

With Innovation Comes Regulation: Driver-Connecting Mobile Application Companies as Common Carriers

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Cite as 61 ATENEO L.J. 844 (2017).

“*The law must be stable, but it must not stand still.*”

— Roscoe Pound, Harvard Law School¹

I. INTRODUCTION

In this day and age, technology has become an indispensable part of everyday living. Advancements in technology have played a crucial role in enhancing the quality of daily life, making it less burdensome to perform tasks in general. With the perpetual innovations in the field of mobile phones in particular, users have experienced not only expanded connectivity with others worldwide, but also increased convenience in their routine, everyday affairs. The most recent phenomenon in mobile phone technology — smartphones — offers its users supreme handheld functionality and, in the process, has substantially altered how people go about their normal activities.

Smartphones are cellular telephones with built-in applications and Internet access, typically with features such as text messaging, electronic mailing, web browsing, and the like.² The said phones operate like powerful, networked multimedia platforms³ that provide users with access to countless avenues for communication. They also allow users to organize their schedule, conduct their business, and even enjoy their favorite entertainment, all through the touch of their fingertips.⁴ Apart from allowing users to stay interconnected with each other round-the-clock,⁵ another highly attractive feature of smartphones is their ability to install and run a

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1. ROSCOE POUND, *INTERPRETATIONS OF LEGAL HISTORY* (1923).
 2. See “Smartphone” Definition from PC Magazine Encyclopedia, *available at* <http://www.pcmag.com/encyclopedia/term/51537/smartphone> (last accessed Jan. 31, 2017).
 3. See Kirstin Fawcett, *The Future is Here: What’s Next For Mobile Phones?*, *available at* <http://www.smithsonianmag.com/smithsonian-institution/the-future-is-here-whats-next-for-mobile-phones-180951479> (last accessed Jan. 31, 2017).
 4. See, e.g., Elizabeth Enochs, *Top Ways Your Smartphone Can Organize Your Life*, *available at* <https://www.verizonwireless.com/news/article/2015/01/top-ways-your-smartphone-can-organize-your-life.html> (last accessed Jan. 31, 2017).
 5. See *Always Connected: How Smartphones and Social Keep Us Engaged*, *available at* [http://www.nu.nl/files/IDC-Facebook%20Always%20Connected%20\(1\).pdf](http://www.nu.nl/files/IDC-Facebook%20Always%20Connected%20(1).pdf) (last accessed Jan. 31, 2017).

wide variety of mobile applications, otherwise referred to as “apps” or “mobile apps.”⁶

Mobile applications are software programs that users may access directly using smartphones or similar mobile devices.⁷ Such apps are developed specially for handheld devices and may either be preloaded on the gadget or downloaded from the Internet through “app stores.”⁸ In other words, apps are specific programs that users may place in their smartphones, thereby maximizing their overall utility.

With the persistent progress in mobile phone technology, “the capabilities of mobile apps continue to improve and expand.”⁹ Aside from offering leisure and entertainment, such mobile apps aid users in boosting productivity and staying organized.¹⁰ From education and business, down to safety and health-related matters, it is likely that an app has been developed for the purpose,¹¹ making life more manageable.

Transport-related apps¹² are one particular category of mobile apps that aim to foster a trouble-free living environment. Smartphones and mobile

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6. See Mobdevapp, Understanding the Different Types of Mobile Applications, *available at* <http://www.mobdevapp.com/understanding-the-different-types-of-mobile-applications> (last accessed Jan. 31, 2017).
 7. See Federal Trade Commission, Consumer Information: Understanding Mobile Apps, *available at* <https://www.consumer.ftc.gov/articles/0018-understanding-mobile-apps> (last accessed Jan. 31, 2017).
 8. See Priya Viswanathan, What is a Mobile Application?, *available at* <http://mobiledevices.about.com/od/glossary/g/What-Is-A-Mobile-Application.htm> (last accessed Jan. 31, 2017).
 9. Caleb Freeman, Different Types of Mobile Apps, *available at* <http://www.freemanhelp.com/different-types-of-mobile-apps> (last accessed Jan. 31, 2017).
 10. See Real Simple, The Best Free Apps to Simplify Your Life, *available at* <http://www.realsimple.com/work-life/technology/organizing-time-savers/best-free-apps> (last accessed Jan. 31, 2017).
 11. See Katherine Xue, Is There an App for That?, *available at* <http://harvardmagazine.com/2013/11/is-there-an-app-for-that> (last accessed Jan. 31, 2017).
 12. See Megan McConville, Blog, *Transport-Related Apps for Your Smartphone*, Feb. 5, 2010, THECITYFIX, *available at* <http://thecityfix.com/blog/transport-related-apps-for-your-smartphone> (last accessed Jan. 31, 2017). See also Shara Karasic, Top 39 local public transportation iPhone apps recommended by city residents & visitors, *available at* <http://www.applicious.com/tech/articles/9581-top-39-local-public-transportation-iphone-apps-recommended-by-city-residents-visitors> (last accessed Jan. 31, 2017).

apps functioning side-by-side have opened a new world of accessibility for all kinds of travelers — daily commuters, business jetsetters, adventurous backpackers, and the like.¹³ Today, users can easily look to their mobile phones for help in acquiring both the information and the means to get from one place to another.

Of the several kinds of transport-related apps, one that connects users directly with drivers in real-time has been widely welcomed all over the world. Such driver-connecting mobile apps¹⁴ allow users to input their respective locations and desired destinations; thereafter, these link them with available carriers, whether public or private, and/or drivers, whether professional or non-professional, to engage for the said purpose.¹⁵ Transport-related apps of this nature are considered as innovative ways to ease the burden of driving or commuting amid varied traffic situations in the city.¹⁶

To be sure, users no longer need to stand in the middle of a busy street with outstretched arms just to hail a cab that will bring them from point A to point B. With a few clicks, for instance, individuals can quickly summon a cab, acquire information about the driver, receive an estimated arrival time, and observe a map showing the vehicle gradually approach the designated pick-up point.¹⁷ Smartphones and transport-related apps working together in close association are steadily erasing the inconveniences of day-to-day public transportation.

Regrettably, the law, in general, has not been able to keep up with the rapid pace of technological improvements, resulting in regulatory gaps in

13. See Christopher Null, 15 Top Transportation Apps for Planes, Trains, and Cars, *available at* http://www.pcworld.com/article/206933/15_top_transportation_apps_for_planes_trains_and_automobiles.html (last accessed Jan. 31, 2017).

14. See Uber, *available at* <https://www.uber.com> (last accessed Jan. 31, 2017); GrabTaxi: The Fastest & Safest Taxi Booking App, *available at* <http://grabtaxi.com> (last accessed Jan. 31, 2017); Easy Taxi, *available at* <http://www.easytaxi.com> (last accessed Jan. 31, 2017); & Tripid, *available at* <http://www.tripid.ph> (last accessed Jan. 31, 2017).

15. See, e.g., Uber, How does Uber work?, *available at* <https://help.uber.com/h/738d1ff7-5fe0-4383-b34c-4a2480efd71e> (last accessed Jan. 31, 2017).

16. See J. Angelo Racoma, Connected commuting and the rise of transport-related social apps, *available at* <https://sg.news.yahoo.com/connected-commuting-rise-transport-related-social-apps-101719168.html> (last accessed Jan. 31, 2017).

17. See Donald Strachan, The best apps for public transport, *available at* <http://www.telegraph.co.uk/travel/travel-advice/9280598/The-best-apps-for-public-transport.html> (last accessed Jan. 31, 2017).

nearly “every domain that [the] technology touches.”¹⁸ As the law appears constrained to play “catch-up,”¹⁹ technology developers continue to devise clever and intricate ways to keep legal issues at bay. The case of the companies in charge of driver-connecting mobile apps is no exception. While the public appears to be persuaded by the supposedly secure and instantaneous services offered by such app companies, the commuters are by no means insulated from any and all problems that may happen on the road. Safety risks are inevitably involved each time users travel, even with the intervention of the technology found in mobile apps. The law ought to be able to enter the picture and provide users with adequate remedies to protect themselves or seek redress whenever the circumstances warrant.

II. OVERVIEW OF DRIVER-CONNECTING MOBILE APPLICATIONS

A. History

The rise of driver-connecting mobile apps arguably began sometime between 2007 and 2008 when the Taxi Magic²⁰ app debuted on the Apple App Store.²¹ The on-the-spot dispatch service app transferred users into taxi routing systems, allowing them to book cabs through the push of a few buttons on their smartphones.²² The app would first detect the location of the users and, on the basis thereof, suggest taxi companies within the area.²³ Users are then given the option of contacting the chosen company either electronically via the app or directly through the phone number provided.²⁴

18. See Vivek Wadhwa, *Laws and Ethics Can't Keep Pace with Technology*, available at <http://www.technologyreview.com/view/526401/laws-and-ethics-cant-keep-pace-with-technology> (last accessed Jan. 31, 2017).

19. See Manav Tanneeru, *Can the Law Keep Up with Technology?*, available at <http://edition.cnn.com/2009/TECH/11/17/law.technology> (last accessed Jan. 31, 2017).

20. See PCWorld, *How Taxi Magic Works its Magic*, available at <http://www.pcworld.com/article/2000117/how-taxi-magic-works-its-magic.html> (last accessed Jan. 31, 2017).

21. *Id.*

22. See Jason Kincaid, *Taxi Magic: Hail A Cab From Your iPhone At The Push Of A Button*, available at <http://techcrunch.com/2008/12/16/taxi-magic-hail-a-cab-from-your-iphone-at-the-push-of-a-button> (last accessed Jan. 31, 2017).

23. *Id.*

24. See PhoneArena, *Taxi Magic app is a new way to hail a cab, but how well does it work?*, available at <http://www.phonearena.com/news/Taxi-Magic-app-is-a->

Taxi Magic first became operational in the United States (U.S.), proclaiming itself as the first nationwide taxi-booking app company.²⁵ It upgraded the taxi dispatching service by letting users bypass the dreadful process of calling a hotline and waiting in vain for a cab to arrive.²⁶ Taxi Magic's mobile application served as the seamless electronic bridge between users and existing taxi companies.²⁷ However, it must be noted that the said app company's business model significantly differed from the models of the more recent companies; for the latter, the users themselves select the taxi fleet or private driver, as the case may be, to engage.²⁸ Such is for the reason that the technology provided by Taxi Magic does not operate as a person-to-person app that functions between the user and the cab driver.²⁹ Rather, said application is sold directly to taxi companies for use in their dispatch centers.³⁰

It was not long until similar companies entered the emergent industry of driver-connecting mobile apps, especially after the Uber app officially launched in San Francisco, California, in 2010.³¹ Taking the traveling experience to a whole new level, Uber set itself apart from traditional driver-connecting app companies by giving its users a small taste of opulence, using sleek black sedans rather than old run-of-the-mill taxis.³² The concept was the same for all intents and purposes, but the Uber app links users directly to

new-way-to-hail-a-cab-but-how-well-does-it-work_id30329 (last accessed Jan. 31, 2017).

25. *Id.*

26. *Id.*

27. PCWorld, *supra* note 20.

28. See David Alpert, Taxi Magic online booking smooth, taxi ride not so much, available at <http://greatergreaterwashington.org/post/11660/taxi-magic-online-booking-smooth-taxi-ride-not-so-much> (last accessed Jan. 31, 2017).

29. PhoneArena, *supra* note 24.

30. See John Roskelley, BUZZREVIEW: Taxi Magic App Works as Advertised, available at <http://www.businessbee.com/resources/news/technology-buzz/buzzreview-taxi-magic-app-works-as-advertised> (last accessed Jan. 31, 2017) & Rebecca Grant, Taxi Magic shows off new powers with biggest update ever, available at <http://venturebeat.com/2012/07/26/taxi-magic-shows-off-new-powers-with-biggest-update-ever> (last accessed Jan. 31, 2017).

31. See generally Travis Kalanick, Uber's Founding, available at <http://blog.uber.com/2010/12/22/ubers-founding> (last accessed Jan. 31, 2017).

32. See John Tamny, Uber, The Amazing Car Service, Lays Waste to Worry About Income Inequality, available at <http://www.forbes.com/sites/johntamny/2013/03/24/uber-the-amazing-car-service-lays-waste-to-worry-about-income-inequality> (last accessed Jan. 31, 2017).

professional drivers, who perform the transportation service in well-maintained luxury cars.³³

Initially, Uber drivers arrived exclusively in high-end cars, such as Lincoln Town Cars, Escalade SUVs, and Mercedes Benz S550 sedans, among others.³⁴ A few years later, Uber introduced UberX, adding a wider selection of non-limousine vehicles to cover a larger and more diverse market.³⁵ UberX gave users a more affordable alternative to the same service, using reputedly lower-end vehicles, such as Toyota Prius Hybrids and Volkswagen Passats, with non-professional drivers performing the transportation services.³⁶ Due to its early success, Uber has expanded its operations to cities outside of the U.S. and is now available in 36 countries, including the Philippines.³⁷

The favorable result of Uber's business sparked competition in its own backyard of San Francisco, California. In the summer of 2012, the Lyft app became publicly available for download in app stores, offering a different twist to the driver-connecting experience.³⁸ Instead of electronically hailing a taxi or a private chauffeur, the said mobile app enables its users to request a ride from others who happen to be driving in the same area.³⁹ The service

33. See Dappered, *Is Uber Worth it? The App-powered, Stylish Alternative to Taxis*, available at <http://dappered.com/2013/08/is-uber-worth-it-the-stylish-alternative-to-taxis> (last accessed Jan. 31, 2017).

34. See Leena Rao, *Uber Brings Its Disruptive Car Service To Chicago*, available at <http://techcrunch.com/2011/09/22/uber-brings-its-disruptive-car-service-to-chicago> (last accessed Jan. 31, 2017).

35. See Alex Wilhelm, *In Another Strike Against The Competition, Uber Lowers UberX Prices In San Diego, LA, And DC*, available at <http://techcrunch.com/2013/10/03/in-another-strike-against-the-competition-uber-lowers-uberx-prices-in-san-diego-la-and-dc> (last accessed Jan. 31, 2017).

36. See Alexia Tsotsis, *Uber Opens Up Platform To Non-Limo Vehicles With "Uber X," Service Will Be 35% Less Expensive*, available at <http://techcrunch.com/2012/07/01/uber-opens-up-platform-to-non-limo-vehicles-with-uber-x-service-will-be-35-less-expensive> (last accessed Jan. 31, 2017).

37. *Uber Cities*, available at <https://www.uber.com/cities> (last accessed Jan. 31, 2017).

38. See Christina Farr, *Lyft team gets \$60M more; now it must prove ride-sharing can go global*, available at <http://venturebeat.com/2013/05/23/lyft-races-ahead-with-60m-in-funding-but-what-challenges-lie-ahead> (last accessed Jan. 31, 2017).

39. See Matt Vella, *The "mega trend" that swallowed Silicon Valley*, available at <http://tech.fortune.cnn.com/2012/10/03/the-mega-trend-that-swallowed-silicon-valley> (last accessed Jan. 31, 2017).

provided by the said company is highly informal, as users deal with non-professional drivers using vehicles that are not for hire.

Lyft aims to build and foster a community among local travelers and car owners within a city through its “peer-to-peer” ridesharing program.⁴⁰ The app company creates a unique environment for users, who are encouraged to take the passenger seat and interact with the drivers. To further break the customer-client barrier, Lyft drivers, who are essentially private individuals who rent out seats in their cars for a few dollars,⁴¹ receive “donations” instead of fares.⁴² Lyft tries to transcend the conventional transportation service by having its passengers feel like being “in the car with a friend.”⁴³

Within the same period, mobile app companies performing the same function of connecting users directly to drivers were conceived outside of the U.S., with the Easy Taxi app launching in Rio de Janeiro, Brazil, in 2011.⁴⁴ Aside from the usual taxi-booking element, the said mobile app also saves the favorite addresses and ride history of users, which become useful, for example, in case they forget their belongings inside the cab.⁴⁵ Easy Taxi is presently operating in 27 different countries and in more than 80 cities,⁴⁶ including Metro Manila.⁴⁷

In June 2012, the MyTeksi app was activated in Malaysia, an app which performs an almost identical function of assisting users secure a taxi service

40. See Farr, *supra* note 38.

41. See The Economist, *A Sense of Place*, *ECONOMIST*, Oct. 27, 2012, available at <http://www.economist.com/news/special-report/21565007-geography-matters-much-ever-despite-digital-revolution-says-patrick-lane> (last accessed Jan. 31, 2017).

42. See Drew Olanoff, *Lyft's Focus On Community And The Story Behind The Pink Mustache*, available at <http://techcrunch.com/2012/09/17/lyfts-focus-on-community-and-the-story-behind-the-pink-mustache> (last accessed Jan. 31, 2017).

43. *Id.*

44. See Camila Lam, *Com Easy Taxi, passageiro localiza o táxi mais próximo*, available at <http://exame.abril.com.br/pme/galerias/central-de-startups/com-easy-taxi-passageiro-localiza-o-taxi-mais-proximo> (last accessed Jan. 31, 2017).

45. See Marvin Velasco, *Easy Taxi App Is Now in Manila*, available at <http://www.hardwarezone.com.ph/tech-news-easy-taxi-app-now-manila> (last accessed Jan. 31, 2017).

46. See Abdul Hannan Tago, *Easy Taxi comes to the Kingdom, making trips hassle-free*, available at <http://www.arabnews.com/news/518831> (last accessed Jan. 31, 2017).

47. Velasco, *supra* note 45.

through their smartphones.⁴⁸ The core product of the said app company is a taxi-dispatch service with Global Positioning System (GPS)-enhancements to help users hail the nearest cab with extreme ease.⁴⁹ Nevertheless, the MyTeksi app draws a distinction from its predecessors by adding a safety feature that permits users to share details of the cab ride on social media.⁵⁰

One year later, MyTeksi branched out in Asia, specifically Thailand,⁵¹ Singapore,⁵² and the Philippines⁵³ under the name, GrabTaxi.⁵⁴ Other Asian countries also have their fair share of purely local mobile apps, such as Taxiwise in Hong Kong,⁵⁵ PingTaxi in Vietnam,⁵⁶ Didi Dache in China,⁵⁷ and Blue Bird in Indonesia.⁵⁸ The business of driver-connecting mobile apps has undoubtedly become a thriving industry, with new technology being developed at a continuously increasing rate. Regardless of the minor differences between one app and another, the main thrust of these app companies remains to be on demand transportation services for users.

48. The Star, MyTeksi makes trial run, confident service will be a hit with customers, *available at* <http://www.thestar.com.my/News/Community/2014/03/14/MyTeksi-makes-trial-run-confident-service-will-be-a-hit-with-customers> (last accessed Jan. 31, 2017).

49. *Id.*

50. Jonathan Gan, Tap For A Cab, *available at* <https://sg.finance.yahoo.com/news/tap-cab-015159736.html> (last accessed Jan. 31, 2017).

51. See Digital News Asia, MyTeksi launches as GrabTaxi in Bangkok and Singapore, *available at* <http://www.digitalnewsasia.com/sizzle-fizzle/myteksi-launches-as-grabtaxi-in-bangkok-and-singapore> (last accessed Jan. 31, 2017).

52. Singapore Business Review, Cab booking app GrabTaxi comes to Singapore, *available at* <http://sbr.com.sg/source/e27/cab-booking-app-grabtaxi-comes-singapore> (last accessed Jan. 31, 2017).

53. GrabTaxi, *supra* note 14.

54. See Tom Noda, GrabTaxi launches new chauffeur service in PH, *available at* <http://newsbytes.ph/2014/05/22/grabtaxi-launches-new-chauffeur-service-in-ph> (last accessed Jan. 31, 2017).

55. See Josh Horwitz, Hong Kong taxi-booking startup Taxiwise gets acquired, *available at* <https://www.techinasia.com/hong-kong-taxi-booking-startup-taxiwise-gets-acquired> (last accessed Jan. 31, 2017).

56. PingTaxi, *available at* <http://pingtaxi.com.vn> (last accessed Jan. 31, 2017).

57. DidiTaxi, *available at* <http://www.xiaojukeji.com/en/taxi.html> (last accessed Jan. 31, 2017).

58. Blue Bird Group, Beyond Transportation, *available at* <http://www.bluebirdgroup.com> (last accessed Jan. 31, 2017).

B. Advantages and Benefits

1. Availability

In almost every major city all over the world, using driver-connecting apps has increasingly become a normal way for people, especially non-drivers, to travel.⁵⁹ Excluding other means of public transportation, such as buses and trains, getting a cab in a busy area like New York City or Makati is not at all an easy endeavor. The vast amount of commuters, coupled with the problem of traffic and the unpredictability of drivers, make it sometimes impossible to acquire a ride to go around the city.

In contrast, individuals staying in a quieter, less populated part of town may also experience trouble because only a small number of cabs pass through the area. Even formally calling an operator and receiving confirmation does not provide any assurance that the taxi will arrive on time, if at all. The lack of guaranteed service and/or taxi unavailability, notwithstanding the relentless demand therefor, is surely an unnecessary nuisance in every society.⁶⁰

2. Safety

Nonetheless, being able to successfully hail a cab is only half of the battle. Another world of difficulty sets in as soon as commuters become actual passengers in a taxi, in which case, the element of control is practically turned over to the drivers.

During such time, security becomes imperative for passengers,⁶¹ especially when traveling to an unfamiliar place or during the wee hours of the morning. Whether it be in so-called first world or developing countries,

59. See Cormac Reynolds, *The Rise and Rise of Taxi Apps — How they Benefit both Drivers and Customers*, available at <http://www.business2community.com/mobile-apps/rise-rise-taxi-apps-benefit-drivers-customers-0824831> (last accessed Jan. 31, 2017).

60. See Matt Flegenheimer, *Judge Allows Phone Apps for Hailing Yellow Taxis*, N.Y. TIMES, Apr. 23, 2013, available at http://www.nytimes.com/2013/04/24/nyregion/judge-allows-pilot-program-using-smartphone-apps-to-hail-yellow-taxis.html?_r=0 (last accessed Jan. 31, 2017).

61. See ABS-CBN News, *LTFRB releases rules for accreditation of Uber, ride-sharing apps*, available at <http://news.abs-cbn.com/business/05/29/15/ltfrb-releases-rules-accreditation-uber-ride-sharing-apps> (last accessed Jan. 31, 2017).

being able to arrive at their destinations safe and sound is the utmost concern for travelers.⁶²

The Philippines, in particular, is one country where safety in using public transportation is an important issue. Sadly, transportation-related crimes seem to be quite rampant in Manila,⁶³ requiring passengers to be extraordinarily alert so as to avoid being victims of taxi-related scams.⁶⁴ Indeed, several cabs in Manila have had their share of bad press by being implicated in what are often referred to as “commuter horror stories,”⁶⁵ where drivers allegedly spray sleeping gas on their unsuspecting passengers, use one plate number for multiple units, and/or insist on inflated taxi rates for foreigners.⁶⁶ Although the frequency in the occurrence of such problems has pushed the Land Transportation Franchising and Regulatory Board (LTFRB) to take serious actions, there is always a chance that abusive cab drivers will come up with new *modi operandi*.⁶⁷

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62. See Alicia Lozano, D.C. taxis struggle with passenger, driver safety, *available at* <http://www.wtop.com/41/3354308/DC-taxis-struggle-with-passenger-driver-safety> (last accessed Jan. 31, 2017) & CBS New York, Councilman Proposes Black Boxes To Monitor Taxi Drivers’ Speed, *available at* <http://newyork.cbslocal.com/2014/04/10/councilman-proposes-black-boxes-to-monitor-taxi-drivers-speed> (last accessed Jan. 31, 2017).
63. See United States Department of State Bureau of Diplomatic Security, Philippines 2015 Crime and Safety Report (Report from Overseas Security Advisory Council), *available at* <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=17461> (last accessed Jan. 31, 2017).
64. *Id.*
65. See, e.g., Dennis Carcamo, *LTFRB to probe on new modus victimizing female taxi riders*, PHIL. STAR, Oct. 22, 2013, *available at* <http://www.philstar.com/nation/2013/10/22/1248159/ltfrb-probe-new-modus-victimizing-female-taxi-riders> (last accessed Jan. 31, 2017) & Julie M. Aurelio, *Cab driver, pal in ‘ipit taxi’ operation nabbed in Quezon City*, PHIL. DAILY INQ., Oct. 9, 2012, *available at* <http://newsinfo.inquirer.net/285508/cab-driver-pal-in-ipit-taxi-operation-nabbed-in-quezon-city> (last accessed Jan. 31, 2017).
66. See Sheila Suyat, *GrabTaxi App: Safe Taxi in Manila*, *available at* <http://www.wheninmanila.com/grabtaxi-app-safe-taxi-in-manila> (last accessed Jan. 31, 2017).
67. See, e.g., Julliane Love De Jesus, *LTFRB bares taxi drivers’ new modus operandi*, PHIL. DAILY INQ., Oct. 23, 2013, *available at* <http://newsinfo.inquirer.net/512569/ltfrb-bares-taxi-drivers-new-modus-operandi> (last accessed Jan. 31, 2017).

3. Payment

The matter of payment is also another area where complications may arise between passengers and cab drivers. It is fairly common knowledge that the fare to be paid will generally consist of the initial flag down rate plus the distance rate, which amount must be charged strictly according to the taximeter.⁶⁸ Nearly all jurisdictions require cabs to operate with a meter that must be visible to the passenger at all times.⁶⁹ In fact, there was a pending bill⁷⁰ introduced by Senator Grace Poe-Llamanzares in the Philippine Senate that aimed to make the violation of such rule an offense punishable by a fine.⁷¹

Be that as it may, the practice of cab drivers refusing to turn on the taximeter or tampering therewith in order to demand a flat rate or illegally increase the same has become very prevalent.⁷² What makes the situation even worse is that many commuters are constrained to accept such kind of behavior, particularly during rush hours or bad weather.⁷³ Lastly, it is also

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68. See Taxi Singapore, *available at* <http://www.taxisingapore.com/taxi-fare> (last accessed Jan. 31, 2017) & Taxi Services Commission, Driver rights and responsibilities, *available at* <http://taxi.vic.gov.au/drivers/taxi-drivers/driver-rights-and-responsibilities> (last accessed Jan. 31, 2017).
69. Taxi Services Commission, Passenger rights and responsibilities, *available at* <http://taxi.vic.gov.au/passengers/passenger-rights-and-responsibilities> (last accessed Jan. 31, 2017).
70. The Bill of Rights of Taxi Passengers, S.B. No. 2152, 16th Cong., 1st Reg. Sess. (2014).
71. *Id.* § 6. See Marvin Sy, Senate bill pushes taxi passengers' rights, *available at* <http://news.abs-cbn.com/nation/10/13/13/senate-bill-pushes-taxi-passengers-rights> (last accessed Jan. 31, 2017). See also Maila Ager, *Bill seeks to penalize erring taxi drivers*, PHIL. DAILY INQ., Mar. 7, 2014, *available at* <http://newsinfo.inquirer.net/583107/bill-seeks-to-penalize-erring-taxi-drivers> (last accessed Jan. 31, 2017).
72. See Candice Montenegro, DOST engineer: 'Recalibrated taxis' may still have illegal 'batingting,' *available at* <http://www.gmanetwork.com/news/story/220137/news/nation/dost-engineer-recalibrated-taxis-may-still-have-illegal-batingting> (last accessed Jan. 31, 2017).
73. See Patrick Cooke, *White taxi drives still refusing to use meters*, TIMES OF MALTA, Aug. 18, 2013, *available at* <http://www.timesofmalta.com/articles/view/20130818/local/White-taxi-drivers-still-refusing-to-use-meters.482485> (last accessed Jan. 31, 2017). See also Alexander Nasr, *It's Harder Than Ever To Catch a Cab in Beijing*, ATLANTIC, Jan. 16, 2013, *available at* <http://www.theatlantic.com/international/archive/2013/01/its-harder-than-ever-to-catch-a-cab-in-beijing/267239> (last accessed Jan. 31, 2017).

typical for taxi drivers to declare that they have no change, allowing them to pocket the difference between the fare and the value of the smallest bill that the passenger can provide.⁷⁴

The foregoing commuter setbacks paved the way for the birth of driver-connecting mobile apps, which sought to remedy the difficulties regarding unavailability, safety, and payment, among others. Taking advantage of the growth in smartphone technology, such mobile app companies made an effort to provide riders with vital information to virtually put them in full control of their traveling experiences.⁷⁵ To put it simply, the primary selling point of these apps is that they make life easier for commuters.⁷⁶

As to unavailability, all of these app companies were actually borne out of a strong desire to find the solution to such issue in their respective cities of origin.⁷⁷ According to Uber CEO Travis Kalanick, “[w]e just wanted to push a button and get a ride.”⁷⁸ Commuters can now simply pull out their smartphones in the coziness of their homes and have a car waiting for them by the time they step out.⁷⁹ These apps are designed to match users with the closest available vehicle within the vicinity, making it almost effortless for commuters to get their much-needed rides.⁸⁰

In addition, once users finalize the request, the apps provide them with the current location of their designated driver and his estimated time of arrival. Users may also track the movement of their specific vehicle and are instantly alerted in the unlikely event that the driver decides to abandon the

74. See Nancy Parode, How to Avoid Taxi Scams, *available at* <http://seniortravel.about.com/od/transportationoptions/a/AvoidTaxiScams.htm> (last accessed Jan. 31, 2017) & Michael Hodson, The Taxi Cab Guide: What You Need To Know, *available at* <http://www.goseewrite.com/2011/03/the-taxi-cab-guide-what-you-need-to-know> (last accessed Jan. 31, 2017).

75. Keith Barry, How Smartphones Can Improve Public Transit, *available at* <http://abcnews.go.com/Technology/smartphone-improve-daily-commute/story?id=13331261> (last accessed Jan. 31, 2017).

76. See The Star, Taxi apps make life easier, *available at* <http://www.thestar.com.my/Videos/2013/10/23/Taxi-apps-make-life-easier.aspx> (last accessed Jan. 31, 2017).

77. See Kalanick, *supra* note 31.

78. Jillian D’Onfro, Uber CEO Founded The Company Because He Wanted To Be A ‘Baller In San Francisco,’ *available at* <http://www.businessinsider.com/why-travis-kalanick-founded-uber-2013-11> (last accessed Jan. 31, 2017).

79. See Barry, *supra* note 75.

80. *Id.*

agreement.⁸¹ “Booking a cab is all about certainty,”⁸² and the said apps gave users what they have always wanted — the actual confirmation of a cab and the assurance that it is on its way.⁸³

As to safety, the companies behind such mobile apps also devised a system to help users feel more confident about their personal well-being throughout the entire trip. According to GrabTaxi General Manager Adelene Foo, “[o]ur product is very people-centric, as we know that safety is a localized problem.”⁸⁴ This is especially for female passengers traveling alone at night.⁸⁵ More than convenience, it would seem that the greatest benefit of such apps is the safety it ensures because the only thing users have to be responsible for is “pressing the right button”⁸⁶ and, afterwards, they can reasonably expect a pleasant traveling experience.⁸⁷

For one, it is standard operating procedure for such app companies to carefully screen the drivers who will, or are allowed to, participate in the system.⁸⁸ For cab drivers, the said companies normally collect their names, license numbers, taxi information, and other relevant details to verify the

81. See Paige Occenola, Need a cab? There’s an app for that!, *available at* <http://www.rappler.com/life-and-style/technology/34811-grab-taxi-app> (last accessed Jan. 31, 2017).
82. See Jennifer Germano, goCatch — breaking the taxi rules for all the right reasons, *available at* <http://www.whatech.com/members-news/it-service/19412-gocatch-breaking-the-taxi-rules-for-all-the-right-reasons> (last accessed Jan. 31, 2017).
83. CBT Online, Gentle face of MyTeksi, *available at* <http://www.cbt.com.my/gentle-face-of-myteksi> (last accessed Jan. 31, 2017).
84. Gan, *supra* note 50.
85. See Marissa Carruthers, *Seven essentials to safe, fun travel for the single woman*, SOUTH CHINA MORNING POST, Oct. 27, 2015, *available at* <http://www.scmp.com/lifestyle/travel-leisure/article/1872676/seven-essentials-safe-fun-travel-single-woman> (last accessed Jan. 31, 2017).
86. Martine Powers, *After recent attacks, safety tips on hailing a taxi*, BOS. GLOBE, Aug. 20, 2013, *available at* <http://www.bostonglobe.com/metro/2013/08/19/after-attacks-two-women-authorities-offer-tips-safely-using-taxis-and-town-cars/qOby76FaElt1BgA4vzGdzN/story.html> (last accessed Jan. 31, 2017).
87. See Thalia Holmes, The app that takes you for a ride, *available at* <http://www.techcentral.co.za/the-app-that-takes-you-for-a-ride/48344> (last accessed Jan. 31, 2017).
88. See Uber, Driver Requirements, *available at* <https://www.uber.com/en-PH/drive/requirements> (last accessed Jan. 31, 2017) & Grab, Safety, *available at* <https://www.grab.com/ph/safety2> (last accessed Jan. 31, 2017).

same with government records.⁸⁹ Private motorists are also subjected to thorough background checks, including the existence of personal liability insurance, to make sure that they meet all state regulations.⁹⁰ In essence, these app companies claim to provide the public with only the best and trustworthy drivers who are available for the job.

As a corollary to the extensive evaluation of the drivers, the app companies also entitle users to rate them after each trip, potentially increasing the drivers' incentives to perform the transportation services well.⁹¹ The ostensibly simple feature serves to improve passenger welfare and satisfaction, as drivers who receive poor reviews from users are promptly withdrawn from the app database.⁹² This measure of transparency is aimed to significantly lower the risk of users getting into cabs driven by reckless or rude drivers. Furthermore, users are able to know all the necessary particulars, such as the name of the driver, his mobile number, and the plate number of the vehicle prior to the actual ride. This enables users to inform other people in advance that they are going to ride in a certain car or taxi, which is a suggested precautionary measure in places like Manila.⁹³ Other apps even expedite such process by providing users with the option of posting the details of the transaction on social media websites immediately after the electronic booking is concluded.⁹⁴ It is clear that these app companies have made, and are making, a conscious effort to squarely address the negative perception involving taxis and public transportation in general.⁹⁵

89. *Id.*

90. *Id.* Safety — Lyft, available at <https://www.lyft.com/safety> (last accessed Jan. 31, 2017) & Help Center — Lyft, available at <https://www.lyft.com/help/article/1003526> (last accessed Jan. 31, 2017).

91. See Cass Sunstein, New app promises taxi certainty: Bloomberg opinion, available at http://www.oregonlive.com/opinion/index.ssf/2013/06/new_app_promises_taxi_certaint.html (last accessed Jan. 31, 2017).

92. *Id.*

93. See GMA News, LTO launches campaign vs. abusive taxi drivers, available at <http://www.gmanetwork.com/news/story/338955/news/metromanila/lto-launches-campaign-vs-abusive-taxi-drivers> (last accessed Jan. 31, 2017).

94. Peter Imbong, GrabTaxi app: Answer to commuter woes, available at <http://www.rappler.com/life-and-style/technology/37380-grab-taxi-app-review> (last accessed Jan. 31, 2017).

95. Digital News Asia, MyTeksi launches as GrabTaxi in Bangkok and Singapore, available at <https://www.digitalnewsasia.com/sizzle-fizzle/myteksi-launches-as-grabtaxi-in-bangkok-and-singapore> (last accessed Jan. 31, 2017).

As to payment, driver-connecting mobile app companies present their users with several options to settle the fare in order to avoid the usual troubles mentioned above. One way of paying is through credit card, which most apps generally require as a prerequisite to creating an account.⁹⁶ Once the users arrive at their destinations, the price for their respective rides will be automatically charged to their credit cards on file with the companies, with a receipt to follow via electronic mail.⁹⁷

Another method of payment is through online money transfer intermediaries, such as PayPal⁹⁸ or Wirecard,⁹⁹ where users have personal accounts, from which the fare may be debited.¹⁰⁰ According to Uber Hyderabad General Manager Siddharth Shanker, “[w]hat works for many customers is that it is an on demand and cashless service.”¹⁰¹ Both modes of payment no longer require users to bring cash to pay the fare, avoiding the need to specifically set aside small denominations of money or to worry about giving the driver a tip.

Finally, the traditional manner of paying upfront is still employed by some app companies, with the difference that the taximeter system is sternly

96. See Christina Chaey, Pay for your cab ride from your phone with the way2ride app, *available at* <http://www.fastcompany.com/3015823/fast-feed/pay-for-your-cab-ride-from-your-phone-with-the-way2ride-app> (last accessed Jan. 31, 2017); Arpita Mukherjee, Hail These Cabs: Uber’s app-based private taxi service makes a splash, *available at* <http://businesstoday.intoday.in/story/uber-app-based-private-taxi-service/1/206332.html> (last accessed Jan. 31, 2017); & CabCue, CabCue Driver and CabCueXT — What’s the difference?, *available at* <http://www.cabcue.com/taxi-driver> (last accessed Jan. 31, 2017).

97. *Id.*

98. PayPal, Send or receive online payments, *available at* <https://www.paypal.com/ph/webapps/mpp/send-payments-online> (last accessed Jan. 31, 2017).

99. Wirecard, Reinventing Payment, *available at* <http://www.wirecard.com> (last accessed Jan. 31, 2017).

100. Sean O’Neill, Traveling naked? MyTaxi iOS app now lets you pay without cash or card [Video], *available at* <http://www.tnooz.com/article/traveling-naked-mytaxi-ios-app-now-lets-you-pay-without-cash-or-card> (last accessed Jan. 31, 2017) & Pete Donohue, Cab riders can now pay fares with smartphones, *available at* <http://www.nydailynews.com/new-york/cab-riders-pay-fares-smartphones-article-1.1473346> (last accessed Jan. 31, 2017).

101. Arpita Mukherjee, Hail These Cabs: Uber’s app-based private taxi service makes a splash, *available at* <http://businesstoday.intoday.in/story/uber-app-based-private-taxi-service/1/206332.html> (last accessed Jan. 31, 2017).

implemented.¹⁰² The companies in charge of the apps train the drivers to properly use the meter and to turn it on only when the passengers are inside the vehicles.¹⁰³ It is also typical for such mode of payment to give users an estimated fare as the booking request is processed,¹⁰⁴ giving them the opportunity to manage their bills ahead of time. More importantly, the app companies ensure that the drivers do not overcharge their passengers by collecting fares that exceed or are not set by state regulation.¹⁰⁵

Besides the aforementioned, some apps also provide other unique benefits, such as driving in style¹⁰⁶ or meeting acquaintances and forming a community.¹⁰⁷ In any case, the refinements involving availability, safety, and payment are the core benefits that such apps offer, which make the same exceptionally marketable in society.¹⁰⁸ Commuters no longer need to stand

102. See GrabTaxi, FAQs, available at <https://www.grab.com/ph/taxi> (last accessed Jan. 31, 2017).

103. *Id.*

104. See AsiaOne Digital News, Hail the new taxi apps, available at <http://news.asiaone.com/news/digital/hail-new-taxi-apps?page=0%2C3> (last accessed Jan. 31, 2017).

105. See User Ct2220, Comment posted on a “Grabtaxi” thread, Adrian Lim, *GrabTaxi to Abolish Tips for Cabbies*, Dec. 31, 2013: 6:34 p.m., SGFORUMS, available at <http://sgforums.com/forums/1802/topics/477466?page=2> (last accessed Jan. 31, 2017).

106. See, e.g., Matthew Panzarino, Founders 2013: Uber’s Travis Kalanick on surge pricing, corruption and “being baller” in SF, available at <http://thenextweb.com/insider/2013/03/14/f-founders-2013-ubers-travis-kalanick-on-surge-pricing-corruption-and-being-baller-in-sf> (last accessed Jan. 31, 2017) & Alyson Shontell, All Hail The Uber Man! How Sharp-Elbowed Salesman Travis Kalanick Became Silicon Valley’s Newest Star, available at <http://www.businessinsider.com/uber-travis-kalanick-bio-2014-1> (last accessed Jan. 31, 2017).

107. See, e.g., John Boitnott, Why Uber Driving Is For Intorverts, And Other Ridesharing Tales, available at <http://www.fastcolabs.com/3027117/why-uber-driving-is-for-introverts-and-other-ridesharing-tales> (last accessed Jan. 31, 2017); Sonari Ginton, Blog, *For Ridesharing Apps Like Lyft, Commerce Is A Community*, Nov. 14, 2013: 4:56 p.m., NPR, available at <http://www.npr.org/blogs/alltechconsidered/2013/11/14/245242805/for-ridesharing-apps-like-lyft-commerce-is-a-community> (last accessed Jan. 31, 2017); & Julio Ojeda-Zapata, Lyft’s free-ride deal gives it a two-week reprieve in Minneapolis, available at http://www.twincities.com/localnews/ci_25250479/lyfts-free-ride-deal-gives-it-two-week (last accessed Jan. 31, 2017).

108. See Cormac Reynolds, The Rise and Rise of Taxi Apps — How they Benefit both Drivers and Customers, available at <http://www>.

out on street corners or, worse, argue with others just to get a ride. The anxieties of riding in an unsafe vehicle or being victims of the deplorable practices of unscrupulous cab drivers are lessened to a great degree. In a few words, these apps personify convenience in the form of assured and dependable rides.

C. Function

The processes of electronically requesting and booking a ride through driver-connecting mobile apps are both simple and seamless. The approach is generally the same, whether the apps link users to professional drivers or private individuals offering transportation services. To begin with, users must have a smartphone that is capable of running such mobile apps. Users then have to download the app of their choice, which is generally free of charge, from an app store, unless the same is already pre-installed in the smartphone.

After downloading the app, users merely need to create an account, which just involves them providing certain personal data, such as their name, date of birth, address, and credit card information for payment purposes, to name a few. Users may begin using the technology once their personal accounts have been generated. In most cases, the apps will require users to connect to the Internet. The Internet helps in determining the location of the users and the drivers to hasten the service.¹⁰⁹

Even so, there are some apps, like Cebu-based Micab, that let passengers access the technology through SMS (short messaging service) in case an Internet connection is unavailable.¹¹⁰ The SMS feature connects to the servers of the said app and sends the instruction to smartphone-equipped drivers within a certain radius.¹¹¹ Another option is to call the hotlines managed by the app companies themselves, which is similar to the normal way of getting in touch with a taxi dispatching service, except that the users

business2community.com/mobile-apps/rise-rise-taxi-apps-benefit-drivers-customers-0824831 (last accessed Jan. 31, 2017).

109. Uber, How does Uber work?, available at <https://help.uber.com/h/738d1ff7-5fe0-4383-b34c-4a2480efd71e> (last accessed Jan. 31, 2017) [hereinafter Uber-Work].

110. See Phoebe Magdirila, Micab lets you virtually hail taxis with or without internet connection, available at <http://www.techinasia.com/micab-lets-virtually-hail-taxis-internet-connection> (last accessed Jan. 31, 2017).

111. *Id.*

deal only with the particular app company concerned, which promises efficiency in the process.¹¹²

In any event, after the users have successfully accessed the system, the apps will automatically detect their current location.¹¹³ The apps will then inform users of either the number of available affiliated cab drivers within the area¹¹⁴ or the distance of the closest private motorist.¹¹⁵ Subsequently, depending on the app involved, users may be required to input their desired destinations¹¹⁶ either to inform the drivers of the exact transportation service that will be expected from them or to coordinate with other private drivers going in the same direction or to the same place.¹¹⁷

Additionally, users may set the pickup location, which may be different from where they presently are,¹¹⁸ or give specific instructions to the driver together with the booking request.¹¹⁹ Other driver-connecting apps may also allow users to select a private car of their choice¹²⁰ or the type of cab they need.¹²¹ Once the users are ready to be fetched, they indicate the same by pressing a button that says, “Request,”¹²² “Book Now,”¹²³ or the like.

Thereafter, the app companies will match users with either a private driver¹²⁴ or a taxi driver, as the case may be, within the immediate vicinity.¹²⁵ Such drivers will be asked to either accept or deny the request,

112. GrabTaxi, FAQ, *supra* note 102.

113. See GrabTaxi, Video, *GRABTAXI: Booking a taxi in Metro Manila will never be the same*, May 31, 2013, YOUTUBE, available at <https://www.youtube.com/watch?v=L7z1vhkx4Do&feature=youtu.be> (last accessed Jan. 31, 2017) & Uber-Work, *supra* note 109.

114. Uber-Work, *supra* note 109.

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. Uber-Work, *supra* note 109.

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. Occenola, *supra* note 81.

and the nearest available driver who confirms will be assigned the task.¹²⁶ As soon as a particular driver has been appointed to a user, the latter will receive an update, along with a host of information, such as the name of the driver, his contact information, the plate number of the vehicle, the estimated time of arrival,¹²⁷ and even the approximate fare, in proper cases.¹²⁸ The driver also receives the mobile number of the user in case there is a need for them to get in touch with each other.¹²⁹

When the driver is en route, users may monitor their own whereabouts through the apps in real-time.¹³⁰ During such time, users are free to cancel the request, but they may be charged a fee in cases where a sufficient amount of travel time has elapsed.¹³¹ The users will receive another update when the driver has arrived at the pickup point previously agreed upon.

As soon as the users board the vehicles, the drivers press a button, such as “Begin Trip,”¹³² “Pick up,”¹³³ or the like in order to officially begin the computation of the fare. It is at this time when taxi drivers are trained to turn on the meter¹³⁴ or the charges peculiar to the app involved start to

126. Mati Man, Uber.com, available at <https://novoed.com/venture1-2014-1/reports/198765> (last accessed Jan. 31, 2017).

127. See iDB, Video, *Uber*, July 6, 2012, YOUTUBE, available at <https://www.youtube.com/watch?v=Mq1HV2v3qZw> (last accessed Jan. 31, 2017).

128. See Ednything, App Review: GrabTaxi, available at <http://www.ednything.com/2013/08/app-review-grabtaxi.html> (last accessed Jan. 31, 2017) & Uber, Uber fare estimator, available at <https://www.uber.com/en-PH/fare-estimate> (last accessed Jan. 31, 2017).

129. See Calvin, Blog, *GrabTaxi officially launched in the Philippines, lets you book a taxi online*, July 30, 2013, PINOY TECH BLOG, available at <http://www.pinoytechblog.com/archives/grabtaxi-officially-launched-in-the-philippines-lets-you-book-a-taxi-online> (last accessed Jan. 31, 2017).

130. Sarah Jacobson Purewal, How Taxi Magic works its magic, available at <http://www.techhive.com/article/2000117/how-taxi-magic-works-its-magic.html> (last accessed Jan. 31, 2017).

131. Brian McClendon, Updated Cancellation Policy, available at <http://blog.uber.com/2012/05/01/updated-cancellation-policy> (last accessed Jan. 31, 2017).

132. See UberCab, Video, *Ubercab Demo*, June 1, 2010, YOUTUBE, available at <https://www.youtube.com/watch?v=L8hJHAJARJY> (last accessed Jan. 31, 2017).

133. See GrabTaxi, Video, *Intro to GrabTaxi*, June 4, 2013, YOUTUBE, available at <https://www.youtube.com/watch?v=7jSVnDEgoiY> (last accessed Jan. 31, 2017) [hereinafter *Intro to GrabTaxi*].

134. See Calvin, *supra* note 129.

accumulate.¹³⁵ Nonetheless, other apps, like Tripid, employ a bidding process for the fare, where users and drivers exchange a one-time offer and counter-offer, such that the fare is fixed for the trip.¹³⁶

Upon arrival at the point of destination, the drivers will again press a button, such as “Drop off,”¹³⁷ “End Trip,”¹³⁸ or the like. This officially ends the transportation service and the driver will proceed to collect the fare or, in case of cashless transactions, the same will be flashed on the smartphone and later charged to the users’ credit card.¹³⁹ As a rule, the final amount will include a booking fee or base fare, which usually varies per location.¹⁴⁰

Finally, the users are asked to rate the drivers, as well as the overall traveling experience, in order to help maintain the quality of the participants using the system.¹⁴¹ All of the foregoing are designed to be executed with a few taps and/or swipes on a smartphone. To summarize, users log on to the app, which traces their location, as well as that of nearby drivers. The app company then pairs the users with available drivers and the former simply waits until the latter arrives.

135. See Josh Constine, Now some Ubers will only wait 2 minutes before charging you, not 5, *available at* <https://techcrunch.com/2016/04/26/no-you-cant-go-to-the-bathroom-first> (last accessed Jan. 31, 2017).

136. Candice Lopez-Quimpo, A modern, mobile way to commute in Manila, *available at* <http://www.rappler.com/life-and-style/17186-a-modern,-mobile-way-to-commute-in-manila> (last accessed Jan. 31, 2017).

137. *Intro to GrabTaxi*, *supra* note 133.

138. UberCab, *supra* note 132.

139. *Id.*

140. *Id.*

141. See Kaylene Hong, GrabTaxi is growing a taxi-booking service in Southeast Asia using a unique model, *available at* <http://thenextweb.com/asia/2014/04/08/grabtaxi-is-growing-a-taxi-booking-service-in-southeast-asia-using-a-unique-model> (last accessed Jan. 31, 2017); Harry Santos, Blog, *Grab Taxi Review*, Dec. 2013, BLOGSPOT, *available at* <http://harryleaks.blogspot.com/2013/12/grab-taxi-review.html> (last accessed Jan. 31, 2017); Geoffrey Ledesma, Grab-a-Cab: A “GrabTaxi” Review, *available at* <http://www.geoffreview.com/2013/06/grab-cab-grabtaxi-review.html> (last accessed Jan. 31, 2017); & Marc Bodnick, Review Of Uber — “One Of My Favorite Two Commerce Services On The Internet,” *available at* <http://www.forbes.com/sites/quora/2013/05/01/review-of-uber-one-of-my-favorite-two-commerce-services-on-the-internet> (last accessed Jan. 31, 2017).

D. Presence in the Philippines

Presently, a handful of driver-connecting mobile app companies have started to operate in the Philippines, specifically in Metro Manila. In open dissatisfaction over the public transportation service in the country,¹⁴² many Filipinos are proclaiming such apps to be the “answer to commuter woes.”¹⁴³ In the eyes of local travelers, the apps offered are intended to eliminate the all-too familiar commuter predicaments, such as cab drivers turning down passengers, haggling over the fare, and constant worrying over the safety of the cab and its driver.¹⁴⁴

GrabTaxi, a subsidiary of Malaysia’s MyTeksi, was the first of such mobile app companies to officially launch in the Philippines.¹⁴⁵ The said app company was introduced in Manila in August 2013 and became a partner of Globe Telecommunications in October of the same year.¹⁴⁶ GrabTaxi refers to itself as an automated location-based smartphone booking and dispatch platform that aims to revolutionize the taxi industry in Manila by making it a safer and more efficient means of transport.¹⁴⁷

By the end of 2013, it had tied up with more than 1,000 taxi drivers under several leading taxi fleets, such 24/7 Taxi, Uber Taxi, World, etc.¹⁴⁸ Like other apps, GrabTaxi requires a booking fee for its connecting service. The fee is set at ₱70.00, which is paid on top of the cab fare that consists of the basic flag down rate of ₱40.00 and ₱3.50 for every 300 meters.¹⁴⁹ The said app company justifies the need for the charge in order for its drivers to cover the expenses incurred in going to the users.¹⁵⁰ While the ₱70.00

142. Taxikick, Report abusive taxi drivers in the Philippines, *available at* <http://www.taxikick.com> (last accessed Jan. 31, 2017).

143. Rose De la Cruz, *GrabTaxi app eases commuters’ woes*, MANILA TIMES, Dec. 8, 2013, *available at* <http://www.manilatimes.net/grabtaxi-app-eases-commuters-woes/58868> (last accessed Jan. 31, 2017).

144. Imbong, *supra* note 94.

145. Calvin, *supra* note 129.

146. Noda, *supra* note 54.

147. Uber, *supra* note 14.

148. De la Cruz, *supra* note 143.

149. See Jess Diaz, *Lawmaker seeks probe of high airport taxi fares*, PHIL. DAILY INQ., Apr. 15, 2014, *available at* <http://www.philstar.com/metro/2014/04/15/1312727/lawmaker-seeks-probe-high-airport-taxi-fares> (last accessed Jan. 31, 2017).

150. GrabTaxi, FAQs, *supra* note 102.

surcharge may be thought of as a deterrent, most Filipinos do not mind paying the same in exchange for convenience and peace of mind.¹⁵¹

In the same year, a highly similar mobile app company, Easy Taxi, also expanded to the Philippine market.¹⁵² Whereas GrabTaxi partnered with Globe Telecommunications, Easy Taxi associated with Smart Telecommunications in order to improve its services in Manila.¹⁵³ Drivers under the R&E taxi brand comprise the flagship partners of Easy Taxi, with more operators set for acquisition and partnership.¹⁵⁴

Easy Taxi boasts of being the biggest taxi-booking app in the world¹⁵⁵ and aims to make public transportation in Manila easier, safer, and more efficient by providing local passengers with top-notch services and helping taxi communities advance.¹⁵⁶ According to Regional CEO Mario Berta, Easy Taxi is “committed to re-brand the transportation industry of [t]he Philippines.”¹⁵⁷ Every taxi booked contributes to the app company’s self-improvement programs for taxi drivers, such as language and hospitality training, free meals, and other worthwhile activities to lift the morale of local

151. See Calvin, *supra* note 129.

152. Newsbytes.ph, Easy Taxi app hits Metro Manila roads, *available at* <http://newsbytes.ph/2013/10/01/easy-taxi-app-hits-metro-manila-roads> (last accessed Jan. 31, 2017).

153. See Giancarlo Viterbo, Smart and Sun Partner with Easy Taxi to Help Filipinos Beat Holiday Traffic, *available at* <http://www.gadgetpilipinas.net/2013/12/smart-sun-partner-easy-taxi-help-filipinos-beat-holiday-traffic> (last accessed Jan. 31, 2017); Faust Haeja Crimsel Principe, Philippine Transportation Breakthroughs in 2013, *available at* <http://geekymobilegadgets.com/news/philippine-transportation-breakthroughs-2013> (last accessed Jan. 31, 2017); & Watwatworld, Manila’s Well-Known Taxi Fleet Now Equipped with Easy Taxi App, *available at* <http://watwatworld.com/2014/01/27/manilas-well-known-taxi-fleet-now-equipped-with-easy-taxi-app> (last accessed Jan. 31, 2017).

154. See Jeremy Pintolo, *STAR partners with Easy Taxi*, PHIL. STAR, Mar. 10, 2014, *available at* <http://www.philstar.com:8080/headlines/2014/03/10/1299130/star-partners-easy-taxi> (last accessed Jan. 31, 2017).

155. Easy Taxi, About Us, *available at* <http://www.easytaxi.com/about-us> (last accessed Jan. 31, 2017).

156. Velasco, *supra* note 45.

157. See Marvin Velasco, Easy Taxi and Smart Communications Offer Zero Booking Fee for the Holidays, *available at* <http://www.hardwarezone.com.ph/tech-news-easy-taxi-and-smart-communications-offer-zero-booking-fee-holidays> (last accessed Jan. 31, 2017).

taxi drivers.¹⁵⁸ Like GrabTaxi, Easy Taxi also charges a ₱70.00 booking fee on top of the regular taxi meter rate.¹⁵⁹

In 2014, Uber made its way to Manila.¹⁶⁰ While performing basically the same function of connecting users to drivers, the said app stayed true to its roots and aimed for those who desired a more upscale traveling experience. Uber defines itself as a tech start-up providing a service whereby users can flag their own personal rides through its dedicated partner-fleet of drivers and vehicles.¹⁶¹ According to Uber Regional Manager Michael Brown, “[i]t could be a limousine company, an individual who owns a Mercedes or has his Toyota, or companies that do private transport.”¹⁶²

Tagged as “[e]veryone’s private driver,”¹⁶³ Uber guarantees luxury to every Filipino user because instead of cabs, they get to book private cars with properly-dressed chauffeurs to drive them around.¹⁶⁴ Some of the Uber car models available for selection are the Toyota Camry, Hyundai Sonata, and Nissan Teana.¹⁶⁵ With the said app, there is no need to go through physical

158. *Id.*

159. See Vince, Philippines’ Smart Waives Off Booking Fee When Hailing a Cab Through EasyTaxi, *available at* http://vulcanpost.com/10502/philippines-smart-waives-booking-fee-hailing-cab-easytaxi/?utm_source=rss&utm_medium=rss&utm_campaign=philippines-smart-waives-booking-fee-hailing-cab-easytaxi (last accessed Jan. 31, 2017).

160. Doug Ma, Uber Manila Has Officially Launched!, *available at* <https://newsroom.uber.com/philippines/uber-manila-has-officially-launched> (last accessed Jan. 31, 2017).

161. See Jose Bimbo Santos, Private transport service app, Uber officially launches in the Philippines, *available at* <http://www.interaksyon.com/motoring/private-transport-service-app-uber-officially-launches-in-the-philippines> (last accessed Jan. 31, 2017).

162. *Id.*

163. See Felix Salmon, The economics of “everyone’s private driver,” *available at* <https://medium.com/@felixsalmon/the-economics-of-everyones-private-driver-464bfd730b38#.7m566l7op> (last accessed Jan. 31, 2017).

164. See Trippy Padilla, Private car service app ‘Uber’ launches in Manila, *available at* <http://www.clickthecity.com/tech/a/21433/private-car-service-app-uber-launches-in-manila> (last accessed Jan. 31, 2017).

165. See Katrina Canlas, Uber, App That Connects Riders and Drivers, Officially Launches in the Philippines, *available at* <http://www.hardwarezone.com.ph/tech-news-uber-app-connects-riders-and-drivers-officially-launches-philippines> (last accessed Jan. 31, 2017).

dispatchers because the mere press of a button can instantly summon a driver.¹⁶⁶

Naturally, Uber charges more than the two aforementioned mobile apps. The base fare is fixed at ₱90.00, and additional charges are computed at the rate of ₱1.292 for every 100 meters and ₱2.10 for every minute the vehicle is traveling at 18 kilometers per hour or under.¹⁶⁷ The minimum fare is set at ₱120.00.¹⁶⁸ The app company then takes 20% of the total amount charged per ride.¹⁶⁹ It is said that Uber is not meant to replace existing taxi services, but rather complement the same by giving an alternative to commuters who are in a hurry and are willing to pay more in order to ride in luxury and utmost comfort.¹⁷⁰

Taking off from the concept popularized by Uber, GrabTaxi launched GrabCar in May 2014.¹⁷¹ GrabCar is a brand new service that provides an authorized on-demand private driver for users and expands the benefits of GrabTaxi to a whole new network of drivers.¹⁷² It is packaged as a premium limousine service at an affordable price while continuing to reinforce GrabTaxi's promise of safe, certain, and fast rides.¹⁷³ GrabCar also aims to

166. See Bradley Voytek, Optimizing a dispatch system using an AI simulation framework, available at <https://newsroom.uber.com/semi-automated-science-using-an-ai-simulation-framework> (last accessed Jan. 31, 2017).

167. See Uber, *supra* note 14.

168. *Id.*

169. Taylor Soper, UberX adds \$1 'Safe Rides Fee' for passengers, reinstates 20% commission fee for drivers, available at <http://www.geekwire.com/2014/uber-adds-1-safe-rides-fee-passengers> (last accessed Jan. 31, 2017) & Megan Rose Dickey, Uber Will Start Charging More For Some Rides Because It Was Losing Money, available at <http://www.businessinsider.com/uberx-reinstate-20-commission-2014-4> (last accessed Jan. 31, 2017).

170. Canlas, *supra* note 165.

171. BudgetedWanderer, Blog, *GrabCar Official Press Release*, May 22, 2014, WORDPRESS, available at <https://budgetedwanderer.wordpress.com/2014/05/22/grabcar-official-press-release> (last accessed Jan. 31, 2017).

172. See Patrick Everett Tadeo, GrabTaxi rolls out on-demand, private-car service called GrabCar, available at <http://www.topgear.com.ph/news/motoring-news/grabtaxi-rolls-out-on-demand-private-car-service-called-grabcar> (last accessed Jan. 31, 2017).

173. See GrabTaxi, Why should I use Grab Taxi?, available at <https://www.grab.com/ph/help> (last accessed Jan. 31, 2017).

provide users with another alternative so that they can successfully obtain a means to travel even during peak or rush hours.¹⁷⁴

Last, but not least, there is Tripid, a locally-developed driver-connecting mobile app that was founded in 2012.¹⁷⁵ Tripid describes itself as a ride-sharing service that connects drivers and passengers headed in the same route, providing everyday drivers and commuters with a means to find better ways to get around Manila by establishing a collaborative, open carpooling system.¹⁷⁶ In other words, the said company provides an avenue for users who are traveling in the same direction to reach an arrangement and make the journey together, lessening traffic and transportation expenses in the process.¹⁷⁷

Since its official launch, Tripid has already gained over 3,500 users, with 12,000 trips posted.¹⁷⁸ In 2013, Tripid raised seed funding from venture fund Kickstart Ventures, an Ayala Corporation-funded organization.¹⁷⁹ The app company has since partnered with local enterprises and organizations, such as AIESEC, Globe Telecommunication, and Asian Development Bank, as well as Luzon-based universities, including the Ateneo de Manila University.¹⁸⁰ The service offered by Tripid is reputed to be building a community of individuals who amicably share rides together.¹⁸¹

When it comes to pricing, Tripid differs from other mobile apps because both the transportation service and the fare are concluded through a bidding

174. Padilla, *supra* note 164.

175. Candice Lopez-Quimpo, A modern, mobile way to commute in Manila, *available at* <http://www.rappler.com/life-and-style/17186-a-modern,-mobile-way-to-commute-in-manila> (last accessed Jan. 31, 2017).

176. Tripid, About Us, *available at* <http://www.tripid.ph/about> (last accessed Jan. 31, 2017).

177. Will Greene, E-Services Help Tame Manila's Traffic Mess, *available at* <http://teconomy.com/2014/04/tech-helps-tame-manilas-traffic-mess> (last accessed Jan. 31, 2017).

178. See Phoebe Magdirila, With Tripid's new mobile app, carpooling in the Philippines can now be cashless, *available at* <http://www.techinasia.com/tripids-mobile-app-carpooling-philippines-cashless> (last accessed Jan. 31, 2017) [hereinafter Magdirila, Carpooling].

179. J. Angelo Racoma, Tripid gets seed funding from Kickstart Funding, *available at* <https://e27.co/tripid-gets-seed-funding-from-kickstart-ventures> (last accessed Jan. 31, 2017).

180. *Id.*

181. Magdirila, Carpooling, *supra* note 178.

process.¹⁸² The procedure begins when users search for possible trips among the routes posted by drivers.¹⁸³ The former are then informed about the number of available seats in the vehicle and the offered price for the journey per seat.¹⁸⁴ The potential passengers can then accept the terms or send a counter-offer for the price, which the drivers will be free to accept or reject.¹⁸⁵ The amount to be paid is the price that both parties have settled on,¹⁸⁶ with Tripid taking a percentage of the total amount earned by the drivers per ride.¹⁸⁷ The exchange of payment is also done through the app by means of “credits” stored in an “electronic wallet.”¹⁸⁸

At the end of the day, the companies providing driver-connecting mobile apps target specific transportation problems existing in Philippine society and seek to provide viable solutions therefor. “The ultimate goal is to ease life of passengers [], making sure every ride is a great, safe, and fast experience. We want our customers to feel empowered by our app.”¹⁸⁹ At the same time, “[b]ecause of this system, there is no time or money lost. Drivers don’t have to drive around at malls waiting for passengers.”¹⁹⁰ The

182. See Jose Bimbo Santos, Transport app Tripid willing to listen to LTFRB, *available at* <http://www.interaksyon.com/motoring/here-comes-the-talk-transport-app-tripid-willing-to-listen-to-ltfrb> (last accessed Jan. 31, 2017).

183. Tripid PH, Video, *Tripid as a Driver*, July 27, 2013, YOUTUBE, *available at* <https://www.youtube.com/watch?v=Xyn2wit5zQ4> (last accessed Jan. 31, 2017).

184. *Id.*

185. See Tripid PH, Video, *Tripid as a Passenger*, July 27, 2013, YOUTUBE, *available at* <https://www.youtube.com/watch?v=sBv61t5XHWQ#t=32> (last accessed Jan. 31, 2017).

186. Vince, Solving Manila’s Traffic Problem With Carpooling App Tripid, *available at* <https://sg.news.yahoo.com/solving-manila-traffic-problem-carpooling-020020372.html> (last accessed Jan. 31, 2017).

187. *Id.*

188. Magdirila, Carpooling, *supra* note 178.

189. Velasco, *supra* note 45.

190. GMA Network, Looking for a taxi in Metro Manila? There’s an app for that, *available at* <http://www.gmanetwork.com/news/story/317222/scitech/technology/looking-for-a-taxi-in-metro-manila-there-s-an-app-for-that> (last accessed Jan. 31, 2017).

“service brings together drivers and passengers ... for a safer, more convenient, and more affordable every day trip.”¹⁹¹

E. Business Models

Based on the above discussion, there are two types of business models that driver-connecting mobile app companies use to cater to the Philippine market. The first one, like GrabTaxi and Easy Taxi, is a structure whereby the apps connect the users to duly licensed taxi drivers or professional chauffeurs from private enterprises that offer transportation services, such as a limousine company (i.e., taxi-driver-connecting app/s). Stated otherwise, the first mode entails the apps linking users with commercial and/or salaried drivers who may be found in the roster of existing companies.

The second, like Uber and Tripid, involves a scheme wherein the apps connect users to private persons who are willing to provide transportation services (i.e., private-driver-connecting app/s). The apps give users access to rides offered by non-professional drivers or regular individuals who sign up as “drivers” in the system.

In both business models, the mobile app companies deal with the drivers themselves and not their existing employers, if any. The drivers personally apply to be part of the system of the app companies. Essentially, in both types of platforms, the mobile app companies purport to act as intermediaries between the users and the drivers.

III. LIABILITY AND REGULATORY MEASURES IN OTHER JURISDICTIONS

Due to the speedy growth of driver-connecting mobile app companies in the Philippines, as well as the growth in the number of users, it would be prudent to examine their exact terms and conditions. It stands to reason that it is important for users to be enlightened as to the responsibility of such app companies for accidents that may occur on the road, considering that the latter generally undertake to aid the former in promptly obtaining a safe means of transportation.¹⁹² Filipino users, in particular, rely on such apps for security and do not mind paying the extra charges in exchange for reliable

191. See J. Angelo Racoma, Dynamic carpooling goes social with Tripid, *available at* <http://e27.co/dynamic-carpooling-goes-social-with-tripid> (last accessed Jan. 31, 2017).

192. See EasyTaxi, About Us, *available at* <http://www.easytaxi.com/about-us> (last accessed Jan. 31, 2017) & Sheila Snow, GrabTaxi App: Safe Taxi in Manila, *available at* <http://www.wheninmanila.com/grabtaxi-app-safe-taxi-in-manila> (last accessed Jan. 31, 2017).

and safe services.¹⁹³ Thus, the question is this — how far will the mobile app companies keep their word?

A. Limited Liability

Uber declares that the service it seeks to offer its customers comprises of providing information and a means to obtain transportation services offered by third party transportation providers, such as drivers, vehicle operators, and the like.¹⁹⁴ Users are understood to have entered into a service contract with Uber through the use of the mobile app.¹⁹⁵ When users engage the said app, Uber supposedly responds by exerting diligent efforts to bring them into contact with transportation providers in order for them to acquire a ride.¹⁹⁶

Nevertheless, in its terms and conditions of use, Uber sets forth that it is not a transportation carrier and that it does not provide transportation services.¹⁹⁷ According to the app company, it only acts as the intermediary between users and the parties offering the actual means of transportation.¹⁹⁸ Moreover, it mentions that the drivers have sole and complete discretion to accept or reject each request made by the users.¹⁹⁹ The app company also insists that the terms of the transportation service are entered into between the users and the drivers to the complete exclusion of Uber.²⁰⁰

In effect, Uber maintains that the contract between the users and the app is different and separate from the contract between the users and the transportation providers.²⁰¹ Hence, the app company declares that the quality of the actual transportation services performed by the drivers is entirely the responsibility of the latter.²⁰² Under no circumstances will the app company accept liability in connection with and/or arising from the performance of the transportation service, including those involving the actions, behavior,

193. See Wazzup Pilipinas, Grab Taxi Mobile App For Fast And Safe Taxi Hailing, available at <http://www.wazzupilipinas.com/2013/08/grab-taxi-mobile-app-for-fast-and-safe.html> (last accessed Jan. 31, 2017).

194. Uber, Legal, available at <https://www.uber.com/legal/terms/ph> (last accessed Jan. 31, 2017) [hereinafter Uber-Legal].

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

200. Uber-Legal, *supra* note 194.

201. *Id.*

202. *Id.*

and/or negligence on the part of the driver.²⁰³ As a result, any and all complaints about the transportation service are to be submitted, not to Uber, but to the individual transportation providers themselves.²⁰⁴

Likewise, GrabTaxi announces that it only offers users information and a method to acquire transportation services provided by third parties.²⁰⁵ The said app company also expresses that it does not assume the actual transporting of passengers, as it is not a transportation carrier.²⁰⁶ Nor does the app intend to provide the transportation services or act in any way that may be construed as such.²⁰⁷ Therefore, GrabTaxi disclaims any responsibility or liability that may be connected with the transportation services performed by the drivers in their system.²⁰⁸

Consequently, GrabTaxi asserts that the quality of the transportation services scheduled through the use of the app is wholly the responsibility of the drivers performing the same.²⁰⁹ Ironically, the app company states that it does not assess the “suitability, legality, [or] ability”²¹⁰ of any third party transportation provider.²¹¹ Nor will the said mobile app company be a party to any disputes or negotiations between the users and the drivers.²¹² In the end, GrabTaxi expects that by using the technology, users are aware that they may be exposed to potentially dangerous or unsafe rides and that they expressly waive and release the app company from any and all liabilities, claims, or damages arising from or in any way related to the same.²¹³

In the same manner, Easy Taxi states that it performs a specialized service with the intention of optimizing the taxi request service in the country.²¹⁴ The app company stresses that it does not have any employer-

203. *Id.*

204. *Id.*

205. Grab, Terms of Use for Philippine GrabTaxi Passengers, *available at* <https://www.grab.com/ph/terms> (last accessed Jan. 31, 2017) [hereinafter Grab-Terms].

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. Grab-Terms, *supra* note 205.

212. *Id.*

213. *Id.*

214. *Id.*

employee relationship with taxi fleets and/or its drivers, as it represents itself to act solely as an intermediary for the purpose of optimizing the scheduling service for taxis.²¹⁵ Easy Taxi sets out that it has no direct association with the drivers registered under its system and has no part to play in the final provision of services between the latter and the users.²¹⁶

Easy Taxi also expects users to acknowledge that the app company is not responsible for any issues that may arise during the taxi ride, such as accidents, delays, and the like.²¹⁷ Strangely, it also states that it does not vouch for the suitability, legality, physical condition, or mental health of the drivers to provide the transportation service.²¹⁸ The said app company even presumes that the users are aware of the fact that the personal data of the drivers, such as their names or vehicle plate numbers, are supplied by the drivers themselves, implying non-liability for any problems that may be connected therewith.²¹⁹ In spite of the preceding terms, Easy Taxi inconsistently proclaims that it commits to provide a thorough screening service so that only cab drivers in good legal standing in their respective cities and/or countries shall be part of the service.²²⁰

Last, but not the least, Tripid substantially echoes the abovementioned terms and conditions. The local app refers to itself as nothing more than a route-sharing platform that provides a marketplace for carpooling services.²²¹ With reference to the carpooling service, Tripid posits that the same is not only at the risk of the users, but it is also provided without any warranties of any kind, whether express or implied, including those with respect to the safety of passengers and/or drivers.²²² Tripid specifies that it does not warrant, endorse, guarantee, or assume responsibility for any ride users or drivers may request or provide through the app company.²²³ Nor does it assume liability for any prejudice to the users, such as damages to property,

215. Easy Taxi, Terms, *available at* <http://www.easytaxi.com/terms> (last accessed Jan. 31, 2017) [hereinafter Easy Taxi-Terms].

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. Tripid, Terms and Conditions, *available at* <http://www.tripid.ph/terms> (last accessed Jan. 31, 2017) [hereinafter Tripid-Terms].

222. *Id.*

223. *Id.*

personal injuries, or even death that may occur as a result of the ride facilitated by Tripid.²²⁴

As can be seen, when it comes to the performance of the actual transportation services, the mobile app companies, whether taxi-driver-connecting or private-driver-connecting, limit their liabilities as against their users or third persons by insisting on two things: (1) they are not transportation carriers; and (2) they do not perform transportation services. Such stipulations also take effect automatically from the moment the users log on to the apps and utilize the same to procure a driver.²²⁵ Therefore, based on the terms and conditions of use, it appears that any recourse that users may have for any harm that they may suffer on the occasion of or during the ride must be asserted solely against the drivers rendering the transportation services.

B. Liability Issues in Other Jurisdictions

Amidst the praises garnered by these driver-connecting mobile app companies for all the benefits they bring to commuters in general, the same have also had their fair share of controversies involving passengers and third persons alike. In foreign jurisdictions, there is a growing concern over the continued operation of such apps because they appear to tread on so-called gray areas of the law, making it unclear whether or not present state regulations may be applicable thereto.²²⁶ As may be expected, such mobile apps have been the subject of serious legal debate as to their liabilities, if any, for damages incurred by their users while being transported.²²⁷

Uber, in particular, is no stranger when it comes to problems involving passengers and/or third persons. In 2012, Uber driver Anouar Habib Trabelsi

224. *Id.*

225. See generally Uber-Legal, *supra* note 194; Grab-Terms, *supra* note 205; Easy Taxi-Terms, *supra* note 215; & Tripid-Terms, *supra* note 221.

226. See Ben Grubb, *Uber snubs NSW government's position on ride-sharing as Backseat app postpones launch*, SYD. MORNING HERALD, May 1, 2014, available at <http://www.smh.com.au/digital-life/smartphone-apps/uber-snubs-nsw-governments-position-on-ridesharing-as-backseat-app-postpones-launch-20140501-zr2ed.html> (last accessed Jan. 31, 2017). See also M.E. Synon, *Brussels court bans Uber taxi service*, available at <http://www.breitbart.com/Breitbart-London/2014/04/17/Brussels-Court-Bans-Uber-Taxi-Service> (last accessed Jan. 31, 2017).

227. See David Streitfeld, *Uber and a Child's Death*, N.Y. TIMES, Jan. 27, 2014, available at http://bits.blogs.nytimes.com/2014/01/27/uber-and-a-childs-death/?_php=true&_type=blogs&_r=0 (last accessed Jan. 31, 2017).

was accused of raping his 20-year-old passenger before bringing her home.²²⁸ According to reports, Trabelsi dropped the passenger off in front of her family's driveway at around 3:30 a.m., but called her back, struck her on the head, and then proceeded to rape her.²²⁹ The incident was allegedly caught by the security camera focused on the driveway.²³⁰ Trabelsi was later arrested for the said assault.²³¹

However, recent developments show that the driver was released from custody, with the U.S. Attorney's Office requiring further investigation and evidence.²³² As of the moment, local authorities are still deciding the issue of whether or not the passenger consented to having sexual intercourse with the Uber driver.²³³ According to Trabelsi's attorney, his client is innocent because the incident was fully consensual between the two parties.²³⁴ Meanwhile, Uber has taken action by removing Trabelsi from its system.²³⁵

More importantly, Uber was quick to clarify that Trabelsi was not an employee working under a contract with the said app company.²³⁶ According to Rachel Holt, Uber's General Manager in Washington, D.C., the driver is an employee of Capitol Limo, a registered limousine company,

228. Nina Golgowski, *Driver from online cab service 'raped 20-year-old passenger after dropping her off outside her home in D.C.'*, DAILY MAIL, Mar. 14, 2013, available at <http://www.dailymail.co.uk/news/article-2293548/Anouar-Habib-Trabelsi-Driver-online-cab-service-Uber-accused-raping-passenger-outside-D-C-home.html> (last accessed Jan. 31, 2017).

229. *Id.*

230. See Benjamin Freed, *Uber Customer Accuses Driver of Rape*, available at http://dcist.com/2012/12/uber_customer_accuses_driver_of_rap.php (last accessed Jan. 31, 2017).

231. See Matthew Stabley, *Family Accuses Uber Driver of Raping Teen Daughter*, available at <http://www.nbcwashington.com/news/local/Teen-Accuses-Uber-Driver-of-Rape-183599831.html> (last accessed Jan. 31, 2017).

232. See Peter Hermann, et al., *Prosecutors not charging limo driver D.C. police accused in rape*, WASH. POST., Mar. 14, 2013, available at http://www.washingtonpost.com/local/uber-driver-charged-with-raping-woman-in-dc/2013/03/14/2bbf4c8e-8cbo-11e2-9838-d62f083ba93f_story.html (last accessed Jan. 31, 2017).

233. *Id.*

234. See NBC Washington, *Sex Assault Charges Against Driver Dispatched by Uber Dropped*, available at <http://www.nbcwashington.com/news/local/Uber-Car-Driver-Charged-With-Sexually-Assault-of-Passenger-197983871.html> (last accessed Jan. 31, 2017).

235. *Id.*

236. *Id.*

and the app company's relationship with the driver, if any, has already been terminated.²³⁷ In the end, Holt reassured the public that "the safety of our users is absolutely paramount, and we will continue to be vigilant that riders' safety and security are protected."²³⁸

In the same year, another Uber driver was tagged in an incident involving a user. Passenger Seth Bender claimed that he was verbally abused, spat on, and slapped by driver Hamza Abu Sharia during his ride in February 2012.²³⁹ Bender narrated that the incident started when he burped and excused himself, but Sharia became irate, ranted about hating "Americans and homosexuals," and assaulted him afterwards.²⁴⁰

Bender described the experience as a hateful and violent ride that left him injured and utterly humiliated.²⁴¹ The said passenger later filed a lawsuit before the Washington, D.C. Superior Court against Uber, Sharia, and Eddine Limousine, the company that employed that driver.²⁴² Bender is suing for \$500,000.00 in compensatory damages and \$250,000.00 in punitive damages.²⁴³

237. *Id.*

238. See Arin Greenwood, Uber Driver Arrested For Rape: Anouar Habib Trabelsi Arrested, Not Charged With Sexual Assault Of Female Passenger In Washington, D.C. (UPDATED), *available at* http://www.huffingtonpost.com/2013/03/14/uber-driver-rape-arrest_n_2876867.html (last accessed Jan. 31, 2017).

239. See Will Wrigley, D.C. Uber Lawsuit: Passenger Claims Driver Slapped Him, Spit In His Face, *available at* http://www.huffingtonpost.com/2013/03/12/dc-uber-lawsuit_n_2861451.html (last accessed Jan. 31, 2017).

240. See Will Sommer, Blog, *Uber Driver Allegedly Assaults Customer for Burping*, Mar. 8, 2013: 1:00 p.m., WASH. CITY PAPER, *available at* <http://www.washingtoncitypaper.com/blogs/citydesk/2013/03/08/uber-driver-allegedly-assaults-customer-for-burping> (last accessed Jan. 31, 2017).

241. See Dick Uliano, Passenger Sues Uber, Driver For Assault and Verbal Abuse, *available at* <http://wtop.com/109/3247106/Passenger-sues-Uber-driver-for-assault> (last accessed Jan. 31, 2017).

242. See Passenger sues Uber driver for assault and verbal abuse, *available at* <http://wtop.com/news/2013/03/passenger-sues-uber-driver-for-assault-and-verbal-abuse> (last accessed Jan. 31, 2017).

243. See Tom Terrance, Passenger sues Uber, driver for assault and verbal abuse, *available at* <http://taxibusinessadvice.com/passenger-sues-uber-driver-for-assault-and-verbal-abuse> (last accessed Jan. 31, 2017) & WJLA.com, Uber sued after passenger alleges verbal abuse, assault, *available at* <http://www.wjla.com/articles/2013/03/uber-sued-after-passenger-alleges-verbal-abuse-assault-86100.html> (last accessed Jan. 31, 2017).

In a letter to Uber, Khadijah Ali, attorney for the plaintiff, asserted that her client suffered from “extreme embarrassment, humiliation, fright[,] and emotional distress” after the short-lived trip.²⁴⁴ Uber has since severed ties with Sharia, but declared that while the drivers are paid through Uber, they are not employed by the said app company.²⁴⁵ Moreover, Uber stated that it does not hire its own drivers, but merely “partners” with independent drivers who use the technology to acquire and transport passengers.²⁴⁶

In 2013, passenger James Alva complained that he was verbally and physically assaulted by another Uber driver, Daveaa Whitmire.²⁴⁷ As per Alva, during the ride, the driver grew surly when given other directions instead of the original address and suddenly snapped when asked if he was, in actuality, the right driver.²⁴⁸ The driver began a barrage of racial and homophobic slurs before forcing Alva out of the car.²⁴⁹ Whitmire even shoved Alva and swatted his mobile phone away when the latter tried to take a photo of the vehicle’s license plate.²⁵⁰

The said app company confirmed that the supposed attacker was an Uber driver, but since the police did not arrest Whitmire when called to the scene, they chose not to investigate the incident further.²⁵¹ Uber refunded Alva’s fare, but refused to take any responsibility for Whitmire’s

244. See Sommer, *supra* note 240.

245. See Mark Harris, *Uber: why the world’s biggest ride-sharing company has no drivers*, GUARDIAN, Nov. 16, 2015, available at <https://www.theguardian.com/technology/2015/nov/16/uber-worlds-biggest-ride-sharing-company-no-drivers> (last accessed Jan. 31, 2016).

246. *Id.*

247. See NBC Bay Area Staff, *Uber Customer Claims Driver Assaulted Him*, available at <http://www.nbcbayarea.com/news/tech/Uber-Customer-Claims-Driver-Assaulted-Him-233395201.html> (last accessed Jan. 31, 2017).

248. *Id.*

249. *Id.*

250. See Joe Eskenazi, *Blog, Uber Passenger Alleges Verbal and Physical Assault by Driver*, Nov. 25, 2013: 1:15 p.m., SF WEEKLY, available at http://blogs.sfweekly.com/thesnitch/2013/11/uber_alleged_assault.php (last accessed Jan. 31, 2017).

251. See Carmel Deamicis, *Exclusive: Uber driver accused of assault had done prison time for a felony, passed background check anyways*, available at <http://pando.com/2014/01/06/exclusive-uber-driver-accused-of-assault-passed-zero-tolerance-background-check-despite-criminal-history> (last accessed Jan. 31, 2017) & Andrew Salzberg, *What To Expect When You Ride*, available at <https://blog.uber.com/sfsafety> (last accessed Jan. 31, 2017).

behavior.²⁵² Andrew Noyes, a member of Uber's Public Relations Team, insisted that the driver was not employed by Uber, but by another company.²⁵³ That is to say, some Uber drivers are under contract with existing car companies, which may subcontract the vehicles and the drivers to the mobile app.²⁵⁴ Such drivers then apply and go through Uber's background check and vetting process.²⁵⁵

To be sure, Uber does not consider itself accountable for what happened to Alva. According to Noyes,

By the rider's own account, the police were called to the scene and determined there was no action necessary. So what would you propose that we do? If law enforcement pursues this, we would cooperate. But we're a technology platform that connects riders and providers, so it's not our job to investigate.²⁵⁶

On 31 January 2013, Syed Muzzaraf, a driver "affiliated" with Uber, fatally hit a six-year-old girl, Sofia Liu, as she was walking with her family in a San Francisco crosswalk.²⁵⁷ At the time of the collision, Muzzaraf was not in the process of transporting a passenger, but he was logged on to the Uber app and was waiting to be engaged by nearby users.²⁵⁸ The driver was later arrested on suspicion of vehicular manslaughter with gross negligence and failure to yield to pedestrians in a crosswalk.²⁵⁹

252. NBC Bay Area Staff, *supra* note 247.

253. Carmel Deamicis, Uber Customer Claims Abuse And Assault By Driver. Uber Confirms: Yes, He Drives For Us, *available at* <http://pando.com/2013/11/25/uber-customer-claims-abuse-and-assault-by-driver-uber-confirms-yes-he-works-for-us> (last accessed Jan. 31, 2017).

254. *Id.*

255. *Id.*

256. *Id.*

257. See USA Today, *Family files wrongful death lawsuit after 6-year-old girl was struck and killed by vehicle*, USA TODAY, Jan. 28, 2014, *available at* <http://www.usatoday.com/story/tech/2014/01/28/uber-wrongful-death-lawsuit/4959127> (last accessed Jan. 31, 2017).

258. Jessica Kwong, *Uber driver accused in fatal collision told police he was awaiting fare*, S.F. EXAMINER, Jan. 2, 2014, *available at* <http://www.sfexaminer.com/sanfrancisco/uber-driver-arrested-for-vehicular-manslaughter-in-girls-death/Content?oid=2664123> (last accessed Jan. 31, 2017).

259. Daily News, *Family sues Uber after New Year's Eve crash in San Francisco kills 6-year-old girl*, *available at* <http://www.nydailynews.com/news/national/family-sues-uber-driver-kills-6-year-old-girl-article-1.1594163> (last accessed Jan. 31, 2017).

Eventually, Liu's family filed a wrongful-death suit against Muzzaraf and Uber in the California Superior Court.²⁶⁰ According to Christopher Dolan, attorney for the plaintiffs,

Uber shares in the profits of its drivers and it must also share in the responsibility for the harms they cause. The use of the Uber app by drivers violates California laws designed to eliminate driver distraction. Drivers are constantly interacting with their mobile devices creating a serious risk to both passengers and the community.²⁶¹

While the suit admits that technology has modified the traditional means of transportation, it asserts that the basic rights of the public to safety and accountability remain the same and must be upheld through the justice system.²⁶²

On 1 May 2014, Uber formally filed its defense.²⁶³ It admitted that Muzzaraf was a "partner" driver for Uber,²⁶⁴ but disclaimed any responsibility for his actions.²⁶⁵ According to Uber, the driver was not providing transportation services through the app at the time of the accident because he was not in course of driving a user nor was he en route to fetch one.²⁶⁶ The defense also claimed that Muzzaraf was not an Uber employee, agent, joint venturer, or partner, but an independent contractor, such that the said driver alone should be liable for the consequences of the collision.²⁶⁷

260. USA Today, *supra* note 257.

261. See Terry Collins, *Uber sued for wrongful death of 6-year-old SF girl*, THE SAN DIEGO TRIB., Jan. 27, 2014, available at <http://www.sandiegouniontribune.com/sdut-uber-sued-for-wrongful-death-of-6-year-old-sf-girl-2014jan27-story.html> (last accessed Jan. 31, 2017) & Dominic Rush, *Uber sued by family of six-year-old killed in San Francisco crash*, GUARDIAN, Jan. 27, 2014, available at <https://www.theguardian.com/world/2014/jan/27/uber-sued-family-six-year-old-killed-crash-san-francisco> (last accessed Jan. 31, 2017).

262. *Id.*

263. See Andrew Salzberg, *Statement on New Year's Eve Accident*, Jan. 1, 2014, available at <http://blog.uber.com/2014/01/01/statement-on-new-years-eve-accident> (last accessed Jan. 31, 2017).

264. *Id.*

265. *Id.*

266. See Joe Fitzgerald Rodriguez, *Uber files defense in New Year's Eve death of six-year-old girl*, available at <https://web.archive.org/web/20150913094807/http://www.sfbg.com/politics/2014/05/05/uber-files-defense-new-years-eve-death-driver-was-not-our-employee> (last accessed Jan. 31, 2017).

267. *Id.*

In contrast, Graham Archer, attorney for Muzzaraf, asserted that his client was indeed working for the app company at the time of the accident, having previously dropped off an Uber user, and was waiting for another request.²⁶⁸ In any case, Attorney Dolan directly challenged Uber's effort to disclaim liability and distance itself from the incident, arguing that it is imperative for the drivers to be logged on to the app, as it is the only way users know that there are potential rides in the vicinity.²⁶⁹ Thus, the absence of an actual engagement is immaterial because the drivers are, in essence, working for Uber round-the-clock.²⁷⁰ Such is the first wrongful death lawsuit against Uber. The case is on trial as of this writing.²⁷¹

Another unfortunate event involving a third person is the one between bystander Claire Fahrbach and driver Djamol Gafurov.²⁷² Gafurov's vehicle collided with another car, driven by Ziad Sleiman, at an intersection, causing one of them to hit a fire hydrant.²⁷³ The hydrant flew 81 feet, striking and severely injuring Fahrbach.²⁷⁴ The said bystander suffered "lacerations to her body, a fracture in her lower leg, and multiple herniated discs," which would likely require surgery.²⁷⁵

After some time, Fahrbach sued Gafurov, Sleiman, and Uber, seeking compensation for medical bills, attorney's fees, and loss of income as a result

268. Zach Miners, Parents sue Uber over daughter's death, claim its app is illegal, available at <http://news.idg.no/cw/art.cfm?id=61CB3D8B-E29B-D102-2E193672CE928033> (last accessed Jan. 31, 2017).

269. See Streitfeld, *supra* note 227.

270. *Id.*

271. See Melody Gutierrez, Family of S.F. girl killed by Uber driver backs insurance law, available at <http://www.sfgate.com/news/article/Family-of-SF-girl-killed-by-Uber-driver-backs-5579980.php> (last accessed Jan. 31, 2017).

272. See Rachel Swan, Blog, *Updated: Uber Won't Pay for Uber Driver Accident*, Aug. 15, 2013: 8:01 a.m., SF WEEKLY, available at http://blogs.sfweekly.com/thesnitch/2013/08/uber_wont_pay_for_uber_driver.php (last accessed Jan. 31, 2017).

273. *Id.*

274. See Andrew Dudley, Uber Driver Sued Over Divisadero Hydrant Crash, available at <http://hoodline.com/2013/08/uber-sued-over-divisadero-hydrant-crash> (last accessed Jan. 31, 2017).

275. See Auto Rental News, Uber Driver Faces Lawsuit for Fire Hydrant Injury, available at <http://www.autorentalnews.com/news/story/2013/08/uber-driver-faces-lawsuit-for-fire-hydrant-injury.aspx> (last accessed Jan. 31, 2017).

of the accident.²⁷⁶ She claimed that since Gafurov was using the Uber app to pick up passengers at the time of the accident, then it, too, should be responsible for a share of the damages.²⁷⁷

Regardless of the damage, Uber brushed the lawsuit aside, referring to clauses in its terms and conditions of use that absolve it from any accidents caused by its drivers.²⁷⁸ From the viewpoint of the mobile app company, since Gafurov is a private contractor rather than an Uber employee, he himself has to answer for whatever amount that would result from the casualty using his own insurance.²⁷⁹ When asked about the lawsuit, Noyes remarked that “[t]here[']s no characterization of a driver as a driver at Uber.”²⁸⁰ According to Trevor Johnson, director of the San Francisco Cab Driver’s Association, with the amount involved, “unless Uber steps in and helps him save the day this driver is going to be in the hole for the next 20 years.”²⁸¹ The case is currently pending before the California Superior Court.²⁸²

The above-stated disputes are only some of the legal issues that Uber has been connected with. Even so, what remains constant throughout all the incidents is Uber’s assertion of non-liability, based on the theory that it is merely a technology platform that connects the parties concerned.²⁸³ Furthermore, the drivers in question, whether they be professional, taxi, or private motorists, are not considered by Uber as its employees, and the app company’s terms and conditions of use²⁸⁴ unequivocally stipulate against any responsibility with regard to the acts or omissions of the drivers.²⁸⁵

Therefore, the most important question that emerges is — who shoulders the liability for any harm suffered by passengers and/or third

276. See Complaint, July 25, 2013, at 4 (on file with Superior Court of California, County of San Francisco), in *Claire Farhbach v. Djamol Gafurov et al*, CGC-13-533103.

277. See Swan, *supra* note 272.

278. *Id.*

279. *Id.*

280. Rodriguez, *supra* note 266.

281. *Id.*

282. *Id.*

283. Swan, *supra* note 277.

284. Uber-Legal, *supra* note 194.

285. See Andrew Couts, Terms & Conditions: Use Uber ‘at your own risk,’ available at <http://www.digitaltrends.com/mobile/terms-conditions-uber/#!TbDdl> (last accessed Jan. 31, 2017).

persons during or in connection with the transportation service? Uber's answer, whether providing taxi-driver-connecting or private-driver connecting services, is insurance.²⁸⁶ However, the mobile app company's insurance policies are rather complicated to the say the least, particularly those involving its private UberX drivers.²⁸⁷ Such drivers are, essentially, regular individuals who offer to transport users using their own private vehicles.²⁸⁸

Consistent with its position that it is not liable for any incidents that may occur on the road, Uber requires all its drivers to procure insurance.²⁸⁹ For drivers employed by existing livery or taxi companies, the said app company expects the commercial insurance policies of such entities to cover the liabilities that may arise due to the transportation service.²⁹⁰

For non-professional drivers operating under UberX, the mobile app company requires the personal insurance policies of such drivers to take the fall, with Uber's own commercial insurance policy being liable merely in a subsidiary, supplementary, or excess capacity.²⁹¹ Uber's policy enters the picture only in the event that a driver's personal policy is exhausted or cannot cover an incident.²⁹²

Be that as it may, having insurance coverage hardly solves the problem of liability. For one, insurance companies will only agree to pay a stipulated amount, which must be in connection with events that have been agreed upon in the insurance contract. As it stands, the insurance policy of most, if not all, of such mobile app companies covers only motor vehicle-related

286. See *Who's Driving You?*, Blog, *Insurance Official: TNCs Should Carry Commercial Insurance as Primary Coverage*, Apr. 7, 2014, WHO'S DRIVING YOU?, available at <http://www.whosdrivingyou.org/blog/insurance-official-tncs-should-carry-commercial-insurance-as-primary-coverage> (last accessed Jan. 31, 2017).

287. *Id.*

288. Elyce Kirchner, et al., *Is Uber Keeping Riders Safe?*, available at <http://www.nbcbayarea.com/investigations/Is-Uber-Keeping-Riders-Safe-256438921.html> (last accessed Jan. 31, 2017).

289. Uber, *Drive with Uber*, available at <https://www.uber.com/driver-referral/uberx> (last accessed Jan. 31, 2017).

290. See Kia Kokalitcheva, *Here's what happens when you get in an Uber crash*, available at <http://fortune.com/2015/10/13/uber-crash-insurance> (last accessed Jan. 31, 2017).

291. *Id.*

292. Taylor Soper, *Uber shares commercial insurance policy just days after leak*, available at <http://www.geekwire.com/2014/uber-insurance-policy-leaked> (last accessed Jan. 31, 2017).

events, which is limited to bodily injuries or damage to property by reason of an automobile accident, such as a car collision.²⁹³ It must also be noted that the drivers need to be logged on to the system in order for the said policy to apply.²⁹⁴ This breeds difficulty because drivers may, deliberately or otherwise, turn the technology off before or during the ride.²⁹⁵

More importantly, the highly contingent insurance policy does not cover different kinds of suffering short of physical injuries resulting from a vehicular accident.²⁹⁶ As regards other forms of harm that may befall passengers and/or third persons due to the fault or negligence of the drivers, such as maltreatment or assault,²⁹⁷ the personal insurance policies of the motorists concerned must be ready to pay for the damages.²⁹⁸ Such provides no guarantee to potential victims because most personal policies do not

293. See Claire, Thinking of Driving with Uber? This Is What You Need to Know, available at <https://newsroom.uber.com/227972> (last accessed Jan. 31, 2017).

294. See Nairi Hourdajian, Eliminating Ridesharing Insurance Ambiguity, Feb. 10, 2014, available at <http://blog.uber.com/uberXridessharinginsurance> (last accessed Jan. 31, 2017).

295. See Jim Edwards, Uber Has Changed My Life And As God Is My Witness I Will Never Take A Taxi Again (Where Available), available at <http://www.businessinsider.com/uber-has-changed-my-life-and-as-god-is-my-witness-i-will-never-take-a-taxi-again-where-available-2014-1> (last accessed Jan. 31, 2017). See also Carolyn Said, Ride services try to balance needs of business and drivers, available at <http://www.sfgate.com/business/article/Ride-services-try-to-balance-needs-of-business-5452593.php> (last accessed Jan. 31, 2017).

296. Don Jergler, Uber Announces New Policy to Cover Gap, available at <http://www.insurancejournal.com/news/national/2014/03/14/323329.htm> (last accessed Jan. 31, 2017).

297. See, e.g., Olivia Nuzzi, Uber's Biggest Problem Isn't Surge Pricing. What If It's Sexual Harrasment by Drivers?, available at <http://www.thedailybeast.com/articles/2014/03/28/uber-s-biggest-problem-isn-t-surge-pricing-what-if-it-s-sexual-harassment-by-drivers.html> (last accessed Jan. 31, 2017) & Who's Driving You?, Blog, *Sexual Harrasment By Uber Drivers*, Mar. 30, 2014, WHO'S DRIVING YOU?, available at <http://www.whosdrivingyou.org/blog/sexual-harassment-by-uber-drivers/> (last accessed Jan. 31, 2017).

298. See Joe Fitzgerald Rodriguez, Uber's secret, "propriety" insurance policy leaked, available at <http://48hills.org/sfbgarchive/2014/03/24/ubers-secret-proprietary-insurance-policy-leaked> (last accessed Jan. 31, 2017) & Uber wrongful death lawsuit highlights insurance grey area for rideshares, available at <http://www.scp.org/programs/airtalk/2014/02/06/35915/uber-wrongful-death-lawsuit-highlights-insurance-g> (last accessed Jan. 31, 2017).

cover commercial activities by the drivers, as when they are operating as a livery or conveyance service.²⁹⁹

Another problem is that, realistically, the policies may not be enough to cover the amounts to which passengers and/or third persons may be legally entitled to. In either case, it is possible that the driver's ability to cover the damage may be limited to his or her personal assets.³⁰⁰ In this regard, Attorney Dolan believes that even with the assistance of the app companies, the sum that is recoverable from insurance may be too small to the extent that "it's like throwing water on a house fire."³⁰¹ When all is said and done, it may not be the drivers alone that these apps are "hanging out to dry,"³⁰² but the users and the public in general as well.

C. Regulatory Measures in Other Jurisdictions

Due to the ongoing concern that driver-connecting mobile app companies are operating in what are believed to be "gray" areas of the law,³⁰³ certain jurisdictions have endeavored to come up with rules in order to regulate the same. The most notable of these are the states of California and Maryland, whose Public Utilities Commissions exerted efforts to study and understand how the app companies operate, calling into public hearings several stakeholders in the matter, such as existing taxi companies, drivers, and,

299. See Jason Williams, Uber, Lyft arrive amid praise, scrutiny, USA TODAY, Apr. 9, 2014, available at <http://www.cincinnati.com/story/news/2014/04/09/uber-lyft-raising-questions-safety-fairness/7506935> (last accessed Jan. 31, 2017). See also Nathaniel Mott, Uber and Lyft expand insurance coverage after controversy, available at <http://pando.com/2014/03/14/uber-and-lyft-expand-insurance-coverage-after-controversy> (last accessed Jan. 31, 2017).

300. Janet Cho, Critics Of Uber and Lyft Raise Questions About Insurance And Safety, available at http://www.cleveland.com/business/index.ssf/2014/04/critics_of_uber_and_lyft_raise_questions_about_insurance_and_safety.html (last accessed Jan. 31, 2017).

301. Patrick Hoge, *Uber's new insurance is cheap, lawyer for dead girl's family says*, SAN FRANCISCO BUS. TIMES, Mar. 14, 2014, available at <http://www.bizjournals.com/sanfrancisco/blog/2014/03/uber-insurance-technologies-travis-kalanick-sofia.html?page=all> (last accessed Jan. 31, 2017).

302. USA Today, *supra* note 257 & Mary Beth Quirk, Family of 6-Year-Old Girl Hit By Uber Driver Suing The Company For Wrongful Death, available at <http://consumerist.com/2014/01/28/family-of-6-year-old-girl-hit-by-uber-driver-suing-the-company-for-wrongful-death> (last accessed Jan. 31, 2017).

303. Noah K. Williams, Questions of Liability in Car-for-Hire and Rideshare Services, available at <http://reedlongyearlaw.com/blog/questions-liability-car-hire-rideshare-services> (last accessed Jan. 31, 2017).

naturally, the app companies themselves. On the basis of their findings, the regulatory bodies concerned applied local statutes to produce regulations that would govern the future conduct of such mobile app companies within their respective territories.

I. California

In 2013, California became the first state to formally legalize and provide a framework for private-driver-connecting app companies, allowing them to continue their services therein.³⁰⁴ With the release of Decision 13-09-045 (CPUC Decision),³⁰⁵ the California Public Utilities Commission (CPUC) aimed to ensure that public safety is not compromised by the conduct of transportation services that utilize online platforms to connect passengers with drivers, who use their personal and/or non-commercial motor vehicles.³⁰⁶

The CPUC Decision specifically governs the transportation services executed by drivers registered with private-driver-connecting app companies.³⁰⁷ As such, the said rules also sought to provide a structure for other states that are grappling with how to regulate these new services, especially those that are not tied-up with drivers from existing taxi, limousine, or livery car companies.³⁰⁸ The regulation also has a second phase, which aims to review the CPUC's existing regulations over limousines and other kinds of charter-party carriers³⁰⁹ to ensure that public safety rules are up to date.³¹⁰ The subsequent stage will be unique to taxi-driver-connecting app companies.

To begin with, the CPUC Decision refers to private-driver-connecting mobile app companies as Transportation Network Companies (TNC). A TNC is defined as an “organization whether a corporation, partnership, sole

304. Tomio Geron, California Becomes First State To Regulate Ridesharing Services Lyft, Sidecar, UberX, *available at* <http://www.forbes.com/sites/tomiogeron/2013/09/19/california-becomes-first-state-to-regulate-ridesharing-services-lyft-sidecar-uberx> (last accessed Jan. 31, 2017).

305. California Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services, Decision 13-09-045 (Sep. 19, 2013).

306. *Id.* at 2.

307. *Id.* at 13.

308. Geron, *supra* note 304.

309. Decision 13-09-045, at 3.

310. *Id.*

proprietor, or other form, operating in California that *provides prearranged transportation services for compensation* using an online-enabled application (app) or platform to connect passengers with drivers using their personal vehicles.”³¹¹

The CPUC Decision requires such TNCs to, among others, obtain a license from the Commission, conduct criminal background checks on drivers, establish a driver training program, implement zero-tolerance policy on drugs, and provide for an adequate commercial insurance policy.³¹² To clarify, it is the TNCs themselves, not the individual drivers, which must obtain a license from the CPUC.³¹³

The CPUC bluntly rebuffed the assertion that TNCs are simply applications on smartphones, which are not part of the transportation industry.³¹⁴ According to the Commission, such private-driver-connecting mobile app companies serve as the means by which the transportation service is arranged and perform a function that is similar to that of conventional transportation company dispatch offices.³¹⁵

The CPUC made it clear that it rejects that argument that “the method by which information is communicated, or the transportation service arranged, changes the underlying nature of the transportation service being offered.”³¹⁶ To come to the point, the rules and regulations concerning public safety do not change merely because a mobile app is employed to facilitate the transportation service.

Based on Section 5360 of the California Public Utilities Code,³¹⁷ the CPUC has come to the conclusion that the TNCs themselves — apart from the drivers — are engaged in the transportation of passengers for compensation, as they derive an unmistakable business or economic benefit through their services.³¹⁸ To be more specific, the Commission found that TNCs are involved in pre-arranged transportation services, in consonance with Section 5360.5 of the same Code³¹⁹ for two reasons.³²⁰

311. *Id.* at 2 (emphasis supplied).

312. *Id.* at 3.

313. *Id.* at 29.

314. *Id.* at 12.

315. Decision 13-09-045, at 12.

316. *Id.* at 13.

317. CAL. PUB. CODE (1973).

318. *Id.* § 5360.

319. *Id.*

First, the user must download the app and agree to the terms of service before being able to request a ride. *Second*, the user must input certain data, such as current location and desired destination, to finalize a particular trip.³²¹ This means that TNCs cannot be placed in the same category as taxis and similar transportation services³²² because TNC drivers cannot be casually hailed on the street and they depend, to a large extent, on information exchanged prior to the performance of the services.³²³

Therefore, TNCs are considered as charter-party passenger carriers, which fall under the regulatory jurisdiction of the CPUC.³²⁴ Under Section 5360 of the California Public Utilities Code, charter-party carrier of passengers (CPCP) refers to “every person *engaged in the transportation of persons by motor vehicle for compensation*, whether in common or contract carriage, over any public highway in this state.”³²⁵ Such definition includes “any person, corporation, or other entity engaged in the provision of a hired driver service when a rented motor vehicle is being operated by a hired driver.”³²⁶

However, the Commission clarified that TNCs are not required to apply for a certificate of public convenience and necessity pursuant to Section 5371 in relation to Section 5384 (b) of the same Code.³²⁷ Based on the said provisions, the CPUC is authorized to issue special permits in lieu of such certificates to passenger carrier operations with seating capacities of under 15 passengers.³²⁸

On the issue of liability, Decision 13-09-045 ordered that TNCs must provide commercial liability insurance, notwithstanding the general disclaimers of liability found in their terms and conditions of use.³²⁹ TNCs are required to maintain such coverage with a minimum of \$1,000,000.00 for each incident involving vehicles and drivers while they are providing TNC

320. Decision 13-09-045, at 20.

321. *Id.* at 21.

322. Geron, *supra* note 304.

323. Decision 13-09-045, at 20-21.

324. *Id.* at 21-22.

325. CAL. PUB. CONTRACT CODE, § 5360 (1973) (emphasis supplied).

326. *Id.*

327. Decision 13-09-045, at 25.

328. CAL. PUB. CODE, §§ 5371 & 5384 (1973).

329. Decision 13-09-045, at 35.

transport services.³³⁰ Unfortunately, nothing more was discussed as regards the accountability of TNCs for the acts or omissions of the drivers beyond insurance coverage for vehicular accidents while the latter are in the pursuit of purely commercial activities for the app companies.

In any event, according to Commissioner Mark Ferron, the CPUC Decision “emphasizes safety as a primary objective, while fostering the development of this nascent industry.”³³¹ Despite the efforts of the Commission, many California taxi fleets remain unhappy about the ruling, as it allegedly sanctions private-driver-connecting mobile apps to operate in the said state under less rigid rules than locally regulated taxi or similar commercial transportation businesses.³³²

As stated earlier, one of the main considerations why the CPUC decided that TNCs are not providing services similar to regular taxis is for the reason that the apps operate on a prearranged basis, making the same charter-party carriers instead. Taxi drivers who are not affiliated with the apps directly challenge this reasoning, arguing that TNC services are not necessarily “ordered in advance” because the same may be acquired as soon as or whenever required by users.³³³

Opposing taxi drivers call attention to the fact that the TNCs themselves describe their services as “on demand transportation,” rendering the time-based definition of “prearranged” by the Commission to be murky at best.³³⁴ As per Mark Gruberg, spokesman for United Taxicab Workers, TNCs “are taxicabs in every sense of the word” and should be regulated as such.³³⁵ The

330. *Id.* at 58.

331. Anthony Ha, California Regulator Passes First Ridesharing Rules, A Big Win For Lyft, SideCar, And Uber, *available at* <http://techcrunch.com/2013/09/19/cpuc-ridesharing-regulations> (last accessed Jan. 31, 2017).

332. Sudhin Thanawala, Blog Post, *California's New Car-Sharing Regulations Create A New Category For Businesses Like Lyft, Uber*, Sep. 9, 2013, BLOGPOST, *available at* <http://www.710studysanrafaelneighborhoodposts.com/2013/09/californias-new-car-sharing-regulations.html> (last accessed Jan. 31, 2017) (Huffington Post Article re-Posted as a Blog Entry).

333. Barry Korengold, CPUC Grants “Limited Rehearing” of Flawed Decision, *available at* <http://www.sfcda.org/archives/1105> (last accessed Jan. 31, 2017).

334. *Id.*

335. Joshua Sabatini, *SF exploring ways to regulated ride services like Uber, Lyft*, S.F. EXAMINER, Mar. 7, 2014, *available at* <http://www.sfexaminer.com/sanfrancisco/sf-exploring-ways-to-regulate-ride-services-like-uber-lyft/Content?oid=2724033> (last accessed Jan. 31, 2017).

issue has yet to be settled, with the CPUC simply being firm about the requirements for insurance.

In the meantime, approximately nine months after Decision 13-09-045 was promulgated, the CPUC released a “Proposed Decision”³³⁶ to modify the same. The proposal involves a clarification of certain rules laid down for TNCs, specifically on the matter of when such apps are providing TNC services.³³⁷ On this matter, the CPUC sought to define “providing TNC services” as follows —

‘Whenever the TNC driver has the [app] open. Furthermore, TNC services are provided by TNC drivers during three distinct time periods. Period One is: ‘App open — waiting for a match.’ Period Two is: ‘Match accepted — but passenger not yet picked up.’ Period Three is: ‘Passenger in car — until passenger safely exits car.’ [Decision] 13-09-045 made clear that coverage was mandatory during Periods Two and Three. This Decision clarifies that coverage is also mandatory during Period One.’

Providing TNC services is not limited to the time between obtaining a recorded acceptance to transport a subscribing TNC passenger or the TNC operator’s travel to pick up that subscribing TNC passenger, transport, or drop-off of that subscribing TNC passenger(s) to his/her/their destination. Instead, this definition is expansive enough to cover all circumstances when the TNC driver is driving and/or waiting to be hired by a subscribing TNC passenger, has accepted a subscribing TNC passenger and is en route to pick up the subscribing TNC passenger, is transporting the subscribing TNC passenger from the pick-up spot to the destination stop, and is then again driving and/or the app is open to indicate that the driver is available or waiting to be hired by another subscribing TNC passenger. It is our intent that insurance coverage must be consistent with our definition of ‘providing TNC services’ and during those times that those services are being provided.³³⁸

As can be seen, the Proposed Decision would entail the \$1,000,000.00 commercial liability insurance imposed under the earlier CPUC Decision to be in full effect as soon as the drivers turn on their smartphones and use the technology.³³⁹ Although the mobile app companies concerned have

336. California Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services, Rulemaking 12-12-011 (June 10, 2014).

337. *Id.*

338. *Id.*

339. California Regulators Want Insurers to Speed Up Ridesharing Policies, *available at* <http://www.insurancejournal.com/news/west/2014/06/11/331606.htm> (last accessed Jan. 31, 2017).

expressed their disapproval of the suggested policy, state regulators and insurance lawyers applaud the same, believing that “It’s good for consumers and their safety.”³⁴⁰ The intention of the CPUC is unmistakably to afford both users and third persons maximum protection from the moment that the drivers begin the process of performing transportation services for the apps.³⁴¹ The Proposed Decision is currently under consideration by the entire CPUC.³⁴²

2. Maryland

In 2014, Maryland became the second state to propose rules to governing private-driver-connecting mobile app companies.³⁴³ While the CPUC decision was explicit only as to the fact that such apps provide transportation services, leaving the issue of whether or not they are common carriers answerable only by implication, the Maryland Public Utilities Commission (MPUC) boldly resolved the same in the affirmative.³⁴⁴ Despite the apps threatening to leave the said state if regulations are not relaxed, Chief Public Utility Judge Terry Romine was adamant that they are public service companies offering riders for hire.³⁴⁵ Case No. 9325 (MPUC Proposed Decision)³⁴⁶ expressly labeled the companies behind the said mobile apps as common carriers and subjected them to rules governing the same.³⁴⁷

Judge Romine asserted that the app companies operate as motor vehicles because they offer to transport users for compensation.³⁴⁸ In this regard, she

340. Patrick Hoge, *Uber, Lyft hit by proposed California insurance requirements*, SAN FRANCISCO BUS. TIMES, June 10, 2014, available at <http://www.bizjournals.com/sanfrancisco/blog/2014/06/uber-lyft-insurance.html?page=all> (last accessed Jan. 31, 2017).

341. *Id.*

342. *Id.*

343. Colin Campbell & Scott Dance, *Md. Commission proposes Uber regulations*, BALTIMORE SUN, Apr. 24, 2014, available at <http://www.baltimoresun.com/business/bs-md-uber-psc-20140424-story.html> (last accessed Jan. 31, 2017).

344. *Id.*

345. *Id.*

346. In the Matter of an Investigation to Consider the Nature and Extent of Regulation Over the Operations of Uber Technologies, Inc. and Other Similar Companies, Case No. 9325 (Maryland Public Service Commission, Apr. 24, 2014).

347. Campbell & Dance, *supra* note 343.

348. Case No. 9325, at 2.

drew attention to Section 1-101 (e) (1) of the Public Utilities Article of Maryland (PUA),³⁴⁹ which states that a common carrier refers to a “person, public authority, or federal, state, district, or municipal transportation unit that is engaged in the public transportation of persons for hire, by land, water, air, or any combination of them.”³⁵⁰ “Transportation for hire,” in turn, is defined under Section 1-101 (pp) of the PUA as “the transportation of persons by: (i) regularly scheduled operations; (ii) charter or contract operations; or (iii) tour or sightseeing operations.”³⁵¹

According to Judge Romine, while it may be that the use of technology to perform transportation services presents a novel situation in assessing whether or not an entity is a public service company,” the same does not hold true in resolving whether or not the said entity is a common carrier.³⁵² She explained that as to the latter issue, the case of *Philip P. Restivo v. Public Service Commission, et al.*³⁵³ was instructive, thus —

It is difficult to determine with exactness just when the owner of a motor vehicle is operating as a common carrier, as that term is ordinarily understood in law, but the courts have not been inclined to excuse the increased numbers of those who earn their livelihood by transporting persons or goods for hire in motor vehicles, from the responsibility of common carriers simply on technical grounds, and they have been particularly slow to excuse them when their plan of operation bore evidence of being a studied attempt to reap the rewards of common carriers without incurring the corresponding liabilities.³⁵⁴

In connection with this, Judge Romine found that mobile app companies exert “significant influence over the management and policies of its partner carriers and drivers and the operation of the vehicles used to provide transportation”³⁵⁵ to the extent that they are deemed to “own” the cars themselves.³⁵⁶ The conclusion was based on Section 1-101 (t) of the PUA, which provides that “‘own’ includes own, operate, lease to or from, manage, or control.”³⁵⁷

349. MD. CODE ANN. PUB. UTIL., § 1-101 (e) (1).

350. *Id.*

351. *Id.* § 1-101 (pp).

352. Case No. 9325, at 17.

353. *Philip Restivo v. Public Service Commission, et al.*, 149 Md. 30 (1925) (U.S.).

354. *Id.* at 34-35.

355. Case No. 9325, at 19.

356. *Id.*

357. MD. CODE ANN. PUB. UTIL., § 1-101 (e) (1) (emphasis supplied).

While it is true that app companies do not have ownership over or title to the vehicles used to execute the transportation services for hire, “the definition of ‘own’ in the Public Utilities Articles is very broad and includes the terms ‘control’ or ‘manage.’”³⁵⁸

As per the said Judge, there is no doubt that mobile app companies exercise sufficient influence, management, and control over the operations of the motor vehicles engaged in the transportation for hire, thereby making them the “owners” thereof³⁵⁹ based generally on the following, among others:

- (1) The app companies require a standardized fleet of vehicles that are distinct to their respective brands and marketed as such;
- (2) The app companies conduct extensive background checks on the drivers applying to be part of the service and “accept” those that have passed the same;
- (3) The app companies utilize a rating system of the drivers, the vehicles, and the entire transportation experience and “remove” drivers who fall below the standard;
- (4) The transportation services provided to the users can only be performed if the driver is equipped with smartphones containing the technology and maintains continued eligibility to use the same;
- (5) The app companies essentially determine which vehicle to dispatch in order to accede to the user’s request.³⁶⁰

Judge Romine was convinced that when all the relevant factors are considered in their totality, the same demonstrates that the companies in charge of the mobile apps direct and influence each aspect of the transportation service.³⁶¹ She also added that her decision was guided by the considerable similarities in the way the app companies operate, as well as manages their drivers and/or vehicles when compared with how a taxicab association does the same over its taxi fleet and drivers.³⁶² Simply put, the said Decision held that the companies providing driver-connecting mobile app services wield enormous power over the drivers and the system in general to the point that it was reasonable to deduce that they are in charge of every aspect thereof, rendering the matter of ownership over the vehicles

358. Case No. 9325.

359. *Id.* at 20–22.

360. *Id.*

361. *Id.* at 22.

362. *Id.* at 38–40.

inconsequential or irrelevant.³⁶³ The MPUC Proposed Decision is under consideration by the MPUC at the moment.³⁶⁴

3. Other States in the U.S.

Some American states have also released tentative and/or provisional rules for such mobile app companies, while others have yet to come to a decision as to how and to what extent they will supervise the conduct of the same in their territories.³⁶⁵

Notably, several cities, including New Orleans (Louisiana),³⁶⁶ Portland (Oregon),³⁶⁷ Miami (Florida),³⁶⁸ New York (New York),³⁶⁹ and Philadelphia (Pennsylvania),³⁷⁰ have chosen to ban the operation of such apps altogether. In Boston (Massachusetts), city officials are preparing to overhaul the city's transportation policies in order to make way for driver-connecting mobile apps.³⁷¹ According to Mayor Martin J. Walsh, "[w]e cannot turn a blind eye to public safety concerns around unregulated modes of transportation, but we also cannot condemn a popular, effective service like Uber[.]"³⁷² At this time, such app companies operate outside the bounds of the Boston taxi regulatory system.³⁷³

363. *Id.*

364. Case No. 9325, at 38-40.

365. Uber Laws State-By-State, available at <http://www.nbcchicago.com/investigations/Uber-Laws-State--By-State--256639731.html?fullSite=y> (last accessed Jan. 31, 2017).

366. See Jon Brooks, City by City, Lyft and Uber Take on Taxis, Regulators, available at <http://blogs.kqed.org/newsfix/2014/03/03/lyft-uber-regulation> (last accessed Jan. 31, 2017).

367. *Id.*

368. *Id.*

369. *Id.*

370. Sabatini, *supra* note 335.

371. Michael B. Farrell, *Uber gets some support from new mayor*, BOS. GLOBE, Mar. 1, 2014, available at <http://www.bostonglobe.com/business/2014/03/01/car-service-uber-not-yet-boston-regulators-sights/vQjDKrmbpT6NPgoCAQC53O/story.html> (last accessed Jan. 31, 2017).

372. *Id.*

373. Joe Shortsleeve, Boston Police Commissioner Questions Safety of Uber App, available at <http://boston.cbslocal.com/2014/02/25/boston-police-commissioner-questions-safety-of-uber-app> (last accessed Jan. 31, 2017).

In Chicago (Illinois), the Mayor's Office introduced a proposed Ordinance that aims to bring the mobile app companies to a regulatory fold.³⁷⁴ The suggested rules will create a new category of commercial vehicle transportation — Transportation Network Providers (TNP) — meant specifically for technology companies that connect people who need ride to private individuals offering their personal cars for the service.³⁷⁵ TNPs are regarded as persons or associations that offer or provide Transportation Network Services to the public.³⁷⁶

In this regard, Transportation Network Services refer to a “prearranged transportation service offered or provided for compensation using an Internet-enabled application or digital platform to connect potential passengers with transportation network drivers.”³⁷⁷ Furthermore, TNPs are required to register with the city and pay an annual licensing fee, as well as a fee per driver using the system.³⁷⁸

The said Ordinance would also subject the TNPs to Chicago's ground transportation tax per vehicle.³⁷⁹ On top of that, like Decision 13-09-045, the Ordinance requires TNPs to have commercial liability insurance policies amounting to \$1,000,000.00 per occurrence.³⁸⁰ The excess policy scheme employed by such app companies, which stipulates that the same will only apply after the personal insurance of the driver has been exhausted, would no longer be allowed.³⁸¹

In Detroit (Michigan), police authorities are sanctioned to issue tickets to private-driver-connecting app drivers who fail to get a license as a “driver for

374. Chicago Dispatcher, Transportation Network Providers Ordinance Proposed, *available at* <http://chicagodispatcher.com/transportation-network-providers-ordinance-proposed-p2476-1.htm> (last accessed Jan. 31, 2017).

375. City of Chicago, Proposed Regulations Ordinance, *available at* <http://www.cityofchicago.org/content/dam/city/depts/bacp/Rules%20and%20Regulations/proposedmcc9115transportationnetworkprovider.pdf> (last accessed Jan. 31, 2017).

376. Chicago Dispatcher, *supra* note 374.

377. *Id.*

378. City of Chicago, Chicago Transportation Network Providers, *available at* https://www.cityofchicago.org/content/dam/city/depts/dol/rulesandregs/TNP_RulesAmendedeffJan12017.pdf (last accessed Jan. 31, 2017).

379. *Id.*

380. Chicago Transportation Network Providers, *supra* note 378.

381. WBEZ91.5, City moves to regulate rideshare companies, *available at* <http://www.wbez.org/news/city-moves-regulate-rideshare-companies-109639> (last accessed Jan. 31, 2017).

hire.”³⁸² Local city officials rejected the argument that such mobile app companies only facilitate, but not provide, transportation services.³⁸³ Representatives for the Michigan Department of Transportation (MDOT) consider drivers of that sort as “for hire” because they charge customers for rides.³⁸⁴ Accordingly, the drivers must obtain a Certificate of Authority from the state, as well as a limousine operator’s license from the Detroit Police Department.³⁸⁵ The app companies themselves are enjoined to register with the MDOT as limousine carriers.³⁸⁶

In Houston (Texas), the city’s Administration and Regulatory Affairs Department presented a set of suggested revisions for the vehicle-for-hire industry, which is set to cover private-driver-connecting mobile apps.³⁸⁷ The proposed changes would allow such app companies to operate if, among others, their drivers pay a certain fee of their gross annual receipts and get a license to formally operate as TNC drivers.³⁸⁸

Meanwhile, the city of Seattle (Washington) passed regulations, requiring TNCs to apply for a permit to operate and placing a cap of 150 vehicles per application.³⁸⁹ The city’s enforcement officers are in charge of making certain that each app company has only 150 drivers on the public highways at any given time.³⁹⁰ Drivers also need to apply for a TNC vehicle endorsement, which would require regular inspection, in order to drive for

382. JC Reindl, Uber car service rolling into regulatory trouble in Detroit, *available at* <http://www.freep.com/story/money/business/michigan/2014/02/16/uber-car-service-rolling-into-regulatory-trouble-in-detroit/77152186> (last accessed Jan. 31, 2017).

383. *Id.*

384. *Id.*

385. *Id.*

386. *Id.*

387. Molly Ryan, Crushing the competition? Houston begins controversial debate on role of new transportation players, *available at* http://www.bizjournals.com/houston/morning_call/2014/02/crushing-the-competition-houston-begins.html?page=all (last accessed Jan. 31, 2017).

388. Molly Ryan, The debate rages on: City proposes code revisions to account for Lyft, Uber, *available at* <http://www.bizjournals.com/houston/blog/nuts-and-bolts/2014/04/the-debate-rages-on-city-proposes-code-revisions.html?page=all> (last accessed Jan. 31, 2017).

389. Sabatini, *supra* note 335.

390. *Id.*

the apps using personal cars.³⁹¹ Based on the foregoing, it is evident that almost all American states seeking to regulate driver-connecting mobile app companies consider the same to be, at the minimum, providing transportation services.

IV. THE LEGAL STATUS AND THE NATURE OF THE BUSINESS OF MOBILE APPLICATIONS

The previous Section has shown that the matter concerning the legal liabilities of driver-connecting mobile app companies for the acts of their drivers has emerged as a serious issue in jurisdictions where such entities operate. Significantly, present and proposed regulations in the U.S. have generally recognized such app companies to be obligated, at the very least, to provide commercial insurance as a first tier of protection to users and third persons after concluding that the same, in the main, provide transportation services to the public.

In the Philippines, before a party may be held to any legal accountability, his or her duty or obligation must be clearly established before anything else.³⁹² It is well-settled that claims for liability by one party due to an act or omission of another must be predicated on an obligation.³⁹³ In a few words, there is no liability if there is no corresponding obligation.

Article 1157 of the Civil Code of the Philippines³⁹⁴ provides that obligations arise from five distinct sources, namely: (1) law, (2) contracts, (3) quasi-contracts, (4) acts or omissions punished by law, and (5) quasi-delicts.³⁹⁵ It must be noted that the enumeration provided is exclusive, such that no obligation or liability would exist if the basis thereof is not one of those found under the said provision.³⁹⁶

391. Alexa Vaughn, *3 inspectors to enforce rules on hundreds of ride-service drivers*, SEATTLE TIMES, Feb. 28, 2014, available at <http://www.seattletimes.com/seattle-news/3-inspectors-to-enforce-rules-on-hundreds-of-ride-service-drivers> (last accessed Jan. 31, 2017).

392. *Sagrada Orden de Predicadores del Santisimo Rosario de Filipinas v. National Coconut Corporation*, 91 Phil. 503 (1952) & *Metropolitan Bank and Trust Company v. Rosales*, 713 SCRA 75 (2014).

393. *See Tan v. Nitafan*, 231 SCRA 129 (1994); *Datu v. People*, 637 SCRA 754 (2010); & *Villegas v. Court of Appeals*, 271 SCRA 148 (1997).

394. *An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE]*, Republic Act No. 386 (1950).

395. *Id.* art. 1157.

396. *Navales v. Rias et al.*, 8 Phil. 508 (1907).

From the foregoing sources of obligations through which driver-connecting mobile app companies may possibly be held liable for the acts or omissions of the drivers, there is a need to answer a handful of preliminary questions in order to determine which are properly applicable to these companies. First, what is the legal status of the said apps, if any? As a corollary thereto, what is the nature of the business or service that they provide? The examination shall focus only on the most logical and reasonable characterizations attributable to such entities, particularly those which have spawned serious legal discourse.³⁹⁷

Second, from the point of view of the users and/or third persons, what is the legal relationship, if any, between the mobile app companies and the drivers? Discovering the answer to the said questions will determine the obligations such companies are burdened with and, consequently, their liabilities for the non-observance or breach thereof.

A. The Legal Status and the Nature of the Business of Mobile Applications

The foremost issue surrounding these mobile app companies is their status as a legal entity and the nature of their business. As such entities continue to grow their ridership in various parts of the world, the same are also colliding with foreign city and/or state regulators who question their claim that they are merely a technology business, which means that they need not comply with local laws governing common carriers.³⁹⁸ This issue is at the heart of the legal challenges faced by these app companies due to their undeniable involvement in the transportation of passengers.

On the one hand, most, if not all, foreign regulators are of the view that the app companies should be classified as public carriers and/or vehicles-for-hire to the extent that they should be treated like regular taxi or limousine

397. Cassandra Angel, *What's Next in Uber Litigation?*, available at <http://www.gkhs.com/whatsnext-uber-litigation> (last accessed Jan. 31, 2017); Christopher Dolan, *Ride services facing major liability questions*, S.F. EXAMINER, May 1, 2014, available at <http://www.sfexaminer.com/sanfrancisco/ride-services-facing-major-liability-questions/Content?oid=2785745> (last accessed Jan. 31, 2017); & Rebecca Lopes, *Uber's service offers a quick and convenient ride, but what does it offer when a ride leads to tragedy?* [Updated], available at <http://campbelllawobserver.com/ubers-service-offers-a-quick-and-convenient-ride-but-what-does-it-offer-when-a-ride-leads-to-tragedy> (last accessed Jan. 31, 2017).

398. Reindl, *supra* note 382.

companies.³⁹⁹ On the other hand, the companies responsible for the mobile apps consider themselves as merely technology enterprises, acting as intermediaries to link customers with parties that will provide the transportation services.⁴⁰⁰ Thus, it becomes necessary to determine whether driver-connecting mobile apps are, or may be considered as, common carriers.

As explained earlier, the app companies clearly and unequivocally contend that they are only technology platforms that facilitate quality transportation experiences, but they are not transportation companies *per se* nor do they provide actual transportation services.⁴⁰¹ The said companies claim that the nature of their business models is simply that of a middleman-broker between passengers and drivers, making them distinct from the traditional public carriers for which transportation regulations were written.⁴⁰² As a further point, such entities own no inventory, warehouses, distribution centers, or other ancillary overhead that is required for most traditional businesses to operate as such.⁴⁰³ Pertinently, this means that for taxi-driver-connecting mobile app companies, they do not own or run a fleet of taxicabs or similar conveyances, while for private-driver-connecting mobile companies, they do not hold title to any of the private vehicles used to perform the transportation services.

1. Common Carriers

As discussed previously, the CPUC has provided regulations and guidelines on how to regulate entities providing private-driver-connecting mobile app services. Such companies have been categorized as TNCs, which are, briefly, entities that furnish transportation services for compensation through their technology that connects users and drivers.⁴⁰⁴ The said classification was

399. Christine Lagorio-Chafkin, Resistance is Futile, *available at* <http://www.inc.com/magazine/201307/christine-lagorio/uber-the-car-service-explosive-growth.html> (last accessed Jan. 31, 2017).

400. Randy Ellis, Uber's ride-for-hire service creates Oklahoma City controversy, *available at* <http://newsok.com/ubers-ride-for-hire-service-creates-oklahoma-city-controversy/article/3899746> (last accessed Jan. 31, 2017).

401. Reindl, *supra* note 382.

402. *Id.*

403. Jeremiah Oywang, Uber's Business Model Reframes Cheaper, Better, Faster, *available at* <http://www.web-strategist.com/blog/2014/02/12/ubers-business-model> (last accessed Jan. 31, 2017).

404. Decision 13-09-045, at 2.

borne out of the premise that TNCs are essentially CPCPs under Section 5360 of the California Public Utilities Code.⁴⁰⁵

CPCPs are, plainly, entities engaged in the transportation of persons by motor vehicles for a fee.⁴⁰⁶ As per California Law, such entities are treated as common carriers and regulated by the CPUC.⁴⁰⁷ Under Section 2168 of the California Civil Code,⁴⁰⁸ it provides that “every one who offers to the public to carry persons, property, or messages, excepting only telegraphic messages, is a common carrier of whatever he thus offers to carry.”⁴⁰⁹ More specifically, Section 2100 of the same Code states that “a carrier of persons for reward must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill.”⁴¹⁰

In connection with this, under Section 211 of the California Public Utilities Code, a common carrier is defined as “every person and corporation providing transportation for compensation to or for the public or any portion thereof ...”⁴¹¹ Section 421 (a) of the same Code, in turn, states that “The commission shall annually determine a fee to be paid by every passenger stage corporation, *charter-party carrier of passengers ... and every other common carrier and related business* subject to the jurisdiction of the commission[.]”⁴¹²

A plain reading of pertinent California statutes coupled with the CPUC Decision⁴¹³ will reveal that while these app companies do not fit neatly into the traditional notions of taxis or similar public carriers,⁴¹⁴ it would be erroneous and overly simplistic to conclude that they are only technology platforms that may be isolated from the transportation contracts entered into through their media. Thus, in the State of California, mobile app companies of such nature are regarded as (1) companies engaged in the business of

405. *Id.* at 18.

406. CAL. PUB. CODE, § 5360 (1973).

407. *Id.*

408. CAL. CIV. CODE (1872).

409. *Id.* § 2168.

410. *Id.* § 2100.

411. CAL. PUB. CODE, § 211 (1973).

412. *Id.* § 421 (a).

413. Decision 13-09-045.

414. *Id.*

transportation, (2) offering transportation services to the public for a fee and, thus, (3) falling within the purview of common carriers.⁴¹⁵

In the State of Maryland, the MPUC Proposed Decision did not create a new category for such mobile app entities but, instead, labeled them *expressly* as common carriers.⁴¹⁶ Judge Romine found (a) that the companies are offering transportation to the public for a fee and (b) that they are exercising a significant amount of control over the performance of the transportation services.⁴¹⁷ According to the Judge, such notable facts placed the app companies squarely under the definition of common carriers under Section 1-101 (e) (1) in relation to Section 1-101 (t) of the PUA.⁴¹⁸

Section 1-101 (e) (1) of the PUA provides, briefly, that common carriers are entities engaged in the public transportation of passengers for compensation,⁴¹⁹ while Section 1-101 (t) of the same Articles states that to own includes to operate, manage, or control.⁴²⁰ Pertinently, Judge Romine scrutinized the business operation of the app companies and found that they have authority and command over the drivers, the kind of vehicles that must be used in the fulfillment of the services, and, to a certain extent, how the drivers should perform the same.⁴²¹ Thus, when satisfying their users' requests for transportation, the app companies direct the drivers on such a level as to be deemed presiding over the entire enterprise for purposes of Maryland law.⁴²²

In the Philippines, the concept of common carriers is mainly of American descent.⁴²³ The legal implications attached to common carriers were generally non-existent during the Spanish colonization, with the idea

415. See Christopher Dolan, *Ride services facing major liability questions*, S.F. EXAMINER, May 1, 2014, available at <http://www.sfexaminer.com/sanfrancisco/ride-services-facing-major-liability-questions/Content?oid=2785745> (last accessed Jan. 31, 2017).

416. Case No. 9325.

417. Campbell & Dance, *supra* note 343.

418. MD. CODE ANN. PUB. UTIL., §§ 1-101 (e) (1) & 1-101 (t) (2013).

419. *Id.* § 1-101 (e) (1).

420. *Id.* § 1-101 (t).

421. Case No. 9325, at 53-54.

422. *Id.*

423. Rogelio E. Subong, Annotation, *Oil Pipeline Owner: A Common Carrier*, 300 SCRA 674, 676 (1998).

of public utility regulations formally beginning with the American regime,⁴²⁴ to wit —

The concept of common carrier was generally unheard of during the Spanish regime. Public utility regulation formally started with the Americans at the turn of the century. Besides, motorized vehicles for the movement of people and goods arrived in the country from the [U.S.] during the earlier decades of the 1900[s]. Then as now, transport facilities, especially the motorized ones were sorely needed by the inhabitants who regularly commute to the seat of government in Manila from their respective provinces in Luzon and *vice-versa*. During the early days of the American regime or better known as the pre-war years, transport service was not organized, let alone, institutionalized. Some enterprising Filipinos who had the fortune of acquiring these new contraptions from the [U.S.] engaged in ‘*colorum*’ service (operation without authority or franchise) because of demand from local [travelers]. During the early decades of the 1900s the [U.S.], started producing cars, trucks[,] and buses, thanks to Mr. John Henry Ford who introduced the assembly line method of mass production with its car models. This development resulted in the increase of the number of motor vehicles that reach our transport starved country.

With the arrival of motor vehicles or transport systems from the U.S. that carry passengers like cars, trucks and buses and even railway trains, the concept of a common carrier was developed. What comes to mind when the term ‘common carrier’ is mentioned is a mode of transportation of people and goods from one place to another for a fee. This is fairly correct but it has legal definitions recognized through the years in American as well as in Philippine jurisdiction.⁴²⁵

Hence, behind the Philippine concept of common carriers are “American legislations and commentaries along with rulings from American courts that have graced and fortified the decisions of our courts in this field of law.”⁴²⁶ Broadly, carriers may be defined as “persons or corporations who undertake to transport or convey goods, property[,] or persons, from one place to another, gratuitously or for hire; and are classified as private or special carriers, and common or public carriers.”⁴²⁷

Based on Philippine statutory law, a common carrier is defined as “persons, corporations, firms[,] or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air,

424. Rogelio E. Subong, Annotation, *Common Carrier, Revisited*, 401 SCRA 232, 235 (2003).

425. *Id.*

426. Subong, *supra* note 426, at 676.

427. Frank Cushing et al. v. John White et al., 101 Wash. 172 (1918) (U.S.).

for compensation, offering their services to the public.”⁴²⁸ That is to say, a common carrier is “a person or corporation whose regular business is to carry passengers or property for all persons who may choose to employ and to remunerate him.”⁴²⁹

In the early case of *United States v. Quinajon and Quitariano*,⁴³⁰ the Philippine Supreme Court held that a “common carrier is a person or corporation whose regular business is to carry passengers or property for all persons who may choose to employ and remunerate him. A common carrier is a person or corporation who undertakes to carry goods or persons for hire.”⁴³¹

Next came *United States v. Tan Piaco*,⁴³² where the Supreme Court found that the party therein was not a common carrier because he only “furnished service under special agreements to carry particular persons and property[.]”⁴³³ In contrast, *Santos v. Public Service Commission*⁴³⁴ held that common carriers do not lose their nature as such simply because they service a limited clientele.⁴³⁵ Finally, in 1988 came the landmark case of *De Guzman v. Court of Appeals*,⁴³⁶ where the Supreme Court elucidated on how Philippine jurisdiction approached the concept of common carriers under Article 1732 of the Civil Code, thus —

The above article makes no distinction between one whose *principal* business activity is the carrying of persons or goods or both, and one who does such carrying only as an *ancillary* activity (in local idiom, as ‘a sideline’). Article 1732 also carefully avoids making any distinction between a person or enterprise offering transportation service on a *regular or scheduled basis* and one offering such service on an *occasional, episodic[,] or unscheduled basis*. Neither does Article 1732 distinguish between a carrier offering its services to the ‘*general public*,’ i.e., the general community or population, and one who offers services or solicits business only from a narrow segment

428. CIVIL CODE, art. 1732.

429. *Caltex (Philippines), Inc. v. Sulpicio Lines, Inc. et al.*, 315 SCRA 709 (1999).

430. *United States v. Quinajon and Quitariano*, 31 Phil. 189 (1915).

431. *Id.* at 197.

432. *United States v. Tan Piaco*, 40 Phil. 853 (1920).

433. *Id.* at 855.

434. *Santos v. Public Service Commission*, 50 Phil. 720 (1927).

435. *Id.* at 210-12.

436. *De Guzman v. Court of Appeals*, 168 SCRA 612 (1988).

of the general population. We think that Article 1733 deliberately refrained from making such distinctions.⁴³⁷

Thus, the Supreme Court declared that the test for determining whether a person or entity is a common carrier is “the carriage of passengers or goods, provided it has space, for *all* who opt to avail themselves of its transportation service for a fee.”⁴³⁸ More comprehensively —

[T]he true test for a common carrier is *not* the quantity or extent of the business actually transacted, or the number and character of the conveyances used in the activity, but *whether the undertaking is a part of the activity engaged in by the carrier that he has held out to the general public as his business or occupation*. ... The question must be determined by the character of the business actually carried on by the carrier, *not by any secret intention or mental reservation it may entertain or assert when charged with the duties and obligations that the law imposes*.⁴³⁹

De Guzman went further to say that the concept of common carriers under the Civil Code is in perfect harmony with the notion of “public service” under the Public Service Act, thus —

So understood, the concept of common carrier under Article 1732 may be seen to coincide neatly with the notion of ‘public service,’ under the Public Service Act (Commonwealth Act No. [416], as amended) which at least partially supplements the law on common carriers set forth in the Civil Code. Under Section 13, paragraph (b) of the Public Service Act, public service includes —

[E]very person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier, railroad, street railway, traction railway, subway motor vehicle, either for freight or passenger, or both, with or without fixed route and whatever may be its classification, freight or carrier service of any class, express service, steamboat, or steamship line, pontines, ferries[,] and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine repair shop, wharf[,] or dock, ice plant, ice-refrigeration plant, canal, irrigation system, gas, electric light, heat[,] and power, water supply and power petroleum,

437. *Id.* at 617-18 (emphases supplied).

438. *Mendoza v. Philippine Airlines, Inc.*, 90 Phil. 836, 842-43 (1952) (emphasis supplied).

439. *Pereña v. Zarate*, 679 SCRA 208, 226 (2012) (emphasis supplied).

sewerage system, wire or wireless communications systems, wire or wireless broadcasting stations[,] and other similar public services[.]⁴⁴⁰

In relation to the concept of common carriers, the Supreme Court has defined “public use” in the following terms —

‘Public use’ is the same as ‘use by the public.’ The essential feature of the public use is not confined to privileged individuals, but is open to the indefinite public. It is this indefinite or unrestricted quality that gives it its public character. In determining whether a use is public, we must look not only to the character of the business to be done, but also to the proposed mode of doing it. If the use is merely optional with the owners, or the public benefit is merely incidental, it is not a public use, authorizing the exercise of the jurisdiction of the public utility commission. There must be, in general, a right which the law compels the owner to give to the general public. It is not enough that the general prosperity of the public is promoted. Public use is not synonymous with public interest. The true criterion by which to judge the character of the use is whether the public may enjoy it by right or only by permission.⁴⁴¹

Such a broad notion of common carriers under Philippine law has even led to the Supreme Court ruling that oil pipelines are common carriers.⁴⁴² In *First Philippine Industrial Corporation v. Court of Appeals*,⁴⁴³ the operator of the pipelines in question argued that —

[P]ipelines are not included in the term ‘common carrier’ which refers solely to ordinary carriers such as trucks, trains, ships[,] and the like. Respondents further posit that the term ‘common carrier’ under the said code pertains to the mode or manner by which a product is delivered to its destination.⁴⁴⁴

The Supreme Court disagreed with the argument and held that “the definition of ‘common carriers’ in the Civil Code makes *no distinction as to the means of transporting, as long as it is by land, water[,] or air*. It does not provide that the transportation of the passenger or goods should be by motor

440. *De Guzman*, 168 SCRA at 618 (citing An Act to Reorganize the Public Service Commission, Prescribe its Powers and Duties, Define and Regulate Public Services, Provide and Fix the Rates and Quota of Expenses to Be Paid by the Same, and For Other Purposes [Public Service Act], Commonwealth Act No. 146 (1936)).

441. *Tan Piao*, 40 Phil. at 856.

442. *First Philippine Industrial Corporation v. Court of Appeals*, 300 SCRA 661 (1998).

443. *Id.*

444. *Id.* at 665.

vehicle.”⁴⁴⁵ Therefore, it can be deduced that the trend in Philippine jurisprudence is to interpret the concept of common carriers by the use reasonable, but wide-ranging parameters. The simplistic and narrow view of common carriers as merely vehicles that move from place to place with passengers, goods, or both therein⁴⁴⁶ is far from being the norm.

The Author submits that, based on the definition provided by the Civil Code and as comprehensively interpreted by jurisprudence, driver-connecting mobile app entities, whether private-driver-connecting or taxi-driver-connecting, qualify as common carriers. Despite the fact that the drivers may refuse to perform the service, it cannot be denied that these app companies commit themselves to procuring a suitable means of transportation for their users. Therefore, on the surface, an argument may logically be made that with their open undertaking to serve the public through their technology — such companies fit the legal criteria to be considered common carriers.

Under Article 1732 of the Civil Code⁴⁴⁷ and pertinent case law, the elements of a common carrier may be broken down as follows:

- (1) The entity involved is a person, corporation, firm[,] or association;
- (2) Such persons, corporations, firms or associations are engaged in the business of carrying or transporting passengers or goods or both;
- (3) The means of carriage or transporting passengers, goods, or both is by land, water[,] or air;
- (4) The carrying or transporting of passengers or goods or both is for a fee or compensation; and
- (5) The services [are] offered to the public without distinction.⁴⁴⁸

Of the abovementioned elements, it is only the second requisite that the app companies may reasonably contest as wanting, thereby removing them from the purview of the law governing common carriers. Such is for the reason that the main line of argument of these mobile app companies is that (a) they do not employ drivers; and (b) they do not own a single vehicle, leading to no other conclusion that they are not companies providing

445. *Id.* at 690 (emphasis supplied).

446. Subong, *supra* note 425, at 696.

447. CIVIL CODE, art. 1732.

448. *See* NOLI C. DIAZ, TRANSPORTATION LAWS NOTES AND CASES 8 (2006).

transportation services.⁴⁴⁹ Simply put, the companies in charge of the apps do not “carry,” much less “transport,” their users.

Regardless, it is submitted that the actual “carrying” or “transporting” by themselves are not the operative acts that will render one a common carrier. That is to say, that the entity physically conveys passengers, goods, or both, *per se* is insufficient to adjudge the same a common carrier. From a long line of jurisprudence, it will be seen that the vital consideration for such a status is that the “carrying” or “transporting,” whether executed personally or otherwise, is done on such a level so as to constitute an occupation or profession.⁴⁵⁰ That is to say, the entity involved must undertake or engage in the business of carrying or transporting of passengers, goods, or both —

A common carrier may be defined, very generally, as one who holds himself out to the public as engaged in the business of transporting persons or property from place to place, for compensation, offering his services to the public generally. The dominant and controlling factor in determining the status of one as a common carrier is his public profession or holding out, by words or by a course of conduct, as to the service offered or performed, with the result that he may be held liable for refusal, if there is no valid excuse, to carry for all who apply. The distinctive characteristic of a common carrier is that he undertakes to carry for all people indifferently, and he is regarded in some respects, as a public servant. Hence, one performing transportation service for himself only is not a common carrier. One does not have the status of a common carrier where he undertakes carriage for a particular group or class of persons under a special arrangement, or for a particular person only.⁴⁵¹

Indeed, parties that engage in the business of carrying or transporting, which may rightfully be classified as common carriers, are differentiated from those that carry or transport only on a special or peculiar occasion, as the latter are denominated as private carriers, thus —

Much of the distinction between a ‘common or public carrier’ and a ‘private or special carrier’ lies in the character of the business, such that if the undertaking is an isolated transaction, not a part of the business or occupation, and the carrier does not hold itself out to carry the goods for the general public or to a limited clientele, although involving the carriage of goods for a fee, the person or corporation providing such service could

449. See Jeanie Riess, Why New Orleans doesn’t have Uber, *available at* <http://www.bestofneworleans.com/gambit/why-new-orleans-doesnt-have-uber/Content?oid=2307943> (last accessed Jan. 31, 2017).

450. See SEYMOUR D. THOMPSON, THE LAW OF CARRIERS OF PASSENGERS: ILLUSTRATED BY LEADING CASES AND NOTES 26-27 (2013).

451. 13 Am Jur 2d. 561-62.

very well be just a private carrier. The concept of a common carrier does not change merely because individual contracts are executed or entered into with patrons of the carrier [—] such restrictive interpretation would make it easy for a common carrier to escape liability by the simple expedient of entering into those distinct agreement with clients.⁴⁵²

As a result, the questions that emerge are: (a) what does “engaged in the business of carrying or transporting” entail for common carriers? In connection with this, (b) do the common carriers need to have ownership over the medium through which the commitment to carry or transport of passengers is performed? The questions are meant to address the contention that without having manpower, much less a vehicle, to drive their users from one place to another, then it is illogical for these app companies to be considered as common carriers.

a. Engaged in the Business of Carrying or Transporting

The Supreme Court provided an in-depth discussion of what it means to “engage in [a] business” in the case of *Caro v. Rilloraza and Workmen’s Compensation Com.*,⁴⁵³ to wit —

‘To engage’ is to embark in a business or to employ oneself therein. *The word ‘engage’ connotes more than a single act or a single transaction; it involves some continuity of action.* ‘To engage in business’ is uniformly construed as signifying to follow the employment or occupation which occupies the time, attention, and labor for the purpose of a livelihood or profit. The expressions ‘engage in business,’ ‘carrying on business,’ or ‘doing business’ do not have different meanings, but separately or connectedly convey the idea of progression, continuity, or sustained activity, and ‘engaged in business’ means occupied or employed in business, ‘carrying on business’ does not mean the performance of a single disconnected act, but means conducting, prosecuting, and continuing business by performing progressively all the acts normally incident thereto while ‘doing business’ conveys the idea of business being done, not from time to time, but all the time.⁴⁵⁴

In relation to the above definition, Philippine Corporate Law has also provided a catch-all guideline as to what constitutes “doing business.” As stated in the case of *Mentholatum Co. v. Mangaliman et al.*,⁴⁵⁵ “the term

452. *Philippine-American General Insurance Company v. PKS Shipping Company*, 401 SCRA 222, 228 (2003).

453. *Caro v. Rilloraza and Workmen’s Compensation Com.*, 102 Phil. 61 (1957).

454. *Id.* at 92 (citing *Day v. Equitable Life Assur. Soc. of the United States*, 83 F.2d 147, 148 & *Simple v. Schwarz*, 109 S.W. 633, 636 (U.S.)) (emphasis supplied).

455. *Mentholatum Co. v. Mangaliman et al.*, 72 Phil. 524 (1941).

implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object of its organization.”⁴⁵⁶

With regard to “transportation,” the same may be defined as follows —

Transportation is simply defined, as its etymology would indicate, and its derivation would denote, as a movement of things or persons from one place to another; a carrying across; and it is immaterial whether the carrying be by rail, by water, or by air.

The word ‘transportation’ in its practical signification includes waiting time, loading and unloading, stopping in transit, and all other accessorial services with the loaded movement.

The word ‘transportation’ is defined in the Interstate Commerce Act, 49 U.S.C.A, Section 1, also known as the Hepburn Act, and as used in this act the word has a meaning broader in scope than that which attaches to its ordinary usage, and includes locomotives and cars and other vehicles and instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigerating[,] or icing, storage, and handling of property transport.

The word ‘transportation’ in the Act was intended to include every phase logically or reasonably connected with the transportation of property, from the time of its initial delivery to the carrier until its final redelivery by the carrier to the consignee.⁴⁵⁷

To summarize, the phrase “engaged in the business” denotes the habitual pursuit of a commercial activity.⁴⁵⁸ Additionally, it includes carrying out all the necessary steps in order to make profit in a certain industry. It necessitates active involvement in the overall scheme, whereby the trade, profession, or occupation is made marketable to the public. Therefore, the question is whether or not these driver-connecting mobile app companies are engaged in the business of carrying or transporting passengers?

From the totality of the circumstances, the Author submits that these apps companies undertake to carry or transport users to their respective destinations. While it is true that they do not physically operate the vehicles

⁴⁵⁶. *Id.* at 528-29.

⁴⁵⁷. RUFUS B. RODRIGUEZ, *THE LAW ON TRANSPORTATION* 4 (4th ed. 2004) (citing 87 C.J.S. Transportation).

⁴⁵⁸. *Id.*

themselves, these companies, nevertheless, play an indispensable part in each and every transportation service executed through their facility. Their contribution and participation in the entire phase of the transportation service reveals that such entities either direct the same or are an integral part thereof.

At the outset, it must be borne in mind that the app companies themselves serve as the all-important bridge without which the contracts of transportation would not exist.⁴⁵⁹ Without their involvement, the users will possess no right over the transportation service and the drivers will not be bound by any obligation to render the same. Such already underscores the significance of these entities in the entire process by which the transportation services are offered and subsequently performed. Most importantly, the business activity assumed by such app companies does not begin and end with the basic and mundane act of connecting users to drivers, as will be shown by two crucial and closely associated circumstances, thus —

First, the business organized and conducted by the mobile app companies is not as simple as how they insist it to be. For one, the entities do not earn simply by working as a platform and providing users access to drivers. It is common knowledge that the fundamental aim of any business or trade is to earn profit as a direct result of performing certain commercial activities. That is, a business is a system, whereby goods or services are exchanged for money or its equivalent.

That being said, it would already be apparent that it is absurd for the app companies to assert they are in the business solely of bringing users and drivers together and that their primary occupation is to serve only as a link. It is beyond cavil that the users do not pay the applications for that act alone. The use of the technology is itself free of charge. If the companies providing the apps receive nothing at all by acting as a mere platform, then the same can hardly be characterized as a business endeavor.

A deeper analysis of their business setup and function shows that the right of the app companies to receive the booking fees and/or commissions is intimately intertwined with the promise and performance of actual transportation services. The mobile app companies receive the payment for their service only after the transportation service itself has been carried out. Any form of profit that goes into the company coffers is the direct consequence of users being successfully brought from point A to point B. As it happens, in case of any complications, the entities themselves refund the fare or grant the users credits, which they can avail of on their next ride.

459. Decision 13-09-045.

From the point of view of the users, they anticipate nothing short of literally acquiring a vehicle, being driven, and getting to their destinations.⁴⁶⁰ That is to say, when users log on and use the apps, they do not expect to be merely linked to a driver without any accompanying certainty of obtaining transportation services.⁴⁶¹ Users employ the apps with the presumption that someone will actually drive them.⁴⁶² As the apps say, “Tap a button, get picked up in minutes,”⁴⁶³ “Ride with people headed your way,”⁴⁶⁴ “Leave the driving to us,”⁴⁶⁵ “Ride safe, ride sure,”⁴⁶⁶ or “Your taxi in one click!”⁴⁶⁷

Essentially, the process is the same as going to the corner of a street and hailing a ride, except that users accomplish the same through the apps because of the belief that doing so would be more convenient, reliable, and safe.⁴⁶⁸ Therefore, in reality, it is imperative for these mobile app companies to have access to the instruments through which the transportation services may be delivered. Verily, the app companies need the drivers and the vehicles in order to wholly offer their services and thrive as a business. Otherwise, the service itself would be incomplete and perhaps of no practical value to users because they can simply revert to the conventional, if not archaic, way of getting a taxi or find other means of transportation.

In the Philippines, the indispensability of providing transportation services as an adjunct to certain businesses has led the Supreme Court, in proper cases, to classify the same as common carriers. In the case of *Cruz v. Sun Holidays, Inc.*,⁴⁶⁹ the Spouses Cruz (Spouses) went on a vacation to Puerto Galera, Oriental Mindoro and stayed in Coco Beach Island Resort (Resort).⁴⁷⁰ The stay of the Spouses was by means of a tour-package offered

460. Jacquelyn Cheok, *Disrupting The System*, available at http://www.businesstimes.com.sg/sites/businesstimes.com.sg/files/sme_may_16.pdf (last accessed Jan. 31, 2017).

461. *Id.*

462. *Id.*

463. Uber Manila, *supra* note 14.

464. Tripid, *supra* note 221.

465. Jonathan Toyad, *After GrabTaxi, here comes GrabCar for the posh*, available at <http://e27.co/grabtaxi-comes-grabcar-posh> (last accessed Jan. 31, 2017).

466. GrabTaxi, *supra* note 14.

467. Easy Taxi, *supra* note 14.

468. Uber-Work, *supra* note 109.

469. *Cruz v. Sun Holidays, Inc.*, 622 SCRA 389 (2010).

470. *Id.* at 391.

by the Resort that included transportation services to and from the Resort.⁴⁷¹ On their last day in the Resort, the Spouses, along with others, rode the M/B Coco Beach III to return to their point of departure in Batangas.⁴⁷²

During the trip, rain started to pour and heavy winds began to blow, causing the boat to capsize.⁴⁷³ The Spouses, along with six others, perished as a result of the incident.⁴⁷⁴ Naturally, the parents of the Spouses demanded indemnity for the death of their loved ones, but the Resort denied any responsibility and alleged that the unfortunate occurrence was a fortuitous event.⁴⁷⁵

Due to the refusal of the Resort, the parents of the Spouses filed a complaint against the same, claiming that it was a common carrier that was guilty of negligence for allowing the M/B Coco Beach III to sail despite being aware that a storm was approaching.⁴⁷⁶ The Resort denied that it was a common carrier, contending that it was a holiday destination and its boats were only available for hotel guests and crew members.⁴⁷⁷ Nevertheless, the parents of the Spouses maintained their position that the Resort is a common carrier and, as per its tour package, the transporting of guests to and from the island is an integral part of its resort business.⁴⁷⁸

The Supreme Court agreed with the parents of the Spouses and held, among others, that “[i]ndeed, respondent is a common carrier. Its ferry services are so intertwined with its main business as to be properly considered ancillary thereto.”⁴⁷⁹ In the aforementioned case, the principal business of Sun Holidays was legitimately an island beach resort.⁴⁸⁰ In spite of that, the same would not have flourished without the intervention of the transportation services it provides; otherwise, patrons would then be deprived of the means to reach it.

471. *Id.*

472. *Id.*

473. *Id.*

474. *Id.* at 391-92.

475. *Cruz*, 622 SCRA at 392-93.

476. *Id.*

477. *Id.* at 393.

478. *Id.* at 394.

479. *Id.* at 396.

480. *Id.*

Similar to the app companies, the performance of the transportation services was extremely crucial for Sun Holidays to be able to completely market itself as a resort and earn therefrom. In the said case, it was clear that transporting the guests was only incidental to the main line of business, as what guests would reasonably expect from making reservations in a resort would be to enjoy its amenities.⁴⁸¹ That being said, some may argue that the decision of the Court in *Cruz* was unreasonable and far-fetched because the resort may now be compelled to obtain a certificate of public convenience.⁴⁸²

Just the same, it may be deduced from the *Cruz* case that the resulting impracticality did not take away from the fact that the acts of the Resort therein fell squarely under the statutory and jurisprudential definition of a common carrier. Furthermore, it is well-settled that an entity can be classified as a common carrier under the Civil Code, even if it does not secure a certificate of public convenience.⁴⁸³ That is, the existence of a certificate of public convenience is a separate issue from, and is not a condition precedent to, a person or corporation being classified as a common carrier.

In any event, the Supreme Court concluded that the Resort is a common carrier, even if the same did not intend to be such because it honestly believed itself to be a holiday destination.⁴⁸⁴ The ferry services themselves, upon which the Court anchored its decision, is a remote aspect of its trade and nowhere near what it primarily intended to do for the public. What more of the mobile app companies at hand whose primary business is, verily, to secure a quality means of traveling for their users through their technology?

Hence, it may be that not maintaining a fleet of cars or hiring drivers was only a commercial strategy for these entities to maximize the acquisition of revenues by disposing of maintenance costs, but such should not detract from the underlying nature of the service that they offer to the general public. The app companies cannot legally or practically isolate themselves from the transportation services performed by the drivers because they are the means through which their income is acquired. More than that, the said companies cannot altogether detach themselves from the actual transportation aspect because of how they package and promote their

481. *Cruz*, 622 SCRA at 396.

482. Public Service Act, § 15.

483. *See* Loadstar Shipping Co., Inc. v. Court of Appeals, 315 SCRA 339, 346 (1999).

484. *Cruz*, 622 SCRA at 396.

services. As a matter of fact, the inability of the mobile app companies to guarantee top-level transportation services would undoubtedly render them useless as a technological innovation. It is submitted that such reality plausibly dictates the manner by which the app companies deal with the drivers and the transportation services.

Second, and of more significance, is the fact that the entities furnishing driver-connecting mobile app services exert “control over the entire transportation service ‘experience’ it provides to its Users.”⁴⁸⁵ In jurisdictions where these app companies operate, passengers are generally impressed and satisfied with the standard of the rides they receive through the participation of the companies and their technology.⁴⁸⁶ This situation is largely due to the regulatory measures incessantly imposed by the said entities in the system, the vehicles, and the drivers themselves.⁴⁸⁷

A thorough probe into the business operations of the apps will reveal that the app companies establish and implement important job requirements to which the so-called “third party transportation providers” must faithfully abide by.⁴⁸⁸ For one, the app companies appear to exercise a substantial amount of control over the drivers. Drivers, who are publicly referred to by these entities either as “partners” or “affiliates,” apply to be part of the system and go through a rigorous vetting process before they can be considered as such.⁴⁸⁹ The screening procedure includes, among others, a scrutiny of the existence of criminal backgrounds, traffic violations, insurance, and other personal circumstances.⁴⁹⁰ Thereafter, the app

485. Uber Ordered To Apply For Carrier Permit, *available at* <http://baltimore.cbslocal.com/2014/04/25/uber-ordered-to-apply-for-carrier-permit> (last accessed Jan. 31, 2017).

486. Adrian Lim, Commuters more satisfied with Uber, Grab than taxis: Public Transport Council survey, *available at* <http://www.straitstimes.com/singapore/transport/commuters-more-satisfied-with-uber-grab-than-taxis-public-transport-council> (last accessed Jan. 31, 2017).

487. See How to avoid rip off Bangkok taxis, *available at* <http://www.renegadetravels.com/how-to-avoid-rip-off-bangkok-taxis> (last accessed Jan. 31, 2017).

488. Chrisoula Papadopoulou, An Overview of Third party Logistics Industry, *available at* http://web.mit.edu/supplychain/www/sp-iscm/repository/papadop2_0202.pdf (last accessed Jan. 31, 2017).

489. See Uber-Work, *supra* note 109.

490. Mick Basa, Uber offers PH gov't information access to drivers, *available at* <http://www.rappler.com/business/industries/infrastructure/82697-uber-driver-information-ph-government> (last accessed Jan. 31, 2017).

companies exercise discretion, as in a typical hiring process, in reaching a decision as to which driver-applicants are qualified to be included in the roster.⁴⁹¹

As soon as these drivers pass the initial evaluation, they are trained by the mobile app companies on matters such as passenger etiquette, road manners, general professionalism, and even conversing with passengers in English.⁴⁹² The drivers also have to be well-groomed and, depending on the app company involved, either in a suit or in a uniform when fulfilling the transportation services for the users.⁴⁹³ Stated differently, the companies administering the mobile app services strictly prescribe how the drivers present and perform the transportation service for the users.⁴⁹⁴

The app companies also have a say in the vehicles that are to be utilized in driving the passengers. Whether the automobiles are taxicabs or personal cars, the mobile app companies regularly inspect the same for safety,

491. *Id.*

492. See The Philippine Star, *How a mobile app is changing lives, crime rates*, PHIL. STAR, Dec. 9, 2013, available at <http://www.philstar.com/networks/2013/12/09/1265687/how-mobile-app-changing-lives-crime-rates> (last accessed Jan. 31, 2017). See also Easy Taxi app hits Metro Manila roads, available at <http://newsbytes.ph/2013/10/01/easy-taxi-app-hits-metro-manila-roads> (last accessed Jan. 31, 2017).

493. Cord Jefferson, *Car and Driver: Left, Uber, and other app-based auto services are changing how we get from point B to point C in L.A.*, available at <http://www.lamag.com/citythink/business/2014/02/10/car-and-driver> (last accessed Jan. 31, 2017) & AdoboTech, Blog, *GrabTaxi App for iOS and Android Launched: Let the Taxi come to you!*, June 3, 2013 BLOGSPOT, available at <http://adobotech.blogspot.com/2013/06/grabtaxi-app-for-ios-and-android.html> (last accessed Jan. 31, 2017).

494. Felix Omondi, *Easy Taxi-App — A Popular App Connecting Passengers And Taxi Drivers Easily*, available at <http://www.innov8tiv.com/easy-taxi-app-popular-app-connecting-passengers-taxi-drivers-easily> (last accessed Jan. 31, 2017); Newsone.tv, *KARACHI: Easy Taxi, has now set up its service in Karachi*, available at <http://newsone.tv/2014/05/karachi-easy-taxi-has-now-set-up-its-service-in-karachi> (last accessed Jan. 31, 2017); See Joe, *Details on Safety*, available at <https://newsroom.uber.com/details-on-safety> (last accessed Jan. 31, 2017); Carmel Deamicis, *Here's the leaked Uber email to drivers, showing it's finally taking background checks seriously*, available at <http://pando.com/2014/01/31/heres-a-leaked-uber-email-to-drivers-showing-its-finally-taking-background-checks-seriously> (last accessed Jan. 31, 2017); & Rich McCormick, *Uber expands background checks for all US drivers*, available at <http://www.theverge.com/2014/2/13/5407606/uber-new-expanded-background-checks-for-us-drivers> (last accessed Jan. 31, 2017).

cleanliness, and overall appearance, to name a few.⁴⁹⁵ Needless to say, the vehicles must meet the standards that are set by these entities.⁴⁹⁶ Certain app companies even promise to let users ride only in brand new or well-maintained cars.⁴⁹⁷ The vehicles also bear the logo of the entities, either through stickers or laminated cards,⁴⁹⁸ signifying that both the driver and the conveyance have passed the assessment process and are fit to carry the good name of the mobile app company.⁴⁹⁹

Above all, the companies in charge of driver-connecting mobile apps administer and oversee the procedure whereby the transportation services are discharged. Despite the fact that the drivers are each provided with their own smartphones so as to accelerate the booking process and maximize the chances of income,⁵⁰⁰ it is still the app companies, in the end, that choose

495. See Sam Biddle, *Why Is Uber Charging You Extra to Not Get Assaulted?*, available at <http://valleywag.gawker.com/why-is-uber-charging-you-extra-to-not-get-assaulted-1567825107> (last accessed Jan. 31, 2017); Alyson Shontell, *The Man Who Lost His 6-Year-Old Daughter On New Year's Eve is Suing Uber And The Driver Who Hit Her*, available at <http://www.businessinsider.com/uber-and-uberx-lawsuit-2014-1> (last accessed Jan. 31, 2017); & Marc Lifsher, et al., *PUC gives a nod to Uber, Lyft, other ride-sharing services*, L.A. TIMES, Sep. 19, 2013, available at <http://articles.latimes.com/2013/sep/19/business/la-fi-ridesharing-puc-20130920> (last accessed Jan. 31, 2017).

496. See Ginger Arboleda, *Easy Taxi: Helping Manila's Transportation Industry*, available at <http://manilareviews.com/2013/11/easy-taxi-helping-manilas-transportation-industry.html> (last accessed Jan. 31, 2017).

497. See Watwatworld, *Manila's Well-Known Taxi Fleet Now Equipped with Easy Taxi App*, available at <http://watwatworld.com/2014/01/27/manilas-well-known-taxi-fleet-now-equipped-with-easy-taxi-app> (last accessed Jan. 31, 2017) & Amanda Ober, *UberX in Orlando challenges conventional taxi services*, available at <http://www.wesh.com/money/uberx-in-orlando-challenges-conventional-taxi-services/26329638#!XtoM6> (last accessed Jan. 31, 2017).

498. Some states in the U.S. require drivers, like those of Uber, to place the company's logo on the car's rear window. See, e.g., Todd C. Frankel, *Not even Uber drivers like the new Uber logo*, WASH. POST, Feb. 4, 2016, available at https://www.washingtonpost.com/news/the-switch/wp/2016/02/04/what-uber-drivers-really-think-of-ubers-new-logo/?utm_term=.9af8257473fi (last accessed Jan. 31, 2017).

499. Uber-Work, *supra* note 109.

500. See Irwin Allen Rivera, *GrabTaxi iOS App Launched: Finding a Cab Just Got Easier*, available at <http://technoodling.net/grabtaxi-ios-app-launched-finding-a-cab-just-got-easier> (last accessed Jan. 31, 2017) & Peter Ugwu, *Easy Taxi, Google Train Drivers on Use of Google Map*, available at <http://>

which driver to deploy each time users request for a ride.⁵⁰¹ Although drivers supposedly have to bid or compete for the job, the said companies ultimately assign the one who is nearest to the user.⁵⁰² Thus, the app companies have and exercise decision-making prerogatives even as to who will perform the transportation service.

Giving the drivers their own smartphones also allows the mobile app companies to track their every movement in real-time, whether or not they are engaged by a passenger.⁵⁰³ This demonstrates that such companies have a strong interest in, and closely monitor, the actual carriage or transportation of passengers.⁵⁰⁴ To put it another way, the app companies are there each and every step of the way — from the beginning of the transportation service up until the very end thereof.

Last, but not least, users must rate the drivers at the end of each ride and give comments as to the conditions of the traveling experience. The customer feedback enables the app companies to assess whether or not a

nigeriacommunicationsweek.com.ng/e-business/easy-taxi-google-train-drivers-on-use-of-google-map (last accessed Jan. 31, 2017).

501. See Joy Hou, GrabTaxi, Region's Largest Taxi-booking Mobile App, Beta Launches in Singapore, *available at* <http://www.hardwarezone.com.sg/tech-news-grabtaxi-regions-largest-taxi-booking-mobile-app-beta-launches-singapore> (last accessed Jan. 31, 2017).

502. See Anthony Bond, Steve Robson, RECAP: Taxi drivers bring central London with Uber protest, *available at* <http://www.mirror.co.uk/news/uk-news/taxi-driver-uber-protest-live-3674984> (last accessed Jan. 31, 2017); The Nation, Grab Taxi gets \$15m in fresh capital, *available at* [http://www.nationmultimedia.com/business/GrabTaxi-gets-\\$15m-in-fresh-capital-30235258.html](http://www.nationmultimedia.com/business/GrabTaxi-gets-$15m-in-fresh-capital-30235258.html) (last accessed Jan. 31, 2017); & Ober, *supra* note 497.

503. See Dwika, Taxi booking app GrabTaxi launches in Indonesia, *available at* <http://vulcanpost.com/11496/taxi-booking-app-grabtaxi-launches-in-indonesia> (last accessed Jan. 31, 2017); Kevin Bruce Francisco, Globe and Grab Taxi Extend Free Booking Fee Promo Until January 1, 2014, *available at* <http://www.hardwarezone.com.ph/tech-news-globe-and-grab-taxi-extend-free-booking-fee-promo-until-january-1-2014> (last accessed Jan. 31, 2017); Jacob Huebert, The 7 worst things in Chicago's proposed Uber ordinance, *available at* <http://www.builtinchicago.org/blog/7-worst-things-chicagos-proposed-uber-ordinance> (last accessed Jan. 31, 2017); & Glenn Harlan Reynolds, *Regulators wreck Uber innovation: Column*, USA TODAY, June 9, 2014, *available at* <http://www.usatoday.com/story/opinion/2014/06/09/uber-lyft-taxi-transportation-regulators-column/10198131> (last accessed Jan. 31, 2017).

504. See Taylor Soper, UberX adds \$1 'Safe Rides Fee' for passengers, reinstates 20% commission fee for drivers, *available at* <http://www.geekwire.com/2014/uber-adds-1-safe-rides-fee-passengers> (last accessed Jan. 31, 2017).

particular driver will remain on the roster.⁵⁰⁵ In the case of Uber, for example, receiving a rating of anything below 4.7 out of 5 will merit automatic deactivation of the driver's account and termination of his services.⁵⁰⁶ Such is patently another form of supervision that the mobile app companies exercise over the entire transportation service. It may even be argued that the procedure also allows the said entities to subtly check whether or not the transportation service has been properly executed.

In point of fact, the foregoing, among others, has forced former drivers, in the case of *O'Connor, et al. v. Uber Technologies, Inc., et al.*,⁵⁰⁷ to argue that classifying them as "partners," "affiliates," or even "independent contractors" is merely a legal fiction.⁵⁰⁸ They contend that the companies running the driver-connecting mobile apps impose "job requirements such as: conduct with passengers; cleanliness of vehicles; most direct route to passenger destination; prices for services; focus on high customer volume; and punctuality."⁵⁰⁹ Plaintiffs-drivers also argued that they are constantly graded on these requirements and are subject to termination based on them."⁵¹⁰ At any rate, it is submitted that whether or not the drivers can be legally considered employees, the exercise of control by the app companies over various aspects of the transportation service has been definitely established.⁵¹¹

Based on the established facts, it can be deduced clearly that driver-connecting mobile app companies are engaged in the business of

505. See Nairi Hourdajian, *Feedback is a Two-way Street*, available at <http://blog.uber.com/feedback> (last accessed Jan. 31, 2017); Phoebe Magdirila, *Rude taxi drivers, beware: Grab Taxi and TaxiKick sharing passenger feedback data*, available at <https://sg.finance.yahoo.com/news/rude-taxi-drivers-beware-grabtaxi-053049354.html> (last accessed Jan. 31, 2017); & Steve Hendrix & Lori Aratani, *Driving for dollars: Thousands sign up to work for UberX and other ride-share services*, Apr. 13, 2014, WASH. POST, available at http://www.washingtonpost.com/local/driving-for-dollars-thousands-sign-up-to-work-for-uberx-and-other-ride-share-services/2014/04/13/1660cbce-bc07-11e3-9a05-c739f29ccb08_story.html (last accessed Jan. 31, 2017).

506. Angus Kidman, *Ask LH: How Can I Become An Uber Driver*, available at <http://www.lifehacker.com.au/2013/03/ask-lh-how-can-i-become-an-uber-driver> (last accessed Jan. 31, 2017).

507. *O'Connor, et al. v. Uber Technologies, Inc., et al.*, No C-13-3826 EMC (Dist. Ct. Cal., 5 Dec. 2013) (U.S.).

508. *Id.*

509. *Id.*

510. *Id.*

511. *Id.*

transportation. Although it may seem otherwise because of the apparent lack of the means to deliver the said services, their manner of running the commercial enterprise and how the same flourishes as such reveal the inseparability and indispensability of transportation services thereto. The non-existence of the necessary facilities is compensated by the existence of control over the drivers who provide the same. Therefore, it would not be amiss to say that the said entities offer to carry or transport the public while the performance thereof is passed on to persons who are, taking everything into account, answerable to them.

b. Distinguished from Travel Agencies

Consequently, the situation of the companies providing driver-connecting mobile app services can rationally be differentiated from that of travel agencies. In *Crisostomo v. Court of Appeals*,⁵¹² Estela Crisostomo contracted the services of Caravan Travel and Tours International, Inc. (Caravan) to arrange her booking, ticketing, and accommodation for a tour of Europe.⁵¹³ A few days later, Caravan's employee, Meriam Menor, delivered Estela's travel documents and, allegedly, informed the latter that her flight would be on "Saturday" of the said week.⁵¹⁴

Relying solely on Meriam's word and without checking the plane ticket itself, Estela went to the airport on "Saturday," but only to find out that her flight was scheduled for the day before.⁵¹⁵ As a result, Estela had to buy another set of tickets for her trip to Europe.⁵¹⁶ Upon her return to Manila, Estela demanded reimbursement from Caravan for its negligence as a common carrier.⁵¹⁷ The travel agency rejected Estela's demands, which forced her to file a complaint for breach of the contract of carriage.⁵¹⁸

Caravan argued that Estela only had herself to blame, as the travel documents were given to her at least two days in advance.⁵¹⁹ Moreover, the correct departure date was clearly and legibly indicated on the face of the plane ticket.⁵²⁰ For her part, Estela contended that Caravan did not observe

⁵¹² *Crisostomo v. Court of Appeals*, 409 SCRA 528 (2003).

⁵¹³ *Id.* at 529.

⁵¹⁴ *Id.*

⁵¹⁵ *Id.*

⁵¹⁶ *Id.* at 530.

⁵¹⁷ *Id.*

⁵¹⁸ *Crisostomo*, 409 SCRA at 530.

⁵¹⁹ *Id.*

⁵²⁰ *Id.* at 530-31.

the standard of diligence required of a common carrier.⁵²¹ Notwithstanding her own simple negligence, the same cannot bar her claim as the travel agency was bound to exercise extraordinary diligence.⁵²²

The Supreme Court agreed with Caravan and ruled that the travel agency did not come within the definition of common carrier under the law, thus —

A common carrier is defined under Article 1732 of the Civil Code as persons, corporations, firms[,] or associations engaged in the business of carrying or transporting passengers or goods or both, by lane, water[,] or air, for compensation, offering their services to the public.

It is obvious from the above definition that respondent is not an entity engaged in the business of transporting either passengers or goods and is [therefore], neither, a private nor a common carrier. Respondent did not undertake to transport petitioner from one place to another since its covenant with its customers is simply to make travel arrangements in their behalf. Respondent's services as a travel agency include procuring tickets and facilitating travel permits or visas as well as booking customers for tours.

While petitioner concededly bought her plane ticket through the efforts of respondent company, this does not mean that the latter ipso facto is a common carrier. At most, respondent acted merely as an agent of the airline, with whom petitioner ultimately contracted for her carriage to Europe. Respondent's obligation to petitioner in this regard was simply to see to it that petitioner was properly booked with the airline for the appointed date and time. Her transport to the place of destination, meanwhile, pertained directly to the airline.

The object of petitioner's contractual relation with respondent is the latter's service of arranging and facilitating petitioner's booking, ticketing[,] and accommodation in the package tour. In contrast, the object of a contract of carriage is the transportation of passengers or goods. It is in this sense that the contract between the parties in this case was an ordinary one for services and not one of carriage. Petitioner's submission is premised on a wrong assumption.⁵²³

Thus, under Philippine law, a travel agency is not a common carrier. "In many cases, the object of contractual relation of a person who purchases a ticket through a travel agency is only the agency's service of *arranging and*

⁵²¹. *Id.* at 533.

⁵²². *Id.*

⁵²³. *Id.* at 534 (2003) (emphasis supplied).

facilitating the booking, ticketing, and accommodation in a package tour."⁵²⁴ Expressed in a different way, the office of the travel agency is to reserve seats on a carrier, procure the ticket therefor, brief the client as to his or her itinerary, and, in proper cases, obtain the most economical deal possible for the client.

While it may seem that the mobile app companies may rely on the *Crisostomo* ruling and argue that like travel agencies, they merely facilitate, but do not perform, the act of transportation service itself, a closer comparison of the two entities would reveal otherwise. To "facilitate" means to make a thing, process, or action easier.⁵²⁵ In this sense, travel agencies facilitate the acquisition of tickets and accommodations for their clients. In spite of that, it is important to note that travel agencies only perform very limited acts and cease to play any particular role after they deliver the proper travel documents to their clients. As such, it cannot be doubted that travel agencies truly act as pure intermediaries between passengers and airline carriers.

First, as soon as the tickets are turned over to the clients, the transaction officially ends and travel agencies immediately become entitled to collect the payment for their services. This is only but proper because in such cases, the said agencies have fully performed their obligations. Such is in contrast with driver-connecting mobile app companies, as they receive their booking fees and/or commissions only after the complete and proper performance of the transportation services. Without question, the services rendered by travel agencies are not intertwined with nor conditioned upon those to be subsequently discharged by independent airline carriers. Nor do such agencies ever volunteer or accede to refund the tickets they issue to their clients, notwithstanding any blunder in the service performed by the airlines.

Second, travel agencies do not subject the airlines to any preliminary vetting process before connecting them with clients. More often than not, it is the clients themselves who request for their preferred carriers. While travel agencies are at liberty to recommend specific airlines due to packages, discounts, or the like, it is the clients who ultimately have the power to choose the same. Conversely, the mobile app companies in question designate the drivers for each request. On top of that, the apps also see to it that they deploy only the drivers that have duly passed their respective management standards.

524. TIMOTEO B. AQUINO, ESSENTIALS OF TRANSPORTATION AND PUBLIC UTILITIES LAW 24 (2011) (emphasis supplied).

525. Merriam-Webster, Definition of Facilitate, available at <http://www.merriam-webster.com/dictionary/facilitate> (last accessed Jan. 31, 2017).

Third, travel agencies have no authority at all to impose any requirements on the airlines as to the specifications and upkeep of the latter's carriers. Neither do the agencies have a hand in crafting and implementing the management policies that govern the pilots, stewardesses, and other members of the crew. Such differs greatly from the app companies in that they are able to lay down parameters that the drivers and their vehicles must religiously abide by, even during the conduct of the ride itself.

Fourth, travel agencies do not, in any way, monitor the airlines while the latter are in the process of transporting the passengers. Moreover, the agencies do not hold any power to discipline the airlines, much less their employees, for any fault or negligence that occurred during the flight despite complaints from clients. On one hand, travel agencies do not make a conscious effort to obtain feedback on how the carriers performed their tasks. On the other hand, the entities behind such mobile apps maintain their presence all throughout the time when the drivers are carrying the users. Afterwards, the app companies have the prerogative to remove the drivers from the system should they be poorly rated.

As the Supreme Court itself observed in *Crisostomo*, the obligation of the travel agency "was simply to see to it that petitioner was properly booked with the airline for the appointed date and time."⁵²⁶ In short, travel agencies only undertake to perform the task of securing for their clients a space on a specific airplane. The agencies do not even have to ensure that their clients physically ride the carrier on which the reservation has been made. True enough, the personality and services of travel agencies can reasonably and legally be separated from that of the airlines.

Accordingly, it would be erroneous for driver-connecting mobile app companies to rely on the case of *Crisostomo* to maintain that they are not engaged in the carriage or transportation of passengers. The doctrine in the said case cannot be applied to the app companies because their business operations and functions are not the same as, and are in fact starkly different from, the general business operations and functions of travel agencies. It cannot be shown that the facts surrounding the app companies are identical or even substantially similar to that of the travel agency in *Crisostomo* so that the issue as to the status of being a common carrier should be resolved in the same manner. It goes without saying that the said case even underscores the integral and peculiarly extensive role that the app companies have in the transportation services they offer to their users.

⁵²⁶ *Crisostomo*, 409 SCRA at 534.

It would have been a different story if all that the technology does is “show customers maps of available cars, without giving them a way to book a ride and without controlling or taking a share of the fare[.]”⁵²⁷ However, it is clear that the mobile app companies “collect payments from passengers, share revenues with drivers, and manage the exchange of information between passengers and drivers to facilitate interactions and commerce between drivers and passengers.”⁵²⁸ Therefore, it may reasonably be concluded that the app companies are offering transportation services for their users and performing the same indirectly through their “partner” or “affiliate” drivers.

c. Ownership of Vehicles Used in the Transportation Service

Regarding the issue of vehicle ownership, it has been said that with respect to the concept of public service in relation to common carriers, “[t]he basic idea of a public utility operator used to include ownership of the equipment used in the service being provided. This has been modified [] where such ownership of the equipment by the grantee-operator may not be necessary.”⁵²⁹

In the U.S., it is settled that ownership or lease over the instruments or facilities utilized by a public utility does not, by itself, render the owner or lessor a public utility.⁵³⁰ In the same way, owners of cars who supply the same through a contract made with a common carrier operating as a public utility are not considered common carriers themselves.⁵³¹ This means that ownership over the vehicles, vessels, airplanes, or whatever conveyances used by common carriers may be validly distinguished from the actual operation thereof.

Such a principle has also been recognized in the Philippines, particularly in the precedent-setting case of *Tatad v. Garcia*,⁵³² where the Supreme Court held that ownership of a public utility is not the same as the operation thereof, thus —

In law, there is a clear distinction between the ‘operation’ of a public utility and the ownership of the facilities and equipment used to serve the public.

⁵²⁷. Decision 13-09-045, at 16.

⁵²⁸. *Id.* at 10.

⁵²⁹. Subong, *supra* note 426, at 234 (citing *Tatad v. Garcia*, 243 SCRA 436 (1995)).

⁵³⁰. *Providence and W.R. Co. v. United States*, 46 F.2d 149, 152 (1930).

⁵³¹. *Crystal Car Line v. State Tax Commission*, 174 P.2d 984, 987 (Utah 1946) (U.S.).

⁵³². *Tatad v. Garcia*, 243 SCRA 436 (1995).

Ownership is defined as a relation in law by virtue of which a thing pertaining to one person is completely subjected to his will in everything not prohibited by law or the concurrence with the rights of another.

The exercise of the rights encompassed in ownership is limited by law so that a property cannot be operated and used to serve the public as a public utility unless the operator has a franchise. The operation of a rail system as a public utility includes the transportation of passengers from one point to another point, their loading and unloading at designated places and the movement of the trains at prescheduled times.

The right to operate a public utility may exist independently and separately from the ownership of the facilities thereof. One can own said facilities without operating them as a public utility, or conversely, one may operate a public utility without owning the facilities used to serve the public. The devotion of property to serve the public may be done by the owner or by the person in control thereof who may not necessarily be the owner thereof.

This dichotomy between the operation of a public utility and the ownership of the facilities used to serve the public can be very well appreciated when we consider the transportation industry. Enfranchised airline and shipping companies may lease their aircraft and vessels instead of owning them themselves.⁵³³

Moreover, the Philippines has itself recognized the concept of non-vessel operating common carriers (NVOCC), which is defined as a

[c]ommon carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean carrier, bu[t] which issues bills of lading in name to shipper under its solicitation to whom it directly assumes the liabilities and responsibilities of a common carrier.⁵³⁴

While it is true that NVOCCs undertake to convey goods instead of passengers, the principle that common carriers need not own or possess the actual conveyances for the transportation service they provide may be applied to the said mobile apps by analogy. So long as these entities hold themselves out to the public for the purpose of transporting goods, passengers, or both as a business, it is already considered a common carrier,

533. *Id.* at 453 (citing *Arizona Eastern R.R. Co. v. J.A. Matthews*, 20 Ariz 282 (1919) (U.S.); 2 ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 45 (1992); & *United States Fire Ins. Co. v. Northern P.R. Co.*, 30 Wash 2d. 722 (1948)).

534. See Maritime Industry Authority, Memorandum Circular No. 30 [Mem. Circ. No. 30, s. 1984] (Aug. 23, 1984).

regardless of the fact that they own the vehicle to be used or have to hire one.⁵³⁵

Ultimately, common carriers need not necessarily own the actual carriers they use in carrying or transporting passengers, goods, or both. That being said, it is of no moment that the entities in control of driver-connecting mobile apps do not maintain a fleet of vehicles for use in the transportation services, as they may be considered engaged in the business of transportation despite ownership remaining with the private motorists or taxi companies.

By all means, there is merit in arguing that the apps are nothing but “electronic methods of hitching a ride. That electronic thumb replacing the one waving by the side of the road[,]”⁵³⁶ but having the same outcome. To stress, it is logical to adjudge such mobile app companies as common carriers engaged in the business of transporting their users and the public in general for compensation. The claim of the app companies that they only undertake to provide intermediary-related services is specious given that their actions palpably dictate otherwise. It becomes apparent that the said entities truly undertake to carry their users through third parties over whom they hold much influence.

Certainly, the presence of new technology to expedite the summoning of vehicles should not, in any way, alter the nature of the transportation business engaged in.⁵³⁷ Furthermore, to consider the app companies as common carriers would not be implausible because this would be in keeping with the broad and expanding concept of the same in the Philippines.⁵³⁸ Admittedly, entities “which are considered common carriers in a number of decisions do not fall neatly into the concept of common carriers contemplated in the test announced in *National Steel Corporation v. Court of Appeals*.”⁵³⁹

Lastly, seeing as how the matter remains to be an open issue in the Philippines with no definitive or binding rule thereon, then it would not be

535. See *Schmitz Transport & Brokerage Corporation v. Transport Venture, Inc.*, 456 SCRA 557, 568 (2005).

536. See Tim Worstall, *This Is Why We Can't Have Nice Things: Uber And Lyft Drivers Being Arrested*, available at <http://www.forbes.com/sites/timworstall/2013/08/03/this-is-why-we-cant-have-nice-things-uber-and-lyft-drivers-being-arrested> (last accessed Jan. 31, 2017).

537. Decision 13-09-045, at 8.

538. AQUINO, *supra* note 524, at 10.

539. *Id.* & *National Steel Corporation v. Court of Appeals*, 283 SCRA 45, 61-62 (1997).

amiss to look to regulations proposed or passed in foreign jurisdictions for guidance. In California, where the concept and business models of the app companies originated, the same are treated as common carriers.⁵⁴⁰ In this regard, attention must be drawn to the fact that the definition given to common carriers and CPCPs under California statutes greatly resembles that found under Article 1732 of the Civil Code.⁵⁴¹

In like manner, the statutory definition of public service provided in Maryland statutes is exceedingly akin to that found under the Public Service Act of the Philippines.⁵⁴² Surely, such would not be the first time that

540. Decision 13-09-04.

541. CAL. PUB. CODE, § 2168 provides that —

[E]very one who offers to the public to carry persons, property, or messages, excepting only telegraphic messages, is a common carrier of whatever he thus offers to carry

...

‘[C]harter-party carrier of passengers’ means every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state. ‘Charter-party carrier of passengers’ includes any person, corporation, or other entity engaged in the provision of a hired driver service when a rented motor vehicle is being operated by a hired driver[.]

Id. CIVIL CODE, art. 1732 states that “common carriers are persons, corporations, firms, or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public.” *Id.*

542. Public Service Act, § 13 (b), states that

[t]he term ‘public service’ includes every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier, railroad, street railway, traction railway, sub-way motor vehicle, either for freight or passenger, or both with or without fixed route and whether may be its classification, freight or carrier service of any class, express service, steamboat or steamship line, pontines, ferries, and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine railways, marine repair shop, wharf[.] or dock, ice plant, ice-refrigeration plant, canal, irrigation system, gas, electric light, heat[.] and power water supply and power, petroleum, sewerage system, wire[.] or wireless communications system, wire or wireless broadcasting stations[.] and other similar public services[.] *Id.*

foreign laws or decisions would have persuasive effect, especially those of American origin, as the provisions of the Civil Code on common carriers were themselves taken from Anglo-American Law.⁵⁴³

d. Private Carriers

In the event that mobile app companies insist on a different legal classification, it is submitted that it would be erroneous to consider them as private carriers. A private carrier refers to those who transport or undertake to transport in a particular instance for hire or reward.⁵⁴⁴ The most significant distinction between a common and a private carrier is that while the former offers itself as ready to carry for hire to all persons who choose to employ the said entity, the latter only agrees in some special case with some private individual/s to carry for reasonable compensation.⁵⁴⁵

“If the undertaking be a single transaction, *not a part of the general business of occupation engaged in, as advertised and held out to the general public*, then the individual or company furnishing such service is a private and not a common carrier.”⁵⁴⁶ Thus, it is readily apparent that the app companies in question cannot be deemed private carriers, since the latter do hold themselves out to the public as engaged in the business of transportation. There are no qualifications that users must comply with before they may be treated as such. While not every individual is permitted to become a driver, all persons are eligible to become users without any distinction at all. Based on how app companies operate, it cannot be denied that their services, which are done as an occupation, are offered and open to the public at large, particularly to those engaged in daily commuting.

MD. PUB CODE, § 1-101 (X) (1) states that “[p]ublic service company’ means a common carrier company, electric company, gas company, sewage disposal company, telegraph company, telephone company, water company, or any combination of public service companies.” *Id.*

MD. PUB CODE, § 1-101 (X) (1). Section 1-101 (t) states that “[o]wn’ includes own, operate, lease to or from, manage, or control.” *Id.*

543. *See* Stonehill v. Hon. Jose Diokno, 20 SCRA 412, 416 (1967) & Valenzuela Hardwood and Industrial Supply, Inc. v. Court of Appeals, 274 SCRA 642, 653-54 (1997).

544. *Allen v. Sackrider*, 37 N.Y. 341 (1867) (U.S.).

545. *Id.*

546. AGUEDO F. AGBAYANI, COMMENTARIES AND JURISPRUDENCE ON THE COMMERCIAL LAWS OF THE PHILIPPINES 7-8 (1993 ed.) (emphasis supplied).

e. Pure Brokers-Middlemen

The above exposition notwithstanding, it would also be relevant to examine whether these driver-connecting mobile app companies are, in reality, simply middlemen between users and drivers, as they persistently claim.⁵⁴⁷ In the Philippines, “the term ‘broker’ is understood to be a commercial term for a person or entity engaged as a middleman to *bring parties together* in matters pertaining to trade, commerce, or navigation.”⁵⁴⁸

In *Behn, Meyer & Co., Ltd. v. Nolting and Garcia*,⁵⁴⁹ the Supreme Court comprehensively defined “broker” as follows —

A broker is generally defined as one who is engaged, for others, on a commission, negotiating contracts relative to property with the custody of which he has no concern; the negotiator between other parties, never acting in his own name, but in the name of those who employed him; he is strictly a middleman and for some purposes the agent of both parties. A broker is one whose occupation it is to bring parties together to bargain, or to bargain for them, in matters of trade, commerce[,] or navigation. Judge Storey, in his work on Agency, defines a broker as an agent employed to make bargains and contracts between other persons, in matters of trade, commerce[,] or navigation, for a compensation commonly called brokerage.⁵⁵⁰

In addition, brokers or intermediaries for transportation services are recognized in the Philippines, as in *Commissioner of Internal Revenue v. Cadwallader Pacific Company*,⁵⁵¹ where the Supreme Court held that a commercial broker “includes all persons, other than importers, manufacturers, producers, or *bona fide* employees, who, for compensation or profit, ... *negotiate freights or other means of transportation*, or for the shippers, or consignors or consignees of freight carried by vessels or other means of transportation.”⁵⁵²

547. Max Nisen, The New hot startup model is being an exceptional middleman, *available at* <http://qz.com/183992/the-new-hot-startup-model-is-being-an-exceptional-middleman> (last accessed Jan. 31, 2017).

548. CESAR L. VILLANUEVA, *NON-CORPORATE MEDIA OF DOING BUSINESS: AGENCY, TRUSTS, PARTNERSHIPS, & JOINT VENTURES* 44 (2015 ed.) (emphasis supplied).

549. *Behn, Meyer & Co., Ltd v. Nolting and Garcia*, 35 Phil. 274 (1916).

550. *Id.* at 279-80.

551. *Commissioner of Internal Revenue v. Cadwallader Pacific Company*, 73 SCRA 59 (1976).

552. *Id.* at 69 (emphasis supplied).

Eventually, Philippine jurisprudence became more precise as to the definition of a commercial broker — especially when distinguished from a commission agent — as can be seen in *Pacific Commercial Company v. Yatco*,⁵⁵³ where the Supreme Court held that

[t]he broker, unlike the commission merchant, has *no relation with the thing he sells or buy* (sic). He is merely an *intermediary* between the purchaser and the vendor. He acquires neither the possession nor the custody of the things sold. *His only office is to bring together the parties to the transaction.*⁵⁵⁴

Such distinction between a commission agent, who is authorized to represent his principal,⁵⁵⁵ and a commercial broker is particularly relevant in that

[a] *true broker*, one who merely acts as a negotiating middleman, and who is not authorized to execute juridical acts in behalf of the clients, does not owe fiduciary duties to his clients, although like any ordinary professional or businessman, he is supposed to act with due diligence in carrying out the affairs of his clients. If his negligence causes damage to a client, his liability is based on tort or quasi-delict, rather than that arising from breach of the duty of diligence.⁵⁵⁶

According to Dean Cesar L. Villanueva, a noted authority in Commercial Law,

the services of a broker is to find third parties who may be interested in entering into contracts with other parties over particular matter[s], and may include negotiating in behalf of both parties the perfection of a contract, but that *the actual perfection must still be done by the parties represented.*⁵⁵⁷

As will be discussed in the succeeding sub-Section, it is the drivers who stand for the mobile apps while the latter do not act in representation of any other party.

Consequently, the essential feature of a pure commercial broker is the fact that he acts not as an agent to either of the parties, but merely a middleman, who provides the avenue whereby they can come together and later contract, should they come to an agreement.⁵⁵⁸ Stated otherwise, the sole duty of a broker is to furnish the means through which parties may

553. *Pacific Commercial Company v. Yatco*, 68 Phil. 398 (1939).

554. *Id.* at 402 (emphases supplied).

555. VILLANUEVA, *supra* note 548, at 45-46.

556. *Id.* at 46 (emphasis supplied).

557. *Id.* at 47 (emphasis supplied).

558. *Id.* at 45.

associate with one another and nothing more. As soon as the parties begin the negotiating process, the broker generally steps out of the way and does not retain any interest in the contract that may result, much less in the performance thereof.

From the position of the broker, his or her right to a commission accrues simply by providing the opportunity for the parties to enter into a contract with each other. "A broker earns his pay merely by bringing the buyer and the seller together, even if no sale is eventually made."⁵⁵⁹ As it happens,

[t]he essential feature of a broker's conventional employment is merely to procure a purchaser for a property ready, able, and willing to buy at the price and on the terms mutually agreed upon by the owner and the purchaser. And it is not a prerequisite to the right to compensation that the broker conduct the negotiations between the parties after they have been brought into contact with each other through his efforts.⁵⁶⁰

To clarify, the job of a broker is not a continuing one, such that he has no responsibility to inquire into or ensure the fulfillment of the obligations of both parties.

Based on Philippine jurisprudence, driver-connecting mobile app entities may, at first glance, be regarded as mere intermediaries, commercial brokers, or middlemen. As claimed by the app companies, they only connect potential passengers to willing drivers without more, leaving the parties to enter into the contract of transportation upon their own accord. The said companies also collect commissions for the successful use of their technology by charging booking fees or taking a certain percentage from the total fare paid to the drivers.

At the same time, what cannot be overlooked is the extended role that such app companies play in the rendition of the transportation service.

First, the driver-connecting mobile app companies have a concern over the performance of the driver and the overall quality of the ride. This is evident, among others, from the policy of asking users to rate their experiences and inform the apps about any relevant incidents that occurred while being driven.⁵⁶¹

559. See *Alfred Hahn v. Court of Appeals*, 266 SCRA 537 (1997) & *Manuel Tan et al. v. Eduardo Gullas et al.*, 393 SCRA 334 (2002).

560. See *Wickersham v. T. D. Harris*, 313 F.2d 468 (10th cir. 1963) (U.S.) & *Bienvenido Medrano et al. v. Court of Appeals*, 452 SCRA 77, 90 (2005).

561. Angela Sormani, *Grab Taxi secures venture packing*, available at <http://www.pehub.com/2014/04/grabtaxi-secures-venture-backing> (last accessed Jan. 31,

Second, most, if not all, of the app companies are beginning to provide vehicle insurance to cover for accidents that may happen on the road.⁵⁶² In fact, Tripid has even installed a “panic button” feature, whereby users may instantly inform designated individuals of any emergency that may occur.⁵⁶³

Third, by connecting to the GPS system, the app companies are practically able to monitor the entire trip of the users. GrabTaxi even allows the public tracking, through social media websites, of the routes taken by the taxis in real time.⁵⁶⁴ It is readily apparent that unique supervisory features allow driver-connecting mobile app companies to take part in and, to a considerable extent, control the transportation services. Hence, notwithstanding the claim that they are not part of the resulting contract of transportation and that they are not liable for whatever may occur on the occasion thereof, it is plain that these entities go beyond the act of simply bringing the parties together. It stands to reason that all their actions taken as a whole effectively removes them from the province of pure commercial brokers and/or middlemen.

B. The Relationship Between the Mobile Applications and the Drivers

From the immediately preceding discussion, it becomes rather evident that it would be incorrect to classify the driver-connecting mobile app companies

2017) & Vince, Solving Manila’s Traffic Problem with Carpooling App Tripid, available at <https://vulcanpost.com/4126/solving-manilas-traffic-problem-with-carpooling-app-tripid> (last accessed Jan. 31, 2017).

562. See Steven Millward, GrabTaxi reveals growth plans after biggest ever funding round, available at <http://www.techinasia.com/grabtaxi-reveals-growth-plans-after-series-b-funding> (last accessed Jan. 31, 2017) & Uber Newsroom, Ridesharing with Uber: a safe, reliable and affordable transport option, available at <https://newsroom.uber.com/australia/ridesharing-with-uber-a-safe-reliable-and-affordable-transport-option> (last accessed Jan. 31, 2017).

563. See Clara Benconsejo, How to Keep Safe When Carpooling or Ride-sharing, available at <http://blog.tripid.ph/2013/11/how-to-keep-safe> (last accessed Jan. 31, 2017).

564. See Wonderful Treats from Globe and Grab Taxi: Globe subscribers enjoy ₱20 off on booking fee until June 2014, available at <http://www.globe.com.ph/press-room/wonderful-treats-from-globe-and-grabtaxi> (last accessed Jan. 31, 2017); Now everyone can grab a taxi and fly on AirAsia, available at <http://www.citynetevents.com/bangkok/events/now-everyone-can-grab-a-taxi-and-fly-on-airasia-may-1st-2014> (last accessed Jan. 31, 2017); & Gil Camporazo, How to be safe in a cab this Christmas through GrabTaxi, available at <http://www.gilcamporazorandomthoughts.info/2013/12/how-to-be-safe-in-cab-this-christmas.html> (last accessed Jan. 31, 2017).

as mere middlemen between the users and the drivers or transportation service providers. An analysis of their business operations in its entirety — before, during, and after the performance of the transportation services — will reveal that the app companies hold themselves out as common carriers that are engaged in the business of transporting their users. The claim that the contract entered into is purportedly one for services and/or brokerage is untenable from the perspective of their users, third persons, and the law.

Accordingly, by logging on to the system, requesting for a ride, and receiving confirmation of the same, the users enter into a contract of carriage with the mobile apps. However, as these app companies insist on lacking the provisions to perform the obligations that come therewith, the undertaking to transport is effectively devolved onto the taxi drivers and/or private motorists. To put it in another way, while the applications make the promise of providing transportation services, the task of physically carrying the users fall upon the drivers. Hence, it becomes necessary to examine the legal relationship existing between the two parties.

Unfortunately, since the official launch of the apps, the legal tie existing between them and their drivers remains an unsettled issue.⁵⁶⁵ The applications publicly refer to the drivers as “partners” or “affiliates,” but the latter themselves refuse to acknowledge this characterization.⁵⁶⁶ Protests have sprung left and right, alleging that the app companies “incorrectly classifies its drivers as independent contractors, making them responsible for costs that would otherwise be covered and deprived them of worker’s compensation and unemployment insurance.”⁵⁶⁷

As of the moment, state regulators, as well as legal practitioners worldwide, continue to discuss and mull over the proper classification for

565. See Marisa Taylor, Drivers accuse car app Uber of dictating terms, skimming tips, *available at* <http://america.aljazeera.com/articles/2014/4/26/uber-a-ber-alles.html> (last accessed Jan. 31, 2017). See also Brett Snider, Blog, *Ride Service Uber Sued Over Girl's Death*, Jan. 28, 2014: 9:29 a.m., FINDLAW, *available at* <http://blogs.findlaw.com/injured/2014/01/ride-service-uber-sued-over-girls-death.html> (last accessed Jan. 31, 2017).

566. See Katy Steinmetz, UberX Drivers Protest Outside Uber Headquarters, *available at* <http://time.com/92988/uberx-san-francisco-protest-uber> (last accessed Jan. 31, 2017) & Sam Biddle, Uber and Lyft Both Sued for Allegedly Ripping Off Drivers, *available at* <http://valleywag.gawker.com/uber-and-lyft-both-sued-for-allegedly-ripping-off-drive-1264430943> (last accessed Jan. 31, 2017).

567. Joshua Brustein, Uber delivers file class-action suit over tips, *available at* <http://www.sfgate.com/business/article/Uber-drivers-file-class-action-suit-over-tips-4778315.php> (last accessed Jan. 31, 2017).

these drivers. The issue is quickly turning into a difficult case of taking the word of one party against the other. As expected, the terms of the contracts are not within the reach of the public, presumably to protect the business interests of the said entities. At any rate, as the users and/or third persons are not privy thereto and to avoid unwarranted speculation, it would be well to ascertain the legal relationship of the apps and the drivers in an impartial manner, that is, without necessarily affirming or denying the contentions of one or the other.

1. Implied Agency

Judging from the viewpoint of the users, particularly the interaction between the mobile app entities and the drivers, it is respectfully submitted that the association between the app companies and the transportation providers is one of agency. Under Article 1868 of the Civil Code, “[b]y the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.”⁵⁶⁸

It is settled doctrine that as a general rule, what a person may do personally, he may do through another.⁵⁶⁹ In this case, the physical act of transporting users, which the app companies cannot discharge due to their deliberate business setup, is performed in their behalf by the taxi and/or private drivers. That is to say, for purposes of doing the actual carrying or moving of passengers, the app companies enter into an agreement with drivers who are willing to bind themselves to execute the same in place of and in the interest of the former.

The parties to a contract of agency are the principal or *mandante* (the mobile app companies) and the agent or the *mandatario* (the drivers).⁵⁷⁰ In the oft-cited case of *Rallos v. Felix Go Chan & Sons Realty Corporation*,⁵⁷¹ the Supreme Court held that the essential elements of agency are as follows:

- (1) There is consent, express or implied, of the parties to establish the relationship;
- (2) The object is the execution of a juridical act in relation to a third person;
- (3) The agent acts as a representative and not for himself; and

⁵⁶⁸. CIVIL CODE, art. 1868.

⁵⁶⁹. See *Philpotts v. Philippine Manufacturing Co. and Berry*, 40 Phil. 471 (1919).

⁵⁷⁰. VILLANUEVA, *supra* note 548, at 5.

⁵⁷¹. *Rallos v. Felix Go Chan & Sons Realty Corporation*, 81 SCRA 251 (1978).

(4) The agent acts within the scope of his authority.⁵⁷²

As to the first requisite, the consent of both parties may be implied from their overt acts that manifest the same, especially as the actual contracts between them are inaccessible for reference. It is also unlikely for the app companies to expressly admit the said relationship, given that they want to be recognized, by all means, as separate and distinct from the drivers. In any event, it is recognized in Philippine jurisdiction that in an agency, “the intention of the parties must find expression either in *words* or *conduct* between them.”⁵⁷³

On the side of the principal, Article 1869 of the Civil Code is undoubtedly clear on the matter when it states that “[a]gency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority.”⁵⁷⁴ As between the app companies and the drivers, the former perform actions that are indicative of their intention to constitute the latter as representing them.

In the first place, as stated in the earlier Sections, the app companies impose a mandatory screening procedure, whereby they exert efforts to assure themselves that the drivers are fit to both embody their brand and drive their users. This is in line with the concept of agency being essentially fiduciary in character.⁵⁷⁵ As acknowledged in Philippine case law, a contract of agency is a contract of representation based entirely on the trust and confidence lodged by the principal on the agent.⁵⁷⁶

To put it simply, the principal must honestly believe in the ability and reliability of the agent to carry out and accomplish the peculiar duties of which the latter is assigned. In the case of the mobile app companies, allowing the drivers to get through the preliminary assessment is equivalent to giving them the stamp of approval to act in their (i.e., app companies’) stead. Truth be told, such is only a prefatory step because the said entities still require the drivers to undergo programs that are geared to enhance their overall delivery of the transportation services.

572. *Id.* at 259.

573. *See* Litonjua, Jr. v. Eternit Corporation, 490 SCRA 204, 206 (2006) (emphases supplied).

574. CIVIL CODE, art. 1869.

575. VILLANUEVA, *supra* note 548, at 23.

576. Republic et al. v. Evangelista, 466 SCRA 544, 551 (2005).

Above and beyond the screening and/or training process, the app companies provide all their drivers with smartphones equipped with the technology. Through the phones, the app companies are able to coordinate with the drivers, inform them as to the location of the users, and track the progress of each trip, among others. While it is true that the drivers provide their own vehicles, the act of such entities in furnishing the mobile devices is crucial because without which the business operations will not take its course and the actual act of transportation cannot be performed. It is submitted that supplying the drivers with the smartphones is the unequivocal gesture that informs them that they are officially part of the roster and that they are entrusted with the heavy responsibility of driving the users.

Secondly, the mobile app companies require the drivers and their vehicles to sport a certain kind of appearance. Such is consistent with the principle that “it is the characteristic of ‘representation’ that is the most distinguishing mark of agency when compared to other service contracts[.]”⁵⁷⁷ By means of the said legal relationship, the agent is authorized and tasked with the duty to stand in for the principal in transactions and dealings with third parties.

Through the suits or uniforms, the drivers become remarkably distinguishable from others who are not affiliated with the app companies concerned. Above all, the color or labels that the vehicles must maintain have the effect of carrying the names of the said companies wherever the cars travel. It goes without saying that by insisting on such unique and distinctive forms of branding, driver-connecting mobile app companies strongly reinforce the notion in the drivers that the latter are acting on the authority of the principals, representing their brands in each trip they take.

Thirdly, the app companies have the power to dismiss the drivers at will. This is in consonance with the revocable attribute of an agency contract, such that the principal cannot be forced to remain in the relationship when he chooses to have it terminated.⁵⁷⁸ On this point *Republic et al. v. Evangelista* is instructive, thus —

A contract of agency is generally revocable as it is a personal contract of representation based on trust and confidence reposed by the principal on his agent. As the power of the agent to act depends on the will and license of the principal he represents, the power of the agent ceases when the will

⁵⁷⁷. VILLANUEVA, *supra* note 548, at 19.

⁵⁷⁸. *Id.* at 23.

or permission is withdrawn by the principal. Thus, generally, the agency may be revoked by the principal at will.⁵⁷⁹

True enough, in the event that the app companies perceive that the drivers are not executing the transportation services in line with their standards, the latter are promptly withdrawn from the system. As a matter of fact, it appears that when such happens, the drivers hold no cause of action against the said companies in connection with the act of discharging. Likewise, the drivers may also choose to end the relationship and stop working for the app companies whenever they please.

The specific and calculated actions by the entities undertaking mobile app services described in the previous paragraphs underscore their indubitable intent to have the drivers perform acts for their benefit. Although the said companies may intentionally choose not to label the relationship expressly as agency or to provide a written power of attorney in favor of the drivers, their gestures can have no other plausible meaning. Certainly, “[a] contract of agency is essentially a consensual contract and that, as a general rule, no form or solemnity is required in order to make it valid, binding[,] and enforceable.”⁵⁸⁰

The foregoing is also the main reason why it is the app companies that should be properly regarded as the principals in this case. Between the apps and the drivers, it is the former who undeniably hold the authority to direct the latter. From the initial application to be a driver down to the very performance of the transportation service, it is the app companies that are in charge of running the entire operations. With respect to this aspect, the case of *Victorias Milling Co., Inc. v. Court of Appeals*⁵⁸¹ could not be any clearer, thus —

One factor which most clearly distinguishes agency from other legal concepts is control; one person [—] the agent [—] agrees to act under the control or direction of another [—] the principal. Indeed, the very word ‘agency’ has come to connote control by the principal. The control factor, more than any other, has caused the courts to put contracts between principal and agent in a separate category.⁵⁸²

In this case, the app companies are the parties presiding over the drivers. This is seen through the regulations imposed by the said companies, as well as the fact that it is the drivers who apply to be part of their roster and seek

579. *Evangelista*, 466 SCRA at 551.

580. VILLANUEVA, *supra* note 548, at 17.

581. *Victorias Milling Co., Inc. v. Court of Appeals*, 333 SCRA 663 (2000).

582. *Id.* at 675-76.

their approval. The screening process itself is not a mere formality. Truly, it would be unsound to believe that the drivers control the app companies because the latter have the discretionary power to terminate the relationship at any point in time, such that they can always look for others who are willing to do the job according to their specifications. Without question, the actions of the driver-connecting mobile app entities are consistent with the fact that “[o]ne of the strongest feature[s] of a true contract of agency is that of ‘control’ [—] that the agent is under the control and instruction of the principal.”⁵⁸³

Similarly, on the side of the agent, Article 1870 of the Civil Code provides that “[a]cceptance by the agent may also be express, or implied from his acts which carry out the agency, or from his silence or inaction according to the circumstances.”⁵⁸⁴ By acceding to the demands of the app companies, as well as presenting and rendering the transportation services according to their instructions, the drivers sufficiently signify their acceptance of the agency. Such confirms the existence of the element of consent coming from both the mobile app entities and the drivers to enter into the contract of agency.

As to the second requisite, the objective of the contract must be for the agent to perform deeds in the name of the principal, which deeds have legal effects as between the latter and third persons.

The object of every contract of agency is *service*, which particularly is the legal undertaking of the agent to enter into juridical acts with third persons on behalf of the principal. Therefore, the obligation created by the perfection of the contract of agency is essentially [a] unilateral personal obligation ‘to do.’⁵⁸⁵

A juridical act, in turn, may be defined as any conduct or activity that is intended to produce legal consequences.⁵⁸⁶ It is an action by the agent that is calculated to create, modify, alter, or even extinguish relations between his

583. VILLANUEVA, *supra* note 548, at 19.

584. CIVIL CODE, art. 1870.

585. VILLANUEVA, *supra* note 548, at 10-11 (emphasis supplied).

586. See JOHN HENRY MERRYMAN & ROGELIO PÉREZ-PERDOMO, *THE CIVIL LAW TRADITION: INTRODUCTION TO THE LEGAL SYSTEMS OF EUROPE AND LATIN AMERICA* 77 (3d ed. 2007); US Legal, Definition of Juridical Act, available at <http://definitions.uslegal.com/j/juridical-act> (last accessed Jan. 31, 2017); & Lawyers.com, Definition of Juridical Act, available at <http://research.lawyers.com/glossary/juridical-act.html?legaldoclist=0> (last accessed Jan. 31, 2017).

principal and third persons.⁵⁸⁷ In the case of the drivers, it is but obvious that the service they render is the physical carrying or transporting of the users that have contracted with their principal, the entities behind the mobile apps concerned.

As to the last two elements included in the foregoing enumeration, the same “should not be understood to be essential elements for the perfection and validity of the contract of agency, for indeed they are matters that do not go into perfection, but rather into the performance stage of the agency relationship.”⁵⁸⁸ Indeed, requiring that the agent (a) truly act for his principal; and (b) within the scope of the authority given are considerations that enter or emerge after the agency contract has come about.

Should the agent choose to act for himself and/or outside the scope of his authority, the same “does not affect the validity of existing agency relationship, but rather the enforceability of the contracts entered into by the agent on behalf of the principal.”⁵⁸⁹ Thus, that the drivers fully and wholeheartedly obey all the conditions set out by the mobile apps while the former are on the occasion of driving the users is not a condition *sine qua non* for the contract of agency to arise and subsist.

It is sufficient that the following are present: (a) consent on the part of both the apps and the drivers, as well as the (b) understanding that the purpose of the relationship is for the latter to perform acts in representation of the former. To be sure, what remains indispensable is that

[o]n the part of the principal, there must be an actual intention to appoint or an intention naturally inferable from his words or actions; and on the part of the agent, there must be an intention to accept the appointment and act on it, and in the absence of such intent, there is generally no agency.⁵⁹⁰

It bears reiterating that “[a]n agency relationship may be implied from the words and conduct of the parties and the circumstances of the case evidencing an intention to create the relationship irrespective of the words or terminology used by the parties to characterize or describe their relationship.”⁵⁹¹ More specifically, agency may be created by implication when the agent is deemed authorized to undertake acts that are reasonable

⁵⁸⁷. *Id.*

⁵⁸⁸. VILLANUEVA, *supra* note 548, at 6.

⁵⁸⁹. *Id.*

⁵⁹⁰. *Victorias Milling Co., Inc.*, 333 SCRA at 675.

⁵⁹¹. *Frank Koricic v. Beverly Enterprises-Nebraska, Inc.*, No. S-08-1167 (Oct. 16, 2009) (U.S.).

and necessary to the business of the principal, taking into account the nature thereof, as well as the role or position of the representative therein.⁵⁹²

As a consequence, when the agency relationship is established, as in this case, the doctrine of representation comes into operation, in which case “the acts of the agent on behalf of the principal within the scope of the authority given have the same legal effects and consequences as though the principal had been the one so acting in a given situation.”⁵⁹³ This means that even if the drivers appear to be the persons that effect the physical carrying or transporting of the users, the same is, in contemplation of the law, performed by the mobile app companies themselves.

Verily, “[w]hen an agency relationship is established, and the agent acts in the name of the principal, the agent is, insofar as the world is concerned, essentially the principal acting in the particular contract or transaction on hand.”⁵⁹⁴ Therefore, from the position of the mobile app companies, the mere denial of the agency relationship with their drivers will not allow them to escape the legal consequences of their actions. The synergy materializing between the said parties, coupled with the influence that the apps have over the drivers, bring to light the real design of the former to extend their personality through the facility of the latter.

In the same way, from the position of the drivers, although they are ones who come face to face with the users and/or third persons, they do so while bearing the name of the mobile app companies they are involved with. The fact that the drivers use their own vehicles and also profit from the engagement does not take away from their being representatives because there is no statutory limitation, apart from not performing unlawful acts, as to how the agents should carry out their duties.

a. Agency by Estoppel

While the previous sub-Section already established the implied agency relationship between the mobile app companies and the drivers, it may be said that the formation thereof was only with respect to the immediate parties to the said contract. Articles 1869 and 1870 of the Civil Code, which provide “rules on when a contract of agency is deemed constituted (i.e., perfected) are taken from the intramural point of view: as between the

592. See *Karam v. Travellers Insurance Co., et al.*, 813 F.2d 751 (5th Cir. 1987) (U.S.).

593. VILLANUEVA, *supra* note 548, at 3.

594. *Id.*

parties to the contract of agency.”⁵⁹⁵ Just the same, the result will not change even if the perfection of the contract of agency is established using rules that are made in reference to third persons.

In point of fact, even if both the app companies and the transportation providers expressly deny the agency relationship, users and/or third persons are not necessarily bound by such denials. From an extramural perspective, the legal relationship existing between the said parties may be judged only from their conduct towards, and manner of dealing with, the rest of society. That being said, it is submitted that insofar as outsiders to the contract are concerned, the app companies and the drivers are estopped from disclaiming the existence of an agency relationship between them.

As explained in the case of *Yun Kwan Byung v. Philippine Amusement and Gaming Corporation*,⁵⁹⁶ there is a difference between implied agency and agency by estoppel —

Implied agency, being an actual agency, is a fact to be proved by deductions or inferences from other facts. On the other hand, apparent authority is based on estoppel and can arise from two instances. *First*, the principal may knowingly permit the agent to hold himself out as having such authority, and the principal becomes estopped to claim that the agent does not have such authority. *Second*, the principal may clothe the agent with the indicia of authority as to lead a reasonably prudent person to believe that the agent actually has such authority. In an agency by estoppel, there is no agency at all, but the one assuming to act as agent has apparent or ostensible, although not real, authority to represent another.⁵⁹⁷

As a clarification, “[a]ctual authority is created by the principal’s manifestations to the agent, whereas apparent authority is created by the principal’s manifestation to a third party.”⁵⁹⁸ Hence, agency by estoppel — sometimes referred to as “ostensible agency”⁵⁹⁹ or “apparent authority”⁶⁰⁰ — is that which arises in favor of innocent third persons due to the intentional or unintentional comportment and circumstances of the parties concerned, notwithstanding that there may be truly no agency relationship between the purported principal and the alleged agent.

595. *Id.* See CIVIL CODE, arts. 1869 & 1870.

596. *Yun Kwan Byung v. Philippine Amusement and Gaming Corporation*, 608 SCRA 107 (2009).

597. *Id.* at 129 (emphasis supplied).

598. Definition—Authority of Agents, available at <http://agency.uslegal.com/authority-of-agents/#sthash.d3QrkXbD.dpuf> (last accessed Jan. 31, 2017).

599. See *King v. Mitchell*, 819 N.Y.S.2d 169 (2006) (U.S.).

600. See *Associated Bank v. Pronstroller*, 558 SCRA 113, 114 (2008).

It has been held that “[t]o determine the existence and scope of apparent authority, the focus is on a third person.”⁶⁰¹ The standard and consideration will be gauged from how the acts of the supposed principal and/or agent will be reasonably interpreted by the parties whom they deal with. Thus, “[i]n agency by estoppel, it is by the separate acts of the purported principal and purported agent, by which they are brought into the relationship insofar as third parties acting in good faith are concerned.”⁶⁰²

Philippine jurisprudence has provided clear guidelines to aid in ascertaining the presence of ostensible agency, thus —

For an agency by estoppel to exist, the following must be established:

- (1) the principal manifested a representation of the agent’s authority or knowingly allowed the agent to assume such authority;
- (2) the third person, in good faith, relied upon such representation;
- (3) relying upon such representation, such third person has changed his position to his detriment.

An agency by estoppel, which is similar to the doctrine of apparent authority, requires proof of reliance upon the representations, and that, in turn, needs proof that the representations predated the action taken in reliance.⁶⁰³

As to the first element, one cannot turn a blind eye to the manner through which the app companies market the transportation services to the public, particularly their strong assertions that the same will be a secure and high quality traveling experience.⁶⁰⁴

Due to the business structure utilized by these companies, the character of the rides is, to a considerable extent, dependent on the drivers. On the subject thereof, the apps boldly boast about working only with pre-screened, trained, and monitored transportation providers who are capable of performing the delicate obligation of transporting the users. In all respects, the mobile app companies have come to be regarded as a reputable source of transportation services.

Since not every applicant will be accepted as a driver, their inclusion in the roster is, at the very least, a certification by the app companies that such

601. *The Bar Plan v. Cooper*, 290 S.W.3d 788 (Mo. Ct. App. 2009) (U.S.).

602. VILLANUEVA, *supra* note 548, at 8.

603. *Litonjua, Jr.*, 490 SCRA at 224-25 (2006).

604. See *Grabtaxi*, available at <http://grabtaxi.com/ph> (last accessed Jan. 31, 2017) & *Safe, Fast, And Easy*, available at <http://www.easytaxi.com/passenger> (last accessed Jan. 31, 2017).

drivers have met their qualifications. Such is compellingly a representation to users and third persons alike that these drivers have the ability to deliver on the first-rate commuting experience that the apps themselves promise. Through their unequivocal acts, the mobile app companies, as apparent principals, warrant the authority of the drivers to fulfill the most significant aspect of the contractual commitment — the actual carrying or transporting of their users.

As to the second element, it is indisputable that the users, with honest and sincere intentions, take the guarantee of the app companies with full trust and confidence.

First, it may be that the users are aware of the fact that the said companies do not maintain vehicles to complete the undertaking to transport. However, at the same time, it may reasonably be construed that the supposed transportation providers work hand in hand with such entities precisely to fill in such gap. Such may be deduced from the way the app companies handle the drivers — of which they proudly inform their users about to the extent that it comes across as being for their benefit.

Second, most, if not all, users are fixated with the idea of acquiring dependable public transportation services, particularly in Metro Manila. Such is arguably what the users perceive to be the value and selling point of the apps,⁶⁰⁵ which draws them into utilizing the same. Apart from convenience, it cannot be denied that Filipino commuters are keen on obtaining safe rides, especially in light of awful stories involving unsuspecting passengers being victims of degenerate drivers.⁶⁰⁶

Thus, it does not come as a shock at all that Filipino users, in good faith, truly rely on the avowal of the entities furnishing driver-connecting mobile app services both with respect to the standard of the transportation services

605. See Easy Taxi Launches Promo for Solo Female Commuters, available at <https://ph.news.yahoo.com/easy-taxi-launches-promo-solo-female-commuters-065255938.html> (last accessed Jan. 31, 2017). See also Easy Taxi, Smart scrap booking fee for Christmas Season, available at <http://newsbytes.ph/2013/12/15/easy-taxi-smart-scrap-booking-fee-for-christmas-season> (last accessed Jan. 31, 2017).

606. See, e.g., Arnold Clavio, Taxi Crime New Modus: SPRAY TAXI, available at <http://www.gmanetwork.com/news/story/341024/publicaffairs/alisto/taxi-crime-new-modus-spray-taxi> (last accessed Jan. 31, 2017) & Dennis Carcamo, LTFRB to probe on new modus victimizing female taxi riders, PHIL. STAR, Oct. 22, 2013, available at <http://www.philstar.com/nation/2013/10/22/1248159/ltfrb-probe-new-modus-victimizing-female-taxi-riders> (last accessed Jan. 31, 2017).

and the capacity of the parties who will render the same. As stated earlier, the said users are even willing to pay a higher fare in exchange for their safety and peace of mind. Such just goes to show the merit and the faith that these users attach to the apps and the drivers. The natural skepticism about being driven by strangers is greatly diminished, if not eliminated, due to the favorable endorsement of the companies behind the mobile apps.⁶⁰⁷

Finally, as to the last element, it is apparent that users would prefer to use the apps to secure transportation services rather than physically hail a cab on the streets. The strong patronage provided by users is evident in the fact that they publicly support the app companies each time city officials attempt to shut the latter down or limit the services they provide. The objective of such state directives is obviously to safeguard the safety of commuters and the public in general, such that by championing the cause of these mobile app companies in resisting regulation, the users are expressing their belief that the latter are already capable of protecting their interests.

On that score, it may be realistically contended that the users have truly begun to consider both the app companies and the drivers as one entity, or at the very least, in collaboration with each other. This is seen, for instance, in the fact that the former are always impleaded in suits filed against the latter. Needless to say, after deliberately and successfully revolutionizing how users interact with public transportation, not to mention profiting therefrom, it would be inequitable for the app companies to give less protection to and abandon their users when controversies arise. If that were the case, then perhaps users would be better off resorting to the conventional way of acquiring transportation.

It submitted that the manner by which these app companies hold the drivers out to the world as their agents and the effect thereof on the public is highly comparable to the factual scenario involved in *Professional Services, Inc. v. Agana*.⁶⁰⁸ In that case, patient-respondent Natividad Agana, suffering from difficulty of bowel movement and bloody anal discharge, was rushed to Medical City General Hospital.⁶⁰⁹ Natividad was assisted by Doctor Miguel

607. Sharon Tang, Here's Why Investors Are Putting An "Eight Figure Sum" Behind Grab Taxi, *available at* <http://www.businessinsider.sg/heres-investors-putting-eight-figure-sum-behind-grabtaxi/#.U6ZfYr-KiDV> (last accessed Jan. 31, 2017) & Asina Pornwasin, On-demand cab service at your fingertips, *available at* <http://www.nationmultimedia.com/technology/On-demand-cab-service-at-your-fingertips-30229943.html> (last accessed Jan. 31, 2017).

608. *Professional Services, Inc. v. Agana*, 513 SCRA 478 (2007).

609. *Id.* at 483.

Ampil, who diagnosed the complication as “cancer of the sigmoid” and later proceeded to perform surgery on her.⁶¹⁰

Doctor Juan Fuentes was tasked to perform hysterectomy on Natividad and thereafter, Doctor Ampil took over until the point of closing the incision.⁶¹¹ Unfortunately, the operation was far from perfect. In the Record of Operation, the following remarks were entered: “sponge count lacking 2” and “announced to surgeon search[] done but to no avail continue for closure.”⁶¹² A few days after being discharged from the hospital, Natividad complained of immense pain in her anal region, but Doctor Ampil assured her that the same was simply a normal effect of the surgery.⁶¹³

Eventually, Natividad’s daughter noticed a piece of gauze protruding from her mother’s vagina.⁶¹⁴ Doctor Ampil immediately proceeded to the Agana residence and, by hand, managed to extract the gauze. Thereafter, the said doctor assured the patient that the pains would disappear.⁶¹⁵ However, the discomfort did not vanish, which prompted Natividad to seek treatment at the Polymedic General Hospital, where she was treated by Doctor Ramon Gutierrez.⁶¹⁶

Doctor Gutierrez detected the presence of another gauze in Natividad’s vagina, which foreign object badly affected her vaginal vault, necessitating another surgical operation.⁶¹⁷ Aggrieved by the situation, Natividad and her husband filed a complaint for damages against Doctor Ampil, Doctor Fuentes, and Professional Services Incorporated (PSI), the owner of the Hospital. The Spouses alleged that the defendants are liable for gross negligence exhibited during her operation.⁶¹⁸ An administrative case for medical malpractice was also filed against both doctors before the Professional Regulation Commission.⁶¹⁹ Natividad later died *pendente lite*.⁶²⁰

610. *Id.* at 483-84.

611. *Id.* at 484.

612. *Id.*

613. *Id.*

614. *Agana*, 513 SCRA at 485.

615. *Id.*

616. *Id.*

617. *Id.*

618. *Id.*

619. *Id.*

620. *Agana*, 513 SCRA at 485.

The trial court adjudged all the defendants' solidarily liable for negligence and ordered them to pay damages to the spouses.⁶²¹ Upon appeal, the appellate court rendered a decision, dismissing the case against Doctor Fuentes and holding Doctor Ampil liable to reimburse whatever amount PSI will pay to the spouses.⁶²² PSI then filed a petition for review on *certiorari* before the Supreme Court, alleging that the appellate court erred, among others, in holding it solidarily liable with Doctor Ampil.⁶²³ According to the Hospital, the said doctor is not its employee, but rather a consultant and/or independent contractor.⁶²⁴ As such, Doctor Ampil alone should be answerable for his own negligence.⁶²⁵

In resolving the said issue, the Supreme Court first referred to their earlier pronouncement in *Ramos v. Court of Appeals*,⁶²⁶ a case involving a similar issue, where it was held that “for the purpose of allocating responsibility in medical negligence cases, an employer-employee relationship in effect exists between hospitals and their attending and visiting physicians.”⁶²⁷

Pertinently, the Court in *Ramos* discussed the following with respect to hospitals and so-called independent doctors and/or consultants, thus —

The unique practice (among private hospitals) of filling up specialist staff with attending and visiting ‘consultants,’ who are allegedly not hospital employees, presents problems in apportioning responsibility for negligence in medical malpractice cases. However, the difficulty is only more apparent than real.

In the first place, hospitals exercise significant control in the hiring and firing of consultants and in the conduct of their work within the hospital premises. Doctors who apply for ‘consultant’ slots, visiting or attending, are required to submit proof of completion of residency, their educational qualifications; generally, evidence of accreditation by the appropriate board (diplomate), evidence of fellowship in most cases, and references. These requirements are carefully scrutinized by members of the hospital administration or by a review committee set up by the hospital who either accept or reject the application. This is particularly true with respondent hospital.

621. *Id.* at 486.

622. *Id.* at 488.

623. *Id.* at 488-89.

624. *Id.*

625. *Id.*

626. *Ramos v. Court of Appeals*, 321 SCRA 584 (1999).

627. *Id.* at 621.

After a physician is accepted, either as a visiting or attending consultant, he is normally required to attend clinico-pathological conferences, conduct bedside rounds for clerks, interns and residents, moderate grand rounds and patient audits and perform other tasks and responsibilities, for the privilege of being able to maintain a clinic in the hospital, and/or for the privilege of admitting patients into the hospital. In addition to these, the physician's performance as a specialist is generally evaluated by a peer review committee on the basis of mortality and morbidity statistics, and feedback from patients, nurses, interns[,] and residents. A consultant remiss in his duties, or a consultant who regularly falls short of the minimum standards acceptable to the hospital or its peer review committee, is normally politely terminated.

In other words, private hospitals, hire, fire[,] and exercise real control over their attending and visiting 'consultant' staff. While 'consultants' are not, technically employees, a point which respondent hospital asserts in denying all responsibility for the patient's condition, the control exercised, the hiring, and the right to terminate consultants all fulfill the important hallmarks of an employer-employee relationship, with the exception of the payment of wages. In assessing whether such a relationship in fact exists, the control test is determining.⁶²⁸

Over and above the said doctrine, the Court in *Agana* went further to say that the ruling in *Ramos* is not the sole basis for holding PSI liable together with Dr. Ampil.⁶²⁹ The Court also relied upon the principle of agency by estoppel or apparent authority, in this wise —

Apparent authority, or what is sometimes referred to as the 'holding out' theory, or doctrine of ostensible agency or agency by estoppel, has its origin from the law of agency. It imposes liability, not as the result of the reality of a contractual relationship, but rather because of the actions of a principal or an employer in somehow misleading the public into believing that the relationship or the authority exists. The concept is essentially one of estoppel and has been explained in this manner [—]

'The principal is bound by the acts of his agent with the apparent authority which he knowingly permits the agent to assume, or which he holds the agent out to the public as possessing. The question in every case is whether the principal has by his voluntary act placed the agent in such a situation that a person of ordinary prudence, conversant with business usages and the nature of the particular business, is justified in presuming that such agent has authority to perform the particular act in question.

The applicability of apparent authority in the field of hospital liability was upheld long time ago in *Irving v. Doctor Hospital of Lake Worth, Inc.* There,

628. *Id.* at 620-21.

629. *Id.*

it was explicitly stated that 'there does not appear to be any rational basis for excluding the concept of apparent authority from the field of hospital liability.' Thus, in cases where it can be shown that a hospital, by its actions, has held out a particular physician as its agent and/or employee and that a patient has accepted treatment from that physician in the reasonable belief that it is being rendered in behalf of the hospital, then the hospital will be liable for the physician's negligence.

Our jurisdiction recognizes the concept of an agency by implication or estoppel. Article 1869 of the Civil Code reads —

[Article] 1869. Agency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority.

In this case, PSI publicly displays in the lobby of the Medical City Hospital the names and specializations of the physicians associated or accredited by it, including those of Dr. Ampil and Dr. Fuentes. We concur with the Court of Appeals' conclusion that it 'is now estopped from passing all the blame to the physicians whose names it proudly paraded in the public directory leading the public to believe that it vouched for their skill and competence.' Indeed, PSI's act is tantamount to holding out to the public that Medical City Hospital, through its accredited physicians, offers quality health care services. By accrediting Dr. Ampil and Dr. Fuentes and publicly advertising their qualifications, the hospital created the impression that they were its agents, authorized to perform medical or surgical services for its patients. As expected, these patients, Natividad being one of them, accepted the services on the reasonable belief that such were being rendered by the hospital or its employees, agents, or servants. The trial court correctly pointed out —

[R]egardless of the education and status in life of the patient, he ought not be burdened with the defense of absence of employer-employee relationship between the hospital and the independent physician whose name and competence are certainly certified to the general public by the hospital's act of listing him and his specialty in its lobby directory, as in the case herein. The high costs of today's medical and health care should at least exact on the hospital greater, if not broader, legal responsibility for the conduct of treatment and surgery within its facility by its accredited physician or surgeon, regardless of whether he is independent or employed.'

The wisdom of the foregoing ratiocination is easy to discern. Corporate entities, like PSI, are capable of acting only through other individuals, such as physicians. If these accredited physicians do their job well, the hospital succeeds in its mission of offering quality medical services and thus profits financially.

Logically, where negligence mars the quality of its services, the hospital should not be allowed to escape liability for the acts of its ostensible agents.⁶³⁰

Therefore, the Supreme Court ruled that based on the circumstances affecting the parties concerned, Natividad, acting in good faith, was led to believe that Doctor Ampil was capable and authorized by PSI to perform medical services for and in its behalf. In effect, the Court recognized that being a hospital claiming to offer topnotch medical assistance, its accreditation of “independent doctors” can logically be taken by the public to mean that the latter are representing the former in making the said services possible.

In due course, PSI filed a motion for reconsideration⁶³¹ alleging, particularly as to the principle of agency by estoppel, which the same is inapplicable because the spouses failed to establish that they relied on the representations of the Hospital, leading them to engage the services of Doctor Ampil.⁶³² Nevertheless, the Supreme Court quickly disposed of the contention and ruled, thus —

PSI argues that the *doctrine of apparent authority* cannot apply to these cases because spouses Agana failed to establish proof of their reliance on the representation of Medical City that Dr. Ampil is its employee.

The argument lacks merit.

Atty. Agana categorically testified that one of the reasons why he chose Dr. Ampil was that *he knew him to be a staff member of Medical City, a prominent and known hospital.*

Q: Will you tell us what transpired in your visit to Dr. Ampil?

A[:] Well, I saw Dr. Ampil at the Medical City, *I know him to be a staff member there*, and I told him about the case of my wife and he asked me to bring my wife over so she could be examined. Prior to that, I have known Dr. Ampil, first, he was staying in front of our house, he was a neighbor, second, my daughter was his student in the University of the East School of Medicine at Ramon Magsaysay; and when my daughter opted to establish a hospital or a clinic, Dr. Ampil was one of our consultants on how to establish that hospital. And from there, I have known that he was a specialist when it comes to that illness.

630. *Agana*, 513 SCRA at 500-03 (citing *Irving v. Doctors Hospital of Lake Worth, Inc.*, 415 So.2d 55 (1982) (U.S.) & CIVIL CODE, art. 1869).

631. *Professional Services, Inc. v. Court of Appeals et al.*, 544 SCRA 170 (2008).

632. *Id.* at 176-77.

Atty. Agcaoli: On that particular occasion, [2 April] 1984, what was your reason for choosing to contact Dr. Ampil in connection with your wife's illness?

A[.]: First, before that, I have known him to be a specialist on that part of the body as a surgeon; second, I have known him to be a staff member of the Medical City which is a prominent and known hospital. And third, because he is a neighbor, I expect more than the usual medical service to be given to us, than his ordinary patients.

Clearly, PSI is estopped from passing the blame solely to Dr. Ampil. Its act of displaying his name and those of the other physicians in the public directory at the lobby of the hospital amounts to *holding out to the public that it offers quality medical service through the listed physicians*. This justifies Atty. Agana's belief that Dr. Ampil was a member of the hospital's staff. *It must be stressed that under the doctrine of apparent authority, the question in every case is whether the principal has by his voluntary act placed the agent in such a situation that a person of ordinary prudence, conversant with business usages and the nature of the particular business, is justified in presuming that such agent has authority to perform the particular act in question*. In these cases, the circumstances yield a positive answer to the question.⁶³³

It may be gleaned from the foregoing jurisprudence that the principle of agency by estoppel has gained acceptance in the Philippine jurisdiction. Certainly, both the law and the courts will not permit one party to callously give the impression that another is sanctioned to act for him when doing so would be beneficial and, at the very next breath, repudiate and deny the authority when the same is no longer favorable. Despite the absence or express denial of a contractual relationship, the actions of the purported principal and agent will be controlling in order to avoid detriment to third persons in good faith, as analyzed in the preceding cases.

Similar to *Natividad*, the users in this case also act in reliance upon the representation of the mobile app companies that quality transportation services may be acquired through them. Likewise, users rely on the recognition that the said entities bestow upon the drivers to the effect that the latter are capable of delivering the said services in the standard committed to. Although the app companies do not display the names of the drivers in any forum, the former publicly proclaims the latter's credibility just the same. To be sure, even a cursory visit to the website of these apps will leave an impression that they vouch for the ability and the integrity of the drivers.

Thus, both users and/or third persons cannot be faulted for being convinced by the professed responsibility of these app companies to provide

633. *Id.* at 180-81 (emphases supplied).

them excellent transportation. It is also worthy to note that such entities are aware of how they, along with the drivers, are being depicted by the media and yet no effort is made to correct such portrayal, despite knowing the effect it has on innocent commuters. Without a doubt, such driver-connecting mobile app companies should be precluded from insisting on the contrary of what may be reasonably implied from their overt actions and/or statements.

At the end of the day, the amount of control that the mobile app companies exercise over the drivers is tantamount to a representation that the latter are delivering the services on account of the former. In relation to this, due to the voluntary actions and measures taken by the said companies, the users are made to believe that the latter care about their welfare, such that they perceive that the drivers are skilled and trustworthy agents of the app companies. True enough, “[i]n agency by estoppel, it is by the separate acts of the purported principal and purported agent, by which they are brought into the relationship insofar as third parties acting in good faith are concerned.”⁶³⁴

To the point, this significantly means that for the users, there is no separate contract existing between them and the drivers aside from the contract of carriage entered into with the mobile app companies. Upon the passengers’ interaction with the drivers, the former are, in substance, dealing with the said companies themselves. Plainly, the users do not take rides through the apps because they are after the services of a certain driver. Instead, the users allow themselves to be transported by such driver because of the belief that he or she is either working with or for the app companies concerned.

By the same token, from the perspective of third persons, when the drivers are traversing the streets and conveying passengers, as well as when they are waiting to be engaged, the same are simply the extension of their respective principals, the mobile app companies. For the rest of Philippine society, these so-called third party transportation providers are not known with any particularity other than Uber, GrabTaxi, Easy Taxi, and/or Tripid drivers.

V. DRIVER-CONNECTING MOBILE APPLICATIONS AS COMMON CARRIERS

The previous Section effectively established that the legal status and the nature of the business of driver-connecting mobile app companies is that of a

634. VILLANUEVA, *supra* note 548, at 8.

common carrier offering to provide transportation services to the public through their driver-agents. Dismissing the circuitous business method of the applications, which involves hiring ostensibly “independent” drivers who are, in the end, bound by company rules; it becomes apparent the app companies are engaged in the business of transportation. As common carriers, such entities then become widely open for liability, whether directly or vicariously, on account of the acts or omissions of the drivers.

A. Liability as Common Carriers for the Acts or Omissions of the Drivers

As common carriers, the app companies may be held liable on the following bases: (a) for the breach of contract of carriage and (b) for the negligent acts or omissions of the driver-agents performing the transportation service. The first pertains to a violation of the said contract, which would right away trigger the primary and direct liability of the app companies, even in the absence of an express finding of fault on their part.⁶³⁵ The second involves a quasi-delict, which, while anchored mainly on the damaging or injurious conduct of the driver-agents themselves, would call into application the vicarious liability of the app companies therefor.

1. Contract

A contract of carriage is “one whereby a certain person or association of persons *obligate themselves to transport* persons, things, or news from one place to another for a fixed price.”⁶³⁶ In the case at hand, the contract of carriage would be between the users and the mobile app companies, with the latter performing the transportation services through the taxi or private drivers by agency, whether impliedly or by estoppel. As a rule, common carriers are immediately presumed negligent in cases of the breach of such contract.⁶³⁷ In *Lasam v. Smith*,⁶³⁸ the Supreme Court succinctly explained the liability of common carriers for breach of the contract of carriage —

It is sufficient to reiterate that the source of the defendant’s legal liability is the contract of carriage; that by entering into that contract he bound himself to carry the plaintiffs safely and securely to their destination; and that having failed to do so he is liable in damages unless he shows that the

635. See *Heirs of Jose Marcial K. Ochoa v. G & S Transport Corporation*, 645 SCRA 93, 110 (2011).

636. See *Cathay Pacific Airways v. Juanita Reyes et al.*, 699 SCRA 725, 737 (2013) (emphasis supplied).

637. Alicia Gonzalez-Decano, Annotation, *Common Carriers*, 646 SCRA 787, 789 (2011).

638. *Lasam v. Smith*, 45 Phil. 657 (1924).

failure to fulfill his obligation was due to causes mentioned in [A]rticle 1105 of the Civil Code, which reads as follows [—] ‘No one shall be liable for events which could not be foreseen or which, even if foreseen, were inevitable, with the exception of the cases in which the law expressly provides otherwise and those in which the obligation itself imposes such liability.’⁶³⁹

In this regard, Philippine jurisprudence has been consistent in holding that “in an action for breach of the contract of carriage, all that is required of the plaintiff is to prove the existence of such contract and its non-performance by the carrier through the latter’s failure to carry the passenger safely to his destination.”⁶⁴⁰ To come to the point, if during the course of the trip, the passenger sustains any damage or injury whatsoever due to any act or omission properly attributable to the carrier and/or its servants, then the carrier must overturn the presumption of negligence, otherwise it will be adjudged liable to pay indemnity to the passenger.

In the case of *Cangco v. Manila Railroad Co.*,⁶⁴¹ the Supreme Court had occasion to elucidate on the contract of carriage as being the primary source of liability for common carriers.⁶⁴² It stated that

[i]t is important to note that *the foundation of the legal liability of the defendant is the contract of carriage*, and that the obligation to respond for the damage which plaintiff has suffered arises, if at all, from the breach of that contract by reason of the failure of defendant to exercise due care in its performance. That is to say, its liability is *direct* and *immediate*.⁶⁴³

On the matter of breach, a common carrier positively acts in contravention of the terms of the contract of carriage “if it fails to exert extraordinary diligence according to all the circumstances of the case,”⁶⁴⁴ which failure brings about prejudice to the passenger. Apropos thereto, the carrier violates the terms of the contract and opens itself up to liability when

639. *Id.* at 660 (citing CIVIL CODE, art. 1105).

640. *Japan Airlines v. Jesus Simangan*, 552 SCRA 341, 360 (2008); *Aboitiz Shipping Corporation v. Court of Appeals*, 179 SCRA 95, 105 (1989); & ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 299 (1992 ed.).

641. *Cangco v. Manila Railroad Co.*, 38 Phil. 768 (1918).

642. *Id.*

643. *Id.* at 771 (emphases supplied).

644. *Cesar Isaac v. A. L. Ammen Trans. Co., Inc.*, 101 Phil. 1046, 1050 (1957).

the passenger either (a) suffers any sort of injury, damage, or the like; or (b) does not arrive at his or her destination at all.⁶⁴⁵

The strict treatment as regards common carriers is due to the fact that the same are required, by express provision of law, to exercise extraordinary diligence in the conduct of their affairs. Such degree of responsibility is found under Article 1733 of the Civil Code,⁶⁴⁶ which provides that “Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to the circumstances of each case.”⁶⁴⁷

Specifically, when it comes to passengers, Article 1755 of the same Code⁶⁴⁸ states that “[a] common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances.”⁶⁴⁹ As a corollary of the said provision, common carriers are presumed to have acted with fault or negligence in case of death of or injuries to passengers.⁶⁵⁰ Such is the reason why the party suing against the carrier needs only to prove the existence of the contract and non-compliance therewith.

As a matter of fact, the exceptionally high standard required of such entities is so sternly enforced to the extent that the same are considered liable to its passengers for damages caused by the mechanical defects of the vehicles used, whether patent or latent.⁶⁵¹ For the consideration and welfare of the public at large, a carrier is considered as having undertaken to provide itself with safe and appropriate conveyances in which to carry their passengers.⁶⁵² Such is due to the all-important rationale that the common carrier industry is

impressed with a special public duty. The public must of necessity rely on the care and skill of common carriers in the vigilance over the goods and the safety of the passengers, *especially because with the modern development of*

645. *Id.*

646. CIVIL CODE, art. 1733.

647. *Id.*

648. *Id.* art. 1755.

649. *Id.*

650. *Id.* art. 1756.

651. *See* La Mallorca and Pampanga Bus Co. v. De Jesus, et al., 17 SCRA 23 (1966).

652. *See* Precillano Necesito et al. v. Natividad Paras et al., 104 Phil. 75, 84 (1958).

*science and innovation, transportation has become more rapid, more complicated[,] and somehow more hazardous.*⁶⁵³

“Appropriately, the extraordinary diligence imposed on common carriers as adopted by the Civil Code is but a just application of the ancient principle that the well-being of the people is the supreme law.”⁶⁵⁴

Moving further, the extent of extraordinary diligence covers not only the vehicles or similar instruments used for transportation, but also the employees, agents, servants, or other individuals through which the operations of the carriers are put into effect. Thus, in one case where the driver of a jeepney negligently parked his vehicle in a manner that half of the width thereof was protruding to the street, the Supreme Court held that both the driver and the common carrier must answer for the injuries suffered by the passengers after the jeepney was hit by another vehicle.⁶⁵⁵

Naturally, the presumption of negligence against common carriers was also “intended to curb the recklessness of their drivers which is a common sight even in crowded areas and on the highways throughout the country.”⁶⁵⁶ Hence, the fault, neglect, or malfeasance of the individuals physically driving the vehicles is right away attributable to the common carrier and serves as a ground for a cause of action against the latter.⁶⁵⁷

Without a doubt, the Civil Code, in clear and unequivocal terms, makes common carriers answerable for the death of or injuries to passengers due to the negligence or willful acts of its servants, even in cases where they (i.e., the carrier’s servants and employees) may have acted beyond the scope of their authorities or in violation of the orders of the carrier concerned.⁶⁵⁸ In similar fashion, carriers are statutorily held responsible for injuries suffered by passengers due to the negligence or willful acts of other passengers or even strangers, if it were possible for the servants of the carrier to prevent the damage through the proper exercise of ordinary diligence.⁶⁵⁹

In fact, the actions or gestures of its drivers and/or other servants for which a carrier may be held liable is not only limited to those that result in

653. TOLENTINO, *supra* note 640, at 298 (emphasis supplied).

654. Severiano S. Tabios, Annotation, *Extraordinary Diligence of Common Carriers in the Transport of Passengers*, 106 SCRA 414, 415 (1981).

655. Anuran et al., v. Buño et al., 17 SCRA 224, 225-27 (1966).

656. Tabios, *supra* note 656, at 418.

657. See Gonzalez-Decano, *supra* note 639, at 789-90.

658. CIVIL CODE, art. 1759.

659. *Id.* art. 1763.

collisions or accidents occurring on the road. In *Air France v. Carrasco*,⁶⁶⁰ the Supreme Court had this to say about the manner by which the personnel of common carriers should deliver their service —

Passengers do not contract merely for transportation. They have a right to be treated by the carrier's employees with kindness, respect, courtesy[,] and due consideration. They are entitled to be protected against personal misconduct, injurious language, indignities[,] and abuses from such employees. So it is, that any rule or discourteous conduct on the part of employees towards a passenger gives the latter an action for damages against the carrier.

Thus, 'Where a steamship company had accepted a passenger's check, it was a breach of contract and a tort, giving a right of action for its agent in the presence of third persons to falsely notify her that the check was worthless and demand payment under threat of ejection, though the language used was not insulting and she was not ejected.'

...

And in another case, 'Where a passenger on a railroad train, when the conductor came to collect his fare tendered him the cash fare to a point where the train was scheduled not to stop, and told him that as soon as the train reached such point he would pay the cash fare from that point to destination, there was nothing in the conduct of the passenger which justified the conductor in using insulting language to him, as by calling him a lunatic,' and the Supreme Court of South Carolina there held the carrier liable for the mental suffering of said passenger.⁶⁶¹

It becomes rather manifest that in the case of the mobile app companies, any deed or misdeed by the drivers that causes damage to the users would be adjudged as inexcusable carelessness by the common carrier in the performance of its functions,⁶⁶² leading to the conclusion that there was non-observance of the extraordinary diligence required by law. Fundamentally, for purposes of this Note, the users-turned-passengers may hold such apps liable for breach of the contract of carriage on the ground that certain acts or omissions of the drivers on the occasion of the transportation service led to their prejudice, whether physical or mental.

As it happens, in cases of breach of the contract of carriage, the aggrieved user need not bother him or herself with the legal relationship, if

660. *Air France v. Carrasco*, 18 SCRA 155 (1966).

661. *Id.* at 168 (citing *Austro-American S.S. Co. v. Thomas*, 248 F.2d 231, 233 (2d Cir. 1917) (U.S.) & *Lipman v. Atlantic Coast Line R. Co.*, 93 S.E. 714, 716 (1917) (U.S.)).

662. *See Tabios*, *supra* note 656, at 419.

any, existing between the common carrier company and the individuals who actually drive them. From the moment that something goes wrong, whereby the users either do not reach their destinations or do not reach the same safely, the contractual obligation with the app companies has been fully transgressed, unless the latter can prove that it exercised extraordinary diligence and that the mishap was due to a fortuitous event.⁶⁶³ Otherwise, such injured users may forthwith rely on the primary liability of the apps owing to the non-fulfillment of their contract to transport their passengers. It must be noted, however, that such cause of action is peculiar only to users-passengers who have a contractual relationship with the companies responsible for the driver-connecting mobile app concerned.

a. Quasi-Delict

Even so, the users, if they so choose, may also opt to file an action against the erring drivers themselves based on quasi-delict under Article 2176 of the Civil Code.⁶⁶⁴ It is settled jurisprudence that a liability for tort may arise even under a contract, where the breach thereof is brought about by the tortious act.⁶⁶⁵ “Stated differently, when an act which constitutes a breach of contract would have itself constituted the source of a quasi-delictual liability had no contract existed between the parties, the contract can be said to have been breached by tort, thereby allowing the rules on tort to apply.”⁶⁶⁶ It must be borne in mind, however, that while such cause of action remains to be an alternative for users, the same is the only recourse for third persons due to the lack of contractual privity between them and the app companies.

At any rate, in cases where the users and/or third persons decide to pursue a case for quasi-delict against the driver for his injurious acts or omissions, the former are still not deprived of the opportunity to hold the applications liable. *First*, due to the implied agency subsisting between the app companies and the drivers, the users may hold the former vicariously liable for the negligent acts of the latter through Article 2176⁶⁶⁷ in relation to Article 1869⁶⁶⁸ of the same Code. “The general rule is that the principal is liable to the injured third parties for the torts committed by the agent at the

663. CIVIL CODE, art. 1756.

664. *Id.* art. 2176.

665. *See* Phil. School of Business Administration v. Court of Appeals, 205 SCRA 729 (1992).

666. Light Rail Transit Authority v. Marjorie Navidad et al., 397 SCRA 75, 82-83 (2003).

667. CIVIL CODE, art. 2176.

668. *Id.* art. 1869.

principal's direction or in the course of and within the scope of the agent's authority."⁶⁶⁹ Such is because from the position of third persons, the act of the agent is essentially that of the principal.

Second, because an ostensible agency relationship between the mobile app companies and the drivers may also be said to exist, the users may hold the former vicariously liable for the fault or negligence of the latter by invoking Article 2176⁶⁷⁰ in relation to Articles 1431⁶⁷¹ and 1869.⁶⁷² It has been recognized in such cases that —

*The principal is bound by the acts of his or her agent with the apparent authority which he or she knowingly permits the agent to assume, or which he or she holds the agent out to the public as possessing. The question in every case is whether the principal has by his or her voluntary act placed the agent in such a situation that a person of ordinary prudence, conversant with business usages and the nature of the particular business, is justified in presuming that such agent has authority to perform the particular act in question.*⁶⁷³

Be that as it may, it must be remembered that “a person's vicarious liability is anchored on his possession of control, whether absolute or limited, on the tortfeasor. Without such control, there is nothing which could justify extending the liability to a person other than the one who committed the tort.”⁶⁷⁴ Hence, it is incumbent to demonstrate that the app companies were themselves remiss in their duty to fairly apprise the agent on how to properly perform his or her task. In such an eventuality, the app companies may be held vicariously liable for the conduct of its drivers, with the nature of such liability being primary and solidary.⁶⁷⁵

In addition, it is worth noting that should the users and/or third persons base their cause of action on *culpa aquiliana*, the negligence and/or fault of the driver-agents that may be imputed to the principal-app companies must be one that is within the scope of the former's authority. That is, the act or omission that causes damage to passengers must arise in the performance of

669. VILLANUEVA, *supra* note 548, at 212.

670. CIVIL CODE, art. 2176.

671. *Id.* art. 1431.

672. *Id.* art. 1869.

673. Emmanuel L.J. Mapili, Annotation, *Breach of Contract vis-à-vis Torts and Damages*, 671 SCRA 510, 515 (2012) (emphasis supplied).

674. *Viloria v. Continental Airlines, Inc.*, 663 SCRA 57 (2012).

675. *Safeguard Security Agency, Inc. v. Lauro Tangco*, 511 SCRA 67, 91 (2006) & *Versoza and Ruiz, Rementeria y Cia v. Silvino Lim*, 45 Phil. 416 (1923).

tasks for which the agent is duly authorized.⁶⁷⁶ Now, in the case of the app companies and the drivers, it must be recalled that the latter is only appointed to execute the sole task of driving the users. Thus, only negligence that is directly related to the act of conveying the users would be covered by the cause of action at hand.

Moreover, while a cause of action based on breach of contract requires proof only of the existence of a contract and breach,⁶⁷⁷ in cases based on quasi-delict, the user and/or third person has to satisfactorily prove the negligence of the driver.⁶⁷⁸ Evidence establishing the negligence of the driver in breach of contract cases is not essential because the same is presumed upon the mere occurrence of the incident causing death or injury to the user-passenger.⁶⁷⁹ That being said, users, in particular, are implored to first ascertain their contemplated cause of action, as well as the possible consequences thereof, before proceeding thereon.

Even if the app companies claim that the drivers who perform the transportation services in their behalf are independent contractors, users and/or third persons may still hold the said entities and the drivers liable as joint tortfeasors under Article 2176⁶⁸⁰ in relation to Article 2194⁶⁸¹ of the Civil Code. The latter provision provides for solidary liability in the case of two or more persons who are responsible for a quasi-delictual act.⁶⁸² Thus, both erring parties will be regarded as joint tortfeasors for purposes of enforcing their liabilities. In the case of *Light Rail Transit Authority v. Navidad*,⁶⁸³ the Supreme Court discussed the matter, thus —

In the discharge of its commitment to ensure the safety of passengers, a carrier may choose to hire its own employees or avail itself of the services of an outsider or an independent firm to undertake the task. In either case, the common carrier is not relieved of its responsibilities under the contract of carriage.

...

676. TIMOTEO B. AQUINO, TORTS AND DAMAGES 25-26 (2005).

677. *Id.*

678. *Id.*

679. *Id.*

680. CIVIL CODE, art. 2176.

681. *Id.* art. 2194.

682. *Id.* art. 2184.

683. *Light Rail Transit Authority v. Navidad*, 397 SCRA 75 (2003).

One might ask further, how then must the liability of the common carrier, on one hand, and an independent contractor, on the other hand, be described? It would be solidary.⁶⁸⁴

The ruling that common carriers and independent contractors share solidary responsibility to indemnify an aggrieved party was reiterated in *Schmitz Transport & Brokerage Corporation v. Transport Venture, Inc.*⁶⁸⁵ To stress, the preceding rules on filing a claim against the driver based on quasi-delict are equally available to both users and third persons, such as pedestrians, innocent bystanders, and the like. Ultimately, as these mobile app companies *are* common carriers, their duty is not merely to furnish safe vehicles and drivers with satisfactory records, but also to instruct and supervise its employees, agents, and/or independent contractors, promulgate proper rules and regulations, as well as formulate and publish proper instructions for their guidance when necessary so as to avoid any culpable negligence.⁶⁸⁶

2. Validity of Disclaimers in Terms and Conditions of Use

At this point, it is imperative to discuss the validity of the provisions imposed by the mobile app companies in their terms and conditions of use, particularly as to their non-liability for the fault or negligence of the drivers. It will be remembered that the common defense for all these app companies is that (a) they purportedly do not provide transportation services and (b) they are allegedly not common carriers, such that they cannot be held liable in any way for any damage caused by the drivers. However, as it has been earlier confirmed that such entities are, in reality, common carriers, it becomes necessary to answer the following questions: can the apps validly stipulate that (a) they should not be treated as common carriers and (b) liability for damages incurred by users and/or third persons should be borne solely by the drivers?

a. Principle of Autonomy of Contracts

To begin with, Philippine law recognizes the principle of autonomy of contracts, as can be seen in Article 1306 of the Civil Code,⁶⁸⁷ which

684. *Id.* at 82-83 (2003).

685. *Schmitz Transport & Brokerage Corporation v. Transport Venture, Inc.*, 456 SCRA 557 (2005).

686. *See* *Butaro Yamada v. Manila Railroad Co.*, 33 Phil. 8 (1915); *Frank Cerf v. Lucas Medel*, 33 Phil. 37 (1915); & *Rosario Santos Vda. de Bonifacio v. B.L.T. Bus Co., Inc.*, 34 SCRA 618 (1970).

687. CIVIL CODE, art. 1306.

provides that “[t]he contracting parties may establish such stipulations, clauses, terms, and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.”⁶⁸⁸ Such provision stresses “the principle of freedom. The free entrance into contracts generally without restraint is one of the liberties granted to the people.”⁶⁸⁹

In the early case of *Gabriel v. Monte de Piedad*,⁶⁹⁰ the Supreme Court explained that “[t]he freedom of contract is both a constitutional and statutory right and to uphold this right[,] courts should move with all the necessary caution and prudence in holding contracts void.”⁶⁹¹ This is because “[t]he agreement or the contract between the parties is the formal expression of the parties’ rights, duties, and obligations and where there is nothing in it which is contrary to law, morals, good customs, public policy[,] or public good, its validity must be sustained.”⁶⁹²

Hence, the general rule established in the Philippines is that parties to a contract may freely stipulate on the provisions thereof as they please. They may, for example, agree upon the contract itself, the meaning of specific terms therein, the scope of application thereof, as well as the liabilities between them. After all —

It is a principle in law, invariably applied by the courts in the decisions of actions instituted in the matter of compliance with obligations, that the will of the contracting parties is the law of contracts and that a man obligates himself to that which he promises to be bound.⁶⁹³

In spite of that, Article 1306 itself provides for the exceptions to the general rule, in which case invalid stipulations in a contract are rendered without legal effect, even if the same was deliberately entered into.⁶⁹⁴ Thus, the Supreme Court has ruled that —

The freedom of contract, under our system of government, is not meant to be absolute. The same is understood to be subject to reasonable legislative regulation aimed at the promotion of public health, moral, safety, and welfare. In other words, the constitutional guaranty of non-impairment of

688. *Id.*

689. 4 EDGARDO L. PARAS, CIVIL CODE OF THE PHILIPPINES ANNOTATED, at 545 (2008).

690. *Gabriel v. Monte de Piedad*, 71 Phil. 497 (1941).

691. *Id.* at 500.

692. *Dela Torre v. Bicol University*, 468 SCRA 542, 551 (2005).

693. *Alcantara v. Alinea et al.*, 8 Phil. 111, 115 (1907).

694. *See Martin et al. v. DBS Bank Philippines, Inc.*, 621 SCRA 94 (2010).

obligations of contracts is limited by the exercise of the State, in the interest of public health, safety, moral, and general welfare.⁶⁹⁵

b. Limitations to Party Autonomy

With respect to limitations imposed by law, the same means that “contracts must respect the law, for the law forms part of the contract.”⁶⁹⁶ Stated otherwise —

It is a fundamental requirement that the contract entered into must be in accordance with, and not repugnant to, an applicable statute. Its terms are embodied therein. The contracting parties need not repeat them. They do not even have to be referred to. Every contract thus contains not only what has been explicitly stipulated, but the statutory provisions that have any bearing on the matter.⁶⁹⁷

When the contracts themselves or the stipulations found therein are contrary to existing law, the same will be struck down by the courts as null and void.⁶⁹⁸

Limitations imposed by morals are those that deal with right and wrong⁶⁹⁹ and affect human conscience.⁷⁰⁰ Comparably, limitations imposed by good customs refer to those “matters that have received for a period of time practical and social confirmation.”⁷⁰¹ In one case, a contractual stipulation requiring the payment of ₱5.00 per each day of delay from the maturity of a loan was rejected by the Supreme Court as

immoral, and there will not be found in the laws, in any principle of justice, or in general, in the human conscience, any reason whatever which can justify such a penalty as appropriate and equitable or as one that may be sustained within the sphere of public or private morals.⁷⁰²

695. *Abe v. Foster Wheeler Corporation et al.*, 110 Phil. 198, 203 (1960).

696. 4 PARAS, *supra* note 689, at 548.

697. *Maritime Company of the Philippines v. Reparations Commission*, 40 SCRA 70, 74 (1971).

698. CIVIL CODE, art. 1409 (1).

699. *See De los Reyes v. Alojado*, 16 Phil. 499 (1910).

700. *See Ibarra v. Aveyro and Pre*, 37 Phil. 273 (1917).

701. Severiano S. Tabios, Annotation, *Limitations of Contractual Stipulations*, 40 SCRA 81, 86 (1971).

702. *Ibarra*, 37 Phil. at 281-82.

Moving on, limitations imposed by public order are those that deal with the public weal,⁷⁰³ including public safety.⁷⁰⁴ Thus, “[a] contract in which are observed the public, social[,] and legal interest, that which is permanent and essential of the institutions, or which does not conflict with law, whether of persons or society in general, is considered to be consistent with public order.”⁷⁰⁵

Finally, limitations imposed by public policy involves

that principle of law which holds that no subject or citizen can lawfully do that which has a tendency to be injurious to the public or against the public good, which may be termed the ‘policy of the law,’ or public policy in relation to the administration of the law.⁷⁰⁶

Public policy is “the principle under which freedom of contract or private dealing is restricted by law for the good of the public.”⁷⁰⁷ On the subject of public policy, the *Gabriel* ruling provides a good discussion as to how the same operates as a limitation to the freedom of contract, to wit —

The term ‘public policy’ is vague and uncertain in meaning, floating and changeable in connotation. It may be said, however, that, in general, a contract which is neither prohibited by law nor condemned by judicial decision, nor contrary to public morals, contravenes no public policy. In the absence of express legislation or constitutional prohibition, a court, in order to declare a contract void as against public policy, must find that the contract as to the consideration or thing to be done, has a tendency to injure the public, is against the public good, or contravenes some established interests of society, or is inconsistent with sound policy and good morals, or tends clearly to undermine the security of individual rights, whether of personal liability or of private property. Examining the contract at bar, we are of the opinion that it does not in [any way] militate against the public good. Neither does it contravene the policy of the law nor the established interests of society.⁷⁰⁸

c. Limitations on Contracts Involving Common Carriers

As regards common carriers, in particular, it is a generally accepted principle of Philippine law and jurisprudence that the business of transportation is impressed with public interest and, consequently, subject to immense

703. See *Bough and Bough v. Cantiveros and Hanopol*, 40 Phil. 209 (1919).

704. See 4 PARAS, *supra* note 689, at 553.

705. Tabios, *supra* note 703, at 88.

706. *Ferrazzini v. Gsell*, 34 Phil. 697, 711-12 (1916).

707. *Id.* at 712.

708. *Gabriel*, 71 Phil. at 500-01.

regulation by the State.⁷⁰⁹ Entities engaged in the public transportation of goods, passengers, or both are subject to the police power of the State, thus

Since a state may, under the police power, regulate a business affected with a public interest, and since the prime characteristic of a public utility is that of public use or service, it is clear that a state may regulate and control public utilities to protect the public interests and to promote the health, conform, safety, and welfare of the people. In the exercise of its police power, the legislature may interfere with the management of public utilities whenever public interests demand, and it has a large discretion to determine not only what the interests of the public require, but also what measures are necessary for the protection of such interests. The state may thus regulate the manner in which public utility corporations shall construct their systems and carry on their business within the state.⁷¹⁰

...

In short, the right to regulate a public utility under the police power does not extend beyond: (1) the right to regulate rates and charges; (2) the right to prevent discrimination upon the part of the public utility against those who employ it; and (3) the right to make orders governing the conduct of the public utility, to the ends that its efficiency may be built up and maintained and that the public and its employees be accorded desirable safeguards and conveniences.⁷¹¹

A public utility, whether registered or not, is “a kind of human activity using private property or equipment for the satisfaction of certain needs of the citizenry (i.e., water system, electrical system, telephone system, common carriers, etc.).”⁷¹² The said services are controlled in the interest of public protection for the simple and self-evident reason that their activities and operations have tremendous effect on the lives and health of society in general.⁷¹³ Certainly, the legal basis for regulation is nothing but “order and community welfare.”⁷¹⁴ True enough, if the business of common carriers were not subject to higher standards of care, then “the riding public and their goods would be at constant risk let alone covered by lesser degree of care while in transit.”⁷¹⁵

709. RODRIGUEZ, *supra* note 457, at 4.

710. *Id.* at 4-5 (citing 64 Am. Jur. 2d, Public Utilities, § 9).

711. *Id.* at 5 (citing 64 AM. JUR. 2d, Public Utilities, § 9).

712. Subong, *supra* note 426, at 240.

713. *Id.*

714. *Id.*

715. *Id.* at 241.

Therefore, in the case of the app companies and the users, the terms and conditions entered into between them must be tested for validity against limitations provided by law, public order, and public policy. Article 1733 of the Civil Code itself, in unmistakable terms, demonstrates that public policy considerations weigh heavily in demanding that common carriers observe extraordinary diligence.⁷¹⁶ In this regard, the first issue that must be resolved is the validity of the express stipulation that the mobile app companies are not common carriers.

Nevertheless, it is a fundamental principle in the law governing contracts that the law itself is deemed written into any agreement entered into by the parties.⁷¹⁷ This means that in the case of the mobile app companies, the provisions of the Civil Code on common carriers⁷¹⁸ automatically form part of the terms and conditions of use they enter into with their users. Thus, given that the app companies fall under the statutory and jurisprudential definition of common carriers, then it is the latter that is controlling, especially when their contractual stipulations conflict therewith.

Even if the app companies should persist on their desired legal classification — commercial brokers and/or middlemen — the same would be futile for courts “should not be held captive or bound by the conclusion of the parties.”⁷¹⁹ Characterizations of status, actions, contracts, and the like should be based mainly on what the law declares the same to be and not by what parties stipulated or believed it to be.⁷²⁰ In other words, parties to a contract may not, through the convenience of conditions or stipulations therein, divest the application of relevant laws to their dealings.

Additionally, it is settled doctrine that while parties may agree on any contract, the designation that they give the same should hardly be controlling, for a contract is what the parties ultimately intend to be, not what they call it.⁷²¹ This is because a contract “must be judged by its character, its nature, and its legal qualifications.”⁷²² Hence, “courts will look to the substance and not to the mere form of the transaction.”⁷²³

716. CIVIL CODE, art. 1733.

717. *Cuyco v. Cuyco*, 487 SCRA 693, 701 (2006).

718. CIVIL CODE, arts. 1732-1766.

719. *Diego v. Diego*, 691 SCRA 361, 381 (2013).

720. *Id.*

721. *See Quiroga v. Parsons Hardware Co.*, 38 Phil. 501 (1918). *See also Tan v. Benolirao*, 604 SCRA 36, 48 (2009).

722. 4 PARAS, *supra* note 689, at 557.

723. *Gabriel*, 71 Phil. at 500.

With regard to this, the intention of the parties, as well as the real nature of a contract may be ascertained not only from the express terms of the agreement, but also from the contemporaneous and subsequent acts of the parties thereto.⁷²⁴ In the case of *Borromeo v. Court of Appeals*,⁷²⁵ the Supreme Court held —

To determine the nature of a contract courts do not have or are not bound to rely upon the name or title given it by the contracting parties, *should there be a controversy as to what they really had intended to enter into, but the way the contracting parties do or perform their respective obligations, stipulated or agreed upon may be shown and inquired into, and should such performance conflict with the name given the contract by the parties, the former must prevail over the latter.*⁷²⁶

It is beyond question that “[a]cts done by the parties to a contract in the course of its performance are admissible in evidence upon the question of its meaning as being their own contemporaneous interpretation of its terms.”⁷²⁷ Needless to say, where the mobile app companies intend to be common carriers, overtly act in accordance therewith, and are regarded by their users as such, as in this case, they will not be allowed to label themselves otherwise through the expediency of a contract, especially one that they alone have drafted.

As to the second issue, it has been earlier pointed out that the Civil Code has provided the general statutory provisions that common carriers must faithfully observe.⁷²⁸ Hence, the conduct of common carriers, as well as the contracts they enter into with the public must first be evaluated in light of the said rules. Of particular relevance to the carrying and transporting of passengers are Articles 1733 and 1755 in relation to Articles 1757 and 1760.⁷²⁹

724. CIVIL CODE, art. 1371. See 4 PARAS, *supra* note 689, at 715.

725. *Borromeo v. Court of Appeals*, 47 SCRA 65 (1972).

726. *Id.* at 74 (emphasis supplied).

727. *Manila Electric Company v. Court of Appeals*, 114 SCRA 173, 181 (1982).

728. CIVIL CODE, arts. 1732-1766.

729. Article 1733 of the Civil Code states —

Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

Such extraordinary diligence in the vigilance over the goods is further express in [A]rticles 1734, 1735, and 1745, Nos. 5, 6, and 7, while the extraordinary diligence for the safety of the passengers is further set forth in [A]rticles 1755 and 1756.

What becomes immediately clear is that the duty imposed by law on common carriers as regards the diligence required of them in the carriage of passengers is mandatory, such that this duty cannot be validly bargained upon or contracted away with, especially by the carriers themselves. Any attempts whatsoever that are designed to circumvent the same will be considered void and of no legal effect — without any rights or obligations flowing therefrom — even if consented to by the parties.⁷³⁰

Articles 1756⁷³¹ and 1759⁷³² of the Civil Code render common carriers presumably negligent or at fault in case their passengers suffer death or injury during the course of the trip. This means that if the carrier cannot discharge the burden of proof that the accident occurred by *force majeure* and that it exercised extraordinary diligence, and then it is rendered immediately liable to the aggrieved passengers. The carrier by itself becomes legally accountable to the victims for damages, regardless of whether or not it may validly maintain an action for reimbursement against other parties.

The responsibility at hand is imposed by the law specifically on the common carriers with whom the passengers concerned have contracted with and not on any other entity, including their employees, agents, third persons, or even other carriers. Therefore, under Philippine law, common carriers cannot legally transfer their accountability over the passengers to other entities, even if the latter should voluntarily consent thereto. True enough, “the law gives very much less freedom to the parties to enter into agreements limiting the carrier’s liability in the carriage of passengers than in the case of carriage of goods.”⁷³³

Id. art. 1733.

Article 1755 states “a common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances.” *Id.* art. 1755.

Article 1757 provides that “[t]he responsibility of a common carrier for the safety of passengers as required in Articles 1733 and 1755 cannot be dispensed with or lessened by stipulation, by the posting of notices, by statements on tickets, or otherwise.” *Id.* art. 1757.

Article 1760 states “[t]he common carrier’s responsibility prescribed in the preceding article cannot be eliminated or limited by stipulation, by the posting of notices, by statements on tickets or otherwise. *Id.* art. 1760.

730. *Id.* art. 5. See Fabre, Jr. v. Court of Appeals, 259 SCRA 426 (1996).

731. CIVIL CODE, art. 1765.

732. *Id.* art. 1759.

733. AGBAYANI, *supra* note 546, at 72.

Accordingly, this means that the entities responsible for the mobile apps in question are not allowed to stipulate that the drivers will entirely take the blame for any misfortune on the road —notwithstanding that the same may truly be due to their fault — and that users should go after the said motorists instead. As it happens, injured users and/or third persons in foreign jurisdictions plainly refuse to comply with the said stipulation by suing both the drivers and the mobile app companies concerned.

The Supreme Court has also provided that —

As regards the carriage of passengers, the common carrier and the passenger cannot enter into an agreement (1) absolutely exempting the carrier from liability from the passenger's death or injuries; nor into an agreement, (2) lessening the extraordinary diligence required by law, say to the diligence of a good father of family.⁷³⁴

Assessed against the clear-cut provisions of the Civil Code on common carriers, driver-connecting mobile app companies may not contractually insist that they are free from any liability owing to the acts or omissions of the drivers in the performance of the transportation services. Thus, users and/or third persons may rightfully disregard such stipulations, as they are devoid of any legal force.

d. Terms and Conditions of Use as Contracts of Adhesion

As a further matter, the terms and conditions of use in question are patently contracts of adhesion. Such are contracts “in which one of the parties imposes a ready-made form of contract, which the other party may accept or reject, but which the latter cannot modify.”⁷³⁵ In the oft-cited case of *Sweet Lines v. Hon. Bernardo Teves*,⁷³⁶ the Supreme Court discussed the nature and effects of contracts of adhesion in this wise —

It should be borne in mind, however, that with respect to the fourteen (14) conditions — one of which is ‘Condition No. 14’ which is in issue in this case — printed at the back of the passage tickets, these are commonly known as ‘contracts of adhesion,’ the validity and/or enforceability of which will have to be determined by the peculiar circumstances obtaining in each case and the nature of the conditions or terms sought to be enforced. For, ‘(W)hile generally, stipulations in a contract come about after deliberate drafting by the parties thereto, ... there are certain contracts almost all the provisions of which have been drafted only by one party,

734. *Id.*

735. *Norton Resources and Development Corporation v. All Asia Bank Corporation*, 605 SCRA 370, 380-81 (2009).

736. *Sweet Lines v. Hon. Bernardo Teves*, 83 SCRA 361 (1978).

usually a corporation. Such contracts are called contracts of adhesion, because the only participation of the party is the signing of his signature or his 'adhesion' thereto. Insurance contracts, bills of lading, [and] contracts of sale of lots on the installment plan fall into this category.'

By the peculiar circumstances under which contracts of adhesion are entered into — namely, that it is drafted only by one party, usually the corporation, and is sought to be accepted or adhered to by the other party, in this instance the passengers, private respondents, who cannot change the same and who are thus made to adhere thereto on the 'take it or leave it' basis — certain guidelines in the determination of their validity and/or enforceability have been formulated in order to insure that justice and fair play characterize the relationship of the contracting parties.

...

To the same effect and import, and, in recognition of the peculiar character of contracts of this kind, the protection of the disadvantaged is expressly enjoined by the New Civil Code — 'In all contractual, property[,] or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age[,] and other handicap, the courts must be vigilant for his protection.'⁷³⁷

While it is true that contracts of adhesion are not necessarily void *per se* and are still binding contracts, the same are subject to scrutiny by the courts for fundamental fairness. The case of *Philippine Commercial Bank v. Court of Appeals*⁷³⁸ teaches, thus —

One party prepares the stipulation in the contract, while the other party merely affixes his signature or his 'adhesion' thereto, giving no room for negotiation and depriving the latter of the opportunity to bargain on equal footing. Nevertheless, these types of contracts have been declared as binding as ordinary contracts, the reason being that the party who adheres to the contract is free to reject it entirely. *It is equally important to stress, though, that the Court is not precluded from ruling out blind adherence to their terms if the attendant facts and circumstances show that they should be ignored for being obviously too one-sided.*⁷³⁹

737. *Id.* at 368-70 (citing 1 EDGARDO L. PARAS, CIVIL CODE OF THE PHILIPPINES ANNOTATED 80 (7th ed. 1971) & CIVIL CODE, art. 24).

738. *Phil. Commercial International Bank v. Court of Appeals*, 255 SCRA 299 (1996).

739. *Id.* at 306 (emphasis supplied).

With reference to stipulations limiting the liability of carriers, the Supreme Court, using the provisions of the *Corpus Juris*, had occasion to discuss the same in *Juan Ysmael v. Gabino Barretto*,⁷⁴⁰ to wit —

Corpus Juris, volume 10, p. 154, says —

PAR. 194.6. *Reasonableness of Limitation*. — The validity of stipulations, limiting the carrier's liability is to be determined by their reasonableness and their conformity to the sound public policy, in accordance with which the obligations of the carrier to the public are settled. It cannot lawfully stipulate for exemption from liability, unless such exemption is just and reasonable, and unless the contract is freely and fairly made. No contractual limitation is reasonable which is subversive of public policy.

PAR. 195.7. What Limitations of Liability Permissible. — a. Negligence — (1) Rule in America — (a) In Absence of Organic or Statutory Provisions Regulating Subject — aa. Majority Rule. — In the absence of statute, it is settled by the weight of authority in the United States, that whatever limitations against its common-law liability are permissible to a carrier, it cannot limit its liability for injury to or loss of goods shipped, where such Injury or loss is caused by its own negligence. This is the common law doctrine and it makes no difference that there is no statutory prohibition against contracts of this character.

PAR. 196.66. *Considerations on Which Rule Based*. — The rule, it is said, rests on considerations of public policy. The undertaking is to carry the goods, and to relieve the shipper from all liability for loss or damage arising from negligence in performing its contract is to ignore the contract itself. The natural effect of a limitation of liability against negligence is to induce want of care on the part of the carrier in the performance of its duty. The shipper and the common carrier are not on equal terms; the shipper must send his freight by the common carrier, or not at all; he is therefore entirely at the mercy of the carrier, unless protected by the higher power of the law against being forced into contracts limiting the carrier's liability. Such contracts are wanting in the element of voluntary assent.

PAR. 197. cc. Application and Extent of Rule — (aa) Negligence of Servants. — The rule prohibiting limitation of liability for negligence is often stated as a prohibition of any contract relieving the carrier from loss or damage caused by its own negligence or misfeasance, or that of its servants; and it has been specifically decided in many cases that no contract limitation will relieve the carrier from responsibility for the negligence, unskillfulness, or carelessness of its employees.⁷⁴¹

740. *Juan Ysmael & Co. v. Gabino Barretto & Co.*, 51 Phil. 90 (1927).

741. *Id.* at 98-99 (citing 10 C.J.S. 154).

Moreover, such kind of stipulations will often depend on whether the carrier in question is common or private. Private carriers are generally granted more leeway by the law as to the terms of their contracts of carriage, thus —

The provisions of our Civil Code on common carriers were taken from Anglo-American law. Under American jurisprudence, a common carrier undertaking to carry a special cargo or chartered to a special person only, becomes a private carrier. As a private carrier, a stipulation exempting the owner from liability for the negligence of its agent is not against public policy, and is deemed valid.

Such doctrine We find reasonable. The Civil Code provisions on common carriers should not be applied where the carrier is not acting as such but as a private carrier. The stipulation in the charter party absolving the owner from liability for loss due to the negligence of its agent would be void only if the strict public policy governing common carriers is applied. Such policy has no force where the public at large is not involved, as in the case of a ship totally chartered for the use of a single party.⁷⁴²

As to common carriers, any provision in the contract of carriage limiting their liability must be tested against the clear requirements of the Civil Code,⁷⁴³ to wit —

Art. 1744. A stipulation between the common carrier and the shipper or owner limiting the liability of the former for the loss, destruction, or deterioration of the goods to a degree less than extraordinary diligence shall be valid, provided it be:

- (1) In writing, signed by the shipper or owner;
- (2) Supported by a valuable consideration other than the service rendered by the common carrier; and
- (3) Reasonable, just[,] and not contrary to public policy.⁷⁴⁴

Art. 1745. Any of the following or similar stipulations shall be considered unreasonable, unjust[,] and contrary to public policy:

- (1) That the goods are transported at the risk of the owner or shipper;
- (2) That the common carrier will not be liable for any loss, destruction, or deterioration of the goods;

742. *Home Insurance Co. v. American Steamship Agencies, Inc.*, 23 SCRA 24, 27-28 (1968).

743. CIVIL CODE, art. 1744.

744. *Id.*

- (3) That the common carrier need not observe any diligence in the custody of the goods;
- (4) That the common carrier shall exercise a degree of diligence less than that of a good father of a family, or of a man of ordinary prudence in the vigilance over the movables transported;
- (5) That the common carrier shall not be responsible for the acts or omission of his or its employees;
- (6) That the common carrier's liability for acts committed by thieves, or of robbers who do not act with grave or irresistible threat, violence[,] or force, is dispensed with or diminished;
- (7) That the common carrier is not responsible for the loss, destruction, or deterioration of goods on account of the defective condition of the car, vehicle, ship, airplane[,] or other equipment used in the contract of carriage.⁷⁴⁵

Nonetheless, it must be noted that the enumerated provisions are applicable only to the carriage of goods. No similar provisions exist when it comes to the transportation of passengers, which the mobile apps are unquestionably engaged in. As discussed earlier, Article 1757⁷⁴⁶ itself expressly prohibits the inclusion of any condition in the contract of carriage that lowers the standard of diligence, all the more one that limits and/or removes legal accountability.

Therefore, when it comes to the terms and conditions of use in question, it is submitted that while the provisions thereof may appear unambiguous and even deemed accepted by the users through their use of the technology, the same are both unlawful and inequitable considering the relevant circumstances. The stipulation exculpating the mobile app companies for the fault or negligence of the drivers, in particular, subverts the public policy concerning common carriers as to the exercise of extraordinary diligence in the transportation of passengers.

Jurisprudence itself recognizes that the law endeavors to protect the traveling public, in this wise —

The general public enters into a contract of transportation with common carriers without a hand or a voice in the preparation thereof. The riding public merely adheres to the contract; even if the public wants to, it cannot submit its own stipulations for the approval of the common carrier. *Thus, the law on common carriers extends its protective mantle against one-sided*

745. *Id.* art. 1745.

746. *Id.* art. 1757.

*stipulations inserted in tickets, invoices[,] or other documents over which the riding public has no understanding or, worse, no choice.*⁷⁴⁷

As a result, driver-connecting mobile app entities cannot validly rely on the stipulations in their terms and conditions of use in order to foist any obligations to pay damages solely on the drivers. The conditions themselves are not only contrary to the incontrovertible mandate of Article 1757,⁷⁴⁸ but also to the avowed policy of the law to give utmost protection to passengers. To insist on giving effect to the same would sanction the exercise of a lesser degree of diligence on the part of the apps despite them being involved in the delicate business of transporting members of the public. Verily, even the voluntarily acceptance of such provisions by the users would be immaterial, as it would amount to an invalid waiver of rights.⁷⁴⁹

VI. CONCLUSION

The advent of advanced smartphone technology and driver-connecting mobile apps has dramatically restructured how daily commuters secure public transportation services. With the faculties to connect prospective passengers to drivers on standby within a short span of time, the birth of such apps has certainly paved the way for unimaginable convenience on the part of travelers. Wherever they are situated, users simply have to register, log on to the system, and with a few taps on their smartphones, a driver will come in a matter of minutes.

The entire process is facilitated and managed by the companies behind the mobile apps to the benefit of the users. The said companies even call attention to the premium quality and utmost reliability of the transportation services delivered through their media. In Metro Manila, in particular, where the reputation of public transportation is rather unsavory, to say the least, commuters are quick to jump on the merits these apps have to offer. Many Filipinos have begun to consider these mobile apps as the long overdue salvation from their traveling miseries.

However, the perceived peace of mind quickly ends when the vehicles run into an accident or, worse, when the drivers themselves mistreat the users. In such cases, the app companies almost automatically disclaim any form of responsibility for any damage or injury suffered by the users. Fortunately, no untoward incidents of that sort have been reported to have

747. *Valenzuela Hardwood and Industrial Supply, Inc. v. Court of Appeals*, 274 SCRA 642, 654 (1997) (emphasis supplied).

748. CIVIL CODE, art. 1757.

749. *Id.* art. 6. See also *Gatchalian v. Delim*, 203 SCRA 126 (1991).

occurred in the Philippines. Be that as it may, Filipino commuters cannot really take any comfort in such fact, as a handful of awful incidents involving app-approved vehicles and drivers have already transpired in foreign jurisdictions.

When push comes to shove, the proud promise of these app companies to connect and provide their users with excellent transportation services quickly disappears. At those times, such entities do not hesitate to point to their terms and conditions of use and put forward what they believe to be their best defense against liability: they do not provide transportation services and they are not common carriers. In short, aggrieved users and/or third persons should not pursue the applications, but the parties who actually drove them — the drivers.

However, aggrieved users and third persons, as well as certain state regulators have rejected the said justification. Thus, a number of suits have been filed against erring drivers, in which the app companies have been impleaded as defendants. Similarly, certain states, through their respective public utilities commissions, have issued rules and regulations to govern the operation of such entities after concluding that they, in fact, provide transportation services. The main argument of such position is that the companies providing mobile app facilities are common carriers engaged in the business of transportation in all but name.

Even so, the app companies are persistent in their stand that they are merely a technology platform or a middleman-broker, which is reinforced by the fact that they do not maintain a fleet of vehicles or a roster of drivers under their employ. Logically, according to the said companies, they cannot be common carriers because they do not perform the physical act of carrying or transporting passengers. The two diverging views have provoked legal disputes in other jurisdictions and a definitive answer has yet to be reached.

Such quandary is precisely the particular issue that the Author sought to answer — whether, and on what basis, driver-connecting mobile app companies can be held liable for the actions, omissions, fault, or negligence of the drivers. However, in answering the said question, it was imperative to first establish, in the Philippine context, the legal status of the mobile app companies, as well as the true nature of their business. Thereafter, it also became necessary to inquire into the legal relationship between the app companies and the drivers, from the viewpoint of both users and third persons.

Analyzing the method by which such mobile app companies carry out their respective businesses, it was revealed that they go beyond the simple act of linking users with drivers. Their respective business structures manifest a

clear design to maintain a substantial interest in the performance of the transportation service to the extent of participating in and/or directing the same.

First, their right to demand payment is wholly contingent upon the complete execution of the transportation services. Although the app companies maintain that they are mere brokers and/or middlemen, such that their main line of business is to merely connect users with drivers, it will be noted that they acquire absolutely no income from doing so. As it stands, the said companies thrive as a business and derive every amount of profit from nothing else but the complete and successful rendition of the transportation services.

Second, and of more significance, the driver-connecting mobile app companies exercise a significant amount of control and discretion over their supposed “independent” drivers. From the moment that such individuals apply to be part of the system down to the presentation of the transportation service, the drivers are under the constant direction and supervision of the app company concerned. Not to mention that the drivers are provided drivers smartphones equipped with the technology through which the entities give the instructions to fetch users and monitor each corresponding trip taken.

Third, it is settled that that ownership over the equipment or instruments used in the performance of common carrier services, or any public utility for that matter, is not necessary. The vital consideration is whether the entity concerned commits itself to doing certain acts that are addressed to the people at large and delivers on that undertaking; and not whether it owns the means for doing so. To be sure, common carriers may, in the discharge of its duties, decide to acquire the necessary tools and hire employees or secure the services of others to perform the task, as in this case. Neither of the two options will relieve the common carriers of their status and responsibilities as regards the public.⁷⁵⁰

Fourth, from the point of view of both users and third persons, the legal relationship between the mobile app companies and the drivers is one of implied or ostensible agency. As to implied agency, the overt gestures of the apps, as principals, plainly manifest their intention to constitute such legal connection. Through the exercise of their discretion in admitting the drivers and the impression of the company brand upon the latter and their vehicles, the app companies have demonstrated their intention to appoint the drivers

750. See *Schmitz Transport & Brokerage Corporation v. Transport Venture, Inc.*, 456 SCRA 557, 568 (2005).

as their representatives in performing the transportation services. The drivers, in turn, agree to the relationship by complying with the requirements.

As to agency by estoppel, the way by which the app companies market both the function of their respective technologies — to allow users access to safe and dependable rides — and the drivers as capable of fulfilling the same, is verily a manifestation to the public that it offers quality transportation services through its roster of drivers. The circumstances of Filipino commuters and the lamentable state of local public transportation lead them to rely upon such representation in good faith. If the said entities would be allowed to repudiate their actions, then their users would receive even less protection than what they would have been entitled to had they simply obtained a ride through conventional methods.

Analyzing the system of driver-connecting mobile apps in its entirety, it becomes apparent that the companies providing the same are involved in the business of carrying or transporting their users for a fee. Their extended and comprehensive participation in prior to, throughout, and subsequent to the performance of the transportation services effectively differentiate their situation from that of travel agencies and/or pure middlemen. While it may be true that they do not perform the physical act of conveying the users to their destinations, the app companies, nevertheless, truly offer and ensure that the same is accomplished through their driver-agents. Such scheme is of no moment for the users who enter into the contract of carriage with the said companies having the lone expectation that they will be driven. In a few words, the app companies make the promise and enter into the obligation, while the drivers accomplish the same under their (i.e., the app companies') direction.

Being common carriers, the entities controlling the operations of the mobile apps are then enjoined to exercise extraordinary diligence in the conduct of their affairs. Whether or not they transport their users themselves or through others, the app companies must see to it that the latter arrive at their destinations safely. In fact, in the event users suffer damage or injury in the course of the transportation service, whether through the fault of the drivers or otherwise, the said companies may be directly held liable for breach of the contract of carriage. By express provision of law, the said duty and standard of diligence that the app companies must abide by cannot be lessened or dispensed with by mere contractual stipulations.⁷⁵¹

However, the rule is different when it comes to third persons or innocent bystanders. As there is no contractual relationship between them

751. CIVIL CODE, art. 1757.

and the applications, any damage they suffer through the acts or omissions or the drivers must be proceeded against based on *culpa aquiliana*. In such cases, the third persons concerned may still hold the app companies liable, but with the qualification that the fault or negligence of the driver-agent must be one that ensues in the course of and within the scope of the latter's authority. In any event, it will be seen that driver-connecting mobile app companies cannot simply escape the responsibility to answer for the drivers who are part of their system.

Evidently, entities at the wheel of driver-connecting mobile apps have established a strong local presence. The technology they have introduced into the Philippine jurisdiction certainly redounds to the satisfaction and convenience of Filipino commuters who admittedly toil on an everyday basis just to obtain transportation services. As the apps continue to gain popularity, it may be reasonable to expect that more users will utilize the service in the years to come. To be sure, it would be a clear disservice to the public to altogether ban these app companies from operating in Metro Manila.⁷⁵²

At the same time, it is submitted that users and third persons should not be unduly left in the dark in terms of their possible recourse in the event that they suffer damage or injury in as a result of the operation of these app companies. After all, what is involved in this case is still the carrying or transporting of passengers — a service which the law highly regulates for the preservation of public safety. That being said, the law must not shirk in its sacred duty and, instead, endeavor to adapt to the ever-changing needs of the times.

VII. RECOMMENDATION

With the breakthrough in smartphone technology, driver-connecting-mobile apps have officially ushered in a new era for commuting and public transportation. However, regulations, specifically those affecting public interest, should by no means bow down to rapid technological advancements. Although these app companies persistently make it appear that they are not common carriers and should not be regulated in the same

752. See James Deakin, LTFRB Chairman orders shutdown of carpool app, *available at* <http://jamesdeakin.ph/ltfrb-chairman-orders-shutdown-of-carpool-app> (last accessed Jan. 31, 2017); Jose Bimbo F. Santos, STOP! LTFRB not happy about latest transport apps craze Uber and Tripid, *available at* <http://www.interaksyon.com/motoring/stop-ltfrb-not-happy-about-latest-transport-apps-craze-uber-and-tripid> (last accessed Jan. 31, 2017); & Jose Bimbo F. Santos, Philippines' LTFRB to Stop UBER and Tripid Apps, *available at* <http://negosentro.com/philippines-ltfrb-to-stop-uber-and-tripid-apps> (last accessed Jan. 31, 2017).

way, a careful examination of their overall business methods will lead to the conclusion that they are operating as such, while trying to conceal this fact through legal circumlocution.

On the one hand, it is not necessary to amend the present law on common carriers for the reason that the same, as supplemented by case law, is already adequate and dynamic enough to cover even the case of these mobile app companies, which, upon first glance, may seem to be mere technology platforms, and, thus, not covered within the scope of the said law. On the other hand, while these apps companies *are* engaged in the business of carrying passengers, it is admitted that they do not operate like conventional taxis or like public conveyances. Therefore, it is respectfully submitted that a set of rules peculiar to such mobile apps be promulgated and implemented by the LTFRB,⁷⁵³ with the end goal of safeguarding public safety.

753. Office of the President, Creating the Land Transportation Franchising and Regulatory Board, Executive Order No. 202, Series of 1987 [E.O. No. 292, s. 1987], § 5 (June 19, 1987).