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Legal analysis of a contract for advanced logistics services

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Abstract

Purpose – This paper aims to study an advanced third/fourth party logistics (3/4PL) relationship in which the logistics service provider extended normal services by taking ownership of the goods during global distribution. It also aims to describe and analyze the approach to the legal rules a 3/4PL provider and its client company took in their contract, and present some remarks on the extent to which these contract solutions are legally sound.

Design/methodology/approach – A cross-functional (business law and logistics) approach is applied to a single case study. The main data source is a written contract, complemented by in-depth interviews with the 3/4PL's managing director. A legal analysis is made from four perspectives of non-mandatory and mandatory commercial legal rules.

Findings – Issues between the offered service, the legal function and reaction in contracts are pointed out, e.g. doubts regarding the legal risk of sales uncertainty, the ownership of goods, the product liability, and the roles as commercial agent and as freight forwarding agent. These kinds of advanced logistics services are not clearly handled, e.g. in the standard-form contracts for freight forwarding.

Research limitations/implications – The research is limited to one case and to some aspects of Swedish commercial law, but put in an international perspective. It adds a legal perspective to previous studies on 3/4PL contracts, and it contributes to legal research by its analysis of how firms in real life react to law in their contracts.

Practical implications – Practitioners can get inspiration from an innovative logistics service setup, but also realize what legal challenges to consider when they make their contracts. A tentative approach to aligning logistics' and lawyers' work is suggested.

Originality/value – The paper combines legal and logistics research, and description/analysis of a 3/4PL case where ownership of the goods is transferred to the service provider.

Keywords Third party logistics, Logistics service providers, Fourth party logistics, Legal analysis, Contract, Financial risk, Property law, Distribution management

Paper type Research paper

1. Introduction

It seems as though logistics practice is sometimes developing innovative arrangements without fully understanding their legal impact – which is why research trying to increase legal knowledge regarding logistics innovations could be fruitful. In general, the field of logistics and law has received little attention, and van Hoek *et al.* (2008), as well as Trent (2004), ask for more studies on the alignment between the logistics and legal functions. One such area where there seems to be a gap is between the latest developed practice of outsourcing of advanced logistics services (often referred to as third- or fourth-party logistics (3/4PL)) because traditional "transport law"

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and standard-form forwarding contracts do not always apply well here. Contemporary 3PL relations are often supported by formal contractual relations (Berglund *et al.*, 1999). The academic research on 3PL is recently summarized in four different reviews (Maloni and Carter, 2006; Selviaridis and Spring, 2007; Marasco, 2008; Lukassen and Wallenburg, 2010), and all of them pinpoint the contractual aspect of 3PL as an area that needs more research. Selviaridis and Spring (2007) suggest, e.g. more empirical research on contractual practices and design of 4PL contracting arrangements. The contract is important since it impacts both the design and management of a relationship, and also because of its function of resolving issues and disputes when they appear. If a dispute ends in court or in some other instance, the contract will be interpreted in combination with rules of the legal system. If the contract cannot be clearly interpreted, the post-contract transaction costs will increase.

For logisticians, practitioners as well as academics, it is important to understand that the legal systems have not only mandatory but also non-mandatory rules, hence implying both "restrictions" and "options" for economic actors in every step of the supply chain. Obviously, the mandatory rules should be taken into consideration when structuring the supply chains, since breaking mandatory rules may entail great expenditure. But it is also important for companies to adopt an approach to ("to react to") rules like non-mandatory rules, case law and soft law. These rules may come into effect if not directly contracted away and thus involve heavy expenses, but the non-mandatory rules may also be used in a proactive way to manage risks and create value. While law as a tool for regulation and dispute settlement has been well explored, it is not at all clear if and how economic actors use law in this proactive way. The emerging field of Law and Management Research focuses on the question of if and how economic actors use the options and restrictions provided by law to astutely optimize and create value (Bird, 2008; Bagley, 2010; Masson and Shariff, 2010; Siedel and Haapio, 2010).

With cross-functional starting points in Law and Management Research as well as Logistics Management Research, we intend to decrease the knowledge gap between legal and logistics practice. The purpose of this study is to describe and analyze what approach to legal rules an internationally active 3/4PL provider and its client company (CC) took in their contract (how they "reacted to" the legal rules), and to present some remarks on the extent to which these contract solutions were legally sound. Logistics practitioners will benefit from this because the case shows that developing legally sound contracts for innovative solutions is not easy, but an essential task for the business. Logistics academics will benefit as a legal perspective is added to logistics research in general and to 3/4PL contracts in particular, and research issues in this interface are identified.

This study will report from a single case study with a quite innovative and advanced configuration in which not only "material and information flow" activities are outsourced but also ownership (related to the third logistics flow of finance/payment). The 3/4PL provider assumes ownership of the goods as a "logistics service" in addition to more traditional 3/4PL services – without shouldering the role of a traditional distributor/wholesaler (Specht, 1988) who, e.g. can make decisions on assortment, pricing and to whom to sell.

After this follows a short overview of literature that has discussed 3/4PL and contracts. Section 3 gives reflections on method. Section 4 describes the case generally, before Section 5 addresses four different legal perspectives with the following structure:

first the case is more specifically described, followed by the legal analysis/review of the contract. In Section 6 the analysis is summarized and implications given. Section 7 concludes by discussing limitations and future research. In the appendix, a short legal framework for the different perspectives is presented.

2. Literature

This section will introduce terminology regarding advanced logistics services, and also provide summarized references to our framework of literature within logistics, law and other perspectives on contracts.

3PL is a phenomenon that is developing both in practice and in academia. In practice, there are many different service configurations labeled 3PL. In academia, the 3PL phenomenon (outsourcing of advanced and bundled logistics services, as well as management) has many different definitions (Selviaridis and Spring, 2007) used in parallel with minor differences. We will use the abbreviation 3/4PL to signal that we are discussing more advanced, non-asset-based and management-oriented outsourced logistics services. This incorporates not only 3PL but also terms such as lead logistics providers (LLP) and 4PL that are said by their advocates to represent more advanced, management-oriented, non-asset-based and information-based approaches. Van Hoek *et al.* (2001), e.g. define 4PL as "a supply chain service provider that participates rather in supply chain coordination than in supply chain operational services". Accenture defined 4PL already in 1996 as:

> [. . .] a supply chain integrator that assembles and manages the resources, capabilities, and technology of its own organization with those of complementary service providers to deliver a comprehensive supply chain solution.

Maloni and Carter (2006) argued that studies on logistics contracts are underrepresented, and Selviaridis and Spring (2007) suggested that more empirical research should be directed towards contractual practices and design, especially of 4PL/LLP contracting arrangements. So far some different aspects of 3/4PL contracts have been addressed (Table I).

Outsourcing logistical functions to the 3/4PL service providers means new risks, and in the contracts with the 3/4PL providers the outsourcing clients try to manage some of these risks. Contracts are tools not only for managing risks, but also for managing commitments and creating, allocating and protecting value, as well as

Aspects addressed	Sources
Provision buyers (logistics managers) found important to include in contracts	Boysen *et al.* (1999)
Contract design, based on agency theory	Logan (2000)
Contract importance in the purchasing process of advanced logistics services	Andersson and Norrman (2002)
Contracts as management tools in 3PL alliances	Pruth (2002)
Contracts in the dynamics of governing 3PL arrangements, based on multiple theoretical approaches	Halldórsson and Skjøtt-Larsen (2006)
Contracts in relational governance, as a basis for flexibility, ongoing dialogue and exchange adaptation	Selviaridis and Spring (2010)

Table I.
Aspects addressed by 3/4PL research on contracts

facilitating communication, coordination, motivation and control. Prevention of problems, dispute avoidance, and regulation are other goals achievable by contracts (Boysen *et al.*, 1999; Jüttner *et al.*, 2003; Andersson and Norrman, 2004).

When doing a traditional legal analysis, lawyers use legal material such as legal rules and court decisions to solve problems identified as legal. Each national legal system consists of numerous rules of different origin and nature, such as mandatory legal rules, default rules (i.e. non-mandatory legal rules, principles and implied terms), case law (i.e. precedents from appellate national courts and from, e.g. the European Court of Justice interpreting the law, and binding the future application of the law), soft law (i.e. codes of conduct, guidelines, recommendations, resolutions, conventions from, e.g. industry bodies and academic groups), usage and established practices. The legal systems imply both restrictions and options for economic actors in every step of the supply chain. A more detailed framework of legal perspectives useful for this case is given in the Appendix, while the main characteristics are summarized in Tables V-VIII in Section 5.

Academic literature on law has different perspectives (Table II). This research is based on a relatively new approach to legal matters, the Law and Management perspective and especially its concrete branch Proactive law. In comparison to traditional contract law, this perspective analyzes a business problem also with a legal approach before (*ex ante*) it ends up in court, where in traditional law it normally will first be categorized as a legal problem (*ex post*). We have found legal writers' interest in logistics limited, and although contractual arrangements define the legal frame of 3PL relations (Lukassen and Wallenburg, 2010), we have not found logistics research on the legal aspects of 3/4PL contracts.

On a more general level, the contract as a construct has been analyzed from many theoretical perspectives, among those economic organization and sociology (Table III). The perspective on contracts ranges from having them as the focused unit of analysis, to something doing more harm than benefit to a relation. Our research is studying

Approach	Aspects addressed	Sources
Law and Management perspective	If and how economic actors use the options and restrictions provided by law to astutely optimize and create value	Haavisto (2006), Argyres and Mayer (2007), Bagley (2008), Gilson *et al.* (2009), DiMatteo (2010) and Siedel and Haapio (2010)
Proactive law	An *ex ante* approach to contract and contract practice. It analyzes a business problem also with a legal approach before it ends up in court where it normally first will be categorized as a legal problem	Haapio (2008) and Siedel and Haapio (2011)
Traditional contract law	Takes an *ex post* courtroom view	Kramer (2010). Main general works are Appleby (2001), Halson (2001), McKendrick (2009) and Treitel (2007)
Legal writers on logistics	Could discuss legal issues of purchasing and transport, but normally not with a focus on 3/4PL providers	Augello (2004), Stöth (2004), Longdin (2005) and Cutler (2006)

Table II.
Aspects addressed by legal research approaches

Approach	Aspects addressed	Sources
Transaction cost economics and new institutional economics	Contracts' role for economic organization, e.g. in-house, by the market or as a hybrid. Contracts as a lens to study economic organization	Williamson (1981, 1991, 2002, 2008) Brousseau and Chaserant (2007) and Ménard (2004)
Sociological view on relational governance	Relational governance and formal contracts are substitutes. Contracts could have undesirable consequences for creating good relationships, and signal distrust	Macaulay (1963), Macneil (1974) and Dyer and Singh (1998)
Contracts and relational governance as complements	Contracts and relational governance are complements. Customized contracts narrow down the domain where the partners might be opportunistic, and specify contingencies, adaptive processes, and controls likely to mitigate opportunistic behavior	Poppo and Zenger (2002)

Table III.
Aspects addressed by some other perspectives of contract research

a contract of a hybrid organization (3/4PL) with the perspective that contracts and relational governance are complementary.

3. Method

This study is by nature interdisciplinary in examining the intersection of two domains (logistics and legal science) with different paradigms. Outsourcing of advanced logistics services is part of logistics practice, but could create challenges to legal practice. This study will bring legal knowledge to the logistics domain, as the main frame of reference (laws, rules and principles given in the Appendix), and the main analysis will be legal. From the logistics domain this study can be viewed as an explorative single case study. The relation and contract constituting the unit of analysis is between an advanced logistics service provider (LSP) and its CC, which is a worldwide company selling consumer products. The CC is also selling food, and is now recognized as one of Sweden's largest exporters of food. The food supply chain is studied here. According to Yin (1994), a single case is appropriate when a case represents something extreme or revelatory (not reported before). The fact that the LSP, as in this case, assumes ownership of the goods is quite unique in our experience. This makes this case revelatory, because contracts in most cases are classified as secret by the contracting partners and hence difficult to investigate. The case was selected due to its being unique, and also because we obtained access to the written contract. The data sources have mainly been an in-depth analysis of the written contract, but also tape-recorded interviews with the Managing Director of the LSP. Owing to the secrecy of the contract given to us, we agreed not to conduct interviews with the CC. The analysis focuses on mandatory and non-mandatory legal rules in Swedish commercial law, as the contractual relationship studied is in Sweden. Lack of basis for scientific generalization is a common concern regarding case study research, but a case study's goal is not to do statistical generalization but analytical (Yin, 1994). Case studies are used to build theories and hypotheses rather than testing them, e.g. by exploration of extreme or revelatory cases. However, to increase general understanding of how the learning from our single case

and its national legal framework could be used in other contexts, we make some references to corresponding rules in international law.

In legal science, the researcher can study her/his research objects in different ways (Lehrberg, 1996; Strömholm, 1996; Hellner, 2001). First, the object can be studied from an *ex ante* or an *ex post* perspective. *Ex ante* means "beforehand" or "before the event" and is based on prior assumptions about the future, on forecasts. *Ex post* means "afterward" or "after the event" and is based on knowledge of the past. *Ex post* is the dominant view in traditional legal science. Second, it is important to know if the approach in the legal study is non-normative or normative. In a non-normative study the goal is primarily to gather and in a descriptive way recapitulate facts and knowledge about the object of the study. In a normative approach, the target is not only to gather facts, but also to point out in what respects the object can be improved (Graver, 2007; Sandgren, 1999/2000a, b).

In this study the approach is *ex post* and both non-normative and normative. We analyze an existing contractual relationship between a LSP and its CC (*ex post*). We describe how goods and financial risks have been handled in a contract between two companies (non-normative) and we review the approach the companies take in the contract to the legal rules (how the companies "react to legal rules") (normative).

Although the two companies are internationally active, the contract prescribes that Swedish law shall govern the agreement, and that disputes not solved by mediation shall be finally settled by arbitration at the Arbitration Institute of the Stockholm Chamber of Commerce. Therefore, we limit the study to the legal conditions in Sweden. The study deals with some Swedish statutes and a Nordic (Sweden, Denmark, Norway, Finland) standard-form contract, leaving out both case law and soft law.

Four different legal perspectives/frameworks will be applied to the observed contract, corresponding to four sets of mandatory and non-mandatory rules (Table IV).

	Buyer, seller and ownership	Commercial agent	Freight forwarding agent	Product liability
Focus	The legal rules concerning the relationship between buyer and seller in the supply chain	The law relating to principals and commission agents	The legal rules of the freight forwarding agents' tasks and responsibilities	Rules for compensation for injuries and damages
Mandatory and non-mandatory rules in Swedish commercial law	The Sales of Goods Act (1990:931)	The Commission Act (2009:865)	NSAB 2000, General conditions of the Nordic Association of Freight Forwarders	The Product Liability Act (1992:18)
Corresponding rules in international commercial law	United Nations Convention on Contracts for the International Sales of Goods, The International Sale of Goods Act (1987:822)	Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments	The FIATA Model Rules for Freight Forwarding	Council Directive 85/374/EEC concerning liability for defective products

Table IV.
Four legal perspectives in the study

The selection of legal perspectives is the result of an abductive approach (Dubois and Gadde, 2002; Kovacs and Spens, 2005) and reflects the contents of the analyzed contract. These four perspectives are central for understanding legal rules.

The Swedish legal system is applicable only within Sweden's national borders. As soon as a cross-border relationship is present, international commercial law has to be considered. There are similarities among the different national legal systems, but there are two major groups: the common law system (e.g. the USA, the UK, Canada, Australia, and India) and the civil law system (e.g. continental Europe, the Nordic countries, South America, Russia, and most parts of Asia). Legal rules are becoming increasingly more international. To make the analysis of this paper somewhat more general, we state international rules for each perspective (Table IV).

4. The case and its inter-organizational structure

In the case studied, the advanced LSP and its CC form a complex inter-organizational structure to handle the CC's global supply chain of food products (e.g. consumer packaged delicatessen, sometimes perishable but in other cases with long shelf life). Previously, the CC used traditional wholesalers in this supply chain. It was on the CC's initiative that the inter-organizational structure between the companies was designed in the new way. The older contract between the companies was replaced with a new contract drawn up by the legal representative of the LSP. The LSP has no physical assets for transportation or other traditional logistical services. The company provides its services with advanced IT systems and with extensive expertise, and buys transportation and warehousing services from asset-based providers who especially have specialists on frozen and chilled goods. The transport from supplier to final customer could involve many different trucks and carriers and pass through different warehouses (Figure 1).

The LSP's services are not only to ensure that the physical handling of the goods is carried out (material flow) by asset-based providers. The LSP also carries out administrative services, such as order processing, billing and inventory control, as well as" analyzing buying patterns, counseling and dissemination of information

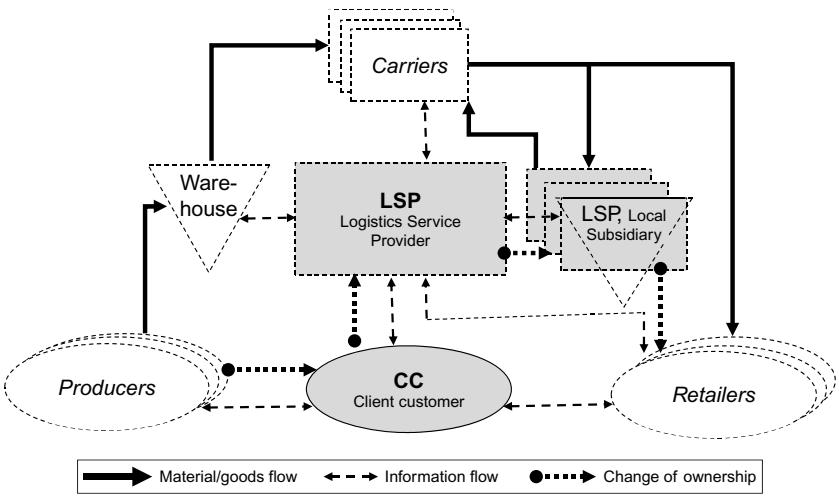

Figure 1.
Logistics flows and ownership changes

in the supply chain (information flow). In addition to this, the LSP assumes liability for the costs of management and the ownership of the transported goods. The LSP sells the goods to end-customers (retailers) at prices and on terms agreed upon by the CC and the end-customers. However, the LSP is never itself handling the goods physically; this is done by asset-based providers. (To simplify import and export for the customer, the ownership sometimes transfers from the LSP to its local subsidiaries and from them to the final end-customers). On some occasions, goods are put in local warehouses upon arrival in the country. The payment for the goods from the end-customers to the CC (financial flow) is administered by the LSP.

For all of this, there is a logistics contract between the LSP and the CC. The contract is the result of collaboration between representatives of both companies and is, from a legal perspective, a rather unstructured "business" text in English consisting of approximately 20 pages. The contract begins with various details of the logistics company and the customer, the logistics company's registration number and address. Then follow five different so-called "Whereas" phrases in which the parties speak about the purpose of the agreement between the companies. The first provision in the contract contains 22 different definitions used in the contract. This is followed by six guidelines for the interpretation of the contract. After that the substantive provisions (Nos. 2-40) follow, containing a vast variety, e.g. "Logistic Services", "Price terms, Payment and Capital neutrality model", "LSP's Obligations", "CC's Obligations" "Duration and Termination". The contract ends with the signing of the contract. To the contract are attached six appendices, e.g. the contract containing price lists, commodity producers and brief descriptions of the various services, and the Nordic Association of Freight Forwarders General Conditions 2000 ("NSAB 2000"). In addition, the LSP has transportation contracts with its asset-based carriers (Figure 2) and contracts with warehousing companies. Besides the LSP, the CC, the asset-based providers and the retailers, the organizational structure also includes companies producing the goods (producers) according to the CC's desires and demands.

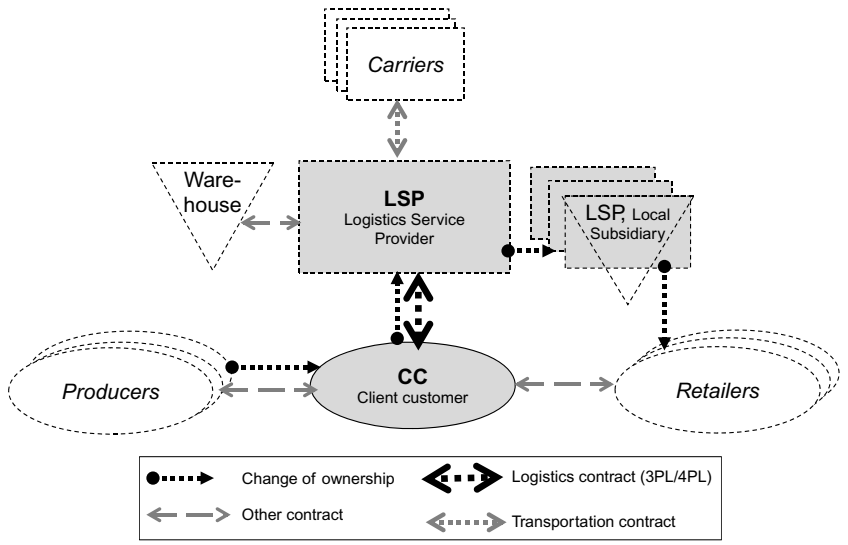

Figure 2.
Contracts and
ownership changes

As in the contracts between the CC and the retailers, the contracts between the CC and the producers set the terms and the conditions of the LSP's buying of the goods. These contracts are long-term supply agreements specifying the goods, setting the frames and the terms for suborders made with reference to the contracts.

With this structure, the CC tries to achieve different goals. That the LSP is taking over the title means that the capital for the goods is freed for the CC, which also gains a better overview of its costs for the material flow of goods from producers to retailers. All costs, except negotiations with producers and retailers and some minor costs for unsold goods, are assumed by the LSP, the carriers, the suppliers and the retailers. In addition, the CC achieves better functionality of the activities. The staff of the LSP is assumed to be better prepared to do an excellent job than the CC's own staff, as the threat of losing the CC as a client is a strong incentive to perform well.

5. Legal perspectives: description and review/analysis

The case will be further described related to each of the legal framework's four perspectives applied to the 3/4PL solution (buyer, seller and ownership; commercial agent; freight forwarding agent; products liability). For each perspective, the description is followed by a review that gives the legal analysis of the reactions taken. A summary of the legal framework that should help logisticians understand the legal basics is given in the Appendix.

5.1 Buyer, seller and ownership

5.1.1 Description. The goods in the case (packaged food and delicatessen), which are distributed to retailers worldwide, are of high value and much capital is tied up in them. Owning the goods involves great risks. Damages to the goods, or their loss, might lead to heavy losses for the company. The goods may rapidly lose quality and become unsalable. Changes in currency and interest rates might make the ownership more costly than intended. In addition, the company owning the goods cannot use the capital for investments elsewhere. To allocate responsibility for the risks of tying up capital in the goods, the CC and the LSP agree that the LSP will buy the goods from the CC, pay for and assume ownership of them. The LSP does not assume the traditional function of a wholesaler/distributor, as it is limited in creating assortment, setting price, choosing suppliers/customers, etc. (Specht, 1988). There is no intent in the case to let the LSP consume the purchased goods or sell them on the open market. The LSP agrees to sell the goods to buyers (retailers) included in the CC's group. The CC and the retailers have agreed upon the terms of these sales, and the LSP agrees to these terms. Economic consequences of risks connected to these sales, e.g. while the goods are transported or in storage, will, according to the contract between the LSP and the CC, be transferred to the latter company.

5.1.2 Legal review/analysis. The Sales of Goods Act and the International Sale of Goods Act, non-mandatory laws that could be contracted away, deal with ownership transfer, possession of the goods, and the partners' liabilities (see the Appendix and Table V). The reaction in the case to these non-mandatory rules is to transfer the legal risks of selling the goods to the retailers from the LSP to the CC. In the contract, the CC resumes all responsibility for all claims made by the retailers concerning goods' quality and/or quantity.

Main contents in legal rules The Sales of Goods Act, a non-mandatory law	Main approach (reactions) in the contract to the legal rules	Some remarks on the legal soundness of the solutions in the contract
Ownership is transferred by agreement and by possession of the goods The new owner gets all privileges to the goods, e.g. authority to transfer the title of the goods, to dispose of the goods, and to use the goods as collateral, as well as all responsibilities for the goods The seller of the goods is responsible towards the buyer Law deals with the transfer of ownership of goods, not with ownership "as a service"	The contract is made binding for other companies, not only the LSP and the CC Non-mandatory rules in law are replaced by clauses diminishing the LSP's responsibilities as a seller	An agreement is only binding for the parties taking part in it, not for third parties Unclear who has the legal risk of sales uncertainty

Table V.
Summary of buyer, seller and ownership

The LSP buys the goods from the CC, receives and pays for them. In legal terms, the goods are included in the LSP's property lot. In the event of the LSP going into foreclosure or bankruptcy, there is a risk that the company's creditors will claim the property to cover their claims against the company. If a debtor holds property, it is legally viewed as belonging to the debtor. The goods are in the LSP's possession, and thus presumed to belong to the company. The contract is also thought to be binding for parties outside it, but a contract is only binding for parties taking part in it.

5.2 Commercial agent

5.2.1 Description. In the contract, the LSP and the CC try to assure the goods from the creditors' claim by equipping their relationship with the characteristics of a commercial agent agreement. In the contract, the LSP agrees to sell the goods "in the LSP's name, on behalf of the CC" and using the CC's logotype on the invoices.

5.2.2 Legal review/analysis. The Commission Act regulates the relationship by a commercial agent who receives, e.g. goods from a principal to sell in his/her name, and where the agent gets compensated for this. Some parts of the act are mandatory, others not. The act deals with ownership of the property, liabilities and economic risks (see the Appendix and Table VI). The reaction in the case – the LSP as buyer, owner and commercial agent – to the non-mandatory and mandatory rules in the Commission Act, generates several interesting legal issues concerning the companies' reactions in the contract to the legal environment. Here we comment on some of these issues, and try to evaluate these reactions in a legal perspective.

First, some remarks on the companies' agreement on the LSP taking title over the goods. The LSP's position is strongly limited. The LSP cannot, e.g. resell the goods to whomever and at whatever price. Such a limitation means that the relationship is legally viewed as an agreement about pledge, and not as a transfer of title. A pledgee's right to the goods is limited to a right to sell the goods, if the debtor does not pay the debt in time. The pledgee has a duty to take good care of the goods while awaiting the payment and cannot sell the goods in advance. From a legal perspective, the CC may

Main contents in legal rules (The Commission Act, both mandatory and non-mandatory law)	Main approach (reactions) in the contract to the legal rules	Some remarks on the legal soundness of the solutions in the contract
Commercial agents sell the goods in their own name, but the ownership of the goods shifts directly from the principal to the third-party	The LSP is seen as buyer, owner and commercial agent	The roles of the LSP and the CC are not clear regarding the ownership of the goods
Since the agents never own the goods, they are not taking any financial risks	The CC is seller, owner and principal	The CC seems to keep ownership, but avoids financial risk of capital tied up
The principal can remove property from the agent in case he/she is bankrupt		Unclear if the LSP can be considered a "real" commercial agent

Table VI. Summary of commercial agent

(by the reaction to law in the case) both maintain to be the owner of the goods, and get out of the financial risks of the capital tied up in the goods.

Second, some remarks on the way the companies handle the risk of the retailers making claims because of quality imperfection in the goods sold. The contract between the LSP and the CC contains a quite swift and easy way of handling these claims; they are all the CC's responsibility. From a legal perspective, it is necessary to point out that this agreement is effective in the relationship between the LSP and the CC, but has no bearing on, e.g. the agreement between the LSP and the retailers. The non-mandatory rules of the Sale of Goods Act or of the International Sale of Goods Act may be applicable to these relationships, and then the LSP may be obliged to take care of the claims from the retailers and then try to get compensation from the CC by invoking their agreement. The contract between the LSP and the CC is not absolutely clear as to whether all claims from the retailers are covered by the CC.

Third, the LSP and the CC seem to have made an agreement in the contract, making the LSP a commercial agent and the CC its principal. The purpose of this is to secure that the CC has the right to remove the goods from the LSP's bankruptcy. This right only exists if the relationship between the LSP and the CC can be regarded as a "real" commercial agent – principal relationship. For this, several aspects must be considered, e.g. does the LSP sell the goods in its own name, does the ownership go directly from the principal to the retailers, and does the CC have a true interest in the sale to the retailers? In the case studied, the LSP sells the goods "in its own name", but uses the CC's logotype on the invoices. Also, it is not the CC who sells the goods to the retailers. The question about the CC's genuine interest in the sales is difficult to answer, but the crucial point is which of the two companies has to deal with the risk of failing sales. If it is the principal (i.e. the CC), then it is a genuine commercial agent agreement, and consequently the CC has a right to remove the goods from the LSP's bankruptcy. If it is the LSP, then it is not a genuine agreement, and the CC has no such right.

5.3 Freight forwarding agent

5.3.1 Description. It is a key task for the LSP to ensure that the goods are transported to the CC's customers, i.e. the retailers. Sometimes the goods are to be transported long

distances by various modes of transport, reloaded several times en route to their destination and kept in different storage depots on their way to the retailers. There is great risk that the goods are damaged or lost on their way to the retailers, which may lead to great economic consequences. The LSP's responsibility for the economic impact of the goods being damaged is regulated by reference in the contract to a standard-form contract: NSAB 2000 (the General Conditions of the Nordic Association of Freight Forwarders).

5.3.2 Legal review/analysis. There are no specific legal regulations for forwarding agents or LSPs in Swedish law. Instead the standard-form contract NSAB 2000 is often used. It contains rules for freight forwarding agents in three different roles:

(1) independent carrier;

(2) mediator of transport; and

(3) storage operator.

It deals with responsibilities and liabilities (see the Appendix and Table VII). The reaction to law in the case – the LSP as freight forwarding agent – to the agreed document NSAB 2000, introduces several interesting legal issues concerning the companies' reactions to their legal environment. There may be several advantages for the LSP and the CC to refer to NSAB 2000, and it may appeal to both parties. This is a very well known and well-established standard-form contract, which addresses many issues and specifies several solutions that the transport industry considers acceptable.

Insurance companies also offer special insurances for transports based on this standard-form contract. The CC wants to entrust the task to one single provider using one single contract with one single transport document and one single operator based on one uniform set of rules. By using NSAB 2000, the LSP gets oversight and predictability in the regulation of its responsibility to the CC for risks of physical handling of the goods. However, using NSAB 2000 in the case studied is not entirely positive. NSAB 2000 is meant for contracts between freight forwarding agents and their customers, with the forwarding agents playing traditional roles as, e.g. brokers, transporters and storage operators. The LSP does not carry out any of the basic assignments of a freight forwarding agent. The LSP does not mediate contract; the LSP signs contracts with transport and warehousing companies for itself. The LSP, and not the CC, is part of these agreements. The LSP does not own vehicles or warehouses,

Main contents in legal rules NSAB 2000, a standard-form contract for freight forwarding agents mediating transport	Main approach (reactions) in the contract to the legal rules	Some remarks on the legal soundness of the solutions in the contract
Handles compensation issues for goods damages Limited responsibility for the freight forwarding agents and limited compensation to the owners for damages	NSAB 2000 is made applicable for the relationship between the LSP and the CC The contract contains obligations for insurances for damages to the goods	NSAB is not directly applicable to the relationship between the LSP and the CC as the LSP owns the goods, not mediating transportation services as agent, and not carrying out transports, but the insurances attached are essential

Table VII.
Summary of freight forwarding agent

so it cannot be regarded as carrier or warehouse keeper. In addition, the relationship between the LSP and the CC involves much more than mediating transportation, which is the traditional service of freight forwarding agents. The LSP manages many aspects of the supply chain from the CC's producers to its retailers.

Another objection to allowing NSAB 2000 to govern the relationship between the LSP and the CC is linked to the perception of their agreement as "one single contract". The reference to NSAB 2000 makes it necessary to divide the agreement into two parts, one part consisting of the transport and warehousing agreement regulated by NSAB 2000, and one part consisting of all the other services provided by the LSP and not covered by NSAB 2000. For these services, the contract between the LSP and the CC is especially important.

Although the LSP, by reference to NSAB 2000, assumes some responsibility for the financial consequences that may result from the goods losing value through the physical handling in transit or storage, this does not mean that the LSP will ultimately bear the real costs for this. The risks are passed on to insurance companies. The contract contains an obligation for the LSP to take out insurance for the liability for the goods during storage and transport, which may result from the provisions of NSAB 2000. The insurance shall cover all common injuries ("all the ordinary risks ").

5.4 Product liability

5.4.1 Description. In the contract between the LSP and the CC, the liability for defective products (here product liability) is considered as involving legal risks and costs for the companies. Contract provisions and insurances are seen as important in allocating the risks and costs when liability cannot be completely eliminated. In the contract, the companies agree – as formulated in the contract – to "have jointly and severally complete and sole responsibility back to back". The CC undertakes and guarantees jointly and severally to indemnify and hold harmless the LSP for any liability resulting from product liability with respect to the goods and/or the imports of the goods, except if such liability is due to negligence by the LSP. To have such responsibility means that a plaintiff can address the two companies or just the one company for compensation. If it is the LSP that pays the plaintiff, it can demand compensation from the CC. Insurances are also important ways to manage risks for the two companies in the case. The CC undertakes to maintain insurance "covering for product liability". Product liability can be covered both by specific product liability insurances and by more general business insurances.

5.4.2 Legal review/analysis. The Product Liability Act is a mandatory law dealing with liabilities for personal injuries and damage to properties caused by product defects (see the Appendix and Table VIII). The reaction in the case – the LSP and the CC as jointly responsible for product liability – to the mandatory rules in the Product Liability Act introduces several interesting legal questions regarding the companies' reactions to the legal environment in the contract. Here we comment on some of these efforts. The companies take a view of product liability that indicates that their main concerns are the costs of the liability and how to distribute the costs between themselves or insurance companies.

Even if the contract points at the CC as the final liable party, it is the insurance companies that pay the piper. The companies pay high premiums for product liability insurance and will pass on the costs for these premiums to the consumers as long as it is possible to raise prices. When the consumers are no longer prepared to pay these prices,

Main contents in legal rules The Products Liability Act, a mandatory law	Main approach (reactions) in the contract to the legal rules	Some remarks on the legal soundness of the solutions in the contract
Companies engaged in selling products are liable for injuries and damages caused by the product	The contract contains joint responsibility between the LSP and the CC for product liability	No reference is made to whether the product liability is according to Swedish law or to other national legal systems
The company selling products to consumers has a special responsibility	The risk of product liability is transferred by the LSP and the CC to insurances, creating high premium costs	Unclear which injuries/damages will be compensated and which will not be compensated
A company paying damages has a right to demand payment from other responsible companies		

Table VIII. Summary of product liability

the companies will not compete effectively with other companies. In addition to this, there are some legal problems with the contractual solution that the parties should address. Here are some examples. First, although the contract provision is about "product liability" there is no reference to whether this term is used in the same sense as in the Swedish Product Liability Act or, e.g. to product liability rules in the USA Second, it is not at all clear that the CC is liable by law, e.g. it does not put the goods on the market, but in the contract the CC assumes full product liability. Third, the CC agrees to indemnify the LSP for all product liability as long as it is not negligent. It is not clear what is meant by "not negligent" and whether it is possible for the CC to prove negligence when the LSP does not take any actions with the goods. Fourth, it is not clear if the CC's duty to indemnify the LSP means that this company will be compensated for all its cost, and not only the plaintiff's claim. Will it be indemnified for, e.g. costs directly associated with litigation, such as lawyers' fees, costs of management time spent on the case, opportunity costs associated with losing time better spent on other business affairs, costs for recovery of the compensation from the CC, costs due to loss in market share resulting from negative publicity?

6. Summarizing discussion and implications

6.1 Discussion

To increase logistics understanding about legal issues related to when logistics practice develops innovative arrangements, the purpose of this study was to describe and to analyze what approach the 3/4PL provider and its CC took to legal rules (how they reacted to legal rules) in their contract regarding advanced logistics services. A further purpose was to present some remarks on the extent to which these contract solutions are legally sound. In the inter-organizational structure between the 3/4PL provider and its CC, the financial risks are managed by letting the 3/4PL provider buy the goods from the CC's suppliers, own the goods, export them worldwide, and finally sell the goods to the CC's customer(s). Furthermore, we found that the contract between the 3/4PL provider and the CC contained some examples of attitudes and reactions to both non-mandatory and mandatory legal rules (summarized in Tables V-VIII). One observation is that sometimes the companies, when reacting in one legal perspective, introduced actions affecting another legal perspective.

In the case studied, the non-mandatory rules in sales law are disregarded and replaced by a clause that makes the CC responsible for all sales claims made by the retailers.

But the CC's different deals with the producers and with the retailers concerning prices and other conditions for the 3/4PL provider are, from our legal analysis, not binding on the 3/4PL provider. A deal is only binding on the parties taking part in it, not on a third-party. In order to protect the goods against pledges (within buyer, seller and ownership), an agreement posing as an agreement between a principal and a commercial agent is drawn up. However, based on our legal analysis, some doubts can be raised about the agreement's legal validity. It is, e.g. unclear who has the legal risk of sales uncertainty (Figure 3).

In the absence of legislation for liability of freight forwarding agents for damages to the transported goods, the 3/4PL provider and the client agree to make use of a standard-form contract of sound repute (NSAB 2000). But NSAB 2000 is not designed for the relationship in question, since the 3/4PL provider owns the goods and therefore does not really act as an agent. The advanced 3/4PL service providers take on other roles than the standard-form contract was developed for. The 3/4PL provider, in our case even owning the goods, does not mediate transport services, which is the standard role in the standard-form contract.

Nevertheless, the standard-form contract gives some limitations to the damages and, more importantly, provides an opportunity to get insurance for the transported goods. With NSAB 2000 coupled with insurances for damages to the goods during transport and storage, the contracting parties make the damages a matter for insurance companies. However, the insurance situation becomes quite complicated.

In the contract, the mandatory rules for product liability are handled with an agreement of "jointly and severally, complete and sole responsibility". Even if this part of the contract also raises questions about its legal meaning (e.g. who is liable by law),

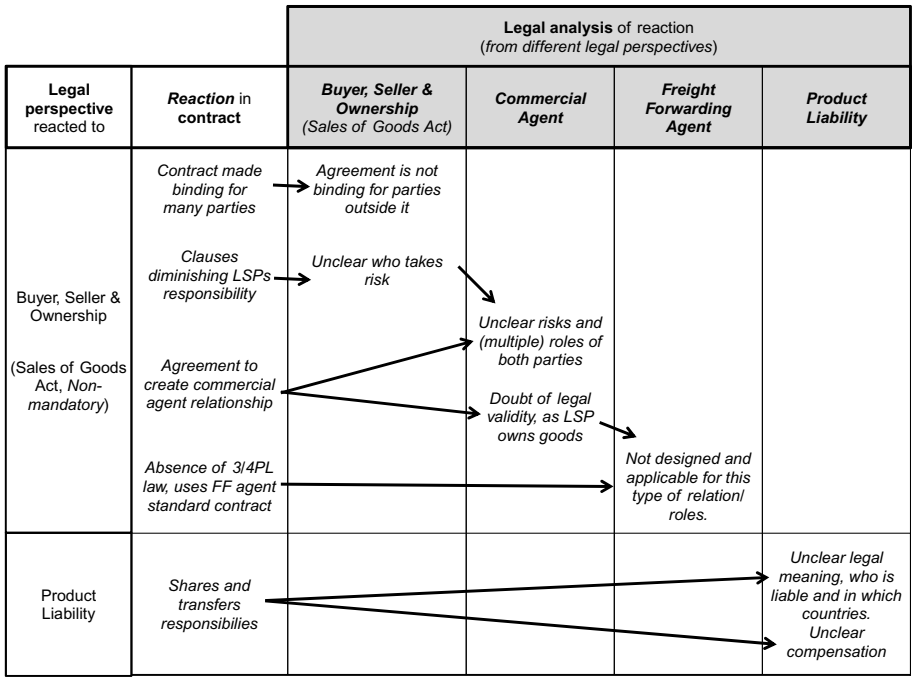

Figure 3.
Summary of attendant effect of contractual reactions

it represents a reaction to law which confirms the overall impression that the 3/4PL provider and the CC are legally astute and react to property law in a proactive and strategically conscious way.

6.2 Implications

When 3/4PL arrangements include outsourcing of the third logistics flow (finance/ownership, in addition to the two flows of material and information), the traditionally used laws and standard-form contracts do not support the business deals on the whole. Innovative 3/4PL arrangements might drive the partners to develop "innovative contracts" designing explicit incentives, defining lines of communication and control, but also reacting to legal rules. As shown in the case, it is not easy to master this. Trying to solve problems by adding and using legal rules and terms from other legal perspectives can make the logistical contract even more complicated. Examples of challenges found in this case, that we think could be of general interest for other companies developing innovative relationships/contracts, were:

- *Uncertainty of legal risks and ownership.* If a CC develops innovative solutions acting both as owner of goods and trying to push the financial risks to the service provider, there should be a clear understanding of what happens legally with the property risk in case of, e.g. bankruptcy.
- *Uncertainty of roles.* If many legal roles are given to one party in an inconsistent way, e.g. buyer, owner and commercial agent, the legal understanding of the complex of roles might be different from what was intended. Advanced logistics services such as the 3PL/4PL might not be considered as forwarding agents by the court, even if standard contracts for forwarding agents are often used.
- *Uncertainty of contract partners.* A contract is not legally binding for someone who does not take part in it. There should be a clear understanding of for whom the contract is binding. This is a challenge for advanced supply chains and logistics service networks with multiple players.
- *Uncertainty of applicable laws.* There is no "logistics law" or standard contract for these more advanced services. Old laws are not always directly applicable to new roles in innovative supply chains. It is of great importance that the parties in the contract decide which national legal system shall be used in case of controversies.
- *Uncertainty of language and legal solutions.* The predominance of English concepts in contracts brings confusion to the national legal systems. Legal solutions are "imported" from, e.g. the common law system to the civil law system through unreflecting use ("cut and paste") of contract paragraphs originally from other contexts.

3/4PL service providers that consider offering ownership services could gain insights from this study to understand upcoming challenges, such as the legal risk of sales uncertainty, uncertainty of ownership and product liability, as well as potentially unclear roles as commercial agent and freight forwarding agent.

It is important to be aware of the most central legal rules for a specific situation, and how the rules are interconnected. Our study has shown how reactions to one law can cause new legal perspectives to be taken into consideration and how different legal perspectives do not always function very well together.

One of the functions of laws is to solve conflicts when they appear. If the parties to a contract use a legal terminology in a wrongful way or if they mix legal perspectives in a way that is not in accordance with the proper way, the contract has lost its legal meaning. Some logisticians, practitioners as well as academics with a more sociological relational view, might argue that this function of a contract is less important. But still this conflict solving function is the core of the contract from a legal perspective. If the contract ends up in court, several problems can arise. The judge may interpret the contract in a way that does not coincide with the parties' own interpretations. National judges may not be all that familiar with the English legal vocabulary often used in contracts. There is always a great risk of getting too much publicity in the courtroom, thus letting the competitors know too much and/or getting the trademark soiled. Every trial costs a lot of money; it is especially important to keep in mind that the party who loses the trial in court has (according to Swedish law) to pay not only its own costs for the trial (e.g. attorney fees), but also the winning party's costs. Also from an academic viewpoint it is important to remember that the contract can help prevent such legal problems, but it can also be a most useful tool in promoting successful business by applying law in a proactive way when designing business strategy.

Contracts are hence of vital importance for business deals, and supplement the relations (compare Poppo and Zenger, 2002). They are needed to record deals and relationships. They define the framework for projects and commitments. Contracts impact, e.g. cash flow, earnings, and risk. The functions of contracting are multiple. Hence, we suggest that the capability to understand the role of contracts, and develop contracts for innovative logistics solutions, e.g. advanced logistics services, is of important both to the logistical companies and to their clients. In this, it is essential to appreciate and make use of legal knowledge, i.e. knowledge of the mandatory and non-mandatory rules surrounding the contracts. Legal knowledge is useful in making contracts work as tools to manage risk, to prevent problems, and to keep problems from developing into costly dispute settlements. This implies that logistics and legal practice could improve by developing cross-functional capabilities. Just as it is important for businessmen to realize that legal knowledge can be profitable in planning, managing and implementing contracts, it is of great significance to make lawyers aware of the needs and realities of logistical practitioners. A tentative approach for this is outlined in Figure 4. As a starting point the logisticians early on describe the logistics innovation to the legal experts, who then identify legal rules to be considered. The legal experts can help the logisticians to understand these rules,

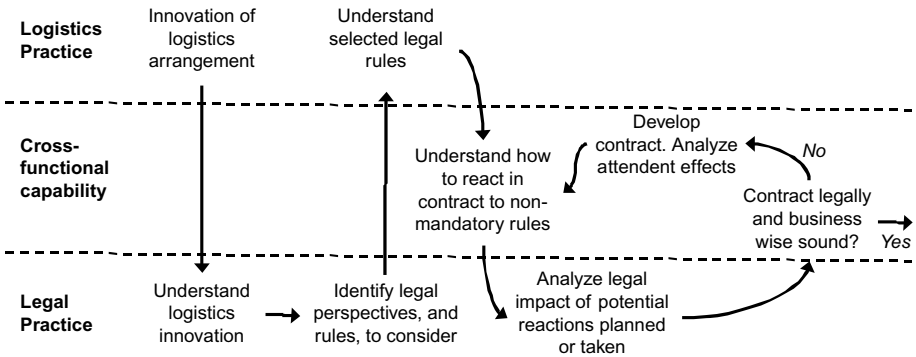

Figure 4.
Tentative approach for cross-functional development of contracts for innovative logistics arrangements

making a joint understanding available and developing a cross-functional capability for a more appropriate proactive attitude to, e.g. the non-mandatory laws. A further thorough analysis of the potential reactions needs legal expertise, while fine-tuning the contract based on attendant effect is a cross-functional matter. A joint review finally checks whether the contract is both useful for the business relation and legally sound. If not, further analysis must be done, which creates a potential loop between cross-functional activities and more focused legal analysis.

This study responds both to the call within logistics research for more empirical studies regarding 3PL contractual arrangements (Maloni and Carter, 2006; Selviaridis and Spring, 2007; Marasco, 2008; Lukassen and Wallenburg, 2010) and to the request for studies in the intersection of logistics and law (Trent, 2004; van Hoek *et al.*, 2008). It complements previous logistics research on 3/4PL contracts by its legal perspective, and previous legal research by focusing on a more advanced logistics relation than transportation and freight forwarding. It submits four legal perspectives that could be used to better understand issues of outsourcing advanced logistics services, and also how those perspectives might become blurred when actions and reactions are not totally understood. There are further implications for academics. One way for academics to help the profession is through developing future competence, e.g. students educated to understand this functional interface. Researchers could also give input to legal policy makers regarding gaps and problems when current laws are not aligned to the development of innovative business practices or when the differences between different national laws create too much friction to efficient trade in global supply chains. This study gives examples of such gaps and problems.

This article seeks to make three contributions to the tradition of Law and Management. First, based on an empirical investigation it uncovers both the essential features of agreements between LSPs and their customers, and the legal setting of such a contract. Second, it describes the many uncertainties and gaps between the lawyers' and the businessmen's view on contracts and legal provisions. Third, on a normative level, the article stresses previous findings on the essential importance of companies' proactive attitude towards the multiple aspects of the legal settings of contracts. The study has shown the importance for lawyers to understand business realities and to use their legal skills to contribute to better contracts and contract management. The study has also shown the equal importance for logisticians to manage legal risks when contracting, as well as managing non-legal risks with legal means. Logisticians and lawyers, practitioners as well as academics, must work together to enable a proactive use of law in making good contracts, i.e. contracts that will stand up in court, as well as facilitate good business. The study proposes a tentative approach for how logistics and legal practitioners could be better aligned to proactively develop contracts for innovative logistics arrangements.

7. Limitations and future research

The study has some limitations. First, the context is based on a small country's legal conditions. However, the case companies are global actors with the CC as a global leader in its industry. Laws are still national, but there are similarities among different national legal systems, and legal rules are becoming increasingly more international. Corresponding rules in international commercial laws have been referenced to help readers to transfer insights to their own contexts. More research is needed to understand similarities and

differences of legal aspects for such a global activity as logistics services, and this can later provide input to the legal policy makers to support laws that are better aligned.

Second, because the study is based on a single case study the findings are not intended for statistical generalization to populations. Reactions and problems can hence not directly be expected for the general 3/4PL relation, but how to investigate and analyze the challenges could be a step towards improved knowledge in the area. Case studies are used for expanding theories by analytical generalization (Yin, 1994). When more advanced 3/4PL solutions emerge and share their contracts for research, first multiple case studies and later survey studies could be performed to increase generalizability, e.g. regarding the challenges in this case.

Third, to only interview the managing director from one of the parties could be questioned. But the main data source has been the written contract, signed by both parties. It is from the legal document that reactions and potential issues have been investigated. As the interviews have been conducted to inform about the case context and business set-up, not the contractual details, this limitation has not affected the conclusions. Instead we call for more "supply chain contract research" where the real contracts are studied.

The case in itself, describing an advanced relationship where the LSP also assumes ownership of the products, raises a research question regarding how common this type of arrangement is (as we have not seen it reported before) and its potential benefits and pitfalls. The study contributes to logistics research by proposing and using four different legal perspectives to discuss contracts for advanced logistics services: "buyer, seller and ownership", "commercial agent", "freight forwarding agent", and "product liability". Future research could study how, and how well, these perspectives are handled in other 3/4PL contracts. It is also interesting to discern whether the alignment problem between those different legal perspectives is common also in other cases of innovative logistics services.

As it seems as though logistics practice is sometimes developing innovative arrangements without fully understanding their legal impact, research trying to increase legal knowledge regarding logistics innovations could be fruitful. More specifically, "future research could more deeply investigate" the gap between advanced logistics practice and the standard-form forwarding contract (like NSAB 2000), as traditional "transport law" does not apply well to advanced logistics services. Furthermore, how the issues of ownership, economic liability and product liability are handled in different countries could be further studied. Perhaps a "logistics law" is needed to better handle the more advanced and global services that are developing, and further research could propose legal gaps to be handled. From the Law and Management perspective, this study has shown that further empirical and theoretical research is needed in order to find out more about how modern firms react to law when handling risks in contracts for gaining competitive advantages.

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Appendix. Legal frameworks

Legal framework: buyer, seller and ownership

In Swedish law ownership is transferred if there is an agreement to this and the possession of the goods is conveyed to the new owner. To transfer ownership means that the previous owner (the CC) can no longer establish any claim to benefit from the privileges of ownership. The LSP is attributed these powers, including the right to transfer the goods to another (disposition), the right to use the goods as collateral for a loan (grant mortgages) and the right to make use of the goods (use right).

Sales law involves either the sale of goods or the sale of services. In Sweden, there is no statute regarding the sale of services, except for the one applicable to sale of services to consumers. The Sale of Goods Act (köplagen, 1990:931) is based on freedom of contract, and contains non-mandatory rules that can be contracted away by the seller and the buyer. The same goes for the International Sale of Goods Act (lag, 1987:822 om internationella köp), based on a United Nations treaty (Convention on Contracts for the International Sale of Goods, CISG) offering a uniform international sales law. Non-mandatory legal rules function as gap fillers if the contract between the parties does not address the issue. The Sale of Goods Act consists of rules for, e.g. the seller's liability to the buyer for the quality of goods, what this responsibility means, and the sanctions the buyer may rely upon if the seller breaks the agreement. One of these sanctions is the seller's duty to pay damages for losses due to breach of contract. The International Sale of Goods Act applies in 70 UN member countries and contains principally the same non-mandatory rules on cross-border sales.

Legal framework: commercial agent

A commercial agent receives, e.g. goods from the principal to sell in his/her own name, and is to be compensated for the sale. The relationship is regulated by the Commission Act (kommissionslag, 2009:865). A few of the provisions in the act are mandatory, such as those concerning the founding and the termination of the relationship. Otherwise, the parties are free to contract out the statute. Under the act, the commercial agent is to take into consideration the interest of the principal and fulfill his/her duty of loyalty against the principal. As the commercial agent is acting in his/her own name, he/she is liable against any third-party (the customer), instead of the principal. However, the ownership of the property shifts directly

from the principal to the third-party (the customer). The agent does not take any economic risks by purchasing the property being sold. The principal protects its right to remove the property from the agent's bankruptcy. The Swedish Commission Act is based on Directive, 2004/39/EC of the European Parliament and of the Council on Markets in Financial Instruments, and regulates not only commercial agents on the financial market but all such agents.

Legal framework: freight forwarding agent

Freight forwarding agreements are primarily about mediating transports, but the task can also be to act as messenger, agent, commissioner, or for oneself. There are no specific legal regulations for forwarding agents in Swedish law. The general rules on storage (deposition) and on grant of authority are considered to be applicable. However, these legal rules do not regulate liability for economic consequences of damage to the goods.

NSAB 2000 is an agreed document (i.e. industry-specific, standard agreements, settled between buyer and seller representatives from business organizations), and contains rules for freight forwarding agents in three different roles:

(1) the independent carrier;

(2) the mediator of transport; and

(3) the storage operator.

In an international context the closest equivalent to this is the Model Rules for Freight Forwarding from the International Federation of Freight Forwarders Association (FIATA).

- The freight forwarding agent has the responsibility as an independent carrier if the agent has given a promise of transport, i.e. undertaken to carry the goods to their destination. The agent is not considered to be responsible if he/she can demonstrate that no liability exemption is applicable, such as circumstances that could not be avoided or consequences that could not be prevented. Compensation should be calculated after the goods invoice value or market price, after deduction for depreciation. Nevertheless, the agent's liability is limited to 8.33 SDR per kilo gross weight (SDR – Special Drawings Rights, a currency decided by the International Monetary Fund (www.imf.org/external/np/fin/data/ rms_sdrv.aspx). The value of 1 SDR is 1.577 US$ or 1.13 Euro (2011-04-14)). If damage is caused intentionally, compensation at the full invoice value or market value is imposed.
- As a mediator of transport the agent is liable for injuries caused by not being sufficiently diligent in the performance of the contract. The agent has to prove that he/she has used due care in the selection of the contractors. If he/she fails to do so, and compensation must be paid; the compensation is limited to 50,000 SDRs for each assignment. However, the compensation may not exceed 8.33 SDR per kilo.
- As a storage operator the agent has the same responsibility as if he/she were a carrier for the storage of the shipment up to 15 days after shipment, i.e. the liability is limited to 8.33 SDR per kilo.

Legal framework: product liability

The Product Liability Act (produktansvarslagen, 1992:18), which is the Swedish implementation of the EU product liability directive (Council Directive 85/374/EEC concerning liability for defective products), is a mandatory law that imposes strict liability (i.e. liability independent of intent or negligence) on product manufacturers for personal injuries caused by a product due to a safety defect. Strict liability is also imposed for damages to property, but only if the product was not safe, was intended for personal use, and was actually being used for personal purposes when the damage arose. Consequently, only consumers are protected for damages to property. Manufacturers of the finished product, as well as manufacturers of component parts that have

caused the harm and any party importing the product to the European Economic Area, the European Trade Association or the EU are imposed liability by the Product Liability Act. The same goes for any party affixing its trademark to the product. The party selling the products is to be held liable if the other parties cannot be identified.

Damages caused by unsafe products can be the liability of these parties. Safety is to be assessed by taking into account how the product could be foreseen to be used, how it was marketed, the product instructions included, the time at which the product was put on the market, and other circumstances. A liable party can be released from the liability if the party can show, e.g. that it did not put the product into circulation, that it is probable that the defect causing the damage did not exist at the time of circulation, or that the state of technical knowledge at the time was not such as to enable the discovering of the existence of the defect. A party paying damages under the act has a right to demand payment from other responsible parties. The statute of limitations for a product liability claim is three years from the date the individual knew or ought to have known that a claim could be made. Any claim must be made at the latest within ten years of the date of the product circulation. The period of limitation is different for the different parties – the supplier of the primary product, the component deliverer and the final manufacturer putting the product into circulation at different times. If the liability has expired for some of the early parties, the liability cannot be referred to.

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