



INDIAN JOURNAL OF  
LEGAL REVIEW

VOLUME 6 AND ISSUE 6 OF 2026

INSTITUTE OF LEGAL EDUCATION



## INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 6 and Issue 6 of 2026 (Access Full Issue on – <https://ijlr.iledu.in/volume-6-and-issue-6-of-2026/>)

### Publisher

Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

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## A COMPARATIVE PERSPECTIVE OF LIABILITY ISSUES IN COMMERCIAL TRANSACTIONS

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**BEST CITATION** – AKSHAYA R & SRIMAN, A COMPARATIVE PERSPECTIVE OF LIABILITY ISSUES IN COMMERCIAL TRANSACTIONS, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (6) OF 2026, PG. 51-54, APIS – 3920 – 0001 & ISSN – 2583-2344. DOI – <https://doi.org/10.65393/IJLRV6165>

### Introduction

Global trade is based on commercial transactions, which include a variety of agreements between companies, customers, and financial institutions. These transactions are not risk-free, though, as liability conflicts often surface in areas like e-commerce, business governance, contract performance, misrepresentation, and product defects. Due to the influence of common law, civil law, and international treaties, the legal frameworks that regulate these liability concerns differ greatly throughout nations. It is crucial for companies, attorneys, and legislators to comprehend the many viewpoints on liability in business dealings. Liability is frequently founded on the concepts of tort-based duties, privity, and freedom of contract in common law jurisdictions (like the US and the UK). Generally speaking, courts prefer a hands-off approach unless fraud or unconscionability is implicated, and remedies center on damages and contractual enforcement. Conversely, civil law systems (like those in Germany and France) place more emphasis on pre-contractual liabilities, good faith duties, and statutory protections. They also provide a wider range of remedies, such as specific performance and rescission. Liability issues have become more complex as a result of the growing internationalization of trade, especially in areas like digital transactions, director accountability, and product liability. Businesses now have to negotiate a complex web of legal frameworks, each with unique liability allocation regulations, as a result of the growth of cross-border trade and e-commerce. Significant variances still exist despite regional consumer protection regulations (like EU Directives) and international initiatives like the United Nations Convention on Contracts for the International Sale of Goods (CISG) to reconcile these differences. Five main categories are examined in this research article's comparative examination of liability issues in business transactions: tortious liability, corporate and director liability, product liability, contractual liability, and liability in e-commerce. This paper examines legal concepts from several jurisdictions to emphasize the difficulties firms confront and provide suggestions for reducing liability risks in a changing global marketplace. The findings are intended to facilitate more seamless business transactions across various legal systems by advancing a better understanding of how responsibility is distributed and enforced.

### **A Comparative Study of Contractual Liability in Business Transactions**

Commercial transactions depend on contractual liability, which guarantees that

parties fulfill their responsibilities under a binding contract. The Common Law and Civil Law traditions are the two main legal systems that have different views on the extent and

application of contractual liability. The concept of freedom of contract serves as the foundation for contractual liability in Common Law nations, such as the US and the UK. As long as a contract is not unconscionable or against public policy, courts often uphold it as stated. Important roles are played by the theories of privity of contract (limiting the rights of the contractual parties) and consideration (a prerequisite for the creation of a contract). Specific performance and damages (liquidated, punitive, and compensatory) are remedies for breach. According to the efficient breach concept, a party may willfully violate a contract if doing so will benefit the economy, so long as the harmed party receives fair compensation. On the other hand, civil law systems (like those in France and Germany) place more emphasis on fair dealing and good faith. Consideration is replaced by the idea of cause, which emphasizes the rationale behind the contract rather than the sharing of promises. A breaching party is liable regardless of fault unless force majeure exists, which is known as strict liability. Culpa in contrahendo, or pre-contractual liability, makes parties answerable for discussions conducted in ill faith. Damages, rescission, and specific performance are among the remedies; the last is more easily awarded than in Common Law states. Due to the need for parties to negotiate several legal systems, international business transactions are more complicated. Although they seek to standardize concepts, instruments such as the United Nations Convention on Contracts for the International Sale of Goods (CISG) permit differences, especially in the treatment of damages and contract interpretation. Because liability risks and enforceability varies depending on the governing law, it is crucial for enterprises involved in cross-border transactions to comprehend these distinctions.

#### **Tortious Liability in Business Transactions: Carelessness and Deception**

In business dealings, tortious liability occurs when one party is harmed by the wrongdoing of another, regardless of contractual duties.

Negligence, fraudulent and negligent misrepresentation, and economic torts such as interfering with contractual relations are the main torts in commercial law. Tortious responsibility in Common Law jurisdictions necessitates the demonstration of duty of care, breach, cause, and loss. As demonstrated by instances such as *Hedley Byrne & Co Ltd v Heller & Partners Ltd* (UK), which established responsibility for negligent misstatements, courts frequently use the "foreseeability test" to evaluate duty. While negligent misrepresentation is predicated on a lack of due care, fraudulent misrepresentation, as in *Derry v. Peek*, necessitates intent to deceive. Common law also recognizes the economic tort of inducing breach of contract, but civil law typically does not recognize it as a separate cause of action. Tort law is codified in civil law jurisdictions (such as Germany's BGB or France's Code Civil). A "duty of care" is not strictly necessary; rather, liability is founded on fault-based concepts and broader duties to act in a way that does not cause injury. The scope of liability for deception is wide and frequently includes pre-contractual discussions (*culpa in contrahendo*). Common Law demands a clearly defined duty of care and cause, whereas Civil Law tends to impose broader liability with fewer formal impediments. This affects companies that operate across borders, especially when there are disagreements about false financial statements, misrepresented products, or unfair commercial practices.

#### **Directors' and Corporate Entities' Liability in Business Transactions**

Legal frameworks and the tenets of corporate governance influence the liability of corporations and their directors. Corporations are separate legal entities under Common Law systems (*Salomon v. Salomon*). Directors who commit dishonest or careless business operations risk personal liability in addition to their fiduciary duties, which include duty of care, loyalty, and good faith. Directors who make reasonable, sincere decisions are shielded from responsibility by the business judgment rule.

Courts have the authority to "pierce the corporate veil" in situations involving fraud, phony businesses, or serious wrongdoing. Corporate accountability is acknowledged similarly in civil law regimes, although the duties of directors are more strictly outlined. For example, in Germany, directors may be held personally accountable for statutory duty violations, such as insolvency mismanagement, under the Aktiengesetz (Stock Corporation Act). Abus de biens sociaux, or the misuse of corporate assets, is punishable by strict liability under French corporate law. Globally, corporate liability for business misconduct has increased, particularly in situations involving fraud, human rights abuses, and environmental damage (e.g., corporate liability under the EU's Corporate Sustainability Due Diligence Directive or the U.S. Foreign Corrupt Practices Act). Multinational companies and their directors must comprehend these differences.

### **Product Liability and Protection of Consumers in Global Business Deals**

Product liability regulates the accountability of producers and retailers for hazardous or flawed goods. The main theories of product liability in common law jurisdictions are strict liability (US Restatement of Torts), carelessness (Donoghue v. Stevenson), and breach of warranty. Strict responsibility applies in the US, which means that regardless of carelessness, manufacturers are liable for faulty goods. With additional consumer protections provided by the Consumer Rights Act of 2015, the UK employs a negligence-based approach. Product liability is mostly statutory in civil law systems. Manufacturers bear the burden of strict liability under the EU Product Liability Directive. Companies must demonstrate that they took all necessary safeguards under the comprehensive consumer rights provisions of German and French law. Businesses must negotiate several legal frameworks for cross-border transactions, including the CISG, EU rules, and US liability laws, which complicates global trading.

### **Digital Transactions and E-Commerce: Liability Concerns in an International Marketplace**

New liability issues in data security, cyber fraud, and contract enforcement are brought forth by the growth of digital commerce. Digital contract laws (such as UETA in the United States) govern e-commerce contracts in Common Law jurisdictions. Online platforms could be held accountable for data breaches, fraudulent transactions, and infringements of intellectual property. Courts frequently decide whether online marketplaces like Amazon are "sellers" for the purposes of product liability statutes, making third-party responsibility a crucial issue. Digital transactions under civil law systems are governed by e-commerce statutes, GDPR (EU), and consumer protection regulations. The Digital Services Act of the EU makes internet platforms more liable and mandates preventative actions against harmful content and fake goods. Liability in digital transactions is still uneven on a global scale. To reduce risks associated with data privacy, cybersecurity, and the enforceability of contracts in cross-border online commerce, businesses must make sure they are in compliance with a number of regulatory frameworks.

### **Conclusion**

Because of the underlying legal traditions of Common Law and Civil Law, liability issues in business transactions differ greatly throughout jurisdictions. The focus of common law (contract freedom) and civil law (good faith and fair dealing) on contractual liability is different. These differences are also reflected in tortious liability for negligence and misrepresentation, where civil law relies on generic fault-based concepts and common law demands a clear duty of care. Corporate liability shows how to strike a compromise between using veil-piercing theories to hold directors accountable for misconduct and protecting them under the business judgment rule. Product liability rules vary from strict liability in the United States and the European Union to more fault-based approaches in other

countries, especially when it comes to defective items. Businesses now have to manage a variety of regulatory frameworks pertaining to cybersecurity, online transactions, and consumer rights as a result of the growth of digital commerce. Significant differences still exist despite attempts at harmonization using tools like the CISG, EU Directives, and international commercial law frameworks. These distinctions make managing cross-border transactions more difficult for small firms, big corporations, and legal experts. To reduce risks and guarantee compliance, it is crucial to comprehend jurisdictional complexities.

### Suggestion

1. Harmonization of International Commercial Laws: To harmonize liability principles, especially in contract law, e-commerce rules, and corporation liability, there needs to be more worldwide coordination. There would be less legal uncertainty if international frameworks for digital trade were developed and standards like the CISG were expanded.
2. Enhanced Legal Due Diligence in Cross-Border Transactions: Companies engaging into contracts in several legal countries should carry out thorough risk assessments. To prevent unforeseen financial and legal repercussions, this entails being aware of local laws, liability exposure, and dispute resolution procedures.
3. Improved Consumer Protection in International Trade To guarantee cross-border product liability and accountability for online platforms, governments and international organizations should improve consumer protection legislation, especially in e-commerce and digital transactions.
4. Corporate Governance and Director Liability Compliance To guarantee adherence to national and international liability regulations, businesses should implement strong corporate governance frameworks. Companies should have policies in place that reduce liability exposure, particularly in industries with strict

regulations, and directors should be trained on legal risks.

5. Using Mechanisms for Alternative Dispute Resolution (ADR) Businesses should employ mediation, arbitration, and other ADR techniques for business disputes more frequently in order to reduce jurisdictional issues. This can assist settle disputes more quickly than going to court, especially when dealing with international transactions.

6. Legal Changes to Handle New Digital Hazards To handle cybersecurity threats, data breaches, and online fraud in e-commerce transactions, laws must change. Governments ought to implement thorough laws governing digital trade while guaranteeing cross-border enforcement cooperation. By putting these recommendations into practice, legal systems can lessen the complexity of liability in a globalized economy while fostering equity, predictability, and efficiency in business dealings.



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ISSN 2583-2344



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