

# U.S. Supreme Court Rules That Judges, Not Arbitrators, Decide If A Dispute Is Arbitrable When Multiple Agreements Conflict On The Question

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On May 23, 2024, the United States Supreme Court unanimously held in *Coinbase, Inc. v. Suski* that where there are two competing contracts – one requiring the arbitration of disputes (including the arbitrator deciding whether a dispute is arbitrable), and the other designating a court to resolve any disputes – it is for the court, not the arbitrators, to decide whether the dispute is to be heard by a court or in arbitration.<sup>1</sup>

In so holding, the Supreme Court relied on its precedent and traditional contract principles, but recognized that this case presented a new category of arbitration disputes relating to the question of “who decides” issues of arbitrability when there are multiple conflicting contracts. The Supreme Court held that the court, not the arbitrators, must make that determination in the first instance, because it goes to the fundamental question of whether the parties agreed to arbitrate a dispute at all.

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<sup>1</sup> See generally *Coinbase, Inc. v. Suski*, 602 U.S. \_\_\_\_ (2024).  
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## Background

This case arose out of a dispute between Coinbase, Inc. (“Coinbase”), which operates a digital asset trading platform, and its users. When the users created their Coinbase accounts, they agreed to a User Agreement containing an arbitration agreement with a so-called “delegation clause,” *i.e.*, a provision requiring that an arbitrator decide all disputes, including the question of whether a given dispute is itself arbitrable.<sup>2</sup> Certain users later participated in a sweepstakes that Coinbase launched for the chance to win the digital asset Dogecoin; the Official Rules for the sweepstakes contained a forum selection clause stating that “[t]he California courts (state and federal) shall have sole jurisdiction of any controversies regarding the [sweepstakes].”<sup>3</sup>

After users filed a putative class action against Coinbase on behalf of sweepstakes participants in the U.S. District Court for the Northern District of California alleging violations of California state law, Coinbase moved to compel arbitration based on the User Agreement.<sup>4</sup> The district court denied the motion to compel, finding that “the User Agreement’s arbitration provision conflicted with the forum selection clause in the Official Rules; and that, under California contract law, the Official Rules superseded the User Agreement.”<sup>5</sup> The United States Court of Appeals for the Ninth Circuit affirmed.<sup>6</sup>

Coinbase filed a *certiorari* petition, which the Supreme Court granted “to answer the question of who—a judge or an arbitrator—should decide whether a subsequent contract supersedes an earlier arbitration agreement that contains a delegation clause.”<sup>7</sup>

<sup>2</sup> *Id.* at \*2.

<sup>3</sup> *Id.* at \*2-3.

<sup>4</sup> *Id.* at \*3.

<sup>5</sup> *Id.* at \*3.

<sup>6</sup> *See generally Suski v. Coinbase, Inc.*, 55 F.4th 1227 (9th Cir. 2022).

<sup>7</sup> *Coinbase*, 602 U.S. \_\_\_\_ at \*3.

<sup>8</sup> Justice Neil Gorsuch authored a concurring opinion.

<sup>9</sup> *Id.* at \*1-2.

## The Supreme Court’s Decision

In a unanimous opinion written by Justice Ketanji Brown Jackson,<sup>8</sup> the Court relied on “[b]asic legal principles” to hold that, where there are two contracts – one with a forum selection clause opting for disputes to be resolved in court and another with an arbitration provision delegating questions of arbitrability to the arbitrator – “a court needs to decide what the parties have agreed to—*i.e.*, which contract controls.”<sup>9</sup>

Looking to the text of the Federal Arbitration Act and the Court’s past precedent holding that “[a]rbitration is strictly a matter of consent,”<sup>10</sup> the Court concluded that that “arbitration agreements are simply contracts,” and therefore, “the first question in any arbitration dispute must be: What have these parties agreed to?”<sup>11</sup>

The Court explained that parties can agree to arbitrate different types of disputes, including (1) disputes over “the merits of the dispute,” “the resolution of which depends on the applicable law and relevant facts;” (2) disputes over “whether [the parties] agreed to arbitrate the merits,” *i.e.*, arbitrability; and (3) disputes regarding “who should have the primary power to decide the second matter,” *i.e.*, who decides arbitrability.<sup>12</sup> The Court found that this case did not fall into any of these “three layer[s] of arbitration disputes,” and instead involved a fourth type of dispute, raising the question of: “What happens if parties have multiple agreements that conflict as to the third-order question of who decides arbitrability?”<sup>13</sup>

Turning to “traditional contract principles,” the Court distilled the dispute to the matter of whether “there is an agreement to arbitrate” in the first place.<sup>14</sup> From there, the Court readily concluded – noting that “Coinbase seems to concede this point” – that where there was “a conflict between the delegation clause in

<sup>10</sup> *Id.* at \*4 (citing *Lamps Plus, Inc. v. Varela*, 587 U.S. 176, 184 (2019)).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at \*5.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at \*5-6 (citing *Field Intelligence Inc. v. Xylem Dewatering Solutions Inc.*, 49 F.4th 351, 356 (9th Cir. 2022)).

the first contract and forum selection clause in the second,” the court “must” determine “whether the parties agreed to send the given dispute to arbitration,” as “per usual.”<sup>15</sup>

The Court did not credit Coinbase’s argument that the so-called “severability principle” should have applied to limit the Ninth Circuit’s consideration of the User Agreement’s delegation clause, finding that because “[a]rbitration and delegation agreements are simply contracts,” “if a party says that a contract is invalid, the court must address that argument before deciding the merits of the dispute.”<sup>16</sup> The Court similarly “declined to consider auxiliary questions about whether the Ninth Circuit properly applied state law,” and rejected the argument that the Court’s “approach will invite chaos by facilitating challenges to delegation clauses.”<sup>17</sup> Instead, the Court distinguished between the situation where the “parties have agreed to only one contract” that contains an arbitration agreement with a delegation clause, which (absent a successful challenge to the delegation provision) will be sent to the arbitrators to resolve any arbitrability disputes, and the situation “where, as here, parties have agreed to *two* contracts—one sending arbitrability disputes to arbitration, and the other explicitly or implicitly sending arbitrability disputes to the courts.”<sup>18</sup> In this latter situation, the Court confirmed that “a court must decide which contract governs.”<sup>19</sup> The Court found that to hold otherwise would “impermissibly” elevate a delegation clause in an arbitration agreement over other forms of contract.<sup>20</sup>

## Practical Impact

*Coinbase v. Suski* is the Supreme Court’s second arbitration decision involving Coinbase. But where

the first decision, *Coinbase, Inc. v. Bielski*, found that court proceedings must be paused to allow a party claiming a right to arbitrate the ability to pursue that right fully without having to litigate its dispute in parallel,<sup>21</sup> the *Coinbase v. Suski* decision reflects that in certain situations, resort to the court may be inevitable if there are two or more contracts with conflicting dispute resolution provisions. As a result, while the Court dismissed the concern that there will be an increase in “challenges to delegation clauses” in the aftermath of its decision,<sup>22</sup> courts will be increasingly called upon to decide disputes between parties with multiple contracts that contain conflicting dispute resolution clauses.

The decision in *Coinbase v. Suski* reinforces the Court’s precedent that arbitration, as a matter of consent, cannot be imposed on parties who have not agreed to arbitrate their disputes, and that courts “may not devise novel rules to favor arbitration over litigation.”<sup>23</sup> Accordingly, where an entity uses umbrella-type agreements with broad arbitration provisions, it should also be mindful of later-issued contracts that might undercut the choice for arbitration.

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<sup>15</sup> *Id.* at \*6.

<sup>16</sup> *Id.* at \*7.

<sup>17</sup> *Id.* at \*8.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* (citing *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 67 (2010)).

<sup>21</sup> See Cleary Gottlieb Alert Memorandum, *U.S. Supreme Court Rules That An Appeal Of An Order Denying A Motion*

*To Compel Arbitration Automatically Stays District Court Proceedings*, dated June 29, 2023, available at <https://www.clearygottlieb.com/news-and-insights/publication-listing/us-supreme-court-rules-that-an-appeal-of-an-order-denying-a-motion-to-compel-arbitration-automatically-stays-district-court-proceedings>.

<sup>22</sup> *Coinbase*, 602 U.S. \_\_\_ at \*8.

<sup>23</sup> *Morgan v. Sundance, Inc.*, 596 U.S. 411, 412 (2022).