
ALTERNATIVE DISPUTE RESOLUTION (ADR) MECHANISM IN SPORTS CONTRACT DISPUTES: A LEGAL ANALYSIS

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ABSTRACT

The expanding sports industry has led to a rise in contractual disputes involving diverse stakeholders such as players, broadcasters, sponsors, and organizers. Traditional litigation often proves time-consuming and inefficient for resolving these high-stake disputes. This research examines the critical role of Alternative Dispute Resolution (ADR) mechanisms—arbitration, mediation, and expert determination—in efficiently resolving sports contract disputes while preserving professional relationships and reputations. The study analyzes the nature and scope of sports contracts, specific clauses, and remedies under contract law, emphasizing their implications in sports law. Further, it explores the contributions of major international ADR institutions including the Court of Arbitration for Sport (CAS), FIFA Dispute Resolution Chamber, and WIPO Arbitration and Mediation Centre in resolving disputes efficiently. The paper advocates ADR as a pragmatic alternative to litigation in sports contract disputes, promoting faster resolutions, confidentiality, and enforceability of outcomes.

Keywords: Alternative Dispute Resolution, Sports Contract Disputes, Arbitration, Mediation, Court of Arbitration for Sport, FIFA Dispute Resolution Chamber, WIPO Arbitration Centre, Sports Law, Contractual Remedies, Lex Sportiva.

INTRODUCTION

Alternative Dispute Resolution is unarguably the need for contemporary dispute resolution systems, as the volume of disputes is ever-increasing, and so are the complexity and innovations arising from such disputes. Many countries are adopting ADR as an integral part of their dispute

resolution system and are trying to simplify the processes therein. Sports law in itself is an evolving discipline and therefore, like any discipline, here disputes also occur. With the expansion of sports industry, various aspects of the field also evolve. It also intersects with other fields and the overlap between different fields for a common cause gives rise to newer, complex business relationships. Sports law, or *lex sportiva* evolves through the sports policy making and decisions of various courts by application of general principles of law and specific sports principles to sports and connected disputes. The most significant overlap of domains under sports law is with contract law. Sports has a massive commercial angle which is created and governed through contracts. Sports contracts exist in manifold shapes and forms. Different stakeholders of the sporting industry, ranging from players to broadcasters to sports goods makers, resort to contracts and contractual relationships for legal and business purposes. Naturally, disputes keep arising from such contracts and business relationships. Sports disputes have high-stake disputes, where huge investments, reputations, and relationships are involved. Therefore, it is important that these disputes are settled at a fast pace, and do not linger on for longer periods, as every day of delay causes losses to everyone involved. Moreover, courts are already overburdened with pending litigation. Hence, it is prudent to resort to other methods of dispute resolution, namely ADR. ADR methods such as arbitration, mediation, and expert determination can be used for resolving sports contract disputes. There are various ways in which these methods efficiently resolve sports contract disputes and protect business relationships with a satisfactory solution to the parties. Further, there are several specialised international institutions that provide guidance in the resolution of sports disputes through ADR methods. This paper explores the different types of contracts that exist in sports law, how ADR helps in resolving sports contract disputes, and the various international institutions and their approach towards resolving sports contract disputes.

REVIEW OF LITERATURE

The importance of alternative dispute resolution (ADR) in sports has been extensively analyzed, with Ian Blackshaw emphasizing the critical role played by specialized institutions such as the Court of Arbitration for Sports (CAS), the FIFA Dispute Resolution Chamber, and the WIPO Arbitration and Mediation Centre. Blackshaw outlines the evolution of these institutions and their

tailored adaptations to sport-specific disputes, showcasing their influence in notable cases that have shaped sports dispute resolution frameworks today.¹

Lorenzo Casini² traces the development of the CAS as a pivotal global adjudicative body contributing to the emergence of Lex Sportiva—a body of transnational sports law. Casini highlights how the CAS fosters normative harmonization and consistency in resolving international sports disputes while engaging with global principles of administrative law and arbitration. He situates CAS within a broader global legal regime, underscoring its indispensable role in the governance of sports law.

Ken Foster³ critiques the concept of Lex Sportiva by analyzing CAS jurisprudence, arguing that it encompasses broader universal legal principles beyond sports law, such as good governance, procedural fairness, and equitable treatment. According to Foster, the CAS functions involve multiple adjudicative roles influencing international sporting federations' operations. He cautions against viewing Lex Sportiva narrowly, stressing the multiplicity of legal principles embedded within CAS awards.

From an American perspective, Bill Whitehill⁴ explores the enforceability of professional sports contracts through a review of litigation cases. He details the nature of legal remedies available, emphasizing damages and defenses in contract disputes, though noting many concepts have since been integrated into modern contract law. Complementarily, Nina Goolamali and Stuart

¹ Ian Blackshaw, “ADR and Sport: Settling Disputes Through the Court of Arbitration for Sport, the FIFA Dispute Resolution Chamber, and the WIPO Arbitration & Mediation Centre,” *Marquette Sports Law Review* 24, no. 1 (2013): 1-50.

² Lorenzo Casini, “The Making of a Lex Sportiva: The Court of Arbitration for Sports ‘The Provider’,” *Georgia Journal of International and Comparative Law* (2012), https://irep.ntu.ac.uk/21420/1/218313_1342.pdf

³ Ken Foster, “Lex Sportiva and Lex Ludica: The Court of Arbitration for Sports’ Jurisprudence,” *Entertainment and Sports Law Journal* 3, no. 2 (2000): 1-20.

⁴ Bill Whitehill, “Enforceability of Professional Sports Contracts: What’s the Harm in It?,” *SMU Law Review* 35, no. 3 (1981): 803-820.

Benzie⁵ focus on personal service contracts in sports, discussing contract restrictions, remedies, and repudiation issues from a global and U.S.-centric viewpoint.

Mediation as an ADR method in professional sports is advocated by Katie Shonk⁶, who presents success stories from leagues such as the NHL and NFL. Shonk outlines the advantages of mediation over litigation and arbitration, particularly its efficiency and suitability for resolving the complex disputes often arising in sports contexts. The American Arbitration Association⁷ echoes this viewpoint by detailing various ADR methods applied to collegiate and professional sports disputes, including those involving player endorsements and contract disagreements, emphasizing expedited and specialized arbitration processes.

In the Indian context, Devika Jayaraj⁸ examines the scope of mediation for sports disputes, particularly sensitive issues like gender discrimination and sexual harassment. She argues mediation's suitability owing to its confidential and conciliatory nature, presenting it as a preferable alternative to formal litigation and arbitration in such matters.

Finally, Dhruv Vatsyayan⁹ provides an overview of ADR mechanisms in sports with a focus on the Court of Arbitration for Sports. He explains CAS procedural rules, their applicability to ordinary and appeal arbitration, and how general arbitration principles enhance the efficient resolution of sports disputes globally.

⁵ Nina Goolamali and Stuart Benzie, "Contracts in Sports: Restriction, Remedies and Repudiation," *Legal Insights in Sports Arbitration* (2019).

⁶ Katie Shonk, "How Mediation can Help in Resolving Pro-sports Disputes," Program on Negotiation at Harvard Law School (July 9, 2023), <https://www.pon.harvard.edu/daily/mediation/how-meditation-can-help-resolve-pro-sports-disputes/>.

⁷ American Arbitration Association, "Using ADR to Resolve Collegiate, Professional, and Sports-Business Disputes," *ADR News* (2025), <https://www.adr.org/news-and-insights/navigating-sports-participation-and-nil-disputes-fair-fast-and-focused-solutions-through-arbitration/>.

⁸ Devika Jayaraj, "Scope of Mediation in Sports Disputes," *Indian Sports Law Review* (2025).

⁹ Dhruv Vatsyayan, "Overview of ADR in Sports with respect to the Court of Arbitration for Sports," *Indian Journal of Sports Law* (2025).

STATEMENT OF PROBLEM

ADR is an effective alternative for litigation in many ways. It allows party autonomy, open communication, and flexibility in decision-making, and it remains a process driven by the interests and satisfaction of the parties involved. These factors are especially significant in a commercial relationship, where parties enter into a transaction for mutual benefit. Sports contracts are an arena where the intersection of sports law, contract law, and any other domain to which the contract belongs, takes place. Therefore, it is essential to study how sports contract disputes can be effectively resolved through ADR and the current status of international institutions and their contribution to resolving sports contracts and other disputes through ADR.

OBJECTIVES OF THE STUDY

Objectives of this study are:

1. To study the nature and scope of contracts that exist in the domain of sports law.
2. To analyse the effect that ADR can have in resolving sports contract disputes.
3. To explore the role and contribution of various international sports ADR institutions in resolving sports contract disputes through ADR.

SCOPE AND LIMITATION

This paper discusses ADR in sports contract disputes and analyses the sports disputes through a lens of contractual relationships that governs them, and hence, has limited the scope to that. It also discusses the role of dispute resolution institutes, however, due to research limitations and private nature of ADR, limits itself to the three major institutes only, and does not cover national institutes.

AN OVERVIEW OF TYPES OF CONTRACTS IN SPORTS LAW

Different types of disputes in the sports sector: Contract law is the foundation of sports law, and therefore, different types of sports are governed through the respective contract law statutes, for example, the Indian Contract Act, 1872 in India. There are several categories of disputes which can be located at the intersection of sports law and contract law. These can be discussed as follows:

Media and Broadcasting contracts: With the advent of communications and broadcasting, sports viewership has become commonplace. Any game happening in any part of the world gets viewership across the globe. Media platforms such as TV Channels buy the rights to broadcast the game.¹⁰ Nowadays, this has extended to OTT platforms as well. For example, Jio bought exclusive broadcasting rights in India for FIFA World Cup 2022, and Disney+ Hotstar has the rights for IPL Broadcast.¹¹ These contracts include elements such as Players' Endorsements and Image Rights, Sports Merchandising, Passing-off, Brand Protection, and the methods for dealing with Disputes regarding brand endorsements.

Sponsorship contracts: Any tournament or game is a cost and promotion-intensive affair, and therefore, many sponsors join the event. The sponsors provide support in different forms in exchange for promotions and brand integration throughout the event.¹² For instance, OPPO and Byju have been sponsors for the Indian men's cricket team.¹³ Sponsorship is a fairly popular marketing strategy and therefore, all the major events include multiple sponsors, for instance, Byju's is a sponsor for the FIFA World Cup 2022.¹⁴

Professional Athlete Contracts: These contracts are the most common contracts, and are used for both individual athletes and teams. These contracts define the role and obligations of the player and its position as a member of the team it is representing. Every player mandatorily signs such a contract when entering into a sporting event, and performs as per the stipulations made in the

¹⁰ Olisa Agbakoba, "*Understanding Commercial and Media Broadcasting Rights in Sports*", LEXOLOGY, <https://www.lexology.com/library/detail.aspx?g=7c333e57-e419-472a-a6f9-98136a3578af>, (visited on Dec. 5, 2022).

¹¹ Swagata Panjari, "*FIFA World Cup 2022: How JioCinema is manoeuvring its live streaming game after a fumble*", THE ECONOMIC TIMES, <https://economictimes.indiatimes.com/prime/media-and-communications/fifa-world-cup-2022-how-jiocinema-is-manoevring-its-live-streaming-game-after-a-fumble/primearticleshow/95921053.cms>, (visited on Dec. 5, 2022).

¹² Tugce Oral, "Sports Sponsorship Contracts", TRIBUNAJURIDICA, <https://www.tribunajuridica.eu/arhiva/An8v3/21.%20Tugce%20Oral.pdf>, (visited on Dec. 5, 2022).

¹³ Saumya Tewari, "Byju's replaces Oppo as Team India's official sponsor: BCCI", LIVEMINT, <https://www.livemint.com/industry/advertising/byju-s-replaces-oppo-as-team-india-s-official-sponsor-bcci-1564065067253.html> (visited on Dec. 5, 2022).

¹⁴ FIFA, BYJU'S ANNOUNCED AS OFFICIAL SPONSOR OF FIFA WORLD CUP QATAR 2022, <https://www.fifa.com/tournaments/mens/worldcup/qatar2022/media-releases/byjus-announced-as-official-sponsor-of-fifa-world-cup-qatar-2022-tm> (visited on Dec. 5, 2022).

contract.¹⁵ When signing such a contract, certain restrictions are placed on the player for the benefit of the entity it is representing, by the inclusion of clauses such as non-association with rival entities, among others. Another subset of these contracts is the eligibility contracts for athletes which establish valid participation as both individuals and teams in the event.¹⁶

Management contracts: These are the contracts between athletes and their managers. Managers are the individuals who manage the day-to-day affairs of the athlete and travel with them everywhere. Sometimes, the manager and the agent for the athlete are one and the same, other times, they might be two different individuals.¹⁷ Management contracts are similar to employment contracts and cover all the aspects that an employment contract may include.

Appearance Contracts: Appearance Contracts, as the name suggests, are contract for the appearance of the players. These contracts are for the players to show up at certain events for publicity. It includes being a guest at events, ribbon-cutting, performances and speech delivery, etc. These acts are performed in exchange for consideration.

Insurance Contracts: Sports are full of contingencies, and due to its spontaneous and unpredictable nature, liability is a major concern for both players and organisers in case of mishaps. Therefore, insurance contracts exist in sports in order to indemnify either the organiser or the player in case of an occurrence which disrupts the event, depending on the circumstances.¹⁸

Disputes in Sports Contracts: There are different kinds of disputes which occur in the domain of sports. Sports are not just activities of recreation; it is often used as a means of commercial entertainment and soft diplomacy as well.¹⁹ Sports no more have just national representation, but also there are mixed tournaments and sports leagues where the sports took a fully commercial

¹⁵ DEFINITION OF PROFESSIONAL SPORTS CONTRACT,

https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=15-USC-651209574-678707149&term_occur=1&term_src=title:15:chapter:104:section:7801, (visited on Dec. 6, 2022).

¹⁶ Aryan Dash and Biraj Kuanur, “*Contracts and Sports Law in India: Scope, Relevance, And Comparison With Laws of Other Nations*”, JLRJS, Vol. 2, 2022, pp.1-6.

¹⁷ *Ibid.*

¹⁸ Nagabhushan H., “*Need for Sports Insurance in Sports Law*”, LAWBHOO MI, June 29, 2020, <https://lawbhoomi.com/need-for-sports-insurance-in-sports-law/>, (visited on Dec. 6, 2022).

¹⁹ Poulomi Sarkar, “*Commercialisation of Sports in India*”, IOSR-JHSS, Vol. 25, 2020, pp. 59-68.

mode with complex contractual and legal intricacies with legal and financial obligations on both sides.²⁰ Therefore, sports law has emerged as a separate field with its own needs, and therefore, different forums have been developing across the globe for the same.

Sports contracts are contracts concerning the arena of sports and different stakeholders in the field. From athletes to clubs to coaches, all those who are a part of the sports industry are a part of a sports contract at some point in time. There are different sports contracts, and due to the commercial nature and intricacies of the field, contract law has become an integral part of sports law.²¹

Contract of service and contract for service in sports: In sports, both contracts of service and contract for service exist. There are regular sports employees and then are independent contracts. Earlier, it was presumed that all the contracts between the governing bodies and a player are personal contracts, however, the situation seems to be changing with the expansion of the sports field and the development of several complex commercial relationships in sports.²² Nowadays, there are several categories of sports contracts: between sporting teams, organisers and sponsors, broadcasters and media groups, healthcare and fitness service firms, etc. Sports agents have a special role to play when it comes to sports contracts, and they are often the catalyst for large-scale sports contracts.

Role of Sports Agents: Sports agents are important in obtaining and negotiating contracts for professional players. Lawyers who negotiate these contracts and represent professional players are usually well-versed in the formulation of commercial contracts and know the relative worth of their players in the market. Agents work for either commissions or fixed pay or both.²³ They represent the player and their skill, and also book projects, games, brand deals, etc. for them.

²⁰ *Supra* note 10.

²¹ Tanisha Yadav, “*Contracts in Sports and Clauses Covered under it*”, ENHELION, Jan. 19, 2021, <https://enhelion.com/blogs/2021/01/19/contracts-in-the-sports-industry-and-the-clauses-covered-under-it/>, (visited on Dec. 7, 2022).

²² *Ibid.*

²³ Pratap Alexander Muthalaly, “*Role of Agents and Intermediaries in Sports*”, IPLEADERS, Dec. 27, 2020, <https://blog.ipleaders.in/role-agents-intermediaries-sports/#:~:text=A%20sports%20agent%20is%20essentially,organisations%20in%20third%20party%20negotiations.> (visited on Dec. 7, 2020).

Since every athlete has a different skill set with unique talent and abilities, their contracts are generalised as personal service contracts.²⁴ Personal service contracts are based on the unique skill set and capabilities and thus, the consideration in such contracts is the personal performance of service by the player. Therefore, a personal service contract usually cannot be assigned to someone else.²⁵ The only scope of assignment in such personal service contracts remains when a player participates in different formats of the same game. Therefore, sports agents include the right to assign as a part of the player's contract. However, factors such as exclusivity can force the hand in a contract, and the bargaining power of the player.

Essential and Remedies in Sports Contracts:

There are certain essential elements that need to be present in a sports contract. For a sports contract to exist, it is imperative that an agreement between the parties exists. This agreement should emerge from a valid offer and a valid acceptance. Parties entering into a contract should be competent to contract and must be aware of the nature of their obligations. If any of the parties are found incapable of entering into a valid contract, then in such case, the contract becomes void.²⁶ In sports law, competency to contract is a contentious issue, because there are several events in which minors participate. Therefore, it is considered important in such cases to take into consideration the imbalance of power and ensure that the minor is properly and lawfully represented.²⁷ Further, consensus ad idem is essential to sports contracts, as it is required to indicate the expectations and obligations on the part of all the parties. In any sporting event, there are obligations attached not just to participation or performance, but also to brand integrations, promotions, and third-party associations that are supporting the event. Therefore, clarity on the terms of the events along with the assessment of any conflict of interest is a must, so that any

²⁴ *Ibid.*

²⁵ US Legal, ASSIGNMENTS: CONTRACTS INVOLVING PERSONAL SKILL OR CONFIDENTIAL RELATIONSHIP, <https://assignments.uslegal.com/subject-matter-of-assignments/contracts-involving-personal-skill-or-confidential-relationship/>, (visited on Dec. 7, 2022).

²⁶ Angad Makkar, "*Minor's Contracts in Sports: Need for Reform*", IPRMENTLAW, Dec. 7, 2019, <https://iprmentlaw.com/2019/12/07/minors-contracts-in-sports-need-for-reform-in-india/>, (visited on Dec. 7, 2022).

²⁷ Roshan Gopalakrishna, "*Minors' Agreements in Sports*", SLPC, Jul. 20, 2011, <http://sportslaw.in/home/2011/07/20/minors-agreements-in-sports/>, (visited on Dec. 7, 2022).

avoidable disputes can be identified and done away with.²⁸ Consideration is another element that is integral to sports contracts. Due to the commercial nature of sports events and the stakes involved, sports contracts are heavy on consideration. It can be seen as the price paid for services performed by an athlete or a team.²⁹ Finally, these contracts, while formulated by the parties, should be lawful in nature. They should be made for unlawful purposes or illegal consideration. There are many countries where gambling sports such as Poker and Rummy are illegal, and therefore, in such countries, a contract entered for these sports will be considered a contract for an unlawful purpose and shall be deemed void.³⁰

Remedies in Sports Contracts: In consonance with the general principles of contract law, there are several remedies which can be sought. Usually, the first remedy that is sought by any party in a sports contract is compensation.³¹ Since sports is a financially intensive field with sponsors and promoters associated with almost every event, in the case of a breach of contract, compensation is sought in accordance with the scale of the event and other determinants such as the worth and brand image of the parties involved. In cases where monetary compensation is not fixable or is insufficient, parties often resort to specific performance as a remedy. Specific performance is a common remedy that is based on the law of equity, and it is discretionary in nature. Under the specific performance, the focus is on the fulfilment of the promise made or making good to the party harmed.³² In India, specific performance is governed by the provisions of the Specific Relief Act, 1963. Under the relief of specific performance, the court directs the parties to act in accordance with what was agreed under the contract, or act in a way that repairs the damage suffered by the claiming party.³³ A sports contract is often a contract of employment, where organisations engage different athletes to represent them. A good example of this would be the

²⁸ Madhav Gawri, “*Intricacies of a Sports Contract*”, IPLEADERS, June 5, 2020, <https://blog.ipleaders.in/intricacies-sports-contract/>, (visited on Dec. 7, 2022).

²⁹ *Ibid.*

³⁰ *Supra* note 7.

³¹ Nina Goolamali and Stuart Benzie, “*Contracts in Sports: Restriction, Remedies and Repudiation*”, LAWNSPORT, March 04, 2014, <https://www.lawinsport.com/item/contracts-in-sport-restrictions-remedies-repudiation>, (visited on Dec. 08, 2022).

³² Kenneth L. Mould, SPECIFIC PERFORMANCE AS REMEDY FOR BREACH OF ATHLETES’ CONTRACTS, <https://repository.up.ac.za/handle/2263/46093>, (visited on Dec. 7, 2022).

³³ S. 14, The Specific Relief Act, 1963.

contract between cricketers and BCCI in India. However, if a sports contract is a personal contract, specific relief cannot be granted for such a contract.³⁴ Therefore, under limited circumstances, specific relief is granted where either the issue in hand is not an issue of employment, or only if by the specific performance the breach can be remedied, or the contract had commercial considerations which could be fulfilled without a breakdown in the relationship of the parties.

IMPORTANT CLAUSES IN SPORTS CONTRACTS

There are a variety of special clauses in a sports contract, which are discussed further.

Morality Clause: A morality clause is a clause that dictates the actions of the person who is entering into such a contractual relationship.³⁵ It stipulates that certain activities and omissions by an athlete, in both professional and personal capacity, will constitute a breach of contract and termination will follow. Such clauses are incorporated into the contract in order to preserve the reputation of the event and avoid any backlash that it might attract due to the actions of players.³⁶ A morality clause enables the organisers to unilaterally terminate the contract of the player. For instance, in conservative countries where LGBTQ relationships are not recognised, if a player comes out as a member of the LGBTQ community, then it is seen as a ground for termination of the contract. Another example could be that if a player is found guilty in criminal cases, then also it renders a ground for termination of the contract.³⁷ Morality clauses are often debated, as the critics argue that they violate the privacy of the player, and blur the line between the professional and private lives of the athletes.³⁸ Its supporters, on the other hand, justify the morality clauses

³⁴ *Ibid.*

³⁵ Tushar Katheria, “Importance of Moral Clauses in Sports Contracts”, *IJLMH*, Vol. 3(3), 2020, p. 2025.

³⁶ *Ibid.*

³⁷ Kritika Garg, “Morality Clause in a Sports Contract”, *IPLEADERS*, Oct. 15, 2020, <https://blog.ipleaders.in/morality-clauses-sports-contract/>, (visited on Dec. 8, 2022).

³⁸ Rohit Krishna, “The Need to Reset Morality Clauses in Athlete Contracts”, 2.1 *GSPR* (2021) 70.

by maintaining that athletes have popularity and public reputation, which they bring to the event as well, and hence, the scrutiny is necessary.³⁹

Risk Awareness Clause: Any outdoor sports and some indoor sports include physical activity and exertion which bears some risk for the players. Physical activities that may create a risk for the players' bodies ultimately harm the team and the sponsor for team, as they risk the removal of the player from the field. Such injuries also expose the organisers to liability, and thus, to mitigate the liability arising from such injuries, a clause detailing what kind of risks may be involved is included in the contract. This clause has its origin in the principles of informed consent and "volenti non fit injuria", which implies that the player consents to expose himself to such enhanced on-field risks, and thus, is aware of what may entail.⁴⁰ Therefore, an on-field injury can be covered under this clause, but a deliberate injury to another player may be not covered under such defence.⁴¹ In modern sports contracts, a risk awareness clause is not just for liability mitigation purposes, but it is designed to be both deterrent and punitive in nature. For instance, if a player or even a visitor is injured while undertaking a risky activity, especially in an extreme sport, then the organisers will not be responsible and the costs of such injury will be borne by the player or the team itself.⁴² However, if the player is injured due to reasons which fall within the purview of the organisers, say faulty gym equipment at the venue, then in such a case, the organiser will be liable.⁴³ It can be understood that the objective behind such clauses is to compartmentalise and establish liability and financial consequences of liability with as much clarity as possible.

Best Efforts Clause: Sports contracts, especially those with the athletes are largely a consequence of the ability and skills of the athlete. Factors unique to each athlete lead to their hiring as a sports professional, especially in private sporting events such as leagues and mixed tournaments. A lot of money and popularity is dependent on the player's performance in the game,

³⁹ Scott A. Anderson, MORALITY CLAUSE IN SPORTS CONTRACTS, <https://law.marquette.edu/assets/sports-law/pdf/Andresen.pdf>, (visited on Dec. 8, 2022).

⁴⁰ *Cafest v. Tombleson* [2003] NSCWA 210.

⁴¹ *Condon v. Basi* [1985] 1 W.L.R. 866.

⁴² *Hall v. Brookland Auto Racing Club* [1993] 1 KB 205.

⁴³ *White v. Blackmore* [1972] 2 QB 651.

and therefore, the Best-Efforts clause requires the parties to perform their contractual obligations to the best of their efforts.⁴⁴ For athletes, it means playing to the best of their ability, display of sportsmanship, and following all the rules of the game. For the organisers, it means providing the most comparable facilities to the stature of the player and the event, providing safety and security to the player and its team, and act in good faith.⁴⁵ It requires optimum performance and conduct mutually, and is also seen as a way of preventing the breakdown of the professional relationship in case of conflicts. An analogy can be drawn between the workings of a best efforts clause and a negligence rule in a contract.⁴⁶

Incentive Clause: Incentivising good performance is a common thread among many industries which are heavily employee dependent. This technique is adopted by sports organisers as well and is integrated into their contracts.⁴⁷ By offering incentives, organisers attract better performances on the field, and thus, make optimum use of their association with the event. Incentives are not guaranteed, these are contingent in nature, usually dependent on winning games and qualifying levels.⁴⁸ Further, exceptional performance by individual players also attracts these incentives, for instance, being an MVP (Most Valuable Player) in a game. These bonuses encourage the players to perform better and serve as a consideration for the extra effort put in by them.⁴⁹

Non-Compete Clause: Sports is a highly competitive field, not just on the field, but off the field as well. Therefore, for the duration of an event, players are restricted from indulging in commercial relationships with other similar entities, or competitors, so that the organisers of an event do not suffer losses. These clauses are known as non-compete clauses, and usually are a

⁴⁴ Mumuksha Singh, “*An Exploration of Some Interesting Clauses in a Sports Contract*”, BnWJOURNAL, Nov. 21, 2021, <https://bnwjournals.com/2021/11/12/an-exploration-of-interesting-clauses-in-sports-contract/>, (visited on Dec. 8, 2022).

⁴⁵ Charles Thau, “*Is This Really the Best We Can Do? American Courts’ Irrational Efforts Clause Jurisprudence and How We Can Start to Fix It*”, Geo. L. J., Vol. 109, 2021, p. 665.

⁴⁶ Mark P. Gergen, “*The Use of Open Terms in Contract*”, COLUM. L. REV. , Vol. 92, 1992, p. 997.

⁴⁷ Tina Heubeck, Jochan Scheur, “*Incentive Contracts in Team Sports: Theory and Practice*”, GWPLE, Vol. 17, 2002, p. 1-31.

⁴⁸ *Ibid.*

⁴⁹ Michael J. Hauptert, “*Bonus Clauses and the Standard Player Contract*”, B.R.J., Vol. 36, 2007, p. 109.

part of standard employment agreements.⁵⁰ Through these clauses, an employee is restrained from pursuing a similar profession with a competitor for a limited period of time after the end of employment with the current employer. The morality of these clauses is often debated, as these are perceived as a direct restraint on pursuing a profession, especially when one employment is already ended.⁵¹ These clauses are considered violative of competition laws and are challenged before the courts, alleged as a means of creating a monopoly in the sector, and not allowing other rival organisations to develop.⁵² These clauses prohibit the participation or appearance of players at other events, restrict endorsement of products connected to other organisations, etc.

Transfer Clause: Ordinarily, sports contracts are personal service contracts which cannot be transferred from one player substituting the other. Therefore, transfer clauses are included in sporting contracts in order to ensure that the organiser is getting what he has contracted for. Transfer clauses are effective for regulating the relationships between the player and teams.⁵³ The regulating authority for the sport authorises the teams to buy the services of the player, and thus, player has to adhere to personal performance of contract.⁵⁴ A transfer clause is especially relevant in sporting events where auction format is followed, as teams play above market price and benefits for getting players, and thus, personal performance become the core of the contract, as here, the player and its skills are a commodity, and ultimately the consideration for the contract.⁵⁵ Transfer clauses can be extended to intra-team transfers as well.

Liquidated Damages Clause: When liability arises, there are two kinds of damages, liquidated and unliquidated. Liquidated damages are predetermined damages, while unliquidated damages

⁵⁰ Raunak Singh, “*Enforceability of Non-Compete Clause under an Employment Agreement*”, MONDAQ, July 26, 2017, <https://www.mondaq.com/india/contract-of-employment/614370/enforceability-of-non-compete-clause39-under-an-employment-agreement>, (visited on Dec. 9, 2022).

⁵¹ Lauren E. Aydinliyim, THE CASE FOR ETHICAL NON-COMPETE AGREEMENTS, <https://provost.baruch.cuny.edu/wp-content/uploads/sites/5/2019/04/Execs-and-Sandwichmakers-Aydinliyim-for-Briloff.pdf>, (visited on Dec. 9, 2022).

⁵² *Supra* note 41.

⁵³ Surabhi Samak, “*Retention and Transfer Clauses in a Sports Contract- With Reference to the Eastham and Bosman Case*”, Int. J. L.D.A.I., Vol. 1, 2009, p. 448.

⁵⁴ Rahul Dave, “*Restraint of Trade and Sports Contracts*”, (2018) 2 Sports and Legislature 68.

⁵⁵ Martin J. Greenberg, “*Drafting of Player Contracts & Clauses*”, Marq. Sports L. J., Vol. 4, 1993, p. 51.

are not fixed and are determined on the basis of claims and counterclaims.⁵⁶ Under a liquidated clause, parties agree on the consequences of a breach of contract. Usually, a liquidated damages clause is included to avoid future conflicts, but it also acts as a deterrent for the parties by already outlining the repercussions of a breach.⁵⁷ Litigation is an expensive and time-consuming process, and therefore, players, organisers, regulatory bodies take steps to avoid disputes, as not only it is a waste of resources, but it also affects the reputation of all those involved. Such clauses are helpful in calculating the damages in case of default and make the assessment of claims and counterclaims clearer.

Dispute Resolution Clause: Despite the inclusion of different measures to avoid and deflect disputes, often circumstances become so that the dispute becomes unavoidable. Therefore, for such circumstances, where there is a dispute and a possible breakdown of the professional relationship between the parties, a dispute resolution clause comes in handy. A dispute resolution clause is a detailed statement of how a dispute is to be recognised, handled, and resolved.⁵⁸ Under these clauses, governing law, steps involved in the resolutions venue, the appointment of mediators and arbitrators, etc. are included. Many of these clauses include a waterfall mechanism, where there are different levels of dispute resolutions, starting from negotiations and the final stage being litigation before a court of law. This clause lays down the jurisdiction to address and entertain the dispute and provides for the laws that will be applicable.⁵⁹ It is arguably the most important yet contentious clause in a sports contract because, in absence of this clause, it becomes painstakingly difficult for the parties to be on the same page for resolving the differences. If the clause is improperly drafted, its interpretation itself becomes an issue which requires resolution.

Termination Clause: Giving proper closure to a commercial relationship is as important as initiating and maintaining it. Once the mutual obligations are fulfilled, tying the loose ends is

⁵⁶ Janhavi Arakeri, “*Liquidated and Unliquidated Damages*”, IPLEADERS, May 27, 2019, [https://blog.ipleaders.in/liquidated-unliquidated-damages/#:~:text=When%20such%20provisions%20are%20created,suffering%20such%20breach%20of%20contract,\(visited on Dec. 10, 2022\).](https://blog.ipleaders.in/liquidated-unliquidated-damages/#:~:text=When%20such%20provisions%20are%20created,suffering%20such%20breach%20of%20contract,(visited on Dec. 10, 2022).)

⁵⁷ Anish Dayal, “*Sports Contracts — A Primer*”, GJLDP, Vol. 2, 2010, p. 136.

⁵⁸ C.C. Chengappa, “*Resolving Stagnant Sport Dispute Resolution Procedures in India*”, 1.2 GSPR (2021) 168.

⁵⁹ TAS/CAS, STANDARD DISPUTE RESOLUTION CLAUSE, <https://www.tas-cas.org/en/arbitration/standard-clauses.html>, (visited on Dec. 10, 2022).

essential for the parties. In long-term agreements, sometimes leases and some other rights exist in perpetuity, which continues even after the termination of the agreement.⁶⁰ For such rights to continue, a savings clause is incorporated in the termination clause. If a termination clause is not properly drafted, it can lead to disputes between the parties even after the end of the contract, which leads to a waste of time and resources, and sours the culmination of a fruitful business relationship.

Good faith and Loyalty Clause: A good faith clause in a sports contract imposes a standard obligation on the parties. Good faith has two facets: first, they have to follow reasonable standards of commercial fairness, and second, they have to act toward the common purpose and mutual obligations sought by the contract. An extension of the good faith clause is the Loyalty clause.⁶¹ A loyalty clause is an indicator of the player's allegiance to the employer, and it allows the employer to terminate the contract of the player if it goes against the interests of the employer.⁶² For instance, if an athlete endorses brand A, he cannot wear any gear from rival brand B at a public event. These clauses ensure exclusivity and commodify the athlete's popularity and commercial relationship with the brand. Many a time, this clause is criticised as a creator of an imbalance of power between the parties.

Indemnity Clause: In addition to the risk awareness clause, an indemnity clause is standard to all contracts, which includes sports contracts. An indemnity clause acts as a safety net for the parties. Despite the assessment of risks, sometimes some unexpected circumstances may happen, which may be outside the scope of the imagination of the parties. Therefore, to overcome such events, an indemnity clause is inserted in the sports contract.⁶³ An indemnity clause is a standard waiver clause that provides that one party will not hold the other party liable for damages or

⁶⁰ *Supra* note 48.

⁶¹ Luka Krysljanin, "The Concept Of "Good Faith" In Commercial Contracts: What Is It And When Does It Apply In The Sports Industry?", LAWINSPO RTS, Oct. 24, 2018, <https://www.lawinsport.com/topics/item/the-concept-of-good-faith-in-commercial-contracts-what-is-it-and-when-does-it-apply-in-the-sports-industry>, (visited on Dec. 11, 2022).

⁶² *Ibid.*

⁶³ *Supra* note 12.

losses which might occur as a consequence of unexpected legal issues. It includes costs such as losses, damages, and potential legal costs, among other expenses.⁶⁴

Anti-Doping Clause: Playing with fairness is considered essential in any sport. Sometimes, athletes use performance-enhancement drugs to perform better and win competitions. This is known as doping, and it constitutes grounds for termination of contract and punitive action. Therefore, as a warning and express intimation of anti-doping norms, a clause prohibiting doping is included in athletes' contracts.⁶⁵ Many contracts include a schedule that also enlists the prohibited drugs and substances, in order to bring specificity to the contract. Many sporting events involve a dispute resolution clause in the contracts to opt for mediation as a voluntary procedure before arbitration and other proceedings.⁶⁶

EFFECTIVENESS OF ADR IN RESOLVING SPORTS CONTRACT DISPUTES

Preventing Breakdown of Professional Relationships: ADR puts people before positions. Mediation provides for the parties to create an environment which is conducive to dispute resolution. One of the reasons why mediation turns out as an effective remedy for resolving contractual disputes. Litigation is seen as a hostile gesture, and therefore, resorting to ADR first and amicably resolving the dispute preserves the professional relationship between the parties.⁶⁷ ADR, especially means such as mediation and arbitration allow the parties to be in a room and exchange their grievance for finding a solution. Mediation allows the parties to identify and present their interests and goals, and come up with mutually benefitting solutions.⁶⁸ In sports

⁶⁴ Diego F. R. Compaire, Gerardo Planás, and Stefan-Eric Wildemann, CONTRACTUAL STABILITY IN PROFESSIONAL FOOTBALL, <https://www.lawinsport.com/pdf/ContStabinProfFoot.pdf>, (visited on Dec. 11, 2022).

⁶⁵ Roberta Furst Wolf, "Conflicting Anti-Doping Laws in Professional Sports: Collective Bargaining Agreements v. State Law", Seattle Univ. Law Rev., Vol. 34, 2011, p. 1605.

⁶⁶ Article 5, The Canadian Sport Dispute Resolution Code, http://www.crdsc-sdrcc.ca/eng/documents/Code_SDRCC_2021_-_Final_EN.pdf, (visited on Dec. 14, 2022).

⁶⁷ Daniel De Sallues, ADR – WHY DO WE NEED IT, WHAT DOES IT INVOLVE AND IS IT ALWAYS SUITABLE?, <https://www.hcrlaw.com/blog/adr-why-do-we-need-it-what-does-it-involve-and-is-it-always-suitable/>, (visited on Dec. 14, 2022).

⁶⁸ Sophie Bishop, HOW MEDIATION CAN HELP TOXIC BEHAVIORS IN RELATIONSHIPS, <https://mediate.com/how-mediation-can-help-toxic-behaviors-in-relationships/>, (visited on Dec. 14, 2022).

contracts, professional relationships are complex and inter-connected on various fronts. Therefore, if a relationship is distorted on one front, it is capable of causing damage to other connected relationships as well. Hence, ADR helps in considering and caring for the interest of all involved.

Saving time and resources: Litigation is a resource-intensive process. At every stage, from hiring a battery of lawyers and other staff, to making claims and counterclaims, and appearing in various hearings, litigation consumes a lot of human resources. Further, many a time, pending litigation can be a hindrance in developing the prospects of further business relationships and causes strain on the overall outcome that the business relationship is meant to yield.⁶⁹ Furthermore, it consumes a lot of time to navigate through litigation, as the courts are already overburdened with the cases that are pending. Additionally, when disputes are resolved through ADR, the professionals who assist in resolving the dispute can be from the field of sports and sports law, unlike litigation where the same set of judges adjudicate all types of disputes. Here, the nuances and the understanding of the industry can help in resolving the dispute more efficiently. Through ADR methods, logic, facts, arguments, and circumstances, all are taken into account while making a decision, thus, ensuring that the outcome is not only successful but also satisfactory.⁷⁰ Sports have seasons, and therefore, sports contracts and their implications are heavily time-sensitive. A sponsor who has invested money in an event would want the focus on the event which brings business, and not on the disputes.⁷¹ Hence, ADR saves precious time and resources and ensures amicable resolution of disputes.

Preserving reputations: Sports is a popular field, and popularity and promotions are a big reason for driving business toward the investors of sports. Players, who engage with different sporting events, also get paid because of their reputation and popularity, among other things such as skills and capabilities. Tickets for sporting events are sold on the basis of the image of the event, the

⁶⁹ C. Menkel-Meadow, “*Mediation, Arbitration, and Alternative Dispute Resolution (ADR)*”, INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL & BEHAVIORAL SCIENCES, 2001, pp. 9507-9512, <https://www.sciencedirect.com/science/article/pii/B008043076702828X>, (visited on Dec. 14, 2022).

⁷⁰ *Supra* note 60.

⁷¹ SEASONAL CONSIDERATIONS FOR SPORTS FACILITIES, <https://sportsfacilities.com/seasonal-considerations-for-sports-facilities/>, (visited on Dec. 14, 2022).

craze among people, and the overall experience of the sporting event. Moreover, sporting events bring tourism and support local businesses at the host destination, and create employment.⁷² If there are controversies surrounding the event and disputes which hamper the smooth functioning of the event, it eventually leads to losses, and popular brands may opt to dissociate from the event. When disputes are resolved through effective communication and transparency between the parties, and the parties get a chance to speak for themselves without the fear of getting reprimanded, it improves the overall dispute resolution experience and also does not cause any reputational loss to the parties owing to the disputes.⁷³

Win-win situation: The primary difference in the approach between litigation and ADR is that, unlike litigation, someone does not have to lose just because someone has to win. It is not a one-sided process, and cannot be dictated unilaterally. There can be an ex-parte decision in litigation, and it is also possible in arbitration. However, mediation does not have the concept of an ex-parte decision.⁷⁴ If a party fails to show up for the mediation session or refuses to cooperate, it is simply reported as a failure by the mediator and the parties move to an alternative course of action. Since ADR is fundamentally based on looking out for the best interest of the parties and working in coordination with each other, the focus remains on generating creative solutions which benefit all the parties involved. A win-win situation is where both parties go away from the table in a better-off position from where they started. ADR ensures that it happens and that both parties at least have something to work with.⁷⁵ Here, communication and cooperation are the keys, and parties look out for their shared interests, thus, focusing on solutions that can be obtained.

Privacy and Confidentiality: A major benefit of ADR, especially mediation and arbitration over litigation is that these processes are private and confidential. Privacy refers to not allowing third parties to have access to arbitration and mediation proceedings. Only those who are party to the

⁷² KPMG, THE BUSINESS OF SPORTS, <https://assets.kpmg/content/dam/kpmg/in/pdf/2016/10/The-business-sports.pdf>, (Dec. 15, 2022).

⁷³ WIPO, ADR ADVANTAGES, <https://www.wipo.int/amc/en/center/advantages.html>, (visited on Dec. 14, 2022).

⁷⁴ Akanksha Mathur, “How Does the Mediation Process Works – Steps and Procedure”, IPLEADERS, Dec. 28, 2017, <https://blog.ipleaders.in/mediation-in-india-process/>, (visited on Dec. 15, 2022).

⁷⁵ Team ADR Times, “Win Win Situations”, ADR Times, June 14, 2021, <https://www.adrtimes.com/win-win-situations/#:~:text=A%20win%2Dwin%20situation%20is,and%20alternative%20dispute%20resolution%20procedure,res>, (visited on Dec. 15, 2022).

dispute or are required to be present in connection with the dispute are allowed to be present during the sessions.⁷⁶ Therefore, to ensure transparency among the parties and open communication, privacy is afforded during dispute resolution proceedings. Confidentiality is when the record of the proceedings and the particulars of the outcome are not disclosed to anyone except those who are legally authorised to have access to it. Confidentiality is essential for parties in such disputes from both reputational and fiscal perspectives. It allows parties to have leverage for negotiation with each other, and treat each contract with its own nuances instead of following fixed steps.⁷⁷ Due to privacy and confidentiality, parties find their reputation and their finances covered and protected, which allows them to resolve disputes at a better pace and not worry about issues emerging from the disclosure of such information.

Enforcement of Settlement Agreement and Arbitral Award: In contractual disputes, especially which are international and complex, enforcement of the decision becomes an issue, because many a time, one jurisdiction fails to recognise and enforce a judgment from another jurisdiction. In such case, the tussle goes on, without anything fruitful coming out of it. In the annual survey conducted by QMUL, international commercial arbitration was chosen as a top mode of dispute resolution, due to various reasons, including easier enforcement owing to the New York Convention, confidentiality, faster pace of resolution, etc.⁷⁸ For mediation, the settlement agreement is treated as a contract between the parties.⁷⁹ Since a successful mediation is an indicator of the sustenance of the professional relationship between the parties, it is relatively easier to hold parties to their end of the obligation as decided under the agreement.⁸⁰

⁷⁶ Shiravi, A., Abdollahi, M.J., “*Privacy and Confidentiality in Alternative Dispute Resolution Methods*”, International Journal of Economic Perspectives, Vol. 11, 2017, pp. 835-844.

⁷⁷*Ibid.*

⁷⁸ QMUL, 2018 INTERNATIONAL ARBITRATION SURVEY: THE EVOLUTION OF INTERNATIONAL ARBITRATION, <https://arbitration.qmul.ac.uk/research/2018/>, (visited on Dec. 19, 2022).

⁷⁹ Cathleen Cover Payne, “*Enforceability of Mediated Agreements*”, J.D.R., Vol. 1:2, 1986, p. 385.

⁸⁰ *Ibid.*

ROLE OF INTERNATIONAL SPORTS ADR INSTITUTIONS IN SPORTS CONTRACT DISPUTES

FIFA Dispute Resolution Chamber

The FIFA Dispute Resolution Chamber is an exclusive forum for resolving disputes related to football. Football is not just a sport; it has become a phenomenon with massive commercial and sentimental value. Every four years, the FIFA Football World Cup takes place, which is one of the biggest commercial sporting events across the globe.⁸¹ The FIFA DRC addresses hundreds of football related disputes every year. Out of these disputes, only those which are of the "general interest" are published on the FIFA website.⁸² The applicable law at the FIFA DRC comprises of general principles of law, and the arenas where the specificity of sports is concerned, the DRC can apply Lex Sportiva and resort to the principle of "specificity of sports", where principles followed in the respective sports are applied in a dispute.⁸³ Unlike the CAS, the DRC is not an arbitral tribunal. Therefore, the decisions of the DRC do not hold the same value as arbitral awards, and cannot be enforced through the New York Convention. These decisions can only be enforced through the regulations of FIFA, and are limited to the football community.⁸⁴ FIFA DRC consists of panels, where a minimum of three members are there on a panel. As per the principles of enshrined in FIFA Statute, the FIFA DRC follows the principle of equal representation of players and clubs.⁸⁵ The player members are recommended by the FIFPro, which is the official union for professional football players, and club members are recommended by the leagues and national associations across the world. After these nominations, the FIFA Executive Committee assesses the recommendations and appoints the members, along with Chairperson and Deputy Chairperson.⁸⁶ While deciding the disputes, the DRC judges are required to follow the RSTP

⁸¹ FIFA, ABOUT FIFA WORLD CUP, <https://www.fifa.com/tournaments/mens/worldcup>, (Visited Dec. 23, 2022).

⁸² Alexander Wild (ed.), CAS AND FOOTBALL: LANDMARK CASES, 1st ed., 2012, p. 5-10.

⁸³ Article 25(6), FIFA Regulations on the Status and Transfer of Players, 2005.

⁸⁴ Article 63, FIFA Statute: Regulations Governing the Application of the Statutes, 2006.

⁸⁵ Article 34, FIFA Statute: Regulations Governing the Application of the Statutes, 2006.

⁸⁶ FIFA, FIFA COMMENTARY ON THE REGULATIONS FOR THE STATUS AND TRANSFER OF PLAYERS, 2021 ed., pp. 366-367.

(Regulation for the Status and Transfer of Players) Rules 2005.⁸⁷ When all the avenues at the DRC are exhausted, a case can go to the CAS. However, the CAS refuses to admit certain appeals from DRC, which are arising from following subject matters: “(a) violation of the Laws of the Game; (b) suspensions of up to four matches or up to three months; (c) decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of the Association or Confederation may be made.”⁸⁸

WIPO Arbitration and Mediation Centre

World Intellectual Property Organisation (WIPO), in addition to developing the framework for IP protection and development, has also been working the dispute resolution sector, as a result of which WIPO Arbitration and Mediation Centre has come into existence. WIPO provides sector-specific ADR services in order to efficiently resolve disputes from different fields. The WIPO Centre provides guidance in resolving disputes through ADR without resorting to court-based litigation. It also provides case management and case administration services.⁸⁹ The variety of disputes that reaches the WIPO Centre ranges from disputes purely in the sporting arena to a blend of various laws, such as IP, labour, etc. WIPO is an organisation that specialises in IP and IP-related disputes. Therefore, it focuses on disputes where there is an overlap between sports and IP.⁹⁰ Some instances of overlap between sports and IP are issues surrounding trademarks and industrial designs, copyright and related rights, patent disputes, etc.⁹¹ These issues arise from different types of sports contracts, such as media and broadcasting contracts, image and reputational rights of athletes, branding, advertising, and merchandising rights for sporting events, among others. WIPO Centre maintains that ADR is an effective alternative to court litigation, and provides a resource-

⁸⁷ *Ibid.*

⁸⁸ Ian Blackshaw, “ADR and Sports: Settling Disputes through the Court of Arbitration for Sports, WIPO Arbitration and Mediation Centre, and FIFA Dispute Resolution Chamber”, *Marquette Sports Law Rev.*, Vol. 24, 2013, pp. 1-57.

⁸⁹ WIPO, WIPO ADR SERVICES FOR SPORTS, <https://www.wipo.int/amc/en/center/specific-sectors/sports/#:~:text=ADR%20allows%20parties%20to%20choose,resolved%20through%20a%20single%20procedure,> (visited on Dec. 26, 2022).

⁹⁰ Ignacio De Castro, Heike Wollgast, “WIPO Arbitration and Mediation Center: New 2014 WIPO Rules”; WIPO FRAND ARBITRATION, *ASA Bulletin*, Vol. 32(2), 2014, pp. 286-296, <https://kluwerlawonline.com/journalarticle/ASA+Bulletin/32.2/ASAB2014027>.

⁹¹ *Ibid.*

saving, time and cost-efficient, and flexible mechanism for obtaining solutions which are satisfactory and pragmatic for both parties.⁹² ADR processes administered under the guidance of the WIPO Centre provide for three processes: Mediation, Arbitration, and Expert Determination. Parties can choose a mediator, arbitrator, or expert panel for sports and IP law. It provides a neutral platform and simplified process for dispute resolution and also provides efficient enforcement mechanisms. Users of ADR services at the WIPO Centre includes athletes, sports clubs, sports federations, media and broadcasting organisations, sports good manufacturers, etc. among others. One of the notable contributions of the WIPO Centre in sports ADR is the WIPO eADR tool, which is an online case administration tool used by America's Cup Arbitration Panel, which was a part of the 36th America's Cup International Yachting Competition 2021.⁹³ WIPO has its own rules for different dispute resolution processes and also has laid down guidelines for governing the procedural aspect of dispute resolution. For parties to resolve their disputes through WIPO Centre, they have to include the jurisdiction of the WIPO Centre in the dispute resolution clause in the contract. WIPO Centre deals with specialised cases where there is an overlap between a sports dispute and a domain name dispute, and also includes ICANN if required. A famous case in this regard is the case of Wayne Rooney and his domain name. This case effectively demonstrated that "domain name disputes concerning well-known sports persons, with famous and valuable trademarks to protect, can be quickly and effectively resolved using the WIPO adjudication process under the terms of the ICANN UDRP Policy. However, no damages or costs were awarded under the Policy, despite Rooney effectively winning the case."⁹⁴

Court of Arbitration for Sports

Sports Arbitration essentially means resolving sports disputes through the process of arbitration culminating in a binding award. With the establishment of the Court of Arbitration for Sports (CAS), sports arbitration has started to grow as a field in itself with its distinct rules and procedures

⁹² *Supra* note 80.

⁹³ WIPO, AMERICA CUP ARBITRATION PANEL: USE OF WIPO ADR, <https://www.wipo.int/amc/en/new/americascup36.html>, (visited on Dec. 26, 2022).

⁹⁴ Sylvie Castonguay and Elizabeth March, "Cybersquatter or Innocent Fan? - The Wayne Rooney Domain Name Dispute", WIPO MAGAZINE, Issue 06/2006, https://www.wipo.int/wipo_magazine/en/2006/06/article_0008.html, (visited on Dec. 26, 2022).

to govern disputes.⁹⁵ Over the last decade, the volume of cases that have come to CAS for resolution has seen an upward trend, which is also an indicator of the growth that the sports industry has been seeing. The CAS was established in 1984 in Lausanne.⁹⁶ Any dispute connected directly or indirectly to the sports and is arbitrable can be referred to the CAS. Such disputes can be matters surrounding principles of sports and their application, matters related to damages or pecuniary interest, any activity connected to the sports, etc. R27 of the CAS Code states:

“R27 Application of the Rules: These Procedural Rules 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 provide for an appeal to CAS (appeal arbitration proceedings).”⁹⁷

CAS Code gives a broad interpretation to the phrase “Sports-related dispute”. There are a variety of sports disputes which can be referred to the CAS. It involves commercial disputes such as issues related to sponsorship agreements, employment contracts, media and broadcasting rights, etc; sports disputes such as disputes about doping, qualifications, on-field incidents, etc. From a practical point of view, sports disputes constantly overlap with different fields, ranging from employment law to media laws. The arbitrability of disputes is determined by the CAS ex officio.⁹⁸ One of the prominent differences between traditional international commercial arbitration and sports arbitration at CAS is that, unlike international commercial arbitration where parties are at liberty of choosing the seat, arbitrations at CAS are seated at Lausanne.⁹⁹ It is an important development for sports arbitration because it gives the Swiss Federal Tribunal the exclusive jurisdiction for setting aside a CAS award, and ensures that the CAS arbitration proceedings are

⁹⁵ Ken Foster, “*Lex Sportiva and Lex Ludica: the Court of Arbitration for Sport’s Jurisprudence*”, Entertainment and Sports Law Journal, Vol. 3(2), 2014, p. 2, doi: <https://doi.org/10.16997/eslj.112>.

⁹⁶ *Supra* note 86.

⁹⁷ S27, Code of Sports-related Arbitration, TAS-CAS, https://www.tas-cas.org/fileadmin/user_upload/CAS_Code_2021__EN_.pdf, (visited on Dec. 29, 2022).

⁹⁸ Johan Lindholm, THE COURT OF ARBITRATION FOR SPORT AND ITS JURISPRUDENCE: AN EMPIRICAL INQUIRY INTO LEX SPORTIVA, 1st ed., 2018, p. 33.

⁹⁹ *Supra* note 79.

governed by the Swiss arbitration law. It is important to observe here that it is a progressive development for arbitration because Swiss arbitration law is considered “pro-arbitration”, and there are few grounds for setting aside the arbitral award. On merits, the substantive law applicable to proceedings can either be chosen by the parties or if the parties do not choose a law, then Swiss law automatically applies.¹⁰⁰ Further, the Panel can also decide *ex aequo et bono*, and the parties can choose whatever laws they prefer as the substantive law for merits.¹⁰¹ On the appellate level, the CAS Appeals Procedure provides that whatever the choice of law is, the Tribunal can apply the relevant laws and regulations of the sports organisation. If the parties do not make a choice, the Tribunal can do it on their behalf and choose any law that is appropriate for the dispute. However, as a general practice, a number of sporting organisations are based in Switzerland, and therefore, Swiss law is commonly applied as the substantive law for merits. Moreover, most international federations have their own regulations and statutes, which makes it suitable and convenient for the arbitral tribunal to refer to these.¹⁰² Another difference between traditional arbitration and sports arbitration at CAS is the expediency of proceedings. CAS Code prescribes for shorter time limits, and requires an appeal against an award within twenty-one days of the publication of award.¹⁰³ Moreover, unlike traditional arbitration, where confidentiality of the award is the general rule and the award is published only if the parties consent to it, the situation is the opposite with CAS. It is important to note here that although the CAS awards are public, they do not carry any authority as a binding precedent, and the arbitrators are free to deviate from the earlier decisions if they want to.¹⁰⁴ The CAS keeps the proceedings confidential but publishes the award publicly when all the parties agree, and unless there is a specific request to keep the award private.¹⁰⁵ This is seen as one of the measures to keep the process transparent and promote consistency in the evolution of sports jurisprudence. Not only CAS conducts sports arbitration on

¹⁰⁰ S45, Code of Sports-related Arbitration, TAS-CAS, https://www.tas-cas.org/fileadmin/user_upload/CAS_Code_2021__EN_.pdf, (visited on Dec. 29, 2022).

¹⁰¹ *Ibid.*

¹⁰² *Supra* note 89, p. 189.

¹⁰³ S49, Code of Sports-related Arbitration, TAS-CAS, https://www.tas-cas.org/fileadmin/user_upload/CAS_Code_2021__EN_.pdf, (visited on Dec. 29, 2022).

¹⁰⁴ *Supra* note 89, p. 112-115.

¹⁰⁵ S43, Code of Sports-related Arbitration, TAS-CAS, https://www.tas-cas.org/fileadmin/user_upload/CAS_Code_2021__EN_.pdf, (visited on Dec. 29, 2022).

a regular basis, but it also involves major sporting events on an ad-hoc basis, as it did in the 2002 Skategate case.¹⁰⁶ It also provides advisory opinions as and when required. For instance, before the Summer Olympics, the opinion was sought on whether the introduction of full-body swimming costumes is lawful or not. These were rendered to be valid and lawful.¹⁰⁷ As for the legality of CAS awards, they are recognised as a facet of private law, and are valid under the New York Convention.¹⁰⁸ In addition to arbitration, CAS also offers mediation services in accordance with the CAS Mediation Rules.¹⁰⁹

CONCLUSION

With the expansion of sports industry, sports disputes are increasing and becoming more complicated as well. A single sports dispute affects the entire chain of connections, resulting in losses for even those parties which are not a direct party to the dispute. There are a variety of contracts that exist in the field of sports law. These contracts regulate the relationship between the parties, and also set out the rights and obligations accordingly. Sports contracts make dispute resolution more efficient at times, as they provide guidelines for navigating through the issues and formulating agendas. Litigation has been the traditional way of resolving disputes, however, it is not efficient, and not suitable for all types of disputes. On comparison between litigation and ADR, it can be seen that ADR can turn out more efficient than litigation. Further, there are specific international institutions that assist in resolving disputes and use ADR and other specialised dispute resolution mechanisms in sports contract disputes. The methods adopted by these institutions conform to international legal norms and find enforcement across the globe, and also preserve business relationships in the process. Hence, ADR emerges as an efficient means for the resolution of sports disputes, especially sports contract disputes.

¹⁰⁶ *Canadian Olympic Association v. International Skating Union*, CAS ad hoc Div. 2002/004 (O.G. Salt Lake City).

¹⁰⁷ *The Case of "Long-John" Swimming Costumes*, Advisory Opinion, Australian Olympic Committee, CAS 2000/C/267.

¹⁰⁸ *Supra* note 79.

¹⁰⁹ S30, S42, Code of Sports-related Arbitration, TAS-CAS, https://www.tas-cas.org/fileadmin/user_upload/CAS_Code_2021__EN_.pdf, (visited on Dec. 29, 2022).

SUGGESTIONS

1. Promote the use of ADR methods—arbitration, mediation, expert determination—as primary dispute resolution mechanisms in sports contract disputes to ensure faster and cost-effective settlement.
2. Encourage inclusion of clear and comprehensive dispute resolution clauses in all sports contracts specifying ADR procedures, governing law, and jurisdiction.
3. Advocate enhancing awareness among sports stakeholders about the benefits of ADR such as confidentiality, preservation of professional relationships, and enforceability of awards.
4. Recommend the adoption of standardized contractual clauses relevant to sports contracts like morality, risk awareness, best efforts, non-compete, transfer, indemnity, and anti-doping clauses to minimize disputes.
5. Support the use of mediation as an effective tool to prevent breakdown of professional relationships by facilitating cooperative dialogue.
6. Emphasize the role of international ADR institutions such as the Court of Arbitration for Sport (CAS), FIFA Dispute Resolution Chamber, and WIPO Arbitration and Mediation Centre for resolving global sports disputes with industry-specific expertise.
7. Suggest capacity building for sports lawyers, agents, and managers in drafting sports contracts that integrate ADR provisions and in navigating ADR processes.
8. Recommend improvements in the legal framework in India to formally recognize and promote mediation and arbitration for sports disputes to decongest courts.
9. Encourage research and development of sports-specific rules and guidelines within ADR institutions to address the unique nature of sports contracts and disputes.
10. Propose consistent publication and transparency of ADR awards by institutions like CAS to build a richer jurisprudence in sports law while maintaining confidentiality where needed.
11. Promote education and training programs for athletes, sports organizations, and related stakeholders on contract law fundamentals and ADR benefits to ensure informed consent and competency.

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