



# Sports Law-for-All

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# **RESOLVING DISPUTES IN SPORTS** and ADVOCATING ALTERNATIVE **DISPUTE RESOLUTION**

This Primer identifies and explains the different uses of Alternative Dispute Resolution (ADR) in sports law disputes. It discusses three types of ADR mechanisms (i.e., arbitration, mediation, and hybrid modes of dispute resolution) and how these could be used in sports law disputes. The Primer contains a discussion on arbitration and mediation in the Philippines, arbitration and mediation in the United States, international arbitration, and arbitration and mediation in the Court of Arbitration for Sport (CAS).

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# The mechanism and approaches are:

1. Litigation, 2. Mediation,

3. Arbitration, and

and hybrid approaches.

venue for private dispute resolution.<sup>26</sup>

B. **Arbitration** 

# 4) What is Arbitration?

### Arbitration is an alternative mode of dispute resolution, "where an arbitrator or panel of arbitrators is

Arbitration may be ad hoc, where parties determine whatever rules they may consider appropriate for the arbitration.<sup>2</sup> Arbitration can likewise be institutional, where the arbitration is conducted under the auspices of one of several arbitration institutions such as the International Chamber of Commerce's (ICC), the International Centre for Dispute Resolution, the Singapore International Arbitration Centre, or the Court of Arbitration for Sport, in case of sport-related disputes.<sup>3</sup> In the United States, the primary domestic sources of law relating to domestic and foreign arbitral proceedings are contained in federal law, state law, statutes, and case law.<sup>4</sup> The Federal Arbitration Act (FAA), which

applies both in federal and state courts, governs arbitration agreements in contracts involving interstate

appointed by the parties to make a binding decision, from which there are very limited grounds of challenge."1

commerce. Likewise, most states in the United States have enacted arbitration statutes that are based on the Uniform Arbitration Act (UAA) or the Revised Uniform Arbitration Act (RUAA).6 While the parties can contract to apply state arbitration law in commercial transactions, in the event of conflict between the FAA and state statutes (such as when there is only a general choice-of-law provision in the agreement invoking the law of a particular state), the FAA pre-empts the latter. Should parties wish to

substitute a state arbitration statute for the FAA, they must make their intention clear.8

### Republic Act No. 9285, or An Act to Institutionalize the Use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and for Other Purposes, otherwise known as the ADR Act of 2004 (ADR Act), is the general law applicable to all forms of alternative dispute

resolution in the Philippines.<sup>24</sup> It also recognizes the international application of the alternative dispute resolution system by adopting the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration.<sup>25</sup> Some of the widely-known arbitral institutions in the Philippines are the Philippine International Center for Conflict Resolution and the Philippine Dispute Resolution Center, Inc. The Philippine Institute of Arbitrations is, on the other hand, the first learned society in the Philippines dedicated to both promoting private dispute resolution within the country and pursuing initiatives to enable the country to serve as a viable and practical

The UNCITRAL model law is a mere proposal. Every country that takes a model law and enacts it makes it domestic law. The formation of the UNCITRAL Model Law was based on a report from the UNCITRAL to the effect that the harmonization of the arbitration laws of the different countries of the world could be achieved more effectively by a model or uniform law.<sup>27</sup>

has adopted the 1985 UNCITRAL Model Law in its ADR Act of 2004. 6) What is the policy of the State on alternative dispute resolution (ADR)? Section 2 of the ADR Act recognizes that it is the declared policy of the State to actively promote party

autonomy in the resolution of disputes or the freedom of the party to make their own arrangements to resolve their disputes. Towards this end, the State shall encourage and actively promote the use of ADR as an important means to achieve speedy and impartial justice and declog court dockets. As such, the State

of appropriate cases. Likewise, the State shall enlist active private sector participation in the settlement of disputes through ADR. The Philippine Supreme Court has declared alternative dispute resolution – specifically, arbitration – as the "wave of the future in international relations." <sup>28</sup> In *Insular Savings Bank v. Far East Bank and Trust Company*, <sup>29</sup> the Supreme Court declared the policy of the Judiciary on ADR, thus:

shall provide means for the use of ADR as an efficient tool and an alternative procedure for the resolution

Corporation Code, required National Sports Associations to provide for an arbitration clause. The Advisory reads: "National Sports Association (NSAs) are required to submit to the PSC, as part of their Articles of Incorporation (AOI) and by laws, an Arbitration Provision pursuant to Section 181 of R.A. No. 11232 (Revised Corporation Code of the

The Philippine Sports Commission in NSA Advisory No. 58-2021 dated November 24, 2021, citing the Revised

the articles of incorporation or bylaws of an unlisted corporation. When such an agreement is in place, disputes between the corporation, its stockholders or members, which arise from the implementation of the articles of incorporation

or bylaws, or from intra-corporate relations, shall be referred to arbitration. A

third parties.

The arbitration agreement shall be binding on the corporation, its directors, trustees, officers, and executives or managers. To be enforceable, the arbitration agreement should indicate the number of arbitrators and the procedure for their appointment. The power to appoint the arbitrators forming the arbitral tribunal shall be granted to a designated independent third party. Should the third party fail to appoint the arbitrators

dispute shall be nonarbitrable when it involves criminal offenses and interests of

arbitrators must be accredited or must belong to organizations accredited for the purpose of arbitration.

corporate dispute is filed with a Regional Trial Court, the court shall dismiss the case before the termination of the pretrial conference, if it determines that an arbitration agreement is written in the corporation's articles of incorporation, bylaws, or in a separate agreement. 

> "(2) competence, as arbitrators will have applicable specialized commercial and legal expertise; "(3) party participation, as the procedures are decided by the parties as well as the arbitrators, rather than dictated by detailed rules as in litigation; "(4) finality, as the resulting award will be subject to relatively limited grounds

for setting aside or modification by a court; "(5) enforceability, as most nations, including the Philippines, are parties to the

U.N. Convention on Recognition and Enforcement of Arbitral Awards (New York

Convention), making a foreign arbitral award typically easier to enforce than a

"(1) speedy relief before the arbitral tribunal is unlikely, as a panel must be

"(6) privacy, as arbitration proceedings are confidential."34 Arbitration, however, is not perfect. As such, it suffers from several disadvantages, as follows:

"(2) in a bitter dispute, there may be not only the specified arbitration, but also litigation resulting from attempts to avoid the arbitration;

side is totally right or totally wrong."35 11) How is an arbitration proceeding commenced?

representatives; (3) the arbitration agreement; (4) the number of arbitrators and the parties' nominees; (5)

foreign judgment; and

words, even if the validity of the contract that contains the arbitration clause is challenged, the agreement to arbitrate remains.50 14) What is the Court of Arbitration for Sport (CAS)? The CAS is "an institution independent of any sports organization which provides for services in order to facilitate the settlement of sports-related disputes through arbitration or mediation by means of procedural

rules adapted to the specific needs of the sports world."51 The CAS resolves disputes through arbitration by

Once parties have validly consented to arbitration through any of the foregoing forms, that consent cannot be

unilaterally withdrawn.<sup>48</sup> According to the doctrine of separability, another important concept in arbitration, the arbitration agreement is an independent obligation separable from the rest of the contract.<sup>49</sup> In other

provide for an appeal to CAS (appeal arbitration proceedings).55

organization (e.g. a doping case) - may be submitted to CAS arbitration.<sup>58</sup>

pronouncing arbitral awards that have the same enforceability as judgments of ordinary court.<sup>52</sup>

Moreover, it is commonplace for an athlete to sign an entry form, which includes a provision for CAS arbitration, as a condition of entry to sports events.<sup>56</sup> While it is true that this practice raises issues as to the authenticity of the consent given, the Swiss Federal Tribunal has ruled that the need for a quick and uniform dispute resolution system in international sport prevails over an athlete's right to have his case adjudicated Under R27 of the Code of Sports-related Arbitration, sports disputes that parties have agreed to submit to CAS arbitration may involve matters of principle relating to sport or matters of pecuniary or other interests relating to the practice or the development of sport and may include, more generally, any activity or matter related or connected to sport. Thus, any dispute directly or indirectly linked to sport - disputes of

a commercial nature (e.g. a sponsorship contract) or a disciplinary nature following a decision by a sports

C. **Mediation** 

### 18) What is Mediation? Mediation is a form of assisted negotiation where a neutral third-party, called a mediator, assists the parties in settling their dispute. It is particularly useful because it gets the parties in dispute talking and negotiating

relationships.<sup>64</sup> Mediation aspires to promote party autonomy, to bring about creative and value-creating solutions, and to transform the disputing parties and their relationships. 65 In the Philippines, Section 3(g) of the ADR Act defines mediation as "a voluntary process in which a mediator, selected by the disputing parties, facilitates communication and negotiation, and assists the parties in reaching a voluntary agreement regarding a dispute." In mediation, the parties are convinced

with one another and therefore, facilitates the restoration and maintenance of personal and business

19) How is this compared to mediation in the United States? In the United States, the use of mediation has been recognized to have become an integral and growing part of the processes of dispute resolution in the courts, public agencies, community dispute resolution programs, and the commercial and business communities, as well as among private parties engaged in conflict.71 The Uniform Mediation Act (UMA) is an "attempt to bring uniformity to mediation across the country. A primary

purpose of the Act is to provide 'a privilege that assures confidentiality in legal proceedings.' Providing this

privilege promotes full disclosure of facts to the mediator by all parties and helps bring a higher level of

success and party satisfaction to all mediations. Achieving a higher level of success will promote greater

community confidence in the mediation process which should result in more disputes being resolved by mediation."72

### mediation in any arbitral or judicial proceedings. "Any information given by one party may be disclosed by the mediator to the other party only with the consent of the former. "No record of any kind shall be made of the meetings. All the written documents

and no copy thereof shall be retained.

23) Compare a contrast the four approaches to resolving disputes.

legalistic and less formal.

There are a few concerns

about due process.

b. Facilitate discussion of the issues by the parties; and

a. Identify the issues in dispute;

c. Propose solutions.

proceedings: a. views expressed or suggestions made by a party with respect to a possible settlement of the dispute; admissions made by a party in the course of the mediation proceedings;

Nature of the A form of assisted An arbitrator A combination **Proceedings** determines of mediation negotiation where a neutral third-party, rights and and

The author proposes and advocates alternative dispute resolution mechanisms, i.e., mediation, arbitration, (JAMS).15

the extent that it does not conflict with the New York Convention. On the other hand, govern arbitrations under the New York Convention. Under the FAA, the only express requirement for enforceability is that the arbitration agreement be in writing.12 Since arbitration is a creature of contract, the same principles that apply to contracts in general under state law also apply to arbitration agreements. 13 Notably, the FAA pre-empts state law that attempts to restrict the formation or validity of arbitration agreements.<sup>14</sup>

"Any dispute of a civil/commercial nature between private persons can be arbitrated." Chapter 1 of the

FAA governs domestic arbitration agreements and awards, but it also applies to international arbitration to

According to the Legal Dictionary, The Free Dictionary by Farlex, Sports Law is defined as "The laws, regulations and judicial decisions that govern sports and athletes. Sports law is an amalgam of laws that apply to athletes and the sports they play. It is not a single legal topic with generally applicable principles."

Its scope is broad. It covers the "Constitution, Contracts, Agency, Torts, Crimes, Labor, Trademark, Tax, Anti-Trust and Discrimination." Its purpose, per Sports Law, Rider University, is "xxx to ensure safety, equality,

In view of the breadth of Sports Law, there is a wide array of possible cases, disputes, conflicts and

This Primer shall cover the following topics:

E. Comparative Matrix (with Litigation)

fairness and integrity in athletic competition on and off the playing field."

controversies related to sports, such as but not limited to matters pertaining to:

a) Rights, Responsibilities and Obligations of Sports Stakeholders and Duty-bearers,

2) What are the possible disputes or controversies in sports?

A. Overview B. Arbitration C. Mediation

A. Overview

D. Hybrid Approach

1) What is the scope of Sports Law?

b) Breach of Contracts,

h) Intellectual Property,

i) Equipment Warranty,

j) Doping, and

k) Benefits.

c) Safe Spaces and Safe Sports,

e) Liabilities of Event of Organizers,

g) Games, events and competitions,

d) Intra- and Inter-Organizational Disputes,

f) Injuries, death and damage to property,

Liabilities may be civil, criminal or administrative in nature.

Some of the well-known arbitral institutions in the United States include the American Arbitration Association (AAA), the International Centre for Dispute Resolution, and the Judicial Arbitration and Mediation Services

There is a strong policy in favor of arbitration and the enforceability of arbitration agreements in the United States. 16 In the landmark case of Hall Street Associates, LLC v. Mattel, Inc., 17 the Supreme Court of the United States held that "Congress enacted the FAA to replace judicial indisposition to arbitration 'with a national policy favoring [it] and plac[ing] arbitration agreements on equal footing with all other contracts."

Arbitral tribunals are bound by the parties' agreement. 18 If the arbitration agreement contains a reference to a particular institution's arbitration rules, then arbitral tribunals may likewise be bound by the institution's procedural rules.<sup>19</sup> Under the FAA, courts can vacate arbitration awards only on extremely limited procedural grounds - those stated in Sections 10 and 11 of the FAA - or corruption or fraud in the procurement of the award, arbitrator partiality or misconduct, or when the arbitrators exceeded their powers.<sup>20</sup> In support of the very limited review mechanism imposed by the FAA, the Supreme Court of the United States in Hall Street,

supra, enunciated that Sections 10 and 11 provide the FAA's exclusive grounds for an award's vacation and modification and may not be supplemented by contract. It is important to note that the FAA is not based on the UNCITRAL Model Law.<sup>21</sup> But while the United States has not enacted the UNCITRAL Model Law, some states - California, Connecticut, Florida, Georgia, Illinois, Louisiana, Oregon and Texas – have adopted it.<sup>22</sup> The majority of state arbitration statutes are based either on the UAA and the RUAA, with some state statutes also being based on the UNCITRAL Model Law.<sup>23</sup>

"Alternative dispute resolution methods or ADRs - like arbitration, mediation,

negotiation and conciliation - are encouraged by the Supreme Court. By enabling

the parties to resolve their disputes amicably, they provide solutions that are

less time-consuming, less tedious, less confrontational, and more productive of

In RCBC Capital Corporation v. Banco de Oro Unibank, 30 the Supreme Court added: "xxx. Institutionalization of ADR was envisioned as 'an important means to achieve speedy and impartial justice and declog court dockets.' The most important feature of arbitration, and indeed, the key to its success, is the public confidence and trust in the integrity of the process. xxx."

7) What are the governing principles of ADR?

1. "Promotion of party autonomy and self-determination in the resolution of disputes.

goodwill and lasting friendships. xxx."

3. "Enlisting of private sector participation." 31

resolve a dispute by rendering an award."<sup>32</sup>

8) How is arbitration defined under the ADR Act? Under the ADR Act, arbitration is a "voluntary dispute resolution process in which one or more arbitrators,

2. "Recognition of ADR as an efficient tool and an alternative procedure for the resolution of cases.

appointed in accordance with the agreement of the parties, or rules promulgated pursuant to this Act,

that, for reasons of public policy, the law deems as not capable of being subject to alternative dispute

9) Is it possible to resolve sports disputes in the Philippines through arbitration? If so, how? Yes. At the core of every alternative mode of dispute resolution is consent. Except for certain controversies

resolution,<sup>33</sup> a dispute may be submitted to arbitration as long as there is consent between or among the parties to the arbitration. This consent may be embodied in an arbitration clause, which is usually contained in the principal agreement between the parties and is an agreement to submit future disputes to arbitration,

or in a submission agreement, which is an agreement to submit existing disputes to arbitration.

The arbitral tribunal shall have the power to grant interim measures necessary to ensure enforcement of the award, prevent a miscarriage of justice, or otherwise protect the rights of the parties.

A final arbitral award under this section shall be executory after the lapse of fifteen (15) days from receipt thereof by the parties and shall be stayed only by

the filing of a bond or the issuance by the appellate court of an injunctive writ. The Commission shall formulate the rules and regulations, which shall govern arbitration under this section, subject to existing laws on arbitration." The Philippine Olympic Committee (POC) explicitly encourages arbitration. Article III of its By-Laws states:

well as, cases arising from or in connection with the Olympic Games or any form of doping offense in case the same cannot be settled or resolved with the NSA's processes and procedures. Any decision ratified by the POC General Assembly may be submitted exclusively by way of appeal to the Court of Arbitration for Sport in Lausanne, Switzerland, which will resolve the dispute in accordance with

the Code of Sports-Related Arbitration. The time limit for appeal is twenty-one

"m. It shall act as the final arbitrator of all intra-NSA conflicts and disputes, as

(21) days after the reception of the decision concerning the appeal." The proposed Agreement between NSAs and National Athletes crafted by the Author includes an Arbitration provision: "All disputes arising out of or in connection with this Agreement and which have not been resolved by the IF and/or NOC, including disputes on this Agreement's conclusion, binding effect, amendment and termination shall be resolved, to the exclusion of the ordinary courts by an Arbitral Tribunal constituted in accordance with the Statues and Regulation of the Court of Arbitration of Sport in Lausanne,

Regulation, and to enforce in good faith the award to be rendered." 10) What are the advantages and disadvantages of arbitration? Among arbitration's advantages are:

Switzerland. The Parties hereby undertake to comply with the said Statues and

the governing law; (6) the place of arbitration and the venue of hearings, if any; (7) the language of the

arbitration; and (8) a summary of the dispute.<sup>36</sup>

In institutional arbitration, it is commenced in accordance with the rules promulgated by the institution, as agreed upon by the parties. For instance, if the parties chose the Singapore International Arbitration Centre,

12) What is international arbitration?

then the parties should follow its rules regarding the commencement of an arbitration proceeding. In ad hoc arbitration, on the other hand, arbitration is commenced in accordance with applicable rules, e.g., if the parties agreed that the arbitration shall be governed by the UNCITRAL Arbitration Rules.37

There are several tests to determine whether a dispute is international, and these may be: (1) the international nature of the dispute; (2) the nationality of the parties; and (3) the UNCITRAL Model Law approach. The ICC adopted the nature of the dispute as its criterion for deciding whether or not an arbitration is international.<sup>39</sup> Thus, any business dispute which contains a foreign element, even if the parties are nationals of the same country, is considered international.<sup>40</sup> For example, a contract that is concluded between two nationals of the same State for performance in another country or that which is concluded between a State

and a subsidiary of a foreign company doing business in that State is considered an international business

The term "international" is used to mark the difference between arbitrations that are purely national or

domestic and those that, in some way, transcend national boundaries or are, in other words, international.<sup>38</sup>

dispute that may be settled through international arbitration.<sup>41</sup> 13) What is an arbitration agreement? Essential to understanding international arbitration, or arbitration for that matter, is a definition of an arbitration agreement. The arbitration agreement is considered as the foundation stone of modern international arbitration.<sup>42</sup> Consent is the essential basis of a voluntary system of international arbitration,<sup>43</sup>

which consent is manifested through a valid agreement to arbitrate. Indeed, before there can be a valid

# An agreement to arbitrate is usually expressed in an arbitration clause in a contract.<sup>45</sup> An arbitration clause

arbitration, there must first be a valid agreement to arbitrate.44

media rights) and those arising from tort. 60

makes it clear that the parties have agreed, as part of their contract, that any dispute that arises out of or in connection with the contract will be referred to arbitration, to the exclusion of the courts.<sup>46</sup> Generally, arbitration clauses are drawn up and agreed as part of the contract before the dispute has arisen. There is, however, a second but less common type of arbitration agreement - a submission agreement, which is made once a dispute has arisen.47

16) What are the CAS procedures? The CAS provides four types of procedure: 1. The Ordinary Arbitration Procedure: This governs disputes that are submitted to the CAS on the first instance.<sup>59</sup> Cases which are assigned to the Ordinary Division

> include classic international commercial arbitration cases like those involving contractual relations (sponsorship contracts, licensing, and broadcasting and

2. The Appeal Arbitration Procedure: This governs appeals for disputes from decisions rendered by the internal bodies of sports organizations (e.g. disciplinary sanctions for anti-doping rule violations);<sup>61</sup> 3. The Ad hoc Division: This division is often set up by the CAS as non-permanent

mediation.

waived or precluded.<sup>75</sup>

20) Describe Mediation under the CAS.

D. Hybrid Approach

21) What is the Hybrid Approach under ADR?

commencement of the arbitration.

**Features** 

**Goal of the** 

**Proceedings** 

tribunals for certain events like the Olympic Games, the Commonwealth Games, or other similar major events. 62 A panel of arbitrators is on-call to hear appeals as they arise and to issue decisions within 24 hours from the filing of an appeal;63 4. Mediation Procedure: Those that may be submitted to the ordinary arbitration procedure, like disputes arising from contract or tort, may be submitted to

17) How does a party commence ordinary arbitration proceedings under the CAS? Under R31 of the Code of Sports-related Arbitration, the party wishing to submit a dispute to the CAS must send the CAS Court Office a request for arbitration (ordinary procedure) or a statement of appeal (appeals procedure). Under R38 of the same Code, the Request shall contain:

1. The name and full address of the Respondent(s); 2. A brief statement of the facts and legal argument, including a statement of the issue to be submitted to the CAS for determination; 3. Its request for relief;

4. A copy of the contract containing the arbitration agreement or of any document

5. Any relevant information about the number and choice of the arbitrator(s). If the relevant arbitration agreement provides for three arbitrators, the name of the arbitrator from the CAS list of arbitrators chosen by the Claimant.

providing for arbitration in accordance with the CAS' Procedural Rules;

Under Section 2(1) of the UMA, mediation means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute. In other words, mediation is a facilitated negotiation. A "mediation communication" means a statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation or is made for purposes

of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a

mediator.73 The mediation privilege under the UMA further provides that, except under certain circumstances,74

a mediation communication is privileged and is not subject to discovery or admissible in evidence unless

Another set of rules that may serve as a guide for mediators, inform the mediating parties, and promote

public confidence in mediation as a process for resolving disputes is the Model Standards of Conduct

for Mediators, which was prepared in 1994 by the American Arbitration Association, the American Bar

The Model Standards provide that mediation "serves various purposes, including providing the opportunity for parties to define and clarify issues, understand different perspectives, identify interests, explore and assess

possible solutions, and reach mutually satisfactory agreements, when desired."77 The principle of party self-

determination is the guiding light of every mediator in conducting a mediation. Under Standard I of the Model

Standards, self-determination is "the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome. Parties may exercise self-determination at

any stage of a mediation, including mediator selection, process design, participation in or withdrawal from

the process, and outcomes." Yet while the Model Standards recognize self-determination as a fundamental

principle of mediation practice, it also acknowledges that a mediator may need to balance such party self-

determination with a mediator's duty to conduct a quality process in accordance with the Standards.<sup>78</sup>

Association's Section of Dispute Resolution, and the Association for Conflict Resolution.<sup>76</sup>

Under Article 1 of the CAS Mediation Rules, the CAS has defined mediation as a "non[-]binding and informal procedure, based on a mediation agreement in which each party undertakes to attempt in good faith to negotiate with the other party, and with the assistance of a CAS mediator, with a view to settling a sportsrelated dispute." A mediation agreement may take the form of a mediation clause inserted in a contract or that of a separate agreement.<sup>79</sup> Notably, disputes related to disciplinary matters, as well as doping issues, are expressly excluded from mediation under the CAS. Article 9 of the CAS Mediation Rules further provides that the mediator "shall promote the settlement of the issues in dispute in any manner that he believes to be appropriate." To achieve this end, he will:

the parties move on to arbitration, where the mediator assumes the role of arbitrator and renders a final and binding decision.81 In the United States, several arbitration institutions have incorporated measures that provide for mediation in advance of arbitration. JAMS, for instance, supplies a standard clause that parties may incorporate in their arbitration agreements should they wish to mediate before proceeding to arbitration. The clause provides

The Hybrid Approach combines mediation and arbitration (Med-Arb), i.e., mediation to identify the issues and, if not successful, arbitration to settle them. 80 Parties first attempt to negotiate and reach an agreement

with the assistance of a mediator. If the mediation ends in an impasse, such as when issues remain unresolved,

the following salient features: (1) disputes arising out of the arbitration agreement shall be submitted to mediation first and if the dispute is not resolved through mediation, then it shall be submitted to final and binding arbitration; (2) mediation confidentiality; and (3) either party may initiate arbitration at any

time following the initial mediation session or 45 days following the date of filing of the written request

for mediation (whichever occurs earlier), and the mediation earlier initiated may continue after the

The American Arbitration Association, on the other hand, instructs that should parties still want to incorporate mediation into their contractual dispute settlement process, they can do so by inserting the following

mediation clause into their contract in conjunction with the standard arbitration provision, therefore:

"If a dispute arises out of or relates to this contract, or the breach thereof, and if

the dispute cannot be settled through negotiation, the parties agree first to try

in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before

resorting to arbitration, litigation, or some other dispute resolution procedure."82

Under Article 13 of the CAS Mediation Rules, the parties may have recourse to arbitration when a dispute has not been resolved by mediation, provided that an arbitration agreement or clause exists between the

parties. The arbitration clause may be included in the mediation agreement. In such a case, the parties may

avail of the expedited procedure under Article 44, paragraph 4 of the Code of Sports-related Arbitration.

Arbitration

The goal of the

arbitrator is to

reach a final

Hybrid (Med-Arb)

Litigation

The goal of the

judgment.

evidentiary discovery and

depositions,

as well as the

examination of

historical truth.

witnesses at trial,

is designed to find

judge is to render

settlement of the and binding dispute. It may award. be to help the parties improve their relationship

Mediation

The goal of the

mediator is not

necessarily the

or complete a transaction. Whether Discovery is not Depending on Discovery is **Discovery** is available. the arbitration available. The Available rules to be availability of

followed,

available.

discovery may

or may not be

Whether Interim relief is Generally, Courts are in the **Interim Relief** not available in interim relief best position is Available mediation. is available in to provide arbitration but enforcement and enforcement provisional or can be an issue. interim relief. 

> 3. The jurisdiction of the courts; 4. Future legitime; 5. Criminal liability; and 6. In general, those which, by law, cannot be compromised. For instance, Article 2035 of the Civil Code of the 34 Philippine Institute of Arbitrators. 2016. PIArb Commercial Arbitration Handbook, Mandaluyong City: Anvil

35 Id., citing J.H. Carter's "Dispute Resolution and International Agreements," International Commercial Agreements,

<sup>51</sup> "Frequently Asked Questions," n.d., Court of Arbitration for Sport, accessed April 17, 2021, https://www.tas-cas.org/

33 Under Section 6(b) to (h) of the ADR Act, the following disputes are not capable of being subjected to ADR:

44 Id. 45 /d. 46 /d. 47 Id. 48 Id. 49 Id.

en/general-information/frequently-asked-questions.html.

2. The validity of marriage or any ground for legal separation;

1. The civil status of persons;

36 See Philippine Institute of Arbitrators 2016.

pp. 435-45, 1995.

<sup>39</sup> /d.

40 /d.

**41** /d.

42 Id.

43 Id.

50 /d.

38 See Blackaby 2015.

53 Reilly, Louise. 2012. "Introduction to the Court of Arbitration for Sport (CAS) & the Role of National Courts in International Sports Disputes, An Symposium." Journal of Dispute Resolution 1. https://scholarship.law.missouri.edu/

cgi/viewcontent.cgi?article=1124&context=jdr. 54 See Frequently Asked Questions, n.d. 55 R27, CAS Code of Sports-related Arbitration. 56 See Reilly 2012. 57 /d. 58 See Frequently Asked Questions, n.d. 59 See Reilly 2012.

79 Article 2, CAS Mediation Rules. 80 See Blackshaw 2013. 81 See Mordehai 2016. 82 "Commercial Arbitration Rules and Mediation Procedures," n.d., American Arbitration Association, accessed April 19, 2021, https://www.adr.org/sites/default/files/Commercial-Rules-Web.pdf. 83 See Blackshaw 2013. 84 "Litigation," n.d., American Bar Association, accessed April 11, 2021, https://www.americanbar.org/groups/dispute\_

77 Preamble, Model Standards of Conduct for Mediators.

78 Standard I(A), Model Standards of Conduct for Mediators.

resolution/resources/DisputeResolutionProcesses/litigation/.

86 Article 12, CAS Mediation Rules. **Sports Law-for-All** Atty. Alberto C. Agra

76 "Model Standards of Conduct for Mediators," n.d., The Center for Appropriate Dispute Resolution in Special

Education, accessed April 19, 2021, https://www.cadreworks.org/resources/model-standards-conduct-mediators. A

joint committee consisting of representatives from the same successor organizations revised the Model Standards in



Nov. 29, 2021 For your comments, inquiries and suggestions, email the author at agrasportslawforall@gmail.com. The Author is an advocate, author and lecturer of Sports Lawfor-All and Sports-for-a-Purpose. He is the Chairman of the Arbitration Committee of the Philippine Olympic Committee. He

East Asia and Southeast Asia Freerunning Parkour Union, and

Vice-President of the Asia Freerunning Parkour Union.

3) What are the mechanisms by which these disputes can be resolved?

5) What is the law applicable to all forms of alternative dispute resolution in the Philippines?

When a country adopts a model law, it has a choice whether to adopt all or only part of it. The Philippines

Philippines). For your information and strict compliance." Section 181 of Revised Corporation Code states: "Arbitration for Corporations. - An arbitration agreement may be provided in

> in the manner and within the period specified in the arbitration agreement, the parties may request the Commission to appoint the arbitrators. In any case, The arbitral tribunal shall have the power to rule on its own jurisdiction and on questions relating to the validity of the arbitration agreement. When an intra-

> "(1) predictability, as disputes are resolved in one place and not by a race to judgment in the courts of two nations;

selected before anything substantive can happen; "(3) arbitration tends toward spitting the difference rather than deciding either

The commencement of an arbitration proceeding depends on whether the arbitration is institutional or ad hoc. But in general, it is commenced by sending a request for arbitration to the other party. The request for arbitration is usually brief and contains the following information: (1) a summary of the request by indicating the governing rule, the cause of action, and the claims or reliefs prayed for; (2) the parties and their legal

Just like any arbitration, the parties' consent to arbitration is the cornerstone of CAS arbitration.<sup>53</sup> For a dispute to be summitted to CAS arbitration, the parties must agree in writing, which may either appear on a one-off basis or in a contract or the statutes/regulations of a sports organization.<sup>54</sup> Similar to ordinary arbitration, parties may agree to submit any dispute to CAS arbitration either before or after the dispute has arisen. Specifically, R27 of the Code of Sports-related Arbitration provides that the rules shall apply whenever the parties have agreed to refer a sports-related dispute to CAS. Such reference may arise out of an arbitration clause contained in a contract or regulations or by reason of a later arbitration agreement

(ordinary arbitration proceedings) or may involve an appeal against a decision rendered by a federation,

association or sports-related body where the statutes or regulations of such bodies, or a specific agreement

by ordinary courts, assuming that due process is complied with.<sup>57</sup> 15) What is the jurisdiction of the CAS?

by a mediator to settle their controversy through a voluntary agreement executed by the parties called a mediated settlement agreement.66 Excluded from the coverage of the ADR Act is court-annexed mediation, which is a mediation process conducted under the auspices of the court.<sup>67</sup> Court-annexed mediation is conducted prior to the trial "where

the judge refers the parties to the Philippine Mediation Center (PMC) for the mediation of their dispute by

trained and accredited mediators."68 Likewise excluded from the ADR Act is Judicial Dispute Resolution, which is the mediation, conciliation, and early neutral evaluation process conducted by the judge of a pending case after a failed court-annexed mediation and before the pre-trial stage. <sup>69</sup> The ADR Act, however, is applicable to court-referred mediation, which is a "mediation ordered by a court to be conducted in accordance with the agreement of the parties when an action is prematurely commenced in violation of such agreement."<sup>70</sup>

The CAS Mediation Rules expressly provide that the mediator may not impose a solution of the dispute on either party. Cases involving sensitive issues may benefit from mediation rather than litigation or arbitration, considering that one of the hallmarks of mediation is strict confidentiality. In fact, Article 10 of the CAS Mediation Rules states: "The mediator, the parties, their representatives and advisers, experts and any other persons present during the meetings between the parties may not disclose to any third party any information given to them during the mediation, unless required by law to do so.

> "Under their own responsibility, the parties undertake not to compel the mediator to divulge records, reports or other documents, or to testify in regard to the

> shall be returned to the party providing these upon termination of the mediation,

"The parties shall not rely on, or introduce as evidence in any arbitral or judicial

c. documents, notes or other information obtained during the mediation d. proposals made or views expressed by the mediator; or e. the fact that a party had or had not indicated willingness to accept a

rely on before an arbitral or judicial authority.86 **Applicability** The process is less

**Results** 

of Due

**Process** 

13 /d.

15 /d.

16 /d.

14 See Kurtz 2014.

17 128 S.Ct. 1396.

<sup>31</sup> See also Robeniol 2020.

66 See Robeniol 2020.

<sup>69</sup> See Robeniol 2020.

<sup>67</sup> See Robeniol 2020. See also Section 3(I), ADR Act.

<sup>70</sup> See Robeniol 2020, citing Section 3(m), ADR Act.

adult protective services agency is a party.

Annexed Mediation (CAM) and Judicial Dispute Resolution (JDR).

32 Section 3 (d), ADR Act of 2004.

Concerns

com/4-107-6426?transitionType=Default&contextData=(sc.Default)&firstPage=true. <sup>2</sup> Id. 3 /d. Through, January. https://www.crowell.com/files/Arbitration-in-the-United-States.pdf.

18 See Kurtz 2014. 19 /d. 20 /d. 21 /d. <sup>22</sup> "Status: UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006," n.d., United Nations Commission on International Trade Law, accessed April 17, 2021, https://uncitral.un.org/ en/texts/arbitration/modellaw/commercial\_arbitration/status. 23 See Kurtz 2014. <sup>24</sup> Robeniol, Gabriel. 2020. Alternative Dispute Resolution. Quezon City: Central Book Supply, Inc. <sup>26</sup> n.d., Philippine Institute of Arbitrators, accessed April 11, 2021, https://www.piarb.org.

63 /d. 64 Blackshaw, Ian. 2013. "ADR and Sport: Settling Disputes Through the Court of Arbitration for Sport, the FIFA Dispute Resolution Chamber, and the WIPO Arbitration & Mediation Center." Marquette Sports Law Review 24. https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1609&context=sportslaw. 65 Mironi, Mordehai. 2016. "The promise of mediation in sport-related disputes." International Sports Law Journal 16: 131-154. doi: 10.1007/s40318-016-0101-4.

<sup>71</sup> Prefatory Note, Uniform Mediation Act. <sup>72</sup> "Legislation: Where the Uniform Mediation Act Stands in the States (Web)," June 16, 2006, International Institute for Conflict Prevention & Resolution, accessed April 19, 2021, https://www.cpradr.org/news-publications/ articles/2005-06-16-legislation-where-the-uniform-mediation-act-stands-in-the-states-web. <sup>73</sup> Section 2(2), Uniform Mediation Act.

68 See Robeniol 2020, citing the Consolidated and Revised Guidelines to Implement the Expanded Coverage of Court-

6. ...sought or offered to prove or disapprove a claim or complaint of professional misconduct or malpractice against a mediation party, non-party participant or representative of a party based on conduct occurring during mediation; and 7. Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in which a child or

8. After an in camera hearing, a party seeking discovery shows that the evidence is not otherwise available and that there is a need for it which substantially outweighs protecting confidentiality. The mediation communication here must be offered for use in criminal proceedings or to avoid liability on a mediated settlement. 75 Section 4, Uniform Mediation Act.

**E. Comparative Matrix** 

identify the

issues and, if

not successful,

arbitration can

else, such as a judge,

may make the final

decisions for the

The process is

subject to the

of due process.

same basic norms

parties, unless the

Hybrid (Med-Arb) Features Mediation Arbitration Litigation Litigation is a process for handling disputes in the court called a mediator, resolves arbitration. system. Litigation is assists the parties in disputes. Mediation can a contested action, be used to where someone settling their dispute.

be used to parties settle before trial.84 settle them.83 Nature of the The mediator cannot The arbitrator Whatever impose a solution of the renders a final comes out of dispute on either party.85 and binding the litigation is The parties, however, award. binding upon the may sign a settlement, parties. which each party may

The process is

subject to the

norms of due

same basic

process.

¹ Thomson Reuters Practical Law, s.v. "Arbitration," Accessed April 11 2021, https://uk.practicallaw.thomsonreuters. <sup>4</sup> Kurtz, Birgit, Arlen Pyenson, and Amal Bouhabib. 2014. "Arbitration in 49 jurisdictions worldwide." Getting the Deal <sup>5</sup> Buckley, Jr., John, and Jonathan Landy. 2020. "USA: International Arbitration Laws and Regulations 2020." International Comparative Legal Guides, August 24. https://iclg.com/practice-areas/international-arbitration-lawsand-regulations/usa. <sup>6</sup> See Kurtz 2014. <sup>7</sup> Id. See also Buckley, Jr. 2020. 8 See Buckley, Jr. 2020. See Kurtz 2014. 10 /d. 11 /d. <sup>12</sup> See Buckley, Jr. 2020.

<sup>27</sup> Blackaby, Nigel, and Constantine Partasides QC. 2015. Redfern and Hunter on International Arbitration, New York: Oxford University Press. <sup>28</sup> Maria Luisa Park Association v. Almendras, G.R. No. 171763, O5 June 2009. See also Robeniol 2020. <sup>29</sup> G.R. No. 141818, 22 June 2006. 30 G.R. No. 196171, 10 December 2012.

60 See Reilly 2012 and Frequently Asked Questions, n.d. 61 /d. **62** Id.

<sup>74</sup> Section 6 of the Uniform Mediation Act provides that mediation privilege does not apply: 1. If all parties signed an agreement waiving it; 2. Available to the public under a Public Records Act; 3. Where there is a threat or statement of a plan to inflict bodily injury or commit a crime of violence; 4. Whether it is used to attempt to commit a crime or to conceal a crime; 5. Sought or offered to prove or disapprove a claim or complaint of professional misconduct or malpractice filed against a mediator;

85 Article 9, CAS Mediation Rules.

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