

Table of Contents

Introduction	1
Chapter I	
Uniformity and Jurisconsultorium	3
A. Defining Uniformity and Introducing the Jurisconsultorium	3
B. The Working Definition of ‘Uniformity’	6
C. Textual Uniformity	7
D. Modern Uniform Law as a Unique Discipline in Law – The Jurisconsultorium	9
E. Relativity of Uniformity	14
Chapter II	
Introducing the CISG and Its Uniformity	19
A. A Brief Background of the CISG	19
B. The CISG and Multicultural Diversity	21
C. The CISG in a Globalized Context – Terminological Deliberations	23
1. Supranational?	23
2. Transgovernmental?	26
D. The CISG and Its Relationship to Other International Law – Article 90	26
E. The Three Functions of Article 7	28
1. Basis of a Uniform Label	28
2. Basis for a Jurisconsultorium	30
3. Basis of the Interpretational Challenge	30
a. Interpretational Guidelines Are Not Enough	30
b. Dynamic Interpretation, Fairness and Uniformity	31
c. The CISG and the Vienna Law of Treaties	32
F. Defining the Uniformity of the CISG	34
1. Functional Uniformity	34
2. Relative Uniformity	35
3. Many Types of Uniformity – Many Levels of Uniformity	36
a. Substantive Uniformity: Autonomous Terminology	37
(1) CISG as a Lingua Franca?	37
(2) Autonomous Terms = High Uniformity Level	38
(3) Flexible Application = Low Uniformity Level	39

b. Uniformity in Scope	40
c. Uniformity in Classification	41
4. Intermediary Conclusions on the Definition of Uniformity of the CISG	41
Chapter III	
The Jurisconsultorium of the CISG – The Tool to Uniform Application	45
A. A Tool to Uniform Application	46
B. The Practical Jurisconsultorium – The CISG Precedent	48
1. Basis for a CISG Precedent	48
2. Nature of a CISG Precedent	48
a. Terminological Caution	49
b. Definitely Not Binding	50
c. Probably Not Persuasive – Definitely Inspirational	51
3. Criteria for CISG Precedents	53
4. Parallels of Precedents of the UCC and the CISG	54
5. Precedents and Procedure	56
C. CISG Case Law Using CISG Precedents	57
D. Defining the CISG Precedent	62
1. Overlooking the Duty to Apply Precedents	63
E. Jurisconsultorium Prerequisites: Availability and Weighting of Sources	65
1. Accessibility to Case Law: Electronic Sources	66
a. Electronic Sources – An Invaluable Tool	66
2. Cases from Inaccessible Jurisdictions	68
3. Availability of Arbitral Awards	69
4. Travaux Préparatoires	72
F. Scholarly Jurisconsultorium	74
1. Cooperating to Free Us All from Homeward Trends	74
2. Incongruent Scholarly Jurisconsultorium – Pitfalls for Practitioners	75
a. Binding Scholars to Observe CISG Case Law?	78
b. International Scholarly Cooperation Preferable	79
3. Part of the Jurisconsultorium: The Scholarly Panels of Experts	79
a. CISG AC	80
b. The Uncitral Digest	81
Chapter IV	
Cataloguing the Issues of Uniformity in the CISG	85
A. Substantive Interpretation: Legal Linguistics	86
1. Autonomy and Multilingualism	87
2. Faux Amis	91

a. The Article 47 Example	92
b. Faux Amis Despite Terminological Neutrality of the CISG – Article 79	93
c. Faux Amis in the Making? – CISG as Model Law	98
3. Other Undue Influence of Domestic Law – A Homeward Trend	99
4. Vague Terminology	101
a. Article 8(2) and Other Reasonableness	102
b. The Strength of Vagueness	104
B. The Scope of the Conventions Application	105
1. The Importance of a Congruent Sphere	105
2. The CISG Overlooked	106
3. The Issue of Reservations	108
4. Convention Hierarchy: Articles 6 and 9	111
5. Issues of Internationality: Articles 1 and 10	114
6. Conclusions on the Uniformity of the Scope of the CISG	115
C. Legal Classification	116
1. Articles 1 through 4 and Classification	117
a. Contract – Consideration?	117
b. Place of Business?	118
c. Sale – The Example of eBay: Auction or Sale?	118
d. Goods – The Example of Software	119
2. Substantive Classification Determining CISG Application	121
a. The Example of Article 74 and Attorneys' Fees	121
D. Gap-Filling: Article 7(2)	125
1. Classifying Gaps – The Article 78 Example	125
2. 'General Principles' – A Big Problem?	127
3. Otherwise Applicable Law	130
4. UNIDROIT and PECL – Standard Gap Filling?	130

Chapter V

Examples of Specific Provisions: Methodology, Selection, Analysis	133
A. Structure and Introduction	134
B. Selecting Relevant Provisions	134
1. Examination and Notification According to Articles 38 and 39	135
2. Exceptions to the Examination and Notification Duty: Articles 40 and 44	135
C. Briefly on German Law	136
1. More Potential CISG Cases	136
2. More International Sales Cases to Which the CISG Is Applied	136
3. These Cases Are More Likely to Be Reported	137
D. Introducing the Provisions	137
E. Introducing the Problems of Uniformity of the Provisions	141

1. Problems of Examination and Notification	141
2. Problems of Exceptions to the Notification Rule	143
a. Sphere of Application and Domestic Gap-Filling	143
b. Determining ‘Could Not Have Been Unaware’	144
c. Determining ‘Disclosed to the Buyer’	144
d. Determining ‘Reasonable Excuse’	145
F. The Relationship Between Articles 38 and 39(1) and the Mix Up of Their Timeframes	145

Chapter VI

Examples of Specific Provisions: Examination and Notification	149
A. Article 38 CISG and the Duty to Examine Goods	150
1. Timeframe – Discernible Defects	150
a. Early Delivery	151
b. Obvious Defects	152
c. Setting Up Fixed Guidelines?	153
2. Timeframe – Hidden Defects or Not Easily Discernible Nonconformities	154
3. Extent of Article 38 Examination	155
4. Exemptions from Article 38 in Article 38	159
B. Article 39 CISG and the Duty to Notify of Nonconformities	162
1. Reasonable Time in Article 39(1)	162
a. Strict Interpretations	164
b. Formulating Set Guidelines	170
(1) The Noble Month	171
(2) The Death of the ‘Noble Month’?	177
(3) 14 Days after Delivery – Seven Days for Notice	178
(4) 14 Days for Notification after Discovery	181
c. The Buyer-Friendly Approach?	182
d. Reasonable Time in the Jurisconsultorium	185
2. Specificity of Notice	187
3. Form of Notice	190
C. Conclusions on the Uniformity of Articles 38 and 39	193

Chapter VII

Examples of Specific Provisions: Exceptions to the Notification Rule	197
A. Sphere of Application of Article 40	197
1. Article 40 and Convention Hierarchy – Articles 6 and 9	197
2. The Role of Article 40 in Context of CISG part III	201
3. Applying Article 40 to 39(2) as Well as 39(1)	204

B. The Determination of ‘Could Not Have Been Unaware’ and its Burden of Evidence	207
1. A Standard of Awareness as a Rule of Good Faith	208
2. Proving ‘Could Not Have Been Unaware’ that the Nonconformity Existed	211
3. Proving ‘Could Not Be Unaware’ that the Nonconformity Was Such to the Buyer	213
C. The Determination of ‘Disclosed to the Buyer’	218
D. The Determination of ‘Reasonable Excuse’	220
E. Conclusions on the Uniformity of the Notification Rule Exceptions	224

Chapter VIII

Conclusions on the Uniformity of the CISG **227**

A. Synopsis of the Preceding Chapters	227
B. Main Conclusions	228
C. CISG: Success in Uniformity?	230
1. Success in Global Drafting and Membership	230
2. Success in Application	231
D. Standard of Uniformity?	232

Appendix A

Index of Authorities **235**

Appendix B

**Index of International Case Law on Articles 38, 39, 40,
and 44 of the CISG** **255**

Index **281**