

The Rental Contract. Bike Sharing and Car Sharing as Sustainable Forms of Mobility

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Abstract

Starting with the concept of rental, this work aims to analyse alternative and more sustainable forms of mobility such as bike sharing and car sharing, and to discuss their legal regulation. Car sharing and bicycle sharing are services aimed at reducing the number of circulating cars in order to minimise the impact on the environment and human life. We should not underestimate the fact that nowadays more and more often in various commercial sectors, businesses prefer to lease rather than purchase equipment, thus conserving cash and avoiding the consequences of their deterioration. Furthermore, the need to adapt production to market demands justifies the need to innovate goods with increasing speed. Even for private individuals, rental (short- or long-term) is a tool that is increasingly used and incentivised mainly by vehicle manufacturers. It is necessary to identify the applicable regulations in this field: whether those concerning leases, or those commonly adopted to regulate mixed contracts (theory of absorption, combination and analogical application).

I. Introduction. Rental

A lease agreement, provided for in the 1882 code,¹ is not a contract envisaged under the Italian Civil Code. First citations on rental, however, can be found in the navigation code and in other special laws.² In practice, just as for legal relationships, the terms and concepts regarding rental have often been designated heterogeneously. Legal scholarship considered a lease agreement any contract having as its object mobile property restricted to a single use, for example, for musical instruments, binoculars or church benches. With the progression to a hire economy, this expanded to include also radios and television sets, calculating machines, computers, measuring instruments, and receptacles for liquids and gases, generally with an additional contract for supplying gadgets.³

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¹ Book I, Title IV, Chapter IV of the Trade Code of 1882 was entitled 'Passengers' but did not in any way regulate a system similar to the rental contract, as understood today, but a contract for the transport of persons (G. Romanelli, 'Autonomia privata e norme inderogabili in materia di trasporto' *Diritto dei trasporti*, 3 (1998); G. Righetti, *Trattato di diritto marittimo* (Milano: Giuffrè, 1990), II, 435).

² A. Fiorentino, *I contratti navali* (Napoli: Jovene, 1951), 8.

³ A. Tabet, 'Nolo o noleggio (Diritto civile)' *Novissimo Digesto italiano* (Torino: UTET, 1957), XI, 298.

Furthermore, contracts govern licences to use cinematographic works, and in particular we consider to be rental agreements those between film producers and intermediary-distributors, and between the latter and the cinema management company.⁴

Additionally, rental contracts are exemplified in the use of industrial vehicles and mechanical devices.⁵ It is worth also distinguishing so-called 'cold freight', ie a rental in which the renter supplies solely machinery without the driver, from so-called 'hot freight', ie a rental where machinery and an employee may be hired together.

The different content of these two types of contracts respectively led to various disputes regarding their codification. In fact, while 'cold freight' was included in a lease,⁶ 'hot freight' was covered by a contract for works.⁷

II. Types of Rental. The Rental of Vehicles for the Transport of Things

Rental of land vehicles is probably the only type of contract for which we have some regulations. Once again, it is a non-homogeneous category that, although it may be collocated among result contracts, poses many issues in terms of definite and unambiguous classification. In fact, vehicles can be hired, with or without a driver, depending on whether they are for the transport of goods or people.

With regard to the transport of goods, there seems to be no doubt about the application of the transport regulations in the case of the hirer also being the driver of the vehicle (Arts 1678 et seq of the Italian Civil Code). A contract for

⁴ This terminology was used for the first time in contracts between ANICA and AGIS (V. Mangini, 'Il contratto di distribuzione cinematografica' *Giurisprudenza italiana*, 862 (1959); L. Sordelli, 'Cinematografia (Diritto privato)' *Enciclopedia del diritto* (Milano: Giuffrè, 1977), VI, 999; E. Moscati, 'Noleggio (Diritto privato)' *Enciclopedia del diritto* (Milano: Giuffrè, 1978), XXVIII, 239; C. Garilli, 'Le intese di distribuzione esclusiva nel mercato cinematografico' *Giornale di diritto amministrativo*, III, 279 (2003)).

⁵ Consider the hypothetical of a contract for the loading and unloading of goods transported by the carrier (Corte di Cassazione 16 February 1956 no 447, *Foro padano*, I, 833 (1956); Corte di Cassazione 24 October 1956 no 3878, *Foro italiano*, I, 807 (1957); Corte di Cassazione 11 May 1967 no 968, *Giustizia civile*, I, 1257 (1967) for the research and collection of war residuals or for the distribution of advertising leaflets (Pretura di Bologna 5 May 1970, *Giurisprudenza italiana*, I, 2-30 (1971)).

⁶ Tribunale amministrativo regionale Sicilia-Catania 29 November 2011 no 2080, *Foro italiano*, XI, 3737 (2011).

⁷ L. Ricciardelli, 'Sulla natura giuridica del contratto di cessione di uso di automezzi con conducente per un determinato viaggio' *Foro italiano*, I, 1609 (1954), which says that 'the assumption of the technical risk of the journey by the renter and the power of the charterer to give orders and necessary instructions relating to the commercial operation according to which the vehicle was rented, correspond perfectly to the risk on the contractor and the supervisory and control powers of the client, who as is known cannot interfere in the company's physical organisation or in the technical management of the work' (Art 1662, para 1 of the Civil Code) (translation author's own).

transport of goods may include ancillary activities, such as when the renter has to collect or deliver the goods entrusted to him by the charterer to a particular destination. In this situation, the principal commitment (ie the transfer of things from one place to another) of the carrier, ends up taking priority over the mentioned services.⁸ On one hand, the assumption is that, for example, the hirer must also purchase goods on behalf of a second hirer, in which case there occurs a link of negotiation between the sale contract and the transport contract of the purchased goods, with the consequence that invalidity or ineffectiveness of the first contract affects the second one.

On the other hand, in the event of hire requested without a driver, the lessee, after having secured the vehicle, can transport his own goods or, acting as an independent contractor, can carry things for third parties.⁹ This type of lease implies responsibility towards third parties, or *vis-à-vis* those for whom the transport is carried out, and lies with the lessee.¹⁰

III. Rental for the Realization of a Trip. Rental Without a Driver

Different from the types of rental referred to above are those concerning the lease of motor vehicles intended for the transport of people. The contract is applied differently depending on whether the vehicle lease for the trip is with or without a driver.¹¹ This element determines the legal nature of the contract and the applicable rules.¹² On the one hand, for a rental without a driver, enjoyment of the vehicle is attributed directly to the charterer who takes delivery of it without any interference with regard to performance of the journey by the lessee, but on the other hand, through his driver, the management of the journey, and the direct availability of the asset to the charterer, is ruled out.¹³

⁸ M. Stolfi, 'Appalto-Trasporto', in G. Grosso and F. Santoro Passarelli eds, *Trattato di diritto civile* (Milano: Vallardi, 1966), 98; M. Iannuzzi, 'Del trasporto', in A. Scialoja and G. Branca eds, *Commentario al codice civile* (Bologna-Roma: Zanichelli, 1971), IV, 147.

⁹ In the context of the organisation of industrial production, the practice created the so-called logistics contract to regulate all the activities of handling and transport of products that businesses often entrust to third parties (M.L. De Gonzalo, 'Il contratto di logistica nella giurisprudenza e nella prassi contrattuale' *Diritto del commercio internazionale*, 409 (2015); F. Marongiu, 'La disciplina giuridica dei contratti di fornitura di servizi di logistica integrata' *Diritto del commercio internazionale*, 305 (2002)).

¹⁰ Corte d'Appello di Bari 28 November 1957, *Giustizia civile - Massimari Corti di Appello*, 47 (1957). This is the case even if the rental is accompanied by the secondment of the renter's staff who are temporarily included in the charterer's business organisation (Corte d'Appello di Milano 9 November 2011, *Giurisprudenza Milanese*, 357 (2002); Tribunale di Torino 22 November 2003, *Giurisprudenza di merito*, 708 (2004)).

¹¹ N. Canzian, 'Il legislatore tentennante sul servizio di noleggio con conducente: l'incertezza ricostruttiva tra reviviscenza e assenza di una disciplina positiva' *Rivista di diritto dei media*, I, 161-175 (2018).

¹² E. Papa, 'Locazione di autoveicolo, trasporto, noleggio' *Diritto e giurisprudenza*, 546 (1963).

¹³ A. Tabet, 'La locazione-conduzione', in A. Cicu and F. Messineo eds, *Trattato di diritto*

Hence, distinct rules are applicable to the two cases. In the first circumstance, since the renter is obliged solely to deliver the vehicle efficiently, and the journey takes place under the direction of the charterer who bears the related risks, legislation concerning leases applies.¹⁴ The prevailing jurisprudence is also oriented in this direction.¹⁵

In the second circumstance, the renter has to assure operation of the vehicle and must directly take care in performance of the journey, and we are in the presence of the different concept of rental in the strict sense. Since it is the technical staff provided by the hirer who are responsible for the journey, the hirer does not incur any liability for damage or damage to the vehicle, nor for harm caused to third parties, for which the renter is liable.¹⁶ It follows, moreover, that if the vehicle is not used due to a breakdown or acts performed by the renter's staff, the charterer is not required to pay rental for the period of inactivity, but can claim compensation for any damages deriving from breach of contract.

Interestingly, the lessee conveys the risks of the commercial transaction, ie the property owner is entitled to the payment of the agreed rent regardless of the economic outcome of the trip and, unless he is also a carrier, assumes no risk for the storage of things transported by the hirer on behalf of third parties.¹⁷

IV. Rental with a Driver

The lack of any arrangement for this specific situation led to the stipulation of rental agreements with a driver as unregulated contracts. This has been assimilated to the letting of goods in which the driver's performance assumes an instrumental and accessory nature with respect to the purpose of enjoyment of the vehicle.¹⁸ Critically, however, it has been observed that such a lease lacks typical requirements, namely transfer of ownership of the vehicle, the taking possession of the vehicle by the user and the qualification of the service as giving rather than doing.¹⁹

civile e commerciale (Milano: Giuffrè, 1972), 258.

¹⁴ G. Romanelli and G. Silingardi, 'Contratti di viaggi organizzati' *Enciclopedia giuridica* (Roma: Treccani, 1978), IX, 1.

¹⁵ Corte di Cassazione 4 October 2017 no 23145, available at www.unionejudiciributari.it. In terms of amortization coefficients, since the rental of passenger cars without a driver is not a transport contract but a leasing contract does not apply to the thirty per cent coefficient (decreto ministeriale 31 December 1988 'for transport people with cars from the square and garage'), but the lower one by twenty-five per cent.

¹⁶ G. Valeri, 'Osservazioni critiche sul concetto di «trasporto» nel diritto privato' *Rivista del diritto commerciale*, I, 486 (1920).

¹⁷ Corte d'Appello di Napoli 18 October 1962, *Diritto e giurisprudenza*, 542 (1963).

¹⁸ Corte di Cassazione 28 May 1986 no 3581, *Responsabilità civile e previdenza*, 81 (1987).

¹⁹ R. Miccio, 'La locazione di cose', in W. Bigiavi ed, *Giurisprudenza Sistematica di Diritto Civile e Commerciale* (Torino: UTET, 1967), 54; A. Tabet, 'La locazione-conduzione' n 13 above, 257; G. Provera, 'Locazione', in A. Scialoja and G. Branca eds, *Commentario al codice civile* (Bologna-Roma: Zanichelli, 1980), 69.

The type of agreement to which, however, as a rule, this case has been compared is that of the procurement contract (Arts 1655 et seq of the Civil Code), the broad regulations of which may regulate a type of agreement whereby the debtor is bound to provide a service through the use of a good that he made available and managed through his own business organisation.²⁰

Isolated and more recent is the opinion that the contract under which a party makes a vehicle with driver available to another for payment of a monthly fee and a fee based on mileage, supplementing the temporary licence for enjoyment of a thing for payment, can be classified as a subtype of the transport contract governed by Art 1678 Commercial Code.²¹ The technical-economic operation of travelling is in fact equivalent to the operation of transferring people from one place to another. Further, the renter's performance

‘is in its essence equivalent to the typical act performed by a carrier, given that if a vehicle is used, it is because there is someone to be transferred from one place to another’.²²

This approach has been criticised by those who say that

‘even if the lessee intends to pursue a purpose similar to that typical of the transport contract, this, at most, can be considered as a reason that remains unrelated to the contractual cause’.²³

It has also been specified that the lessee's purpose is not always that of transport, since he could use the renter's services for different purposes without any transport being carried out, only using the vehicle for moving around.²⁴

V. Bicycle Sharing and Car Sharing Services

In Europe the issue of the transport of goods and people and urban mobility has for years been at the centre of a debate that revolves around the negative effects that these activities can have on the environment and on quality of life.²⁵

²⁰ Corte di Cassazione 23 July 1955 no 2364, *Rivista giuridica della circolazione e dei trasporti*, 1203 (1955). In literature, compare: G. Mirabelli, ‘La locazione’, in F. Vassalli ed, *Trattato di diritto civile italiano* (Torino: UTET, 1972), 160; A. Asquini, ‘Trasporto (in generale)’ *Novissimo digesto italiano* (Torino: UTET, 1973), XIX, 567.

²¹ Corte di Cassazione 28 January 1985 no 493, *Rivista giuridica della circolazione e dei trasporti*, 379 (1985).

²² G. Romanelli, *Profilo del noleggio* (Milano: Giuffrè, 1979), 70.

²³ A. Flamini, ‘Noleggio’ *Digesto italiano sezione civile* (Torino: UTET, 1995), XII, 132.

²⁴ F.M. Dominedò, ‘Sviluppi della teoria del noleggio’ *Rivista del diritto commerciale*, I, 266 (1939).

²⁵ The EU Smart Cities Information System (SCIS for the years 2014-2017) brings together project developers, cities, institutions, industry and experts from across Europe to exchange data, experience and know-how and to collaborate on the creation of smart cities and an energy-

In this context, in Italy, the Decree of the Ministry of the Environment of 27 March 1998 introduced regulations on sustainable mobility in urban areas, where the protection of atmospheric and environmental conditions is promoted through the rationalisation of vehicular traffic, planning and incentives to use public transport and the promotion of mobility solutions with a lower environmental impact. This decree, together with the obligation to rehabilitate and protect the air quality imposed on regional councils, has promoted alternative and more sustainable forms of mobility such as bicycle sharing and car sharing.

Bicycle sharing is a service whereby a certain number of bicycles are made available to users, which can be picked up and used for travel in historic city centres.²⁶ Bicycles can only be used by those users who, upon registration, can unlock them by means of a contactless key or card. The service is not, therefore, usable by everyone. Under the provisions of the contract, after use the bicycles can be returned to other stations or to the departure station. In some cities, however, the service is 'free flowing': bicycles can be left anywhere as they are identified with the use of GPS.²⁷

Indicated in practice as a rental, this type of use of bicycles (or motorcycles), according to some scholarship, is different from that of other vehicles. In fact, for bicycles and motorcycles, only the full and direct use by the charterer is technically possible. The term 'rental' therefore seems to be used here improperly.²⁸

In effect, however, decreto legislativo 30 April 1992 no 285 and subsequent amendments (New Highway Code) to Art 85 concerning rental with driver for transportation of persons, states in the second paragraph that also motorcycles with or without sidecars, tricycles, velocipedes and quadricycles 'may be intended

efficient urban environment. With a focus on smart cities, energy efficiency, transport and mobility and ICT, SCIS showcases solutions in the fields of sustainable building and district development, renewable energy sources for cities, energy efficiency and low-carbon technology applications. Launched with support from the European Commission, SCIS encompasses ongoing and future projects under the CONCERTO initiative, Smart Cities and Communities European Innovation Partnership (SCC EIP), Energy-efficient Buildings Public Private Partnership (EeB PPP) and Smart Cities calls in Horizon 2020. The Smart Cities Information System: collects valuable data and expertise from smart cities demonstration projects and sites and channels them into a comprehensive database to promote replication of projects; presents a thematic overview of projects with a focus on technologies and expertise in fields such as energy-efficient buildings, districts and cities, sustainable energy, geothermal communities, sustainable urban planning, low-carbon cities and zero-energy neighbourhoods; offers an outline of renewable energy sources and low-carbon technologies and examples of their use; establishes best practice by analysing and visualising project results, enabling project developers and cities to learn and replicate; identifies barriers and points out lessons learnt, with the aim of finding better solutions for technology implementation and replication, and policy development; provides recommendations to policy makers on support and policy actions needed to address market gaps.

²⁶ The use of bicycles was promoted for the first time under legge 19 October 1998 no 366 'Rules for the financing of cycling mobility'. The local authorities, then, over the years have been called to draw up their own network plans for cycling mobility.

²⁷ Messina case in the announcement of 25 September 2018, available at www.messinaora.it.

²⁸ E. Spasiano, 'In tema di noleggio di veicoli' *Foro italiano*, I, 948 (1955).

to perform a rental service with driver for the transportation of persons'.²⁹ The standard should be read in conjunction with Art 47 of the Highway Code, in which these categories are deemed to be vehicles since they are equipped with engines. In this regard, the office of the Undersecretary for Infrastructures and Transport on 11 September 2013 clarified that 'only vehicles equipped with engines may be used to provide rental services with drivers for the transport of persons'.³⁰ Consequently, more and more frequently, motorcycles are hired with drivers by the hour, day or kilometre, by specialised companies and used for the transport of people or things.³¹ Although these vehicles do not provide a supplementary service for public transport, they require an appropriate licence issued by the relevant municipality.³² The municipality is required to regulate the carrying out of these activities on its territory, in order to reconcile the interest of individual businesses with the public interest.³³ Anyone who, even if authorised, does not comply with the provisions laid down by municipal regulations, incurs the penalties provided for under Art 4-bis legge 30 April 1992 no 285.

In addition to bike sharing, we have car sharing and car-pooling services, which also reduce the number of cars circulating in terms of environmental impact.³⁴ In the first case, a car is hired from a rental company by the hour or day by a person with a driver's licence and must be returned at the end of the stipulated period of use; in the latter case, the car is owned by a private person

²⁹ The category of velocipedes was inserted in Art 85, para 2, with decreto legge 23 December 2013 no 145, *Gazzetta Ufficiale* 23 December 2013 no 300, coordinated with the legge di conversione 21 February 2014 no 9, regarding 'Urgent measures for the launch of the *Destinazione Italia* plan, for the containment of electricity and gas tariffs, for the internationalisation, development and digitalisation of companies, as well as measures for the construction of public works and EXPO 2015'.

³⁰ Specifically, Minister Rocco Girlanda stated: 'Pedal tricycles cannot be used to perform rental services with drivers in historic centres, as they cannot be included in the category of motor vehicles referred to in Art 47, para 2, CdS' (Bollettino delle Giunte e delle Commissioni, 11 September 2013).

³¹ L. Marfoli, 'Trasporti, ambiente e mobilità sostenibile in Italia' *Rivista giuridica dell'ambiente*, III-IV, 305 (2013).

³² According to a ruling by Tribunale amministrativo regionale Lazio 27 May 2016 no 6208, *Archivio giuridico circolazioni e sinistri stradali*, VII-VIII, 623 (2016), the municipal regulations on the exercise of public services are required to define the 'requirements and conditions for the issuance of licences for the exercise of taxi services and the authorization for the exercise of rental services with drivers'.

³³ Consiglio di Stato 5 November 2014 no 5476, available at <http://www.dirittoegiustizia.it>; Consiglio di Stato 6 September 2012 no 4735, available at <http://www.dirittodeiservizipubblici.it>.

³⁴ The first manifestation of interest in these forms of sustainable mobility is contained in the Ronchi Decree of 27 March 1998. In the same year, the Ministry of the Environment, in the framework of the Environmental Protection Program, introduced the National Car Sharing Program. At the beginning of the year 2000 a memorandum of understanding was signed between the Ministry and the Municipalities of many Italian cities, establishing the desire to set up a national car sharing circuit and the establishment of a body able to coordinate the project. In December 2000 'the integration and completion of the project for the creation of a coordinated and integrated system of car sharing services was promoted'.

who makes it available for short journeys in the company of other people. In these situations, as well as with bicycle sharing, vehicle circulation appears to be instrumental to the transport of people, which means that the vehicle becomes a natural and non-essential element of the transport contract. Hence the further consequence that, while people who rent the vehicle cannot remain indeterminate (and are identifiable on the basis of the registration made or the agreements signed with the renter), the vehicle on or in which they will travel may, however, not be identified. This is contrary to what happens when renting a vehicle made available for the accomplishment of a journey, in which the vehicle must be at least determinable, while any indication regarding the persons or things for whose transfer the vehicle is rented may be absent.

VI. Rental as a Business Activity

For a long time, scholarship has assimilated rental with a lease contract, also believing that it could be similarly interpreted (Art 1571 Civil Code) in regulatory terms.³⁵ Considering, however, that leases can concern both real estate and movable property, and rental is only for movable property, some authors have stated that rental ‘remains a species of lease’.³⁶ On this point it was stated that in the letting of movable things it appears essential to acquire the *de facto* power of the tenant over the thing, and that this power involves possession of the asset, whose licence for use constitutes the subject matter of the obligation assumed by the lessor.

From this point of view, leasing regulations and, in particular, those that deal with the duration of the permanent contract (Art 1574, no 4) apply to those who lease motor vehicles ‘without a driver’: costs of conservation and ordinary maintenance (Art 1576, para 2, Civil Code); fire of the insured thing (Art 1589, para 2, Civil Code); place to return the thing (Art 1590 Civil Code);³⁷ prohibition to sublease (Art 1594 Civil Code); effects of the sale of movables not registered in public registers.

On the other hand, the presence of auxiliary drivers provided by the grantor prevents the classification of the rental event as a rental. In this case the renter, in fact, retains availability of the vehicle. Circumstances such as the assumption by the driver of expenses related to fuel, maintenance and storage of the vehicle, or certain peculiarities related to consideration do not assume essential importance for the distinction between the case of the rental and that of the rental of

³⁵ L.M. Bentivoglio, ‘Disciplina giuridica del volo charter nel quadro di una politica nazionale del trasporto aereo’, in L.M. Bentivoglio et al, *Trasporto aereo charter e movimento turistico. Atti del congresso internazionale di Taormina 19-21 novembre 1976* (Milano: Giuffrè, 1977), 31.

³⁶ G. Romanelli and G. Silingardi, ‘Noleggio (diritto civile)’ *Enciclopedia giuridica* (Roma: Treccani, 1990), XX, 3.

³⁷ Tribunale amministrativo regionale Lazio-Roma 4 September 2012 no 7516, *Foro amministrativo*, IX, 2742 (2012).

movables.³⁸ These elements, in fact, only indicative of the configurability of the relationship as a case of rental.³⁹

On the basis of what has been said, it is simplistic to state that the rental contract is governed by the rules on rental, and even more so if one thinks of the fact that the renter generally organises the work as a business activity, ie as a stable and organised production activity, carried out with economic criteria (Art 2082 of the Civil Code). In the various sectors of commerce, businesses prefer to lease machinery rather than purchasing it, retaining liquidity and not suffering the consequences of the deterioration of assets. Furthermore, the need to adapt production to market demands justifies the need to innovate contracted goods with increasing speed.

The freedom of persons to regulate economic phenomena (associative or exchange) at their own discretion has certainly been encouraged by globalisation, the Internet and, moreover, by the advent of a process of delegation.⁴⁰ From the first point of view, the Uber application ('app') was created as a platform to connect motorists and passengers, thus offering a car transport service that is distinct from traditional public bus services.⁴¹ Uber's breakthrough into the market generated various disputes involving social parties often resulting in jurisdictional litigation.⁴² In Italy, for example, consider the 'Milan case'⁴³ where unfair competition was ascertained pursuant to Art 2598, no 3, Civil Code, and as a result, Uber International BV and others were consequently prohibited from using the app in Italy or in any case from providing a service

'that organises, disseminates and promotes, by persons without administrative authorisation and/or a license, the transportation of a third party at the request of the person transported, so not continuous or periodic,

³⁸ Corte d'Appello di Messina 28 March 1957, *Foro italiano - Repertorio generale annuale*, 59 (1957); Corte d'Appello di Brescia 27 February 1958, *Foro italiano - Repertorio generale annuale*, 8 (1958).

³⁹ Corte d'Appello di Firenze 28 July 1956, *Giurisprudenza Toscana*, 39 (1957); Corte d'Appello di Bari 28 November 1957, *Repertorio generale annuale della giurisprudenza italiana*, 4 (1958).

⁴⁰ G. Palmieri, 'Le grandi riforme del diritto dell'impresa nell'Italia contemporanea' *Banca, borsa e titoli di credito*, 251 (2012).

⁴¹ Uber Technology Inc was created in 2008, with the original name of UberCab and with a modest initial investment (two hundred thousand dollars). It operates in North and South America, Europe, the Middle East, Africa, Asia Pacific. It entered the circle of tech giants (E. Morozov, *I silicon lords* (Torino: Codici Editore, 2016); S. Galloway, *The Four: the Hidden DNA of Amazon, Apple, Facebook and Google* (London: Bantam Press, 2017)).

⁴² On the action spaces of city administrators to regulate the activity of the platforms, D.E. Rauch and D. Schleicher, 'Like Uber, but for Local Government Law: The Future of Local Regulation of the Sharing Economy' 76 *Ohio State Law Journal*, 901 (2015); S.R. Miller, 'Decentralized, Disruptive and On Demand' 77 *Ohio State Law Journal*, 47 (2016); C. Holloway, 'Uber Unsettled: How Existing Taxicab Regulations Failed Address Uber, Lyft, and Comparable Innovators' 16 *Wake Forest*, 2 (2015).

⁴³ Tribunale di Milano 25 May 2015, *Diritto dell'informazione e dell'informatica*, 1053 (2015).

on itineraries and according to schedules established from time to time’.

Judges in other Italian cities have made similar pronouncements that of the Milan case.⁴⁴ To date the problem has not been solved. In particular, the regulation of rental services with drivers seems to have been deferred.⁴⁵

The autonomy of the parties and the flexibility of the institutions is accompanied by a process of market deregulation in general and, in this case, of rental activity. The lessee has an interest in granting the means of payment (freight) from the perspective of a short or long-term investment. We are faced with a situation that entails the establishment of a series of relationships given the use of labour and capital investment organised by the lessor and the non-occasional development of a productive activity of services destined for the market. We could qualify these as ‘internal’ relationships: with the charterer, as a user of the rented vehicle (with or without driver) to be used for transportation (on his own account or for third parties) of goods or people; and the ‘external’ relationships, with the workers (auxiliaries, commander, drivers), with the market. These are all interests that deserve recognition and protection and that combine to give rise to mixed contracts.⁴⁶ We cannot however ignore the fact that scholars who have analysed the legal concepts applicable to the different types of rental contracts have based their studies, depending on the specific case and without reaching uniform conclusions, on the theories commonly used to regulate mixed contracts (absorption theory, combination and analogue application).⁴⁷

Considering, in fact, the theory of centralisation, according to which the joint contract must be governed on the basis of the norms of the prevailing contractual

⁴⁴ Tribunale di Genova 16 February 2015, *Il Foro italiano*, V, 1845 (2015); Tribunale di Torino 22 March 2017, *Diritto dell’informazione e dell’informatica*, 284 (2017); Tribunale di Roma 7 April 2017, *Il Foro italiano*, VI, 2082 (2017).

⁴⁵ M. Midiri, ‘Nuove tecnologie e regolazione: il caso Uber’ *Rivista trimestrale di diritto e procedura civile*, 1017 (2018); R. Lobianco, ‘Servizi di mobilità a contenuto tecnologico nel settore del trasporto di persone con conducente: brevi riflessioni sulla natura giuridica del fenomeno Uber’ *Responsabilità civile e previdenza*, 1046 (2018); E. Ferrero, ‘Le smart cities nell’ordinamento giuridico’ *Il Foro amministrativo*, IV, 1267 (2015).

⁴⁶ There is a mixed contract when ‘the merger of the case causes the distinctive elements of each instrument to be taken as elements of a single instrument subject to the rule of the prevailing cause’ (Corte di Cassazione 28 March 2006 no 7074, *Guida al diritto*, 22, 39 (2006)). With specific reference to the rental contract as a joint contract: Corte di Cassazione 27 March 2012 no 4921, *Massimario di Giustizia civile*, III, 408 (2012)).

⁴⁷ E. Contino, ‘Contratti misti, contratti collegati e meritevolezza degli interessi’ *Giustizia civile*, 1897 (2001); F. Sangermano, ‘La dicotomia contratti misti-contratti collegati: tra elasticità del tipo ed atipicità del contratto’ *Rivista del diritto commerciale*, 557 (1996); N. Corbo, ‘Tipicità, contratto misto e giurisprudenza: qualche breve riflessione, nota a Trib. Monza 12 novembre 1985’ *Giurisprudenza di merito*, 77 (1987); C. Di Nanni, ‘Collegamento negoziale e funzione complessa’ *Rivista del diritto commerciale*, 279 (1977); A. Cataudella, *La donazione mista*, (Milano: Giuffrè, 1970); G.B. Ferri, *Causa e tipo nella teoria del negozio giuridico* (Milano: Giuffrè, 1969), 402; F. Di Sabato, ‘Unità e pluralità di negozi (Contributo alla dottrina del collegamento negoziale)’ *Rivista di diritto civile*, I, 412, (1959); T. Ascarelli, ‘Contratto misto, negozio indiretto, *negotium mixtum cum donazione*’ *Rivista del diritto commerciale*, I, 464 (1930).

scheme, scholarship has considered that while typical lease rules should apply to rental contracts for the transport of things requested without a driver, transport regulations must instead be applied to the rental of vehicles for the transport of things in which the renter is also the carrier of the vehicle.⁴⁸

Applying the theory that a mixed contract should be governed by the combination of the rules dictated for the individual typical models of which it is comprised, we arrive at the conclusion that a rental contract with a driver for the transport of persons would be both a lease and the performance of work.⁴⁹

On the other hand, invoking the theory of analogical application, according to Art 12 of the preliminary provisions of the Civil Code, if rental for the transportation of people is carried out without a driver, legislation concerning leases will apply.⁵⁰

Due to adaptations and interpretations that tend to protect different interests, the types of rental contracts emphasise and entrust the interpreter with adapting to the applicable discipline. In order to guarantee unique solutions, it seems essential to introduce legislation on leasing land vehicles, like that which already exists for the chartering of a ship or aircraft. Increasingly, socially typed contracts are now being transfused into law by the legislator. In the global system characterised by 'liquidity' and 'variability', certainly the arrangement of a standardised formal discipline may be of practical use in providing secure relationships.⁵¹

⁴⁸ N. Distaso, *I contratti in generale* (Torino: UTET, 1981), 1116; R. Scognamiglio, 'Contratto in generale', in A. Scialoja and G. Branca eds, *Commentario al codice civile* (Bologna-Roma: Zanichelli, 1970), 47.

⁴⁹ R. Sacco, 'Autonomia contrattuale e tipi' *Rivista trimestrale di diritto e procedura civile*, 790 (1966); L. Cariota Ferrara, *Il negozio giuridico nel diritto privato italiano* (1950) (Napoli: Edizioni Scientifiche Italiane, 2011), 219; G. De Gennaro, *I contratti misti. Delimitazioni, classificazioni e disciplina*. *Negotia mixta cum donatione* (Padova: CEDAM, 1934).

⁵⁰ S. Cascio and C. Argiroffi, 'Contratti misti e contratti collegati' *Enciclopedia giuridica* (Roma: Treccani, 1988), IX, 4.

⁵¹ See my article 'Le tipologie del noleggio. Ipotesi di un quadro sistematico' *Nuova giurisprudenza civile commentata*, 92 (2018).