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The Landlord as a Retailer? Strict Products Liability and the Landlord-Tenant Relationship in California: Becker v. IRM Corporation

INTRODUCTION

In Becker v. IRM Corporation, the California Court of Appeal held that a landlord in the business of leasing housing, is to be treated as a “retailer.” By placing the rental units or “goods” on the market, the landlord becomes strictly liable for any subsequent defects. Classifying the landlord as a “retailer” of rental housing places the landlord-tenant relationship squarely within the ambit of strict products liability and therefore requires that landlords be held strictly liable for defects in the leased premises.

Previously, the California Courts of Appeal had applied the doctrine of strict products liability to the landlord-tenant relationship only in a limited and piecemeal manner. In a 1962 case, Fakhoury v. Magner, the court held a landlord strictly liable for defective “furnishings,” and in 1976, in Golden v. Conway, the doctrine was applied to “fixtures” installed by the landlord in a rental unit.

The Becker court held the landlord to be a “retailer,” thus avoiding the restrictive distinctions implied in the previous decisions. To understand the broad scope of the Becker strict liability rule, it is helpful to analyze the following hypothetical in terms of pre-Becker and post-Becker rules.

Toni (tenant), is apartment hunting and reads the following advertisement: “$385 LOVELY LIKE NEW 2 BR UPPER in EL CAJON includes Carpet, Drapes, Appl., Laundry fac., Pool, Pvt. Balcony. No pets.” She views the apartment and signs a one year lease with Larry (landlord).

After moving into the apartment, Toni’s first priority is to wash

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2. See Fakhoury v. Magner, 25 Cal. App. 3d 58, 63, 101 Cal. Rptr. 473, 476 (1972) where a landlord was held strictly liable as a “lessor of personal property”; see also Golden v. Conway, 55 Cal. App. 3d 948, 961-62, 128, Cal. Rptr. 69, 78 (1976), where the landlord’s liability was extended to include defects in appliances with which he equipped the leased premises or which he caused to be installed; see infra notes 49-71 and accompanying text.
5. See supra note 2.

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her laundry. Consequently, she places her first load in the machine and returns to the apartment to unpack the rest of her belongings. Thirty minutes later she attempts to remove the clothes from the washer. Unfortunately, the machine slips into the “spin” cycle catching Toni’s arm and injures it.

Toni rushes upstairs for help. As she passes the electric space heater, it tips over severely burning her legs. She then goes to get some first aid cream for her burn. The stepladder she is using (the cream is located on a high shelf), collapses throwing Toni to the ground causing severe head injuries.

Although the above fact situation is more typical of a first year torts exam than a personal injury case, it is useful to highlight the ramifications of the application of the Becker strict landlord liability rule. Assume that the washing machine, heater and stepladder malfunctioned due to a manufacturing or design defect. The liability of the landlord could be outlined as follows:

Pre-Becker: Toni would most likely have a cause of action in strict liability for the defective stepladder under the rule existing prior to Becker if the court held the ladder to be “furniture” supplied for her use by Larry, the landlord.

She would also have a strict liability claim for the injuries received from the washer (fixture) if Larry had installed the machine. However, if the machine was already in place when he purchased the apartment building some time after its construction, he would not be strictly liable for her injuries.

The liability for the burn sustained from the heater is less clear. No California cases, prior to Becker, have addressed the issue of imposing strict liability on a landlord for defective appliances.

Post-Becker: The Becker rule of strict landlord liability treats the apartment as a package of goods for which the landlord is wholly responsible. As a supplier of housing, the landlord is held accountable for the entire “package” which consists of the apartment, including fixtures, appliances and furniture. Consequently, according to the Becker holding, Toni would have strict liability action for all three injuries.

The Becker court considered not only the previous case law which applied strict products liability, but also the policy behind the doctrine and the evolution which the landlord-tenant relationship has undergone in the change from an agrarian to a modern urban setting. This Note will therefore demonstrate that the extension of strict products liability to the landlord is consistent with the development of the doctrine and also with California landlord-tenant law. Further, this Note will consider some of the problems which may result from the application of this decision.
A brief review of the historically preferred status of the landlord is necessary to fully understand the prior reluctance of the courts to apply strict products liability to the landlord.

I. DEVELOPMENT OF LANDLORD LIABILITY

At common law, the relationship between the landlord and tenant was governed by the doctrine of caveat emptor. This doctrine completely excluded the landlord from tort liability. The rationale for this rule of landlord tort immunity was that the tenant was receiving a conveyance of property and therefore had a duty to inspect the premises for any defects. Once the tenant took possession of the land, it was his responsibility to maintain the same in a safe condition.

The harshness of the rule together with the changing times led to many exceptions to the nonliability rule allowing for the development of tort liability of the landlord. These exceptions did much to mitigate the unreasonable harshness of the common law rule; however, their continued usefulness has been questioned and in California, discarded as a framework for imposing tort liability.

At common law, a system of classifications developed for deter-

7. "Caveat emptor" is defined as "Let the buyer beware. This maxim summarizes the rule that a purchaser must examine, judge, and test for himself." BLACK'S LAW DICTIONARY 202 (5th ed. 1979). See also Comment, The Landlord's Tort Liability for Injuries Caused By Defects Upon the Demised Premises, 3 PEPP. L. REV. 132, 133 (1975).

8. Thus, the tenant was held to have taken the land and buildings thereon "as is" and was subsequently held responsible for the maintenance and repair of the property for the duration of the lease. Since the tenant had the opportunity to observe the condition of the property he was considered to have assumed the risk of any danger, he would not seek recovery for personal or property damage which resulted from subsequent defects. Love, Landlord's Liability for Defective Premises: Caveat Lessee, Negligence, or Strict Liability?, 1975 Wis. L. REV. 19, 48-49 (1975) [hereinafter cited as Landlord's Liability].

9. The following exceptions to the nonliability rule have been recognized: 1) undisclosed latent defects known to lessor; 2) premises leased for admission of public; 3) implied warranty of habitability or merchantability in furnished dwellings for a short term; 4) covenant to repair; 5) negligent repairs; 6) premises in common use; and 7) statutory duty to repair. Landlords' Liability, supra note 8, at 48-78; see also W. PROSSER, LAW OF TORTS § 63, at 399-412 (4th ed. 1971) [hereinafter cited as LAW OF TORTS]. In California the nonliability rule applied unless one of the following three exceptions were present: "(1) concealment of a known danger, (2) an express covenant to repair supported by consideration, or (3) a statutory duty to repair . . . ." Del Pino v. Gualtieri, 265 Cal. App. 2d 912, 920, 71 Cal. Rptr. 97, 721 (1968) (citation omitted).

10. Landlord's Liability, supra note 8, at 19.

11. Rowland v. Christian, 69 Cal. 2d 108, 443 P.2d 561, 70 Cal. Rptr. 97 (1968). (Plaintiff, a social guest of tenant, was injured by a cracked knob of the cold water faucet on the bathroom basin of tenant's apartment. The California Supreme Court held that one's status as a trespasser, licensee or invitee could not serve to bar recovery. See infra notes 21-23 and accompanying text.)
mining the standard of care owed by owners and possessors of land\(^\text{12}\) towards those who entered upon the land. The three main categories are: 1) trespassers,\(^\text{13}\) 2) licensees,\(^\text{14}\) and 3) invitees.\(^\text{15}\) Basically, a trespasser is a person who has no right to be on the land, a licensee has a limited right to enter the land, and finally, an invitee is one who is on the land of another for a particular purpose or course of business.\(^\text{16}\) The degree of protection to be afforded a visitor was determined by the category in which he was placed.\(^\text{17}\) Trespassers received the least protection with invitees receiving the most.\(^\text{18}\) These categories tended to be extremely rigid and often proved to be virtually unworkable for determining a landowner's tort liability.\(^\text{19}\)

Dissatisfaction\(^\text{20}\) with the above-listed categories led the Califor-

\(^{12}\) "A possessor of land is
(a) a person who is in occupation of the land with intent to control it, or
(b) a person who has been in occupation of land with intent to control it, if no other person has subsequently occupied it with intent to control it, or
(c) a person who is entitled to immediate occupation of the land, if no other person is in possession under Clauses (a) and (b)." RESTATEMENT (SECOND) OF TORTS § 328E. (1965) [hereinafter cited as RESTATEMENT].

\(^{13}\) "A trespasser is a person who enters or remains upon land in the possession of another without a privilege to do so created by the possessor's consent or otherwise." RESTATEMENT, supra note 12, § 329.

\(^{14}\) "A licensee is a person who is privileged to enter or remain on land only by virtue of the possessor's consent." RESTATEMENT, supra note 12, § 330.

\(^{15}\) "(1) An invitee is either a public invitee or a business visitor.

(2) A public invitee is a person who is invited to enter or remain on land as a member of the public for a purpose which the land is held open to the public.

(3) A business visitor is a person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land." RESTATEMENT, supra note 12, § 332.

\(^{16}\) In California, the following working definitions were used to determine the status of one entering the land of another:

Generally speaking a trespasser is a person who enters or remains upon land of another without a privilege to do so; a licensee is a person like a social guest who is not an invitee and who is privileged to enter or remain upon land by virtue of the possessor's consent, and an invitee is a business visitor who is invited or permitted to enter or remain on the land for a purpose directly or indirectly connected with business dealings between them.

Rowland, 69 Cal. 2d at 113-14, 443 P.2d at 565, 70 Cal. Rptr. at 101 (citation omitted).

\(^{17}\) See LAW OF TORTS, supra note 9, §§ 58-62, at 357-98.

\(^{18}\) Id.

\(^{19}\) Problems arose concerning public officials such as firemen—should they be treated as licensees or invitees? What about the invitee who overreached the limits of his invitation? For difficulties such as these see generally Note, Torts—Negligence—Liability of an Occupier, 7 DUQ. L. REV. 316 (1968-69). See also LAW OF TORTS, supra note 9, § 62, at 398-99.

\(^{20}\) LAW OF TORTS, supra note 9, § 62. This dissatisfaction arose due to the difficulties encountered when one attempted to classify certain persons. See supra note 19 and accompanying text. Dissatisfaction also existed because of the inequitable results which sometimes occurred due to such classification. For instance, a child might be barred from recovery because his status was that of a trespasser.
nia Supreme Court, in the landmark case of *Rowland v. Christian*,21 to impose a new rule of reasonableness. Hereafter, there was to be only one standard of care applied to the possessor of the land; and the degree of care owed to another was to be determined by:

whether in the management of his property he has acted as a reasonable man in view of the probability of injury to others, and, although the plaintiff’s status as a trespasser, licensee, or invitee may in the light of the facts giving rise to such status have some bearing on the question of liability, the status is not determinative.22

No longer is a possessor of land immune from tort liability solely because the injured person is a “trespasser.” An injured plaintiff is not to be denied recovery based on an outdated rule with numerous exceptions which may not be applicable to his situation.23

Five years later, in *Brennan v. Cockrell Investments, Inc.*,24 the California Court of Appeal made the *Rowland* rule of reasonableness applicable to the landlord-tenant relationship. The court said that even though the tenant, rather than the landlord, was in possession of the defective premises, the rule is that the landlord “must act toward his tenant as a reasonable person under all of the circumstances, including the likelihood of injury, the burden of reducing or avoiding the risk . . . .”25

Thus, in California, prior to *Becker v. IRM Corporation*, landlord-tenant law had progressed from completely exempting the landlord from liability, to a rule with exceptions, and finally to an adoption of the rule of reasonableness, with limited application of strict products liability.26 Moreover and importantly, while landlord-tenant law was evolving, so was tort law.27 Specifically, the

22. Id. at 119, 443 P.2d at 568, 70 Cal. Rptr. at 104.
23. By eliminating the aforementioned categories and adopting the rule of reasonableness, the *Rowland* court recognized the necessity of updating the common law rules required for an agrarian society to be in accord with the complexities of modern urban society. *Rowland*, 69 Cal. 2d at 114, 443 P.2d at 567, 70 Cal. Rptr. at 103.
24. 35 Cal. App. 3d 796, 111 Cal. Rptr. 122 (1973) (Tenant was injured when the handrail on the stairway broke).
25. Id. at 800-01, 111 Cal. Rptr. at 125.
26. See infra notes 49-71 and accompanying text.
27. One commentator made the following relevant observation of the growth in the fields of landlord-tenant and strict liability law:

This progression in the law of landlord and tenant with respect to tort liability arising from the condition of the property parallels in some respects developments in the field of products liability, where the move was from artificial rules of privity, which effectively shielded the manufacturer from liability, to the implication of warranties of fitness and the application of negligence rules. It is perhaps not too wild a surmise that the next step may be, under theories of enterprise liability, the adoption of a rule of strict liability under which the landlord will be automatically charged with responsibility for the injuries caused by defects in his property, as one of his normal costs of doing business.
II. DEVELOPMENT OF STRICT PRODUCTS LIABILITY

The theory of strict liability is based on the premise that there are certain instances when liability should be imposed in the absence of any wrongdoing or negligence.\(^{28}\) Strict liability was first applied in the areas of defective food and drink and "imminently" dangerous articles such as explosives and firearms.\(^{29}\) Next, the doctrine was extended to include certain products intended for bodily use such as permanent wave solutions and hair dye.\(^{30}\) As the development of strict liability progressed, the American Law Institute drafted the now famous Restatement (Second) of Torts Section 402A\(^{31}\) defining strict products liability.

The section 402A approach was adopted first in California in 1962, in the landmark case of Greenman v. Yuba Power Products, Inc.\(^{32}\) The court held 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."\(^{33}\)

Following this decision, it was not long before liability was placed on other entities in the marketing chain besides the original manufacturer. Other responsible defendants in a strict products liability

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For further discussion of this development in tort and property law, see generally Comment, Products Liability at the Threshold of the Landlord-Lessor, 21 HASTINGS L.J. 458 (1969-1970).

28. These instances require that the party manufacturing the product bear the cost of injury as part of the cost of doing business. This cost is not dependent upon any concept of "fault" on the part of the manufacturer. LAW OF TORTS, supra note 9, § 75, at 494-96.

29. Prosser, Strict Liability to the Consumer in California, 18 HASTINGS L.J. 9, (1966-67) [hereinafter cited as Strict Liability to the Consumer].

30. Id. at 13.

31. (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) applied 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.

RESTATEMENT, supra note 12, § 402A.

32. 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697 (1963) (The plaintiff in Greenman was injured by a defective "shopsmith," a combination power tool. A piece of wood flew out of the machine causing severe head injuries).

cause of action have included retailers, lessors, land developers, and landlords. A brief review of the cases which extended strict product liability to defendants other than the manufacturer will aid in understanding the Becker court’s decision to include landlords as appropriate defendants.

In 1964, in another landmark case, *Vandermark v. Ford Motor Company*, the California Supreme Court, held that retailers were within the scope of strict products liability. Justice Traynor, writing for the court, enumerated a number of policy concerns which were instrumental to its decision. They included the fact that the retailer may be the only reasonably available defendant to an injured plaintiff. In addition, the *Vandermark* court reasoned that imposing strict liability on the retailer would not be inequitable as the cost of protection could be adjusted between the manufacturer and the retailer in the course of their continuing business relationship. Furthermore, the decision was motivated by safety concerns, “the retailer himself may play a substantial part in insuring that the product is safe or may be in a position to exert pressure on the manufacturer to that end; the retailer’s strict liability thus serves

34. The following entities beside the manufacturer, obviously the principal one, have been found to be integral components of the particular enterprise responsible for placing alleged defective products on the market: a lessor: (McClain v. Bayshore Equipment Rental Co., 274 Cal. App. 2d 446, 79 Cal. Rptr. 337 (stepladder)); and (Price v. Shell Oil Co., 2 Cal. 3d 245, 85 Cal. Rptr. 178, 466 P.2d 722 (gasoline truck)); a developer: (Kreigler v. Eichler Homes, Inc., 269 Cal. App. 2d 224 (a builder engaged in mass tract development of homes)); a licensee: (Garcia v. Halsette, 3 Cal. App. 2d 319 (a laundrette owner who was said to have licensed the use of a washing machine to plaintiff)); a retailer: (Vandermark v. Ford Motor Co., *supra*, 61 Cal. 2d 256, 37 Cal. Rptr. 896, 391 P.2d 168 (retailer of a defective automobile)); and a wholesale-retailer distributor: (Barth v. B.F. Goodrich Tire Co., 265 Cal. App. 2d 228, 71 Cal. Rptr. 306 (who merely distributed tires from his stock on order of the manufacturer)).


36. For further discussion of this extension, *see generally* Note, *Landlord’s Tort Liability*, 3 PEPP. L. REV. 132, 145-49 (1975). The author traces the extension of strict liability from manufacturers to retailers, lessors, and contractors. The author also raises the proposition that it would be inconsistent with California case law not to extend the doctrine to the landlord-tenant relationship.

37. *Vandermark v. Ford Motor Co.,* 61 Cal. 2d 256, 391 P.2d 168, 37 Cal. Rptr. 896 (1964). The plaintiff in *Vandermark* suffered serious injuries when the car he purchased from Maywood Bell Ford, an authorized Ford dealer, went out of control and collided into a light post. The accident was caused by a defect in the master cylinder assembly. The California Supreme Court held that Maywood Bell, as a retailer, together with the manufacturer of the car, should be held strictly liable for the defect.

38. *Id.* at 262-63, 391 P.2d at 171-72, 37 Cal. Rptr. at 899-900.

39. *Id.*
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as an added incentive to safety.” The court also took the view that retailers, as active participants in the overall marketing enterprise, should aid in bearing the cost of injuries. Thus, a retailer was held amenable to suit on a strict products liability cause of action due to his relationship to the marketing enterprise coupled with policy considerations of safety incentives and spreading the costs of protection. The same policy considerations and enterprise liability theory have led to the inclusion of landlords within the scope of strict products liability.

Six years later, in Price v. Shell Oil Company, the California Supreme Court further held that lessor should be included within the scope of strict products liability. The court perceived “no substantial difference between sellers of personal property and non-sellers such as bailors and lessors.” The court compared the status of the lessor to the manufacturer and retailer in Greenman and Vandermark, respectively, to find that the policy considerations in those cases were applicable to the lessor: “the former like the latter, are able to bear the cost of compensation for injuries resulting from defects by spreading the loss through an adjustment of the rental.” The court further stated that: “Lessors of personal property, like the manufacturers or retailers thereof, are engaged in the business of distributing goods to the public. They are an integral part of the overall . . . marketing enterprise that should bear the cost of injuries resulting from defective products.” Price established that there is no requirement of a sale for a defendant to become subject to strict products liability. It is only necessary that the lessor be in the business of placing goods on the market.

The Vandermark court reasoned that by making retailers strictly liable no injustice was worked on them. The retailers could adjust the cost of protection between themselves and the manufacturers in the course of their continuing business relationship. Price modi-

40. Id.
41. Id.
42. See infra notes 78-88 and accompanying text.
43. 2 Cal. 3d 245, 466 P.2d 722, 85 Cal. Rptr. 178 (1970) (Mechanic injured when he fell from a defective ladder mounted on a leased gasoline truck).
44. Id. at 251, 466 P.2d at 726, 85 Cal. Rptr. at 182 (emphasis added by the court).
45. Id. The California Supreme Court in Price incorporated the court of appeal decision of McClain v. Bayshore Equipment Rental Co., 274 Cal. App. 2d 446, 79 Cal. Rptr. 337 (1969) which had extended the strict products liability doctrine to lessors. The plaintiff in McClain died as a result of injuries received when he fell from a defective stepladder leased for his business. McClain, 274 Cal. App. 2d at 448, 79 Cal. Rptr. at 339.
46. Price, 2 Cal. 3d. at 252, 466 P.2d at 726, 85 Cal. Rptr. at 183 (citations omitted).
47. “Strict liability on the manufacturer and retailer alike affords maximum protection to the injured plaintiff and works no injustice to the defendants, for they can adjust the costs of such protection between them in the course of their continuing busi-
fied Vandermark’s rationale by allowing for an adjustment in rental fees to cover the costs of protection rather than adjusting the costs between the retailer and manufacturer. This departure by the California Supreme Court in Price should be persuasive in similarly permitting landlords to make an adjustment in the rental rate to defray the costs of protection resulting from a strict landlord liability rule.

As demonstrated, the doctrine of strict liability, as applied to defective food and extremely dangerous products, quickly expanded from imposing liability on manufacturers for such defects to including retailers. Shortly thereafter other entities in the marketing chain were subject to the doctrine. Subsequently, in Price, the California Supreme Court included lessors of personal property thus removing the requirement of a sale to bring the doctrine into play. Meanwhile, developments in property law were also taking place with respect to strict products liability.

III. STRICT PRODUCTS LIABILITY AS APPLIED TO HOUSING

Within the scope of real property, strict products liability was extended in 1969 to include a mass producer of homes. Again, an analogy was drawn to a retailer: “We think, in terms of today’s society, there are no meaningful distinctions between mass production and sale of homes and the mass production and sale of automobiles and that the pertinent overriding considerations are the same.” The Kriegler court thus established the application of the doctrine to the housing industry.

Later, a builder was held strictly liable for a fire which occurred due to the defective location of a water heater. Additionally, a

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48. Price, 2 Cal. 3d. at 254, 466 P.2d at 726, 85 Cal. Rptr. at 183.
50. Kriegler, 269 Cal. App. 2d at 227, 74 Cal. Rptr. at 752.
52. The home builder designed the location of the water heater in such a way that it created a fire hazard. Plaintiff, a nine year old boy, accidently knocked over a can of gasoline which consequently ignited. The resulting fire seriously burned the child’s left leg. The court held that “the doctrine may be applied where, as the proximate result of a defect in the design of a residential building, and installation of an article pursuant thereto, injury results to a human being.” Hyman v. Gordon, 35 Cal. App. 3d 769, 774, 111 Cal. Rptr. 262, 264 (1973).
developer has been held strictly liable for the installation of a defective water distribution system, which caused the homeowner's house to burn to the ground. Thus, the rule of strict liability came to apply to developers and builders of housing. Furthermore, the doctrine has even been applied to lessors of housing.

It was in 1972 that the California courts first faced the question of including a landlord within the strict products liability doctrine. In Fakhoury v. Magner, the plaintiff injured her back when the relatively new couch in her furnished apartment collapsed while she was sitting on it. The plaintiff sought recovery from the defendant landlord under a theory of strict liability. The court allowed recovery; however, the doctrine was applied to the landlord as a lessor of personal property rather than as a lessor of real property.

The court was clear that the doctrine would not apply in all circumstances: "The defective property must have been placed in the stream of commerce; a casual or isolated transaction will not bring the doctrine into play." The landlord in Fakhoury had furnished five apartments with similar couches; this involvement satisfied the court that the furniture was in the "stream of commerce."

In announcing this new rule, the Fakhoury court relied upon strict liability policy reasons for allowing recovery: "The injured persons are virtually powerless to protect themselves; the lessor can recover the cost of protection by charging for it in his business; and he has a better opportunity than does the injured person of recouping from anyone primarily responsible for the defect." Generally, in the landlord-tenant situation when a judgment is rendered against the landlord, the landlord is still in a better position than the tenant to seek indemnity from the manufacturer of the product, as well as from other responsible parties in the marketing chain.

Rather than making an analogy of a landlord to a retailer, however, the Fakhoury court compared the landlord to the lessors in McClaffin v. Bayshore Equipment Rental Company and Price v. Shell Oil Company. Presiding Justice Devine refused to grant spe-

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54. "The question whether a landlord may, under circumstances such as those present, be held to strict liability for latent defects in furniture, is a new one." Fakhoury v. Magner, 25 Cal. App. 3d 58, 63, 101 Cal. Rptr. 473, 476 (1972).
55. Id. "[T]he doctrine of strict liability does apply to the landlord, not as lessor of real property, but as lessor of the furniture."
56. Id.
57. Id.
58. Id. at 64, 101 Cal. Rptr. at 477.
59. See CTLA Brief, supra note 51, at 22.
cial treatment to landlords due to their protected common law status as lessors of real property:

There does not seem to be good reason for holding, as we surely would under existing case law, that the lessor of furniture who supplies it for an empty apartment should be held to strict liability, under appropriate circumstances, but holding the landlord exempt just because he is also the owner and lessor of real property.61

The Fakhoury decision thus continued to erode any special treatment landlords had previously received:62 “The result is that two standards of care are now applied to the landlord, one as the lessor of real property and one as the lessor of furniture.”63

In 1976, the California Court of Appeal in Golden v. Conway64 again faced the question of imposing strict liability on a landlord. In Golden, the landlord employed an independent contractor to install a wall panel heater. Allegedly, the heater was defectively installed, and as a proximate result a fire broke out which destroyed both the landlord's and the tenant's property. The landlord brought an action against the tenant for the property damage which resulted from the fire; the tenant was allowed to cross-complain with a theory of strict liability.65

The Golden court refused to apply the limiting distinction drawn by the Fakhoury court “between appliances which are attached to the realty, and appliances or furniture which is not.”66 The fact that a tenant could recover for injuries sustained from defective furniture or from a defective washing machine but not for injuries sustained from the collapse of a wall bed disturbed the Golden court.67

The majority resolved the dilemma by holding:

that a lessor of real property who, as the landlord in this case, is engaged in the business of leasing apartments and appurtenant commercial premises, equips the premises with an appliance without knowing whether or not it is defective because of the manner in which it was manufactured or installed, and it proves to have defects which cause injury to persons or property when used in a normal manner, is strictly liable in tort.68

The Golden decision extended strict products liability to a landlord as a lessor of real and personal property, by including liability

61. Id. at 63, 101 Cal. Rptr. at 476 (emphasis added).
62. See generally supra notes 7-27 and accompanying text.
64. 55 Cal. App. 3d 948, 128 Cal. Rptr. 69 (1976).
65. Id.
66. Id. at 961, 128 Cal. Rptr. at 78.
67. Id. at 961, 128 Cal. Rptr. at 77.
68. Id. at 961-62, 128 Cal. Rptr. at 78.
for fixtures as well as for furniture; however, there were still limitations. It would appear that the landlord would only be liable when he personally installed or contracted to have the defective product installed.\(^6\) Thus, according to this reasoning, an injured tenant would be without a strict products liability remedy when the landlord purchased the apartment building some time after its original construction.

The *Becker* court recognized the holdings of *Fakhoury* and *Golden*; however, it felt compelled to make it clear that strict products liability applied to a landlord without the restrictions of these cases.\(^7\) The *Becker* court classified the landlord as a retailer of rental housing, thus placing the apartment owner, as a potential defendant, squarely within the strict products liability doctrine. Rather than expanding the rules of *Fakhoury* and *Golden* by holding the landlord liable as a “lessor of personal and real property,” the *Becker* court created the fiction of the landlord as a “retailer.” This concept of treating the landlord as a retailer is not new. Commentators have been arguing for the application of strict products liability to landlords for years:

> When the landlord fails to discover or repair a defective condition created by a third person, the plaintiff is in a position analogous to that of a consumer in an action against a retailer. It may be impossible for the plaintiff to prove that the landlord knew or

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\(^6\) Presiding Justice Sims distinguished the case where a defective product was already in place from the situation where the installation of the appliance was defective:

> In that case it was the product which was defective, and the property owner merely failed to take corrective action because he did not discover the defect. Here the faulty installation created the dangerous situation and the landlord, through her contractor was party to that, if the tenant's engineer can be believed.


\(^7\) Defendant IRM Corp. sought to have the limiting standard set forth in *Golden* bar plaintiff Becker's strict liability claim. IRM Corp. argued that, in contrast to the landlord in *Golden*, it was not the owner of the building when the defective shower was installed. Defendant IRM purchased the complex in 1974, however, the apartments were built and the shower doors were installed over eleven years prior in 1963. Defendant's and Respondent's Brief, *supra* note 69, at 1-2. The *Becker* court was not persuaded, it held:

> Once IRM became the landlord, however, it acted in effect as distributor or supplier of housing, with authority and ability to monitor all products so furnished, including appliances and fixtures in the apartments. And by failing to remove shower doors made of untempered glass, respondent maintained the distribution of those appliances to its tenants.

*Becker*, 144 Cal. App. 3d at 333, 128 Cal Rptr. at 577.

Thus the *Golden* landlord-installation requirement was dismissed by the *Becker* court. The landlord may be strictly liable for merely maintaining the defective product for use by the tenants.
should have known of the defective condition.\footnote{Landlord's Liability, supra note 8, at 136.}

It is against this historical stage of development in property and tort law that the \textit{Becker} decision was rendered.

\section*{IV. The \textit{Becker} Case}

Plaintiff George Becker filed his action in negligence and strict products liability as a result of personal injuries sustained in his leased apartment which was owned by defendant IRM Corporation.\footnote{Becker v. IRM Corp., 144 Cal. App. 3d 321, 326, 192 Cal. Rptr. 570, 572 (1983).} Becker slipped in his apartment bathroom and fell against the untempered glass of the shower door. The pressure of the fall caused the glass to shatter, severely injuring Becker's left arm and wrist.\footnote{Appellant's Opening Brief at 1, Becker v. IRM Corp., 144 Cal. App. 3d 321, 192 Cal. Rptr. 570 (1983) [copy on file in the offices of California Western Law Review].} The evidence was clear that had the glass been tempered, the consequences of the plaintiff's fall would have been minimized.

Following the plaintiff's injury, the defendant replaced thirty-one of the thirty-six shower doors in the apartment complex with tempered glass.\footnote{The five other shower doors already had tempered glass installed prior to Becker's accident. CTLA Brief, supra note 51, at 2.}

The California Court of Appeal, First District, reversed the lower court's decision granting summary judgment.\footnote{Defendant IRM's motion for summary judgment was granted relating to both the negligence and strict liability counts. Defendant IRM cross-complained against Nels Carlson dba Merritt Construction Company, and Western Shower Door, Inc., who in turn cross-complained against Pioneer Shower Door. However, the court "refused to dismiss the Nels Carlson and Western Shower Door American Motorcycle type cross-complaints . . . ." Defendant's and Respondent's Brief, supra note 69, at 3-5.} Presiding Justice Newsom, writing for the majority in a 2-1 decision, held in pertinent part, that it is "a reasonable rule that a landlord should be treated as a 'retailer' of rental housing, subject to liability for defects in the premises rented."\footnote{Becker, 144 Cal. App. 3d at 332, 192 Cal. Rptr. at 577. Becker v. IRM Corporation was granted a petition for hearing by the California Supreme Court on August 19, 1983. Settlement has been reached between defendants Western Shower Door, Inc., and Nels Carlson dba Merritt Construction Company and plaintiff George Becker. The agreement is in the amount of $150,000 with an additional $50,000 due Becker should he be unsuccessful against IRM Corporation on appeal to the Supreme Court. Respondent's Answer to C.T.L.A. Amicus Curiae Brief at 15-17, Becker v. IRM Corp., 133 Cal. App. 3d 321, 192 Cal Rptr. 570 (1983) [copy on file in the offices of California Western Law Review].}

The \textit{Becker} court reached its decision to hold a landlord to a standard of strict products liability as a "retailer" by a thorough analysis of strict products liability in California.

In holding that a landlord, as a supplier of housing, is subject to
 strict products liability, the majority concluded that the policy concerns underlying the doctrine would be furthered. Furthermore, imposing strict landlord liability would be in line with California's stream of commerce approach whereby liability is imposed link by link throughout the marketing chain.

The Becker court was influenced by the evolution of the landlord-tenant relationship as depicted by the California Supreme Court in Green v. Superior Court. The analogy set forth in Green of a tenant purchasing goods was equally persuasive. These combined forces of policy, enterprise liability, and the changing nature of the landlord-tenant relationship led to the adoption of the Becker strict landlord liability rule.

A. Policy Supporting Strict Landlord Tort Liability

The Becker court concluded that the weight of policy supporting strict products liability compelled the inclusion of landlords. Presiding Justice Newsom speaking for the court stated that "we have considered that the salutary policies underlying the strict products liability doctrine will be furthered by inclusion of landlords within its scope."78

California case law has consistently expressed public policy concerns as motivation for the application of strict products liability. The main policy consideration for strict products liability is one of spreading the cost of compensation to an innocent victim of a manufacturing defect throughout society. This "cost-spreading" may be best accomplished by placing the burden on the party who is best able to bear the cost.79 The Becker court found that in the landlord-tenant relationship, the landlord was best able to bear the burden and spread the cost: "The landlord receives the financial benefit from the tenants' use of appliances included in rental housing, and has the ability to spread the cost of compensation throughout the marketing system by obtaining insurance or otherwise accounting for the risk of loss."80

Safety is another major concern: "Essentially the paramount policy to be promoted by the rule is the protection of otherwise defenseless victims of manufacturing defects ...."81 By placing liability on the landlord, strong safety incentives are promoted. Landlords will be encouraged to make choices regarding the equip-

78. Becker, 144 Cal. App. 3d at 332, 192 Cal. Rptr. at 577.
80. Becker, 144 Cal App. 3d at 333, 192 Cal. Rptr. at 577.
81. Price, 2 Cal. 3d at 251, 466 P.2d at 725-26, 85 Cal. Rptr. at 181-82.
The reasonable expectations of the consumer play a role as well. Often tenants are led to believe, through advertising and other means, that they may rely on the landlord to take care of the “details.” The maintenance of central heating and air conditioning systems, along with the gardening and parking facilities, are often managed and serviced by the landlord or his employees. The California Supreme Court in Barker v. Lull Engineering Company recognized such expectations by acknowledging the complexities of a technological society which require reliance on the expertise of others. The Becker rule of treating the landlord as a “retailer” would therefore require that the landlord meet the tenants’ reasonable expectations. Presiding Justice Newsom aptly quoted the observation in Green v. Superior Court: “a tenant may reasonably expect that the product he is purchasing is fit for the purpose for which it is obtained, that is, a living unit.”

The Becker court relied on this rationale of Green. In reaching the decision to imply a warranty of habitability to residential leases,

82. See CTLA Brief, supra note 51, at 21.
83. Id. at 20.
84. Through their advertising efforts in the mass media, landlords entice tenants to choose their apartment complex. Garden apartments with all the amenities are advertised as “carefree living.” See generally Comment, Products Liability at the Threshold of the Landlord-Lessor, 21 HASTINGS L.J. 458, 480 (1970) [hereinafter cited as Products Liability at the Threshold].
85. 20 Cal. 3d 413, 573 P.2d 443, 143 Cal. Rptr. 225 (1978).
86. The technological revolution has created a society that contains dangers to the individual never before contemplated. The individual must face the threat to life and limb not only from the car on the street or highway but from a massive array of hazardous mechanisms and products. The radical change from a comparatively safe, large agricultural, society to this industrial unsafe one has been reflected in the decisions that formerly tied liability to the fault of a tortfeasor but now are more concerned with the safety of the individual who suffers the loss.
87. Becker, 144 Cal. App. 3d at 332, 192 Cal. Rptr. at 577.
88. Green (quoting Green v. Superior Court, 10 Cal. 3d 616, 627, 517 P.2d 1168, 1174, 11 Cal. Rptr. 704, 711 (1974)).
89. Green was a typical unlawful detainer action. The tenant admitted that he owed back rent, but offered as a defense, that the landlord had failed to maintain the premises in a habitable condition. The serious defects Green complained about included: “(1) the collapse and non-repair of the bathroom ceiling; (2) the continued presence of rats, mice and cockroaches on the premises; (3) the lack of any heat in four of the apartment’s rooms; (4) plumbing blockages; (5) exposed and faulty wiring; and (6) an illegally installed and dangerous stove.” Green v. Superior Court, 10 Cal. 3d 616, 621, 517 P.2d 1168, 1170, 111 Cal. Rptr. 704, 706 (1974).

The California Supreme Court, In Bank, held that a warranty of habitability is implied to a residential lease by law and that a breach of that warranty serves as a defense to an unlawful detainer action. Id. at 637, 517 P.2d at 1176, 111 Cal. Rptr. at 718. For in-depth discussions of the implied warranty of habitability see generally Browder, The Taming of a Duty—The Tort Liability of Landlords, 81 MICH L. REV. 99, 109-16
the court recognized the transformation of the roles of landlords and tenants in a modern urban setting: "When American city dwellers, both rich and poor, seek 'shelter' today, they seek a well known package of goods and services—a package which includes not merely walls and ceilings, but also adequate heat, light, and ventilation, serviceable plumbing facilities, secure windows and doors, proper sanitation, and proper maintenance."90

The Becker court specifically relied on the Green characterization of the tenant as a consumer of goods:

"In most significant respects, the modern urban tenant is in the same position as any other normal consumer of goods. . . . Through a residential lease, a tenant seeks to purchase 'housing' from his landlord for a specified period of time. The landlord 'sells' housing, enjoying a much greater opportunity, incentive and capacity than a tenant to inspect and maintain the condition of his apartment building. A tenant may reasonably expect that the product he is purchasing is fit for the purpose for which it is obtained, that is, a living unit. . . . It is just such reasonable expectations of consumers which the modern 'implied warranty' decisions endow with formal, legal protection."91

It was this analogy that influenced the Becker court to characterize the landlord as a "retailer." The Becker court found it persuasive that defendant IRM was in the business of leasing apartments, thus the landlord was acting in the capacity of a distributor or supplier of housing.92 By treating the landlord as a retailer, he is unquestionably within the scope of strict products liability in California.93

When it previously had extended liability to retailers, a unani-
mous California Supreme Court noted that "the retailer may be the only member of that enterprise reasonably available to the injured plaintiff." 94 The same rationale was used in Price when strict liability was extended to a lessor. 95 Likewise, the landlord may be the only reasonably available entity to an injured plaintiff. 96 Furthermore, as in Becker, the landlord will be more likely to have access to records or other data which will lead to the discovery of other responsible parties in the marketing chain. 97

Many of the policy concerns which led to the adoption of strict products liability such as safety and cost coupled with the developments regarding consumer expectations and access to vital members of the marketing enterprise are applicable to the landlord-tenant relationship. In any event, "'[w]hat public policy condones the denial of compensation to an injured plaintiff as opposed to protection of the landlord who maintains defective premises?'" 98

B. California’s Stream of Commerce Approach to Strict Products Liability

The Becker court further relied on California’s “stream of commerce” approach to determine that a landlord should be included within the scope of strict products liability. 99 Thus, the focus is not on the legal relationship between the defendant and the manufacturer, but rather on his “participatory connection, for his personal profit or other benefit, with the injury-producing product and with the enterprise that created consumer demand for and reliability upon the product . . . which calls for imposition of strict liability.” 100 Using this test, the Becker court found the necessary link to


An analogy of a tenant as a consumer of goods is useful to the adoption of a landlord tort liability rule; however, an action based in contract law of implied warranty should not be utilized to extend strict liability to landlords. Browder, The Taming of a Duty—Tort Liability of Landlords, 81 Mich. L. Rev. 99, 126 (1982).

However, it should also be noted that the California courts grant great leniency when one is pleading a tort action. They place substance above form in allowing pleading in the alternative and will view several causes of action as one: “Although separate counts for negligence, warranty, and strict liability have been pleaded, we view them as stating a single cause of action, in that the complaint seeks damages for personal injuries caused by deficiencies in the design of a manufactured product.” Balido v. Improved Machinery, Inc., 29 Cal. App. 3d 633, 640, 105 Cal. Rptr. 890, 895 (1973). See also 4 B.E. Witkin, Summary of California Law § 812, at 3108-09 (5th ed. 1974).

95. Price, 2 Cal. 3d at 253, 466 P.2d at 727, 85 Cal. Rptr. at 182-83.
96. CTLA Brief, supra note 51, at 22.
97. Id. at 21.
98. Products Liability at the Threshold, supra note 84, at 490.
99. Becker, 144 Cal. App. 3d at 331, 192 Cal Rptr. at 576.
100. Id. (citing Tauber-Arons Auctioneers Co. v. Superior Court, 101 Cal. App. 3d
hold the landlord responsible for defective premises: "Here, respondent is in the business of leasing apartments, including appliances and fixtures, and is therefore an intergral part of the marketing enterprise by which the shower door in question reached the user public."\(^{101}\)

The first court to articulate the "participatory connection" rule was *Kasel v. Remington Arms Company, Inc.*\(^{102}\) In *Kasel*, a hunter was injured, while on a trip to Mexico, by a defective shotgun shell manufactured by Remington Arms' Mexican affiliate, CDM.\(^{103}\) Defendant Remington Arms neither manufactured nor sold the defective product to the injured party. However, the court determined that due to the extensive participation in the business activities of CDM,\(^{104}\) Remington Arms was instrumental in placing the defective product in the stream of commerce, and therefore, under California's marketing enterprise approach was subject to strict products liability.\(^{105}\) The court went on to claim that "Remington had more involvement in the enterprise which produced the defective shell than the typical retailer, distributor or wholesaler upon whom the courts have had no trouble imposing strict liability."\(^{106}\)

As pointed out in a *Becker* Amicus Curiae Brief, "[w]ithout an enterprising apartment owner, whether the initial owner or a subsequent owner, the apartment complex is not used by others, that is, not placed in the stream of commerce."\(^{107}\) And as stated by the *Becker* court, "respondent is in the business of leasing apartments, including appliances and fixtures, and is therefore an integral part of the marketing enterprise by which the shower door in question reached the user public."\(^{108}\) Moreover, a landlord receives a continuual profit from leasing an apartment. Thus, not only is the landlord instrumental in bringing a tenant into contact with the injury producing product, but he receives an ongoing profit from doing so.


\(^{101}\) *Id.*


\(^{103}\) *Id.* at 717, 101 Cal. Rptr. at 318.

\(^{104}\) As licensor of CDM, Remington Arms owned forty percent of the outstanding stock of CDM, had directors on CDM's Board, received royalties from CDM, conducted extensive international advertising promoting the product, and trained the personnel of CDM, among other activities. *Kasel*, 24 Cal. App. 3d at 718-22, 101 Cal. Rptr. at 318-20.

\(^{105}\) *Id.* at 725, 101 Cal. Rptr. at 323.

\(^{106}\) *Id.* at 727, 101 Cal. Rptr. at 325.

\(^{107}\) Defendant Western Shower Door's Amicus Curiae Brief at 9, *Becker v. IRM Corp.*, 144 Cal. App. 3d 321, 192 Cal. Rptr. 570 (1983) [copy on file in the offices of California Western Law Review].

\(^{108}\) *Becker*, 144 Cal. App. 3d at 332, 192 Cal. Rptr. at 576.
Consequently, similar to the licensor in Kasel, a landlord has more involvement than a typical retailer.

According to California case law regarding enterprise liability and policy objectives of the state, it is thoroughly consistent to classify a landlord as a retailer, thus bringing him into the scope of strict products liability. In light of this new rule, consideration should be given to a number of problems the courts are likely to encounter when they seek to apply strict products liability to a landlord.

V. STRICT LANDLORD LIABILITY: SOME UNANSWERED ISSUES

When the courts seek to apply the Becker strict landlord liability rule, a number of problems will have to be resolved. Some of the most notable trouble areas are discussed below.

A) When will the courts hold that a landlord is "in the business" of leasing? The Becker rule requires that the landlord be in the business of leasing to impose strict liability. In Becker, the defendant landlord was a corporation which owned a thirty-six unit apartment complex. Thus, the court had little difficulty in holding that IRM Corporation was "in the business" of leasing. However, should an individual who owns and rents a duplex be held to be in the business of leasing and consequently subject to the strict liability rule? Guidelines for this determination are at best, unclear.

In Fakhoury v. Magner, a landlord who owned five units was held to be in the business of leasing. In the area of real property finance, the California legislature has passed a number of beneficial provisions applicable to the owners of four or fewer units. Furthermore, a number of municipalities have ordinances which permit exemption from zoning regulations when the landlord is providing one unit housing for the elderly or low income persons. If the courts should follow the approach of the California legislature and certain municipalities in protecting a certain class of landlords, they

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109. Id.
110. Id. at 326, 192 Cal. Rptr. at 572.
112. The provisions for variable interest rate loans are available solely to "finance the purchase or construction of real property containing four or fewer residential units or on which four or fewer residential units are to be constructed." CAL CIV. CODE § 1916.5(b)(1)(b)(1) (Deering 1981 & Supp. 1985). See also id. § 2954.8(a) where the California legislature requires lenders to credit interest to a borrower's account for amounts received in advance for payment of taxes and insurance when such sums relate to property securing a loan and such property contains "only a one to four family residence . . . ."
113. San Diego County, Cal., Accessory Use Regulations § 6156(w) (Oct. 1983) [copy on file in the offices of California Western Law Review].
may determine that landlord is only in the business of leasing when he is renting five or more units.

In contrast to the above analysis, it has been suggested that the owner of one apartment may be considered to be in the business of leasing for the purposes of the strict liability rule. The continuing business relationship which exists between the landlord and tenant, whereby the landlord receives a profit and certain tax advantages, may bring him within the Becker strict liability rule. According to this approach, no special protection would be afforded to a couple who purchased one or two units to provide supplemental income during their retirement years. 114 Thus, the courts could find support for the inclusion of all landlords within the scope of strict products liability, regardless of the number of units leased.

However, there seems to be a predisposition in favor of landlords owning four or fewer units on the part of the California legislature and the local governments. The courts should follow this lead and exempt such landlords from the strict liability rule.

B) Should landlords be exempted from strict liability if the premises are rented on a month to month basis? In the cases we have examined, the landlord-tenant relationship has been solidified by a lease. In fact, the Becker court relied on the existence of a lease to give the tenant legitimate expectations concerning the safety of the apartment: “Moreover, since a lease contract specifies a designated period of time during which the tenant has a right to inhabit the premises, the tenant may legitimately expect that the premises will be fit for such habitation for the duration of the term of the lease.” 115 Perhaps, when the landlord-tenant relationship may be terminated by either party upon thirty days notice, the courts might hold that the tenant does not have reasonable expectations concerning the safety of the rented apartment. Thus, in the absence of a lease, a tenant will be proscribed from seeking a strict liability recovery from the landlord.

However, policy considerations, other than reasonable expecta-

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114. See generally CTLA Brief, supra note 51, at 14 n.2 where the authors proposed that the owners of a single rental unit, such as a condominium, who regularly leases this unit but owns no other rental property, is not in the business of leasing in the same sense that defendant IRM Corporation is. On the other hand, because the condominium owner has made a business judgment as to how to maximize his investment prospects, receives rent and tax advantages, and may realize appreciation in the value of the property, he can be seen as in the business of owning and renting housing.

Although at first glance, this result may appear to be a harsh burden, strict products liability recognizes that a defendant may insure against losses which may result due to the product defects. Price v. Shell Oil Co., 2 Cal. 3d 245, 251 n.5, 466 P.2d 722, 725-26 n.5, 85 Cal. Rptr. 178, 181-82 n.5 (1970).

115. Becker, 144 Cal. App. 3d at 332, 192 Cal. Rptr. at 577.
tions, such as safety, and spreading the cost of protection\textsuperscript{116} may lead the courts to include landlords within the rule, even in the absence of a lease. In view of the fact that our high court has, on numerous occasions expressed that the paramount concern is the health and safety of tenants, the absence of a lease should not be fatal to a tenant's strict liability action against a landlord.

C) Will the consequences of the Becker strict liability rule lead landlords to include exculpatory clauses in their leases? In Lee v. Giosso\textsuperscript{117} the court relieved the landlord from liability when the lease provided that the tenant: "2) expressly assumed the responsibility for keeping the apartment in good condition; 3) waived any and all rights to make repairs at the expense of the landlord and waived the provisions of section 1942 of the Civil Code; 4) absolved the owner and manager of the apartment from any and all claims for damages to person or property from any cause whatever."\textsuperscript{118} Perhaps, in light of the Becker decision, landlords will include a clause in their leases to the effect that the tenant is taking the premises "as is" and absolving the landlord from any and all strict liability claims.

Although the legality of such clauses may be challenged as unconscionable,\textsuperscript{119} many tenants are not aware of the intricacies of the law and would therefore never challenge such a clause. In any event, such a determination would rest on the facts of each case. In order to avoid inequitable results from such clauses, the legislature should make such exculpatory clauses unlawful.

CONCLUSION

The California Court of Appeal's decision in Becker v. IRM Corporation that "a landlord should be treated as a 'retailer' of rental housing, subject to liability for defects in the premises rented" is significant in a number of aspects. The decision sets forth unequivocally that a landlord is subject to strict products liability for defec-

\textsuperscript{116} See supra notes 78-88 and accompanying text.
\textsuperscript{117} 237 Cal. App. 2d 246, 46 Cal. Rptr. 803 (1965) (Tenant died as a result of injuries received when the door of her wall bed collapsed).
\textsuperscript{118} Id. at 247, 46 Cal. Rptr. at 804.
\textsuperscript{119} CAL. CIV. CODE § 1668 (Deering 1981 & Supp. 1985) invalidates "all contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law." CAL. CIV. CODE § 1667 gives definition to that which is unlawful: "That is not lawful which is:
1. Contrary to express provision of law;
2. "Contrary to the policy of express law, though not expressly prohibited; or
3. Otherwise contrary to good morals."
Id. § 1667.
tive premises. This holding serves to further the abolition of the protected status of a landlord at common law, thus completing a process of more comprehensive landlord liability initiated by the California Supreme Court in Rowland v. Christian.\textsuperscript{120} The overriding policy objectives which gave rise to strict products liability are furthered by including landlords within the scope of the doctrine. The landlord may be the only reasonably available entity in the marketing enterprise. Liability placed on the landlord furthers the policies of spreading the burden of loss of an injured tenant and creates safety incentives for the landlord to maintain the premises in safe working order.

The recognition of the tenant's lack of expertise in dealing with the complexities of modern apartment living (and the landlord's better position in this regard) serves to bring the law into step with modern urban society. To complete this process, however, steps should be taken to avoid the possibility of landlords placing exculpatory clauses in their leases or seeking to avoid a legitimate claim of a tenant based on the fact that no lease exists. Furthermore, to carry out the intent of the legislature, those landlords owning four units or less should be exempted from the Becker strict landlord liability rule.

Finally, the extension of strict products liability to a landlord is consistent with California precedent and policy objectives, and signifies that the court has fully recognized the nature and implications of the modern landlord-tenant relationship.

\textit{Meredith J. Lintott}

\textsuperscript{120} 69 Cal. 2d 108, 443 P.2d 561, 70 Cal. Rptr. 97 (1968).