

VERTICAL PRIVITY/RE MOTENESS

EXPRESS WARRANTIES	IMPLIED WARRANTIES
<p style="text-align: right;">m → M</p> <p>Remote seller's liability for remote seller's express warranty (e.g., <i>manufacturer's liability for manufacturer's express warranty</i>):</p> <ul style="list-style-type: none"> • Yes, generally 	<p style="text-align: right;">m → M</p> <p>Remote seller's liability for remote seller's implied warranty (e.g., <i>manufacturer's liability for manufacturer's implied warranty</i>):</p> <ul style="list-style-type: none"> • Depends on jurisdiction and injury: <ul style="list-style-type: none"> ○ Usually yes for personal injury ○ Maybe yes for economic damages, but maybe no
<p style="text-align: right;">d → M</p> <p>Remote seller's liability for near seller's express warranty (e.g., <i>manufacturer's liability for dealer/retailer's express warranty</i>):</p> <ul style="list-style-type: none"> • No • Unless if remote seller adopted dealer's warranty, then likely yes. 	
<p style="text-align: right;">m → D</p> <p>Near seller's liability for remote seller's express warranty (e.g., <i>dealer/retailer's liability for manufacturer's express warranty</i>):</p> <ul style="list-style-type: none"> • If adoption, then yes. <ul style="list-style-type: none"> ○ Affirmation, promise, statement of fact, or action that tends to induce the buyer to purchase is adoption. • If no adoption, then no. <ul style="list-style-type: none"> ○ Merely providing notice of the warranty is not adoption. 	
<p style="text-align: right;">d → D</p> <p>Near seller's liability for near seller's express warranty (e.g., <i>dealer/retailer's liability for dealer/retailer's express warranty</i>):</p> <ul style="list-style-type: none"> • Yes, always • (There is no privity issue here.) 	<p style="text-align: right;">d → D</p> <p>Near seller's liability for near seller's implied warranty (e.g., <i>dealer/retailer's liability for dealer/retailer's implied warranty</i>):</p> <ul style="list-style-type: none"> • 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