

# Supreme Court Rules That Judges—Not Arbitrators—Must Resolve Disputes Where Various Agreements May Govern a Particular Dispute and Those Agreements Conflict on the Forum for Deciding Arbitrability

BY ALEJANDRO E. MORENO & TORI D. KUTZNER

In [23-3 \*Coinbase, Inc. v. Suski\* \(05/23/2024\)](#) ([supremecourt.gov](#)) (May 23, 2024), the U.S. Supreme Court once again delved into the frequently litigated arena of arbitration agreements. Specifically, the Court considered whether the [Federal Arbitration Act](#) (“FAA”) empowers courts or arbitrators to decide which contract controls when (1) parties have executed multiple contracts, and (2) at least one contract contains an arbitration agreement delegating the threshold issue of arbitrability to an arbitrator while another sends arbitrability disputes to the courts. Guided by “basic principles of contract” law, the Court unanimously held that courts—*not* arbitrators—must decide which contract governs the parties’ dispute.

The case involved a dispute between Coinbase, the operator of a cryptocurrency exchange platform, and users of the platform. The parties had executed two contracts potentially governing their dispute. The first, a broad user agreement, contained an arbitration provision with a delegation clause requiring an arbitrator to decide all disputes arising from their contract, including whether a given dispute was arbitrable. The second, an agreement regarding official rules governing a sweepstakes offered by Coinbase and entered into by users, contained a forum selection clause requiring all disputes related to the contract to be decided in California courts.

After the sweepstakes, sweepstake entrants filed a class action complaint in

federal court, alleging the sweepstakes violated California consumer protection and false advertising laws. The parties disagreed regarding whether the forum selection clause in the “official rules” superseded the arbitration provision in the user agreement.

Coinbase moved to compel arbitration pursuant to the arbitration agreement in the user agreement. The [United States District Court for the Northern District of California](#), agreeing with respondents, denied Coinbase’s motion, and the [United States Court of Appeals for the Ninth Circuit](#) affirmed. The Supreme Court granted certiorari to decide who—judge or arbitrator—should decide whether a subsequent contract supersedes an earlier arbitration agreement containing a delegation clause.

In a 9-0 opinion delivered by Justice Jackson, the Supreme Court held that when parties have multiple agreements that conflict on the question of *who* decides arbitrability, the court must decide which contract applies. This issue does not go to the arbitrator in the first instance unless the parties expressly agree otherwise.

The Supreme Court rejected Coinbase’s arguments for reversing the Ninth Circuit. First, Coinbase invoked the severability principle, under which the arbitrator considers a contract’s validity in the first instance *unless* the party opposing arbitration specifically challenges *only* the arbitration or delegation clause itself. The Supreme Court found this principle satisfied because the plaintiffs challenged both the

contract as a whole and the arbitration agreement specifically, which required the Court to address arbitrability.

Coinbase also argued that the Supreme Court’s decision would invite chaos by facilitating challenges to delegation clauses in arbitration agreements. The Supreme Court disagreed, emphasizing that in cases where parties have agreed to only one contract containing an arbitration agreement with a delegation clause, courts must continue to send all arbitrability disputes to the arbitrator absent a successful challenge to the enforceability of the delegation provision itself.

The Supreme Court emphasized that its decision only impacts parties who have entered into multiple agreements with conflicting provisions regarding the forum for deciding arbitrability. Nevertheless, in a world where the contractual relationships between companies and their customers are increasingly governed by numerous agreements, companies should ensure their agreements are in harmony with respect to the forum – court or arbitration – for deciding arbitrability. If businesses fail to harmonize their consumer contracts, the new default rule under *Coinbase* will apply and a court will decide which contract governs in the first instance.

---

This article was originally published in Sheppard Mullin’s Class Action Defense Strategy Blog.