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The Statute of Limitations in Strict Products Liability Actions

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THE STATUTE OF LIMITATIONS IN STRICT PRODUCTS LIABILITY ACTIONS

In *Rivera v. Berkeley Super Wash, Inc.*,[1] a personal injury action was brought against a self-service laundromat and the manufacturer of an allegedly defective laundry extractor by the injured party, Alberto Rivera, Jr., and his parents. The machine had been sold to the laundromat in 1959. On his eighth birthday, in 1967, Alberto, by reaching into the extractor while it was in operation, sustained injuries which caused the eventual amputation of his arm.

The plaintiffs[2] initially sought recovery on the grounds of negligence. In 1973, they amended their complaint to add causes of action in implied warranty and strict products liability. The manufacturer, Bock Laundry Machine Co., interposed the defense of the statute of limitations, claiming that the contract statute of limitations, which runs from the date of sale, was applicable to actions based on warranty and strict products liability.[3] The trial court denied the motion to dismiss and Bock appealed. In a 3-2 decision, the appellate division, second department, *held*: that the causes of action based on warranty are time-barred;[4] but that the statute of limitations in strict products liability actions is controlled by tort law and runs from the date of injury, not the date of sale,[5] thereby allowing the infant plaintiff to proceed with the merits of the case.

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1. 44 App. Div. 2d 316, 354 N.Y.S.2d 654 (2d Dep't 1974).

2. Both the infant and his parents were plaintiffs in the proceeding. On each separate cause of action (negligence, warranty, and strict products liability), the parents asserted a derivative cause of action based on loss of services.

3. Since the laundry extractor was sold in 1959, prior to the adoption of the Uniform Commercial Code by New York, a six-year statute of limitations which commenced at the time of sale would apply. Currently, actions predicated on breach of warranty are governed by the Uniform Commercial Code. N.Y. CIV. PRAC. LAW § 213(2) (McKinney 1972); *see* N.Y. U.C.C. § 2-725(1) (McKinney 1964), which provides that: "An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued." The cause of action accrues "when delivery is made . . . ." *Id.* § 2-725(2).

4. 44 App. Div. 2d at 326, 354 N.Y.S.2d at 663.

5. *Id.* at 318, 354 N.Y.S.2d at 655; *accord,* Victorson v. Kaplan, 75 Misc. 2d 429, 347 N.Y.S.2d 666 (Sup. Ct. 1973), *aff'd sub nom. mem.* Victorson v. Bock Laundry Machine Co., 44 App. Div. 2d 702, 355 N.Y.S.2d 565 (2d Dep't 1974). The *Rivera* court also ruled that the parents' derivative cause of action in strict products liability was barred by time because more than three years had passed between the injury in 1967 and the amendment to their complaint in 1973. *See* N.Y. CIV. PRAC. LAW § 214 (McKinney 1972). The tolling provisions of section 208 of the Civil Practice Laws and Rules were held applicable to the infant's claim for personal injury.

In holding that the tort statute of limitations should govern actions predicated on strict liability, the court ruled that a prior decision by the New York Court of Appeals in *Mendel v. Pittsburgh Plate Glass Co.*[6] was no longer controlling on the issue of the limitations period in strict products liability. Both *Mendel* and the instant case involved plaintiffs who were injured by defective products more than six years after the date of sale. Similarly, neither plaintiff was the purchaser of the product that caused the injury. The *Rivera* court gave effect to the *Mendel* decision insofar as the warranty counts were concerned. In the 1969 *Mendel* case, the majority reiterated a long-standing rule that personal injury actions based on the breach of an implied warranty are contract actions[7] and hence accrue at the time of sale. The court of appeals went further, however, and equated warranty and strict liability actions: "[W]e believe . . . that strict liability in tort and implied warranty in the absence of privity are merely different ways of describing the very same cause of action."[8]

The *Rivera* court determined that the *Mendel* rule, as it applied to strict products liability, was no longer viable in light of the subsequent decision by the court of appeals in *Codling v. Paglia.*[9] In that case, the court announced the doctrine of strict products liability, applying a three-pronged test:

> [U]nder a doctrine of strict products liability, the manufacturer of a defective product is liable to any person injured . . . if the defect was a substantial factor in bringing about his injury or damages, provided: (1) . . . the product is being used . . . for the purpose and in the manner normally intended, (2) that if the person injured or damaged is himself the user of the product he would not by the exercise of reasonable care have both discovered the defect and perceived its danger, and (3) that by the exercise of reasonable care the person

6. 25 N.Y.2d 340, 253 N.E.2d 207, 305 N.Y.S.2d 490 (1969).

7. *See, e.g.,* Blessington v. McCrory Stores Corp., 305 N.Y. 140, 111 N.E.2d 421 (1953); *cf.* N.Y. U.C.C. § 2-715(2)(b) (McKinney 1964), which expressly recognizes a cause of action for personal injury arising from breach of warranty. *See also id.* § 2-318, which extends the protection of the Code to some, but not all, bystanders.

8. 25 N.Y.2d at 345, 253 N.E.2d at 210, 305 N.Y.S.2d at 494.

9. 32 N.Y. 2d 330, 298 N.E.2d 622, 345 N.Y.S.2d 461 (1973). *See also* Velez v. Craine & Clark Lumber Corp., 33 N.Y.2d 117, 305 N.E.2d 750, 350 N.Y.S.2d 617 (1973); Bolm v. Triumph Corp., 33 N.Y.2d 151, 305 N.E.2d 769, 350 N.Y.S.2d 644 (1973); Fogal v. Genesee Hosp., 41 App. Div. 2d 468, 344 N.Y.S.2d 552 (4th Dep't 1973). For analyses of the *Codling* decision, see Watkins, *Codling v. Paglia,* 38 ALBANY L. REV. 3 (1973); Comment, *Codling v. Paglia,* 40 BROOKLYN L. REV. 390 (1973).

injured or damaged would not otherwise have averted his injury or damages.[10]

The underlying rationale of the *Mendel* court was that strict liability evolved from, and was delimited by, contract law.[11] In order to determine that *Mendel* was no longer viable, the majority in the instant case viewed the *Codling* decision as establishing an independent action grounded in tort: "[W]e believe that *Codling* overruled *Mendel's* reliance on the Uniform Commercial Code when it *(Codling)* provided an alternative remedy *sounding in tort.*"[12]

The *Rivera* majority relied on its interpretation of the *Codling* three-pronged test as establishing a *tort* concept of strict products liability.[13] To recover under a theory of strict products liability, the plaintiff must show not only that he had been injured by a defective product, but also that he could not have avoided the injury through the exercise of reasonable care. The last two criteria of the three-pronged test, set forth above, indicate that contributory negligence and assumption of risk, defenses available in tort proceedings, are relevant in strict products liability actions. The court of appeals in *Codling* clearly stated that contributory negligence of the plaintiff would bar recovery.[14]

Tort law's emphasis on the compensation of victims was another factor in the majority's conclusion that strict products liability should be interpreted as a tort concept. Judge Shapiro, writing for the majority, examined the policy reasons behind the adoption of strict liability,[15] stating that "the clear intent of the recent decisions is to protect a party injured . . . by a defective product,"[16] and concluding

10. 32 N.Y.2d at 342, 298 N.E.2d at 628-29, 345 N.Y.S.2d at 469-70.

11. For an analysis of the contrasts and similarities between theories of recovery under contract and strict liability in tort, see Rapson, *Products Liability Under Parallel Doctrines,* 19 RUTGERS L. REV. 692 (1965).

12. 44 App. Div. 2d at 324, 354 N.Y.S.2d at 662 (emphasis added); *see* Velez v. Craine & Clark Lumber Corp., 33 N.Y.2d 117, 124-25, 305 N.E. 2d 750, 754, 350 N.Y.S.2d 617, 623 (1973).

13. For a discussion of the *Codling* test, see text accompanying note 10 *supra.*

14. 32 N.Y.2d at 343, 298 N.E.2d at 629, 345 N.Y.S.2d at 470.

15. *See, e.g.,* Bolm v. Triumph Corp., 33 N.Y.2d 151, 305 N.E.2d 769, 350 N.Y.S.2d 644 (1973). In *Bolm,* the court of appeals focused on protection and compensation for the injured party: "As was pointed out in *Codling,* liability for defective products has . . . been increasingly shifted to the responsible manufacturer in order 'to avoid injustice and for the protection of the public' . . . ." *Id.* at 158, 305 N.E.2d at 773, 350 N.Y.S. 2d at 650 (citation omitted).

16. 44 App. Div. 2d at 321, 345 N.Y.S.2d at 659.

that the policy could be effectuated only by measuring the statute of limitations from the date of injury.

> Application of the contract Statute of Limitations to the strict-products-liability causes of action here, claims grounded in the concept of a tortious wrong, would only serve to duplicate the unfair *Mendel* result. The infant plaintiff Rivera was born in 1959, the same year in which the sale of the extractor took place. Eight years later this machine was to cause the loss of his arm. To apply the contract Statute of Limitations . . . would mean that the limitation period expired two years prior to the accident.[17]

In addition to focusing on the injustice to the plaintiff, the majority also noted that the *Mendel* rationale was rejected by other jurisdictions.[18] In fact, the court concluded that there was no authoritative support for *Mendel*.[19]

To further augment his argument that strict products liability is grounded in tort, Judge Shapiro emphasized that the *nature* of Rivera's claim was an action for personal injury. Traditionally, tort law has furnished relief for personal injury claims. Contract law was designed to remedy commercial loss. The majority reasoned that the suit should therefore be governed by section 214(5) of New York's Civil Practice Law and Rules, which provides a three-year statute of limitations period for personal injury actions which runs from the time of injury.[20] The court emphasized that the limitations period

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17. *Id.* at 325, 354 N.Y.S.2d at 662-63.

18. *See, e.g.*, Nelson v. Volkswagen of America, 315 F. Supp. 1120 (D.N.H. 1970); Tucker v. Capitol Mach., Inc., 307 F. Supp. 291 (M.D. Pa. 1969); Holifield v. Setco Indus., 42 Wis. 2d 750, 168 N.W.2d 177 (1969); Roseneau v. City of New Brunswick, 51 N.J. 130, 238 A.2d 169 (1968). In *Nelson*, the federal court was firm in rejecting the hypothesis that strict liability and implied warranty are one and the same:

> Products containing defects when manufactured, which remain undetected are veritable time bombs ready to explode in the face of the hapless consumer at any time . . . .
>
> . . . .
>
> . . . In states which accept the doctrine of strict liability in tort, the theory of breach of warranty should have no place in personal injury cases.

315 F. Supp. at 1122.

19. 44 App. Div. 2d at 322 n.7, 354 N.Y.S.2d at 660 n.7. In fairness to the *Mendel* majority, it must be noted that few courts have been confronted with the precise problem that faced the *Mendel* court; an injury resulting from a defective product long after the date of sale.

20. N.Y. CIV. PRAC. LAW § 214(5) (McKinney 1972). *But cf.* N.Y. U.C.C. §§ 2-315, -318 (McKinney 1964). For a unique extension of the tort statute of limita-

includes, but is not limited to, negligence actions.[21] Since a cause of action for personal injury on a strict products liability theory falls within the wording of section 214 (5), it therefore should be subjected to the three-years-from-date-of-injury rule. The majority stressed that there is no *one* theory of products liability, that the Uniform Commercial Code and the doctrine of strict products liability are not mutually exclusive.

> The result of the legal development of a strict-products-liability cause of action is that redress for personal injuries caused by defective products may be sought in New York under several different theories —(1) pure common-law negligence, (2) breach of warranty and (3) strict products liability . . . .[22]

The court recognized that its holding was subject to the criticism that manufacturers' liability might be extended indefinitely. The coexistence of different theories of liability might allow an injured party to develop its litigation strategy based on the particular time lag between the sale, the injury, and the commencement of the suit. The court maintained, however, that the alternative—the foreclosure of meritorious claims—justified its holding:

> [I]t seems unwise to accept the sacrifice of any meritorious claim as the necessary price to be paid for the insulation of manufacturers from exposure to meritless claims, *especially since these same manufacturers are open to suits in negligence.* Moreover, . . . the policy decision behind the establishment of a strict-products-liability action having been made by the Court of Appeals, it would appear that more harm is done by refusing to recognize its essential character as based in tort than by intentionally misapprehending it for the sake of protecting against false claims and thereby potentially blunting its usefulness . . . in cases in which there is merit.[23]

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tions in products liability cases, see Maynard v. General Elec. Co., 486 F.2d 538 (4th Cir. 1973). In *Maynard,* the court applied the personal injury statute of limitations to a cause of action in *warranty.* "The view of the majority of the courts which have considered the question appears to be that an action to recover for personal injuries is, in essence, a personal injury action and, regardless of whether it is based upon . . . breach of implied warranty or . . . tort, the limitations statute applicable to actions for personal injuries is controlling." *Id.* at 540.

21. 44 App. Div. 2d at 323, 354 N.Y.S.2d at 661.

22. *Id.* at 321, 354 N.Y.S.2d at 659.

23. *Id.* at 324-25, 354 N.Y.S.2d at 662 (emphasis in original). For an analysis of the policy reasons behind the adoption of strict liability, see Greenman v. Yuba Power Prods., Inc., 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697 (1963); Prosser, *The*

The *Rivera* court's opinion that strict products liability is grounded in tort finds support in case law,[24] commentaries,[25] and the Restatement (Second) of Torts.[26] Since strict liability's emphasis on "defect" is conceptually analogous to the breach of an implied warranty of merchantability, the debate of whether the action lies in contract or tort becomes important when the effect of disclaimers, privity, and the selection of a limitations period must be decided. In the instant case, where the last issue was in dispute, the characterization as tort or contract was determinative of the outcome of the case. It was precisely Judge Shapiro's characterization of strict products liability as a tort that the dissent challenges.

The dissenting opinion by Judge Benjamin[27] was premised on the assumption that *Codling* and *Mendel* are reconcilable.[28] He asserted that *Codling* did not create a new substantive basis for liability; rather it merely enlarged the possible class of plaintiffs by allowing an innocent bystander to sue.

> I read *Codling* as having removed the remaining "pillar" from the beleagured citadel of privity, thus . . . extending to "any" person

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Assault Upon The Citadel (Strict Liability to the Consumer), 69 YALE L.J. 1099 (1960); Comment, *Strict Products Liability and The Bystander*, 64 COLUM. L. REV. 916 (1964).

24. *See, e.g.*, Heavner v. Uniroyal, Inc., 63 N.J. 130, 305 A.2d 412 (1973); Caruth v. Mariani, 11 Ariz. App. 188, 463 P.2d 83 (1970); Elmore v. American Motors, 70 Cal. 2d 578, 451 P.2d 84, 75 Cal. Rptr. 652 (1969); Greenman v. Yuba Power Prods., Inc., 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697 (1963). *But cf.* Greeno v. Clark Equip. Co., 237 F. Supp. 427, 431 (N.D. Ind. 1965). *See generally* Chestnut v. Ford Motor Co., 445 F.2d 967 (4th Cir. 1971); Sills v. Massey-Ferguson, Inc., 296 F. Supp. 776 (N.D. Ind. 1969).

25. *See, e.g.*, Prosser, *The Assault Upon The Citadel (Strict Liability to the Consumer)*, 69 YALE L.J. 1099, 1134 (1960); Prosser, *The Fall of the Citadel (Strict Liability to the Consumer)*, 50 MINN. L. REV. 791 (1966). *See generally* Dickerson, *The ABC's of Products Liability*, 36 TENN. L. REV. 439 (1969); Comment, *The Last Vestige of the Citadel*, 2 HOFSTRA L. REV. 721 (1974).

26. RESTATEMENT (SECOND) OF TORTS § 402A, Comment *m* (1965), provides:

> The basis of liability is purely one of tort . . . .
>
> . . . [T]he warranty theory has become something of an obstacle to the recognition of . . . strict liability . . . .
>
> . . . The rule stated in this Section is not governed by the provisions of the . . . Uniform Commercial Code . . . .

27. 44 App. Div. 2d at 326-29, 354 N.Y.S.2d at 664-67. Justice Cohalen also dissented in a one paragraph opinion stating that *Mendel* was dispositive of the instant case. *Id.* at 329, 354 N.Y.S.2d at 667.

28. *See* Dickerson, *Was Prosser's Folly Also Traynor's?*, 2 HOFSTRA L. REV. 469, 471 (1974); Marschall, *An Obvious Wrong Does Not Make A Right*, 48 N.Y.U.L. REV. 1065, 1104-05 (1973).

> injured by a defective product the full benefits of the express and implied warranty protection contained in the Uniform Commercial Code . . . .[29]

The dissent further maintained that the language of the court of appeals in *Velez v. Craine & Clark Lumber Corp.* to the effect that "strict products liability sounds in tort rather than contract"[30] was not technically binding on the instant case.

> The terminology employed in the area of products liability *i.e.*, "strict liability in tort" and "strict products liability", has resulted in some confusion. Language . . . in *Codling* . . . must therefore be interpreted against the background of cases which *preceded* it.[31]

Judge Benjamin, therefore, viewed the *Mendel* equation of "strict liability in tort" and breach of implied warranty as encompassing the *Codling* doctrine of strict products liability. He concluded that the breach of warranty provisions of the Uniform Commercial Code furnished the exclusive remedy in products liability cases.[32]

The dissent's argument that *Codling* and *Mendel* are compatible is not compelling for two reasons. First, if the court in *Codling* merely intended to extend the protection of the Uniform Commercial Code to bystanders, it could have done so, more directly, by announcing that the then-current state of the law, as evidenced by *Goldberg v. Kollsman Instrument Corp.*,[33] *Mendel,* and the Code, would be applicable to bystanders. The delineation of a doctrine of strict products liability, with its attendant requirement that plaintiffs meet three criteria in order to recover, would not have been neces-

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29. 44 App. Div. 2d at 327, 354 N.Y.S.2d at 665.

30. 33 N.Y.2d 117, 124-25, 305 N.E.2d 750, 754, 350 N.Y.S.2d 617, 623 (1973). In *Velez,* the court of appeals refused to give effect to a disclaimer in an action brought on the theory of strict products liability. Since the parties who were injured by the product were strangers to the sales contract, the disclaimer was ineffective as applied to them. As between parties to the contract, the court opined: "[W]e see no reason why . . . parties cannot by contract restrict or modify what would otherwise be a liability between them *grounded in tort.*" *Id.* (emphasis added).

31. 44 App. Div. 2d at 328, 354 N.Y.S.2d at 666 (emphasis added).

32. *Id.*

33. 12 N.Y.2d 432, 191 N.E.2d 81, 240 N.Y.S.2d 592 (1963). In *Goldberg,* the court of appeals characterized the breach of an implied warranty as a tortious wrong, but the *Mendel* court later interpreted this language as merely eroding the concept of privity. *See* notes 7-8 *supra* & accompanying text.

sary.[34] Furthermore, the doctrine is applicable to "any"[35] person: it is not limited to suits brought by innocent bystanders.

Second, the dissent minimized the policy reasons behind the adoption of strict liability, namely, the protection of an innocent party who could not have avoided the injury and the placing of the burden of costs of injury upon the manufacturers, the parties most capable of absorbing the loss.[36] The dissent preferred the contract statute of limitations to insure that the manufacturers' exposure to suit would not be extended in time indefinitely.[37] Since the manufacturer in the instant case still may be liable in negligence (if the plaintiff can prove that the manufacturer did not use due care, a virtually insurmountable proof problem), there may not be an adequate justification to foreclose a suit based on strict products liability. It appears that Judge Benjamin may have equated strict products liability and absolute liability. But to establish liability under the *Codling* doctrine, the plaintiff must show more than resultant injury: he still must prove that the product was defective. As Judge Breitel pointed out in his dissent to *Mendel,* "the passage of time has the effect of making quite difficult the proof that the defect was due to the manufacturer rather than to circumstances, passage of time, users and repairers of the product . . . ."[38] If Judge Breitel's analysis is correct, then it would appear that foreclosure of suits grounded in strict products liability is not necessary to protect the manufacturer from meritless claims.

Assuming *arguendo* that *Codling* and *Mendel* can be reconciled, the dissent failed to explore adequately why they should be reconciled. It seems unreasonable to foreclose an innocent party's suit for personal injury on the ground that the limitations period should be governed by commercial contract law. Since the plaintiff in the instant case was not a party to the original sales contract, there is no compelling reason to restrict his opportunity for redress to the existence of that sales contract.

The future impact of *Rivera* is not yet clear. Despite *Rivera's* clear rejection of *Mendel,* a supreme court in Broome County, in

34. *See* text accompanying note 10 *supra.*

35. For the dissent's analysis in the instant case of the significance (or more accurately nonsignificance) of the word "any", see text accompanying note 29 *supra.*

36. *See* materials cited note 23 *supra.*

37. 44 App. Div. 2d at 328, 354 N.Y.S.2d at 666.

38. 25 N.Y.2d at 351, 253 N.E.2d at 214, 305 N.Y.S.2d at 499.

Lewis v. John Royle & Sons,[39] found the two cases compatible. The court in that case interpreted the second department's opinion as drawing yet another distinction in products liability law. "It appears that a significant distinction is unfolding between 'strict liability in tort' . . . and 'strict products liability' . . . ."[40] The court in Broome County held that a strict products liability action is controlled by *Rivera,* while a strict liability in tort action is governed by the *Mendel* rule.[41] This is a specious distinction based on semantics. While it is true that *Codling* and *Rivera* speak only of strict products liability, it serves no legitimate purpose to maintain that there is a substantive difference between that doctrine and what is referred to in other jurisdictions as strict liability in tort. To continue on the road to verbal confusion, as the lower court's opinion in *Lewis* would have us do, is to compound the problem of understanding the law in this rapidly changing field.

There is one line of authority that holds that breach of warranty actions should govern purely economic loss, while strict products liability as a tort concept should control suits for personal injury.[42] The basis of the personal-injury/economic-loss dichotomy lies in an interpretation of the reasons for the promulgation of the Uniform Commercial Code. Economic loss refers to the loss of the value of the bargain, that is, purely commercial losses. Since the Code was designed to govern commercial transactions, the remedy for economic losses arising from those transactions should be restricted to the provisions

39. 79 Misc. 2d 304, 357 N.Y.S.2d 601 (Sup. Ct.), *aff'd,* 362 N.Y.S.2d 262 (3d Dep't 1974). In *Lewis,* the plaintiff's original suit in negligence was dismissed. Since the plaintiff's injury occurred in 1968, he could not initiate a cause of action predicated on strict products liability more than three years from the date of injury.

40. *Id.* at 306, 357 N.Y.S.2d at 604 (footnotes omitted); *see* Jerry v. Borden Co., 45 App. Div. 2d 344, 358 N.Y.S.2d 426 (2d Dep't 1974), in which the appellate division wrote: "There are, of course, differences between a cause of action for strict liability in tort and a cause of action for breach of warranty . . . ." *Id.* at 347, 358 N.Y.S.2d at 430. Note the language of the court, "strict liability in tort." It would be helpful if the court were consistent in its use of language. "Strict products liability" was the terminology employed by both *Codling* and *Rivera.* The plethora of terms used to describe an action in products liability apparently resulted in the verbal confusion illustrated by the *Lewis* opinion.

41. 79 Misc. 2d 306-07, 357 N.Y.S.2d 604-05.

42. *See* Hagenbuch v. Snap-On Tools Corp., 339 F. Supp. 676 (D.N.H. 1972); Hawkins Constr. Co. v. Matthews Co., 190 Neb. 546, 209 N.W.2d 643 (1973); Seely v. White Motor Co., 63 Cal. 2d 9, 403 P.2d 145, 45 Cal. Rptr. 17 (1965); Adler, *Strict Products Liability,* 2 HOFSTRA L. REV. 581, 585 (1974). *Contra,* Santor v. A & M Karagheusian, Inc., 44 N.J. 52, 207 A.2d 305 (1965); Comment, *The Expanding Scope of Enterprise Liability,* 69 COLUM. L. REV. 1084, 1102 (1969).

of the Code. The fact that the Code also allows recovery for personal injury should not, in and of itself, indicate that recovery under the Code must be exclusive of the tort law. Similarly, since the occurrence of personal injury is related only peripherally (if at all) to the contract for sale, personal injury actions should be delimited by tort law. This dichotomy may not adequately protect consumer interests, but it is preferable to the dissent's all-or-nothing approach. Too often, under Judge Benjamin's analysis, the plaintiff would end up with nothing, foreclosed from suit because sale of the chattel preceded the injury by more than four years.[43]

By removing the bar of privity in *Codling*, the court of appeals attempted to eliminate one of the last vestiges of a contract theory of products liability. The announcement of the new doctrine of strict products liability was the first step in nullifying the much-criticized *Mendel* rule.[44] To give *Codling* its full effect, it is necessary to place actions for personal injury where they belong—in tort law, governed by that statute of limitations.

> Strict products liability is a relatively new thing . . . thus far not fitting with complete comfort into any preexisting contract or tort setting. But it seems . . . less uncomfortable as a tort theory. Therefore, it is hoped that states such as New York will abandon warranty principles . . . .[45]

The alternative is to retain part of the citadel established by the law of sales. As long as that barrier is allowed to preclude actions for personal injury, solely on the basis of when a sales contract was executed, the protection afforded by *Codling* is illusory.

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43. *See* N.Y. U.C.C. § 2-725 (McKinney 1964).
44. *See* notes 18-19 *supra* & accompanying text.
45. Marschall, *supra* note 28, at 1106-07.