



UiO : **Department of Private Law**
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Challenges in the “sharing” economy

Employer duties for platform companies?

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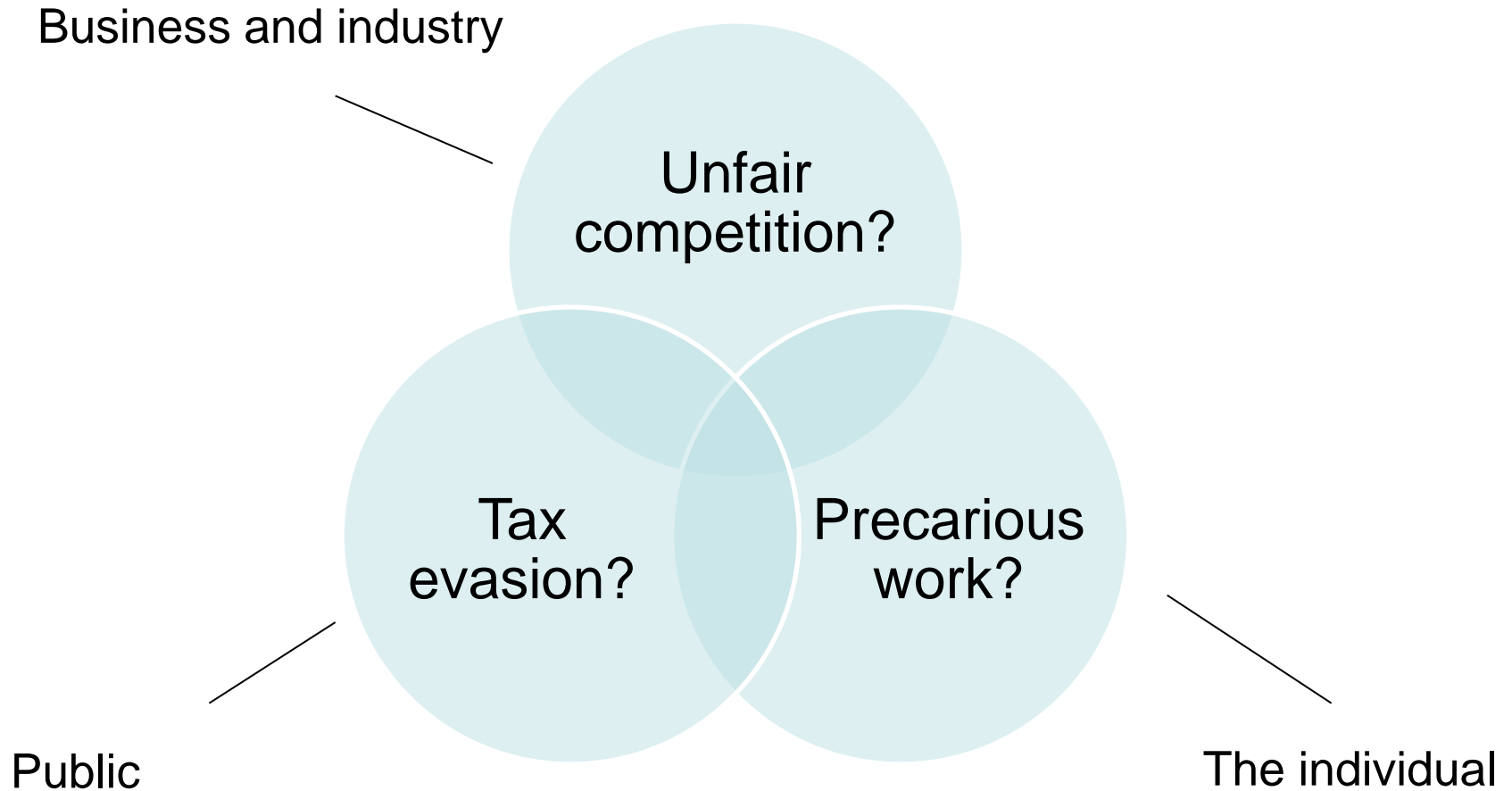
The «sharing» economy

- On-line platforms connecting providers and costumers
- Market place for work (services, tasks, etc)
- «Firms» without assets or employees
- Profit-driven
- Norway:
 - The Sharing Economy Committe, Report February 2017
 - FAFO-study of scope and characteristics

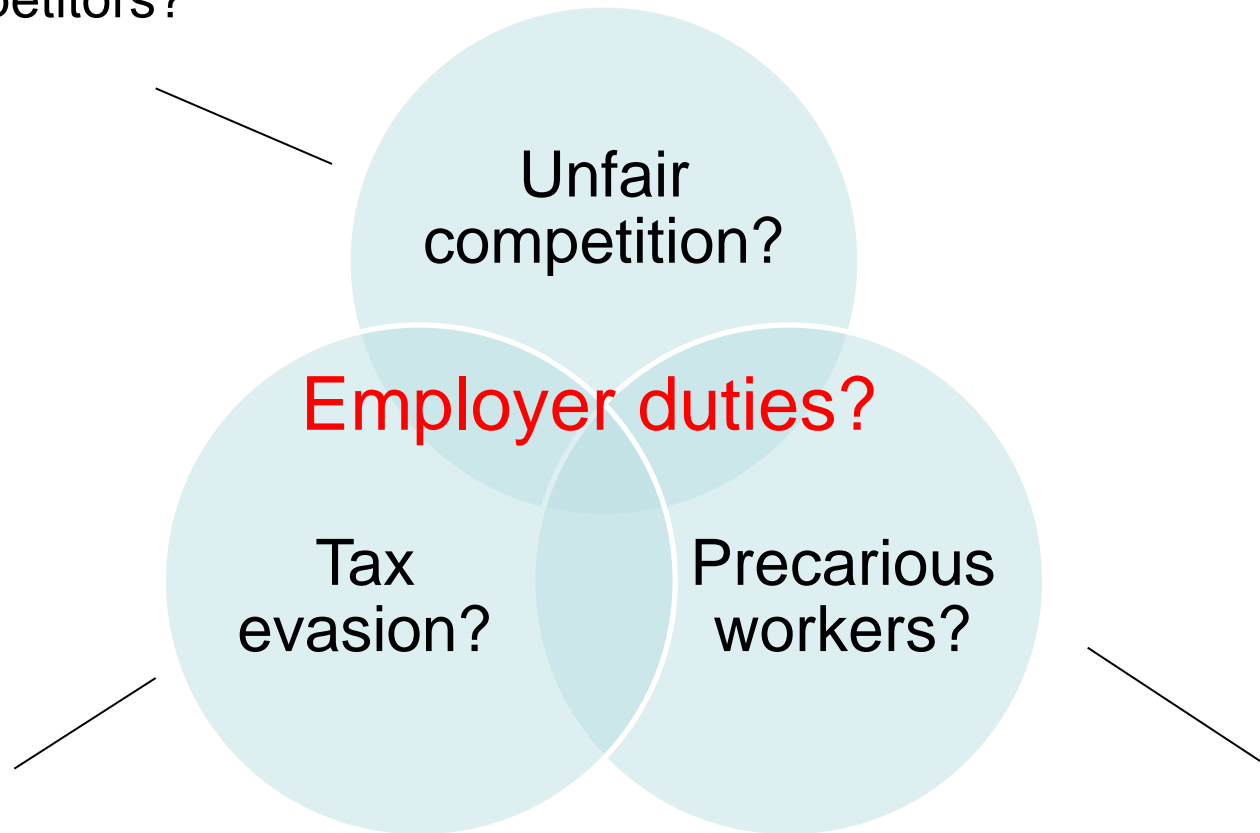
Outline

- Introduction
 - Challenges
 - Uber
- Employer duties for platform companies?
 - Labour law?
 - Tax/social security law?
- What to do?

The challenges



Same responsibilities
as the competitors?



Duties to report,
withhold income tax,
payroll tax?

Individuals subject to
employment protection?

Uber



- Platform for rides
- World's largest «taxi-company» \$ 66 billion
- Ca. 400 cities in ca. 60 countries
- Self employed drivers (?)
 - Legal battles, e.g. California class action, UK
- Norway:
 - More than 10 000 costumers
 - Taxi-permits – liberalizing and growth?



Rasier B.V

Uber B.V

Uber Norway

Contract for providing
transport services

- criminal record check
- driver's license
- insurance
- car max 10 y

App for
drivers

App for
passengers

Terms and conditions

- personal information
- credit card details

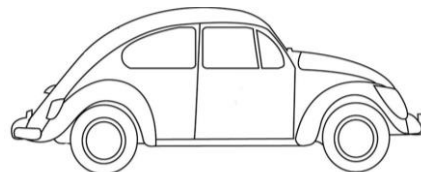


Drivers

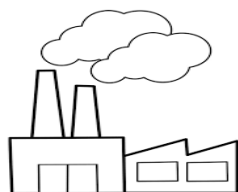
Contracts for
rides



Passengers



Are platform companies employers?



Contract of employment



Employer

Employees

- Are users employees (or independant contractors)?
- Who is the employer? Platform company (or costumer)?
 - Platform company – user relation
 - Do employer duties apply?

Employer duties

Duties on «employer»:

Working environment act (WEA)

Holiday act

Discrimination acts

Work injury act

Occupational pensions act

...

Labour disputes act

Purpose:

Protection of individuals

- Health and safety, economy,
equal treatment, co-
determination, etc.

National insurance act (NIA)

Tax payment act (TPA)

Tax act

Purpose :

Economic safety-net

Ensure public revenue

Employer duties

Labour law

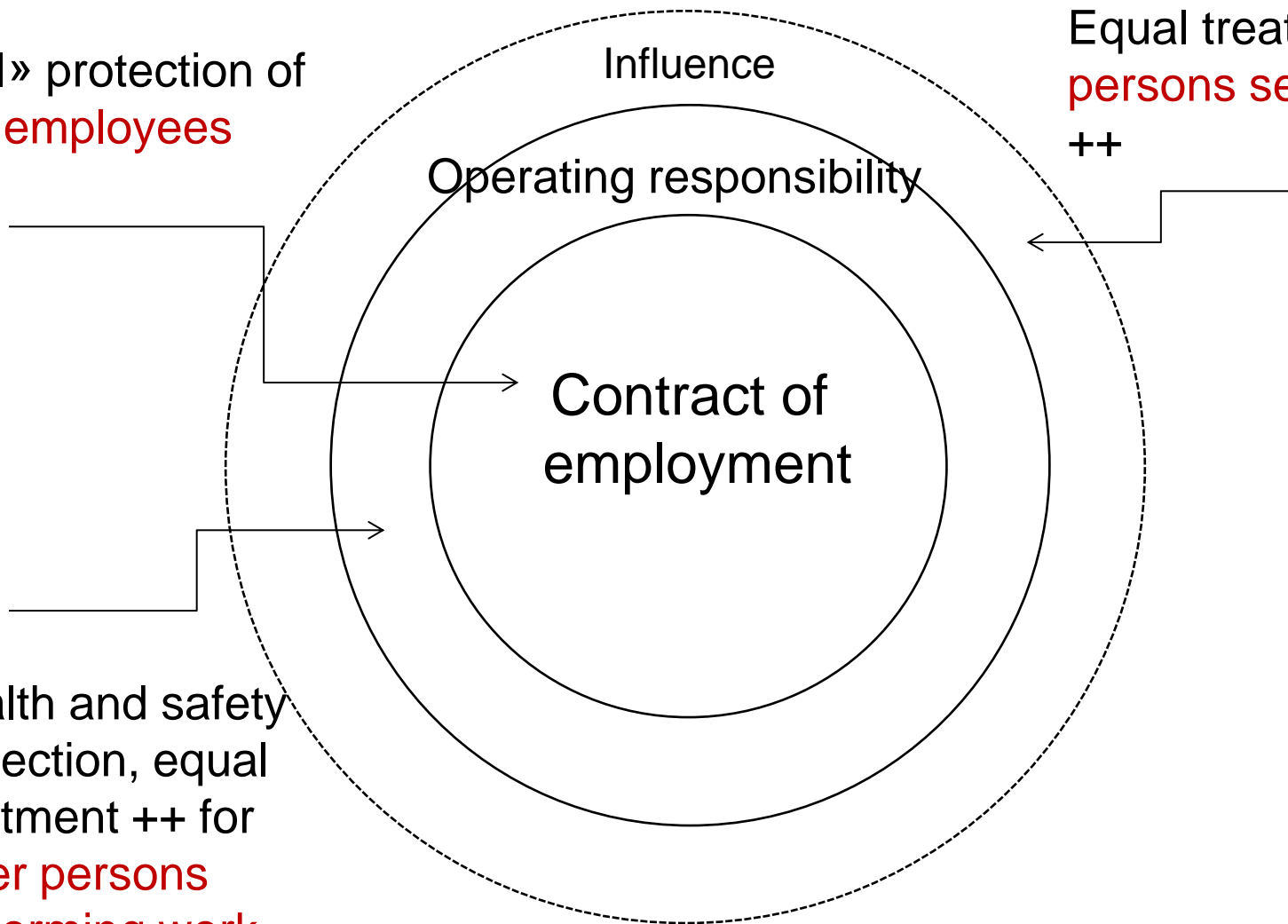
«Full» protection of
own employees

Equal treatment for
persons seeking work
++

Influence
Operating responsibility

Contract of
employment

Health and safety
protection, equal
treatment ++ for
other persons
performing work



Employer duties?



A contract
of employment?



Drivers are employees?
Full employment protection

Operating
responsability?



Drivers working as independant contractors?
Some employer duties
Health and safety WEA § 2-2?
Protection against discrimination, WEA ch. 13 ++

Influence
on access to work?



Drivers seeking work?
A few employer duties
Protection against
discrimination, WEA ch. 13 ++

Contract of employment?

WEA § 1-8 (1) ... «i annens tjeneste»: a contract of service?

A broad fact-based assessment of the contractual realities
Dependancy and subordination?

Continuous duty to perform personal work

Subordination: supervision and control

The employer provides equipment, location etc.

The employer is responsible for the result

The person receives compensation as a wage

A stable relationship, terminable on specific terms

The person works mainly for one employer

Other forms of dependancy/ subordination?

An individual assessment of the need for protection

Cf. e.g. Rt. 1968 p. 725 , Rt. 2013 p. 354

Contract of employment?

- Triangular contracts may well be employment contracts
 - Cf. agency work
 - Cf other triangular relations Rt. 2013 p. 354, HR-2016-1366-A
- The realities must include digital tools
- Supervision and control?
 - Comprehensive approach: Company, digital tools *and costumer*
- Countinous duty to perform personal work?
 - «Free» to use own employees – a reality?
 - «Free» to log off between short task ?
- Individual assessment of the need for protection
 - Platform sets the price / control earnings
 - Extensive work? Other «main» job?

Employer duties

Tax- and social security law

Employee

NIA § 1-8: «work of service for pay...»

Income tax

Reporting, withholding income tax,

Payroll tax (arbeidsgiveravgift)

Unemployment benefit

Sick pay (100 %)

Sick pay first 16 days
(«arbeidsgiverperioden»)

Work injury benefits

Freelancer

NIA § 1-9: «work **not** of service, for pay..»

No sick pay first 16 days

Voluntary work injury insurance

Self employed

NIA § 1-10: «work at own risk and account .. continuing business..»

Business tax

Self reporting

No payroll tax

No unemployment benefit

Sick pay (65 %)

Definition of employer: TPA § 4-1: The payment
(more than a mere proxy)

Tax- and social security law

Employer duties apply on platform company if the user :

- An employee? Full employer duties
 - Work of service?
 - Focus on allocation of economic risks
- A freelancer? Some employer duties
 - A residual category, cf. HR-2016-589-A
 - At own risk, but not as a continuing business («virksomhet»)?
 - A registred business? Sporadic work?

To sum it up...

- Platform-user contracts may in reality be employment contracts
 - More likely in a labour law than in a tax-/ social security law context
- Platform companies have some employer duties in relation to independant contractors
 - Labour law: Duties based on operational resonsibility and influence
 - Tax-/ social security law: Duties in relation to freelancers

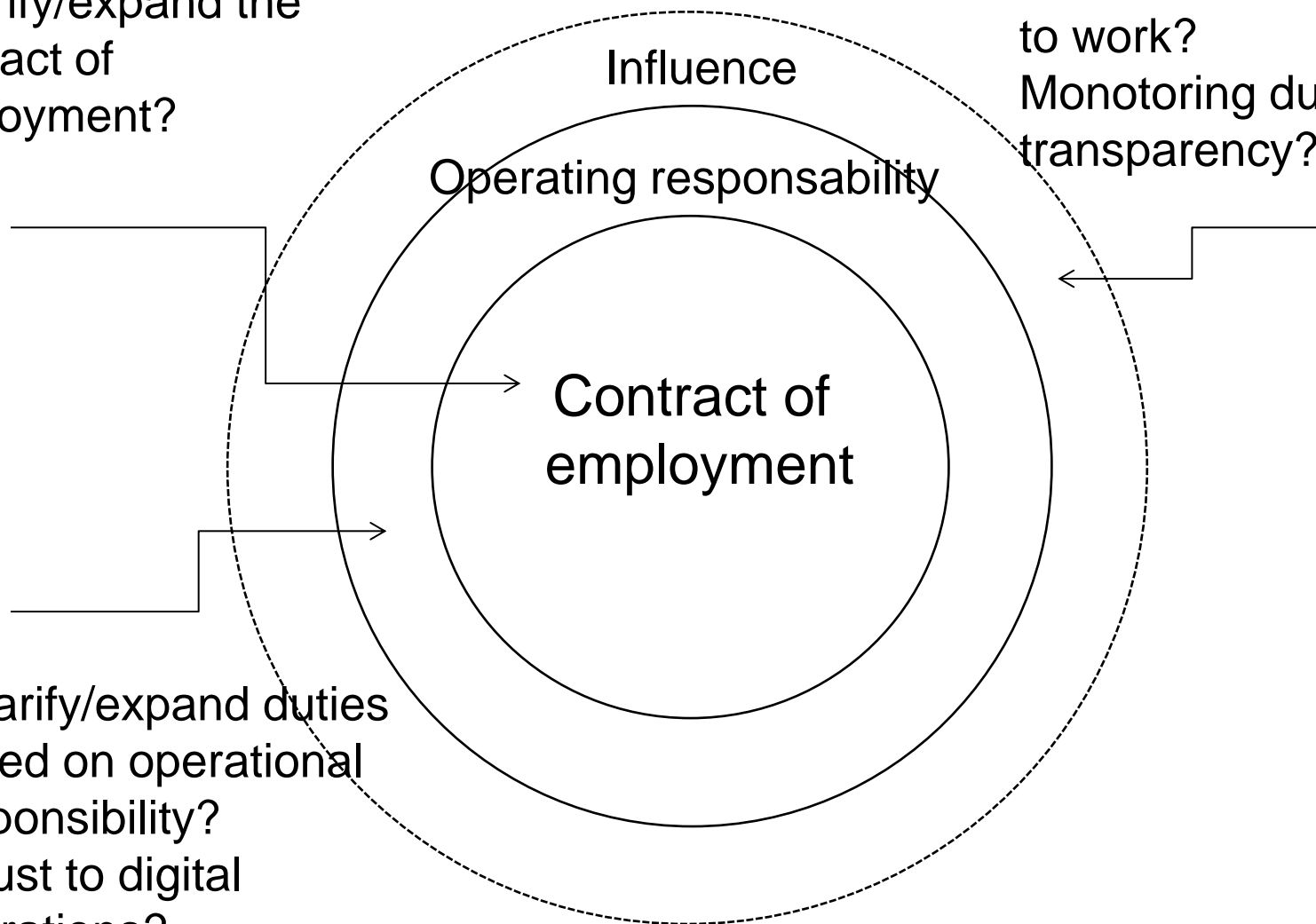
What to do?

- Clarify and/or expand the classification of the employment contract?
- Clarify and/or expand employer duties beyond the employment contract?

Possibilities

Clarify/expand the
contract of
employment?

New duties based on
the influence of access
to work?
Monitoring duties /
transparency?



Thank you for your attention!