
THE LEGAL NATURE OF THE LAND TRANSPORT CONTRACT VIA SMART APPLICATIONS.

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ABSTRACT

On the one hand, this contract contains most of the elements of a traditional transportation contract, in terms of an obligation to transport a person or item in exchange for a fee. On the other hand, the question arises as to whether the relationship established via the application constitutes a tripartite contract (the passenger, the driver, and the application operator), or whether it is merely a bilateral relationship managed by an intermediary. The study reached the following results:

1. Smart app operators themselves set the terms of the contract, and they also authorize, revoke, or restrict access to and use of the smart app by users (passengers.)
 2. Drivers are under no obligation other than to carry out the trip at the discretion of the app operators and in accordance with the terms and instructions they impose. Furthermore, the app operators set the pricing and payment methods, offer promotions to the public, award points, and provide a single service to the general public. In this regard, the researcher believes that smart app operators cannot be considered commission agents for transportation, whether for passengers or drivers, because they are the ones who set the contracting mechanism and how the transportation process is completed.
 3. The process of separating the electronic service from the transportation service is not possible in an inseparable way because the two elements are linked together, as transportation companies via smart applications practice transportation service, which may be considered a legal practice, as long as the company practicing these activities has the necessary licenses to practice its business and provide transportation services. On the contrary, in the event that smart application companies do not obtain the necessary licenses to practice their activities, which leads to the suspension of the services of these companies.
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INTRODUCTION

With rapid technological development, smart applications have emerged as a primary means of regulating land transportation services. Contracts are no longer traditionally concluded between a carrier and a passenger within a clear physical framework, but are now concluded digitally, through an electronic intermediary who plays a key role in regulating the relationship between the two parties. This development has sparked a jurisprudential and legal debate about the legal nature of the transportation contract via smart applications. Whether it falls within the category of traditional transportation contracts or is a new type of contract requiring special treatment is unclear.

On the one hand, this contract contains most of the elements of a traditional transportation contract, in terms of an obligation to transport a person or item in exchange for a fee. On the other hand, the question arises as to whether the relationship established via the application constitutes a tripartite contract (the passenger, the driver, and the application operator), or whether it is merely a bilateral relationship managed by an intermediary.

First requirement: The relationship between the traveler and the smart application

Among the theories that have contributed to clarifying the nature of the legal relationship in the smart application transportation contract are the commission agency theory and the information service provider theory. In this section, the researcher will study these two theories through the following two sections. The first section addresses the commission agency theory, and the second section addresses the information service provider theory.

SECTION ONE: THE THEORY OF AGENCY COMMISSION

The role of commission agency emerges at a time when the merchant or service provider is far away from the consumer, which forces him to contract with commercial agents who work to promote and introduce his products or goods; and even sell them in their own name on behalf of the owner of the production. Global openness and globalization, due to the progress and speed of transportation, have led the merchant or service provider to resort to contract agents and commercial representatives to dispose of their products. However, commission agency still has its role in the fields of trade under specific circumstances, and it is still widespread in the field of transportation and insurance.⁽¹⁾

Article (927) of the Iraqi Civil Code states: "Agency is a contract by which a person appoints another in his place in a permissible and known transaction." The Iraqi Commercial Agency Regulation Law No. 51 of 2000 states in Article Three that agency is: "Every commercial act carried out in Iraq by a person in the capacity of an agent for a natural or legal person from outside Iraq, whether it is a commercial agency, a commission agency, or any other commercial agency stipulated in the laws relating to trade, companies, and transportation."⁽²⁾

The definition of agency commission is: "A contract concluded between two persons, one of whom is the principal (the principal), and the other is the agent, whether an individual or a company; whereby the agent performs legal acts that give him rights and impose obligations on him: and it is in his own name and on behalf of his principal; whether those acts are selling, buying, providing a service, or other actions."⁽³⁾

There is a difference between a commission agent for transportation and a carrier. The most prominent thing that distinguishes a commission agent for transportation from a carrier is that the carrier is fully committed to completing the transportation process; meaning that he carries out all the obligations that the transportation contract stipulates and what guarantees their fulfillment, while the commission agent is merely an intermediary who is not committed to completing the transportation process himself, but is committed to completing the transportation process, whether that is through one or more transportation intermediaries. The commission agent also differs from the carrier in that he intervenes based on his assignment by the principal to implement the transportation contract, not based on an assignment from the carrier to implement all or part of the transportation contract, as it is possible that the principal is not a carrier in the legal sense.⁽⁴⁾

The transportation process through smart applications is done by the person entering the smart application, and submitting a request to reach a specific destination by car; the company then uses its smart application, which works on programming smart identification, to search for the nearest drivers providing the service who are located near the passenger's location; and after confirming the trip process, the driver heads to the passenger at his location via electronic maps, and after the trip is completed, a message is sent to the passenger showing the cost of the trip.

The principal is obligated to pay the commission to the commission agent along with the expenses necessary to implement the agency. If the agent incurs losses in the course of carrying out the transport, the commission agent is responsible for undertaking the transport process within the specified period according to the agreement. The commission agent is free to choose the appropriate means to complete the transport process and achieve the result. The principal can achieve the result without interfering with the means used by the commission agent, as the commission agent carries out the transport without referring to the principal, who does not interfere in the transport process. He has appointed the commission agent to carry out the transport process, whether by choosing the method of transport, choosing the carrier and contracting with him in a way that achieves the interest of the principal and with the best possible conditions, while taking into account the instructions issued by the principal in the transport process. In addition, one of the advantages of the commission agency contract in this regard is that the agent's task includes all stages of transport, in a way that achieves the desired result, which is the completion of the transport process.⁽⁵⁾

The commission agent's responsibility towards the principal under the commission agency contract lies in achieving the result, to complete the transportation process, as it is an obligation on the commission agent, and if the commission agent does not fulfill his obligations, such as transportation and delivery to the intended destination on time, he is responsible for that under the contract⁽⁶⁾.

SECTION TWO: THE THEORY OF INFORMATION SERVICE PROVIDERS

Information society services are characterized by their ability to provide a wide range of services remotely through websites for a specific fee, and upon request from users to the service provider. This means that the contract is concluded and the service is provided electronically, without the two contracting parties meeting in person or at the same time. Meanwhile, the service transfer process is provided electronically, and the data sent by the service provider is received and stored by the consumer.⁽⁷⁾

The electronic service provider does not select or modify the information; it does not control it, and the information work within this platform is automatic and passive towards the service provider and the consumer; the information service provider is only responsible for the electronic service, whether that is sending the information and data provided by the user; or the storage process.⁽⁸⁾

Smart apps have been the subject of numerous lawsuits regarding crimes committed by their drivers. One of the most notable crimes involved a woman in India who was raped by an Uber driver, sparking widespread outrage, including against the ride-hailing company in that country. The woman is currently suing the company for damages in the United States.

In this case and other similar cases, companies disclaim any responsibility for the actions of their drivers under the pretext that the drivers working with them, in their personal belief, are independent contractors who only have the right to access the application programmed by the company, and that they do not consider them workers under its authority, as these companies are treated as mere information service providers in the form of software that allows them and the drivers working with them a high degree of flexibility.⁽⁹⁾

The process of contracting via smart transportation applications is done by users downloading the smart application on their phone or tablet. The download process is usually free, such as Uber. The user then creates an account on the application or links it to their personal email. Some smart applications require the user to enter their credit card number. When the user wants to obtain a transportation process, they log in to the smart application and activate the location option on their smartphone so that the smart application can determine their location. The application then displays the vehicles nearby. After the user selects the vehicle, the application displays the approximate time it will take for the vehicle to reach the user, information about the driver and vehicle, the estimated trip duration, and the estimated fare. The user pays the fare after the trip ends and the transportation process is completed. The payment mechanism for the fare account is automatically deducted from the user's credit card account by the smart application.

After the transfer process, the smart application allows the user and the driver to evaluate each other. Those who wish to be a driver with these applications must fill out the company's form, which is available for free, with personal information about themselves and the vehicle. The driver's age must be at least a certain age, and they must hold a valid driver's license that qualifies them to work in the workplace. They must have driving experience, and the vehicle must be covered by a valid and insured insurance contract. They must pass a general background test conducted by the smart application company, and their record must be complete, ensuring they have not been convicted of any felony or misdemeanor that violates public rules and morals. The vehicle must be newly manufactured, making it no more than a certain year old, and have a certain shape, such as four doors. The vehicle must undergo an inspection that qualifies it to work in transportation via smart applications. This means that the driver and vehicle must comply with the general conditions set by the smart application company for everyone to work for.⁽¹⁰⁾

The professional organization representing taxi drivers in the Barcelona area filed a lawsuit with the 3rd Commercial Court of Barcelona demanding an injunction against Uber to stop its operations, arguing that it was engaging in unfair competition. The reason for this was that Uber, the owners of the vehicles it operates, and the drivers who work on its vehicles did not have the necessary licenses and legal requirements according to national transport rules and regulations relating to the services provided by taxis to transport passengers in Barcelona. Here, the court filed a request with the European Court of Justice to clarify the nature of smart applications and their legal status.⁽¹¹⁾

The reason for the request submitted to the European Court of Justice was to determine the nature of the service provided by Uber; whether the company could be considered to be providing a transportation service, an information society service, or a mixture of both. Uber objected to this claim by claiming that its activities are legitimate and denied committing any violation of national transportation rules and local regulations in Barcelona, as its work is advertising and providing support activities on behalf of the company responsible for operating the Uber application in the European Union, which is the Dutch company. It also claimed that it does not provide a transportation service as intended in European and Spanish legislation, but rather acts as an intermediary by providing a service that connects users (passengers) and drivers, enabling them to communicate with each other through smartphones and its

smart application only, in exchange for a commission in exchange for providing the electronic mediation service.⁽¹²⁾

SECTION THREE: THE THEORY OF THE CONTRACT OF TRANSPORT AND THE THEORY OF COMPOSITE SERVICE

Given the criticisms that the agency theory and the information service provider theory have been subjected to, and the advantages that smart application companies enjoy, which led to the emergence of the transportation contract theory and the composite service theory, we will address this in this section in the following two sections, where the first section deals with the transportation contract theory, and the second section with the composite service theory.

FIRST: THE THEORY OF THE CONTRACT OF CARRIAGE:

Given the advantages that smart application companies enjoy, which give them control and contractual power, whether in the transportation contract or in contracting with drivers or with users (passengers), which has led to them being subjected to many criticisms, given that they are considered information society services due to the control and contractual power that these companies possess in controlling all aspects of the contract, some have gone so far as to consider these companies as carriers in the legal sense, and therefore not merely intermediaries providing electronic services.

Smart apps set the requirements and terms of use, whether these requirements and terms relate to the type of driver, the vehicle's characteristics, the locations where smart app companies provide their services, or the routes they take. They also take disciplinary measures for misconduct by drivers, according to the terms they impose upon contracting with them. These apps also set service prices automatically, and this is independent of either the driver or the passenger. This gives them the ability to regulate the behavior of multiple drivers, contributing to significant operational efficiency. At the same time, they also have the ability to set price levels based on the continuous fluctuations in market demand. This makes it very difficult to compare the services provided by these companies. An example of this is Uber, which offers users the opportunity to view commercial offers provided by functionally independent contractors, such as airlines and hotels. These companies are independent in setting the terms and prices under which they provide their services and compete in the market, unlike transportation companies such as Uber, which provide the same service in a uniform manner for all users. Users choose the means of transportation based on physical proximity to the vehicle, not on comparison and differentiation between the available offers. Some companies provide their drivers with a smartphone and a communication line to enable them to activate the service provided by the application. It also facilitates communication between the application, drivers, and passengers. It also works to provide legal and financial assistance by paying fines or legal prosecutions that affect drivers as a result of providing these services and doing their work with them. In light of the above evidence that has been collected so far, it is clear that smart applications do not only work as an intermediary, but rather they work as a real organizer and operator of transportation services⁽¹³⁾ ..

In the case brought before the European Court of Justice pursuant to a request submitted by the Third Commercial Court of Barcelona, in a case brought by the professional organization representing taxi drivers in the Barcelona region, the European Court of Justice decided to reject Uber as a mere provider of an electronic information society service. It is true that the contracts concluded through it, by connecting a non-professional driver using his private car with a user who wishes to carry out a transportation operation, are true. According to the evidence, the platform's operating methods and characteristics indisputably demonstrate that this service provided by these companies is not an electronic mediation system, but rather a modern transportation service using smartphone programs, systems, and applications. This is reinforced by the fact that, without the programs and technological systems used by these companies, non-professional drivers who work for them using their private cars would not be able to provide transportation services, nor would users who wish to carry out transportation using the services offered by these non-professional drivers. In addition, these companies have the ability to exercise control and influence over the conditions under which the basic transportation service is provided, including the mechanism by which prices are determined. The method of collecting it from users, the percentage of drivers' wages from it, the testing of drivers, their number and types, and the court indicated that the concept of services in the field of transportation includes the transportation process itself and any service associated with it by its nature, whether it is the transportation of people or goods from one place to another by means of transportation, and that it is not limited to the concept of transportation itself only⁽¹⁴⁾ ..

Therefore, we conclude from the above that the user constantly interacts with smart applications as an integrated unit, as the driver works for these applications, and the user is the one who chooses them. This choice is not based on personal considerations, but rather on financial considerations, in terms of the proximity of the vehicle driven by the driver to the user. Smart transportation applications enjoy a high level of control compared to the drivers working for them. These applications subject them to continuous evaluation and impose working conditions, although drivers have complete freedom to accept transportation requests sent to them or any other commercial or non-commercial activity. It is important to note here that this matter is included in their evaluation, which negatively affects the driver's work in the event of repeated refusal, and this may lead to the termination of their services. This pushes the driver to obtain the best evaluations, namely that these applications impose contractual terms, such as prohibiting and restricting access to and use of the application by users (passengers) and drivers, at the discretion of the application companies, as they alone determine prices, payment methods, and service offers. They work to provide a unified service to all users. This makes these smart applications merely a provider of information society services, like other smart applications in airlines, hotel companies, etc., while the latter have no connection to the price and terms of the contract, do not control them, and only collect a commission for providing this electronic service. This makes smart transportation applications apply to the legal carrier meaning, and the contract concluded is a transportation contract, and their role is not merely that of a service provider; since the basic service is based on transporting individuals (passengers) from one place to another, and not the communication services provided by smart application companies in their current and economically dominant form.

This is what the Egyptian legislator emphasized in this regard with regard to obligating companies licensed to work within the system of land transport services for passengers using information technology not to employ licensed drivers unless they submit a certificate proving their participation in social insurance, and that the vehicle owner be insured in accordance with the provisions of the Social Insurance Law. The Egyptian legislator was keen to oblige companies to make good choices for drivers in terms of morals and professions, and that the company conducts a random sample examination of no less than (0.5%) of its drivers. Companies must also be committed to providing a certificate stating that the driver has been trained and qualified to deal through the smart application, with regard to the vehicle through which the service is provided. The legislator was keen to oblige companies to complete the insurance facility number for all vehicles operating through the system; It also obligated them to conduct the necessary inspection and examination of the vehicle before adding it to the service, and stipulated that it be in good technical condition, that it be air-conditioned, and that its windows not be tinted, obscured, or covered with curtains that violate the law or are opaque, as the vehicle must be in a suitable condition to provide a good level of service. It also obligated companies to reduce the year of manufacture to five years at most by the end of 2024 for vehicles that provide the service, according to a policy submitted by the company within three months from the date of its licensing.⁽¹⁵⁾

SECOND: THE THEORY OF COMPLEX SERVICE:

After the emergence of the trend that sees smart transportation applications working to provide transportation services, and that they bear responsibility for the transportation process in the same way that the carrier bears, which raised in Europe the issue of the possibility of legally separating the communication service provided by electronic means from the basic service, which is the transportation process, and that the laws and instructions related to electronic commerce be applied to communication services provided by electronic means (information service provider), as the provider of electronic information society services is not required to register in the country in which it carries out its activities and provides its services, while if the information service provider is registered with one of the European Union countries for services related to transportation, which requires those who wish to provide its services and practice it to register in the country in which it carries out its activity.⁽¹⁶⁾

I draw on the case law of the European Court of Justice that composite services must include certain conditions, which can be determined by two criteria:

1. The two components that constitute the service must be economically independent of each other, i.e., the company providing the contact information must be economically separate from the company providing the service, which is primarily responsible for the transmission process.
2. The majority of the service provided must be provided electronically, i.e., to the greatest extent possible, and the material part of the remaining contractual obligation must be performed physically. The court must assess each case presented to it according to these two criteria.⁽¹⁷⁾

Regarding contracts concluded through smart transportation applications, the communication information service and the paid transportation service from one place to another are linked to each other,

giving each an equal value. The transportation process and the electronic contracting process constitute an equal value for each. This makes smart applications that provide transportation services a service in the field of transportation, and excludes them from being considered e-commerce, and thus the application of the provisions and rules of e-commerce. This is what the European Court of Justice decided in the application submitted by the Third Commercial Court in Barcelona, filed by the professional organization representing taxi drivers, which considered the communication information service component and the transportation process component in Uber to be of equal economic importance, and considered them economically related aspects of the transportation business.

And when looking at the nature of the contract between smart application operators and passengers, you find it closer to a contracting contract through its nature, which requires the carrier, who are smart application operators, to undertake a task, which is the commitment to transport the thing or person to another place, and at a specific time without being subject to his control or supervision in exchange for a fee paid by the passenger, as the basic thing that is the essence of the contracting contract without his control or supervision, which excludes the consideration of separating the electronic service from the transportation process.⁽¹⁸⁾

The second requirement: the relationship between the driver and the company

Since the driver here, after the entry of an intermediary between him and the passenger in the contractual relationship, has become a different party, especially in the adaptation of his relationship with the intermediary and the extent of its impact on his obligations towards the intermediary and also towards the passenger, it was necessary for us to address this relationship by researching in two branches as follows:

SECTION ONE: THE DRIVER IS AN INDEPENDENT CONTRACTOR.

Ride-hailing apps rely on drivers who own their own cars and have the desire and time to work within the app. These apps, such as Uber or Careem, have set a controversial classification and condition, which is to consider drivers as independent contractors, through their terms for downloading the app for drivers. These conditions have a very significant impact on the legal status of these people. If they are considered independent contractors, this makes them liable for any harm that may befall the passenger, without the operator of the smart application bearing any of that responsibility, since the driver agreed to this condition when he started working in transportation via smart applications, and he knows that he is an independent contractor according to those conditions stipulated in that application when he downloaded it onto his electronic device. This has affected the ire of most labor unions specialized in defending workers' rights, as these unions have taken it upon themselves to file a lawsuit before the competent courts in the United States of America in the state of California, as the labor court in the aforementioned state decided to classify the driver as an employee of the Uber company, according to the labor law legislation in force there, and he cannot be considered an independent contractor from the company, as long as the company has positioned itself as a company that transports people and goods from one place to another, and plays an important role in controlling drivers by setting the wage, determining the route of the trip, and also directing penalties to those who violate those orders issued by it.⁽¹⁹⁾

In the same context, a decision was issued by the United Kingdom Supreme Court in Britain, stipulating that drivers working for the people-transportation company Uber are considered employees of the company, entitled to the minimum wage, according to UK law, and cannot be considered independent contractors. These judicial decisions were based on determining that drivers working for the company are workers, by answering some questions that were raised: Does the smart application determine the fares for the trip? Is the driver allowed to negotiate wages? Does the driver adhere to the routes and routes determined by the application? Do these applications impose decisions that are non-negotiable by the driver? Such as discounts, clothing, etc. We find that we find that the answer to most of these questions is that the application determines all of this, and the driver cannot violate any of it. Therefore, these judicial decisions defined the relationship between the smart application operator and the driver as the latter working as an employee and not an independent contractor.⁽²⁰⁾

This last opinion, which is that the driver is an employee of the smart application operator, is not desired by most companies that work in transportation via smart applications, as they stipulate among their conditions for approving the driver that he be an independent contractor from them, and perhaps the conditions of the Uber company are an example of this, as it considers the driver an independent contractor from it and must bear the consequences of the risks of his work (). Among the laws that relied on setting standards to determine whether a person is considered a worker or an independent contractor is the American Fair Labor Standards Act (FLSA), as it evaluates the factors known as economic facts, as this law specified a method or test to establish the employment relationship as follows:⁽²¹⁾

- ❖ Is the work performed considered the work of the original employer? This means that if the work performed by the employee is part of the original employer's duties, then this is an employee relationship, not an independent contractor relationship.
- ❖ Is the employee's managerial skill influential in generating profits and bearing losses? If the employee is likely to incur losses, this indicates that he or she is an independent contractor, not an employee.
- ❖ Does the nature of the work require special skills? If the work requires special skills and decision-making from the employee, this indicates that the relationship is an independent contractor, not an employee relationship.
- ❖ Is the relationship permanent or indefinite? If the relationship is permanent or indefinite at a specific time, this indicates that it is an employment relationship, not an independent contractor relationship.
- ❖ The degree and nature of the employer's control? If the employer controls the employee in determining key aspects of the work, this indicates an employment relationship. The researcher believes it is necessary to establish such controls in Iraqi legislation, should a law specifically governing transportation via smart applications be enacted. This will help the judiciary determine the person responsible for compensation when harm occurs to any party to a contractual or tortious relationship.
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SECOND BRANCH: DRIVER WORKER

Smart application transportation companies resort to dictating their terms to the drivers working for them through their policies of including conditions that they impose on each person who downloads that application on his electronic device. Sometimes they go further than that by not allowing the people working for them to download that application, except after signing a standard contract that includes most of those arbitrary conditions, which are signed in writing by the company's agent located in the city. Perhaps the most prominent of those conditions is the exemption of the application operator or the company's responsibility, and placing it completely on the driver or passenger in the event of harm caused by one of them to the other, even in the event that the company or the application informs them of the possibility of that harm occurring⁽²²⁾.

Therefore, these contracts can be classified as contracts of adhesion, and the judge may amend the contract, mitigate those conditions, or even exempt the party from them, whenever he deems it appropriate for justice. This is what the Egyptian Civil Code No. 131 of 1948 went for, as it stated, "If the contract was concluded by way of adhesion, and it included arbitrary conditions, the judge may amend these conditions or exempt the adhering party from them, in accordance with what justice requires, and any agreement to the contrary is void."⁽²³⁾.

It seems clear that any condition in the contract is invalid if it violates the rules of justice. Since the experience of transportation via smart applications is new in Iraq, we did not find judicial decisions in this area, but there are many judicial decisions issued by foreign courts on this subject. One of the passengers using an Uber car presented that he was physically injured due to one of the company's drivers. Uber denied responsibility for the accident, as it confirmed that the drivers working for it are independent contractors and cannot be considered workers. This argument was due to the fact that its policies depend on the driver's acceptance of the terms published on its website, and that the driver is considered to have agreed to them if he clicks to accept the terms and downloads the smart application on his electronic device⁽²⁴⁾ ..

Perhaps the O'Connor case is one of the cases related to the issue of considering drivers as workers or independent contractors, as we find many details in the court in this regard. Uber presented to the California District Court in the United States of America that it was not a carrier in the legal sense, and that it was not an employer for drivers, but rather a technology company that offers a smart application that can be used via electronic devices to facilitate passenger transportation with its driver partners. However, the court rejected this argument and considered it merely a verbal formulation, as the court focused on the essence of what these smart applications do for the purpose of classifying its workers: whether they can be considered independent contractors or merely workers. Therefore, the court focused on the issue that Uber did not present itself as a software company, but rather as a provider of transportation services, through its employees who are drivers of vehicles to carry out the trips requested by passengers or customers. The court can determine this through the level of control and domination by these applications over drivers, to determine that they are its workers.⁽²⁵⁾ .

While Uber continued to defend itself from liability, claiming that it lacks control over drivers' working hours, does not require drivers to log in to the application at a specific time, but rather leaves the choice to the driver himself, and only requires him to make one trip every (180) days, the court nevertheless

found that the standard of control and dominance of the driver is a heavy standard, in the event that he is considered an independent contractor and not a worker. Perhaps the most relevant and central question in this case is the extent of Uber's control and dominance over the driver, and the flexibility factor granted to him is considered a single standard in the event that the driver logs in to the application, taking into account the other conditions that Uber imposes on him, which are not negotiable, such as its requirement to specify a percentage for each trip, and to set the price in advance according to the distance traveled, and that it monitors drivers who refuse all trips. All of this contradicts what the company claims that it allows them the freedom to refuse the passenger or customer during their work. The court confirmed that it has complete control over determining the route, price, and non-negotiable terms with drivers. Therefore, the court found that Uber has unilateral control and dominance, and the driver has no room to negotiate or change that control through the smart application or the operator. The court went further, by finding that Uber's control and dominance are not limited to what was mentioned above only; It extends to imposing the company logo on the car in a visible place, and also requires drivers to wear specific professional clothing. It also does not allow drivers to work or attract customers or passengers from outside its smart application, and disables their access to the application if this is discovered. It also placed monitors on drivers, by classifying drivers into two categories: "Captain" and "Super Captain." The latter has the authority to monitor the rest of the drivers in the field to monitor their implementation of these conditions, so that the company can make decisions based on the observations provided by the monitors. The Uber application also regularly acts in exercising its authority by terminating or deactivating a group of drivers within the limits of (5%) of those who receive the lowest rating from the total number of drivers working for it, and on a regular basis. Therefore, the court decided that drivers working for Uber are workers and not independent contractors.⁽²⁶⁾

By analyzing the above judicial decision, we find that determining the nature of the relationship between the smart application operator and the driver requires a realistic and accurate analysis. We find that the court relied on the American Fair Labor Standards Act (FLSA) to determine the relationship between them. Perhaps the most prominent of these criteria is the amount of control and dominance exercised by the application operator over drivers, and the contractual imbalance between the two parties, as the first party enjoys a stronger position than the second party. It also sets conditions that are not open to negotiation and discussion, such as setting the price for each trip, and other criteria that confirm that the relationship is a work relationship between them and not an independent contractor. Therefore, we find it necessary to define these criteria in Arab laws that have enacted laws regulating work in transportation via smart applications, such as Egyptian Legislation No. (87) of 2018. This necessity comes to determine the type of relationship between the application operator and the driver, according to the nature of the relationship between them and the extent of that relationship, with reference to some Arab countries that have issued instructions and regulations to regulate work via these smart transportation applications, such as the Jordanian Passenger Transport Regulation No. (9) of 2018, which is related to transportation via smart applications. By extrapolating Article (5), Paragraph (e) of this regulation,⁽²⁷⁾ We find that it holds the smart application operator responsible in the event of an error or action or damage to the passenger and guarantees the proper implementation of the transportation process. From this text, we find that this system has defined the nature of the relationship between the application operator and the driver as a work relationship, and that the employer is responsible for everything issued by the driver, as well as the meaning of paragraph (w) of the same article, which obligated the operator to provide additional insurance for the purpose of guaranteeing damages that may arise to beneficiaries and passengers. Rather, it went on to hold the application operator and those in charge of it jointly and severally responsible for those damages in the event of the expiration or cancellation of the insurance policy.

CONCLUSION

4. Smart app operators themselves set the terms of the contract, and they also authorize, revoke, or restrict access to and use of the smart app by users (passengers.)

5. Drivers are under no obligation other than to carry out the trip at the discretion of the app operators and in accordance with the terms and instructions they impose. Furthermore, the app operators set the pricing and payment methods, offer promotions to the public, award points, and provide a single service to the general public. In this regard, the researcher believes that smart app operators cannot be considered commission agents for transportation, whether for passengers or drivers, because they are the ones who set the contracting mechanism and how the transportation process is completed.

6. The process of separating the electronic service from the transportation service is not possible in an inseparable way because the two elements are linked together, as transportation companies via smart applications practice transportation service, which may be considered a legal practice, as long as

the company practicing these activities has the necessary licenses to practice its business and provide transportation services. On the contrary, in the event that smart application companies do not obtain the necessary licenses to practice their activities, which leads to the suspension of the services of these companies.

FOOTNOTES

- (1) Dr. Farid Al-Mashriqi, *Principles of Egyptian Commercial Law*, Vol. 1, Anglo-Egyptian Library, Cairo, 1954, p. 459.
- (2) Dr. Ali Al-Baroudi, *Contracts and Commercial Banking Operations*, University Publications House; Alexandria, 2001, p. 56.
- (3) Dr. Ali Al-Baroudi, *Contracts and Commercial Banking Operations*, previous source, p. 56.
- (4) Dr. Hani Dawidar, *The Commercial Legal System*, University Foundation for Studies, Publishing and Distribution, Beirut, Lebanon, 1997, p. 270.
- (5) Dr. Hani Dawidar, *The Commercial Legal System*, previous source, p. 271.
- (6) Edward Eid; *Commercial Contracts and Banking Operations*, previous source, p. 377.
- (7) Francisco De Masi, *The Uber Case: A ride for the future of the European Single Market*, Master's Degree Thesis, Luiss University, Italy, 2017, p.40
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