



# Arbitration Rules & Governing Law

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# Law & Rules – Why Both?

The law is the legislative enactment by a sovereign governing arbitration

It may include both “default” and “mandatory” provisions

Much like the CISG as governing sales of goods



# Law & Rules – Why Both?

Arbitration “rules” are selected by the parties and are binding solely as a matter of contract

They are largely default rules,  
subject to modification by the parties

But may be mandatory, as to the chosen institution

Similar to INCOTERMS as rules incorporated by reference



# Laws and Rules – How Chosen?

Rules, if applicable, are chosen by the parties

If no choice, then no rules

An agreement for final and binding arbitration is still binding and enforceable



# Laws and Rules – How Chosen?

Law typically chosen indirectly through parties' choice of "seat" or "place of arbitration"

Choice of substantive law governing main contract will not typically affect arbitration agreement, unless specific to arbitration agreement as well

Arbitration agreement is "autonomous"



# The Lex Arbitri, Seat or Place

Party choice given effect (if none,  
tribunal shall choose – ML Art 20(1))

Choice of “seat” or “place” of arbitration  
also effectively chooses forum arbitration  
law

In absence of contra choice (generally a bad  
idea)



# The Lex Arbitri, Seat or Place

Place of arbitration versus place of hearings

Need not be the same (e.g., Olympics) – ML Art 20(2)





# The Lex Arbitri, Seat or Place

Delocalized (or a-national)  
arbitration

French approach closest

Courts may aid arbitration, but no interference



# Law Versus Rules

A hierarchy of law, rules, and specific terms

Mandatory legal rules of place of arbitration

For Danubia, e.g., UNCITRAL Model Law Article 18



\*Textbook reference: Morrissey & Graves, International Sales Law and Arbitration (Wolters Kluwer 2008)

\* "Moot" – Vis Moot Arbitration, [vismoot.pace.edu](http://vismoot.pace.edu)

# Law versus rules

A hierarchy of law, rules, and specific terms

Parties' actual arbitration agreement

Express Terms:

Specific terms (e.g., arbitration clause)

Terms incorporated by reference (e.g., arbitration rules)

Implied-in-fact terms of parties' agreement

Past practices, usages, etc. (not typical in arbitration)



# Law versus Rules

A hierarchy of law, rules and specific terms

Default legal rules of place of arbitration

For Danubia, much of UNCITRAL Model Law



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# Law versus Rules

A hierarchy of law, rules and specific terms

Mandatory legal rules of place of arbitration

Parties' actual arbitration agreement

Default legal rules of place of arbitration



