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**The CISG and the Parol Evidence Rule Comparative Analysis**

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# Abstract

According to the international text of the Convention, interpretation of a contract revolves around intention of the parties; however, this intention must be teased out as per the Article 8 of CISG. As to the interpretation of the contract, the evidence that the parties had relied upon for formation of the contract becomes inadmissible. In this regard, the courts must examine the extinction evidence in order to determine that if the contracting parties have used the words in question in one sense only; by doing so, it would be possible for the courts to give effect to the dictionary meaning of the word as a result of the common intention of the parties. The above argument is of critical importance due to the fact that the actual and presumed assumptions of the contracting parties must be differentiated from each other. It is of great importance that the subjective what actual intention of the parties is sought. No contract will be concluded despite the fact that an informed bystander concluded that a contract is formed looking at the words if the parties were aware that they were playacting. It demonstrates the problem of applying the objective theory. It brings the discussion to the question that if the presumed or objective intent must be considered if no subjective intent can be established. This paper argues that the subjective intention of parties and the in admissibility of evidence of pre-contractual nature or outdated. For this reason, change is inevitable. Moreover, this paper highlights exchange and bargains as grounds for contracts. In this regard, it argues that the classical theory is outdated and wrong. Thus, there is conflict between the article 8 of the CISG and the Parol rule of evidence. For this reason, different results have been yielded as an outcome of litigation as witnessed in the recent U.S. cases such as MCC-Marble versus Ceramica. However, the common law has tools to bring similar results as under the CISG; such as rectification. Thus, it is high time for the common law to recognize and embrace international trends.

**Table of Contents**

[Statement of originality 2](#_Toc13401)

[Acknowledgments 3](#_Toc22556)

[Abstract 4](#_Toc2156)

[List of Abbreviations 6](#_Toc2589)

[Chapter 1: Introduction 7](#_Toc23771)

[Objectives of Stud 12](#_Toc28193)

[Sources of Data 13](#_Toc11002)

[Organization of Study 14](#_Toc15069)

[Chapter 2: Research and Literature Review 15](#_Toc11931)

[Chapter 3: Methodology 30](#_Toc17695)

[Chapter 4: Analysis, Discussion and Summary of Results 31](#_Toc22668)

[Intention of Parties 31](#_Toc21709)

[Interpretation of Contracts 35](#_Toc18978)

[Jurisprudence of the CISG 37](#_Toc17096)

# List of Abbreviations

CISG = Contract of Sales of International Goods

UNIDRIOT = International Institute for the Unification of Private Law

ULIS = Uniform Law for the International Sale of Goods

ULF = Uniform Law on the Formation on Contracts for the International Sale of Goods

UNCITRAL = United Nations Commission on International Trade Law

# Chapter 1: Introduction

The contractual landscape at international level has significantly been changed over time.[[1]](#footnote-1) Primarily, the ascendancy of international commercial laws into modern laws and conventions has played its role in this regard. As a matter of fact, these changes can be viewed as a sea change in the contract law. Since the CISG has become a part of domestic law through ratification, having knowledge of international contract law became imperative.

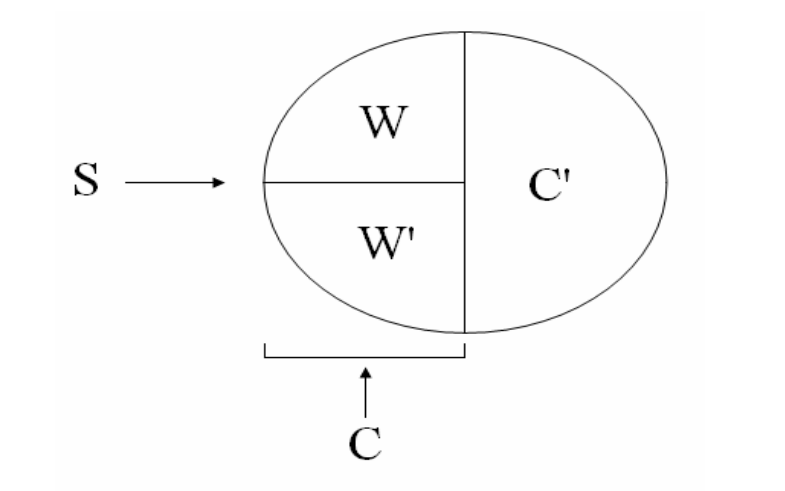
Several international cases concerning sales of goods across the borders have illustrated this problem. For instance, the facts are simple in the case of Perry Eng. versus Bern old.[[2]](#footnote-2) An Australian purchaser in the south Australian Supreme Court sued the Swiss manufacturer for supplying defective goods. The contract between the two parties provided that the laws of South Australia would cover the dealing between the two contracting parties. However, the judge gave his decision based on an entirely different perspective. According to his decision, the plaintiff’s ability to proceed to judgment has been limited due to the assumption that the South Australian Sale of Goods Act will only be applied on the statement of claim primarily due to the application of CISG. The reason behind the application of the international law over the domestic rules in this case lies on the fact that the domestic law cannot protect itself from the influence of international laws for an indefinite period of time.

For this reason, principles and domestic law must regularly be reviewed in order to remain stepped up with best practices. Moreover, in an attempt to create uniform international laws, a compromise between the leading legal families had to be formed. It is of considerable importance based on the fact that the outcomes of having reached compromises have shown to be workable. Thus, significant international jurisprudence already exists. Furthermore, the noteworthiness of CISG can be demonstrated showing the fact that it has significantly influenced the new Chinese contract law, and has thus become the sales law of the European Union as well.

This dissertation addresses the Parol Evidence Rule, which supports the notion that the intent of contracting parties remains central.[[3]](#footnote-3) Additionally, it accepts the fact that common law demands an objective theory of contract. In general terms, based on this reason, the subjective intent of parties does not remain the focal point of the contract although objectively intent is not common to the contracting parties. This point of view is of critical importance. It emerges from the reforms of the 19th century when the influence of the subjective theory of contract and the Continental writers was well established. However, preposition between the objective and subjective theories remains underway by the end of the century. The classical concept of contract law provides grounds for the objective theory.[[4]](#footnote-4) According to this theory, the contract is between two strangers homogeneous product rejected in a perfect spot market. Given the background of the classical contract theory, the development of Parol evidence rule was inevitable.

The Parol evidence rule lies among the most criticised, litigated, and controversial legal doctrine of the common law. Yet it is an indispensable and integral contract law doctrine. However, the Parol evidence rule remains virtually unknown beyond the boundaries of common law.[[5]](#footnote-5) In its simplest form, the rule states that the complete and final written integration of the agreement between the contracting parties cannot be supplemented, contradicted hot varied by contemporaneous or previous written on oral agreements, representations or understandings due to duress, mistake, absent fraud and any other invalidation clause. The parties make a written instrument concerning the terms and conditions of the agreement between them through the process of integration. Although it is not the only source of terms of the agreement it remains the only recognisable source at law.

The Parol evidence rule is of considerable importance in the American contract law due to the fact that it deals with the most fundamental issues of the contract law, i.e., what does and does not constitute the content of an agreement?[[6]](#footnote-6) In an attempt to answer this very question, Professor Eric Posner effectively illustrated the issue using a figure.[[7]](#footnote-7) An agreement between the contracting parties is often decided over a period of bargaining the terms and conditions of the contract. During this period, the contracting parties discuss various terms, make numerous negotiations, state statements, and reach mutual conclusions. Eventually, the contracting parties reach a set of negotiations. As per the figure illustrated by the professor, C represents the contract whereas S is used for representing all terms and conditions as negotiated, insinuated, and suggested during the formation of the contract.[[8]](#footnote-8) The agreement is then transformed in the form of a written instrument. However, this written instrument does not embody the entire agreement primarily due to the fact that it can cost a high price to put every term and condition in writing. Also, sometimes, the marginal cost of writing the contract exceeds the marginal benefit thereof. Thus, only the original contract is written, and W Posner represents that written part.[[9]](#footnote-9) In the end, the terms and conditions that the parties discussed but never agreed upon are represented by the term C'.[[10]](#footnote-10)



Although after a long period of negotiation a contract either partially or completely is formed but level of uncertainty concerning the terms and conditions of the contract prevails among the parties. It becomes the non-return part of their agreement. Professor Posner represented this part by W'. This part plays a critically important role in the contract. It induces an opportunistic behavior among the contracting parties. Either of the parties can supplement W with terms and conditions as they have agreed upon. For this reason, the parties offer terms during the negotiation period for keeping them in the contract so that during the time of a dispute among the parties, the court or tribunal can use these terms and conditions to resolve it.

Alternatively, the contracting parties also introduce complementary terms as a part of the contract. These terms are often used for the purpose of influencing the other parties to sign. During this process, it is assumed that these terms are not enforceable by law despite being included in the written instrument at the time of the contract. Moreover, the contracting parties sometimes purposefully leave some of the terms and conditions of the written document empty. Either party tries an attempt to be the beneficiary of these terms and conditions. However, it is a game of opportunity. Such opportunism does not become a problem unless the parties come at dispute. It is the time when parties argue that the contract consisted of only W along with the little bit of W' or even some of C'. In such a situation, the court or tribunal has to decide that which part is the real substance of the contract. Thus, the court concerns to the doctrine of contract law. It is often reported as a board game of clashing exceptions, sub rules and tests that negatively affect the litigation process as well as the counseling of the clients.[[11]](#footnote-11) At this point in time, the court has to take the Parol evidence rule into consideration.

The Parol evidence rule, at its core, deals with the noteworthiness and consequences in the legal framework of the process of making of an agreement to a written instrument. It seeks to ensure judicial certainty and stability to written documents. Thereof, the Parol evidence rule attains predictability in the judicial review. As illustrated by Professor Posner in his figure, the substance of a contract may appear to be a simple matter but it comes with a complicated set of facts. For this reason, the legal review does not remain a straightforward method.

Therefore, the Parol evidence rule maintains its critical position in providing the legal backdrop to the courts against which the issues are resolved. Moreover, the Parol evidence rule also successfully provides a legal backdrop to the parties against which to take appropriate measures for safeguarding the integrity of the written agreement. In this process, the contracting parties also successfully minimize the risk of an uncertain, costly and lengthy litigation process. These appropriate measures include certain contractual terms that have been developed over the time on the grounds of the Parol evidence rule. They are commonly known as integration on merger clauses.[[12]](#footnote-12) They work as the drafting tool for protecting the integrity of the written agreements.

In connection with the figure provided by Professor Posner, the integration clauses make W impervious to a later complementation, variation or contradiction, in the event of a dispute, on the grounds of evidence concerning C' or W'. Today, the integration on merger clauses commonly used in contracts particularly the ones including international contracting parties.

Many nations seek to establish uniform bodies of law for governing the cross border transactions. These nations support the notion that such uniform bodies of law, in the arena of international transactions, smoothly sail to efficiency both in terms of cost and time.[[13]](#footnote-13) Although this goal of uniform bodies of law appears to be a part of the twenty-first century, it dates back to the Middle Ages. The businessmen that travelled between the borders short to create uniform set of laws the sole purpose of facilitating their businesses.

The CISG is the most significant and the most recent attempt by the United Nations for codifying the private international law in the area of sale of goods internationally. It is the culmination of an arduous international effort for establishing international contract laws concerning the sales of good at international level.[[14]](#footnote-14) The founders of the Convention intended to achieve the uniformity goal by removing artificial impediments in commerce caused by differences in the national legal systems. In this regard, the founders encouraged the dissemination and use of jurisprudence (international case law) and doctrine (scholarly critique) for interpreting the language of the Convention. Finally, they recognised obligation of good faith as the bedrock of international business norms as well.

The Eleventh and Fifth Circuits took a divergent approach concerning that if the Parol evidence rule comports with Article 8 of the CISG. The Eleventh Circuit, in MCC-Marble versus Ceramica,[[15]](#footnote-15) held that the Parol evidence rule does not go in conformity with the CISG. In contrast to this decision, the Fifth Circuit, in an old case titled Beijing Metals versus American Business Center, decided that the Parol evidence rule applies to the CISG.[[16]](#footnote-16) In this regard, careful analysis of the language interpretation provision is required along with the works of the most contemporary commentators supporting MCC marble decision, the CISG's goal for promoting facility in international contract law and the legislative history.

## Purpose of Study

The aim of this paper is to investigate the changes in substantive laws brought by globalisation of trade and hence birth of international uniform laws. The municipal systems recognise the substantive law.[[17]](#footnote-17) In this regard, the Parol rule of evidence remains under pressure. It is further argued that the subjective intention of parties in the admissibility of evidence of pre-contractual nature is outdated. For this reason, change is inevitable. On the other hand of the discussion, the Convention of Contracts for International Sale of Goods (CISG), the binding contract among nations, has recognised the fact that the business people ignore the rules on which contracts are often interpreted.

Moreover, this paper highlights exchange and bargains as grounds for international contracts. In this regard, it argues that the classical theory is outdated and wrong; the theory suggests that two strangers transact in a perfect spot market for a homogenous product. Thus, there is conflict between the article 8 of the CISG and the Parol rule of evidence. For this reason, different results have been yielded as an outcome of litigation as witnessed in the recent U.S. cases such as MCC-Marble versus Ceramica. However, the common law has tools to bring similar results as under the CISG; such as rectification. Thus, it is high time for the common law to recognise and embrace International trends.

## Objectives of Study

This research dissertation has the following objectives:

1. To investigate the changes in substantive laws brought by globalisation of trade and hence birth of international uniform laws.
2. To highlight exchange and bargains as grounds for contracts.
3. To argue that the classical theory is outdated and wrong which suggests that two strangers transact in a perfect spot market for a homogenous product.
4. To provide a comprehensive literature review in this regard.

## Sources of Data

This research study relates to interpretation of International commercial contracts. Fact and information concerning the Parol evidence rule and the CISG have been collected for this dissertation using secondary sources such as the journal articles and research papers. Moreover, websites such as JSTOR, ResearchGate, BASE, and other have been used in this regard.

## Organization of Study

The study has been organized as follows: Chapter 2 discusses the research and literature review on the topic under discussion. Chapter 3 briefly discusses the methodology of the dissertation. Chapter 4 presents the findings of the research in detail. This chapter has further been subdivided into three parts, i.e., the intention of contracting parties, the formation of contract, and the jurisprudence of CISG. The last chapter concludes the dissertation.

# Chapter 2: Research and Literature Review

In American contract jurisprudence, Parol evidence rule has been the subject of substantial amount of litigation for centuries.[[18]](#footnote-18) However, the Parol evidence has legitimately been called the source of confusion in contract law. Primarily, it is not a rule of evidence as its name might suggest too many, i.e., it does not deal with the rule or method through which a fact must be proven.[[19]](#footnote-19) In contrary, it is a rule of substantive law suggesting that certain fact is material for the formation of the substance of a contract. In a similar fashion, the rule is not limited to the Parol evidence only where Parol indicates connotes words of mouth, i.e., the oral communication only.

However, while continuing with the discussion in the same direction, the word Parol has been derived from the Italian and French terms for ‘words’. For this reason, this term has been in use as it describes the scope of the rule in a better manner, as it applies to both written and oral contracts, be it in the form of agreements, understandings, representations, or negotiations. Since the rule applies to all evidence, the term ‘extrinsic evidence’ is used in an attempt to avoid any potential confusions. This term includes all evidence irrespective of the form arising outside the scope of a written contract.[[20]](#footnote-20)

As a matter of fact, the term must be considered as a cluster of legal doctrines and concept instead of being an actual rule of law primarily due to the fact that it is a rule used for distinguishing between the facts leading to the substance of a contract and the ones not leading in the same direction, i.e., the facts that are immaterial to the contract, relative to a written contract. In this regard, it is the Parol evidence rule must be regarded as a legal framework or a body of doctrine, under which a law identifies a contract, i.e., a legally operative agreement in the midst of a length process of negotiations riddled with representations, oral understandings, tentative agreements, and different proposals that concluded with a written agreement.[[21]](#footnote-21) Thus, all of these definitions of the title of the rule lead to the sources of confusion towards the actual scope and nature of the same.

In the early 1930s, the UNIDRIOT appointed a group of scholars primarily from the European region of the planet for the sole purpose of drafting a set of laws for addressing the sale of international goods.[[22]](#footnote-22) However, until 1964, the work could not be completed due to the influence of the World War II. In 1964, two conventions, i.e., the Uniform Law on Formation on Contracts of the International Sale of Goods and the Uniform Law for International Sale of Goods were finalized.[[23]](#footnote-23) Therefore, the origin of CISG must be traced back to early 1930s instead of 1964.[[24]](#footnote-24) Although the European nations did not ratify any of the two conventions and thus, they never received the support worldwide primarily due to the fact that the European scholars drafted them. However, both of these conventions have played a significantly important role in the history of the development of CISG due to the fact that provided natural starting point for another attempt at forming a uniform body of international law.[[25]](#footnote-25)

In 1966, the United Nations created UNCITRAL in an attempt to address the concerns of other nations.[[26]](#footnote-26) The Commission appointed a group of legal scholars from fourteen different states. All of them had different legal traditions. They were provided with the task of creating a uniform legal text with the purpose of harmonizing the different demands creating a convention enjoying support worldwide.[[27]](#footnote-27) In 1980, the work was finalized and somewhat completed when the CISG was presented by the Convention to the United Nations for signature.[[28]](#footnote-28). Ever since, the CISG has been regarded as one of the most successful attempts in the history of international law for formation of uniform body of international commercial law.[[29]](#footnote-29) As a testimony to its success, the Convention has successfully ratified signatures from the countries worldwide.

It gives rise to the question in discussion that what exactly is CISG. It is a substantive law, i.e., it preempts the otherwise applicable domestics laws.[[30]](#footnote-30) It is worth mentioning here that despite being a substantive law, the same is not a procedural law. Therefore, it does not affect the evidentiary or procedural rules of the applicable forum. The application of CISG is widespread. It is automatically applied when the private international law rules lead to application of law of the contracting states or when the business of the contracting parties is spread between two contracting states.[[31]](#footnote-31) For this reason, the applicability of the CISG does not need agreement upon it between the parties. It is the governing law of contract and thus, it is applied if the prerequisite of its application are at hand.

However, none of the legal documents or texts come without issues. An important issue that was being addressed during the making of CISG concerned its role in the gap-filling of the Convention, i.e., the substantive issues or topics that were left by the Convention and were thus not addressed. In an attempt to resolve this issue, two of the either approaches are adopted. Firstly, general principles underlying the Convention are applied, and secondly, the issue is resolved by resorting to domestic laws. Ideally, the CISG has been successful in adopting a compromise between the two approaches.[[32]](#footnote-32) In this solution, the CISG suggests that the underlying rules of the Convention must prevail the domestic laws, i.e., the problem must be resolved firstly through application of the general principles of the Convention and if these rules do not comprehensively address the issue on the table, the domestic rules applicable by virtue of private international law must be applied.[[33]](#footnote-33)

The issue of Parol evidence rule was brought on the table as a part of the discussion sessions during the drafting of the CISG in the 1980s. The rule was rather discussed as an issue of whether an evidentiary limit should be applied to a party attempting to introduce evidence to the effect of supplementing or contradicting a written agreement. In this regard, one of the Canadian representatives proposed amendment to the current Article 11 of CISG.[[34]](#footnote-34) The amendment discussed applying a limit on the amount of admissible evidence in cases where the parties in contract, after mutual consent, had chosen to trim down their agreements to a written instrument.[[35]](#footnote-35) This amendment is of considerable importance in the history of the relationship between Parol evidence rule and CISG due to the fact that it sought to include a version of the Parol evidence rule somewhat similar to the Williston approach.

However, the suggestion of amendment was not welcomed and it met with great criticism primarily due to the fact that some of the delegates from the civil law nations found it clashing with the evidentiary principles of the civil law. According to this part of law, a court can review all kind of evidence.[[36]](#footnote-36) It was opposed why the Australian delegation on the ground that it was aimed at limiting the principle of evidence. In a similar fashion, the Australian delegation opposed the suggestion because according to them it limited the principle of free appreciation of evidence by the judge. It is worth mentioning here that this is known as the fundamental principle of Australian law. Continuing further, the Japanese representatives opposed it because they found the amendment to be too difficult to apply and rigid. The Japanese representatives brought forward this criticism because they believed that even in the common law countries, it lacked uniform body of law. Since the proposed amendment of the Canadian representative did not receive much support, it was rejected by the committee upon vote. Based on this discussion, it is evidently clear that the drafters of the CISG rejected the exclusionary aspect of the Willistonian Parol evidence rule. This discussion has also made it clear that that the different aspects and versions of the Parol evidence rule not considered while rejecting the suggestion of Canadian representatives.

The application of the Parol evidence rule is critical. It is applied to the terms and conditions of a contract in two different ways. Firstly, it is applied interpreting the meaning of contractual terms, and secondly, it is applied for proving that if the parties intended to form an integrated agreement. Determining the extent to which the Parol evidence rule helps in providing integration is also a critical process.[[37]](#footnote-37) However, it can be determined using a two-step approach. The first step is to determine that if an agreement is integrated at the first place. It depends on the parties entering into the contract and thus, assenting to a final expression of the terms and conditions to which they have agreed upon. It is evidently clear that this part of assessment is easier said than done. It is a difficult assessment to make primarily due to the fact that the law does not require a particular form open agreement neither does it disregard model agreement. For this reason, all oral contracts along with the written contracts in any form are integrated for Parol evidence purposes. Once it has been cleared written agreement is integrated and the parties had intended to do so, the next question that arises on the surface is that if the parties have had intended to integrate the contract either completely or partially. This critical question can be answered in two different manners. However, the choice of the answer depends upon that if the answer of the first question has been found using the traditional (narrower) or liberal (modern) approach to the Parol evidence rule.

The classical or traditional approach to the Parol evidence rule is defined as the classical Williston approach.[[38]](#footnote-38) Under this approach, an objective examination of the language used in the contract is carried out for the purpose of determining that if the agreement is a partial or complete integration. The terms extrinsic to the agreement can be permitted the part of the evidence only if there is some uncertainty to the meaning of the terms. For this reason, this approach goes far to the point where it allows for the possibility for the parties contract without considering the intent of either of them as long as a plain meaning analysis to the contract can be given by the courts. Therefore, if the court finds the contract to be written in a difficult language it has the discretion of not admitting evidence of what the parties may have thought the meaning to be.

On the other part of the discussion, i.e., under the modern Cobin approach to the Parol evidence rule, courts primarily focus on the intentions of the contracting parties instead of the integration practices. This approaches followed by most of the courts in the United States. However it is not an easy process to ascertain the intention of the parties. For the purpose of ascertaining the intention of the parties, the courts must take into account all of the relevant circumstances. It includes taking account of the evidence of prior negotiations. Although it is a lengthy process of determination intention of the parties but the rationale behind this approach is that the completeness and comprehensiveness writing of a contract cannot be determined except in the light of the circumstances in which the contract was formed between the parties. This modern approach to the Parol evidence rule is of considerable importance due to the fact that it recognises to resolve the issue of completed partial integration of a contract is an arduous task. It works on the theory that the writing does not prove its accuracy and completeness. For this reason, under this modern approach, the courts enjoy wide latitude in determining that if the parties had intended the contract to be a partial or complete integration.

Article 8 of the CISG is another important article that is of considerable importance in how the Parol evidence rule has been approached by courts and commentator. This article of the legal text deals with the interpretation of statements other conduct of the contracting parties. Article 8 has three parts as under;

Firstly, it explains that for the purpose of this convention, the statements and other conduct of the contracting parties must be interpreted as per the intentions of the parties themselves.[[39]](#footnote-39) However such interpretation must be carried out only if the other contracting party is well aware of the intention or otherwise is not unaware of it.

Secondly, if the first rule of interpretation of statements and other conducts of the parties cannot be applied then they must be interpreted according to the understanding that a reasonable person must have shown if in the same circumstances.

Lastly, the relevant circumstances of every case must be given due consideration in determination of the intent of the party or the understanding of a reasonable person. It includes negotiations. Furthermore, it includes the later conduct of the parties as well as any practices that the parties have developed among them.

This article is of considerable importance primarily due to the fact that its first part is a clear suggestion that the primary interpretative source a contract must be based upon the subjective intent of the contracting parties. The first part of the article also elaborates the other party must be aware of the intent or at least must not be unaware of the same.[[40]](#footnote-40) The Article further dictates but if this approach is insufficient then the understanding of a reasonable person must be applied. Based on these suggestions, the Article portraits adoption of the modern contract theory. The modern theory of contact formation focuses on intent of the parties insofar as the intent is clearly communicated to the other party. Under American contract jurisprudence, this approach is well established.

Going ahead, the third part of article 8 directs courts to give considerable importance to all relevant circumstances while interpreting a contract. This part of the article is of great importance due to the fact that it rejects any limits ever proposed or applied on the type of evidence that can be included during formation of a contract. Based on this discussion, it can be concluded that article 11 along with article 8(3) successfully establish a general principle explaining that a written contract does not enjoy special status despite the fact that it has inherent practical evidentiary advantages. Moving in the same direction, the CISG does not effectuate a presumption, either partial or complete, that writing a contract constitutes an integration. However, relative to oral contracts, written contract may be held in higher regard. It is in pursuance of the applicable rules of evidence. According to the general International Private Law principal, the CISG does not govern formation of a contract but the law of the forum. However, the CISG remains substantive contract law that does not make any such stipulation.

Some of the legal cases play the critical role in this regard as well. In 1988, a case MCC-Marble Ceramic Centre Incorporation versus Ceramica Nuova D'Agostino, S.P.A. was decided by the court of appeals for the Eleventh Circuit. The court decided the leading case latterly in the context of the issue that if a Parol evidence rule exists under the cover of CISG.[[41]](#footnote-41) For this reason, it is of considerable importance hair the examination of the facts of this case have been warranted to the Eleventh Circuit. The president of the Florida ceramic company, in 1990, attended or trade show in Italy. It is where he met the director of The Italian manufacturer. At the very point, the two representatives entered into an agreement according to which the Italian manufacturer should deliver products to the Florida ceramic company. The two parties orderly discuss the details of the terms and conditions of the contract including the price quantity and other key terms. The president of the Florida ceramic company afterwards signed a pre-written order proposal form Italian manufacturer. The phone was in Italian Language. According to the proposal form, the buyer of the products was required to provide the company weather written notice of the defects if any in the products within ten days of the delivery, and that delay or default in the payment would permit the seller with the opportunity to fully or partially cancel the contract between the parties. In addition to these prerequisites, the proposal form also stated that the buyer was informed or aware of the provisions provided on the rivers of the form.

The Italian manufacturer made several deliveries in the later months. A pretty execution of the written contract, according to the Florida ceramic company, the parties also entered into a verbal requirements contract. The Florida ceramic company afterwards also allegedly made several complaints to the Italian manufacturer about the quality of the ceramic tiles. However, it did not provide any written complaint in this regard. Despite lack of written complaint, the Florida Company withheld payments. Witnessing the situation, the Italian manufacturer refused to shift further orders. Because of this refusal, the Florida ceramic company filed a Suit against the Italian manufacturer in the Federal District Court of southern district of Florida. In this case, the Florida Company withheld responsible for the Legend defects in the received product as well as the failure of the failure of the same in continuing deliveries. In support of the allegation, the Florida Company put forward the oral requirement contract made between the parties after execution of the written contract. The Italian manufacturer counterclaimed that the Florida Company failed to provide any written complaint do it in pursuance to the terms and conditions of the written contract. It is worth mentioning here that the contract between the parties stated that the Florida Company was aware of the provision provided on the reverse of the form. According to these provisions, Florida Company had to submit a written notice of the defects in the received goods within 10 days of the delivery. However, the company never provided written statement concerning the non-conformity of the goods. Italian manufacturer further argued that it was in its capacity to refuse for the deliveries because Florida Company withheld the payments without any written notice. Moreover, the Florida Company did not make payments of the previous shipments.

The Florida Company in response submitted affidavits from its own president as well as the director of The Italian manufacturer. According to these affidavits, the parties had come to an agreement that with the help of a translator, the back of the form had been translated and the parties had decided that they will not be bound by the provisions provided on the reverse of the order form. However, the affidavit did not provide explicit true of the intention of the parties to do so that is objective manifestation of the affidavit was lacking. Thus, the contracting parties shared mutual intention of not including the provisions provided on the reverse of the order form is part of the written contract neither party manifested that intent. The district court, present circumstances of the case, held that the provisions provided on the reverse of the order form applied on the contract despite the subjective intentions of the parties. According to the court order, the written contract between the contracting parties was a complete integration the terms and conditions of the agreement. It precluded any resort to extrinsic evidence. Based on this discussion, the district court granted summary judgment in favor of the Italian manufacturer. However, the court did not make direct reference to the Parol evidence rule by its name.

In contrast to this decision, the Eleventh Circuit held that affidavits provided by the Florida company established the fact that although neither of the parties head objectively manifested the intention of not including the provisions provided at the rivers of the order form, director of the Italian manufacturing company was aware of the fact the parties were not bound by the provision the Florida company had to provide written notice any defects in the products within ten days of the delivery.[[42]](#footnote-42) The decision of the Eleventh Circuit came as a major breakthrough due to the fact that put the facts of the case within article 8(1) of the CISG. According to this article, the statements and conduct of the parties must be interpreted intention of the same. Therefore, the Florida Company successfully raised material fact concerning the subjective intention of the parties. For this reason, the parties were not bound by the provisions provided at the rivers of the proposal order form. It precludes a summary judgment. Based on this discussion, the Eleventh Circuit amended the case for further proceedings as it reversed the grant summary.[[43]](#footnote-43)

The decision of the Eleventh Circuit is of great importance here due to the fact that if it had stopped here, the kids would not have become the highly regarded and leading case in the context of the Parol evidence rule and the CISG as it is considered today. The court has successfully played its role in addressing the first question appearing on the surface that is the Parol evidence rule plays any role in cases concerning the CISG.[[44]](#footnote-44) The court began its decision by concluding that as opposed to the rule of evidence the Parol evidence rule is a substantive rule of law. In this context, the CISG preempts its application. Therefore, the Parol evidence rule cannot be applied is a procedural matter. It can only be applied as a part of the CISG.

If the Parol evidence rule is absent in its applicability the applicable rules of procedure rules of evidence cannot allow for a possible in-road. The court also concluded that the CISG and the Parol evidence rule have no express statements in common. However, the CISG, pursuant to Article 11, remains comfortable with allowing the contracting parties to rely on written as well as oral contracts alike. After concluding this discussion on Article 11, the court moves towards article 8(3) of the CISG. The court provided this article as the major reason for rejecting Parol evidence rule as a part of the CISG. According to this article, the courts are required to give due consideration to all of the relevant circumstances of the case under discussion. It includes negotiations. Such consideration must be given with the purpose of determining the intention of the contracting parties. According to the decision of the court, this article provides clear instruction towards admission and consideration of expressing evidence concerning the negotiations to the extent read a successful reveal the subjective intention of the parties. This rating of the article clear rejection of the payroll evidence rule has been supported by most of the academic works. For this reason, the court made reference to several commentaries supporting the fact that the language of the article provides a clear indication that an inclusive approach towards all kind of relevant evidence has been adopted by the CISG. Therefore, it preempts any domestic substantive rules limiting inclusion of evidence when deciding the case including international contracting parties.

The case of Beijing Metals and Mineral Import/Export Corporation versus American Business Center Incorporated was decided by the Fifth Circuit in 1988.[[45]](#footnote-45) The Beijing Company entered into a sales agreement with the American business company. The contracting parties agreed upon to purchasing the fitness equipment with the purpose of developing the weightlifting market in the United States and Canada. The American company exit to furnishing the Beijing Company with design prints and samples for the research and development of weightlifting market in the desired countries.[[46]](#footnote-46) As per the American company, the Beijing company introducing and shipping defective goods. Therefore, it notified the company of the defective goods. Upon the notification, both of the companies entered into an oral agreement. According to the oral agreement, the Beijing Company promised to send replacement goods in conformance to the contractual specifications. Simultaneously, both of the parties also orally agreed to change the payment method tour period of 90 days maximum. Under this method the American company was to pay for the equipment to the Beijing Company.

According to the president of the American company, the Beijing Company did not intend to reduce the two oral agreements into written instrument.[[47]](#footnote-47) The president further explained that the Beijing Company not willing to do so due to some political reasons. In order to accommodate the Beijing Company, the American company decided not to reduce the two oral agreements into writing. However, the American company did not pay all of the invoices. As a matter of fact, it only paid photo invoices and declined twenty-seven shipments; it totaled to more than 1.2 million American Dollars. Seeing this situation, the Beijing Company notified the American company that if the payments would not made immediately the Beijing Company would no longer ship equipment. As a result, the American company negotiated up payment plan with the Beijing Company.

Moving further, the American company alleged the Beijing Company did not ship the replacement goods. Based on this allegation, the American company stopped payment to the Beijing Company on a check it issued earlier. As a result of these circumstances the Beijing Company find the suit in the district court for the southern district of Texas with the purpose of discovering the contract amount from the American company. In its defense, American company maintained that the payment plan was a part of a larger and more comprehensive agreement of sale of goods between the two parties. The American company further maintained that the two oral agreements were part of agreement as well. The trial court, notwithstanding the difference of the American company, granted summary judgment in favor of the Beijing Company. As a result of this decision, the Beijing Company was granted a money judgment totaling 1.7 million American Dollars. In its decision, the trial court explained the Parol evidence rule has prevented the two oral agreements to become a part of the written contract. The court further explained that that the agreement was written unambiguously. For this reason, no evidence of contingent collateral agreements has been added to the written contract itself.

The American company went into appeal. The Court of Appeal for the Fifth Circuit Also affirmed the decision of the trial court concerning the Parol evidence rule. The court, without getting into details and explanations, determined at the Parol evidence rule is applied how to search a case regardless to the fact that if the Texas State Law or CISG is applied on the dispute. The court then ran two comprehensive analysis supporting its holding.[[48]](#footnote-48) Firstly, the court found that the payment plan between the two parties what's the complete agreement in itself. It was written agreement that was written without any ambiguity and in a clear language. Moreover, the agreement contained an itemized payments schedule. The parties had unanimously agreed to this contract. Therefore, the existence of contingent expressing agreements regarding the future payments future shipment of the replacement goods were not suggested by the agreement. Secondly, the court found that the two oral agreements one not part of the major written contract due to the fact that they were not Collateral agreements. Since they were not collateral agreements, they were not allowed to be admitted into evidence primarily because they were consistent with the written agreement itself. Based on these arguments, the court allowed the Parol evidence rule to govern the outcome of the case.

Chapter 3: Methodology

The literature review concludes that the Parol evidence rule must be regarded as a legal framework or a body of doctrine under which a law identifies a contract, i.e., a legally operative agreement in the midst of a length process of negotiations riddled with representations, oral understandings, tentative agreements, and different proposals that concluded with a written agreement. Thus, all of these definitions of the title of the rule lead to the sources of confusion towards the actual scope and nature of the same.

It also concludes that CISG is a substantive law, i.e., it preempts the otherwise applicable domestic’s laws. It is worth mentioning here that despite being a substantive law, the same is not a procedural law. Therefore, it does not affect the evidentiary or procedural rules of the applicable forum. The application of CISG remains widespread and is automatically applied when the private international law rules lead to application of law of the contracting states or when the business of the contracting parties is spread between two contracting states. For this reason, the applicability of the CISG does not need agreement upon it between the parties. It is the governing law of contract and thus, it is applied if the prerequisite of its application are at hand.

This research study relates to interpretation of International commercial contracts. Fact and information concerning the Parol evidence rule and the CISG have been collected for this dissertation using secondary sources such as the journal articles and research papers. Moreover, websites such as JSTOR, Research Gate, BASE, and other have been used in this regard.

It also concerns with the relevant articles of CISG. Article 8 of the CISG is an important article that is of considerable importance in how the Parol evidence rule has been approached by courts and commentator. This article of the legal text deals with the interpretation of statements other conduct of the contracting parties. Article 8 has three parts as under; firstly, it explains that for the purpose of this convention, the statements and other conduct of the contracting parties must be interpreted as per the intentions of the parties themselves. However such interpretation must be carried out only if the other contracting party is well aware of the intention or otherwise is not unaware of it. Secondly, if the first rule of interpretation of statements and other conducts of the parties cannot be applied then they must be interpreted according to the understanding that a reasonable person must have shown if in the same circumstances. Lastly, the relevant circumstances of every case must be given due consideration in determination of the intent of the party or the understanding of a reasonable person. It includes negotiations. Furthermore, it includes the later conduct of the parties as well as any practices that the parties have developed among them.

It also concerns several legal cases. For instance, the Eleventh Circuit, in MCC-Marble versus Ceramica, held that the Parol evidence rule does not go in conformity with the CISG. In contrast to this decision, the Fifth Circuit, in an old case titled Beijing Metals versus American Business Center, decided that the Parol evidence rule applies to the CISG. Similarly, in the case titled Roger versus La Societe, the court looked at the prolonged dealing between the contracting parties and came to the conclusion that the seller knew that the goods were destined to French market.[[49]](#footnote-49) Therefore, according to the court, the seller had to comply with the marketing regulations of France. In a similar fashion, in the case titled Obergericbt Basel-Landscbaft, the question in front of the court was that if silence of the German supplier on receipt of the letter could be determined as an expression of intention. The court determines the intentions of the parties in this case and determined that the silence in this case did not constituent acceptance of the latter. In Smith vs. Hughes, the court just did not only referred to the objective intent but also included the subjective element and interpretation of the contract.[[50]](#footnote-50)

# Chapter 4: Analysis, Discussion and Summary of Results

As an integral part of the common law contract jurisprudence, the Parol evidence rule has a straightforward substantive character forbidding the parties who had reduced the negotiations to a written instrument from varying, adding to, or subtracting from that text. Over the time, the rule has developed into one of the most misunderstood, complex, and controversial contract doctrine of common law despite its initial simplicity. This chapter elaborates the findings of the research and the literature review in this regard. For the purpose of simplicity, this chapter has been divided into three parts, i.e., the intention of the parties, interpretation of contracts, and jurisprudence of CISG.

## Intention of Parties

This dissertation argues that a complete rethinking of the Parol evidence rule is inevitable primarily due to two important reasons. Firstly, it is not possible for the domestic floors definitely ignore the increasing influence and importance of international uniform laws. Secondly, within the common law, the subjective intent is applied in certain circumstances anyway. For this reason, creating a dual system within its own laws is not in the best interest of the domestic laws when different laws can apply depending on the place of business. It presents a problem that can be reduced if domestic law adjusts to its own laws where possible while taking notes of international law. Moreover, the omission of subjective intent of the parties entering into a contract has largely been criticized by an increasing number of Academics. For this reason the Parol evidence rule is incompatible with the views of the business community and international developments.

With regard to intention of parties, the first observation on the Parol evidence rule is that it lacks uniform application among countries observing common law. Between the United States of America and Australia, the rule varies. Even it is not uniform within the United States where it has both varied and statutory Commando manifestations. Also, in the United States the Parol evidence rule is expressed in Article 2 of the Uniform Commercial Code. The prime factors of Parol evidence rule is to determine the substance of a written contract by determining which evidence is applicable in the circumstances. In the case of The United States of America, the modern approach has been adopted due to the fact that it instructs the courts to view all of the relevant evidence surrounding the contract for deciding that if the parties actually intended the writing to be exclusive and complete. The crucial point in this discussion arrives when the court has to decide that if the contract had been written with the purpose of complete or partial integration or statement of the contract. This problem in general is resolved by the common law but taking a stance promoting predictability uncertainty in contract performance.

Despite the fact that such a view is of considerable importance, the fact cannot be subsided that it ignores the fundamental reason behind the formation of a contract primarily due to the fact that it ignore is the motive and only looks the outcome of an action. What is the reason behind this inability lies in the fact that a contract cannot be really taken as an instrument that an impassive bystander can interpret without taking account of the understanding of the statements what conduct of the parties contracting parties.

The difference between the approach taken by the CISG and the common law approach can the best illustrated through a French case titled Roger versus La Societe. In this case, the court looked at the prolonged dealing between the contracting parties and came to the conclusion that the seller knew that the goods were destined to French market. Therefore, according to the court, the seller had to comply with the marketing regulations of France. Under the Parol evidence rule, the evidence of the conduct of the parties would have been inadmissible in terms of the common law primarily due to the fact that the written contract did not include the clause concerning application of French marketing regulations on the goods. However, the intention of parties is treated factual piece of information a notice the question of evidentiary rule under the CISG. Such factual pieces of information are a prerequisite for construction of the contract as the parties intended it to be at the first place.

The subjective intent of the contracting parties has been best summarised by McHugh JA who explained that it is right of the courts to review the circumstances in constructing a document. He also explains that this right of the courts is no longer open to dispute. However, there is no doubt in the fact that the subjective intention of the parties remains inadmissible for supporting particular interpretations of a contract. For this reason, some of the people might assume that the subjective intent of parties, under the common law, has no place at all summarily due to the fact that all it does is an introduction of an area of uncertainty. As a matter of fact, it is not the reality. Lord Steyn elaborated that a rule cannot be unqualified and absolute because it would result in defeat of the reasonable expectations of commercial businessmen. However, Lord Hoffman has not embraced introduction of subjective intent of the contracting parties influential principle where he argued that the declaration of subjective intent and the previous negotiations of the parties are excluded from the admissible background by the law. This approach has its place in the contract law but if it ignores the possibility that the contracting parties what are the agreed upon a terminology in their previous negotiations, which is foreign to them but they know its meaning. This point of view has been confirmed by Clark JA. Is the Parol evidence rule is applied, it will arguably defeat the reasonable Expectations of commercial men.

Besides the potential of construction of a contract artificially, the real problem in this scenario is arrived when in certain circumstances the principle of subjective intent is applied for interpreting the written contract. According to Lord Hoffman, this principle is only admissible in an action for rectification. There is a conflict of policy of predictability and certainty due to the fact that the subjective intent has different meanings concerning the interpretation or formation of a contract. Primarily, the conflict arrives due to the fact that it is not possible that the theory of subjective intent is acceptable in one part of the law not acceptable in another. It is worth mentioning here that if a micro look is taken on the Parol evidence rule, the argument that predictability uncertainty is achieved can be advanced. However, this argument is not defensible in the big picture approach.

Another case titled Smith vs. Hugbes is often noted, in the formation of contracts, as advocating that apparent consensus or objective is sufficient. The concept of apparent consensus explains that that is a reasonable man believes that he is indenting himself to the terms of a contract, and the other party based on this belief enters into the contract then the person asserting to the terms of the contract is equally bound as he has agreed to the terms proposed by the other party. In formation of contract, the meeting of mind or a consensus ad idem is an essential element. However, in Smith vs. Hugbes, the judge did not only referred to the objective intent but also included the subjective element and interpretation of the contract. Primarily, he included it based on the theory that the other party entered into the contract believing upon the previous party. It indicates that the presence of a subjective understanding is essential for formation of a contract.

The above argument is of critical importance due to the fact that the actual and presumed assumptions of the contracting parties must be differentiated from each other. It is of great importance that the subjective what actual intention of the parties is sought. No contract will be concluded despite the fact that an informed bystander concluded that a contract is formed looking at the words if the parties were aware that they were play acting. It demonstrates the problem of applying the objective theory. It brings the discussion to the question that if the presumed or objective intent must be considered if no subjective intent can be established. According to Hope JA, it would be fraudulent to deny the intent is the mutual consent of the contracting parties was to conclude a contract. In conclusion, enforcing the actual intention of the parties making a contract as manifested by their conduct has a commercial and social importance.

## Interpretation of Contracts

The rules change as soon as a binding contract is admitted. As to the interpretation of the contract, the evidence that the parties had relied upon for formation of the contract becomes inadmissible. The plain or literal meaning approach is rejected bad even liberal versions stressing 'the importance of commercial men' and 'common sense'. However, this approach does not reject the Parol evidence rule. Lord Hoffmann, as pointed out earlier, set out five rules applying the Parol evidence rule. Primarily, he has reinforced the evidence concerning subjective intentions is inadmissible. However, in his rule number three, Lord Hoffmann admits that the evidence concerning the subjective intent is admissible in an action for rectification.

The implication and rectification of a term share one thing in common. The problem is arrived primarily due to omission of a fact that should otherwise have been included. It is worth mentioning here that the application of Parol evidence rule in this context must be extended to the implication of terms. Mason J elaborated the difference by stating that the remarks are directed to the application of the Parol evidence rule a note to the implication of a term. He also explained that the difference between implication and rectification of a term lies in the fact that the former gives effect to the presumed intentions of the contracting parties where the latter gives effect to the actual intentions the contracting parties is. This distinction is based on the examination of the intention of the parties. For this reason, it is of considerable importance. Rectification of a term can be used to giving effect to the contract if subjective intent can be established. However, if such intent is absent, the only way to give effect to a contract lies in implication of a term using objective criteria. In essence, the whole issue does not revolve around what evidence is available but hinges on the approach by Counsel. For this reason, if Counsel relies an implication of a term despite having admissible rectification evidence of subject intent, the same exact evidence will be barred from taken into account by the Parol evidence rule. Based on this discussion, it comes out without doubt that the objective or presumed intention leads to implication of a term. Anytime belonging to a contract can be implied into a contract by a court in its capacity as an informed bystander that clearly belongs to date contract. An emerging example in this regard is that of good faith.

In conclusion, it can be suggested that rectification must be sought as soon as subjective intent can be established. If such an establishment is not possible then the focus must be maintained on objective intent but if it can be elicited and thus, a term can be implied to a contract. Mason J confirmed this notion by stating that the prior oral agreement is admissible in an action for rectification being inadmissible in aid of construction. Logically speaking, there is no point in admitting a piece of evidence during formation of a contract rectification of a term is in dispute but not admitting the same evidence when interpretation of the contract is at issue. The policy is not consistent; there is a difference between being pregnant when being a little bit pregnant. This inconsistency argument becomes of great importance when it becomes clear that the extrinsic evidence is not even going to be admissible on the grounds of the implication of a term.

This argument is an exception to the Parol evidence rule. However, it remains confusing. Kerr J laid it down. He elaborated but how meanings must be given to the words capable of providing more than one meaning during interpretation of a contract. According to him, the courts must examine the extinction evidence in order to determine that if the contracting parties have used the words in question in one sense only; by doing so, it would be possible for the courts to give effect to the dictionary meaning of the word as a result of the common intention of the parties. Although it is a comprehensive point of view on the topic under discussion, it does not come without problems. The primary problem with this view is that the court has to decide the word under consideration is capable of possessing only one meaning. In this context, the discussion reverts to the informed bystander again you have to decide about the intention of the parties that if they wanted to create the contract or not. A stronger argument can be made in this regard, i.e., the parties must be asked about the subjective intent instead of making any second guesses about the objective meaning. In both of the cases, the consistency and predictability argument cannot be advanced by the exceptions. It is worth mentioning here that the document is frequently noted is the grounds of contract theory. In conclusion, the leading cases have found it important enough to admit the need exceptions in Parol evidence rule.

## Jurisprudence of the CISG

In contrary to the view presented by the common law, the CISG presents a simple approach to ascertain intention of the parties. The same approach has also been adopted by the European principles, and UNIDROIT. This approach has been adopted as an important tool in understanding the importance of negotiations during formation of a contract. This approach has diverged despite the fact that both International and common law instruments give effect to a contract. According to the common law, contract expresses the negotiation of party primarily due to the fact that it views an agreement as the culmination of negotiations. If placed within the classical contract theory, this approach is logical. On the side of the discussion, the CISG realises it contract is an evolving instrument of exchange and bargain. For this reason, it elaborates the fact that strict adherence the written contract is not possible due to the ever changing cultural influences within international trade. For instance, a contract is an evolving instrument that changes according to the economic situations in Asian Trade.

According to the International text of the convention, interpretation of a contract revolves around intention of the parties; however, this intention must be teased out as per the Article 8 of CISG. The Court must ask its first question that if the parties understand the statement or conduct of the other parties in the contract. In the case titled Oberlandesgericht Miincben, the German buyer insisted on paying reduced amount of the goods as was decided in the agreement. However the court found that the other party has agreed to take fewer amounts if the buyer met certain conditions. Therefore, applying Article 8(1) of CISG, the full price became due error failed to do so. Moreover, silence can also amount to expressing intention. For this reason, article 8(1) does not only include statements made by the parties but also the conduct of the parties as constituting intent. In the case titled Obergericbt Basel-Landscbaft, the German seller did not ship winter collection because the Swiss buyer did not pay on time. The Swiss buyer later made up of the payment send sent a letter to the German supplier setting out delivery dates for the winter collection as well as the payment plan for the outstanding amount. The German supplier refrained from making the shipment. The Swiss buyer sued him for not sending the shipment. The question in front of the court was that if silence of the German supplier on receipt of the letter could be determined as an expression of intention. The court determines the intentions of the parties in this case and determined that the silence in this case did not constituent acceptance of the latter. The court also determined that the Swiss buyer must be aware of the fact that The Silence of the German seller did not amend their initial contract. Therefore, he could not be unaware of the true intention of the seller.

# Chapter 5: Conclusion

The contractual landscape international level has significantly been changed due to the ascendancy of International commercial laws into modern laws and conventions. In an attempt to create uniform international laws, a compromise between the leading legal families had to be formed. The reason behind the application of the international law over the domestic rules in this case lies on the fact that the domestic law cannot protect itself from the influence of International laws for an indefinite period of time. In order to remain stepped up with best practices, principles and domestic law must regularly be reviewed.

The Parol evidence rule is one of the most criticised, most litigated, and most controversial legal doctrine of the common law. Yet it is an indispensable and integral contract law doctrine. The Parol evidence rule is of considerable importance in the American contract law due to the fact that deals with one of the most fundamental issues of the whole field of contract law, i.e., what is the substance of an agreement? Professor Eric Posner effectively illustrated the issue using a figure in an attempt to answer this very question.[[51]](#footnote-51) The figure has been demonstrated in detail in the previous parts of the very discussion. It is often reported as a board game of clashing exceptions, sub rules and tests that negatively affect the litigation process as well as the counseling of the clients. For this reason, the court has to turn to the Parol evidence rule. As illustrated by Professor Posner in his figure, the substance of a contract may appear to be a simple matter but it comes with the complicated set of facts. For this reason, the legal review does not remain a straightforward method. Therefore, the Parol evidence rule maintains its critical position in providing the legal backdrop to the courts against which the issues are resolved.

An important issue that was being addressed during the making of CISG concerned its role in the gap filling of the Convention, i.e., the substantive issues or topics that were left by the Convention and were thus not addressed. In an attempt to resolve this issue, two of the either approaches are adopted. Firstly, general principles underlying the Convention are applied, and secondly, the issue is resolved by resorting to domestic laws. Ideally, the CISG has been successful in adopting a compromise between the two approaches.[[52]](#footnote-52)

The application of the Parol evidence rule is critical. It is applied to the terms and conditions of a contract in two different ways. Firstly, it is applied interpreting the meaning of contractual terms, and secondly, it is applied for proving that if the parties intended to form an integrated agreement. Determining the extent to which the Parol evidence rule helps in providing integration is also a critical process. However, it can be determined using a two-step approach. The first step is to determine that if an agreement is integrated at the first place.

Once it has been cleared written agreement is integrated and the parties had intended to do so, the next question that arises on the surface is that if the parties have had intended to integrate the contract either completely or partially. This critical question can be answered in two different manners. However, the choice of the answer depends upon that if the answer of the first question has been found using the traditional (narrower) or liberal (modern) approach to the Parol evidence rule.

According to the common law, contract expresses the negotiation of party primarily due to the fact that it views an agreement as the culmination of negotiations. If placed within the classical contract theory, this approach is logical. On the side of the discussion, the CISG realises it contract is an evolving instrument of exchange and bargain. For this reason, it elaborates the fact that strict adherence the written contract is not possible due to the ever changing cultural influences within international trade. The difference between the approach taken by the CISG and the common law approach has been discussed in detail. It has been concluded from the discussion and in the light of previous legal cases that under the Parol evidence rule, the evidence of the conduct of the parties would have been inadmissible in terms of the common law primarily due to the fact that the written contract did not include the clause concerning application of French marketing regulations on the goods. However, the intention of parties is treated factual piece of information a notice the question of evidentiary rule under the CISG. Such factual pieces of information are a prerequisite for construction of the contract as the parties intended it to be at the first place.

Besides the potential of construction of a contract artificially, the real problem in this scenario is arrived when in certain circumstances the principle of subjective intent is applied for interpreting the written contract. The conflict arrives due to the fact that it is not possible that the theory of subjective intent is acceptable in one part of the law not acceptable in another. It is worth mentioning here that if a micro look is taken on the Parol evidence rule, the argument that predictability uncertainty achieved can be advanced. However, this argument is not defensible in the big picture approach.

The above argument is of critical importance due to the fact that the actual and presumed assumptions of the contracting parties must be differentiated from each other. It brings the discussion to the question that if the presumed or objective intent must be considered if no subjective intent can be established. It would be fraudulent to deny the intent is the mutual consent of the contracting parties was to conclude a contract. In conclusion, enforcing the actual intention of the parties making a contract as manifested by their conduct has a commercial and social importance. This distinction is based on the examination of the intention of the parties. For this reason, it is of considerable importance. Rectification of a term can be used to giving effect to the contract if subjective intent can be established. However, if such intent is absent, the only way to give effect to a contract lies in implication of a term using objective criteria. Moreover, silence can also amount to expressing intention. For this reason, article 8(1) does not only include statements made by the parties but also the conduct of the parties as constituting intent.

Overall, this dissertation investigated the changes in substantive laws brought by globalisation of trade and hence birth of international uniform laws. It elaborated that the municipal systems recognise the substantive law but the Parol rule of evidence remains under pressure. It further argued that the subjective intention of parties and the in admissibility of evidence of pre-contractual nature or outdated. It also highlighted exchange and bargains as grounds for contracts. In this regard, it argues that the classical theory is outdated and wrong. It concluded that the courts must examine the extinction evidence in order to determine that if the contracting parties have used the words in question in one sense only; by doing so, it would be possible for the courts to give effect to the dictionary meaning of the word as a result of the common intention of the parties.

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