Knox v. North American Car Corp.: Re-Examination of Privity of Contract in UCC Implied Warranty Actions

Barbara Stuetzer
**Knox v. North American Car Corp.: Re-Examination of Privity of Contract in UCC Implied Warranty Actions**

**INTRODUCTION**

Products liability law and strict liability in tort\(^1\) have grown rapidly in the past fifteen years. A key factor in this development has been the erosion of the doctrine of privity of contract as a requisite to recovery by a user of a defective product in actions against a remote manufacturer. The doctrine retains viability in warranty actions by non-purchasing users of the defective product. In *Knox v. North American Car Corp.*,\(^2\) the Illinois Appellate Court affirmed the doctrine by holding that an employee of a consignee of a leased railroad boxcar lacked the requisite privity to qualify as a third party beneficiary of an implied warranty in an action filed under the UCC.\(^3\)

This article will analyze the doctrine of privity in Illinois and evaluate its retention in products liability actions for breach of warranty. The exceptions to the doctrine that developed to alleviate the often harsh results accompanying its application will then be discussed. Next, *Knox* will be examined in light of the doctrine as it has been applied in similar actions for products related injuries. The article will then analyze the doctrine as a requisite to recovery for breaches of the UCC's implied warranty provisions by non-purchasing users who have sustained personal injuries from a defective product. Finally, this article will recommend that foreseeability be substituted for privity as a limitation on recovery in third party beneficiary actions filed pursuant to UCC §2-318.\(^4\)

---

1. The products liability explosion began with *Suvada v. White Motor Co.*, 32 Ill. 2d 612, 210 N.E.2d 182 (1965), in which the court adopted the theory of strict liability in tort. For an explanation of the development of this theory, see, notes 28 through 30, infra, and accompanying text.
3. *Id.*
4. UCC §2-318 exists in three alternative forms. Alternative A provides:
   A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not
Privity—Generally

Background

Confusion and controversy surround the doctrine of privity in personal injury actions for breach of warranty. Much of this confusion stems from the dual nature of warranty actions. Courts have analyzed warranty actions in terms of tort principles (based on theories of negligence or strict liability) or contract principles (based on common law breach of warranty or violations of warranty provisions contained in the UCC). Courts frequently fail to distinguish tort from contract principles in analyzing warranty

exclude or limit the operation of this section.

This provision has been adopted in a majority of jurisdictions, including Illinois (see, Ill. Rev. Stat. 1977, ch. 26, §2-318). Two jurisdictions, California and Utah, omitted Alternative A entirely when the UCC was enacted. Maine, Massachusetts, New Hampshire, New York, Rhode Island and Virginia have extended protection to a reasonably foreseeable user through legislative amendment to §2-318. Connecticut, Texas and Pennsylvania have judicially eliminated the privity requirement.

Alternative B provides:

A seller’s warranty whether express or implied extends to any natural person who may reasonably be expected to use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.

Alternative B incorporates foreseeability as the standard for determining the scope of a manufacturer’s liability for personal injuries resulting from defective products. (Emphasis added). Alternative B has been adopted in eight jurisdictions: Alabama, Colorado, Delaware, Kansas, South Carolina, South Dakota, Vermont and Wyoming.

Alternative C provides:

A seller’s warranty whether express or implied extends to any person who may reasonably be expected to use, consume or be affected by the goods and who is injured by breach of the warranty. A seller may not exclude or limit the operation of this section with respect to injury to the person of an individual to whom the warranty extends.

Alternative C extends protection to foreseeable users and includes within its scope actions for economic loss and actions for personal injuries. Alternative C has been adopted in four jurisdictions: Hawaii, Iowa, Minnesota, and North Dakota.

Alternative A represents the original text of UCC §2-318. Alternative B was “designed for states where the case law has already developed further and for those that desire to expand the class of beneficiaries.” U.C.C. §2-318, Comment 3. Alternative C was designed to reflect the modern trend embodied in Restatement (Second) of Torts §402A (1965). Id. Horizontal privity is at issue only in those jurisdictions which have adopted Alternative A.


6. For an example of this mode of analysis, see, Rhodes Pharmacal Co. v. Continental Can Co., 72 Ill. App. 2d 362, 219 N.E.2d 726 (1st Dist. 1966)(recovery permitted by third party user from remote manufacturer of aerosol cans for property damage resulting from leakage of cans on the theory that the user was a third party beneficiary of the contract).
actions.\textsuperscript{7}

The key distinction between tort and contract actions is the nature of the interests protected. Principles of tort law protect the interest in freedom from risk of injury.\textsuperscript{8} Tort actions are predicated on the existence of a duty, the breach of which gives rise to a cause of action for damages. This duty is imposed on the basis of public policy irrespective of the intent of the parties.\textsuperscript{9}

Principles of contract law protect the interest in performance of promises created by mutual consent of the parties.\textsuperscript{10} The underlying purpose of contract law is to afford contracting parties the benefit of their bargain—to put them in the position they would have been in if the contract had been performed.\textsuperscript{11} This relationship arises from the mutual intent of the parties. Privity derives from the consensual nature of this relationship and embodies the concept that only parties to the contract may sue to enforce it. In contrast to tort actions, the mutual consent of the parties manifested in the contract defines the scope of liability.\textsuperscript{12}

Where a third party user who has sustained personal injuries attempts to enforce a contracting party's obligations, elements of tort and contract principles are combined. Courts, however, have been inconsistent in analyzing this situation. Consequently, warranty actions have been characterized as a "curious hybrid, born of

\begin{itemize}
\item \textsuperscript{7} Davidson, \textit{supra}, note 5. An employee sued to recover for personal injuries sustained from the explosion of a defective grinding wheel purchased from the defendant by his employer. The court concluded that the defendant, through the descriptions in its catalog, held itself out as a manufacturer and had assumed the attendant responsibility and obligations for injuries due to the defective condition of the product. \textit{Id.} at 367. The court held that the existence of these express warranties, together with the employer's reliance on them supported recovery. \textit{Id.} at 369. Supporting authorities cited by the court, however, speak in terms of foreseeability and misrepresentation. \textit{Id.} at 370-72. Consequently, it is unclear whether the court's holding is based on tort or contract principles.
\item \textsuperscript{8} The fundamental difference between tort and contract lies in the nature of the interests protected. Tort actions are created to protect the interest in freedom from various kinds of harm. The duties of conduct which give rise to them are imposed by the law, and are based primarily upon social policy, and not necessarily upon the will or intention of the parties.
\item \textsuperscript{10} Wade, \textit{Is Section 402A of the Second Restatement of Torts Preempted by the UCC and Therefore Unconstitutional?}, 42 Tenn. L. Rev. 122, 127 (1974).
\item \textsuperscript{11} \textit{Id.}
\item \textsuperscript{12} \textit{Id.}
\end{itemize}
the illicit intercourse of tort and contract, unique in the law."

Winterbottom v. Wright\(^{14}\) presented an early indication of the confusion inherent in personal injury warranty actions. A coachman sued to recover for personal injuries sustained when the mail coach he was driving broke down. He relied primarily on a contract between the contractor and the postmaster general whereby the contractor agreed to supply and maintain the coach. Although the action sounded in tort, the court sustained a demurrer, ruling that no action could be maintained on the contract by one who was not a party to it.\(^{18}\) Despite references to the "negligent" performance of the contractor's contractual duties and to "this action in tort" the holding was based on principles of contract law.\(^{16}\)

As a result of this decision, privity became firmly entrenched in

---


16. *Id.* at 403, 405. Lord Abinger noted:

By permitting this action, we should be working this injustice, that after the defendant had done every thing to the satisfaction of his employer, and after all matters between them had been adjusted, and all accounts settled on the footing of their contract, we should subject them to be ripped open by this action of tort being brought against him.

*Id.* at 405.

In a concurring opinion, Alderson, B. stated:

If we were to hold that the plaintiff could sue in such a case, there is no point at which such actions would stop. The only safe rule is to continue the right to recover to those who enter into the contract; if we go one step beyond that, there is no reason why we should not go fifty. The only real argument in favour of the action is, that this is a case of hardship; but that might have been obviated, if the plaintiff had made himself a party to the contract.

*Id.*

And, Rolfe, B., in a separate concurring opinion noted:

The duty [sought to be imposed on the contractor] . . . is shown to have arisen solely from the contract; and the fallacy consists in the use of that word, "duty."

If a duty to the Postmaster-General be meant, that is true; but if a duty to the plaintiff be intended . . . there was none.

*Id.*
tort law. The fear of unlimited litigation underscored adoption of the doctrine.\textsuperscript{17} Uniform acceptance of this limitation stemmed primarily from a desire to protect manufacturers from numerous and costly claims which would inhibit commercial development.\textsuperscript{18}

\textit{Privity in Illinois}

In Illinois, actions for breach of warranty have generally been regarded as actions \textit{ex contractu} requiring privity of contract.\textsuperscript{19} In warranty actions predicated on tort theories, however, courts have adopted the general rule that a contractor, manufacturer or vendor is not liable to third parties with whom he has no contractual relations.\textsuperscript{19.1} Due to the harshness of the doctrine courts developed numerous exceptions to circumvent privity as a requisite to recovery in breach of warranty actions.\textsuperscript{20} In conjunction with these deci-

\begin{flushleft}
17. There is not privity of contract between these parties; and if plaintiff can sue, every passenger, or even any person passing along the road, who was injured by the upsetting of the coach, might bring a similar action. Unless we confine the operation of such contracts as this to the parties who entered into them, the most absurd and outrageous consequences, to which I can see no limit, would ensue. \\
\textit{Id.}
\end{flushleft}

\begin{flushleft}
19. Paul Harris Furniture Co. v. Morse, 10 Ill. 2d 28, 139 N.E.2d 275 (1957).
20. One commentator has listed 29 such theories. \textit{See}, Gillam, \textit{supra}, note 14 at 153-55. For example, one court permitted recovery ruling that the actual purchaser of defective goods was acting as an agent of the plaintiff. \textit{See}, Singer v. Zabelin, 24 N.Y.S.2d 962 (1941).

The earliest exception to the privity doctrine occurred in actions to recover for personal injuries resulting from consumption of contaminated foods. Prior to Davidson v. Montgomery Ward & Co., 171 Ill. App. 355 (1st Dist. 1912), the Illinois Supreme Court held that lack of privity was not a defense in an action against the seller of food products for breach of an implied warranty of fitness and wholesomeness for consumption. Wiedeman v. Keller, 171 Ill. 93, 99, 49 N.E. 210, 211 (1897). The court based its holding on the principle that a warranty of fitness is implied at law for the protection of public health and safety. \textit{Id.} at 96, 49 N.E. at 210-11.

Subsequently, Illinois courts relied on public policy to expand the classes of beneficiaries entitled to warranty protection in food products cases. The class of beneficiaries expanded horizontally to include members of the purchaser's family, Welter v. Bowman Dairy Co., 318 Ill. App. 205, 47 N.E.2d 739 (1st Dist. 1943), and the ultimate consumer of the food product, Blarjeske v. Thompson's Restaurant Co., 325 Ill. App. 189, 59 N.E.2d 320 (1st Dist. 1945). Eventually, the manufacturer of an unwholesome food product was held strictly liable to parties not in privity of contract because the implied warranty of fitness for human consumption ran with the sale of the product. Patargias v. Coca-Cola Bottling Co., 332 Ill. App. 117, 74 N.E.2d 162 (1st Dist. 1947). Although this theory is based on contract principles, the court articulated underlying policy considerations which foreshadowed the adoption of strict liability in tort. The court noted that the manufacturer places a product in the stream of commerce with the expectation that a consumer will rely on its appearance as being suitable
sions, Illinois courts developed the theory that a manufacturer’s or seller’s implied warranty ran with the sale of the product.\textsuperscript{21}

In \textit{Davidson v. Montgomery Ward & Co.},\textsuperscript{22} the court recognized three exceptions to the general rule that a manufacturer is not liable to third parties absent privity. Privity was not required where the negligent act of the manufacturer or vendor caused risk of injury to the consumer; the negligent act of an owner caused injury to an invitee on the owner’s premises; and the vendor sold or delivered an article which he knew to be imminently dangerous without disclosing its dangerous qualities.\textsuperscript{23} The court in \textit{Rotche v. Buick Motor Co.},\textsuperscript{24} approved of the rationale in \textit{MacPherson v. Buick Motor Co.}\textsuperscript{25} and expanded the categories of exceptions to include inherently dangerous products.\textsuperscript{26} These exceptions were advanced primarily on public policy grounds—the manufacturer’s liability for personal injuries from defective products was imposed by law

\begin{enumerate}
\item for human consumption. \textit{Id.} at 131, 74 N.E.2d at 168-69. Furthermore, a manufacturer solicits the purchase and use of its product through extensive advertising and marketing techniques. \textit{Id.} Therefore, the court concluded that it would be inequitable to permit a manufacturer to rely on privity to escape liability. \textit{Id.}
\item In \textit{Suvada}, the court recognized that the policy justifications underlying abolition of privity as a defense in sale of food cases were equally compelling where personal injuries resulted from products other than contaminated food. \textit{Suvada v. White Motor Co.}, 32 Ill. 2d 608, 619, 210 N.E.2d 182, 186 (1965). This finding culminated in the adoption of strict liability in tort. Thus, the demise of privity of contract as a requisite to recovery in tort actions for breach of warranty was complete.
\item Patargias v. Coca-Cola Bottling Co., 332 Ill. App. 117, 133, 74 N.E.2d 162, 169 (1st Dist. 1947). “Where an article of food or drink is sold in a sealed container for human consumption, public policy demands that an implied warranty be imposed upon the manufacturer thereof that such article is wholesome and fit for use, that said warranty runs with the sale of the article for the benefit of the consumer thereof . . . .”
\item Id. at 364. The court declined to indicate if any of these exceptions supported recovery by an employee who sustained personal injuries from the explosion of a defective grinding wheel purchased by his employer.
\item 358 Ill. 507, 193 N.E. 529 (1934).
\item 217 N.Y. 382, 111 N.E. 1050 (N.Y. 1916).
\item Rotche v. Buick Motor Co., 358 Ill. 507, 517, 193 N.E. 529, 532 (1934). In \textit{Suvada v. White Motor Co.}, 32 Ill. 2d 612, 616, 210 N.E.2d 182, 184 (1965), the Illinois Supreme Court stated that \textit{MacPherson v. Buick Motor Co.}, 217 N.Y. 382, 111 N.E. 1050 (N.Y. 1916), “had expanded the concept that imminently dangerous articles such as explosives, poisons and other things which in their normal operation are implements of destruction, to the concept that any article negligently manufactured, which is reasonably certain to place life and limb in peril, is a thing of danger.” Noting that this exception effectively “swallowed” the general rule of nonliability, the court explicitly abolished privity in all tort actions against manufacturers. \textit{Suvada v. White Motor Co.}, 32 Ill. 2d 612, 616-17, 210 N.E.2d 182, 184-85 (1965). This conclusion coupled with the adoption of strict liability in tort renders irrelevant the distinction between imminently and inherently dangerous products.
\end{enumerate}
to protect the health and safety of consumers. This rationale evolved into the theory of strict liability in tort which eliminated privity as a requisite to recovery for personal injuries in tort actions against remote manufacturers.

In *Suwada v. White Motor Co.* the Illinois Supreme Court adopted the theory of strict liability in tort. Cognizant of prior exceptions to the privity requirement, the court concluded that the public policy justifications used to support these exceptions were equally compelling where the personal injuries resulted from any defective product. The court specifically cited the public's interest in life and health; the manufacturer's reliance on marketing and advertising to induce the public to use its product and to imply that the product is safe; and the risk of loss as being more properly borne by the manufacturer who profits from marketing the product. Therefore, the court decided that the law of tort rather than contract was the appropriate means to determine the scope of a manufacturer's liability for products related injuries.

Other cases evolved to circumvent the privity requirement. These cases emphasized contract principles rather than tort principles and proceeded under the third party beneficiary theory. This rule was enunciated in *Carson Pirie Scott & Co. v. Parrett.*

The test is whether the benefit to the third person is direct to him or is but an incidental benefit to him arising from the contract. If direct he may sue on the contract; if incidental he has no right of recovery thereon . . . . The rule is, that the right of a third party benefited by a contract to sue thereon rests upon the

27. *See,* note 20, *supra.*
28. 32 Ill. 2d 612, 210 N.E.2d 182 (1965). Plaintiffs purchased a used reconditioned tractor unit from defendant White Motor Co. The brake system was manufactured by Bendix-Westinghouse Automotive Air Brake Co. and installed by White. The brake system failed and caused the tractor to collide with a bus, resulting in injuries to the bus passengers and damage to the bus and tractor. The court applied the theory of strict liability in tort in allowing recovery for property damage and costs incurred in settling the personal injury claims of the bus passengers.
29. *Id.* at 619, 210 N.E.2d at 186.
30. *Id.* at 621, 210 N.E.2d at 186. The appellate court imposed strict liability based on an implied warranty theory, holding that lack of privity was not a defense to such action. The Illinois Supreme Court, however, declined to address the issue of whether lack of privity is a defense in an implied warranty action brought pursuant to UCC §2-318. *Id.* at 622, 210 N.E.2d at 188.
31. 346 Ill. 252, 257-58, 178 N.E. 498, 501 (1931) (supplier of hotel furnishings permitted to recover for cost of goods as third party beneficiary of contract between hotel company and underwriter).
liability of the promisor, and this liability must affirmatively appear from the language of the instrument when properly interpreted and construed. The liability so appearing can not be extended or enlarged on the ground, alone, that the situation and circumstances of the parties justify or demand further or other liability.

The third party's right to enforce the contract rests solely on the promisor's intent to benefit the non-contracting third party.

The viability of this theory was affirmed in *Rhodes Pharmacal Co. v. Continental Can Co.* The court permitted a non-contracting third party user to directly enforce an implied warranty of fitness against the manufacturer on the grounds that the manufacturer had knowledge of the intended use of the product and of the user's reliance that the product would be fit for that use. This ruling emphasized the contractual basis of warranty actions.

**Privity and the UCC**

UCC §2-318 as adopted in Illinois maintains the third party beneficiary exception to privity. This section names as beneficiaries of a warranty the purchaser and "any natural person who is in the family or household of his buyer or who is the guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty." This section, however, fails to alleviate the confusion surrounding the doctrine in breach of warranty actions.

Section 2-318 generates two problems. First, this section recognizes a cause of action for personal injuries that introduces foreseeability into commercial sales transactions. This provision sustains the tension generated by the tort-contract dichotomy. Thus, the

32. 72 Ill. App. 2d 362, 219 N.E.2d 726 (1st Dist. 1966). Third party user sued remote manufacturer of aerosol cans for property damage resulting from leakage of the cans.


Although the contract negotiations in the case were completed prior to the effective date of the UCC, the court implied that its holding would apply to breach of warranty actions brought pursuant to the UCC. *Rhodes Pharmacal Co. v. Continental Can Co.*, 72 Ill. App. 2d 362, 371-72, 219 N.E.2d 726, 731-32 (1st Dist. 1966).


35. *Id.* This is the original version of §2-318 and conforms to what is now Alternative A. Subsequently, two additional alternatives were adopted. The text of these alternative provisions is reproduced at note 4, *supra.*

36. See, text accompanying notes 5 through 7, *supra.*
question of whether tort or contract principles control third party breach of warranty actions remains unanswered.

The second problem concerns the effect of comment 3 on the scope of protection under UCC §2-318. Although the section extends protection to specific classes of beneficiaries (i.e., family members or guests in the purchaser’s home), comment 3 expresses neutrality with respect to expansion of the classes of beneficiaries. Comment 3 fails to clarify whether judicial expansion of the categories may proceed horizontally and vertically.

Privity denotes the relationship between the promisor and the promisee, or in commercial sales terminology, between the vendor and the vendee. There are two basic types of privity: horizontal and vertical. Horizontal privity describes the situation in which the injured party who is not a purchaser seeks to maintain an action against the last seller. Horizontal privity “arises only after all resales have been completed and one reaches the flat plane spreading outwards from the last purchaser.”

In contrast, vertical privity denotes the relationships among the parties within the chain of distribution. For example, where goods are distributed through a four-linked chain, which includes a manufacturer, wholesaler, retailer and purchaser, three distinct transactions are discernible. The manufacturer is in privity solely with the wholesaler. The wholesaler, however, participated in two transactions and is in privity with both the manufacturer and the retailer. Similarly, the retailer is in privity with the wholesaler and the purchaser. The purchaser, however, is in privity only with the retailer.

Some commentators have suggested that §UCC 2-318 focuses exclusively on horizontal privity and leaves the question of whether vertical privity is to be retained in UCC warranty actions to judi-

37. Comment 3 to §2-318 provides in pertinent part: “Beyond this, the section is neutral and is not intended to enlarge or restrict the developing case law on whether the seller’s warranties, given to his buyer who resells, extend to other persons in the distributive chain.”
39. A third type of privity is “diagonal” privity which describes the relationships in a suit by a purchaser “or beneficiary of his questionable largess” against someone in the distributive chain other than the last seller. Ezer, supra, note 14 at 323. Courts frequently fail to distinguish between vertical, horizontal and diagonal privity. This has resulted in confusion as to the status of the doctrine in particular jurisdictions.
40. Ezer, supra, note 14 at 323.
cial determination. The jurisdictions which have considered the scope of horizontal privity under §2-318 have reached conflicting determinations. Some jurisdictions have interpreted the language as providing suggested classes of beneficiaries which may be judicially expanded; others have literally construed §2-318 to preclude extension beyond the enumerated classes.

In Berry v. G. D. Searle & Co., the Illinois Supreme Court abolished vertical privity as a requisite to recovery in UCC breach of warranty actions. The Berry court determined that the statutory cause of action for breach of warranty established under the UCC is distinct from an action predicated on strict liability in tort; consequently, it is subject to restrictions incorporated elsewhere in the UCC. The court, however, construed §2-318 to hold that vertical


43. See, Smith v. Sturm, Ruger & Co., Inc., 524 F.2d 776 (9th Cir. 1975) (applying Alaska law); General Motors Corp. v. Davis, 141 Ga. App. 495, 233 S.E.2d 825 (1977); Chen v. Reliable Rubber & Plastic Mach., Inc., 25 U.C.C. Rep. 1274 (Conn. Super. Ct. 1978). A literal construction of §2-318 can have anomalous results. Compare, Tomczuk v. Town of Chesire, 26 Conn. Supp. 219, 217 A.2d 71 (1965) (plaintiff, a minor and friend of purchaser's daughter, injured as a result of defects in bicycle was considered guest in purchaser's home and not required to give notice to bicycle manufacturer as condition precedent to suit) with Thompson v. Reedman, 199 F. Supp. 120 (E.D. Pa. 1961) (passenger in purchaser's automobile not a guest in the purchaser's home within the plain meaning of §2-318 but lack of privity did not preclude action against manufacturer in light of "developing case law"). Query whether the decision in Tomczuk was based on assumption that plaintiff was riding the defective bicycle in the purchaser's home when the injury occurred.

It has been suggested that a literal interpretation of Alternative A conforms with the intention of the drafters. See, Article Two Warranties, supra, note 14 at 258. Other commentators have disagreed with this interpretation since the text does not support a negative inference. See, Skilton, Some Comments on the Comments to the Uniform Commercial Code, 1966 Wis. L. Rev. 597, 616-19 and Franklin, When Worlds Collide, 18 Stan. L. Rev. 974, 1000 (1966).

44. 56 Ill. 2d 548, 309 N.E.2d 550 (1974). Martha Berry sought recovery for personal injuries sustained after taking an oral contraceptive manufactured by the defendant. Count I was premised on a breach of an implied warranty of fitness under the UCC.

Abolition of vertical privity is a logical extension of the holding in Rhodes Pharmacal Co. v. Continental Can Co., 72 Ill. App. 2d 362, 219 N.E.2d 726 (1st Dist. 1966). The Rhodes court permitted direct enforcement of an implied warranty by a third party user against a manufacturer despite lack of privity. See, notes 32 through 33, supra, and accompanying text.

45. Berry v. G. D. Searle & Co., 56 Ill. 2d 548, 553-54, 309 N.E.2d 550, 553-54 (1974). The court specifically addressed the limitations period contained in §2-725(1) [4 years] and the notice provision contained in §2-607(3)(a) [buyer must notify seller of breach within
"privity is of no consequence when a buyer who purportedly has sustained personal injuries predicates recovery against a remote manufacturer for breach of an implied warranty under the Code."\(^{64}\)

In *Goldstein v. G. D. Searle & Co.*\(^{67}\) the Illinois Appellate Court analyzed the effect of contract principles on personal injury actions for breach of warranty. The issue presented to the court was whether plaintiff, a subpurchaser, had complied with the Code's notice provisions.\(^{48}\) Privity was relevant to the court's inquiry of whether notice to the immediate seller constituted notice to the manufacturer. In concluding that notice to the immediate seller was sufficient, the court relied on *Berry* to support its theory that "warranties ... flow downstream with the goods through any number of intermediate sales eventually enuring to the benefit of the ultimate consumer."\(^{49}\) *Berry* and *Goldstein* involved privity between purchasers and remote manufacturers, but the broad language used by the *Berry* court suggests it may be unduly restrictive to equate "ultimate consumer" with "purchaser."\(^{50}\)

In *Knox v. North American Car Corp.*,\(^{51}\) Illinois courts examined the scope of horizontal privity under the UCC for the first time. The *Knox* court denied recovery to a third party user and joined those jurisdictions which have literally construed §2-318.\(^{52}\) This decision represents a departure from the trend toward abolishing privity as a requisite to recovery for personal injuries in implied warranty actions.

reasonable time after he discovers or should have discovered the breach. The court held that §2-725(1) is the appropriate limitations period for personal injury actions. *Id.* at 555, 309 N.E.2d at 554.

46. *Id.* at 558, 309 N.E.2d at 556. The court interpreted §2-318 in light of prior decisions based on tort theory.

47. 62 Ill. App. 3d 344, 378 N.E.2d 1083 (1st Dist. 1978) (purchaser sued manufacturer of oral contraceptives for personal injuries alleging breach of an implied warranty of fitness for human consumption.


50. Indeed, courts have interpreted *Berry as authority to support expansion of the classes of third party beneficiaries beyond those specifically enumerated in Alternative A of UCC §2-318. See, Hoffman v. Howmedica, Inc., 364 N.E.2d 1215 (Mass. 1977) and Milbank Mut. Ins. Co. v. Proksch, 244 N.W.2d 105 (Minn. 1976).


52. See, note 43, supra.
KNOX v. NORTH AMERICAN CAR CORP.

Plaintiff, Johnnie B. Knox, filed a complaint against defendant North American Car Corp. (NAC) seeking recovery for personal injuries allegedly resulting from breach of an implied warranty under UCC §2-315. NAC, an equipment lessor, had leased a railroad boxcar to the Hershey Chocolate Corporation. The terms of the lease required Hershey to inform NAC of the movement of the boxcar, its loading dates, the nature of the commodities shipped in the boxcar, and its destination and routing. In return, NAC agreed to assume responsibility for all repairs except "running repairs." Repairs to the floor of the boxcar were not considered running repairs.

After using the car for a number of years, Hershey notified NAC that there was a hole in the floor of the boxcar which needed repair. Subsequently, Hershey loaded the boxcar, still in its damaged condition, and consigned it to the Great Atlantic & Pacific Tea Company in New Orleans. Johnnie Knox, an A & P employee was injured when he drove a forklift truck into the boxcar and a wheel of the truck fell into the hole in the floor.

Although the injury occurred on November 13, 1973, Johnnie Knox failed to file his complaint until February 2, 1977. Consequently, the statutory period for filing non-UCC personal injury actions had expired. Thus, Johnnie Knox predicated recovery...
upon breach of an implied warranty of fitness for a particular purpose pursuant to UCC §2-315. Knox contended that he was a beneficiary within the scope of §2-318 and, therefore, qualified for the Code’s four-year limitations period.\(^5\)

NAC moved to dismiss the complaint on the grounds that the statute of limitations barred the cause of action. The trial court granted the motion to dismiss, holding the UCC four-year statute of limitations inapplicable because a lease transaction is not a sale within the provisions of the Code.\(^6\)

On appeal, the court found that the trial court erred in holding that Article 2 was inapplicable to lease transactions.\(^1\) However,
the court affirmed dismissal of the complaint on the grounds that Knox was not a third party beneficiary within the scope of §2-318. The court distinguished vertical from horizontal privity and noted that §2-318 applies only to horizontal privity. The court then determined that by electing to enact the most restrictive of the three available alternatives the Illinois legislature manifested an intent to limit beneficiaries to those classes of persons specifically enumerated in the statute.


62. In so ruling the court accepted the arguments advanced in NAC’s brief. NAC noted that the Illinois legislature adopted Alternative A of UCC §2-318 despite the availability of more liberal alternatives. NAC cited Official Comment 2 to §2-318 which states that the purpose of the provision was to give “certain beneficiaries” the same warranty benefits received by the buyer in the “contract of sale.” Brief for Appellee at 39, Knox v. North Am. Car Corp., 80 Ill. App. 3d 683, 399 N.E.2d 1355 (1st Dist. 1980), appeal denied, No. 78-1114 (May 29, 1980). (Emphasis in original.) Therefore, the Illinois legislature intended to extend protection only to those classes of beneficiaries specifically enumerated in the statute. Id.

NAC also contended that Knox’s reliance on Berry v. G. D. Searle & Co., 56 Ill. 2d 548, 309 N.E.2d 550 (1974), as abolishing privity under the UCC was misplaced. NAC distinguished Berry on the grounds that Berry related solely to the issue of vertical privity in breach of warranty actions and not horizontal privity. Brief at 40. NAC cited Omaha Pollution Control Corp. v. Carver-Greenfield Corp., 413 F. Supp. 1069 (D.C. Neb. 1976) to support its assertion that UCC §2-318 permits judicial elimination of vertical privity but not horizontal privity. In contrast NAC concluded that Knox was not in the chain of distribution and consequently, outside the scope of Berry. Brief at 42.


NAC emphasized the attenuated relationship between Knox and NAC. NAC relied on Neofes v. Robertshaw Controls Co., 409 F. Supp. 1376 (S.D. Ind. 1976) as holding that §2-318 is not applicable to a lessee of the purchaser of an allegedly defective product. Since Knox was in a more remote position and there was no sales contract to support a warranty, there was no basis for recovery. Brief at 45-46. Therefore, NAC concluded that despite the demise of privity in warranty actions based on the doctrine of strict liability in tort, there is no case law in Illinois to support elimination of the doctrine under the UCC. Id. at 46.

63. See, notes 40 through 43, supra, and accompanying text.

64. Knox v. North Am. Car Corp., 80 Ill. App. 683, 689, 399 N.E.2d 1355, 1360 (1st Dist. 1980), appeal denied, No. 78-1114 (May 29, 1980). The court implied that an employee of the last purchaser may be entitled to protection under §2-318 even though employees are not among the enumerated classes. Id. See, Peterson v. Lamb Rubber Co., 54 Cal. 2d 339, 347, 353 P.2d 575, 581, 5 Cal. Rptr. 863, 869 (1960)(recovery permitted because an employee of the last purchaser is a member of the employer’s “industrial family”); McNally v. Nichol-
In a specially concurring opinion, Mr. Justice Simon found it unnecessary to address the issue of whether Knox was a qualified beneficiary under §2-318.66 J. Simon concluded that even if Knox was a proper beneficiary of NAC’s implied warranty of fitness, the action was barred by the four-year limitations period contained in UCC §2-725.66

Mr. Justice Rizzi’s dissenting opinion stated that UCC §2-318 “should apply to users and all persons who may reasonably be expected to be affected by a breach of the implied warranty regardless of privity.”67 He based his conclusion on prior case law involving the scope of a manufacturer’s liability for personal injuries resulting from defective products.68 Moreover, J. Rizzi reasoned

son Mfg. Co., 313 A.2d 913 (Me. 1973). The Knox court noted that McNally would be “persuasive authority” if Johnnie Knox were a Hershey employee. Knox v. North Am. Car Corp., 80 Ill. App. 3d 683, 689, 399 N.E.2d 1355, 1360 (1st Dist. 1980), appeal denied, No. 78-1114 (May 29, 1980). In this situation recovery was precluded since Knox was an employee of the consignee of the boxcar, and, therefore, twice-removed from the last party in the distribution chain. Id.


66. Mr. Justice Simon concluded that the Code’s four-year limitations period barred plaintiff’s cause of action and precluded consideration of the applicability of §2-318. Since defendant leased the boxcar on March 1, 1966, and tendered delivery to Hershey a short time later, J. Simon reasoned that the cause of action accrued in 1966. Lack of a specific guarantee of future performance rendered the discovery exception to the statute of limitations inapplicable. Furthermore, the policy considerations which led to the adoption of the discovery rule in Illinois were not applicable to commercial transactions and were offset by the important interests of uniformity and commercial certainty. Id. at 693, 399 N.E.2d at 1366.

67. Id. at 698, 399 N.E.2d at 1366. The dissent determined that Illinois law and not Louisiana law controlled disposition of the case and that an implied warranty of fitness was established without artifically distinguishing between sale and lease transactions. Id. at 694-96, 399 N.E.2d at 1363-64.

68. J. Rizzi noted that a manufacturer has a duty to make its product reasonably safe for its intended use. Dunham v. Vaughan & Bushnell Mfg. Co., 42 Ill. 2d 339, 247 N.E.2d 401 (1969). This duty extends to individuals whose use of the product is reasonably foreseeable and to situations in which the product is put to its intended or reasonably foreseeable use. Winnett v. Winnett, 57 Ill. 2d 7, 11, 310 N.E.2d 1, 4 (1974). Foreseeability is defined in this situation as “that which it is objectively reasonable to expect, not merely what might conceivably occur.” Id. at 12-13, 310 N.E.2d at 5. (Emphasis in original.)

This duty is imposed at law because “public policy demands that responsibility be fixed wherever it will most effectively reduce the hazards to life and health inherent in defective products that reach the market.” Court v. Grzelinski, 72 Ill. 2d 141, 150, 379 N.E.2d 281, 285 (1978)(quoting Escola v. Coca-Cola Bottling Co., 24 Cal. 2d 453, 462, 150 P.2d 436, 440 (1944)). To further this policy, the Grzelinski court declined to exclude firemen, as a class, from the scope of a manufacturer’s liability for defective products. Id. at 151, 379 N.E.2d at 285.

J. Rizzi noted that vertical privity was abolished in UCC breach of warranty actions for personal injuries in order to afford consumer protection. Berry v. G. D. Searle & Co., 56 Ill.
that adoption of strict liability in tort supported expansion of the categories of qualified beneficiaries in UCC §2-318 due to the similarity between these two causes of action.  

J. Rizzi contended that by basing its decision on the concept of privity, the court resurrected a concept which was an unsatisfactory method of determining liability. Specifically, he disagreed with the conclusion that the language in Alternative A reflected a legislative intent to eliminate privity only for those classes of beneficiaries named in the statute. The dissent argued that the neutrality expressed in comment 3 leaves applicability of the doctrine to judicial discretion.

J. Rizzi noted that restricting the beneficiaries to those named in the statute was inconsistent with the court’s implication that an employee of the last purchaser could qualify as a beneficiary despite omission of employees from the text of UCC §2-318. This reasoning would lead to the anomalous result of denying recovery to Johnnie Knox because he is an employee of A & P while permitting recovery by a Hershey employee under identical circumstances. This was a primary factor in J. Rizzi’s conclusion that privity should be abolished in UCC breach of warranty actions.

2d 548, 309 N.E.2d 550 (1974). Therefore, to make strict liability and UCC breach of warranty actions coextensive, horizontal privity under the UCC should also be eliminated.

J. Rizzi’s analysis implies that liability for defective products under the theory of strict liability in tort and UCC §2-318 should be coextensive. He cited the neutrality of Comment 3 to UCC §2-318 as permitting judicial expansion of the classes of beneficiaries to parallel developing case law. The developing case law in Illinois includes strict liability in tort which affords protection to any user of the product despite the absence of a sale or contractual relationship. Restatement (Second) of Torts §402A (1965). These principles have been judicially extended to all reasonably foreseeable users. Winnett v. Winnett, 57 Ill. 2d 7, 11, 310 N.E.2d 1, 4 (1974). Therefore, the legislative intent expressed in UCC §2-318 and the developing case law in the area of products liability should be reconciled by interpreting UCC §2-318 to include all reasonably foreseeable users irrespective of privity. Knox v. North Am. Car Corp., 80 Ill. App. 3d 683, 698, 399 N.E.2d 1355, 1366 (1st Dist. 1980), appeal denied, No. 78-1114 (May 29, 1980).

This is evident in the early recognition of exceptions to the doctrine. See, notes 20 through 33, supra, and accompanying text.

Knox v. North Am. Car Corp., 80 Ill. App. 3d 683, 399 N.E.2d 1355, 1365 (1st Dist. 1980), appeal denied, No. 78-1114 (May 29, 1980). This position is in accord with decisions in those jurisdictions which have expanded the categories of beneficiaries through case law. See, note 42, supra.

The dissent also concluded that the UCC four-year limitations period was applicable; consequently, NAC’s motion to dismiss should have been denied. Knox v. North Am. Car Corp., 80 Ill. App. 3d 683, 700, 399 N.E.2d 1355, 1367 (1st Dist. 1980), appeal denied, No. 78-1114 (May 29, 1980).
Observations

The dissent's position is consistent with decisions in other jurisdictions which have abolished privity as a defense in breach of warranty actions. For example, the Pennsylvania Supreme Court has comprehensively articulated the rationale underlying the demise of privity. An analysis of Pennsylvania decisions reveals four

74. See, note 42, supra.
75. The Pennsylvania Supreme Court abolished horizontal and vertical privity in a series of decisions spanning a period of eleven years. Ten years after adoption of the UCC, the Pennsylvania Supreme Court addressed the issue of whether an employee of a purchaser, who was injured when an unopened bottle of carbonated water exploded, was a proper beneficiary within the scope of §2-318. (Pennsylvania has adopted Alternative A of UCC §2-318.) Hochgertel v. Canada Dry Corp., 409 Pa. 610, 187 A.2d 575 (1963). The court strictly construed the language of §2-318 and denied recovery to plaintiff because he was not a member of one of the designated categories. Id. at 615, 187 A.2d at 577. The court's desire to maintain a distinction between actions predicated on tort and those predicated on contract was a major factor in its decision. Id.

In Yentzer v. Taylor Wine Co., 414 Pa. 272, 199 A.2d 463 (1964), the Pennsylvania Supreme Court retreated from its strict constructionist approach and permitted recovery by a hotel manager who personally purchased, on behalf of his employer, four bottles of champagne. Id. at 274, 199 A.2d at 464. The cork from one of the bottles ejected and hit the manager in the eye. Id. The court distinguished Hochgertel by ruling that since the manager actually purchased the product, he satisfied the Code's definition of "buyer." Id. Subsequently, the Pennsylvania Supreme Court adopted strict liability in tort. Webb v. Zern, 422 Pa. 424, 220 A.2d 853 (1966).

The court in Kassab v. Central Soya, 432 Pa. 217, 246 A.2d 848 (1968), abolished vertical privity and noted that the concept ignored commercial realities and fostered multiplicity of litigation. Id. at 227, 246 A.2d at 853. Furthermore, prior to the adoption of strict liability in tort, abolishing privity in UCC implied warranty actions would have permitted recovery in contract actions while denying recovery if the same suit had been filed as a tort action. The court logically concluded that the adoption of Restatement (Second) of Torts §402A (1965) with its attendant public policy justifications compelled a finding that both actions are coextensive. Id. at 234, 246 A.2d at 854.

Having abolished vertical privity in contract and tort actions for breach of warranty, the next logical step was to abolish the requirement of horizontal privity. This step was taken in Salvador v. Atlantic Steel Boiler Co., 319 A.2d 903 (Pa. 1974). An employee suffered loss of hearing as a result of an explosion of a steam boiler and sought recovery in contract from the retailer and the manufacturer. Id. at 904. The Pennsylvania Supreme Court held that the complaint stated a valid cause of action. Id. at 905.

The court reasoned that Kassab sought to effect identical results regardless of whether the complaint sounded in tort or contract, thus eliminating the basic premise for both vertical and horizontal privity. Id. The key factors in the court's decision were adoption of 402A liability and recognition that society's interests were not served by permitting a manufacturer to place a defective product in the stream of commerce and then to avoid liability based on the technical requirement of privity of contract. Id. at 907. These two factors eliminated the Hochgertel court's justification for retention of privity and compelled abolition of the doctrine. Id.

For a complete analysis of the demise of privity in Pennsylvania, see, Jaeger, Privity of Warranty: Has the Tocsin Sounded?, 1 Duq. U. L. Rev. 1 (1963); Murray, Products Liability—Another Word, 35 U. Pitt. L. Rev. 255 (1973); Comment, The Tocsin Has Sounded: A
key factors which led the Pennsylvania Supreme Court to abolish horizontal privity in personal injury actions predicated upon breach of the UCC warranty provisions:

1. Existence of prior exceptions to the privity doctrine.
2. Adoption of strict liability in tort and its attendant social policy justifications.
3. Recognition of the intent expressed in the Official Comments to UCC §2-318 to permit judicial expansion of qualified beneficiaries.
4. Achievement of uniformity among actions.

All four factors have been present in Illinois decisions evaluating the privity doctrine. Yet, the court in Knox relied on a doctrine which had virtually been eliminated in tort actions for personal injuries. The decisions of the Pennsylvania Supreme Court on this issue represent the preferable approach.

Prior Exceptions to the Privity Doctrine

The erosion of the doctrine of privity in Illinois is evidenced by early decisions which restricted privity. Illinois courts developed numerous exceptions to circumvent the privity requirement in breach of warranty actions. The doctrine was not applicable where the product was negligently manufactured; where the product was sold or delivered without disclosure of its dangerous qualities; or where the implied warranty ran with the sale of the prod-
This approach culminated in extension of warranty protection to a third party user who sustained no personal injuries but suffered property damage. The court in *Berry v. G. D. Searle & Co.* abolished vertical privity as a requisite to recovery in UCC breach of warranty actions. With respect to personal injury actions for breach of warranty, the privity doctrine retains viability only where the injured party is not the ultimate purchaser. The enactment of UCC §2-318, however, has significantly restricted the applicability of the doctrine even in this situation. This section expressly designates third party users who may enforce warranties despite lack of privity. The decision reached in *Knox* is decidedly contrary to the continued erosion of the doctrine reflected in these authorities.

**Effect of Strict Liability in Tort**

Illinois courts have consistently relied on public policy to undermine the privity doctrine as a defense in warranty actions for personal injuries. The Illinois Supreme Court noted that public policy considerations were the primary factors underlying the adoption of the theory of strict liability in tort. The court articulated these considerations as follows: 1) society's interest in health and life demanded the fullest possible legal protection; 2) affirmative solicitation through marketing and advertising rendered the manufacturer liable for damages resulting from a defective product; and 3) losses are more appropriately borne by the manufacturer which created the risk of injury and profited by the marketing of its product.

Another policy consideration is that as manufacturing technology becomes more sophisticated, imposing strict liability is one means to deter manufacturers from marketing defective products. Also, as the number of intermediate parties between the manufacturer and ultimate consumer increases, permitting suits

---

84. 56 Ill. 2d 548, 309 N.E.2d 550 (1974). See, notes 44 through 46, supra, and accompanying text.
85. See, notes 27 through 30, supra, and accompanying text.
87. *Id.* at 619, 210 N.E.2d at 186. The court derived these considerations by analogy from sale of food cases. See, note 20, supra.
88. But see, Prosser, *The Assault*, supra, note 14 at 1119, where the author challenges the validity of this argument.
directly against a remote manufacturer avoids circuity of actions. In \textit{Berry v. G. D. Searle & Co.}, the court underscored the vitality and continued recognition of these policy considerations. Based on its conclusion that tort liability and implied warranty liability are similar, the court abolished privity as a defense to personal injury actions by purchasers for breach of an implied warranty under the UCC. Having thus transferred the policy justifications from a tort context to a commercial warranty context for the purpose of eliminating the requirement of vertical privity, the distinction between vertical and horizontal privity advocated by the court in \textit{Knox} appears to be arbitrary.

\textit{Effect of the Official Comments to UCC §2-318}

In \textit{Knox}, the court based its holding on a determination that “the legislature consciously chose to limit a seller’s liability for breach of warranty to the specific classes enumerated therein.” Prior decisions by Illinois courts fail to support this interpretation of UCC §2-318.

In \textit{Rhodes Pharmacal Co. v. Continental Can Co.}, the court, in dictum, construed the language in Comment 3 to mean that “the extension to these specified third-party beneficiaries is not intended to exclude others.” What was implicit in \textit{Rhodes} became explicit in \textit{Berry v. G. D. Searle & Co.}. The \textit{Berry} court concluded that the language in §2-318 and the accompanying commentary did not require privity between the purchaser and the remote manufacturer. Applying basic rules of statutory construction, the court stated “[the code provisions pertaining to warranties] clearly demonstrate the legislative intent to create a statutory cause of action for breach of implied warranty to afford consumer protection to those who sustain personal injuries resulting from product deficiencies.” A restrictive interpretation of UCC §2-318 defeats this intent.

---

89. \textit{Article Two Warranties}, supra, note 14 at 255-56.
90. 56 Ill. 2d 548, 309 N.E.2d 550 (1974).
91. \textit{Id.} at 558, 309 N.E.2d at 556. See, notes 44 through 46, supra, and accompanying text.
95. \textit{Id.} at 558, 309 N.E.2d at 557.
96. \textit{Id.} at 553, 309 N.E.2d at 553. (Emphasis added.)
The court in *Knox* undermines its own interpretation by suggesting that an employee of a purchaser may be permitted to recover from a remote manufacturer despite exclusion of employees from the classes of beneficiaries specifically enumerated in the statute.\(^97\) This position, however, is consistent with other jurisdictions which have extended protection to employees under UCC §2-318. Recovery has been permitted on the grounds that a manufacturer knows that in a corporate setting employees are the actual users of products\(^98\) or that employees are within the employer's industrial family.\(^99\)

Recovery has been allowed in situations involving passengers and bystanders due to the public policies upon which products liability law rests.\(^100\) The *Knox* court impliedly recognized these policies where employees of purchasers seek to enforce warranties under the UCC. Yet, the court failed to give effect to these considerations in its decision.

Finally, reliance on legislative action overlooks the origin of privity as a judicial doctrine. The Illinois Supreme Court has previously responded to this assertion stating, “the doctrine . . . was created by this court alone. Having found that doctrine to be unsound and unjust under present conditions, we consider that we have not only the power, but the duty, to abolish that [doctrine]. We closed our courtroom doors without legislative help, and we can likewise open them.”\(^101\)

### Uniformity Among Actions

An undesirable ramification of the *Knox* decision is that recov-
ery by a third party user may depend on the nature of the complaint—whether the complaint is premised on liability under UCC §2-318 or tort liability. Reviving the tort-contract dichotomy ignores the substantive similarities between the two causes of action.

Warranties in actions for personal injuries resulting from defective products are a means to afford consumer protection. Advancements in marketing and advertising techniques and manufacturing technology enable a manufacturer to solicit the use of its product from a greater segment of the consuming public. This element plus the increased profits resulting from wide scale distribution of a product place the manufacturer in a better position to assume responsibility for personal injuries due to the defective condition of the product. These factors underlie the cause of action regardless of whether it is premised on tort or contract theory.¹⁰²

Consumer protection is the primary factor underlying the scope of a manufacturer’s liability for products related injuries in actions predicated on strict liability in tort or UCC §2-318.¹⁰³ In tort actions, foreseeability defines the scope of liability and may include persons outside the purchasing chain. Consumer protection is restricted by the Code’s retention of artificial distinctions based on privity. Warranty actions must be coextensive in order to afford the fullest possible protection to consumers for products related injuries. The Pennsylvania Supreme Court correctly concluded that “the same demands of legal symmetry which once supported privity now destroy it.”¹⁰⁵


To waive the privity requirement in a personal injury case where the warranty arises in “tort” while retaining it where the warranty arises in “contract” is to perpetuate a formalistic distinction at the expense of the public policy considerations repeatedly emphasized by the Texas Supreme Court. The Texas cases that have held privity still necessary have involved not personal but purely economic injury.

Id. at 691.

¹⁰³. See, notes 28 through 30, supra, and accompanying text.

¹⁰⁴. Where the sole recovery is for economic loss, the policy considerations underlying the demise of privity are less compelling. Consequently, privity has retained greater viability in this situation. The court in Alfred N. Koplin & Co. v. Chrysler Corp., 49 Ill. App. 3d 194, 364 N.E.2d 100 (2d Dist. 1977), affirmed this distinction holding that “tort theory . . . does not extend to permit recovery against a manufacturer for solely ‘economic losses’ absent property damage or personal injury from the use of the product.” Id. at 203, 364 N.E.2d at 107. The court limited its holding to actions for economic loss predicated on the theories of negligence and strict liability in tort noting that the commercial expectations of purchasers and sellers is within the province of contract law as expressed through the UCC. Id.

RECOMMENDATION

Illinois courts should adopt the standard asserted in the Knox dissent and extend the protection of UCC §2-318 to all persons who may reasonably be expected to be affected by a breach of implied warranty irrespective of privity. This criterion would give full effect to products liability case law as it has developed in Illinois and to the legislative intent to create a statutory cause of action through enactment of the UCC warranty provisions. Thus, Illinois would join a growing number of jurisdictions that have adopted foreseeability as the standard for determining the scope of a manufacturer's liability to the ultimate user or consumer of its product.

The doctrine of privity has been judicially restricted in personal injury actions for breach of warranty to such an extent that it is applicable only in actions brought under the UCC where horizontal privity is at issue. Adopting a standard of foreseeability would achieve maximum uniformity in products liability suits by eliminating technical distinctions based on privity. When the Illinois Supreme Court abandoned privity as a defense in tort actions, it purportedly "discarded any remnants of the privity concept" in tort actions for products related injuries. As the dissent in Knox aptly noted, "this court should not pick up the discarded remnants of privity in personal injury actions and mold them back into our law, where they are destined for eradication again."

CONCLUSION

Illinois court decisions evidence a trend toward the abolition of privity as a requisite to recovery in implied warranty actions. Early recognition of exceptions to the doctrine coupled with an identifiable need to fully and adequately protect consumers who suffer products related injuries advanced this trend. A logical extension of these factors compels eradication of the remaining traces of this anachronistic doctrine. Legislative amendment of UCC §2-318 or adoption of Alternative B would effect a result consistent with

---

107. See, note 42, supra.
110. The text of Alternative B is reproduced at note 4, supra.
social policy. Absent such action, Illinois courts should adopt the approach manifested by the Pennsylvania Supreme Court and abolish privity to promote uniform recovery for products related injuries under strict liability in tort or the Uniform Commercial Code.

BARBARA STUETZER