PRODUCTS LIABILITY—UNDER GREENMAN FORMULATION, THE PLAINTIFF NEED NOT PROVE THAT THE DEFECTIVE PRODUCT WAS UNREASONABLY DANGEROUS.—*Cronin v. J. B. E. Olson Corp.* (Cal. 1972).

The defendant was the manufacturer of an aluminum safety hasp which was designed to hold bread trays in place behind the driver's seat in a delivery truck. The truck was involved in an accident and the impact of the collision severed the safety hasp. The bread trays struck the plaintiff driver of the truck in the back and propelled him through the windshield, causing serious injuries. It was determined that the hasp was defective because it was extremely porous and was able to withstand only a small amount of pressure. The lower court entered judgment for the plaintiff on the theory of strict liability in tort. The defendant alleged that the lower court erred by failing to instruct the jury that the plaintiff had the burden of proving that the defective latch was unreasonably dangerous. The Supreme Court of California, *held*, that under the *Greenman* formulation, the plaintiff need not prove that the defective product was unreasonably dangerous. *Cronin v. J. B. E. Olson Corp.*, 8 Cal. 3d 121, 501 P.2d 1153, 104 Cal. Rptr. 433 (1972).

The evolution from *caveat emptor* to strict tort liability for manufacturers[1] has now reached an era of refinement and delineation. American law has effectively destroyed the "citadel of privity"[2] as it was articulated over a century ago in *Winterbottom v. Wright*.[3] The necessity of contractual privity between the consumer and the manufacturer was first abrogated in negligence actions[4] and was followed some years later in warranty actions.[5] Although this afforded partial relief to members of the public injured by defective products, there was still considerable dissatisfaction. The consumer advocates of the era[6] felt that the plaintiff should not be forced to bear the onus of proving

1. There have been several notable articles on the historical and evolutionary aspects of products liability. *See, e.g.*, Carmichael, *Strict Liability in Tort—An Explosion In Products Liability Law*, 20 DRAKE L. REV. 528 (1971); Prosser, *The Fall of the Citadel (Strict Liability to the Consumer)*, 50 MINN. L. REV. 791 (1966); Wade, *Strict Tort Liability of Manufacturers*, 19 SW. L.J. 5 (1965). For an excellent compilation of cases relating to products liability see Annot., 13 A.L.R.3d 1057 (1967).

2. Ultramares Corp. v. Touche, 255 N.Y. 170, 180, 174 N.E. 441, 445 (1931). *See* Prosser, *The Fall of the Citadel (Strict Liability to the Consumer)*, 50 MINN. L. REV. 791 (1966).

3. 10 M. & W. 108, 152 Eng. Rep. 402 (1842). It is surprising that the *Winterbottom* case has been recognized as the landmark case in establishing the citadel of privity. It was first stated that an injured plaintiff cannot maintain a warranty action against a defendant without privity of contract in *Langridge v. Levy*, 2 M. & W. 519, 150 Eng. Rep. 863 (1837).

4. MacPherson v. Buick Motor Co., 217 N.Y. 382, 111 N.E. 1050 (1916).

5. Henningsen v. Bloomfield Motors, Inc., 32 N.J. 358, 161 A.2d 69 (1960). *See* UNIFORM COMMERCIAL CODE § 2-318.

6. Justice Traynor and William Prosser were the two major proponents of strict tort liability. For an expression of their views, see Justice Traynor's concurring opinion in *Escola v. Coca Cola Bottling Co.*, 2 Cal. 2d 453, 150 P.2d 436 (1944) and Prosser, *The Assault upon the Citadel (Strict Liability to the Consumer)*, 69 YALE L.J. 1099 (1960).

the elements of negligence. As for those actions based upon the warranty laws, it was contended that liability should be imposed without the "illusory contract mask"[7] and separate from the "intricacies of the law of sales."[8]

The breakthrough occurred in 1962 in *Greenman v. Yuba Power Products, Inc.*,[9] where Justice Traynor stated that "[a] manufacturer is strictly liable in tort when an article he places on the market, knowing that it is to be used without inspection for defects, proves to have a defect that causes injury to a human being."[10] The policy behind strict tort liability is that a manufacturer is in a better position to assure a safe product by inspection and conscientious production and designing techniques. The manufacturer can also pass the expense and loss on to the public as a whole by increasing the price of the product.[11] The *Greenman* case finally gave the courts the tool to effectuate this policy.

Within three years, the American Law Institute adopted the present text of section 402A of the *Restatement (Second) of Torts*.[12] The drafters of this section had considerable difficulty in determining what types of defective products should subject manufacturers to strict tort liability, but they finally concluded that all products should be included.[13] Despite some criticism,[14] section 402A has been adopted by a great majority of jurisdictions[15] and has become "the court's most effective legal tool to fulfill their responsibility and

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7. Prosser, *The Assault upon the Citadel (Strict Liability to the Consumer)*, 69 YALE L.J. 1099, 1134 (1960).

8. Ketterer v. Armour & Co., 200 F. 322, 323 (S.D.N.Y. 1912).

9. 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697 (1962).

10. *Id.* at 62, 377 P.2d at 900, 27 Cal. Rptr. at 700.

11. *See, e.g.*, Price v. Shell Oil Co., 2 Cal. App. 3d 245, 251, 466 P.2d 722, 725-6, 85 Cal. Rptr. 178, 181-2 (1970), wherein the court stated that "[e]ssentially the paramount policy to be promoted by the rule is the protection of otherwise defenseless victims of manufacturing defects and the spreading throughout society of the cost of compensating them."

12. RESTATEMENT (SECOND) OF TORTS § 402A (1965) reads as follows:

(1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if

(a) the seller is engaged in the business of selling such a product, and

(b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(2) The rule stated in Subsection (1) applies although

(a) the seller has exercised all possible care in the preparation and sale of his product, and

(b) the user or consumer has not bought the product from or entered into any contractual relation with the seller.

13. RESTATEMENT (SECOND) OF TORTS § 402A (Tent. Draft No. 6, 1961) was limited to "foods for human consumption." RESTATEMENT (SECOND) OF TORTS § 402A (Tent. Draft No. 7, 1962) was expanded to include "products intended for intimate body use." RESTATEMENT (SECOND) OF TORTS § 402A (Tent. Draft No. 10, 1964) was expanded to include "any product" and, with few changes, this was the text of the present section published in 1965.

14. Smyser, *Products Liability and the American Law Institute; A Petition for Rehearing*, 42 DETROIT L.J. 343 (1965). The Defense Research Institute, Inc. published a monograph entitled *Brief Opposing Strict Liability in Tort* which expressed dissatisfaction with section 402A. *See* 2 L. FRUMER & M. FRIEDMAN, PRODUCTS LIABILITY § 16A(2) n.1 (1970).

15. Iowa adopted section 402A in 1970. *See* Hawkeye-Security Ins. Co. v. Ford Motor Co., 174 N.W.2d 672 (Iowa 1970).

provide some measure of protection for the consumer from defective products."[16]

Strict tort liability must be distinguished from strict liability in its traditional sense,[17] for a manufacturer is not an insurer of the safety of his product and is not responsible for all injuries caused by the product. Under both the *Greenman* and section 402A formulations, it is incumbent upon the plaintiff to show that the product was defective when it left the seller's hands.[18] An item is defective when it does not meet the reasonable expectations of the ordinary consumer as to its safety.[19] Due to the difficulty of proving a defect by direct evidence, many courts have eased the plaintiff's burden of proof and allowed the utilization of circumstantial evidence to show the probability of a defect.[20]

The determination and identification of defective products has proved to be a very important aspect of products liability law.[21] The most common and easily ascertainable defect is that which arises from a miscarriage of the manufacturing process. It is readily apparent that the consumer does not expect a foreign substance in his soft-drink,[22] or that his automobile brakes[23] or transmission[24] will prove ineffective, and thus the existence of these contingencies renders the products defective. To avoid strict tort liability, the manufacturer must, by effective production and inspection techniques, place a product on the market that adheres to its design and performs "in the manner reasonably to be expected in light of its nature and intended function."[25]

Whether a product is defective for the purposes of strict tort liability if manufactured pursuant to a dangerous design has invoked a considerable

16. Carmichael, *Strict Liability in Tort—An Explosion in Products Liability Law*, 20 DRAKE L. REV. 528, 574 (1971).

17. The landmark case in the area of traditional strict liability is *Rylands v. Fletcher*, 3 H.L. 330 (1868), where a landowner was responsible for all damage occasioned by his non-natural use of his land. *See* RESTATEMENT OF TORTS § 519 (1934).

18. Greenman v. Yuba Power Products, Inc., 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697 (1962); Hawkeye-Security Ins. Co. v. Ford Motor Co., 174 N.W.2d 672 (Iowa 1970); Traynor, *The Ways and Meanings of Defective Products and Strict Liability*, 32 TENN. L. REV. 363 (1965).

19. *See, e.g.*, Dunham v. Vaughan & Bushnell Mfg. Co., 42 Ill. 2d 339, 247 N.E.2d 401 (1969); Berkebile v. Brantly Helicopter Corp., 219 Pa. Super. 479, 281 A.2d 707 (1971); W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 99 (4th ed. 1971). RESTATEMENT (SECOND) OF TORTS § 402A, comment *g* at 351 (1965) gives the same definition but adds the qualification that the product be unreasonably dangerous.

20. Helene Curtis Ind., Inc. v. Pruitt, 385 F.2d 841 (5th Cir. 1967); Vandermark v. Ford Motor Co., 61 Cal. 2d 256, 391 P.2d 168, 37 Cal. Rptr. 896 (1964); Hawkeye-Security Ins. Co. v. Ford Motor Co., 174 N.W.2d 672 (Iowa 1970); Snider v. Bob Thibodeau Ford, Inc., 42 Mich. App. 708, 202 N.W.2d 727 (1972).

21. *See, e.g.*, Dickerson, *Products Liability: How Good Does a Product Have to Be?*, 42 IND. L.J. 301 (1967); Freedman, *"Defect" in the Product: The Necessary Basis for Products Liability in Tort and in Warranty*, 33 TENN. L. REV. 323 (1966); Rheingold, *What Are the Consumer's "Reasonable Expectations"?*, 22 BUS. LAWYER 589 (1967); Traynor, *The Ways and Meanings of Defective Products and Strict Liability*, 32 TENN. L. REV. 363 (1965).

22. Allen v. Coca-Cola Bottling Co., 403 S.W.2d 20 (Ky. 1966); Shoshone Coca-Cola Bottling Co. v. Dolinski, 82 Nev. 439, 420 P.2d 855 (1966).

23. Hawkeye-Security Ins. Co. v. Ford Motor Co., 174 N.W.2d 672 (Iowa 1970).

24. Mitchell v. Miller, 26 Conn. Sup. 142, 214 A.2d 694 (1965).

25. Ginnis v. Mapes Hotel Corp., 86 Nev. 408, 413, 470 P.2d 135, 138 (1970).

amount of discussion and litigation. There has been little difficulty in those jurisdictions adopting the *Greenman* rule, for that case evolved around a design defect, and the court explicitly stated that liability can be imposed "as a result of a defect in design and manufacture. . . ."[26] Section 402A did not indicate whether a product could be defective in design as well as manufacture. Much of the confusion emanated from another section in the *Restatement*[27] which provided a cause of action for negligent design of chattels. In light of this section, a substantial amount of case law has been compiled recognizing a manufacturer's liability for failing to use reasonable care in the adoption of a safe plan or design for products.[28] Even after the adoption of strict tort liability, many cautious attorneys continued to categorize design defects into the area of negligence law as well as in strict tort liability.[29] But courts soon began to realize that there was no rational distinction between a defect in design and one in manufacture, and the difficulties of proof did not warrant such a segregation. As expressed in *Cronin*:

> It is difficult to prove that a product ultimately caused injury because a widget was poorly welded—a defect in manufacture—rather than because it was made of inexpensive metal difficult to weld, chosen by a designer concerned with economy—a defect in design. The proof problem would, of course, be magnified when the article in question was either old or unique, with no easily available basis for comparison. We wish to avoid providing such a battleground for clever counsel.[30]

In recognition of this difficulty, several of the jurisdictions which have adopted section 402A have imposed strict tort liability on manufacturers for injuries caused by their defectively designed products. The section 402A precept has been applied to cases where the product design fails to include a safety

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26. Greenman v. Yuba Power Products, Inc., 59 Cal. 2d 57, 64, 377 P.2d 897, 901, 27 Cal. Rptr. 697, 701 (1962). This position has been reaffirmed in subsequent California cases. *See* Cronin v. J.B.E. Olson Corp., 8 Cal. 3d 121, 104 Cal. Rptr. 433, 501 P.2d 1153 (1972); Pike v. Frank G. Hough Co., 2 Cal. 3d 465, 85 Cal. Rptr. 629, 467 P.2d 229 (1970).

27. RESTATEMENT (SECOND) OF TORTS § 398 (1965), which provides that:
A manufacturer of a chattel made under a plan or design which makes it dangerous for the uses for which it is manufactured is subject to liability to others whom he should expect to use the chattel or to be endangered by its probable use for physical harm caused by his failure to exercise reasonable care in the adoption of a safe plan or design.

28. Carpini v. Pittsburgh & Weirton Bus Co., 216 F.2d 404 (3d Cir. 1954); Bengford v. Carlem Corp., 156 N.W.2d 855 (Iowa 1968); Wagner v. Larson, 257 Iowa 1202, 136 N.W.2d 312 (1965); Swaney v. Peden Steel Co., 259 N.C. 531, 131 S.E.2d 601 (1963). *See also* Note, *Manufacturer's Liability for Negligent Design*, 14 DRAKE L. REV. 117 (1965); Note, *Liability for Negligent Automobile Design*, 52 IOWA L. REV. 953 (1967).

29. Passwaters v. General Motors Corp., 454 F.2d 1270 (8th Cir. 1972); Hall v. E.I. DuPont De Nemours & Co., 345 F. Supp. 353 (E.D.N.Y. 1972); Bexiga v. Havir Mfg. Corp., 60 N.J. 402, 290 A.2d 281 (1972); Finnegan v. Havir Mfg. Corp., 60 N.J. 413, 290 A.2d 286 (1972). *See also* 1 L. FRUMER & M. FRIEDMAN, PRODUCTS LIABILITY § 7 (1973).

30. Cronin v. J.B.E. Olson Corp., 8 Cal. 3d 121, 134, 501 P.2d 1153, 1163, 104 Cal. Rptr. 433, 443 (1972).

shield,[31] and also to the less conventional cases where a boy's jacket,[32] a helicopter rotary system,[33] or a radiator cap[34] is manufactured pursuant to a dangerous or unsafe design. In light of this, the gulf between *Greenman* and section 402A in this area is narrowing, and its logical extension will necessarily result in no distinction being made between a defect in design and one in manufacture as they relate to strict tort liability.

Probably the greatest distinction between the *Greenman* formulation and section 402A has emanated from the *Cronin* case, the latest major pronouncement by the California supreme court in the area of products liability. The importance of this case rests in its resolution of a conflict which ensued after the *Greenman* case in 1963. Early in the opinion of the *Greenman* case, Justice Traynor articulated the oft-quoted rule of the case—"A manufacturer is strictly liable in tort when an article he places on the market, knowing that it is to be used without inspection for defects, proves to have a defect that causes injury to a human being."[35] This rule has been applied in a number of jurisdictions,[36] and is the most liberal and comprehensive of any rule in the area of strict tort liability. The strength of this maxim rests not only upon its simplistic nature, but also upon its logic and its facile applicability to many products liability cases.

The confusion of the *Greenman* case arose due to a sentence at the end of the opinion which may justifiably be depicted as the "second rule" of the case. The court specified that "[t]o establish the manufacturer's liability it was sufficient that plaintiff proved that he was injured while using the [defective product] in a way it was intended to be used as a result of a defect in design and manufacture of which plaintiff was not aware that made the [defective product] *unsafe for its intended use*."[37] This rule particularizes more stringent proof requirements for the plaintiff and appears to mirror section 402A's qualification that the defective item be unreasonably dangerous. Some courts have recognized this latter formulation as the law of the *Greenman* case.[38] The

31. Richey v. Sumoge, 273 F. Supp. 904 (D. Ore. 1967); Wright v. Massey-Harris, Inc., 68 Ill. App. 2d 70, 215 N.E.2d 465 (1966); Pizza Inn, Inc. v. Tiffany, 454 S.W.2d 420 (Tex. Civ. App. 1970).

32. LaGorga v. Kroger Co., 275 F. Supp. 373 (W.D. Pa. 1967), *aff'd*, 407 F.2d 671 (3d Cir. 1969).

33. Berkebile v. Brantly Helicopter Corp., 219 Pa. Super. 479, 281 A.2d 707 (1971).

34. Runnings v. Ford Motor Co., 461 F.2d 1145 (9th Cir. 1972).

35. Greenman v. Yuba Power Products, Inc., 59 Cal. 2d 57, 62, 377 P.2d 897, 900, 27 Cal. Rptr. 697, 700 (1962).

36. Luque v. McLean, 8 Cal. 3d 136, 501 P.2d 1163, 104 Cal. Rptr. 443 (1972); Elmore v. American Motors Corp., 70 Cal. 2d 578, 451 P.2d 84, 75 Cal. Rptr. 652 (1969); Snider v. Bob Thibodeau Ford, Inc., 42 Mich. App. 708, 202 N.W.2d 727 (1972); Shoshone Coca-Cola Bottling Co. v. Dolinski, 82 Nev. 439, 420 P.2d 855 (1966).

37. 59 Cal. 2d at 64, 377 P.2d at 901, 27 Cal. Rptr. at 701 (emphasis added).

38. *See, e.g.*, Chairaluce v. Stanley Warner Management Corp., 236 F. Supp. 385 (D. Conn. 1964); Maas v. Dreher, 10 Ariz. App. 520, 460 P.2d 191 (1969); Bennett v. International Shoe Co., 275 Cal. App. 2d 797, 80 Cal. Rptr. 318 (1969); Gherna v. Ford Motor Co., 246 Cal. App. 2d 639, 55 Cal. Rptr. 94 (1966); Martinez v. Nichols Conveyor & Eng. Co., 243 Cal. App. 2d 795, 52 Cal. Rptr. 842 (1966). William Prosser has also stated this extract as the rule of the *Greenman* case. *See* Prosser, *Strict Liability to the Consumer in California*, 18 HASTINGS L.J. 9, 18 (1966); Prosser, *The Fall of the Citadel (Strict Liability to the Consumer)*, 50 MINN. L. REV. 791, 804 (1966).

basic question to be resolved in the *Cronin* case was whether the *Greenman* and section 402A polestars were similar in requiring that the defective item be unreasonably dangerous, or did *Greenman* require the plaintiff to prove only a defect and an injury proximately caused by the defect in the product. Prior to *Cronin*, the California supreme court had treated the *Greenman* and section 402A precepts as identical on two occasions. In *Pike v. Frank G. Hough Co.*,[39] the court quoted from an Illinois case[40] which applied section 402A and required a showing that the defective product be unreasonably dangerous. The California supreme court stated that they would apply a similar rule to the *Pike* case, and continued by saying that "[w]hether the [defective product] was unreasonably dangerous due to faulty design . . . is clearly a question of fact. . . ."[41] In *Jiminez v. Sears, Roebuck & Co.*,[42] the California supreme court was even more explicit by citing section 402A and stating that the court would "categorize a product in a defective condition as one which was 'unreasonably dangerous' to the user, consumer or bystander."[43]

However, *Cronin* held that the "second rule" of the *Greenman* case was not intended to be a statement of the rule of the case and California was not to be governed by the more stringent proof requirements of section 402A. Therefore, a plaintiff need not prove that a defective item is "unsafe for its intended purpose" or unreasonably dangerous. In another case, decided the same day as *Cronin*, the California supreme court further abrogated the application of the "second rule" of the *Greenman* case by ruling that a plaintiff did not need to prove that he was unaware of the defect in the product.[44]

The *Restatement* defines "unreasonably dangerous" as being "dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it, with the ordinary knowledge common to the community as to its characteristics."[45] William Prosser, the Reporter of the *Restatement*, explains that the unreasonably dangerous requirement was added so that a manufacturer of products with inherent dangerous qualities will not become "automatically responsible for all the harm that such things do in the world."[46] Examples of such products are tobacco and whiskey. Tobacco may be dangerous since it may have some carcinogenic qualities, and whiskey has a propensity to cause constant consumers to become alcoholics or be inflicted with cirrhosis of the liver. The *Restatement* states that such products are not unreasonably dangerous since they are not "dangerous to an extent beyond that contemplated by the ordinary consumer who purchases it. . . ."[47] There-

39. 2 Cal. 3d 465, 467 P.2d 229, 85 Cal. Rptr. 629 (1970).
40. Wright v. Massey-Harris, Inc., 68 Ill. App. 2d 70, 215 N.E.2d 465 (1966).
41. 2 Cal. 3d at 476, 467 P.2d at 237, 85 Cal. Rptr. at 637.
42. 4 Cal. 3d 379, 482 P.2d 681, 93 Cal. Rptr. 769 (1971).
43. *Id.* at 384, 482 P.2d at 684, 93 Cal. Rptr. at 772.
44. Luque v. McLean, 8 Cal. 3d 136, 501 P.2d 1163, 104 Cal. Rptr. 443 (1972).
45. RESTATEMENT (SECOND) OF TORTS § 402A, comment *i* at 352 (1965).
46. Prosser, *Strict Liability to the Consumer in California*, 18 HASTINGS L.J. 9, 23 (1966).
47. RESTATEMENT (SECOND) OF TORTS § 402A, comment *i* at 352 (1965).

fore, section 402A has established a bifurcated proof requirement for the plaintiff. He must not only prove that the product was in a *condition* not contemplated by the consumer, but also that it was *dangerous* to an extent not contemplated by the ordinary consumer.

A great majority of jurisdictions have adopted section 402A and thus require that the plaintiff prove that the defective item was unreasonably dangerous.[48] Generally, this has created little difficulty in light of the fact that when the plaintiff adduces evidence showing that he was injured by a defective product, it creates at least an inference that the defective product was unreasonably dangerous. But this qualification has been used to defeat the policy and intent of strict tort liability in some instances. In Oregon, it was held that the consumer should have expected a seven-year old automobile to have defective brakes.[49]

Although a manufacturer is not an insurer of the safety of his product, he is in a better position to protect consumers and distribute the expense occasioned by an injury caused by a defective product. The qualification that the plaintiff prove that the defective item was unreasonably dangerous does not foreclose the possibility that a manufacturer may escape liability although it markets a defective product. Such a requirement increases the plaintiff's burden of proof and decreases the possibility that the manufacturer will be forced to respond in damages to the injured plaintiff. Also, requiring a showing of the "reasonableness" or "unreasonableness" of the dangerous qualities of a defective item, and proof of what a consumer might "expect" or "foresee" appears to be strikingly similar to the proof requirements in negligence actions.[50] Some legal writers have observed that, from a practical standpoint, the results obtained in strict tort liability actions under section 402A differ very little from the results that would be obtained if the actions were pursued upon the theory of negligence.[51] As stated in the *Cronin* case, "a requirement that a plaintiff also prove that the defect made the product 'unreasonably dangerous' . . . represents a step backward in the area pioneered by this court."[52]

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48. Beetler v. Sales Affiliates, Inc., 431 F.2d 651 (7th Cir. 1970); Helene Curtis Ind., Inc. v. Pruitt, 385 F.2d 841 (5th Cir. 1967); Richey v. Sumoge, 273 F. Supp. 904 (D. Ore. 1967); Greeno v. Clark Equip. Co., 237 F. Supp. 427 (N.D. Ind. 1965); Royal v. Black and Decker Mfg. Co., 205 So. 2d 307 (Fla. 1967); Suvada v. White Motor Co., 32 Ill. 2d 612, 210 N.E.2d 182 (1965); Williams v. Brown Mfg. Co., 93 Ill. App. 2d 334, 236 N.E.2d 125 (1968); Wright v. Massey-Harris, Inc., 68 Ill. App. 2d 70, 215 N.E.2d 465 (1966); Allen v. Coca-Cola Bottling Co., 403 S.W.2d 20 (Ky. 1966); Berkebile v. Brantly Helicopter Corp., 219 Pa. Super. 479, 281 A.2d 707 (1971); Ford Motor Co. v. Lonon, 217 Tenn. 400, 398 S.W.2d 240 (1966).

49. Cornelius v. Bay Motors Inc., 258 Ore. 564, 484 P.2d 299 (1971).

50. Many courts apply the test of "foreseeability" not only to determine the question of "duty" but also the issue of "proximate cause." *See* Weisser v. Otter Tail Power Co., 318 F.2d 375 (8th Cir. 1963); Republic of France v. United States, 290 F.2d 395 (5th Cir. 1961).

51. Keeton, *Products Liability—Some Observations About Allocation of Risks*, 64 MICH. L. REV. 1329 (1966); Rheingold, *Proof of Defect in Product Liability Cases*, 38 TENN. L. REV. 325 (1971). *But see* Williams v. Brown Mfg. Co., 93 Ill. App. 2d 334, 236 N.E.2d 125 (1968); Prosser, *Strict Liability to the Consumer in California*, 18 HASTINGS L.J. 9 (1966).

52. 8 Cal. 3d at 133, 501 P.2d at 1162, 104 Cal. Rptr. at 442.

Unfortunately, the *Cronin* case did not specify how to handle those products which have inherent dangerous qualities, but the deletion of the unreasonably dangerous requirement should not force manufacturers to discontinue the marketing of those types of products. A product is defective only when it is in a condition not contemplated by the consumer.[53] Although there is a danger that knives will cut or that whiskey will cause inebriation, these qualities do not render these products defective. These dangers should be within the expectations of the ordinary consumer, since they are matters of common knowledge and experience to a majority of the consuming public. When a danger is generic to the product itself and there exists the possibility that a consumer is not aware of the danger (such as the possible carcinogenic effects of cigarette smoking, or the possibility of serum hepatitus in blood transfusions) the manufacturer or supplier can protect himself by accompanying a warning with the sale of the product, thus bringing such danger within the expectations of the consumers. The precautionary burden is placed on the manufacturer, and the injured plaintiff has only the onus of proving that the product was in a condition not contemplated by the consumer and that the injury was proximately caused by the defective item.

In essence, the *Cronin* case exemplifies a re-evaluation of California's perspective on strict tort liability. Despite its protestation of innocence, the California supreme court had treated the *Greenman* rule and section 402A as interchangeable. The *Cronin* case afforded them the opportunity to refine their position by disassociating themselves from the stringent proof requirements of section 402A and identifying with the most liberal rule that has been articulated in products liability law. In doing so, California has reaffirmed its position as the precursor of liberality and expansion in the area of strict tort liability.[54] California is noted for its trend-setting decisions and one court has already followed the *Cronin* case.[55] The *Cronin* case may encourage other jurisdictions to re-consider the necessity or desirability of the unreasonably dangerous requirement inserted in section 402A. The eventual result might be a re-evaluation by the *Restatement* of its own position and conceivably a reformation of section 402A to mirror the liberalized result obtained in the *Cronin* case.

TIMOTHY A. PRATT

53. *See* note 18 *supra*.

54. However, even the advocates of liberality reach their limits. The California supreme court recently held that it would not impose strict tort liability upon the manufacturer unless the plaintiff could at least show a defect in the product that caused the injury. *See* Miller v. Los Angeles County Flood Control Dist., 8 Cal. 3d 389, 505 P.2d 193, 106 Cal. Rptr. 1 (1973).

55. Glass v. Ford Motor Co., 41 U.S.L.W. 2641 (N.J. Super. Ct. May 3, 1973).