

## What is Arbitration? A Delaware Federal Court Poses the Primordial Question

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In August 2012, a Delaware federal court struck down as unconstitutional the Delaware Chancery Court's much-anticipated new arbitration procedure, which allowed Chancery Court judges and masters to serve as arbitrators in cases where parties so chose. The Chancery Court's arbitration rules provided, inter alia, for confidentiality, which was challenged on First Amendment grounds. The federal district court concluded, in a decision now on appeal to the Third Circuit, that the arbitration procedure did not constitute "arbitration" but rather essentially a civil trial by another name, and therefore that it violated the First Amendment guarantee of public access to civil trials. The court examined at some length the meaning of "arbitration" and how it differs from litigation to arrive upon its ruling. Simpson Thacher Litigation Partner Tyler Robinson's article, entitled "What is Arbitration? A Delaware federal court poses the primordial question," takes an inquisitive and critical look at the court's reasoning and its implications for international arbitration.

The article is available to IBA members on the Arbitration Committee's website, [here](#).

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