

RESEARCH ARTICLE	The Applicable Law to Disputes Arising from Sports Sponsorship Contracts before Arbitration (A Comparative Study)	
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Abstract This study aims to identify the applicable law to disputes arising from sports sponsorship contracts before arbitration. This is due to the frequent emergence of such disputes, which have become an integral part of the sports world ranging from contractual conflicts between players and clubs to appeals against arbitration decisions or violations of sports regulations. However, resolving disputes related to sports sponsorship contracts does not always require resorting to traditional courts, as alternative dispute resolution mechanisms, such as arbitration, provide effective and professional solutions for the sports community.		
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Introduction:

In countries leading commercial activity, sports possess both economic and investment dimensions. This commercial aspect of sports explains the increasing number of practitioners, in addition to the growing audience, professional athletes, and sports channels.

Sport has become a complex industry relying on modern sports management methods, attracting capital from both public and private sectors, domestically and internationally. Individuals and institutions engaged in sports activities whether in Algeria or other countries must now deal with the inevitability of detachment from state financial guardianship and the resulting oversight of private and individual financial resources.

Sports sponsorship contracts are among the most significant contracts signed by sports organizations. To secure sufficient funding to carry out their activities, these organizations have turned to highly professional approaches. Sports events with large public audiences attract commercial or industrial companies seeking to promote their names through such events this is what is known as the sports sponsorship contract.

Given the international nature of sports sponsorship contracts and the diversity of the nationalities of the involved parties, disputes may inevitably arise regarding the applicable law in the event of a conflict concerning such contracts.

Determining the applicable law when referring sports sponsorship contract disputes to arbitration involves two aspects:

The first is **procedural**, and the second is **substantive**. Therefore, it is essential to first identify the law applicable to arbitration procedures and then determine the law governing the substance of the arbitration dispute.

To address this issue, we have adopted a descriptive, analytical, and comparative methodology, dividing our study in this article into two sections:

The first section examines the law applicable to arbitration procedures,

while the second addresses the law applicable to the subject matter of the dispute before arbitration.

Section One Determining the Law Applicable to Arbitration Procedures

Arbitration procedures are not subject to the same procedural rules that govern judicial court proceedings, and this is considered one of the main advantages of the arbitration system. There is no doubt that the law applicable to arbitration procedures holds particular significance in the field of arbitration, especially with regard to respecting the rights of defense, the law that governs rules of evidence, the degree of confidentiality or publicity of the hearings, and many other aspects.

Subsection One Personal Connection (Subjective Connecting Factor)

The will of the parties plays a prominent role in managing the arbitration proceedings. Pursuant to the principle of the autonomy of will, the parties have full freedom to choose the law applicable to the procedures governing the arbitration dispute. Accordingly, they may choose to apply the law of a particular country or refer to the rules of an international arbitration center ¹.

If the parties wish to conduct the arbitration electronically, they may refer to the rules of electronic arbitration centers such as the Cyberjustice Tribunal affiliated with the University of Montreal in Canada ².

This approach has also been adopted by the Algerian legislator in Article 1043, paragraph 1 of the Code of Civil and Administrative Procedure, which states that if the arbitration dispute is ongoing, or if the judge is aware that one of the parties will present an arbitration agreement, the judge has no authority to decide the dispute ³.

Section One: The Authority of the Arbitration Parties

First: In the Selection of Procedures

Accepting the jurisdiction of the arbitral tribunal means that the tribunal begins examining the merits of the case and the origin of the arbitration dispute, which consists of a series of various and sequential procedures carried out over a period of time, namely, the arbitration period agreed upon by the parties or prescribed by law.

These procedures aim to investigate the dispute submitted to the arbitral tribunal and to form an opinion with the objective of ultimately rendering a decision.

The Algerian legislator provides in Article 1043, paragraph 1 of the Code of Civil and Administrative Procedure that: "The arbitration agreement may provide, whether directly or by reference to an arbitration system, for the procedures to be followed in settling disputes. These procedures may also be subject to a procedural law determined by the parties to the arbitration agreement."

From the content of Article 1043 of the aforementioned Code of Civil and Administrative Procedure, it is clear that the Algerian legislator subjects the arbitration procedures to the law chosen by the parties. In the absence of such agreement, the matter is referred to the arbitrators.

Second: The Impact of the Contractual Nature on the Regulation of Procedures

Article 25 of Egyptian Arbitration Law No. 27 of 1994 provides that the parties to the arbitration may agree on the procedures to be followed by the arbitral tribunal, including the right to subject these procedures to the rules in force at any arbitration center. In the absence of such agreement, the arbitral tribunal may choose the arbitration procedure it deems appropriate, taking into account the provisions of this law.

It is evident from this paragraph that, although a procedural relationship also arises when resorting to national courts, litigation before national judicial bodies fundamentally differs from arbitration. This difference is defined by the source of the rules governing the proceedings. Procedures before national courts are usually based on established legal origins, namely procedural law, which is governed by the Civil Code, and judges are bound by the statutory rules.

In contrast, arbitration proceedings are characterized by the contractual foundation of the arbitration system. Therefore, arbitrators enjoy broader powers in this regard compared to national judges. These powers are subject to the rules agreed upon between the parties. In the absence of such agreement, the arbitral tribunal independently organizes the proceedings.

Third: Choice of Procedures

Under the previous legislative principle, arbitrators were bound by procedural rules and could not deviate from them except with the consent of the parties. However, a global trend has since emerged that reverses this approach: arbitrators are no longer bound by procedural rules as a general principle unless such rules are based on legislative provisions or an agreement between the parties.

Based on the above, if the parties agree to follow specific procedural rules before the arbitral tribunal, the tribunal must adhere to them. However, the parties' authority in this matter is not absolute, and their agreement does not imply the neglect of fundamental procedural guarantees and principles, foremost among them the right to defense, particularly the principle of confrontation as also stipulated in Article 26 of the Egyptian Arbitration Law.

Section Two: The Tribunal's Obligation to Follow the Procedures of Any Organization or Arbitration Center If Agreed Upon by the Parties

If the parties agree to refer to the procedural rules of an arbitral institution whether local or foreign the arbitral tribunal is required to fully apply those procedural rules for the duration of its commitment to them.

The parties may also partially commit to certain rules, or merely refer to them for guidance, without considering them as binding rules.

Accordingly, it is permissible for the parties to agree to follow the procedures applied by the Regional Arbitration Center affiliated with the International Chamber of Commerce in Paris, or the Arbitration Committee... etc.

Subsection Two Substantive Connection (Objective Connecting Factor)

If the parties do not agree on specific rules for the arbitration dispute resolution procedures and do not request the arbitral tribunal to follow any particular procedure, the tribunal shall apply the law of the country where the arbitration is held⁴. This matter was implicitly addressed in the 1958 New York Convention, which dealt with the enforcement of foreign arbitral awards⁵, particularly under Article V(1)(d). If the composition of the arbitral tribunal or the arbitral procedure is contrary to the parties' agreement or in the absence of such agreement, contrary to the law of the country where the arbitration is held this constitutes a ground for refusing enforcement of the award⁶, i.e., non-enforcement under the 1985 UNCITRAL Model Law on International Commercial Arbitration⁷.

By analogy, in the sports field, the arbitral tribunal shall apply the law of the country where the sports federation, sports organization, or sports institution is located⁸.

Moreover, the arbitral tribunal has the authority to choose the procedure it deems appropriate, meaning it may establish its own procedural rules. While arbitrators are not bound by the procedural rules set out in the Code of Civil and Administrative Procedure, this does not necessarily prevent them from applying all or part of those rules.

Thus, an arbitrator may rely entirely or partially on these procedures. Arbitrators may also exclude rules related to the participation of court clerks or bailiffs, or those requiring a lawyer's signature on specific documents.

An arbitrator may also dispense with oral pleadings and rely solely on written briefs especially in cases where the arbitrator is located far away.

It is worth noting that the arbitrators' authority to establish procedural rules in such cases is not absolute. Article 25 of the Egyptian Arbitration Law states that "the arbitral tribunal shall have authority... subject to the provisions of this law." This means that arbitrators cannot be exempted from complying with the procedural rules stipulated in Law No. 27 of 1994, which must be adhered to. While such provisions may be limited in number, they do exist and are binding. For example, arbitrators must comply with procedural rules concerning challenges against arbitrators, which are governed by rules on objections, recusals, arbitral procedures, arbitration deadlines, and the contents of the arbitral award, among others.

If the arbitral tribunal violates the agreement between the parties in this regard, the award rendered may be deemed to have exceeded the scope of the arbitration agreement and may be subject to annulment.

An appeal may also be brought if the arbitral tribunal fails to follow the rules prescribed in the arbitration law, or if the arbitrator did not observe such rules when issuing the award despite the arbitrator's procedural autonomy in managing the arbitration dispute.

However, in practice, such issues rarely arise. Most international institutional electronic arbitration experiences have established clear models for resolving arbitration disputes, including the procedures to be followed. Anyone resorting to such institutions is obliged to comply with the procedural rules applicable to them⁹. Accordingly, it can be said that disagreements over the selection of the applicable procedural law are rare.

Section Two Determining the Law Applicable to the Subject Matter of the Dispute before Arbitration

Determining the law applicable to the subject matter of the dispute is one of the longstanding challenges that has emerged with the development of legal disputes. It has led to conflicts among the laws of various countries, each claiming the applicability of its own law to such disputes. Moreover, the task of arbitrators in identifying the applicable law for the substance of the dispute is even more complex than that of judges, as the dispute is not limited to domestic laws, but also extends to international sports regulations and national legal systems.

Article 58/R of the Rules of Procedure of the Court of Arbitration for Sport (CAS) provides that the Appeals Chamber shall issue its decision in accordance with the rules and laws chosen by the parties. In the absence of such agreement, the applicable law shall be that of the country in which the headquarters of the relevant sports federation or organization is located¹⁰.

Accordingly, the law applicable to the subject matter of arbitration may be determined through personal connection (subjective connecting factor), substantive connection (objective connecting factor), or the arbitrator's private international law. Each of these approaches will be examined in the following three subsections:

Subsection One Subjective Connecting Factor (Personal Connection)

The applicable law may be determined through the expression of the parties' will¹¹, a principle that is well-established and recognized in many legal systems¹². Accordingly, the parties are free to choose the law applicable to the subject matter of the dispute, and the arbitral tribunal is bound by this choice and must apply it accordingly. This freedom is based on the contractual nature of arbitration, which distinguishes it from the judicial origin¹³ a principle also adopted by the UNCITRAL Model Law on International Commercial Arbitration¹⁴.

The arbitral tribunal is required to implement the parties' agreement; otherwise, the award may be deemed null and void for violating the parties' choice of applicable law for the subject matter of the dispute¹⁵. This is affirmed in Article 1050, paragraph 1 of the Algerian Code of Civil and Administrative Procedure, which states that the arbitral tribunal shall decide the dispute in accordance with the rules of law chosen by the parties¹⁶. Similarly, Egyptian Arbitration Law affirms this in Article 32, paragraph 1 of Law No. 27 of 1994¹⁷, which provides that even if the arbitration agreement is a contract in itself, it remains subject to the law of obligations in accordance with Article 19, paragraph 1 of the same law, just like any other international contract to which this provision applies¹⁸.

It is also accepted that the parties may have the right to determine the governing law of the contract at a later time, at their own discretion, and may postpone this decision until a dispute arises and is referred to arbitration¹⁹.

Recourse to arbitration itself may be determined either through an arbitration clause, which refers the dispute to arbitration upon its emergence, or through a submission agreement concluded²⁰ after the dispute arises and the scope of the conflict is defined²¹.

The applicable law to the dispute may thus be determined after the contract has been concluded.

There is no doubt that choosing the applicable law, whether made in the body of the contract or in a separate document, makes no difference; the chosen law remains binding whether selected before or after the dispute arises²², so long as the case has not yet been adjudicated.

It is also unquestionable that the subjective connecting factor applies to arbitrations involving disputes arising from sports sponsorship contracts when determining the law applicable to the subject matter of the dispute before arbitration. This grants the parties the freedom to choose the substantive law of the dispute, and the arbitral tribunal is bound to apply this choice.

Subsection Two Objective Connecting Factor

When the parties do not wish to determine the law applicable to the subject matter of the dispute, the arbitral tribunal applies strict and alternative criteria in such cases. In the absence of an express choice by the parties, the arbitrator applies the substantive rules of law that he or she considers most closely connected to the dispute²³, taking into account the terms of the disputed contract and the prevailing customs related to this type of transaction, as stipulated in Article 39, paragraphs 2 and 3 of the Egyptian Arbitration Law²⁴, Article 28, paragraphs 2 and 4 of the UNCITRAL Model Law on International Commercial Arbitration²⁵, Article 17 of the ICC Rules in Paris²⁶, and Article 1045, paragraph 2 of the Algerian Code of Civil and Administrative Procedure²⁷.

Since international sports federations are composed of a group of national federations affiliated with them, these national bodies are obligated to implement the regulations and directives issued by the international federation. It is not surprising that such federations are merely non-governmental international organizations composed of individuals of various nationalities or legal entities (public or private), and as such, they do not possess the governmental powers granted to intergovernmental organizations.

These organizations operate under domestic laws, not international law²⁸, and are often referred to as private international organizations on the basis that they are subject to private law rather than public international law²⁹. When clubs draft their statutes, they are required to adhere to the rules established by the national sports federation to which they belong, and consequently, they are also bound by the regulations of the international federation to which the national body is affiliated. Therefore, the rules of international sports federations are known to clubs, players, and other stakeholders. As a result, arbitration must acknowledge this reality and take it into account, just as it would with the terms of a contract between two parties based on the principle that a contract is the law of the contracting parties.

Thus, as a non-governmental international organization, the legislative authority of the international sports federation is not merely advisory, but binding³⁰.

Consequently, the arbitrator may not refuse to apply the regulations issued by the international sports federation but is required to comply with them as if they were contractual terms especially since such regulations often define the framework within which the contractual terms must operate ³¹.

Subsection Three Application of the Arbitrator's Private International Law

To clarify the issue and avoid potential legal confusion ³², it must be acknowledged that the applicable law in the case is the law governing the subject matter of the dispute, not the law governing the arbitration system ³³.

In practice, if arbitration takes place in a particular country, the applicable law is the law of that country. However, this does not mean that the dispute is to be resolved under that country's substantive national law, but rather by applying the conflict-of-law rules (connecting rules) of that country's legal system. A well-established principle in this regard is that the arbitrator's determination of the applicable law is based on the arbitration agreement, and not on considerations of national or international sovereignty. In other words, arbitrators do not operate under international rules in the traditional sense and are not bound by a specific system of public international law.

Determining the applicable law is a task entrusted to arbitrators, who carry it out within the framework of the designated system of international arbitration ³⁴.

This approach was adopted by the Swiss legislator in Article 187 of the Swiss Code of Civil Procedure ³⁵, which introduces the concept of the arbitrator's private international law in international arbitration. This provision grants arbitrators' full powers derived from the will of the parties, thereby recognizing both the autonomy of the parties and the authority of the arbitrators to determine the applicable law ³⁶.

However, an arguably illogical consequence of this autonomy is that rules of non-international origin may be applied, and both courts and arbitrators may have authority in determining the applicable law. The courts may define the scope of their jurisdiction without prejudice to public policy.

In summary, this criterion is similar to the objective connecting factor, in the sense that it grants arbitrators the authority to determine the law most closely connected to the dispute, without relying on rigid, predetermined rules. This standard is applicable to disputes arising from sports sponsorship contracts.

Conclusion:

In conclusion, alternative dispute resolution mechanisms such as arbitration constitute effective legal tools for resolving sports-related disputes between various parties in the sports field. This mechanism has demonstrated its ability to provide swift and efficient solutions while preserving confidentiality, protecting the reputation of the parties, and safeguarding their professional and personal relationships. By applying the appropriate law to disputes arising from sports sponsorship contracts before arbitration, the sports community can adopt a more flexible and professional approach in seeking alternative solutions to achieve justice, particularly through the inclusion of a governing law clause for alternative dispute resolution in sports sponsorship contracts.

Accordingly, this study has reached a set of findings and recommendations, which can be summarized as follows:

Study Findings:

- A growing trend toward the effective implementation of arbitration, particularly as it contributes to enhancing stability in the field of sports.
- Recognition of amicable means for settling disputes arising from sports contracts, ensuring the protection of all parties' rights and promoting fairness in global sports sponsorship and competition contracts.
- Arbitration allows parties to avoid high costs and legal risks associated with traditional litigation.
- The absence of any reference to arbitration-based settlement in the field of sports sponsorship contracts within Law No. 13-05 related to physical and sports activities and their development.

Based on these findings, the following recommendations are proposed regarding the law applicable to disputes arising from sports sponsorship contracts before arbitration:

- The need to establish legal provisions that clearly define the boundaries of arbitration-based settlement within sports sponsorship contracts under Law No. 13-05 related to physical and sports activities and their development.
- Inclusion of a governing law clause for alternative dispute resolution in sports sponsorship contracts within the framework of Law No. 13-05.
- Activation of sports justice through enabling recourse to arbitration in disputes related to sports sponsorship contracts.

- The necessity of incorporating procedural legal provisions, particularly those related to alternative dispute mechanisms such as arbitration, in sports sponsorship contract disputes under Law No. 13-05 on physical and sports activities and their development.

Endnotes and references

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12. Article 5, paragraph 1 of the 1958 New York Convention states: "Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought..."
13. This provision states that one of the grounds for annulment of the award is that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, or, in the absence of such agreement, not in accordance with the law of the country where the arbitration took place.
14. Paragraph 4 of Article 36 of the UNCITRAL Model Law on International Commercial Arbitration provides that one of the grounds for setting aside the award is that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, or, in the absence of such agreement, not in accordance with the law of the country where the arbitration took place.
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26. "The Panel shall decide according to the applicable regulations and the rules of law chosen by the parties, or, failing such choice, according to the law of the country in which the federation, association or other sports organization that issued the challenged decision has its domicile, or according to the rules of law that the Panel deems appropriate."
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28. BUCHER Andreas: op. cit., p. 85.
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31. BUCHER Andreas: op. cit., p. 85.

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34. Article 28, paragraph 1 of the 1985 UNCITRAL Model Law on International Commercial Arbitration states: "The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute..."
35. "For example, Article 53, paragraph 3 of the Egyptian Arbitration Law No. 27 of 1994 states: "The arbitral tribunal shall apply to the subject matter of the dispute the rules agreed upon by the parties. If they agree to apply the law of a particular country, the substantive rules of that law shall be followed, excluding conflict of law rules, unless otherwise agreed."
36. Article 1050, paragraph 1 of the Code of Civil and Administrative Procedure: "The arbitral tribunal shall decide the dispute in accordance with the rules of law chosen by the parties."
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Paragraph 3 of the same article provides: "When resolving the dispute, the arbitral tribunal shall take into account the terms of the contract in dispute and the relevant trade usages."
46. Article 28, paragraph 2 of the 1985 UNCITRAL Model Law on International Commercial Arbitration states: "If the parties do not designate any rules of law, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable."
Paragraph 4 of the same article states: "In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction."
47. Article 17 of the Rules of the International Chamber of Commerce (ICC) in Paris states:
48. "1 - The parties are free to agree upon the rules of law to be applied by the arbitral tribunal to the merits of the dispute.
49. 2 - In the absence of such agreement, the arbitral tribunal shall apply the rules of law which it determines to be appropriate. In all cases, the arbitral tribunal shall take account of the provisions of the contract and the relevant trade usages."
50. (Referenced by Dr. Abdel Hamid Al-Ahdab: Encyclopedia of International Arbitration, Vol. 2, Dar Al-Maaref, Alexandria, p. 553.)
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"...In the absence of such choice, it shall decide in accordance with the rules of law and customs which it deems appropriate."
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