

**BETWEEN**

**RASIER OPERATIONS BV**

**First appellant**

**UBER PORTIER BV**

**Second appellant**

**UBER BV**

**Third appellant**

**PORTIER NEW ZEALAND LIMITED**

**Fourth appellant**

**RASIER NEW ZEALAND LIMITED**

**Fifth appellant**

**AND**

**E TŪ INCORPORATED**

**First respondent**

**FIRST UNION INCORPORATED**

**Second respondent**

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**APPELLANTS' OUTLINE OF ORAL ARGUMENT  
DATED 7 JULY 2025**

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Pursuant to the requirements under the Supreme Court Submissions Practice Note and having made appropriate inquiries, counsel hereby certify that, to the best of their knowledge, this outline of oral submissions for the appellants does not contain any suppressed information and is therefore suitable for publication.

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## Introduction / summary of argument (Wicks KC)

### Section 6 framework (Dunn)

1. Overview of s 6; *Bryson* [2005] NZSC 34 (Tab 12); and legislative history: Select Committee (Tab 67) 5–6.
2. No dispute that *Bryson* governs.
3. EmpC 'purpose' reasoning was in error: CA [120]–[126], [136].

### Services agreement (Walker)

4. Overview of services agreement **[[301.0232]]**; community guidelines **[[303.1094]]**; rider agreement **[[303.1345]]**; business model; and regulatory framework: Land Transport Act, s 30P(c).
5. Parties agreed to a contractual relationship, expressly not employment: cl 28. Uber "facilitates" trips: cl 1.
6. Whole contract consistent with that bargain: eg genuine flexibility (CA [188]); own equipment; work for competitors. No mismatch with reality: cf CA [204]; Res Subs [70]; *Autoclenz* [2011] UKSC 41 (Tab 52).

### Intention (Wicks KC)

7. Relevant intention is "common intention concerning the *status of their relationship*" (*Bryson* (Tab 12) [32]) — ie what kind of relationship did the parties bargain for at the outset: App Subs [2.8]–[2.10], [3.2]–[3.4]; s 6(3)(a); cf CA [108], [114].
8. Section 6(3)(b) did not displace intention, it prevented mislabelling. Accurate labels remain an "important factor" indicating common intention: *Challenge Realty* [1990] 3 NZLR 42 (Tab 13) 56.
9. All evidence supports common intention of non-employment: cl 4, cl 28; Ang **[[201.0181]]**, **[[201.0196]]**, **[[302.0973]]**.

### Control (Wicks KC)

10. To identify *relevant* extent of control in employment context, must consider obligations and expectations in light of context, *and* balance with freedoms: *Aslam* (Tab 60) [91]; *Windle* [2016] EWCA Civ 459 (Tab 61) [23].
11. Quality standards, incentives schemes and price setting are commonplace features of many commercial relationships, so cannot distinguish an employment relationship from a purely contractual relationship: *TNT* [1993] 3 NZLR 681 (Tab 42) 697–698; *Head* [2021] NZEmpC 69 (Tab 22) [250]–[251].

12. By contrast, the complete absence of an obligation to work is a uniquely non-employment feature of this relationship. Casual employees must complete period of work once accepted: *Muldoon* [2011] NZEmpC 103 (Tab 33) [40]; cf Res Subs [123]–[124].
13. The drivers used Uber for gig work: Rama [4]; Ang **[[201.0191]]**; Abdurahman **[[201.0412]]**–**[[201.0413]]**.

### **Integration (Wicks KC)**

14. Drivers provide transport services directly to riders: cls 1, 3. No reason to construct a fiction, cf *Aslam* (Tab 60) [47], [52] (no contract with Uber London; regulatory regime precluded direct transport services by drivers).
15. Drivers operate independently through an automated platform, so are not connected as part of a larger 'Uber enterprise'.
16. Freedom to work at any time for competitors weighs against the existence of an integrated 'Uber enterprise'. See evidence of multi-apping **[[304.2233]]**.
17. Irrelevant that Uber needs some drivers, no *individual* driver is essential: App Subs [5.36]–[5.40]; cf CA [225]. Submission is a response to CA, not a positive argument: cf Res Subs [151].

### **Fundamental (Wicks KC)**

18. Core question is whether individual has control over business decisions (ie revenue and expenses). In the gig economy, this must account for "portfolio work": App Subs [4.9]–[4.11].
19. Drivers bear risks / enjoy rewards of business decisions: control revenue by selecting hours (vs other gigs), time / location to drive: **[[304.1604]]**, Ang **[[201.0192]]**, **[[302.0666]]**; control expenses by choosing vehicle, managing opex: Keil [72], Ang **[[201.0182]]**, **[[201.0207]]**; cf *Southern Taxis* [2020] NZEmpC 63 (Tab 41).
20. Ability to generate goodwill is unnecessary, as it only resembles a subset of business types: *Jamsek* [2022] HCA 2 (Tab 51) [58].

### **Overall assessment (Wicks KC)**

21. Need to weigh outcome of intention and three common law tests, with cross check to statutory test ("real nature of the relationship").
22. When common law tests are inconclusive, scales should be tipped by clear intention of parties: *Arachchige* [2020] NZEmpC 230 (Tab 5) [56]; *Challenge Realty* [1990] 3 NZLR 42 (Tab 13) 56; Select Committee (Tab 67) 5–6. Viewed in the round, the four drivers were not employed by the appellants.