



HKI Arb Webinar:

Introduction to Sports Arbitration

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Presenter



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- Benny Lo is an independent barrister and international arbitrator based in Hong Kong. He focuses on civil, commercial, company and intellectual property dispute resolution and advises and represents clients in litigation and international arbitration matters.
- Apart from acting as an advocate, Dr Lo also regularly sits as an arbitrator. He is an HKIAC, SIAC, CIETAC, BAC, SHIAC, SCIA, KCAB, AIAC, WIPO and FIBA (BAT) arbitrator and has received over 95 arbitral appointments to date. These include acting as the investor-appointed arbitrator in *Jin Hae Seo v The Republic of Korea* (<https://www.italaw.com/cases/7470>), a property expropriation dispute brought under the US-Korea Free Trade Agreement. Further, Dr. Lo is one of the 9 arbitrators appointed to the Basketball Arbitral Tribunal, set up under the statutes of FIBA in Geneva, Switzerland.
- Dr Lo is also active in public service. Since 2017, he has been appointed by the Chief Justice of Hong Kong to sit as a deputy judicial officer. He is fluent in English and Chinese and conducts litigation and arbitration proceedings regularly in both languages.

Structure of Presentation



What is Sports Arbitration?



Sports Arbitral Institutions



Sports Arbitrations vs. Commercial Arbitrations



Awards & Enforcement of Sports Arbitration Decision



Sports Arbitration in China & Hong Kong

A. What is sports arbitration?

- “The **resolution of sports disputes through arbitration** (rather than litigation) as a form of alternative dispute resolution”
- **Common topics for disputes**

(1) Sports Regulatory Issues

- Selection
- (Dis)qualification
- Transfer
- Doping
- Other integrity issues

(2) Commercial Matters

- Intellectual Property
- Employment
- Agency
- Sponsorship
- Competition

(3) Broader Legal Implications

- **Breach of contract** with sponsor due to doping
- **Criminal liability** (e.g. On-field assault, Spot/match-fixing)

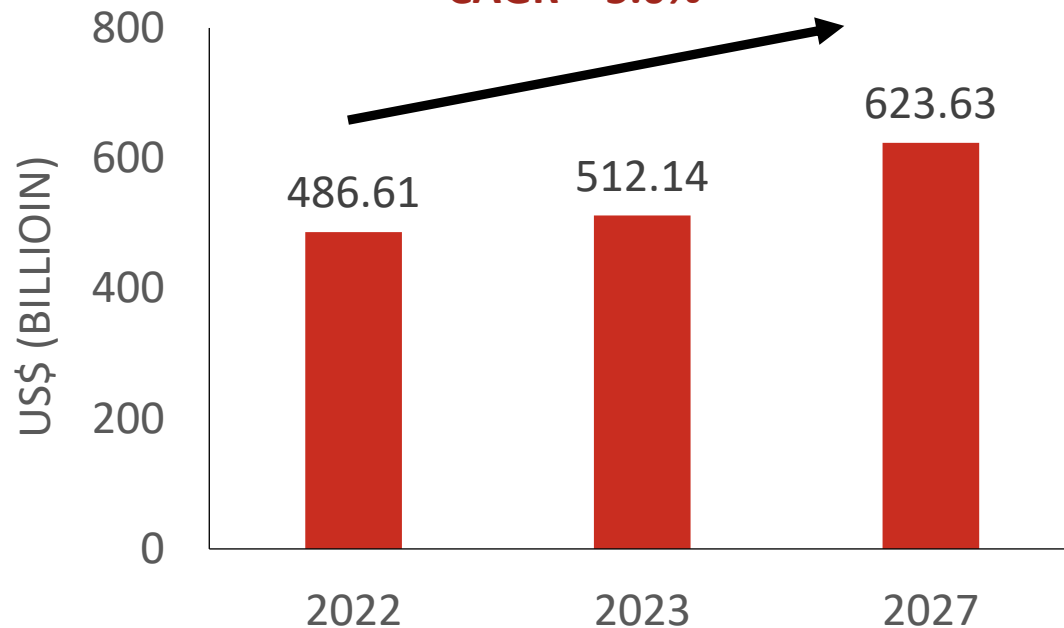
A. What is sports arbitration?

Why do we need it?

Commercial Aspects

Global Sports Market

CAGR = 5.0%



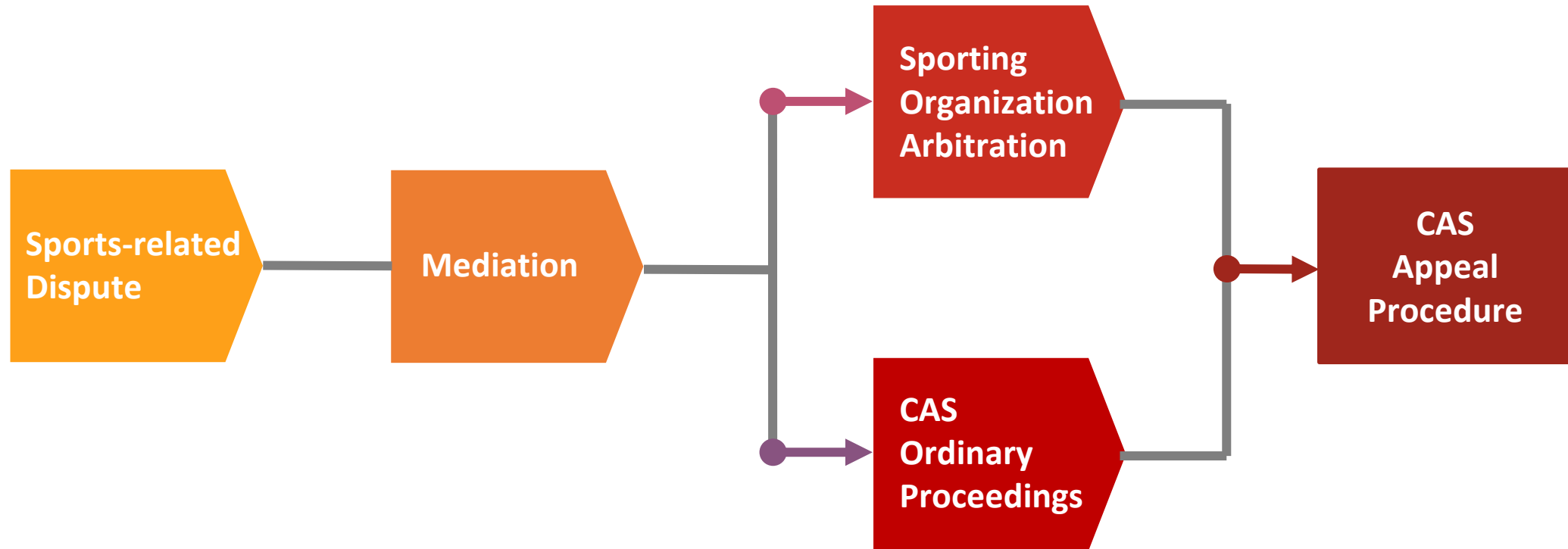
(Source: Research and Markets)

Unique features of sports

- Short careers of sportsmen
- Speedy and tight schedule of sporting events
- Necessity for integrity/finality of sporting results

B. Sports Arbitral Institutions

Sports Arbitration Process



B. Sports Arbitral Institutions

Court of Arbitration for Sports (CAS)

- **“The true supreme court of world sports”**
- Established in 1984 by the International Olympic Committee (IOC)
- An independent institution, headquartered in Lausanne, Switzerland, that settles sports-related disputes through arbitration and mediation
- Overseen by International Council of Arbitration for Sports (ICAS)
- Purpose: To take sports disputes out of the hands of national courts, which are often slow and lack specialized sporting knowledge

(Source: CAS website)

B. Sports Arbitral Institutions

CAS: Divisions

2 Divisions

The CAS Ordinary Division

- First Instance Arbitral Tribunal
- Party-driven or designated by sport institution internal regulation
- Conducted according to CAS procedural rules

The CAS Appeal Division

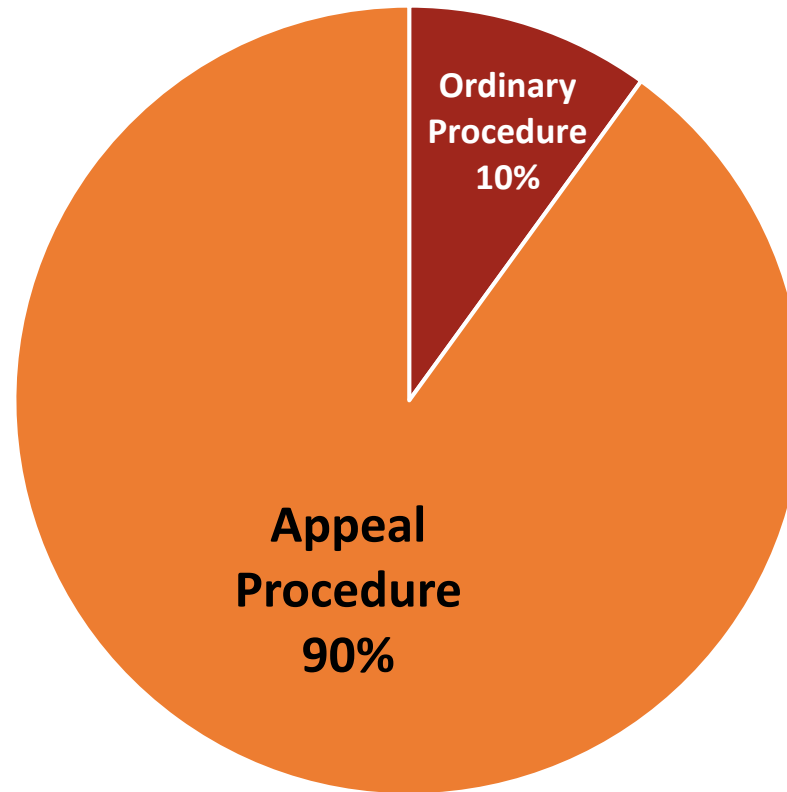
- Appeal against decisions by sports-related institution and/or prior CAS Ordinary Division decision
- **BUT**: CAS appeal must be provided for under: (a) statutes/regulations of sports institution; or (b) arbitration agreement, **provided that** Appellant exhausted all prior available legal remedies

(Source: CAS website)

B. Sports Arbitral Institutions

CAS: Divisions (con't)

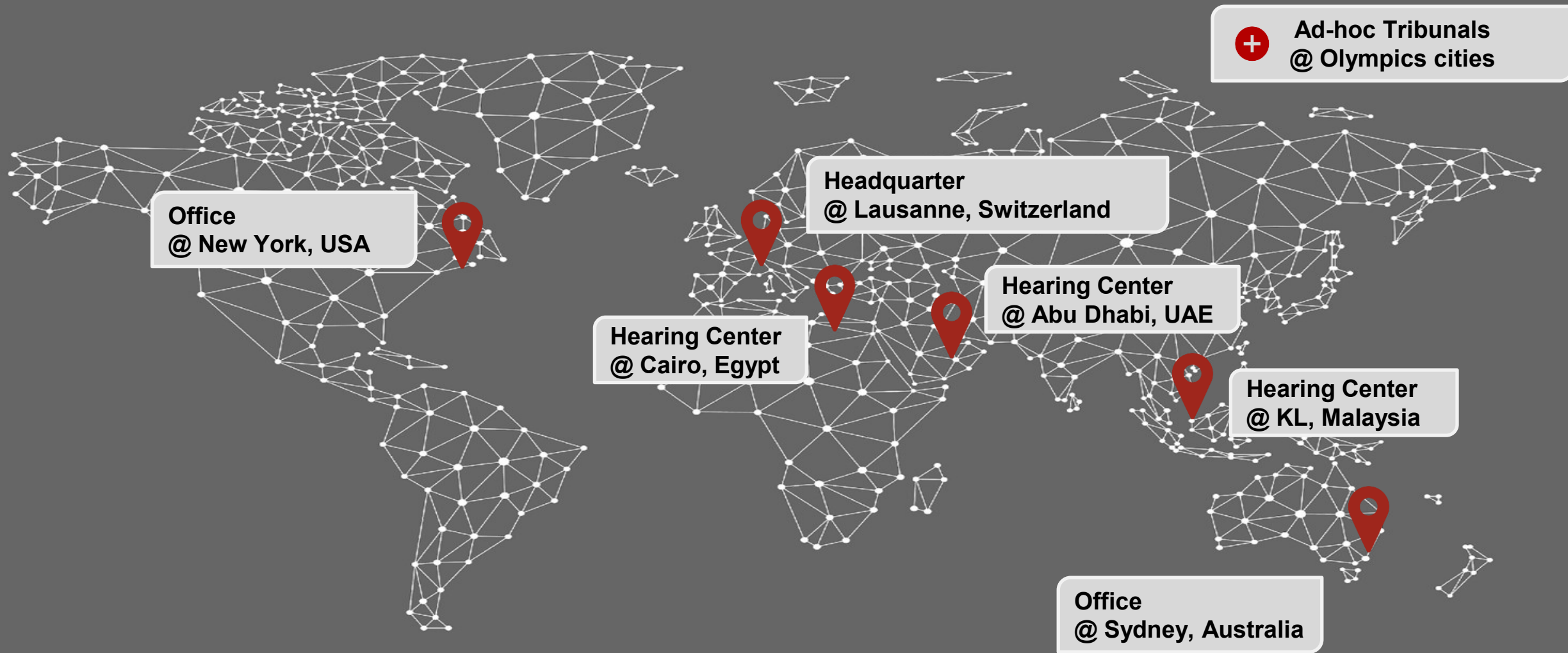
- Two Divisions:



(Source: CAS website)

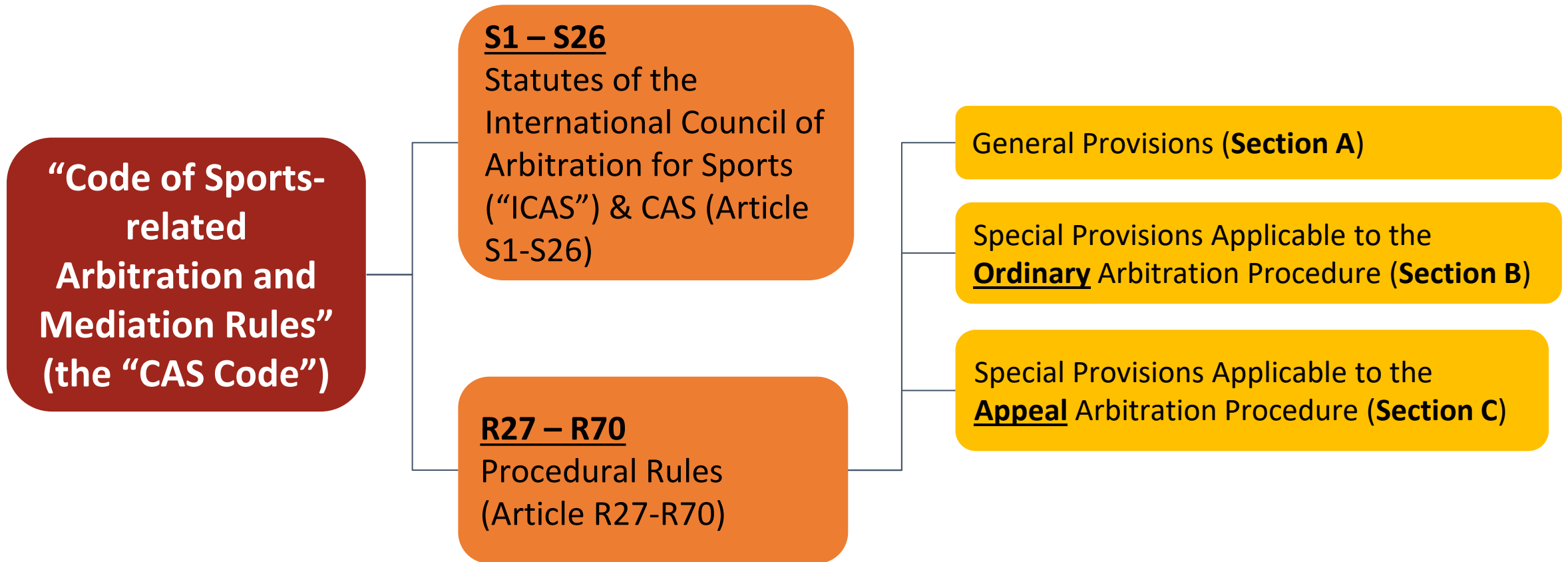
B. Sports Arbitral Institutions

CAS: Locations



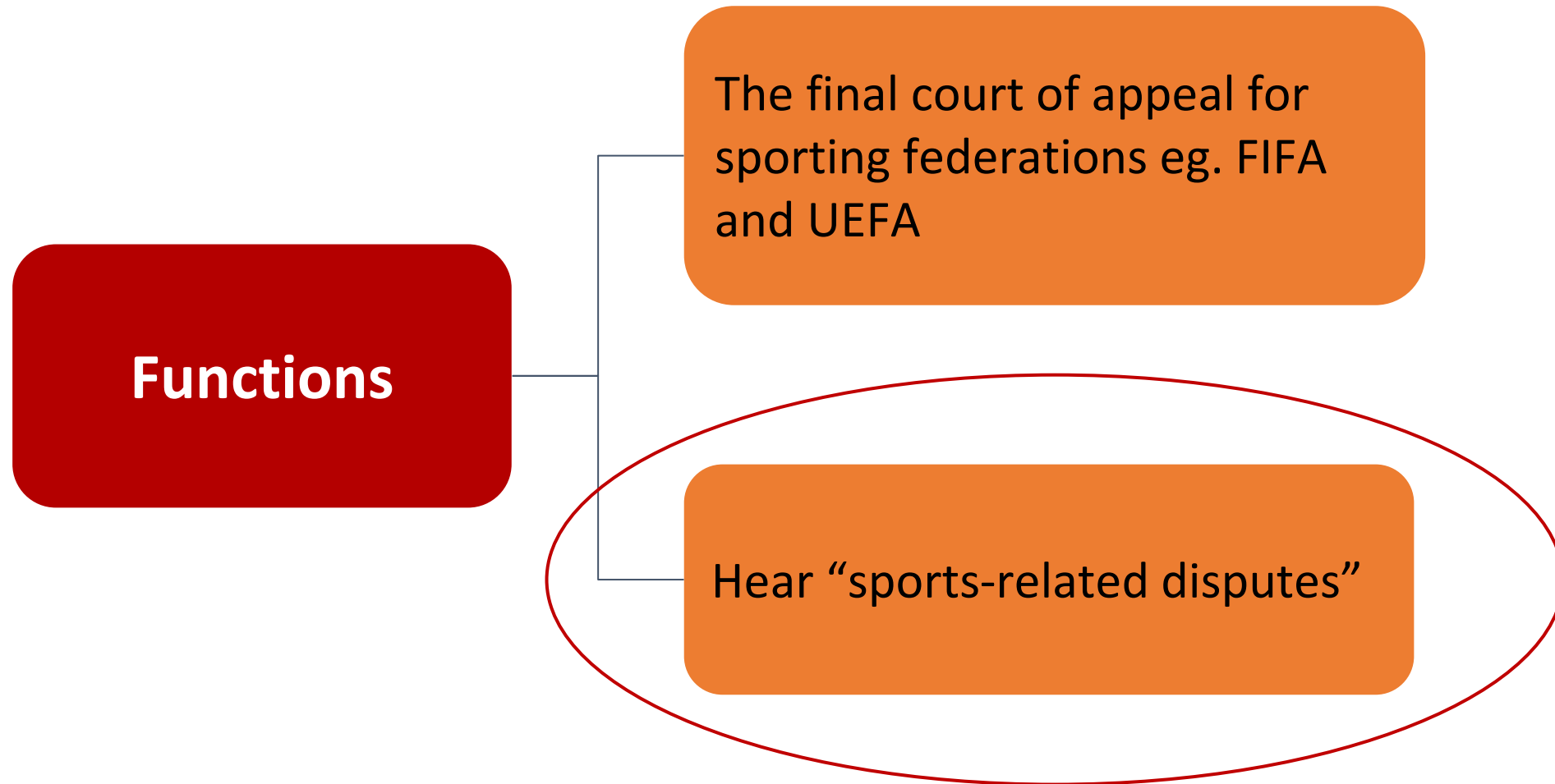
B. Sports Arbitral Institutions

CAS: Procedural rules



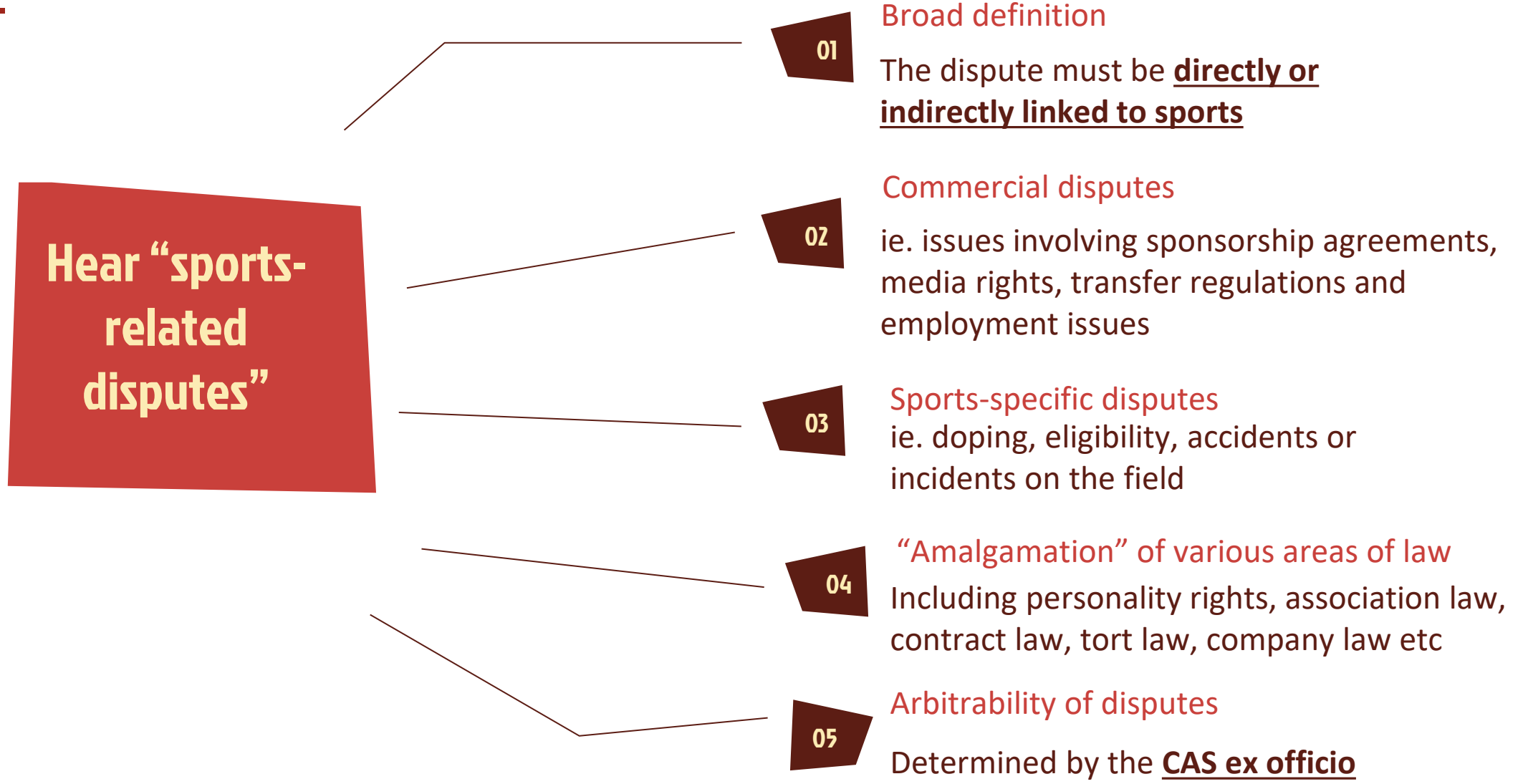
B. Sports Arbitral Institutions

CAS: Functions



B. Sports Arbitral Institutions

CAS: Functions



B. Sports Arbitral Institutions

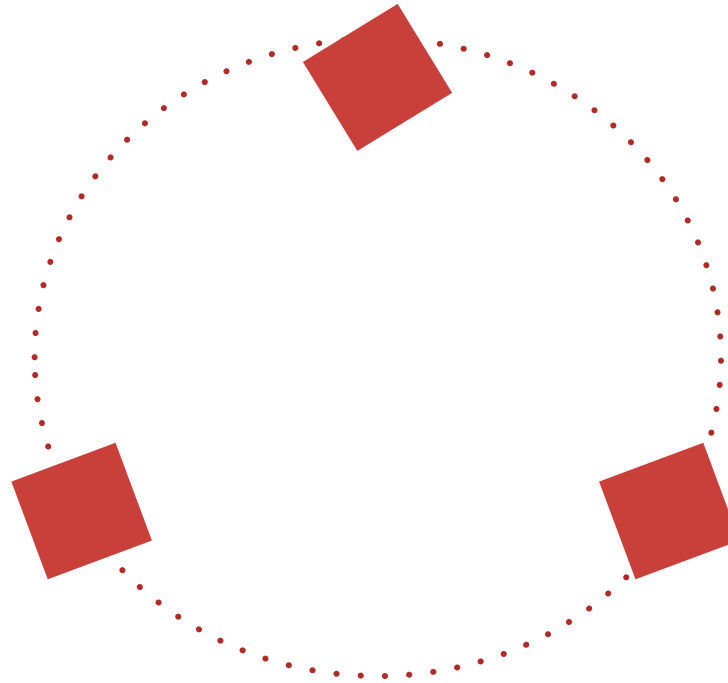
CAS: Seat of arbitration

By default...

all CAS arbitrations are seated in
Lausanne (Article R28 of the CAS Code)

Therefore...

the Swiss Federal Tribunal
has an exclusive jurisdiction
for setting aside of the CAS
awards

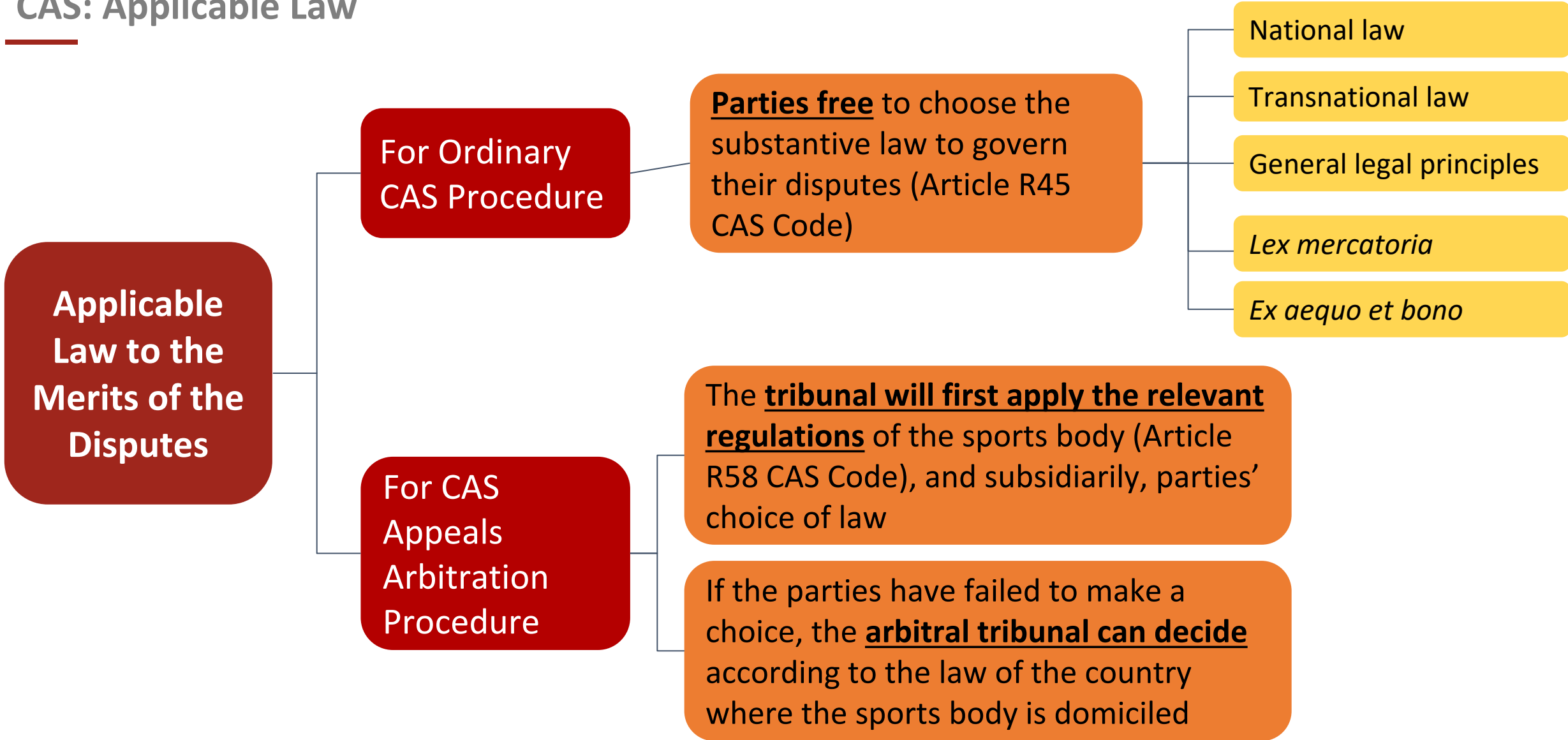


Consequently...

CAS arbitrations are
governed by Swiss
arbitration law

B. Sports Arbitral Institutions

CAS: Applicable Law



Applicable Law to the Merits of the Disputes

For Ordinary CAS Procedure

Parties free to choose the substantive law to govern their disputes (Article R45 CAS Code)

- National law
- Transnational law
- General legal principles
- Lex mercatoria*
- Ex aequo et bono*

For CAS Appeals Arbitration Procedure

The **tribunal will first apply the relevant regulations** of the sports body (Article R58 CAS Code), and subsidiarily, parties' choice of law

If the parties have failed to make a choice, the **arbitral tribunal can decide** according to the law of the country where the sports body is domiciled

B. Sports Arbitral Institutions

Organizations or associations of particular sports

- Many international sports federations have their **own system of dispute resolution** and appoint tribunals for the resolution of disputes related to their sports.

(1) FIFA's Dispute Resolution Chamber (DRC)

- For members of world's national football associations
- Consists of 24 permanent judges appointed by the FIFA Board



(2) Basketball Arbitral Tribunal (BAT)

- Set up by the governing body for basketball (FIBA)
- Resolves disputes between players, agents and clubs
- Seated in Geneva
- English language procedure



B. Sports Arbitral Institutions

Organizations or associations of particular sports (con't)

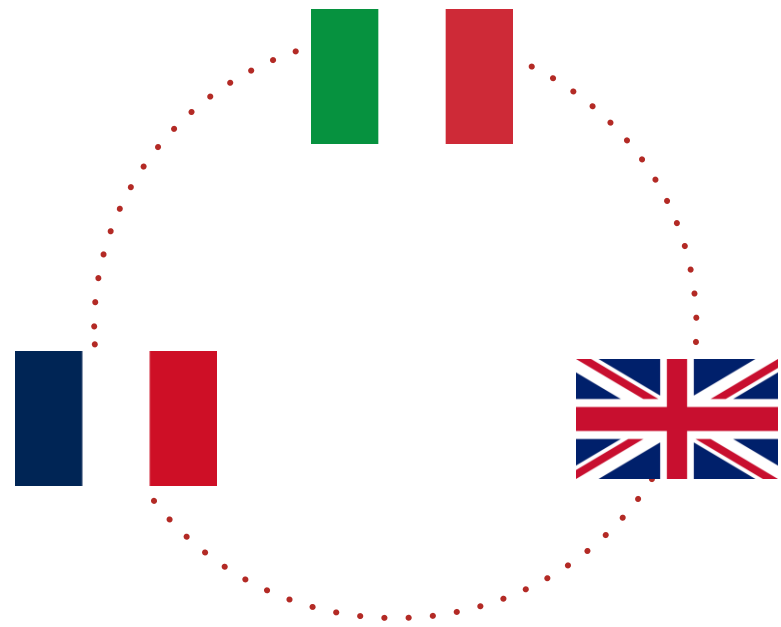
- (3) National sports dispute resolution bodies**
- Italy
 - France
 - UK

Tribnale Nazionale di Arbitrato per lo Sport (TNAS)

Resolves disputes between sports federations and affiliated persons only if the internal remedies have been exhausted

Chambre Arbitrale du Sport

Resolves sports-related disputes referred to it by national sports federation, regional, national and departmental sporting organs



Sports Resolutions

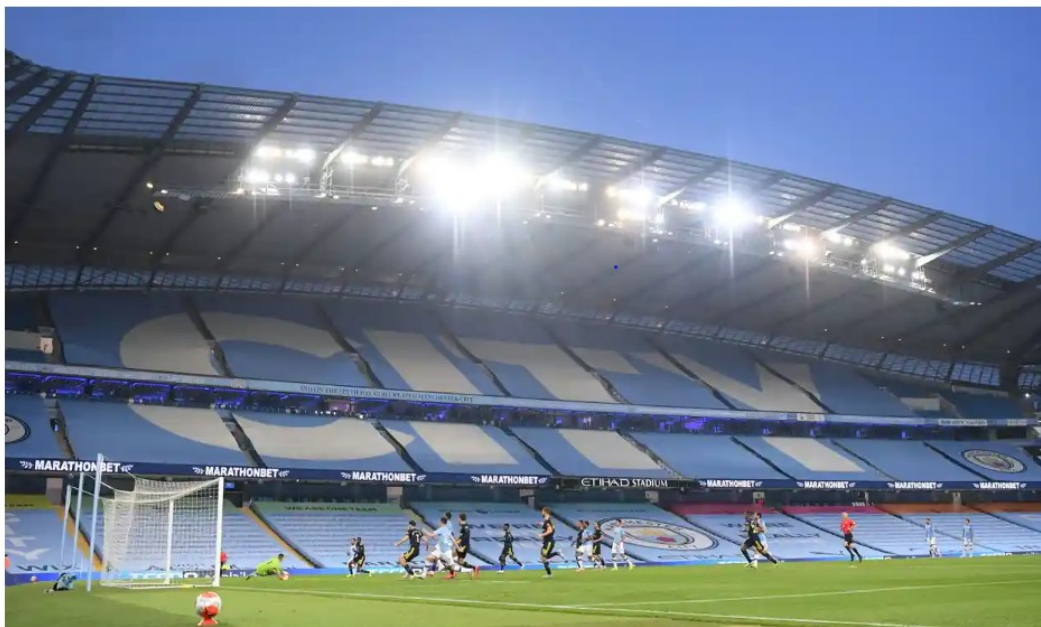
Provides independent arbitration and mediation services for sports; National Anti-Doping Panel (NADP) services; Also serves as a national CAS for the UK

C. Notable cases

Case 1: Manchester City Financial Fair Play case (UEFA) (2009-2018)

Cas releases its reasons for overturning Manchester City's Europe ban

- Judgment rules that much of Uefa's case was 'time-barred'
- Cas panel chairman Rui Botica Santos recommended by City



📷 The charges against Manchester City by Uefa were not frivolous, according to the court of

C. Notable cases

Case 1: Manchester City Financial Fair Play case (UEFA) (2009-2018)

<u>Facts</u>	<u>Appeal</u>	<u>CAS</u>
<p><u>Manchester City</u></p> <ul style="list-style-type: none">● Charged with: <ol style="list-style-type: none">1. Breaking financial fair play rules >100 times (between 2009 – 2018)2. Overstating sponsorship revenue by around £204 million (between 2012 – 2016)	<p><u>UEFA Decision:</u></p> <ul style="list-style-type: none">● <u>Ban:</u> 2-season ban from European competitions● <u>Fine:</u> €30m (£26.8m) <p><u>Appeal:</u></p> <ul style="list-style-type: none">● Manchester City initiated appeal arbitration against UEFA at CAS	<p><u>Outcome:</u></p> <ul style="list-style-type: none">● Man City won – 2-1 by CAS Panel● Ban: <u>Overtured</u>● Fine: <u>Reduced</u> (€30m -> <u>€10m</u>) <p><u>Found:</u></p> <ol style="list-style-type: none">1. Most of the breaches alleged were NOT established2. Limitation – alleged breaches occurred long ago, and UEFA made decision out of time

C. Notable cases

Case 2: FC Sion v UEFA (2011)



C. Notable cases

Case 2: FC Sion v UEFA (2011)

<u>Facts</u>	<u>UEFA Decision</u>	<u>Appeal</u>
<p data-bbox="333 496 524 546"><u>FC Sion</u></p> <ul data-bbox="129 582 715 1282" style="list-style-type: none"><li data-bbox="129 582 715 839">• Accused of encouraging player to break contracts with other clubs.<li data-bbox="129 868 715 1068">• UEFA imposed transfer ban, but FC Sion fielded players again<li data-bbox="129 1096 715 1282">• Engaged in delay tactics and took out several applications	<ul data-bbox="792 489 1421 1103" style="list-style-type: none"><li data-bbox="792 489 1421 661">• <u>Disqualification:</u> FC Sion disqualified from Europa League<li data-bbox="792 739 1421 975">• <u>Invalidation:</u> Results of FC Sion matches involving transfer-ban players voided<li data-bbox="792 1053 1421 1103">• FC Sion appealed to CAS	<p data-bbox="1816 489 2079 539"><u>Outcome:</u></p> <ol data-bbox="1465 561 2211 661" style="list-style-type: none"><li data-bbox="1465 561 2211 604">1. FC Sion would not be reinstated<li data-bbox="1465 618 2211 661">2. Match results remain voided <p data-bbox="1854 746 2040 796"><u>Found:</u></p> <ul data-bbox="1465 818 2415 1303" style="list-style-type: none"><li data-bbox="1465 818 2415 989">• UEFA correct to enforce FIFA regulations → correct to declare games forfeit/disqualify FC Sion<li data-bbox="1465 1068 2415 1303">• FC Sion's actions were a "clear abuse of procedures", intended to delay or postpone a decision on the merits of the case

C. Notable cases


Case 3: Sun Yang (CAS) (2018-2020)

The New York Times

Sun Yang, Chinese Olympic Swimmer, Gets 8-Year Doping Ban

The decision by the Court of Arbitration for Sport will keep him out of the Tokyo Olympics this year and most likely end his career.



 Give this article



C. Notable cases

Case 3: Sun Yang (CAS) (2018-2020)

<u>Facts</u>	<u>FINA Decision</u>	<u>Appeal</u>	
<p><u>Sun Yang</u></p> <ul style="list-style-type: none"> Chinese Olympic Swimmer Invited to provide blood sample in September 2018 Sun Yang provided sample, but testers eventually did not receive one → alleged that Sun’s entourage destroyed sample 	<ul style="list-style-type: none"> FINA (swimming federation) launched investigation → ruled in favour of Sun Yang World Anti-Doping Agency (WADA) lodged appeal against FINA decision to CAS 	<p><u>CAS:</u></p> <ul style="list-style-type: none"> <u>Ban:</u> Issued maximum possible suspension of 8 years Overtaken FINA initial decision 	<p><u>Swiss Federation Supreme Court (SFSC):</u></p> <ul style="list-style-type: none"> Annulled CAS award Problematic comments by President of Tribunal Affected impartiality Remit case back to CAS <p><u>New CAS Panel</u></p> <ul style="list-style-type: none"> Found breach again Banned Yang

C. Notable cases

Case 4: Russian Olympian doping cases (CAS) (2020-2022)

FIGURE SKATING



WADA appeals case of Russian figure skater Kamila Valieva to Court of Arbitration for Sport

By Jill Martin and George Ramsay, CNN
Updated 10:56 AM EST, Fri March 10, 2023



CAS to hear Kamila Valieva's doping case in September



Kamila Valieva performs during the team figure skating event at the Beijing Olympics on Feb. 7, 2022. | REUTERS

(Source: The Japan Times; CNN Sports)

C. Notable cases

Case 4: Russian Olympian doping cases (CAS) (2020-2022) (cont.)

<u>Facts</u>	<u>Appeal to CAS</u>	<u>CAS</u>
<p><u>Russian Federation:</u></p> <ul style="list-style-type: none">• Several violations of anti-doping regulations by Russian athletes• Russian Anti-Doping Agency (RUSADA) investigated and did not find fault in Russian Federation• WADA (2019): intervened and banned Russian Federation from participating in Olympic Games for 4 years	<ul style="list-style-type: none">• WADA appealed against RUSADA decision in CAS → failure to comply with World Anti-Doping Code (WADC)• Sought:<ol style="list-style-type: none">1. four-year period of ineligibility +2. Disqualification of athlete results	<p><u>Outcome:</u></p> <ul style="list-style-type: none">• 2-year ban against Russian Federation (reduced from the 4 year-ban imposed by WADA)• Russian athletes can compete but only under neutral flag + designation• RUSADA pay fines/subject to supervision

D. BAT Arbitration

History & Function

History & Aims

- Established 2007
- Independent Tribunal
- Contractual dispute resolution in Basketball World

Constitution

Article 16.4 BAT Rules:

- Transparency
- “awards not confidential unless ordered otherwise”

Chapter 12 PILA

- Defining features:

Protectiveness of party autonomy

Wide arbitrability of disputes

Availability of provisional measures through arbitral tribunals

Hands-off approach to review of awards by courts

D. BAT Arbitration

Features of BAT arbitration

Consistent

Based on universally accepted general principles of law

Flexible

Core principle: ex aequo et bono (Fairness/Equity)

Speedy

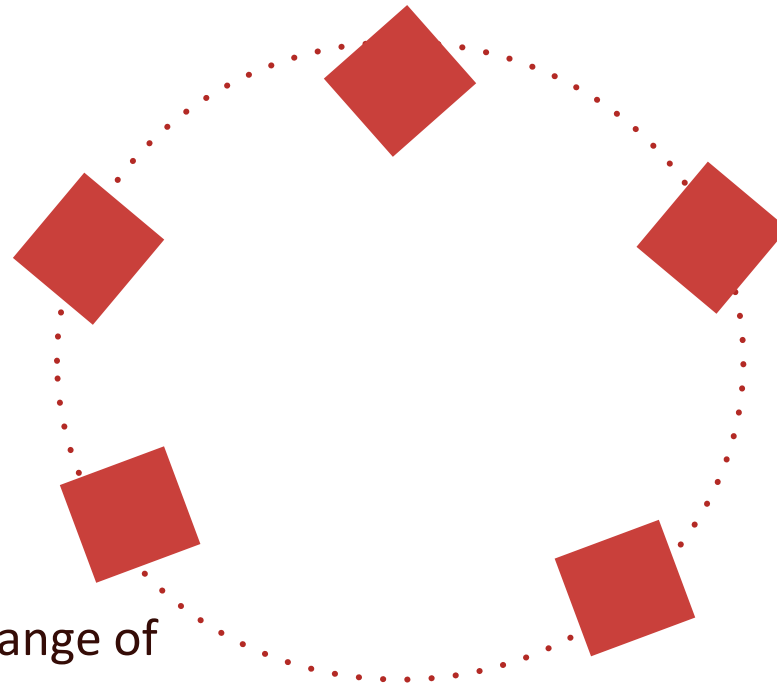
Sole arbitrator + single exchange of written submissions → average duration of just >6 Months

Language

Proceedings usually in English

Inexpensive

Cap on contribution → usually only dispositive part of award issued



D. BAT Arbitration

Substantive Law

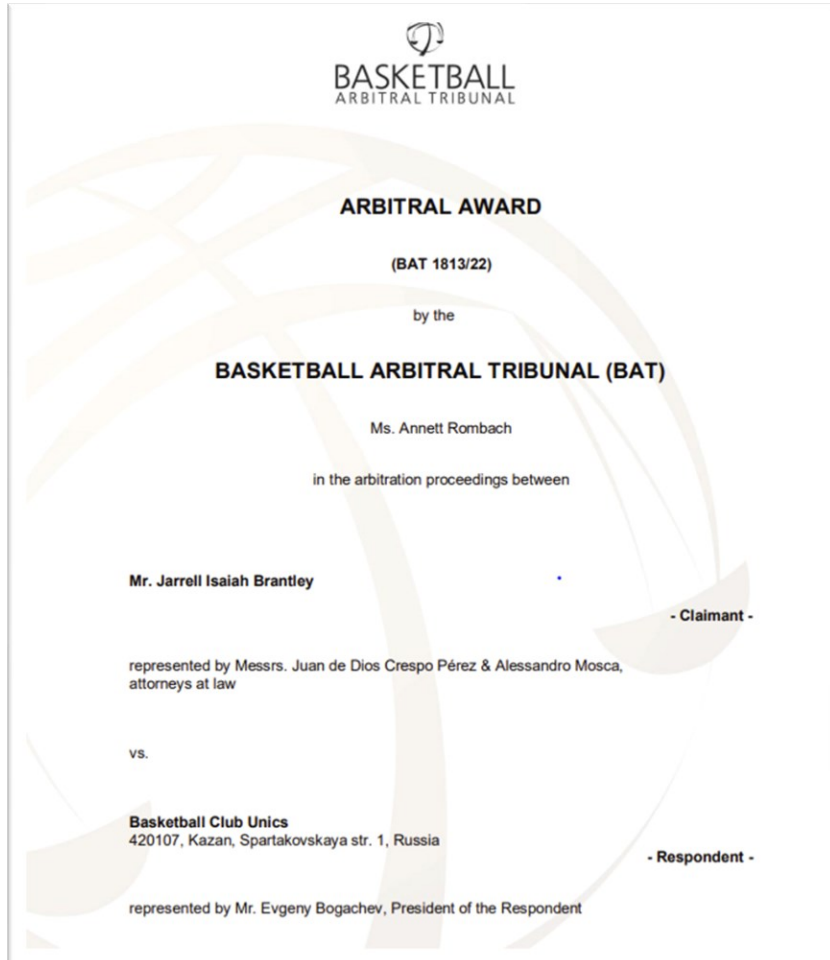
Core Principles

- **Ex Aequo et Bono**: Determination according to what is “right and good” vs specific national law
- **Pacta Sunt Servanda & Bona Fides**: Starting point for basketball contracts → contractual obligations performed honestly + loyally → good faith + intention of parties

Further principles:

- **“Guaranteed no-cut” contracts**: Protect interests of clients → prevent negative consequences of early termination
- **“Just Cause”**: Right to unilateral termination of contracts
- **Termination clauses**: removal of performance/injury based termination clauses
- **Notice**: notice before termination + proportionality of undertaken measure

D. BAT Arbitration Awards



Facts:

- American player engaged by Russian Club (BC Unics) for 2021-22 season.
- Russia commenced military action against Ukraine
- Player left Russia and missed training sessions
- Club terminated contract + allege Player wrongfully left Russia without Club approval

Claim:

- Player claimed for outstanding salary/expenses + compensation for Club's termination of contract without just cause

Held:

- Employment contract contained force majeure clause
- Ukraine conflict constituted force majeure event as circumstances (i) fell within wording of clause; and (ii) rendered performance impossible
- Player departure not in breach, club termination thus **unlawful**

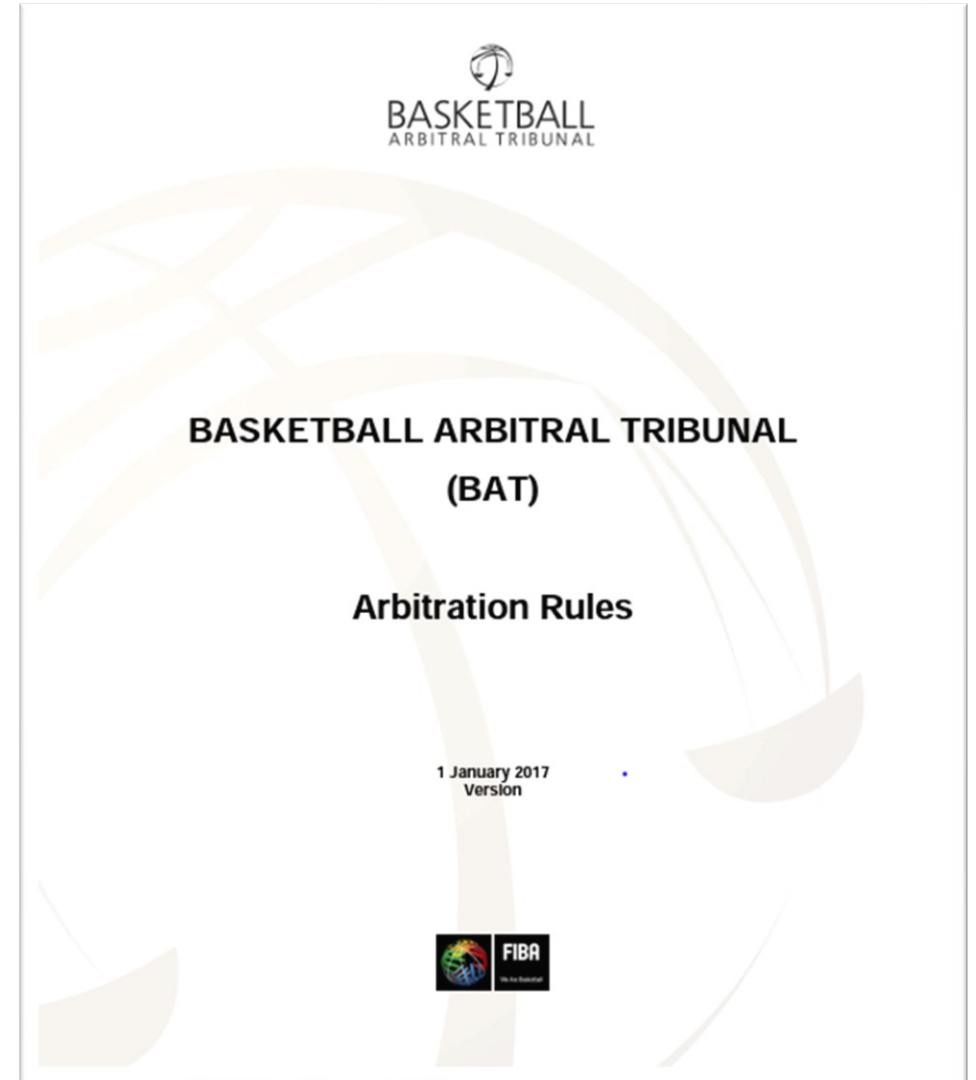
D. BAT Arbitration

Special Procedural Rules

16. Award

16.1. The arbitrator shall give a written, dated and signed award which, subject to Article 16.2, shall include reasons. Before signing the award the Arbitrator shall transmit a draft to the BAT President who may make suggestions as to the form of the award and, without affecting the Arbitrator's liberty of decision, may also draw his/her attention to points of substance.

In the interest of the development of consistent BAT case law, the BAT President may consult with other BAT arbitrators, or permit BAT arbitrators to consult amongst themselves, on issues of principle raised by a pending case.



D. BAT Arbitration

Procedure/enforcement

Enforcement of BAT Awards

- **Timing:** issuance of final award within 6 weeks from close of proceedings (BAT Rules)
- Average duration of arbitration just above 6 months)
- **Review:** Before signing the award, the arbitrator must submit final draft to BAT president for review (Article 16.1)

Failure to honour award – Sanctions against party failure to comply:

- **Fines:** up to CHF 150,000
- **Targeted Bans:** e.g. bans on international transfer of players, registration of new players to clubs, participation in international competitions etc.

E. Sports Arbitration vs. Commercial Arbitration

SIMILARITIES

- Finality of awards
- Neutral setting
- Flexible procedures
- Specialized arbitrators

DIFFERENCES

- Expedited proceedings
- More frequent and effective interim measures
- Transparent nature of the proceedings
- Closed list of arbitrators
- Consistent legal seat
- Strict liability rule under the anti-doping regulations
- Lex Sportiva (Sports Law)
- Non-confidential nature of proceedings
- Low legal costs
- Appeal procedures (Article R47 CAS Code)
- Enforcement methods

E. Sports Arbitration vs. Commercial Arbitration

Features of sports arbitration

Difference 1: Expedited proceedings

- 21 day time-limit for appeal (Article R49 CAS Code) → communication of award within 3 months (Article 59(5) CAS Code)
- Sports governing bodies/Ad Hoc CAS tribunals → hand down decision within 24 hours (when required)
- Rationale: Time is of the essence → e.g. Russian appeal against IOC decision resolved just 3 days after appeal filed

E. Sports Arbitration vs. Commercial Arbitration

Features of sports arbitration

Difference 2: More frequent and effective interim / provisional measures

- Standard for interim/provisional measures: similar to general arbitration standard

BUT:

- More frequently issued: Requests for a stay of the execution of the decision under appeal when the tribunal has not yet been appointed (CAS)

Difference 3: Transparent nature of the proceedings

- Ordinary Proceedings: Usually confidential

C.f.

- Appeal Proceedings: no confidentiality (Article R59 CAS Code)

E. Sports Arbitration vs. Commercial Arbitration

Features of sports arbitration

Difference 4: Closed list of arbitrators

- Limited choice of arbitrators → “CAS List of Arbitrators” (Article R38, 39 & 48 CAS Code)

CAS arbitrators and mediators:

- Not allowed to act as counsel for a party before the CAS (Article S18 CAS Code)
- Must go through training for international arbitration + sports law

BAT arbitrators:

- Appointed on rotational basis from published list (BAT arbitration rules Article 8.1)

Difference 5: Consistent legal seat

- All CAS appeals seated in Lausanne, Switzerland.
- Arbitration subject to Swiss arbitration law → decisions are only challengeable (in very limited circumstances) before the Swiss Federal Tribunal

C.f.

- Ordinary Arbitration: parties generally free to choose seat of arbitration.

E. Sports Arbitration vs. Commercial Arbitration

Features of sports arbitration

Difference 6: Strict liability rule under the anti-doping regulations

- Sportspersons instantly disqualified + barred from receiving & may need to forfeit any medals/prizes if found doping
- Case: *Alain Baxter v IOC*
 - A British skier was disqualified from the Alpine Skiing Slalom event at the Salt Lake City Olympics for Doping
 - The panel found that the appellant is strictly responsible for the substances they place in their body, and for the purposes of disqualification neither intent nor negligence needs to be proven

Difference 7: Lex Sportiva (Sports Law)

- Unique case law upon which sports arbitration users can rely on
- Ensures fairness and proportionality in decision-makers' mind
- Sport arbitration awards non-binding, but highly persuasive → promote consistency of decisions

E. Sports Arbitration vs. Commercial Arbitration

Features of sports arbitration

Difference 8: Non-confidential Nature of proceedings

- Recent cases emphasized right to fair hearing upon request from athletes for public hearing
- Reassures integrity of the proceedings + mitigates potential bias, negligence or corruption in private proceedings

Difference 9: Low legal costs

- Balancing difference in resources between parties
→ protection of weaker parties (usually athletes/players)
- Provision of comfort to impecunious athletes:
 - Moderate filing fee of 1,000 Swiss francs
 - System of contribution towards legal costs

E. Sports Arbitration vs. Commercial Arbitration

Features of sports arbitration

Difference 10: Appeal procedures (Article R47 CAS Code)

- Tribunal has power to review de novo, facts + law underlying the decision (Article R57 CAS Code) → **not bound by the facts, legal findings or evidence of the previous instance**
- May fully or partially annul a decision → then either replace it with new decision or remit it to previous instance

Difference 11: Enforcement methods

Not limited to NY Convention:

While awards sometimes enforceable under NY convention, governing bodies have also developed independent internal rules and regulations to deal with the enforcement of sports arbitration awards.

e.g., FIBA internal regulation Art. 344 – specific provision for enforcement of BAT awards

G. Sports Arbitration in China

Sports Arbitration in China: Growing needs & importance

China hosting more major international sporting events
(ie. Olympic Games, IAAF World Championship in Athletics)

The diagram consists of two large, dark red arrows pointing in opposite directions. The left arrow points left and contains text about China hosting major international sporting events. The right arrow points right and contains text about the increasing number of disputes related to sports. The two arrows are connected at their inner ends by a white, curved line that resembles a ribbon or a scroll, suggesting a causal link between the two points.

Increasing number of disputes related to sports

G. Sports Arbitration in China

Sports Arbitration in China

BEFORE 1 JAN 2023

Existent system **BUT** never put into practice → lack of practical adoption

(Article 33, Law of the PRC on Physical Culture and Sports)

FROM 1 JAN 2023

- Fast-tracked revision to the Sports Law
- Change in emphasis → independent force
- Establishment of **Sports Arbitration Commission** “中国体育仲裁委员会”
 - **Governs** the arbitration of sports disputes
 - **Formulates detailed arbitration rules** on arbitrators' qualifications, composition of the arbitration panel, etc.

Notably:

- **Not an independent body** → supervised by the State Council.

G. Sports Arbitration in China

Sports Arbitration in China

Scope of arbitrable disputes

- Disputes regarding decisions by Sports Institutions
- Disputes arising from registration or interactions among athletes
- Other disputes arising from competitive sporting activities

Excluded:

- Arbitrable disputes under the Arbitration Law of the PRC
- Labour disputes under the Law of the PRC on Mediation and Arbitration of Labour Disputes

Legal effect of awards

- Final and binding (Article 97, Sports Law)

BUT:

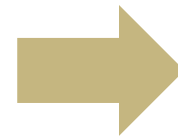
- Exception: petition to the Intermediate People's Court is allowed if “there are indeed errors in the application of laws and regulations” (Article 98, Sports Law)

H. Sports Arbitration in Hong Kong

Sports Arbitration in Hong Kong

HK's potential to be Asia's leading sports arbitration seats

- One of top arbitration seats in the world
- High quality forum
- World class legislative framework
- Arbitration friendly jurisdiction
- Geographical convenience to Mainland China and East Asia-related sports disputes
- Quality advocates and lawyers
- Multi-lingual jurisdiction
- Sports friendly jurisdiction



Issues to be overcome

- NO unified sports specific rules/law
- NO independent dispute resolution mechanism
 - Tribunals not sufficiently independent from sports organizations
- Lack of professionals in sports arbitration

I. Future development

E-sports Arbitration



E-sports arbitration



A substantial & growing industry

- Olympic e-Sports Series
- Official Asian Games sports since 2018 Asian Games
- Global esports market was USD 1.39 billion in 2022



Current status

- No single agreed-upon overarching governing body or dispute recognition mechanism
- Lack of transparency
- Most disputes handled by the game publishers
→ move towards standardized contracts

(Source: Governance in eSports – a void the needs to be filled, World Sports Advocate, October 2018.)

Contact Details



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