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Liability in TNC (Uber/Lyft) sexual-assault cases

THE VENUE MATTERS IN THESE CASES AGAINST RIDESHARE COMPANIES

Thirteen years ago, people who approached complete strangers and requested rides in their private vehicles were considered "hitchhikers." This was widely perceived as dangerous and was also illegal in many jurisdictions. The more reasonable approach was to hire a taxi or a livery service, an industry that was subject to numerous laws and regulations that required – among other things – performance-based license requirements for drivers and mandatory liability insurance coverage for operators. Accordingly, if a taxi or limousine driver raped or sexually assaulted a passenger in their service, questions related to vicarious liability were clear. And perhaps not surprisingly, appellate decisions addressing this issue are scant.

But as we are all aware, beginning in 2012, two San Francisco-based companies – Lyft and Uber – began to offer mobile-phone app-based services that connected people seeking rides with *any* drivers willing to provide them, regardless of whether they were licensed by a taxi or livery service. To make this enterprise profitable, companies offering these services needed to change the public's perception of the risks associated with riding in a private vehicle operated by a non-professional driver. Accordingly, they began marketing their ride services by emphasizing that their brand name can be associated with "safety."

For example, Lyft advertises that it "monitors rides for unusual activity, like long stops or route deviations" and promises that, "If we notice anything off about your ride, we'll contact you to see if you need help." Lyft also publicly announces that, "Safety team members are always standing by, ready to help via phone or chat." Similarly, Uber assures would-be passengers that it provides the "safest rides on the road," "a ride you can trust," and a service that "ensures reliable access to safe rides."

In sum, both companies have attempted to convince the public that a ride with Uber or Lyft is not a ride with a stranger; it is a ride *with Uber or Lyft*, arranged and procured *by Uber or Lyft*, in cars operated by drivers vetted and approved by *Uber or Lyft*.

Thousands of claims filed claiming sexual assault

Notwithstanding these representations, *thousands* of women have filed claims that they have been sexually assaulted or raped by drivers purporting to work for Uber, Lyft, or another app-based transportation-network company ("TNC"). And because Uber and Lyft are based in California, our state and federal courts have issued dozens of opinions over the last five years, which attempt to divine the appropriate legal rules for determining whether the companies who provided the connection between the passenger and the driver can be

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vicariously liable for the drivers' intentional torts, and whether app-based transportation services can be the subject of a product-liability claim.

This article focuses primarily on Uber's business practices, because it has been the named defendant in several cases that address how existing precedent on California law should define (1) the scope of the duties that a TNC owes to its passengers; and (2) the extent to which a TNC can be financially responsible for rapes, sexual assaults, and other crimes and intentional torts committed by their drivers – and by people *posing* as their drivers. And although the goal of this article is to provide some guidance on how to plead and prove future claims against a TNC, our state and federal courts have reached *polar opposite* conclusions on how California law should apply to similarly situated plaintiffs.

Remedies available to rideshare passengers with *authorized* drivers

At the outset of this discussion, it is important to note that if Uber is the defendant, California's state and federal courts have coordinated all driver-on-passenger sexual assault cases.

- For cases that can be filed in state court, the Judicial Council coordinated all pending cases against Uber in San Francisco County Superior Court. (Case No. CDC-21-005188.) As of February 2025, the JCCP proceeding governs over 2,000 cases.
- For cases that can be filed (or removed to) federal court, the federal Judicial Panel on Multidistrict Litigation coordinated all cases into a proceeding before Judge Charles Breyer in the Northern District of California. (Case No. 3:23-MD-03084.) As of March 2025, this MDL proceeding governs more than 1,600 cases.

In the state JCCP proceeding, Judge Ethan Schulman concluded that – as a matter of law – Uber could *not* be vicariously liable for the intentional torts of any of its drivers under any theory of liability. He also sustained Uber's demurrers to the plaintiffs' causes of action for misrepresentation, fraud, intentional infliction of emotional distress, and strict products liability. The plaintiffs' causes of action against Uber for general negligence, negligence by misfeasance and nonfeasanace, and common-carrier negligence, remain pending.

In the federal MDL proceeding, by contrast, Judge Breyer concluded that the plaintiffs' common-carrier negligence claims *do* give rise to Uber's potential vicarious liability. (*In re Uber Technologies, Inc., Passenger Sexual Assault Litigation* (N.D. Cal. 2024) 745 F.Supp.3d 869.) Tacitly rejecting Judge Schulman's analysis, Judge Breyer's opinion focused on the fact that Uber did not contest the plaintiffs' allegation that it *is* a "common carrier."

This concession was important for two reasons. *First*, section 2100 of the Civil Code imposes a duty on common carriers to "use the utmost care and diligence for its passengers' safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill." *Second*, a 1952 decision from the California Supreme Court held that a common carrier's duties are *non-delegable*. Accordingly, Judge Breyer concluded that Uber "cannot avoid liability by claiming that discharge of its duty was somebody else's responsibility." And by doing so, he validated the plaintiff's strongest theory of liability when concluding, "When a driver assaults a passenger, there is no question that the driver has failed to discharge Uber's duties: instead of safely transporting the passenger, Uber's agent intentionally assaulted her."

Finally, Judge Breyer also departed from the state-court's conclusion that the plaintiffs could not – as a matter of law – seek relief from Uber for misrepresentation, fraud, or strict products liability. Although he cast some doubt on the viability of those theories, Judge Breyer granted the plaintiffs leave to amend their complaint.

Remedies available to rideshare passengers with unauthorized drivers

Again, the answer depends on whether you are filing suit in state or federal court.

State court

In *Jane Doe No. 1 v. Uber Technologies, Inc.* (2022) 79 Cal.App.4th 410, three women sued Uber after they were sexually assaulted by individuals *posing* as authorized Uber drivers. All three of the plaintiffs met a similar fate:

- They used the Uber app to arrange for a ride home after consuming alcohol at dance clubs in West Hollywood and downtown Los Angeles;
- Before the *authorized* Uber drivers arrived, *unauthorized* drivers in vehicles bearing Uber decals approached the plaintiffs and claimed to be driving the Uber they requested; and
- The driver then abducted and raped the plaintiffs.

The plaintiffs alleged that Uber was aware that dozens of other assailants used similar schemes to assault women throughout the United States and Canada since late 2014. They also noted that Uber's use of their mobile phones' GPS technology gave Uber unique knowledge of – and influence over – their pre-ride movements, which was sufficient to form the "special relationship" associated with "common carriers."

Finally, the plaintiffs cited Uber's advertisements that advertised its service as "a safe alternative to drinking and driving" and "a safe means of transportation for women," and argued that they created an implied contractual obligation to protect the plaintiffs while they were waiting for their driver. In sum, all of their allegations were based on Uber's breach of a duty to warn or protect them *from the danger that its business model created*.

Demurrer sustained

The trial court, however, concluded that these facts were not sufficient to state a cause of action for negligence or strict product liability and sustained Uber's demurrer. The Court of Appeal agreed. Although it acknowledged that common carriers *sometimes* owe duties to their passengers "for brief windows of time immediately before and/or after the passenger is in transit," it concluded that Uber passengers are more akin to those waiting in train stations or airports, to

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whom the carriers do not owe a heightened duty. The court also held that the facts that the plaintiffs alleged in the complaint about Uber's representations in its advertisements were "not sufficiently definite or explicit to constitute a specific promise that Uber would undertake a legal duty to protect them from third party misconduct."

Finally, the court concluded that Uber did not engage in any "misfeasance" through a business model that "lulled the plaintiffs into a false sense of security" through their marketing and concealment of prior sexual assaults. Because it determined that "the violence that harmed the plaintiffs – abduction and rape – is not a *necessary component* of the Uber business model," even if Uber could have foreseen that its passengers could be harmed by "fake driver scheme," the court of appeal held that Uber did not owe the plaintiffs a duty to protect them from it.

The California Supreme Court denied the plaintiffs' petition for review in August 2022. It also denied their motion to depublish the opinion.

Federal court

Less than a month after the California Supreme Court denied review of the *Jane Doe v. Uber* decision, a federal district court in San Francisco granted Uber's motion for summary judgment in a case involving a similarly situated plaintiff. And when it did so, it relied primarily on the *Jane Doe* opinion.

The Ninth Circuit, however, concluded that *Jane Doe* opinion had since been called into question by an even-more-recent decision from the California Supreme Court, *Doe v. Uber Technologies, Inc.* (9th Cir. 2024) 90 F.4th 946, 951, citing *Kuciemba v. Victory Woodworks, Inc.* (2023) 14 Cal.5th 993). Noting that "no other court has followed" the holding in *Jane Doe No. 1*, the Ninth Circuit asked the California Supreme Court whether the "necessary-component test" used in *Jane Doe* was still good law. The California Supreme Court, however, declined to answer the Ninth Circuit's certified question.

In August 2024, the Ninth Circuit issued an unsigned opinion in which it *reversed* the district court's summary judgment after concluding that "there is convincing evidence that the California Supreme Court would not follow *Jane Doe No. 1*." (The panel amended its opinion in January 2025 after the court denied en banc review. (*Doe v. Uber Technologies, Inc.* (9th Cir., Jan. 13, 2025, No. 22-16562) 2025 WL 80365).) Instead, the Ninth Circuit concluded that "the risk that an Uber rider may be kidnapped and sexually assaulted by a predator posing as an Uber driver...simply would not have existed without Uber's own conduct."

Specifically, it noted that the plaintiff provided evidence of four categories of Uber's "affirmative conduct" that increased her risk of harm:

- a novel business model that placed strangers together in a situation where one individual had control over the other's freedom;
- active encouragement of vulnerable users by Uber through marketing and the extension of novel services like Uber's remote-ordering capability;
- reliance by app users on Uber's promotion of safety and its decal, which it did not require terminated drivers to return; and
- previous incidents involving imposter drivers that had reached "crisis levels."

And because the panel concluded that, "Uber has access to more information about potential dangers facing its riders and a superior ability to implement appropriate safeguards," it concluded that public policy justifies a rule that allows Uber to be financially responsible for its negligence.

If you cannot file in federal court

Obviously, if your case is against Uber, you will be bound by the decisions in the pending coordinated proceeding. But with regard to claims against other TNCs, Judge Breyer's opinion in *In re Uber* and the Ninth Circuit's opinion in *Doe v. Uber* are required reading. Both provide a detailed discussion of recent and well-established precedent from the California Supreme Court and also cite decisions from other jurisdictions as persuasive authorities.

For cases against *authorized* driver-assailants in cases where Uber is not the defendant, Judge Schulman's order is obviously not binding. Nor should plaintiff's attorneys be discouraged from continuing to argue that it was wrongly decided. Although any complaint in this type of case will almost certainly be the subject of a demurrer that looks quite similar to the one that Uber filed in the JCCP court, the plaintiff's opposition papers should cite and discuss Judge Breyer's opinion – as well as the authorities cited within it.

The same is true with regard to cases against imposter driver-assailants. Although *Jane Doe No. 1* has not (as of the date of publication) been overruled, abrogated, or questioned by any other California state court of appeal, the defendants cannot ignore the Ninth Circuit's acknowledgment that the holding from a more recent California Supreme Court decision should apply instead. In the meantime, the Ninth Circuit's analysis in *Doe v. Uber* should serve as a plaintiff's template for the preservation of appellate arguments that could lead to *Jane Doe No. 1*'s reversal.

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