

# SJC: Uber's online contract failed to make clear to consumers what rights they were surrendering

By [John R. Ellement](#) Globe Staff, Updated January 4, 2021, 1:20 p.m.



JASON ALDEN/BLOOMBERG

An online Uber contract that “literally may require an individual user to sign his or her life away” cannot be used to force the ride-hailing giant’s customers into arbitration, the state’s highest court ruled Monday.

In an unanimous decision, the Supreme Judicial Court said Uber did not adequately notify customers who opened accounts what constitutional or contractual rights they were surrendering, although the company did so with online sign-ups for drivers.

“Uber cannot enforce the terms and conditions against the plaintiffs, including the arbitration agreement at issue here,” Justice Scott L. Kafker wrote.

Uber did not effectively steer customers toward contract language spelling out what privacy and contract rights they would retain or surrender, the court said.

Consumers routinely turn to lawyers when buying a house or setting up a business, but not when signing up for an Internet-based service like Uber. Yet the contractual language in both cases must be equally clear, the court said.

“The touchscreens of Internet contract law must reflect the touchstones of regular contract law,” the court concluded.

Uber did not meet that standard, the court held.

It is “by no means obvious that signing up via an app for ride services would be accompanied by the type of extensive terms and conditions present here,” the decision stated. “Indeed, certain of the terms and conditions may literally require an individual user to sign his or her life away, as Uber may not be liable if something happened to the user during one of the rides.”

An Uber spokeswoman, Alix Anfang, said the company modified its online application forms earlier this year in a way that complies with the court’s reasoning.

Anfang said the company believes the SJC decision addresses only the case at hand and will not have a widespread impact on Uber’s operations in Massachusetts.

The ruling arose from litigation in state and federal courts by Christopher P. Kauders, who tried to sue Uber after a driver refused three times in 2015 and 2016 to give him a ride with his guide dog.

Kauders and his family sued Uber in Superior Court, alleging discrimination. Uber pushed the case out of court — where a jury could decide if Kauders was a victim of discrimination and how much the company should pay in damages — and into arbitration, where narrow legal issues often guide decisions.

The arbitrator concluded that Kauders was discriminated against, but that Uber could not be held financially liable for the actions of the driver, a legally independent contractor. Kauders appealed and the case wound its way through state and federal courts over several years.

W. Paul Needham, a Boston lawyer who represents Kauders, said the ruling clears the way for his client to bring his case before a Superior Court jury in the near future.

For other consumers involved in litigation against Uber, especially those in arbitration with the company based on the online agreement they signed, Needham said the ruling could help their cause. But the legal issues are complex.

“What’s really at risk here is a Seventh Amendment right to a jury trial, and [the SJC] doesn’t like the idea of your waiving it all,” Needham said.

Online contracts that force customers to review the entire user agreement are legally acceptable, but the court ruled that the Uber contract did not so so.

“Uncertainty and confusion in this regard could have simply been avoided by requiring the terms and conditions to be reviewed and a user to agree,” the court said.

---

John R. Ellement can be reached at [john.ellement@globe.com](mailto:john.ellement@globe.com). Follow him on Twitter [@JREbosglobe](https://twitter.com/JREbosglobe).

[Show comments](#)

---

©2021 Boston Globe Media Partners, LLC