

## CONSIDERING CULTURAL COMMUNITIES IN CONTRACT INTERPRETATION

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### ABSTRACT

*The art of contract interpretation involves determining the meaning of an agreement. Often, courts must determine whether a particular term is reasonably susceptible to more than one meaning, and if so, they engage in the process of disambiguating the term. This process involves a subtle dance between the traditional and the modern approaches to contract interpretation: the former looking merely to the “four corners” of the contract and the latter considering extrinsic evidence to establish the intent of the parties. When encountering dissimilar cultural influences in common-law contract ambiguities, the courts apply an objective, “reasonable person” standard, which inevitably dilutes cultural variance into a westernized and often short-sighted contract interpretation. After advocating for a “modern” jurisdictional approach to contract interpretation, this Note will argue that guidelines within both the Uniform Commercial Code (UCC) and the Contracts for the International Sale of Goods (CISG) can provide a salient approach for introducing cultural evidence to tackle cultural conflicts arising during contract interpretation. This Note advocates for the admission of cultural extrinsic evidence to both create ambiguity and resolve ambiguity. The notion of culture advocated for in this Note embraces dismantling the concept’s vagueness into more concrete constituents of social relations. This method of cultural contract interpretation provides the greatest opportunity to recognize cultural conflicts within ambiguous terms and thus avoids blindly engaging in cultural compulsion.*

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## TABLE OF CONTENTS

INTRODUCTION .....	130
I. CONTRACT INTERPRETATION .....	132
A. <i>A Tale of Two Theories – The Evolution of Contract Interpretation</i> .....	132
B. <i>Ambiguity of Contract Terms – An Interpretive Dichotomy</i> .....	136
1. <i>The plain-meaning approach: the “four corners”</i> ..	136
2. <i>The modern jurisdiction: context-friendly</i> .....	138
C. <i>Sources of Evidence in Resolving Ambiguities</i> .....	139
D. <i>A Brief Introduction to the Contracts for the International Sale of Goods (CISG)</i> .....	142
II. CULTURE .....	143
A. <i>The Expansive Role of Culture in the Legal Realm</i> .....	146
B. <i>Connecting Culture with Contracts</i> .....	150
III. ANALYSIS .....	151
A. <i>Contract Ambiguities: The Law’s Failure to Recognize Culture</i> .....	151
B. <i>An Interdisciplinary Approach: The Use of Cultural Extrinsic Evidence</i> .....	155
CONCLUSION .....	159

## INTRODUCTION

A Native Alaskan couple, Philip Serradell and Bertha Tikiun, applied for a group accident insurance policy, which provides for a payment of death benefits to the insured’s benefactors in the event one’s spouse dies as a result of a covered accident.<sup>1</sup> Serradell and Tikiun lived in a small Native village, Nunapicuaq.<sup>2</sup> They never legally married, but they had two children and lived together for over 10 years until Tikiun’s death due to an accident.<sup>3</sup>

Serradell had enrolled in the group insurance policy.<sup>4</sup> In the enrollment application form, he had printed the name of Bertha Tikiun, as well as the names of his two children.<sup>5</sup> The Certificate of Insurance issued to Serradell defined a “Covered Person” as includ-

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1. Serradell v. Hartford Accident & Indem. Co., 843 P.2d 639, 639–40 (Alaska 1992) (noting that both Serradell and Tikiun were Yupik Eskimos).

2. *Id.* at 640 n.1

3. *Id.* at 640.

4. *Id.*

5. *Id.*

ing, among others, Serradell's "spouse," i.e., "your spouse unless: (a) you and your spouse are legally separated or divorced."<sup>6</sup>

Following Tikiun's death, Serradell applied to the insurance company for \$50,000 in accidental death benefits under the group accident insurance plan; however, this request was denied on the basis that Tikiun had not been Serradell's "spouse" under the policy because she and Serradell had never legally married.<sup>7</sup> Serradell countered the denial—Native Alaskans have a unique culture and the insurance policy had failed to consider their lifestyle, relationship, and how they define family and spouse.<sup>8</sup> The courts swiftly dismissed Serradell's claims, as "spouse" is an unambiguous term, construed only to mean legal marriage.<sup>9</sup> Serradell's relationship with Tikiun failed to meet this definition and he was ousted from his contract choice.

The Background section includes Part I and Part II. Part I provides an explanation of contract interpretation, including its history, evolution, and current guidelines. It demonstrates the evolution of contract interpretation from a subjective "will theory" to the now-prevalent objective theory. Part I then explains the current modes of interpreting ambiguous contract terms, including the traditional 'four-corners' approach and the modern approach. Furthermore, Part I describes different sources of extrinsic evidence judges may employ in disambiguating contract terms. Concluding Part I is an introduction to the Contracts for the International Sale of Goods (CISG). Part II explores the encompassing and often elusive concept of culture. It explores the concept's connection to law generally and then specifically its connection with contract law. Part III argues that when encountering dissimilar cultural influences in common-law contract ambiguities, the courts apply an objective, "reasonable person" standard, which inevitably dilutes cultural variance into a westernized and often shortsighted contract interpretation. After advocating for a "modern" jurisdictional approach to contract interpretation, this Note will argue that guidelines within the Uniform Commercial Code (UCC) and the CISG could provide a salient approach for introducing cultural evidence to tackle cultural conflicts arising during contract interpretation.

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6. *Id.* at 640–41.

7. *Id.* at 640.

8. *Id.* at 641.

9. *Id.*

## I. CONTRACT INTERPRETATION

“What is interpretation? It is the process of endeavoring to ascertain the meaning or meanings of symbolic expressions used by the parties to a contract . . . .”<sup>10</sup> Prior to unfolding the specific role of the court in “disambiguating” language within a contract,<sup>11</sup> a general discussion of contract interpretation is warranted. Without interpretation, many contracts would remain indeterminate and void; therefore, courts must wrestle with the meaning of particular words, as well as how to make those determinations. This section provides an explanation of contract interpretation, including its history, evolution, and current guidelines. It demonstrates the evolution of contract interpretation from a subjective “will theory” to the now-prevalent objective theory.

*A. A Tale of Two Theories – The Evolution of Contract Interpretation*

Within a dispute, how does a court determine the meaning of an agreement? This question presents a contract doctrine dichotomy: the subjective theory of contract interpretation and the objective theory of contract interpretation.<sup>12</sup> Each theory turns on the issue of perspective—“[w]hose perspective should a judge employ in determining what the parties agreed to bind themselves to do?”<sup>13</sup> Under the subjective theory, or the “will theory,” contract formation involves a “meeting of the minds;” therefore, contract interpretation requires a judge to look at the will of the parties based on their words or actions.<sup>14</sup> Conversely, the objective theory looks to “what a reasonable person would believe the language means.”<sup>15</sup>

For most of the nineteenth century, contract law in both the United States and England was governed by the subjective “will theo-

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10. Edwin W. Patterson, *The Interpretation and Construction of Contracts*, 64 COLUM. L. REV. 833, 833 (1964).

11. See Joseph D. Becker, *Disambiguating Contracts by Summary Judgment*, 69 N.Y. ST. B.J. 10, 10 (1997).

12. Marjorie Florestal, *Is a Burrito a Sandwich? Exploring Race, Class, and Culture in Contracts*, 14 MICH. J. RACE & L. 1, 13 (2008); see also Menachem Mautner, *Contract, Culture, Compulsion, or: What Is So Problematic in the Application of Objective Standards in Contract Law?*, 3 THEORETICAL INQUIRES L. 545, 550–51 (2002).

13. Florestal, *supra* note 12, at 13.

14. Mautner, *supra* note 12, at 550–51; see Florestal, *supra* note 12, at 13.

15. ROBERT A. HILLMAN, *PRINCIPLES OF CONTRACT LAW* 279 (3d ed. 2014); see also Florestal, *supra* note 12, at 13.

ry.”<sup>16</sup> During this time period, courts attempted to foster individual freedom and autonomy; therefore, judges interpreted agreements as conveying the will of each party.<sup>17</sup> There was “an understanding that the value of contract lay precisely in the recognition of the power of parties to agree, of their own accord, on the terms of their future actions and to have the law enforce such agreements.”<sup>18</sup>

A famous embodiment of subjective interpretation is the English 1864 case *Raffles v. Wichelhaus*, or the “Peerless” case.<sup>19</sup> In *Peerless*, the defendant-buyers entered into a contract to buy 125 bales of cotton, scheduled to arrive on a ship called the Peerless.<sup>20</sup> The seller delivered the cotton to a ship named Peerless sailing from Bombay to England in December.<sup>21</sup> The buyer refused to pay, arguing that they intended to buy cotton arriving on a different ship, also called the Peerless, that sailed from Bombay in October.<sup>22</sup> The seller sued, but the court excused the buyers and invalidated the contract.<sup>23</sup> “What is most important about *Peerless* is less the outcome than the methodology.”<sup>24</sup> Exemplifying the subjective theory of contract interpretation, the court sought to understand what these parties actually intended or believed the agreement meant.<sup>25</sup> The contract did not specify which “Peerless” ship the parties meant, and since each party operated under a different set of assumptions, the court determined there was no contract formation—there was no “meeting of the minds.”<sup>26</sup>

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16. Mautner, *supra* note 12, at 550. *But see* James W. Fox Jr., *The Law of Many Faces: Antebellum Contract Law Background of Reconstruction-Era Freedom of Contract*, 49 AM. J. LEGAL HIST. 61, 62 (2007) (arguing that although the “will theory” view of nineteenth-century contract law is largely correct, it overlooks the “variety inherent in law” and fails to connect contract law with the “ideas of political freedom and equality” during that time period).

17. Fox, *supra* note 16, at 62.

18. *Id.* at 70.

19. *Raffles v. Wichelhaus (Peerless)*, (1864) 159 Eng. Rep. 375; 2 H. & C. 906; Florestal, *supra* note 12, at 13.

20. 159 Eng. Rep. 375.

21. *Id.*

22. *Id.*

23. *Id.*

24. Florestal, *supra* note 12, at 14; *see also* HILLMAN, *supra* note 15, at 290 (“In fact, the actual decision consists of one line from the judges declaring *per curiam* that the buyers’ defense was legally sufficient.”).

25. Florestal, *supra* note 12, at 14.

26. *See Peerless*, 159 Eng. Rep. 375; Florestal, *supra* note 12, at 14; *cf.* HILLMAN, *supra* note 15, at 289–90 (using *Peerless* to articulate the law of ‘Misunderstanding,’ which currently operates as an exception to the objective theory of contract interpretation).

Toward the end of the nineteenth century, critics of the subjective theory surfaced, claiming the theory was *too* subjective.<sup>27</sup> In a laissez-faire economy, the uncertainty and difficulty behind determining the contents of someone's mind could undermine "commercial transactions and impede expansion of the marketplace."<sup>28</sup> Ultimately, the subjective "will" theory succumbed to the objective theory of interpretation, which is now described as "one of the most entrenched dogmas of contract law."<sup>29</sup> Rather than evaluating what the parties understood, courts acting under the objective theory ascertain what a reasonable person would believe the contract entails.<sup>30</sup>

Under the objective theory of contract formation, whenever a reasonable person in the promisee's shoes could have understood that the promisor intended to create a contract, the promisor will be held accountable, even if the promisor did not actually intend to be bound.<sup>31</sup> Similarly, in the realm of interpretation, the court will "protect a party's reasonable reliance on the other party's manifestation of intent."<sup>32</sup> The contract will be given its "'ordinary meaning,' viewing the subject of the contract 'as the mass of mankind would view it.'"<sup>33</sup> This theory guides courts to align with what a reasonable person in the position of the two contracting parties would believe the language means.<sup>34</sup>

Famously illustrating the objective theory of contract interpretation, Judge Learned Hand writes:

A contract has, strictly speaking, nothing to do with the personal, or individual, intent of the parties . . . . If . . . it were proved by twenty bishops that either party, when he used

27. See Florestal, *supra* note 12, at 14.

28. *Id.*; see Melvin Aron Eisenberg, *The Responsive Model of Contract Law*, 36 STAN. L. REV. 1107, 1119 (1984) ("The policy, known as security of transactions, is that in order to promote commerce, contracts should be reliable. This policy would be undermined if the addressor's unreasonable and undisclosed meaning could prevail . . ."). *But see* Mautner, *supra* note 12, at 556 (arguing the rise of the objective approach in contract law was "a product of the prevalence of the experience of trust in modern life").

29. Mautner, *supra* note 12, at 551-52 ("It is difficult to think of a change more radical and of more far-reaching implications in contract law doctrine than the shift from subjectivism to objectivism.").

30. HILLMAN, *supra* note 15, at 279.

31. See *Lucy v. Zehmer*, 84 S.E.2d 516, 522 (Va. 1954); see also Mautner, *supra* note 12, at 551.

32. HILLMAN, *supra* note 15, at 280-81 ("If you promise in writing to sell your piano to Alice for \$500, contract law will enforce what a reasonable person would believe the terms mean . . . . It doesn't matter if you unreasonably thought that 'piano' meant your toy electric keyboard . . .").

33. *All-Ways Logistics, Inc. v. USA Truck, Inc.*, 583 F.3d 511, 516 (8th Cir. 2009) (quoting *Coleman v. Regions Bank*, 216 S.W.3d 569, 574 (Ark. 2005)).

34. Mautner, *supra* note 12, at 551.

the words, intended something else than the usual meaning which the law imposes upon them, he would still be held, unless there were some mutual mistake, or something else of the sort.<sup>35</sup>

Although objective contract interpretation is both practical and efficient, the severe effect of Judge Hand's proposition is to bind "parties to an intention *neither one of them* held at the time of contract formation."<sup>36</sup> This seemingly unfair result attracted critics; if both parties intended a particular meaning, shouldn't contract law enforce that meaning in spite of the reasonable person test?<sup>37</sup>

In response, the Restatement (Second) of Contracts "splits the baby" by carving out an exception to the objective interpretation of contracts.<sup>38</sup> Although rare, if both parties intend a particular meaning, that meaning will prevail, even if it contradicts the objective interpretation of the language.<sup>39</sup> Where parties have attached different meanings, however, the court engages in further inquiry: if "neither party knew or had reason to know they were laboring under differing meanings," mutual assent fails, much like the *Peerless* case.<sup>40</sup> "But if one party remains silent despite knowing the other party holds a different meaning, a court will not reward that act of silence."<sup>41</sup> Despite the continuing prevalence of the objective theory, contract interpretation requires a delicate balance between the objective and the subjective.<sup>42</sup>

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35. *Hotchkiss v. Nat'l City Bank of N.Y.*, 200 F. 287, 293 (S.D.N.Y. 1911); see also HILLMAN, *supra* note 15, at 280 ("[D]on't be fooled by language you find in numerous judicial decisions that refers to the parties' intentions. . . . [C]ourt's are giving lip service to the idea when interpreting language.").

36. Florestal, *supra* note 12, at 14-15.

37. See *id.*

38. *Id.* at 15; RESTATEMENT (SECOND) OF CONTRACTS § 201 (AM. LAW INST. 1981); see generally HILLMAN, *supra* note 15, at 289-303 (describing further exceptions to the objective interpretation of contracts, including: "Misunderstanding"; "Rules of Gap Filling"; and "Good-Faith Performance").

39. RESTATEMENT (SECOND) OF CONTRACTS § 201(1); HILLMAN, *supra* note 15, at 288-89.

40. Florestal, *supra* note 12, at 14-15; RESTATEMENT (SECOND) OF CONTRACTS § 201(3).

41. Florestal, *supra* note 12, at 15; *Joyner v. Adams*, 87 N.C. App. 570, 575 (1987) ("[W]here one party knows or has reason to know what the other party means by certain language and the other party does not know or have reason to know of the meaning attached to the disputed language by the first party, the court will enforce the contract in accordance with the innocent party's meaning."); RESTATEMENT (SECOND) OF CONTRACTS § 201(2).

42. RESTATEMENT (SECOND) OF CONTRACTS § 202(1) ("Words and other conduct are interpreted in the light of all the circumstances, and if the principal purpose of the parties is ascertainable it is given great weight."); see Eisenberg, *supra* note 28, at 1121 ("While a rigorously objective theory of interpretation may seem justified[,] . . . as further elements are added it becomes clear that individualization is necessary in all cases, and subjective elements must be recognized in some.").

### *B. Ambiguity of Contract Terms – An Interpretive Dichotomy*

Any court looking to enforce a contract must first determine what the contract says. Where a term or language in the contract is “reasonably susceptible to more than one meaning” or interpretation, it is said to be “ambiguous.”<sup>43</sup> The interpretation of an unambiguous term is a question of law for a judge to determine.<sup>44</sup> Once a term is designated as ambiguous, however, the fact-finder engages with extrinsic evidence to place the term in context and interpret its meaning.<sup>45</sup> Jurisdictions disagree about the appropriate process for deciding whether language is in fact capable of more than one meaning:<sup>46</sup> they are split between a plain-meaning, “four corners” approach and a modern, contextual approach to the issue of ambiguity.<sup>47</sup>

#### *1. The plain-meaning approach: the “four corners”*

Plain-meaning courts adopt a “certain no-nonsense approach to contract interpretation.”<sup>48</sup> Such courts hold that a judge must determine whether a term is ambiguous by simply reading the contract—looking *only* to the four corners of the contract, “without the aid of extrinsic evidence.”<sup>49</sup> The primary advocate of the plain-meaning approach is Samuel Williston, who wrote in his treatise on contracts: “The court will give . . . language its natural and appropriate meaning; and, if the words are unambiguous, will not even admit evidence of what the parties may have thought the meaning to be.”<sup>50</sup> The Williston approach gives primacy to the written agreement and restricts the use of extrinsic evidence that could be used to supplement or interpret the contract.

*White City Shopping Center, LP v. PR Restaurants, LLC*, decided within a plain-meaning jurisdiction, provides an interesting case

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43. HILLMAN, *supra* note 15, at 272; Florestal, *supra* note 12, at 16.

44. Guilford Transp. Indus. v. PUC, 746 A.2d 910, 914 (Me. 2000).

45. *Id.*; see *infra* Part I.C.

46. HILLMAN, *supra* note 15, at 272.

47. Keith A. Rowley, *Contract Construction and Interpretation: From the “Four Corners” to Parol Evidence (and Everything in between)*, 69 MISS. L.J. 73, 84–86 (1999) (noting the prevailing view among courts is the modern view); Juliet P. Kostritsky, *Plain Meaning vs. Broad Interpretation: How the Risk of Opportunism Defeats a Unitary Default Rule For Interpretation*, 96 KY. L.J. 43, 54–55 (2007).

48. Florestal, *supra* note 12, at 16.

49. HILLMAN, *supra* note 15, at 272–73; *Bank v. Thermo Elemental, Inc.*, 451 Mass. 638, 648 (2008) (“To answer the ambiguity question, the court must first examine the language of the contract by itself, independent of extrinsic evidence concerning the drafting history or the intention of the parties.”).

50. SAMUEL WILLISTON, WILLISTON ON CONTRACTS § 95 (3d ed. 1957).



study.<sup>51</sup> Panera Bread signed a ten-year lease with White City to occupy retail space.<sup>52</sup> The lease contained an exclusivity clause restricting White City from leasing space to any “bakery or restaurant reasonably expected to have annual sales of *sandwiches* greater than ten percent (10%) of its total sales . . . .”<sup>53</sup> The lease did not specify the definition of “sandwiches.”<sup>54</sup> During this lease, White City entered into a new lease agreement with Qdoba Mexican Grill.<sup>55</sup> Panera was not happy—specifically, Panera believed that tacos, burritos, and quesadillas fell within the meaning of “sandwiches” and therefore argued that White City was prohibited from leasing to Qdoba.<sup>56</sup> White City “beat Panera to the courthouse” seeking declaratory judgment that it did not breach its contract with Panera.<sup>57</sup>

The issue before the court was simple: is the term “sandwich” ambiguous?<sup>58</sup> The court swiftly determined that the term “sandwiches” is not ambiguous, explaining that “[t]he New Webster Third International Dictionary describes a ‘sandwich’ as ‘two thin pieces of bread, usually buttered, with a thin layer (as of meat, cheese, or savory mixture) spread between them.’”<sup>59</sup> “[A]s dictated by common sense, th[e] court [found] that the term ‘sandwich’ is not commonly understood to include burritos . . . which are typically made with a single tortilla and stuffed with a choice filling of meat, rice, and beans.”<sup>60</sup> Under the plain-meaning rule, “[i]f the words of the contract are plain and free from ambiguity, they must be construed in accordance with their ordinary and usual sense.”<sup>61</sup> As this Note intends to show, the court’s analytical approach in *White City* is fundamentally flawed on numerous levels.<sup>62</sup>

51. No. 2006196313, 2006 WL 3292641, at \*3 (Mass. Super. Ct. Oct. 31, 2006) (ruling that “sandwich” is not commonly understood to include burritos, tacos, and quesadillas); for an in-depth discussion of *White City*, see Florestal, *supra* note 12, at 9–13.

52. *White City*, 2006 WL 3292641, at \*1.

53. *Id.* at \*1–2 (recounting that the exclusivity clause, and its subsequent renegotiated forms, included a Jewish-style delicatessen as well as a near-Eastern restaurant that served gyros).

54. *Id.* at 2.

55. *Id.*; Florestal, *supra* note 12, at 11.

56. *White City*, 2006 WL 3292641, at \*2.

57. Florestal, *supra* note 12, at 11; see also *White City*, 2006 WL 3292641, at \*2.

58. *White City*, 2006 WL 3292641, at \*3; Florestal, *supra* note 12, at 11 (“[T]he issue before the court was deceptively simple: Does the term ‘sandwiches’ as it appears in the Panera lease include burritos?”).

59. *White City*, 2006 WL 3292641, at \*3. As Professor Chapin Cimino voiced, “What about a Nutella ‘sandwich’?”

60. *Id.*

61. *Id.*

62. See *infra* Part III.A.

## 2. *The modern jurisdiction: context-friendly*

Many critics dislike the plain-meaning approach of determining ambiguity; therefore, many courts have adopted an alternative, context-driven view.<sup>63</sup> Under this modern approach, the court may employ extrinsic evidence *before* an ambiguity has been identified from the face of the contract, in the limited sense that such evidence can assist the court in determining whether a term is reasonably susceptible to more than one meaning.<sup>64</sup> This modern approach to resolving ambiguities “allows persuasive extrinsic evidence to show an agreement is ambiguous even if the agreement appears unambiguous.”<sup>65</sup> Without constriction to the four corners of the contract, “extrinsic evidence may in fact reveal an ambiguity not otherwise patent . . . [and] language may point only slightly in one direction and extrinsic evidence strongly in another.”<sup>66</sup>

In *Pacific Gas and Electric Co. v. G.W. Thomas Drayage & Rigging Co.*, Justice Traynor both cautioned against the plain-meaning approach to ambiguities and advocated for the more expansive view.<sup>67</sup> In *Pacific Gas*, the parties disagreed over the meaning of the term “indemnify” in a contract where the defendant was to replace a portion of the plaintiff’s steam turbine.<sup>68</sup> The provision stated that the defendant agreed to “indemnify [plaintiff] against all loss, damage, expense and liability resulting from injury to property, arising out of or in any way connected with the performance of this contract.”<sup>69</sup> During the job, the plaintiff’s property was damaged and they sought damages based on the indemnification provision.<sup>70</sup> The defendant sought to introduce extrinsic evidence that the parties intended the indemnification provision to cover only damage to a third party’s property.<sup>71</sup> The court agreed with the defendant, and

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63. HILLMAN, *supra* note 15, at 272; see *Pac. Gas & Elec. Co. v. G. W. Thomas Drayage & Rigging Co.*, 442 P.2d 641, 644–45 (1968) (showing Justice Traynor’s distaste for a plain-meaning approach to ambiguities).

64. *Lincoln Elec. Co. v. St. Paul Fire & Marine Ins. Co.*, 210 F.3d 672, 684 n.12 (6th Cir. 2000) (emphasis added).

65. Jerald D. Stubbs, *The Federal Circuit and Contract Interpretation: May Extrinsic Evidence Ever Be Used to Show Unambiguous Language is Ambiguous?*, 39 PUB. CONT. L.J. 785, 786 (2010).

66. *Nat’l Tax Inst., Inc. v. Topnotch at Stowe Resort & Spa*, 388 F.3d 15, 20 (1st Cir. 2004) (internal citations omitted); *Sunshine Shopping Ctr., Inc. v. KMart Corp.*, 85 F. Supp. 2d 537, 540 (V.I. 2000) (“Thus, in determining whether ambiguity exists, a court is not always confined to the four corners of the written document.”).

67. 442 P.2d at 644–45.

68. *Id.* at 642.

69. *Id.* (internal quotations and alterations omitted).

70. *Id.*

71. *Id.*

although Justice Traynor determined the word “indemnify” was ambiguous on its face, his commentary extended:

A rule that would limit the determination of the meaning of a written instrument to its four-corners merely because it seems to the court to be clear and unambiguous, would either deny the relevance of the intention of the parties or presuppose a degree of verbal precision and stability our language has not attained.<sup>72</sup>

Both the Restatement (Second) of Contracts and the UCC follow this modern, extrinsic evidence rule.<sup>73</sup>

### *C. Sources of Evidence in Resolving Ambiguities*

This section explores the kinds of evidence that may be used to resolve ambiguities.<sup>74</sup> Under the objective approach, the goal is to determine what a reasonable person would believe the language means under the surrounding circumstances; therefore, contract law must engage with multiple sources of evidence. In addition to the contract itself, circumstances include “all writings, oral statements, and other conduct by which the parties manifested their assent, together with any prior negotiations between them and any applicable course of dealing, course of performance, or usage.”<sup>75</sup> This evidence is key during the discussion on ambiguous terms.

The parties’ purpose in making the contract, evidenced by preliminary negotiations, drafts, or other conversations, is demonstrative of a reasonable person’s understanding of the language.<sup>76</sup> In *Keating v. Stadium Management Corp.*, an employee, in charge of procuring commercial advertisements for use within a stadium, sought to enforce a contract that entitled him to future commissions so long as a particular company continued to display its advertisements in the stadium.<sup>77</sup> The employer entered into a new lease arrangement with

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72. *Id.* at 644.

73. Stubbs, *supra* note 65, at 787.

74. In this section, discussions over the admissibility of extrinsic evidence to resolve an ambiguity are over; a plain-meaning jurisdiction will only engage with extrinsic evidence once a term is deemed ambiguous on its face, whereas a modern jurisdiction may engage with extrinsic evidence both prior to and after determining ambiguity. *See supra* Part I.B.1-2.

75. HILLMAN, *supra* note 15, at 281 (quoting E. ALLAN FARNSWORTH, *CONTRACTS* 453 (4th ed. 2004)).

76. *Id.*; *See, e.g.,* Frigalment Importing Co. v. B.N.S. Int’l Sales Corp., 190 F. Supp. 116, 118 (S.D.N.Y. 1960) (discussing cablegram negotiations preceding the contracts to determine whether “chicken” includes young chicken).

77. 508 N.E.2d 121, 121-23 (Mass. App. Ct. 1987).

this particular company, and the employee stopped receiving commissions.<sup>78</sup> After determining the contract provision that detailed the conditions warranting termination of commission was ambiguous, the court concluded from “the circumstances attending [the contract’s] execution” that the conditions were not met and the employee was entitled to damages.<sup>79</sup> The court construed the disputed language of the agreement by considering the context in which the agreement was executed.<sup>80</sup>

Another source of evidence is any applicable trade usage, course of dealing, or course of performance.<sup>81</sup> Although the UCC defines each of these sources of evidence, courts “utilize this evidence in a wide variety of cases outside sales of goods.”<sup>82</sup> Each source constitutes objective evidence because it extends beyond the parties’ own, individual intentions.<sup>83</sup> If these sources of evidence contradict one another, the interpretation hierarchy is as follows: “(1) express terms prevail over course of performance, course of dealing, and usage of trade; (2) course of performance prevails over course of dealing and usage of trade; and (3) course of dealing prevails over usage of trade.”<sup>84</sup>

According to the UCC, “a usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question.”<sup>85</sup> Although parties may be bound by trade usage despite not being members of the trade themselves,<sup>86</sup> trade usage “must have a regularity of observance . . . by the great majority of decent dealers.”<sup>87</sup> In *Nanakuli Paving & Rock Co. v. Shell Oil Co.*, the court allowed the admission of Hawaiian trade

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78. *Id.* at 123.

79. *Id.* at 124–25.

80. *Id.* (“[T]he construction which . . . we approve, ‘is the one which appears to be in accord with justice and common sense and the probable intention of the parties. It [interprets the Agreement] as a business transaction entered into by practical men to accomplish an honest and straightforward end . . .”).

81. HILLMAN, *supra* note 15, at 282 (“[T]hey are equally important tools for finding the meaning of contract terms, and . . . most lawyers usually think of them as a group.”).

82. *Id.*; see RESTATEMENT (SECOND) OF CONTRACTS § 202(4) (AM. LAW INST. 1981).

83. HILLMAN, *supra* note 15, at 282.

84. U.C.C. § 1-303(e)(1)–(3) (AM. LAW INST. & UNIF. LAW COMM’N 2016).

85. *Id.* § 1-303(c) (internal quotations omitted); see *Pac. Gas & Elec. Co. v. G. W. Thomas Drayage & Rigging Co.*, 442 P.2d 641, 645 n.6 (Ca. 1968) (“Extrinsic evidence of trade usage or custom has been admitted to show that the term ‘United Kingdom’ in a motion picture distribution contract included Ireland . . .”).

86. *Nanakuli Paving & Rock Co. v. Shell Oil Co.*, 664 F.2d 772, 791 (9th Cir. 1981).

87. U.C.C. § 1-303, cmt. 4 (internal citations omitted).

usage to give meaning to an express term within the parties' agreement.<sup>88</sup> The contract expressed that the price of asphalt would be "Shell's Posted Price at time of delivery," but Nanakuli sought to introduce the Hawaiian custom of "price protection."<sup>89</sup> Price protection consists of "charging the old price at times of price increases," rather than the posted price.<sup>90</sup> In admitting the Hawaiian price protection trade usage, the court noted, "the [UCC] would have us look beyond the printed pages of the contract to usages and the entire commercial context of the agreement in order to reach the 'true understanding' of the parties."<sup>91</sup> Labeled by some a "controversial use of custom," the Ninth Circuit held it was permissible to admit what appeared to be "contradictory evidence of custom to give meaning to the parties' agreement."<sup>92</sup>

The UCC defines course of dealing as "a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct."<sup>93</sup> In *Southern Cotton Oil Co. v. Merchants National Bank*, the Fifth Circuit utilized the course of dealing between a bank and its customer to determine whether the bank acted reasonably in delaying a notice of dishonor for fifty-two days.<sup>94</sup> The court found that a history of slow payments between the parties in previous transactions established that the bank acted reasonably in delaying notice of dishonor for fifty-two days.<sup>95</sup>

Finally, course of performance involves "repeated occasions for performance by [either] party" where the other party has "knowledge of the nature of the performance and opportunity for objection to it . . . ."<sup>96</sup> Unlike course of dealing, which looks to conduct prior to the contract at issue, course of performance relates to conduct occurring during the transaction at issue.<sup>97</sup> Course of performance may shed light on a disputed, ambiguous term. For example, "[i]f your contract to mow Alice's lawn says only that mowing shall take place at a reasonable time and you show up repeatedly

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88. 664 F.2d at 778-79.

89. *Id.* at 790.

90. *Id.*

91. *Id.* at 780.

92. Florestal, *supra* note 12, at 51.

93. U.C.C. § 1-303(b) (AM. LAW INST. & UNIF. LAW COMM'N 2016).

94. 670 F.2d 548, 550 (5th Cir. 1982).

95. *Id.*

96. U.C.C. § 1-303(a)(1)-(2).

97. HILLMAN, *supra* note 15, at 284.

without Alice's objection on Sundays at 9 a.m., a court likely will find that this time is reasonable."<sup>98</sup> Critics argue that parties may lose their right to enforce an express contract term if course of performance reflects an alternate interpretation of the contract's language.<sup>99</sup>

*D. A Brief Introduction to the Contracts for the International Sale of Goods (CISG)*

The United Nations Convention on Contracts for the International Sale of Goods (CISG) is recognized as one of the most successful efforts to unify a broad area of commercial law at the international level.<sup>100</sup> The purpose of the CISG, adopted in 1980, is to provide a "modern, uniform and fair regime for contracts for the international sale of goods."<sup>101</sup> In the United States, CISG is a self-executing treaty that applies by force of federal preemption; therefore, the CISG applies to all proposed contractual relationships that satisfy its "internationality" requirements.<sup>102</sup>

The first "internationality" requirement concerns the entities involved in the contract. The CISG governs international sales contracts if "(1) both parties are located in Contracting States, or (2) private international law leads to the application of the law of a Contracting State . . . ."<sup>103</sup>

The second requirement mirrors the UCC in that the CISG applies only to the sale of movable goods.<sup>104</sup> Finally, the disputed contract must have been concluded—"or, if the issue is one of formation, the

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98. *Id.*

99. *Id.* (describing how course of performance may have the "perverse effect of making the parties more inflexible and uncooperative."); see Omri Ben-Shahar, *The Tentative Case Against Flexibility in Commercial Law*, 66 U. CHI. L. REV. 781, 812 (1999) (arguing that the UCC provision "diminishes the parties' ability to flexibly perform their contractual obligations.").

100. Harry M. Flechtner, *Introductory Note: United Nations Convention on Contracts for the International Sale of Goods: Vienna, 11 April 1980*, UNITED NATIONS (Feb. 2009), <http://legal.un.org/avl/ha/ccisg/ccisg.html>; Michael P. Van Alstine, *Consensus, Dissensus, and Contractual Obligation Through the Prism of Uniform International Sales Law*, 37 VA. J. INT'L L. 1, 6 (1996).

101. *United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG)*, UNCITRAL (last visited Nov. 20, 2016), [http://www.uncitral.org/uncitral/en/uncitral\\_texts/sale\\_goods/1980CISG.html](http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG.html) [hereinafter UNCITRAL] ("[T]he CISG contributes significantly to introducing certainty in commercial exchanges and decreasing transaction costs.").

102. Van Alstine, *supra* note 100, at 9–10.

103. Flechtner, *supra* note 100.

104. Van Alstine, *supra* note 100, at 10.

offer must have been made . . . after the relevant states became parties to the Convention.”<sup>105</sup>

The CISG deals with the formation of a contract, the obligations of the buyer and seller of a contract, and the rules regarding remedies for breach of contract.<sup>106</sup> The CISG’s interpretive rules are found in Article 8 of the Convention, which apply to both contractual terms and interpreting the conduct surrounding contract formation.<sup>107</sup> According to Article 8(1), the “statements made by and other conduct of a party are to be interpreted according to [her] intent where the other party knew or could not have been unaware what that intent was.”<sup>108</sup> This interpretive language is subjective, focusing on the actual intent of the speaker or actor.<sup>109</sup> If the subjective standard of Article 8(1) does not apply, Article 8(2) stipulates that the ambiguous statement is to be interpreted “according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances.”<sup>110</sup>

## II. CULTURE

What is meant by culture? Generally, culture is defined as a set of values, beliefs, traditions, or customs, which serve to both identify and unite a group.<sup>111</sup> Culture develops through repeated interactions among individuals within a social group; this process produces norms that ultimately gain the force of tradition, forming a “community with a common identity.”<sup>112</sup> Interactions within the group become “self-reinforcing,” both determining the nature of future interactions and forming a “feedback loop” with behavior—culture both shapes and is shaped by group conduct.<sup>113</sup> Culture is neither

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105. *Id.*

106. UNCITRAL, *supra* note 101 (“Obligations of the sellers include delivering goods in conformity with the quantity and quality stipulated in the contract, as well as related documents, and transferring the property in the goods. Obligations of the buyer include payment of the price and taking delivery of the goods.”).

107. U.N. Convention on Contracts for the International Sale of Goods (*open for signature*) Apr. 11, 1980, 1487 U.N.T.S. 59 (entered into force Jan. 1, 1988) [hereinafter CISG].

108. *Id.*

109. Van Alstine, *supra* note 100, at 43 (noting this is a “substantial victory over the rigid objective tests of classical contract law . . .”).

110. *Id.* at 44; CISG, *supra* note 107.

111. Florestal, *supra* note 12, at 50 (citing DAVID THROSBY, *ECONOMICS AND CULTURE* 63 (2001)); ROGER COTTERRELL, *LAW, CULTURE AND SOCIETY: LEGAL IDEAS IN THE MIRROR OF SOCIAL THEORY* 102 (2006).

112. JOSHUA KARTON, *THE CULTURE OF INTERNATIONAL ARBITRATION AND THE EVOLUTION OF CONTRACT LAW* 19 (2013).

113. *Id.*

self-contained nor rigid, but remains in a constant state of flux, continually in the “dynamic practice of making and remaking meanings that are provisional, shifting, and partial.”<sup>114</sup> Cultural contact zones are inevitable and lead to the transition and influence of alternate ideas;<sup>115</sup> “[o]ne culture seeps into the next, and the experience transforms the two into something wholly new and different.”<sup>116</sup> Furthermore, cultures are overlapping: all persons participate in multiple cultures at once, particularly due to forces such as education or migration.<sup>117</sup> This leads some to conclude that culture is not necessarily a form of unity, but rather a fragmented assortment of influences, experiences, understandings, environments, and expectations.<sup>118</sup>

The concept of culture does not remove individual agency.<sup>119</sup> Cultural actors still retain the ability to self-deliberate and make moral choices, and often individuals within groups disagree about their expression of cultural values—people “offend each other, wrong each other, misunderstand each other, exert power over each other, and leverage the tensions and ambiguities in cultural norms in order to push for changes in those norms.”<sup>120</sup> Cultural conflict encompasses disagreement both between and within communities.

The concept of “culture” breeds various levels of analysis and critique. Culture is often described as indeterminate.<sup>121</sup> The term may embrace “a too indefinite and disparate range of phenomena,” including values, beliefs and traditions.<sup>122</sup> Furthermore, culture may be impressionistic, since it lacks analytical and empirical precision—it may be difficult to ascribe specific behaviors to the effect of culture generally, rather than other factors, such as economic self-interest.<sup>123</sup>

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114. Karen Knop et. al., *From Multiculturalism to Technique: Feminism, Culture, and the Conflict of Laws Style*, 64 STAN. L. REV. 589, 602 (2012); Florestal, *supra* note 12, at 50.

115. Knop, *supra* note 114.

116. Florestal, *supra* note 12, at 50.

117. Annelise Riles, *Cultural Conflicts*, 71 LAW & CONTEMP. PROBS. 273, 285 (2008).

118. COTTERRELL, *supra* note 111, at 104.

119. Riles, *supra* note 117. *But see* KARTON, *supra* note 112, at 20 (“[Culture] operates prior to—and therefore frequently obviates—deliberate decision-making.”).

120. Riles, *supra* note 117, at 285.

121. KARTON, *supra* note 112, at 20.

122. COTTERRELL, *supra* note 111, at 97; KARTON, *supra* note 112, at 20–21 (describing that culture “amalgamates a ‘variety of activities and attributes into one common bundle’ and thereby may confuse different factors affecting behaviour or disguise the differences between them”).

123. KARTON, *supra* note 112, at 21.



To reduce the vagueness and indeterminacy often associated with “culture,” the concept should be broken down into distinct components and abstract levels of community.<sup>124</sup> First, culture embraces tradition—these social relations may be based on “common language, or common territorial location, inherited environment or customs, or common historical experience.”<sup>125</sup> An example might include the tradition of celebrating Thanksgiving in the United States. Second, culture is a matter of shared beliefs, morals, and values—a particular way of understanding or worldview.<sup>126</sup> Religious activities exemplify this type of cultural community—faith often varies among a particular church, mosque, synagogue, or other place of worship and meeting.<sup>127</sup> Third, culture can be expressed as an “affective” or emotional bond within a community.<sup>128</sup> This is the most abstract subset of culture, which is “diffuse, not rationally explicable or capable of being conclusively related to particular phenomena, but often evoked symbolically (for example, through cuisine, landscape, buildings, works of art, items of popular culture, experience of particular events).”<sup>129</sup> The fourth type of community embraces “instrumental” relations—“social relations based purely on the pursuit of common or convergent purposes (often but not exclusively economic).”<sup>130</sup> For example, a firm or industry has a “business culture” because the individuals “share a common understanding on particular issues.”<sup>131</sup> Culture is often seen as possessing an enduring character, but “instrumental” relations survive only until the common purpose has been achieved.<sup>132</sup> When culture is dismantled into these four types of communities—traditional, belief-based, affective, and instrumental—analyzing culture becomes more manageable.

Cultural conflict encompasses disagreement both between and within these communities, especially in our changing, globalized environment. Globalization demonstrates a progression toward transnational uniformity in economic and social arrangements, institutions, and values.<sup>133</sup>

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124. COTTERRELL, *supra* note 111, at 97, 105.

125. *Id.* at 104.

126. *Id.*

127. Florestal, *supra* note 12, at 50.

128. COTTERRELL, *supra* note 111, at 104.

129. *Id.*

130. *Id.*

131. Florestal, *supra* note 12, at 50.

132. COTTERRELL, *supra* note 111, at 104–05 (“[G]lobalization is usually associated with the internationalization and transnationalization of instrumental (mainly economic) relations.”).

133. *Id.* at 150–51.

The Internet and improvements in transportation have enabled participation in international commerce for economic players who would have, in the past, been prevented from doing so for a lack of resources. . . . As technology enables even small dollar transactions to occur across international boundaries, *the potential for conflict due to language or cultural misunderstandings grows.*<sup>134</sup>

However, there is also a counter-tendency toward localization, which seeks space for culture to flourish.<sup>135</sup> Localization emphasizes “protection, assertion or facilitation of diversity, difference, independence, separation or autonomy of groups, nations or territories.”<sup>136</sup> Tension exists between seeking similarity through globalization and appreciating difference through localization; however, both movements provide space for cultural conflict and misunderstandings, particularly when a community attempts to appreciate its difference alongside its search for uniformity.<sup>137</sup>

#### A. *The Expansive Role of Culture in the Legal Realm*

“‘[L]egal invocations of ‘culture’ too often fail to understand culture as imbricated with the material or the political, but rather, present culture as if it is somehow cordoned off from economic and political concerns.’ Law and culture are intertwined; indeed, law *is* culture.”<sup>138</sup>

Guided by Roger Cotterrell’s foci of cultural-legal inquiries,<sup>139</sup> this Note explores the interconnection of culture and law. The relationship between culture and law is prominent, yet often involves contradictory themes: dependence, recognition, competition, dominance, projection, and stewardship.

Law often *depends* on culture, and developments in comparative law provide an interesting case study of this theme.<sup>140</sup> Comparative law is essentially the study of foreign law – a comparison of different legal systems of the world, rather than a field of substantive

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134. Nancy S. Kim, *Evolving Business and Social Norms and Interpretation Rules: The Need for a Dynamic Approach to Contract Disputes*, 84 NEB. L. REV. 506, 531–32 (2005) (emphasis added).

135. COTTERRELL, *supra* note 111, at 151.

136. *Id.*

137. *Id.* at 151–52.

138. Florestal, *supra* note 12, at 50 (quoting Leti Volpp, *Migrating Identities: On Labor, Culture, and Law*, 27 N.C. J. INT’L L. & COM. REG. 507, 513 (2002)).

139. COTTERRELL, *supra* note 112, at 97–108.

140. *Id.* at 98.

law.<sup>141</sup> The study of other legal systems has gained relevance during economic globalization, as it allows for a deeper understanding of diverse legal systems, which contributes not only to domestic legal improvement, but also to the unification of legal systems.<sup>142</sup> International human rights law and adjudication, particularly demonstrated through the International Court of Justice, provides an example of transnational legal unification. Comparative law often views the world through the lens of “coexisting legal cultures,” determining “how far law is ‘rooted’ in, and how far it can ‘fly free’ of, culture . . . .”<sup>143</sup> Comparatists have advocated for cultural immersion to best define and understand foreign law, an approach that “travels from the inside of a foreign legal culture’s many sources, from its rich, inchoate depths, to the outer, manifest level of the law.”<sup>144</sup> Understanding cultural subtext becomes key to decoding the manifest level of the law.<sup>145</sup>

Law may *recognize, or fail to recognize, culture*.<sup>146</sup> The law strives to provide equal treatment of similar cases via consistently applied law; therefore, tension arises when differentiated social groups, potentially associated with common language, homeland, or history, ask for their claims and interests to be recognized.<sup>147</sup> “[I]f law cannot recognize cultural variation or differentiation in any significant way, but assumes cultural uniformity within its jurisdiction,” cultural variation may be necessarily invisible to legal doctrine.<sup>148</sup> In criminal law, however, culture is often considered and recognized.<sup>149</sup> For example, cultural defense encompasses the “use of social customs and beliefs to explain . . . the behaviour of a defendant,” raising either justification for the criminal act or an excuse from criminal liabil-

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141. *Comparative Law*, NEW WORLD ENCYCLOPEDIA, [http://www.newworldencyclopedia.org/entry/Comparative\\_law](http://www.newworldencyclopedia.org/entry/Comparative_law) (last modified June 11, 2013).

142. *Id.*

143. COTTERRELL, *supra* note 111, at 98; Kim, *supra* note 134, at 569 n.289 (quoting Mathias Reimann, *The Progress and Failure of Comparative Law in the Second Half of the Twentieth Century*, 50 AM. J. COMP. L. 671, 677–79 (2002)).

144. Vivian Grosswald Curran, *Cultural Immersion, Difference and Categories in U.S. Comparative Law*, 46 AM. J. COMP. L. 43, 60 (1998).

145. *Id.*; see COTTERRELL, *supra* note 111, at 98.

146. COTTERRELL, *supra* note 111, at 98.

147. *Id.*

148. *Id.* at 98–99 (posing questions such as, “But should culture be invisible? Conversely, should it become a legal concept? What precise meaning can be given to the idea of culture if it is to assume an enhanced position in mainstream legal and political thought?”).

149. *Id.* at 99.

ity.<sup>150</sup> The court remains apprehensive to recognize culture, however, because the defense “seeks to locate ‘reasonableness’ in cultural understandings that may be entirely unreasonable from law’s usual standpoints.”<sup>151</sup>

After culture is brought explicitly into legal interpretation, there becomes a demand for differential cultural interpretation of law.<sup>152</sup> This issue concerns “*law as an object of cultural competition.*”<sup>153</sup> *United States v. Jarvison*, decided in 2005, provides an interesting case study of this issue.<sup>154</sup> The U.S. government prosecuted Ben Jarvison, a seventy-seven-year-old Navajo, for allegedly sexually abusing his granddaughter.<sup>155</sup> The U.S. government sought to compel the testimony of Esther Jarvison, an eighty-five-year-old Navajo woman, who allegedly saw some of the abuse.<sup>156</sup> Esther refused to testify, claiming that she was Ben’s wife and hence could not be compelled to testify under U.S. spousal privilege.<sup>157</sup> Navajo records were inconclusive on the couple’s marriage; however, they contended they were married by a traditional medicine man in 1953.<sup>158</sup> The U.S. government contended that this marriage was a “sham,” invented solely for the purpose of avoiding testimony.<sup>159</sup> The conflicting issue was “what law would apply to the question of a marriage between two Navajo tribal members who live completely within the boundaries of the Navajo Reservation.”<sup>160</sup>

The cultural conflicts in *Jarvison* are complex. At first glance, it seems that the dominant culture is pitted against a minority culture; the eradication of child abuse “turns on doing damage to the legitimacy of another revered cultural institution, Navajo marriage.”<sup>161</sup> However, the *Jarvison* case also reveals a conflict within the dominant culture. While the family is “a sphere of autonomy and privacy,” sex occurring within the family should be between proper fami-

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150. *Id.* But see Riles, *supra* note 117, at 285 (“Culture cannot serve as a straightforward explanatory tool in that way.”).

151. COTTERRELL, *supra* note 111, at 106.

152. *Id.* at 100.

153. *Id.*

154. 409 F.3d 1221, 1222 (10th Cir. 2005); Riles, *supra* note 117, at 282 (utilizing *Jarvison* as a cultural conflicts case study).

155. *Jarvison*, 409 F.3d at 1222.

156. *Id.*

157. *Id.* at 1223.

158. *Id.* at 1223, 1229.

159. *Id.* at 1224.

160. *Id.* at 1225.

161. Riles, *supra* note 117, at 286.

ly members according to normative cultural standards.<sup>162</sup> Thus, the government argued that, should the court find that Esther and Ben were properly married, there should be an exception to the spousal privilege rule.<sup>163</sup> The Navajo conflicts were equally present:

Esther . . . weaves together the values of two cultural worlds and hence claims a foot in both, and a right to mix and match: on the one hand, she appeals to Navajo understandings of marriage to argue that she is married to Ben, while on the other hand, she argues for the application of federal rules governing interspousal testimonial immunity.<sup>164</sup>

The court concluded that the couple did have a valid marriage, and furthermore, it rejected the government's request to create a new exception to the spousal testimonial privilege for child abuse cases.<sup>165</sup> This raises the question: which cultural contexts are treated as significant when they are in conflict, and does the answer depend upon the area of law in question?<sup>166</sup>

The law also often *dominates* culture, through "describing a larger culture in authoritative settings such as legal documents and judicial decisions."<sup>167</sup> The law has the power to shape the meaning of social relationships, institutions, personal identity, expectations, and responsibilities.<sup>168</sup> In *Mashpee Tribe v. Town of Mashpee*, the district court of Massachusetts determined whether the Mashpee people were a "tribe."<sup>169</sup> Holding that the group did not have standing as a Native American tribe,<sup>170</sup> the court inevitably defined the group's collective identity with "dramatic consequences."<sup>171</sup> The court incorporated perceptions of race, community, leadership, and territory that were "entirely alien to Mashpee culture."<sup>172</sup> *Mashpee*, and even the *Jarvison* case, which provided a cultural description and

162. *Id.* at 286–87.

163. *Jarvison*, 409 F.3d at 1231.

164. Riles, *supra* note 117, at 287.

165. *Jarvison*, 409 F.3d at 1231–32.

166. See COTTERRELL, *supra* note 111, at 100.

167. Riles, *supra* note 117, at 288 (describing how the *Jarvison* case unwittingly provides a cultural description and statement concerning valid marriage under Navajo law); see COTTERRELL, *supra* note 111, at 99.

168. COTTERRELL, *supra* note 111, at 99.

169. 447 F. Supp. 940, 943 (D. Mass. 1978) *aff'd sub nom.* *Mashpee Tribe v. New Seabury Corp.*, 592 F.2d 575 (1st Cir. 1979).

170. *Id.* at 950.

171. COTTERRELL, *supra* note 111, at 99.

172. *Id.* (internal citations omitted).

statement concerning valid marriage under Navajo law, demonstrates how law dominates and confers cultural meanings.

Law operates as a *popular cultural projection*, particularly within the realm of “film, television, theatre, novels, magazines, newspapers, or advertising.”<sup>173</sup> Research of cultural projection is useful to determine popular consciousness surrounding the law. There are three famous general orientations toward law. Subjects can be “‘before the law,’ awed by its majesty and convinced of its legitimacy.”<sup>174</sup> Second, subjects can be “‘with the law,’ utilizing it strategically when it favors them and generally understanding law to be like a game.”<sup>175</sup> Third, subjects can be “‘against the law,’ cynical about its authority and distrustful of its implementation.”<sup>176</sup> Lastly, law often operates as a *steward* of culture.<sup>177</sup> This may involve the protection and preservation of historic sites or controlling the exportation of artwork.<sup>178</sup>

### B. Connecting Culture with Contracts

“[C]ommunication is doomed to imperfection. Perfect communication by means of human language would require that all interlocutors have identical cultural backgrounds and physical makeups.”<sup>179</sup>

Considering the interplay between culture and law, it becomes evident that culture plays a central role in contract law. The successful application of the “objective” approach to contract formation and interpretation depends on four implicit assumptions.<sup>180</sup> First, the approach assumes that contracting parties had actual or constructive knowledge of the “contents of contract law rules on the formation of contracts at the time that they made their contract.”<sup>181</sup> Second, an assumption is made that contract formation rules provide “clear and unequivocal solutions to *all* possible factual situations in which a claim is made regarding the making of a contract.”<sup>182</sup> Third is the assumption that when the contracting parties gave meaning to

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173. *Id.* at 101.

174. Laura Beth Nielsen, *Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment*, 34 *LAW & SOC'Y REV.* 1055, 1060 (2000).

175. *Id.*

176. *Id.*

177. COTTERRELL, *supra* note 111, at 102.

178. *Id.*

179. Curran, *supra* note 144, at 50.

180. Mautner, *supra* note 12, at 562.

181. *Id.*

182. *Id.*

the contents of their contract, they “shared the same cultural” environment or viewpoint.<sup>183</sup> Fourth, the assumption is made that the shared cultural viewpoint of the parties “provides an unequivocal means of attributing meaning to the contents of contracts.”<sup>184</sup> Overall, contract doctrine often assumes that contracting parties are culturally equals – that they are equally situated economically, linguistically, experientially, and ethically – when entering into a contract.<sup>185</sup> Rather, contracting parties have varying degrees of experience and bargaining power that not only affects their understandings of the nature of their contractual relationship, but also plays a role in each party’s interpretation of the contract.<sup>186</sup>

### III. ANALYSIS

#### *A. Contract Ambiguities: The Law’s Failure to Recognize Culture*

The numerous rules and customs associated with contract interpretation, particularly those in relation to disambiguating terms, often work to the disadvantage of the party invoking a perspective clothed in diverse cultural understanding. When encountering dissimilar cultural influences in common-law contract ambiguities, the courts apply an objective, “reasonable person” standard, which inevitably dilutes cultural variance into a westernized and often short-sighted contract interpretation.

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183. *Id.*; see also John M. Conley, *Of Contract, Culture, and the Code: Judge Easterbrook and the Cheyenne Indians*, 16 *TOURO L. REV.* 1053, 1061 (2000), who writes:

The meeting of the minds, classical contract law’s core concept, is both fascinating and problematic to anthropologists. ‘Minds’ are themselves cultural constructs. The idea that these cultural constructs can ‘meet’ assumes a number of things, including sufficient shared knowledge to permit communication, shared communication norms . . . a mutually consistent sense of the other . . . and a shared understanding of the cultural meeting place . . .

184. Mautner, *supra* note 12, at 562.

185. Kim, *supra* note 134, at 509. Many contract law doctrines are premised on mutual cultural understandings for determining the rights and obligations of contracting parties. *Id.* For example, in *Hadley v. Baxendale*, the court determined that when one party breaches a contract, the other party may recover all damages that are reasonably foreseeable to both parties at the time of making the contract. *Hadley v. Baxendale* (1854) 156 Eng. Rep. 145; 9 Exch. Div. 341. Applying Cotterrell’s foci of cultural-legal inquiries, this rule demonstrates contract law’s dependence on culture, as it assumes the two contracting parties acted within the same cultural context and share the same cultural knowledge as to reasonably foreseeable consequences of a particular breach of contract. See Mautner, *supra* note 12, at 559–60; see COTTERRELL, *supra* note 111, at 98.

186. COTTERRELL, *supra* note 111, at 98.

In *Serradell v. Hartford Accident & Indemnity Co.*, Serradell, a Native Alaskan, attempted to recover benefits from his companion's death, but the insurance company denied his claim, stating that his companion, Bertha Tikiun, was not an eligible dependent under the policy because they were never legally married.<sup>187</sup> Chief Justice Rabinowitz wrote: "Our precedents establish that insurance contracts are to be constructed so as to provide that coverage which a layperson would have reasonably expected from a lay interpretation of the policy terms."<sup>188</sup> After determining the term "spouse" was not ambiguous, but intended to refer to a legal relationship, Rabinowitz concluded that no layperson could expect the policy to be reasonably interpreted as providing coverage for Tikiun's death.<sup>189</sup>

The Certificate of Insurance policy stated: "*Spouse* means your spouse unless: (a) you and your spouse are legally separated or divorced."<sup>190</sup> Although the policy definition of "spouse" excludes cases in which a couple had legally separated or divorced, this definition does not explicitly state that "spouse" means a legally binding marriage.<sup>191</sup> Logically, if "spouse means your spouse" unless it is not under the condition of legal separation, then one could infer that a spousal relationship either requires legal marriage or merely the absence of legal separation. Serradell may have been reasonable in assuming, according to norms established in his traditional and affective-based culture, that Bertha Tikiun would be regarded as his "spouse" for the purpose of the insurance policy.

This cultural conflict leads to the term "spouse" as being susceptible of two meanings, and thus potentially ambiguous; yet is the term in the context of an insurance policy *reasonably* susceptible of two meanings?<sup>192</sup> Not according to the court: the objective, "reasonable person" standard, or the invocation of the "layperson," dilutes cultural variance into a westernized and shortsighted contract interpretation.<sup>193</sup>

Contract law both dominates and fails to recognize culture.<sup>194</sup> The *Serradell* court's contractual interpretation legally defined Serradell's

187. 843 P.2d 639, 640 (Alaska 1992).

188. *Id.* at 641.

189. *Id.*

190. *Id.*

191. *Id.* ("[T]he certificate provides: "*Spouse* means your spouse . . .").

192. See HILLMAN, *supra* note 15, at 272.

193. See Kim, *supra* note 134, at 509 ("[T]hese numerous rules of interpretation work to the disadvantage of the party with fewer resources, particularly when that party is a member of a cultural or language minority.").

194. See COTTERRELL, *supra* note 111, at 99.



relationship as non-spousal, providing a cultural description and statement regarding the authority of his Native Alaskan relationship.<sup>195</sup> Terms operate in a context in which conflicts are inevitable, however the dominant culture then uses those very conflicts to delegitimize the cultural minority's interpretation.<sup>196</sup> The court subjected Serradell to a narrow meaning of "spouse," failing to recognize the impact, depth, and ties to both his traditional and affective cultural relations.<sup>197</sup> "[T]he court denied Serradell the contractual choice made by him (as well as the fruits of the insurance premiums paid by him to Hartford)."<sup>198</sup>

Cultural conflicts not only arise between parties of different cultural communities, but also between parties involved in the same cultural community. The *White City* case, involving Panera Bread's conflict with White City Shopping Center concerning its lease with Qdoba, provides an interesting case study, as both parties are arguably corporate, "instrumental" communities, whose initial contracting goals involved a convergence of common purpose.<sup>199</sup> However, beneath the surface of their contract ambiguity dispute laid a deceptively subtle cultural conflict. The term "sandwiches" is not ambiguous, referring simply to "two thin pieces of bread, usually buttered, with a thin layer (as of meat, cheese, or savory mixture) spread between them."<sup>200</sup> Thus, according to the court, a sandwich does not include a burrito.<sup>201</sup>

America is a large "melting pot," housing immigrants from around the world.<sup>202</sup> While many of these cultures—such as Greek, Irish, or Italian—have assimilated into a uniquely American experience, others have experienced a different path.<sup>203</sup> "Groups such as

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195. The *Serradell* case provides an interesting contrast with the *Jarvison* case, above. The *Jarvison* court found a couple to have a valid marriage under Navajo law. *United States v. Jarvison*, 409 F.3d 1221, 1231-32 (10th Cir. 2005). However, the *Jarvison* case involved the recognition of interspousal immunity, a crucial United States privilege, whereas the *Serradell* case merely attempted to engage in contract interpretation between two parties. *Compare id.*, with *Serradell*, 843 P.2d at 639.

196. JENNIFER A. HAMILTON, *INDIGENEITY IN THE COURTROOM: LAW, CULTURE, AND THE PRODUCTION OF DIFFERENCE IN NORTH AMERICAN COURTS* 21 (2009).

197. See COTTERRELL, *supra* note 111, at 104.

198. Mautner, *supra* note 12, at 572.

199. See COTTERRELL, *supra* note 111, at 104; see *supra* Part I.

200. *White City Shopping Ctr., LP v. PR Rest., LLC*, No. 2006196313, 2006 WL 3292641, at \*3 (Mass. Super. Ct. Oct. 31, 2006) (quoting MERRIAM-WEBSTER DICTIONARY (2002)).

201. *Id.*

202. Florestal, *supra* note 12, at 52.

203. *Id.*

Mexicans integrated with their status as ‘the other’ intact.”<sup>204</sup> America is “a fraught balance of identity – to take and be of an other, yet define yourself by contrast to that other.”<sup>205</sup> Neither the sandwich nor the burrito was invented in America, yet both have become quintessentially American, and we feel possessive over both.<sup>206</sup> Yet, in the realm of “sandwich taxonomy,” we define our sandwiches both through what they are and through what they are not, finding an identity in both recognition and rejection.<sup>207</sup> “The sandwich is unhesitatingly American, while the burrito is perceived as a hybrid Tex-Mex concoction . . . . It is only when the burrito is appropriated and repackaged as a “wrap,” does it attain All-American status.”<sup>208</sup>

Contract law fails to recognize culture. A court’s role in the interpretation of contracts is to seek meaning, often from conflicting and competing alternatives.<sup>209</sup> Contract interpretation has evolved into an objective process, leading courts to adopt the notions of “reasonableness” and “common understanding as a guidepost” in interpreting ambiguities<sup>210</sup> – “reasonableness,” however, necessarily includes multiple abstract layers of community and culture, including traditions, beliefs, emotional bonds, and common goals.<sup>211</sup> In *White City* and *Serradell*, the judges’ common understandings of the words ‘spouse’ and ‘sandwich’ embody all of the underlying preconceptions and misconceptions that they hold concerning culture and its constituent parts.

Quick decision-making regarding the lack of ambiguity in contracts relates to the imposition of common sense and the lack of cultural reflexivity surrounding its use.<sup>212</sup> Common sense is not an abstract concept, “but rather, a highly structured method through which the mind processes and organizes certain types of lived expe-

204. *Id.* at 52–53.

205. Jeb Lund, *Is a hot dog a sandwich? An extended meditation on the nature of America*, THE GUARDIAN (July 3, 2014), <http://www.theguardian.com/commentisfree/2014/jul/03/is-a-hot-dog-a-sandwich-nature-america>.

206. Florestal, *supra* note 12, at 53.

207. Lund, *supra* note 205.

208. Florestal, *supra* note 12, at 53; see also Lund, *supra* note 205 (“This is the strange impulse of our ‘exceptionalism’, to always borrow something and modify it slightly, then declare the end result definitively, uniquely American.”).

209. Florestal, *supra* note 12, at 57.

210. Florestal, *supra* note 12, at 57.

211. See COTTERRELL, *supra* note 111, at 104.

212. See *White City Shopping Ctr., LP v. PR Rest., LLC*, No. 2006196313, 2006 WL 3292641, at \*3 (Mass. Super. Ct. Oct. 31, 2006) (“Under this definition and as dictated by common sense, this court finds that the term “sandwich” is not commonly understood to include burritos . . . .”) (emphasis added).

rience, and which is deeply rooted in factors such as . . . the repetitive nature of many of our daily interactions with the physical and social world.”<sup>213</sup> This biased and heavily cultured common sense often moves to fill the void created by ambiguity, as common sense is uncomfortable with “oscillating” meanings.<sup>214</sup> In *Serradell*, for example, the insurance company’s expectations of “spouse” accorded with common sense—legal marriage—while Serradell harbored “deviant expectations,”<sup>215</sup>—recovering death benefits under a guise of ephemeral culture—thus it was only natural that the insurance company won.<sup>216</sup> “[A]ccording to the court, the law’s presumptions about contractual expectations reflect not only the result favored by the law, but also the natural tendency of most people.”<sup>217</sup>

*B. An Interdisciplinary Approach: The Use of Cultural Extrinsic Evidence*

“[C]ultures have a certain authentic legitimacy—one wants to protect and give expression to plural cultures—but the tensions among these are also potentially dangerous and need to be managed. The task of law, then, is to develop . . . procedural . . . ‘frameworks’—to engineer practical tools—for managing culture.”<sup>218</sup>

As the potential for conflict due to linguistic or cultural misunderstandings grows, an understanding and recognition of the parties’ cultural norms, particularly as a legal concept, is essential to understand the parties’ contractual intent when disambiguating contract terms. In order to accomplish this goal, courts should abandon the

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213. Beverly Horsburgh & Andrew Cappel, *Cognition and Common Sense in Contract Law*, 16 *TOURO L. REV.* 1091, 1092–93 (2000); see also Chris Guthrie et. al., *Blinking on the Bench: How Judges Decide Cases*, 93 *CORNELL L. REV.* 1, 2 (2007) (“For the realists, the judge ‘decides by feeling, and not by judgment; by ‘hunching’ and not by ratiocination’ and later uses deliberative faculties ‘not only to justify that intuition to himself, but to make it pass muster.’”) (quoting Joseph C. Hutcheson, Jr., *The Judgment Intuitive: The Function of the “Hunch” in Judicial Decision*, 14 *CORNELL L.Q.* 274, 285 (1929)).

214. Lenora Ledwon, *Common Sense, Contracts, and Law and Literature: Why Lawyers Should Read Henry James*, 16 *TOURO L. REV.* 1065, 1077 (2000). “In the face of ambiguity, students will fall back on common sense explanations as to why one interpretation is preferable. Practitioners most typically will be interested in closing down texts, in hammering out unitary, common sense explanations. Judges, too, will prefer common sense interpretations to uncomfortable ambiguities.” *Id.* at 1088.

215. See Thomas Joo, *Common Sense and Contract Law: Fear of A Normative Planet?*, 16 *TOURO L. REV.* 1037, 1041 (2000) (discussing *Hill v. Gateway* and the court’s discussion of “sensible human behavior”).

216. *Serradell v. Hartford Accident & Indem. Co.*, 843 P.2d 639, 641 (Alaska 1992).

217. Joo, *supra* note 215, at 1041.

218. Riles, *supra* note 117, at 295.

traditional approach and fully adopt the modern approach to contract interpretation, which will allow for flexibility in considering extrinsic evidence. Furthermore, guidelines within the UCC and the CISG could provide a salient approach to introducing cultural evidence to tackle cultural conflicts arising during contract interpretation.

The traditional “four corners” approach to contract interpretation highlights the importance of the written contract, limits the admissibility of extrinsic evidence, and thus serves to disadvantage individuals or groups operating under a different cultural community. Although limiting the admissibility of extrinsic evidence while disambiguating a contract “may enhance the reliability of the evidence” or reduce the risk of opportunistic behavior, there are usually other ways to attain the same objective.<sup>219</sup> For example, the court may simply use the general rules of evidence.<sup>220</sup> The traditional approach assumes that “both parties share the same linguistic and cultural context, which is often by default assumed to be the majority language and culture,” therefore, the flexibility of introducing extrinsic evidence allows the court to take further consideration, and thus recognition, of culture.<sup>221</sup>

The constituent subsets of culture—traditional culture, belief-based culture, affective or emotional culture, and instrumental culture—“are not just ‘out there’ to be judicially discovered and adjudicated; rather, they are produced in the intersubjective experience of ‘collecting’ or describing them.”<sup>222</sup> The admission of cultural extrinsic evidence can be utilized in a similar way to the Uniform Commercial Code’s (UCC) trade usage, as any cultural community with “regularity of observance” as to “justify an expectation that it will be observed with respect to the transaction in question.”<sup>223</sup> This will be a project of dialogue, confrontation, and mutual learning, especially among sources of law and cultural identities.<sup>224</sup>

The CISG may also provide salient approaches to the judges considering whether to accept different components of cultural extrinsic

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219. Kim, *supra* note 134, at 567; see Kostritsky, *supra* note 47, at 44-48.

220. Kim, *supra* note 134, at 567.

221. *Id.*; Pac. Gas & Elec. Co. v. G. W. Thomas Drayage & Rigging Co., 442 P.2d 641, 644 (1968) (“A rule that would limit the determination of the meaning of a written instrument to its four-corners merely because it seems to the court to be clear and unambiguous, would either deny the relevance of the intention of the parties or presuppose a degree of verbal precision and stability our language has not attained.”).

222. Riles, *supra* note 117, at 296; see COTTERRELL, *supra* note 111, at 104.

223. U.C.C. § 1-303(c) (AM. LAW INST. & UNIF. LAW COMM’N 2016).

224. Riles, *supra* note 117, at 296.

evidence involved in conflicts over ambiguity.<sup>225</sup> According to Article 8(2) of CISG, “[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 same circumstances.”<sup>226</sup> This structure dilutes the objectivity behind the mere “reasonable person” standard; it asks the judge to appreciate cultural norms surrounding the opposing party, but through a recognizable structure. Furthermore, although this is a form of objective interpretation, Article 8(2) “does *not* impose a normative resolution[;]” it “does not call upon a court . . . to decide what is the ‘better,’ ‘preferred’ or even ‘normal’ interpretation of an ambiguous statement or action.”<sup>227</sup>

Some may argue that cultural extrinsic evidence is too subjective; indeed, the legal system is looking for an answer with clear limits. Yet “[t]he shift from a search for absolute meaning to a search for meaning in a social, cultural context does not in itself signify a shift away from searching for truth.”<sup>228</sup> Furthermore, this structure and perspective of cultural extrinsic evidence would allow for the fluidity of culture, without the need for formal intervention. This self-amending feature places an emphasis on “flexibility, its willingness to tolerate ambiguity, its elevation of the practical over the theoretical, and, above all, its respect for the cultural norms [in contract doctrine].”<sup>229</sup> This is where cultural anthropologists may step in, as either expert witnesses or neutral, court-appointed contributors. Although anthropologists often work in the grey area, they will be able to provide a holistic, cultural perspective surrounding ambiguous terms, leaving the judge to consider and recognize all the evidence prior to conforming, and potentially restricting it, to the legal standards guided by either the UCC or CISG.

Professional anthropologists may help demystify cultural communities in the courtroom.<sup>230</sup> Appointing anthropologists as expert witnesses poses many ethical difficulties in an adversarial system,

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225. U.N. Convention on Contracts For The International Sale of Goods (*open for signature*) Apr. 11, 1980, 1489 U.N.T.S. 59 (entered into force Jan. 1, 1988).

226. *Id.* art. 8, § (2) (emphasis added).

227. Van Alstine, *supra* note 100, at 44.

228. Curran, *supra* note 144, at 65.

229. See Conley, *supra* note 183, at 1059.

230. Anthropologists generally testify in cases concerning asylum, child custody, forensics, the nature of religious communities, or the cultural background of criminal defendants. Their most prominent role has been in cases involving Native Americans – often regarding land titles, the identification of social groupings, or the comprehension of treaties signed with the federal government.

particularly since each side is generally preoccupied with trial gamesmanship. As one anthropologist-lawyer wrote, “participation in legal cases has had a reciprocal effect on anthropological thinking.”<sup>231</sup> In the course of conducting research for a party with a vested interest in a particular result, anthropologists may be specifically recruited for a favorable perspective or tempted to skew their results, rather than an engage in an objective, self-reflexive process.

One option is to use court-appointed, neutral third party contributors, who may present cultural extrinsic evidence to both determine if ambiguity exists and resolve ambiguity; these anthropologists are unlikely to skew their findings in order to hold an allegiance to a particular side. Rule 706 of the Federal Rules of Evidence permits the appointment of expert witnesses, and several New York courts have used neutral medical experts chosen by external, professional societies.<sup>232</sup> However, there are several concerns present with court-appointed experts. For example, bias may actually increase—the expert would provide her or his single perspective, likely obtained via a particular school of anthropological thought, “cloaked with a false air of neutrality.”<sup>233</sup> Furthermore, repeat players may become entrenched in the system, creating a convenient panel of stagnant anthropologists, resistant to new or developing approaches.<sup>234</sup> Albeit more expensive, one option is to combine adverse and neutral expert witnesses—each side may advocate for a particular expert, yet the court may also present a special master or neutral expert, subject to the same rules of cross-examination.<sup>235</sup> Furthermore, anthropologists serving as expert witnesses may find an ethical code of conduct, or guidelines, useful to regulate the process of becoming and serving as an expert witness.

Anthropology contributes to a better understanding of law, as anthropologists “deal with cultures as integrated, working wholes . . . [which] has made possible the development of comprehensive theories of cultural dynamics embracing legal phenomena as but one as-

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231. Lawrence Rosen, *The Anthropologist as Expert Witness*, 79 AM. ANTHROPOLOGIST 555, 567 (1977).

232. *Id.* at 570.

233. *Id.*; see Dawn Fuller, *The Challenges for Anthropologists When They're the Expert in the Courtroom*, U. CIN. (Mar. 24, 2015, 7:50 AM), <http://www.uc.edu/news/NR.aspx?id=21378> (“In cultural anthropology, there’s the strict—as close to scientific methodology—camp, and then there are the critical or interpretive anthropologists who have their own way of collecting data.”) (quoting Leila Rodriguez, anthropologist and expert witness).

234. Rosen, *supra* note 231, at 571.

235. *Id.* at 570–71.

pect of culture.”<sup>236</sup> Furthermore, anthropology is a comparative science, gathering data from different levels of society.<sup>237</sup> The admission of cultural extrinsic evidence not only brings recognition of cultures into the courtroom, but also reminds judges that they are making a cultural choice within interpretation, particularly concerning the acceptability of each component of culture.

Judges should balance the external legal rule, the interpretation of the type of communal or cultural relationship involved, and the internal perceptions of that relationship by the participants.<sup>238</sup> Although the presence of ambiguity might place lawyers in an uncomfortable or uncertain position, they should learn to embrace the experience of removing a term from a culturally void vacuum.<sup>239</sup> In the *Serradell* case, a neutral third party anthropologist could provide their ethnographic evidence of the Yupik Eskimo’s objective recognition of traditional cultural community and furthermore provide guidance on the more abstract level of the party’s affective culture within the marriage itself. The cultural extrinsic evidence will aid the judge in determining, as a matter of law, whether a term such as “spouse” is ambiguous; the language used by the insurance company should be interpreted according to the understanding of *reasonable person of the same kind* as *Serradell*, under the same circumstances. In this instance, the court is both engaging with and recognizing culture through disambiguating contract terms—even if the court arrives at the same ultimate decision, judges are giving expression to the intentions of the parties.

## CONCLUSION

“[L]aw has typically assumed the uniformity of culture and so avoided considering it.”<sup>240</sup> When encountering dissimilar cultural influences in common-law contract ambiguities, the courts apply an objective, “reasonable person” standard, which inevitably dilutes cultural variance into a westernized and often shortsighted contract interpretation. After advocating for a “modern” jurisdictional approach to contract interpretation, this Note argues that guidelines within the UCC and the CISG could provide a salient approach to

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236. BORIS KOZOLCHYK, *COMPARATIVE COMMERCIAL CONTRACTS: LAW, CULTURE AND ECONOMIC DEVELOPMENT* 97 (2014) (internal quotations omitted).

237. *Id.*

238. See COTTERRELL, *supra* note 111, at 106 (internal quotations omitted).

239. Ledwon, *supra* note 214, at 1087–88 (“The experience of ambiguity is something lawyers rather desperately shun, [however, they] should instead appreciate, if not embrace it.”).

240. COTTERRELL, *supra* note 111, at 100.

introducing cultural evidence to tackle cultural conflicts arising during contract interpretation. Anthropologists are able to provide holistic insights into cultural communities, leaving the judge to balance the external “legal” rule, the interpretation of the type of communal or cultural relationship involved, and the “internal” perceptions of that relationship by the participants.