
William M. Musser III
youth is stigmatized as a "criminal" because he has been found to be a delinquent, or (3) burden the juvenile courts with a procedural requirement which will make juvenile adjudications significantly more time consuming or rigid.\textsuperscript{17}

The cautious manner in which the Court is proceeding into the area of juvenile rights at hearings indicates that it recognizes the beneficial aspects of the present juvenile court system as well as its need for improvement. The Court seems determined to preserve those aspects of the juvenile hearing which it considers necessary for rehabilitation while at the same time providing the safeguards of criminal procedure which it considers essential to due process.

DENNIS L. BECK


Plaintiffs in this case were employees, and the survivors of employees of the New York City Bureau of Sewage Disposal who had been injured or killed in an unsuccessful attempt to rescue John J. Rooney\textsuperscript{1} from a sewer tunnel filled with lethal hydrogen sulfide gas. Rooney was suffocating and in need of aid because of a defect in the gas mask he was wearing in the tunnel.\textsuperscript{2} The mask had been manufactured by the defendant.

The rescuers or their survivors sought damages for wrongful death and personal injuries. The trial court found the manufacturer liable; the Appellate Division\textsuperscript{3} and Court of Appeals of New York affirmed.\textsuperscript{4} The Court of Appeals held the manufacturer liable to the rescuers under

17. 90 S. Ct. at 1078.


the "danger invites rescue" doctrine because the danger which resulted in the injuries and deaths was created by the defendant's breach of warranty.

Historically, liability for breach of warranty required privity of contract. This requirement, however, is being abolished by an increasing number of courts. In the leading case of *Henningsen v. Bloomfield Motors, Inc.*, the New Jersey Supreme Court found the manufacturer of a new car liable for personal injuries to the wife of the purchaser sustained as a result of a defective steering mechanism. The court held that regardless of privity, an implied warranty of merchantability from the manufacturer and dealer extended to the purchaser, members of his family, other persons occupying the car, and users. After *Henningsen*, the privity requirements for breach of warranty actions were eliminated in a number of states. The manufacturer's liability was extended to purchasers and users on the basis of breach of implied warranty, liability in tort, or a combination of the two.

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5. The "danger invites rescue" doctrine permits an injured rescuer to recover damages when, as a result of defendant's negligence, an emergency situation was created which imperiled his life or the lives of others. The doctrine allows a rescuer to recover regardless of contributory negligence, as long as he did not act in a reckless manner. "Danger invites rescue. The cry of distress is the summons to relief. . . . The wrong that imperils life is a wrong to the imperiled victim; it is a wrong also to his rescuer." Wagner v. International Ry., 232 N.Y. 176, 180, 133 N.E. 437 (1921). See Eckert v. Long Island R.R., 43 N.Y. 502 (1871).


9. 161 A.2d at 100 The *Henningsen* court gave the following reasons for extending liability:

   Accordingly, we hold that under modern marketing conditions, when a manufacturer puts a new automobile in the stream of trade and promotes its purchase by the public, an implied warranty that it is reasonably suitable for use as such accompanies it into the hands of the ultimate purchaser.

   161 A.2d at 84. See also 75 Harv. L. Rev. 630 (1961).


   1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer is subject to liability for physical harm
In New York, the effect of *Henningsen* was apparent in *Goldberg v. Kollsman Instrument Corp.* There the court held the manufacturer of an airplane containing a defective altimeter liable to the passenger’s parents in an action for wrongful death on the combined theories of breach of implied warranty and strict liability. Neither *Henningsen* nor *Goldberg*, however, extended protection to bystanders or other persons affected by the defect.

Protection to third parties was first extended in *Piercefield v. Remington Arms Co.*, in which the Supreme Court of Michigan allowed a bystander to recover damages for personal injuries from the manufacturer for breach of an implied warranty of merchantability. The court reasoned that the manufacturer is in the best position to correct defects which endanger the public.

Subsequent decisions extending the liability of the manufacturer to bystanders have been based on implied breach of warranty, strict liability in tort, or a combination of both.

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2. Id.
3. Id. at 436, 191 N.E.2d at 82, 240 N.Y.S.2d at 594. The court refused to hold defendant Kollsman liable because the assembler’s liability provided “adequate protection” to the passengers even though Kollsman manufactured the defective altimeter and Lockheed merely installed it in its plane. Id. at 437, 191 N.E.2d at 83, 240 N.Y.S.2d at 595.
4. 375 Mich. 85, 133 N.W.2d 129 (1965) (plaintiff’s injuries were caused by a defective shotgun shell).
5. Id. at 136.
6. Id. at 134.
The facts of the instant case caused the court no difficulty in accepting breach of warranty as the basis for its decision. The result might be otherwise, however, in a different fact situation because of certain incongruities between breach of warranty and tort liability. The Uniform Commercial Code requires an injured party to give notice of a breach of warranty within a reasonable time after learning of the breach before damages may be recovered.21 Under tort theory, however, notice of a breach is not required.22 The Code allows disclaimer of any warranty, express or implied, by use of appropriate language,23 but because disclaimer is a contract device, it is not a valid defense in a tort action.24 The U. C. C. usually requires a “sale” of the defective goods,25 but no sale is required under tort law for liability to attach.26 Furthermore, under the Code the statute of limitations for breach of warranty actions is four years,27 and the period is computed from the time the breach occurs which is most often “when tender of delivery is made.” 28 Statutory periods for tort actions are generally shorter than the four year Code limitation, and a tort cause of action accrues when the injury occurs,29 not when the goods are tendered.

The Guarino decision represents a developing trend of extending liability to include bystanders who are affected by defective goods.30

21. UNIFORM COMMERCIAL CODE § 2-607 (3) (a).
23. UNIFORM COMMERCIAL CODE § 2-316.
30. Some states have extended liability to persons affected by the goods by adopting anti-privity statutes.

Lack of privity . . . shall be no defense . . . for breach of warranty . . .
if the plaintiff was a person whom the manufacturer or seller might reasonably have expected to use, consume, or be affected by the goods . . . .
VA. CODE ANN. § 8.2-318 (Added Vol. 1965). See generally Speidel, The Virginia
In so holding, the Court of Appeals believed that the theory of the action, whether breach of warranty or negligence, was unimportant in a "danger invites rescue" situation. Previous litigation and the significantly different bases of liability, however, indicate that some distinction between warranty and tort theory is desirable. Indeed, some members of this court cautioned that the holding should be limited to similar factual settings as were present in Guarino lest injustice result from abuse of the remedy of breach of warranty.

WILLIAM M. MUSSER, III


Maclin Davis, a fifty percent stockholder in a closely held corporation, made an additional capital contribution in exchange for preferred stock to enable the corporation to qualify for a loan. The stock was redeemed.


1. Davis and his wife each owned twenty-five percent of the issued common stock.
2. The company believed that it needed to present a better position on the balance sheet for the purposes of loan qualification. Once the anticipated loan was repaid, Davis was to be reimbursed via the redemption of the preferred stock.