FACULTY OF LAW
DEPARTMENT: CIVIL LAW

MASTER STUDIES

IMPORTANCE OF CONTRACT ON FREIGHT FORWARDING

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Definition of the problem / theme that gets investigated

Considering the fact that Kosovo since the previous decade confronted with serious challenges in the economical, political and social plan, with the integration challenge, from the fact that in its general development, the contract on freight forwarding had an important role.

Therefore as a paper work that is done within the Faculty of AAB, as a master thesis, aims to be an extra contribution in the literature of this expanded field, because it has an emphasized lack of projects with such content.

Also for the reality of Kosovo, as a country that inspires the integration in EU, it is important to deal with such dimension and to evaluate this theme in this aspect too. The difficulties of realizing this work project were different, but the lack of relevant literature in the native language had its own consequence.

In the first chapter – Contract on freight forwarding, Conditions for contract linking, General conditions of the contract, Types of freight forwarding, Duties of the freight forwarder, Obligations of the commander;

In the second chapter – Concept of freight forwarding and its importance, Internal and external freight forwarding, Activity of freight forwarders;

In the second chapter – International transport, Freight forwarding and provision of the international support, Transporting documents, Duties of the freight forwarder in Customs, Preservation of things and obligation towards them, Duty of the freight forwarder to act as a good economist, International freight forwarding, Types of freight forwarders, Time functions of freight forwarders ; and

In the fourth chapter –Conclusion and Literature.

Purpose of research

The main purpose of this theme is to identify the actual state of contracts and freight forwarding, and the identification of problems, obstacles, and barriers that choke the development of their activity, by identifying at the same time the needs and requirements of this community for the improvement of the state, advancing of developing processes and development of positive trends in the strategic aspect. Therefore, as specific purposes of the theme, we list these:
• Contract on freight forwarding
• Concept of freight forwarding and its importance
• Internal and external freight forwarding
• Activity of freight forwarders
• International freight forwarding
• Types of freight forwarders
• Duties of freight forwarders
• Commission contracts etc.

Methodology of work

During this work, we have used the most contemporary forms such as: analysis method of data where the collection of professional literature and other scientific facts, publications and different scientific and studying articles take place, that give us knowledge and much information, in order to solve the problem from this research field. Also, in the research we used the research method, therefore Internet literature and other research methods, as historical methods. We also used the comparative method that enables the problem analysis from the time and space point of view in this field.

The scientific-practical contribution of research

This study will be a scientific contribution to see, analyze, compare and evaluate the parameters of contracts on freight forwarding in Kosovo etc.

By actualizing this theme in the university level and by enabling the relevant institutions to have it as a mirror that will help in the access and compilation of any eventual project that deals with this field. The paper work might have an extra service that might find implementation in the study level, by enabling student and all the other interested ones to have an idea and general view for the contract on freight forwarding by taking into consideration the fact that information and publications in this field aren’t sufficient.
PREFACE

Contract (contractus) represents agreement between two or more people that aim to create, change or eliminate a law relation. In order to create juridical effects, in the contract there must be fulfilled the defined conditions that can be general and special. General conditions consist of; 1. Working ability of pairs that means ability that a subject can create defined right and obligations. Individuals gain this ability when they are adults (18 years old) and when in 16 years old get married with the permission of the competent body (with emancipation).

The contract base is the juridical purpose that has pushed any subject to take the obligation e.g. to the sell-buying, the juridical base and the duty of the perpetrator is to pay the price and become an owner. Here the obligation base of one pair is the obligation base of the other pair. From the base, we must differentiate the motive. E.g., in the sell-buying, the selling motive can be different. In some cases except the general conditions must be fulfilled, even the special conditions in which the contract cannot be created.

If the pairs weren’t present, as the place of contract linking, it is considered the place in which there’s the office of the one who offers it. It is understood that issues regard to the place can be regulated even differently. The definition of the place is important to the contracts in the international circulation of wares because of the law implementation of the place where the contract has been linked (lex loci contractus).

3.2. Insurance of contract: As much as the linked contract is insured with juridical sanction, there are cases when the creditor doesn’t trust the other contracting pair, or because he doesn’t know her enough, requires that with other insurance tools to insure the contract fulfillment.

From these tools, most common: Bailing (fideiussia) which is a personal tool for the provision of the contract execution that is created based on the agreement of the creditor and bailer, with which the bailer is obliged to pay debt if the debtor doesn’t want to pay. Bailing is an accessory contract linked with the main contract (with special clause in contract or as a special contract).

The activity of the freight forwarder, as in the national aspect, so as in the external one, is a serving activity. Main duty of the freight forwarder, whether national or international, has to do with its committee –commander to release it from all the worries regards to expedition or ware importing, and all the work regards to them as well. It isn’t thought here in the technique or the technical side of the work around the import and ware receiving, but a duty of the freight forwarder is to also advise the seller, respectively the buyer during the contract link, even before it, regards to the contract of sell-buying the ware.

For instance, it isn’t all same whether it is bought or whether it will be bought and whether it will be sold based on the conditions of the CIF or FOB clause, Franco van of the beginning station or the ending one, etc. Therefore, the advice of the freight forwarder, before linking the contract for sell-buying, would be helpful to avoid unpleasant situations and disagreements and to link contract with optimal conditions.
The freight forwarding contract is a contract with reciprocal duties, with non-formal and commutative contract. It means that even though the random written contract (it’s not a legal imperative), aims easier proof. Basic elements in this contract are the transport in a defined place or bringing the object from that defined place in the destined place, whether of wares or movable objects and the price (reward) provision, like:

The transportation of wares means a collection of activities and work that aim to be delivered to the transporter for he to transport them in the destination place.

Ware transportation means undertaking all the acts which able to take wares from the transporter and its delivery to the committee. Even clearer, in case of ware transportation, the committee (commander) is represented as the ware sender, meanwhile to the ware, is represented as the ware receiver.

In the law and economical literature, we confront the divison of freight forwarding into an internal and international one. The beginning of freight forwarding is closely conform to the development of international trade, from the XIII century, from the era of the prosperity of Republic of Venice, as a trade power in that time. Venetian traders then in trade with Alp countries used mediators who were in charge of regular and safe ware transportation.

Ware in the destination place would be handed in to costumers based on a receipt, so this type of receipt can be considered as the first transporting document. After the big discoveries, international trade had a huge rapid development, so that wares in bigger amounts would always have to be sent in further distance, and quite often with different kinds of transportation (roads and waters).

International freight forwarding, in the contemporary nowadays life, it has become a quite important activity. International freight forwarders who deal with organizing international transport in the economical aspect, it’s a mediator between the producer and consumer, in the juridical aspect between the seller and buyer of ware from different countries. During the development of international ware exchange and increasing technical perfection of transport vehicles and other communication tools, the need for international freight forwarding appeared as a special economical activity.

The main obligation of the freight forwarder is to organize the transportation of the thing, and this obligation contains in itself a series of juridical work and following work. In the enterprise of all of these acts, the freight forwarder must act like a prepared and responsible economist, who must be careful all the time and keep track for the interest of its committee, whether we question the freight forwarding activities of the expeditor or second-hand activities, such as storage (because storage isn’t a main activity of the freight forwarder). As an economist, he will be responsible to the order of the committee, will give advice and instructions. While handing in the object in transportation, the freight forwarder has to hand in these objects just as he received them. The freight forwarder in the received objects in
expedition, where it keeps the retention right, if the committee doesn’t pay provision or costs made for the ware preservation (from damage, destruction, etc.). By receiving the object, the freight forwarder is obliged to observe them, calculate them, measure them, conduct any lack, meanwhile the content will be controlled only if there is a based doubt that there exists any damage.