

**DETERMINING THE EMPLOYMENT STATUS OF RIDE HAILING SERVICE
DRIVERS IN GHANA: A MISGUIDED APPROACH IN JUSTICE NOAH
ADADE V. BOLT GHANA LIMITED AND ANOTHER**

Akosua Asah-Asante[†] and Azanya Abraham Maslow^{††}

ABSTRACT

This paper critically examines the various legal tests used to determine employment status in the gig economy, with particular emphasis on the application of these tests to ride-hailing service drivers. Currently, there are approximately eight recognized tests in use to determine employee status. This paper explores all eight tests. These tests include the control test, integration test, dominant purpose test, mutuality of obligation, multiple factors test and the subordination principle. Through a detailed analysis, the paper applies these tests to determine the employment status of ride-hailing service drivers, specifically addressing the legal framework within the Ghanaian context.

A central focus of this paper is the recent Ghanaian case of Justice Noah Adade v. Bolt Ghana & Anor. in which the court ruled that ride-hailing service drivers are not employees of Bolt Ghana. The paper challenges this decision, arguing that it was made per incuriam without due consideration of the complexities inherent in modern gig economy and the evolving nature of employment relationships. Relying on legal precedents and a thorough analysis of the applicable tests, the authors contend that the ruling fails to address key aspects of the drivers' working conditions, including their economic dependency and subordination to the platform. The authors recommend the inclusion of this category of workers in the Labour (Amendment) Bill, 2024. Ultimately, the paper seeks to contribute to the ongoing discourse on employment classification in the gig economy.

Keywords: *Gig Economy, Platform Work, Fourth Industrial Revolution (4IR), Ride Hailing Services, Employment*

[†] Lecturer at the UPSA Law School and a Ph. D Candidate

^{††} Professional Law Course Part I Student

INTRODUCTION

In recent years, the rise of gig economy platforms such as ride-hailing services have prompted a reevaluation of traditional concepts of employment¹. As these platforms continue to redefine the nature of work, determining the legal status of individuals who provide services through such platforms has become a complex and contentious issue. At the heart of this debate is the question of whether or not ride-hailing service drivers are employees, independent contractors or a distinct category of workers². This question is of legal, social and economic significance as it impacts workers' rights, the responsibilities of platform companies and the broader regulatory landscape³.

Various legal tests have been developed over the years to determine employment status⁴, with the most commonly employed being the subordination principle, the dominant purpose test and the integration test. These tests are designed to assess the nature of the relationship between employees and the entities they provide services for, distinguishing employees from independent contractors based on factors such as control, economic dependency and integration into the employer's business⁵. However, the gig economy presents unique challenges⁶ as platforms like Bolt Ghana blur the lines between traditional employment and self-employment; creating the need for nuanced legal analysis.

This paper examines the application of these tests to the employment status of ride-hailing service drivers, with special focus on a recent judgment by a Ghanaian court in *Justice Noah Adade v. Bolt Ghana & Anor.*⁷ In this case, the court determined that

¹Ndah Ejims Enwukwe, 'The Employment Status of Nigerian Workers in the Gig Economy: Using Uber as a Case Study' (2021) 107 *JL Pol'y & Globalization* 55

² Evan Saltsman, 'A Free Market Approach to the Rideshare Industry and Worker Classification: The Consequences of Employee Status and a Proposed Alternative' (2017) 13 *JL Econ. & Pol'y* 209

³Ronald Brown, 'Ride-hailing Drivers as Autonomous Independent Contractors: Let Them Bargain!' (2019) 29 *Wash. Int'l LJ*, 533.

⁴ Simon Deakin, 'Decoding Employment Status' (2020) 31(2) *King's Law Journal* 180-193.

⁵ Miriam Cherry and Antonio Aloisi., 'Dependent Contractors in the Gig Economy: A Comparative Approach' (2016) 66 *Am. UL Rev* 635.

⁶ Gobinda Roy and Avinash Kumar Shrivastava, 'Future of Gig Economy: Opportunities and Challenges' (2020) 9(1) *Imi Konnect*, 14-27.

⁷ *ibid*

the drivers are not employees of the company, a decision that has sparked significant debate. The authors argue that this judgment was made without due regard for contemporary authorities on the matter, failing to properly consider the complexities and subtleties of the employment relationship between the drivers and the platform. By applying established legal tests to this case, this paper contends that the drivers should be classified as employees, deserving of the rights and protections under the Labour Act, 2003 (Act 651).

METHODOLOGY

The paper adopts a qualitative comparative methodology⁸ to assess how employment status should be determined for ride hailing drivers in Ghana. This approach is designed to place the reasoning in *Justice Noah Adade v. Bolt Ghana Ltd* within a wider international context and to show how Ghana can learn from the experiences of other common law countries. The jurisdictions selected for comparison, namely the United Kingdom, the United States and Canada were chosen because they share Ghana's common law heritage; they have been pivotal in resolving gig economy employment disputes and have developed a range of legal tests that offer useful contrasts. Cases such as *Uber BV v. Aslam*,⁹ *Uber Technologies Inc. v. California*¹⁰ and *McIntyre v. The Queen*¹¹, demonstrate how other courts have adapted traditional employment principles to modern platform work.

The paper explains that foreign law is not treated as something to be copied wholesale. Instead, the comparative analysis is used to demonstrate how Ghana can adapt core common law principles to its own developmental needs. It highlights that the court in the *Justice Noah Adade* case relied too narrowly on the control test and failed to adopt the multi factor approach that other jurisdictions explore to capture economic dependence and subordination. The foreign examples also help justify the recommendation for Ghana's Labour (Amendment) Bill, 2024 by

⁸ Eva Thomann, Jorn Ege and Ekaterina Paustyan, 'Approaches to Qualitative Comparative Analysis and Good Practices: A Systematic Review' (2022) 28(3) Swiss Political Science Review, 557-580.

⁹ [UKSC 5] 2021

¹⁰ 56 Cal.App.5th 266 (Cal. Ct. App. 2020)

¹¹ [1982] FCA 297

conveying how some jurisdictions have turned to legislations, such as California's AB5, to provide clarity where judicial tests have struggled. The comparative approach is therefore presented as a critical tool for diagnosing the weaknesses of the *Justice Noah Adade* judgment and guiding both judicial evolution and legislative reform in Ghana

JUSTICE NOAH ADADE V. BOLT GHANA LIMITED AND BOLT HOLDING OU IN PERSPECTIVE

The suit of *Justice Noah Adade v. Bolt Ghana Ltd and Another*¹² was initiated before the Circuit Court, which operates as a court of first instance within Ghana's judicial system. The dispute arose from an incident on August 1, 2022 when the Plaintiff requested transportation through the Bolt ride-hailing platform. After placing the request, he discovered that the application displayed his personal details as the driver for the trip. His photograph and other identifying information had been unlawfully used to create the driver profile assigned to the ride.¹³ The individual who actually undertook the trip was Peter Walker, an employee of the Plaintiff's own software company. Walker later admitted that he had wrongfully appropriated the Plaintiff's identity in order to sign up as a driver on the Bolt platform. The Plaintiff's action therefore sought a judicial declaration that the Defendants had violated his privacy under the Data Protection Act, 2012 (Act 843) and prayed for compensation for the unauthorized and non-consensual processing of his personal information.

Although the case was framed as one concerning the misuse of personal data, the Circuit Court had to resolve a crucial preliminary matter before it could determine liability. The Plaintiff argued that Bolt Holdings OU should bear responsibility for Walker's fraudulent conduct. This assertion required the court to confront the question of vicarious liability. And in reaching any conclusion on this substantive point, the court needed to determine the legal nature of the relationship between

¹² Suit No. C11/003/2023

¹³ *ibid* < <https://superlawgh.com/judgements/justice-noah-adade-vrs-bolt-ghana-limited/> > accessed 19 April 2025.

Bolt and the drivers who access its platform. Vicarious liability under Ghanaian law generally arises only where an employer-employee relationship exists. For this reason, the core issue at this stage of the analysis was not Walker's deception but whether Bolt drivers could properly be regarded as employees of Bolt Holdings OU.

The Circuit Court ultimately held that Bolt Holdings OU could not be held vicariously liable for Walker's misconduct. Its conclusion rested on a finding that Bolt drivers are independent contractors rather than employees. The court found that Bolt did not exercise the level of operational control over drivers that would be required for an employer-employee relationship. According to the court, this limited authority meant that Bolt could not be saddled with responsibility for the fraudulent acts committed by Walker. It is important to highlight, however, that the nature of the employment relationship was not itself the substantive claim before the court. Instead, it served as a threshold issue that needed resolution before the court could decide the broader questions of liability and data protection breaches.

Despite its ostensibly preliminary character, the court's handling of the employment status inquiry carries significant consequences in an employment relationship. The reasoning displayed by the Circuit Court relied on an older and rather narrow application of the control test. Under this approach, the court focused primarily on the degree to which Bolt supervised the day-to-day activities of drivers. Yet the evolving reality of platform-based employment has shown that control in the traditional sense is only one of several indicators relevant to determining whether an employment relationship exists. The modern gig economy is characterized by hybrid forms of work that do not neatly fit into historical employer-employee categories. Courts in several common law jurisdictions have responded to these transformations by adopting multi-factor frameworks that assess a much wider range of economic and structural considerations.

The Circuit Court's decision to rely exclusively on the control test therefore reflects an outdated analytical method. By doing so, it paid scant attention to additional indicators that a more contemporary judicial analysis would consider, including the extent to which drivers are economically dependent on the platform; the degree of

integration between the employee and the business and the presence or absence of mutual obligations. This narrow interpretive approach not only shaped the outcome of the case but also limited the opportunity to address the broader implications of platform work for Ghana's developing legal framework on employment and liability.

A comparative examination reveals that other common law courts have approached similar questions with a far more expansive and structured methodology. The Supreme Court of Canada in *McIntyre v. The Queen*¹⁴ employed a multiple factor test that considered ownership and provision of tools, prospects of personal profit and potential exposure to financial loss. These indicators allowed the court to form a contextual understanding of the actual working relationship rather than relying on a single criterion.

The Californian Supreme Court in *Uber Technologies Inc. v. California*¹⁵ adopted the ABC test, which requires a platform to demonstrate that the worker is free from its direction, performs work outside the core business of the platform and operates an independent enterprise¹⁶. This test is explicitly oriented towards economic realities rather than formal labels.

The United Kingdom Supreme Court in *Uber BV and Others v. Aslam and Others*¹⁷ went even further by classifying Uber drivers as workers in United Kingdom. In reaching this conclusion, the court placed significant weight on Uber's power to set fares, impose non-negotiable contractual terms and manage performance through a rating system that could result in sanctions or removal from the platform¹⁸. The court regarded these features as clear evidence of subordination, even though drivers bore some commercial risks of their own. This decision acknowledged the

¹⁴ *ibid* (n 13)

¹⁵ *ibid* (n 12)

¹⁶ Andre Andoyan, 'Independent Contractor or Employee: I'm Uber Confused: Why California Should Create an Exception for Uber drivers and the On-demand Economy' (2017) 47 *Golden Gate UL Rev* 153.

¹⁷ [UKSC 5]

¹⁸ Monika Jain, 'In Context of Uber BV v. Aslam in London ([2021] WLR (D) 108): Do Uber Drivers Work for Uber as Employees or as Independent Contractors?' (2024) 3(1) *Justice and Law Bulletin* 7-19.

distinctive nature of platform work that places the user in a subordinate and dependent position despite superficial indications of autonomy.¹⁹

These common law exemplifications reflect a widespread shift toward analytical models that capture the complexities of platform labour. They recognize that the substantive reality of the working relationship must prevail over formal structures or contractual labels. Against this background, the approach taken by the Circuit Court in *Justice Noah Adade v. Bolt Ghana Ltd and Another* appears misaligned with global doctrinal developments. The court's reliance on a single, traditional factor produced an analysis that does not fully correspond to the contemporary nature of gig work and its regulatory challenges. It also represents a missed opportunity to situate Ghanaian jurisprudence within the broader evolution of common law thinking on the regulation of platform-based employment and the assignment of responsibility within digital labour systems.

This broader context is essential for understanding why the treatment of the preliminary employment-status question is not merely procedural but foundational to the development of Ghanaian law in this emerging field.

EMPLOYMENT DEFINED

The concept of employment has long been understood in society, with its basic structure largely uncontested from its inception²⁰. However, in recent times, most especially with the rise of the gig economy, temporary work and part-time employment, the concept of employment remains shaky²¹. In the Fourth Industrial Revolution (4IR), the boundaries and definitions of employment have become more complex. This evolution has necessitated new legal frameworks to account for

¹⁹ Sandra Fredman and Darcy Du Toit University, 'One Small Step towards Decent Work: Uber v Aslam in the Court of Appeal' (2019) 48(2) *Industrial Law Journal* 260-277.

²⁰ South African Department of Labour, *The Code of Good Practice: Who is an Employee* (GG No. 29445 of 1 December 2006).

²¹ Abi Adams-Prassl and Judith Freedman and Jeremias Adams-Prassl, 'Rethinking Legal Taxonomies for the Gig Economy: Tax Law, Employment Law, and Economic Incentives' (2018) 34(3) *Oxford Review of Economic Policy* 475

varied work arrangements, as these emerging trends of employment challenge traditional employment concepts²².

Formal employment typically carries with it specific benefits such as health coverage, paid leave and regulated work hours, which have become central to the modern understanding of employment²³. These benefits are often tied to one's classification as an "employee," a status that has itself become difficult to define. In response, numerous legal tests have been developed to clarify who qualifies as an employee and who does not. Originally, the control test, which focused on the degree of control an employer had over an employee, served as the standard method for this determination²⁴. As the nature of work evolved over time, the control test alone proved inadequate, leading to the introduction of other tests such as the integration test, which assesses the employee's integration into the employer's business.

Employment, as defined by the United Nations and the International Labour Organization (ILO) includes all individuals of working age generally fifteen (15) years or older who, within a short reference period (such as a week), participate in activities to produce goods or provide services in return for pay or profit²⁵.

From this definition, one might assume that determining employment status is straightforward: it seems to include anyone engaged in remunerative activities, thus establishing them as "employees"²⁶. However, the issue is considerably more complex, with the primary challenge arising from the legal, economic and social implications of employment status. An individual's classification as an "employee" versus an "independent contractor" or other non-employee status critically

²² Theophilus Coleman and George Letlhokwa, 'Accommodating New Modes of Work in the Era of the Fourth Industrial Revolution in Ghana: Some Comparative Lessons from the United Kingdom and South Africa' (2023) 56(1) *Comparative and International Law Journal of Southern Africa* <<https://doi.org/10.25159/2522-3062/11831>> accessed 16 March 2025.

²³ Catherine Barnard, *EU Employment Law* (Oxford University Press 2012)

²⁴ *Yewen v Noakes* [1880] 6 QBD 530

²⁵ International Labour Organization, 'Employment' (2012) <<https://www.ilo.org/resource/employment> > accessed 16 March 2025.

²⁶ Herhert Simon, 'A Formal Theory of the Employment Relationship' (1951) 19 *Econometrica*, 293-305.

influences access to benefits, rights and protections under labour and employment law *viz a viz* the obligations required of employers.

Given these complexities in determining an employment status, numerous tests have been developed to determine whether individuals meet the legal criteria to be classified as an employee, thus entitling them to the accompanying economic, social and legal benefits²⁷. These tests, which will be explored, reflect the shifting landscape of employment. As these tests became obsolete or inadequate, newer tests emerged to bridge the gaps left by their predecessors.

The continuous evolution of society and employment practices means that classification challenges will persist and further tests may be necessary to adapt to new work models²⁸. Currently, there are approximately eight recognized tests in use to determine an employee status. These tests aim to balance the need for a fair allocation of employment benefits with the realities of modern work arrangements; underscoring the ongoing development in employment law as work itself transforms.

DETERMINING EMPLOYMENT STATUS: THE TESTS IN PERSPECTIVE

Determining whether a worker is classified as an employee or an independent contractor is a fundamental issue in employment law as this classification impacts a wide range of legal rights and obligations, including tax liabilities, benefits and protections under labour and employment laws²⁹. In exploring the employment status of ride-hailing service drivers, it is essential to examine the various legal tests used to classify workers as either employees or independent contractors.

THE CONTROL TEST

The control test, in its simplest form refers to the level of control an employer exercises over his employee with regard to how the employees go about the

²⁷ Letlhokwa Mpedi and Theophilus Coleman, *Labour Law In Ghana* (LexisNexis 2022) 255-268

²⁸ Paul Benjamin, 'An Accident of History: Who is (and Who Should Be) an Employee under South Africa Labour Law' (2004) 25 *Industrial Law Journal* < <https://doi.org/10.1163/221160205X00290>> accessed 28 March 2025.

²⁹ Miriam Cherry and Antonio Aloisi (n 7)

execution of their assigned duties. According to this test, the more control an employer has over *how, when* and *where* work is performed, the more likely it is that the individual qualifies as an employee³⁰. In practical terms, the control test assesses whether the employer has authority over the worker's tasks, including instructions on the specific methods used to complete the work, scheduling and oversight. If the employer controls only the final outcome or result of the work, rather than the process, the worker is more likely considered an independent contractor³¹.

In the 19th Century, the courts developed the *Control Test* as the primary method for determining whether a worker was an employee or an independent contractor³². This test focused on whether the "master," had control or the right to control not just the tasks performed by the worker, but also the manner and method by which those tasks were carried out. This principle was clearly articulated in the case of *Yewens v. Noakes*³³ where the court defined a servant as someone who is "subject to the command of his master as to the manner in which he shall do his work." Under this framework, if an employer could direct not only what work was to be done but also how and when it should be completed, an employment relationship was deemed established, thereby classifying the worker as an employee. Conversely, a lesser degree of control, where the worker had more autonomy over the work assigned suggested that the worker was an independent contractor³⁴.

As the 20th Century progressed and technology advanced, the practical application of the Control Test became increasingly challenging³⁵. The rapid pace of technological change and the rise of highly specialized professions made it unrealistic for employers to possess the detailed knowledge necessary to control how their skilled employees performed their work³⁶. This evolution highlighted the

³⁰ Gina Stevens., 'The Test of the Employment Relation' (1939) 38(2) Michigan Law Review 188-204.

³¹ Griffin Pivateau, 'Rethinking the Worker Classification Test: Employees, Entrepreneurship, and Empowerment' (2013) 34 N. Ill. UL Rev 67.

³²The control test for employment originated in the 1880 case *Yewen v Noakes*. The test is used to determine whether a person is an employee or an independent contractor. It focuses on whether the employer dictates the nature of the work or the employee has more control

³³ *Yewens* (n 26)

³⁴ (1979) 42(4) MLR 462

³⁵ Griffin Pivateau (n 33)

³⁶ Letlhokwa Mpedi and Theophilus Coleman (n 29)

limitations of the Control Test in the modern employment landscape, where the traditional notions of employer control became less applicable³⁷.

The case of *Performing Right Society Ltd. v. Mitchell & Booker*³⁸ further emphasized that determining a worker's status depended significantly on the nature and degree of detailed control exercised over the individual. This case reinforced the concept that while control remained a crucial factor in classifying employment relationships, the specific context and extent of that control required careful consideration, especially as the workforce evolved.

The Control Test laid the foundational principles for distinguishing between employees and independent contractors by focusing on the employer's control over the worker's tasks and methods. However, the test's applicability has evolved, reflecting changes in the nature of work and the increasing complexity of employment relationships³⁹.

To put it succinctly, in *Kussasi v. Ghana Cargo Handling Co*⁴⁰, it was said that the test is: "Does the alleged master have power of controlling the employee's acts and dismissing him for disobedience"? Historically, the classification of a worker as an employee or an independent contractor largely depended on the concept of control, according to this traditional test. A worker was regarded as a "servant," if the master had authority over *how* the assigned work was performed. This command extended not just to the expected results but also to the precise methods and processes employed in carrying out the work. In contrast, if the employer's influence was limited to the *what* outcome or objectives of the work, without specifying how these were achieved, the worker was typically deemed an independent contractor. The employment relationship in this context was thus understood as one where the

³⁷ Kristine Kuhn and Terrence Galloway, 'Expanding Perspectives on Gig Work and Workers' (2019) 34(4) *Journal of Managerial Psychology* < <https://doi.org/10.1108/JMP-05-2019-507>> accessed 19 April 2025.

³⁸ [1924] 1 KB 762

³⁹ Stefan Kikiros, 'Dichotomy or Trichotomy? Defining Employee and Independent Contractors in an Evolving Market' (2019) 45 *University of Western Australia Law Review* 16.

⁴⁰ [1979] DLHC 1107

master had both the right and the responsibility to direct each detail of the labour process, whereas a contractor retained discretion over the methods of the work⁴¹.

However, this conception of the employment relationship began to encounter significant challenges as industrial and technological advances reshaped the workforce. The rigid control test became increasingly incompatible with a world in which specialized knowledge and technical skills became more accessible through formal education and professional training⁴². The rule of *respondeat superior*⁴³, which holds employers responsible for the actions of their employees, continued to apply even when workers carried out skilled or highly technical tasks far beyond the employer's knowledge base.

The courts recognized these changing dynamics, acknowledging that the traditional control test could not adequately address cases in which highly skilled professionals were employed. Instead of maintaining detailed oversight of skilled tasks, many employers hired workers precisely for expertise that the employer did not possess. In such cases, if an employee sought constant instruction from the employer, this could be seen as a violation of their professional obligations and might even constitute grounds for dismissal. This shift is exemplified in *Mersey Docks and Harbour Board v. Coggins & Griffiths*⁴⁴, where the court acknowledged that the control test required adaptation to remain relevant and applicable.

The control test, while foundational, has its limitations. As industries evolved and skilled labour became more common, it became increasingly difficult to rely solely on control as the determining factor in employment status⁴⁵. Professionally trained employees, such as ship captains, aircraft pilots or hospital surgeons, exercise significant independence in their roles. The employer may not have the technical

⁴¹ Ernest Manamela, 'Employee and Independent Contractor: The Distinction Stands' (2002) 14(1) South African Mercantile Law Journal 107

⁴² Tumo Maloka and Chuks Okpaluba, 'Making Your Bed as an Independent Contractor but Refusing to Lie in It: Freelance Opportunism' (2019) 31 South African Mercantile Law Journal 44.

⁴³ Harvard Law Review, 'Torts. Respondeat Superior. Imposing Vicarious Liability for the Willful Tort of an Intoxicated Employee Lacking Intent to Serve Employer. *Ira S. Bushey & Sons, Inc. v United States*, 398 F 2d 167 (2d Cir 1968)' (1969) 82(7) *Harvard Law Review*, 1568-75

⁴⁴ [1947] AC 1

⁴⁵ *Griffin Stevens* (n 32)

expertise to direct these workers' day-to-day functions, yet they are still considered employees due to the broader relationship of subordination and structure. This limitation as held in *Market Investigations v Minister of Social Security*⁴⁶ recognized that control was no longer the single defining criterion for employment status, noting that a worker status could involve multiple factors beyond control, such as the degree of integration into the business, the permanency of the relationship and mutual obligations between the parties. This reflects a shift in judicial approaches towards a "multiple test" or "composite test," which balances various aspects of the employment relationship in order to understand the nature of the relationship holistically.

The control test's effectiveness also diminishes in contexts where independent contractors consent to a level of oversight without conceding their independent status. Contractors may work under specific guidelines or expectations from a client but retain autonomy over the work process and methodology⁴⁷. Many freelancers or consultants may allow clients to set deadlines or project requirements without relinquishing their status as independent contractors. Control alone does not transform the relationship into one of employment.

UTILIZING THE CONTROL TEST IN ASSESSING EMPLOYMENT STATUS OF RIDE-HAILING SERVICE DRIVERS

The *control test*, as repeatedly highlighted in various legal contexts, focuses primarily on the degree of control an employer exercises over the way and timing with which a worker performs an assigned job. This test examines not only what the worker is tasked to accomplish but also how, when and under what conditions the tasks are executed. The case of *Yewens v Noakes* has solidified this principle. In applying these principles to contemporary situations, especially concerning ride-hailing service drivers, it becomes evident that companies such as Uber and Bolt impose substantial control over their drivers, thereby closely aligning their

⁴⁶ [1969] 2 QB 173

⁴⁷ Jeremias Prassl, 'Who is a Worker' (2017) 46 Law Quarterly Review, 366.

operational structure with that of traditional employment⁴⁸. Although drivers may appear to work independently, various aspects of their work environment are regulated by the companies they drive for, suggesting an employment relationship under the control test⁴⁹.

The exploitative nature of control exerted by ride-hailing companies over their drivers is deeply concerning. These companies, such as Bolt imposes rigid operational requirements that leave drivers with little autonomy over their work⁵⁰. This level of control is done through the enforcement of daily ride quotas. Bolt mandates that drivers complete a minimum of 23 rides per day, regardless of how long it takes. Failure to meet this target results in severe penalties including the forfeiture of commissions earned on completed trips. Such punitive measures force drivers to work excessively long hours sometimes up to 12-hour shifts or late into the night placing their health, well-being and safety at risk.⁵¹

This level of control goes beyond mere regulation; it reflects a structured system in which drivers, despite being labeled as independent contractors are subjected to conditions that mirror traditional employment.⁵² The control test, a fundamental legal criterion used to determine whether a worker is an employee or an independent contractor, is clearly satisfied in this context. By dictating the volume of work, imposing penalties for non-compliance and indirectly coercing drivers into working extended hours, Bolt and similar ride-hailing companies exercise significant authority over their workforce. This challenges the notion of driver

⁴⁸ Andre Andoyan (n 18)

⁴⁹ Richard Bales and Christian Woo, 'The Uber Million Dollar Question: Are Uber Drivers Employees or Independent Contractors?' (2017) 68 Mercer Law Review 461.

⁵⁰ Thorsten Berger and others, 'Uber Happy? Work Well and Well-being in the Gig-Economy' (2020) 34 Economic Policy <<https://doi.org/10.1093/epolic/eiz007>> accessed 19 April 2025.

⁵¹ Eric Mensah-Ayettey, 'From Eric's Diary: Woes of Bolt and Uber Drivers- A Problem that requires Public Policy' (2022) < <https://www.myjoyonline.com/from-erics-diary-woes-of-bolt-and-uber-drivers-a-problem-that-requires-public-policy/>> accessed 19 April 2025.

⁵² Brian Carney, 'Uber Drivers Found to be Workers (UK)' (2017) 2017 European Employment Law Cases 54.

independence and strongly suggests that these workers should be classified as employees rather than as self-employed individuals⁵³.

Ride-hailing companies control key aspects of drivers' earnings and work structure by setting fare rates, arbitrarily and unilaterally determining service fees and managing pricing adjustments. Drivers have no influence over these elements, as companies like Bolt and Uber reserve the right to change fare structures unilaterally. This control over financial terms not only restricts drivers' autonomy but also places them in a position similar to employees, whose wages and conditions are typically determined by their employers. In this respect, ride-hailing companies exert the type of control that would commonly be exercised in a traditional employment setup⁵⁴.

Moreover, companies regulate drivers' acceptance of ride requests, reinforcing this control dynamic. Drivers are given limited information about each trip, such as the passenger's destination, only after accepting a request⁵⁵. This restriction limits drivers' ability to make fully informed decisions about which trips to accept, thereby curtailing their discretion in a manner consistent with employee-like oversight. Furthermore, if drivers frequently decline or cancel requests, they face potential penalties, which can include warnings or temporary suspension from the platform⁵⁶. Such measures closely resemble disciplinary practices in traditional employment, where employers impose consequences for non-compliance with company policies.

The level of control also extends to routing and logistics. Ride-hailing platforms provide drivers with designated pickup points and preferred routes for each journey⁵⁷, further limiting drivers' freedom to determine the best routes or pickup strategies. In effect, drivers must adhere to company-mandated logistics, which

⁵³ Guy Davidov, 'The Status of Uber Drivers: A Purposive Approach' (2017) 6 Spanish Labour Law and Employment Relations Journal < <https://doi.org/10.20318/sllerj.2017.3921> > accessed 19 April 2025.

⁵⁴ Nicholas Debryne, 'Uber Drivers: A Disputed Employment Relationship in Light of the Sharing Economy' (2017) 92 Chicago-Kent Law Review 56.

⁵⁵ Eric Mensah-Ayettey (n 53)

⁵⁶ *ibid*

⁵⁷ *ibid*

reinforces the companies' substantial control over how services are delivered. This requirement reduces the autonomy associated with independent contractors, positioning drivers closer to the definition of an employee as per the control test.

Further to that, ride-hailing companies dictate comprehensive terms of service that drivers must accept to remain active on the platform. These terms cover various operational aspects, from pricing models to conduct expectations and are subject to unilateral modification by the company⁵⁸. Drivers have no room to negotiate these contractual elements, placing them in a subordinate role where they must comply with terms set entirely by the company. This position is found by the authors to be contrary to the designated terms these companies ascribe to these drivers. They are referred to as “partners”. Nonetheless, from the foregoing it becomes apparent that the relationship that exists between the driver and the company is in no way equal or even close to being equal as the said relationship reflects a more superior - subordinate relationship. This dynamic aligns with the employer-employee relationships, where the employer establishes non-negotiable policies and conditions.

Significantly, ride-hailing companies employ monitoring mechanisms to oversee drivers' activities, often utilizing sophisticated tracking technology. This regular supervision, which include performance reviews and safety checks, resembles the level of oversight employers traditionally maintain over their employees⁵⁹. The Court of Appeal of New Zealand in *Rasier Operations BV v. E tu Inc* recently recognized the employment status of ride-hailing drivers as employees, underscoring the substantial control these companies have over drivers' work conditions.⁶⁰ This judicial trend aligns with the position in *Kussasi v. Ghana Cargo Handling*⁶¹, where the court asserted that a worker is deemed an employee if the employer can direct and control their tasks and terminate the relationship at will.

⁵⁸ *ibid*

⁵⁹ *ibid*

⁶⁰ [2024] NZCA 403

⁶¹ *ibid* (n 13)

Ride-hailing companies retain the right to deactivate drivers who fail to comply with their protocols⁶², underscoring the control they wield over these workers' livelihood. This ability to terminate access to the platform based on performance and compliance reinforces the nature of an employment relationship, as traditional employees are subject to dismissal for failing to meet company standards. In essence, the authors posit that this ongoing, pervasive control exercised by ride-hailing companies places their drivers under conditions analogous to those of conventional employees, rather than independent contractors, as established by the control test.

THE INTEGRATION TEST

Explored to address the inadequacies of the Control Test⁶³, the Integration Test evaluates the extent to which a worker's tasks are integrated into the core operations of a business. *Cassidy v Ministry of Health*,⁶⁴ *Stevenson, Jordan and Harrison Ltd v Macdonald and Evans*⁶⁵ emphasize that once an individual's work formed an integral part of the business and not merely supplementary, they are considered employees. Just like its predecessor, the Integration Test faced criticism for its lack of clarity regarding the precise meanings of 'integration' and 'organization'.⁶⁶

*Stevenson, Jordan & Harrison Ltd v. MacDonald & Evans*⁶⁷ provides significant guidance in distinguishing between a “contract of service” and a “contract for services.” This distinction remains pivotal in determining an employment status under common law principles.

The court explained that an individual working under a “contract of service” (i.e., an employee) is one whose work is integrated into the core operations of the

⁶² Bolt, 'General Terms for Drivers' <<https://bolt.eu/en-nl/legal/old-terms-for-drivers/>> accessed 19 April 2025.

⁶³ Letlhokwa Mpedi and Theophilus Coleman (n 29)

⁶⁴[1951] 2 KB 343

⁶⁵[1952] 1 TLR 101

⁶⁶ Business Bliss Consultants FZE, 'Employment Law: Independent Contractor or Employee?'(2018) Lawteacher.net <Employment Law: Independent Contractor or Employee? | LawTeacher.net <https://share.google/a6Sj9u1h51u7FkQpZ>> accessed 23 February 2025.

⁶⁷ [1952] 1 TLR 101

business and is considered an essential part of it. In contrast, a person operating under a “contract for services” (i.e., an independent contractor) performs tasks that are ancillary to the business rather than forming an intrinsic component of its operation. This distinction highlights that integration into the business framework is a critical factor in identifying an employment relationship⁶⁸.

The Integration Test focuses on assessing the extent to which a worker's tasks contribute to the core functions of the business they work for. In essence, it examines whether the worker's activities are embedded within the essential workings of the business⁶⁹. A worker's role is deemed central to the business' primary activities, suggesting that the worker is more likely to be classified as an employee and not an independent contractor⁷⁰. This contrasts with the Control Test which primarily examines the degree of control or direction exerted by the employer over the worker's performance of assigned duties.

UTILIZING THE INTEGRATION TEST IN ASSESSING EMPLOYMENT STATUS OF RIDE-HAILING SERVICE DRIVERS

The Integration Test, as outlined in *Stevenson, Jordan & Harrison Ltd v. MacDonald & Evans*,⁷¹ evaluates the extent to which an individual's role is integral to a business's operations to determine the employment status⁷². The test suggests that a person is likely to be an employee once the given duty is so central to the enterprise that the business would struggle or fail to operate without them. When applying this principle to ride-hailing service drivers, it is essential to consider the nature of their role within the broader framework of the companies they work for⁷³.

⁶⁸Government of Canada, Determining the Employer-Employee Relationship- IPG- 069 (2025) <<https://www.canada.ca/en/employment-social-development/programs/laws-regulations/labour/interpretations-policies/employer-employee.html> > accessed 23 February 2025.

⁶⁹Business Bliss Consultants FZE (n 68)

⁷⁰ Government of Canada (n 70)

⁷¹ *ibid* (n 69)

⁷² Government of Canada (n 70)

⁷³Winifred Muia, Tests which the Courts have developed in Determining when Employment Relationship Exists' <<https://www.sheriaplex.com/forum/464-tests-which-the-courts-have-developed-in-determining-when-employment-relationship-exists> > accessed 23 February 2025.

Ride-hailing companies rely fundamentally on the transportation of passengers and goods⁷⁴ and this function is carried out exclusively by their drivers. The authors assert that without these individuals, the entire premise of the business collapses. Drivers are not ancillary to the business; they embody its core operational function. While the companies provide the platform, match drivers with passengers, set fares and manage their platform functionality, these activities alone do not fulfill the company's promise to deliver transportation services⁷⁵. The drivers' role is indispensable, as they physically execute the service that forms the crux of the business. The company's reliance on their contribution clearly demonstrates their integration into its operations.

The business model of ride-hailing companies reflects a dual structure. On one hand, the parent company performs critical administrative and technological tasks, ensuring the smooth operation of the platform⁷⁶. On the other hand, the drivers carry out the actual transportation, delivering the service to customers. This interconnectedness resembles a form of partnership where both parties are crucial to the success of the enterprise. The drivers are not independent operators functioning at the periphery of the business; they are integral to its day-to-day functioning⁷⁷.

In light of this relationship, the Integration Test strongly supports the classification of ride-hailing drivers as employees. Their work is central to the business' primary function and cannot be regarded as merely accessory or secondary. This status as an integral contributor to the business, warrants recognition through employment classification, ensuring that drivers receive the corresponding benefits and protections. These include fair commissions, social security contributions and labour protections. By applying the Integration Test, it becomes clear that ride-

⁷⁴ Jiehong Qiu, 'What Does Uber Bring for Consumers?' (2021) 2 Data Science and Management 20-27.

⁷⁵ Murtaza Haider, 'To Uber or Not to Uber' (2015) <<https://doi.org/10.13140/RG.2.1.4512.8403>> accessed 23 February 2025.

⁷⁶ *ibid*

⁷⁷ Stefan Eck and Nditwani Nemusimbori, 'Uber Drivers: Sad to Say, But Not Employees of Uber SA' (2018) 81 Tydskrif vir die Hedendaagse Romeins-Hollandse Reg < SSRN <https://share.google/YIn72SykGCXCGJWli>> accessed 28 August 2024.

hailing drivers fulfill a role that is fundamental to the operation of the business. Recognizing their employment status is not only consistent with the principles of the test but ensures fairness in their treatment and accountability in the relationship between drivers and the companies that rely on their labour.

THE MIXED TEST (MULTIPLE FACTORS TEST)

The evolution of the employment landscape necessitates the continuous re-evaluation of legal tests designed to determine employment status⁷⁸. Each test, while effective in addressing the specific challenges of its era, eventually becomes less applicable as the nature and scope of employment evolves. This shift renders earlier frameworks, such as the integration test inadequate in certain contexts.

The Multiple Factors Test is designed to account for the complexities and nuances of modern employment relationships by incorporating a range of considerations rather than relying on a singular criterion. This holistic approach allows for greater adaptability in evaluating the diverse and dynamic roles that characterize the contemporary workforce, ensuring that legal standards keep pace with the changing realities of employment⁷⁹.

A significant principle derived from *Ready Mixed Concrete v. Minister for Pensions*⁸⁰ emphasizes the irrelevance of the terminologies used in employment contracts. What matters is the actual substance of the agreement and the circumstances prevailing the working relationship. Thus, "*the nomenclature used in the contract is irrelevant.*" The mere designation of an individual as an "independent contractor" within a contract does not determine their actual employment status. The true nature of the working relationship is discerned from the practical realities of how the parties conduct themselves, rather than the labels employed in the contractual language.

⁷⁸ Letlhokwa Mpedi and Theophilus Coleman (n 29)

⁷⁹ *ibid*

⁸⁰ [1968] 2 QB 497

This principle has profound implications when applied to contemporary scenarios involving ride-hailing services like Bolt and Uber which often describe their drivers as "partners" or "independent contractors." While these companies may prefer such terminology to suggest a non-employment relationship, this characterization is not definite. The determination of whether these drivers are employees or independent contractors' hinges on an analysis of the actual dynamics of their relationship with the company. Factors such as the level of control exerted over the drivers, the degree of their integration into the company's operations and the dependency of the company on their services for its core functions are far more significant than the contractual nomenclature.

Ultimately, *Ready Mixed Concrete v. Minister for Pensions*⁸¹ underscores the principle that employment status is a matter of substance over form. Labels in a contract cannot obscure the reality of a relationship that, by its very nature, may align more closely with employment. This approach ensures that the rights and obligations of the parties are grounded in their genuine working arrangement rather than the superficial terms of their agreement.

The Multiple Factors Test combines the other tests discussed and examines the principles underpinning each of them in determining the nature of the relationship. In this regard, this test does not use just a single factor but all the indicators in order to appreciate an impression of the employment relationship.

UTILIZING THE MIXED (MULTIPLE FACTORS) TEST IN ASSESSING EMPLOYMENT STATUS OF RIDE-HAILING SERVICE DRIVERS

In light of *Ready Mixed Concrete v. Minister for Pensions*⁸², several key principles are essential in determining the employment status of ride-hailing service drivers. As the court established, whether a contract creates a "master and servant" relationship, an employer-employee relationship must be evaluated based on the contractual rights and duties between the parties. This approach highlights that the terminology

⁸¹ *ibid*

⁸² *ibid*

used in the contract, such as referring to the worker as an "independent contractor," is immaterial to determining employment status⁸³. What matters is the substance of the relationship, as evidenced by the actual conduct of the parties and the terms of the contract⁸⁴.

The first condition the court set out for the existence of an employment relationship under a contract of service is that a person must agree to perform a service for a company in exchange for remuneration⁸⁵. In the context of ride-hailing service drivers, this principle is clearly satisfied. Drivers provide a service transporting passengers from one location to another and receive payment for their services through the fares that passengers pay for the ride. The payment mechanism is set by the company and the drivers' compensation is directly tied to the amount of service (in terms of rides completed) they provide, further confirming that the arrangement is based on remuneration for services rendered.

The second key principle established by the court is that a person must agree, either expressly or impliedly, to submit to a degree of control by the company that renders the company their "master⁸⁶." This control should extend to the manner in which the work is performed, the time it is performed and the means by which it is carried out. In the case of ride-hailing drivers, this control is evident despite the apparent flexibility drivers have in choosing when to work and which routes to take. While it is true that ride-hailing drivers are generally free to choose their working hours, this does not mean they are free from control. Ride-hailing companies exercise significant control through the platform, which directs the drivers to pick up passengers at specific times and places. Additionally, the companies set specific standards for performance, such as maintaining customer service ratings, meeting certain vehicle standards and complying with operational guidelines; all of which are monitored through an application on the platform.

⁸³ George Cohen, 'Interpretation and Implied Terms in Contract Law' (2011) *Contract Law and Economics* 6.

⁸⁴ *ibid*

⁸⁵ Jeffrey Aiken and Dylan Ochoa, 'Dissecting Contract Breach Terminology, Warranties, and Remedies: Part One' (2022) 42(3) *Construction Lawyer* 87.

⁸⁶ *ibid*

Further, the companies exercise control over the pricing structure. Although the drivers can sometimes influence their income through incentives (e.g., surge pricing), the basic fares are set by the companies and the drivers are required to accept them. This control over pricing and ride assignments suggest that the company retains a significant degree of authority over how and when the drivers work, even if they technically operate as independent entities⁸⁷.

The court's third principle asserts that the contractual provisions must be consistent with those typically found in contracts of service⁸⁸. In the case of ride-hailing services, the contractual relationship mirrors that of an employee in several ways. The terms set by the company, such as the obligation to comply with platform instructions, adhere to customer service standards and accept specific ride requests, are reflective of the kinds of terms found in typical employment contracts.

Besides, ride-hailing companies often provide the tools necessary to perform the work, such as the application platform, payment systems and access to potential passengers. This contrasts with independent contractors who generally supply their own tools and have a greater degree of discretion on how the work is performed. While drivers may own their vehicles, the platform and the services provided by the company are integral to their ability to operate effectively within the business model. The relationship is not just based on one-off contracts for specific tasks; it involves an ongoing connection where the company sets the framework within which the drivers operate, demonstrating the nature of an employment relationship.

When such principles are applied to ride-hailing drivers, it becomes evident that the relationship between the drivers and the company bears many characteristics of an employer-employee relationship rather than that of an independent contractor. The provision of services for remuneration, the significant control exercised by the company and the integration of drivers into the company's core business model all

⁸⁷ *ibid* (n 82)

⁸⁸ *ibid*

point towards the conclusion that these drivers should be classified as employees. Thus, in applying the court's criteria, ride-hailing drivers are more likely to be considered employees rather than independent contractors, which would entitle them to the rights and benefits afforded to employees under labour and employment law. This understanding emphasizes the importance of examining the substance of the relationship than relying on contractual labels; ensuring that workers are protected in accordance with their actual working conditions.

THE MUTUALITY OF OBLIGATION

The principle examines the reciprocal commitments between the parties involved: the employer's obligation to provide work and pay and the worker's obligation to perform that work personally in accordance with the employer's instructions⁸⁹. When these mutual obligations are absent, the relationship is unlikely to qualify as one of employment. This principle posits that a genuine employment relationship requires mutual responsibilities: the employer must provide work and the employee must undertake the work. *Minister for Agriculture and Food v. John Barray & Ors*⁹⁰ emphasizes the importance of mutual obligations in determining the existence of a contract of service. *Nethermer (St. Neots) Ltd v. Gardiner*⁹¹ further underscores the necessity of an irreducible minimum of mutual obligation to establish an employment relationship.

However, it is important to note that the mere presence of mutual obligations does not automatically define the nature of the relationship as one of employment. The courts often delve deeper to assess the specific nature of the relationship, as the existence of mutuality alone is not always conclusive⁹². This nuanced approach is evident in cases where the courts have examined the extent and nature of the obligations to determine whether a genuine contract of service exists. It is noted that

⁸⁹ Ewan McGaughey, 'Uber, the Taylor Review, Mutuality, and the Duty not to Misrepresent Employment Status' (2019) 48 *Industrial Law Journal* < <https://doi.org/10.1093/indlaw/dwy014> > accessed 28 August 2024

⁹⁰ [2008] IEHC 216

⁹¹ [1984] ICR 612

⁹² Hugh Collins, 'Independent Contractors and the Challenge of Vertical Disintegration of Employment Protection Laws' (1990) 10 *Oxford Journal of Legal Studies* < <https://doi.org/10.1093/ojls/10.3.353> > accessed 28 August 2024

while mutuality of obligation is crucial, it is not the sole determinant of the employment relationship; requiring a comprehensive analysis of the broader context in which the relationship operates. The importance of mutuality of obligation lies in its ability to clarify the boundaries between employment and other working arrangements⁹³. Without a guaranteed obligation for the employer to offer work or for the individual to accept it, the relationship typically does not meet the threshold of employment. This concept has been examined and refined through various judicial decisions, which have established its application in different contexts⁹⁴. A landmark case in this regard is *Carmichael v. National Power*⁹⁵ in which the court ruled that casual workers engaged "as required" were not employees because mutuality of obligation was absent when they were not actively working. The employer was under no obligation to provide work, nor were the workers obliged to accept it. This decision highlighted the necessity of ongoing reciprocal obligations for an employment relationship to exist⁹⁶.

Another significant case is *Ready Mixed Concrete (South East) Ltd v. Minister of Pensions*⁹⁷ which identified mutuality of obligation as one of three critical elements of employment, alongside control and consistency with an employment relationship. Similarly, in *Autoclenz Ltd v. Belcher*⁹⁸, the UK Supreme Court underscored the need to examine the actual nature of the working relationship rather than relying solely on the written agreement. The court emphasized that even if a contract appears to lack mutuality, the reality of the arrangement could still demonstrate an employment relationship.

UTILIZING THE MUTUALITY OF OBLIGATION TEST IN ASSESSING EMPLOYMENT STATUS OF RIDE-HAILING SERVICE DRIVERS

⁹³ Anne Morris, 'Mutuality of Obligation: Employer's Guide' (2025) < <https://www.davidsonmorris.com/mutuality-of-obligation/> > accessed 28 August 2024

⁹⁴ HM Revenue & Customs, HMRC Internal Manual: Employment Status Manual (2016) < <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm0543> > accessed 28 August 2024

⁹⁵ [1999] UKHL 47

⁹⁶ *ibid*

⁹⁷ *ibid* (n 82)

⁹⁸ [2011] UKSC 41

The mutuality of obligation test requires the existence of mutual commitments: the employer must have an obligation to provide work and the worker must be obligated to accept and perform that work⁹⁹ as stipulated in the Labour Act, 2003 (Act 651)¹⁰⁰. Applying this test to ride-hailing drivers reveals that the nature of their relationship with the parent company satisfies these criteria. Ride-hailing companies provide a platform that connects drivers to passengers, without which drivers would be unable to secure work¹⁰¹. This platform is not merely a facilitative tool but an essential medium for drivers to access consistent opportunities for rides, thereby demonstrating the company's obligation to provide work¹⁰².

Conversely, drivers are bound by the requirement to accept ride requests and deliver services in line with the company's standards and operational guidelines. This obligation to perform work illustrates their reliance on the company, reinforcing the presence of mutual obligations¹⁰³. The interplay between these obligations: the company supplying work opportunities and drivers fulfilling those opportunities reflects a relationship that aligns with the principles underpinning the mutuality of obligation test.

Judicial precedents further substantiate this interpretation. In *Carmichael v. National Power*,¹⁰⁴ the absence of mutual obligations meant that casual workers were not classified as employees. However, in the case of ride-hailing drivers, the consistent provision of work by the company and the drivers' obligation to accept and perform that work distinguish their situation. This ongoing exchange of obligations indicates an employment relationship.

Similarly, the principles outlined in *Ready Mixed Concrete (South East) Ltd v. Minister of Pensions*¹⁰⁵ reinforce this conclusion. In that case, mutuality of obligation,

⁹⁹Tolley, 'Personal and Employment Tax' <<https://www.lexisnexis.co.uk/tolley/tax/commentary/simons-taxes/personal-employment-tax/e4-213-mutuality-of-obligation-employment-status-effect>> accessed 19 April 2025

¹⁰⁰ Sections 9(a) & 11(a)

¹⁰¹ Guy Davidov (n 55)

¹⁰² *ibid*

¹⁰³ Bolt (n 64)

¹⁰⁴ Yewens (n 35)

¹⁰⁵ *ibid* (n 82)

alongside control and integration, was deemed essential for identifying employment. Ride-hailing companies exert significant control over drivers through mechanisms such as fare structures, performance evaluations and operational protocols. Additionally, drivers are integral to the company's service delivery, further satisfying the criteria for employment status.

The decision in *Autoclenz Ltd v. Belcher*¹⁰⁶ underscores the importance of assessing the practical reality of a working relationship rather than relying solely on contractual labels. While ride-hailing drivers are often classified as independent contractors in contractual terms,¹⁰⁷ the practical dependence of both parties on one another highlights the mutuality of obligation. Drivers rely on the company's platform to access passengers; and the company depends on drivers to fulfill its operational objectives of transporting passengers.

The interdependence between ride-hailing companies and their drivers reflects a clear mutuality of obligations. Drivers depend on the platform to generate income, while the companies rely on drivers to execute their core business model¹⁰⁸. This reciprocal relationship meets the essential criteria of the mutuality of obligation test, suggesting that ride-hailing drivers should be classified as employees.

ALTERNATIVE CONCEPTS, TESTS AND PRINCIPLES FOR ASSESSING EMPLOYMENT STATUS

The scope of employment is continuously evolving.¹⁰⁹ Consequently, it becomes essential to periodically develop and implement new tests to address the dynamic nature of the employment landscape. This ongoing evolution necessitates the

¹⁰⁶ Griffin Pivateau (n 37)

¹⁰⁷ Uber, 'Uber BV: Terms and Conditions' (2025) <<https://www.uber.com/legal/en/document/?country=uganda&lang=en&name=general-terms-of-use>> accessed 19 April 2025

¹⁰⁸ Nicholas Debryne (n 56)

¹⁰⁹ Alex Wood and others, 'Good Gig, Bad Gig: Autonomy and Algorithmic Control of the Global Gig Economy' (2019) 33(1) *Work, Employment and Society* < <https://doi.org/10.1177/0950017018785616>> accessed 19 April 2025

creation of additional tests to address gaps and deficiencies that may arise from previously established legal frameworks.

The Subordination Principle

The subordination principle plays a pivotal role in understanding employment relationships in the United Kingdom.¹¹⁰ It was primarily introduced to address the complexities arising from intermediate categories of workers who are not traditional employees but are also not entirely independent in their work.¹¹¹ These workers, who are often self-employed, provide services as part of a broader professional or business enterprise conducted by another party. The subordination principle helps to distinguish these individuals from those who operate independently, dealing directly with their clients or customers.¹¹²

The United Kingdom Supreme Court provided a significant clarification of this principle in the case of *Hashwani v Jivraj*.¹¹³ The court in this case emphasized the importance of distinguishing between a worker and an independent contractor based on the nature of their relationship with the person to whom they provide services. The court explained that the critical distinction lies in whether the individual performs services under the direction and control of another party, receiving remuneration in return or whether they are independent contractors who are not subordinate to the person receiving the services. This distinction is essential for determining the rights and obligations of the parties involved; particularly concerning statutory protections and obligations under labour and employment law.

UTILIZING THE SUBORDINATION PRINCIPLE IN ASSESSING EMPLOYMENT STATUS OF RIDE-HAILING SERVICE DRIVERS.

¹¹⁰ Ivana Marimpietri, 'Il lavoro subordinato' in Antonio Vallebona (a cura di), *I contratti di lavoro* (Utet 2009) 30-31.

¹¹¹ Felicia Rosioru and Gyorgy Kiss, 'The Changing Concept of Subordination: Recent Developments in Labour Law' (2013) 1 *Recent Developments in Labour Law* 150

¹¹² Christopher McCrudden, 'Two Views of Subordination: The Personal Scope of Employment Discrimination Law in *Jivraj v Hashwani*' (2012) 41 *Industrial Law Journal* < <https://doi.org/10.1093/indlaw/dws006>> accessed 19 April 2025

¹¹³[2011] UKSC 40

In the case of ride-hailing service drivers, such as those working for companies like Bolt, the subordination principle offers a useful lens through which to analyze their employment status. On one hand, ride-hailing drivers operate as independent contractors, choosing their own working hours and locations. They also have the ability to reject rides and decide when to work, which mirrors the autonomy typical of an independent contractor.¹¹⁴ On the other hand, these drivers are often subject to a degree of control that may suggest a subordinate relationship with the ride-hailing company.

The control exercised by the ride-hailing platform is significant. Drivers must adhere to certain rules set forth by the company, such as complying with the platform's rating system, using the company's *app* for job dispatch and following the platform's terms and conditions regarding the conduct of work. The platform sets the price for rides, determines the geographic regions in which drivers can operate and imposes penalties for non-compliance with its rules. This level of control is similar to the way employees are managed within a traditional workplace

*James v. Redcats Brands Ltd*¹¹⁵ provides further insights into the relevance of subordination in determining employment status. The court sees employees as wholly integrated into an employer's business operations, while independent contractors operate on their own account, detached from the employer's enterprise. Ride-hailing drivers, despite their operational autonomy, may still be considered integrated into the broader business of the platform. The platform itself is a central component of their working life, providing the infrastructure through which they connect with customers. In this sense, drivers could be considered somewhat integrated into the business, despite not being wholly subordinate in the traditional sense.¹¹⁶

However, the analysis must consider the degree of dependence. Drivers rely heavily on the platform for access to customers, as it provides the essential tool for

¹¹⁴ *ibid*

¹¹⁵ [2007] IRLR 296

¹¹⁶ Christopher McCrudden (n 115)

conducting their business. This dependence creates an economic relationship akin to the subordination seen in traditional employment relationships, even if the formal employment contract is absent. The platform's control over pricing and working conditions suggest a form of economic dependence that mirrors that of employees, raising the question of whether such drivers should receive the same protections given to employees.

The Dominant Purpose Test: Clarifying Employment Relationships

Common law jurisdictions have also developed the “Dominant Purpose Test” to further clarify the nature of employment relationships. In *Mirror Group Newspapers Ltd v. Gunning*¹¹⁷ the court sought to determine whether a contract was primarily one of employment or one between two independent parties; whether or not the contract falls within the domain of the dominant purpose test attempts to identify the essential nature of the contract by asking whether it falls within the domain of a dependent work relationship or whether it represents a contract between independent undertakings.¹¹⁸

The Dominant Purpose Test is particularly useful in cases where the distinction between employment and independent contracting are blurred. It helps to establish whether the individual is genuinely operating a business on their own account or whether they are, in reality, in a subordinate and dependent position akin to that of an employee. This test is crucial for ensuring that individuals are classified correctly, allowing them to access the appropriate legal protections and benefits¹¹⁹.

In the context of determining employment status, the Dominant Purpose Test evaluates whether the individual’s work relationship is primarily focused on fulfilling the interests or business of another party (such as an employer) or whether the person is operating as an independent contractor for their own benefit. The key aspect of this test is to assess which purpose predominates in the work arrangement;

¹¹⁷ [1985] EWCA Civ J1105-4

¹¹⁸ Maeve Regan, ‘The Contract and Relationship of Employment’ In: Maeve Regan (ed), *Employment Law* (Tottel, 2009) 41-42.

¹¹⁹ Business Bliss Consultants FZE (n 68)

whether the person is primarily working for themselves or primarily for another. If the dominant purpose is to serve the employer's business interests and there is a significant level of control or subordination, it is more likely that the individual is classified as an employee. On the other hand, if the dominant purpose is to serve the individual's own business or entrepreneurial interests, the person may be considered an independent contractor.

This test is often used when examining relationships where midst of elements that might suggest both an employer-employee relationship and an independent contractor arrangement. In some contractual or gig economy scenarios, workers may have the appearance of independence (such as being able to set their hours), but their work may ultimately serve the dominant interest of a company or platform, pointing toward an employment relationship. In a case involving a delivery driver for a ride-hailing service such as Bolt, the dominant purpose test looks at whether the drivers' work is primarily for the benefit of Bolt (serving its business interests) or for their own purposes (running their own independent business). If the dominant purpose is to fulfill the business needs of Bolt, then the driver ought to be classified as an employee, even where they exhibit some characteristics of an independent contractor.

This test is a tool for the courts to make a nuanced judgment about the nature of the working relationship, particularly when other tests, such as the subordination test do not provide a clear answer.

APPLICATION OF THE DOMINANT PURPOSE TEST TO RIDE-HAILING SERVICE DRIVERS

In the case of ride-hailing drivers, the application of the dominant purpose test can help clarify their employment status by analyzing whether their primary work function aligns with that of an employee rather than an independent contractor. Ride-hailing platforms such as Bolt are designed to facilitate the transportation of passengers, making it clear that the drivers' primary function is to provide transportation services for the platform's customers. This raises a critical question:

Is the dominant purpose of the relationship between the drivers and the platform one of self-employment, or does it more closely resemble the traditional employer-employee dynamic¹²⁰?

It is the assertion of the authors that when applying the Dominant Purpose Test to the employment status of ride-hailing service drivers, it is clear that the work performed by these drivers is central to the operation and revenue generation of the platform. The economic dependence, the degree of control exercised by the platform and the integration of the drivers into the core business suggest that the dominant purpose of their engagement is more consistent with that of an employee and not an independent contractor.

Thus, in light of the Dominant Purpose Test, it is reasonable to conclude that ride-hailing service drivers should be classified as employees. The core nature of their work, their economic dependence on the platform and their integration into the platform's operations support the argument that they meet the criteria typically associated with employee status. This determination underscores the need for platforms to reconsider their treatment of drivers and to extend the rights and protections afforded to employees under Act 651, including those related to wages, working conditions, rest and leave entitlements and workmen's compensation. As the gig economy continues to grow, it is imperative that courts and lawmakers apply the various tests with the nuances required to ensure that workers' rights are adequately protected.

Emerging Approaches and a Critique of Binary Classification

While the application of established common law tests reveals the shortcomings of the *Adade* judgment, a truly robust critique requires looking beyond these traditional frameworks. The court's reasoning is entrenched in a rigid binary classification employee versus independent contractor that is increasingly ill-suited to the realities of the platform economy. To fully appreciate what the court overlooked, it is essential to consider emerging approaches championed by the

¹²⁰ *ibid*

International Labour Organization (ILO) and progressive jurisdictions, which seek to prevent false self-employment¹²¹ and re-centre the protective purpose of labour law.

1. The Presumption of an Employment Relationship

A powerful tool to combat disguised employment relationships is the legal presumption of employment. This approach, strongly advocated by the ILO in its Employment Relationship Recommendation, 2006 (No. 198), shifts the burden of proof. Rather than the worker having to prove their subordinate status against a well-resourced platform, the law presumes an employment relationship exists once certain factual indicators are present (e.g., work performed for the benefit of another, dependence on a single entity for income). The onus then falls on the platform to rebut this presumption¹²².

Had the Ghanaian courts adopted this principle, the *Adade* case would have unfolded differently. The Plaintiff would only have needed to demonstrate that Peter Walker performed work for Bolt's benefit and was integrated into its operational framework. Bolt would then have been compelled to prove that Walker was genuinely operating an independent business. This would have forced a more substantive inquiry into the relationship's realities, moving beyond the superficial terms of the "partner" agreement.

2. The Purposive Approach to Labour Law

The purposive approach, articulated by scholars like Guy Davidov, argues that the interpretation of "employee" must be guided by the fundamental purposes of labour law¹²³. These purposes include addressing inherent inequalities in bargaining power, preventing the exploitation of vulnerable workers and ensuring human

¹²¹ International Labour Organization, Disguised Employment or Dependent Self-Employment (2016) <<https://www.ilo.org/resource/other/disguised-employment-dependent-self-employment>> accessed 19 April 2025

¹²² International Labour Organization, Employment Relationship Recommendations (No. 198, 2006) <https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312535> accessed 19 April 2025

¹²³ Guy Davidov (n 55)

dignity in the workplace.¹²⁴ Under this approach, the question is not merely "Does this worker meet a historical checklist?" but "Does this worker suffer from the same vulnerability and subordination that labour laws were designed to remedy?"

Applying this lens to Bolt drivers reveals the inadequacy of Circuit Court's analysis of the *Adade*. The drivers' economic dependence on the platform, their subordination to its algorithmic management and their inability to negotiate terms are precisely the vulnerabilities labour law exists to address. By ignoring these substantive inequalities and focusing solely on a formalistic control test, the court's decision frustrates the very purpose of Ghana's labour protection framework.

3. The "Dependent Contractor" Category

Perhaps the most direct challenge to the employee/independent contractor binary is the recognition of an intermediate category: the dependent contractor. This category, recognized in jurisdictions such as Canada and several in Europe, encompasses individuals who are legally self-employed but are economically dependent on a single client or platform.¹²⁵ They enjoy more autonomy than traditional employees but are granted core statutory protections, such as the right to organize, minimum wage guarantees and safety standards.

The introduction of a "dependent contractor" status in Ghana would have provided the court in the *Adade* with a more nuanced tool. It would have allowed the court to acknowledge the drivers' operational flexibility while also recognizing their economic dependence and subordination, potentially making Bolt liable for Walker's actions without needing to force him into the traditional "employee" box. This approach pragmatically reflects the hybrid nature of platform work, ensuring that legal classifications keep pace with economic realities.

Synthesizing the Critique of the Adade Judgment

The court's failure in the *Adade* case was not merely its selection of the control test but its uncritical acceptance of an outdated binary paradigm. By not considering

¹²⁴ Guy Davidov, 'Who is a Worker?' (2005) 34(1) *Industrial Law Journal* 57-71.

¹²⁵ Miriam Cherry and Antonio Aloisi (n 7)

these emerging approaches, the judgment placed an unfair evidential burden on the Plaintiff to deconstruct a sophisticated business model using tests not designed for that purpose.

Additionally, the court inadvertently foreclosed a nuanced solution that could balance platform innovation with worker rights, such as the dependent contractor model.

CONCLUSION

The decision in this *Justice Noah Adade v. Bolt Ghana Ltd & Anor*¹²⁶ underscores the limitations of applying rigid employment classification tests in the modern gig economy. The finding that Bolt drivers are independent contractors was pivotal in absolving Bolt Holdings OU of vicarious liability, yet the reasoning employed highlights necessary for more nuanced legal frameworks. As the nature of work continues to evolve, the Ghanaian courts need to adopt broader criteria for employment classification, ensuring that liability assessments reflect the realities of platform-based work arrangements. This case serves as a reference point for ongoing discussions regarding legal accountability in the gig economy, particularly in relation to data protection and employment law. The court's ruling in this case appears to be both misguided and incomplete. By exclusively applying the control test, the court relied on an outdated legal framework that does not adequately account for the complexities of the modern gig economy. This narrow approach overlooked the evolving nature of work arrangements, particularly in platform-based employment models. A more appropriate and comprehensive method would have been to assess the relationship between Bolt Holdings and its drivers using a multifaceted approach. Rather than relying solely on the control test, the court should have incorporated additional tests, including the integration test, the economic reality test, the mutuality of obligation principle and the subordination principle to arrive at a conclusion reflective of modern working environment. These

¹²⁶ *ibid*

tests collectively provide a more nuanced understanding of employment relationships and would have been instrumental in determining whether an employer-employee relationship truly exists in this context.

Given the significance of this determination, a holistic analysis was necessary to ensure a fair and well-reasoned judgment, one that aligns with contemporary labour dynamics and not outdated legal doctrines.

RECOMMENDATIONS

It is the position of the authors that the legislature has the opportunity through the Labour (Amendment) Bill, 2024 to explicitly address the status of ride hailing service individuals working within the gig economy particularly in the light of the transformative changes brought about by the Fourth Industrial Revolution (4IR). The absence of clear legal provisions regarding the classification of gig workers, such as ride-hailing service drivers, creates significant uncertainty, leaving them vulnerable to exploitation and depriving them of essential labour rights. Legislative clarity would not just provide a definitive framework for their classification as employees but to ensure that judicial interpretations align with the evolving nature of work in the digital age, ultimately safeguarding the rights and interests of gig workers.

The rapid development of work in the digital space requires the presence of trade unions to advocate for the interest and wellbeing of workers operating in such a space as trade unions through collective bargaining are able to explore work related policies that protect their workers. Thus, encouraging the formation and joining of a trade union, a constitutional right, can be explored to mitigate some of the challenges of these ride hailing service drivers.