CHAPTER ONE

INTRODUCTION

> "[E]ven when outward uniformity is achieved, . . . , uniform application of the agreed rules is by no means guaranteed, as in practice different countries almost inevitably come to put different interpretations upon the same enacted words."[1]

> "[H]ow [does one] determine which interpretation should be preferred when the CISG itself gives rise to different autonomous interpretations [?]"[2]

A hopeful note was expounded 250 years ago by Lord Mansfield when he stated that "mercantile law . . . is the same all over the world. For from the same premises, the sound conclusions of reason and justice must universally be the same."[3] The universality of commerical practice provides the opportunity to structure a uniform law of sales premised upon the commonality of practice. It is on this view of the universality of commercial practice that the success of a uniform international sales law is hinged. Critics of such a view assert that such uniformity efforts are both unwise and doomed to failure. Unwise, because there are substantial and reasonable differences in national practices that are reflected in differences in national laws. Doomed to failure, because legal and cultural differences will necessarily be reflected in the national courts' interpretations of a supranational sales law. Thus, the uniformity of form (a single body of rules) will lose to non-uniform application (jurisprudential chaos). A middle view between Mansfield's idealism and the realist critque will be discussed later in this chapter. The middle view is that absolute uniformity of application should not be the test to measure the success of any international

[1] R. J. C. Munday, *The Uniform Interpretation of International Conventions*, 27 Int'l & Comp. L.Q. 450, 450 (1978).
[2] Franco Ferrari, *Ten Years of the U.N. Convention: CISG Case Law – A New Challenge for Interpreters?*, 17 J. L. & Com. 245, 254 (1998).
[3] *Pelly v. Royal Exchange Assurance Co.*, 97 Eng. Rep. 342, 346 (1757).

sales law. Instead, a standard of common discourse or relative uniformity of application is a more appropriate measurement. In the end, the true test should be whether a uniform law of sales has reduced the legal impediments to international trade. Does the uniform law provide a common legal discourse that is facilitative of international business transactions?

Despite the questions involving uniformity of application, the United Nations Convention on Contracts for the International Sale of Goods (CISG) was adopted on April 11, 1980, and entered into force on January 1, 1988, under the auspices of the United Nations Commission on International Trade Law (UNCITRAL).[4] Critics have argued that the benefits of uniform international business law are minimal,[5] and that national courts will inevitably be the conscious or subconscious victims of *homeward trend*.[6] Homeward trend

[4] United Nations Convention on Contracts for the International Sale of Goods, April 11, 1980, 1489 U.N.T.S. 3, 19 I.L.M. 671, *available at* Pace Law School Institute of International Commerce Law, http://www.cisg.law.pace.edu (hereafter CISG). The CISG was incorporated into the law of the United States on January 1, 1988. *See generally* E. Allan Farnsworth, *The Vienna Convention: History and Scope*, 18 INT'L LAW. 17 (1984); John O. Honnold, DOCUMENTARY HISTORY OF THE UNIFORM LAW FOR INTERNATIONAL SALES (1989) (hereafter, Honnold, DOCUMENTARY HISTORY). The CISG officially went into force on January 1, 1988. As of February 8, 2005, sixty-four countries had acceded to the CISG. *See* UNICTRAL at http://www.uncitral.org/english/status/status-e.htm. The countries that have ratified the CISG, in alphabetical order, are: Argentina, Australia, Austria, Belarus, Belgium, Bosnia-Herzegovina, Bulgaria, Burundi, Canada, Chile, China (PRC), Colombia, Croatia, Cuba, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Guinea, Honduras, Hungary, Iceland, Iraq, Israel, Italy, Kyrgyzstan, Republic of Korea, Latvia, Lesotho, Lithuania, Luxembourg, Mauritania, Mexico, Mongolia, Netherlands, New Zealand, Norway, Peru, Poland, Moldova, Romania, Russian Federation, Saint Vincent & the Grenadines, Serbia & Montenegro, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Syria, Uganda, Ukraine, United States, Uruguay, Uzbekistan, and Zambia. Notable exceptions include Brazil, Indonesia, India, Japan, Malaysia, and the United Kingdom. In a 1990 article, Professor Farnsworth stated generally that the internationalization of contract law and the adoption of the CISG was one of the "Top Ten" developments in contract law during the 1980s. Regarding the CISG he states that "the 1980's saw the internationalization of contract law – a legislative event that was the culmination of an effort spanning a half century." E. Allan Farnsworth, *Developments in Contract Law During the 1980's: The Top Ten*, 41 CASE WEST. L. REV. 203, 204 (1990).

[5] *See generally* Paul B. Stephan, *The Futility of Unification and Harmonization in International Commercial Law*, 39 VA. J. INT'L L. 743 (1999).

[6] For a discussion of the problem of homeward trend *see* Honnold, DOCUMENTARY HISTORY, *supra* Note 4. *See also* Harry M. Flechtner, *The Several Texts of the CISG in a Decentralized System: Observations on Translations, Reservations and Other Challenges to the Uniformity Principle in Article 7 (1)*, 17 J. L. & COM. 187 (1998). "Perhaps the single most important source of non-uniformity in the CISG is the different background assumptions and conceptions that those charged with interpreting and applying the Convention bring to the task." *Id.* at 200. One commentator argues that homeward trend can be minimized if the CISG is re-titled, enacted as a piece of federal legislation, and state law [UCC] expressly refers to it. *See* James E. Bailey, *Facing the Truth: Seeing the Convention on Contracts for the International Sale of Goods*

reflects the fear that national courts will ignore the mandate of autonomous-international interpretations of the CISG in favor of interpretations permeated with domestic gloss. It is most difficult for a court to "transcend its domestic perspective and become a different court that is no longer influenced by the law of its own nation state."[7]

An example of homeward trend jurisprudence is the Italian case of *Italdecor SAS v. Yiu Industries*.[8] The court ignored the interpretive methodology of the CISG[9] that is explored in Chapter 2. For current purposes, a brief introduction is needed. CISG interpretive methodology includes the use of analogical reasoning by using CISG articles not directly related to the issue in a case and the use of the general principles of the CISG in fabricating default rules. Furthermore, for the sake of uniformity, national courts should review holdings of foreign courts and arbitration panels for insight in rendering well-reasoned decisions. In the *Italdecor SAS* case, the court failed to review pertinent foreign cases and arbitral decisions. Its failure to review existing cases resulted in rendering a decision without the guidance provided in the cases dealing with the determination of fundamental breach.[10] If any semblance of applied uniformity is to be achieved, it is imperative that courts look to relevant foreign decisions for guidance.

One can argue that substantive uniformity can be obtained only through the use of foreign case law, especially of upper-level or supreme courts, as binding precedent. Others have rejected such a common law view of precedent in favor of the use of foreign cases as persuasive precedent. The latter opinion is the correct one given that the CISG fails to provide an express

as an Obstacle to a Uniform Law on International Sales, 32 CORNELL INT'L L.J. 273 (1999). The drafters of the CISG were aware and concerned by the problems of homeward trend: "[I]t is especially important to avoid differing constructions of the provisions of this Convention by national courts, each dependent upon the concepts used in the legal system of the country of the forum" GUIDE TO CISG, Article 7, *available at* http://cisgw3.law.pace.edu/cisg/text/e-text-07.html.

7 John E. Murray, Jr., *The Neglect of CISG: A Workable Solution*, 17 J.L & COM. 365, 367 (1998). *See also* V. Susanne Cook, *The U.N. Convention on Contracts for the International Sale of Goods: A Mandate to Abandon Legal Ethnocentricity*, 16 J. L. & COM. 257 (1997). *See, e.g.*, Danielle A. Thompson, Commentary, *Buyer Beware: German Interpretation of the CISG has Led to Results Unfavorable to Buyers*, 19 J. L. & COM. 245 (2000). "Perhaps the decision of the Oberlandesgericht [German appellate court] can be explained as a demonstration of the formalism and strictness that pervades German culture." *Id.* at 263.

8 *Italdecor SAS v. Yiu Industries*, CA Milano, Mar. 20, 1998, (It.), *available at* http://cisgw3.law.pace.edu/cisg/wais/db/cases2/980320i3.html#ct.

9 *Infra* Chapter 2.

10 Angela Maria Romito & Charles Sant'Elia, Case Comment, *CISG: Italian Court and Homeward Trend*, 14 PACE INT'L L. REV. 179, 195 (2002) (hereafter, Romito & Sant'Elia, *Homeward Trend*).

mandate to view foreign cases as binding precedent. Furthermore, the lack of an international appellate body renders such a view impracticable and unwise. One co-author has asserted the persuasive precedent approach in which courts and arbitral panels have a duty to review all relevant cases on the contested legal issues. They also have a duty to explain their decisions using CISG interpretive methodology. In this regard, Professor Ferrari misunderstood Professor DiMatteo's analysis of this subject.[11] Ferrari correctly criticizes the binding precedent view as follows:

> First, from a substantive point of view, stating that uniform case law should be treated as binding precedent does not take into account that a uniform body of cases does not per se guarantee the correctness of a substantive result. . . . Second, from a methodological point of view, the suggestion to create a *supranational stare decisis* . . . must be criticized, since it does not take into account the rigid hierarchical structure of the various countries' court systems. . . .

The co-author is in complete agreement with this statement. Also, the co-author's use of the phrase *supranational stare decisis* may have been inappropriate. The use of the phrase was not meant to indicate that all foreign decisions, at whatever level of the judicial system and whatever the quality of the analysis, should be accepted as binding precedent. This is indicated by the fact that the full phrase used was "*informal* supranational stare decisis."[12] The term *informal* highlights the point that Professor Ferrari makes that because there is no supranational appellate process to speak of, binding precedent is nonsensical. The point being made by Professor DiMatteo is that courts should (not must) follow well-reasoned foreign case law opinions; they are free to disregard foreign cases that demonstrate poor reasoning and those that fail to comply with CISG interpretive methodology.

Whether as voluntarily applied precedent or as persuasive (semi-binding) precedent, courts should review CISG jurisprudence before rendering a decision. In the case of diverging interpretations, the interpreter should select,

[11] Ferrari, *CISG Case Law*, *supra* Note 2, at 259 (emphasis added). Larry A. DiMatteo, *The CISG and the Presumption of Enforceability: Unintended Contractual Liability in International Business Dealings*, 22 YALE J. INT'L L. 111, 133 (1997) (hereafter DiMatteo, *Presumption of Enforceability*). In reviewing *Italdecor SAS v. Yiu Industries*, Romito and Sant'Elia conclude that "because of the inconsistencies in the reasoning . . . its opinion will probably have little persuasive value for other CISG cases." Romito & Sant'Elia, *Homeward Trend, supra* Note 10, at 203.

[12] DiMatteo, *Presumption of Enforceability*.

modify, or reconcile such decisions through the proper use of the CISG's interpretive methodology:

> [C]ourts [should serve] two primary functions [in their roles as *informal* appellate courts]. First, they would look to decisions of foreign courts for guidance. Second, they should actively unify international sales law by distinguishing seemingly inconsistent prior decisions and by harmonizing differences in foreign interpretations.[13]

Simply put, courts' decisions should separate well-reasoned cases from the poorly reasoned ones, explain why they are so, and give persuasive effect to the cases using the proper interpretive methodology.

One commentator concluded that the Court's decision in *Italdecor SAS* was "cryptic, and parochial, and it is written in a way that is hard to understand even for an Italian."[14] The court not only failed to review foreign case law on the CISG, but also failed to use relevant articles of the CISG. In one example, the court applied Article 49(1) without analyzing the related Article 25.[15] Article 49(1) allows for the avoidance of a contract in the event of a fundamental breach. The court held that an untimely delivery was fundamental without applying Article 25 which provides the CISG's parameters for determining whether a breach is fundamental. Without the use of the Article 25 template of "substantiality" and "foreseeability," and without the guidance of foreign cases applying the Article 25 template, there is no deterrent to a homeward trend perspective of fundamentality.

Given the above, the "middle view" is the proper measurement to judge the success of the CISG. The likelihood of substantive uniformity of application is unrealistic, but the utter failure of the CISG as a device to remove legal impediments to international trade is equally implausible. This middle view is found in the ongoing development of CISG jurisprudence. It is the jurisprudence of the CISG that this book seeks to uncover in gauging the impact of the CISG on international sales law.

This is not a book that will focus on the normative aspects of uniformity. The focus of this book is not whether the CISG mandates or should mandate absolute uniformity of application. The literature on this subject is quite extensive.[16] Instead, this book recognizes that many CISG provisions are the

[13] DiMatteo, *supra* Note 11 , at 136.
[14] Romito & Sant'Elia, *Homeward Trend, supra* Note 10, at 203.
[15] *Id.* at 192.
[16] *See generally* Michael P. Van Alstine, *Dynamic Treaty Interpretation*, 146 U. Pa. L. Rev. 687 (1998); Frank Diedrich, *Maintaining Uniformity in International Uniform Law via Autonomous Interpretation: Software Contracts and the CISG*, 8 Pace Int'l L. Rev. 303

product of compromise and asks whether these compromises have proven to be effective or have resulted in a chaotic jurisprudence. How have the articles of the CISG actually been interpreted and applied by the various national courts? At the interpretive level, is there evidence of convergence or divergence among the national courts?

To this end, the remainder of this Introduction will examine the special characteristics of the CISG as an "international code," including the importance of the CISG as an international convention and legal code meant for uniform application. The importance of defining a standard for measuring uniformity of application will be discussed along a continuum between absolute and relative standards of uniformity. The discussion then focuses on the importance of autonomous interpretation, as intended by the drafters of the CISG, to the goal of a relative uniformity of application. The Introduction concludes with a discussion of the more expansive use of the CISG as "soft law." This use of the CISG as evidence of customary international law offers an avenue for courts and arbitral tribunals to bridge differences between domestic law regimes.

The review of CISG jurisprudence in Chapters 2 through 10 will highlight the problems of non-uniform applications. This will be done by highlighting poorly reasoned opinions as well as those that are a product of more exemplary reasoning. The poorly reasoned opinions are generally characterized by decisions that merely apply the legal concepts of the Court's domestic legal system. The exemplary opinions are characterized by the application of CISG interpretive methodology, as discussed in Chapter 2, in pursuit of autonomous interpretations. Finally, numerous arbitral cases will be examined to assess the application of the CISG by arbitral panels.

Chapters 3 through 10 provide a more practical view of the CISG at work. These chapters are intended to provide a descriptive review of the jurisprudence that has developed around major provisions of the CISG as well as the raw material necessary to judge the CISG's functionality in lowering the legal obstacles to the international sale of goods. This review is meant to illustrate the types of issues and interpretation problems encountered by national courts and arbitration tribunals in the fifteen years since the CISG's adoption. It also

(1996); Franco Ferrari, *Uniform Interpretation of the 1980 Uniform Sales Law*, 24 GA. J. INT'L & COMP. L. 183 (1994); Mark N. Rosenberg, *The Vienna Convention: Uniformity in Interpretation for Gap-Filling – An Analysis and Application*, 20 AUSTL. BUS. L. REV. 442 (1992); Amy H. Kastely, *Unification and Community: A Rhetorical Analysis of the United Nations Sales Convention*, 8 NW. J. INT'L L. & BUS. 574 (1988); Michael F. Sturley, *The 1980 United Nations Convention on Contracts for the International Sale of Goods: Will a Homeward Trend Emerge?*, 21 TEX. INT'L L. J. 540 (1986).

recognizes that courts have developed specific default rules to make the CISG more functional. The use or misuse of CISG interpretive methodology and the development of specific default rules will be highlighted throughout the book.

Chapters 3 through 10 review CISG jurisprudence according to the main substantive areas of the convention: contract formation (Chapters 3 and 4), obligations of buyers and consequences of buyers' breach (Chapters 5 and 9), obligations of sellers and consequences of sellers' breach (Chapters 6 and 8), common obligations (Chapter 7), and damages-excuse (Chapter 10). In each of these chapters, the provisions with the largest volume of case and arbitral law are given the most coverage. In Chapter 3, the review focuses on the writing requirements and the use of extrinsic evidence. In Chapter 4, the focus is on offer-acceptance rules, including the battle of the forms scenario. Chapter 5 concentrates on the duties of the buyer to inspect and to give timely notice of nonconformity (defect), to pay the price, and to take delivery. Chapter 6 discusses the sellers' duty of delivery and warranty obligations. Chapter 7 focuses on the issue of the passing of risk, definition of fundamental breach, and the use of anticipatory breach. Chapter 8 examines the rights of the buyer upon seller's breach, including the rights to substituted performance, time extension, avoidance, and price reduction. Chapter 9 reviews the civil law concept of *nachfrist notice* as codified in Article 47, the seller's right to cure in Article 48, and the remedy of avoidance. Chapter 10 reviews the remedial provisions of the CISG. This review includes the calculation of damages, the doctrines limiting damages recovery, the excuse of "impediment" found in Article 79, and the preservation of goods. Throughout this analysis, divergent interpretations, the use and nonuse of CISG interpretive methodology, and the development of specific default rules are highlighted.

Chapter 11's "Summary and Observations" concludes that the CISG is an evolving legal code. Consequently, its jurisprudence reflects the courts' confusion and use of different methodologies to contend with the CISG's perceived shortcomings. Because case law commonly brings necessary depth and clarity to statutory acts, this concluding chapter offers five characteristics or examples of such developing jurisprudence and discusses the persistence of homeward trend reasoning in CISG opinions.

The book concludes that the current level of disharmony associated with divergent national interpretations is acceptable. Some divergence in interpretation is expected and acceptable given the difference in national legal systems and in the very nature of codes. This divergence is expected not only because of the code's multi-jurisdictional application, but also because – like the civil and commercial codes of Europe and the U.S. Uniform Commercial Code (UCC) – the CISG is an evolving, living law. As such, it provides for the contextual

input of the reasonable person,[17] including the recognition of evolving trade usage,[18] in the re-formulation and application of its rules. The benefit of such a dynamic, contextual interpretive methodology is that the code consistently updates its provisions in response to novel cases and new trade usages. This process should ultimately overcome the initial divergent interpretations and result in an effective and functional international sales law. The success of the living, contextual nature of the CISG is dependent upon the courts balancing the need for flexibility in application against the need to minimize divergent interpretations so as to ensure that the CISG remains attentive to its mandate of uniformity.

We can look to the U.S. UCC as an example. It is held up as an example of a successful harmonization of commercial law among multiple jurisdictions. In fact, the different state court systems have rendered divergent interpretations of UCC provisions. Despite such divergence, can we still say that the UCC has served its function of uniformity?[19] The answer depends on one's definition of uniformity or harmonization. The CISG has worked to harmonize international sales law despite the production of divergent interpretations and despite failing the test of absolute uniformity. Nonetheless, it remains an enduring code that continues to evolve along the side of modern commerce.

CISG as international convention

It is important to understand that the CISG is written in the form of a convention[20] and not as a uniform or model law. The paramount characteristic of a convention is its international character. This characteristic implies that its

[17] "[S]tatements made by and other conduct of a party are to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the circumstances" CISG at Art. 8(2).

[18] "The parties are considered . . . to have impliedly made applicable to their contract or its formation a usage . . . " CISG at Art. 9(2).

[19] Professor Robert Scott has argued that the UCC has failed in its quest of substantive uniformity. *See generally* Robert E. Scott, *Is Article 2 the Best We Can Do?*, 52 Hastings L. J. 677 (2001). Professor Scott states the dilemma of comprehensive code writing: "[T]he pressure to formulate rules that will be uniformly adopted distorts the rules themselves in ways that may, quite perversely, undermine the very objective of a uniform law in the first instance." *Id.* at 680. In more prosaic terms, he argues that necessitated compromise results in *mushy* drafting at the expense of "precise, bright line rules . . . " that "generate predictable outcomes . . . " *Id.* at 682. Thus, formal uniformity or adoption uniformity is gained with a loss of predictability or uniformity of application (substantive uniformity). *See also* Alan Schwartz & Robert E. Scott, *The Political Economy of Private Legislatures*, 143 U. Pa. L. Rev. 595 (1995) (arguing that the structural forces within the UCC Article 2 drafting process necessarily leads to vague, open-ended rules).

[20] *See infra* Chapter 2, section on "Interpretive Methodology" (discussing the importance of viewing the CISG as a code).

overall purpose is the standardization of law at a level above that of national law.[21] This standardization provides the important benefit of avoiding the long-standing problem of conflict of laws among nation states.

In the short term, however, international conventions often produce a problem referred to by Professors Enderlein and Maskow as the *cleavage of statutes*.[22] This is caused by the fact that although the CISG is not meant to be integrated into national legal systems, it is incorporated and applied by national courts. For example, the CISG is not integrated into the domestic sales law (UCC) of the United States. Instead it is incorporated as a separate, independent statute with a separate jurisdictional domain. The presence of two sales laws within a single legal system inevitably produces norm conflict. The differences in the use of general contract and interpretation principles, along with substantive differences in the formal legal rules, cause a degree of conceptual dissonance. It is hoped that with any new trans-jurisdictional standardizing law, whether in the form of a uniform law, model law, or convention, the effect of such dissonance will diminish over time. In the end, it is hoped that a solid jurisprudential framework will develop in which the interpreter will "manage with the standardizing rules"[23] independently of the influence of divergent domestic law.

The international nature of the CISG is demonstrated by the fact that its jurisdiction is transaction-focused and not party-focused. This fact is evident in that a transaction crossing national borders is the linchpin of CISG jurisdiction – not the nationality of the parties. For example, Article 10(a) provides that the place of business is that which has the closest relationship to the transaction. The nationality of the parties, the place of incorporation of a party, and the place of its headquarters are largely irrelevant. Article 10(a) states the rule that "the nationality of the parties is not to be taken into consideration"[24] in determining the applicability of the CISG. Therefore, a contract between two nationals of the same country may be subject to the CISG if it involves a trans-border shipment and one of the parties has its CISG "place of business" in another country.[25]

[21] Professors Enderlein and Maskow state that "there is a *difference with uniform laws* insofar as this incorporation elucidates the international character of the perspective rule, underlines its special position in domestic law, and furthers an interpretation and application which is oriented to the standardization of law." Fritz Enderlein & Dietrich Maskow, INTERNATIONAL SALES LAW 8 (1992) (emphasis in original) (hereafter, Enderlein & Maskow).

[22] *Id.* at 11.

[23] *Id.*

[24] GUIDE TO CISG, at Art. 1, Secretariat Commentary, *available at* http://cisgw3.law.pace.edu/cisg/text/e-text-01.html.

[25] Should parties whose countries have ratified the CISG wish to opt out of the Convention, they should do so by explicit mention in the contract. *See generally* Paul M. McIntosh,

Another example of the international nature of the CISG is its exclusion of the types of sales transactions that are more likely to be exposed to the peculiarities of national laws. Article 2 excludes consumer sales, auction sales, sales of ships and aircraft, and forced or judicially mandated sales. The rationale behind excluding these types of sales is that they are subject to special national regulations. Examples of such specialty laws are consumer protection laws and special registration laws (ships and aircraft).[26]

PRINCIPLE OF UNIFORMITY

A recent article is entitled: *Is the United Nations Convention on the International Sale of Goods Achieving Uniformity?*[27] The author correctly replies that the question itself is improper. The answer is yes and no depending on how the word *uniformity* is defined. If by uniformity one means substantive or absolute uniformity of application, then the answer is a commonsensical no. The better question is: Has the CISG become a functional code? Have functional default rules developed through the application of CISG's general principles? Has it resulted in at least a manageable level of uniform application to have decreased the legal impediments to international sales?[28] Finally, what is the likelihood of greater uniformity of application in the future?

Strict or Absolute Uniformity versus Relative Uniformity

The degree that the CISG has been successful at unifying international sales law has been debated. In order to gauge its perceived impact on unifying international sales law, a standard is needed in which to measure CISG jurisprudence. Numerous standards can be offered, including the standards of strict[29] or absolute uniformity,[30] relative uniformity, and the lessening of

Selected Legal Aspects of International Sales Transactions: The United Nations Convention on Contracts for the International Sale of Goods, Bus. Credit, Oct. 1, 2001, *available at* 2001 WL 12570546.

[26] *Id., available at* http://cisgw3.law.pace.edu/cisg/text/e-text-02.html.

[27] Philip Hackney, *Is the United Nations Convention on the International Sale of Goods Achieving Uniformity?*, 61 La. L. Rev. 473 (2001).

[28] Professor Hackney rejects the argument that the CISG has increased the legal impediments to trade because it produces greater complexity. He responds that "this objection should fade with time, as a body of case law builds around the Convention" *Id.* at 476.

[29] *See generally* Fred H. Miller, *Realism Not Idealism in Uniform Laws – Observations from the Revision of the UCC*, 39 So. Texas L. Rev. 707, 721–6 (1998).

[30] Professor Robert Scott discusses the difference between formal uniformity and substantive uniformity. He further discusses the different dimensions of substantive uniformity as being