УДК 347.4
DOI: https://doi.org/10.33216/2218-5461/2026-51-1-106-114

REPRESENTATIONS, WARRANTIES AND INDEMNITIES IN UKRAINIAN LEGISLATION: SYSTEMATIC DEFICIENCIES IN THE IMPLEMENTATION OF COMMON LAW INSTITUTIONS

Husakov Y.I., Shapovalova O.V.

REPRESENTATIONS, WARRANTIES ТА INDEMNITIES У ЗАКОНОДАВСТВІ УКРАЇНИ: СИСТЕМНІ НЕДОЛІКИ ІМПЛЕМЕНТАЦІЇ ІНСТИТУТІВ СИСТЕМИ ЗАГАЛЬНОГО ПРАВА

Гусаков Є.І., Шаповалова О.В.

The article provides a critical analysis of the implementation of contractual representations, warranties and indemnities institutions borrowed from the common law system into the Ukrainian legal system. The legal nature of 'representations', 'warranties' and 'indemnities' in the context of the common law system (Anglo-Saxon legal system) is examined in detail, and systemic problems of their integration into Ukrainian legislation are identified. Special attention is paid to the structural shortcomings of placing new legal constructions in the Civil Code of Ukraine and other laws, their inconsistency with original concepts, as well as the limited scope of their application.

The research demonstrates that the Ukrainian legislator confused pre-contractual representations with contractual warranties, failed to implement the full warranty framework including the condition/warranty distinction, and conflated indemnities with liquidated damages. These conceptual errors have resulted in transplanted institutions that are poorly understood and rarely used in practice. The article proposes concrete legislative reforms including: repositioning representation provisions to Chapter 16 on Transactions with rescission remedies; clarifying warranty provisions as contractual terms in Chapter 52; properly implementing indemnity as a standalone risk-allocation mechanism; and providing authoritative guidance on the application of these institutions. The research provides broader lessons about legal transplants and the challenges of borrowing institutions from different legal traditions.

***Keywords**: contractual representations, warranties, indemnities, common law system, digital economy, legal transplants, comparative law.*

Problem statement. The globalization of trade relations worldwide requires national legal systems to adapt and harmonize commercial regulation mechanisms in accordance with international standards. This issue is particularly acute in the field of contract law, where significant differences traditionally persist between the continental legal system and the common law system. As a consequence of such globalization, foreign legal institutions have been introduced into domestic legislation, particularly contractual representations, warranties and indemnities, which are traditionally inherent to common law countries.

The adoption of the Law of Ukraine "On Stimulating the Development of the Digital Economy in Ukraine" dated July 15, 2021 [1] was intended to mark a new stage in the development

of Ukrainian contract law. This law introduced amendments to the Civil Code of Ukraine, implementing the institution of contractual representations (Article 650-1 of the Civil Code of Ukraine [2]), as well as introducing the mechanism of warranties and indemnities in contracts involving Diia City residents. According to the explanatory note to the aforementioned law, these innovations were intended to borrow from the common law system such institutions as 'representations', 'warranties' and 'indemnities' [3].

At the same time, it is noteworthy that in the explanatory note, the legislator made a conceptual error when, in the section on 'warranties', an attempt was made to draw a parallel with the Ukrainian norm concerning the transaction execution under the influence of fraud. Furthermore, the legislator itself acknowledges that the mentioned norm is an analogue of 'fraudulent misrepresentations'. It should be noted here that the reference to fraudulent misrepresentations in the context of the section on warranties is logically inconsistent and indicates the legislator's confusion of institutions that differ in their legal nature – 'warranties' (contractual concept) and 'representations' (pre-contractual concept). This raises the question of how consistent the legislator is in resolving the problem of implementing the mentioned institutions.

Literature review. On the other hand, Ukrainian scholars also often demonstrate ambiguity in the systematic interpretation of these institutions. Scholars such as M.M. Velykanova, O.V. Basai, V.I. Teremetskyi, N.H. Huts, L.M. Doroshenko, M.S. Fedorko and others, although they have studied the issue of implementing these concepts, mainly focused on descriptive analysis of innovations without proper critical assessment of their systemic integration into Ukrainian civil legislation.

In the course of this study, it is also noteworthy that in practice, common law concepts implemented in Ukrainian legislation are rarely applied in contracts governed by Ukrainian law, as evidenced by the insignificant amount of case law over almost 4 years since their implementation. This practical neglect raises questions about whether the implementation was done in a way that makes these institutions accessible and useful for Ukrainian legal practitioners, or whether the conceptual inconsistencies discussed above have rendered them practically unworkable.

Purpose of the Article. The purpose of the study is a critical analysis of the implementation of the concepts of contractual representations, warranties and compensation borrowed from the common law system into the Ukrainian legal system, identifying systemic problems of their integration into Ukrainian legislation and determining possible ways to improve these legal mechanisms. The research also aims to update a comprehensive study of the theoretical foundations of these common law institutions, their proper application in the original legal context, and to clarify the specific challenges that arise when attempting to transplant them into a continental legal system.

Presentation of the main material. To understand the problems of implementation, it is necessary to clearly distinguish the essence of several common law institutions that were borrowed by the Ukrainian legislator. It is known that each of these institutions has a separate legal nature, performs different functions and causes different legal consequences. Errors in proper understanding and preservation of these differences became one of the central problems of Ukrainian implementation.

'Representation' in common law is a statement of fact relating to the past or present, made before or during the conclusion of a contract and inducing the counterparty to enter into that contract. It is fundamentally important that 'representation' is not part of the contract, but only a prerequisite for its conclusion. The

representation exists in the pre-contractual period – it is information provided during negotiations to induce the other party to enter into the contract. If a representation is found to be false ('misrepresentation'), the consequence may be rescission of the contract (returning parties to their pre-contractual position) or compensation for damages [4].

The common law distinguishes between different types of misrepresentation based on the state of mind of the representor. Fraudulent misrepresentation occurs when a party knowingly makes a false statement with the intention to deceive. Negligent misrepresentation occurs when a party makes a false statement without reasonable grounds for believing it to be true. Innocent misrepresentation occurs when a party makes a false statement but can prove they had reasonable grounds to believe it was true. Each type of misrepresentation carries different remedies and different standards of proof.

'Warranty' in common law is a contractual term of secondary importance, according to which one party provides the other party with a promise that a certain fact regarding the subject matter of the contract is or will be as stated or should be. Unlike 'representation', 'warranty' is an integral part of the contract itself – it is incorporated into the contractual bargain between the parties. Its breach does not give grounds for rescinding (invalidating) the contract, but only the right to claim compensation for damages. This is because warranty is classified as a minor term of the contract, as distinguished from a 'condition' which is a major term whose breach does give rise to the right to terminate the contract [4].

The warranty operates on the principle of strict liability – the warrantor is liable for breach of warranty regardless of fault, negligence, or even knowledge of the falsity of the warranted statement. When a party gives a warranty, they are essentially promising that certain facts are true and agreeing to compensate the other party if those facts turn out to be false, regardless of whether they knew or should have known of the falsity. This strict liability nature makes warranties particularly valuable in commercial transactions where one party has superior knowledge about certain facts and the other party wants protection without having to prove fault.

'Indemnity' in common law is a contractual obligation whereby one party assumes responsibility to protect the other party from certain types of losses, costs or liabilities that may arise upon the occurrence of certain circumstances. It is critically important to understand that 'indemnity' functions as a mechanism for distributing risks between the parties to a contract, rather than as a sanction or measure of liability for breach of contractual obligations. An indemnity operates as a stand-alone obligation – it can be triggered even if the main contract is void or voidable, and it operates independently of whether there has been any breach of other contractual terms [4].

The indemnity serves a specific risk allocation function in complex commercial transactions. Parties use indemnities to allocate specific, identifiable risks (such as tax liabilities, environmental liabilities, intellectual property infringement claims) to one party. The indemnified party is entitled to pound-for-pound reimbursement of losses falling within the scope of the indemnity, without needing to prove breach of contract and without any duty to mitigate (reduce) their losses. This makes indemnities particularly valuable for risks that are difficult to quantify in advance or that may crystallize long after the contract is concluded.

Having defined the meaning of these terms, one should try to understand which of these institutions the legislator tried to implement in Ukrainian civil legislation, and whether the implementation was conceptually coherent. This analysis requires examining both the text of the enacted provisions and their placement within the systematic structure of the Civil Code.

Analyzing Article 650-1 of the Civil Code of Ukraine (contractual representations), it should be noted that the legislator most likely tried to adapt the concept of 'representation', since the article concerns assurances about facts that are significant, including for the conclusion of a contract. The reference to facts relevant "for the conclusion" of the contract suggests a pre-contractual focus consistent with representations. However, the article also refers to facts relevant for "performance or termination" of the contract, which suggests a broader, more contractual scope that would be more consistent with warranties.

On the other hand, in Part 2 of Article 650-1 of the Civil Code of Ukraine, the only consequence of providing false representations is compensation for damages, which brings this institution closer to 'warranty'. There is no provision for rescission (invalidation) of the contract, which is the primary remedy for misrepresentation in common law. This creates a fundamental inconsistency: if the institution is meant to be a representation (pre-contractual statement), why is the remedy limited to damages rather than rescission? Conversely, if it is meant to be a warranty (contractual term), why is it described in terms that suggest pre-contractual applicability?

Furthermore, if we are talking about the implementation of 'representation', a structural question arises regarding the placement of this norm in Chapter 53 of the Civil Code of Ukraine "Conclusion, Amendment and Termination of Contract", rather than in Chapter 16 "Transactions", which contains norms on the validity of transactions, in particular Article 230 regarding the commission of a transaction under the influence of fraud [2]. In common law, 'misrepresentation' is fundamentally about the validity of contract formation – it goes to whether consent was properly obtained. Therefore, if the legislator intended to introduce an analogue of 'representation', it would be logical to place the corresponding norm in Chapter 16 dealing with the validity of juridical acts.

The current placement in Chapter 53 suggests that the legislator viewed this institution as something that operates after the contract is validly formed, which would be more consistent with the nature of warranties. However, this interpretation conflicts with the language of the article itself, which refers to assurances relevant to contract conclusion. This structural inconsistency reflects a deeper conceptual confusion about what institution was actually being implemented.

M. Fedorko rightly notes that the provisions of Article 650-1 of the Civil Code of Ukraine do not establish a connection between the legal consequences of providing inaccurate representations and the invalidation of the contract, unlike the provisions of Article 230 of the Civil Code, according to which a transaction is declared invalid by the court [5, p. 127]. This observation highlights a paradoxical situation: if contractual representations are meant to be an analogue of 'representation', then it is unclear why the legislator limited the legal consequences of breach to only compensation for damages, without providing for the possibility of invalidating the contract, which is a key feature of the 'misrepresentation' institution in common law.

The paradox deepens when we consider that Ukrainian law already has a mechanism for dealing with false pre-contractual statements: Article 230 of the Civil Code on transactions concluded under the influence of fraud. If the legislator wanted to address pre-contractual misstatements, why create a new institution with more limited remedies instead of simply expanding or clarifying the existing fraud provisions? The only logical answer is that the legislator was not trying to create a true representation mechanism, but rather something hybrid – perhaps attempting to combine elements of both representations and warranties.

If the purpose of implementation was to introduce the concept of 'warranty', then it would be more appropriate to place the article in Chapter 52 "Concept and Terms of Contract", since 'warranty' is primarily a contractual term. This placement would signal that the institution operates as part of the agreed contractual bargain, rather than as a pre-contractual inducement. However, Ukrainian legislation has not implemented the distinction between 'condition' and 'warranty', which is fundamental for the common law system.

In common law, 'condition' (essential term of the contract) is of primary importance, and its breach gives the right to terminate the contract (treating it as discharged), while 'warranty' is of secondary importance, and its breach only gives the right to compensation for damages. This distinction serves an important function: it allows parties to signal which terms are so important that their breach justifies ending the contractual relationship, versus terms where monetary compensation is an adequate remedy. Without implementing this distinction, Ukrainian law lacks the full toolkit of the common law warranty concept [6].

In this regard, M. Fedorko makes another important observation, indicating that the distinction between representations about circumstances and obligations allows us to assert that the body of norms of the law of obligations should not apply to representations about circumstances, and therefore its regulation is actually limited only to Article 650-1 of the Civil Code of Ukraine [5, p. 128]. This observation is significant because it suggests that the legislator may have viewed contractual representations as standing outside the normal framework of contractual obligations.

If representations about circumstances are not subject to the general law of obligations, then they cannot be true warranties, which are by definition contractual obligations. This interpretation supports the view that the legislator was attempting to implement something closer to the pre-contractual representation concept. However, this creates a different problem: a free-standing institution that is neither fully part of contract formation (validity of transactions) nor fully part of contract performance (obligations) risks becoming marginalized and rarely used – which is precisely what appears to have happened in practice.

Regarding the analysis of the institution of indemnity, it is necessary to turn to its original concept in the common law system. As mentioned above, 'indemnity' is a contractual obligation whereby one party assumes responsibility to protect the other party from certain types of losses, costs or liabilities that may arise upon the occurrence of certain circumstances. The key characteristics of indemnity are: (1) it is a primary obligation, not dependent on breach of contract; (2) it operates on strict liability principles; (3) there is no duty on the indemnified party to mitigate losses; (4) it can survive even if the main contract is void; and (5) it typically covers third-party claims or losses arising from specified events [7].

The fundamental problem of implementing this institution is that the Ukrainian legislator, judging by the explanatory note, unsuccessfully uses the term "compensation", applying it simultaneously both as an analogue for the consequences of 'indemnity' and as an analogue of 'liquidated damages' (pre-assessed damages) [3]. This conflation of two completely different institutions reveals a fundamental misunderstanding of how indemnities function in common law.

In the common law system, these institutions have entirely different legal natures: 'liquidated damages' is a specific sum that the parties have agreed in advance as compensation for breach of contract – it is essentially a pre-estimate of damages for breach. In contrast, 'indemnity' is an obligation of one party to protect the other from losses that may arise in connection

with certain circumstances, not necessarily related to any breach of contract. Liquidated damages presuppose a breach of contract and serve as an alternative to proving actual damages. Indemnity does not presuppose any breach – it is simply a risk allocation mechanism [8].

The conflation of these concepts in Ukrainian legislation leads to the impossibility of effectively applying the indemnity concept in its original understanding. If practitioners and courts interpret "compensation" provisions as merely a type of liquidated damages, they will miss the key features that make indemnities valuable: the ability to cover risks regardless of breach, the absence of a duty to mitigate, the strict liability nature, and the independence from the validity of the main contract. This conceptual confusion may explain why indemnity-type provisions remain rare in Ukrainian contract practice.

Furthermore, in Ukrainian legal doctrine, compensation is also often considered primarily as a means of protecting violated rights and actually a separate form of liability. Thus, L. Doroshenko argues that compensation is a guarantee of proper performance of the contract, the most universal means of protecting a party's rights among other methods provided by law [9, p. 35]. This understanding, in general, does not correspond to the essence of 'indemnity'.

The indemnity institution in the common law system exists not primarily to ensure contract performance or to remedy breaches of contract, but rather to provide parties with a mechanism for better risk control after the contract is concluded. It is a planning tool, not a remedial tool. Parties use indemnities to say: "Regardless of who is at fault, regardless of whether there is a breach, if X happens, Party A will bear the costs." This forward-looking, risk-allocation function is fundamentally different from compensation as a remedy for breach.

The failure to understand this distinction means that Ukrainian law lacks a true equivalent to the common law indemnity. While parties can achieve some similar results through carefully drafted obligation clauses and liability provisions, they cannot replicate the full functionality of the common law indemnity, particularly its independence from breach and its survival even when the main contract fails. This limitation is particularly problematic for complex commercial transactions, such as mergers and acquisitions, where indemnities play a central risk-allocation role.

Conclusions and proposals. A critical analysis of the implementation of common law institutions into the Ukrainian legal system has revealed a number of systemic problems that undermine the effectiveness of these transplanted institutions. The analysis demonstrates that the problems are not merely technical or drafting issues, but reflect deeper conceptual inconsistencies in how these institutions were understood and implemented.

To address these problems, the following measures are proposed:

1. Conceptual differentiation of institutions. It is necessary to clearly distinguish at the legislative level between the institutions of 'representation' and 'warranty', which in common law have fundamentally different legal natures and consequences of breach. Currently, Article 650-1 of the Civil Code of Ukraine conflates these concepts, which leads to legal uncertainty and, as a consequence, to limited practical application due to conceptual detachment from other institutions of Ukrainian civil law.

The legislator should decide whether it wants to create a pre-contractual representation mechanism (focused on contract formation and validity) or a contractual warranty mechanism (focused on risk allocation in validly formed contracts), or both as separate institutions. If both are desired, they should be clearly distinguished in separate provisions with different placement in the Code, different triggering conditions, and different remedies. A representation mechanism should allow for rescission and should be placed

in Chapter 16 on Transactions. A warranty mechanism should focus on damages only and should be placed in Chapter 52 on Contract Terms.

2. Systematic placement of norms. At the same time, it is advisable to review the placement of norms on contractual representations in the Civil Code of Ukraine. If the goal is to implement a representation mechanism, the provisions should be moved from Chapter 53 to Chapter 16 "Transactions" with explicit provision for the possibility of invalidating the contract in case of providing false representations, which will correspond to the original concept in the common law system.

Such repositioning would signal that representations go to the validity of consent and contract formation, not to post-formation performance issues. This would also create a clearer relationship with the existing Article 230 on fraud, allowing for a systematic interpretation where intentional misrepresentation falls under Article 230, while other types of misrepresentation fall under the new provisions. The remedies should also be aligned: rescission for gross misrepresentation, with damages as an alternative or additional remedy depending on the type and impact of the misrepresentation.

3. Correct implementation of indemnity. The institution of indemnity should be clearly separated from 'liquidated damages' (pre-assessed damages) and implemented as a mechanism for distributing risks between parties, rather than as a form of liability or remedy for breach. This requires legislative provisions that clearly establish the key features of indemnities: strict liability, no duty to mitigate, survival independent of the main contract, and applicability to losses arising from specified events rather than from breach.

Ideally, the Civil Code should include provisions that explicitly authorize parties to allocate specific risks through indemnity clauses and clarify that such clauses operate independently of fault, breach, or the validity of other contractual provisions. This would give Ukrainian parties the same risk-management flexibility that common law parties enjoy, which is particularly important for complex commercial transactions and for Ukraine's integration into international commercial markets.

4. Monitoring and iterative improvement. Given that these institutions are transplants from a different legal tradition, their integration into Ukrainian law should be monitored and adjusted over time based on practical experience. This requires collecting data on how often these provisions are used, what problems arise in their application, and what modifications might improve their effectiveness. A review mechanism after 3-5 years of application would be advisable.

Thus, although the implementation of the institutions of contractual representations, warranties and indemnities is an important step towards harmonizing domestic legislation with international standards and promoting Ukraine's integration into global commercial markets, its current state is characterized by conceptual inconsistencies and systemic shortcomings. To ensure the effective functioning of these institutions within the framework of Ukraine's continental legal system, it is necessary to introduce new knowledge for further improvement of legal interpretation. The experience of this implementation attempt also provides broader lessons about legal transplants: it is not enough to simply borrow terminology or create provisions inspired by foreign institutions – successful legal transplants require a deep understanding of how the foreign institution functions in its own system, careful consideration of the interaction with existing domestic institutions, and educational efforts to help practitioners and judges understand and properly apply the new institutions.

The experience of this attempted implementation also provides broader lessons about legal transplants. Simply borrowing

terminology or creating provisions inspired by foreign institutions is insufficient. Successful legal transplants require: (1) deep understanding of how the foreign institution operates in its home system; (2) careful consideration of how it will interact with existing domestic institutions; (3) systematic placement within the domestic code or statute; (4) clear drafting that maintains the essential features of the transplanted institution; and (5) educational efforts to help practitioners and judges understand and properly apply the new institution.

Література:

1. Про стимулювання розвитку цифрової економіки в Україні : Закон України від 15.07.2021 № 1667-IX. URL: https://zakon.rada.gov.ua/laws/show/1667-20#n437.

2. Цивільний кодекс України: Закон України від 16.01.2003 р. № 435-IV. URL: https://zakon.rada.gov.ua/laws/show/435-15.

3. Пояснювальна записка до проекту Закону України «Про стимулювання розвитку цифрової економіки в Україні». URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=70298&pf35401=537383.

4. Garner, Bryan A. and Henry Campbell Black. Black's Law Dictionary. 8th ed. Thomson/West, 2004.

5. Федорко М.С. Щодо питання про правову природу інституту запевнень про обставини в цивільному праві України. Матеріали 78-ї наукової конференції ОНУ імені І. І. Мечникова (22 – 24 листопада 2023 р., м. Одеса). URL: https://dspace.onu.edu.ua/handle/123456789/37333.

6. Sharma, Nupur, and Simply Shekhar. "Condition and Warranty." Issue 3 Int'l JL Mgmt. & Human. 6 (2023): 995. URL: https://ijlmh.com/paper/condition-and-warranty/.

7. Alderman P. Indemnity clauses in commercial contracts: how to achieve desired contractual risk allocation. URL: https://www.lexology.com/library/detail.aspx?g=db38e8d6-7451-49e1-9e74-531bf32e0d10.

8. Weinberg, Kenneth P. Fair and Clear: Liquidating Damages and Indemnity Provisions. October 2009. URL: https://www.monitordaily.com/article-posts/fair-clear-liquidated-damages-indemnity-provision/.

9. Дорошенко, Л.М. 2023. Захист прав сторін корпоративного договору шляхом застосування компенсації та запевнень. Правничий часопис Донецького національного університету імені Василя Стуса. (Сер 2023), 24-37. DOI: https://doi.org/10.31558/2786-5835.2023.1.3.3.

References:

1. Pro stymuliuvannia rozvytku tsyfrovoi ekonomiky v Ukraini : Zakon Ukrainy vid 15.07.2021 № 1667-IX [On Stimulating the Development of the Digital Economy in Ukraine: Law of Ukraine dated July 15, 2021 No. 1667-IX]. URL: https://zakon.rada.gov.ua/laws/ show/1667-20#n437.

2. Tsyvilnyi kodeks Ukrainy : Zakon Ukrainy vid 16.01.2003 r. № 435-IV [Civil Code of Ukraine: Law of Ukraine dated January 16, 2003 No. 435-IV]. URL: https://zakon.rada.gov.ua/laws/show/435-15.

3. Poiasniuvalna zapyska do proektu Zakonu Ukrainy «Pro stymuliuvannia rozvytku tsyfrovoi ekonomiky v Ukraini» [Explanatory note to the draft Law of Ukraine "On Stimulating the Development of the Digital Economy in Ukraine"]. URL: http://w1.c1.rada.gov.ua/pls/ zweb2/webproc34?id=&pf3511= 70298&pf35401=537383.

4. Garner, Bryan A. and Henry Campbell Black. Black's Law Dictionary. 8th ed. Thomson/West, 2004.

5. Fedorko M.S. Shchodo pytannia pro pravovu pryrodu instytutu zapevnen pro obstavyny v tsyvilnomu pravi Ukrainy [On the question of the legal nature of the institution of representations about circumstances in the civil law of Ukraine]. Materialy 78-yi naukovoi konferentsii ONU imeni I. I. Mechnykova (22 – 24 lystopada 2023 r., m. Odesa). URL: https://dspace.onu.edu.ua/handle/123456789/37333.

6. Sharma, Nupur, and Simply Shekhar. "Condition and Warranty." Issue 3 Int'l JL Mgmt. & Human. 6 (2023): 995. URL: https://ijlmh.com/paper/condition-and-warranty/.

7. Alderman P. Indemnity clauses in commercial contracts: how to achieve desired contractual risk allocation. URL: https://www.lexology.com/library/detail.aspx?g=db38e8d6-7451-49e1-9e74-531bf32e0d10.

8. Weinberg, Kenneth P. Fair and Clear: Liquidating Damages and Indemnity Provisions. October 2009. URL: https://www.monitordaily.com/article-posts/fair-clear-liquidated-damages-indemnity-provision/.

9. Doroshenko, L.M. 2023. Zakhyst prav storin korporatyvnoho dohovoru shliakhom zastosuvannia

kompensatsii ta zapevnen [Protection of the rights of parties to a corporate agreement through the application of compensation and representations]. Pravnychyi chasopys Donetskoho natsionalnoho universytetu imeni Vasylia Stusa. (Ser 2023), 24-37. DOI: https://doi.org/10.31558/2786-5835.2023.1.3.3.

Гусаков Є.І., Шаповалова О.В. Representations, warranties та indemnities у законодавстві України: системні недоліки імплементації інститутів системи загального права – Стаття.

Стаття присвячена з'ясуванню проблеми реалізації Закону України «Про стимулювання розвитку цифрової економіки в Україні» в частині положень щодо оновлення українського договірного права. Внаслідок критичного аналізу імплементації інститутів 'representations', 'warranties' та 'indemnities', запозичених із системи загального права в українську правову систему, визначено недоліки тлумачення їх правової природи. Надано характеристику їх правової природи в контексті системи загального права (англосаксонської правової системи). Системним недоліком їх інтеграції в українське законодавство визначено проблему належного застосування у первинному правовому контексті та врахування наслідків специфічних викликів, що виникають при спробі трансплантувати їх у континентальну правову систему. Особлива увага приділяється структурним недолікам розміщення нових правових конструкцій у Цивільному Кодексі України та інших законах, їх невідповідності оригінальним концепціям, а також обмеженості сфери їх застосування. У висновках до статті узагальнюються результати наукової розвідки та вказується заходи подолання концептуальних непослідовностей в розумінні та імплементації інститутів 'representations', 'warranties' та 'indemnities'.

Ключові слова: *запевнення щодо договору, запевнення, компенсація, система загального права, цифрова економіка.*

Авторська довідка:

Гусаков Євген Ігорович *– аспірант 2 курсу спеціальності 081 "Право", факультет права, гуманітарних і соціальних наук, Східноукраїнський національний університет імені Володимира Даля, ORCID iD 0009-0004-5771-0609.*

Шаповалова Ольга Вікторівна *– доктор юридичних наук, завідувач кафедри господарсько-правових та суспільно-політичних дисциплін, Східноукраїнський національний університет імені Володимира Даля, ORCID iD 0000-0002-8813-3849*

Стаття надійшла до редакції 30 листопада 2025 р.