INTERNATIONAL PRODUCT LIABILITY IN A GLOBAL BUSINESS ENVIRONMENT: ETHICAL AND LEGAL PERSPECTIVES FOR BUSINESS MANAGERS

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Abstract
This article endeavours to shed some light on the snares of international product liability where defects in products lead to costly class actions, outrageous punitive damages in Common Law realms and the loss of consumer trust and business image, often followed by the tightening of laws and a clamp down of authorities on whole business sectors and management.
The authors have identified a general number of trigger points in the business and legal environment that either have to be observed or should be strictly avoided. No matter how different product liability regulations in different countries might be – some basic rules, diligently and flexibly applied – this research helps to reduce liability risks by great margin.

Keywords
Business management, business administration, product liability, decision making, business ethics, business law

JEL: M10, 16, K33

Introduction
The 'race to the bottom' often begins with a certain ignorance or negligence towards ethical standards not initiated or not followed in business. One might ask: *Business ethics can save me a ton of money? On what planet?*
In everyday corporate activities maybe more than one entrepreneur has been faced with the "issue" of business ethics, particularly when having to deal with international commerce.
In this article, a different approach to Business Ethics is brought forth, having in mind a global environment. The paper provides a strong case framework to understand the subtle, yet strong, forces affecting businesses at many different levels, for there is literally no

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physical boundary that a consumer product cannot and will not cross during the course of manufacturing, marketing, distribution and final use by the consumer.
Business Ethics is both an academic field and a corporate movement. For the purposes of this article it is being considered as the latter. Business Ethics has a wide range of applications and different ramifications such as labour and human resources, consumer well-being, product liability, impact on the environment, amongst other topics and issues.
History has taught us that great scandals are needed for governments to react and regulate business ethics in practice. The greatest scandal of this decade was the case of Enron in 2001(Peregrine, 2011). The trail of destruction left behind not only affected US economy, but had a domino effect in the World's economy. Over 20,000 people lost their jobs and their retirement savings. A lack of Business Ethics in Enron's practice promoted the debacle with effects still present today.
All in all, this was a case that had monetary repercussions. But there are cases such as the Union Carbide Bhopal incident in India (Edwards, T. 2016) in 1984 where lives were lost, and health issues are still arising from what happened back then.
So, even though Ethics in Business are nothing but an unnecessary protocol for many, cases keep demonstrating over and over again that this is an incorrect judgement.
The motto "Think Global, Act Local" becomes the main idea to be taken in count when applying a code of conduct or ethics in the "real world". Some canons to be considered as a base to create a code of ethics are: integrity, competence, individual responsibilities, professional responsibilities, human concerns and environmental concerns.
What is clear though is that there are four basic forces at work: one, the company or business; two, the government (in the form of a legal framework to regulate a business' activity –aims to protect the consumer or set rules of trading-); three, the society (both as a consumer society and as people that can be harmed by or can benefit from a certain company's activity); and four, Business Ethics.

Methodology
The first part of the paper relates to perspectives about Business Ethics and Legal Liabilities considered in literature, followed by examples of law reports investigated by the authors.
The research continues with the second part that consists in interviews with 14 managers from US, UK and EU companies targeting a discussion around nowadays Business Ethics and Product Liability (5 managers from the US and 9 from UK and EU). The interviews were organized face to face or through video conferences in the period November 2015 – February 2016 and consisted of seven questions and two rating evaluations on the mentioned topics.

Business Ethics
One must think of a business as a well-oiled machine, where a minimum failure or mistake can bring about the downfall of the whole entity. Hence it is important to understand the role of proper ethical behavior at the core of every process and interaction between the entity and any internal or external agents.
As Ethics refer to conduct, it might be implied that it is merely an individual process, but history has taught us that even management is highly responsible for the ethical decisions that take place in everyday activities. So we have mainly two influences at work: the

working environment which provides the guidelines and the employees that will adapt their moral behavior to it.

A Code of Ethics (McNamara, 2016) is a tool that specifies the ethical rules of operation within a company highlighting what is to be avoided. A Code of Conduct is a set of conventional principles and expectations that are considered binding on any person who is a member of a particular group. A Code of Conduct can be regarded either as a mask to cover for corrupt practices in a company or the golden key to enhance corporate productivity, credibility and profitability. It becomes a central guide and a reference to support employees in their everyday decision making (Biegelmann, T. and Barlow, 2012). It will help to clarify an organization's mission, values and principles, linking them with standards of professional conduct.

A Code of Ethics and/or Conduct by itself isn't enough to help a company develop proper business ethics savoir-faire. In this case a proper ethical guidance might look pretty, but an organization could be sued for breach of contract if its practices are not according to its policies.

Quality Management is a very important tool that a business can count on in order to help implement a Code of Conduct along with policies and procedures. By diligently following the ISO 9000 standard, for example, a company will achieve most effective tools in the prevention of quality problems as well as potential product liability incidence (Finlay, 1992; Bläsing, J., 1992).

Legal Liability

So now we're moving from the realm of Business Ethics to the more specific realm of Legal Liability. International Product Liability is the inevitable consequence of the need for global trade and the necessary protection of individual consumer rights. Consumers have suffered personal injuries, property damages and economic losses occasioned by defective products manufactured, distributed and sold in more than one country (Andre, Claire and Velasquez Manuel, 1991). International bodies and national courts have struggled with this problem with little overall success. Harmonisation of law and practice – currently struggled for in Europe – may eventually bring solutions (by 1997 all 15 Member States of the European Union except France had harmonized their rules to the extent required by the Product Liability Directive 374/85/EEC of the European Union.).

International Product Liability has emerged particularly with the increased number of multinational co-operations that appear to have no physical boundaries and are not always effectively controlled by the laws of the statuses of incorporation. The growth of international trade fired by the entrance of IT based trade in the international markets has made foreign companies and foreign consumers aware of the dangers inherent in the use of the many products that travel internationally. In addition, the relative ease of moving people and products abroad has encouraged litigation in the product liability area at home and abroad (Freedman, 1990).

Corporations must fully understand the legal aspects of product liability in the U.S. and abroad and must find in-house ways to ensure their own future. They will have to institute effective programs and safeguards to avoid future legal actions and possible losses.

Some of the world's most common aspects of product liability are listed in Table no. 1.

Table no. 1 Product liability aspects

Nr. crt.	Product liability aspect	Description	Law reports/references
1.	**Reasonable care**	The first general rule of liability in all non-contractual cases, namely for suppliers and producers of goods is that they must take "reasonable care" to ensure the safety of the goods for those likely to use them. Failure to take such care is the wrong, or tort of negligence	The duty of 'reasonable care' is sometimes reinforced by the criminal law, as under the Health and Safety at Work-Act (1974)
2.	**Safety of material**	The producer of raw materials will have to ensure that his employees observe certain precautions, if not the producer will be liable to them in damages. If the producer sells the materials for others to use, he will have to make sure that they are packed as safely as reasonably practicable and that the user has adequate information for their proper use. Sometimes it is feasible and necessary to simply ban or withdraw an exceptionally dangerous product from the market	Hawes (1952)
3.	**Safe Design**	From dangers created by the extraction or processing of materials, it is a short way to those resulting from defective design or construction. The designer's objective has to be that of ensuring that materials are reasonably safe in the circumstances of their likely use	Gallant vs. Beitz (1983)
4.	**Research**	The manufacturer is obliged to keep up to date through conducting continuous research into safety aspects of his products; in particular to seek, and respond to, information from users as to operating hazardous side effects of medication, etc.	Bayer will rely on the ruling in Girdler v. SE Kent (1997)with a similar problem area
5.	**Recalls**	The manufacturer, who recalls his goods or modifies or even withdraws them, does not thereby admit liability for them. He might, for example, have been prompted to take remedial action by some unforeseeable accident for which he would not be liable and his action might serve only to downplay his anxiety to ensure that no such accident should happen again	Walton v. British Leyland (1978) The Times
6.	**Obvious**	A fault can very hardly be seen in the	An excellent

	dangers	questions of liability or injury caused by dangers which are or are ought to be obvious to the user. Of course, there must be a point at which a risk is so obvious, that there can be no ground for complaint, as when one hits one's thumb with a hammer or cuts oneself when shaving. These products were fit for their normal purposes and without any risk other than those plainly inherent in their use. It is different when a machine is one in which its design disregards the basic safety principles (e.g., a motor lawn mower with sticking out rotating blades.	illustration of the problem is provided by the English case of Crow v. Barford (1963)
7.	**Durability**	Nobody expects manufacturers to produce gear which will never wear out, nor suffer from the consequences of wear and tear. What matters is whether the goods were reasonably safe when first sold and used	Henningsen v. Bloomfield Motors (1960)
8.	**Packaging**	Design liabilities extend to the safety of packaging, e.g., provision of containers which do not break, or leak, or open too easily, particularly when they may be harmful to children, or others ignorant of their contents	Samways vs. Westgate (1962)
9.	**Advice and warning**	The kind of information a manufacturer must give, varies with a product (such as details, the various hazards, precautions and warnings). Different levels of information may be necessary for different purposes, and different classes of users	Eidenmüller, Rose and Bittner Capelle (2014)

Source: authors

According to the prevailing claims-handling practice in Europe, most product liability claims are settled without the initiation of a lawsuit. Compared to the situation in the U.S., product liability court decisions are relatively rare and the few decisions available form factual, but no legal precedence (except in the U.K.).

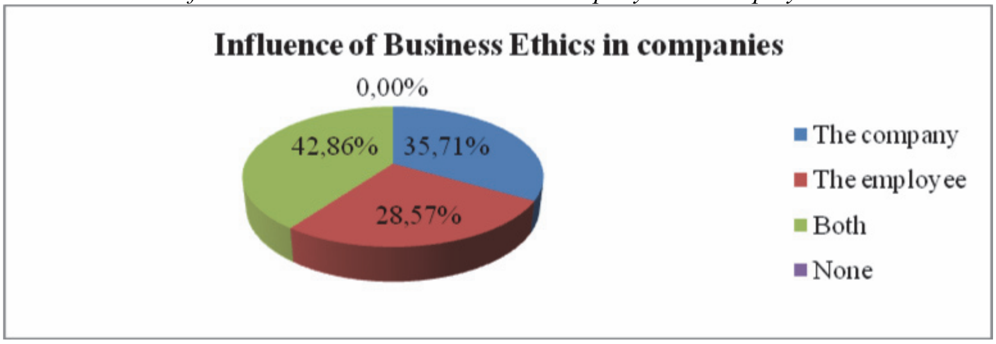
Companies slowly began to recognize the demand for and the importance of selling high quality products eventually triggering the Total Quality Management effort (Kassebohm and Malorny, 1994). During all this focus on improved quality, the whole area of product liability and the numerous lawsuits involved had grown out of control in the United States. Numerous manufacturing corporations went out of business because of the impact of multiple product liability lawsuits even with a certifiable quality programme in place.

Product liability prevention shed a totally new light on quality programs. As manufacturers successfully learned to track quality costs, losses due to scrap, reverse, warranty and other areas of failure, they at first neglected to tract other key financial line items, such as insurance or liability costs (see Davis v. Gibson Products Co., 68 N.J. 1, 342 A. 2d 181, 184).

There is no golden set of rules to assure a perfect, pure and chaste way of doing business; there will always be mistakes taking place, corruption or lack of commitment from be the personnel of a company, its shareholders, the government,..., the list can go on forever.
In spite of this realization, we have found some interesting answers along the way. Even though there is no statistical data gathered to this date to prove once and for all lawsuits can be avoided by businesses that apply a Global Ethic code, a Code of Conduct, diligently implemented along Total Quality Management steps (e.g.: guidelines, prevention teams etc.) reduces the risk of a lawsuit considerably.

Results
The results of the investigation were measured based on the questionnaire during the interviews. Question number 5a targeted the US managers, while 5b was answered by the UK and EU managers.

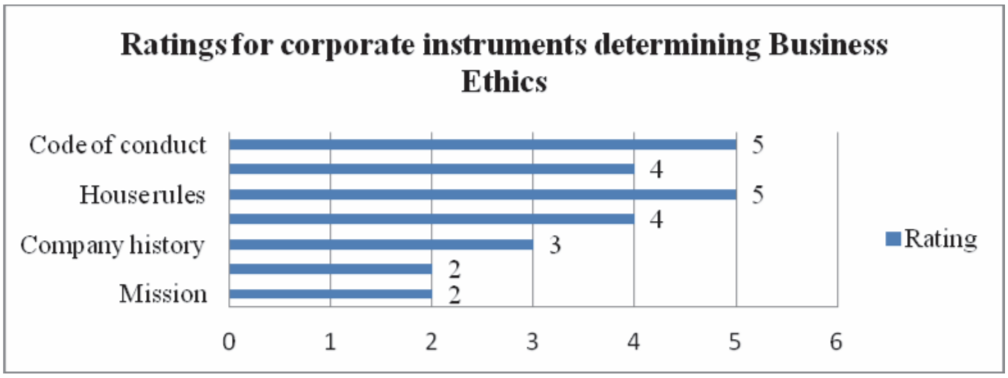
1. Which can influence business ethics more: the company or the employee?



Source: authors

Almost 43% of the interviewees have answered that both employees and the company policies, history and culture are responsible for Business Ethics. Around 36% of the managers agreed that companies influence Business Ethics through their mission statement, vision, historical background and the way they measure performance.

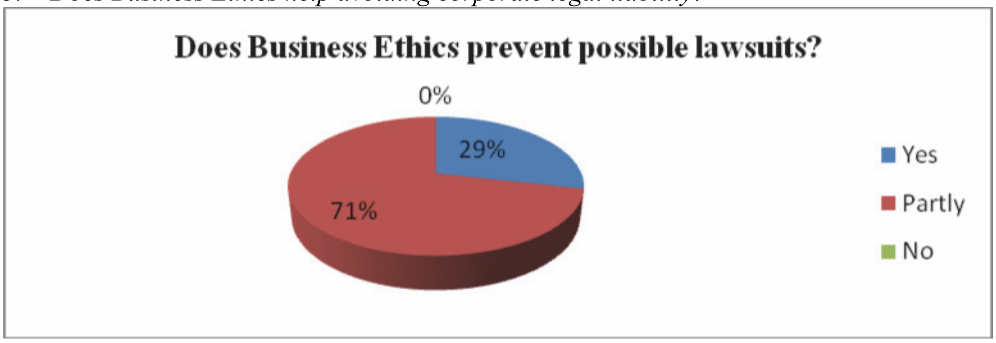
2. Please rate from 0 to 5 the following instruments that can be used by companies in order to provide proper Business Ethics: mission, vision, company history, performance measurements, house rules, code of ethics or a code of conduct.



Source: authors

The top instruments used to define Business Ethics in a company were the code of conduct and the house rules and with a rating of 4 out of 5 the code of ethics and performance measurements.

3. Does Business Ethics help avoiding corporate legal liability?



Source: authors

In order to avoid any legal liability, legal departments should review codes of conduct and other ethic policies. This is why it is critical for organizations to review their policies at least once a year to ensure they are in accordance with laws and regulations.

4. Please rate from 0 to 5 the following employees as candidates recommended for the product liability team that focuses on avoiding law suits: Human Resources Manager, Logistics Manager, CEO, Head of Sales, Head of Procurement, Head of Finance, Head of Engineering, Head of Technology, Risk Manager, Head of Quality Management.

Source: authors

The managers considered these candidates arguing as follows:

a) the head of quality management: product liability is closely related to the quality system and a product liability incident is logically the ultimate quality failure of a product;
b) the risk manager: in most cases the risk manager will already have filled the role of the in-house product liability expert;
c) the head of technology: when a company first learns of a technical failure of its product in the field, this individual has the most in-depth technical knowledge of the product's abilities as well as those of the component parts, especially in the area of electrical or electronic products. In addition, the individual can become a well-trained expert witness in a trial environment;
d) the head of engineering: engineering is commonly the first department ever involved in the product liability prevention effort, although typically from the product perspective as it relates to design, labels or other product safeguards;
e) the head of finance: whether the company carries liability insurance or is self-insured, the head of finance will normally control the expenses and typically serve as the main contact with the insurance carrier.

5a. *Are consumer safety regulations considered in the EU?*
All the European interviewees considered that consumer safety regulations are at a steady rise in the European Union. The current focus is on banking and capital market provisions but generally giving consumers more and more protection against designers, producers and retailers of faulty and harmful products.
5b. *Are product liability standards harmonized in the US?*
The US managers have answered that in the US there is still much to achieve by further harmonizing product liability standards as regulated in the Uniform Commercial Code, Article 2. Most states have adopted all of these UCC regulations concerning product liability in the field of sales of goods but some still go on different routes.

6. Are consumer and product safety measures standardized globally?
To resume the discussions with the managers, unfortunately there is no global standardization at the moment. Consumer and product safety measures and definitions differ widely, depending on the influence of EU legal sources, common law standards as

implemented by the USA or UK/ Commonwealth dominated countries, especially in Asia and Africa.

7. How are consumers protected in terms of service liability?
At the moment, managers answer that consumers are not protected from service liabilities. However, litigation possibilities for consumers in the EU will balloon when and if the plans mature to introduce service liability in direct analogy to the overcome product liability criteria.

8. Is there any perspective on standardizing safety in terms of products, services and manufacturing?
The interviewees have answered that product safety and a whole bunch of standards that will be harmonized touching on everything from the definition of 'defect' to 'compensation' will be part of the Transatlantic Trade and Investment Partnership, TTIP, the prospective largest Free Trade Zone of the world. Negotiations of numerous chapters have just begun and will change the product liability universe through changes in newly defined standards for products, services and manufacturing.

Conclusions
As a conclusion, it can be said that even though this topic is only the tip of the iceberg, there is much yet to be researched on this particular subject. The support of many is needed in order to understand even better the subtle, yet very imperious relationship between Business Ethics, Product Liability and Business Transactions.
As the litigious nature of society grew and personal injury awards, as well as punitive damages continued to grow to heights never seen before, it became a real necessity for corporations to focus on product liability prevention and incorporate it into their quality programme and effort (Whincup, 1999). If for some reason, it is needed to go to court, it is recommended for companies to have a product liability team that should consist of up to five members with focus on a long term work relationship. This team, along with a Total Quality Management team will provide the necessary effort to avoid a product liability issue in a company.
The responsible parties for corporate Business Ethics are both the company and the employees that mostly follow the company's house rules and code of conduct. Quality and Assurance, Risk, IT, Engineering and Finance departments are the most relevant cabinets for the implementation of a successful Business Ethics program. And it is so that Business Ethics applied from a TQM perspective will prevent to a certain extent any foreseeable product liability issue for a company.
When it comes to Business Ethics, one could summarise it in a simple expression: *'Walk your Talk'* and *'Don't strive to do what you can do but rather strive to do what you should do'*. This is the gist of all compliance rules and Corporate Governance frameworks (from the extremely strict measures of the US Sarbanes Oxley Act to the more allowing and voluntary German Corporate Governance Codex), namely the promise to obey all external and internal rules and regulations and thus to avoid as good as possible damaging effects on third parties. This applies to manufacturing processes just as well as to service providing or customer relations. Therefore an ethical approach helps considerably in minimizing product liability risks.

All these developments are showing their potential for coming legal and business debates. However they will not do away with the basic guidelines identified in this work to minimize legal and business risks stemming from product liability issues.
The authors are looking into performing another full-scale global research on this particular subject, but with international cooperation between companies, legal advisors, business scholars, colleges, and so on, to begin creating a global guideline that could at some point become a structure and guidance for corporations in all branches and in any country in the world.

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