

WEIL'S SCOTUS TERM IN REVIEW

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Supreme Court Holds that Courts—Not Arbitrators—Decide Which Conflicting Contract Controls Arbitrability

By Mark A. Perry, Zack Tripp, Josh Wesneski, and Luke Sullivan

Today, in *Coinbase, Inc. v. Suski*, the Supreme Court unanimously held that when there are two conflicting contracts—one that requires a court to address a question of arbitrability and another that requires an arbitrator to address that question—a court must decide which contract controls.

The Federal Arbitration Act requires courts to send to arbitrators any dispute covered by a valid contractual agreement to arbitrate. Depending on the scope of the arbitration clause, this can include not only the ultimate merits dispute on a relevant claim, but also threshold questions of “arbitrability”—that is, whether a claim is “arbitrable” because it is covered by an arbitration clause and, relatedly, a “third-order question” of whether a court or arbitrator decides this gating question of arbitrability.

The Supreme Court in *Suski* addressed a fourth-order arbitration question: “What happens if parties have multiple agreements that conflict as to the third-order question of who decides arbitrability?” In an opinion written by Justice Jackson, the Court turned to “basic legal principles” to answer this question. The Federal Arbitration Act’s fundamental principle, Justice Jackson explained, is that “arbitration is a matter of contract and consent.” As a result, courts can send disputes to arbitration if—and only if—the parties actually agreed to arbitrate those disputes. When parties are bound by two contracts that conflict with respect to who decides arbitrability, the question of which contract governs, at core, turns on “whether the parties agreed to send the given dispute to arbitration.” That threshold question of consent, the Court held, “must be answered by a court.”

Justice Gorsuch authored a short concurrence. He emphasized that the Court affirmed only the Ninth Circuit’s “bottom-line conclusion” and did not “endorse the reasoning in the Ninth Circuit’s opinion,” which was more convoluted and depended on which conflicting contract controlled as a matter of state contract law. The Supreme Court’s analysis, by contrast, is straightforward: The court decides.

The Supreme Court thus has now resolved that courts (not arbitrators) resolve conflicts between dispute resolution provisions in two contracts. But one

practical takeaway is that businesses that have multiple contracts with the same counterparties should ensure their contracts are consistent with respect to the arbitrability of any disputes. As this case shows, inconsistency between contracts on the question of

arbitrability can result in protracted litigation on threshold procedural issues—thwarting arbitration's core goal of providing a streamlined, expeditious alternative to traditional litigation. Maintaining consistency up front thus can avoid costly back-end distractions.

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Practice Co-Heads:

[Mark A. Perry](#)
Appeals & Strategic Counseling
Washington, D.C.
+1 202 682 7511
mark.perry@weil.com

[Greg Silbert](#)
Appeals & Strategic Counseling
New York
+1 212 310 8846
gregory.silbert@weil.com

[Zack Tripp](#)
Appeals & Strategic Counseling
Washington, D.C.
+1 202 682 7220
zack.tripp@weil.com

Authors:

[Mark A. Perry](#)
Appeals & Strategic Counseling
Washington, D.C.
+1 202 682 7511
mark.perry@weil.com

[Zack Tripp](#)
Appeals & Strategic Counseling
Washington, D.C.
+1 202 682 7220
zack.tripp@weil.com

[Josh Wesneski](#)
Appeals & Strategic Counseling
Washington, D.C.
+1 202 682 7248
joshua.wesneski@weil.com

[Luke Sullivan](#)
Appeals & Strategic Counseling
Washington, D.C.
+1 202 682 7006
luke.sullivan@weil.com

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