

“Litigation no longer stays in the court room – you have to think about how it will play with the public and your stakeholders.”



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How have disputes facing Uber shifted in recent years?

In line with Uber's maturity, our disputes have trended from regulatory disputes in those early days, when we were entering markets, to now, where we're seeing more commercial disputes and group action-style claims. The trend I'm seeing is greater overlaps between different areas of law, whether things like contract, privacy or consumer.

How has your team adjusted to handle these disputes?

In some ways, it's been a relief, because those early regulatory disputes were fairly existential in nature. If you are not on the right side of them or don't reach a negotiated settlement, you may have to shut down in a particular market. Commercial disputes tend to be more about money than the future of the business. It feels like we've grown up a lot and we're becoming more like a normal business.

How able do you feel to assess the dispute risks facing Uber?

I am privileged. I get to look across 50 different countries, work with the team to pick out the trends and then plan litigation strategy. I'm also close to our teams at HQ in San Francisco. Often, you see patterns and are able to influence strategy that works for a variety of jurisdictions. We're also lucky to have some fantastic business colleagues who help us out with analytics, assessing probabilities and gaming scenarios out to aid decision making.

Any examples you can give?

If we look at Central and Eastern Europe three years ago, there was a lot of ambiguity in our regulatory situation. By adopting different strategies, from engagement with authorities, regulatory negotiation to proactive litigation, we stabilised the business in that region. But that is only because we approached it from a strategic view and planned the activities we needed to execute on. You're only able to do that if you look 12, 18, 24 months ahead and know if you don't peer round corners and take action, the business unintentionally ends up facing significant risks that could have been avoided.

If you were giving a tip to peers to head off litigation risks, what would it be?

Don't keep it all within legal. Work closely with the business. Stay closely across strategy and the changing dynamics. Have in-depth discussions about the type of risks on the horizon and then prioritise between those risks in how you tackle them, because the solutions often aren't just legal, they might be public policy or comms solutions, or we might be changing the way we operate. Make sure that's a conversation with the business rather than just a RAG analysis every so often kept within the legal team.

What are the broad trends you see in commercial litigation?

The big one developing is group actions, whether genuine class actions or pseudo-class actions. That seems to be a rapidly evolving area.

“Brexit is making counterparties think twice about agreeing to English law and jurisdiction.”

Predictions of class actions in Europe have been made before without much materialising. Is it different this time?

I am certainly seeing a move in that direction. When you look at some of the consumer laws that have come in the EU recently and the ability of group associations to bring actions on behalf of consumers, I would expect that to become much more lively in the years to come.

Will London retain its position for resolving disputes?

It will always be an attractive forum for resolving complex disputes, but we are already seeing that market become more competitive. Different countries are resourcing up to get that business away from London, which is fascinating. They have just built a brand-new court for commercial disputes here in Amsterdam and you can choose English as the language for the proceedings. That's competition!

Is that impressing you so far?

As a UK-qualified lawyer, I always like to be on home turf, but I have seen in the last 18 months in a variety of different contexts, whether a commercial dispute or negotiating M&A deals, where you've got two international counterparties, there is an increasing reluctance to use the UK as governing law for those agreements because of Brexit – especially where you've got one or more EU counterparties.

So English law has some questions over whether it can retain that cross-border lustre?

What a lot of international legal counterparties like when it comes to the English legal system is certainty and consistency. If that is under doubt for a period of time...well, it's already causing people to think twice about agreeing to English law and jurisdiction. That doesn't fill me with any joy at all, though through 2020, it was becoming more of a reality.

How much will Covid-19 drive disputes?

Around Covid, various companies have done well-meaning things to help out, like handing out free food or helping the NHS. Where they have gone wrong, we might see a long tail of litigation. Like with any downturn, there can be more willingness to look at litigation and I imagine there will be force majeure clauses tested and employment issues if people were made to keep working and got sick.

Will Brexit trigger much litigation?

It's broadly priced in. Where the uncertainty still lies on Brexit is the regulatory side. Bodies like the FCA have been good at providing as much certainty as possible, but there is still quite a bit of cross-border uncertainty. It wouldn't surprise me if that leads to litigation if it slows international trade or if counterparties try to get out of contracts due to heavier formalities and extra costs.

How much scope do you see for commercial disputes to be radically shaken up?

Go back 10 years and look at how litigation was conducted – especially around discovery – and it is now completely different. There must be scope for change in the next 10 years. One of the most interesting areas is how blockchain gets used in the contractual process and can it be used to reduce the scope for disputes. That will be very interesting over the next 10 to 15 years.

There's been so much hype around Blockchain – you see it as more substantive than that?

It could be. Whether it will be is an entirely different question, because blockchain will rely on relatively standard terms where positions are often heavily negotiated. To the extent they still need to be negotiated, lawyers will be needed.

Will there be a shift in how companies think about litigation and regulatory risk?

The big area is that it's no longer just about whether you are right on the law. You need to be seen doing the right thing. Taking a case which is controversial from a reputational point of view is no longer something that stays in the court room, especially for high-profile organisations. You always have to think about how it will play in the public consciousness and what your different stakeholders will think, whether regulators or users. One of the biggest things in the next 10 years will be the environmental and sustainability agenda. If people are litigating to keep dirty industries alive, that in the end is going to be a losing battle because everything points in the direction of sustainability and greater accountability for the planet we live on.

What is Uber's strategy for handling risk and disputes?

We always try to be intellectually honest. When I first arrived at Uber, there was this culture of fighting everything, whereas these days we exercise a lot more discretion and use litigation strategically where we can.

What should advisers be doing that you don't see now?

Really basic. Proactively manage us. Everyone is so busy – lots of GCs have cut the number of people in their teams over the last 12 months – so proactively managing us, whether on specific cases or more generally about risks on the horizon, that's where I find a good chunk of the value comes from, and some firms have done a terrific job.

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