How AI Can Complicate Liability Limits In Contracts

By **Daniel Erskine** (September 9, 2026)


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Recent taskforce and regulator pronouncements emphasize the usefulness and risks of artificial intelligence-assisted legal practice as transactional lawyers resort to AI for speed in drafting contracts across the wide spectrum of client needs, for all industries and service offerings.

While the innovation of AI tools promises easier contract review and drafting assistance, including options for clause wording favoring specific negotiating perspectives, risks to deal execution and dispute resolution arise. Contract language employed by AI tools in drafting limits on liability poses particular concern as chosen agreement language must account for human definition and interpretation of the contract language used.

Contract clauses aimed at constraining such liabilities remain subject to established contract norms, as confirmed by the July 2026 U.K. Jurisdiction Taskforce's legal statement on liability for AI harms under the private law of England and Wales.[1]

This recognizes that contract language governs liability limitation subject to traditional English common law interpretive theories, and asserts that even language poorly drafted by AI resolves through judicial gloss, e.g., the High Court decision in Drax Energy Solutions Ltd. v. Wipro Ltd. in 2023.[2]

Application of these theories to language generated by AI outputs risks interpretation by human decision-makers resulting in significantly different liability outcomes than anticipated or intended by the drafting lawyer.

U.S. Court Decisions

Reported court decisions in the U.S. illustrate the same clause language, when for instance, addressing liability under contract default or termination result in differing human interpretations — even when applying the exact same legal theory.

For example, typical clauses limiting liability to payments under the contract's term resulted in contrary interpretations from different courts. In Professional Fighters League LLC v. Takeover Industries Inc. in 2025, the U.S. District Court for the Southern District of New York reasoned a limitation clause capping liability to fees actually paid likely did not result in zero liability for material breach for failure to pay annual sponsorship fees.[3]

However, in 2025, the U.S. Court of Appeals for the Eighth Circuit in Baldwin Hackett and Meeks Inc. v. Early Warning Services LLC, interpreting Delaware law, reasoned a clause limiting liability to fees paid, under a plain language interpretation, resulted in the commercially reasonable outcome that excluded recovery for unpaid future fees upon contract termination.[4]

Practical Risk Results

The application of contract legal interpretative theories happens by human decisional action, at present, affecting outcomes based on language placed in contracts after negotiation. These decisions create a governing system for agreement administration, risk management and resource allocation. When clauses, thought to facilitate and mitigate, cause increased liability and disruption, transactional lawyers must reconsider words used to express clients' desired outcomes.

When liability attaches where the drafting party sought to limit or where payment for unused software resources unintentionally occurs for the contracting party, practical harm results. Consider effects on a vendor who placed the same language in standard terms across multiple software offerings, believing, even if customers canceled — perhaps factoring in certain rates of such — revenue from the contract continued to flow, but faces no further revenue recognition due to language now interpreted to release customers from future payments.

Also, think about the impact on mediation provisions within the same agreement altered due to current interpretation of the contract's clauses, causing limited negotiation options.

Limiting liability by contractual clauses is essential to facilitate commercial activities and encourage rapid deployment of new technologies. Language used to constrain such liabilities remains subject to established interpretive norms. Ensuring the AI training set includes certain words legally defined through applicable case law and confirming the outputs conform to such meanings help to solidify consistent interpretation.

Legal Ethics

With the Solicitors Regulation Authority's recent warning notice to solicitors in August concerning professional obligations inherent in lawyers' use of AI, AI tool management — including vendor due diligence on what data comprises the corpus resulting in outputs for use in drafting limitation of liability provisions — may implicate competent practice, ethical and regulatory requirements.

AI drafting tools should be reviewed to ensure that the language suggested, favorable to one side or the other, draws upon available case law, statutes, regulations, codes of practice and regulatory interpretations. Analysis of custom and usage for terms used in the industry subject to the contract should factor into AI drafting outputs.

Ensuring that AI tools draw upon relevant decisional law when aiding transactional lawyers in producing limits of liability provisions advances contract parties' expectations, provides intended cover and improves dispute outcomes. "Most favored nation" clauses, insurance cover and revenue projections for the agreement need to be cross-referenced to ensure that mitigating language inserted achieves contemplated results.

Examples of how limitation terms under various contract interpretative theories play out in practical scenarios should be run. By analyzing such outputs against present contract interpretation theories, the transactional lawyer assists in effectuating a party's commercial expectations.

Tech Contracts Need Predicable Interpretation

As technology modifies business interactions, the malleable application of law to contract language, often employing ancient canons in novel applications, requires transactional lawyers to use AI tools as drafting aids, but continue to ascertain human decisional interpretation of AI output language.

The goal of transactional drafting remains the expression of the parties' mutual agreement effectuated by the clauses employed. The growth of AI agents contracting on a party's behalf, executing deals and fulfilling contract requirements necessitates transactional lawyers' aid in constructing the terms or parameters for AI action to ensure outcomes anticipated actually result from language implemented.

Technology agreements, including AI solutions, interact through multiple tiers, or stacks, of contractors and suppliers, including terms incorporated into those contracts through hyperlinks or portals. An order form, deceptively simple, references hundreds of pages of integrated terms subject to these multiple layers forming the contract ecosystem.

Aggregate and super caps on liability together with the assumption of discrete identified liabilities across the contract documents need reconciliation to ensure predictable enforcement. It is necessary to ensure that AI tools, both internally developed and external, capture the complete contract platform when both drafting and reviewing agreements.

The technology industry needs limited liability for future viability, as well as certainty in how those limits, once imposed, are interpreted. Transactional lawyers aid parties in the achievement of both goals by using AI tools sufficiently capable of understanding contractual interpretative theories and their impact on language selected in limiting liability.

Avoidance, to the extent practicable, of strict interpretation of language employed leads to more definite outcomes. As regulation, particularly data protection rights and responsibilities, evolves within the digital sector, allocating liability for regulatory imposed obligations remains vital, as well as carveouts for liabilities incapable of either exclusion or limitation. Reasonableness, whether imposed or as an interpretive device will affect the execution of justice by judges tasked with reviewing and practically applying the limitation language employed.

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[1] https://lawtechuk.io/ukjt/public-consultation-liability-for-ai-harms-under-the-private-law-of-england-and-wales/.

[2] Drax Energy Solutions Ltd. (Formerly Haven Power Ltd) v. Wipro Ltd. [2023] EWHC 1342.

[3] Professional Fighters League, LLC v. Takeover Industries, Inc., No. 1:24-cv-01335 (S.D.N.Y.).

[4] Baldwin Hacket and Meeks, Inc. v. Early Warning Services, LLC (8th Cir. 2025).