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| *Indicate whether the statement is true or false.* |

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| 1. Product liability arises from a lack of assurance by one party of the existence of a fact on which the other party can rely.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 2. A manufacturer’s duty of care extends to the inspection and test-ing of products bought to incorporate in the final product.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 3. A product liability claim may be based on the tort theory of fraudulent misrepresentation.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 4. To avoid product liability, a manufacturer must exercise due care in selecting its materials and using the appropriate production process.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 5. A failure to exercise reasonable care is negligence   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 6. To succeed in a product liability suit, an injured plaintiff must show that a product’s defect was the proximate cause of the injury.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 7. A product liability action based on negligence requires privity of contract between the injured plaintiff and the defendant-manufacturer.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 8. When a user is injured as a result of a seller’s misrepresentation, the basis of product liability may be the tort of fraud.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 9. Some states limit the application of strict product liability to situations involving personal injuries.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 10. A public policy underlying the imposition of strict product liability is that consumers should be protected against unsafe products.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 11. The doctrine of strict liability can be applied to sellers of goods, including manufacturers, but not distributors.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 12. To be liable for product liability, a seller must normally be engaged in the business ofdistributing the product that causes harm by its use.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 13. An action in strict product liability requires that a product be *reasonably* dangerous to a user or consumer.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 14. The law imposes strict liability as a matter of public policy based in part on the assumption that manufacturers can better bear the costs associated with injuries caused by their products.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 15. An action in strict product liability requires that the product be in a defective condition when the defendant sells it.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 16. To support the imposition of strict product liability, a product must be substantially changed from the time it is sold to the time an injury occurs.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 17. A design defect is not the sort of product defect that will support the imposition of liability on a strict product liability basis.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 18. A product contains a manufacturing defect when the product departs from its intended design even though all possible care was exercised.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 19. The types of product defects that have traditionally been recognized in product liability law include inadequate warnings.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 20. A manufacturing defect is a departure from a product unit’s design specifications that results in products that are physically flawed.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 21. To successfully assert a design defect, a plaintiff has to show that no reasonable alternative design was available.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 22. Under a theory of market-share liability, a manufacturer sells “shares” of its potential strict liability and thereby spreads the risk and the cost.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 23. Generally, the strict liability of manufactures and other sellers does *not* extend to injured bystanders.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 24. The types of product defects that have traditionally been recognized in product liability law include manufacturing defects.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 25. A design defect will support the imposition of liability on a strict product liability basis.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 26. Recovery in a product liability case may be limited when it can be shown that the plaintiff misused the product.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 27. Suppliers are generally required to expect reasonably foreseeable misuses of their products.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 28. Some courts consider the negligent actions of both the plaintiff and the defendant when apportioning liability in a product liability action.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 29. A statute of limitations may restrict the time within which an action in product liability may be brought.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 30. A statute of repose places outer time limits on product liability actions.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 31. Sellers are required to take precautions against every conceivable misuse of a product.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 32. As a defense to product liability, comparative negligence completely absolves a defendant of liability.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 33. Even if a particular danger is commonly known by the users of a product, the maker or seller of must warn these users of the danger.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 34. Assumption of risk can never be used as a defense in a product liability action.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| 35. If the misuse of a product is reasonably foreseeable, the seller must take measures to guard against it.   |  |  |  | | --- | --- | --- | |  | a. | True | |  | b. | False | |

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| *Indicate the answer choice that best completes the statement or answers the question.* |

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| 36. ​Those who can be held liable on a theory of product liability for physical harm or property damage caused by defective goods include all of the following *except*   |  |  |  | | --- | --- | --- | |  | a. | ​a lessor of the goods. | |  | b. | ​themaker of the goods. | |  | c. | ​aseller of the goods. | |  | d. | ​auser of the goods. | |

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| 37. Downhill Racer Company makes and sells a pair of skis to Elinor. Downhill fails to exercise “due care” to make the skis safe, and Elinor is injured as a result. Downhill Racer is most likely liable for   |  |  |  | | --- | --- | --- | |  | a. | any alteration of the skis after Downhill sold them. | |  | b. | misrepresentation. | |  | c. | negligence. | |  | d. | ​nothing. | |

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| 38. Soda Bubbles Corporation makes and sells soft drinks. Talia buys and drinks a Soda beverage, which proves defective and injures her. One justification for holding Soda strictly liable for the harm caused to Talia by its defective product is that   |  |  |  | | --- | --- | --- | |  | a. | Soda is in a better position than Talia to bear the cost of her injury. | |  | b. | Talia is a person, not a business. | |  | c. | ​making and selling products are abnormally dangerous activities. | |  | d. | Soda and Talia are in privity. | |

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| 39. Island Breeze Company designs and makes desk, window, and ceiling fans. In a product liability suit based on negligence, Island Breeze could be liable for vio-lating its duty of care with respect to all of the following *except*   |  |  |  | | --- | --- | --- | |  | a. | the design of the fans. | |  | b. | ​the production process used to make the fans. | |  | c. | the warnings on the labels of the fans. | |  | d. | a consumer’s unforeseeable misuse of a fan. | |

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| 40. Forest & Field Company makes and leases a backhoe to Gallagher. Due to a defect attributable to Forest & Field’s negligence, Gallagher is injured in an accident in which his neighbor Helga is also hurt. In a product liability suit based on negligence, Forest & Field may be liable to   |  |  |  | | --- | --- | --- | |  | a. | Gallagher only. | |  | b. | ​no one. | |  | c. | Gallagher and Helga. | |  | d. | Helga only. | |

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| 41. Garden Tool Company makes chain saws. Hadrian is injured while using a Garden saw and sues the company for product liability based on neg-ligence. To win, Hadrian must show that   |  |  |  | | --- | --- | --- | |  | a. | Garden did not use due care with respect to the trimmer. | |  | b. | ​Garden used puffery in its advertising. | |  | c. | Hadrian was not experienced in the use of trimmers. | |  | d. | Hadrian was in privity with Garden. | |

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| 42. Lipstik, Inc. makes cosmetics. Lipstik intentionally mislabels its packaged products to conceal a defect. Trusting and relying on the mislabeling, Mikayla buys a Lipstik product and suffers an injury. Lipstik is most likely liable for   |  |  |  | | --- | --- | --- | |  | a. | product misuse. | |  | b. | fraud. | |  | c. | privity. | |  | d. | ​puffery. | |

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| 43. Sailaway Corporation makes sailboards, which are bought and distributed by Tropical Marketing Company to UV Sports Stores, Inc., which sells them to consumers. Wen is in-jured while using a Sailaway board that he bought from UV Sports. In a product liabil-ity suit based on strict li-ability, Wen may recover from   |  |  |  | | --- | --- | --- | |  | a. | Sailaway only. | |  | b. | Sailaway, Tropical, or UV Sports. | |  | c. | UV Sports only. | |  | d. | ​none of the choices. | |

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| 44. Street Bikes, Inc., makes and sells a bicycle to Theo. Street Bikes fails to exercise “due care” to make the bicycle safe, however, and Theo is injured as a result. Street Bikes is most likely liable for   |  |  |  | | --- | --- | --- | |  | a. | assumption of risk. | |  | b. | commonly known danger. | |  | c. | negligence. | |  | d. | ​product misuse. | |

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| 45. AgriGro, Inc., sells hybrid seed to farms and other agricultural enterprises. Brandon buys and plants AgriGro seed on his Country Farm, but no crop grows because the seed is defective. Brandon sues AgriGro for product liability based on negligence. To win, Brandon must show that   |  |  |  | | --- | --- | --- | |  | a. | AgriGro sold the seed to Brandon. | |  | b. | Brandon knew and appreciated the risk caused by the defect. | |  | c. | Brandon suffered damage caused by the defect. | |  | d. | the “defect” was a commonly known danger. | |

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| 46. Dark Roast Products, Inc., makes espresso machines and sells one to the Eat at Joe’s Café. Flo, the café’s employee working at the coffee bar, is injured when the machine malfunctions. If the injury occurred as a result of a misrepresentation about the product, Dark Roast is most likely liable for   |  |  |  | | --- | --- | --- | |  | a. | negligence. | |  | b. | fraud. | |  | c. | privity. | |  | d. | puffery. | |

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| 47. Custom Ceramics Corporation makes ceramic products for commercial uses, including heat-resistant tiles for industrial ovens. When damage occurs in an oven at Duramold Plastics, Inc., liability may be imposed on Custom Ceramics if the tiles sold to Duramold were   |  |  |  | | --- | --- | --- | |  | a. | in perfect condition at the time of their sale. | |  | b. | damaged by their use. | |  | c. | substantially changed after their sale. | |  | d. | in a defective condition that was the proximate cause of the damage. | |

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| 48. Good Cookin’ Products Company makes heat convection ovens. Heidi discovers that her Good Cookin’ oven is defective and sues the maker for product liabil-ity based on strict liability. To win, Heidi must show that she   |  |  |  | | --- | --- | --- | |  | a. | bought the oven from Good Cookin’. | |  | b. | did not misuse the oven. | |  | c. | suffered an injury caused by the defect. | |  | d. | did not know of the defect. | |

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| 49. Brandname Parts, Inc., makes and sells parts for the repair of major appliances. Clarice suffers a loss when a defective Brandname part in her freezer fails to keep the contents fresh. A statute restricts the time within which Clarice may file a product liability suit once she has discovered or should have discovered the damage. This is a statute of   |  |  |  | | --- | --- | --- | |  | a. | limitations. | |  | b. | preemption. | |  | c. | repose. | |  | d. | suspension. | |

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| 50. Global Insulation Company makes and sells fire-retardant building materials.To determine whether the risk of harm from the products as designed outweigh their utility to the users and the public, most courts would engage in   |  |  |  | | --- | --- | --- | |  | a. | a risk-utility analysis. | |  | b. | a consumer-expectations test. | |  | c. | a critical, statistical analysis. | |  | d. | a marketing test. | |

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| 51. ​Meds Company, Oral Med Corporation, and Pharma, Inc., are drug makers. In a suit against all of these parties in which market-share li-ability is imposed, most likely to be liable are   |  |  |  | | --- | --- | --- | |  | a. | none of these parties. | |  | b. | the party with the largest market share. | |  | c. | all of these parties. | |  | d. | the parties whose market shares are equal. | |

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| 52. River Rock Company makes spas and hot tubs. Sterling files a product liability suit against River Rock, alleging a warning defect in one of its products. In deciding whether to hold the defendant liable, the court may take note that a manufacturer or seller has *no* duty to warn about risks that are   |  |  |  | | --- | --- | --- | |  | a. | avoidable by an alternative design. | |  | b. | foreseeable. | |  | c. | contrary to the instructions for the use of the product. | |  | d. | obvious. | |

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| 53. Arrow Straight Corporation makes archery supplies. While using an Arrow Straight bow, Jamie is injured due to a defect in the bow that causes an arrow to misfire. Kaley, another archer standing by, is also injured. In a product liability suit based on strict product liability, Arrow Straight may be liable to   |  |  |  | | --- | --- | --- | |  | a. | Jamie and Kaley. | |  | b. | Jamie only. | |  | c. | Kaley only. | |  | d. | no one. | |

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| 54. Fleet Feet Corporation makes athletic shoes. Gloria, a marathoner, files a product liabil-ity suit against Fleet Feet, alleging a design defect. In deciding whether to hold Fleet Feet liable, the court may consider an alternative design’s   |  |  |  | | --- | --- | --- | |  | a. | popularity among industrial designers and consumers. | |  | b. | weight and heft. | |  | c. | aesthetics. | |  | d. | advantages and disadvantages. | |

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| 55. ClearCall Corporation makes phones, which are sold to consumers by DefDeals stores. Erna files a product liabil-ity suit against ClearCall, alleging a design defect. In deciding whether to hold ClearCall liable, the court may consider   |  |  |  | | --- | --- | --- | |  | a. | Erna’s intended use for the phone. | |  | b. | DefDeals’ method of accounting. | |  | c. | ClearCall’s quality control efforts. | |  | d. | an available alternative design. | |

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| 56. Fine Motor Company buys auto parts from General Mechanix, Inc., and puts them in its vehicles without changing their composition. If the parts are defective, strictly liable for any damage caused by the defects are   |  |  |  | | --- | --- | --- | |  | a. | Fine Motor only. | |  | b. | no one. | |  | c. | Fine Motor and General Mechanix. | |  | d. | General Mechanix only. | |

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| 57. SmartTalk, Inc., makes and markets cell phones and related accessories. When problems develop with SmartTalk products or sales, the company may be liable in product liability for any of the following *except*   |  |  |  | | --- | --- | --- | |  | a. | a manufacturing defect. | |  | b. | a design defect. | |  | c. | an inadequate warning. | |  | d. | an ineffective marketing plan. | |

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| 58. MedBeat Inc., makes medical devices, including heart pacemakers. Nina, a heart patient, files a product liabil-ity suit against MedBeat, alleging a warning defect with respect to its pacemaker. In deciding whether to hold MedBeat liable, the court may consider whether there is a foreseeable risk of harm posed by the pacemaker and   |  |  |  | | --- | --- | --- | |  | a. | ​the omission of a warning renders the pacemaker not reasonably safe. | |  | b. | there is a reasonable alternative design. | |  | c. | ​MedBeat did not use due care in making the pacemaker. | |  | d. | Nina lacks insurance coverage. | |

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| 59. BioChem Corporation, ChemCo Company, and DexLabs Inc. make and distribute toxic chemicals. In a product-liability suit against all of these parties, the court is most likely to impose market-share li-ability if it cannot be proved which of the parties   |  |  |  | | --- | --- | --- | |  | a. | ​was in privity with the injured plaintiff. | |  | b. | exercised the least amount of due care in making the product. | |  | c. | ​supplied the particular product that caused the injury. | |  | d. | holds the largest share of the market for the product. | |

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| 60. Wideload, Inc., makes, sells, and leases trucks, trailers, and other moving and hauling equipment for consumer use. Verna files a product liability suit against Wideload, alleging a design defect. In deciding whether to hold the maker liable, the court may consider   |  |  |  | | --- | --- | --- | |  | a. | the assumptions of Wideload. | |  | b. | the identity of Wideload’s owner. | |  | c. | the intentions of Wideload. | |  | d. | the expectations of the ordinary consumer. | |

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| 61. Sea & Sail Corporation makes boats and boating supplies. Theresa files a product liability suit against Sea & Sail, alleging a design defect. In deciding whether to hold the boat maker liable, the court may consider an available alternative design based on the design’s   |  |  |  | | --- | --- | --- | |  | a. | popularity among industrial designers. | |  | b. | attractiveness to consumers. | |  | c. | commonality of use. | |  | d. | effect on the product. | |

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| 62. Safe-Rite Company makes electrical cords and other connectors for electronic devices. Tina files a product liability suit against Safe-Rite, alleg-ing a warning defect. In deciding whether to hold Safe-Rite liable, the court may consider   |  |  |  | | --- | --- | --- | |  | a. | consumers’ general failure to read the product’s warnings. | |  | b. | the plaintiff’s specific failure to read the product warnings. | |  | c. | the obvious risks of other products. | |  | d. | ​the obvious risks of this product. | |

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| 63. To assemble and sell stoves and fireplaces, Hearth & Home, Inc., buys igniters, tubing, and other parts from Inflame Stove & Fireplace Parts and installs them without changing them. If the parts are defective, strictly liable for any damage caused by the defects   |  |  |  | | --- | --- | --- | |  | a. | are neither Hearth & Home nor Inflame. | |  | b. | are Hearth & Home and Inflame. | |  | c. | is Inflame only. | |  | d. | ​is Hearth & Home only. | |

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| 64. Frieda is working on a construction site when she is injured on the job in the collapse of a Girder Company-made ceiling beam. At the time, Frieda is not wearing a hard hat or any other safety gear. In Frieda’s product liability suit against Girder, the company can most successfully raise the defense of   |  |  |  | | --- | --- | --- | |  | a. | preemption. | |  | b. | inadequate warning. | |  | c. | comparative negligence. | |  | d. | ​product misuse. | |

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| 65. Therapeutic Corporation makes medical devices that are subject to extensive government regulation and undergo a rigorous premarket approval process. In a product liability suit against Therapeutic by a party allegedly injured by one of the devices, the company can most successfully raise the defense of   |  |  |  | | --- | --- | --- | |  | a. | preemption. | |  | b. | assumption of risk. | |  | c. | comparative negligence. | |  | d. | knowledgeable user. | |

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| 66. Stan, an air conditioning and heating technician, files a suit against Temp-Set Corporation, alleging that its thermostats are unreasonably dangerous due to the possibility of electrical shock. Temp-Set’s best defense is most likely   |  |  |  | | --- | --- | --- | |  | a. | assumption of risk. | |  | b. | knowledgeable user. | |  | c. | commonly known danger. | |  | d. | none of the choices. | |

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| 67. Rose, who is obese, files a product liability suit against Burger Meal Corporation (BMC), alleging that BMC’s food is unhealthy because, as Rose knows, it contains high levels of cholesterol and saturated fat. BMC can most successfully assert the defense of   |  |  |  | | --- | --- | --- | |  | a. | preemption. | |  | b. | assumption of risk. | |  | c. | comparative negligence. | |  | d. | knowledgeable user. | |

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| 68. Garage Magic, Inc., contracts for the sale of a certain number of garage door openers to Home & Yard Hardware stores. Ian buys one of openers. The applicable statute of limitations prescribes a period of four years. To bring a product liability claim against Garage Magic, Ian must file a suit within four years of   |  |  |  | | --- | --- | --- | |  | a. | Ian’s discovery of an injury caused by the opener. | |  | b. | Garage Magic’s sale of the opener to Home & Yard. | |  | c. | Garage Magic’s design of the opener. | |  | d. | Home & Yard’s sale of the opener to Ian. | |

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| 69. In making and marketing tools and other do-it-yourself home maintenance products,Do-It-Rite Corporation, like other sellers, is required to take precautions against   |  |  |  | | --- | --- | --- | |  | a. | every conceivable misuse of a product. | |  | b. | only foreseeable misuses of a product. | |  | c. | no misuses of a product. | |  | d. | only obvious misuses of a product. | |

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| 70. The brakes on Dirk’s Tour de Valle bicycle malfunction, but he continues to ride it because he likes the thrill of the unstoppable acceleration. One night, enjoying a fast downhill pace, he speeds through a stop sign and is struck by a truck. In Dirk’s suit against Tour de Valle, the bike maker can raise the defense of   |  |  |  | | --- | --- | --- | |  | a. | commonly known dangers. | |  | b. | assumption of risk. | |  | c. | inadequate warning. | |  | d. | product misuse. | |

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| 71. ​Bob is shopping in Carl’s Hardware Store when a nail gun in use by Dan, one of Carl’s employees, fires without warning and hits Bob in the leg. Carl checks the gun and discovers that it was assembled improperly. Bob files a suit against Eagle Tools, Inc., the manufacturer of the gun, for product liability, on the ground of strict liability. What are the elements for an action based on strict liability? In whose favor is the court likely to rule and why? |

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| 72. Grass Green Company makes and sells hedge trimmers, which are designed to be safe if used properly. Hazel buys a Grass Green trimmer and lends it to her neighbor Izak. In his garage, Izak is using the trimmer as a prod to dislodge a box from a high shelf when the trimmer suddenly engages. Startled, Izak drops the trimmer, which swings around and cuts his leg. Izak files a product liability suit against Grass Green, on the ground of negligence. On what basis could the manufacturer prevail? |

**Answer Key**

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| 1. False |

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| 2. True |

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| 3. True |

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| 71. In an action based on strict lia-bility, a plaintiff must show that (1) a product was defective, (2) the defendant was in the business of distributing the product, (3) the product was unreasonably dangerous due to the defect, (4) the plaintiff suffered harm, (5) the defect was the proxi-mate cause of the harm, and (6) the goods were not substantially changed from the time they were sold. A plaintiff does not have to show that there was a failure to exer-cise due care, and this distinguishes an ac-tion based on strict liability from an ac-tion based on negligence, which requires proof of a lack of due care.  If Bob establishes his case, the court in this problem is most likely to rule in his favor, because the manufacturer would be strictly liable under the circumstances. Strict liability allows a plaintiff to recover dam-ages for injuries resulting from product defects without proof of fault. |

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| 72. A manufacturer or seller can prevail in a product liability suit based on negligence if the manufacturer designed its product to be safe for proper uses, even if the product was not designed to be safe for un-foreseeable, improper uses, such as the use in this question.  A manu-fac-turer is negligent if it breaches the duty to exercise reasonable care in the design or manufacture of its product, or warnings about the prod-uct, and this breach causes injuries. In other words, liability may be found if a product is unsafe because of negligence in its manufacture, as-sembly, testing, or inspection. Even if all reasonable care is taken, the manufac-turer may be liable if the design of the product makes it unrea-sonably dangerous for the uses for which the product is made. A manu-facturer must also be liable for failing to include a warning if the manufacturer knows the product is dangerous when used as intended or as could reasonably be foreseen, and users are not likely to be aware of the danger.  But a manufac-turer has no li-ability, when its product is reasonably safe for proper uses and foreseeable, improper uses, and is used in an unforesee-able, improper way. |