**Vertical Privity/Remoteness**

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| --- | --- |
| **Express warranties** | **Implied warranties** |
| m 🡪 MRemote seller’s liability for remote seller’s express warranty *(e.g., manufacturer’s liability for manufacturer’s express warranty)*:* Yes, generally
 | m 🡪 MRemote 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
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| d 🡪 MRemote 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 🡪 DNear 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 🡪 DNear 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 🡪 DNear 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.)*
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**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