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# K-Notes: Arbitration Clauses in Terms of Use

from Uber

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## Reasonability vs Legalese

Drafters can create functional documents by balancing the need for user-friendly terms and a comprehensive document that doesn't miss the details. Look for legalese that isn't reasonable, while still including necessary legal terms.

"The whole point of the location procedure was to avoid arguments that would be prohibitive. Uber will not drag you to California because they acknowledge how burdensome the arbitration experience is in terms of enforceability."



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## KEY TAKEAWAYS

- **Draft User Friendly Terms**

Avoid an argument that would be too prohibitive to arbitrate the case. For instance, allow arbitration over remote technology and avoid requiring the signee to travel to a different state. Courts may rule against arbitration if it's practicality makes no sense.

- **Make the Arbitration Clause Enforceable**

Don't write your terms of use for the state you're in. If you're involved in multi or interstate commerce, for example, if you're in Texas, which is less consumer-friendly than Massachusetts, the most consumer-friendly state in America – recognize that.

- **Ensure Users Agree to the Terms**

Even though it's may seem ridiculous to add an "I agree" button, it suddenly means a person will read every single word in the terms of use. Just keep in mind that the little and technical things included in the app will help you succeed and overcome some of these challenges in the future.

- **Have Users Agree to Pay Filing Fees**

Uber did well to require the person filing the case to pay all of the filing fees. It is a deterrent to the user, especially if they are unfamiliar with arbitration and are unaware of how expensive it can be.

"It's a good practice for both the company and the consumer to use arbitration because you know what you're getting upfront."