Another important restriction on consumer warranty rights is the outdated concept of privity, that a consumer can enforce a warranty remedy against the manufacturer or other seller only if the consumer has a direct contractual relationship with the seller. A consumer is said to lack vertical privity when the consumer attempts to sue a manufacturer or other party in the distribution chain with whom the consumer has not dealt directly. A consumer is said to lack horizontal privity when the consumer is not the original buyer, but is a transferee of that buyer, such as a family member given the product as a gift or a subsequent purchaser.

Chapter 6 [1], infra, examines whether the historical concept of privity still applies in consumer transactions. In general, the Magnuson-Moss Warranty Act has eliminated horizontal privity requirements for subsequent owners of a product and vertical privity requirements for claims based on written warranties. Less clear is whether it has eliminated the vertical privity requirement for implied warranty claims. It has not done so for claims based on express warranties that do not meet its restrictive definition of “written warranty.” Nevertheless, even for implied warranties and express warranties that do not qualify as Magnuson-Moss “written warranties,” state law in most jurisdictions has eliminated the vertical privity requirement. When privity is not eliminated, alternative legal theories may be available to the consumer that will not be impeded by privity requirements—such as new car lemon law, manufactured home warranty, UDAP, fraud, negligence, and strict liability claims.

Footnotes

455 [422] See §§ 6.2.2 [2], 6.3.2 [3], infra.

456 [423] See § 6.2.4.1 [4], infra.

457 [424] See § 6.2.4.2 [5], infra.

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