[William & Mary Law Review](https://scholarship.law.wm.edu/wmlr)

Volume 8 (1966-1967)
Issue 4

Article 13

June 1967

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Repository Citation

John B. Gaides, *Sales - Implied Warranty of Fitness - An Interpretation of U.C.C. 2-318. Miller v. Preitz, 422 Pa. 383 (1966)*, 8 Wm. & Mary L. Rev. 694 (1967), https://scholarship.law.wm.edu/wmlr/vol8/iss4/13

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Sales—IMPLIED WARRANTY OF FITNESS—AN INTERPRETATION OF U. C. C. 2-318. In *Miller* v. *Preitz*,[1] an administrator, representing a deceased nephew of a party who purchased a vaporizer-humidifier which squirted hot water on the nephew causing his death, sought to recover in assumpsit from the manufacturer and the retailer under the provisions of Uniform Commercial Code 2-318.[2] The lower court[3] entered judgment for the defendants on their demurrers to the plaintiff-administrator's complaint. On appeal, the Supreme Court of Pennsylvania held that the lower court had erred in sustaining the demurrer of the defendant-retailer. The court ruled that the nephew was a natural person who was in the family of his buyer, and, as such, was within the provisions of Uniform Commercial Code 2-318. Therefore, the decedent's administrator had stated a cause of action against the retailer of the product despite the decedent's lack of privity of contract; however, the court found that the decedent was not entitled to the benefit of any warranty, express or implied made by the remote seller since the nephew was not the buyer.

At Common Law, a manufacturer or wholesaler was not liable to a remote purchaser for either negligence or omission unless privity of contract between the parties existed.[4] As commerce grew in complexity and volume, the injustice of this rule became apparent and the courts sought to circumvent the requirements of privity with a variety of fictions. The most common device employed to attain the ends of justice was the implied warranty of merchantability or fitness for purpose.[5] Warranty, however, has been defined as "A freak hybrid born of the illicit intercourse of tort and contracts" [6] and the application of this fiction has met with many difficulties. Action on implied warranty

1. 422 Pa. 383, 221 A.2d 320 (1966). The complaint contained two counts. The first count was brought under the Wrongful Death Statute and the second under the Survival Statute. The court held that the first count could not be sustained in assumpsit but must be brought in tort, however, the second count faced no similar procedural obstacle and was properly brought.

2. UNIFORM COMMERCIAL CODE 2-318: "A sellers warranty whether express or implied extends to any natural person who is in the family or the household of his buyer or who is a guest in his home if it is reasonable to expect that such a person may use, consume or be affected by the goods and who is injured in person by breach of warranty. A seller may not exclude or limit the operation of this section."

3. Court of Common Pleas, Bucks County, No. 578, January Term (1963).

4. Winterbottom v. Wright, 10 M. & W. 109, 152 Eng. Rep. 402 (1842).

5. MacPherson v. Buick Motor Co., 217 N.Y. 382, 111 N.E. 1050 (1916); for a discussion of warranty see, Prosser, *The Assault Upon the Citadel (Strict Liability to the Consumer)*, 69 YALE L. J. 1099, 1100 (1960).

6. Prosser, *supra* note 5, at 1126.

may sound either in tort or contract. The tort action has been highly developed and defined and the requirement of privity in this area has been almost entirely eliminated.[7] The action sounding in contract has not been as frequently utilized and thus is not as highly developed as the tort action. Thus, in most jurisdictions the requirement of privity between the parties is still in force in contract actions.[8]

However, recent decisions and the adoption of the Uniform Commercial Code by a large majority of the states have thrown the requirement of privity in the contract sphere open to review. The Uniform Commercial Code 2-318 has eliminated the necessity of privity as between the seller and remote users, if such users are in the family or household of the buyer, or are guests in his home.[9]

With the exception of the strict seller's liability imposed by the Uniform Commercial Code, the majority of jurisdictions retain privity between the parties as a necessary prerequisite for recovery against the manufacturer of a defective product.[10] However, many courts which refuse to enforce breach of warranty in the absence of privity will make exceptions when the defective article is dangerous to human life or health,[11] or when the public has been induced to purchase the article in reliance upon the manufacturer's advertisements.[12] A substantial number of courts have dispensed with privity when impure food and beverages are involved,[13] and Pennsylvania is one of the exponents of this rule.[14] Only a few jurisdictions have extended liability to products other

7. Thomas v. Winchester, 6 N.Y. 397, 57 Am. Dec. 455 (1852); MacPherson v. Buick Motor Co., *supra* note 5.

8. Young v. Aeroil Products Co., 248 F.2d 185 (C.A. 9th Cir. 1957); Kennedy v. Brockelman Bros., Inc., 334 Mass. 225, 134 N.E.2d 747 (1956); Odem v. Ford Motor Co., 230 S.C. 320, 95 S.E.2d 601 (1956); Lombardi v. California Packing Sales Co., 83 R.I. 51, 112 A.2d 701 (1955); H. M. Gleason & Co. v. International Harvester Co., 197 Va. 255, 88 S.E.2d 904 (1955).

9. See UNIFORM COMMERCIAL CODE 2-318 cited note 2, *supra*.

10. Cases cited note 8 *supra*.

11. Markovich v. McKesson & Robbins, Inc., 106 Ohio 265, 149 N.E.2d 181 (1958); Graham v. Bottomfield's, Inc., 176 Kan. 68, 269 P.2d 413 (1954); Worley v. Procter & Gamble Mfg. Co., 241 Mo. 1114, 253 S.W.2d 532 (1952); Simpson v. American Oil Co., 217 N.C. 542, 8 S.E.2d 813 (1940).

12. Worley v. Procter & Gamble Mfg. Co., *supra* note 11; Mannsz v. Macwhyte Co., 155 F.2d 445 (C.A. 3rd Cir. 1946); Lardaro v. M. B. S. Cigar Corp., 177 N.Y.S.2d 6 (1957).

13. Collum v. Pope & Talbot, Inc., 135 Cal.App.2d 653, 288 P.2d 75 (1955); Taffin v. Great Atlantic & Pacific Tea Co., 18 Ill.2d 48, 162 N.E.2d 406 (1959); Miller v. Louisiana Coca Cola Bottling Co., 70 So.2d 409 (La. 1954); LaHue v. Coca Cola Bottling, Inc., 50 Wash.2d 645, 314 P.2d 421 (1957).

14. Nock v. Coca Cola Bottling Works, 102 Pa. Super. 515. 156 A. 537 (1931).

than food, even though "no valid reason appears for distinguishing between food cases and others so far as the privity requirement is concerned." [15]

Henningsen v. *Bloomfield Motors*[16] was one of the first cases to extend strict liability beyond food products. The court held that despite the plaintiff's lack of privity the seller and the manufacturer are both liable for breach of implied warranty if the defective product is dangerous to life and limb. Since 1960, courts in twenty states[17] have applied the liberal rule as stated in the *Henningsen* case, but there is some doubt whether all of these jurisdictions have completely accepted the doctrine. The law in this area is still developing.

The ruling in the principal case is founded primarily on *Hochgertel* v. *Canada Dry Corporation*[18] which held that an employee of a purchaser was not within the provisions of Uniform Commercial Code 2-318, and therefore was precluded from maintaining an action against the manufacturer due to the want of privity. The court chose to limit the benefits of Uniform Commercial Code 2-318 on the basis of the dicta in the *Hochgertel* case[19] instead of applying the more liberal view adopted by other courts.[20] While the vigorous dissents in the principal case may indicate that the court's holding is not unanimous, the Pennsylvania rule seems to force the plaintiff to sue in tort if he wishes to recover from a remote manufacturer. Thus, it is apparent that the principal case greatly limits the benefits of Uniform Commercial Code 2-318. The Pennsylvania court's refusal to extend the benefits of strict liability conferred by Uniform Commercial Code 2-318 will undoubtedly serve to limit the developing case law[21] in other jurisdictions which have

15. James, *Products Liability*, 34 TEXAS L. REV. 196 (1955).

16. 32 N.J. 358, 161 A. 2d 69 (1960).

17. Henningsen v. Bloomfield Motors, Inc., *supra;* Canada Dry Bottling Co. v. Shaw, 118 So. 2d 840 (Fla. 1960); Savada v. White Motor Co., 32 Ill. 2d 612, 210 N.E. 186 (1965); Spence v. Three Rivers Builders & Masonry Supply, Inc., 353 Mich. 120, 90 N.W. 2d 873 (1958); Rodgers v. Toni Home Permanent Co., 167 Ohio 244, 147 N.E.2d 612 (1958).

18. 409 Pa. 610, 187 A.2d 575 (1963).

19. *Id.* at 578.

20. Jarnot v. Ford Motor Co., 191 Pa. Super. 422, 156 A.2d 568 (1959); Mannsz v. Macwhite Co., *supra* note 12; Pritchard v. Liggett & Meyers Tobacco Co., 134 F. Supp. 829 (D.C. Pa. 1955); Thompson v. Reedman, 199 F.Supp. 120 (D.C. Pa. 1961). *But* see, Atlas Aluminum Corp. v. Borden Chemical Corp., 233 F. Supp. 53 (D.C. Pa. 1964).

21. The comment to UNIFORM COMMERCIAL CODE 2-318 states that "the section is neutral and is not intended to enlarge or restrict the developing case law on whether

been reluctant to abandon the privity requirement. In addition, the holding in *Miller* v. *Preitz* will promote multiple litigation, in as much as the seller, who is held strictly liable, is forced to sue in order to recover his loss from the manufacturer. The liabilities of this strict interpretation of the Uniform Commercial Code 2-318 are patently obvious.[22]

John B. Gaidies

Torts—Landlord and Tenant. Respondent Bisson, a tenant of Langhorne Road Apartments, slipped and injured himself on a snow and ice covered common walkway. Attempts had been made by the landlord to clear the walk throughout the day. On a motion for judgment by the tenant, a jury found him free of contributory negligence and the Corporation Court entered judgment on the verdict for the tenant. The cause was brought on error to the Supreme Court of Appeals of Virginia.[1] The Appellate Court in affirming the decision held that in the absence of a statute or agreement, it is the duty of the landlord to remove natural accumulations of ice and snow from common passageways.

Although this is a case of first impression in Virginia, the issue of whether snow and ice removal is included in the landlord's general duties has appeared in several jurisdictions. Three approaches have emerged:[2]

(1.) the Massachusetts rule which places no duty on the landlord to remove ice and snow;[3]
(2.) the Connecticut rule which imposes a duty to remove the accumulations;[4] and

the seller's warranties, given to his buyer who resells, extend to other persons in the distributive chain."

22. For an interesting perspective of the 1966 session of the Pennsylvania Supreme Court see the dissent in Webb v. Zern, 422 Pa. 424, 220 A.2d 853 (1966). The dissenting justice opposed the court's adoption of Restatement 402-A as law in Pennsylvania. He maintained that this decision in conjunction with the many other decisions overruling the previous law passed down by the court in 1966, jeopardizes stare decisis.

1. Langhorne Road Apartments, Inc. v. Bisson, 207 Va. 474, 150 S.E. 2d 540 (1966).

2. These rules apply when the landlord has not by contract assumed the duty of removal, when he has not impliedly assumed the duty by past removals, and when the accumulation of snow and ice is natural and not artificial.

3. Woods v. Naumkeag Steam Cotton Co., 134 Mass. 357, 45 Am. Rep. 344 (1883); Boulton v. Dorrington, 302 Mass. 407, 19 N.E. 2d 731 (1939).

4. Reardon v. Shimelman, 102 Conn. 383, 128 A. 705, 39 A.L.R. 287 (1925).