

SCOTUS Designates Dueling Delegation Decision to Courts

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SCOTUS has once again clarified a court's power to compel arbitration, this time in the context of conflicting delegation clauses. In doing so, the Court aptly acknowledged its standing tri-layered analysis of arbitral consent, noting, "[i]n prior cases, we have addressed three layers of arbitration disputes: (1) merits, (2) arbitrability, and (3) who decides arbitrability. This case involves a fourth: What happens if parties have multiple agreements that conflict as to the third-order question of who decides arbitrability?"^[1]

Justice Ketanji Brown Jackson's May 23, 2024 decision in *Coinbase, Inc. v. Suski* answered that where parties have agreed to two contracts with two conflicting delegation clauses — one that sends arbitrability disputes to arbitration, and the other that sends arbitrability disputes to the courts — the question of which contract governs is for the court to decide.

The *Coinbase* decision stems from a class action lawsuit brought against Coinbase by users of the cryptocurrency platform. Upon joining the platform, users first consented to an arbitration agreement containing a delegation clause that provided an arbitrator, not the court, the jurisdiction to decide whether an issue was arbitrable under the contract. In several instances, those same users then entered a second contract for a sweepstakes promotion that provided dispute resolution jurisdiction to California courts. After the users initiated the case in federal court, Coinbase moved to arbitrate the class action lawsuit, arguing that the initial contract required an arbitrator to determine arbitrability for all disputes. The users contended that the sweepstakes rules' forum selection clause superseded this agreement, sending the arbitrability determination to a California court.

The Court resolved the question of whether a court or an arbitrator should determine arbitrability in favor of basic contract principles, observing that "[a]rbitration is a matter of contract and consent, and we have long held that disputes are subject to arbitration if, and only if, the parties actually agreed to arbitrate those disputes."^[2] In that vein, the Court held that determining whether a subsequent contract supersedes a prior contract presents a question of whether the parties consented to arbitration, a gateway question SCOTUS has already confirmed must be left to the courts.^[3] See *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 71 (2010).

While this ruling does not represent an unexpected extension of the court's power to determine gateway issues, it serves as a warning to those employing multiple delegation clauses across multiple contracts: parties must ensure their delegation clauses match, or risk the question of arbitrability being decided by the court.^[4]

[1] *Coinbase, Inc. v. Suski*, 23-3, slip op. at 5 (2024).

[2] *Id.* at 1.

[3] See Frank H. Griffin IV, Matthew H. Adler & R. Zachary Torres-Fowler, *Kavanaugh's First Opinion: In Arbitration Agreements, Delegation Means Delegation*, Troutman Pepper Insights (Jan. 11, 2019).

[4] See Robert A. Gallagher, Stephen W. Kiefer & Jane Fox Lehman, *Do You Know Who Will Decide Whether Your Next Dispute is Subject to Arbitration?*, Troutman Pepper Insights (Mar. 22, 2018).

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