cepts of law, but require special rules that should be provided for the courts by the state legislatures.

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Products Liability—A COMMERCIAL BAILOR IS LIABLE UNDER THE DOCTRINE OF STRICT LIABILITY IN TORT FOR INJURIES SUSTAINED BY THE BAILEE FROM A DEFECT IN THE BAILED ARTICLE.—*McClaflin v. Bayshore Equipment Rental Co.* (Cal. Ct. App. 1969).

The survivors of a deceased person brought a wrongful death action against the lessor of a stepladder rented to the decedent. The decedent died as a result of an accident caused by a defect in the ladder. The trial court refused to submit an instruction to the jury basing recovery on strict liability. On appeal to the California Court of Appeals, *Held*, reversed. A commercial bailor is liable under the doctrine of strict liability in tort for injuries sustained by the bailee from a defect in the bailed article. *McClaflin v. Bayshore Equipment Rental Company*, 79 Cal. Rptr. 337 (Cal. Ct. App. 1969).

The doctrine of strict liability in tort, as generally applied to the products field, was first announced in *Greenman v. Yuba Power Products, Inc.*[1] The *Greenman* court held that a manufacturer is strictly liable in tort when he places an article on the market knowing that it is to be used without inspection for defects, and the article proves to have a defect that causes an injury to a human being.[2] Following the *Greenman* decision was *Vandermark v. Ford Motor Co.*,[3] which expanded the doctrine of strict liability to apply to a retailer. The *Vandermark* court also stated that the fact that a retailer or component parts manufacturer is responsible for a defect in the product will not absolve the manufacturer of a completed product from liability under the strict liability in tort doctrine.[4] Decisions in other cases have extended the doctrine to vendor-builders,[5] component parts manufacturers,[6] middlemen,[7] and retailers.[8] Strict liability in tort for a defective product has been adopted by the *Restatement (Second) of Torts*. The *Restatement Second* provides that:

> (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

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1 59 Cal. 2d 65, 377 P.2d 897, 27 Cal. Rptr. 697 (1962).
2 *Id.*
3 61 Cal. 2d 256, 391 P.2d 168, 37 Cal. Rptr. 896 (1964).
4 *Id.*
5 Schipper v. Levitt & Sons Inc., 44 N.J. 70, 207 A.2d 314 (1965).
6 Suvada v. White Motor Co., 32 Ill. 2d 612, 210 N.E.2d 182 (1965).
7 Canifex, Inc. v. Hercules Powder Co., 46 Cal. Rptr. 552 (1965); Piercefield v. Remington Arms Co., 375 Mich. 85, 133 N.W.2d 129 (1965).
8 Alvarez v. Felker Mfg. Co., 230 Cal. App. 2d 987, 41 Cal. Rptr. 514 (1964).

> 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 brought the product from or entered into any contractual relation with the seller.[9]

The *Restatement Second* holds that this provision is applicable to any manufacturer, wholesaler, retailer, or distributor of a product.[10] The doctrine has been recognized in eighteen states,[11] but is not recognized in Iowa. Iowa recognizes strict liability in the products area as based on a warranty theory, but has abandoned any requirements of privity of contract between the parties.[12] Iowa requires that a party, in order to recover, must be in the distributive chain and not a casual bystander.[13] On the other hand, cases which ground strict liability in tort have in some instances awarded recovery to a bystander, or to one not a consumer or user of the product.[14] The *Restatement Second* observes that there is no reason why casual bystanders cannot be brought within the protection of strict liability except that bystanders and others do not expect protection for the same reasons as do the consumers.[15]

Bailment cases can be classified as product liability cases.[16] The principal, as stated in *MacPherson v. Buick Motor Co.*,[17] that liability will exist regardless of privity of contract if the nature of a thing is such that it is reasonably cer-

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[9] RESTATEMENT (SECOND) OF TORTS § 402A (1965).

[10] *Id.* at comment *i*.

[11] Greenman v. Yuba Power Products, Inc., 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697 (1962); Garthwait v. Burgio, 153 Conn. 284, 216 A.2d 189 (1965); Suvada v. White Motor Co., 32 Ill. 2d 612, 210 N.E.2d 182 (1965); Dealers Transp. Co. v. Battery Distrib. Co., 402 S.W.2d 441 (Ky. Ct. App. 1966); Browne v. Fenestra, Inc., 375 Mich. 566, 134 N.W.2d 730 (1965); McCormack v. Hankscraft Co., 278 Minn. 436, 154 N.W.2d 488 (1967); State Stove Mfg. Co. v. Hodges, 189 So. 2d 113 (Miss. 1966); Morrow v. Caloric Appliance Corp., 372 S.W.2d 41 (Mo. 1963); Shoshone Coca-Cola Bottling Co. v. Dolinski, 82 Nev. 439, 420 P.2d 855 (1966); Santor v. A. & M. Karagheusian, 44 N.J. 52, 207 A.2d 305 (1965); Goldberg v. Kollsman Instrument Corp., 12 N.Y.2d 432, 191 N.E.2d 81 (1963); Lonzrick v. Republic Steel Corp., 1 Ohio App. 2d 374, 205 N.E.2d 92 (1965); Marathon Battery Co. v. Kilpatrick, 418 P.2d 900 (Okla. 1965); Wights v. Staff Jennings, Inc., 241 Ore. 301, 405 P.2d 624 (1965); Webb v. Zern, 422 Pa. 424, 220 A.2d 853 (1966); Ford Motor Co. v. Lonon, 217 Tenn. 400, 398 S.W.2d 240 (1966); McKisson v. Sales Affiliates, Inc., 416 S.W.2d 787 (Tex. 1967); Dippel v. Sciano, 37 Wis. 2d 443, 155 N.W.2d 55 (1967).

[12] State Farm Mut. Auto. Ins. Co. v. Anderson-Weber, Inc., 252 Iowa 1289, 110 N.W.2d 449 (1961).

[13] Hahn v. Ford Motor Co., 256 Iowa 27, 126 N.W.2d 350 (1964).

[14] Elmore v. American Motors Corp., 75 Cal. Rptr. 652, 451 P.2d 84 (1969); Mitchell v. Miller, 26 Conn. Supp. 142, 214 A.2d 694 (1965).

[15] RESTATEMENT (SECOND) OF TORTS § 402A, comment *o* (1966) also observes that the social pressure which brought about the doctrine of strict liability in tort was consumer pressure.

[16] LaRocca v. Farrington, 301 N.Y. 247, 93 N.E.2d 829 (1950) points out that the title *supplier* in the RESTATEMENT OF TORTS § 392, comment *c* (1934) covers both owners and lessors. Scharf v. Gardner Cartage Co., 95 Ohio App. 153, 113 N.E.2d 717 (1953) supports the *MacPherson* application to bailments.

[17] MacPherson v. Buick Motor Co., 217 N.Y. 832, 111 N.E. 1050 (1916).

tain to place life and limb in peril when negligently made, has been applied to cases involving bailments for hire.[18] As a general rule a bailor is not an insurer of personal injuries resulting to the bailee from defects in the bailed article.[19] A bailor for hire is under a duty to warn the bailee of any defects known to the bailor, and the bailor must exercise reasonable care and diligence to see that the object of the bailment is free from defects. A failure to fulfill this duty will expose the bailor to liability for the personal injuries of the bailee.[20] A bailor will also be liable for any foreseeable injuries sustained by third parties.[21]

Various works have suggested that the liability of suppliers of goods should be co-extensive with that imposed by the law of sales.[22] One of the first cases to support this view was *Booth Steamship Co. v. Meier & Oelhaf Co.*[23] Although this case is distinguishable from the typical bailor-bailee relationship,[24] the United States Court of Appeals for the Second Circuit stated that, like the manufacturer or retailer, the supplier of goods profits from the bailment or lease of his equipment, and although he is unable to prevent defects arising in the course of manufacturing, his expert knowledge of the characteristics of the equipment in use should enable him to detect defects more readily than the user.[25] To say that the supplier warrants the equipment to be free from defects merely confirms the customary reliance which flows from a bailor-bailee relationship.[26]

Ten years after *Booth*, the Supreme Court of New Jersey, in a far-reaching decision, held a lessor of trucks liable under a strict liability in warranty theory. In *Cintrone v. Hertz Truck Leasing & Rental Service*,[27] an employee of the lessee was injured due to a defect in one of the lessor's trucks. In reversing the lower court decision, the *Cintrone* court held that a bailor-bailee agreement gave rise to a continuing promissory warranty that the leased truck would be fit for use during the period of the bailment. In addition the court stated that the bailor's liability may be stated in terms of strict liability in tort. The court found no good reason for restricting warranties to sales and not to leases. A warranty of fitness is regarded by law as an incident of a transaction 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 and take losses

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18 Aircraft Sales & Serv. v. Gantt, 255 Ala. 508, 52 So. 2d 388 (1951).

19 Annot., 131 A.L.R. 845 (1941); 8 AM. JUR. 2d *Bailments* §§ 149, 150 (1963). This general rule was followed in Davis v. Sanderman, 225 Iowa 1001, 282 N.W. 717 (1938).

20 Annot., 131 A.L.R. 845 (1941); 8 AM. JUR. 2d *Bailments* §§ 149, 150 (1963).

21 Andrews Taxi & U-Drive-It Co. v. Summerour, 98 Ga. App. 425, 106 S.E.2d 63 (1958).

22 2 F. HARPER & F. JAMES, TORTS § 28.19 (1956); W. PROSSER, TORTS, 655-56 (1964); 4 S. WILLISTON, CONTRACTS § 1041 (1967).

23 262 F.2d 310 (2d Cir. 1958).

24 In *Booth*, an employee of a contractor who was overhauling a ship and supplying the equipment was injured due to a defect in the equipment. The employee recovered against the shipowner, Booth, who, in turn, sought and recovered indemnity from the contractor based on a breach of warranty to supply safe and sound equipment.

25 Booth Steamship Co. v. Meier & Oelhaf Co., 262 F.2d 310 (2d Cir. 1958).

26 *Id.*

27 45 N.J. 434, 212 A.2d 769 (1965).

which may occur because of a dangerous condition the chattel possesses.[28] In *Cintrone*, the court stated that the most significant criteria which gave rise to an implied warranty of fitness in sales transactions were present in the lessor-lessee relationship before the court. The court found these criteria to be:

> (1) the risk of harm to the lessee, his employees, passengers, and members of the public from the operation of a defective truck on the highways is great; (2) the representation of the lessor that the vehicles are fit for use for the lessee's purposes is of major proportions . . . [the servicing and maintenance were to be performed by the lessor]; (3) the reliance of the lessee on the representation of the lessor is bound to be great.[29]

The court also emphasized that the inducement offered to the lessee through advertising and solicitation, encouraged reliance on the fitness of the vehicle.[30]

Immediately prior to *McClaflin v. Bayshore Equipment Rental Co.*,[31] the California Court of Appeals, by way of dicta, announced the coming of *McClaflin*. In *Price v. Shell Oil Co.*,[32] the court of appeals stated that the doctrine of strict liability in tort, as announced in *Greenman v. Yuba Power Products, Inc.*,[33] is equally applicable to non-sellers and therefore to lessors and bailors. The court noted that the doctrine does not depend upon whether the articles are sold or leased in large quantities, but on whether the article is placed upon the market.[34] The term "market" has been defined as "[t]he course of commercial activity by which the exchange of commodities is effected."[35] A casual sale does not create a market.[36] In the *Price* case the bailment was of a *casual* nature and thus, the doctrine of strict liability was not applied.

The *McClaflin*[37] case held a commercial lessor liable under the doctrine of strict liability in tort. The court, in referring to *Greenman* and *Vandermark*,[38] stated that the rationale of the two cases applied as logically and desirably to a lessor of chattels as to a manufacturer or retailer thereof.[39] Lessors of personal property, like the manufacturers and retailers of personal property, are engaged in the business of distributing goods to the public.[40] They are an integral part of the overall marketing enterprise and should bear the cost of injuries resulting from defective products.[41] The *McClaflin* court felt that the imposition of strict liability upon a lessor would afford maximum protection to the

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28 *Id.*
29 *Id.* at 781.
30 *Id.*
31 79 Cal. Rptr. 337 (Cal. App. 1969).
32 79 Cal. Rptr. 342 (Cal. App. 1969).
33 59 Cal. 2d 65, 377 P.2d 897, 27 Cal. Rptr. 697 (Cal. App. 1962).
34 Price v. Shell Oil Co., 79 Cal. Rptr. 342 (Cal. App. 1969).
35 *Id.*, citing to WEBSTER'S NEW INTERNATIONAL DICTIONARY (3rd ed. 1961).
36 *Id.*, citing to LeBlume Import Co. v. Coty, 293 F. 344 (2d Cir. 1923).
37 McClaflin v. Bayshore Equip. Rental Co., 79 Cal. Rptr. 337 (Cal. App. 1969).
38 Greenman v. Yuba Power Products, Inc., 59 Cal. 2d 65, 337 P.2d 897, 27 Cal. Rptr. 697 (1962); Vandermark v. Ford Motor Co., 61 Cal. 2d 256, 391 P.2d 168, 37 Cal. Rptr. 896 (1964).
39 McClaflin v. Bayshore Equip. Rental Co., 79 Cal. Rptr. 337 (Cal. App. 1969).
40 *Id.*
41 *Id.*

plaintiff while working no injustice upon the lessor; the latter can recover the cost of protection as an incident of his business expense. The court in *McClaflin*, as in *Price*,[42] emphasized that the case involved a full-time marketing enterprise, not an isolated or casual transaction.

The Iowa supreme court does not impose strict liability upon a bailor for a defective bailment. If *McClaflin* arose in Iowa, the basis for an argument to impose strict liability would lie in the Uniform Commercial Code whose provisions Iowa has adopted by statute. Of particular interest in this regard is a comment to a section of the Uniform Commercial Code.[43] This comment provides:

> Although this section is limited in its scope and direct purpose to warranties made by the seller to the buyer as part of a contract for sale, the warranty sections of this Article are not designed in any way to disturb those lines of case law growth which have recognized that warranties need not be confined either to sales contracts or to the direct parties to such a contract. They may arise in other appropriate circumstances such as in the case of bailments for hire . . . .[44]

The Iowa supreme court abandoned the privity of contract requirement in order to permit recovery from a manufacturer for a breach of warranty.[45] This appears to be in accord with the comment's suggestion that warranties need not be confined to the direct parties of sales contracts.[46] Perhaps, the second part of the comment should not go unheeded: "They [warranties] may arise in other appropriate circumstances such as in the case of bailments for hire . . . ."[47]

The courts have extended strict liability in tort to manufacturers,[48] vendor-builders,[49] retailers,[50] and middlemen.[51] These persons are all vital links in the production and marketing chain which serves the public. It seems only logical, as the *McClaflin* court stated, that the doctrine be extended to commercial lessors. The commercial lessor is a key link in the commercial chain. The volume of rental companies grows every year. Rental companies lease to the public such potentially dangerous articles as cars, boats, planes, trailers, and power tools. To place the doctrine of strict liability in tort upon the commercial lessor would insure that maximum safety precautions will be taken in order to prevent defects. This, in turn, would raise to an even higher level the reliance and trust which the public can feel when using a product. If the number of injuries due

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42 Price v. Shell Oil Co., 79 Cal. Rptr. 342 (Cal. App. 1969).

43 UNIFORM COMMERCIAL CODE § 2-313, Comment 2 (this section has been incorporated by IOWA CODE § 554.2313 (1966)).

44 *Id.*

45 State Farm Mut. Auto. Ins. Co. v. Anderson-Weber, Inc., 252 Iowa 1289, 110 N.W.2d 449 (1961).

46 UNIFORM COMMERCIAL CODE § 2-313, Comment 2.

47 *Id.*

48 Greenman v. Yuba Power Products, Inc., 59 Cal. 2d 65, 377 P.2d 897, 27 Cal. Rptr. 697 (1962).

49 Schipper v. Levitt & Sons Inc., 44 N.J. 70, 207 A.2d 314 (1965).

50 Alvarez v. Felker Mfg. Co., 230 Cal. App. 2d 987, 41 Cal. Rptr. 514 (1964).

51 Canifex v. Hercules Powder Co., 46 Cal. Rptr. 552 (1965); Piercefield v. Remington Arms Co., Inc., 375 Mich. 85, 133 N.W.2d 129 (1965).

to defects in a product can be reduced even a fraction, if yet one more safety check is encouraged by the imposition of the doctrine, then the extension of strict liability to a commercial lessor is certainly a logical one.

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Torts—THE DOCTRINE OF STRICT LIABILITY IN TORT CAN BE APPLIED TO HOME BUILDERS.—*Kriegler v. Eichler Homes, Inc.* (Cal. Ct. App. 1969).

Plaintiff homeowner brought an action for damages sustained as a result of the failure of his home's radiant heating system. Defendant had constructed the home and supervised the installation of the heating system by a contractor. In 1952 the completed house was sold to plaintiff's predecessor, who sold it to plaintiff in 1957. Failure of the heating system due to corrosion of improperly installed metal tubing occurred in 1959. The trial court found that as a result of defendant's negligence the value of plaintiff's home was diminished by $5,073.18, but that regardless of negligence, defendant was liable to plaintiff in the above amount on the theory of strict liability in tort because the radiant heating system, as installed, was defective. On appeal to the California Court of Appeals, *Held*, affirmed, the doctrine of strict liability in tort can be applied to home builders. *Kriegler v. Eichler Homes, Inc.*, 74 Cal. Rptr. 749 (Cal. Ct. App. 1969).

Although the doctrine of *caveat emptor*[1] has long been abolished with respect to manufacturers and sellers of chattels, it remained a viable doctrine in sales of real estate until more recently.[2] Under that rule, the buyer could not recover from the builder for defects in construction unless he had obtained an express warranty or could prove fraud or misrepresentation.[3] Since the end of World War II there has been a tremendous increase in the number of low-cost, mass-produced homes built by developers who specialize in this type of construction. Because of this fact, and because of the unfair treatment the buyer receives under the doctrine of *caveat emptor*, the courts of many jurisdictions have attacked the doctrine. The attack has centered around both contract and tort law.

The first exception to the doctrine appeared as dictum in the English case of *Miller v. Cannon Hill Estates, Ltd.*[4] In that case, the court stated that where the sale of a dwelling takes place before construction is completed, the builder

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[1] "Let the buyer beware (or take care)." BLACK'S LAW DICTIONARY 281 (4th ed. 1968).

[2] Levy v. C. Young Constr. Co., 46 N.J. Super. 293, 134 A.2d 717 (1957).

[3] Bearman, *Caveat Emptor in Sales of Realty, Recent Assaults Upon the Rule*, 14 VAND. L. REV. 541 (1961).

[4] 2 K.B. 113 (1931) (house purchased in course of construction later found uninhabitable due to dampness).