

# The Legal Adaptation of The Uber Delivery Contract

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## Abstract

The features of contemporary development have been characterized by the emergence of fast-paced electronic platforms that keep pace with an individual's working life requirements. What O'Brien is doing has become a clear and straightforward model for the use of contemporary means of communication, as this application allows to provide a convenient means of transportation for the passenger to get him to the place he wants on the one hand and the other hand the situation is reflected in the situation for the driver to exploit his car in the way that benefits him, and this is reflected in the participatory relationship between the two parties. There has been a significant difference in the legal adaptation of the relationships in the Uber contract, as there is a contractual relationship between Uber and the client on the one hand. On the other hand, we note another relationship between Uber and the driver. This research aims to highlight the nature of the different and mutual relations between the parties.

**Keywords:** Delivery Contract, Uber, Uber Contract Adaptation, Participatory Economy, Digital Platforms

## Introduction

The contractual relationship between Obroh and the client was adapted to several opinions, some of which went to being a brokerage contract considering that The Uber broker between the driver and the client and that the contract is concluded between the client and the driver, which made the French Court of Cassation unique in its decisions focused towards this direction. In contrast, a second opinion went to adapt the relationship based on the agency contract provisions based on the idea of what Uber is doing as an agent to collect the amounts due to the carrier. The client's direction and if this opinion is palatable at first glance, he has some negatives, including the possibility of canceling the agency from the client because the agency is one of the binding contracts for one side. Therefore the European can not be just a service provider. This is why some have said a third way to adapt the relationship between The O'Brien and the client to be subject to the provisions of the Elegar contract, considering that the client in the shadow of the under contract asks the company to rent a car to

move it to the place where he wants to travel so that The Uber company is not a joint rent between the customers and the rent here is a rent received on the eye of the eyes. As for the second relationship, which is the contractual relationship between Uber and the driver, we find that the jurisprudential opinions have also differed on them, there are some of them as being subject to the provisions of the lease, as the company hires drivers in order to move the customer to the specified place, while the other opinion of the jurisprudence tended to adapt the relationship mentioned above to being a contract of work in the presence of the association dependency between The Company Of Uber and the driver and this is the content of the basis of the contract of employment, and perhaps there is This is evidenced by the contract between two parties, for example, the driver may not collect more than one customer per trip as long as it is intended for only one customer, however, there are those who opposed this conditioning, denying the dependency relationship between the two parties, considering that there is no authority imposed by the company on the driver to perform the favor in

its favor. That is why we wanted to stand in detail on the multiple relationships resulting from the Uber delivery contract as one of the contemporary themes that have spread to digital applications based on the participatory economy.

## 1. The Concept of Uber Conditioning

### 1.1. Background

The concept of uber goes to a customer or customer to order electronically and through social media to order a car from a company to reach a particular area, so the company proceeds through its electronic application installed through electronic programs with rapid response and start searching for the closest drivers of the service who are in the same customer's location to prove the booking and then the driver access the customer through his website specified through the maps programs After the end of the journey, the customer receives a text message on the registered email revealing the costs of the trip, and Uber has a specific application for smartphones that employs GPS takes on the idea of communication between drivers and customers who are at the nearest point of function for them through a fast and easy channel of communication between the service provider and the customer through the electronic platform<sup>1</sup>. In Iraq, article 2/IV of the Electronic Payment Services System for Iraqi Funds indicated the possibility of paying money through electronic payment services. Fourthly, the execution of electronic payments credited and owed by any means of digital communication or any means of information technology or network operator acting as an intermediary between the user of electronic payment services and the processor of goods or services or any other recipient of funds, including transfers by mobile phone).

<sup>2</sup> Considers this meaning: Fadl Abdul Karim al-Bashir, The Role of the Digital Economy in Promoting Islamic Growth, Beit Al-Advice Magazine , Qatar, Issue 9, 2018, p. 27.

<sup>3</sup> Ruchel Bostman : The sharing Economy lacks a shared Definition , fast company .( 21) ,2013,p1

### 1.2. The concept of digital platforms

The features of contemporary reality are made up in the shadow of modern technologies, which have opened new doors to a different economic formula in which information and ideas are shared because of the qualities of digital technologies that distinguish them from others, such as speed interaction and flexibility<sup>2</sup>. Therefore, electronic platforms are the first significant basis for participatory economy activities as platforms have the upper hand in achieving growth. The participatory economy at the global level through the behavior of mediation between individuals so that they can share the resources and material assets of all kinds, including what is achieved in the provision of Uber services to the consumer, and to clarify this, we have to go through the following points:

#### 1. Defining a participatory economy

The participatory economy was defined by several definitions, including that it was a system based on the participation of untapped assets and services, free of charge or at direct nominal fees from individuals to achieve economic, environmental, or social benefits, taking into account the value added to the internet communication channels, namely, Quality, confidence and safety which on this can be called collaborative consumption<sup>3</sup>. Some joint services also poisoned the participatory economy. It was defined as (mutual services between a group of individuals, service provider, and consumer facilitated through electronic platforms that act as a trusted third party either free of charge or for both the service provider and the consumer customers of the electronic platform)<sup>4</sup>, so the term participatory economy is dismissed as an economic model based on the use of Electronic networks for the participation, rental and exchange of personal goods, products and experiences, and this model is therefore based on the more significant role of

<sup>4</sup> Stephnie Nguyen and Sylvie LIosa : On the difficulty to define the sharing Economy and collaboratire consumption - Literature review and proposing a different apperash with introduction of collabrative services, HAL,6Dec,2018p3. .

contemporary communication techniques in the making of relationships and contracts between individuals, which is what continues to exchange individuals for their personal property based on the requirements of supply and demand <sup>5</sup>. Accordingly, the company's ability to provide its services to the customer is only a living example of the idea of a participatory economy based on

### **Use modern means of communication.**

So the participatory economy is based on several fundamental principles, including:

A- Connecting to the Internet and the platform, as a third-party service, helps build a society based on the exchange of services and experiences based on the adoption of digital space and the foundations of mutual agreements between the two parties to participate.

B. The participatory economy is based on an essential component of dealing, namely, trust between the service provider, consumer, or customer using the social media of those platforms.

C. The platform site provider is the primary beneficiary in material terms, noting that participants receive value in a common way and as an easy way for each other to reach each other <sup>6</sup>. Therefore, we have to recognize that there are three main pillars on which the participatory economy is based: the digital platform, the self-employed (owners of goods and services), as well as consumers, so we need to know the digital media across the axis and the following :

### **2- Defining the digital platform: -**

The digital platform is a system that facilitates communication. For a group of people to achieve specific goals, maybe services, products, events, education, or otherwise <sup>7</sup>. Therefore, the digital

platform is described as a program hosted by what works according to a specific operating system and coordination that includes a set of instructions and instructions for a particular processor. Therefore, these rules allow the user to pass through interactive and non-interactive services that can be provided or spread by the Internet and allow. Thus, the participatory economy is described as providing new models for exploitation in collective frameworks, so it is an umbrella term for business or practices of exchanging goods and services or renting them by others through interactive electronic means related to information technology, where they increase and activate efficiency and reduce transaction costs. The participatory economy plays an essential role in providing mechanisms. New to be exploited and reintroduced for the same purpose through digital platforms <sup>8</sup>, for example, the owner of a car can have a participatory relationship with a passenger related to the need of the owner to exploit his vehicle in a way that benefits him on the one hand and the other hand the passenger needs to get a suitable and convenient means of transportation to the place he wants and this applies to the digital platform (Uber) in this case by combining the parties and benefiting percentage of the fees set as done by a car company. The fare, however, is that different from the traditional model of taxis in that the owner does not use his car. In contrast (Uber) uses an application open to the public other than the application of the bidding used by many taxi companies in the sense that (Uber) offers special privileges compared to the traditional situation, and this is included in the creation of new ideas, which is what is used on this participatory service A distinct impression in the form that makes it a competitor to the usual regular model and based on the contract of the law on the Provision of

<sup>5</sup> This meaning is considered by Doaa Samir, participatory economy and its impact on tourism in Egypt, International Journal of Tourism heritage and hospitality, Cloud University, Volume 11, Issue (1/3), 2017, p. 3.

<sup>6</sup> Maya G Ivanova, sharing Economy : Bulgarian Tourism Industry perspective, op.cit.P481 .

<sup>7</sup> I an Bogost and Nick Montfort : plat form studies : Frequently Questioned Answers , op . cit . p3

<sup>8</sup> Christoph Mittendorf : what Trust means in the sharing Economy : A provider perspective on Airbnb.com, Implications of Trust in the sharing Economy, Twenty-second Americas conference on Information system, san Diego , 2016. P1 .

Protection for the Service Provider and the Consumer.

## 2. Legal adaptation of contractual relations with Uber

The legal nature of relationships between different parties remains unclear, as Uber relies on the development of intermediate platforms. At the same time, the traditional practice puts the service provider and consumer face to face. However, scrutiny of the terms and conditions of digital platforms is not entirely clear. For example, the platform's design may be just technical support, as many digital platforms claim to be just technical service providers. However, this characterization does not reflect the nature of the legal relationship between the parties involved but rather constitutes the starting point for thinking about the heart of the relationship. Therefore, the question arises as to what legal characterization of the tripartite legal relationship occurs through platforms? As a general financial transaction law, does civil law provide practical tools for such characterization?

To make this statement, we will divide this research into two requirements that address the legal adaptation of the contractual relationship between Uber and the client in the first requirement. The second requirement addresses the legal transformation of the contractual relationship between Uber and the driver.

### 1.1. Legal adaptation of the contractual relationship between Uber and the customer (passenger)

There have been many opinions about the legal adaptation of the contractual relationship between Uber and the customer who wants to take a car to move it from one place to another. To stand on these adjustments, we divided this requirement into three branches. We deal in the first branch adapting the contract as brokerage. We are exposed in the second branch as an agency

contract, and we discuss in the third branch that it is a lease.

#### 1.1.1. Brokerage contract

Ray argued that Uber is a broker between the customer and the driver, and digital platforms usually claim that there is no contractual relationship between them. They remain unrelated to the relationship between the service provider and his client. Still, they cannot legally stay as a foreign party from the contractual relationship between users. In this regard, the Paris Court has given the legal characterization of the contractual process involving the director, operator of the digital platform, and the on-demand service provider, particularly the identification of contractual linkages that unite them to achieve this process. This case boils down to the existence of a digital platform that has placed a sender and courier through an application in a contractual relationship to transmit letters and packages. Is this platform a shipping broker? If the answer is yes, the digital platform will be subject to the legal rules concerning the shipping broker. But the court could not adjudicate the matter because the giving of legal characterization is not within the judge's jurisdiction of urgent issues. However, the latter pointed out that The insistence of the digital platform as a completely foreign party to the contractual association does not seem very serious, as the relationship between the sender and the courier can only be linked through it, and that the final payment, and the settlement of disputes - is, likewise, here with its intervention<sup>(9)</sup>. The judge tried to give the legal nature of the service by extending the contractual link established by the digital platform with the other parties, which was determined by the level of control of the platform over the process. European judge.

The<sup>10</sup> dispute focused on whether the platform and its drivers should have the licenses and approvals in the taxi service regulation. Quality: The purpose of the overall process is to transport passengers, but online communication is only to achieve this end. Many indicators point in favor of this theory. As stated in the ruling, Uber controls the quality

(1) TGI Paris, ord. ref., 12 May 2016: Comm.com. electr. 2016, comm. 61, note G. Loiseau.

(2) CJEU, 20 déc. 2017, aff. C-434/15, Asociación Profesional Elite Taxi/Uber Systems Spain.

of vehicles and their drivers and significantly affects their terms of service, particularly by managing the maximum price of the trip. The digital platform does not act on behalf of a contracting person, which leads us to exclude the theory of agency or agency commission. However, jurisprudence's little reference to brokering seems to correspond to many digital platforms. From this point of view, we must understand the will expressed in the terms and conditions of never appearing as a party to the contract between users of the platform. Furthermore, the French Court of Cassation has added brokering adaptation to transactions concluded by digital media, ruling that (by interpreting the terms of the contract to demystify the content, the Court of Appeal has argued that [the platform] as an intermediary to establish a relationship between sellers and buyers of used cars and set a procedure for holding the sale without completing it, and that its role remained the role of the broker.

### 1.1.2. Agency contract

If the brokering theory is acceptable for adapting transactions made by digital platforms, the agency's theory cannot be completely ruled out. Many of the terms and conditions of digital media are explicitly due to this theory of controlling part of the contractual relationships formed through the platforms, particularly regarding recovery. For example, The Cream app amends an agent to collect the amounts owed to the carrier towards the passenger or sender. On other digital platforms, the issue is less clear. For example, uber and its counterparts enter into the contract in a way that suggests a dual agency or agency. An agency contract is usually concluded with hotel owners for hotel booking platforms. Article L311.5.1 of the French Tourism Act stipulates that (the contract between a hotel owner and a natural or legal person operating an online booking platform

for hotel room rentals for clients can be concluded by name and on behalf of the hotel owner and within the written framework of the authorization contract mentioned in articles 1984 and subsequently from the Civil Code). The application of agency rules and brokerage is compatible with several digital platforms. However, we should not ignore that the agency's theory can pose some risks, including for a professional who uses the digital platform. These risks are precisely the abolition of the agency by the client as a binding contract for single committees. Therefore, civil law techniques make it possible to give the legal nature and control of the relationships between the various contracting parties, particularly those with platforms. The digital platform cannot be just a service provider and cannot be foreign from the contractual relationships through which it is concluded. However, the problem is not significant for legislation following civil law.

### 1.1.3. Lease

My opinion went to adapt the contract of The Uber company to transport people with the client to be a lease and the requirement that the customer asks the company mentioned to rent a car with a driver to reach the specified place and within a specific period. Determined by the innovative Uber and since it is known that it has a group of workers drivers contracted with it, the company considers the nearest driver for the area where the customer is. Hence, you ask him to go to the customer. When the driver does so, it is only based on the company's rental of him. Since the rent is returned to an eye or a job, the first means that the rent should be replaced as renting an apartment. Still, the second is to respond to a particular work or to pay for a particular work on the one hand. On the other hand, the wage earner is either a private wage earner or a co-wage earner. The first is the one on which the contract falls on a period of

(1) ass. 1st civ., 19 Feb. 2013, n° 11-23.287: JurisData n° 2013-002770; Contracts, conc. Consumption. 2013, comm. 108, note L. Leveneur; Comm.com. electr. 2013, comm. 52, note A. Debet.

(2) The article of the Tourism Code provides that "The contract between a hotelier and a natural or

legal person operating an online booking platform for the rental of hotel rooms to customers can only be concluded in the name and on behalf of the hotelier and within the written framework of the mandate contract mentioned in Articles 1984 et seq. of the Civil Code. ».

information the tenant deserves to benefit from the work of the wage earner alone as the investment of a man to serve him or build or work one day One or more, or as a worker in a company or a shop or the like.<sup>1</sup>

If we look at the nature of The Uber company's contract with the client, it arranges who performs the customer transfer service. Although typically, it is not limited to this service only to this customer only in each client in contact with The Company Uber through its application in the digital platforms, the company will be a joint wage between the various customers and at the same time the rent contained in the process of transferring the customer from one place to another is considered to rent the eye of the company Uber to leave the will of the customer to the company itself and without other Companies.

Uber hires a joint venture between customers, and the rent is included in moving the customer from one place to another. The rent here is a lease appointed considering that the customer asks the company itself to provide him with a transport service and does not accept another company and that the conditions of renting the eye specified by the jurists in these contracts were met as the agreement comes on the use of cars belonging to the company to transport to a specific place and since the vehicles are described in particular characteristics. Therefore, the company can transfer The customer where he wants, and the company, through renting by the car, owns the disposal of the benefit of the vehicles<sup>(1)</sup>.

## 1.2 Legal adaptation of the contractual relationship between Uber and the driver

Some argue that this relationship between Uber and the driver is an adaptation that the driver is a hire with Uber. However, at the same time, the French Court of Cassation considered a contract of employment between them by virtue of the driver's dependence on the company. So to stand

on these adaptive, we divided this requirement into two branches. We deal in the first branch as a lease, and we are exposed in the second branch as a contract of employment.

### 1.2.1 The Lease

Ray goes that there is a lease between Uber and the driver. The company hires drivers to carry out the task of transporting the customer. Drivers are a joint procedure between Uber and other companies because the driver may receive requests from various companies. The driver rejects the request in principle as long as it does not affect his relationship with the company, and this supports that the driver is a co-wager and not specific to Uber. The driver may be a private agent if he works with the company in accordance with the guarantee system The so-called "Granti system" under which the company gives him a full-time fee to work for her only. If he does not carry out a transfer of passengers, he is entitled to it once the driver waits for the orders in exchange for money. This system guarantees the driver a certain amount for each hour, even if he does not transfer customers or in an amount less than the guarantee amount. It should be noted that the driver performs the rent for an eye because the company required the driver to carry out the task before, as well as the car that approved it early and that it sent the driver's picture, name, and car number to the customer. If the driver sent another one, he would have been in violation and may be punished by the company by finishing his contract and closing his account<sup>1</sup>

In light of the above and based on those who believe that the contract between the company and the customer is a lease, the adaptation of the contracting process with Uber is shortened by the fact that it is a lease either from the customer's side or from the driver's side, i.e., Uber signs two contracts of the first lease to move the customer

(1) Zakaria bin Mohammed Al Ansari, Al-Ghurr The beautiful In an explanation Joy Rosary C3, Printing press Yemenis P. 332.

(1) Dr. Jaafar Mohammed Al-Masir, Doctrinal Adaptation of Contracts for Electronic Companies for Road Transport for People, Research

published in the Journal of the Faculty of Sharia and Law in Our Honorable Understanding, Issue 21, Part 6, published by: Al-Azhar University - Faculty of Sharia and Law, 2019, p. 4732.

(1) the Same source P. 4733-4734.

from a place to where the second wants with the driver to start moving the customer

### 1.2.2. Employment contract

Some argue that there is a dependency bond between Uber and the driver. Therefore the legal adjustment is the existence of a work contract between the company and the driver. The employment contract means that a natural person undertakes to work for another natural person or legal entity in exchange for compensation and establishes a legal dependency relationship. This indicates that Uber has the power to impose penalties on drivers and that the driver is forbidden to take other passengers on the journey booked through the Uber app, which means that the status of the driver provided is not free and that the geographical tracking system used by the uber platform is enough to prove its supervision of drivers, this adapts the relationship as a working contract relationship, and that the employment contract requires that the person is working in a permanent legal dependency relationship of the employer and characterized by the association of dependency Performing the work under the authority of the employer who enjoys issuing orders and instructions, supervising performance and punishing the subordinate for any default.

In response, it was noted that the agreement concluded by a driver that provides a taxi with a digital platform that provides an electronic application for establishing customer relations does not require the driver to work on the digital platform or remain at its disposal and does not include any undertaking that forces that driver to use the app to practice his work, the driver remains accessible to whatever and can contact the application or not to run it and choose the place and time he intends to get without notifying the platform in advance and can also end his contact in At any time, the driver when choosing to contact the app is free to accept or reject the proposed flights or not to respond to them through the application, and that the driver is not obliged to any financial obligation towards the platform forces him to use the app, and that the driver can use other applications at the same time to establish business relationships with other companies, and in light of the above, the driver's contract with Uber did not result in any obligation on the driver

to work on Platform, so a contractual relationship can't be described as a business relationship. The agreement signed between the platform and the driver does not establish a permanent legal dependency relationship. The platform has no authority to require the driver to perform the job in its favor or remain at its disposal for a certain period, regardless of the length of that period or any other undertaking that would oblige the driver to use the application developed by that platform. Respect for the customer's request accepted by the taxi driver cannot be considered as a sign of a dependency relationship between the driver and the digital platform that has established relationships between the driver and the customer, and therefore the driver who has agreed to carry out the transport service does not indicate a dependency relationship concerning the digital platform

The geographical tracking system inherent in the operation of a digital platform to establish relationships between taxi drivers and potential customers does not create a legal dependency relationship between drivers and the platform as long as it is not intended to oversee the activities of drivers and is used only to connect drivers to the nearest customer to ensure the safety of the passenger and determine the price of service. However, this response to the denial of the dependency relationship to remove the fact that the driver's relationship with the company does not fall within the framework of the employment contract is also the subject of discussion and was mentioned below.

1- The relationship of dependency is characterized by the performance of a job under the authority of the employer, who has the power to issue orders, instructions, supervision of execution, and punishment of the subordinate for any irregularities, and accordingly, working in the service of an organization refers to the relationship of dependency if the employer determines the terms and conditions of the performance of the job unilaterally, and this applies to the driver's relationship with Uber

2- The driver's ability to choose working days and working hours does not exclude the relationship of dependency at work as long as the driver, when

connected to the Uber platform, joins a service organized by Uber.

3- The company has to adjust the prices for flights, especially if the driver chooses an inappropriate route, which means the company gives instructions to the driver and oversees the application.

4- One of the terms of the agreement: Uber reserves the right to deactivate the account, restrict access to the app or services or use it from the driver, whether the customer or any of the drivers of the app or services and Uber is entitled to any reason at its reasonable discretion. These conditions force drivers to stay in touch with the app in the hope of getting a trip and, therefore, always remain at Uber's disposal throughout the connection without being entitled to choose the journey that restricts them or not to choose them as the independent driver.

The conclusion is that the employment contract establishes a relationship of dependency and requires supervision of implementation and punishment of the driver if he does not comply with the instructions provided by the company. Drivers who use uber do not operate their own customer base and do not specify their prices freely, and the company imposes the itinerary and adjusts the driver's fare if he does not follow the said route, and the driver does not know his destination, which makes him not free to choose the way he takes, in addition, the driver's refusal of more than three trips may be temporarily separated by Uber from the application, and if the driver exceeds the rate of cancellation of orders or reports misconduct He may not be able to access his account, and finally the driver participates in the transport service of an organization whose terms and conditions are unilaterally determined by Uber and therefore all the elements mentioned constitute a dependency relationship between Uber and the driver once he or she has contacted the digital platform because the position of the driver as a free employee is a fictitious situation, and with regard to the driver's non-obligation to communicate with the platform and the fact that his contact no matter how long it lasts does not expose him to any penalty, this cannot be taken into account when describing the dependency relationship<sup>1</sup>

## Conclusions

The emergence of digital platforms such as opera, for example, is consistent with the requirements of modern working life, which correspond to the buildings of the contemporary digital economy. Recent jurisprudence differed in describing the contractual relationship between Oprah and the client to several mustaches, and we saw the most likely characterization based on the concept of single or dual power of attorney. Modern doctrinal opinions have branched out in adapting the contractual relationship between Oprah and the driver to different views, which seem likely to be adjusted under the provisions of the lease.

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- [5] I an Bogost and Nick Montfort: plat form studies: Frequently Questioned Answers, op. cit. p3
- [6] L'article de code du tourisme dispose que « Le contrat entre un hôtelier et une personne physique ou morale exploitant une plateforme de réservation en ligne portant sur la location de chambres d'hôtel aux clients ne peut être conclu qu'au nom et pour le compte de l'hôtelier et dans le cadre écrit

- du contrat de mandat mentionné aux articles 1984 et suivants du code civil ».
- [7] Look at this meaning, Fadel Abdul Karim Al-Bashir, The role of the digital economy in promoting the growth of Islamic finance, research published in Bait Al-Mashura magazine, Qatar, issue ninth, 2015, pp. 37-38.
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- [12] Stephnie Nguyen and Sylvie Llosa: On the difficulty to define the sharing economy and collaborative consumption - Literature review and proposing a different approach with introduction of collaborative services, HAL,6Dec,2018p3..
- [13] TGI Paris, ord. réf., 12 May 2016 : Comm. com. electr. 2016, com. 61, note G. Loiseau.
- [14] The same source, pp. 4733-4734.
- [15] The sharing economy at the global level, through mediation behavior between individuals to be able to share resources and material assets of all kinds, including what is achieved in providing Oberoh services to the consumer. In order to clarify this, we must go through the following points:
- [16] Yogesh Hole et al 2019 J. Phys.: Conf. Ser. 1362 012121
- [17] Zakariya bin Muhammad Al-Ansari, Al-Gharar Al-Bahiya fi Sharh Al-Bahja Al-Wardia, Part 3, Al-Maymen Press, p. 332.