



SHENFIELD
& ASSOCIATES
Attorneys at Law

THE “NEW ECONOMY” LEGAL AND REGULATORY SUCCESS

Business Law Seminars and Lawyer Networks – Silicon Valley

Presented by:

Christopher Shenfield, Attorney

Shenfield & Associates

www.shenfieldlaw.com

Palo Alto – March 2, 2016

San Francisco – April 7, 2016

Disclaimer

This session is for educational purposes only.

What is discussed in this session does not constitute legal advice, nor does any client-attorney privilege or confidentiality attach regarding issues discussed, publicly or privately in relation to this session.

In other words, we're not your lawyers.

“New Economy” Companies

- Facilitate short-term rentals of real estate.
Examples: Airbnb (the poster child)
- Enable people to borrow cars or bikes from neighbors.
Examples: Relay Rides, Getaround, Liquid
- Provide taxi and ride sharing services
Examples: Uber, Lyft, Side Car
- Mobile marketplaces to hire people to do jobs and tasks.
Examples: Task Rabbit, Zaarly
- Miscellaneous services, from loaning & borrowing to laundry services
Examples: Lending Club, Washio, Prosper Marketplace, Zen 99

Picturing the “Sharing” Economy

Picturing the sharing economy according to its phenomena and practices:

- Cohousing communities
- Community gardens
- Social enterprise
- Community-owned agriculture
- Shared commercial kitchens
- Creative commons licensing
- Car sharing groups
- Childcare cooperatives
- Renewable energy cooperatives
- Tool lending libraries
- Coworking spaces
- Collaborative consumption
- Grocery cooperatives
- Worker cooperatives
- Community-owned enterprises
- Community-supported kitchens
- Credit unions
- Community land trusts
- Housing cooperatives
- Local currencies
- Barter networks
- Time banks
- Gift economies
- Ecovillages

The “New Economy” Key Characteristics

- “Sharing Economy” business model
 - ✓ Digital platforms bring together customers and providers or goods/services for a fee
 - ✓ Peer-to-Peer (“P2P”) review and/or Ebay-style ratings systems
- Information as the prime object of economic transactions.
- Rapid technological change & fluid transactional relationships

Safeguarding Valuable Information

Old vs. New Economy

➤ Old (managerial) Economy

Patent & copyright → Markets in Information

➤ New (P2P) Economy

Secrecy, trust, → Process-related || difficult to capture

trade secret, tort → Managed relationally

→ Secrecy, trust, trade secret, tort

Regulatory Uncertainty in the New Economy



SHENFIELD
& ASSOCIATES
Attorneys at Law

- **Disrupted Players** – Incumbents & Governments
- **Taxes** - What's taxable? Who does the taxing? How to collect efficiently?
- **Insurance & Risk Management** – Group vs. individual insurance. Control costs of insurance coverage. Scope of coverage and risk.
- **Health & Safety, etc.** - Transportation licensing, food safety, childcare center licensing, hotel industry regulations, OSHA, etc.
- **Land Use/Environmental** – Adequately enforce zoning, landlord/tenant, building codes, and environmental laws.
- **Labor and Employment** - “Gig” Economy; Independent contractor vs employee; Benefits; Overtime; Disability; Discrimination; Fair pay; Equal pay; Unionization.

New Economy Taxation Issues

- *S.F. Admin. Code § 41.A.5. (g) (2/1/15)* “Short-term residential rental” exception to unlawful conversion law to accommodate Airbnb landlords. Requires registration & collection of City’s occupancy taxes.
- *IRS Regulations & Tax Court Rulings: Hobby v. Business. Donation vs. Barter v. Sample vs Sold*
- *Legalities and Taxation of Exchange: What constitutes taxable income?*
- *Preferential Tax Issues: Should shared transport options be given preferential tax treatment or placement and, if so, how should these benefits be quantified and adjusted over time?*

New Economy Insurance & Risk Issues

- ***Ratings & Verification Systems:*** In 2011 Airbnb suffered a rash of bad publicity when a host found her apt. trashed and valuables stolen after a rental. Airbnb eventually agreed to cover her expenses, and added a \$50,000 guarantee for hosts against property and furniture damage, increased to \$1m in May 2012 (Lloyd's).
- ***Jurisdiction:*** *Flywheel v. Ca. Pub. Utilities Comm'n* (USDC ND CA) Cab company sues PUC over jurisdiction of transportation network companies (TNC), arguing TNC's are *de facto* taxi services that should be regulated by cities and counties.
- ***Insurance Economics:*** Can new economy companies obtain group insurance at economical rates?
- ***Liability:*** E.g., is the driver-car-owner's insurer liable in case of accident?

Example of “New Economy” Auto Insurance Policy Exclusion

EXCLUSIONS

Part V – CAR DAMAGE, EXCLUSIONS.

Exclusion (1) is deleted and replaced by the following:

(1) to **your insured car** while used:

(a) to carry persons or property for compensation or a fee, including but not limited to the delivery of food or any other products; or

(b) while being used for **ride-sharing**

This exclusion does not apply to **shared-expense car pools**. This exclusion also does not apply if **you** are acting as an unpaid volunteer for a non-profit charitable organization or government agency even if **you** are reimbursed for **your** expenses.

The following Exclusion (10) is added:

(10) to **your insured car** while leased or rented to others, including while used in a **personal vehicle sharing program**.

The following Exclusion (11) is added:

(11) to a vehicle not owned by **you** or a **relative** in connection with a **personal vehicle sharing program**.

New Economy Case Law

Health & Safety

- ***Transportation Licensing***
 - Can ride-sharing companies avoid the licensing requirements already imposed on taxi and limo drivers?
 - How can governments protect the public from unsafe, unreliable or untrustworthy drivers?
- ***Commercial vs. Non-Commercial.*** How do health and safety regulations apply to activities that are not clearly commercial? Examples:
 - food swapping events
 - community gardens
 - babysitting cooperatives,
 - energy cooperatives?

New Economy Land Use

- **Zoning:** How to apply current zoning restrictions to new economy transactions?
- **Contractual Restrictions:** *Chen v. Kraft*, BV 031047 (Ca. Ct. App. LA 1/13/16): Tenant can't rent apt through AirBnb in Los Angeles County. Zoning laws trump lease clause.
- **Public policy:** To promote resource-efficient, livable cities, what is the appropriate role of government in regulating car-sharing spaces? Parking spaces?

New Economy Employment & Labor

- *Uber Technologies v. Berwick*, CGC-15-546378 (Sup Ct SF 6/16/15): Held Uber driver employee, not independent contractor. Uber to reimburse work expenses.
- *O'Conner v. Uber Technologies*, C-13-3826 EMC (USDC ND CA): Class action for misclassification of Uber drivers as independent contractors.
- *Zenelaj v. HandyBook, Inc.* 3:14-cv-05449 (USDC SD CA) (case pending)
- *Cotter v. Lyft* 3:13-cv-04065 (USDC, ND CA) (1/26/16 settlement \$12.2 million plus provisions making it harder to terminate drivers).
- *Search v. Uber Technologies*, 15-257 (DDC 2015) denied Uber's motion to dismiss lawsuit--filed by consumer attacked by knife-wielding Uber driver--alleging negligent training, hiring, & supervision; *respondeat superior*; violation consumer protection act.

What to do? The Legal Path Forward

- **Passive Platform vs Content & Services Providing.**
- **Get out of the gray, if you can.**
- **Agree.** Spell out expectations, memorialize commitments, assumption of risk
- **Cooperatives (Subchapter T?):** Put customers in control of the company.
- **Seek regulatory exemption, revision or redrafting.**



SHENFIELD
& ASSOCIATES
Attorneys at Law

Providing solutions
that deliver results

Questions?

Please contact us any time with additional questions.

Christopher Shenfield, Attorney at Law
SHENFIELD & ASSOCIATES
533 Airport Blvd, Suite 400
Burlingame, CA 94010
650.373.2054 • chris@shenfieldlaw.com
www.shenfieldlaw.com