CHOICE OF LAW THAT MATTERS – APPLICATION OR EXCLUSION OF THE CISG FOR INTERNATIONAL SALE OF GOODS TRANSACTIONS

TAKEAWAYS
CONFORMITY OF GOODS / TIME OF DELIVERY / REMEDIES

• CISG is definitely more PRO-SELLER than UCC, (perfect tender rule, rejection as opposed to damages).

• However:
  – there is a slight advantage for BUYER in the CISG in *force majeure* (impossibility rather than impracticability)
  – Where Buyer has sufficient bargaining power to obtain agreement a contractual penalty, CISG with underlying civil law may be an even better tool to secure compliance with the contract
IP RIGHTS / IMPLIED WARRANTY

• CISG is definitely more PRO-SELLER than UCC, since the implied warranty only goes to IP violations KNOWN TO SELLER.

• Parole evidence rule in UCC may or may not be preferable in a specific case. The multiple exceptions significantly reduces its importance in practice.
Both schemes seem to reach the same result in the hypothetical.

Jurisprudence on CISG rejecting permits as implied warranties makes it possible that CISG is also PRO-SELLER here, but there is an argument that UCC is even more restrictive on fitness for a particular purpose. However, the same facts may give rise to a merchantability claim.