

# CPLR 105(j): Age of Majority Changed to Eighteen

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portant, but, nevertheless, significant cases cannot be included. It is hoped that the *Survey* nonetheless accomplishes its basic purpose, *viz.*, to key the practitioner to significant developments in the procedural law of New York.

#### ARTICLE 1 — SHORT TITLE, APPLICABILITY AND DEFINITIONS

*CPLR 105(j): Age of majority changed to eighteen.*

The Legislature has added a new subdivision (j) to CPLR 105. This subdivision defines the words "infant" and "infancy" when used within the context of the CPLR. Under the new definitions, an infant is one who has not yet attained the age of eighteen.<sup>1</sup>

#### ARTICLE 2 — LIMITATIONS OF TIME

*CPLR 214: Tort statute of limitations adopted for strict products liability.*

The scope of recovery for personal injury and property damage caused by a defective product has been greatly expanded since *MacPherson v. Buick Motor Co.*<sup>2</sup> eliminated the requirement of privity in negligence actions. Although this right of recovery predicated upon negligence is well settled, it may provide inadequate protection in certain instances.<sup>3</sup> Therefore, the New York Court of Appeals has seen fit

<sup>1</sup> N.Y. SESS. LAWS [1974], ch. 924, § 1 (McKinney).

<sup>2</sup> 217 N.Y. 382, 111 N.E. 1050 (1916). See generally Prosser, *The Fall of the Citadel (Strict Liability to the Consumer)*, 50 MINN. L. REV. 791 (1966); Prosser, *The Assault Upon the Citadel (Strict Liability to the Consumer)*, 69 YALE L.J. 1099 (1960).

<sup>3</sup> Recovery predicated upon a negligence theory may be had only if the following elements can be proven: (1) the plaintiff is within the category of persons to whom the manufacturer owes a duty of reasonable care, see *MacPherson v. Buick Motor Co.*, 217 N.Y. 382, 111 N.E. 1050 (1916); (2) the manufacturer did not use such care; and (3) the negligently caused defect was the proximate cause of the plaintiff's injury. See W. PROSSER, *LAW OF TORTS* 143, 641 (Hornbook ed. 1971) [hereinafter cited as PROSSER]. The plaintiff may rely on *res ipsa loquitur* as an aid in proving negligence, but such proof may be difficult, or even impossible, particularly where a manufacturer can demonstrate that he generally used reasonable care throughout the manufacturing process. Wade, *On the Nature of Strict Tort Liability for Products*, 612 INS. L.J. 141, 142 (1974). 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) (*per curiam*) (plaintiff's suit dismissed in negligence but upheld on the theory of strict products liability); *Codling v. Paglia*, 32 N.Y.2d 330, 298 N.E.2d 622, 345 N.Y.S.2d 461 (1973), discussed in *The Quarterly Survey*, 48 ST. JOHN'S L. REV. 616 (1974) (jury found manufacturer free from negligence, but rendered verdict for the plaintiff on the theory of extended breach of warranty).

An even greater burden is imposed upon a plaintiff choosing, instead, to rely on the traditional cause of action for breach of warranty. He must prove: (1) contractual privity between himself and the seller; (2) the contract contained express or implied warranties not effectively disclaimed; (3) the defect causing the injury was a breach of the warranty; and (4) the defect proximately caused the injury. See N.Y.U.C.C. §§ 2-314, 2-315 (McKinney 1964). Broad disclaimers and adherence to privity requirements serve to limit the effectiveness of these Code provisions in protecting the consumer.