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Sales--Additional Responsibility of Manufacturers--New Car Sales

Robert Glenn Steele

West Virginia University College of Law

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falsifying employment applications to obtain jobs in violation of railroad safety requirements. The *Rock* doctrine might never have arisen if the fraud perpetrated by *Rock* had not been so outrageous as to shock the sensibility of the Supreme Court. *Minneapolis St. P. & Ste. M. Ry. v. Rock, supra*; *Minneapolis, St. P. & S. Ste. M. Ry. v. Borum, supra*. Despite the public protection basis for the doctrine it has been urged that application of the doctrine will have no effect in deterring job applicants from making false statements to gain employment. Merrill, *Misrepresentation to Secure Employment*, 14 MINN. L. REV. 646 (1930).

It is clear that the *Rock* doctrine actually has had little effect in advancing the public policy which it was intended to support. Evidence of this failure can be found in the many cases which have arisen since the *Rock* decision where fraud in the employment contract has been introduced as a defense. The decision has failed to provide an adequate standard for the courts to follow when applying the provisions of the Federal Employers' Liability Act and has served only to confuse the application of a clear policy stated by Congress in that act.

Herbert Stephenson Boreman, Jr.

Sales—Additional Responsibility of Manufacturers—New Car Sales

P purchased a new car from a dealer which was destroyed by fire ten days after purchase. *P* contended that it was caused by faulty wiring and sued both the dealer and the manufacturer for the damage to the car. The lower court directed a verdict for both *Ds*, but the Supreme Court of Iowa held that in spite of an express warranty which limited liability, the case could go to the jury against both *Ds* on an implied warranty theory. *State Farm Mut. Ins. Co. v. Anderson-Weber, Inc.*, 110 N.W.2d 449 (Iowa 1961).

This recent case illustrates a line of decisions which gives the purchaser of a new automobile some protection from the common law doctrine of "caveat emptor." Many car dealers are selling new cars with a uniform warranty and disclaimer which gives a purchaser very little protection against mechanical defects. This line of cases disregards the disclaimer and gives the purchaser the right to sue on an implied warranty theory.

From a position of almost total immunity from suit the manufacturer now finds himself in quite a different position. It was origi-

nally possible for the producer to send out a dealer to sell his product, and use the defense of lack of privity of contract against an ultimate consumer who was injured by the product. The first suits allowed against manufacturers were based on the theory of negligence, but this was difficult to prove and was of little value to the consumer. *MacPherson v. Buick Motor Co.*, 217 N.Y. 389, 111 N.E. 1050 (1916). Many jurisdictions still follow the view that the suit must be based on privity of contract or negligence. *Blitzstein v. Ford Motor Co.*, 288 F.2d 738 (5th Cir. 1961); *Levitt v. Ford Motor Co.*, 215 N.Y.S.2d 679 (Sup. Ct. 1961); *Prince v. Smith*, 154 N.C. 768, 119 S.E.2d 923 (1961); *Harris v. Hampton Roads Tractor & Equipment Co.*, 121 S.E.2d 471 (Va. 1961). The latest view has been that a warranty is implied and it does not have to be based on privity of contract. *Chapman v. Brown*, 198 F. Supp. 78 (D. Hawaii 1961); *Thompson v. Reedman*, 199 F. Supp. 120 (E.D. Pa. 1961); *Appleman v. Fabert Motors, Inc.*, 30 Ill. App. 424, 174 N.E.2d 892 (1961).

The principal case suggests that the thinking in the area of implied warranties is going even further. Not only would the Iowa court allow recovery on an implied warranty, but it would also allow recovery where there is an expressed warranty and a disclaimer of other liability. *Henningsen v. Bloomfield Motors, Inc.*, 32 N.J. 358, 161 A.2d 69 (1960); *General Motors Corp. v. Dodson*, 338 S.W.2d 655 (Tenn. 1960). The Washington court in *Norway v. Root*, 361 P.2d 162 (Wash. 1961) has approved the reasoning behind these two cases.

Before a suit can be maintained for breach of implied warranty where there is an express warranty and a disclaimer of other warranty, the courts must concede, first, that an ultimate consumer does not need privity of contract in order to sue the manufacturer; second, that an express warranty and an implied warranty can co-exist as long as their provisions are not inconsistent; and third, that the disclaimer clause contained in the uniform new car warranty is void as it is against public policy. The third concession seems to be the most difficult for the courts to make. In the *Dodson* case, *supra*, and in the principal case the courts seem to have ignored this problem altogether. Other jurisdictions have refused to declare such a provision in the sales contract void. *Shafer v. Rea Motors, Inc.*, 205 F.2d 685 (3d Cir. 1953); *Sanders v. Allis Chalmers Mfg. Co.*, 237 S.C. 133, 115 S.E.2d 793 (1960).

In *Henningsen v. Bloomfield Motors, Inc.*, *supra*, the court justified its decision in light of the disclaimer. Mainly for this reason the *Bloomfield* case seems destined to become the leading case in this area. This decision is also an extensive study of the subject of implied warranties in the sale of new automobiles, especially in the light of new marketing practices. The court said that the Uniform Sales Act codified, extended, and liberalized the common law of sales, because of the need to lessen the effect of the doctrine of "caveat emptor" and to place some responsibility on the seller. The court also considered the complete dependence of the buyer upon the manufacturer of the new car, and the necessity of buying with the uniform warranty that many car producers include in their sales contracts.

This additional responsibility on the manufacturer seems to result from the fact that it is impossible for the individual consumer to bargain on equal terms with the large producers. Since the biggest producers all insist on the uniform warranty it is almost impossible to buy on any other terms. The individual cannot intelligently buy products which are too difficult to examine easily, or which are too difficult to even understand. These courts have realized that the doctrine of "caveat emptor" is unrealistic in today's technical and complex world. Additional inroads may be made into the manufacturer's safety from suit by the extension of the implied warranty to cover the producer's advertising claims. *Henningsen v. Bloomfield Motor Co.*, *supra*; *Rogers v. Toni Home Permanent Co.*, 167 Ohio St. 244, 147 N.E.2d 612 (1958); *Frantz Equipment Co. v. Leo Butler Co.*, 370 Pa. 459, 88 A.2d 702 (1952); *Norway v. Root*, *supra*.

West Virginia has in the past recognized implied warranties. Comment, 63 W. VA. L. REV. 326 (1961). The court has indicated, at least by dicta, that it would follow the view that an express warranty and an implied warranty can exist together as long as they are not inconsistent. *Hill v. Montgomery Ward & Co.*, 121 W. Va. 554, 4 S.E. 2d 793 (1939). Also, by dicta, the West Virginia court has said that a disclaimer against public policy should be disallowed. *Maryland Cas. Co. v. Owens-Illinois Glass Co.*, 116 F. Supp. 122 (S.D. W. Va. 1953); *Keystone Mfg. Co. v. Hines*, 85 W. Va. 405, 102 S.E. 106 (1920). This does not mean that the West Virginia court would agree with the line of cases that have said the disclaimer in new car contracts is void, but it may be a

necessary step before that result could be reached. There are also statements in a federal case in West Virginia which would indicate that a manufacturer could be sued on a warranty without privity of contract. *Kyle v. Swift & Co.*, 229 F.2d 887 (4th Cir. 1956). These are the three concessions mentioned before which are necessary to arrive at the same decisions which the New Jersey, Tennessee, and Iowa courts have reached. The authority is too sketchy to believe that the West Virginia court is ready to follow these cases at this time. But it would not seem like such a large step for West Virginia to join this group some time in the future.

The trend to hold manufacturers liable on this type of implied warranty situation will probably not be widely adopted for many years. But under the conditions of our complex society, a continued swing away from the doctrine of "caveat emptor" seems inevitable.

Robert Glenn Steele

Torts—Parent and Child—Parent Liable for Tort of Child Where Parent Negligent in Failing to Restrain Child

P, a minor, was injured due to an assault and battery by minor son of *D*. The trial court sustained a general demurrer by *D*. *Held*, reversed. The complaint stated a cause of action on the theory that the parent (*D*) had full knowledge of previous similar acts by minor son, and *D* failed to exercise reasonable parental discipline to restrain such malicious conduct, thereby ratifying it. *Bieker v. Owens*, 350 S.W.2d 522 (Ark. 1961).

In recent years the rate of juvenile delinquency has been rising at an alarming pace. With the advent of many malicious torts by minors, the injured parties have sought recovery from the parents of such minors for the obvious reason that such minors seldom have appreciable estates of their own. The theories upon which recovery is sought are limited. The principal case represents the view that the parent is liable, not for the child's tort, but for his own tort of negligence in failing to restrain his child from committing such torts if he has knowledge of his child's vicious propensities and fails to exercise reasonable parental control.

A well-recognized rule at common law is that a parent is not liable for the torts of his child by reason of the parent-child relationship alone. *White v. Seitz*, 342 Ill. 266, 174 N.E. 371 (1930);