

**Gordon Institute
of Business Science**

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**The make-or-and-buy decision for in-house legal
departments: A concurrent sourcing approach**

by

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Abstract

With massive trends affecting the manner in which legal services are delivered and will frame the way In-house legal departments consider the make-or-buy decision. This study explored the make-or-buy decision considering a comprehensive academic framework, utilising Transaction Cost economics, Neoclassical economics and Capabilities economics to determine the economic drivers of a concurrent sourcing choice where In-house legal departments both make-and-buy legal services

Mixed methodology research included 12 in-depth interviews with Chief Legal Officers/Head of Legal or Head of legal function for qualitative purposes and a questionnaire distributed to all 486 members of the Corporate Counsel Association of South resulting in 32 valid responses, to triangulate and validate the qualitative results. Both interview schedule and the questionnaire were adapted from Parmigiani's (2007) concurrent sourcing academic framework.

From the results of interviews, an inherent complexity arose in the distinction between generalised and specialised legal services. The results demonstrated support for the Neoclassical and Capabilities economics, through economies of scale and scope and firm and supplier expertise, over Transaction Cost economics considerations. Institutional knowledge and the mitigation of legal risk were two exogenous factors that arose and which influence the make-or-buy decision for In-house legal departments.

This offered a composite interpretation to develop a decision tree model to be considered by In-house legal departments in the make-or-buy decision. The model assists In-house legal departments to consider the choice of legal services provider depending on the type of services required, be that generalised or specialised/Internal or External legal services, resulting in value-adding legal services delivery that helps to deliver the organisations overall goals and objectives.

Keywords

Concurrent Sourcing; Transaction Cost Economics; Neoclassical economics;
Capabilities economics; Legal Services delivery.

Declaration

I declare that this research project is my own work. It is submitted in partial fulfilment of the requirements for the degree of Master of Business Administration at the Gordon Institute of Business Science, University of Pretoria. It has not been submitted before for any degree or examination in any other University. I further declare that I have obtained the necessary authorisation and consent to carry out this research.

Date: _____

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Signature _____

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1. CHAPTER 1: INTRODUCTION TO RESEARCH PROBLEM

1.1. Introduction

The rise of the In-house legal department as an important strategic partner in any organisation has increased the scope and influence of the legal function. The days of relative autonomy within the organisations is over and organisations want to know: how does the legal department add value to meet the goals and objectives of the organisation? How can legal be a proactive partner to business and not just a reactionary support function?

This research aimed to explore the concurrent sourcing model as an alternative option to the traditional make-or-buy decision and rather consider the make-and-buy decision. Numerous economic drivers influencing the South African legal industry were considered and explored in order to shed light on a local industry that has not been academically considered from an economic standpoint.

With massive global trends influencing the manner in which legal services are delivered, it is important to understand the current economic drivers as a comprehensive grounding point for more specific research to be conducted in subsequent studies. The South African legal industry is less mature than the United States and United Kingdom markets, which are leading the development and implementation of alternative legal service delivery models.

As a result, and in order to frame the problem, the make-or-buy decision facing In-house legal departments was used to give an appropriate academic basis for the research. The make-or-buy decision has been subject to extensive research, with varying conclusions. This research focuses on combining many academic theories under the composite concurrent sourcing framework.

This research explores how numerous different influences interact in relation to the make-or-buy decision and aims to provide some conclusive evidence to help In-house legal departments in their internal production and procurement of legal services.

1.2. Description of the problem

Scores of academics and researchers have attempted to define how organisations determine their boundaries, a dichotomous decision to either make or buy products and services.

The make-or-buy decision confronts many In-house legal departments as it offers a choice between producing a service internally or buying the service externally from an independent service provider (Moschuris, 2015).

This study will have regard to the concept of concurrent sourcing, as postulated by Parmigiani, (2007), in terms of which a firm either has backward or partial vertical integration of a homogenous good, in this case, legal services (Parmigiani, 2007). The study will focus on In-house legal departments (those departments which form part of a corporate entity) and will attempt to answer when an In-house legal department will select to make, buy or concurrently source a service.

It is assumed, that In-house legal departments will adopt a concurrent sourcing approach, as there are legal impediments to producing all required legal services internally. This research will attempt to highlight some of these areas.

Three main academic avenues will be explored, to determine the make-or-buy decision for In-house legal departments. The three academic avenues are that of Transaction Cost Economics (hereinafter referred to as “TCE”), Neoclassical economics and the Resource and Knowledge based view (hereinafter referred to as “Capabilities economics”), which avenues have produced differing results to answer the make-or-buy decision, however, as per Parmigiani (2007), should be considered in determining the questions whether to use concurrent sourcing as a plural sourcing model.

1.3. Research background

The In-house legal department is traditionally a support function to the organisation, assisting the business to function effectively in pursuance of its goals. Even though the legal department acts as a support function, it produces services in order to fulfil its obligations, which obligations are used in support of both pre-production and post-production needs.

Africa's use of In-house legal services lags behind other jurisdictions such as America and Europe. An example of this can be seen in Eskom, which only has 24 In-house counsel, however, relies on outsourced service providers in a panel of 72 external law firms (Harris, 2014). The role, size and influence within the organisation in the South African context also seems to be diminished compared to the global context (Wilkins, 2012).

This position may, however, be changing. As pointed out by a Nigerian entertainment company, companies who want to compete, from large to small companies, are finding it more cost effective to have an In-house lawyer involved than legal advisors who have expensive hourly charges (Harris, 2014).

The role of the general counsel/In-house legal department in South Africa and Africa is different in contrast to the role of the In-house legal department in the United Kingdom where their role and influence is stronger than compared to five years ago (Ward, 2016). This aligns with a less mature legal services market in South Africa.

The role of the In-house department is changing. The department is now playing an increased business advisory role (Walsh, 2016), going beyond providing merely legal advice to the business (Mintzer, 2016).

In-house legal departments, in this increasing role have grown in size and responsibility in terms of the legal services that they deliver. In-house departments are often responsible for driving change in the greater industry as they are primary users of legal services (M. A. Cohen, 2016). The dual role of the In-house lawyer acts as the bridge between business and the lawyer and rely on an embedded knowledge of the business to provide the best advice for the organisation (M. A. Cohen, 2016).

The In-house legal department has a number of governance structures to choose from in delivering legal services. Either the In-house department can make legal services (however limited to performing all services), it can buy legal services, or it can both make and buy legal services. This study focuses on determining the boundaries of the In-house legal department as to when and how they make, buy or concurrently source legal services.

In determining the make-or-buy decision, this study will not differentiate between service providers. Service providers to the In-house legal department cover a range of services and include the traditional law firm, advocates, alternative legal service providers and traditional consulting organisations. Any service provider, who fulfils a legal function or

completes a legal process for the organisation and includes the law firm, the legal process outsourcing provider, the advocate, the collections agent, the labour broker, the typing service etc., should be regarded as outsourced service providers.

The global, and by extension the South African legal industry is facing a number of different trends including the rise of technology, alternative service providers and alternative fee models, which are driving towards efficiency and reduction in costs.

The Law Society of South Africa's Co-Chairperson, Mr. Richard Scott at the Practice Management Conference reported that there is a trend for clients to "shop" around for the best deal or services, which is leaving the law firm in a position, which requires them to change the way that the law firms are delivering services. He is quoted saying: 'Gone are the days where lawyers' fees were unchallenged ... We need to focus on their needs' (Kriel, 2015).

Chairperson of Edward Nathan Sonnenberg, Piet Faber has been pointed out saying that In-house teams are highly capable and are sourced with the best lawyers. This increased the In-house ability to deal with a broader scope of legal services internally, including the use of Legal Process Outsourcing as an alternative (Kriel, 2015).

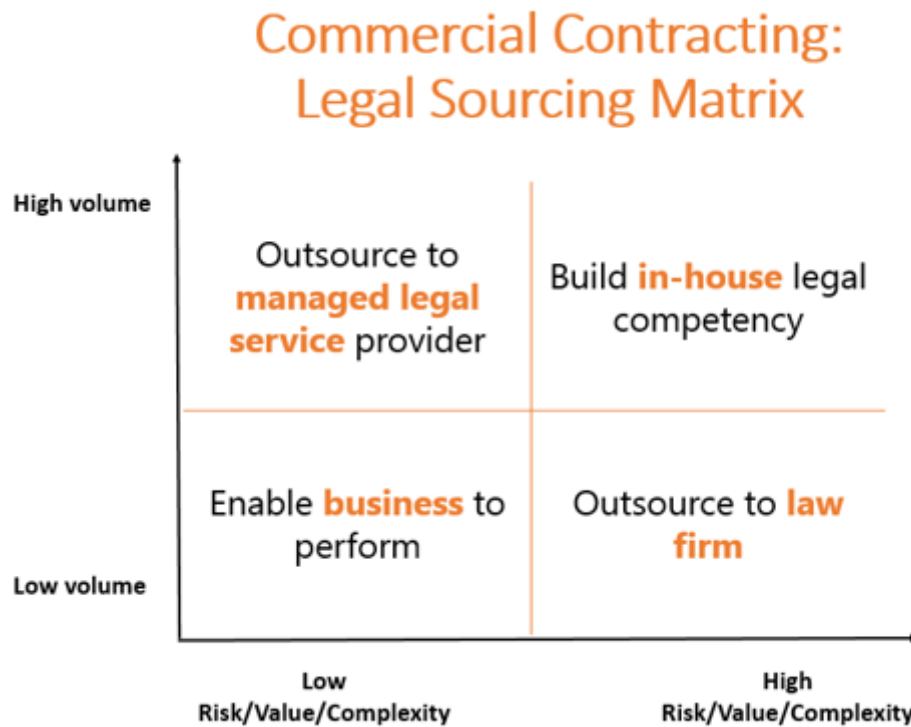
Mr. Faber indicated that the biggest factor which will influence legal services delivery in the future is technology with artificial intelligence playing a more important role than before (Kriel, 2015).

Mr. Faber further highlighted the importance to accurately divide work between highly specialised and commoditised work in order to ensure the best allocation of resources for the type of work (Kriel, 2015).

There is further a growing pressure on In-house legal departments to add more business value and increasing efficiencies in the delivery of legal services. Pursuant to that, many In-house departments are trying to find an appropriate balance of internal and external support to deliver legal services.

Hamilton's Legal Sourcing Matrix below demonstrates the high volume/low complexity sourcing choices available for In-house departments.

Figure 1: Commercial Contracting: Legal Sourcing Matrix



(Hamilton, 2016)

Further In-house departments have been shown to be moving legal spending back In-house (BTI, 2016). This indicates a trend towards greater levels of internal production of legal services, as external spend is done at a premium.

Technology and globalisation are important trends that are affecting the manner in which legal services are being delivered.

Firstly, technology is being applied in areas such as knowledge management systems, contract lifecycle systems and automated data abstraction technology. Software driven solutions are gaining popularity overseas where providers are rendering services to their clients focused on ways to improve efficiency and delivery (Groot, 2014).

However, hurdles, which have lowered adoption rates amongst users, including resistance from lawyers, high switching costs and concerns around preserving the profession (Robertson, 2016).

A result of globalisation is the Legal Process Outsourcing (“LPO”) delivery model in legal services. These organisations tend to assist in areas where In-house departments are faced with high volume legal work that is by its nature of lower complexity due to

repetition (Friedmann, 2012). The general model allows for labour arbitrage to be leveraged in terms of where services are outsourced and offshored from expensive jurisdictions to less expensive jurisdictions (Groot, 2014).

As noted, especially in relation to the United States that the legal industry's biggest challenge relates to pricing uncertainty. This leads into the greater debate around uncertainty (Tiano, 2016). The high costs of external legal services have led to the emergence of alternative legal service providers and technology, which have continued to develop alternative, efficiency driven low costs solutions as opposed to the traditional law firm (Tiano, 2016).

The discerning In-house client of today now has more choice as to the ultimate recipients of legal spend and can attain a more streamlined and efficient operation, without compromising on quality or increasing the legal risk for the organisation. The role of technology, changing business and fee models and Legal Process Outsourcing have further been identified as major trends affecting the South African legal industry (Wakefield, 2016).

There has been a rise in legal consulting platforms, where highly skilled professionals have left the "big firm" practice to reduce overheads and fee targets. At the top end of the market, fees can be as much R6000 per hour in the traditional legal market (Pickworth, 2013).

Deloitte's has similar views in its recent report Future Trends in Legal Services, in which it highlights the role of technology, alternative legal service providers and increased efficiency requirements as some of the major trends influencing the industry (Deloitte, 2016).

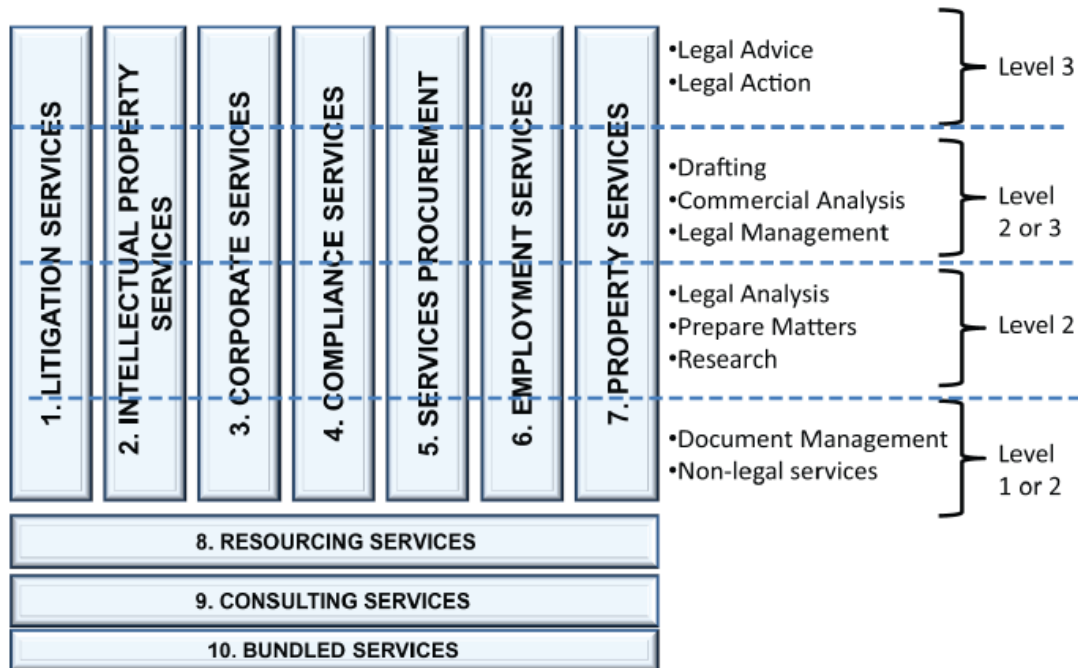
International law firm Ashurst, found that 83% of In-house legal departments are under scrutiny in relation to efficiency and costs whilst 56% have had budgets reduced in the last 24 months (Polson, 2016).

In-house departments, in order to improve efficiency, have to look at the performance metrics used in evaluating the delivery of legal services. Previously, cost was the primary driver, rather measuring budget as opposed to value (Brown, 2016). Measurements such as risk mitigation and management, maximising the benefit delivered, protecting intellectual property, maximising benefits from contracts and minimising consequences of disputes have been developed to assist in measuring the performance of In-house

legal departments. A more rounded stakeholder approach has emerged looking at internal satisfaction, external satisfaction and other subjective elements (Brown, 2016).

In determining the appropriate definition of legal services, a framework, Figure 2 below, from Lacity and Wilcocks (2013), which sets out 10 towers of legal services for legal process outsourcing providers, has been considered to adequately define legal services.

Figure 2: Legal Services Framework



(Lacity & Willcocks, 2013)

Seven towers support core legal activities and have been considered to help determine the nature of legal services, which are delivered by In-house legal departments:

- Tower 1: Litigation Services – discovery, document, and case management services.
- Tower 2: Intellectual property services – patents, trademarks, and domain name services.
- Tower 3: Corporate services – mergers and acquisitions, transaction agreements, and corporate financing services.
- Tower 4: Compliance services – regulatory and company policy compliance services.
- Tower 5: Services procurement – contracts, service agreements, and outsourcing services.

- Tower 6: Employment services – employment contracts, disputes, immigration and injury services.
- Tower 7: Property services – purchase, lease, rent, or sale of immovable property (Lacity & Willcocks, 2013).

For the purposes of this study, the focus will be placed on general legal services that encompass the seven core service towers, as the framework to identify whether an In-house legal department will make or buy the services.

Lacity and Wilcock's (2013) have identified activities which are commonly performed across all seven core services, which include researching, drafting and managing documents, preparing matters, performing legal and commercial analyses, providing legal advice, taking legal action, and managing legal and non-legal services.

Skills allocations and distinctions are determined in order to allocate the correct resource to these common activities, Level 1 skills, which are administrative in nature and do not require formal legal training. Level 2 skills (e.g. paralegal), do not require formal legal training but do require some legal knowledge and context. Level 3 skills (e.g. technical/fully qualified lawyers) are high value activities that require legal qualifications to be performed (Lacity & Willcocks, 2013).

Even though the seven core towers have been identified as providing a complete exposition of the different types of legal services. Legal services for the purposes of this study will be considered in general encompassing all legal different legal services. The purpose of exposing the inherent complexity of legal services is to highlight the need for further study to determine if there are inherent complexity and/or correlation between the different core service lines in relation to the make-or buy decision.

It has been found that many In-house legal departments are moving work back into the organisation itself. The main rationale behind this is simply saving money and time. This a general trend that has been observed in the United States market (BTI, 2016).

The work moving In-house is primarily in the following areas:

- Commercial Litigation
- IP Litigation
- Investigations
- Environmental

- Real Estate
- Smaller M&A
- Licensing(BTI, 2016).

New legal roles are also developing, where focus is levelled on efficient operations, budgeting and strategy. Law firms themselves have developed roles such as Chief Practice Management Officer or Chief Pricing Officer, which look at more effective delivery and pricing of legal services (Tiano, 2016).

As highlighted above, the trend for In-house departments to deliver more legal services internally is pushing external service providers to deliver better value. Costs have been reduced by greater internal production, alternative legal services models and moving work from large firms to more boutique specialised firms (Friedmann, 2016). Clients (including the In-house departments) are looking for risk adjusted solutions and commercial decision making in pursuance of legal matters.

It is important to consider that not all services can be delivered internally, as specific rules of practice limit the party who is allowed to perform the required services. For instance, corporate legal departments require outsourced activities on conveyancing and litigation, in order to comply with legal requirements and rules, which mandate an attorney to perform such functions. As a result, the study will further attempt to identify areas where the In-house legal department is compelled to buy legal services and areas where the choice exists to either make, buy or concurrently source the legal services.

In-house lawyers, who have not been previously admitted as an attorney or advocate may not be directly admitted as practitioners of the courts and are generally not considered as part of the practicing legal profession (Transformation of the Legal Profession,” n.d.). However, corporate legal advisors may remain as non-practicing members of the attorneys association or bar council to which they have been admitted to.

Sako et al (2013) found that the use of law firms and alternative legal service providers is now well-recognised practise in the United States. It was further confirmed that organisations both make and buy legal services confirming the position of a plural sourcing mode of sourcing in the delivery of legal services (Sako et al., 2013). The legal industry, especially in the context of corporate legal services, a hybrid sourcing strategy

of both producing internal legal services as well as procuring service in the external market is a long established practice (Sako et al., 2013; Susskind, 2008).

1.4. Scope of research

This study attempts to gain a more profound understanding of the make-or-buy decision for corporate legal departments through the lens of the Concurrent Sourcing model developed by Parmigiani (2007). This model brings together previously disparate economic theories of TCE, Neoclassical Economics and Capabilities economics, in order to fully ventilate when organisations both make-and-buy.

Essentially this research aims to:

- Explore the economic drivers underlying the make-or-buy and the make-and-buy decision for In-house legal departments.
- Test the academic applicability of the Concurrent sourcing mode in terms of the academic framework developed by Parmigiani (2007).
- To ascertain whether asset specificity, volume uncertainty, performance uncertainty, economies of scale/scope, supplier expertise, firm expertise and technological uncertainty affect the concurrent sourcing mode of In-house legal departments in South Africa.
- Exposing any complexities that can arise as a result of the application of concurrent sourcing to services related spectrum in distinction to the manufacturing or production areas.

In order to assist in establishing links between the three academic foundations of TCE, Neoclassical Economics and Capabilities economics the comprehensive approach of Parmigiani (2007) has been developed after analysing the literature that is presented in Chapter 2. The model was developed prior to the semi-structured in-depth face-to-face interviews that were conducted, on the basis of the questions asked to either confirm the literature or gather new insights to be formed, in order to formulate a thorough understanding of the concurrent sourcing choice as it applies to services related industries.

By understanding the type of considerations which are of importance for In-house legal departments in making the decision to procure services externally or produce same internally, it will develop not only the understanding of the dominant economics drivers

in general, but provide a guideline to assist In-house legal departments to better understand the decisions surrounding concurrent sourcing of legal services.

This research hopes to assist In-house legal departments in highlighting a clear formulation and framework of how to consider the make-or-buy decision, and how the In-house legal departments can improve its strategic role in meeting organisational objectives.

Additionally, this research should provide further insight into the major trends and themes which are currently at issue in the legal industry, such as the use of technology and alternative legal service providers and the continued functioning of the traditional approach to legal services delivery.

The literature review in Chapter 2 focuses on the key themes and issues of TCE, Neoclassical Economics and Capabilities economics. The Concurrent sourcing mode emphasises the interconnectedness of the various theories, in order to best explain the make-and-buy decision as it is presented in the form of concurrent sourcing.

Further quantitative research has been conducted on a closed sample of the In-house lawyers in attempts to validate the results of the exploratory research, in relation to the delivery of internal legal services or procuring these services in the external market.

2. CHAPTER 2: LITERATURE REVIEW

2.1. Introduction

There is little to no applicable academic research and writing on the In-house legal department's make-or-buy decision in the South African context.

The main academic theories elevating the make-or-buy decision are rooted in economics. This research finds its academic basis from economics, but more specifically the theories of TCE (hereinafter referred to as "TCE"), Neo Classical economics and the capabilities view. These three theories all propose differing reasoning as to why a firm would make-or-buy, with TCE furthering the view that the make-or-buy decision rests on a continuum, whilst neo-classical and capabilities theories postulating a discrete decision between the two (Parmigiani, 2007).

However, building on the work of Parmigiani (2007), this study will examine the notion of concurrent sourcing by combining the academic basis highlighted above.

Concurrent Sourcing, as fully discussed below, is a form of dual sourcing by an organisation. Such hybrid models that have included both make and buy decisions have been subject to many different studies and have been labelled in different ways. For the purposes of this research, the term concurrent sourcing should be considered to all include the previous terminology such as plural, mixed and hybrid sourcing. However, when reliance is placed on a single author, the terminology used by that author will be applied to the review.

Concurrent sourcing, as defined by Parmigiani (2007), is the "backward, partial vertical integration of a homogeneous good (or service) by a single firm" (Parmigiani, 2007).

This research focuses on the delivery of legal services in In-house legal departments. Legal services can be regarded as homogenous services that are in competition in a market but which (from the consumer's viewpoint) have little or no differentiation in terms of features, benefits, or quality and are, therefore, forced to compete on price or availability ("Homogeneous Goods," 2016). This accords with Parmigiani (2007) who focused on a manufactured homogenous product. However, the emphasis of this study is directed to legal services and not a tangible good.

Even though legal services, in general, are regarded as a homogenous service, the distinction highlighted by Lacity and Wilcock's (2013) in the different towers of legal services that can be performed must be regarded in terms of the definition of homogeneity as highlighted above.

Parmigiani (2007) focuses on determining whether concurrent sourcing should be considered as an independent sourcing approach or a continuous make-or-buy spectrum. It further appears that Parmigiani (2007) has found support for the separate sourcing approach, as it is apparent that firms would first make a discrete choice between producing the good or service internally and then determines the quantity, which would be internally produced (Lambrecht, Pawlina, & Teixeira, 2013).

Parmigiani's (2007) approach and constructs have been applied subsequently in both the private and public sector and provide a comprehensive base on which to ground this study (Rosenberg Hansen, Mols, & Villadsen, 2011b). This comprehensive foundation and de jure model will assist an extensive study, which will fully elucidate the drivers and levers influencing the make-or-buy decision for In-house legal departments.

2.2. Academic sources

2.2.1. The Make-or-Buy Decision

The "make-or-buy" decision has been the subject of much research in economics, beginning with the classic paper by Coase (Coase, 1937). Coase has primarily identified that the firm must lower the cost of access to resources but also in the allocation and co-ordination of those resources (A. Smith, Chanson, & Que, 2013).

Theories of the firm and the vertical boundaries that dictate the make-or-buy decision view sourcing as a dichotomous choice, which is a choice between either make-or-buy.

A make-or-buy cost analysis has regard to the costs of production in relation to the transaction costs to procure that service. These transaction costs must include all costs involved in making the decision to buy the service and includes cost of transacting and co-ordinating the outsourced service (Moschuris, 2015).

Make-or-buy decisions generally span over a period of time and it is the accumulation of these decisions that determine the extent to which a firm is vertically integrated (Diaby & Padillo, 1999).

In order for firms to be in a position to be able to both make and buy, as per Parmigiani (2007) organisations will need to secure capital, allocate plant and equipment, adequately staff and coordinate same to be in a position to produce internally whilst simultaneously having to find, select, procure and manage external service providers and the costs associated with these processes (Moses, 2011; Parmigiani, 2007).

The make-or-buy decision has been the subject to broad ranging research and three general approaches have emerged. The three approaches are TCE, neoclassical economics and the capabilities view. Parmigiani (2007) has combined these three approaches to creating a comprehensive view of concurrent sourcing as an alternative to the make-or-buy decision and rather make-and-buy as a distinct alternative.

This study discusses these three theoretical approaches and then considers the research on concurrent sourcing and its many forms thereafter.

2.2.2. Transaction Cost Economics

Coase (1937) and Williamson (1985) established the dominant lens of TCE through which before and after costs are considered to determine whether a firm produces a service internally or externally.

Accordingly, Coase (1937) advised economists that they needed “... to bridge what appears to be a gap in [standard] economic theory between the assumption (made for some purposes) that resources are allocated by means of the price mechanism and the assumption (made for other purposes) that that allocation is dependent on the entrepreneur-coordinator. We have to explain the basis on which, in practice, this choice between alternatives is affected.”

TCE has highlighted numerous costs that are incurred when sourcing from external suppliers such as the price of service and transaction costs, search costs, bargaining costs, and ex ante protection costs. Further Ex post transaction costs such as costs of monitoring and enforcing contract, the cost associated with the exchange of goods or services and those costs which are incurred in overcoming market imperfections are all considered (Allen, 2000).

According to Williamson (1985) asset specificity, and uncertainty motivates firms to produce internally as both drivers increase the costs associated with market exchanges. It has been developed on two behavioural assumptions: bounded rationality and opportunism (Mols, 2010a; O. E. Williamson, 1985).

Williamson (1985) has defined asset specificity as to refer to investments that are undertaken in support of particular transactions and highlights and considers whether investments made could have a better use or higher value if deployed elsewhere (Lonsdale, 2001).

Williamson highlighted that a buyer cannot determine what is opportunistic behaviour and what is not, until such time as the parties have concluded a transaction and the transaction has been or is being implemented (Lonsdale, 2001). Parties are not assumed to be completely rational.

These behavioural assumptions highlighted above can create obstacles and difficulties in the transaction which must be dealt with by the firm in procuring externally (Nordigarden, Rehme, Breg, Chicksand, & Walker, 2014).

Williamson (1985) has proffered that the controlling function in TCE, the market uses contracts to protect itself against opportunism when there are many alternatives and information uniformity. The market provides an autonomous environment with little to no administration (Mols, 2010a).

TCE predicts satisfaction and performance with suppliers and has long formed a strong theoretical basis for the make-or buy-decision (Mols, Hansen, & Villadsen, 2012).

Support for the notion that if core competencies are exposed to suppliers, the firm is more vulnerable to opportunism on the part of the supplier. This highlights the importance of asset specificity in the context of the TCE approach to the make-or-buy decision for firms (Bildsten, 2014; Parmigiani, 2007).

TCE has generally found empirical support when applied broadly to strategy, management and organisational theory (Macher & Boerner, 2002).

Many academic studies have used the concept of the transaction and by extension Williamson's TCE to explain a particular sourcing decision by the firm (Ang & Cummings, 1997; Leiblein & Miller, 2003; Pisano, 1990; Poppo & Zenger, 1998; Straub & Ang, 1998; Sutcliffe & Zaheer, 1998).

However, the work has further been extensively critiqued based on the assumptions it makes, its emphasis on opportunism as well as its results and the subsequent implication which are subsequently made in relation to the make or buy decision for the firm (Ghoshal & Moran, 1996; A. Smith et al., 2013).

Williamson (1991) has found support in both management and organisational design fields that the required investment which needs to be made in order to internally produce versus external procurement must be coupled with the governance required to manage either the internal or external sourcing choice (Hefetz, Warner, & Vigoda-Gadot, 2014; Oliver E. Williamson, 1985; Oliver E Williamson, 1991).

Academic research has attempted to expand the theoretical base for concurrent sourcing. Williamson included both the organisational structures of joint ventures and strategic partnerships as TCE assumes that due to uncertainty, the firm's boundaries between the make or buy decision are inherently unclear (Bradach & Eccles, 1989; Hefetz et al., 2014; Puranam, Gupta, & Bhattacharya, 2013).

Various forms of hybrid models have been investigated using the lens of TCE, however, none had considered the questions as to why firms would concurrently source (Parmigiani, 2007). However, research has considered alliance and joint ventures, franchising, relational contracting and network forms. This could largely be attributed to the assumption that the make or buy decision rests on a continuum which is a discrete market exchange on one end and a hierarchical organisation on the other, with mixed modes filling the range between (Oliver E. Williamson, 1985).

TCE is used throughout to create an academic basis that assists in determining the appropriate form of governance mechanism for the organisation. TCE assumes that firms have a profit maximisation and cost minimisation focus. TCE has argued that in consideration of whether an organisation should consider internal production must be based on the transaction specific costs between the parties (Kulkarni & Jenamani, 2012; McIvor, 2008).

Parmigiani (2007), in developing the make or buy decision has further noted that volume uncertainty, and more specifically the decision as to what volume ought to be internally or externally procured, cannot be adequately explained by TCE. TCE has not been conclusive in the ability to predict the use of the concurrent sourcing approach (Parmigiani, 2007).

Williamson has indicated that TCE assumes that the ability to create economies of scale favour the external market over internal production (A. Smith et al., 2013; O. Williamson, 1973).

Smith et al (2013) have set out that external production favours the creation of economies of scale by those external providers, in that the provider is able to leverage

its capacity to produce higher volumes to many customers. These economies of scale allow the procurement from external suppliers at lower costs than the firm can produce internally. As a result, firms should externally procure when they are able to benefit from the lower costs created in areas that have economies of scale created by the external supplier (Ang & Cummings, 1997; Poppo & Zenger, 1998; A. Smith et al., 2013).

However, if the firm can internally create economies of scale in the areas that have high volume requirements, then the firm will produce internally. As a result, Transaction costs economics presumes that firms will produce internally when the costs of internal production are lower than the costs of procuring the services in the external market (Kulkarni & Jenamani, 2012; Poppo & Zenger, 1998; Safizadeh, Field, & Ritzman, 2008).

However, in relation to outsourcing in general, professional services may be more complex than other forms of outsourcing. Outsourcing is not solely about lower costs and There are potential long term challenges which must also be factored into the overall costs associated with an outsourcing decision (Ellram, Tate, & Billington, 2008).

It has however been forwarded that transaction costs economics alone cannot explain concurrent sourcing decisions. Parmigiani (2007) postulated that the higher the asset specificity of the good, the higher the percentage of the good will be produced internally, which means that goods with a medium asset specificity should be concurrent sourced. Parmigiani (2007) has further connected asset specificity with volume and performance uncertainty. However, the empirical evidence does not support this notion and hence lends itself to the argument of Heroit and Kulkami (2001) in that TCE cannot be the explaining factor in concurrent sourcing in isolation (Mols, 2010a).

With the changing cost structures in today's economies, where non-physical, service oriented exchanges may have low transaction costs due to information technology, the assumption that a high level of transactions equates to a high level of costs is not valid (Yang, Wacker, & Sheu, 2012). Technology plays a significant role in the improvement of knowledge management, which is applicable to services.

2.2.3. Neoclassical Economics

A neoclassical explanation for concurrent sourcing is founded in demand uncertainty. The basic premise expounded by Adelman (1949) is that an organisation can keep internal production at full capacity and rely on the use of external suppliers to handle additional volumes. This position relies on the assumption that the market has a large

number of qualified suppliers who will charge a premium to provide the output flexibility and that the firms will accept to pay this premium instead of investing in further capacity, which may not be utilized due to the demand uncertainty (Adelman, 1949).

This approach is in direct contradiction to the TCE approach which denotes that due to supplier opportunism, a firm will make greater volume to protect against same, whilst Neoclassical approach suggests that a firm will both make and buy in order to utilise capacity but allow for the flexibility to meet unexpected demand (Parmigiani, 2007).

Neoclassical Economics has as its primary driver, the reduction of production costs by leveraging both economies of scale and scope. Porter (1980) focuses on internal production as a means of exploiting both scale and scope. Economies of scope reduce the costs of producing services if the same input is shared. Hence, this leads to higher utilisation rates of the resource (Mols, 2010a; Panzar & Willig, 1981).

The Neoclassical approach further contends that the greater the economies of scope for the firm, the greater the motivation to produce the service internally whilst the greater the economy of scope for the supplier, would, in turn, lead to a higher degree of outsourcing from the firm (Parmigiani, 2007).

This is premised on and forwards the argument that if a firm has economies of scope that the preferred mode of sourcing ought to be Make. However, as highlighted, if a supplier has economies of scope, this may act to reduce the overall cost of production to the supplier and ought, in turn, reduce the costs to the firm in its buy decision. Parmigiani's (2007) argument is hence when economies of scope are present for both the supplier and the firm, a concurrent approach will more likely be the preferred sourcing choice (Rosenberg Hansen et al., 2011b).

As a result, if both the firm and the supplier can reduce production costs through the use of economies of scope, the firm would concurrently source the service in order to enjoy lower costs of internal production for services which it has economies of scope in and enjoy reduced costs from its supplier, where the supplier enjoys economies of scope (Parmigiani, 2007).

The Neoclassical approach further suggests that performance uncertainty can be reduced with concurrent sourcing. Increased information that is obtained through the buying process will lead to better understanding of methods of production. Heide (2003) highlighted that the risk of opportunism can be reduced through concurrent sourcing (Heide, 2003).

Once again, as in TCE, performance uncertainty does not dictate a continuous relationship between how much to make and how much to buy, but the firm does both, in order to allow greater availability of information, which in turn reduces the performance uncertainty (Parmigiani, 2007).

2.2.4. Capabilities Economics

The corollary to TCE is the capabilities view, which is based on the resource based view of the firm and the knowledge based view of the firm approach (“capabilities economics”), which assists organisations and academics alike to determine and evaluate differing capabilities. This approach does not only look at the capabilities and capacities of the organisation to internally make the service but the capabilities and capacities of the outsourced service providers (Eisenhart & Martin, 2000).

Resource based theory uses sustainable competitive advantage as its barometer when determining the effect of characteristics of resources and capabilities on same (Barney, 1991; Mols, 2010a; Peteraf, 1993).

Resource based view of the firm has been the subject of several studies, especially in the public sector, but is a relatively new application in the context of the make-or-buy decision. Its focus and academic basis rely on expertise and capabilities, both internally and externally, to determine the sourcing mode to be chosen (Bryson, Ackermann, & Eden, 2007; Carmeli & Tishler, 2004; Mols et al., 2012).

Intuitively, a firm, in order to create a sustainable competitive advantage, must determine its own boundaries between internal and external sourcing by leveraging the core capabilities of the firm (Jacobides & Winter, 2005, 2007; Parmigiani, 2007)(Jacobides & Winter, 2005).

Even though external sourcing requires governance models that are able to monitor and control the external sourcing, firms ought to focus on internal production if it aligns with the best utilisation of its current resources and capabilities (Ceci & Masciarelli, 2010; K. Conner & Prahalad, 1996; Kogut & Zander, 1993).

Resource Based view of the firm postulates that larger benefits will be garnered for a firm to produce internally if it has strong capabilities to produce, the corollary being true for firms with less developed capabilities benefitting from the reduced costs from sourcing externally (Argyres, 1996; Mayer & Salomon, 2006; Mols, 2010a).

Resource based theory thus establishes the academic groundwork which highlights how outsourced service providers are able to create economies of scale, a reduction of overall turnaround times and a reduction in the costs to produce the service. That is why different cost efficiency is obtained and different business results are achieved (Vasiliauskiene, Snieska, & Venclauskiene, 2011).

Resource based theory has found further application when discussing outsourcing. The theory found its base in the concept of the core competence which has further been used to explain the practice of outsourcing (Kulkarni & Jenamani, 2012; Mclvor, 2008).

The decision to make-or buy will be dependent on whether the firm has the required resources to perform the service. If not, the firm is more likely to outsource where it can obtain skills and expertise that will be more efficient in producing the service. As a result, the better resourced the firm is, the more it will tend to make the service, whilst the corollary favour outsourcing if the supplier possesses greater expertise and resource to perform the service (Conner & Prahalad, 1996).

Parmigiani (2007) found that concurrent sourcing would be the preferred mode of governance if both the firm and the supplier has significant expertise in the production of the service.

Concurrent sourcing further exposes the firm to external complementary knowledge which in turn increases the expertise and knowledge of the firm, which will develop its own internal expertise and production capability (Ahuja, 2000; Ahuja & Lampert, 2001; Cassiman & Veugelers, 2006; Hashai, 2016; Lavie & Rosenkopf, 2006; Leiblein & Madsen, 2009; Parmigiani, 2007; Parmigiani & Mitchell, 2010; Phelps, 2010; Sampson, 2007).

This view of developing technology and the uncertainty that it creates for the firm can further be seen in light of Susskind's model for the evolution of legal services set out in Figure 3 below:

Figure 3: Susskind's Evolution of the Legal Industry



(Susskind, 2008)

To inform the application of the evolution of the legal industry in this discussion, Susskind (2008) has considered that legal work is gradually evolving from bespoke (e.g. court room practice) to standardized (e.g. form documents for a merger), to systematized (e.g. a document assembly system for estate planning), to packaged (e.g. a turn-key regulatory compliance program), to commoditized (e.g. any IT-based legal product that is undifferentiated in a market with many competitors) (Susskind, 2008).

This evolution has developed from the ability to determine what is repetitive in legal services delivery and how standardised process can be coupled with technology to provide solutions that can be scaled to deal with large volumes of legal services, without derogating quality in the process (Henderson, 2014).

Technology uncertainty has been identified as an important variable and driver in the determination of the make or decision. Barney (1999) further indicates that a firm can gain access to capabilities at reduced costs by applying non-hierarchical forms of governance over the continuous attempts to replicate similar capabilities internally (Mols, 2010a).

However, this technology and its uses are most definitely in its infancy in the legal market and there is a slow adoption of the technology based commoditised services.

This would tend to support the view of Parmigiani (2007) in that the greater the technological uncertainty, the more likely the firm will concurrently resource. Having access to information from an external provider or providers, as highlighted above, will mitigate the risk associated with technological uncertainty (Mols, 2010b; Parmigiani, 2007).

The increased knowledge absorbed from external sourcing can be applied internally, improving the firm's ability to produce, allowing the firm to develop an absorptive capacity

affording the firm flexibility to deal with excess or demand fluctuations from the external relationships (Cassiman & Veugelers, 2006).

Concurrent sourcing mitigates negative consequences of supplier performance uncertainty associated with technological uncertainty. In concurrent sourcing, both the internal and external producers can be intimately involved in technology choices, as a firm who uses the technology internally can better understand the technologies used by the external supplier (W. M. Cohen & Levinthal, 1990; Mols et al., 2012).

Parmigiani in her approach to concurrent sourcing argues that the firm has the best of both worlds. The firm will be in a position to develop its own knowledge and expertise in areas where it has strong internal expertise and further be in a position to exploit the knowledge of the external suppliers in areas where it has superior expertise (Parmigiani, 2007; Rosenberg Hansen, Mols, & Villadsen, 2011a; Rosenberg Hansen et al., 2011b).

Knowledge Based theories have lent substance to the value that is garnered through knowledge. Firms tend to retain greater knowledge and expertise than would strictly speaking be necessary for their own internal production (Gospel & Sako, 2010; Kogut & Zander, 1992). External suppliers assist firms in keeping up to date with technological developments (Mols, 2010b; Rothaermel, Hitt, & Jobe, 2006).

2.2.5. Concurrent Sourcing

As defined above Parmigiani states that: “[c]oncurrent sourcing emphasizes that firm s are making and buying the same good, in contrast to considering a broader unit of analysis and/or one with more heterogeneity” (Parmigiani, 2007).

Concurrent sourcing has taken many names by many researchers. However, the common thread is that each different discussion, the existence of both the make and buy decision is present (Heide, 2003; Mols, 2010a; Parmigiani, 2007; Rothaermel et al., 2006). Harrigan (1984) uses the terminology of tapered integration, where a firm relies on external service providers for a part of its requirements. Jacobides and Billinger (2006) described firms that are both vertically integrated and open to the market as permeable vertical architectures and Heide (2003) uses the term plural governance to describe the existence of concurrent sourcing in production areas (Heide, 2003; Jacobides & Billinger, 2006; Mols, 2010a).

Mixed sourcing strategies and the concept of combining the make and buy decision has regained academic interest (Jacobides & Billinger, 2006; Kretschmer & Puranam, 2008;

Mols, 2010a, 2010b; Nordigarden et al., 2014; Parmigiani, 2007; Parmigiani & Mitchell, 2010). With this bulk of knowledge, other than the research highlighted above, concurrent sourcing has received little attention (Mols, 2010b).

Most research has further focused on the application of concurrent sourcing in the manufacturing sectors and industries. Hybrid/Plural/Concurrent sourcing models have received little attention in knowledge based areas and services such as ITO and BPO, where the decision has been regarded and developed into strategies where these firms make the distinct choice to either make or buy, but not both.

Puranam and Kretschmer(2008) have postulated that the emergence of plural/mixed strategies can be seen to emerge out of knowledge complimentaries that are arising between both the internal production and external supply. Overlapping expertise and mutual learning are the main drivers behind firms both making and buying (Cassiman & Veugelers, 2006; Parmigiani & Mitchell, 2010; Sako et al., 2013).

Despite the numerous complementary academic theories that have emerged, there is a common reliance on economics and bounded rationality. However, the differing perspectives have often focused on differing variables and problems, which has limited a common application across the board, however many scholars agree that whole of the sum has provided a comprehensive view which can be achieved by applying a single approach alone (Mols, 2010a).

The academic sources have tried to establish which theoretical basis would be better to follow by the firm in making the make-or-buy decision. Watjatrakul (2005) has found that if the theories have differing predications, then TCE is the better explanation as compared to resource based view. Arnold (2000) developed an outsourcing model that combines the theories. However, there does not seem to be conclusive approaches to the question (Kulkarni & Jenamani, 2012).

Concurrent sourcing is to be regarded as a strategic approach which can be used in both the public and private (Parmigiani, 2007; Warner & Hefetz, 2012).

Volume uncertainty and the difficulties in predicting demand have lent credence to the concurrent sourcing approach. Firms cannot plan internal production and this the volume uncertainty results in reduced performance and raised costs, as there is waste and or underutilised resources. A mixed sourcing strategy can assist firms in mitigating risk associated with volume uncertainty (Harrigan, 1984; Mols, 2010a).

In clarification, concurrent sourcing reduces a firm's risks associated with balancing capacity with demand, by using internal production capacity for stable workflows and external suppliers for peak demand areas. Concurrent sourcing has further shown to be an effective approach to encourage competition between suppliers and reducing dependence on external suppliers, in that there is an internal capability that can be leveraged (Adelman, 1949; Mols, 2010b).

Plural sourcing as a mode of concurrent sourcing focused on the affects and consequences created in organisations that suffer from information asymmetry. Internal production can reduce risks associated with information asymmetry in that external suppliers can be better monitored and controlled by the information generated through internal production (Heide, 2003). Heide's results and findings found a basis for concurrent sourcing as the appropriate sourcing choice when faced with problems associated with information asymmetry and external uncertainty (Heide, 2003; Mols, 2010b).

In general, the numerous models and research generated in the mixed sourcing strategy space has shown that benefits of a choice between make or buy have been exceeded by the benefits which can be garnered from the complimentaries which are associated with the concurrent or mixed sourcing strategy (Purunam, Gulati, & Bhattacharya, 2013). From a concurrent sourcing point of view, Mols indicates that cost are higher for firms that follow a mixed strategy as the firm must govern external providers as well as make the necessary investments into internal production and capability (Heide, 2003; Mols, 2010b; Puranam et al., 2013).

The benefits are largely an increase in efficiency and services. Parmigiani (2007) has found that firms have a distinct choice to follow a concurrent sourcing approach based on the lack of information in the market, levels of asset specificity in governing external suppliers and other uncertainties related to volume, performance and technology. These uncertainties have further been found to lead a risk mitigation strategy by the application of a concurrent sourcing model (Hefetz et al., 2014).

Plural sourcing further highlights the effect of co-specialisation of resources, which can be leveraged by utilising synergies with specific resource combinations (Argyres, 1996; Kogut & Zander, 1992). As a result, in plural sourcing, firm will prefer and rely on internal production over external sourcing when there are greater opportunities to combine unique resource combinations (Sako et al., 2013).

Plural sourcing, in its second main consideration, firms rely more heavily on external sourcing when firms choose a concentrated number of suppliers that have a large range of capabilities amongst them. In such a choice, relational contracting and client specific investments reduce the transactional costs associated with governance of external suppliers (Dyer, 1997; Sako et al., 2013).

Agency theory has further been applied to attempt to explain the development of the separate sourcing decision, being concurrent sourcing. Internal production provides the buyer with information which can be used to reduce problems associated with lack of information with external suppliers (Heide, 2003; Mols, 2010a).

As Parmigiani (2007) highlights, that goods with a moderate performance uncertainty, firms are more likely to use concurrent sourcing as both the firm and the external supplier can exploit economies of scope. If both the firm and the external suppliers capabilities are strong, with high technological uncertainty, firms are most likely to concurrent source, as concurrent sourcing is a choice and does not lie on a continuum (Mols, 2010b).

However, the empirical findings in concurrent sourcing have not been consistent with regards performance ambiguity and volume uncertainty (Krzeminska, Hoetker, & Mellewigt, 2013; Mols, 2010b).

Concurrent sourcing as a distinct mode of sourcing choice available is important as a further strategic consideration to the previous make-or-buy options available (Hefetz et al., 2014).

Supplier performance, through vitally important to any business, is often difficult to manage and control. Concurrent sourcing allow a firm to evaluate and compare the services of one external supplier with another(Heide, 2003). Concurrent sourcing does not have the effect of reducing performance uncertainty other than in areas where the performance uncertainty is related to the lack of information. If that is not the case, then performance uncertainty does directly influence concurrent sourcing, but the information provided does reduce negative consequences of performance from external suppliers (Mols, 2010b).

As concurrent sourcing exposes firms to external knowledge sources especially on costs and prices. This allows the firm to have better knowledge of prices of the external supplier which in turn facilitates the firm to obtain better prices from external suppliers (Adelman, 1949; Parmigiani & Mitchell, 2010).

Volume uncertainty can negatively affect the relationship between the firm and the external provider. Adelman sets forth that concurrent sourcing allows a firm to use external supply for the irregular demand and internal production for the ordinary demand (Adelman, 1949). This is further found to be a low risk strategy when there is demand uncertainty as the external supplier can absorb the fluctuation in demand whilst the internal production can operate optimally (Harrigan, 1984). As a result, concurrent sourcing acts to moderate uncertainty and performance for the firm (Mols et al., 2012). In facing fluctuating demand often faced by firms, the choice of using concurrent sourcing can limit negative consequences that could be faced by firms (Harrigan, 1984). This allows a firm to utilize its internal resources and assets whilst affording the firm the flexibility in the internal production (Mols, 2010b).

It has been argued by Argyres (1996) that firms that have different capabilities will have different production costs. As a result, a firm with strong capabilities will decide to make and a firm with weaker capabilities will decide to buy from the external market. Concurrent sourcing effects capabilities and performance of firms to varying degrees and influence. Strong capabilities can be used to create stronger capabilities in the external provider and a buyer can learn from the external supplier. As a result, both the firm and the external provider benefit from the concurrent sourcing mode (Cassiman & Veugelers, 2006; Parmigiani, 2007).

Internal capability is required for a firm to be able to assimilate the external knowledge and develop the firms capacity and capabilities in order for the firm to benefit from demand uncertainty (Cassiman & Veugelers, 2006; W. M. Cohen & Levinthal, 1990).

Concurrent sourcing, as a mix of vertical integration and outsourcing, was found to improve new products, hence, increasing the return from external knowledge and thus concurrent sourcing improves the capabilities of both the firm and the external service provider (Rothaermel et al., 2006) and a more efficient use of capabilities (Parmigiani, 2007).

Parmigiani (2007) demonstrates some support for the performance uncertainty and asset specificity. There was no support for TCE hypotheses when trying to explain the make-or-buy decision for services when looking at Danish municipalities. It was further highlighted the difference between services delivery and not manufacturing of products. (Rosenberg Hansen et al., 2011b).

The best value regime was recommended to be that In-house should deliver all core services and use the external suppliers to assist in meeting excessive demand, hence the research considering both internal and external expertise (Rosenberg Hansen et al., 2011b).

2.3. Conclusion

In summary and having regard to the numerous contributions to concurrent sourcing, the contributions that have been made to the area of research rely on different academic frameworks due to differing results.

No single academic framework can be used to conclusively assist an organisation in the make-or-and-buy decision for organisations. The research differs on aspects and highlights the potential difficulty which is experienced in the distinction between generalised and specialised services.

The main academic frameworks in general suggest, in summary as follows:

1. TCE: provides a termination safeguard for firms and firms do not produce entirely through in internal production as external suppliers have lower costs and do not buy entirely to protect transaction specific investments (O. E. Williamson, 1985; Oliver E Williamson, 1981);
2. Capabilities Economics: provides a broader availability of resources for the firms utilisation, and firms do not produce entirely internally as it is not possible to maintain all necessary resources internally and firms do not externally procure all their requirements to earn rent on internal resources and to maintain absorptive capacity (Parmigiani, 2007) and provides for both increased problem solving capabilities as well as the ability to exploit the efficiencies associated with external supply and firms do not produce entirely internally as external suppliers are more efficient if problems are decomposed and firms do not externally procure all their requirements as the firm must retain its internal capabilities to solve problems that are not decomposed (Parmigiani, 2007);
3. Neoclassical view: provides for operational economies of scale and scope and firms do not produce entirely internally as firms lack productive capacity or

decreasing returns to scale and firms do not externally procure all their requirements as firms can produce some of their requirements at lower production costs than their external suppliers (Adelman, 1949; Harrigan, 1984; Heide, 2003).

4. Concurrent: concurrent sourcing allows for the leveraging of complementarities. Firms do not produce entirely internally or entirely externally due to bureaucracy, costs constraints and barriers to exit (Kretschmer & Puranam, 2008; Parmigiani, 2007; Rosenberg Hansen et al., 2011b)

3. CHAPTER 3: RESEARCH QUESTIONS AND HYPOTHESES

3.1. Introduction

In terms of following a mixed methodology, this study has both a qualitative and quantitative element. As a result, the research is comprised of both research questions, with sub questions thereto, and hypotheses to afford focus and direction to the study.

The research question is exploratory in nature and attempts to determine how firms will make decisions regarding the make-or-buy decision. It will further highlight whether firms concurrently source legal services by based on the three main academic avenues highlighted above.

The hypotheses have been adapted from Parmigiani (Parmigiani, 2007) for application to the legal services context in general.

3.2. Purpose of the study

The purpose of the study is to explore the make-or-buy decision for In-house legal departments in South Africa.

3.3. Research questions

For a conclusion to be reached in answering the broader question of this research, exploration of the following questions will be conducted.

The general high-level research question is: How do In-house legal departments determine when to make, buy or concurrently source legal services?

In order to determine same and have regard to the literature review, a number of sub research questions have been developed.

3.3.1. Research Question 1

How does asset specificity affect the make-or-buy decision?

3.3.2. Research Question 2

How does volume uncertainty affect the make-or-buy decision?

3.3.3. Research Question 3:

How does performance uncertainty affect the make-or-buy decision?

3.3.4. Research Question 4:

How do economies of scale/scope affect the make-or-buy decision?

3.3.5. Research Question 5:

How does expertise affect the make-or-buy decision?

3.3.6. Research Question 6:

How does technological uncertainty affect the make-or-buy decision?

3.4. Research objectives

3.4.1. Primary objectives

The primary objective to be explored through this research is to establish a high level understanding of the main economic drivers influencing the make-or-buy decision from the viewpoint of the In-house legal department and to develop a framework to assist In-house legal departments in the future delivery of legal services,

3.4.2. Secondary objectives

To achieve the desired primary objective, secondary objectives were established. The secondary objectives are:

- To review the existing literature on concurrent sourcing and its foundations as a distinct alternative to the make-or-buy decision;

- To build on the existing Concurrent sourcing literature by determining the potential effect on services as opposed to the manufactured goods;
- To establish areas where In-house departments are forced to procure legal services externally;
- to establish the affect that:
 - how asset specificity influences the make-or-buy decision;
 - how volume uncertainty influences the make-or-buy decision;
 - how performance uncertainty influences the make-or-buy decision;
 - how technological uncertainty influences the make-or-buy decision;
 - how economies of scale/scope influence the make-or-buy decision;
 - how capabilities influence the make-or-buy decision.
- to establish if there is external factors that influence the make or buy decision which is unique to the South African context.

3.4.3. Empirical objectives

To achieve the desired primary objective, theoretical objectives need to be established. The empirical objectives will be:

- to critically evaluate the make or buy decision for concurrent sourcing modes;
- to conduct a study of the concurrent sourcing mode in relation to the In-house legal department and services in general;
- to critically evaluate Transaction Cost Economic theory to gain an understanding of how it relates to the make-or-buy decision for In-house legal departments in South Africa (Parmigiani, 2007);
- to critically evaluate Neoclassical Economic theories theory to gain an understanding of how it relates to the make-or-buy decision for In-house legal departments in South Africa (Parmigiani, 2007);

- to critically evaluate Capabilities economics theory to gain an understanding of how it relates to the make-or-buy decision for In-house legal departments in South Africa (Parmigiani, 2007).

4. CHAPTER 4 - RESEARCH METHODOLOGY AND DESIGN

4.1. Introduction

This chapter aims to explain the research design employed by the researcher to gather the data necessary to derive a conclusive result and to answer the research questions posed. It also outlines the sampling process, the gathering of the information and the analysis of the data employed.

4.2. Research design

A mixed method of both qualitative and quantitative research. The research will follow a Concurrent Use Model in that Qualitative and the Quantitative research will be conducted simultaneously due to time constraints.

Mixed methodologies allow for a more complex understanding and exploration of a certain topic or research subject than would be allowed by one method alone (Cresswell & Clark, 2007; Shannon-Baker, 2015).

Mixed methodologies have a number of further associated benefits such as higher levels of confidence in the results, more insight, and understanding and increased validity in the conclusion that the researcher is drawing (B. Johnson & L Christensen, 2004; Molina-Azorin, 2012).

A further advantage obtained through a mixed methodology include triangulation, which seeks to corroborate the findings that examine the same theoretical approaches, as well as being complementary in the attempt to clarify and enhance the results obtained through one method (Bryman, 2006, 2016; Molina-Azorin, 2012).

Concurrent data collection has been employed, not only due to time constraints in the collection of data but also to allow for a comparison with Parmigiani (2007) study into the concurrent sourcing (Cresswell & Clark, 2007; McManamny, Sheen, Boyd, & Jennings, 2014).

This approach has further allowed the researcher to alternate between a truly deductive process to allow for an inductive and iterative process to elucidate themes that may fall outside the traditional literature or to highlight context specific elements that can affect the overall results and subsequent discussions thereof (Doyle, Brady, & Byrne, 2009).

4.2.1. Qualitative Design

Being cognitive of this it was deemed necessary to do exploratory research as “it is about discovering general information about a topic which is not well understood.(Saunders & Lewis 2012).

It relies on issues and concepts that are influenced by prior learning and the scope for misinterpretation is large. However, qualitative research has been defended by acknowledging the central role of the researcher and how this provides high quality data and findings and deep meaningful insights only possible with this role (Pierce, 2008).

A pragmatic philosophy as a research philosophy suggests that the researcher is to be guided by what is possible and therefore a combination of philosophies can be adopted. In this case, it is interpretism and critical realism (Saunders & Lewis, 2012) which has been identified as being possible.

Exploratory research can be used to investigate phenomena, discover academic relationships between disparate concepts and create the basis for further hypotheses which can be tested in the future (Marshall & Rossman, 2014).

Smith & Bowers-Brown, (2010) describe qualitative research as looking in depth at the information involved in a situation. Therefore, qualitative research was chosen to enable in depth analysis of the responses from semi-structured interviews containing open-ended questions. It is understood and accepted, as reasoned by Creswell (2014) that reality has multiple views, therefore a qualitative approach to research is filled with ambiguity and subjectivity.

In designing the study, reliance was placed on the theoretical lenses of the concurrent sourcing choice which combines the traditional make-or-buy economic theory (Hanson, Creswell, Clark, Petska, & Creswell, 2005; McManamny et al., 2014).

The author, has been involved in the South African legal industry for over 10 years, is following a deductive approach by following an established academic framework established by Parmigiani (2007). However, in the coding of the interview data, the researches allowed an inductive process to be followed in the first iteration of coding which was subsequently developed to include the codes, which arose in terms of the established framework.

4.2.1.1. The De Jure model/Academic frameworks

The first phase of the research design was to identify the current framework around the make-or-buy decision, in order to provide the theoretical base for the input “data” of the de jure model by extracting the key themes. In doing so the framework assisted in the first phase in-depth interview and the second phase of quantitative survey responses, providing a common platform that demonstrated the key concepts of the research topic.

4.2.1.2. In – depth interviews

Semi-structured interviews were conducted in order to gather the information to answer the research questions posed in Chapter 3. By following a localist, interpersonal, interactive approach (Qu & Dumay, 2011), and utilising semi-structured interviews the researcher was able to enquire about themes, using predetermined questions, enabling the researcher to probe and ask additional questions as appropriate to garner a more profound understanding of what is being answered by the participant (Saunders & Lewis, 2012).

4.2.2. Quantitative Design

The quantitative design is based exclusively on the work of Parmigiani (2007). The survey schedule is based directly on the survey used in the Parmigiani study; however, it has been adapted to suit the context of the study, the In-house legal department.

It was further decided to focus on a general description of legal services. This was done because using the Lacity and Wilcock’s (2013) framework would introduce complexity to the data. As the use of the quantitative portion is for the purposes of verification and triangulation of the qualitative data, which focused on legal services in general, a

consistent approach was followed in the quantitative portion of the research' (Doyle et al., 2009).

4.3. Sampling

4.3.1. Qualitative

Saunders & Lewis, (2012) suggest that non-probability sampling is sampling techniques that are used for selecting a sample when one does not have a complete list of the population. The author's judgement was used to obtain the correct types of samples to get the best results. This is defined by Saunders & Lewis, (2012) as a purposive sampling technique.

The researcher tried to obtain access to the mix of organisations. However, responses were most forthcoming from the banking and mining sectors, being represented by 4 Bank and 2 mining companies respectively. The author does not expect the limited mix of organisational representation to diminish the findings or generalizability other than highlighting specific idiosyncrasies, which can be directly attributed to the specific industry.

In order to target appropriate senior In-house legal department respondents, non-probability sampling was employed based on respondents willingness to participate in the research and hence the sample selection is dependent on personal contacts of the researcher (Creswell, 2011). In attempts to reduce the bias associated with this type of sampling, the researcher only sought senior In-house respondents in senior positions, either that of Chief Legal Officer or a Head of Legal Function.

4.3.2. Quantitative

As the total number of In-house legal departments and lawyers is unknown, this research chose the Corporate Counsel Association of South Africa ("CCASA") as a sample which would be representative of the greater population. As a result, this research focuses on a closed non-random sampling frame.

As a result, the survey was sent out to 486 individual members of CCASA in order to act as a closed sample of In-house lawyers.

4.3.3. Population

The In-house Legal Department will be the population for this study. It is not possible to obtain a complete list of all In-house legal departments, which limits the research to rely on non-probability methods to determine the population and sampling method (Saunders, Lewis, & Thornhill, 2007).

4.4. Sampling size

4.4.1. Qualitative

Semi-structured interviews were performed and it was the author's intention to conduct interviews until additional data collection provides little or no additional insights into the research objectives. Saunders & Lewis, (2012) refer to this stage of semi-structured sampling strategy as data saturation. The exact quantity of interviews could not be predicted before the interview process had run its course, it became evident after 10 interviews that the same themes had been repeated several times and that saturation point had been reached.

For the purposes of implementation of the sample, the researched used a convenience approach relying on the author's own network and the extended networks of other individuals in the legal industry.

The factors to be considered when using the purposive sampling will be to gain access to the following types of respondents:

1. Head of Legal/Chief Legal Officer/General Counsel; or
2. Head of Legal Function, within an In-house position.

Table 1 sets out basic descriptive information for all 12 respondents.

Table 1: Overview of Respondent's

Respondent	Roles and Responsibilities
Respondent 1:	Head of Legal Risk, General Council – Retail and Business Banking – South African bank
Respondent 2:	Principal Legal Counsel – Retail and Business Banking, - South African Bank
Respondent 3:	Principle Legal Counsel – Head National Credit Act – Retail and Business Banking – South African Bank
Respondent 4:	Head Of Risk, Legal and Compliance – South African Short Term Insurance Group
Respondent 5:	General Counsel – COO, Head of Enterprise and Shared Services – South African Bank
Respondent 6:	Head Of Legal – South African Mining company
Respondent 7:	Head of Legal – Group Legal – South African Investment Bank
Respondent 8:	Head of Group Legal – Group – South African Bank
Respondent 9:	Head of Legal Function – Energy Company
Respondent 10:	Head of Legal Function – South African Bank
Respondent 11:	Head Of Legal – South African Mining Company
Respondent 12:	Chief Legal Officer – South African Pharmaceutical Company

4.4.2. Quantitative

A non-probability purposive sampling will be used to conduct the quantitative research. All 486 members of the Corporate Lawyers Association of South Africa will be recipients of the quantitative questionnaire. Members of CCASA will be requested to complete the survey in their individual capacities and not on behalf of the member organisation. Respondents were further requested to consider legal services in general if they deal with more than one of the identified legal services areas.

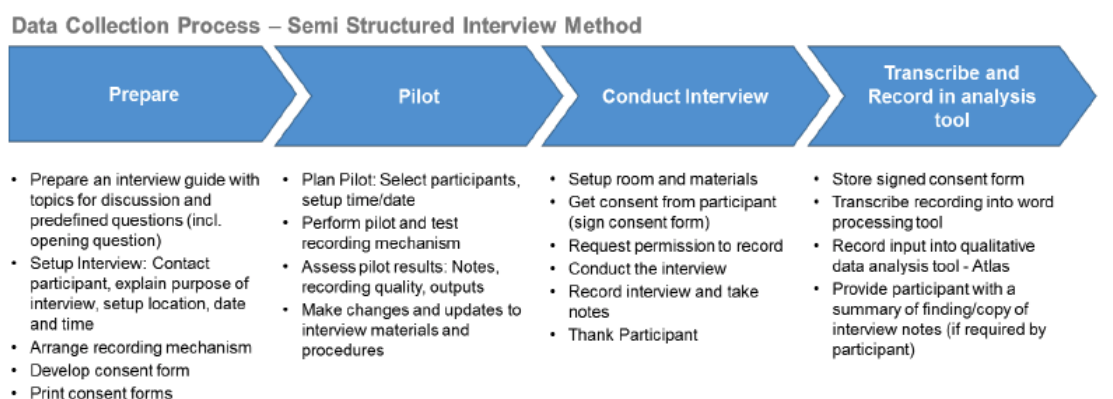
4.5. Data collection

4.5.1. Qualitative

Interview questions were compiled using a number of sources as frameworks to create themes and ideas so that respondents were guided through a conversation using open-ended questions. This type of data gathering is referred to as semi-structured, in-depth interviews. Saunders & Lewis (2012) argues that semi-structured, in-depth interviews are used to give the interviewer the ability to cover certain themes during the interview and to be able to ask additional questions or delve deeper into certain aspects where appropriate and to seek “deep” information and knowledge (Johnson & Rowlands, 2012).

The data collection process was guided by Saunders and Lewis (2012) Semi Structured Interview method as described below in Figure 4:

Figure 4: Data Collection Process – Semi Structured Interview Method



(Saunders & Lewis, 2012)

4.5.2. Pre-Testing Interview and Interviews

The interview schedule was pre-tested on a single In-house counsel, who would not take part in the study. From the pre-testing, the general questions and flow of the interview schedule were regarded as being capable of being understood by an In-house counsel who is either the Head of the Legal Department or a Head of a Legal Function. It was further indicated that some concepts, especially those associated with the economies of scale and scope area should be explained in order to have the respondents aware of the

distinction between the concepts. It was further highlighted that a high-level question should be asked at the outset and then afterwards to delve deeper into the main research question through the academic lenses highlighted above.

The interviews were conducted face to face. The researcher ensured that each respondent has provided informed consent to participate in the research and that each respondent is forwarded a copy of the findings (Saunders et al., 2007).

These initial interviews were also be used to pre-test the quantitative questionnaire. From the initial interview and prior to the distribution of the survey, the issue and complexity associated with general and specialist services were observed. This will be dealt with fully below.

It was found that the access to individuals was more challenging than expected and that the use of the author's contacts was paramount in securing initial interviews. Fortunately, the quality of respondents was exceptional and could be used to complete the study.

Twelve Interviews were conducted, on average each interview lasting between 25 to 60 minutes. Each interview was recorded in order to ensure for data to be captured in its original format. The recordings of the interviews were then subsequently transcribed, the researcher personally checking each transcription in accordance with the recording and handwritten notes of the researcher taken during the interviews.

4.5.3. Reliability and Validity

Reliability and validity are used as broader concepts to test the trustworthiness of and quality of the qualitative data obtained by a researcher (Golafshani, 2003).

Guba and Lincoln (1994) have proposed 2 key criteria to be used in assessing the validity of a qualitative study, namely credibility and transferability (Guba & Lincoln, 1994).

The key to qualitative research must be that the research is credible and defensible. By increasing the credibility of the research, the research is regarded as more trustworthy and hence increases the validity of the research, which can then be used to generalise the results across other academic disciplines (Golafshani, 2003).

The main purpose of the quantitative portion of this research methodology was to reduce reliability and validity concerns associated with the pure qualitative method of research and to lead to the generalizability of the results.

Data reliability involves the extent to which the data collection methods and analysis procedures provide consistency (Saunders & Lewis, 2012).

As a result, the researcher ensured that the interview schedule was standardised and each interview was conducted in terms of the same sequence of the schedule unless the respondent's answers required deviation from the original schedule. However, all respondents were asked all questions in the schedule.

The importance of the quantitative portion of the research is to allow the researcher to primarily triangulate and hence validate and corroborate the results obtained pursuant to the analysis in the qualitative portion of the research. Triangulation is the method of cross referencing data from multiple sources to produce accurate results which can be regarded as certain (O'Danoghue & Punch, 2003).

4.5.4. Quantitative

The nature of the research makes the questionnaire an appropriate method to use due to the array of variables that needed to be evaluated for relevance to the make or buy decision of In-house legal departments (Venkatesh, Brown, & Bala, 2013). See appendix II for the complete survey.

The survey considered the constructs highlighted below and consisted of ordinal data based on a 7-point Likert scale.

The questionnaire was pre-tested with 6 non-members of CCASA, and from respondent 4's organisation. This testing sample was chosen as the organisation, as its employees are not members of CCASA and would not be receiving the questionnaire as part of the primary sample.

Pursuant to the pre-testing of the questionnaire and the feedback received in this regard, the following amendments were made to the questionnaire:

- 1.) Included definitions of the legal services;

- 2.) Inconsistent use of “your” and “our” in the questions;
- 3.) Included examples into question 4;
- 4.) Reworded question 19 and 22 of the questionnaire in order to make the questions clearer to the respondent.

The independent variable in the questionnaire and quantitative portion of the research was the In-house legal department with numerous dependent variables.

The data obtained was coded. The survey relied on a 7-point Likert scale from Mostly Untrue to Mostly True. The code book used is set out in Table 2 below:

Table 2: Likert scale Coding

Likert Scale	Code
Totally True	0
Mostly True	1
Sometimes True	2
Neutral	3
Sometimes Untrue	4
Mostly Untrue	5
Totally Untrue	6

The data obtained was cleaned in order for the data to be properly analysed using IBM SPSS. Of the 39 Respondent’s there were 7 Make Respondents, 0 Buy Respondents and 31 Concurrent Respondents. Respondents 6, 7, 11, 23, 26, 28 and 36 were removed from the data due for failing to answer questions 5 to 28.

No reverse coding was necessary for the purpose of conducting the descriptive statistics.

Composite variables were created in order to be able to determine the average mean of the composite variables. The following questions were used to create the composite means:

1. Asset Specificity: Question 5,6 and 7
2. Volume Uncertainty: Question 8 and 9;
3. Technological uncertainty: Question 10, 11 and 12;
4. Performance Uncertainty: Question 13, 14, 15 and 16;
5. Economies of Scale/Scope: Questions 17, 18 and 19;
6. Firm Expertise: Question 20, 21, 22, 23,
7. Supplier Expertise: Question 24, 25, 26, 27 and 27.

4.6. Unit of analysis

This study focuses on why In-house Legal departments either make, buy or concurrently source legal services and not on the actual number of transactions itself. As a result, the In-house Legal Department has been chosen as the unit of analysis for this paper (Saunders et al, 2007).

4.7. Data analysis

4.7.1. Qualitative

All interviews were recorded using either a mobile phone recording application. The recordings were then transcribed and the transcripts were analysed by examining the contents and using Atlas.ti specialist qualitative data analysis software to identify themes. A list of codes from the theory, exposed during the literature review, was compiled as an initial starting point. However, additional codes were introduced as the data collection revealed further themes.

4.7.1.1. Coding of Data and Data Analysis

The coding of the data was an iterative process with numerous iterations produced. The researcher followed an inductive process in the initial first iteration of coding of the interview data to allow for any issues, which were raised to be considered.

Coding was conducted utilising a qualitative data analysis programme AtlasTi. An inductive and deductive approach was followed, with deductive reasoning stemming from the literature review and inductive from the data that presented itself but had no link to the literature review or clear framework (Saunders & Lewis, 2012).

The author's handwritten notes and observations were used to highlight areas of importance. This was only done after the first coding was conducted and included as interesting quotes within the codes. Subsequent to the first iteration, the researcher created a high-level overview table of the responses given. This was used to get the general nature of the response to the individual questions. See appendix III.

The second iteration of coding was conducted. In this iteration, the researcher included

direct coding to each question asked in the interviews in order to create a higher level coding. These question codes were then allocated to the academic framework in terms of the themes of asset specificity, volume uncertainty, and performance uncertainty, economies of scale/scope, technological uncertainty, firm expertise and supplier expertise.

These codes were then allocated to super families in terms of which were the three main academic foundations, namely Transaction Cost Economics, Neoclassical Economics and Capabilities Economics as set out in Figures 5, 6 and 7 below:

Figure 5: Neoclassical economics coding and families

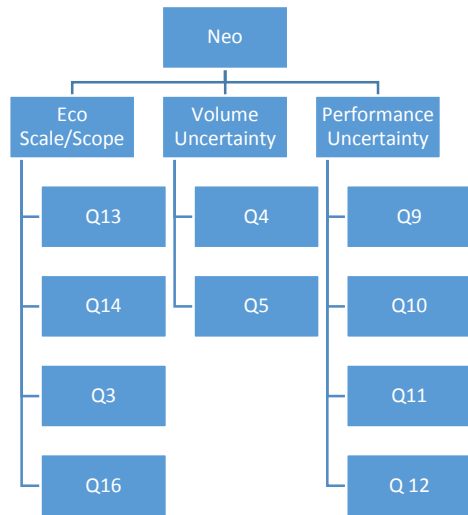


Figure 6: TCE coding and families

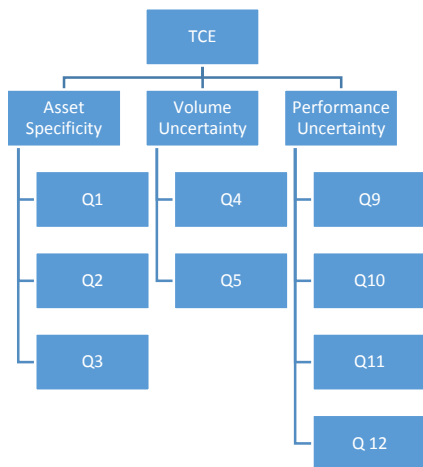
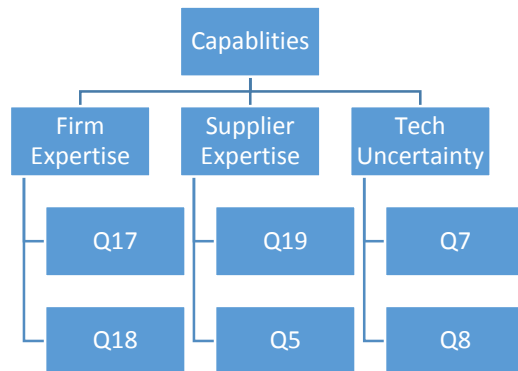


Figure 7: Capabilities Economics Coding and Families



The researcher relied on the co-occurring codes to each question in order to determine, any further themes or factors that arose because of the codes being allocated to specific questions and thus specific academic frameworks.

All relevant key words identified as being relevant to a particular theme will also be carried out to be analysed using Atlas.ti specialist qualitative data analysis software which allows “researchers to uncover and systematically analyse complex phenomena hidden in unstructured data” (Lewins & Silver, 2007).

The researcher created a high-level grid of answers from each interview respondent. This was then compared to the co-occurring codes that were highlighted in terms of Atlas.ti in order to determine if any further themes were identified in the high-level answers that did not form part of the academic basis highlighted in Chapter 2.

4.7.2. Quantitative

The data obtained was ordinal by its nature, in that there is a clear ordering of the variables(Jamieson, 2004).

The quantitative data will use descriptive statistics as to the nature of the sourcing decisions. The quantitative data will serve to triangulate the data obtained in the qualitative portion of the study(Jick, 1979).

In order to conduct the required statistical tests, the researcher will use IBM SPSS

software to conduct same.

Descriptive statistics have tested the central tendency and especially the means of the single grouping of all respondents. Further composite means were created from the constructs highlighted in 4.7.2.1 below. This has been facilitated through the use of the ordinal nature of the survey.

The reliability of the descriptive statistics will be considered through the lens of the standard deviation to demonstrate the range within the collected data and the responses thereto (Schreiber, 2008). The coefficient of variation was considered, and calculated by dividing the standard deviation by the mean to compare the degree of variation within the questionnaire data. The lower the coefficient of variation is, the smaller the relative variability to the predicted value. This is suggestive of a good model fit.

4.7.2.1. Constructs

Parmigiani (2007) identified six separate constructs in the study. Same has been followed and adapted to the suit the needs of this specific context.

The constructs as highlighted are:

1. Asset Specificity;
2. Volume Uncertainty;
3. Performance Uncertainty;
4. Economies of Scale/Scope;
5. Firm Expertise; and
6. Supplier Expertise.

In terms of the survey, the following questions relate to each construct:

8. Asset Specificity: Question 5,6 and 7
9. Volume Uncertainty: Question 8 and 9;
10. Technological uncertainty: Question 10, 11 and 12;
11. Performance Uncertainty: Question 13, 14, 15 and 16;
12. Economies of Scale/Scope: Questions 17, 18 and 19;

13. Firm Expertise: Question 20, 21, 22, 23,
14. Supplier Expertise: Question 24, 25, 26, 27 and 27.

4.8. Research Limitations

By its nature qualitative data is inconclusive in its outcomes, with the conclusions drawn in this research representing a portion of the population. The research process is limited in its number of available respondents and time restrictions available to the researcher and is as a result, not exhaustive.

The use of non-probability sampling means that the sample is has limited representative applicability to the entire population (Saunders & Lewis, 2012). However, the quantitative portion of this research attempts to limit this by validating the qualitative results.

Exploratory research is by it very nature subjective. This can potentially result in the interpretation of the data being influenced by the perspectives of the researcher, allowing for potential bias, especially with the application of judgemental and convenience sampling (Saunders & Lewis, 2012).

The closed and limited sample for the quantitative portion of this research, which can only validate the research in terms of generalised legal service

Given the nature of this research, researcher bias is possible, however attempts will be made to avoid personal interpretation of the interviews and rather fact based analysis to take place. The use of the academic frameworks constituting the de jure model is aimed at reducing the effects of researcher bias.

The participants in the quantitative may not understand the de jure model of academic frameworks, and individual questions asked in relation to the frameworks, which could lead to skewness in favour of the respondent's incorrect understanding.

5. CHAPTER 5: RESULTS

Interviews were conducted with 12 respondents, all of whom were in the position of Chief Legal Officer, Head of Legal or Head of a Legal Function (i.e. Head of Litigation). The respondents were all well positioned to consider and explore the research questions. All respondents were asked to consider all 19 questions. Total interview time was 423 minutes with an average interview time of 35.23 minutes.

The quantitative survey was sent via an online survey tool to all 486 members of CCASA. Excluding the pre-testing sample, there were 39 responses to the survey. Using Parmigiani's (2007) 10% distinction, there were seven respondents internally produced more than 90% of their own legal services and could be classified as make respondents. Thirty-two Respondents internally produced between 10 to 90% of their legal services and can be classified as concurrent. There were no buy respondents who procured over 90% of the legal requirements externally. Seven respondent's responses were removed for incomplete responses.

In general, a difference between generalised and specialised services arose to the fore as a major complexity in relation to the Make-or-Buy decision for the delivery of legal services by In-house departments.

5.1. Contextual Questions

A general question relating to the types of legal services delivered was asked to all respondents. In general, all respondents covered numerous areas of legal services, including but not limited to Dispute Resolution services, Employment Law Services, Commercial Law Services, Corporate Law services and Property law related services.

The sizes of departments that the respondents are responsible for also differ:

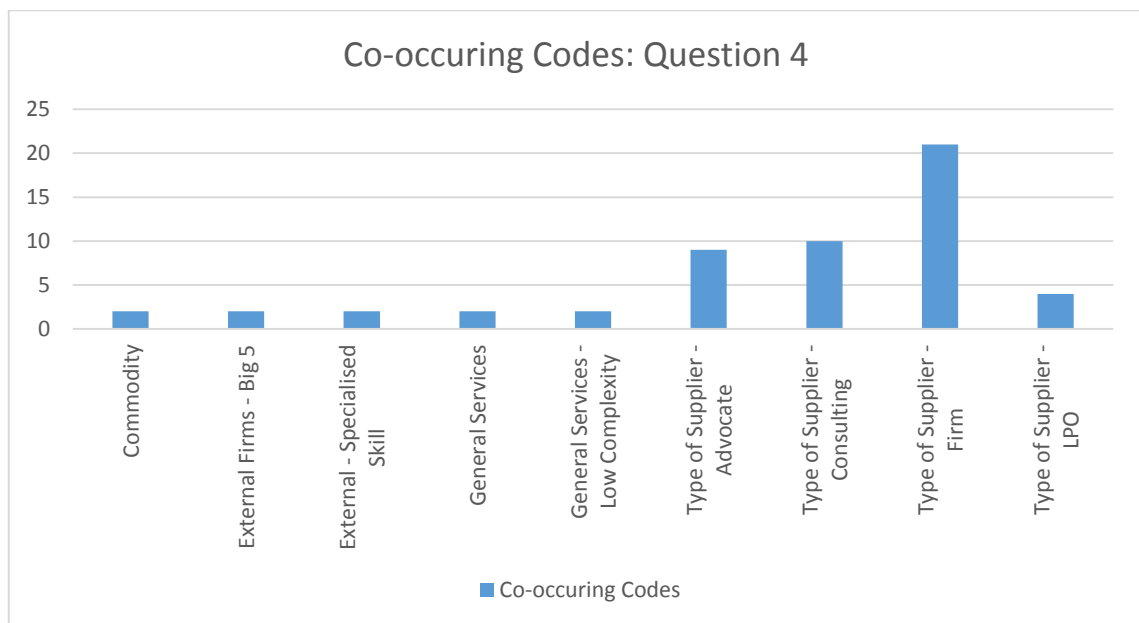
- 4 out of 12 respondents worked in departments between 30 to 40 lawyers,
- 3 out of 12 respondents had departments between 20 and 30; and
- 5 out 12 respondents with In-house legal departments of less than 20 lawyers.

A general question asked to all respondents was what type of legal service providers does the organisation use, the responses as follows:

- 12 out of 12 respondents confirmed the use of traditional Law Firms as suppliers,
- 7 out of 12 respondents specifically noted the use of advocates,
- 5 out of 12 respondents noted the use of consultants/experts whilst;
- 3 out of 12 respondents noted the use of alternative legal suppliers such as Legal Process Outsourcing suppliers.

Figure 8 below sets out the co-occurring codes in relation to types of legal service providers used.

Figure 8: Types of Legal Services Providers



In terms of the survey questions posed to the chosen sample, questions 1 to 4 aimed at highlighting, at a high level the types of legal services delivered by the organisation, a description of the manner of legal services delivery, the percentage of legal services delivered internally and what impediments were faced when delivering legal services internally.

Question 1:

- 19 of the 32 survey responses highlighted that the respondent delivers Dispute

Resolution Services to the organisation;

- 16 of the 32 survey responses highlighted that the respondent delivers Employment Law services to the organisation;
- 24 of the 32 survey responses highlighted that the respondent delivers Property Law services to the organisation;
- 27 of the 32 survey responses highlighted that the respondent delivers Commercial Law services to the organisation;
- 25 of the 32 survey responses highlighted that the respondent delivers Procurement Law services to the organisation;
- 15 of the 32 survey responses highlighted that the respondent delivers Intellectual Property Law services to the organisation;
- 26 of the 32 survey responses highlighted that the respondent delivers Compliance services to the organisation; and

The other services highlighted not directly set out but falling under the category of “other” included Company Secretarial (Compliance Service), Litigation (Dispute resolution service), Insurance (Commercial Law Services/Dispute Resolution Services) and Contract Drafting (Commercial/Procurement etc.). All of these other services can fall within one of the seven categories highlighted. This indicates that the categories can have more comprehensive definitions in order to assist the respondent.

Question 2 and 3:

- Only 3 of the 32 survey responses indicated that they produce all required legal services internally;
- 29 of the 32 survey responses indicated that they both produce legal services internally and procure legal services externally in the market;
- No response indicated that they only externally procure legal services;
- Of the 29 responses indicating concurrent sourcing, 14 indicated that they produce 75 -90% of required legal services internally.
- A further 5 responses indicate that they produce over 90% of the required legal services internally, whilst 6 responses indicated internal production of 50-74% of the required legal services, 2 responses produced 26-49% of legal services internally and 1 response indicated both internal and external but did not specify a percentage of internal production.

Question 4:

- 24 of the 32 survey responses highlighted a legal impediment to internal production of legal services.
- 7 of the 32 highlighted conveyancing services as a legal impediment to internal production of legal services;
- 20 out of 32 survey responses highlighted the use of external attorneys and specifically advocates for litigation matters; and
- 5 of the 32 survey responses further highlighted the use of Intellectual Property expertise for Intellectual Property related services.
- 10 of the 32 survey responses further highlighted the use of external suppliers for specialist expertise and capacity. Even though this appears not strictly to be a legal impediment to internal production, it does clearly highlight the use of specialists, be that litigation, intellectual property or other in areas that fall outside of the skills of the organisation itself.

However, the only two real impediments to internal delivery of legal services seem to be the use of conveyancing attorneys for property related requirements and the use of attorneys/advocates to appear on behalf of the organisation in court appearances. This indicates that In-house departments can cover a very broad range of legal services and are not compelled to seek a majority of legal services in the external market.

5.2. Research Questions and Related Hypothesis

5.2.1. High Level

How do In-house legal departments determine when to make, buy or concurrently source legal services?

From the answers received from the respondents, six clear themes arose, namely: Cost, Skill/Expertise, Capacity, Legal Risk, Volume and Complexity. More specifically:

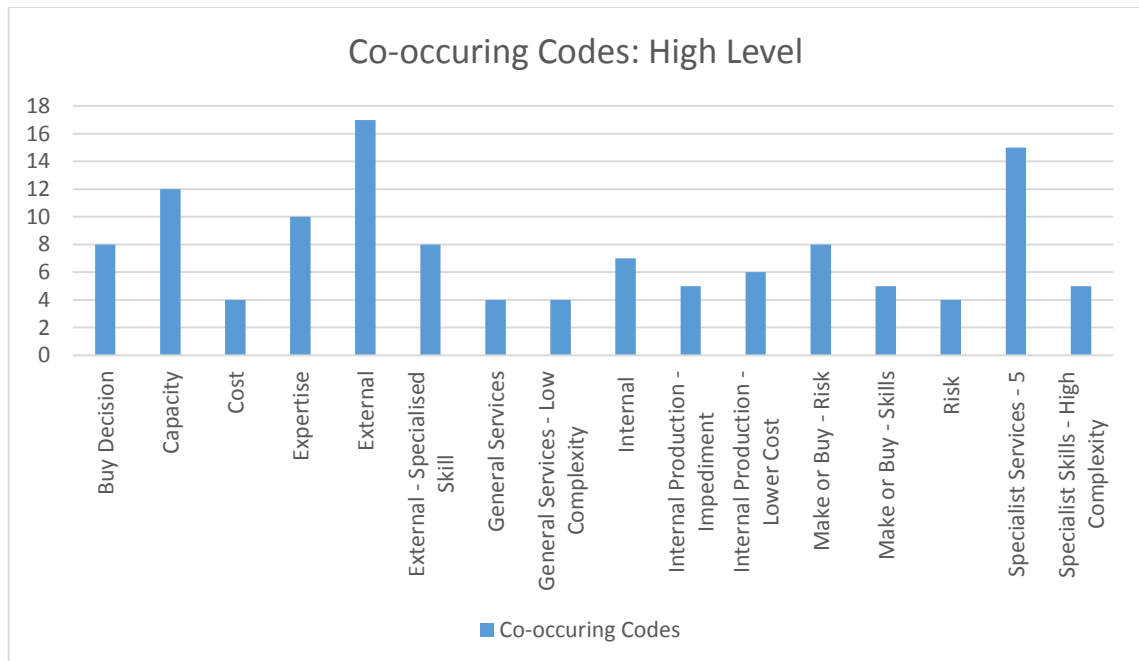
- 6 out of 12 respondents listed Costs as an important factor,
- 8 out of 12 listed expertise as a factor,
- 5 out of 12 highlighted capacity as an important factor,
- 4 out of 12 specifically highlighted volume and legal risk as important factors

and lastly

- the complexity of legal function was highlighted by numerous respondents, 1 specifically and 7 relating it to the expertise required for delivering legal services as more specialised services are inherently more complex.

From the Co-occurring codes in relation to the High Level answers given by the respondents, the following codes co-occurred in the High Level question on more than occasions, in Figure 9:

Figure 9: Co-occurring codes: High Level



Respondent 4 highlighted the organisation's general approach by, *“We would only look to outsource in, where we don't have the relevant expertise. Or it is a matter where we require external levels of expertise. All the day-to-day matters, we would not outsource but things like technical tax matters, very technical competition matters, and anything outside of the skills centre we can offer the group, we will look to outsource. But there again we try to limit those outsourcing cost as much as we can.”* This was confirmed by Respondent 9 also highlighting the importance of the internal legal advisors by highlighting that the decision *“largely depends on the legal advisor”*

Respondent 5 noted the importance of legal risk in answering: *“So there’s two primary considerations and those are legal risk and cost. That is what we always balance when we make a decision. So there are three drivers for legal costs. One is the per unit cost for delivery, which can either be an hour of work or a finished product. The second one is risk appetite and the third one is demand for volume. So legal controls two of those and assists in the managing of the third. We control per unit cost and we set the risk appetite. The business in respect of their volume of activity and the risk that they expose themselves to, kind of like influences the demand more than we can because they have to also comply with our appetite. So that is essentially how we look at it. So as soon as the risk outweighs the benefit of the cost at which we can do it in-house, we will make the decision to buy more legal risk coverage externally.”*

This was confirmed by respondent 7 who summarised the position as: *“It’s very simple. The overriding factor, especially in a bank, is legal risk. It is not cost. Because on a billion rand transaction if it is wrong and the agreements are wrong and you cannot perfect your security, the fact that you save yourself 500 000 rand or a million rand or 2 million rand is immaterial. So it’s very much driven by legal risk.”* This response indicates the further role that industry type plays in primary strategic concern in relation to the delivery of legal services.

Respondent 8 highlighted the role of internal capacity in the decision in that: *The other area where we might go externally is when it is a capacity issue. When there is large projects, especially on the mergers and acquisition side we will always involve an external law firm who can lend heads or hands to a project if you need more than the capacity that we have. That is basically, on large projects it’s basically a combination of expertise and resources.”*

Respondent 10 was comprehensive in his answer to the question at a high level, in that: *“Okay so I think, the fact is what one must have a look at is the skill set, volumes, confirmation from outside. So let us deal with the first one being the skill set. In certain instances the skill sitting in the bank is actually better than we can get outside. So its sophisticated instruments like derivatives and that. The bank might internally sit with the skills set. Volumes we sometimes can do the work internally but it is just too much and just more cost effective to outsource it and the number of works, let us say if you have a*

big rather than employ an additional legal advisor. And the thirdly, often, let's say, there is an issue which our auditors are querying or we think we might have a problem with a regulator, then rather getting an internal, we'll have an internal legal view, which is then confirmed by an outside. Let us say it is a very technical matter on an NCA or something, our internal experts will have a view but because it might have ramifications, we just want to confirm it with an outside council. So ja, I think its skill set, cost effectiveness and in outside confirmation. I also think that cost is not the only driver, sometimes once they have the hybrid of, to ensure that you're internal lawyer's remains exposed to outside views as well. Not to have, I do not want to call it academic inbreeding, but not marking our own work.

5.3. Research Question 1: Asset Specificity

5.3.1. How does asset specificity affect the Make-or-Buy decision?

There is low asset specificity for generalised legal services and higher asset specificity for specialised legal services. As a result, asset specificity is of greater importance when an In-house legal department is looking at whether to make-or-buy specialised legal services. On the other hand generalised legal services is not as affected by asset specificity as the skills needed for internal production are widely available and generic and with high numbers of suppliers who can service the requirements for external production.

In order to assess how asset specificity could potentially affect the make or buy decision for In-house legal departments, and as highlighted above in accordance with Parmigiani (2007), questions relating to availability of skills, the nature of the skills, the number of suppliers in the market and switching concerns were asked to the respondents.

5.3.1.1. Question 1: Are skills needed to produce legal services widely available and generic?

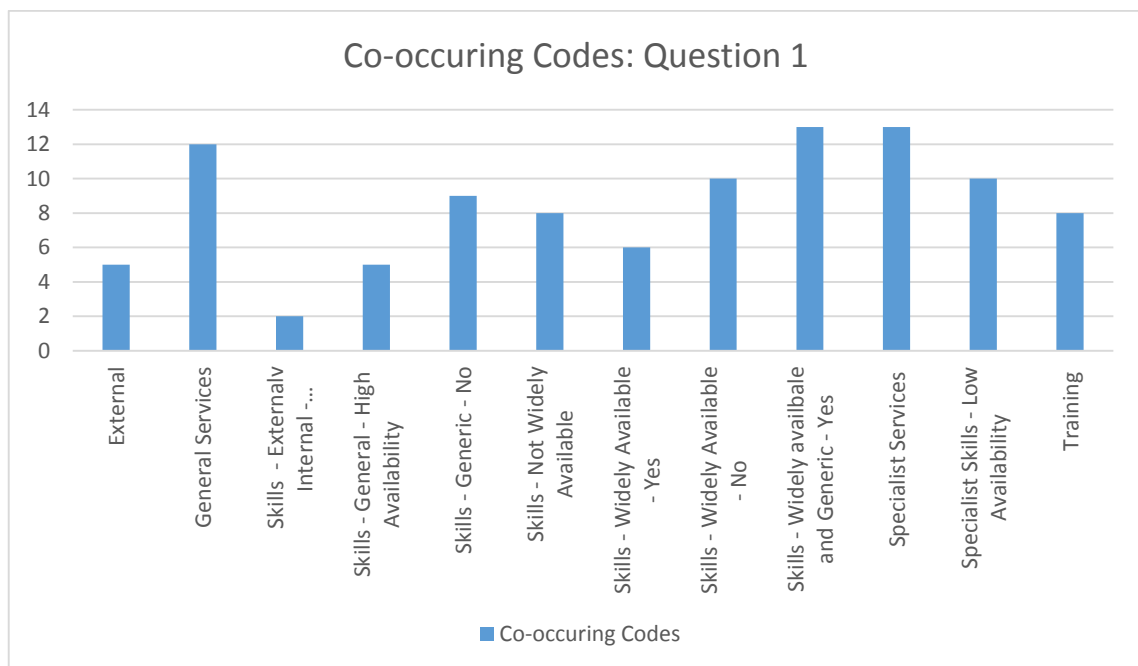
- 7 out of 12 respondents answered "Depends". All highlighted the complexity associated with generalised and specialised services;
- 10 out of 12 respondents had positive answers for generalised legal services; and

- 9 out of 12 respondents had negative answers in relation to specialised legal work. This includes the seven respondents who noted, “depends” and 2 more respondents, both organisations in specified banking areas.

This amplifies the answer in that in general services, skills are widely available and generic whilst for specialised services, the skills required are not widely available and generic.

The Co-concurring codes for this aspect highlighted a number of key themes, namely the role that the distinction between generalised and specialised services plays in relation to the required skills. Training was also highlighted as often being a requirement to make core skills applicable to industry specific environment Figure 10 below indicates the codes that co-occurred with Question 1 more than 2 times.

Figure 10: Co-occurring code: Skills – Widely available and generic?



In order to assist in highlighting the difference between specialised and generalised services Respondent 6 set out the complexity: *“Some of the skills required in our organisation are not generic and are not widely available. So the regulatory stuff is most definitely not widely available. There is not an overabundance of skilled mining lawyers, and skilled environmental lawyers, there is not an overabundance of skilled project lawyers, who are people who can do construction agreements, and things of that nature.*

There is not an abundance of that. The day to day stuff, which we call staying in business stuff, which is contracting, whether it is with customers or suppliers, employment law type of stuff, that stuff is not generic but it's abundantly available."

Respondent 10 further highlighted the distinction of specialised and generalised services but further the influence that industry specific knowledge plays: *"Let me say to you, in the litigation space, yes. It is fairly widely available. On the commercial side, let us call it ordinary work, let us just say contracts, you know we do marketing contracts or a procurement contract. I mean those things should be universal. Where it does get tricky, maybe it's banking specific products."*

As result, question 1 highlights the difference between specialised and generalised skills as well as the fact that skills are widely available and generic for general services and not so widely available and generic for specialised services.

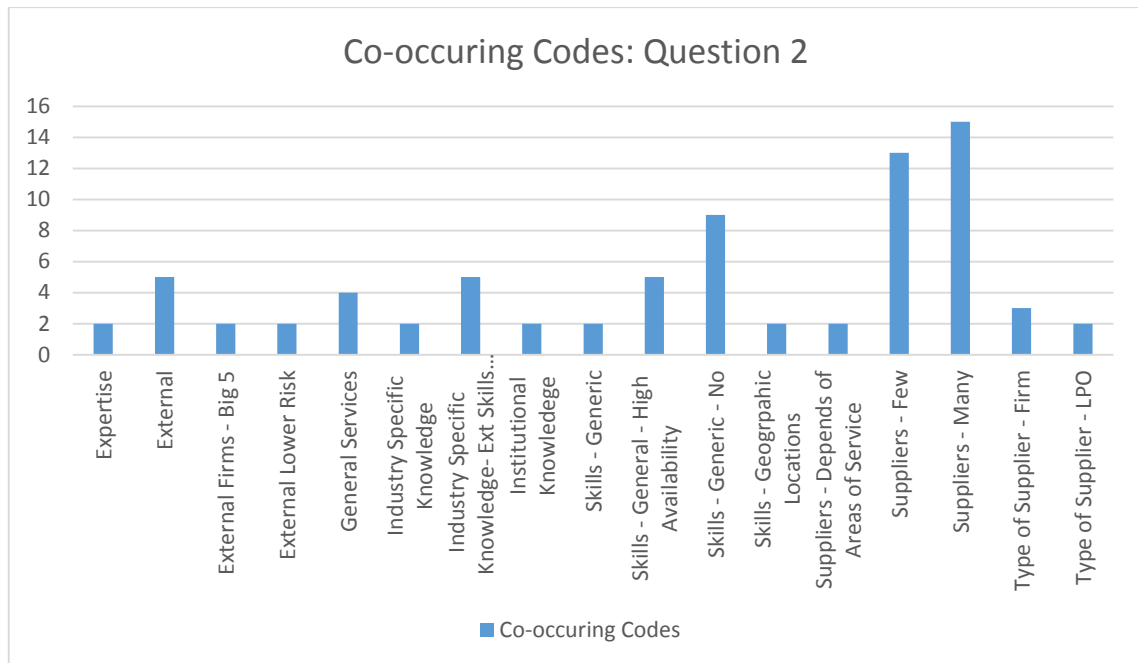
5.3.1.2. Question 2: Number of suppliers in the market?

- 10 out of 12 respondents had positive answers in that there were many suppliers in the market.
- 2 out of 12 responses were ambivalent, in that the respondents only used a few suppliers and did not know.
- 5 out of 12 respondents noted the complexity between specialised and generalised services, with all noting that there were numerous suppliers for generalised services with limited suppliers for specialised services.

There are large numbers of available legal services providers. However, there are fewer suppliers in the specialised areas that can service the respondent's needs.

The Co-concurring codes for this aspect highlighted a number of key themes, namely the role that the distinction between generalised and specialised services plays in relation to the required skills. Figure 11 below indicates the codes that co-occurred with Question 2.

Figure 11: Co-occurring codes: Number of suppliers in the market?



Respondent 10 highlighted the role of Industry specific knowledge and institutional knowledge in responding: *“Only after three years you know enough from the bank, it’s not to say you don’t add value from day one but to be a rounded bank legal advisor with technical legal skills and bank knowledge. Because you know you must be able to work the banks systems.”*, whilst Respondent 2 highlighted it as follows: *“I think that the reason why we intend not to instruct legal council is not so much to do with the skills being available, but its more the institutional know how that goes with it”*

These themes of Institutional Knowledge and Industry specific knowledge came out of specialised areas such as banks and mines operations. This posits that the higher importance of knowledge based skills that are industry specific in areas that require highly specialised legal services delivery.

Concerning the number of suppliers available to the organisation, the complexity associated with general and specialised services arose again. In relation to general requirements, respondents, in general, felt that there was an abundant supply of suppliers’ available to assist in the delivery of legal services.

However, in the specialist environment, there were fewer suppliers available to the respondents. The role of what is known as the “Big Five” law firms was highlighted as

being used by the organisations to deliver legal services to them.

Respondent 2 noted in relation to Question 2, also highlighting industry specific knowledge that, *“It is quite a lot of suppliers. I would say there are two things. I think to a large degree there is an oversupply of lawyers but an under supply, let us call it, in good technical sound lawyers that understands our business. Ja, banking lawyers. That is their skill.”*

The relationship in the number of suppliers was perfectly encapsulated in respondent 11’s response: *“So from a general sort of day to day legal I think there’s probably more than enough attorneys in the, and legal resources out there. Specialist type work, so your environmental law, your M&A and your banking stuff is very limited.”*

This was confirmed by Respondent 8 who once again highlighted the difficulty, which arises due to specialised and generalised services, in that: *“So I think there is a huge amount of, let me put it this way, if you deal with more generic type of legal services, there’s a big offering. When you get to the more specialist type of work, taking into account efficiency and effectiveness of the service you need to be rendered, it becomes limited.”*

5.3.1.3. Question 3: Is it easy to change suppliers?

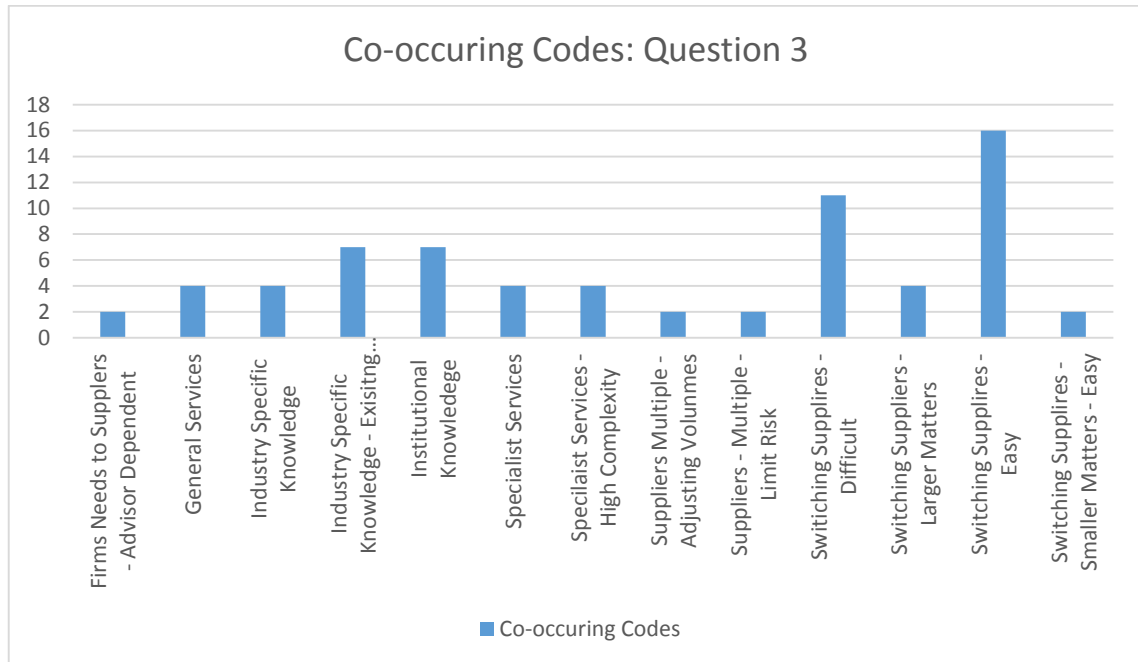
- 11 out of 12 respondents had positive responses to it being easy to switch suppliers.
- The single negative respondent highlighted Institutional knowledge as the barrier to switching suppliers. This respondent’s organisation once again was in the specialised banking industry.
- 2 out of 12 respondents highlighted the complexity surrounding generalised and specialised services.

Due to a large number of service providers, as highlighted above, the overwhelmingly positive response can only conclude that it is easy to switch suppliers, especially in general legal services.

The Co-occurring codes for this aspect highlighted a number of key themes, namely the

role that the distinction between generalised and specialised services plays in relation to the required skills. Figure 12 below indicates the codes that co-occurred with Question 3 more than 2 times.

Figure 12: Co-occurring codes: Easy to change suppliers?



The Co-occurring codes have highlighted the role of institutional knowledge/industry specific knowledge in relation to the existing relationships between firms and their suppliers. The use of multiple suppliers in order to mitigate risk as well as the complexity created by general and specialist suppliers became further apparent in relation to service providers. The size and complexity of the matter were highlighted as themes when determining whether it would be easy to switch suppliers.

In relation to Switching of Suppliers, the general approach according to the respondents that it was easy to change suppliers. However, it was further prominent that the respondents did not want to have “key man dependency” and would in general procure external services from a number of different suppliers by Respondent 10’s answer to question 3, in responding: *“Look what we do Rian to ensure that we don’t have single person dependency we do have more than one supplier so it will only be, it’s not a matter of us changing suppliers, its adjusting volumes. So it doesn’t work like that so let’s say I have three attorneys from three firms , and they each get each a third of the work, and something happens to the one, I increase the work to the other and it will give me time*

to find an alternative. But one must be very careful. As I say, it works in single person dependency. “

Respondent 6 further highlights the role of industry specific and institutional knowledge in relation to the switching of suppliers, in that: *“And that’s premised on the fact that they know us really well, and they understand what it is that freaks us out and so they avoid it. Okay. And that really about familiarity. So how easy would it be for me to change? Well I am going to say to you the skills, the core delivery skills that sit inside of a Weber Wentzel are not dissimilar to the core delivery skills that sit in a Bowman Gilfillan or a Edward Nathan or a Cliff Decker. I think it is much of a muchness. The difference is the one crowd knows us really well, and the other crowd doesn’t.”*

Respondent 7 notes who the existing relationship between the organisation and its legal suppliers plays a role in the make-or-buy decision, by: *“Essentially there’s a an institutional history with them so um we invariably use the same lawyers over and over again just because they know our documents and our requirements and because the stakes are often so high”*

5.3.2. Descriptive Statistics

Table 3 highlights the descriptive statistics including the mean and standard deviation of quantitative data.

Table 3: Descriptive Statistics: Asset Specificity

Descriptive Statistics					
	N	Minimum	Maximum	Mean	Std. Deviation
Asset Specificity 2	32	3	7	6.03	.861
Asset Specificity: 1	32	2	7	5.34	1.310
Asset Specificity: 3	32	1	7	4.25	1.626
Asset Specificity Composite	32	3.3	6.7	5.208	.8540
Valid N (listwise)	32				

Question 6: Asset Specificity 1 - The skills needed to produce Legal services are generic and widely available?

The Mean statistic for question 6 of the survey provided a score of 5.34, indicating that the mean response to the question sits between Sometimes True to Mostly True, whilst

the standard deviation is 1.310. The co-efficient of variation is 0.211, indicating low variance.

Question 5: Asset Specificity 2 - Numerous capable Legal Service Providers exist in the market?

The Mean statistic for question 5 of the survey provided a score of 6.03 on the 7-point Likert scale, indicating a response sitting closer to Mostly True to Totally True, whilst the standard deviation is 0.861. The co-efficient of variation is 0.142, indicating low variance.

Question 7: Asset Specificity 3 - Switching Legal Service Providers would be quick and easy to do?

In relation to question 7, the Mean statistic provided a score of 4,25 on the 7 point Likert scale, indicating a positive response on the side of Neutral to Sometimes True, whilst the standard deviation is 1.626. The co-efficient of variation is 0.382, indicating low variance.

The composite mean statistic for asset specificity produced a result of 5.208, which results highlight answers on the side of Sometimes True and Mostly True, whilst the standard deviation is 0.854. The co-efficient of variation is 0.163, indicating low variance.

The descriptive statistics confirm that there is low asset specificity in relation to generalised legal services, and serves to validate and confirm the qualitative results in relation to asset specificity in generalised legal services.

5.3.3. Asset Specificity: Conclusion

As a result, the role that asset specificity plays in the make-or-buy decision for firms is subject to the inherent complexity associated with general and specialist legal services. In relation to general services, it would appear that there is low asset specificity as there are large numbers of suppliers available, skills required to do the work would be somewhat generic and it would not be difficult to switch suppliers. This was confirmed by the results and in contradiction with general TCE thinking that areas with high specificity should require internal production, which is not the case in In-house legal services.

In specialist services, there would be a higher asset specificity as the skills required are by their very nature, not generic or widely available. This is further highlighted, in that switching is more difficult in specialist areas as there are fewer suppliers which can deal with the high volume or complex matters and thus affecting the ability to switch and skills which are neither widely available nor generic.

5.4. Research Question 2: Volume Uncertainty

5.4.1. How does volume uncertainty affect the make-or-buy decision?

There is low volume uncertainty for generalised core services and higher volume uncertainty in relation to future looking once-off/project type services. These services are regarded as of a more specialised nature.

As a result, there is an inherent complexity in relation to volume uncertainty in relation to the make-or-buy decision for In-house departments. The role of the firm's strategy could help act to reduce the volume uncertainty in relation to once-off/project and general requirements.

In order to assess how volume uncertainty affects the make or buy decision for In-house legal departments, questions relating to how firms forecast their needs for legal services and whether there were patterns in legal services delivery were asked.

5.4.1.1. Question5: How do you forecast requirements for legal services?

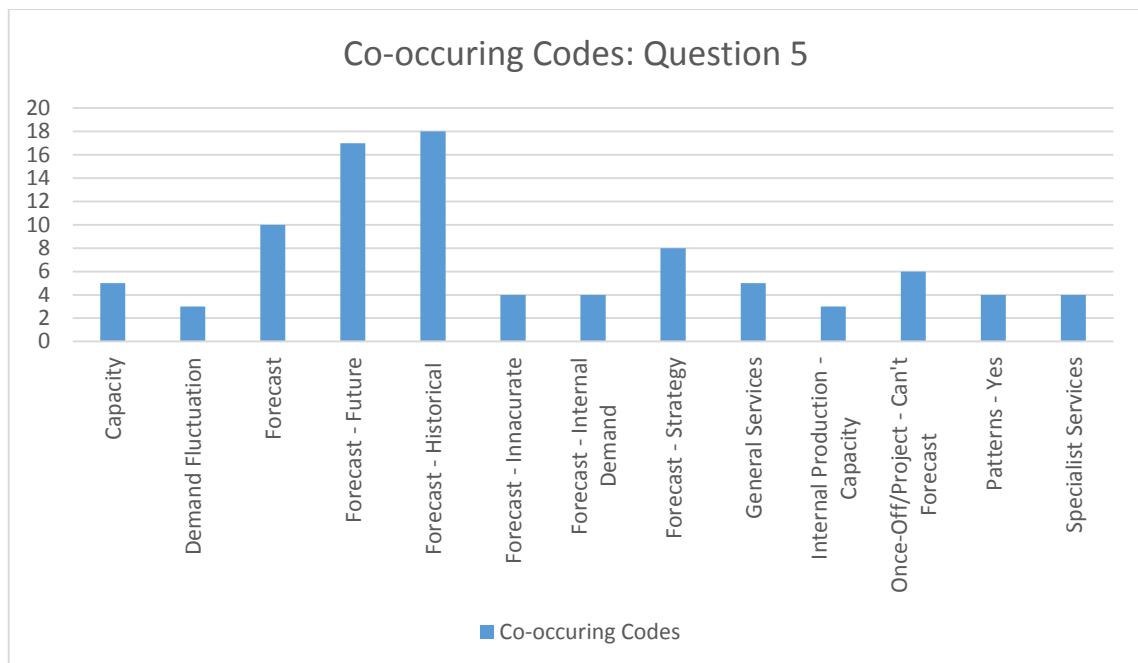
- 8 out of 12 respondents noted the use of historical data in relation to forecasting legal services requirements.
- 9 out of 12 respondents noted future requirements in the forecasting of legal services.
- 4 of these respondents specifically recorded the use of the organisation's strategy as part of the future legal services obligations aspect.
- 6 out of 12 respondents noted specifically that there is a difficulty associated with the forecasting of legal services.

Accordingly, there is low uncertainty in relation to legal services where historical data

exists and moderate uncertainty in relation to once-off/project related requirements. This volume uncertainty is somewhat reduced by alignment with the organisation's strategic objectives and scanning of potential future requirements/events.

In terms of the co-occurring codes that arose from this question, issues relating to capacity, demand fluctuation and the difficulty/inaccuracy of legal services forecasting came to the fore, especially in once-off project related legal services. Figure 13 below indicates the codes that co-occurred with Question 5 more than 2 times.

Figure 13: Co-occurring codes: How are legal services forecast?



What is clearly highlighted is the general volume uncertainty in relation to the forecasting of legal services demand. The very nature of items such as litigation is uncertain. However, the effective use of data, especially in related to historical requirements allows an organisation to reduce uncertainty in relation to volume for services that would be classified as generalised.

The position is well summarised by Respondent 1 who highlighted as follows: *“Well, some things you can forecast and something’s you can’t. I mean if you take for example, routine debt recovery work or conveyancing work in connection with a home loan, you pretty well know your volumes and you can pretty well predict them. So that’s relatively*

easy. If however, what you cannot predict is large M&A deals because either they happen or they do not happen. And equally, if you have a large project you cannot regularly enforced or something like that you cannot really foresee or plan for those.

When it came to something like litigation services that you mentioned earlier? Some you can and some you cannot. Its routine so if you take for example my area of responsibility has plus or minus nine hundred thousand cases. That the replacement rate is fairly constant so the, if you look over the last two or three years, you kind of know in terms of the relatively routine of litigation you can predict that. But if you get something major, a major one off, you can't."

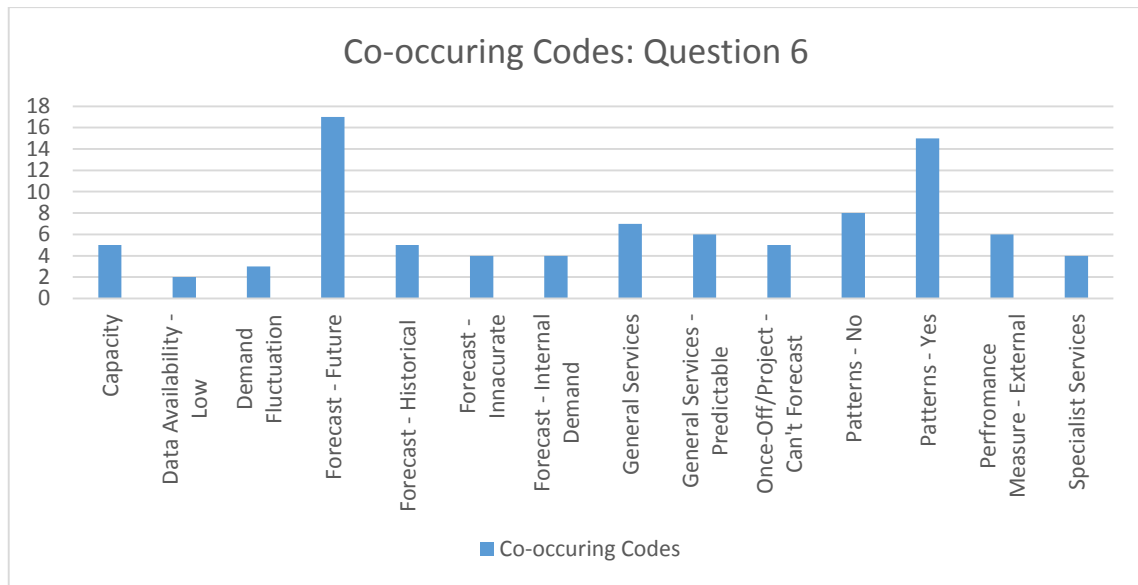
5.4.1.2. Question 6: Are there predictable patterns?

- 10 out 12 respondents indicated a positive response towards predictable patterns, whilst
- 5 out 12 also noted that the answer “depends”, whilst
- Only 1 respondent had a clear negative answer and 1 respondent did not provide an answer.

Organisations do have predictable patterns that are relied on for the purposes of reducing volume uncertainty.

In terms of the co-occurring codes, the theme of historical data featured strongly as a key in volume forecasting as well as the difficulty in forecasting once-off/project related requirements. Looking forward to potential occurrences was highlighted as a theme. Figure 14 below indicates the codes that co-occurred with Question 6 more than 2 times.

Figure 14: Co-occurring codes: Are there predictable patterns?



The general response to how firms forecast for legal services elicited the general response that there was an inherent difficulty in determining the volume of required legal services due to demand fluctuations. Once again, complexity was highlighted in that there was a difference between legal services that were delivered in accordance with day-to-day business needs and those that occur due to a once-off occurrence or project based requirements.

This distinction adds further complexity to the make-or-buy decision. The once-off/project types services can further be defined as generalised and/or specialised and often have wide reaching affects across an organisation.

In general, firms have regard to the historical volume requirements per area, the potential future occurrences which could affect volumes as well as the strategic needs and goals of the firm itself.

Respondent 11's response to Question 6 summarises the role of forecasting and patterns in legal services by: *"So we try and use it based on a historical use. So we look at basically the previous year to see what's been done and then try and forecast what legal services will be required coming up. And to the extent there's obviously is repetitive work it's easy to forecast, but there's are some items that you know you need to make provision for that may or may not arise. So we treat it as part of our normal budgeting*

process. Its linked to that so I'll run, being the head of the division, I'll look at what we've done historically year to date and I'll make an estimate as to what additional work will need to be done going forward. The accuracy is probably not, maybe about 25% accuracy, based on the contingent items that may or may not happen.”

This is confirmed by respondent 5 that highlights as follows: *“Well you’re obviously have a, it’s a mixture of a look back and a look forward. So historically, you will have your seasonal cycles of when things happen, when they do not happen. For example, we will know which time of the year we have our wage negotiations with the incumbent trade union so we know we need more labour lawyers around that time. Therefore, there is a seasonal aspect that we have a line of sight of and then for the rest you have to be in consultation with the business, when they envisage large projects. For example, now with the sell down by Barclays, obviously we know that that is going entail a massive amount of legal work. So it’s to understand the strategy of the business going forward and how it differs from the past and what the inherent legal risks in those strategies are that might generate legal work that might exceed capacity.”*

In response to whether there were predictable patterns in the delivery of legal services, the general responses noted complexity between once-off/project requirements and the legal services for day-to-day operations of the firm. In general work areas, there were indeed historical patterns that could be relied on, in turn, the corollary in relation to a specialist or once off/project type work, it would be less predictable.

5.4.2. Descriptive Statistics

Table 4 highlights the descriptive statistics including the mean and standard deviation of quantitative data.

Table 4: Descriptive Statistics: Volume Uncertainty

Descriptive Statistics					
	N	Minimum	Maximum	Mean	Std. Deviation
Volume Uncertainty: 1	32	2	6	4.94	1.134
Volume Uncertainty: 2	32	2	6	5.00	1.437
Volume Uncertainty Composite	32	3.0	6.0	4.969	1.0994
Valid N (listwise)	32				

Question 8: Volume Uncertainty 1 - Your forecasts for Legal services are very accurate?

The Mean statistic for question 8 of the survey provided a score of 4.94, indicating that the mean response to the question sits between Neutral to Sometimes True and closer to Sometimes True, whilst the standard deviation is 1.134. The co-efficient of variation is 0.229 , indicating low variance.

Question 9: Volume Uncertainty 2 - There are predictable patterns to your requirements for Legal services?

The Mean statistic for question 9 of the survey provided a score of 5 in the 7-point Likert scale, indicating a response sitting closer to Sometimes True to Mostly True, whilst the standard deviation is 1.437. The co-efficient of variation is 0.287, indicating low variance.

The composite mean score for questions relating to volume uncertainty was 4.969 on the 7-point Likert scale, which indicates an answer between neutral and sometimes true, whilst the standard deviation is 1.099. The co-efficient of variation is 0.221, indicating low variance.

This composite mean indicates a positive leaning towards moderate to low volume uncertainty, in that forecasting is accurate and there are predictable patterns.

5.4.3. Volume Uncertainty Conclusion

This theme highlights the difference between services that can rely on historical data and those that must consider future requirements, which look at the more uncertain future events to forecast legal services.

The descriptive statistics confirm that there is moderate to low volume uncertainty in relation to generalised legal services, and serves to validate and confirm the qualitative results in relation to volume uncertainty, which further indicated that there was low volume uncertainty for generalised legal services.

5.5. Research Question 3: Performance Uncertainty

5.5.1. How does performance uncertainty affect the Make-or-Buy decision?

In-house legal departments have moderate to low performance uncertainty. The role of objective and subjective metrics was highlighted as forming the framework for performance measurement. The role of the legal advisor itself moderates and reduces the performance uncertainty due to its institutional knowledge or industry specific knowledge especially in relation to problems experienced in the internal delivery of legal services.

In order to assess how performance uncertainty could potentially affect the make or buy decision for In-house legal departments, and as highlighted above in accordance with Parmigiani (2007), questions were posed to the respondents in terms of describing needs to suppliers, measuring internal and external performance, identification of problems and measuring suppliers against each other.

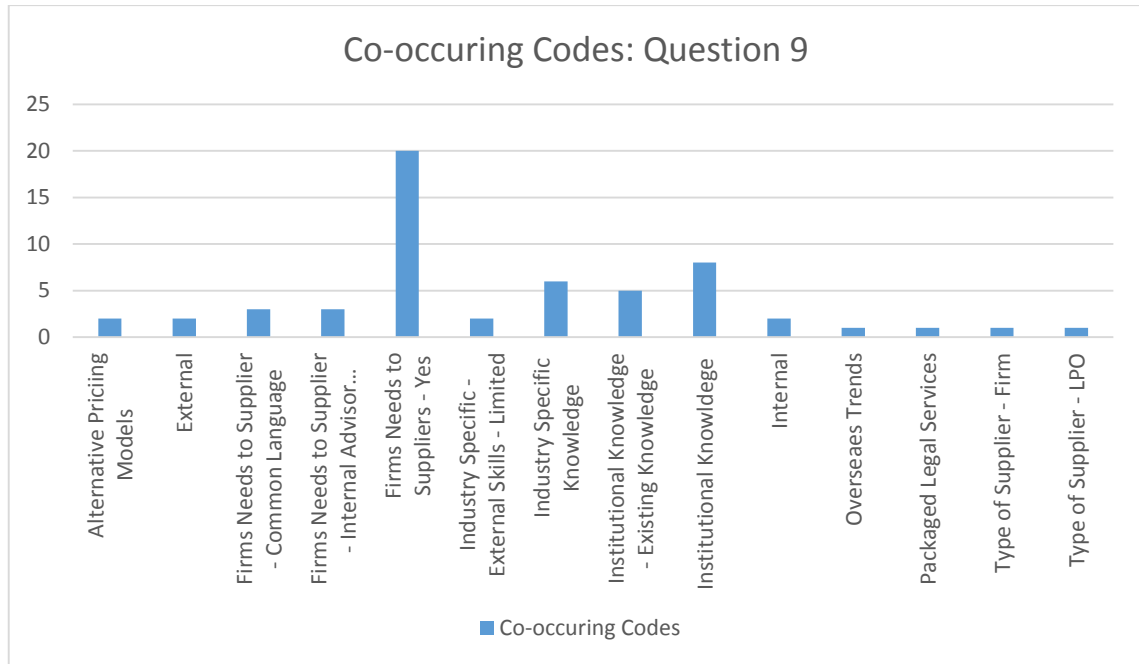
5.5.1.1. Question 9: Is it easy to describe your needs to your suppliers?

- 12 out of 12 respondents indicated that it was easy to describe their needs to their suppliers.
- Of those 12, 10 out of 12 highlighted the role of the internal advisor, institutional knowledge or Industry Specific Knowledge in describing the needs.

There tends to exist a common language between the In-house department and their suppliers that allow for easy translation of needs and requirements as All respondents found it easy to describe their needs to their suppliers.

In terms of the Co-occurring codes in relation to this issue, themes such as Institutional Knowledge/Industry specific knowledge played an important factor, the role of the legal advisor was also highlighted. In relation hereto, the existing relationship between supplier and firm was important. Figure 15 highlights the co-occurring codes that were highlighted in question 9, more than two times:

Figure 15: Co-occurring codes: Is it easy to describe needs to suppliers?



The results are best encompassed in Respondent 10's answer, in terms of which: *“Yes because we talk a common language. I think that is the greatest advantage of legal advisors. I often call us the translators, because that's what I meant you need experienced bank legal advisor because I can take the requirement of business, translate it into legal speak, and tell my lawyer what I want.”* Which was confirmed by Respondent 11 in highlighting: *“So generally it is. Unfortunately I'm always the bridge between the business and who our legal suppliers are, so part of my job is to actually understand, you know, what the legal risks are, what the legal output is needed. So I can direct it to the correct resource. So it's generally quite easy.”*

Respondent 9 further noted the role of the legal advisor in communicating needs to external service providers, as is noted: *“I've not had a problem and in fact I think that's where the value of my life as In-house legal has been most realised is I am able to give the business's perspective to my external suppliers and they are then able to give more directed input into my request for support.”*

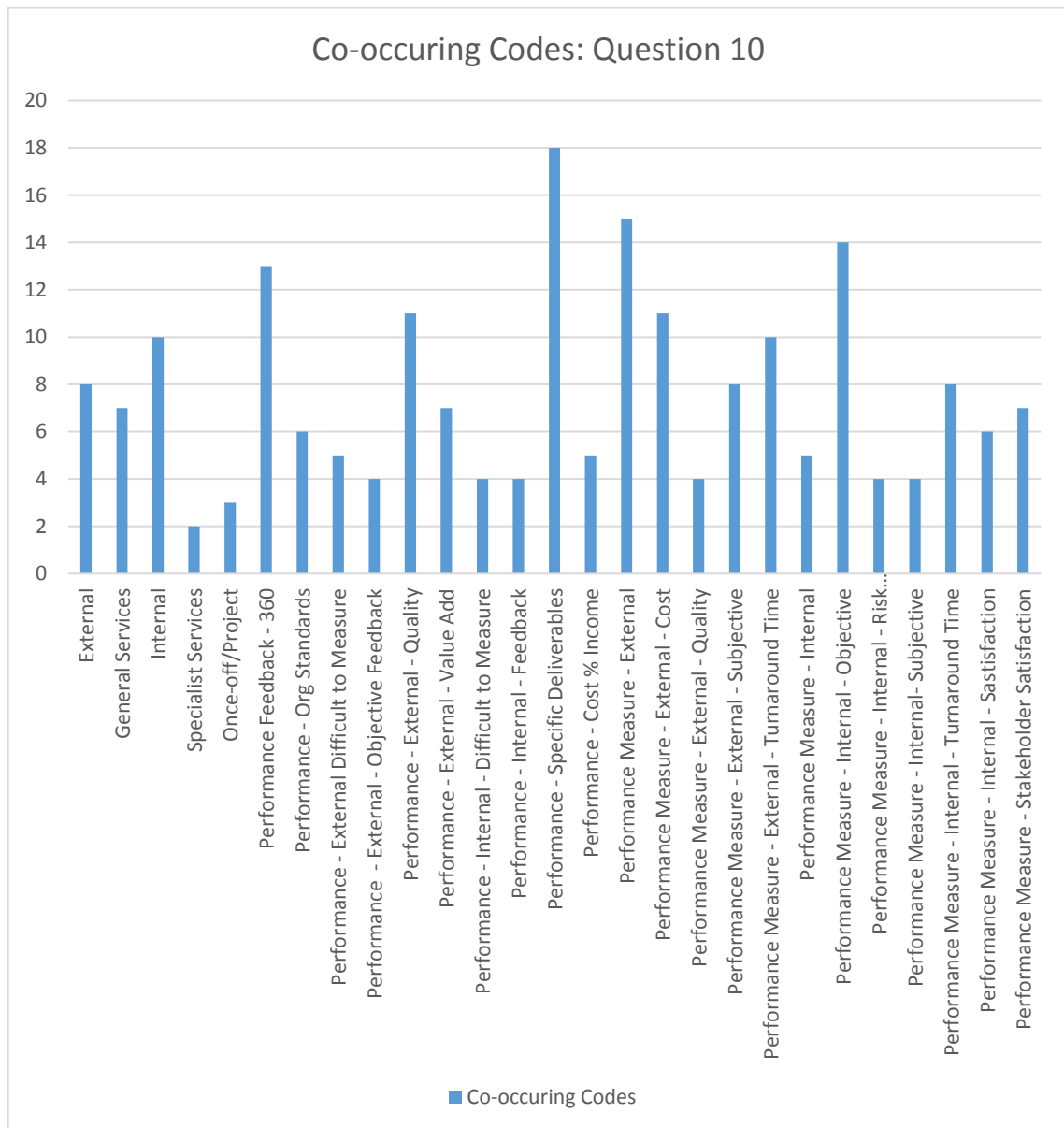
5.5.1.2. Question 10: How do you measure performance internally and externally?

- In relation to internal performance measures, all 12 out of 12 respondents highlighted very specific performance measures.
- In relation to external, 12 out of 12 respondents highlighted specific performance measures. Some of these specific measures highlighted were turnaround time, 360 degree type feedback.
- 9 out of 12 respondents mentioned cost; however, the respondents were really looking at value for money/value added in relation to costs.
- 8 out of 12 respondents highlighted the quality of work provide by the supplier, however, this was somewhat subjective on the suppliers and advisors themselves.

In having regard to the co-occurring codes, which were highlighted in terms of performance measures, quality, cost and turnaround time were highlighted as important external performance measures. From an internal point of view, turnaround time, stakeholder satisfaction and risk management were highlighted as important performance measures.

Figure 16 below highlights the co-occurring codes that arose in relation to question 10, 2 or more times:

Figure 16: Co-occurring codes: How do you measure performance?



In relation to internal performance, in general, In-house legal departments applied specific metrics and performance measures to the internal resource delivering legal services. These were often related to objective considerations such turnaround time and 360 degree feedback from stakeholders and some more subjective measures such as quality and risk management. In relation to external service providers, firms regard performance such turnaround time, quality and cost as important measures. There were also more subjective measures such as value added and risk mitigation that were elucidated.

Respondent 5 was clear in response to this question, in setting forward internal performance: *“So we measure round 14 key aspects of legal service delivery and behaviours that we measure performance against. So are you the trusted advisor, do you understand the clients business, is your turnaround good, do you make commercially based decisions, do you instil legal discipline in the business instead of just taking the work out.”*

Respondent 6 noted the performance measures in terms of the external service provider in that, *“In terms of our external law firm providers, we had a matrix that we were using, where we looked at an internal assessment by our own department, again on a survey basis. Our key clients, because obviously our key clients were engaging with the law firms as well, so there was a satisfaction survey component to that as well. And then over and above that we kind of measured in terms of cost effectiveness, and what we used as a proxy for cost effectiveness”*

Respondent 8 also highlighted the subjectivity which is often associated with performance measures in the delivery of legal services: *“There’s not a lot of measurement criteria and that basically to do with, and the reason for that is you don't have a lot of quantitative measurement tools I can't view, I don't measure my guys on how much contracts they draft in a week or how many opinions they issue. It goes about the quality of their work. And it's is about 360 what the feedback from their clients are about. Turnaround times, quality of work ant all of that there is general division. And that's basically how internally we measure.”*

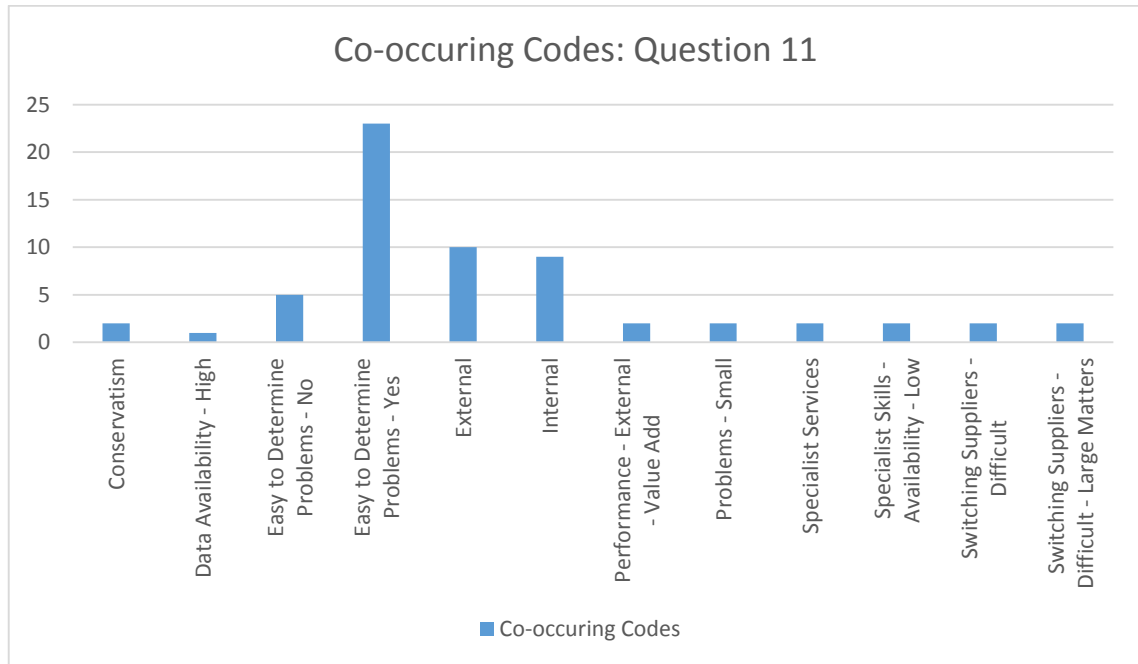
5.5.1.3. Question 11: If problems exist, can you easily determine the cause?

- Nine out of 12 respondents indicated that it is easy to determine the cause of problems that arise.

In relation to firms being able to determine if and where problems exist, respondent found it easy to identify problems, which arise in the delivery of legal services. From an external point of view, the supplier is put into the position to determine the problems if problems arise.

Figure 17 highlights the co-occurring codes that were highlighted in question 11, more than two times:

Figure 17: Co-occurring codes: Easy to determine problems?



In terms of the co-occurring codes in relation to problems in the delivery of legal services, the ability to switch suppliers could be influenced by the size (history) of the matter and whether the matter is of a specialist nature. Once again, the complexity in generalised and specialised services was present.

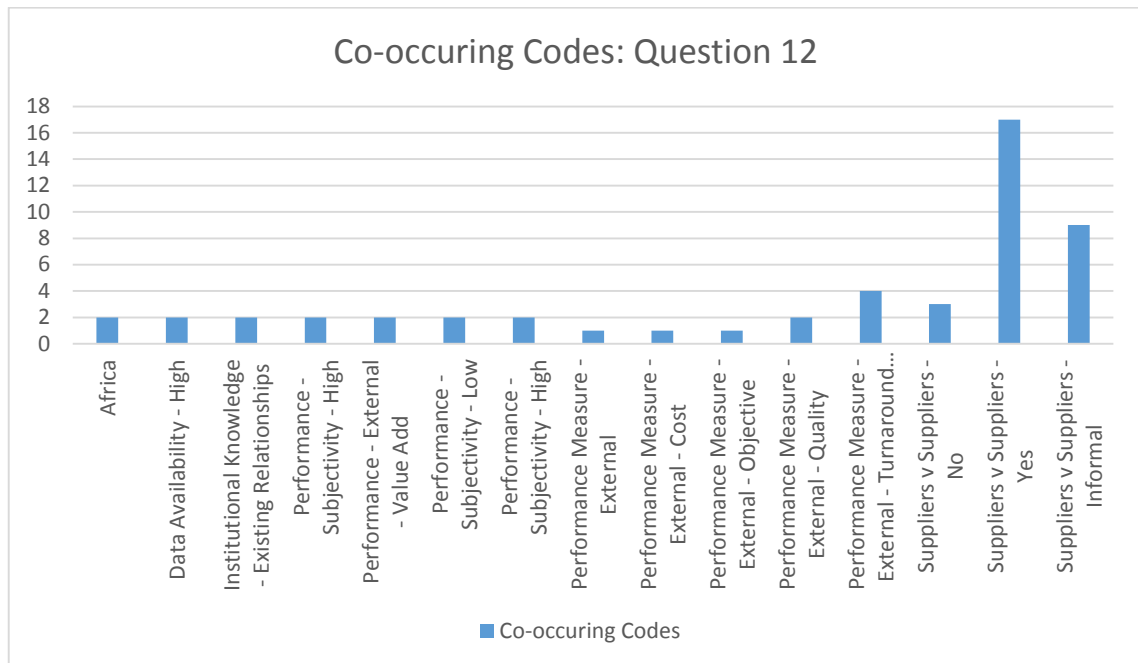
5.5.1.4. Question 12: Do you measure one supplier's service against another?

- 11 out of 12 respondents indicated that they measure one supplier against another, of which seven of these 11 in indicated that this was done on an informal basis.

In terms of the co-occurring codes, themes that were raised in relation to measuring one supplier against each other were on objective measures like turnaround time and cost and more subjective approaches like quality. Figure 18 highlights the co-occurring codes

that were highlighted in question 9, more than two times:

Figure 18: Co-occurring Codes: Measure one supplier v another?



What was apparent, in general, In-house legal departments will measure the performance of its suppliers against each other, even if not in a formal manner.

Respondent 3 also confirmed the approach in that: *“You know, to the best of my knowledge, not formally. But, I mean, obviously you know that firm A will charge you X rand per hour and firm B will charge you XXX rand per hour and then you make a choice. This instruction of such a nature that you want to get to the most expensive firm but you also try to distribute your work evenly, not only to use only one firm but it’s certainly in the back of your mind when you an instruction. Where are you going to get the best value for money? That’s certainly and of course if you know that one firm delivers quickly and another one takes really a month after the deadline to deliver then it will definitely play a role in instructing them or not.”*

Respondent 8 importantly noted the role of subjectivity in the measurement of suppliers, in that: *“Again it’s subjective and discretionary. And the type of work we refer outside its not that easy always, because you might have two or three guys in the market who is an expert in the particular matter and if you ask for an opinion in something you not going to ask for same opinion from the other two so you cannot compare it. So you again you*

exercise a professional judgement on the quality of the service and the attention that has been given to it. So it's a professional discretion."

5.5.2. Descriptive Statistics

Table 5 highlights the descriptive statistics including the mean and standard deviation of quantitative data.

Table 5: Descriptive Statistics: Performance Uncertainty

Descriptive Statistics					
	N	Minimum	Maximum	Mean	Std. Deviation
Performance Uncertainty: 1	32	2	7	5.44	1.045
Performance Uncertainty: 2	32	1	7	4.25	1.796
Performance Uncertainty: 3	32	2	7	5.66	1.004
Performance Uncertainty: 4	32	1	7	3.94	1.722
Performance Uncertainty Composite	32	3.3	6.3	4.820	.7493
Valid N (listwise)	32				

The Mean statistic for question 13 of the survey provided a score of 5.44, indicating that the mean response to the question sits between Sometime True to Mostly True, whilst the standard deviation is 1.045. The co-efficient of variation is 0.192, indicating low variance.

The Mean statistic for question 14 of the survey provided a score of 4.25 on the 7-point Likert scale, indicating a response sitting closer to Neutral than Sometimes True, whilst the standard deviation is 1.797. The co-efficient of variation is 0.423, indicating low variance. This indicates that there is a moderate use of metrics to evaluate supplier performance

The Mean statistic for question 15 of the survey provided a score of 5.66 on the 7-point Likert scale, indicating that the mean response to the question sits between Sometime True to Mostly True, whilst the standard deviation is 1.004. The co-efficient of variation is 0.177, indicating low variance. This indicates a positive response to In-house departments being able to determine causes of problems when they arise.

The Mean statistic for Question 16 of the survey provided a score of 3.94 on the 7-point Likert scale, indicating a mean response between Sometimes Untrue and Neutral in relation to it being difficult to measure one supplier's services against another's. Whilst the standard deviation is 1.722. The co-efficient of variation is 0.437, indicating low variance.

The composite mean score for questions relating to volume uncertainty was 4.820 on the 7-point Likert scale, which indicates an answer between neutral and sometimes true, whilst the standard deviation is 0.749. The co-efficient of variation is 0.155, indicating low variance. This composite mean indicates a positive leaning towards moderate to low performance uncertainty.

5.5.3. Performance Uncertainty Conclusion

There is moderate to low performance uncertainty in relation to the delivery of legal services. The role of the legal advisor and their own skill competence are of utmost importance in reducing uncertainties in relation to performance. The In-house lawyers have a good understanding of their requirements as well as sufficient knowledge to convey this to external service providers. What is further of importance is that the In-house department can determine the quality of the services delivered both internally and externally.

The descriptive statistics confirm that there is moderate to low performance uncertainty in relation to generalised legal services, and serves to validate and confirm the qualitative results in relation to performance uncertainty.

5.6. Research Question 4: Economies of Scale/Scope

5.6.1. How do economies of scale/scope affect the Make-or-Buy decision?

Economies of scale and scope can potentially be present for In-house legal departments. There is the potential for both the In-house legal department and external supplier to be in a position to achieve both, however, by design In-house departments prefer to have multiple suppliers in a single area to reduce key man dependency.

What was clearly highlighted is that internal production of legal services does reduce the

cost of delivering legal services. Where a problem for In-house legal departments can exist is the use of the resources. There are obvious attempts in the In-house legal departments to ensure that the resources are allocated to the appropriate complexity of legal requirements, however, there are times when a high-level resource can potentially focus on low complexity work. This mix of allocation is done in attempts to create either economies of scale or scope from the resources utilisation.

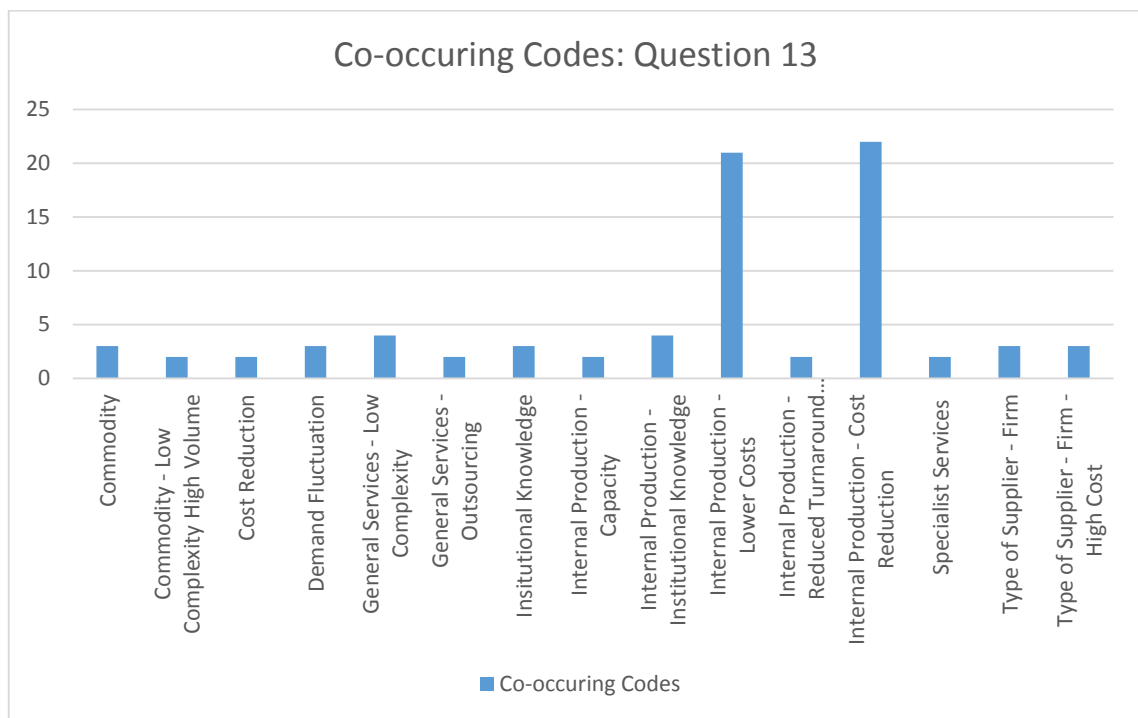
In order to assess how economies of scale and scope could potentially affect the make or buy decision for In-house legal departments, and as highlighted above in accordance with Parmigiani (2007), questions relating to costs of internal production, use of resources and economies of scale and scope both internally and externally, were asked to the respondents.

5.6.1.1. Question 13: By producing legal services internally, do you reduce your costs?

- 11 out of 12 respondents confirmed that by producing legal services internally, the organisation can reduce the costs of legal services delivery.

The co-concurring codes in relation to this question highlighted the role that internal capacity plays in reducing costs. Figure 19 highlights the co-occurring codes that were highlighted in question 13, more than two times:

Figure 19: Co-occurring codes: Internal production – lower costs?



What was further apparent is that the current legal services provider, the law firm, can be regarded as high in costs compared to internal production.

Respondent 6’s response to Question 6 was quite specific and afforded a ratio, which is applied by the organisation, as highlighted in the response: *“I pay on average somewhere in the region of R400 per hour. Per hour billing is not the way that I do things but it is the most effective way of measuring it. I pay R400 per hour for an LPO. I pay between R900 and R1 200 per hour for an internal resource and I pay R3 500 for an external law firm resource. That’s my ratio.”*

Respondent 5 who answered confirmed this: *“Yes of course. And the general rule of thumb that we work by is that internal is roughly a third of the cost of external.”*

Respondent 10 and 12 further set out that internal production of legal services reduces costs answering as follows: *“That I mean, okay I don't want to give you the amounts, but we reduce the bank's legal spending in the millions. Literally millions that we have saved the bank just by doing work internally. I think”* and Respondent 12 who indicated as follows: *“Tremendously, tremendously. So I've got an exact case study. In Mexico some*

of the internal drafting is, all the internal drafting of distribution agreements, and there's three or four templates, goes to an external law firm. I was there last month and we seeing what's its costing us and it costs us twice a month of what a junior lawyer who could draft under the senior lawyer. And we busy changing it."

These quotes highlight the high cost of external legal services. The costs associated with internal production are between one third and half of procuring the service in the external market.

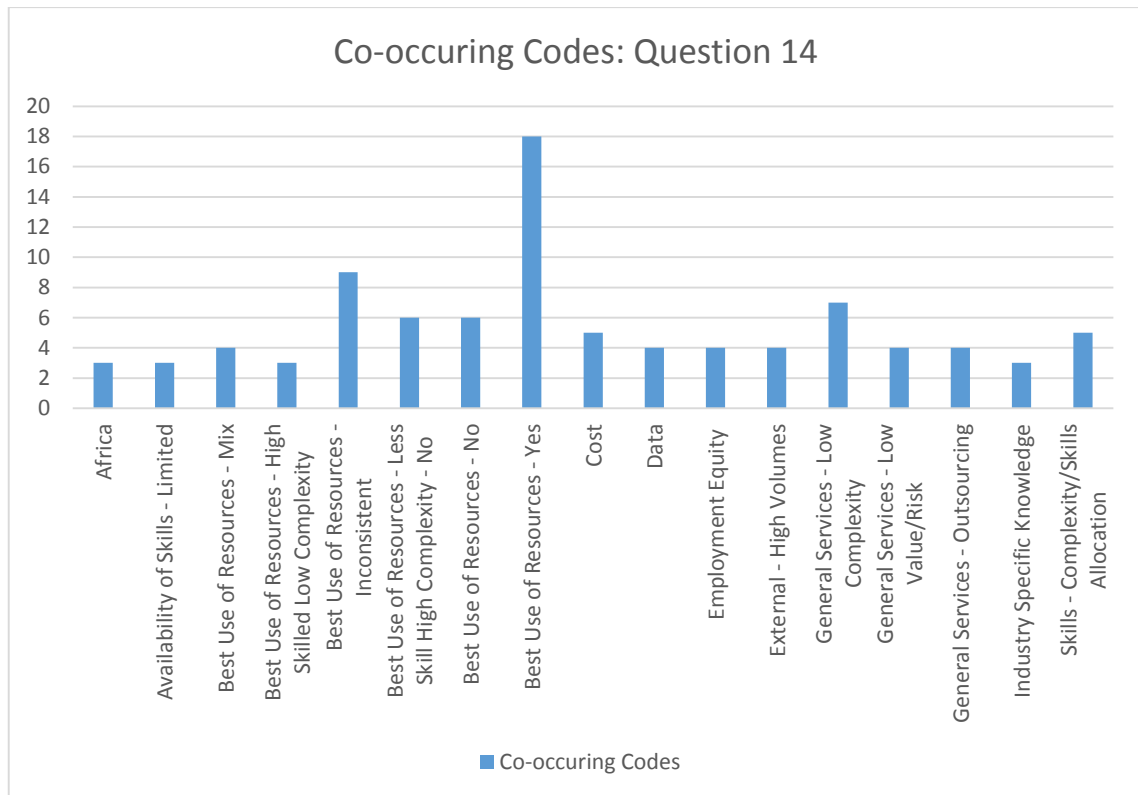
5.6.1.2. Question 14: Do you make the best use of your resources?

- 6 out of 12 respondents highlighted that it depends on whether they are making the best use of their internal resources.
- A further 7 out of 12 respondents indicated that there is a definite effort to make the best use of the resources; and
- 6 out of 12 recognised that complexity associated with generalised and specialised work.

When discussing if the firms made the best use of the resources available to them, the general response was that the firms attempt to ensure that the correct resource is allocated to the correct complexity of work. However, the firms have inconsistent results in this regard. The complexity associated with general and specialist services further are highlighted as important considerations.

In terms of the co-occurring codes, the role of complexity and volume were themes that came out strongly. The idea of attempting to commoditise high volume low complexity legal work was a further theme that arises from the respondents. Figure 20 highlights the co-occurring codes that were highlighted in question 14, more than two times:

Figure 20: Co-occurring codes: Do you make the best use of your resources?



The distinction between generalised and specialised legal services arose again, which complexity can be attributed to the fact that there is inherent difficulty in ensuring that the right resource is allocated to the right complexity of work. This inconsistency can potentially add to inefficient methods of legal services delivery, especially in the internal environment.

Respondent 1 noted the inherent complexity in that: *“You tend to have, I for example have a rather large team of junior lawyers and small number of senior ones to oversee them, but other parts of the function have rather too many senior lawyers which isn't very efficient because they are relatively expensive for the level of work that they are doing.”*

The importance of resource allocation and complexity was noted by Respondent 5: *“Having the right legal counsel doing the right work at the right time for right client is something that we do consider very strongly and that's something that we measure the performance of the general councils against. So what we encourage legal counsel to do, very strongly, as part of our minimum requirements, is to commoditise repetitive work all automated either by means of a system or by means of a tool kit.”*

Respondent 6 was more blunt in the approach followed: *“It’s the right people with the right skill doing the right work and the right cost. You got to do that analysis consistently. You cannot have a situation where you have a lawyer with twenty years post qualification experience who is an expert in mining law buggering around on your supply chain agreements.”*

5.6.1.3. Question 15a: Can you achieve economies of scale?

- 9 out of 12 respondents highlighted that the organisation could achieve economies of scale internally.

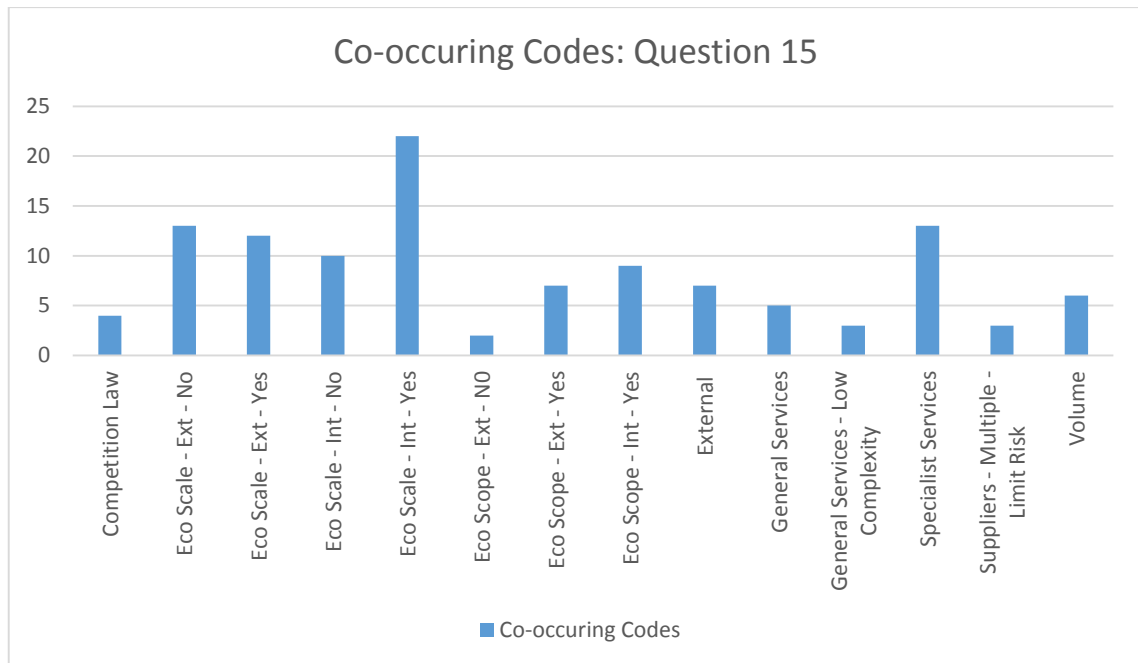
5.6.1.4. Question 15b: Can your suppliers achieve economies of scale?

- 8 out of 12 respondents indicated that potentially external service providers could create economies of scale from the organisation's work.
- This was highlighted as a potential, but 5 out of the 8 who responded positively indicated that there exists a preference to spread work across numerous external suppliers to reduce risk.

Even though economies of scale for external service providers is possible, there is an active move away from creating dependency on a single supplier. It is further apparent, that In-house legal departments can create economies of scale, depending on the volume of the required service to be delivered.

From the co-occurring codes, the complexity in relation to specialised and generalised work arose again. Volumes that drive the economies was prominent and once again related to the distinction between specialised v generalised services. Figure 21 below highlighted co-occurring codes with Question 15 that arose more than 2 times.

Figure 21: Co-occurring codes: Can you/suppliers achieve economies of scale?



It is apparent that it would be easier to create economies of scale internally for an In-house department than it would be for an external supplier. It appears that it would be possible to achieve economies of scale in the environment of general services where there are higher more consistent volumes.

Respondent 5 confirmed the position by highlighting: *“so the legal discipline that goes into those things are infinitely scalable once we’ve deployed our tool kit standard documentation system announcements or system controls. And that’s the same for low value commercial contracts, employment contracts, work orders that’s subject to framework agreement, so we achieve economies of scale on many many aspects of the way in which we deliver legal advice and legal risk management.”*

“So from a resilience perspective its better for us to have our work spread over a number of suppliers, cause then an operational risk event that takes out your supplier will only affect a small portion of your legal risk management”

5.6.1.5. Question 16a: Can you achieve economies of scope?

- 10 out of 12 respondents indicated that internal production can create economies

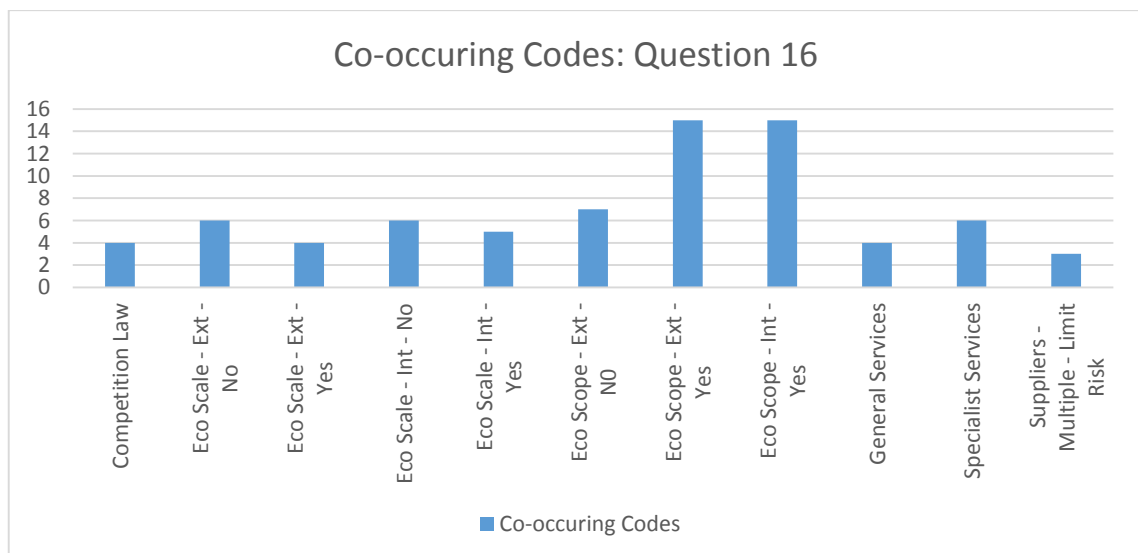
of scope, in that a single resource is occupied with many activities instead of a single focus.

5.6.1.6. Question 16b: Can your suppliers achieve economies of scope?

- 7 out of 12 respondents indicated that it is possible for external firms to create economies of scope through the organisation's work;
- 5 out of 12 said that this would not be possible;
- In relation to the costs of internal legal services production, all respondents were of the opinion that internal production is lower in costs than procuring the services in the external market;
- 4 of the 7 respondents who highlighted that external service providers can create economies of scope further indicated that this was possible but in reality was not achieved.

From the co-occurring codes, the complexity in relation to specialised and generalised work arose again. Volumes that drive the economies was prominent and once again related to the distinction between specialised v generalised services. Figure 22 highlights the co-occurring codes that were highlighted in question 16, more than two times:

Figure 22: Co-occurring codes: Can you/suppliers achieve economies of scope?



Respondent 2 forwarded the inefficiencies that can arise in order to achieve economies of scale or scope: *“Well that’s what we try and do. I thinks sometimes it is not always*

possible to achieve that, and some of that has to do with I guess, both our business units that we support and ja both the business units that we support and the way that we manage our portfolios. So if I take an example of that, I've got one senior lawyer dealing with the home loans portfolio but inevitably means that while she does focus on the high-level work she also has to focus on the kind of rats and mice or the low-level stuff that we would ultimately like to manage away. So that's when come back to business unit efficiency."

Respondent 8 confirms the position in that: *"I can to a certain extent achieve economies of scale, if you look at the nature of the legal the legal nature of the problem. So I have somebody who does IT law or somebody that does competition law, or focuses thereon, or somebody who focuses on IP. There I can but not in the nature of the work that comes in if I'm making sense."*

In relation to economies of scope and scale, same must be considered together. Firms are potentially either able to achieve either economies of scale or economies of scope in relation to the delivery of legal services. The potential for both exists, however, volumes of internal requirements drive the decision. It is apparent that In-house counsel can have individual focus, creating economies of scale from the resource; alternatively, the resource will focus on numerous different activities in order for full utilisation.

The complexity of generalised and specialised services further complicate the matter. It would be easier to drive economies of scale in generalised work (e.g. doing repetitive processes) and economies of scope in specialised work (e.g. advising multiple areas and matters on a complex issue).

From the external point of view, the general response was that external suppliers have the potential to generate both economies of scale and scope from firms. In that, external service providers can potentially have focused areas that can generate economies of scale for the supplier. Further firms can have a number of different departments that can be occupied by a single firms work. However, the consensus is that even though it is possible, in reality, it is not achieved, as firms prefer to mitigate single supplier dependency by spreading work to more than one supplier.

Respondent 10's comprehensive answer sets out numerous difficulties in relation to

economies of scale/scope: *“When you tallying resources here, so we will have people that specialise in home loans for closures, we will have people that specialise in motor car, call it, simple repossessions. Because, to foreclose on a house, is different from foreclosing on a motor car. The one is a quick moving asset. In addition, you must get it as quickly as possible; the other one cannot run away. That is in contrast, let’s say, to your conveyancing attorneys. And in the third contrast, let’s say, you’re unsecured, let’s say, somebody is collecting credit card debt, its I suppose that is volume, It’s few and far between that you will have a individual doing all the products. But in a firm there might be two people doing the home loans and one, another partner doing the motor vehicle, and a third and a fourth partner doing the conveyancing. So in that sense, I suppose a bank often likes to go to a bigger firm because under one roof is all the skills. When I say a bigger firm, it does not have to be 80 partners or something like that. So that is, in economies of scale. I also must warn you there, so the bank has got certain compliance issues, so we ensure that maybe not more than, I don't want to give the game away, but let’s call it a percentage of the work, let’s say for instance, not more than 10% of your home loan foreclosures may go to one firm. So even if that means, and we have seen it, that attorneys will come back and say that these volumes do not justify economies of scale working for us. Because this is not, obviously we say to them we will give you large volumes of instructions at a lower rate. But some will come and say look if you only give me ten instructions a month, so that can happen. So some attorneys will come and say look, you know if they don't get, I'm just saying, using a number, fifteen instructions a month's it's not worth their while and if you look at our benchmarks and say will you will get more than 10%, there's a risk with the bank in having too much. It adds on to your previous question, when I think you asked how quickly can I switch.”*

5.6.2. Descriptive Statistics

Table 6 highlights the descriptive statistics including the mean and standard deviation of quantitative data.

Table 6: Descriptive Statistics: Economies of Scale/Scope

Descriptive Statistics					
	N	Minimum	Maximum	Mean	Std. Deviation
Firm Scope Economies Composite	32	1.0	7.0	5.328	1.3174
Firm Scope Economies:1	32	1	7	5.59	1.521
Firm Scope Economies:2	32	1	7	5.06	1.390
Supplier Scope Economies:1	32	2	7	5.16	1.110
Valid N (listwise)	32				

The Mean statistic for question 17 of the survey provided a score of 5.59, indicating that the mean response to the question sits between Sometimes True to Mostly True on the 7-point Likert scale, whilst the standard deviation is 1.521. The co-efficient of variation is 0.155, indicating low variance.

The Mean statistic for question 18 of the survey provided a score of 5.06 on the 7-point Likert scale, indicating a response sitting closer to Sometimes True than Mostly True, whilst the standard deviation is 1.390. The co-efficient of variation is 0.275, indicating low variance.

The Mean statistic for question 19 of the survey provided a score of 5.16 on the 7-point Likert scale, indicating a response sitting closer to Sometimes True than Mostly True, whilst the standard deviation is 1.110. The co-efficient of variation is 0.215, indicating low variance.

The composite mean score for questions relating to volume uncertainty was 4.820 on the 7-point Likert scale, which indicates an answer between neutral and sometimes true, whilst the standard deviation is 1.317. The co-efficient of variation is 0.273, indicating low variance. This composite mean indicates a positive leaning towards moderate to low performance uncertainty.

The descriptive statistics confirm that there is moderate to low performance uncertainty in relation to generalised legal services, and serves to validate and confirm the qualitative results in relation to performance uncertainty.

5.6.3. Economies of Scale/Scope Conclusion

In relation to economies of scope and scale, same must be considered together. In-house legal departments are potentially either able to achieve either economies of scale or economies of scope in relation to the delivery of legal services. There is potential for both to exist, however, volumes of internal requirements drive the decision. It is apparent that In-house counsel can have individual focus, creating economies of scale from the resource; alternatively, the resource will focus on numerous different activities in order to achieve full utilisation.

The complexity of generalised and specialised services further complicates the matter. It would be easier to drive economies of scale in generalised work (e.g. doing repetitive processes) and economies of scope in specialised work (e.g. advising multiple areas and matters on a complex issue).

5.7. Research Question 5: Capabilities

5.7.1. How do capabilities/expertise affect the Make-or-Buy decision?

What is apparent that the core skills of lawyers exist internally and externally. However, there are specialist skills that are present in the external market that is not capable of internal replication and there are skills internally, heavily reliant on institutional knowledge, that cannot be replicated externally. The skills are complimentary but it is in areas of expertise and capacity that often internal legal delivery cannot replicate the capabilities of external suppliers.

In order to assess how capabilities/expertise could potentially affect the make or buy decision for In-house legal departments, and as highlighted above in accordance with Parmigiani (2007), questions relating to internal skills and external skills, as well whether the external expertise could not be replicated internally were asked to the respondents.

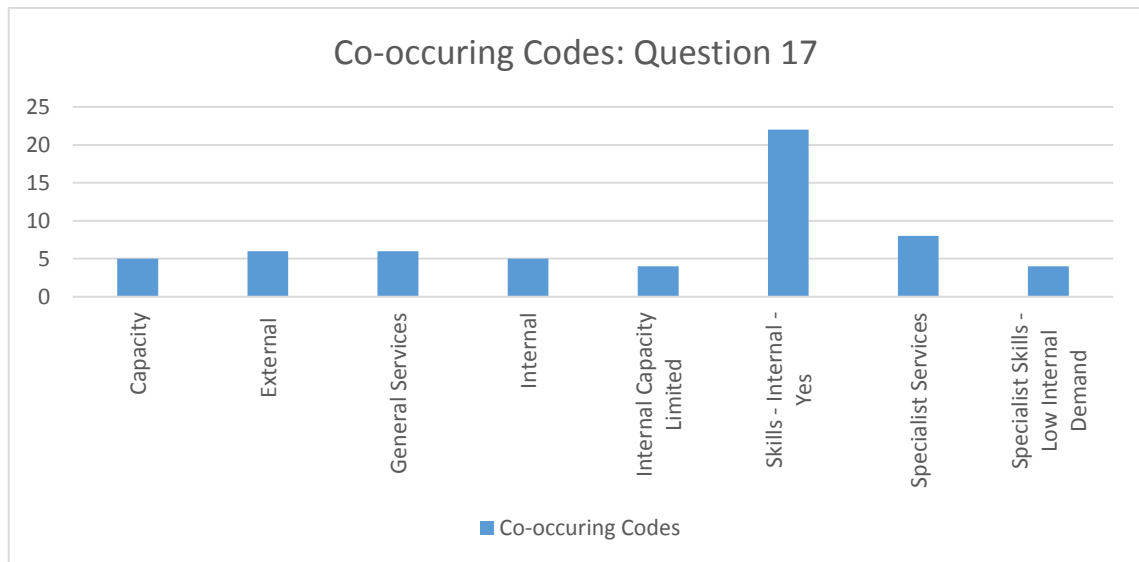
5.7.1.1. Question 17: Do you have the required skills internally?

- 12 out of 12 respondents responded positively to question 17 in that they had the required skills internally to deliver legal services.

- 2 out of the 12 respondents highlighted the importance of training in the development of the required skills whilst a further 2 of the 12 respondents highlighted the distinction between generalised and specialised legal services, in that they did not have all the required specialist skill internally, and this was by design.

Figure 23 below highlights co-occurring codes in Question 17 that arose more than 2 times in the question:

Figure 23: Co-occurring Codes: Do you have the required skills internally?



In terms of the code co-occurrences that arose as a result of this question, the complexity in relation to generalised and specialised services arose again. There was further indication highlighting capacity and demand as issues that affect whether the In-house departments have the required skills internally. The role of training further arose in that firms are often required to train to suit their own needs and purposes.

Respondent 1 forwarded: *“What you would call “business as usual” yes. Because if you know that you have that business requirement you can recruit somebody who, if not immediately, can do the work”*. This was confirmed by Respondent 11: *“To the extent that sort of the general day to day and the general practitioner, definitely.”*

As slightly contrasting response from Respondent 5 noted the In-house department's specific approach by *"No and that's by desire. Some of them are, you will not keep a Ferrari in the garage if one day a year you have to drive to the corner shop. Does not make economic sense. So it is by design that we do not internally house all the skills. So let me just take it one-step back. You do actually have the skills that you guys require. Yes. Because you require, you have met, you have dealt with We have what we require in terms of the risk balance formula. Yes. So stuff that we go very light on by design is for example, is environmental law and then like the esoteric tax structures and stuff. We just buy that externally when it arises. And it's once or twice every two or three years."*

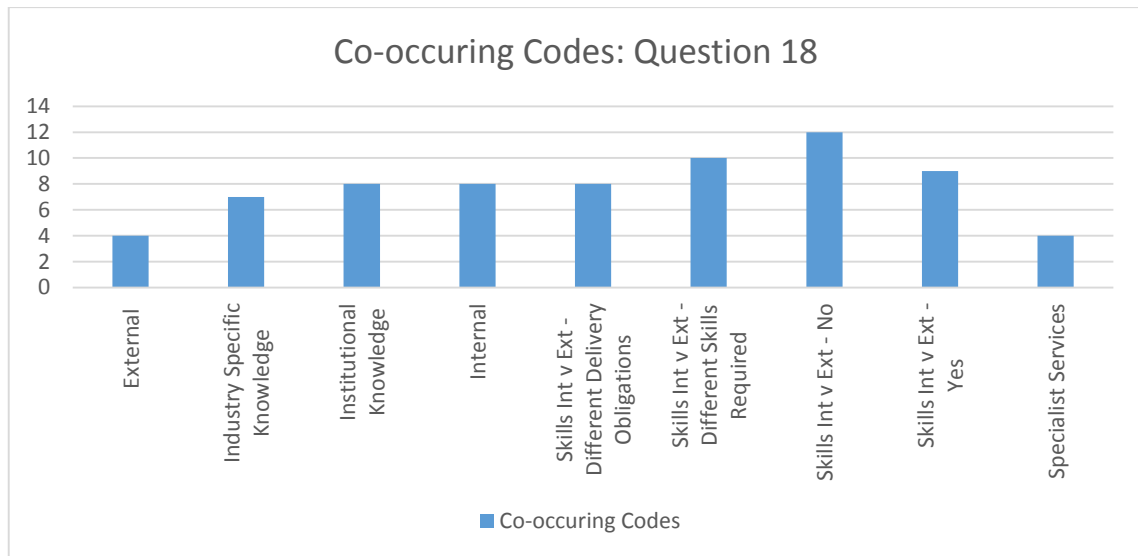
All respondents and firms were of the view that they had the necessary skills internally to produce legal services, however, the complexity associated with general and specialist services was again present in the results.

5.7.1.2. Question 18: Are skills needed internally similar to external?

- 6 out of 12 respondents responded negatively to whether skills for internal production of legal services was similar to the external production of legal services.
- This, however, is qualified by 6 out of 12 respondents highlighting the difference between general and specialised skills.
- 5 out of 12 respondents noted that the core skills of internal and external lawyers are similar, were the skills diverge and become complementary is as a result of industry specific skills and institution specific skills.

Figure 24 below highlights co-occurring codes in Question 18 that arose more than 2 times in the question.

Figure 24: Co-occurring Codes: Are skills needed internally similar to external?



In relation to whether skills required internally were similar to those required externally, the general theme of complementarity arose. Once again, a distinction of generalised and specialised skills was highlighted in that often the core lawyering skills are present, but it is the differing requirements of the differing roles that have specific skills. The benefit of institutional knowledge was forwarded as an important differentiator between In-house and external lawyers.

The co-occurring codes highlighted the role and importance that institutional knowledge plays in the delivery of legal services. Even though the skills tend to be generic, institutional knowledge is a skills that assist the In-house counsel to deliver legal services as set out by Respondent 3: *“Ja I think so except that the benefit is with in-house of course that after a while you really grow into your product and you staple this and because you know them and you much closer to your business, you know a lot of detail that you don't have to know when you outside.”*

Respondent 6 further set out the importance core legal skills and of institutional knowledge in that: *“So core legal skills, obviously. I think that even though I indicated earlier on that pure generalist are hard to find, people have spent a while within my organisation understand the breadth of our environment a hell of a lot better than an external law firms do, and generally the external law firms tend to specialise in a particular discipline to a greater degree than we do, so there's a matching. It's a kind of a funny matching if you think of, I don't know how to explain it but its stuff we have that*

they don't have and there's stuff that they have that we don't have."

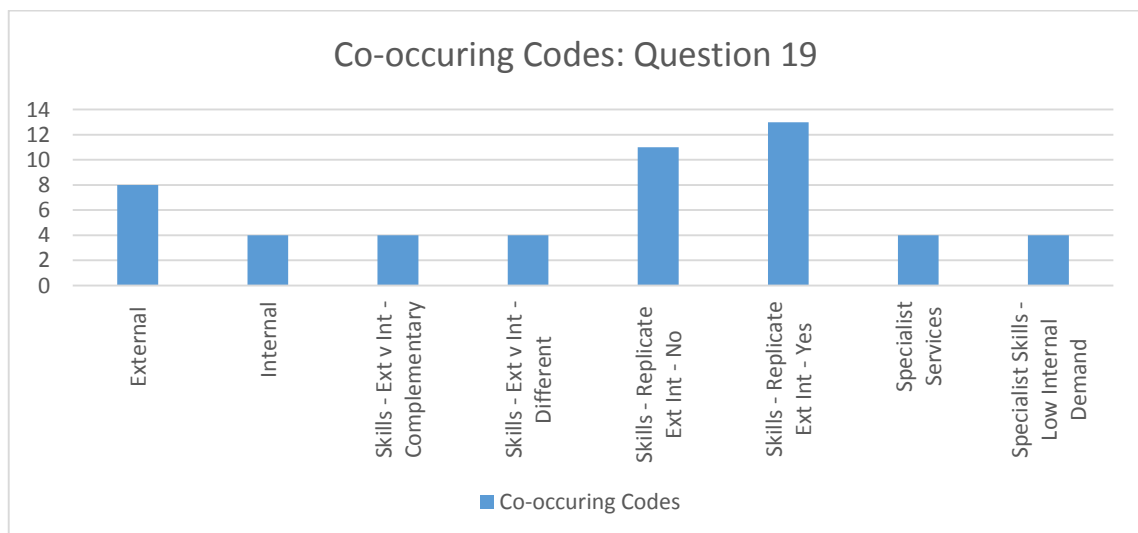
5.7.1.3. Question 19: Do your suppliers have expertise/skills that cannot be replicated internally?

- 8 out of 12 respondents highlighted the complexity associated with generalised and specialised services in answering whether suppliers have skills/expertise that cannot be replicated internally. Included in the skills that are often difficult to replicate internally are specialised expertise and greater capacity to deal with volume related legal services delivery.

In regards to whether suppliers have skills that cannot be replicated internally, the complexity in relation to generalised and specialised services was once again highlighted, in that the skills required internally and externally can be regarded as complimentary. There are certain areas in relation to capacity and expertise where it is difficult to replicate external capabilities internally.

Figure 25 below highlights co-occurring codes in Question 19 that arose more than 2 times in the question.

Figure 25: Co-occurring codes: External supplier's skills that cannot be replicated internally?



In terms of the co-occurring codes that have arisen in relation hereto, the complexity in relation to the type or organisation arose. There are skills in relation to specialisation that could not be replicated internally, as well as not being able to cater for high demand.

Respondent 3 has suggested that capacity in relation to high volume demand is crucial in that: *“I’m not so sure about expertise really. I think we have actually; we probably cover all the areas of expertise. What they certainly have is the volume. Like the example that I used. We are being involved and typically you might have experienced in your own career as well when there’s a big transaction was a secret and then all of a sudden that lands on your desk and then all of a sudden you have to do a massive due diligence and you have a week or two to do that. When you have that volume available, we can never just pull ten people from their tables and say go to that town and do a due diligence. We just do not have that capacity. While you can do that with a supplier.”*

Respondent 4 further confirms the position in relation to specialisation by answering: *“Ja, ja some of them. Like I said, well we could replicate them internally. It would be possible but it would be highly, it would be silly because we simply do not have enough of that type of work. So again, the tax work, the competition work, and the very intricate commercial work we do outsource.”*

5.7.2. Descriptive Statistics

Table 7 highlights the descriptive statistics including the mean and standard deviation of quantitative data.

Table 7: Descriptive Statistics - Capabilities

Descriptive Statistics					
	N	Minimum	Maximum	Mean	Std. Deviation
Firm Expertise: 1	32	4	7	5.91	.777
Firm Expertise: 2	32	2	7	5.22	1.289
Firm Expertise: 4	32	2	7	4.69	1.491
Firm Expertise: 3	32	1	7	5.78	1.581
Firm Expertise Composite	32	2.5	6.5	5.398	.9564
Supplier Expertise: 1	32	2	7	5.31	1.256
Supplier Expertise: 2	32	1	7	4.88	1.809
Supplier Expertise: 3	32	1	7	4.28	1.746
Supplier Expertise: 4	32	1	5	2.78	1.313
Supplier Expertise: 5	32	1	6	3.34	1.696
Supplier Expertise Composite	32	2.6	5.4	4.119	.7651
Valid N (listwise)	32				

Question 20: Firm Expertise 1 - Your legal staff can/could easily produce * Legal services?

The Mean statistic for question 20 of the survey provided a score of 5.91, indicating that the mean response to the question sits between Sometimes True to Mostly True on the 7-point Likert scale, however, closer to Mostly True, whilst the standard deviation is 0.777. The co-efficient of variation is 0.131, indicating low variance.

Question 21: Firm Expertise 2 - Making Legal services requires a deep expertise that your organisation understands.

The Mean statistic for question 21 of the survey provided a score of 5.22 in the 7-point Likert scale, indicating a response sitting closer to Sometimes True than Mostly True, whilst the standard deviation is 1.289. The co-efficient of variation is 0.247, indicating low variance.

Question 22: Firm Expertise 3 - The skills used to make one type of Legal service are closely related to those that you use to make other similar types of legal services?

The Mean statistic for question 22 of the survey provided a score of 4.69 in the 7-point Likert scale, indicating a response sitting closer to Sometimes True than Neutral, whilst the standard deviation is 1.581. The co-efficient of variation is 0.337, indicating low variance.

Question 23: Firm Expertise 4 - We have internally produced Legal services for years.
The Mean statistic for question 23 of the survey provided a score of 5.78, indicating that the mean response to the question sits between Sometimes True to Mostly True on the 7-point Likert scale, favouring Mostly True, whilst the standard deviation is 1.491. The co-efficient of variation is 0.258, indicating low variance.

The Composite Score for Firm Expertise was 5.398. This indicates the composite means sits between and closer to Sometimes True and Mostly True, whilst the standard deviation is 0.9564. The co-efficient of variation is 0.177, indicating low variance.

Question 24: Supplier Expertise 1- The leading Legal suppliers have proprietary knowledge/expertise that gives them an advantage over other organisations?

The Mean statistic for question 24 of the survey provided a score of 5.31, indicating that the mean response to the question sits between Sometimes True to Mostly True on the 7-point Likert scale, whilst the standard deviation is 1.256. The co-efficient of variation is 0.237, indicating low variance.

Question 25: - Supplier Expertise 2 - You rely on your suppliers to help us keep up with Legal technology?

The Mean statistic for question 25 of the survey provided a score of 4.88 in the 7-point Likert scale, indicating a response sitting closer to Sometimes True than Neutral, whilst the standard deviation is 1.809. The co-efficient of variation is 0.371, indicating low variance.

Question 26: Supplier Expertise 3 - There is very little difference between the process you would use to make Legal services and that used by a supplier?

The Mean statistic for question 26 of the survey provided a score of 4.28 in the 7-point Likert scale, indicating a response sitting closer to Neutral than Sometimes True, whilst the standard deviation is 1.746. The co-efficient of variation is 0.408, indicating low variance.

Question 27: Supplier Expertise 4 - As compared to suppliers, your internal production of Legal services is/would be higher in price?

The Mean statistic for question 27 of the survey provided a score of 2.78, indicating that the mean response to the question sits between Sometimes Untrue to Mostly Untrue on

the 7-point Likert scale, whilst the standard deviation is 1.313. The co-efficient of variation is 0.472, indicating low variance. This answer indicates and confirms that firms have lower internal production costs than their suppliers.

Question 28: Supplier Expertise 5 - As compared to your suppliers, your internal production of Legal services is/would be lower in quality?

The Mean statistic for question 28 of the survey provided a score of 3.34, indicating that the mean response to the question sits between Mostly Untrue and Neutral on the 7-point Likert scale, whilst the standard deviation is 1.696. The co-efficient of variation is 0.507, indicating low variance. This answer indicates that the sample respondents did not believe that the quality of internal legal services delivery was equivalent to the quality produced or slightly below the quality of external service providers.

The composite mean score for the questions relating to supplier expertise is 4.119, whilst the standard deviation is 0.7651. The co-efficient of variation is 0.186, indicating low variance.

This confirms that the respondents did believe or only sometimes believed that the overall expertise to delivery legal services internally and externally is similar. It further indicates that capabilities neither favour the internal or external production of legal services. However, cost and capacity/volume play an important role adding complexity.

The descriptive statistics confirm that the In-house legal departments have the required skills and capabilities to deliver most legal services internally at the same level and quality as external providers. , and serves to validate and confirm the qualitative results in relation to generalised legal services.

5.7.3. Expertise Conclusion

There is very little appreciable difference in capabilities of legal services production between In-house and external suppliers. What is however at play is the complexity that is inherent in specialised and generalised services. This favours the external production for services that require specialised skill or capacity to manage high volumes.

What is further apparent is that were skills do diverge, is in the realm where industry

specific or institutional knowledge is crucial to the effective delivery of legal services. This can be knowledge, which is inherent to the organisation or external specialised expertise in a specific industry.

This must all be considered in the context that the skills and expertise internally and externally are capable of delivering similar services. There is little appreciable indications, other than mitigating legal risk, why In-house departments would not produce legal services in generalised areas internally, as In-house departments have the skill to produce similar quality legal services in comparison to external suppliers.

5.8. Research Question 6:

5.8.1. How does technological uncertainty affect the Make-or-Buy decision?

The overwhelming majority indicated that disruptions from technology were expected in the manner in which legal services are delivered. What was further apparent was that the role in high volume areas would be most be most apparent.

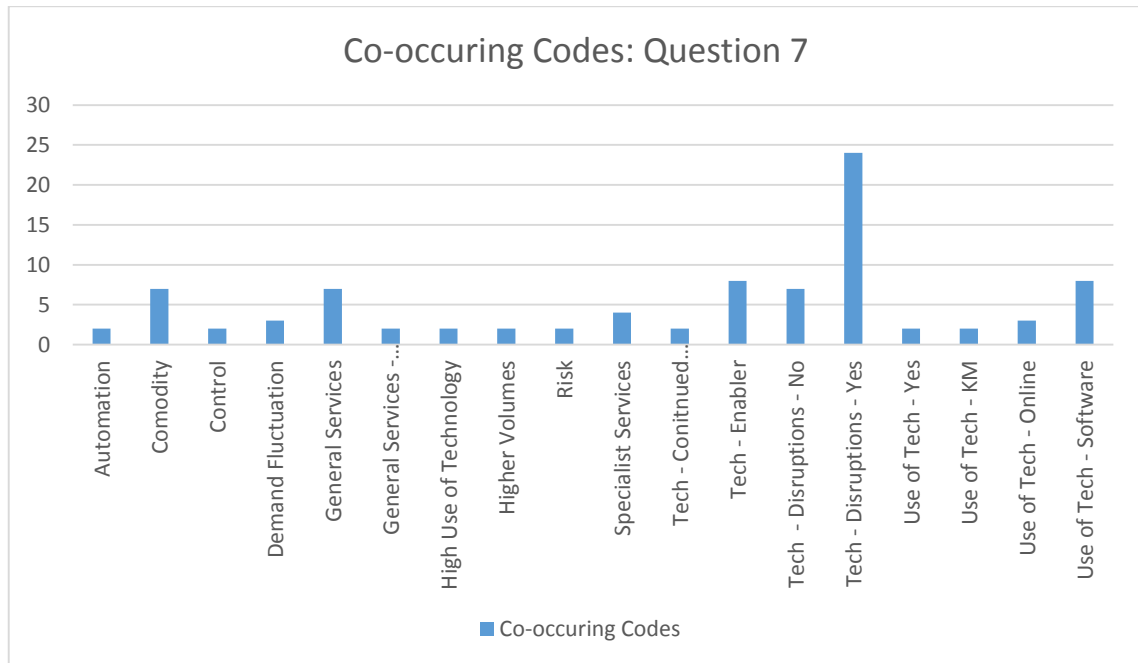
In order to assess how technological uncertainty could potentially affect the make or buy decision for In-house legal departments, and as highlighted above in accordance with Parmigiani (2007), questions relating to whether the respondent expect disruptions from technology in the delivery of legal services and what type of technology is presently being used, were asked to the respondents

5.8.1.1. Question 7: Do you expect disruptions from technology in the delivery of legal services?

- 10 out 12 Respondents highlighted that they expected disruptions from technology in the delivery of legal services.
- 3 out of those 10 further identified the high volume commoditised legal services as an area for technology implementation and
- another 3 recognised that technology will act as an enabler to the delivery of legal services.

In terms of the co-occurring codes, the commoditisation of general services was highlighted as well as technology acting as an enabler for the delivery of legal services. Figure 26 highlights the co-occurring codes that were highlighted in question 7, more than two times:

Figure 26: Co-occurring Codes: Disruptions from technology in legal services delivery?



Technology is a very broad topic, but Respondent 1 insights highlight: *“Well, yes we hope so. The there is a few, there is few trends. At the commodity end of the market, increased use of technology does show some promise in reducing the very basic types of legal work to process and automation so if you take our retail banking products within the bank, they're all now delivered automatically, so if you take, for example, very recently needed to change the terms and conditions applying to 600 000 credit card holders and once we worked out the how and the words the rest of its done completely automated. So you've got a very high level of automation in the bank and that's been driven very fast by digital innovation so you would expect to be substantially paperless so we get into the world of digital signatures and all of those things. So within the bank the industry is moving very fast and that requires a lot of innovation the way we think and risks that we take. Externally the service providers are you get the outfits where they'll deal your commodity for you, it's kind of slightly early days, I suspect that the, I suspect that the way it will go is that the sort of drafting systems within law firms will become semi intelligent and the idle document assembly there'll be a greater level of document*

assembly and those sorts of things. So yeah, but I would expect the pace of that to increase.

Respondent 5 when answering further posited this position: "I think only a fool would say no. You have to expect that and I do not say by expecting the unexpected that is something that could go into that category. I think technology has been making quite a lot of inroads into the legal field but I think we still, lawyers are still looking at technology as enabling instead of disruptive and we still asking the question, how will technology make my easier, instead of asking the question how will technology make my client's life earlier. I think that is where the disruption can potentially happen. There's nothing that would prevent an uber type platform for legal services. I can't see why that will be impossible"

Respondent 6 was the most emphatic in the opinion on technology : "I'm convinced there will come a time where technology may in fact become a replacer. You know, with some of the AI type of developments happening, I think that some of the stuff that we do around contracting, which is template based, may in fact in the next ten to twenty years may make a lot of low level lawyers quite redundant, I suppose."

5.8.1.2. Question 8: Do you make use of technology to deliver legal services?

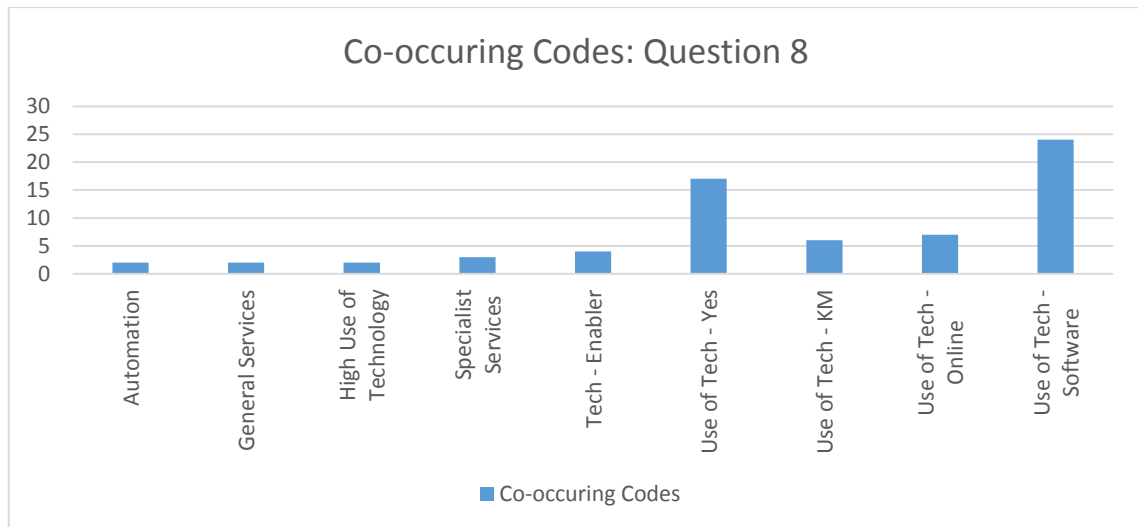
All 12 respondents indicated that technology used in the delivery of legal services.

The technology that was identified is case management systems, matter management systems, document management systems and then knowledge management systems. Further use of email and online databases was further highlighted.

No respondents indicated the use of E-Discovery, Technology Assisted Review or Artificial intelligence technology solutions.

Figure 27 highlights the co-occurring codes that were highlighted in question 8, more than two times:

Figure 27: Co-occurring codes: Types of technology used?



When it came to the technology being implemented, there is no indication of application of the latest artificial intelligence or related legal software. Most organisations use the traditional online databases, email and matter management systems.

In terms of the co-occurring codes, online databases, knowledge management tools and software were all present.

5.8.2. Descriptive Statistics

Table 8 highlights the descriptive statistics including the mean and standard deviation of quantitative data.

Table 8: Descriptive Statistics – Technological Uncertainty

Descriptive Statistics					
	N	Minimum	Maximum	Mean	Std. Deviation
Technological Uncertainty: 1	32	2	7	4.34	1.638
Technological Uncertainty: 2	32	2	6	4.72	1.397
Technological Uncertainty: 3	32	2	6	4.66	1.405
Tech Uncertainty Composite	32	2.0	6.0	4.573	.9049
Valid N (listwise)	32				

Question 10: Technological Uncertainty 1 - The processes and skills to perform Legal services are mature and unlikely to change in the future?

The Mean statistic for question 10 of the survey provided a score of 4.34, indicating that the mean response to the question sits between Neutral and Sometimes True on the 7-point Likert scale, whilst the standard deviation is 1.638. The co-efficient of variation is 0.377, indicating low variance.

Question 11: Technological Uncertainty 2 - Major Legal services innovations are very likely within the next few years?

The Mean statistic for question 11 of the survey provided a score of 4.72 in the 7-point Likert scale, indicating a response sitting closer to Sometimes True than Neutral, whilst the standard deviation is 1.397. The co-efficient of variation is 0.296, indicating low variance.

Question 12: Technological Uncertainty 3 - Major innovations in how Legal services are delivered are very likely within the next few years.

The Mean statistic for question 12 of the survey provided a score of 4.66 in the 7-point Likert scale, indicating a response sitting further from Neutral than Sometimes True, whilst the standard deviation is 1.405. The co-efficient of variation is 0.302, indicating low variance.

The composite mean score for the questions relating to technological uncertainty is 4.573, whilst the standard deviation is 0.905. The co-efficient of variation is 0.197, indicating low variance. This composite mean indicates a positive leaning towards moderate to low performance uncertainty.

However, the descriptive statistics confirm that the central tendency is moderate to low technological uncertainty in relation to generalised legal services, and serves to validate and confirm the qualitative results in relation to technology uncertainty.

5.8.3. Technology Uncertainty Conclusion

What is clear, and confirmed by the descriptive statistics is that there will be technology disruptions in the legal services industry. Limited technology is being applied in all aspects of legal services delivery, however, there is moderate uncertainty in relation to how technology will affect the delivery of legal services.

As a result, there is low uncertainty in relation to technology, in that the industry does expect some form of disruption. However, this is slightly tempered in that there moderate uncertainty in relation to how these disruptions will affect the way legal services are delivered.

6. CHAPTER 6: DISCUSSION OF RESULTS

The make-or-buy decision for In-house legal departments is inherently complex by its very nature. Using the framework of Parmigiani (2007), the results have shown differing results in relation to TCE, Neoclassical economics and Capabilities economics, in relation to the concurrent sourcing choice.

From the results obtained pursuant to both the qualitative and quantitative research, the results of the research questions in terms of the main academic frameworks will be discussed together.

A decision tree model has been designed and developed in accordance with the main findings of the research in order to assist In-house legal department in making the decision to produce legal services internally or procure them in the external market.

6.1. Inherent Complexity

What was clear from the outset of the data analysis was that legal services, and potentially services in general, are highly complex environments subject to numerous different and sometimes opposing forces. A distinction between generalised and specialised legal services must be drawn from the outset as it frames the results and analysis of data obtained.

However, the boundary between what is generalised and what is specialised is, however, inconsistent. What became apparent from the respondents was that the context of the notion and distinction between generalised and specialised legal services was organisation and potentially industry dependant. Many references were made to the industry or institutional specific knowledge and expertise. Even within the context of an industry, a retail bank would have a different distinction between generalised and specialised services as compared to an investment bank.

This does not, however, diminish the generalisability of the study across the South African legal industry or potentially to other jurisdictions. The decision to make the quantitative instrument general as opposed to specific could be a limiting consideration in the validation role of the survey results. However, further consideration of specialised services can be given in further studies.

Lacity and Wilcock's (2013) exposition and definition of legal services attempt to create a more specialised distinction in the type of legal services by creating towers of legal subject matters, be it litigation or corporate to employment, can be used in future studies to potentially limit the uncertainty created by the distinction in services. The effect of volume and expertise in the different towers could potentially indicate more precisely the role of transaction cost economics, neoclassical and capabilities economics on legal services (Parmigiani, 2007).

However, the role of the governing industry needs to be further investigated alongside the specific service towers to further attempt to explain the potential role and consequential affects the distinction between generalised and specialised legal services plays in the context of the make-or-buy decision.

6.2. Transaction Cost Economics

Research Question 1: How does asset specificity affect the Make-or-Buy decision?

The role that asset specificity plays in the make-or-buy decision for In-house legal departments is subject to the inherent complexity associated with the distinction between generalised and specialised legal services. In relation to general services, there is low asset specificity as there are large numbers of suppliers available, skills required to do the work would be somewhat generic and widely available and it would not be difficult to switch suppliers.

In specialist services, there would be a higher asset specificity as the skills required are by their very nature, are not generic or widely available. This highlights, in that switching is more difficult in specialist areas as there are fewer suppliers that can deal with the high volume or complex matters and thus affecting the ability to switch.

Concerning the availability and nature of skills, the general response elicited complexity in that responses made a distinction between general and specialised skills. Skills for general services were generally found to be widely available and generic.

Research Question 2: How does volume uncertainty affect the Make-or-Buy decision?

This theme highlights the difference between services that can rely on historical data and those that must consider future requirements, which look at the more uncertain future events to forecast legal services.

The descriptive statistics confirm that there is moderate to low volume uncertainty in relation to generalised legal services, and serves to validate and confirm the qualitative results in relation to volume uncertainty, which further indicated that there was low volume uncertainty for generalised legal services.

Research Question 3: How does performance uncertainty affect the Make-or-Buy decision?

There is moderate to low performance uncertainty in relation to the delivery of legal services. The role of the legal advisor and their own skill competence are of utmost importance in reducing uncertainties in relation to performance. The In-house lawyers have a good understanding of their internal business requirements as well as sufficient knowledge to convey this to external service providers. What is further of importance is that the In-house department can determine the quality of the services delivered both internally and externally.

The descriptive statistics confirm that there is moderate to low performance uncertainty in relation to generalised legal services, and serves to validate and confirm the qualitative results in relation to performance uncertainty.

Transaction cost economics, and specifically asset specificity, volume uncertainty and performance uncertainty cannot alone explain concurrent sourcing of legal services, which is more complex by its very nature as compared to manufacturing.

Generalised services, which have lower asset specificity, lower volume uncertainty and lower performance uncertainty are generally being produced internally. This contradicts the traditional TCE approach. The very fact that these services generate volumes required to generate economies of scale or scope seem to be the main contributing factor

to the internal production of legal services.

The traditional TCE approach (Coase, 1937; Poppo & Zenger, 1998; O. E. Williamson, 1985; Oliver E Williamson, 1981) dictates that areas with low asset specificity, low volume uncertainty and low performance uncertainty would be outsourced to the external market as service providers can increased efficiencies and reduce costs. The corollary seems to be true in legal services, as the cost of external production far exceeds the costs of internal production.

In relation to specialised services, which has higher asset specificity, moderate volume uncertainty in relation to once-off/project type requirements and low performance uncertainty, the results contradict the prevailing thinking which indicates that such an environment should lend itself to internal production. These legal services tend to be procured in the external market.

The results of the qualitative portion and the questions relating to asset specificity specifically bears out the inherent complexity associated with the make-or-buy decision in the context of In-house legal departments. The complexity arises due to what can be labelled as specialised or generalise legal services. This concept arose throughout the study and was expected by the author.

In relation to asset specificity, the number of suppliers in the market can very well be determined to be distinguished again through the generalised or specialised capabilities and expertise of the suppliers. There are fewer available suppliers for more specialised work as compared to generalised work.

The fact that the distinction was once again highlighted in the In-house legal department's ability to switch suppliers, being easier in relation to generalised services and harder in relation to more specialised services leads one to the conclusion that there is higher asset specificity in relation to specialised services and low asset specificity in relation to generalised services.

Williamson (1985) argues that asset specificity and uncertainty motivate firms to produce internally as both drivers increase the costs associated with market exchanges. It builds on two behavioural assumptions: bounded rationality and

opportunism (Mols, 2010a; O. E. Williamson, 1985). is however potentially contradictory to the results obtained, in legal services, where asset specificity is high in specialised services, In-house legal departments tend to source more services externally in areas that require specialised skill and internally produce the generalised work, depending on how the distinction is drawn by the In-house legal department.

TCE has argued that in consideration of whether an organisation should consider internal production must be based on the transaction specific costs between the parties (Kulkarni & Jenamani, 2012; McIvor, 2008). This is not supported by the analysis of the data obtained; in that, the costs of external legal services coupled with low performance uncertainty do not outweigh the mitigation of risk that is associated with using external legal services providers. In this regard, even though there are high transaction costs in the use of external service providers, high transaction costs do not appear to force internal production for specialised services.

Cost is not the primary driver behind the decision to seek legal services in the external market, nor is performance or volume uncertainty the main determinant.

Williamson has indicated that TCE assumes that the ability to create economies of scale favour the external market over internal production (A. Smith et al., 2013; O. Williamson, 1973).

This notion would be correct in general, however, as the research has shown, both the internal and external production of legal services can achieve economies of scale. These economies exist in areas where the In-house legal department regards the delivery of the specific legal service as core to its business and where volumes can be generated. External suppliers look to create economies in areas that are not core to the In-house legal department, or where low or high volumes do not justify the internal production of legal services, either by failing to generate economies or not having sufficient capacity to deal with high demand.

Smith et al (2013) have set out that external production favours the creation of economies of scale by those external providers, in that the provider is able to leverage its capacity to produce higher volumes to many customers. These economies of scale allow the procurement from external suppliers at lower costs than the firm can produce

internally. As a result, firms should externally procure when they are able to benefit from the lower costs created in areas that have economies of scale created by the external supplier (Ang & Cummings, 1997; Poppo & Zenger, 1998; A. Smith et al., 2013).

The corollary is, however, true in the delivery of legal services. The cost of procuring external services is in general higher than the internal production of legal services. External service providers ought to be able to create the required economies, but their high costs prohibit the In-house department from benefitting from those economies.

As highlighted the alternative service providers are attempting to capitalise on this disparate situation, in trying to reduce costs by creating economies of scale in high volume low complexity legal requirements. Traditional law firms have left the door wide open for other suppliers to exploit what can only be described as a considerable opportunity in the legal services market.

However, if the In-house legal department can internally create economies of scale in the areas that have high volume requirements, then the In-house department should produce internally. As a result, Transaction costs economics presumes that firms will produce internally when the costs of using the external market are higher than internal production costs (Kulkarni & Jenamani, 2012; Poppo & Zenger, 1998; Safizadeh et al., 2008)

So, as has been demonstrated, In-house legal departments are forced to produce internal legal services in areas that can be driven by generalised high volume services, as the costs for such services in the external market exceed the costs of internal production. However, this position seems artificial in that external services providers can create economies of scale by servicing many clients, which should have the effect of lowering production costs for the external supplier.

However, in relation to outsourcing in general, professional services may be more complex than other forms of outsourcing. Outsourcing is not solely about lower costs and There are potential long term challenges which must also be factored into the overall costs associated with an outsourcing decision (Ellram et al., 2008). These transaction costs are mitigated by the role of institutional knowledge as well as the core

skills of internal and external lawyers being similar and complimentary.

Building thereon, the role of institutional knowledge of the external supplier and the relationship with the In-house department are a testament to the complexity in the decision for In-house departments. The role that risk mitigation plays in the sourcing decision adds a further dimension, in that there are circumstances when to reduce risk, procuring services in the external market, even though at a higher rate, satisfies the firms needs to mitigate risk. This is counter-intuitive to the traditional TCE approach and supports the view postulated by Ellram, Tate and Billingham (Ellram et al., 2008).

As demonstrated in chapter 1, legal services are trending towards the outsourcing of high volume low complexity services to alternative legal service providers who are more efficient than internal production. In-house departments look at outsourcing the high complexity low volume legal work to external experts. This serves as a function of legal risk management. So as the research indicates, areas of high asset specificity, as associated with specialised services are not conducted internally, but rather outsourced, which lends itself to indicating that asset specificity alone cannot assist in the make-or-buy decision when sourcing is concurrent.

The uncertainties, be it performance or volume plays varying roles in the transaction cost realm.

Volume uncertainty in this realm can be regarded as moderate to low in that there are predictable legal delivery areas and some that are unpredictable. Predictable areas rely heavily on historical data and unpredictable areas seem to be those that are beholden to a future event, or the strategy of the organisation itself. It is the interpretation of the researcher that this distinction is closely related to the distinction between generalised and specialised services and how the firm makes the distinction.

What is apparent is that the In-house legal department can use external suppliers to limit any negative effects associated with volume uncertainty, in that the firm can procure capacity related or expertise related services from the external market to adequately mitigate the uncertainty experienced with moderate to low volume uncertainty. This tends to lend itself to the Parmigiani's (2007) hypothesis indicating moderate volume uncertainty would lead to a concurrent sourcing approach.

The results do however not lend themselves towards a continuum, but rather a discrete choice and how the firm decides to mitigate the risk.

Parmigiani postulated that the higher the asset specificity of the good, the higher the percentage of the good will be produced internally, which means that goods with a medium asset specificity should be concurrent sourced. Parmigiani has further connected asset specificity with volume and performance uncertainty. However, the empirical evidence does not support this notion and hence lends itself to the argument of Heroit and Kulkarni (Heriot & Kulkarni, 2001) in that TCE cannot be the explaining factor in concurrent sourcing in isolation (Mols, 2010a). This research confirms that TCE alone cannot be the explaining factor in the make-or-buy decision for In-house legal departments.

This is further borne out because of the complexity associated with the generalised and specialised services distinction.

With the changing cost structures in today's economies, where non-physical, service oriented exchanges may have low transaction costs due to information technology, the assumption that a high level of transactions equates to a high level of costs is not valid (Yang et al., 2012). This is borne out by the shifts towards commoditising repetitive high volume legal services that can be regarded as general to an In-house legal department. As a result, and in contradiction to the past, large volumes of legal services should be benefitting from the reduction of costs through better use of information technology and its associated efficiencies.

There is little to no indication that firms have difficulty in relation to the performance of their external or internal suppliers. Switching suppliers tend to be easier in the generalised than specialised areas which bear out the inherent difficulty in following an exclusively TCE approach to the make-or-buy decision in the provision of legal services. Low demand uncertainty further does not bear out that TCE alone describes the make or buy decision for In-house.

6.2.1. Transaction Cost Economics Conclusion

Transaction costs alone cannot explain the make-or-buy decision for In-House legal departments.

In contradiction to previous research, high asset specificity does not lead to internal production, but instead leads to external procurement of legal services, especially in areas of specialised services.

Volume uncertainty can be regarded as moderate too low for generalised services and moderate for once-off future projects. This conforms with previous research in that In-house departments can use external suppliers to deal with areas of high demand by providing capacity the In-house legal department does not have.

Performance uncertainty does not seem to influence the make-or-buy decision for In-house legal departments. Performance uncertainty is reduced by the role of institutional knowledge, industry specific knowledge or the role of the legal advisor and does not appear to be a cause for either internal or external production in generalised services. It does however influence the decision to outsource in specialised areas where external expertise is used to mitigate performance uncertainty and legal risk.

6.3. Neoclassical Economics

Research Question 2: How does volume uncertainty affect the Make-or-Buy decision?

This theme highlights the difference between services that can rely on historical data and those that must consider future requirements, which look at the more uncertain future events to forecast legal services.

The descriptive statistics confirm that there is moderate to low volume uncertainty in relation to generalised legal services, and serves to validate and confirm the qualitative results in relation to volume uncertainty, which further indicated that there was low volume uncertainty for generalised legal services.

Research Question 3: How does performance uncertainty affect the Make-or-Buy decision?

There is moderate to low performance uncertainty in relation to the delivery of legal services. The role of the legal advisor and their own skill competence are of utmost importance in reducing uncertainties in relation to performance. The In-house lawyers have a good understanding of their requirements as well as sufficient knowledge to convey this to external service providers. What is further of importance is that the In-house department can determine the quality of the services delivered both internally and externally.

The descriptive statistics confirm that there is moderate to low performance uncertainty in relation to generalised legal services, and serves to validate and confirm the qualitative results in relation to performance uncertainty.

Research Question 4: How do economies of scale/scope affect the Make-or-Buy decision?

In relation to economies of scope and scale, both must be considered together. In-house legal departments are potentially either able to achieve either economies of scale or economies of scope in relation to the delivery of legal services. There is potential for both to exist, however, volumes of internal requirements drive the decision. It is apparent that In-house counsel can have individual focus, creating economies of scale from the resource, alternatively, the resource will focus on numerous different activities in order to achieve full utilisation.

The complexity of generalised and specialised services further complicates the matter. It would be easier to drive economies of scale in generalised work (e.g. doing repetitive processes) and economies of scope in specialised work (e.g. advising multiple areas and matters on a complex issue).

A neoclassical explanation for concurrent sourcing is founded in demand uncertainty. The basic premise expounded by Adelman (Adelman, 1949) is that an organisation can keep internal production at full capacity and rely on the use of external suppliers to handle additional volumes.

This explanation fits better into the results obtained. Firms use the external suppliers largely to assist with capacity or expertise. Both of these influence volume uncertainty, in that are often once-off projects or future strategic requirements that will require that the firm seek either the required expertise or the capacity to assist in the delivery of the legal services.

This position relies on the assumption that the market has a large number of qualified suppliers who will charge a premium to provide the output flexibility and that the firms will be willing to pay this premium instead of investing in further capacity, which may not be utilized due to the demand uncertainty (Adelman, 1949).

Adelman's (1949) observations are confirmed in the qualitative portion, in that In-house legal departments are willing to procure services at a higher cost externally in areas that are not core to the business, or where volumes are insufficient to generate any form of economies for the firm. As lawyers tend to be expensive resources themselves, the fact that there may be an area of law that seldom arises, it is not in the organisations best interest to attempt to produce this service internally, due to the potential low utilisation rate of the resource. This supports the Neoclassical approach as expounded by Parmigiani (2007) that a firm will both make and buy in order to have flexibility to meet unexpected demand, as external service providers tend to support the In-house departments with either expertise or capacity.

Neoclassical Economics has as one of its primary drivers, the reduction of production costs by leveraging both economies of scale and scope. Porter (1980) focuses on internal production as a means of exploiting both scale and scope. Economies of scope reduce the costs of producing services if the same input is shared. Hence, this leads to higher utilisation rates of the resource (Mols, 2010a; Panzar & Willig, 1981).

This is supported in theory, but potentially not in practice. As highlighted, both firms and suppliers have the potential to generate both economies of scale and scope, depending on the circumstances. Resources in the In-house environment, in order to ensure full utilisation, tend to have either a singularly focused task or having many different tasks within areas.

The external supplier, on the other hand, has the potential to create economies of scale by producing a single service for many clients, or are able to support many clients in many different areas, creating scope utilisation. However, due to the reluctance and the dangers associated with key man dependency, most In-house legal departments tend to provide portions of the pie to multiple suppliers. As a result, it is difficult for external suppliers to build either economies of scale or scope for a single In-house legal department, and hence are required to service many clients to generate economies. This further lends credence to the contention that the greater the economies of scope for the firm, the greater the motivation to produce the service internally whilst the greater the economy of scope for the supplier, would, in turn, lead to a higher degree of outsourcing from the firm (Parmigiani, 2007).

Parmigiani's (2007) argument is hence when economies of scope are present for both the supplier and the firm, a concurrent approach will more likely be the preferred sourcing choice (Rosenberg Hansen et al., 2011). This has been confirmed in theory and would be dependent on the distinction of the In-house department between core and non-core and generalised and specialised services. The role of the external supplier is to provide either expertise or capacity to the In-house legal department.

As a result, if both the In-house and the supplier can reduce production costs through the use of economies of scope, the firm would concurrently source the service in order to enjoy lower costs of internal production for services which it has economies of scope in and enjoy reduced costs from its supplier, where the supplier enjoys economies of scope (Parmigiani, 2007). This in reality is however, not the position, as traditional external service providers do not have reduced costs resulting from economies of scope.

The only part of this postulation is supported, in that if firms can generate either economies of scale or scope, the general position for In-house legal departments is that it is cheaper to produce the service internally. However, this choice is fundamental, as the In-house legal department will not benefit from suppliers providing external legal services in the traditional manner, as those are more expensive than internal production. Where however this may ring true, is in the area of alternative legal service providers and LPO's who produce legal services cheaper than internal production in areas of high volume and low complexity.

Parmigiani (2007) further hypothesises, which does not find support in the study, in the greater the performance uncertainty of the good, the more likely the firm will concurrently source (Parmigiani, 2007) and would rather choose to make over concurrent sourcing and to make over buying in areas of high performance uncertainty. The result of this study do not conform with this postulation, in that areas with high specialisation, where performance uncertainty is higher, leads the In-house department to procure services in the external market, in order to mitigate risk coupled with the requirement of specialised skills not being available in the organisation. Generalised services that have lower performance and volume uncertainty are be produced internally.

6.3.1. Neoclassical Economics Conclusion

The results and analysis of this study show a more favourable acceptance of the role that Neoclassical economics, especially in areas such as economies of scale and scope and volume uncertainty. Performance uncertainty, despite being relatively low, has contradictory results owing to the distinction and complexity associated with generalised and specialised legal services.

As a result, neoclassical economics alone cannot explain with complete satisfaction the concurrent sourcing approach in In-house legal services delivery.

6.4. Capabilities Economics

Research Question 5: How do expertise affect the Make-or-Buy decision?

There is very little appreciable difference in capabilities of legal services production between In-house and external suppliers. What is however at play is the complexity that is inherent in specialised and generalised services. This favour the external production for services that require the capacity to manage high volumes.

What is further apparent is that were skills do diverge, is in the realm where industry specific or institutional knowledge is crucial to the effective delivery of legal services. This can be knowledge, which is inherent to the organisation or external specialised expertise in a specific industry.

Research Question 6: How does technological uncertainty affect the Make-or-Buy decision?

What is clear, and confirmed by the descriptive statistics is that there will be technology disruptions in the legal services industry. Limited technology is being applied in all aspects of legal services delivery, however, there is moderate uncertainty in relation to how technology will affect the delivery of legal services.

The decision to make-or buy will be dependent on whether the In-house department has the required resources to perform the required legal services. If not, the In-house legal department is more likely to outsource where it can obtain skills and expertise that will be more efficient in producing the service. As a result, the better resourced the firm is, the more it will tend to make the service, whilst the corollary favour outsourcing if the supplier possesses greater expertise and resource to perform the service. (K. Conner & Prahalad, 1996)

This is supported by the In-house legal departments producing general services where the organisation has the required internal skill to produce and deliver legal services. It, however, is more complex in relation to specialised services in terms of where firms would only possess the specialised skills that are core to their business (and so regarded as general), where suppliers are well position to meet the In-house legal department's expertise requirements and hence services are procured externally.

What is further inherent in the decision is that it would be more difficult to generate economies of scale and/or scope in specialised legal services, as there is an inherent lower demand coupled with higher demand uncertainty for specialised services.

Parmigiani (2007) found that concurrent sourcing would be the preferred mode of governance if both the firm and the supplier has significant expertise in the production of the service.

The results and analysis of this study confirm that the skills requirements between external and internal service providers do overlap and are to some degree complimentary to each other. It is the combination of these skills that drives the In-house legal department to both, produce internally as compared to externally, and vice versa.

In-house legal departments generate skills and expertise in certain areas and are able to procure services in areas where the external supplier has the required expertise, or when the expertise of the supplier is used to mitigate the risk for the firm.

Concurrent sourcing further exposes the firm to external complementary knowledge which in turn increases the expertise and knowledge of the firm, which will develop its own internal expertise and production capability (Ahuja, 2000; Ahuja & Lampert, 2001; Cassiman & Veugelers, 2006; Hashai, 2016; Lavie & Rosenkopf, 2006; Leiblein & Madsen, 2009; Parmigiani, 2007; Parmigiani & Mitchell, 2010; Phelps, 2010; Sampson, 2007) There can be no denying the role that industry specific or institutional knowledge plays in the delivery In-house legal services, but also acts to reduce performance uncertainty in relation to the external production of legal services. The skills often develop to ensure complementarity with internal and external legal services production.

The research confirms that In-house legal departments rely on both internal and external expertise and capability to deliver legal services. The internal delivery of generalised legal services is supported through the external procurement of specialised expertise and capacity.

What has clearly been demonstrated through this research is that technology will undoubtedly change the ways in which legal services are delivered. Artificial intelligence and other associated software can greatly assist organisations in delivering high volume lower complexity legal services. The eventual role that technology will play is open to speculation.

This would tend to support the view of Parmigiani (2007) in that the greater the technological uncertainty, the more likely the firm will concurrently resource. However, not all activities affected by technological uncertainty have to be outsourced. Having access to information from an external provider or providers, as highlighted above will mitigate the risk associated with technological uncertainty (Mols, 2010b; Parmigiani, 2007).

Technology is only now emerging as a trend in the South African legal market and the role it will play will increase over time. What was clear from the research is that technology is going to enable the delivery of legal services, be it internal or external and will assist in the efficient delivery of legal services. Both internal and external production

can benefit from the use of technology related solutions, the effect of such, can only be determined in time. This accords with the “Evolution of Legal Services” model (Susskind, 2008) that demonstrates, as a number of respondents highlighted, the attempt to commoditise legal services,

As demonstrated, the role of institutional knowledge or industry specific knowledge has a supporting and moderating effect on the internal delivery of legal services. This knowledge must be harnessed to leverage internal capabilities, which can potentially propel the In-house department to be specialists within the organisation and the greater industry. This can reduce the requirement to seek external specialists as the internal capability exceeds that of the external service provider.

6.4.1. Capabilities Economics Conclusion

However, capabilities economics would not tend in itself to explain the concurrent sourcing decision in the delivery of legal services. Knowledge and capabilities tend to moderate the uncertainties associated with volume and performance uncertainty. Neither capabilities nor technological uncertainty can alone or together explain why an In-house legal department will make-or-buy legal services.

6.5. Concurrent Sourcing

Concurrent sourcing appears to be a distinct choice over making or buying, rather than a linear combination of the two sourcing modes as supported in her study (Parmigiani, 2007). This has been confirmed in this research as In-house legal departments are required to consider a number of different factors, which can have distinct results.

As defined above *Parmigiani states that “[c]oncurrent sourcing emphasizes that firms are making and buying the same good, in contrast to considering a broader unit of analysis and/or one with more heterogeneity”*. (Parmigiani, 2007) What is apparent is that legal services, can be considered as homogenous in general but there is complexity which arises and can affect the different types of legal services, as described earlier (Lacity & Willcocks, 2013).

Most research has further focused on the application of concurrent sourcing in the manufacturing sectors and industries (Heide, 2003; Parmigiani, 2007; Stump & Heide,

1996). Hybrid/Plural/Concurrent sourcing models have received little attention in knowledge based areas and services such as ITO and BPO, where the decision has been regarded and developed into strategies where these firms make the distinct choice to either make or buy, but not both. In reality, In-house legal departments are only really impeded legally from conducting conveyancing and court appearance roles but their use of concurrent sourcing goes much wider than those two areas.

What is borne out by the study is that it is difficult to consider legal services in one composite definition. There is inherent complexity which rings out that the different towers as described by Lacity & Wilcocks (2013) can potentially be affected in different ways by the make-or-buy decision. In-house departments tend not to concurrently source the same service that they are producing internally, but procure externally when the legal services required exceed the internal capacity or the internal expertise of the In-house department.

Puranam (Kretschmer & Puranam, 2008) have postulated that the emergence of plural/mixed strategies can be seen to emerge out of knowledge complementariness that are arising between both the internal production and external supply. Overlapping expertise and mutual learning are the main drivers behind firms both making and buying (Cassiman & Veugelers, 2006; Parmigiani & Mitchell, 2010; Sako et al., 2013). This finds real credence in this study, as the skills between the internal and external production of legal services, in its core, are very similar. However, it is where In-house legal departments and external service providers have complementary skills that tend to encourage the concurrent sourcing approach, however the services produced internally do differ yet compliment from the services procured externally

The academic sources have tried to establish which theoretical basis would be better to follow by the firm in making the make-or-buy decision. Watjatrakul (2005) has found that if the theories have differing predications, then TCE is the better explanation as compared to the resource based view. Arnold (2000) developed an outsourcing model that combines the theories. However, there does not seem to be conclusive approaches to the question (Kulkarni & Jenamani, 2012).

There is apparent confirmation for the notion that no single theory can adequately explain the make-and-buy decision for In-house legal departments. Neither TCE, Neoclassical Economics nor Capabilities Economics can adequately explain the make-or-buy decision for In-house legal departments alone.

Volume uncertainty and the difficulties in predicting demand have lent credence to the concurrent sourcing approach. Firms cannot plan internal production and the volume uncertainty results in reduced performance and raised costs, as there is a waste and or underutilised resources. A concurrent sourcing strategy can assist firms in mitigating risk associated with volume uncertainty (Harrigan, 1984; Mols, 2010a). The concurrent sourcing approach tends to alleviate the concerns, which can be described by the moderate volume uncertainty results obtained in relation to specialised services, or projects that are once off by their nature. In-house legal departments tend to outsource when they require expertise, capacity, and external providers often provide both, which mitigates any concerns associated with volume uncertainty.

In clarification, concurrent sourcing reduces a firm's risks associated with balancing capacity with demand, by using internal production capacity for stable workflows and external suppliers for peak demand areas. Concurrent sourcing has further shown to be an effective approach to encouraging competition between suppliers and reducing dependence on external suppliers, in that there is an internal capability that can be leveraged (Adelman, 1949; Mols, 2010b). What was of importance in relation hereto is that the role of the legal advisor and the institutional or industry specific knowledge that they have, is definitely an internal capability that is leveraged by In-house legal departments to reduce performance uncertainty with external suppliers. In-house departments can both subjectively and objectively measure the performance of their suppliers, which in turn creates benchmarks to improve the performance of external suppliers as well as internal production

This logic can further be applicable to the notion that Internal production can reduce risks associated with information asymmetry in that external suppliers can be better monitored and controlled by the information generated through internal production (Heide, 2003).

From a concurrent sourcing point of view, Mols indicates that cost is higher for firms that follow a mixed strategy as the firm must govern external providers as well as make the necessary investments into internal production and capability(Heide, 2003; Mols, 2010b; Puranam et al., 2013). This is true for the In-house legal department as the concurrent sourcing choice does seek legal services at much higher costs in the external market. The In-house department benefits from being in a position to commoditise its internal general legal services at a lower cost and seeks more specialised services, that have lower and more uncertain volumes, at what should be a lower cost than it would be to have a full time resource in that specialisation.

The benefits are largely an increase in efficiency and services. Parmigiani (2007) has found that firms have a distinct choice to follow a concurrent sourcing approach based on the lack of information in the market, levels of asset specificity in governing external suppliers and other uncertainties related to volume, performance and technology (Parmigiani, 2007). These uncertainties have further been found to lead a risk mitigation strategy by the application of a concurrent sourcing model (Hefetz et al., 2014). This approach is fundamentally confirmed by this research, as legal risk mitigation was seen to be a primary driver behind the decision to buy legal services.

Concurrent sourcing further highlights the effect of co-specialisation of resources, which can be leveraged by utilising synergies with specific resource combinations (Argyres, 1996; Kogut & Zander, 1992). As a result, in concurrent sourcing, In-house legal departments will prefer and rely on internal production over external sourcing when there are greater opportunities to combine unique resource combinations (Sako et al., 2013). Limited support was found to confirm these previous findings. In-house legal departments can combine general resources supplemented with internal specialised resources in order to deliver legal services. This is one of methods required to generate economies of scope for full time utilisation of specialised resources. The theme of institutional knowledge and industry specific knowledge can be the result of long practiced concurrent sourcing mode in legal services.

Concurrent sourcing, in its second main consideration, firms rely more heavily on external sourcing when firms choose a concentrated number of suppliers that have a large range of capabilities amongst them. In such a choice, relational contracting and client specific investments reduce the transactional costs associated with the governance of external suppliers (Dyer, 1997; Sako et al., 2013). Many of the respondents indicated the limited number of suppliers used, the so-called “Big Five”, largely due to the skills and expertise available as well as the relationships that have been established over time. This has definitely influenced and reduced the performance uncertainty associated with the use of external legal services suppliers and has tended to lend itself to the concurrent sourcing choice. What it has however not encouraged is the reduction of costs by external suppliers who can achieve economies of scale and scope and the benefits associated with it.

As Parmigiani (2007) highlights, that goods with a moderate performance uncertainty, firms are more likely to use concurrent sourcing as both the firm and the external supplier can exploit economies of scope. This study has shown a strong reliance to support this

notion, in that In-house departments and external suppliers in the legal industry can achieve some form of economies of scope or scale in theory. In-house departments tend to exploit either economies of scale or scope internally in generalised services whilst external providers, offering wide ranges of services assist in areas where the In-house department lacks the specialised skill and knowledge and where the In-house department does not have the internal capacity to satisfy the demands of excess volume.

Concurrent sourcing is to be regarded as a strategic approach which can be used in both the public and private (Hefetz et al., 2014). This finds support in the research and confirms that the decision to outsource legal services to external providers is a discrete one. Factors such as risk mitigation, volume and skills and expertise influence the make-or-buy sourcing choice.

Supplier performance, though vitally important to any business, is often difficult to manage and control. Concurrent sourcing allows a firm to evaluate and compare the services of one external supplier with another (Heide, 2003). There is strong confirmation that concurrent sourcing provides rich data from which to reduce performance uncertainty by comparing one supplier with another. Even though in a services environment, this task can be somewhat subjective, comparison help alleviates and reduce performance uncertainty.

Concurrent sourcing does not have the effect of reducing performance uncertainty other than in areas where the performance uncertainty is related to the lack of information. If that is not the case, then performance uncertainty does directly influence concurrent sourcing, but the information provided does reduce negative consequences of performance from external suppliers (Mols, 2010b). Mol's position is confirmed as legal services concurrent sourcing approach most definitely reduces performance uncertainty as external sourcing provides both internal and external benchmarking information, which is then used to reduce the associated uncertainty.

As concurrent sourcing exposes firms to external knowledge sources especially on costs and prices. This allows the firm to have better knowledge of prices of the external supplier, which in turn facilitates the firm to obtain better prices from external suppliers (Adelman, 1949; Parmigiani & Mitchell, 2010). The research does not reach a similar conclusion. External traditional legal services are expensive, with many In-house departments using many of the same suppliers in the market. This has not resulted in lower external legal costs. However, the In-house department can easily determine costs

of external service providers and whether the costs are reasonable in the circumstances. However, cost is not the primary driver behind the make-or-buy decision in legal services.

However, this does tend to confirm Parmigiani in her approach to concurrent sourcing, when she argues that the firm has the best of both worlds. The firm will be in a position to develop its own knowledge and expertise in areas where it has the strong internal expertise and further be in a position to exploit the knowledge of the external suppliers in areas where it has superior expertise (Parmigiani, 2007; Rosenberg Hansen et al., 2011a, 2011b). This can clearly be related to the inherent complexity associated with legal services delivery. An In-house legal department cannot cover all the bases, so to say, but what the research has shown, is that the In-house legal department can build capabilities that can deal with all the generalised legal requirements (as decided by each In-house legal department as general to their organisation) and use external suppliers for all specialist areas, where having internal capacity would not reach any form of economy, be that scale or scope.

Finding support for Adelman's notion setting forth that concurrent sourcing allows a firm to use external supply for the irregular demand and internal production for the ordinary demand (Adelman, 1949). In-house legal departments rely heavily on external service providers to deal with the excess demand for internal production that cannot be met through internal production capacity.

This is further found to be a low risk strategy when there is demand uncertainty as the external supplier can absorb the fluctuation in demand whilst the internal production can operate optimally (Harrigan, 1984). This relates directly to In-house departments using concurrent sourcing and more specifically external suppliers to help mitigate legal risks that face the organisation.

As a result, concurrent sourcing acts to moderate uncertainty and performance for the firm (Mols et al., 2012) and which has been confirmed by the research and data obtained in this study. This allows a firm to utilize its internal resources and assets whilst affording the firm the flexibility in the demand for internal production (Mols, 2010b).

As argued by Argyres, firms that have different capabilities will have different production costs (Argyres, 1996). As a result, a firm with strong capabilities will decide to make and

a firm with weaker capabilities will decide to buy from the external market. In-house departments will tend to produce generalised services or specialised services that are core to the business and seek external suppliers in specialist and high peak areas, where the capabilities of the In-house legal department are weaker in terms of being able to satisfy the requirements.

Concurrent sourcing purports that strong internal capabilities can be used to create stronger capabilities in the external provider and a buyer can learn from the external supplier. As a result, both the firm and the external provider benefit from the concurrent sourcing mode (Cassiman & Veugelers, 2006; Parmigiani, 2007).

Parmigiani (2007) demonstrates some support for the performance uncertainty and asset specificity. There was no support for TCE hypotheses when trying to explain the make-or-buy decision for services when looking at Danish municipalities. It was further highlighted the difference between services delivery and not manufacturing of products (Rosenberg Hansen et al., 2011b). This accords with the results highlighted above in that TCE did not proffer an satisfactory explanation for the make-or-buy decision for In-house legal departments.

The best value regime was recommended to be that In-house should deliver all core services and use the external suppliers to assist in meeting excessive demand, hence the research considering both internal and external expertise (Rosenberg Hansen et al., 2011b). This can be related to the complexity which arises from specialised and generalised services.

The importance of the role that institutional knowledge or industry specific knowledge, both internally and externally, in the delivery of legal services plays has been elucidated by the research conducted. This tends to support the view that concurrent sourcing tends to benefit both the supplier and the In-house legal department.

6.6. Make-or-buy?

Pursuant to Chapter 5 and 6, the make-or-buy decision for In-house legal departments is more complex than the make-or-buy decision in manufacturing or production. An inherent complexity in relation to what an organisation deems generalised and specialised legal requirements exists.

The neoclassical and capabilities view tend to better explain the make or buy decision

for In-house legal departments in relation to generalised services and specialised services, when one specifically relate the use importance of economies of scale or scope and the capabilities an In-house legal department has to deliver services.

TCE view does not find support in relation to the delivery of legal services because there is relatively low volume and performance uncertainty, especially in relation to generalised services. It further contradicts the TCE approach which indicates that items with high asset specificity would be produced internally (Parmigiani, 2007). The results further do not bear out the assumption of TCE in that economies of scale favour the external supplier, as external suppliers in the South African legal industry have not reduced the costs of external production through economies of scale (A. Smith et al., 2013; Oliver E Williamson, 1981a).

Legal risk mitigation acts as an exogenous factor and must be considered as an independent factor that can lead to the external procurement of legal services. It can operate independently from the other considerations. Attorneys have professional indemnity that covers any negligent conduct on their parts, which then allows for In-house departments to rely on the external legal services in order to reduce risk associated with incorrect advice or production of services. As a result the decision can be made to procure external services in both generalised and specialised services when the nature and matter dictates that the organisation can be severely prejudiced by the subsequent legal risk.

6.7. Conclusion and managerial implications

There are few impediments to the internal production of legal services. The primary impediments to the internal production of legal services, only excludes In-house departments from delivering services in relation to conveyancing requirements for property related legal services and court appearance related requirements in dispute resolution related requirements. As a result, an In-house legal department, other than stated above, deliver many of the internally related legal requirements an organisation can have.

From the high-level point of view, the general factors that need to be considered in the make-or-buy decision are capacity, expertise, cost and legal risk mitigation. This is

considered in relation to the inherent complexity in the distinction between generalised and specialised legal services.

A summary of the main findings are as follows in Table 9 below:

Table 9: Summary of findings

Research Question	Research Results	Research Findings
Q1: How does Asset Specificity affect the make-or-buy decision?	Low Asset Specificity – Generalised Services Higher Asset Specificity – Specialised Services	Contradictory to TCE research in that areas with low asset specificity are produced internally. Asset specificity and TCE do not explain the make-or-buy decision for In-house legal departments.
Q2: How does Volume Uncertainty affect the make-or-buy decision?	Low Volume Uncertainty for historically delivered services Moderate Volume Uncertainty for Once-off/Project delivered services	Confirms concurrent sourcing, in that areas with moderate volume uncertainty leads to concurrent sourcing. In-house departments are able to generate legal services internally for areas of lower uncertainty and use external service providers in times of excess demand.
Q3: How does Performance Uncertainty affect the make-or-buy decision?	Moderate to Low performance uncertainty for both generalised and specialised services	Performance uncertainty does not affect the make-or-buy decision, and confirms current academic position. Role of institutional/industry specific knowledge mitigates performance uncertainty.
Q4: How do Economies of Scale/Scope affect the make-or-buy decision?	In-house legal departments can achieve both scale/scope internally External providers can achieve both scale /scope externally	Economies of Scale and Scope are both present in legal services delivery. Internal generation of economies leads to internal production, due to reduced costs. External providers supply expertise and capacity to support In-house production.

Q5: How does firm expertise/supplier expertise affect the make-or-buy decision?	In-house departments do have required skills to deliver required services. Suppliers have specialised skill or capacity. Institutional knowledge and complementary skills are important.	Skills are complimentary. Expertise affects the make-or-buy decision in that In-house departments either have the capabilities to perform internally, or seek external capabilities for either expertise or high volume related external service production. Generalised services tend to be performed internally with specialised services being bought externally.
Q6: How does Technological uncertainty affect the make-or-buy decision?	There is moderate to low technological uncertainty.	Technology acts as enabler and is incorporated within the capabilities of the In-house legal department or External suppliers. Use to drive efficiencies and commoditisation.

6.7.1. Institutional Knowledge/Industry Specific Knowledge

An important aspect, namely the role of institutional knowledge or industry specific knowledge must also be considered. Institutional knowledge has a supporting and moderating effect on the internal delivery of legal services. This knowledge currently appears to be a tacit knowledge that resides with the individual legal advisor. This knowledge must be harnessed to leverage internal capabilities, which can potentially propel the In-house department to be specialists within the organisation and the greater industry. This can reduce the requirement to seek external specialists as the internal capability exceeds that of the external service provider.

6.7.2. Legal Risk

Mitigation of legal risk serves as an overriding consideration that can potentially act to limit and constrain the decision to make-or-buy legal services. There are legal scenario's that can have dramatic effects on organisations. This cannot be discounted when considering the make or buy decision. If at any stage, the legal risk exceeds an acceptable limit for the In-house department and the organisations, the consideration to seek external legal services, due to mitigating affects, should be of more importance.

Thresholds can help identify guidelines as to when these high areas of legal risk are of applicability.

From the findings generated above, there is no clear academic basis that can conclusively define and explain the make-or-buy decision for In-house legal departments. As a result, the important factors that affect the make-or-buy decision for In-house legal departments are:

1. Generalised or specialised;
2. Volumes and Economies of Scale and Scope;
3. Internal capabilities;
4. Cost; and
5. Overriding factor in legal risk.

6.7.3. In-house legal services: Make-or-buy decision tree

From the validated results in relation to generalised services and the qualitative findings in relation to specialised services, the following decision making process is apparent:

6.7.3.1. Decision Point 1:

The In-house department must consider the nature of the required legal services it delivers. These must be classified into general and specialised services. In relation to the distinction, In-house departments must decide what legal services are core or strategic to its business as these must be regarded as generalised legal services. Specialised services on the other hand are legal services that arise due to once-off/project related requirements or in areas that are not core to the organisation.

6.7.3.2. Decision Point 2:

For each generalised service or specialised service, the In-house department must then determine if it has the required volumes to generate either Economies of Scale or Economies of Scope. Accordingly, each resource must be able to have high utilisation through large volume focus or across many different areas within the organisation.

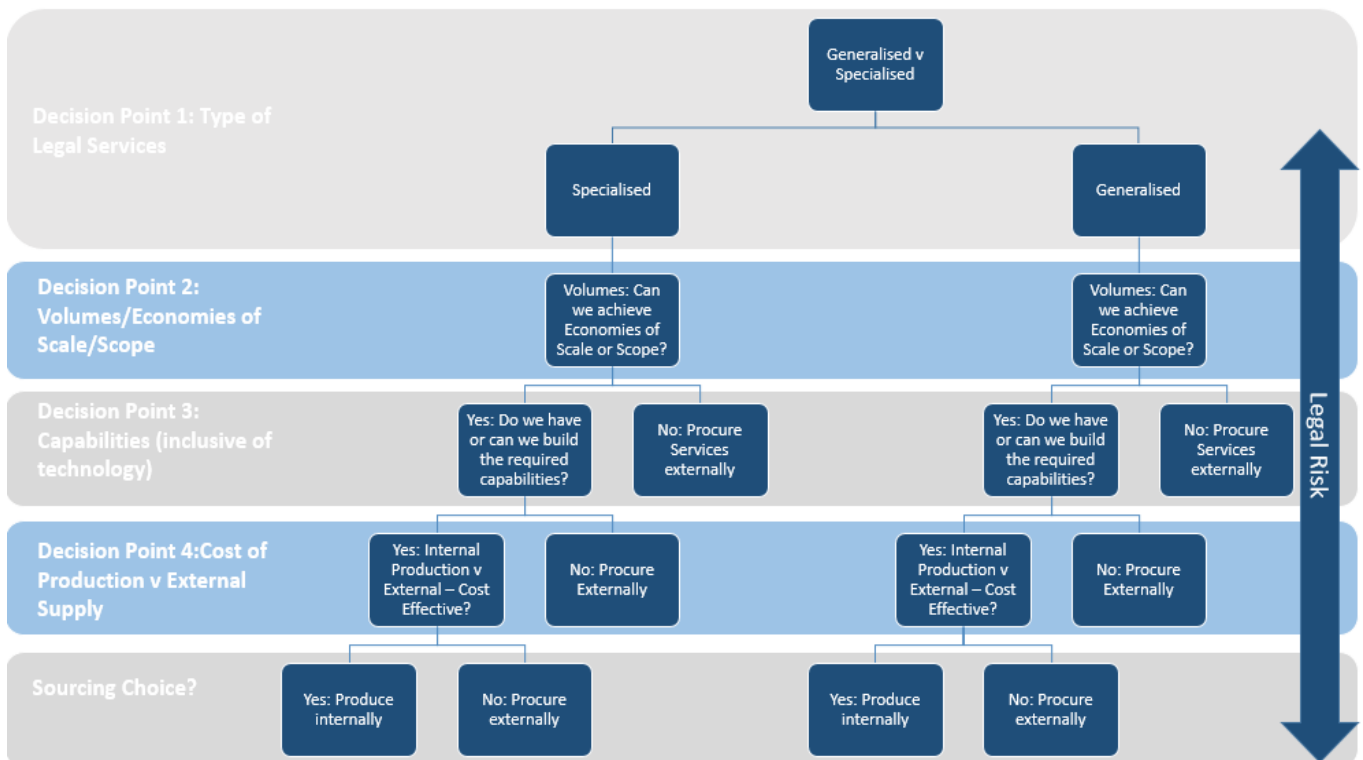
6.7.3.3. Decision Point 3:

If the In-house department can generate with the volumes required, then the In-house department either must determine if it has the capabilities to deliver the required service internally or can create the capability to deliver the service internally? Technology is considered as an enabler to the delivery of legal services and is part of the In-house department's capabilities.

6.7.3.4. Decision Point 4:

If so, only then does the In-house department consider the question of costs by asking whether the organisation can deliver services (quality being a non-negotiable) at less than can be procured in the open market? Here it is important to consider all service providers including traditional and alternative, as the service providers do not have similar pricing structures as highlighted by Respondent's 6's pricing ratio of R400:R800-R1200:R3000 (LPO: Internal Production: Law Firms).

Figure 28: Make-or-Buy Decision Tree: In-house legal departments



(“Authors Own, 2016”)

7. CHAPTER 7: CONCLUSION

7.1. Introduction

This conclusion will discuss and integrate the research conducted, the data collected and the analysis of the data in order to fully ventilate the make-or-buy decision for In-house legal departments.

In considering the main research question, academia has forwarded many different lenses through which this decision can be explained, namely Transaction Cost economics, Neoclassical economics and Capabilities economics.

7.2. Research background and objectives

There is no academic research which considers how the make-or-buy decision is made by In-house legal departments. There is limited research that considers the make-or-and-buy decision for services related industries.

There are massive global trends that are affecting the manner of delivery of legal services. The emergence of technology-enabled delivery of legal services as well as alternative legal services providers has caused much disruption in the manner in which legal services are delivered, however South Africa lags behind other jurisdictions such as the United States, United Kingdom and Australia.

In-house legal departments and the role they play within an organisation has increased over recent times. In its traditional form, In-house legal departments both make and buy legal services and have follow a concurrent sourcing approach. This can be attributed towards growing pressure to add value and to meet organisations overall strategic objectives.

The objectives of this research, by following the concurrent sourcing approach, was to establish how In-house legal departments make the decision to either make or/and buy legal services using a comprehensive framework.

These lenses have forwarded a number of different concepts in order to establish the applicability of the different theories. In relation to TCE, reliance on asset specificity, volume uncertainty and performance uncertainty have been relied on to establish an

explanation for the make-or-buy decision. In relation to Neoclassical Economics, reliance has been placed on Economies of Scale/Scope, volume uncertainty and performance uncertainty. Lastly, the lens of Capabilities economics has relied on Firm Expertise, Supplier Expertise and Technological uncertainty to establish and find support for how organisations decide on making or buying the required services.

In order to full ventilate the primary objective of the research, further secondary objectives were considered, in that how do asset specificity, volume uncertainty, performance uncertainty, economies of scale/scope, firm expertise, supplier expertise and technological uncertainty affect the make or/and buy decisions for In-house legal departments.

7.3. Discussion on key findings

The key findings from the research indicate that no single academic basis can justify the use of the concurrent sourcing approach. It has further highlighted that

Legal services and potentially services in general can be subject to the inherent complexity that arose between the distinction between generalised and specialised legal services. What is further apparent is that this distinction is not a uniform one and depends on what the In-house legal department regards as core services to achieve the goals of the organisation. What is core to some industries is potentially not core to others. Specialised services on the other hand must regarded as those services that are not core to the organisation or those that are of high complexity in the generalised core areas where legal services are delivered.

This distinction is important as it frames many of the aspects considered in this research, especially that in relation to asset specificity, volume uncertainty, economies of scale/scope and expertise. As a result, the distinction between generalised and specialised services is the first vital question any In-house department should make.

As highlighted, many In-house departments try and internally produced their legal services due to the cost ratio and high expense of external legal services. The distinction between generalised and specialised services helps an In-house legal department to consider what work is ought to be delivering and which work is should not be delivering.

The second important finding relates to the role that volumes play in relation to economies of scale or scope. In relation hereto, if an organisation does not have high volumes that generate economies of scale for the organisation, it must consider whether the capability to perform this function can do numerous other function as well as the primary function to ensure full utilisation of the resource. If In-house departments cannot ensure high utilisation of the resource, it should externally procure services instead of allocating resources that can be allocated for better use in other areas.

The third important finding relates to internal capabilities. What has been demonstrated is that In-house legal departments have or ought to have the necessary capabilities to perform the generalised services. If it does not, the research suggest, and especially highlighted by the pricing ratio, it should consider the development of the capability to produce internally. The use of technology under pins the In-house and external provider's capabilities as the use of technology will function as an enabler to the delivery of legal services, at this current juncture.

It is lastly important to consider the production costs as related to the transaction costs. If the production costs are lower as compared to the transaction costs, then the In-house legal department must produce the legal services internally. However, the introduction of alternative legal services providers in the South African market has further resulted in the potential lowering of transaction costs in relation to external services providers.

What is abundantly clear is that all academic theories have some application to the make-or-buy decision for In-house legal departments. What is further clear is that a composite of theories can best explain how In-house legal departments decide whether to make-or-buy, subject to the complexity of specialised and generalised services.

An important consideration for In-house legal departments is the role of institutional knowledge and industry specific knowledge and the affect is has on moderating performance and volume uncertainty. An overriding consideration by In-house legal departments is legal risk, to which an In-house department must defer, in favour of the risk mitigating role external legal service providers can play.

7.4. Recommendations

The decision tree model, set out in Chapter 6.10 above, developed a logical framework in which In-house legal departments can consider the make-or/and-buy decision. It considers the complexity associated with generalised and specialised services as the primary consideration and context in which any decision to internal produce or to externally procure in the market.

The second consideration is that of forecasting volumes and determining whether these volumes can generate either economies of scale or scope in the internal delivery of these services. This is a vital consideration, in that, resources that are not optimally utilised, then there are wasted expenditures and inefficiencies in the production of the internal legal services. The

The third consideration is for the In-house legal department to determine whether it has the internal capabilities to deliver the required legal services or it can create the capabilities to deliver the legal services. This follows on from the second consideration in that in relation to generalised services, the skills needed to produce legal services are generic and widely available. Institutional knowledge must be leveraged to improve the capabilities of internal legal services delivery.

Lastly, the In-house legal department must consider production costs as compared to transaction costs. If internal production is cheaper than obtaining these required legal services, externally, the In-house department should consider internal delivery of same. In relation hereto, In-house departments must consider all available legal service providers as there are different pricing ratio's that have been demonstrated to be applicable to the different models. A good mix of service providers, in relation to expertise and capacity, be that generalised or specialised services, can result in the a more efficient legal services delivery mix that not only reduces costs, but ensures high quality delivery across all the organisation's needs.

All decisions should consider how Institutional knowledge or Industry specific knowledge could be leveraged to improve internal performance or reduce performance uncertainty, as well as always considering risk thresholds, which may dictate the mitigating effect of using external services providers.

Lastly, In-house legal departments must consider Legal Risk as an overdoing factor. If there is a Legal Risk scenario that could be detrimental and highly prejudicial to the future of the organisation, the In-house legal department should consider the risk mitigating effect of external law firms. The professional indemnity that covers the law firms can assist the In-house department to mitigate internal risk.

7.5. Limitations of the study

This study focused on the research question from a general approach to legal services. This was in order not to limit answers to any specific legal services. The role of generalised and specialised legal services was highlighted as a complexity in the delivery of legal services.

The small closed sample for the quantitative portion of the research could be expanded on to seek In-house lawyers who are not members of the Corporate Counsels Association of South Africa. The quantitative portion can further be focused on a higher level of In-house lawyer, as was done in the qualitative interview portion of the research, and not to any lawyer within the In-house environment.

The context of the South African legal industry may limit the generalizability of results to other jurisdictions as well as to other services industries. The inherent complexity to services may limit the broad applicability of the research.

Further consideration can be proffered on adapting the Parmigiani (2007) testing instruments to be specifically adapted to services and not only manufacturing or production.

7.6. Recommendations for future research

It is important for future research using the concurrent sourcing framework, to consider the inherent complexity that arises in services based industries and make clear distinction from previous manufacturing orientated studies.

Further consideration to the role that institutional knowledge plays specifically in services

related areas in relation to the make-or-buy decision will expose the potential mitigating affect or leveraging affect within the role of internal production.

In relation to this study, further research, both qualitative and quantitative can be conducted into the specific 7 towers identified by Lacity and Wilcocks (2013) to determine if the different towers have differing results in relation to the concurrent sourcing framework. The sampling frames can be reconsidered to increase the sample size that can be used.

Further statistical analysis can be conducted on the further research to, like Parmigiani (2007), in an attempt to identify specific correlations and predictions in terms of regression modelling techniques.

7.7. Concluding statements

This research used a comprehensive framework for the make-or-buy decision to explore how In-house legal departments, who both make-and-buy, determine the boundaries between internal production and external procurement.

Validated results, through the use of a robust mixed methodology, has highlighted the importance of the Neoclassical economics consideration of economies of scale and scope and the Capabilities economics considerations of firm and supplier expertise interact in the make-or-buy decision for In-house legal departments. An inherent complexity arose between generalised and specialised legal services, which complexity requires an In-house legal department to have full consideration to the distinction.

Further exogenous factors, such as the influence of institutional/industry knowledge and an overriding consideration to legal risk, are important aspects that must be taken cognisance of. This has combined into a decision tree model that can be applied and adapted to suit the In-house legal departments and the wider organisations needs and assist in delivering value-adding legal services.

As a result, the make-or-buy decision for In-house legal departments is a complex one relying on a multitude of factors. There are new trends in legal services delivery, which can be harnessed to grow and develop the role of the In-house legal department from a support function to a valuable strategic partner.

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9. Appendices

9.1. Appendix I: Interview questions And Survey

9.1.1. Interview questions (Parmigiani, 2007)

Name:

Job Title:

Area of Influence:

Types of Legal Services:

Number of Lawyers:

Number of Paralegals and support:

High Level: How does you go about making the make or buy decision?

Asset Specificity:

1. Are skills needed to produce legal services widely available and generic?
2. Number of suppliers in the market?
3. Is it easy to change suppliers?
4. What type of the suppliers do you use?

Volume Uncertainty:

5. How do you forecast requirements for legal services?
6. Are there predictable patterns?

Technological Uncertainty

7. Do you expect disruptions from technology in the delivery of legal services?
8. Do you make use of technology to deliver legal services?

Performance Uncertainty

9. Is it easy to describe your needs to your suppliers?
10. How do you measure performance?
 - a. Internally?
 - b. Externally?
11. If problems exist, can you easily determine the cause?
12. Do you measure one suppliers service against another?

Economies of Scale/Scope

13. By producing legal services internally, do you reduce your costs?
14. Do you make the best use of your resources?
15. Can you suppliers achieve economies of scale?
 - a. Internal?
 - b. External?
16. Can you suppliers achieve economies of scope?
 - a. Internal?

b. External?

Capabilities

17. Do you have the required skills internally?
18. Are skills needed internally similar to external?
19. Do your suppliers have expertise/skills that cannot be replicated internally?



9.1.2. Survey

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The Make or Buy Decision for In-House Legal Departments: A Concurrent Sourcing Model

Welcome to My Survey

Thank you for participating in our survey. Your feedback and insights are very valuable.

I kindly thank CCASA for their assistance.

I am conducting research on when corporate legal departments either make or buy legal services. To that end, you are asked to follow this link and answer the survey. This will help us better understand whether corporate legal services should procure required legal services or whether same should be internally produced. This survey should take no longer than 10 minutes.

Your participation is voluntary and you can withdraw at any time without penalty. All data will be kept confidential and anonymous. By completing the survey, you indicate that you voluntarily participate in this research. If you have any concerns, please contact my supervisor or me. Our details are provided below.

**Researcher: Rian Hancock
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The Make or Buy Decision for In-House Legal Departments: A Concurrent Sourcing Model

Welcome to My Survey

This survey is conducted pursuant to interviews held with 10 In-House/Corporate Counsel in senior positions in their organisation. In order to test the accuracy of the results and in order to confirm the findings of the interview portion of this research, your participation in this survey can potentially assist in same.

For the purposes of this survey, Legal Services includes:

Dispute Resolution Services: discovery, document, and case management services or any other Dispute Resolution requirements;

Intellectual Property Services: patents, trademarks, and domain name services or any other Intellectual Property Law requirements;

Commercial Law Services: mergers and acquisitions, transaction agreements, and corporate financing services or any other Commercial Law requirements;

Compliance Services: regulatory and company policy compliance services or any other Compliance requirements;

Procurement Services: contracts, service agreements, and outsourcing services or any other procurement requirements;

Employment Law Services: employment contracts, disputes, immigration and injury services or any other Employment Law requirements;

Property Law Services: purchase, lease, rent, or sale of physical property or any other Property Law requirements; and

Any other area of practice required by the In-House/Corporate Legal Department.

For the purposes of this survey, kindly consider Legal services and how you and your organisation deliver Legal services in general. If you only deal with a single area of legal services, only consider your answers in that area. If you deal with more than one type of legal services, please consider your answers generally.

The answers span from totally true to totally untrue. Kindly choose the most generally applicable answer.

This survey contains 28 questions and should take approximately 10 minutes to complete.



The Make or Buy Decision for In-House Legal Departments: A Concurrent Sourcing Model

Legal Services

This section relates to the provision of Legal services. Kindly indicate which categories of legal services that you provide. Note: Dispute Resolution services must be seen independently even though the subject matter may span a number of categories.

1. What types of legal services do you supply for your organisation?

- Dispute Resolution Services: discovery, document, and case management services or any other dispute resolution related requirements
- Employment Law Services: patents, trademarks, and domain name services or any other employment law related requirements
- Property Law Services: purchase, lease, rent, or sale of physical property or any other property law related requirements
- Commercial Law Services: mergers and acquisitions, transaction agreements, and corporate financing services or any other commercial law related requirements
- Procurement Services: contracts, service agreements, and outsourcing services or any other procurement requirements
- Intellectual Property Law Services: patents, trademarks, and domain name services or any other Intellectual Property Law requirements
- Compliance Services: regulatory and company policy compliance services or any other compliance requirements
- Other (please specify)



The Make or Buy Decision for In-House Legal Departments: A Concurrent Sourcing Model

Legal Services Questions

* 2. For the past fiscal year, which best describes how you source Legal Services?

- All done internally
- All sourced with external service providers
- Both done internally and sourced from external service providers



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Legal Services Questions

3. If you marked "Both" in the previous question, what % of your requirements did you produce internally?



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Legal Services Questions

4.

If you were unable to produce a Legal service internally due to a legal impediment, please state the impediment? (E.g Needed to use a conveyancing attorney, Needed an Advocate to appear etc)

6



The Make or Buy Decision for In-House Legal Departments: A Concurrent Sourcing Model

Legal Services Questions

* 5. Numerous capable Legal Service Providers exist in the market?

Totally True	Mostly True	Sometimes True	Neutral	Sometimes Untrue	Mostly Untrue	Totally Untrue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* 6. The skills needed to produce Legal services are generic and widely available?

Totally True	Mostly True	Sometimes True	Neutral	Sometimes Untrue	Mostly Untrue	Totally Untrue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* 7. Switching Legal Service Providers would be quick and easy to do?

Totally True	Mostly True	Sometimes True	Neutral	Sometime Untrue	Mostly Untrue	Totally Untrue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* 8. Your forecasts for Legal services are very accurate?

Totally True	Mostly True	Sometimes True	Neutral	Sometimes Untrue	Mostly Untrue	Totally Untrue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* 9. There are predictable patterns to your requirements for Legal services?

Totally True	Mostly True	Sometimes True	Neutral	Sometimes Untrue	Mostly Untrue	Totally Untrue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* 10. The processes and skills to perform Legal services are mature and unlikely to change in the future?

Totally True	Mostly True	Sometimes True	Neutral	Sometimes Untrue	Mostly Untrue	Totally Untrue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>



* 11. Major Legal services innovations are very likely within the next few years?

Totally True	Mostly True	Sometimes True	Neutral	Sometimes Untrue	Mostly Untrue	Totally Untrue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* 12. Major innovations in how Legal services are delivered are very likely within the next few years?

Totally True	Mostly True	Sometimes True	Neutral	Sometimes Untrue	Mostly Untrue	Totally Untrue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* 13. You can easily describe Legal services to your suppliers through descriptions and/or consultations?

Totally True	Mostly True	Sometimes True	Neutral	Sometimes Untrue	Mostly Untrue	Totally Untrue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* 14. You use several forms of inspection and several different metrics to evaluate Legal services quality?

Totally True	Mostly True	Sometimes True	Neutral	Sometimes Untrue	Mostly Untrue	Totally Untrue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* 15. When there is a problem with a Legal service, you usually can determine its cause?

Totally True	Mostly True	Sometimes True	Neutral	Sometimes Untrue	Mostly Untrue	Totally Untrue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* 16. It is difficult to equitably measure one supplier's Legal service vs. another supplier's?

Totally True	Mostly True	Sometimes True	Neutral	Sometimes Untrue	Mostly Untrue	Totally Untrue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* 17. By making your own Legal services, you do/could reduce our overall production costs of legal services?

Totally True	Mostly True	Sometimes True	Neutral	Sometimes Untrue	Mostly Untrue	Totally Untrue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>



* 18. You do/could better utilize our labour and equipment by making Legal services in addition to your organisations core function?

Totally True	Mostly True	Sometimes True	Neutral	Sometimes Untrue	Mostly Untrue	Totally Untrue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* 19. By making Legal services for you, your suppliers can reduce their overall production costs since they can make better use of their labour and infrastructure?

Totally True	Mostly True	Sometimes True	Neutral	Sometimes Untrue	Mostly Untrue	Totally Untrue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* 20. Your legal staff can/could easily produce Legal services?

Totally True	Mostly True	Sometimes True	Neutral	Sometimes Untrue	Mostly Untrue	Totally Untrue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* 21. Making Legal services requires a deep expertise that your organisation understands?

Totally True	Mostly True	Sometime True	Neutral	Sometimes Untrue	Mostly Untrue	Totally Untrue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* 22. The skills used to make one type of Legal service are closely related to those that you use to make other similar types of legal services?

Totally True	Mostly True	Sometimes True	Neutral	Sometimes Untrue	Mostly Untrue	Totally Untrue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* 23. We have internally produced Legal services for years?

Totally True	Mostly True	Sometime True	Neutral	Sometimes Untrue	Mostly Untrue	Totally Untrue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* 24. The leading Legal suppliers have proprietary knowledge/expertise that gives them an advantage over other organisations?

Totally True	Mostly True	Sometimes True	Neutral	Sometimes Untrue	Mostly Untrue	Totally Untrue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>



* 25. You rely on your suppliers to help us keep up with Legal technology?

Totally True	Mostly True	Sometimes True	Neutral	Sometimes Untrue	Mostly Untrue	Totally Untrue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* 26. There is very little difference between the process you would use to make Legal services and that used by a supplier?

Totally True	Mostly True	Sometimes True	Neutral	Sometimes Untrue	Mostly Untrue	Totally Untrue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* 27. As compared to suppliers, your internal production of Legal services is/would be higher in price?

Totally True	Mostly True	Sometime True	Neutral	Sometimes Untrue	Mostly Untrue	Totally Untrue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* 28. As compared to your suppliers, your internal production of Legal services is/would be lower in quality?

Totally True	Mostly True	Sometimes True	Neutral	Sometimes Untrue	Mostly Untrue	Totally Untrue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

9.2. Appendix II: Letter of consent

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I am conducting research on when corporate legal departments either make or buy legal services. To that end, I request your assistance in agreeing to be interviewed for this research. This will help us better understand whether corporate legal services should procure required legal services or whether same should be internally produced. This interview should take no longer than 1 hour.

Your participation is voluntary and you can withdraw at any time without penalty. All data will be kept confidential. By agreeing and participating in this interview, you indicate that you voluntarily participate in this research. If you have any concerns, please contact my supervisor or me. Our details are provided below.

Signature of Participant

Name: _____

Signature of Researcher

Researcher: Rian Hancock

Research Supervisor: Mike Holland

Email: 20079461@mygibs.co.za

Email: mholland@pricemetrics.co.za

Phone: 083 277 7808

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9.3. Appendix III: General Summary of Survey Responses

		Interview 1	Interview 2
Overall	High Level	Cost, skills availability, expertise external limited	Capacity
Asset Specificity	Question 1	Yes	Yes/No, however need institutional and industry knowledge
	Question 2	Numerous Suppliers	Numerous
	Question 3	Yes	Yes
	Question 4	Law Firms, Advocates, Consultants, LPO	Law Firms
Volume Uncertainty	Question 5	Historical Data, Some requirements unforeseeable, routine v not	Alignment with Business Strategy, future needs
	Question 6	Yes and No	Yes. Historic data/demand fluctuations
Technological Uncertainty	Question 7	Yes, automation, high volumes, paperless	Yes
	Question 8	Software systems,	Case management, file management, matter management, online databases
Performance Uncertainty	Question 9	Yes	Yes, if institutional knowledge
	Question 10a	Std performance measures, specific deliverables,	Perf objectives, some objective some subjective, not time
	Question 10b	Cost, similar to internal, feedback	Turnaround time, quality of output
	Question 11	No, depends, people risk adverse, so don't make big mistakes	Yes, internal - can identify resource
	Question 12	No, no hard measures, subjectivity	Yes
Economies of Scale/Scope	Question 13	Yes	Yes
	Question 14	Depends, degree of inefficiency, Employment	Try, not always possible, will be mix of complexity work
	Question 15a	Equity Yes.	Yes
	Question 15b	No direct answer	Don't know. No
	Question 16	Yes, in theory. In reality, no-spread risk over numerous suppliers	Yes. Using as knowledge in different areas. May be scale
Capabilities	Question 16b	No direct answer	no direct answer
	Question 17	Yes, general No-specialised	Yes. Recruit to train
	Question 18	No, different skills from practice	NO. Banking specific.
	Question 19	Depends, capacity and expertise	No.



Interview 3	Interview 4	Interview 5
As much internally. Reduces costs. Expertise and Capacity	As much internally, External for Expertise. Try to limit external cost	Legal risk and cost. Cost - cost per unit, risk and volume.
Depends. Expertise is available both ex and in. Generic to be trained. Not sure. Only use a view. Yes Law Firms, Advocates, Consultants	widely available and generic. - Organisation has geographic problems that make skills scarce. Yes. Yes. Law firms, consulting.	Widely available - yes. Generic - Depends. Buy specialised for high legal risk Depends. From discipline to discipline Yes Law firms, advocates, experts
Historical data. New requirements (legislative) No. It differs. If no change then historical.	Future Events, Could be. Have not looked.	Historical and future. Business strategy. Yes. Seasonal patterns.
Yes. Data Repositories Data Repository, emails etc., online databases.	Very much. Reduce costs of external services, Internal matter management (Disputes) Some reporting.	Yes. Enabling. Doc management. Case management. Automation.
Yes. Internal preparation. Performance objectives, specific deliverables, not time etc. Independent Assessment of firm, internal feedback, Depends. Can use own experience and firms do fir external. Not in general. Not formally. Turnaround times, cost (appropriate as to risk), value added	Yes. Internal knowledge-ability to translate. Objective based performance, specific deliverables, no metrics achieving goals Billing cost. Subjective view of services delivery. Yes. Not structured. No comparative metrics.	Yes. Suppliers have institutional knowledge Balancing risk v cost. Cost as % of value added. Stakeholder satisfaction - specific performance measures. Depends per department. Looks at value added v cost etc. Yes Yes.
Yes. Institutional knowledge Try. Depends on inherent complexity of the area. Yes, Yes. Depends on structure Difficult. Some Yes. Not all. depends. One firm, many panels, some firms, one panel	Believe So Cost of external (big 5) is high. Guilty of throwing high end resources at low end problems. Not vice versa. No. No. No volume. Yes. In theory yes. But not enough volume.	Yes. Internal a 3rd of external Yes - try to commoditize repetitive work. Yes. On scalable work. Conceivable. But spread risk. Yes. Possible. No direct answer
Yes Yes. But institutional knowledge No Expertise. Yes capacity/volume.	Yes Yes. Except specialised. No. Except specialised.	Yes. Not specialist by design, or not usual areas. Yes. No. Except specialised areas.



Interview 7	Interview 8	Interview 9
Bank - NB Legal Risk. Not cost.	Expertise/Capacity	Advisor dependent. Profile/Risk, Expertise,
No. Bank specific. Skills are highly priced.	No, specialised work.	Depends. Available, may be not generic.
Big 5. International firms.	Use all major. Generic - Yes. Specialised no	Yes
No. Institutional knowledge.	Yes.	Yes. Spread work around.
Law Firms.	Law firms, advocates.	Law Firms.
Not an exact science.	Determined by internal client.	Thumb suck. Strategy, future, . Not using our data.
No. Transaction based.	Yes. Depends. Run of mill yes. Project - No	Yes, in certain areas.
Yes. High volume space.	Yes, in generalised commoditised areas., Artificial intelligence	Not really. Not in our environment.
Yes. Deal management systems.	Knowledge management, online databases,	Matter management
Yes. Institutional knowledge.	Yes	Yes. Legal advisor must be bridge between business and legal needs
Intangible. If deal goes bad.	360 degree, internal client satisfaction, subjective, quality,	Turnaround, quality,
Intangible. If deal goes bad. Implementation of Instructions, turnaround time, quality, lesser degree cost.	Qualitative, subjective,	Quality, value add,
No. Internal. External - they figure out.	Yes. External must if their issue	Yes. 9/10 times.
Not formally.	Informal. Subjective and discretionary.	Not formally.
No, to specialised. Not volume based	Yes. Institutional knowledge	Yes. I institutional knowledge.
Yes	Mixed. Not all work high complexity.	No.
Theory yes. But spread the risk.	No. Work is varied.	Yes
No really. Most are focused.	Conceivable. No. Not enough volume.	Yes
Yes. Numerous departments servicing needs.	Yes.	Yes
Yes	no	Yes
Yes	Yes	Yes
Core yes. But then become industry specialised.	No. Specialist work external. Internal relies on institutional knowledge.	Yes, general. Complimentary.
Yes.	No. However external has capacity.	Yes.



Interview 10	Interview 11	Interview 12	General Analysis- Question	Composite Analysis
Expertise/Skills, volumes, legal risk management, cost	Capacity Cost Complexity	Hybrid. Expertise, Volume	Cost, Expertise/Skills, Capacity, Legal Risk, Volume, Complexity	
General - Yes and Yes. Specialised, no and no.	General - Yes and yes, Specialised No.	General - Yes	Depends. Specialised/General	Depends. Specialised v Generalised, Many Suppliers, Fewer in Specialised Areas, Low Asset Specificity for Generalised, Higher for Specialised
General - lots Specialised - few	General - Lots, Specialised - few.	No direct answer	Depends, General - Lots, Specialised - Limited, Big 5	
Yes. Don't want key person dependency.	General Yes, Specialised - More difficult	Yes	Yes - Institutional knowledge, key man dependency.	
Law firms, advocates, experts	Law Firms, LPO's, Consultants	Law Firms,	Law Firms, Consultants, Advocates Fewer LPO.	
Historic volumes. Future	Historical, future needs	Difficult. Look historical, try to forecast. Strategic plan	Difficult. Historical data. Scanning Future Environment, Strategy	Depends. Difficult. Use of data, Once-off/project. Moderate Volume Uncertainty.
Yes	Yes	Yes.	Depends - Some area predictable.	
No.	Yes.	Yes	Yes. Enabling	Technological uncertainty high. Use of software and databases to deliver services. Not yet into AI or similar.
Software support, nothing specific, online databases.	Online databases, knowledge management	Contract/Template Management, online databases, mater tracker	Management based software. No AI etc. Online resources.	
Yes. Speak a common language. Institutional knowledge both internal and external.	Yes. Legal advisor bridge. Institutional knowledge goes both ways	Yes, industry/institutional knowledge	Yes. Institutional knowledge. (Internal and external) Role of Legal Advisor.	Importance of Internal Advisor and Institutional Knowledge (Internal v External). Moderate to Low performance uncertainty. Some metrics, mostly subjective.
Difficult, quality, feedback,	360 degree, risk management, internal review, soft targets	Matters closed. Turnaround time, customer satisfaction, Specific KPA Value added	Specific deliverables, 360 type feedback, subjective (quality) Metrics (turnaround, internal satisfaction, matters closed)	
Subjective criteria. Quality,	Pricing, turnaround times, quality,	Turnaround time, availability, value added,	Cost (more value for money), similar to internal, 360 feedback, quality, value add, turnaround time	
Yes.	Yes	Yes	Yes. Good knowledge of processes. Internal and External.	
Yes, quality, turnaround	No. Single supplier per area.	Not formally. Subjective	Yes. Informally. Quality & Turnaround, subjective.	
Yes	Yes	Yes.	Yes. Institutional Knowledge	Depends. Economies of Scope and Scale present. Driven by volumes, one or the other usually present. Specialised v Generalised Needs. External: Depends. Want to spread work.
Yes. Try	We try to. Not always.	Yes. Encourage people to become experts.	Depends. Difficult. Try. Volumes, Specialised v General	
Yes	No.	Yes	Yes	
Depends, spread the work.	Potentially	Yes	Depends. Volumes, Spreading Work,	
Yes. Depends on volume.	Yes. Currently multi, not single	No	Yes. Cross functional/cross business.	
Yes	Possible, but does not happen.	Yes. To a degree.	Depends.	
Yes	Yes	Yes. Try to develop internally	Yes. Train to be institutional/industry specialist	Similar and Complimentary Skills. Industry/institutional Knowledge and Complexity. Generalised v Specialised. Expertise and Capacity.
No. due to institutional knowledge.	Genre skills yes. Specific skills - no, internal more project management	Different but core yes.	Depends, Specialist v Generalist. Different requirements Internal v External, Core skills same	
Yes	Yes and No.	Yes. Specialists. Complimentary skills.	Depends. Specialist v Generalist, Complimentary Skills, Capacity and Expertise	

9.4. Appendix IV: Qualitative Codebook

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Africa
Alternative Pricing Models
Automation
Availability of Skills - Limited
Best Use of Resource - Mix
Best use of Resources - Highly Skilled for Low Complexity - Yes
Best use of Resources - Inconsistent
Best use of Resources - Less Skilled for High Complexity - No
Best use of Resources - No
Best use of Resources - Yes
Business Specific
Buy Decision
Capacity
Combination Internal and External
Commodity
Commodity - Low Complexity High Volume
Competition
Complexity
Conservatism
Control
Cost
Cost - low importance
Cost Reduction
Data
Data Availability - High
Data Availability - Low
Demand Fluctuation
Different Suppliers for Different Areas
Easy to determine problems - No
Easy to determine problems - Yes
Economies of Scale - External - No
Economies of Scale - External - Yes
Economies of Scale - Internal - No
Economies of Scale - Internal - Yes
Economies of Scope - External - No
Economies of Scope - External - Yes
Economies of Scope - Internal - No
Economies of Scope - Internal - Yes
Employment
Employment Equity
Employment Equity - Reduced Efficiency
Expertise
External



External - Firms - Big 5
External - Firms - Higher pay
External - High Org Risk
External - High Volumes
External - Higher costs
External - Increased Capacity
External - Lower Risk
External - Specialized Skill
External Cost - Variable
External Skills Limited
External Skills Widely Available
Firms Needs to Suppliers - Common Language
Firms Needs to Suppliers - Internal Advisor Dependent
Firms Needs to Suppliers - No
Firms Needs to Suppliers - Yes
Forecast
Forecast - Difficult
Forecast - Future
Forecast - Historical
Forecast - Inaccurate
Forecast - Internal Demand
Forecast - Strategy
General Services
General Services - Low Complexity
General Services - Low Value/Risk
General Services - Outsourcing
General Services - Predictable
Growth of Legal Function - Increase External Spend - Yes
High Use of Data
High Use of Technology
Higher Volumes
Increased Demand - External supply
Increased Regulation - Increased Legal Spending
Identify Areas for Commoditization
Industry Specific - External Skills - Limited
Industry Specific Knowledge
Institutional Knowledge - Existing Relationships
Institutional Knowledge - Limited
Institutional Knowledge
Intellectual Property
Interesting Quote
Internal
Internal - Legal Risk
Internal Capacity Limited
Internal Cost - Fixed
Internal Production - Capacity
Internal Production - Impediment
Internal Production - Increase - Volume
Internal Production - Institutional Knowledge
Internal Production - Internal 1/3 of External
Internal Production - Less Capacity than Volume
Internal Production - Lower Costs
Internal Production - Preferred



Internal Production - Reduced Turnaround Time
Internal Production Cost Reduction - Yes
Internal Production Costs Reduction - No
Legal - Not Core Function
Legal Consultants
Legal Costing's
Litigation
Make or Buy - Advisor Dependent
Make or Buy - Business Importance
Make or Buy - Capacity
Make or Buy - Cost
Make or Buy - Demand
Make or Buy - Hybrid
Make or Buy - Internal Demand
Make or Buy - Internal Strategy
Make or Buy - Per Unit Cost
Make or Buy - Risk
Make or Buy - Skills
Make or Buy - Volume
Once-Off/Project
Once-Off/Project - Can't forecast
Organizational Design
Overseas Trends
Packaged Legal Solutions
Patterns - No
Patterns - Yes
Performance - 360 Feedback
Performance - Apply Org Standard
Performance - External - Difficult to Measure
Performance - External - Objective Feedback
Performance - External - Quality
Performance - External - Value Added
Performance - External - Value Added - Risk v Reward
Performance - Internal - Difficult to Measure
Performance - Internal - Feedback
Performance - Specific Deliverables
Performance - Subjectivity - High
Performance - Total Costs % of Income
Performance - Subjectivity - Low
Performance Measure - External
Performance Measure - External - Cost
Performance Measure - External - Cost Inflation
Performance Measure - External - Objective
Performance Measure - External - Quality
Performance Measure - External - Subjective
Performance Measure - External - Supplier Rankings
Performance Measure - External - Turnaround Time
Performance Measure - Internal
Performance Measure - Internal - Objective
Performance Measure - Internal - Quality
Performance Measure - Internal - Risk Management
Performance Measure - Internal - Subjective
Performance Measure - Internal - Turnaround Time



Performance Measure - Internal Satisfaction
Performance Measure - Limitation of Risk
Performance Measure - Matters Closed
Performance Measure - Risk v Cost
Performance Measure - Stakeholder Satisfaction
Problems - Big
Problems - Small
Process Driven
Risk
Skills - Complexity/Skill Allocation
Skills - External v Internal - Complimentary
Skills - General - High Availability
Skills - Generic
Skills - Generic - No
Skills - Geographic Locations
Skills - High Turnaround
Skills - Internal - No
Skills - Internal - Yes
Skills - Internal v External - Different Delivery Obligations
Skills - Internal v External - Different Skills Required
Skills - Not Widely Available
Skills - Not Widely Available - Process
Skills - Process Orientated
Skills - Replicate Internal v External - No
Skills - Replicate Internal v External - Yes
Skills - Supplement Internal with External
Skills - Widely Available - Yes
Skills - widely available and generic - No
Skills - widely available and generic - Yes
Skills Internal v External - No
Skills Internal v External - Yes
Specialist Services
Specialist Skills - Availability - Low
Specialist Skills - High Complexity
Specialist Skills - Internal - Low availability then External
Specialist Skills - Low Internal Demand
Specialist Services - High Complexity
Supplier v Supplier - Single Supplier Per Area
Suppliers - Depends on Area of Service
Suppliers - Few
Suppliers - Many
Suppliers - Multiple - Adjusting Volumes
Suppliers - Multiple - Competitive Tension
Suppliers - Multiple - Limit Risk
Suppliers - Multiple - Switching Needs
Suppliers v Suppliers - Benchmarks
Suppliers v Suppliers - No
Suppliers v Suppliers - Yes
Suppliers v Suppliers - Yes - Informal
Switching Suppliers - Difficult
Switching Suppliers - Difficult - Larger Matters
Switching Suppliers - Easy
Switching Suppliers - Easy - Smaller Matters



Technology - Continued Human Interaction
Technology - Enabler
Technology - Enabler - Admin
Technology - Human Control
Technology Disruptions - No
Technology Disruptions - Yes
Time - Specialist becomes Generalist
Training
Training - General to Specialist
Type of Supplier - Advocate
Type of Supplier - Consulting
Type of Supplier - Firm
Type of Supplier - Firm - High Costs
Type of Supplier - Firm - Higher Complexity Focused
Type of Supplier - LPO
Use of Technology - Knowledge Management
Use of Technology - No
Use of Technology - Online
Use of Technology - Software
Use of Technology - Yes
Volume
Volume - High
Volume - Low

9.5. Appendix V: Ethical Clearance Confirmation

Dear Mr Rian Hancock

Protocol Number: **Temp2016-01122**

Title: **Corporate Legal Services: The Make or Buy Decision, A Concurrent Sourcing Approach**

Please be advised that your application for Ethical Clearance has been APPROVED.

You are therefore allowed to continue collecting your data.

We wish you everything of the best for the rest of the project.

Kind Regards,

Adele Bekker