



**CLM 2015 Transportation Committee Conference
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Uber: Uncommon Carrier Becomes Common

I. Uber Primer: A Guide to Uber's Rideshare Services

A. The Concept

To an outsider, Uber's ridesharing service appears to be a run-of-the-mill taxi service. It pairs people who require a ride with people willing to share their car. But Uber's business model works a bit differently. Consumers have endured decades of frustration with cab drivers who never seem to have change for a \$20 bill and taxis with credit card machines that are always mysteriously broken. Uber consumers never have to exchange currency with their driver, which lowers the chances that either party will be the victim of fraud or robbery.

B. The Drivers

Uber drivers may clock in and out when they choose, no longer beholden to the schedules of a cab conglomerate. The job is an ideal one for people in several walks of life, and without protections in place, riders would face some uncertainty about their safety in a stranger's inconspicuous, non-yellow car. For that reason, Uber touts the fact that it implements a rigorous, three-step background check of its drivers, which includes screening with counties, the federal government, and several states. In addition, Uber maintains ongoing reviews of its driver's motor vehicle records.

C. The App

Uber's app is easy to install and set up, and gives riders all the information they need to begin their Uber trip. Once the customer enters her credit card information, she is ready to rideshare. First, the app locates the rider on GPS, so that the rider need not know the address of her location. The app then estimates the wait time for a car. Next, the user may choose one of up to seven categories of cars, depending on the services available in that city. The first type, "uberTAXI," is a taxi-cab licensed through the city just like other taxi services. "uberX" is any typical, everyday car, and "uberXL" are the larger, everyday cars. "uberSELECT" is a category with cars somewhat nicer than those in the uberX group. Next, "uberBLACK" offers pick-up in a high-end sedan. "uberSUV" offers riders a luxury vehicle with seating for up to six. Finally, "uberLUX" services pick up riders in the "finest cars with prices to match."

Speaking of prices, before customers book an Uber car, the app will give fare estimates based on the type of car chosen, this distance to the customer's destination, and the current demand for cars. If the customer has a companion along for the ride, the app will let her split the ride-share bill with ease.

II. Uber versus the Taxi Industry

When taxis practiced price fluctuation in the 1920s based on supply in demand, what resulted was poor service at high prices. It was difficult for passengers to negotiate with a driver, not knowing what a "reasonable price" would be for car service. Once regulations became a reality, cab companies were forced to average out the variables of demand, distance, and whether they would receive a return fair at the destination, and were compelled to charge a standard price for all fares. For that reason, today many taxi drivers stay home on busy holidays, like New Year's Eve, because there is no incentive to venture out. Uber fills that gap.

Without regulations to prevent it from doing so, Uber charges higher prices during peak hours, which detractors call "Ubercharging." Because Uber had a large head start in front of Lyft, and because taxi services cannot fluctuate prices based on demand, Uber essentially holds a monopoly on its "free market" pricing. Commentators suspect that once Uber becomes established and overtakes the taxi industry, it will "resemble the rebel who overthrows the tyrant only to become a tyrant himself," which will again result in poor service at high prices. Ergo, according to detractors, Uber regulation is inevitable.

A. Federal Regulations

Some commentators argue that the federal government—as opposed to the municipality's government—should regulate ride-sharing services. The argument is that the city-taxi "cartels" effectively offer platforms in competition with ridesharing services, and when monopolies exist, the governmental entity that sets the prices should not profit from them. Currently, the federal government has not taken any action with regard to rideshare services.

B. City Regulations

Uber's goal is to encourage cities to pass new laws that would take it out of its current legal gray area. However, Uber's position is that it should be subject to new rules and regulations that recognize Uber as an app-based car service distinct from taxis. So far, seventeen cities and four states have passed "pro-Uber" laws, while other cities scramble to determine what should be done.

1. Level the Playing Field

The taxi industry has sought out lawmakers in certain regions and convinced them to attempt to cripple Uber's business model or level the playing field. For example, the city of Cambridge proposed rules that would impose regulations on any device used to calculate fares subject to regulation. The state of Virginia's DMV sent Uber a cease-and-desist order, which the governor overturned after reaching an agreement with the company. Miami and Austin have banned Uber altogether. In France, the legislature mandated that there be a 15-minute delay from the time a customer orders an Uber car to the time the car arrives. A French court overturned the rule shortly after. These attempts to stifle Uber have been unsuccessful where an outright ban is not in place, but it has forced lawmakers to re-examine the outdated taxi regulations already on the books. While it is too early to know for certain, in the future, these governments may overhaul

the entire regulatory scheme to which taxis are subject and treat Uber and taxi companies as the same type of business.

2. A Whole New Concept

For the most part, the lawmakers in governments that have embraced ride-sharing refer to Lyft and Uber as “transportation network companies,” a term probably coined in 2013 when California passed ridesharing regulations. The definition of a “TNC” in various regulations is typically a service that does not own vehicles or employ drivers and relies on software to connect passengers to rides. The rules in these locales cover practices that Uber has already implemented on its own, including criminal background checks of its drivers, driver training programs, vehicle inspections, and insurance policies.

The policies in some policies call for more specific requirements, such as requiring the Uber app to show a photo of the driver and deliver an electronic receipt when the ride completes. In addition, some rules create a new type of worker in Uber drivers, which is somewhere between standard definitions of full-time employee and part-time contractor. Some municipalities require driver suspension when a passenger reports discrimination or drug and alcohol use. Many note that, as Uber “grows up,” the rules around it will, too. New rules are being drafted on a continuing basis, some to require more stringent background checks, others to require Uber to provide wheelchair-accessible vehicles.

III. Insurance: Uber’s Insurance Scheme & Its Pitfalls

Coverage disputes among ridesharing services like Uber and insurance companies have exposed Uber drivers and their passengers to the danger that an accident may not be covered by either Uber or the driver’s personal car insurance.

There are only two scenarios where insurance coverage is clear: 1) when the Uber app is off, a driver’s personal car insurance covers him; and 2) when the Uber app is on *and* the driver is carrying a passenger, Uber’s insurance covers the vehicle.

Conflicts as to coverage arise when the Uber app is on and the driver is *on his way* to pick up a fare and when the Uber app is on but the driver *has not yet accepted* a fare. During the latter scenario, an Uber driver hit and killed a six-year-old child in San Francisco. The driver’s personal insurance has denied coverage because the driver was participating in a commercial activity. Meanwhile, Uber contends that the driver was not transporting a rider, was not en route to pick one up, and was not receiving a request for transportation services. Thus, Uber contends that it is absolved of any responsibility.

In response to the above events, California re-examined transportation network company insurance requirements under its regulatory scheme and made significant changes. In mid-2015, Uber will be required to provide insurance from the moment a driver turns on the app, and must carry \$1,000,000 in coverage whenever a passenger is in the vehicle. The law will also impose new insurance requirements for the individual drivers.

Insurance problems still remain, however. Elsewhere in the country, Uber and other transportation network companies are under no obligation to offer coverage for drivers when they do not have a passenger. Many car insurance companies, upon learning of their insured’s mixed usage of his vehicle, are canceling the policies, leaving drivers and their passengers exposed. California’s bill suggests that private insurance companies come up with new plans to cover mixed

personal/business use vehicles like those used for ridesharing, but no companies are compelled to issue policies, and no one is sure how such policies would work.

IV. Specific Claims & Lawsuits

Currently, there are few court opinions that relate directly to ride-sharing apps. For that reasons, the attorneys involved in pending cases have looked to case law related to “matching” sites such as eBay—which matches buyers and sellers—and Match.com—which matches potential romantic couples. However, cases are beginning to spring up around the nation.

In February 2015, bills were introduced in both houses of Florida’s state legislatures seeking to legalize and regulate Uber and Lyft as “transportation network companies,” defined as a companies that use “digital network or software application service to connect passengers to TNC services provided by TNC drivers.” It would require drivers to pay a \$5,000 annual permit fee.

All TNCs would be required to ensure that their drivers have proper insurance, including \$1 million in liability coverage. Sex offenders, drivers with a DUI in the past seven years, and drivers with three moving violations or one major violation in the past three years would not be allowed to be hired. TNC drivers would also not be allowed to pick up passengers who hail them, and the TNC companies cannot own cars. The house bill pre-empts local regulations placed on Uber or Lyft at the municipal level.

A. The Taxi Industry & Others

Mediacorp v. Uber Technologies, Inc.: Plaintiffs, medallion-holders in Miami-Dade County, filed a federal class-action suit against both Uber and Lyft under the Florida Deceptive and Unfair Trade Practices Act, Florida’s RICO Act, and Florida’s Lanham Act, as well as for trespass to chattels (the medallions) and unjust enrichment, contending that Uber and Lyft’s unregulated and illegal operations devalued their medallions, which are limited in number.

Davis v. Miami-Dade County: Plaintiff Christopher Davis, chief executive of Professional Chauffeur Transportation Services, filed an antitrust class action suit against Uber, Lyft, and the county, seeking compensatory and punitive damages, citing allegations that Uber and Lyft engaged in tortious interference, as well as committed violations against Florida’s Antitrust Act. The lawsuit also seeks an injunction against Florida’s Miami-Dade County for not fully enforcing antitrust laws, in spite of the fact that the county has arrested Uber and Lyft drivers, impounded their vehicles, issued traffic citations, and recognized the companies’ illegal conduct.

Orlando Int’l Airport v. Uber Technologies, Inc.: In Orlando, Florida, Uber is not legally permitted to operate services. In spite of that, and in spite of the city ticketing and towing Uber vehicles and the airport warning Uber that its drivers would be ticketed and arrested if they continued to pick up passengers at the airport, Uber continued its operations. The airport filed suit against Uber in November 2014 for failure to pay the airport’s vehicle-for-hire fees, including application fees, dwelling fees, and passenger pick-up fees. The city government is currently working on changes to a city ordinance that would allow ride-share companies to operate legally.

Manzo v. Uber Technologies, Inc.: Plaintiffs, taxi and livery drivers, sued Uber and taxi and livery drivers who use Uber under the Illinois Consumer Fraud and Deceptive Business Practices Act, alleging that Uber misrepresents its rates and the nature of the gratuity it charges,

misidentifies itself as a transportation company, and illegally operates in violation of Chicago Municipal Code provisions regulating the taxi and livery industries.

Goncharov v. Uber Technologies, Inc.: Plaintiffs, who were duly licensed and permitted taxicab drivers, attempted to bring a class action lawsuit to prevent Uber from “continuing to act illegally in the City and County of San Francisco, by ‘partnering’ with unauthorized and unpermitted drivers to unlawfully compete with law-abiding taxicab drivers.” Because California addressed Uber’s position as a transportation network company, the suit was eventually dropped.

Western Washington Taxicab Operators Association v. Uber Technologies, Inc.: Taxi drivers brought suit under the Consumer Protection Act, arguing that Uber diverts customers away from the lawful, regulated services provided by the Association’s members, seeks to divert the most lucrative and most able to tip customers, and deprives regulated drivers of means to make a living.

Greater Houston Transportation Co. v. Uber Technologies, Inc.: Houston cab companies sued both Uber and Lyft, claiming that both companies “are unfairly competing with the taxicab industry by failing to comply with local regulations and misrepresenting the nature of their services to consumers.” The court granted Uber’s motion to dismiss in part, but is allowing Plaintiffs’ Lanham Act claims and unfair competition claims to move forward.

Boston Cab Dispatch, Inc. v. Uber: Plaintiff argues Uber violates various federal and state false advertising and unfair competition laws and Boston taxicab ordinances by providing a private car service that allows users to call taxicabs associated with Boston Cab and other dispatch services without complying with Boston taxicab regulations.

Illinois Transp. Trade Association v. City of Chicago: Plaintiffs, taxicab and limousine operators, brought suit against the City of Chicago, arguing that the Office of the Mayor seriously devalued their taxi medallions by allowing Uber and Lyft to operate in the city without being required to obey City Taxi Regulations.

B. The Municipality

City of Portland v. Uber Technologies, Inc.: In December 2014, the City of Portland filed suit seeking declaratory relief that Uber is subject to and in violation of the city’s Private For-Hire Transportation Regulations and Administrative Rules and seeking an injunction against Uber prohibiting it from conducting business or operating within the city, including through the use of the Uber app, and including contracting with unpermitted drivers, unless and until Uber comes into compliance with the permit, insurance, and other requirements of Portland City Code.

Officials in Broward County, Florida, are considering filing a lawsuit against Uber and Lyft. In December 2014, the County sent a letter to both companies threatening to arrest their drivers, impound their cars, and impose fines against both the driver and the companies unless they comply with Broward County taxi laws.

C. Uber Drivers

O’Connor v. Uber Technologies, Inc.: Plaintiffs, Uber drivers, filed a putative class action suit claiming that they are Uber employees as opposed to independent contractors, and thus are eligible for various statutory protections for employees codified in the California Labor Code, including the requirement that an employer pass on the entire amount of any gratuity to the

employee. Uber's motion for summary judgment was denied in March 2015, the court having decided that Plaintiffs are Uber's "presumptive employees," and whether they are employees or independent contractors is a mixed question of law and fact.

Ehret v. Uber Technologies, Inc.: Plaintiffs, Uber drivers, filed a putative class action lawsuit for illegal and deceptive trade practices, contending that Uber misrepresents to consumers the true nature of charges made to them in connection with Uber's services. Specifically, the petition alleges that Uber does not remit the full amount of gratuity a consumer provides to the Uber driver.

D. Personal Injury Potpourri

Walsh v. Uber Technologies, Inc.: In Palm Beach County, Florida in March 2015, the County Commissioners reached a temporary agreement with Uber to allow it to operate unregulated within the county through September 2015, with hopes that regulations would be forthcoming. In February, however, Uber driver Donald Bremer struck Brendan Walsh as he was riding his motorcycle. Because Walsh reportedly had trouble obtaining insurance information from Uber, he brought suit against the company for his damages.

Liu v. Uber Technologies, Inc.: In the case discussed above, Uber and Uber driver Syed Muzzafar are being sued for the wrongful death of a six-year-old in San Francisco. Muzzafar struck and killed the girl as she crossed the street with her mother and brother. At the time, he did not have any active fares.

Also in San Francisco, an Uber driver's vehicle collided with another vehicle while the driver was making a left turn. One of the vehicles sheared a fire hydrant from its base, which struck bystander. The bystander has sued Uber and driver Djamol Gafurov for her injuries.

In both of these suits, Uber claims that it is not liable. In fact, Uber's in-house lawyer compared the company to Facebook, reasoning that if one arranged a ride with a Facebook friend and got into an accident, the social media site would not be liable.

Mazaheri v. Uber Technologies, Inc.: An Uber passenger was assaulted by the driver in December 2013, and brought suit against the driver and Uber. The court dismissed Plaintiff's claims against Uber, ruling that the company was not responsible for the driver's actions.

Finally, although a civil suit has yet to be filed, Houston Uber driver Duncan Burton has been charged with sexual assault after he admitted that he took his unidentified, intoxicated female passenger home and had sexual intercourse with her, an event of which the woman has no memory.