**Vertical Privity/Remoteness**

|  |  |
| --- | --- |
| **Express warranties** | **Implied warranties** |
| m 🡪 M  Remote seller’s liability for remote seller’s express warranty *(e.g., manufacturer’s liability for manufacturer’s express warranty)*:   * Yes, generally | m 🡪 M  Remote seller’s liability for remote seller’s implied warranty *(e.g., manufacturer’s liability for manufacturer’s implied warranty)*:   * Depends on jurisdiction and injury:   + Usually yes for personal injury   + Maybe yes for economic damages, but maybe no |
| d 🡪 M  Remote seller’s liability for near seller’s express warranty *(e.g., manufacturer’s liability for dealer/retailer’s express warranty)*:   * No * Unless if remote seller adopted dealer’s warranty, then likely yes. |  |
| m 🡪 D  Near seller’s liability for remote seller’s express warranty *(e.g., dealer/retailer’s liability for manufacturer’s express warranty)*:   * If adoption, then yes.   + Affirmation, promise, statement of fact, or action that tends to induce the buyer to purchase is adoption. * If no adoption, then no.   + Merely providing notice of the warranty is not adoption. |  |
| d 🡪 D  Near seller’s liability for near seller’s express warranty *(e.g., dealer/retailer’s liability for dealer/retailer’s express warranty)*:   * Yes, always * *(There is no privity issue here.)* | d 🡪 D  Near seller’s liability for near seller’s implied warranty *(e.g., dealer/retailer’s liability for dealer/retailer’s implied warranty)*:   * Yes, always * *(There is no privity issue here.)* |

**Horizontal Privity**

Steps to analysis, for either express or implied warranties:

**1. Was there a warranty? Was it disclaimed/excluded/limited? Was it breached? Did the breach cause the complained-of damages?**

*These questions have nothing to do with horizontal privity, of course – these are questions you must answer with all warranty problems.*

**2. Did a warranty transmit from the defendant to the buyer?**

*This is a reminder that you must deal with any possible vertical privity/remoteness issues before going on to the horizontal privity analysis. If the answer is yes, then move on to question 3.*

**3. Does the non-buyer/plaintiff overcome the horizontal privity issue?**

*Apply UCC §2-318, alternative A, B, or C depending on what was adopted in the relevant jurisdiction.*

**Alternative A:**

* any natural person in buyer’s family or household, or guest in the home,
  + if reasonable to expect that person to use, consume, or be affected by the warranty breach
* for personal injuries only
* exclusions not allowed

**Alternative B:**

* any natural person
  + if reasonable to expect that person to use, consume, or be affected by the warranty breach
* for personal injuries only
* exclusions not allowed

**Alternative C:**

* any person (natural or entity)
  + if reasonable to expect that person to use, consume, or be affected by the warranty breach
* for any injury
* exclusions for personal injury not allowed; exclusions for injuries beyond personal injury are allowed