

## **Sharing Economy Encountered Legal Quagmire: When Private Cars Entered the Taxi Market**

**Shi-Peng CAO**

School of Law, Renmin University of China, Beijing 100872, China

**Zi-Xin CHEN**

Department of Physics, Renmin University of China, Beijing 100872, China

**Rong-Ze MA**

School of Economics, Renmin University of China, Beijing 100872, China

**He YAO**

School of Administration and Policy, Renmin University of China, Beijing 100872, China

**Jie YUAN**

School of Sociology and Population, Renmin University of China, Beijing 100872, China

### **Abstract**

*As society continues to advance, technology has spearheaded the transformation of the way we work, live and play. Sharing economy has been developed and spread gradually and then rapidly, but many problems have happened at the same time. The legal quagmire is an important issue; we will take the private cars entering the taxi market as an example to analyze this problem. By comparing Uber and Didi—a kind of “special car”(zhuanchein Chinese) service in Beijing, China—three major legal problems are analyzed: (1) the legal responsibility of the driver, car owner and the company; (2) the labor relationship between the company and the driver ;and (3) insurance issues. Moreover, changes of the Chinese laws governing the sharing economy of private cars in the market are proposed. Similarly, in anticipation of the law changes, modifications for the calling-car apps aiming to avoid the legal quagmire are also proposed.*

**Keyword:** Sharing economy, Uber, Didi, Private car, Legal quagmire, Operation mode.

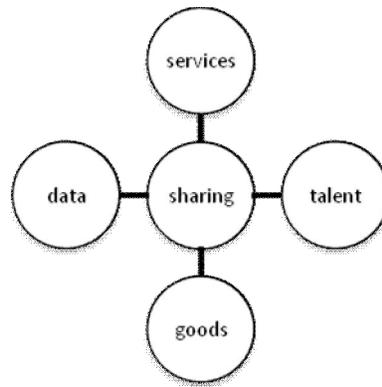
### **Introduction**

Sharing economy as a business model has a long history. In 1978, “collaborative consumption”, a term coined by Felson and Spaeth [1978], emerged. In the mid-2000s, it evolved to “sharing economy”, a new business mode inspired by enabling social technologies (e.g., Facebook and WeChat), global population growth and resource depletion. For example, one inspiration was that a privately owned car when shared with others will increase its value and decrease the waste of resources. That is, everyone can be both the owner and the consumer in a sharing economy.<sup>1</sup>

The sharing economy refers to economic and social systems that enable shared access to goods, services, data and talent[Felson & Spaeth, 1978] (Fig. 1). These systems take a variety of forms but all leverage information technology to empower individuals, corporations, non-profits and government with information that enables distribution, sharing and reuse of excess in goods and services. A common premise is that when information about goods is shared, the value of those goods increases, for the business, for individuals, and for the community.

---

<sup>1</sup>[https://en.wikipedia.org/wiki/Sharing\\_economy#cite\\_note-11](https://en.wikipedia.org/wiki/Sharing_economy#cite_note-11) (July 7, 2015).



**Fig. 1: Sketch of how the sharing economy works.**

The sharing economy has been developed and spread gradually, but many problems have been raised [Dong, 2015; Zhou, 2015; Jiang & Zhou, 2015; Flegenheimer, 2013]. In this paper, we focus on the particular example of private cars entering the taxi market, in the case of Uber and Didi.<sup>2</sup> While this represents a typical sharing-economic mode there are still many debates in permitting private cars to enter the transportation market. It is worth mentioning that there is not yet any formal taxi industry legislation in China. What happened was that the China State Council in 2007 has released the draft of Urban Public Transport Regulations. Later, in 2014, the draft of taxi legislation was presented to the public. It shows that efforts were being made to promote the legislation process but the process is unfinished. Resultantly, a whole-industry norm with legal documents does not exist.

In the following, the legal quagmire of sharing economy in the case of private cars entering the market is examined by comparing Uber and Didi. Three main legal problems will be analyzed: responsibility, relationship and compensation. Finally, suggestions and predictions are given.

## 2. Background

Here, some backgrounds about the taxi industry and private cars entering the taxi market in the city of Beijing, China, are introduced.

### 2.1 The Taxi Industry

Article 3 of the Urban Taxi Regulations<sup>3</sup> (UTR) prescribes that “taxis refer to cars approved by authority in charge which provide service for passengers according to their wishes and charge on the basis of the travel mileage and time”. And in other local legislatures, taxis are described by “having legal operation qualification”, “with administrative licensing”, “obtaining management rights according to law”, etc. So, the operation of taxis is administrative and controlled by government. The existing regulations make provisions of the qualification and procedure for companies and individuals who want to join the taxi industry. Articles 8 and 9 of UTR prescribe clearly conditions that those companies and individuals should conform to.<sup>4,5</sup> And Article 11 prescribes specific documents which should be submitted by companies and individuals applying for the operation of taxis.<sup>6</sup>

<sup>2</sup> In this paper, Uber and Didi refer to the two companies operating in China that use app platform to organize private cars to transport people for profit. Their modes of service will be explained in section 2.2. And in this paper we talk about the service which is illegal, i.e., private cars are used to transport people to earn money *without* license.

<sup>3</sup> “Urban Taxi Regulations” was issued by the Ministry of Construction and the Ministry of Public Security in 1998.

<sup>4</sup> Article 8 of UTR prescribes that “Companies of taxi industry should conform to the following conditions: (1) Have traffic vehicles conforming to the requirements and a corresponding amount of money; (2) have a management area conforming to the requirement; (3) have management staff and drivers conforming to the requirement; (4) have a management and operation system matching the business model; (5) be able to bear civil responsibility; (6) conform to other related conditions”.

<sup>5</sup> Article 9 of UTR prescribes that “Individual operators of taxi industry should conform to the following conditions: (1) Have a traffic vehicle conforming to the requirement and a corresponding amount of money; (2) have a parking area conforming to the requirement; (3) conform to other related conditions”.

<sup>6</sup> Article 11 of UTR prescribes that “Management enterprises and individual operators of taxi industry, which are called operators for short, should submit the following documents to the transportation management department: (1) Written application; (2) management plan and feasibility report; (3) certificate of property and credit; (4) the management and operation system; (5) the documents about management area; (6) other related documents conforming to the conditions”.

As for becoming a taxi driver, Article 10 prescribes that people can be engaged in driving taxis as long as they have a valid driver's license and have passed the vocational training.<sup>7</sup> But in reality, there does not exist a centralized department managing taxi drivers, and the training and assessment requirements for them are not implemented.

In China, according to different management bodies, the taxi business model is divided into three types: (1) the contract business model, (2) company's direct management model, and (3) individual business model. On the whole, the contract business model is dominant, accounting for more than 85% [Chai, 2013].<sup>8</sup>

In the contract business model, taxi companies enjoy the ownership of taxis and management right. Taxi companies get the permit by auction or administrative approval; taxi drivers cannot get the license directly from the government. Taxi drivers contract for management right with companies; they pay the whole contract cost to companies in one time. And they also pay a certain amount of money as management fee every month.

As in the contract business model, in the company's direct management model taxi companies enjoy the ownership of taxis and management right, too. But the difference is that after the taxi companies obtain the permit by auction or administrative approval, they buy cars directly and hire drivers working for them. In this model, the relationship between companies and drivers are labor relations, which are protected by law. Drivers are employees, and enjoy the general welfare provided by companies.

In the individual business model, different from the other two models, individual operators enjoy the ownership of taxis and management rights. Individuals are allowed to invest and manage taxis. Operators, who fulfil the lawful requirements and have certain wealth and management ability, could get into the taxi industry after they go through specific procedures, get the permit, buy a car, and handle relevant licenses.<sup>9</sup>

In all cases, local transportation departments are in charge of handing out taxi licenses by auction or administrative approval.<sup>10</sup> And the taxi fare is priced by government according to the economic development level and fuel price; taxi management department is in charge of the proposal, demonstration and approval of adjusting the taxi fare; taxi management department and price department are in charge of supervising the taxi fare and the use of taximeter together. Every taxi is required to install taximeter to ensure a fair trade.<sup>11</sup>

## 2.2. Private Cars in the Taxi Market

Here, "private cars in the taxi market" refers to the case that the private-car owners enter the market and make profit by picking up passengers through special network platforms, *without* a license from the government. On the other hand, the private-car owner needs to submit the information of individual operator, car, and car insurance to the platform company involved; pass the check by the company; and get special service training from the company. These cars are called "special cars" (zhuanche) in China, which refer to cars operated specially for transporting someone (or something). Within this definition, according to the ownership of the car, special cars are divided into two types: the car is owned (1) privately or (2) by a car-rental company.

According to Uber's official [website](#), Uber defines itself as an information content provider. In addition, Uber registered in Holland in 2009 while its headquarters is in San Francisco, California, USA.<sup>12</sup> Uber began trial operation in Shanghai in August, 2013; it went into operation formally in Shanghai, Beijing and Shenzhen in June, 2014 [Wang et al, 2015]. Didi belongs to Beijing Xiaoju Science and Technology Co., Ltd.

<sup>7</sup> Article 10 of UTR prescribes that "Taxi drivers should conform to the following conditions: (1) Have permanent residence or temporary residence; (2) have a drive license for at least 2 years; (3) be trained in passenger service and pass the test; (4) observe law and discipline".

<sup>8</sup> In this paper, Chinese names are in pinyin. In the text, the family name appears first; in the paper's author list, the family name appears last.

<sup>9</sup> Article 3 of "Interim regulations for the compensation of the operation right of the taxi transportation in Wenzhou" prescribes that "A citizen with a permanent residence in Wenzhou city who is more than 18 years old (including 18) and able to bear civil responsibility, or a corporation registered in urban city and other organizations all can participate in the action".

<sup>10</sup> Article 4 of UTR prescribes that "The development plan of taxi industry is compiled by urban construction administrative department and other related departments, and it is included into the city plan and put into effect after approved by government".

<sup>11</sup> Article 17 of UTR prescribes that "Operators should follow the standards set up by the local price department and construction administrative department, and use the fare invoice printed by local transportation management department in conjunction with the tax department".

<sup>12</sup> <https://www.uber.com.cn/about> (July 7, 2015).

It registered in Beijing and its headquarters is in Haidian District, Beijing.<sup>13</sup> A brief comparison between Uber and Didi is given in Table 1.

**Table 1: Comparison between Uber (in Beijing) and Didi.**

**Source:** official websites and the contracts signed between platform and driver, and between platform and passenger.

	Uber	Didi
Where company registered in	Holland	China
Whether have a license	×	×
Compulsory traffic insurance	√	√
Commercial insurance (for driver)	√	√
Commercial insurance (for passenger)	√	√
Whether the relationship is a labor relation	√	×
Whether platform be responsible for accident and pay compensation	√	√

Private cars in market do solve some problems of traditional taxis such as their shortage in number, the single-service format, and poor quality of service. In fact, private cars in market meet the passenger's need of transportation, and improve the efficiency of time management since drivers and passengers both can use time better and more freely. So, private cars in market receive a warm welcome since they exist. However, according to Article 63 of Regulations of the People's Republic of China on Road Transport (RRT),<sup>14</sup> private cars in market without an operating license and aiming at earning money is illegal.<sup>15</sup> Consequently, private cars in market such as Uber and Didi are against the law. Furthermore, it is not clear that real-name certificate, insurance certificate, and electronic agreement will raise the safety level of the operation of private cars. When car accidents happen, it is not clear that the platform company should be responsible for compensating the drivers and passengers. And the decisive factor of this issue is whether the relationship between the network platform and car drivers is a labor relation or a service relation. This as well as the compensation liability and the relational identity will be analyzed in Sections 3 and 4.

### 3. Legal Problems

From the legal perspective, on the one hand, legal norms about taxi industry are mostly concentrating in government rules and regulations and in local legislatures, and are rarely found in articles in law. And the consequences are: the force of laws is weak, laws and regulations are imperfect, and different regions in the country enforce different standards. On the other hand, legal norms about the taxi industry involve administrative law, economic law, labor law, etc. Thus, the issues can hardly be clarified by linking it to a few laws but have to be analyzed comprehensively.

After analyzing the laws about transport and government permission, we find that there is a grey area in responsibility bearing. We thus start by analyzing responsibility.

#### 3.1. Responsibility

The relationship in this has four main characters: driver, passenger, platform, insurance company. So, what responsibility should they take?

##### 3.1.1. Responsibility of the driver

Based on RRT, the driver of a private car cannot use his or her car to do passenger transportation to earn money without an official license. When an accident happens, the driver (not the car-calling platform) will first be responsible for his illegal operation. And how much responsibility he should take for the accident will be judged by the traffic police according to the accident scene.

<sup>13</sup> <http://www.xiaojukeji.com/website/contact.html> (July 7, 2015).

<sup>14</sup> RRT was issued by the State Council in 2004, and was modified in 2012.

<sup>15</sup> Article 63 of RRT prescribes that "Violating the provisions of this regulation, not getting operating license of road transport or engaging in road transport operation without authorization should be stopped by the road transport management department at or above the county level".

### 3.1.2. Responsibility of the car-calling platform

For the car-calling platform, the major dispute has two parts: (1) Does the platform commit tort? (2) Does the platform have a labor relation with the driver?

#### 1. Joint tort

In Uber's contract, Uber does not acknowledge any labor relations with the driver. In this present form, we think the kind of relationship between Uber and the driver could be called "intermediary relationship". But when doing an intermediary operation, all sides should obey the laws. Also, even though Uber knows that the private car used to transport is illegal it still encourages its use. We can thus say that Uber should be responsible for the illegal action of Uber's driver. But what kind of responsibility should Uber have? We think it is joint tort.

But what responsibility will Uber assume in the passenger's damage compensation? According to Uber's network terms: "The quality of the transportation services requested through the use of the Application or the Service is entirely the responsibility of the Transportation Provider who ultimately provides such transportation services to you. Uber under no circumstance accepts liability in connection with and/or arising from the transportation services provided by the Transportation Provider or any acts, actions, behavior, conduct, and/or negligence on the part of the Transportation Provider. Any complaints about the transportation services provided by the Transportation Provider should therefore be submitted to the Transportation Provider". And "Uber itself does not provide transportation services, and Uber is not a transportation carrier. It is up to the Transportation Provider to offer transportation services, which may be requested through the use of the Application and/or the Service. Uber only acts as intermediary between you and the transportation provider. The provision of the transportation services by the transportation provider to you is therefore subject to the agreement (to be) entered into between you and the Transportation Provider. Uber shall never be a party to such agreement".

We can see that Uber only plays the role of the intermediary. In principle, the intermediary should abide by the principle of honesty and credibility. That is, people shall abide by the laws, regulations and policies of the state, commercial practices and trading habits in the intermediary activities, and shall not engage in illegal intermediary activities and so on. However, as a car-calling platform, Uber knows that or should know that the phenomenon that private cars serve as vehicles operating in violation of China's laws and regulations. As a mediator and a platform, Uber violates the obligations they should undertake. However, in the user terms, Uber also listed "You will comply with all applicable law from your home nation, the country, state and/or city in which you are present while using the Application or Service" and "Uber reserves the right to immediately terminate the Service and the use of the Application should you not comply with any of the above rules." This is hypocrisy.

In practice while using the platform, Uber does not strictly examine registered drivers. In the Uber-X series, Uber uses "laissez faire" in private cars. So we believe that the illegal operation of the driver and Uber's laissez faire belong to the joint tort. According to the Tort Liability Law of the People's Republic of China<sup>16</sup> (TLL): The scope of application of joint and several liabilities are not limited to, so joint tort contributes to the result of the scope of application of joint and several liabilities. We thus believe that Uber's liability should be based on the New Personal Injury Indemnity Judicature Explanations,<sup>17</sup> whereas, paragraph 1 of Article 3 stipulates: "Two or more people have caused damage in joint intent or joint negligence or although they are not in joint intent or joint negligence, the injurious act combined directly and caused the same injury consequence is constitution of joint tort, which should undertake the joint and several liability according to the article one hundred and thirty of the general principles of the civil law".

In Didi's contract, there is no declaration about the relationship between the company and its driver. But there exists always a labor relation between the labor company and the driver even though the platform just plays an intermediary role. So Didi cannot avoid its responsibility about the illegal action of their drivers. The responsibility is also joint tort.

#### 2. Tort because of labor relations

Base on TLL, the employer should be responsible for the damage caused by his employee when the employee is in working time. Both Uber and Didi do not have clear relationship between themselves and their private-car drivers.

<sup>16</sup> "Tort Liability Law of the People's Republic of China" was issued by National People's Congress Standing Committee in 2010.

<sup>17</sup> "New Personal Injury Indemnity Judicature Explanations" was promulgated by the Supreme People's Court in 2003.

Uber says in its contract that they do not have any labor relations between the company and private-cars drivers while in Didi's contracts; the labor relation is between the driver and other labor companies. But whether there are labor relations or not cannot be judged purely by the contract. There are many disputes (seeSection3.3). And once their relationship is judged as labor relations, they would be responsible for the illegal action of their drivers according to the tort law.

### 3.2. Compensation

The compensation is mainly from the insurance company, but there are also disputes between the company and persons in the car.

#### 1. Insurance company

There are two kinds of insurance which a private-cars' driver will have. One is compulsory traffic insurance; the other is commercial insurance. Based on RRT, every driver will get compulsory-insurance compensation when they have an accident because there is no regulations in compulsory insurance that say that the driver cannot use his private car for transportation. However, the amount covered by compulsory insurance is always not enough. So most drivers use commercial insurance to ensure they will not lose their private property when they meet an accident. In China, strict liability of the mandatory motor-vehicle traffic liability insurance refers to motor-vehicle traffic accidents that cause damage in people, regardless of whether the motor-vehicle party has responsibility or not, and the compensation is paid by the insurance company in the motor-vehicle's third party liability compulsory insurance within the limit of compensation. According to the first paragraph<sup>18</sup> of Article 21 of the Mandatory Motor Vehicle Traffic Liability Insurance Regulations,<sup>19</sup>the insurance company could claim that the private cars shall not be engaged in commercial operation, so they use this claim as an excuse in refusing to pay the third people's personal injury compensation.

Similarly, for the passengers, in accordance with Article 48 of TLL<sup>20</sup>and Article 76 of Road Traffic Safety Law of the People's Republic of China (RTSL),<sup>21,22</sup>if traffic accidents between vehicles result in injuries to passengers compensations should be paid first by insurance companies in the scope of compulsory insurance, and the inadequate part by the drivers according to the size of the fault. But as for commercial insurance, the insurance company has reason to refuse compensating because the private cars engage in commercial operations, expanding the risk on the ground, which are not covered by compulsory insurance. Now the fact is, Uber does not spend any money on their drivers 'insurance premium while Didi does buy another kind of insurance called "accident injury insurance" to cover their passengers. The drawback is that this insurance needs real-name authentication of both the passenger and the driver to become effective. Thus, the validity of this insurance for passengers bought by Didi is very unclear. Didi just let you know they have bought insurance for you by sending you a text message without mentioning the insurance details, which puts the passenger in a very weak position.

#### 2. Drivers and passengers

Many drivers of these car-calling platforms know that they cannot get commercial insurance. So they will encourage their passengers to cheat the traffic police. In this case, they are breaking the law and what they do is an insurance fraud. Both driver and passenger will suffer a lot.

#### 3. Legal relief of right

As a foreign company, Uber's server is not placed physically in China. Uber's user terms say:"These User Terms are subject to the laws of the Netherlands.

---

<sup>18</sup>The first paragraph of Article 21 of the Mandatory Motor Vehicle Traffic Liability Insurance Regulations prescribes that "The vehicle which has insurance suffered traffic accident which has caused person in vehicle, the victims who are outside the insurance field casualties and property loss, the compensate is paid by the insurance company in accordance with the law in a motor vehicle accident liability compulsory insurance liability limit within the scope of compensation".

<sup>19</sup>"Mandatory Motor Vehicle Traffic Liability Insurance Regulations" was issued by the State Council in 2006 and modified in 2012.

<sup>20</sup>Article 48 of TLL prescribes that "Damage caused by motor vehicle traffic accident, assuming liability to pay compensation in accordance with the relevant provisions of RTSL".

<sup>21</sup>Article 76 of RTSL prescribes that "Personal casualty and property loss caused by motor vehicle traffic accident, the insurance company should pay for insurance compensation".

<sup>22</sup>"Road Traffic Safety Law of the People's Republic of China" was issued by National People's Congress Standing Committee in 2011.

Any dispute, claim or controversy arising out of or relating to these User Terms or the breach, termination, enforcement, interpretation or validity thereof or the use of the Website, the Service or the Application (collectively, “Disputes”) will be settled exclusively by the competent court in Amsterdam, the Netherlands, unless you notify Uber within one month after Uber invoking its right pursuant to this provision to commence court proceedings in Amsterdam, the Netherlands, that you demand settlement of the dispute, claim or controversy at hand before the relevant court competent by law”.

Obviously, this contract is a foreign contract; the parties may choose the applicable law to deal with the dispute over the contract, except as otherwise stipulated by law. The parties to a foreign-related contract have no choice; the law of the state which is the most closely related to the contract shall be applied. China’s law follows the principle of “doctrine of autonomy of will” and “the most closely related principle”. According to the former, the parties can choose which the substantive law they use, but not the procedure law. Also, most closely linked to the principle, the performance characteristics of the method should be the applicable law which is a reflection of the character of the contract obligations to fulfill people’s domicile, habitual legal permanent residence or place of business. Uber in China plays a role of intermediary between passengers and vehicle-service providers. In the case of no provisions in the applicable law, the relationship should be applicable to the laws of China.

In contrast, since Didi is a Chinese company (while Uber is not) the relationship between the two sides becomes a domestic contract. There is no dispute in applying the law of China according to the Contract Law.<sup>23</sup>

#### 4. Fact

Because there is no clear judgment about the relationship between drivers and companies, and the number of private cars using these apps is large, it is hard to punish those car-calling platforms and those private cars. Also in the trend of sharing economy, it is hard to forbid those kinds of new system. But as we can see now, both the driver and passenger will suffer a great loss when they have an accident. Though according to the laws, the platforms should have liability but, in practice, there are no direct and clear regulations and laws to limit this new kind of company. And it takes a lot to fight for one’s right against those companies.

### 3.3. Labor Relations: Disputes and the Private-Car Drivers

In January 2015, Uber was sued by drivers. Before that, Uber drivers paid gasoline fee and vehicle maintenance cost by themselves, etc. Drivers in the lawsuit hoped the court will rule that they belong to Uber’s full-time employees rather than temporary workers so that the drivers can be reimbursed for all kinds of fees, including gasoline and car maintenance fees. In March of the same year, Lyft (a special-car company like Uber but in America) also suffered the same thing. If the final judgment is against Uber and Lyft these two giant American taxi-application companies will face sharply rising costs, and may also be forced to pay social security fees and unemployment insurances for drivers.

Presently, many companies in the United States are trying to use sharing-economic models. The company build a network composed of a large number of individual contractors, and, e.g., provide a taxi and housekeeping service. The core of the economic model is to provide a platform to share resources, benefitting the participants. Therefore many people are involved. Also because of the voluntary mode, each person will not be treated as an employee but as a contractor as all economic transactions and interactions between the platform and the users are concerned. In providing a platform, the company only plays the role of allocating corresponding and necessary resources. Meanwhile, the company in the sharing-economic mode will also take some measures to maintain the trading platform and dictate certain requirements. So *if* the relationship between the resource provider (e.g., the private-car driver) and the platform is treated as a labor relation, it will greatly enhance the company’s operating costs and will make the economic advantage of sharing disappear. Here we will analyze in detail the cases about labor relations in recognition of the relevant situations.

#### 1. Uber

About Uber, there are two reasons that the drivers thought they should be treated as full-time employees:

1. The drivers can be hired and fired easily by Uber at will.
2. Uber requires the taxi drivers to undertake certain customer orders and requires them to pass related background checks.

<sup>23</sup> “Contract Law” was issued by National People’s Congress Standing Committee in 1999.

In our opinion, the relationship between Uber and the drivers is just the contractor relationship rather than the employer-employee relationship. The reasons are:

1. The drivers can control their own schedules and have not been assigned specific service areas.
2. Apart from the iPhone and the use of trademark, the company does not provide any other equipment.

Still, here is a new issue: Is the contract relationship also a labor relation? The difference is that in addition to earning wages, laborers in labor relations will also get insurances and welfare benefits, etc. But the natural person in a contract relationship generally receives remuneration only.

The problem is very complicated here. China belongs to the continental law system, where “affiliate said standard” is more acceptable in theory. The subordination is the most important and the most basic feature of the standards of labor relations. It can be used to determine the relationships between employers and employees. “Subordination” could be reflected in two aspects: personality subordination and economic subordination. Personality subordination refers to “except law, collective agreement, management agreement, unless otherwise specified, the labor contract under the employers command, employer cannot decide unilaterally the work place, time, and type” [Liu, 2000]. In other words, everything in providing service is determined by employers; employees just provide labor under employers’ command.

In China, the special legislation on labor relations—Notice on Establishing Labor Relation Matters (ELRM) issued by the Ministry of Labor and Social Security in 2005—stipulated the conditions to ensure the labor relations. ELRM also provides some articles for those who do not have contracts to ensure the labor relations, which could be summarized as “subject eligibility, affiliate, and business affiliate personality”.

Concretely analyzed, the driver's operation should not be decided by Uber unilaterally, and drivers can control their own schedules. That means the status of drivers as employees is not very clear. On the one hand, drivers volunteer to undertake business but at the same time they also accept Uber’s certain requirements. On the other hand, these requirements can be regarded as one of a certain requirement of service in the contract relationship. The most important thing is that the drivers’ behavior and time could be arranged freely, making the “subordination” feature not obvious. For the service contract, except being agreed by both sides, service providers can arrange their time to provide labor services. As for whether providing labor services in legal holidays, or labor issues such as how much time every day, the two parties could decide by themselves. Secondly, Uber just provides drivers a phone and the use of a trademark. In labor relations, the unit (i.e., company) which employs people must have material conditions (such as factories and offices, instruments and equipment) to provide laborers with the necessary safety, health protection and protective equipment. In a contract relationship, material conditions (such as tools and equipment), if not stipulate in the contract, under normal circumstances should be provided by the service provider. Consequently, the use of contract relationship implies that the service providers’ obligations are mainly the results of services provided to comply with the contract.

Article 1 of ELRM<sup>24</sup> makes things more complicated, and here two questions cannot be avoided: (1) Whether the two or more employers in line who choose and employ people have legally the subject qualification. (2) Whether the individual contracting operator has the subject qualification in hiring workers. In other words, when the legality of both sides is in doubt it will be difficult to characterize their mutual relationship. In the case of United States, the relationship between the two parties is decided by the method of “cybernetics”, which does not emphasize employer qualifications but, instead, employers’ control of employees. However, it is contradictory with the flexible work pattern.

The most important thing is that, Uber only recognizes itself as an intermediary when it signs the agreement and Uber considers the relationship as a contract relationship. As an intermediary, Uber just performs information transfer, and do not consider providing car service as their part of function. But in actual operation, Uber exerts a lot of interference and management in the process of content, e.g., the scoring system, free to hire or fire, training drivers, and so on. Secondly, in the service process, Uber takes intervention measures to change the service’s price.

---

<sup>24</sup> Article 1 of ELRM prescribes that “Employer and laborer should have the ‘subject qualification’ in accordance with laws and regulations”. The “subject” refers usually to an individual or unit that participates in some kind of societal activity. “Subject qualification” refers to the legally-specified qualification that should be possessed by the individual/unit when they carry out the societal activity. The activity of any individual/unit who does not possess “subject qualification” may not be recognized by law.

Moreover, Uber also represents car drivers to charge passengers the car service fees and pays the driver separately. From this perspective, Uber does not just exercise the content of the car-service-information provider within the scope of authorization, but actually intervenes the process and content of the car-service operation. All of these are beyond the simple software service provider and client management. So there is the management relationship between Uber and its drivers. Since it is difficult to distinguish between contracting and labor relations, many companies, in order to avoid the responsibility, try to adopt the contract system by signing only the contract (not labor contract) with their laborers. In our opinion, to protect the interests of the laborers, national laws and regulations should recognize the fact that the two sides *do* have labor relations and proceed according to labor laws.

There are other issues of concern. If it is merely a contractual relation between Uber and the private-car driver, then how to operate is purely the driver's own business; others have no right to interfere. If the driver does not have safe production conditions for the business the contract-issuing party will have to accept the responsibility. According to Article 4 of ELRM,<sup>25</sup> private cars do not have operation qualification in this case, in principle. Yet, Uber still signed the contract with those drivers; then according to the above Article, if something happens that needs someone to take responsibility, Uber has to take it for the private-car drivers.

In our opinion, in fact, the relationship between Uber and private-car drivers is more like a compensable entrustment relationship. First of all, the target of entrustment is certain labor, and this target is the trustee on behalf of the principal to handle the entrusted affair. At the same time, the relationship also meets several major characteristics of the entrustment appointment contract. (1) The agency appointment contract is considered as other people doing things for the principal. Here it refers to the transaction that Uber entrusting its operating service to the driver. (2) In the real operation, based on the Uber's advertisement, the driver is actually in the name of Uber's qualification to participate in the running of the operation. (3) To establish the premise of mutual trust, Uber trains drivers and permits passengers to grade the drivers' service. At the same time, in the operating process of handling the entrusted affair, drivers are in accordance with the instruction of the principal, the obligation of reporting process, and transferring of property characteristics. Besides, Uber represents the car drivers to charge users the car services' fees. It seems more like Uber pays salary to drivers rather than drivers making money through themselves. When the driver suffers losses, Uber as trustee for the driver in the course of handling the entrusted affair shall be liable for the damage caused by their fault-compensation obligations [Wang, 2015].

## 2. Didi

For Didi, they use a pattern called "ride picking" which could enable the private car giving auto services even though Didi also consider itself as just an information intermediary platform. A private-car driver using the platform is the provider of information, and the passenger is the user who uses those information. And Didi writes this explicitly in the contract: Didi as an information service platform used by both sides is just an information-providing online service platform; the two sides go through the platform to make a "ride picking" behavior, which is a mutually voluntary behavior. Thus Didi, as an information service platform, does not assume any responsibility for disputes arising between the two parties (driver and passenger) when the ride-picking behavior causes property damage or personal injury; the two parties have to resolve it among themselves. In the process of ride-picking, drivers can choose to release their own information online which could be added on by peer users, and users choose the car service on their own. But this goes two ways: the driver can also take initiative and pick up passengers who are nearby. In the contract, because the sharing behavior is a public-welfare behavior both parties shall not have commercial behavior; the payment and receipt are done according to the agreement, etc. In the driver's operating process, Didi does not intervene the driver excessively. But occasionally when the drivers are being suspected they will be blacklisted by Didi and will be banned for a certain period of time. But overall there are not that many excessive interventions beyond the contract agreements. So as the ride-picking company of Didi is concerned, both drivers and passengers are their users; Didi just provides a convenient platform for both sides to use.

---

<sup>25</sup> Article 4 of ELRM prescribes that "In the case that the unit that chooses and employs persons such as in building construction and mining enterprises project (business) who have neither the right to do so nor have labor organization or natural-person subject qualification, the organization or natural person to employ the workers shall assume the subject qualification of employment of the labor subject's responsibility".

#### 4. Conclusion and Suggestions

After all of the above analysis, we reach two conclusions.

1. The relationship between the car-calling platform and the private-car drivers is a complex problem that depends mainly on the company's management, attitude and business mode. Since Uber intervenes drivers so much and goes beyond the contract agreements, the relationship between the two sides could be determined to be a labor relation. In contrast, Didi's case is different: it is just an intermediary relation.
2. For all platform-providing companies, the driver and passenger should both be responsible for any loss due to accidents, etc. As for the insurance companies, they should pay for the traffic compulsory insurance but can refuse to pay for the commercial insurance. (Recently, some companies like Didi are cooperating with the insurance companies to work out a solution.)

According to our analysis, we can see that the car-calling platform does not merely act as an intermediary. They also do many things related to the management of drivers and passengers. Since the government cannot control the process of private cars performing business operations, the car-calling platforms actually have responsibility towards the government. However, the platforms companies cannot be held responsible for the liabilities such as labor security, safety security, income security, etc. Needless to say, all these things are closely related to passengers' benefit. According to our analysis of the laws, the platforms shall be responsible for the unauthorized action towards the government and passengers. Under the government's supervision, the car-calling platform should provide safety security for passengers and ensure labor security by a tri party agreement between government, platform and drivers.

Finally, as a sharing-economy product, car-calling platforms should regard both passengers *and* drivers as their users. According to the security requirement and social traffic regulations, government should slowly ease traffic-operation qualifications, using reversed transmission mechanism to push for improvement of the business sector and break the existing monopolies. The platforms should cooperate with insurance companies, and promote the use of private cars in car-rental companies by signing a special contract to protect the labor relations. Ideally, government should encourage and achieve 100% pure sharing economy—private-car owners unselfishly provide free rides for the public's benefit while the government provides security expenses. In short, what we are witnessing is a new and exciting situation that new technology is forcing the laws to play catch up. Laws are written by people and can thus be modified, with due process, by people.

#### Acknowledgment

We thank Lui Lam, Li Jian-Min and Meng Tao for useful discussions. This project was started at the International Summer School 2015 of Renmin University of China (RUC). We thank RUC for the opportunity to work on this project and financial support.

#### References

- Chai Bao-Ting [2013]. Analysis of taxi business models in China. *Cars and Safety*, Issue 8, 48-53.
- Dong Li-Ren [2015]. Promote the modernization of national governance ability with the thought of "Internet +". *Administration and Law*, Issue 6, 8-13.
- Felson, M. & Spaeth, J. L. [1978]. Community structure and collaborative consumption: A routine activity approach. *American Behavioral Scientist* 2, 614-624.
- Flegenheimer, M. [2013]. All-borough taxis (like Yellow Cabs, but Green) hit the streets. *New York Times*, August 9.
- Jiang Yuan-Qiang & Zhou Xi-Zhao [2015]. The influence factors and development countermeasures of urban car-sharing based on consumer choice. *Business Economic*, Issue 6, 159-163.
- Liu Zhi-Peng [2000]. *Labor law: Theory and the study of sentence*. Taiwan: Yuan Publishing Company.
- Wang Li-Ming [2015]. *Civil Law*. Beijing: China Renmin University Press.
- Wang Wen-Hua, Luo Dan & Liu Sha [2015]. What makes Uber lose the market in China? Jiemian.com May 4, 2015 (<http://www.jiemian.com/article/274711.html>, July 7, 2015).
- Zhou Jian-Ming [2015]. "When government regulations meet with "Internet +". *Phoenix Weekly*, Issue 19 (<http://www.ifengweekly.com/detil.php?id=2026>, July 7, 2015)