ability exists between an automobile manufacturer and a purchaser unless privity is established by the manufacturer's issuing a warranty through its authorized dealer extending to the purchaser.

In an action for breach of warranty, the assertion of the defense of contributory negligence presents a jury question as to whether the breach of warranty was the proximate cause of the plaintiff's injury. Section 2–314.

This case is not fully annotated because the headnotes adequately state the Code issues involved.

COMMENT

Prior to the passage of the Code, Georgia extended the manufacturer's implied warranty to the ultimate consumer regardless of lack of privity. However, since adoption of the Code, Georgia courts have held once again that an ultimate consumer cannot sue a manufacturer directly on a breach of implied warranty where privity of contract does not exist between the ultimate buyer and the manufacturer. *Chaffin v. Atlanta Coca-Cola Bottling Co.*, 127 Ga. App. 619, 194 S.E.2d 513 (1972). The present case might be viewed as a first step forward on the road to re-abolishing the privity requirement. However, it is a hesitant step at best, since the court found privity between the manufacturer and the buyer to exist when a manufacturer issues a warranty to a buyer through its dealer, rather than finding that privity is not necessary. For a similar interpretation, see *Chrysler Corp. v. Wilson Plumbing*, 132 Ga. App. 435, 208 S.E.2d 321 (1974). See generally, Section 2–318, "A Survey of Privity as a Requisite to Actions for Breach of Implied Warranty in Jurisdictions Retaining Section 2–318, Alternative A."

A149. Forte Towers, South, Inc. v. Hill York Sales Corp.

312 So. 2d 512 (Fla. Dist. Ct. App. 1975)

Implied warranties—Directed verdict

Where there is substantial evidence that an air conditioning system is defective so that a court could find for plaintiff on a claim of breach of warranty, it is reversible error to grant defendant-contractor a directed verdict.

An immovable air conditioning system carries implied warranties of fitness and merchantability even where the express warranty is limited to one year, so that upon a prima facie showing of breach of warranty, a directed verdict may not be granted. Sections 2–314 and 2–315.

This case is not fully annotated because the headnotes adequately state the Code issues involved.

A150. St. Luke's Hosp. v. Schmaltz

17 U.C.C. Rptg. Serv. 65 (Colo. 1975)

Sale of blood—Service contract

Where a blood transfusion is performed without the consent or

knowledge of the patient, the more realistic view of the relationship between the hospital and the patient is that it is not a commercial transaction, which is ordinarily based on contract and involves a "consensual nexus" between a buyer and a seller. The true character of the transaction is that of furnishing medical "services" and it is not a sale of a product subject to the provisions of the Code. Therefore, a hospital which furnishes defective blood for transfusion to a patient is not liable under either the doctrine of strict liability or the theory of breach of warranty when the patient contracts serum hepatitus as a result of the transfusion. Sections 2–102 and 2–314.

This case is not fully annotated because the headnote adequately states the Code issues involved.

COMMENT

Subsequent to the transaction giving rise to this case, Colorado enacted a statute, 13–22–104, CRS 1973, which limits the liability arising out of blood transfusions to instances of negligence or willful misconduct. Forty-seven states have enacted statutes which say in effect that the implied warranties of merchantability and fitness are "*not*" applicable to the sale of human blood:

Alabama, Code of Ala. Tit. 7A, Section 2–314(4)(Supp. 1976); Alaska, AS 45–05–100(e)(Supp. 1976); Arizona, A.R.S. Section 36–1151 (1974); Arkansas, Ark. Stat. Ann. Section 85–2–316 (3)(d) (Supp. 1975), 82–1607 to 82–1608 (1976); California, West's Ann. Health & Safety Code Section 1606 (1970); Colorado, 13–22–104, CRS (1973); Connecticut, C.G.S.A. Section 19–1391 (Supp. 1976); Delaware, 6 Del. C. Section 2–316(5) (1974); Florida, F.S.A. Section 672.2–316(5) (Supp. 1976); Georgia, Code, Section 105–1105(Supp. 1976), 109A–2–316(5) (1973); Hawaii, HRS Section 325–91 (Supp. 1974); Idaho, I.C. Section 39–3702 (1976); Illinois, S.H.A. Ch. 91 Sections 181–184 (Supp. 1976); Indiana, Burns Ind. Stat. Ann. 16–8–7–1 to 16–8–7–3 (1973); Iowa, Iowa Code Ann. Section 142 A.8 (1972); Kansas K.S.A. 65–3701 (1972); Kentucky, KRS 139.125 (1971); Louisiana, La. Civil Code, Art. 1764, subd. B. (Supp. 1977); Maine, 11 MRSA Section 2–108 (Supp. 1976); Maryland, Code 1957, art. 43, Section 136B (Supp. 1975); Massachusetts, MGLA c. 106 Section 2–316(5) (Supp. 1976); Michigan, M.S.A. Section 14–528(1) (1976), M.C.L.A. Section 691.1511; Minnesota, M.S.A. Section 525.928 (1975); Missouri, Section 431.069 RSMo. 1969, V.A.M.S. (Supp. 1976); Mississippi, Miss. Code Ann. Vol. 5A, Title 25, Section 7129–71 (1972); Montana, R.C.M. 1947, Section 69–2203 to 69–2205 (Supp. 1975); Nebraska, R.S., Section 71–4001 (1971); Nevada, N.R.S. 460.010 (1975); New Hampshire, N.H. Rev. Stat. Ann. Section 507:8–b (Supp. 1975); New Mexico, Section 12–12–5, N.M.S.A. 1953 (Repl. Vol. 3, Supp. 1975); New York, McKinney Con. Law of N.Y. Public Health, Section 580, (Supp. 1976); North Carolina, G.S. Section 90–220.10 (1975); North Dakota, NDCC 41–02–33, subd. 3(d) (Supp. 1975), 43–17–40 (Supp. 1975); Ohio R.C.

Section 2108.11 (1977); Oklahoma, 63 O.S. 1971, Section 2151 (1973); Oregon, ORS 97–300 (1969); Pennsylvania, 35 P.S. Section 10021 (Supp. 1976); South Carolina, Code 1962, Section 32–559 (Supp. 1975); South Dakota, SDCL 57–4–33.1 (Supp. 1976); Tennessee, T.C.A. 47–2–316(5) (Supp. 1976); Texas, Vernon's Ann. Civ. St. art. 4590–3, subd. 2 (Supp. 1975); Utah, U.C.A., 26–29–1 (Supp. 1975); Virginia, Code 1950, Section 32–364.2 (Repl. 1973); Washington RCWA 70.54.-120 (1975); West Virginia, Code, 16–23–1 (Supp. 1976); Wisconsin, W.S.A. 146.31(2) (1974); Wyoming, W.S. 1957, Section 35–221.10 (Supp. 1975).

The only three states without such statutes are New Jersey, Vermont and Rhode Island. For the New Jersey law, see *Brody v. Overlook Hosp.* 317 A.2d 392, 127 N.J. Super. 331 (1974), *aff'd* 332 A.2d 596, 66 N.J. 448 (1975). This later case reverses the 1972 result reported in *Brody v. Overlook Hosp.*, Section 2–314, Annotation A79. The courts in Vermont have not had an occasion to rule directly on this point. However, in *Mauran v. Mary Fletcher Hosp.*, 318 F. Supp. 297 (Vt. 1970) the court was faced with the issue of whether to permit a suit for breach of contract or breach of warranty where the wrong substance is injected into a person for preoperative anesthesia purposes. The court found the anesthesia procedure similar in principle to a blood transfusion. Rhode Island has no case law directly on point, but in *Russo v. Merch & Co.*, 138 F. Supp. 147 (R.I. 1956) the court discusses whether any warranties should apply when a patient receives blood "plasma" in a hospital, and implies a requirement of "scienter" in the absence of privity of contract between plaintiff's intestate and defendant.

A151. McKinstrie v. Henry Ford Hosp.

223 N.W.2d 114 (Mich. 1974)

Sale of blood—Service contract—Constitutionality

Where the plaintiff-patient contracts serum hepatitis as the result of a blood transfusion he may not maintain an action against the hospital on a theory of implied warranty. A statute which states that the use of blood for the purpose of a transfusion is the rendering of a service and does not constitute a sale is not unconstitutionally vague. Section 2–102, 2–314 and 2–315.

This case is not fully annotated because the headnote adequately states the Code issue involved.

COMMENT

See M.S.A. Section 14–528(1), and M.C.L.A. Section 691.1511, for the text of the applicable statute. See also the comment to *St. Luke's Hosp. v. Schmaltz*, Section 2–314, Annotation A150 for a listing of other states which have enacted statutes in this area.