liability" by the author acquaints us with the classic *Winterbottom* case, the beginning of the modern exploration of the problem of products liability. This case held that tort liability for product defects ran only to those with whom the defendant was in privity of contract. This clearly illustrates the doctrine of caveat emptor.

Early in the study we are introduced with complacency to an exception to the privity rule, the leading *MacPherson* case,[3] which marks a new era in products liability; the beginning of caveat venditor. A synopsis of the social and economic background of the manufacturer-consumer relationship as well as characteristic features of the auto industry prepares us for the author's minute examination of the topic.

Mr. Gillam's exhaustive exploration of the legal background brings us one-third of the way into the text. Although considerating this introductory material excessive, I don't believe the superlative discussion impaired the main subject matter; that of products liability in the auto industry.

The privity rule in products liability of automobile manufacturers is attacked on three fronts by the author. These are fraud, negligence and warranty. Mr. Gillam concludes,

> On the first (fraud) privity has been routed; on the second (negligence) it is in full retreat. The struggle for warranty without contract still remains in doubt, although time seems to be on its side.[4]

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1. GILLAM **PRODUCTS LIABILITY IN THE AUTOMOBILE INDUSTRY,** Minneapolis: University of Minnesota Press (1960) at 3.
2. Winterbottom v. Wright, 10 M. & W. 109, 152 Eng. Rep. 402, 11 L. J. Ex. 415 (1942).
3. MacPherson v. Buick Motor Co., 217 N.Y. 382, 111 N.E. 1050 (1916).

Through his discussion it is evident that the author emphatically favors expansion of the rule of liability for manufacturers. He thoroughly examines products liability for specific defects in vehicles, such as design, chassis, engine, etc., and dissects this group and discusses the ramification of each division. The liability of the manufacturers and parts manufacturers is considered as well as the damages recoverable.

Although sketchy in certain instances, Mr. Gillam's inquiry into the problems of pleading and proof for both the defendant and plaintiff should be a valuable tool to the practicing attorney. The practicability of this section is evident.

In concluding, Gillam exemplifies the metamorphosis of the products liability law by stating, "caveat emptor has become caveat venditor,"[5] although he later qualifies this remark.[6] Some results of the transition mentioned are higher standards on the part of manufacturers and greater accuracy and authenticity in advertising by automobile manufacturers.

An interesting analysis of disclaimers pointed out the principle features of present automobile warranties in which "the practical effect of all this (manufacturer's warranties) is to put the consumer at the manufacturer's mercy."[7] In essence, the standard warranty holds the manufacturer liable for no more than discretionary replacement of parts within the warranted period.

However, a completely astonishing legal phenomenon is conspicuously perceptible at this point. The standard warranty of the manufacturer *has never been used as a defense in an action for personal injury causes by dangerous defects in vehicles.* It appears policy consideration involving the "consuming public" is the manufacturer's allurement to full legal responsibility for losses from defects. It is quite evident, however, that the consumer ultimately bears the cost of this risk in the disguise of the sale price. The court is definitely aware of the policy impact when spreading the liability expense in this matter.

The author's restlessness indicates that although Cardozo's MacPherson opinion[8] is still the monarch over a kingdom full of litigation, the problems involved in products liability are

4. **Supra** note 1 at 66.
5. **Ibid.** at 185.
6. **Ibid.** at 209, and commented on later in this review.
7. **Ibid.** at 191.
8. **Supra** note 2.

far from being solved. Solutions suggested are sidestepping the privity rule completely in warranty cases and legislative regulation of disclaimers.

One becomes confused as to the dominance of caveat venditor, when examining the last paragraph of the book. Gillam departs from earlier concluding statements by observing that the plaintiff still has the burden of proof " . . . on the issues of the existence of a 'defect' in the technical sense, and of the proximated causation of his injury by that defect."[9] Based on this statement, Gillam subscribes to the idea that caveat emptor survives. The entire theme of the conclusion is now modified and colored by this dictum.

The table of contents of this work appears wholly inadequate and quite confusing. However, the excellent and comprehensive index and alphabetical and jurisdictional table of cases outweighs the faulty listing of the various sections.

Mr. Gillham's greatest contribution to one exploring the field of products liability is certainly the wealth of material he offers to his readers through the footnotes. Not only are the notes satisfactory in all respects, the quantity and volume of reference material is outstanding. For example, he gives general references in the footnotes for various topic headlines; one[10] included 49 law review articles, 16 case and text books, 39 law review notes and 12 ALR citations. Other notes are as extensive.

Material referred to in the notes both support and oppose the author's conclusions. Most of the notes are explanatory in nature and cases are usually briefly commented on. Authorities are cited for problems that are beyond the scope of the book. Mr. Gillam certainly excels in the synthesizing of this material concerning products liability in the automobile industry.

After researching the Minnesota and North Dakota cases contained therein, I was confident that the author had not only been careful in his selection of cases, but that he was quite accurate in his observations. In a Minnesota case[11] the volume number of the reporter was cited incorrectly, however this was the only error found in the footnote material examined.

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9. **Supra** note 1 at 204.
10. **Ibid.** at 30.
11. Ferraro v. Taylor, 197 Minn. 5, 265 N.W. 829 (1936). The Ferraro case was erroneously cited as 65 N.W. 829.

An early North Dakota statute[12] was referred to as initial legislation in the nation which gave buyers of farm machinery reasonable time to discover defects in the machinery. The case cited supporting this enactment has been upheld to the present day, with recent legislation[13] replacing the older statute. Other North Dakota cases examined accurately supported the textual matter.

The research in this work is remarkably complete and the material would serve as a fine reference guide for either lawyer or businessman. It will certainly satisfy all, lawman or layman, who are concerned with products liability in the automobile industry.

JAMES D. SCHLOSSER

ADVERSE POSSESSION. By Charles C. Callahan. Ohio State University Press, 1960, 111 pages. Price: $3.00

The Ohio State University School of Law annually sponsors the Law Forum, a lecture series. The book under review, Adverse Possession, was originally presented as a part of that series by the author, Charles C. Callahan, in March, 1960.

The work was prepared for delivery primarily to law students. The impressions that follow are likewise those of a law student. Professor Callahan has divided his book into three sections. My remarks will generally follow that format.

The first six pages contain the facts in *Van Valkenburgh v. Lutz*.[1] This case involves mistaken boundary lines, a typical adverse possession fact situation. The opinion in this case, which is not fully revealed, is apparently what troubles Professor Callahan because he states, "that all the talk in the opinion between the statement of facts and the decision has very little to do with the actual reasons for the decision." At this point one feels that the following will contain a detailed discussion of that opinion, pointing out the errors and attributes of the justice's handling of the situation. However, the subject rather abruptly changes[2] to a discussion of the evolutionary process operating in the field of property law, i. e., the dissolution of doctrines, the merger of some theories

12. N.D. Rev. Stat. § 5991a, 5993a (1913).
13. N.D. Cent. Code § 51-07-07 (1961).

1. 304 N.Y. 95, 106 N.E. 2d 28 (1952, **reh. den.** 304 N.Y. 590, 107 N.E.2d 82 (1952).

and the introduction of new concepts. One of the principle ways in which property law is changing is simply a lack of scholarship and understanding. By this the author does not mean a lack of capacity to understand but a lack of time and motivation to make inquiry. For instance, the Professor feels that various and sundry technicalities of the requirements prevent the judges from seeing the forest for the trees. Because of the pressure of the times, we are moving away from the scholarly approach. Thus certain property law concepts are becoming somewhat less than scholarly.

The remaining portion of this chapter deals with ownership and possession and other basic concepts embodied in the property field. He defines, analyzes and questions. Aside from his dextrous ability in writing and obvious proficiency in the field, nevertheless, it is nothing more than any student should hear in class from a professor of property law.

At this point the reader is likely to be confused, as I was. The book began with six pages of facts; then an oblique discussion of the change that is occurring in property law. Not illogical maybe, but it does make one wonder if a "meaty" discussion of adverse possession is going to follow as the title of the book would indicate. At page forty-one (of a total of one-hundred and eleven) we begin the second division titled, "Adverse Possession: The Law."

This section begins with an outline of the history of the development of adverse possession. Throughout the remainder of this the Professor does battle with the verbiage, logic and the ultimate purpose of the concept of adverse possession. Upon completing this portion of the book I felt that we had arrived. The discussion was lively, logical and to the point. The approach used signified sharp and original reflection upon the problems involved. The challenge presented by this chapter often found one studying what was being said instead of merely reading.

The assault upon the requirements that adverse possession must be open, hostile, notorious and actual was particularly interesting. Professor Callahan argues that these requirements are superfluous and presents a most persuasive case.

North Dakota does not require that possession be open, hostile. continuous, notorious and actual in so many words. Indeed, acts constituting adverse possession based upon a written instrument shall be deemed to have been so possessed and

occupied in each of the following cases:[3] (1) when it has been usually cultivated or improved; (2) when it has been protected by a substantial enclosure; (3) when, although not enclosed, it has been used for the supply of fuel or of fencing timber for the purposes of husbandry, or the ordinary use of the occupant; or (4) when a known farm or a single lot has been partly improved, the portion of such farm or lot that may have been left not cleared or not enclosed according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated, but when the premises consists of two or more contiguous lots, the possession of one lot shall not be deemed a possession of any other of such lots.[4] Another statute actually confers title on one who has been in the "actual open adverse and undisputed possession of land under such title for a period of ten years."[5] This statute requires a claim under color of title and is not considered a statute of limitation. The normal statutory period and requisites of adverse possession not under color of title are set out in the chapter of the code previously alluded to.[6]

The concluding section, Question of Purpose, means just what the title indicates. The Professor states that the law in this regard does not know the why or wherefor of its existence. All questions concerning adverse possession must be answered in terms of its purpose. Various theories have been announced such as elimination of stale claims[7] and punishment for not developing land.[8] The author would reject these and suggest that its purpose may be the orderly transfer of land. From the early statute of limitation enactment the theme has apparently been orderly devolution of one's property. From a social policy based on this premise, Professor Callahan infers that this then is the true purpose of the doctrine.

The author encourages the trend towards simplification of the rules of adverse possession. It is his feeling that such requirements as claim of right, state of mind, privity of tacking and disabilities all break down under the weight of logical

2. p. 8, the professor does ask a few searching questions.
3. N.D. Cent. Code § 28-01-09 (1961).
4. N.D. Cent. Code § 28-01-11 (1961), when not based upon a written instrument only the first two requirements are needed.
5. N.D. Cent. Code 47-06-03 (1961).
6. See note 3, **supra.**
7. Burby, Real Property (2d Ed. 1954).
8. Chester H. Smith, Real Property Survey (1956).

analysis. Such simplifications as alluded to at the beginning of this report would overcome the confusion that attends the field of adverse possession today.

Throughout the book Professor Callahan is dissatisfied with the reasoning that has been applied to the problems of adverse possession. His criticism and suggestion are both helpful and stimulate one's thinking with regard to the subject. Throughout the book I waited patiently for a thorough discussion of the application of the law to the facts in the *Van Valkenburgh* case. There was none. The recitation of the facts in that case immediately caused me to begin thinking in terms of adverse possession and this, conceivably, was the purpose for their insertion at this point. However, aside from that I saw no great need for their inclusion at all. Further, the extensive treatment of basic material prior to the actual discussion of adverse possession would lead one to believe that the book is geared to readers not actually trained in the property law. This may be so.

The writing technique is such as to hold interest from beginning to end. Its use is for information and is recommended for those students who plan to do academic writing in this area. My general impression is that the subject matter is not too difficult but the aggressive approach would also make for interesting reading for the practitioner.

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