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PART 2 OF 3 – UNDERSTANDING THE SUPREME COURT'S LATEST DECISIONS ON THE FEDERAL ARBITRATION ACT

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The Federal Arbitration Act ("FAA") reflects the fundamental principle that arbitration is a matter of contract. This second article of three continues to provide insights and updates concerning three decisions issued by the U.S. Supreme Court between April 12 and May 23, 2024 interpreting the FAA. Each of these decisions will have short- and long-term ramifications for arbitration proceedings under the FAA.

This second article discusses the U.S. Supreme Court's decision in Coinbase, Inc. v. Suski, 144 S. Ct. 1186 (2024). In Coinbase, the Supreme Court allocated to the judicial system—rather than arbitral tribunals—the obligation to determine which of successive contracts governs the dispute resolution process.

Coinbase, Inc. v. Suski

On May 23, 2024, Justice Jackson delivered the Supreme Court's unanimous decision in Coinbase which involved putative class action allegations. The Supreme Court considered the question of arbitrability—whether a case is subject to arbitration—in the face of successive contracts which conflicted as to how disputes should be resolved. The first contract included an arbitration provision with a delegation clause giving the arbitrator sole authority to determine arbitrability over all disputes. The second contact contained a forum selection clause requiring resolution of disputes in a court.

The Supreme Court relied on the fact that the FAA "reflects the fundamental principle that arbitration is a matter of contract." Surprisingly, the Supreme Court's decision never mentions any of the typical maxims governing arbitration matters espoused in its previous decisions, including: (1) the strong federal policy in favor of enforcing arbitration agreements, (2) the strong presumption of arbitrability where arbitration provisions exist, or (3) any doubts concerning the scope of arbitrable issues being resolved in favor of arbitration.

Instead, the Supreme Court emphasized that "arbitration is strictly a matter of consent." It explained there are three layers (or orders) of arbitration disputes previously recognized: (1) merits, (2) arbitrability, and (3) who decides arbitrability. Coinbase, with successive conflicting contracts, presented a fourth-order dispute, namely who decides the arbitrability issue "if parties have multiple agreements that conflict as to the third-order question of who decides arbitrability."

The Supreme Court dismissed arguments that the delegation clause from the first agreement (containing arbitration provisions) could be severed from the remainder of that contract and serve as a basis for requiring arbitration to determine the threshold issue of arbitrability pursuant to Rent-A-Center, Prima Paint, and Buckeye Check Cashing's severability rule.[1] In the Court's opinion, the conflict between the two successive contracts represented a challenge to the entire agreement containing the arbitration and delegation provisions. Accordingly, under "basic principles of contract," a "'court **must** consider th[at] challenge before ordering compliance with [an] arbitration agreement.'"

The Supreme Court ultimately concluded a court, not an arbitrator, must decide whether the parties' first contract was superseded by their second contract. In reaching this conclusion, the Supreme Court made it abundantly clear courts making that decision must do so under generally applicable contact principles.

Coinbase's Impact

Coinbase's impact is several-fold. **First**, it reminds parties drafting and entering into successive contracts to either keep their dispute resolution and forum selection provisions consistent, or clearly and unmistakably identify their mutual intent related to which provisions take priority in the event of a conflict. This is a particular concern for parties wishing to avoid putative class actions.

Second, the Coinbase decision will increase litigation—at least in the short term—about whether a subsequent contract's exclusive forum selection clause supersedes the prior contract's arbitration clause. Litigants will test the scope and limits of the Coinbase holding. Traditional maxims favoring resolution of disputes through arbitration will carry less weight as courts rely, instead, on generally applicable contract principles.

Third, consumer advocate groups will take solace in the fact that disputes with consumers that are subject to the Coinbase holding will no longer be presumed subject to arbitration but will be reviewed by courts to make an initial determination (based on state contract principles) whether those disputes will remain in court or proceed to arbitration.

Fourth, the Coinbase decision further demonstrates this year's Supreme Court's trend in FAA decisions to enlarge the importance of courts' roles in cases that traditionally were viewed as controlled by the FAA's deference to arbitration.

In this case involving successive contracts with conflicting dispute resolution procedures, the Supreme Court held that **courts** would decide the issue of which contract's dispute resolution procedures would be followed. In rendering this decision, the Court ignored several well-established maxims favoring arbitration and refused to invoke established principles of severance to apply the delegation clause that otherwise arguably required issues of arbitrability to be determined in the first instance by an arbitrator.

This follows the Supreme Court's May 16, 2024 decision in Smith v. Spizzirri (discussed in our earlier article) clarifying that a stay generally applies when all claims in a case are referrable to arbitration based on the Court's belief that the "FAA envisions [a "supervisory role"] for the courts."

The Coinbase decision can also be viewed as part of a broader trend to allocate more decision-making authority to the judicial system and away from other decision-making and regulatory bodies. See Loper-Bright Enters. v. Raimondo, 144 S. Ct. 2244 (2024) (ending Chevron agency deference) and Sec. and Exch. Comm'n v. Jarkesy, 144 S. Ct. 2117 (2024) (finding targets of agency actions seeking civil penalties are entitled to a jury, rather than an internal SEC, adjudication).

This trend of enlarging the court's traditional role in claims historically subject to arbitration under the FAA will be further explored in our next article discussing the Supreme Court's April 12, 2024, decision in Bissonnette v. LePage Bakeries. The Bissonnette decision arguably enlarges the scope of the FAA's **exemption** from coverage to include "transportation workers" employed by businesses and industries not typically viewed as employing "transportation workers."

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[1] See Rent-A-Ctr., W., Inc. v. Jackson, 561 U.S. 63, 68-71 (2010); Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 444-46 (2006); Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 402-04 (1967).