

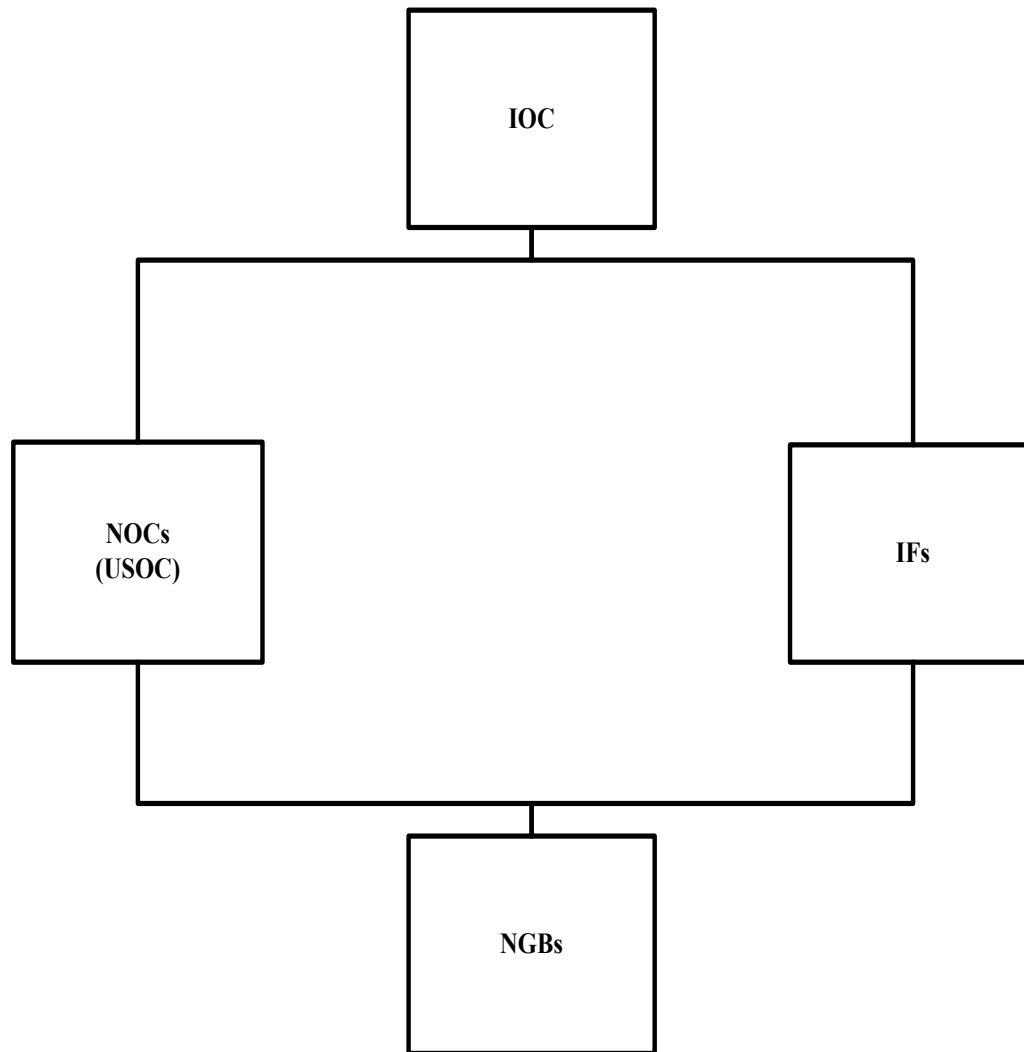
INTERNATIONAL SPORTS DISPUTE RESOLUTION



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AAA/Court of Arbitration for Sport Arbitrator
Agency for Dispute Resolution, Los Angeles
Sports Lawyers Ass'n Annual Meeting 2012

Olympic Sports Regulatory Framework



Basic Sources of Olympic Rules

- IOC
 - Olympic Charter
 - www.olympic.org
- IPC
 - Handbook
 - www.paralympic.org
- USOC
 - Ted Stevens Olympic & Amateur Sports Act, 36 USC §220501
 - Constitution & Bylaws
 - USOC Code of Conduct and Grievance Procedures
 - www.usoc.org
- IF Rules
- NGB Rules
- WADA
 - World Anti-Doping Code
 - www.wada-ama.org
- USADA
 - USOC National Anti-Doping Policies
 - USADA Protocol
 - www.usantidoping.org
- CAS Decisions
 - www.tas-cas.org

American Arbitration Association

- Arbitral forum by law for U.S. athlete right to compete/eligibility disputes. 36 U.S.C. § 20522(a)(4).
- Applicable Rules: AAA Commercial Rules, as modified pursuant to statute.
- Only current modifications to Commercial Rules apply to doping cases, in which AAA is court of first instance.

Court of Arbitration for Sport

- Based in Lausanne.
- Ad Hoc Division at Site of Olympic Games
- Approximately 250 arbitrators worldwide (approximately 30 in North America) (what % get used?)
- IOC requires agreement by athletes to arbitrate before it in Olympic entry form; IF rules similar.
- Disputes with results of IOC and IF governance resolved here.
- International arbitration forum results of which are enforceable under New York Convention.

Jurisdiction/Locale

- By contract (the usual suspect)
 - Olympic Games entry form
 - IF event entry form
 - Clause in sponsorship/television/services agreement
- By rule (unique to sports?)
 - Under IF rules and Olympic Charter
 - Are they contracts? Adhesion?

Commencing Arbitration

- Ordinary Arbitration: Claimant files request for arbitration CAS R 38, submitting brief statement of facts, identifying information, copy of contract with arb clause, any relevant info on number and choice of arbitrators
- Appeals Arbitration: Appellant files Statement of Appeal under CAS R 47 containing identifying info for parties, copy of decision appealed from, copy of rule giving rise to CAS jurisdiction, request for relief, and if applicable request to stay underlying decision pending appeal
- Ad Hoc Panel at Olympic Games

Forming the Panel

- Closed list and its implications
- Disclosures-US vs. International Standards
- Personalities/New List
- Who and how to pick?
 - Appeals:
 - 1 per side (what if disagree?)
 - CAS picks President of Panel
 - Ordinary:
 - Read the contract or 1 or 3



Tribunal Arbitral du Sport
Court of Arbitration for Sport

Arbitrator's Acceptance and Statement of Independence

CAS 2011/A/2518 Robert Kendrick v. International Tennis Federation

In view of art. R33 of the Code of Sports-related Arbitration (the "Code"),
I, the undersigned,

Name: Jeffrey Benz

First Name:

(Mark with a cross)

- ☒ hereby declare that I accept to serve as arbitrator in the present case. I confirm that I am familiar with the Code and am able and available to serve as an arbitrator pursuant to all the requirements of the Code. I also confirm that I am able to examine and to decide the present case in English, which is the language of the arbitration. (Then, please choose one of the two following declarations)
- ☒ I am independent of each of the parties and intend to remain so; to the best of my knowledge, there are no facts or circumstances that need be disclosed because they might be of such a nature as to compromise my independence in the eyes of any of the parties.
- ☐ I am independent of each of the parties and intend to remain so; however, I wish to call your attention to the following facts or circumstances which I hereafter disclose because they might be of such a nature as to compromise my independence in the eyes of any of the parties:

.....
.....
.....
.....

- ☐ hereby declare that I decline to serve as arbitrator in the subject case for the following reasons:

.....
.....
.....
.....

Place:

Los Angeles
CA USA

Date:

8/2/11

Signature:

[Signature]

Civil Law/Common Law

- Differences in approach: Lawyers
- Differences in approach: Arbitrators
- Civil Law Arb Institution with Extensive Common Law Precedence
- Appeals; Swiss Federal Tribunal

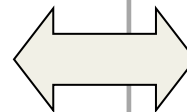
STANDARD OF PROOF

“Balance of probabilities”

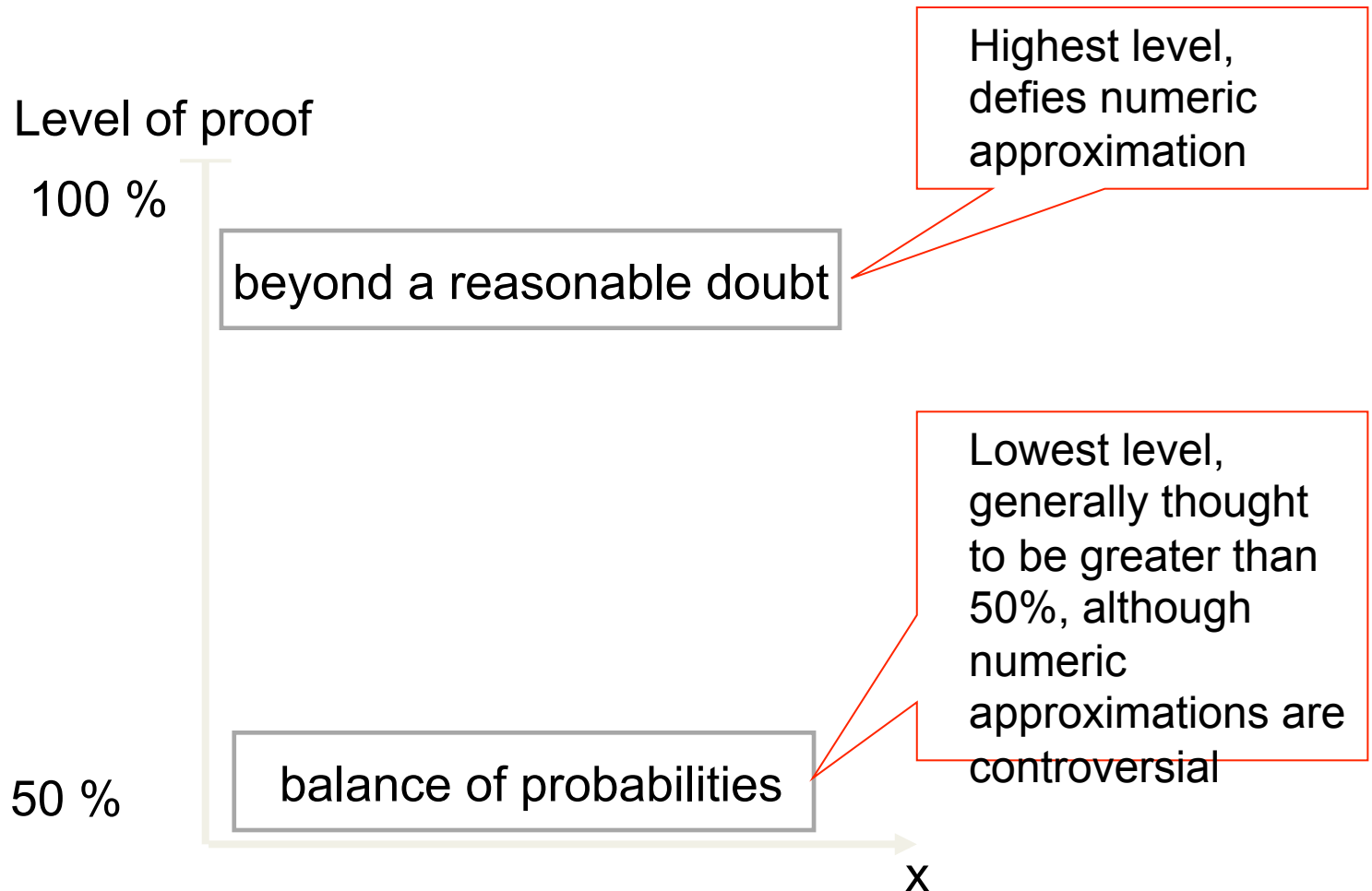
- also known as the "preponderance of evidence,,
- standard required in most civil cases
- proposition is more likely to be true than not true
- greater than 50% chance that the proposition is true
- "more probable than not".

“Beyond a reasonable doubt”

- standard required in most criminal cases
- must be proven to the extent that there is no "reasonable doubt" in the mind of a reasonable person that the defendant is guilty
- Usually defined as "any doubt which would make a reasonable person hesitate in the most important of his or her affairs."



STANDARD OF PROOF



ARTICLE 3: PROOF OF DOPING

WADA CODE

3.1 Burdens and Standards of Proof.

The *Anti-Doping Organization* shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the *Anti-Doping Organization* has established an anti-doping rule violation to the comfortable satisfaction of the hearing body bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where the *Code* places the burden of proof upon the *Athlete* or other *Person* alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.



“comfortable satisfaction”

STANDARD OF PROOF

Level of proof

100 %

beyond a reasonable doubt

comfortable satisfaction

50 %

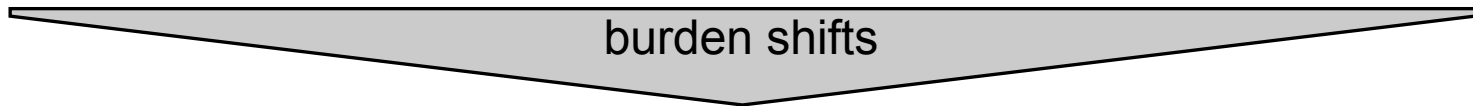
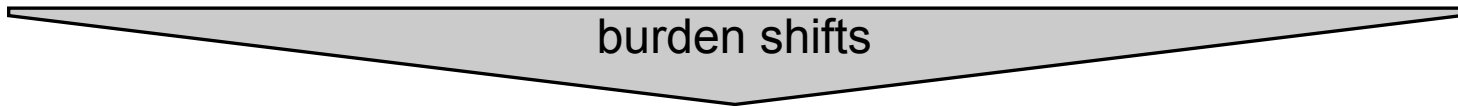
balance of probabilities

Art. 3.1 WADA
Code:

*„greater than a
mere balance of
probability but less
than proof beyond
a reasonable
doubt“*

X

BURDEN OF PROOF



Deference in Appeals

- *De novo*
- Deference to lower court decisions
 - Kendrick language

The Hearing

- Locale
- Procedure for Proceedings:
 - Opening Statements
 - Presentation of Witnesses/evidence, party with initial burden going first
 - Experts
 - Strict application to rules of evidence?
 - Closing statements

The Award

- *Dispositif*/Operative Section
- Reasoned Award
- Signature
- Date
- Disposing of all claims/arguments
- Dissents—R59-not recognized and not communicated to parties, but what if you disagree?

The Role of CAS Staff

- Organizing
- Advising
- Commenting/Deciding/4th Arbitrator?
 - R59-Before the Award is signed it shall be transmitted to the CAS Secretary General who may make rectifications of pure form and may also draw the attention of the Panel to fundamental issues of principle.
- Case digests, reports, searching, use of electronic filing, etc.
- New developments in CAS administration

About

-Based in Los Angeles, *Jeff Benz* is a AAA and Court of Arbitration for Sport arbitrator and a trained mediator focused on resolving disputes in the sports, entertainment, and technology/IP areas. With nearly 20 years as a sports lawyer and executive, Jeff is an expert at resolving seemingly intractable disputes in the field. Jeff is also a member of the panel of neutrals for the Agency for Dispute Resolution, and his full bio and contact information can be found on their website.

-*Agency for Dispute Resolution* is a premier provider of alternative dispute resolution services to lawyers, companies and individuals with seemingly intractable conflicts. Our celebrated panel of neutrals includes trained mediators, superior arbitrators, former top-tier judges, senior attorneys, skilled peacemakers and creative problem-solvers that possess unique expertise in a broad range of practice areas. For more information on Jeff or Agency for Dispute Resolution, go to www.agencydr.com.



THANK YOU!