LANDLORD-TENANT — IMMUNITY — NEW HAMPSHIRE ABROGATES LANDLORD'S LIMITED TORT IMMUNITY AND IMPOSES REASONABLE MAN STANDARD — *Sargent v. Ross*, ____ N.H. ____, 308 A.2d 528 (1973).

INTRODUCTION

A child fell to her death from a steep outdoor stairway which led to the second story apartment of her babysitter. The child's mother sued the landlord for negligence. The landlord, in turn, raised the ancient defense of landlord tort immunity. In *Sargent v. Ross*[1] [*Sargent*], the Supreme Court of New Hampshire rejected the defense and held the landlord responsible for the child's death caused by her negligence.

SARGENT v. ROSS

An outdoor stairway rises steeply[2] from the rear courtyard of a residential building in Nashua, New Hampshire, to the second story apartment of Simone Ross.[3] The stairway, constructed some ten years ago, is an improvement to the building where Simone and her husband have lived for more than thirty years.[4] Before the stairway was built, Simone's family and guests had used an interior staircase which leads to an upstairs hall from the living room of the ground floor apartment where Fabiola Ross, her mother-in-law, lives.[5] Fabiola owns the four apartment dwellings; the two remaining apartments are occupied by other relatives.[6] The outdoor stairway was added[7] to serve as the entrance for Simone's family and friends,[8] and for Mrs. Tina Sargent's two children for whom Simone was the daily babysitter.[9] One afternoon, Anna Marie Sargent, age four, fell from this stairway to the ground below. She died four days later.[10]

The child's mother sued the landlord Fabiola, for negligent construction and maintenance of the stairway.[11] The jury, which had a

1. ____ N.H. ____, 308 A.2d 528 (1973) [hereinafter cited as *Sargent*].
2. *Id.* at ____, 308 A.2d at 530, 535.
3. Brief for Appellee at 2; Brief for Appellant at 2, *Sargent*.
4. Brief for Appellee at 1-2, *Sargent*.
5. *Id.* at 1-2; Brief for Appellant at 2, *Sargent*.
6. Brief for Appellant at 1-2, *Sargent*.
7. *Id.* at 2, 4.
8. *Id.* at 4-5.
9. *Sargent* at ____, 308 A.2d at 535.
10. Brief for Appellee at 1; Brief for Appellant at 2, *Sargent*.
11. *Sargent* at ____, 308 A.2d at 529-30.

view of the stairway,[12] returned a verdict against the landlord.[13] On appeal to the Supreme Court of New Hampshire, the defendant invoked the general rule[14] that a landlord, with certain limited exceptions, owes no duty to protect tenants or their guests[15] from injuries caused by defective and dangerous conditions on the premises. There was no special rule concerning guests; the landlord's duty owed to the guest was equivalent to that owed to the tenant.[16] Thus, under the common law, the court was confronted with two alternatives, "either to apply the rule, and hold the landlord harmless for a forseeable death resulting from an act of negligence, or to broaden one of the existing exceptions and hence perpetúate an artificial and illogical rule."[17] Eschewing both alternatives, the court abrogated the landlord's traditional immunity from liability for negligence,[18] finding that the rationale for the immunity was no longer extant.[19]

LANDLORD'S COMMON LAW TORT LIABILITY

At common law there was no law against leasing a tumble down house.[20] The rules governing the landlord's tort liability were predicated on the concept that a lease was a *sale* of the premises for a term.[21] As with the common law purchaser of a chattel, the tenant's "eyes were his bargain."[22] Indeed, the tenant's interest in the land was commonly called a chattel real.[23] He took possession of the premises, in the absence of fraud or express warranty, subject to the doctrine of *caveat emptor*.[24] There was no implied warranty that the leased premises were reasonably safe and fit for habitation.[25] Thus, a

12. Brief for Appellee at 4, *Sargent*.
13. *Sargent* at _____, 308 A.2d at 530.
14. *Id.*
15. At common law the landlord owed no duty to the tenant's guest greater than that owed to the tenant himself. The right of the guest was derivative. Black v. Fiandaca, 98 N.H. 33, 93 A.2d 663 (1953); Towne v. Thompson, 68 N.H. 317, 44 A. 492 (1895); 1 H. TIFFANY, A TREATISE ON THE LAW OF LANDLORD & TENANT § 961, at 649 (1st ed. 1910) [hereinafter cited as TIFFANY].
16. TIFFANY § 961, at 649.
17. *Sargent* at _____, 308 A.2d at 531.
18. *Id.* at _____, 308 A.2d at 533.
19. *Id.* at _____, 308 A.2d at 534.
20. Robbins v. Jones, 143 Eng. Rep. 768, 776 (Q.B. 1863).
21. Harkrider, *Tort Liability of a Landlord*, 26 MICH. L. REV. 260, 261 (1928) [hereinafter cited as Harkrider].
22. Moore v. Weber, 71 Pa. 429, 432, 10 Am. R. 708, 711, (1872).
23. TIFFANY § 12, at 46.
24. Towne v. Thompson, 68 N.H. 317, 319, 44 A. 492, 493 (1895); Harkrider at 262.
25. Marston v. Andler, 80 N.H. 564, 122 A. 329 (1923); J. CRIBBET, PRINCIPLES OF THE LAW OF PROPERTY 191 (1962).

landlord was not liable for injury caused by defective and dangerous conditions in the leased premises.[26]

Courts at an early date recognized certain situations where the immunity did not apply.[27] Today the rule is replete with exceptions.[28] A landlord is subject to ordinary negligence liability for injury to a tenant, or anyone entering under his right, if the injury is attributable to: (1) a hidden danger in the premises of which the landlord but not the tenant is aware; (2) premises leased for public use; (3) premises retained under the landlord's control, such as common stairways; or (4) premises negligently repaired by the landlord.[29]

Sargent v. Ross and the Search for the Appropriate Pigeonhole

Both at the trial and on appeal, the parties in *Sargent* concentrated on whether any of these exceptions to the landlord's immunity applied, particularly whether the landlord or the tenant had control of the stairway.[30] The court, however, disregarded the standard exceptions because they obscured the central issue of whether reasonable care was exercised with respect to the design of the stairs.[31]

The steepness of an outdoor stairway is an open and obvious danger which a landlord need not disclose to escape liability under common law.[32] However, the court pointed out that, under normal negligence principles, there may be liability for maintaining such a danger of which the plaintiff is fully aware.[33] Moreover, the court noted that a child may be oblivious to a risk readily apparent to an adult.[34]

Because the stairway led only to Simone's apartment and was not used by other tenants, the court held that liability could not be predicated on the common stairway or control doctrine.[35] The control

26. Clark v. Sharpe, 76 N.H. 446, 83 A. 1090 (1912) which interestingly involved injuries to a child under a fact situation quite similar to that in *Sargent;* W. PROSSER, HANDBOOK ON THE LAW OF TORTS § 63, at 400 (4th ed. 1971) [hereinafter cited as PROSSER]; TIFFANY § 86, at 556.

27. *Sargent* at ———, 308 A.2d at 531.

28. PROSSER § 63, at 400.

29. PROSSER § 63, at 401-12; RESTATEMENT (SECOND) OF TORTS §§ 358-62 (1965); 2 R. POWELL, REAL PROPERTY § 234, at 332-33 (rev. ed. 1971).

30. *Sargent* at ———, 308 A.2d at 531.

31. *Id.* at ———, 308 A.2d 532-33.

32. PROSSER § 63, at 401-02.

33. *Sargent* at ———, 308 A.2d at 532, *citing* 2 F. HARPER & F. JAMES, THE LAW OF TORTS § 27.13, at 1493 (1st ed.1956) [hereinafter cited as HARPER & JAMES].

34. *Sargent* at ———, 308 A.2d at 532.

35. *Id.*

exception to nonliability applies only to those areas used in common, or otherwise not part of the leasehold.[36] The landlord has the duty to exercise reasonable care to maintain and guard against injuries in such areas.[37] The court conceded that authority existed for finding control from the facts,[38] but refused to "expand the fiction,"[39] criticizing the control test as a poor substitute for an inquiry into whether the landlord exercised due care.[40] The court pointed out that the control test actually discouraged a landlord from repairing dangerous conditions since his repairs would be evidence of his control.[41] Since the jury could find that the landlord negligently constructed the stairway or failed to warn of the danger,[42] the court declined to immunize the landlord simply because the danger he created passed from his control before causing the injury.[43]

The court conceded that broadening the negligent repairs exception to embrace negligently constructed improvements would require no "great leap in logic."[44] But the court stated that a better alternative was to reject an immunity so perforated with exceptions.[45] The logical basis for discarding the remnants of the general rule was found in the court's recent decision, *Kline v. Burns*.[46]

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36. *Id.* at _____, 308 A.2d at 531; *see* Harkrider at 401-02.

37. *Sargent* at _____, 308 A.2d at 531; *see* PROSSER § 63, at 406; Harkrider at 401-03. Harkrider states at 403:

> But this duty of repairing the common passages and hallways does not extend so far as to require the landlord to change the *natural* conditions of the premises even though they are unsafe at the beginning of a term. Thus, if a stairway is dangerously steep, or without a handrail, the tenant is presumed to take what is there. Such defects "leap to the eye." The tenant can not expect the landlord to change them for his convenience. (Emphasis in original; footnotes omitted).

38. *Sargent* at _____, 308 A.2d at 532, *citing* Gibson v. Hoppman, 108 Conn. 401, 143 A. 635 (1928).

39. *Sargent* at _____, 308 A.2d at 532.

40. *Id.* at _____, 308 A.2d at 531.

41. *Id.* at _____, 308 A.2d at 532.

42. *Id.* at _____, 308 A.2d at 531.

43. *Id.* at _____, 308 A.2d at 532, *citing* HARPER & JAMES § 27.16, at 1509.

44. *Sargent* at _____, 308 A-2d at 533. The negligent repair exception was held to include negligently constructed improvements in Rowan v. Amoskeag Mfg. Co., 79 N.H. 409, 109 A. 561 (1920). This appears to be the general common law rule. *See* TIFFANY § 87, at 608.

45. *Sargent* at _____, 308 A.2d at 533.

46. 111 N.H. 87, 276 A.2d 248 (1971), an apartment rental claim suit where the tenant claimed the premises were uninhabitable. The court held for the tenant on the basis of an implied warranty of habitability.

KLINE v. BURNS AND THE DEATH KNELL OF CAVEAT EMPTOR

As noted earlier at common law there was no implied warranty that leased premises were safe and fit for habitation; instead *caveat emptor* was the rule.[47] At an early date, however, an exception to that maxim was recognized where a furnished house was let for a temporary term.[48] In such a case, a warranty was implied that the dwelling was fit for habitation at the beginning of the term.[49] Although slow to receive recognition,[50] the concept of an implied warranty served as a catalyst for modernization of the landlord-tenant contractual relationship.[51]

In *Kline v. Burns*[52] [*Kline*], a rental claim suit, the Supreme Court of New Hampshire joined the vanguard of jurisdictions recognizing an implied warranty of habitability in residential leases.[53] Among the reasons advanced for its decision, the court in *Kline* explained that the landlord is in a much better position than the tenant to know the condition of the premises, particularly concerning latent defects. Additionally, the court observed that it is appropriate for the landlord to shoulder the cost of repairs necessary to make the premises safe because he retains ownership of the premises, including permanent improvements.[54]

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47. *See* text accompanying notes 24-25, *supra*.

48. Smith v. Marrable, 152 Eng. Rep. 693 (Ex. 1843); Ingalls v. Hobbes, 156 Mass. 348, 31 N.E. 286 (1892); Collins v. Hopkins, [1923] 2 K.B. 617, 619, where the court said:

> Not only is the implied warranty on the letting of a furnished house one which . . . springs by just and necessary implication from the contract, but it is a warranty which tends in the most striking fashion to the public good and the preservation of public health. It is a warranty to be extended rather than restricted.

See also TIFFANY § 86, at 570; Harkrider at 279.

49. Harkrider at 279-80.

50. *Id.* at 280-81; *see also* TIFFANY § 86, at 573.

51. Delamater v. Foreman, 184 Minn. 428, 239 N.W. 148 (1931); Pines v. Perssion, 14 Wis. 2d 590, ———, 111 N.W.2d 409, 412-13 (1961), where the court explained:

> To follow the old rule of no implied warranty of habitability in leases would, in our opinion, be inconsistent with the current legislative policy concerning housing standards. The need and social desirability of adequate housing for people in this era of rapid population increases is too important to be rebuffed by that obnoxious legal cliche, *caveat emptor*.

52. 111 N.H. 87, 276 A.2d 248 (1971) [hereinafter cited as *Kline*].

53. Javins v. First Nat'l Realty Corp., 428 F.2d 1071 (D.C. Cir. 1970); Lemle v. Breeden, 51 Hawaii 426, 462 P.2d 470 (1969); Marini v. Ireland, 56 N.J. 130, 265 A.2d 526 (1970).

54. *Kline* at ———, 276 A.2d at 251.

From Kline to Sargent

The *Sargent* court pointed out that as a "necessary predicate" to its decision in *Kline*, the doctrine of *caveat emptor* had to be discarded.[55]

The creation in *Kline* of an implied warranty of habitability was used by the *Sargent* court to support the imposition of normal negligence rules on the landlord. Apparently, the *Sargent* court viewed the implied warranty as creating a continuing relationship between the landlord and the tenant. With this relationship came the duty to act with due care.[56] Arguably at least, the *Sargent* court could have merely expanded the implied warranty doctrine from the rent dispute situation of *Kline*, to allow recovery for personal injuries. The liability under either approach would be similar, since the scope of the implied warranty and that of the tort duty would no doubt be functionally identical.[57]

In holding the landlord to the reasonable man standard, the court explained that the former prerequisites to the landlord's liability, such as hidden defect and control, were now "relevant only inasmuch as they bear on basic tort issues such as the forseeability and unreasonableness of the particular risk of harm."[58]

Sargent and the Implied Warranty of Habitability

The principal case retains a distinction between contract and tort in resolving the landlord's liability. The court characterized *Kline* as a decision which modernized the landlord-tenant *contractual* relationship.[59] In holding the landlord liable for negligence the *Sargent* court stated, "We thus bring up to date the other half of landlord-tenant law" — the *tort* half.[60] This division, however, is not so rigid as to prevent contract elements from buttressing liability in tort.

55. *Sargent* at ____, 308 A.2d at 533-34.
56. *Id.* at ____, 308 A.2d at 534-35.
57. If the landlord-tenant relationship is viewed as strictly contractural (*e.g.* constituting the express lease, and implied warranties), the permissible parties plaintiff are limited by the rules of privity. Arguably, at least, a guest would *not* be in privity with the tenant, and therefore could not sue for personal injuries caused by a breach of warranty. *See e.g.*, UNIFORM COMMERCIAL CODE § 2-318. A third party may however recover under an express covenant to repair, PROSSER § 63, at 409.
58. *Sargent* at ____, 308 A.2d at 534.
59. *Id.* at ____, 308 A.2d at 533.
60. *Id.* at ____, 308 A.2d at 534.

The *Kline* decision explained that for a defect to constitute a breach of the implied warranty of habitability "it must be of a nature and kind which will render the premises unsafe. . . ."[61] Although the warranty in *Kline* is *not* defined in terms of housing code, other courts[62] have adopted an implied warranty of housing code compliance. Typically, housing codes expressly provide for only public enforcement by way of fines.[63] The courts are divided concerning whether a violation of a housing code imposes tort liability.[64] Recognition of the implied warranty of housing code compliance bolsters the tenant's right to maintain a tort action for injuries attributable to a housing code violation. Because the landlord is under an implied contractual duty to maintain "facilities vital to the use of the premises,"[65] a violation of a housing code which causes injury to the tenant would appear to be actionable negligence *per se*.[66] In brief, the implied warranty provides the "missing link" for private suits under housing codes otherwise enforceable only by public authority.

Where an *express* warranty to repair has been breached with consequent personal injury, courts have imposed negligence liability, finding a duty arising out of the contractual relation.[67] Arguably, liability for negligence could be predicated on breach of the *implied* warranty where the duty to maintain and repair the premises is written into the lease by law.[68]

In additon, the implied warranty of habitability recognized in the lease of a furnished house,[69] first limited in application to disputes over contractual aspects of the lease,[70] later served as the basis for recovery for personal injuries.[71] Significantly, liability in such a case was not predicated on proof of the landlord's negligence, as that

61. *Kline* at _____, 276 A.2d at 252.
62. *E.g.*, Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1072-73 (D.C. Cir. 1970), where the court held that an implied warranty of housing code compliance is written into residential leases by operation of law.
63. Harkrider at 384-85; *see* 62 HARV. L. REV. 669, 674-75 (1949); *see, e.g.*, N.H. REV. STAT. ANN. § 48-A:4 (Replacement ed. 1970).
64. 56 CORNELL L. REV. 489, 499-500 (1971); 62 HARV. L. REV. 669, 674 (1949); Harkrider at 384-89.
65. *Kline* at _____, 276 A.2d at 252.
66. 56 CORNELL L. REV. 489, 500 (1971).
67. PROSSER § 63, at 410.
68. 56 CORNELL L. REV. 489, 500 (1971).
69. *See* text accompanying notes 48-49, *supra*.
70. *E.g.*, Ingalls v. Hobbs, 156 Mass. 348, 31 N.E. 286 (1892).
71. Fisher v. Pennington, 116 Cal. App. 248, 2 P.2d 518 (1931); Horton v. Marston, 352 Mass. 322, 225 N.E.2d 311 (1967); Ackarey v. Carbonaro, 320 Mass. 537, 70 N.E.2d 418 (1946); Hacker v. Nitschke, 310 Mass. 754, 39 N.E.2d 644 (1942).

rationale was antithetical to the traditional landlord immunity. Instead, the landlord was subject to liability for breach of the implied warranty absent proof of negligence.[72] This liability for personal injuries, based on the implied warranty of habitability, presages the application of strict liability in tort to the landlord-tenant relationship.[73]

THE TENANT AS CONSUMER

The common law lease, as noted earlier, was likened to the sale of a chattel.[74] So viewed, *caveat emptor* was as applicable to the lease of a house as to the sale of a horse. The seller's sovereignity in the chattel marketplace gradually gave way with the development of the law of products liability. The seller's liability in tort was first premised on negligence.[75] Later, an alternative theory of liability was based on an "implied warranty," under which the injured buyer could recover without proving the seller's negligence.[76] Rules of privity, notice, and disclaimer, incident to warranties in commercial law, impeded recovery under the warranty theory,[77] and prompted the court to refine the doctrine to one of strict liability in tort.[78]

Arguably, the facts in *Sargent* would *not* warrant application of the strict liability doctrine. Fabiola Ross is not in the business of leasing apartments to a multitude of tenants. It is probable that her status is similar to the "occasional seller," against whom the doctrine does not apply.[79] As stated in the comments to the *Restatement (Second) of Torts* §*402A*:

> [Strict products liability] does not, however, apply to the occasional seller. . .who is not engaged in that activity as part of his business. Thus it does not apply to the housewife who, on one occasion sells to her neighbor a jar of jam . . . . The

72. Hacker v. Nitschke, 310 Mass. 754, ———, 39 N.E.2d 644, 646 (1942).
73. *See* 38 FORDHAM L. REV. 818, 823 (1970).
74. *See* text accompanying note 21, *supra*.
75. MacPherson v. Buick Motor Co., 217 N.Y. 382, 111 N.E. 1050 (1916); *see* PROSSER § 96, at 643.
76. *E.g.*, Henningsen v. Bloomfield Motors, Inc., 32 N.J. 358, 161 A-2d 69 (1960); *see* PROSSER § 97, at 650.
77. *See* PROSSER § 97, at 655-56.
78. Greenman v. Yuba Power Prods., Inc., 59 Cal.2d 57, 27 Cal. Rptr. 697, 377 P.2d 897 (1963); *see* PROSSER § 98, at 656-57, and RESTATEMENT (SECOND) OF TORTS § 402A (1965).
79. *Sargent* at ———, 308 A.2d at 530, *citing* HARPER & JAMES, § 27.13, at 1495.

> basis for the rule is the ancient one of the special responsibility for the safety of the public undertaken by one who enters into the business of supplying human beings with products which may endanger the safety of their persons and property, and the forced reliance upon that undertaking on the part of those who purchase such goods. This basis is lacking in the case of the ordinary individual who makes the isolated sale, and he is not liable to a third person, or even to his buyer, in the absence of his negligence.[80]

The landlord of the four apartment dwellings in *Sargent* probably would not be so "engaged in the business" of leasing to justify the imposition of strict liability.[81] Strict liability may well be imposed in the future to the mass lessor of apartment units.

An apartment has been analogized to a product. In *Javins v. First National Realty Corp.*,[82] the court characterized the modern tenant as a consumer who desires

> a well known package of goods and services — a package which includes not merely walls and ceilings, but also adequate heat, light and ventilation, servicable plumbing facilities, secure windows and doors, proper sanitation, and proper maintenance.[83]

He seeks, in sum, a product in which to live.

The range of defendants subject to strict products liability has broadened to include not only sellers, but also lessors.[84] For example,

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80. RESTATEMENT (SECOND) OF TORTS § 402A comment *f* 1965); In PROSSER § 100, at 664, the rationale for the occasional sale exemption is explained:

> When a housewife, on one occasion, sells a jar of jam to her neighbor, or the owner of an automobile trades it in to a dealer, the undertaking to the public and the justifiable reliance upon that undertaking on the part of the ultimate consumer, which are the basis of the strict liability, are conspicuously lacking.

81. *See* Conroy v. 10 Brewster Ave. Corp., 97 N.J. Super, 75, 234 A.2d 415 (1967), where the court declined to subject the corporate-lessor of a two-unit dwelling to strict liability. The court said the doctrine of strict liability applied only to the *mass* producer or *mass* lessor. *See* also Comment, *Products Liability at the Threshold of the Landlord-Lessor*, 21 HASTINGS L.J. 458, 482 n. 155 (1970).

82. 428 F.2d 1071 (D.C. Cir. 1970).

83. *Id.* at 1074.

84. Citations at note 78 *supra*, [manufacturers]; Vandermark v. Ford Motor Co., 61 Cal. 2d 256, 391 P.2d 168, 37 Cal. Rptr. 896 (1964) [retailers]; Cintrone v. Hertz Truck Leasing & Rental Serv., 45 N.J. 434, 212 A.2d 769 (1965) [lessors]; Garcia v. Halsett, 3 Cal. App. 3d 319, 82 Cal. Rptr. 420 (1970) [licensors].

in *Cintrone v. Hertz Truck Leasing and Rental Service*,[85] the Supreme Court of New Jersey held the *lessor* strictly liable in tort for breach of an implied warranty of fitness.[86] The court explained:

> There is no good reason for restricting such warranties to sales. Warranties of fitness are regarded by law as an incident of a transaction [e.g., a lease] because one party to the relationship is in a better position than the other to know and control the condition of the chattel transferred and to distribute the losses which may occur because of a dangerous conditon the chattel possesses. These factors make it likely that the party acquiring possession of an article will assume it is in a safe condition for use and therefore refrain from taking precautionary measures himself.[87]

Just as warranty of fitness implied in the lease transaction in *Cintrone* served as the basis for subjecting the lessor of a chattel to strict liability, there is at least arguable justification for holding the lessor of apartment units subject to the same liability for breach of the implied warranty of habitability.[88]

The real property quality of the apartment lease transaction does not foreclose this result. In extending the doctrine of strict liability to the builder-vendor of homes the New Jersey court, in *Schipper v. Levitt & Sons*[89] said:

> Ancient distinctions which make no sense in today's society and tend to discredit the law should be readily rejected . . . . We consider that there are no meaningful distinctions between Levitt's mass production and sale of homes and the mass production and sale of automobiles and that the pertinent overriding policy considerations are the same. That being so, the warranty or strict liability prin-

85. 45 N.J. 434, 212 A.2d 769 (1965).

86. *Id.* at ———, 212 A.2d at 779; *see also* Comment, *Products Liability at the Threshold of the Landlord-Lessor*, 21 HASTINGS L.J. 458, 465 (1970).

87. 45 N.J. at ———, 212 A.2d at 775.

88. *See* Conroy v. 10 Brewster Ave. Corp., 97 N.J. Super. 75, 234 A.2d 415, (1967); PROSSER § 95, at 640; 56 CORNELL L. REV. 49 (1971); 38 FORDHAM L. REV. 818 (1970); Comment. *Products Liability at the Threshold of the Landlord*, 21 HASTINGS L.J. 458 (1970).

89. 44 N.J. 70, 207 A.2d 314 (1965).

> cipales . . . should be carried over into the realty field . . . .[90]

In this regard, the seller[91] and presumably the lessor[92] of a mobile home could be subjected to the doctrine of strict liability. Thus a rule subjecting the lessor of an apartment home to strict liability seems likely to follow.

CONCLUSION

The *Sargent* court found the landlord's traditional tort immunity replete with exceptions. Moreover, the court saw that the doctrine of *caveat emptor*, the basis for the immunity, had been deeply eroded by the implied warranty of habitability recognized in the rent dispute situation in *Kline*. The court in *Sargent* declined to grant the landlord the traditional immunity, and thereby expanded the landlord's tort liability for personal injuries by holding him to a standard of reasonable care. Want of due care might be evidenced by a housing code violation, particularly where, as in *Javins*, there exists an implied warranty of code compliance. Where the implied warranty is not defined in terms of the housing code, as in *Kline*, negligence could still be found by analogizing the breach of the implied warranty of habitability to the breach of an express covenant to repair.

Recognition of the implied warranty of habitability, together with the imposition of the reasonable man standard, reflects the changing attitude of the court toward the law of landlord-tenant, and, perhaps, portends the advent of strict liability in this area.

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90. *Id.* at _____, 207 A.2d at 325.
91. Melody Home Mfg. Co. v. Morrison, 468 S.W.2d 505 (1971).
92. Cintrone v. Hertz Leasing & Rental Serv., 45 N.J. 434, 212 A.2d 769 (1965).