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Introduction to Comparative International Arbitration

Monday, 17 June 2024

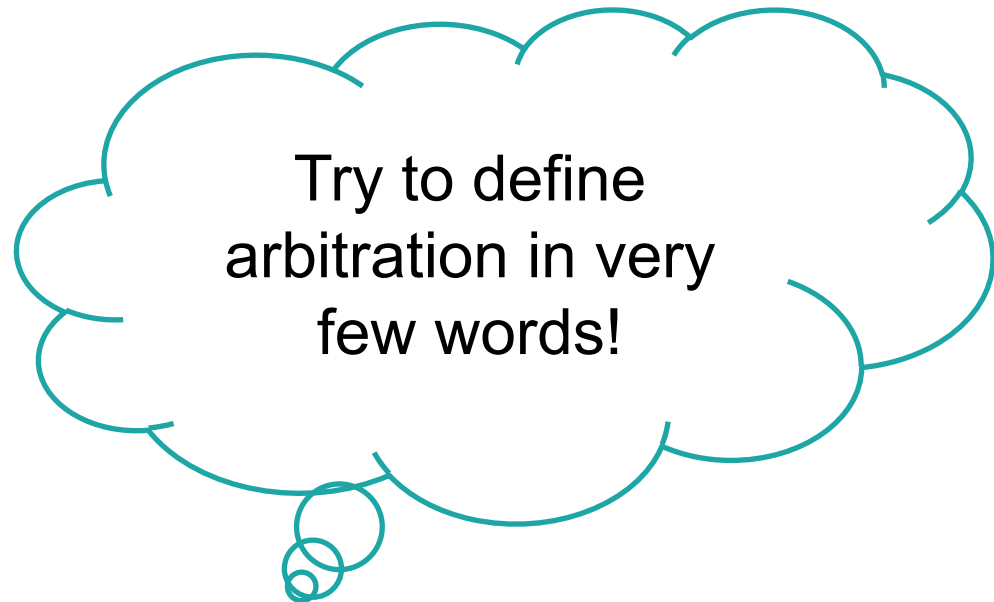
Prof. Dr. Anna Petrig, LL.M. (Harvard)
anna.petrig@unibas.ch

What is international arbitration?

No generally-valid definition, but...!

What is international arbitration?

Let's brainstorm!



„Arbitration is a procedure for resolving disputes.“

Thomas Schultz & Thomas Grant, *Arbitration: A Very Short Introduction* (OUP 2021), Preface.

What is international arbitration?

No single, generally valid definition, but...

The diversity of disputes submitted to arbitration is great – and so are the arbitration mechanisms!

„While arbitration takes many forms, all its forms share a core set of characteristics.“

Thomas Schultz & Thomas Grant, *Arbitration: A Very Short Introduction* (OUP 2021), Chapter 1, Abstract.



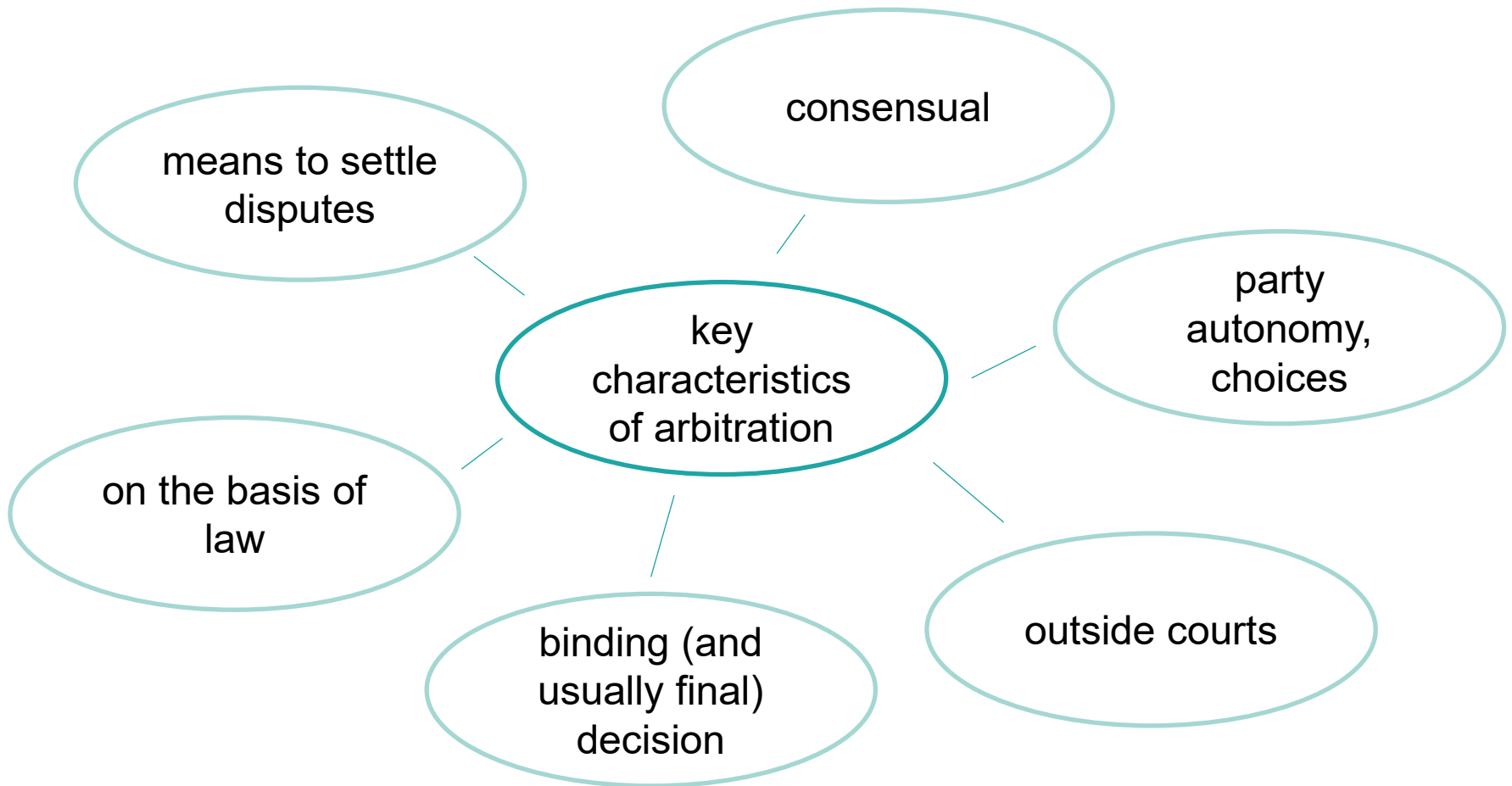
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Characteristics of arbitration?

Let's brainstorm!

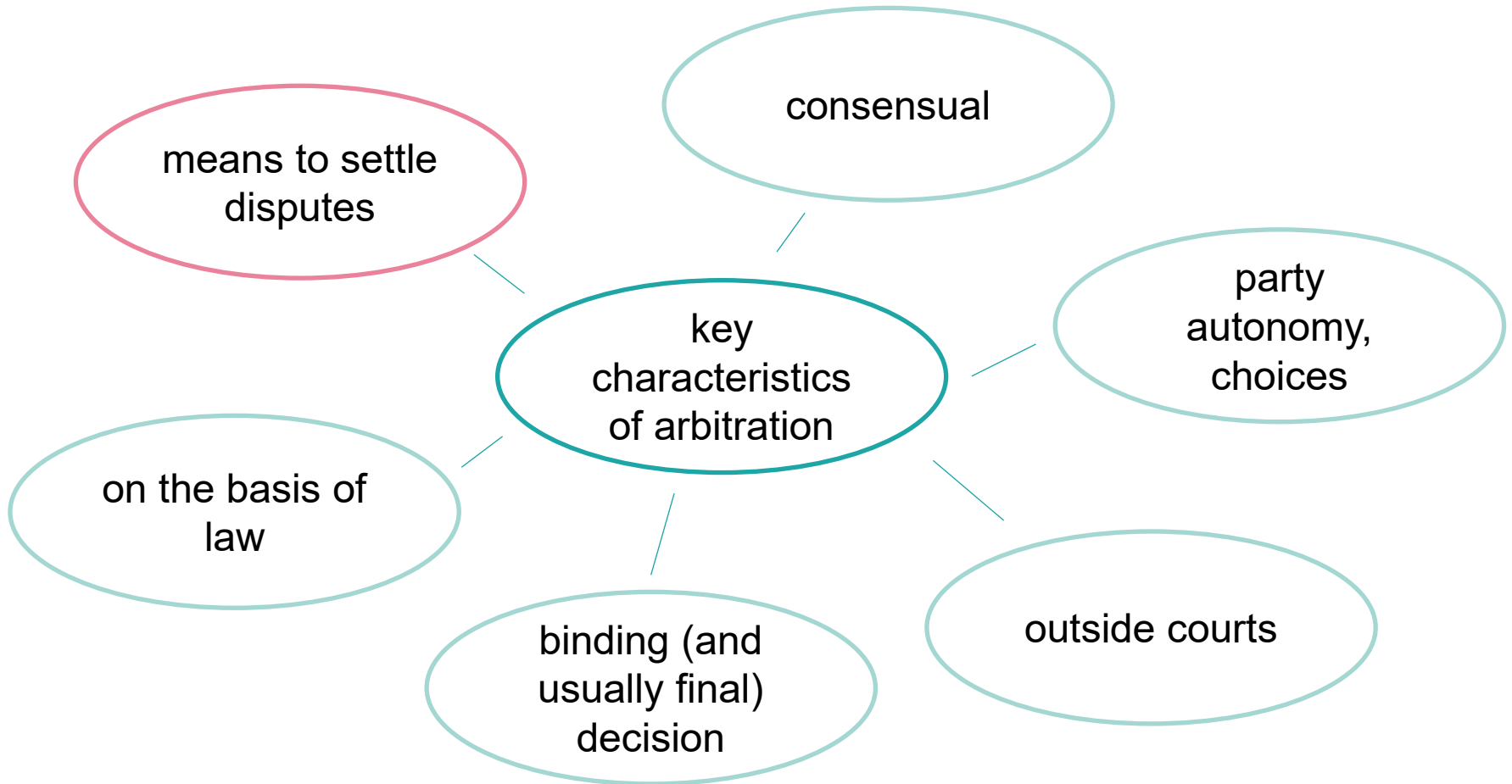
What are the characteristics of arbitration?

Let's brainstorm!



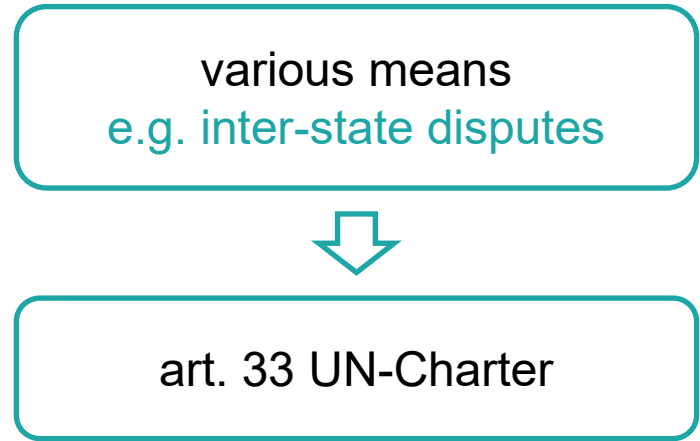
What are the characteristics of arbitration?

Let's brainstorm!



What is international arbitration?

Means to settle disputes



What is international arbitration?

Means to settle disputes

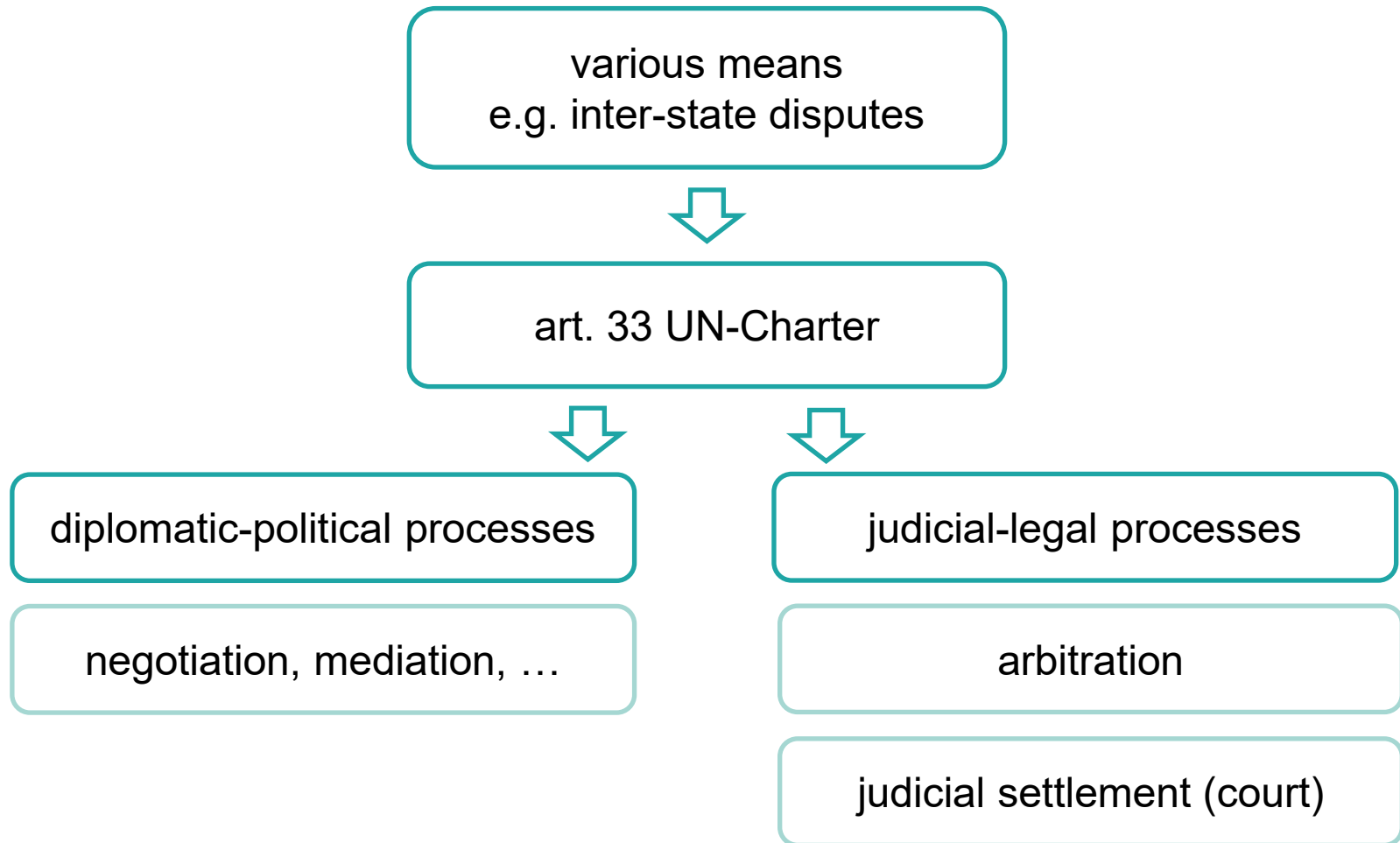
Chapter VI: Pacific Settlement of Disputes

Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

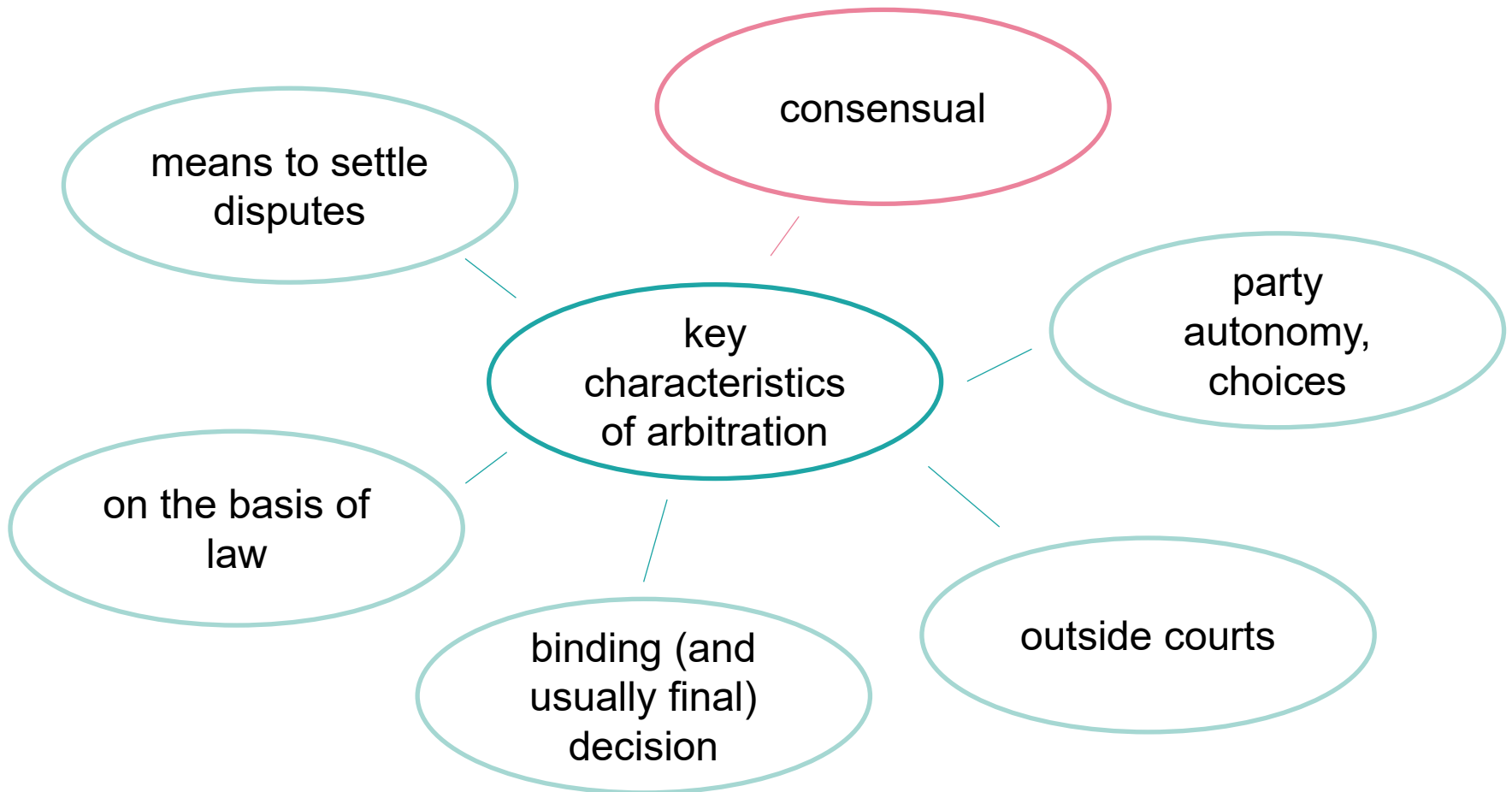
What is international arbitration?

Means to settle disputes



What are the characteristics of arbitration?

Let's brainstorm!



What is international arbitration?

Consensual – agreement to arbitrate

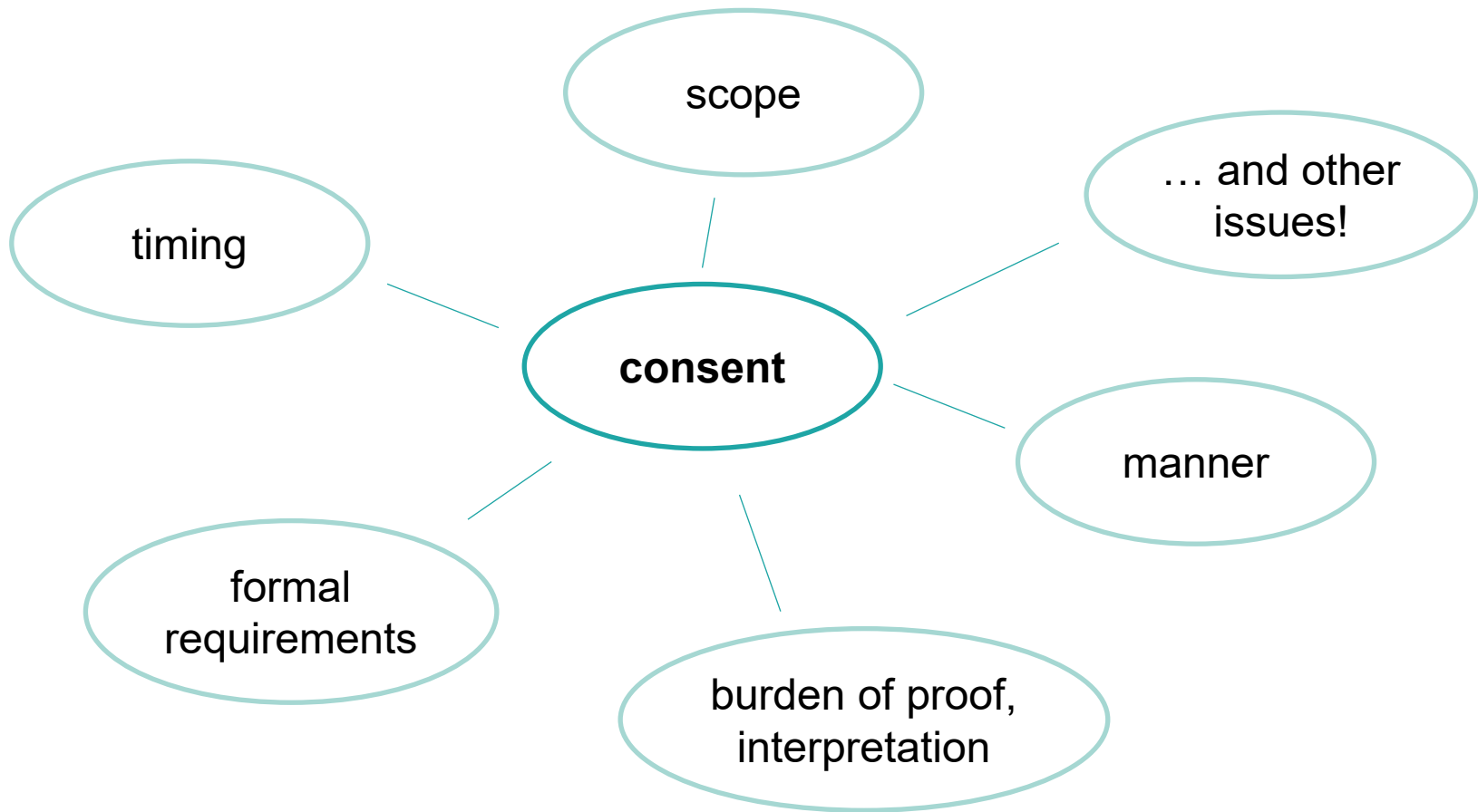
Ladies and gentlemen,

One of the most fundamental principles of international arbitration, constantly reaffirmed by courts and scholars is that arbitration is a creature of contract, based on the parties' agreement. Consent has always been presented as a kind of dogma, the foundation of any arbitration, which entails consequences throughout the process.

Bernard Hanotiau, "Consent to Arbitration: Do We Share a Common Vision?" (2011) 27(4) International Arbitration, 539.

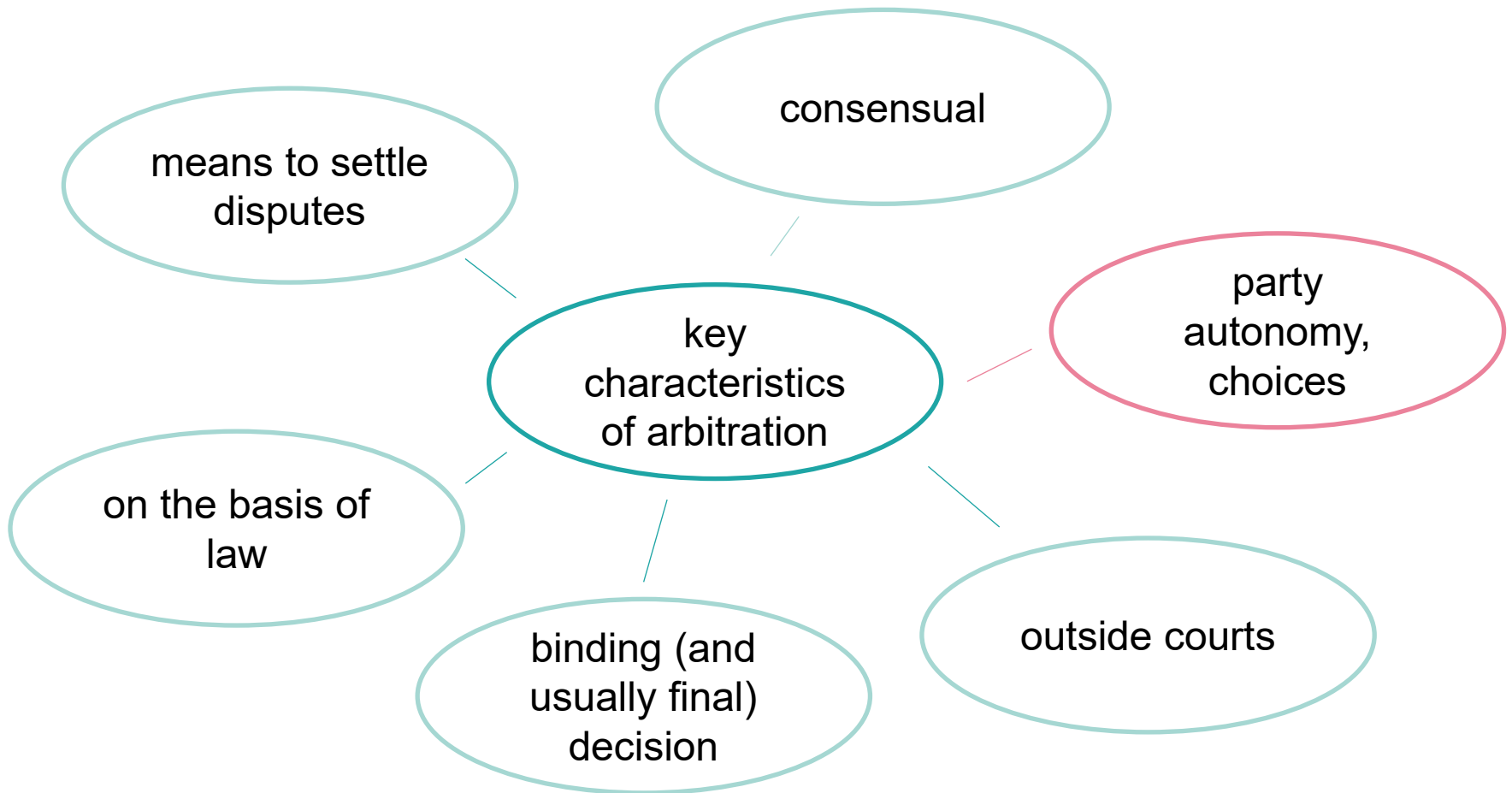
What is international arbitration?

Consensual – agreement to arbitrate



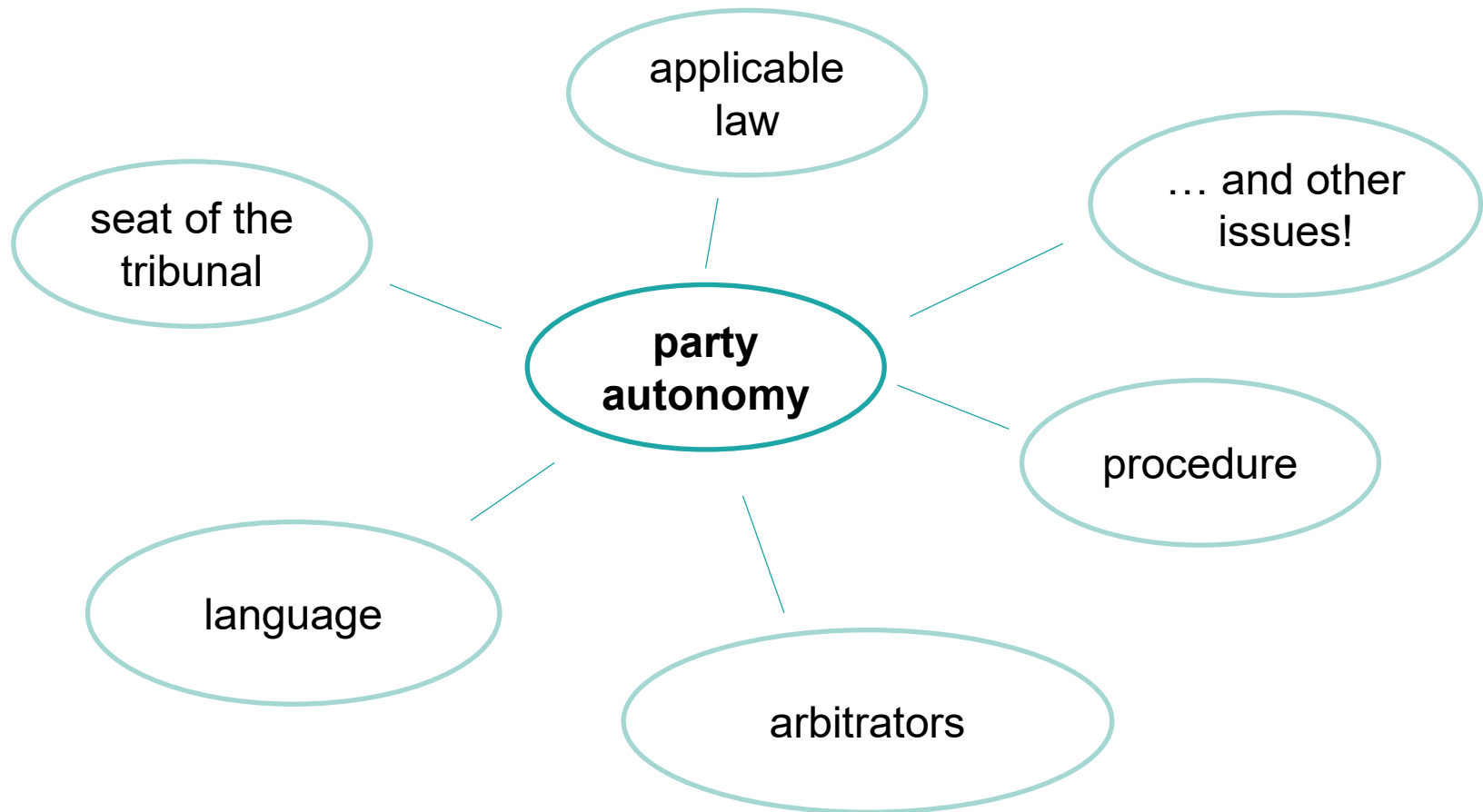
What are the characteristics of arbitration?

Let's brainstorm!



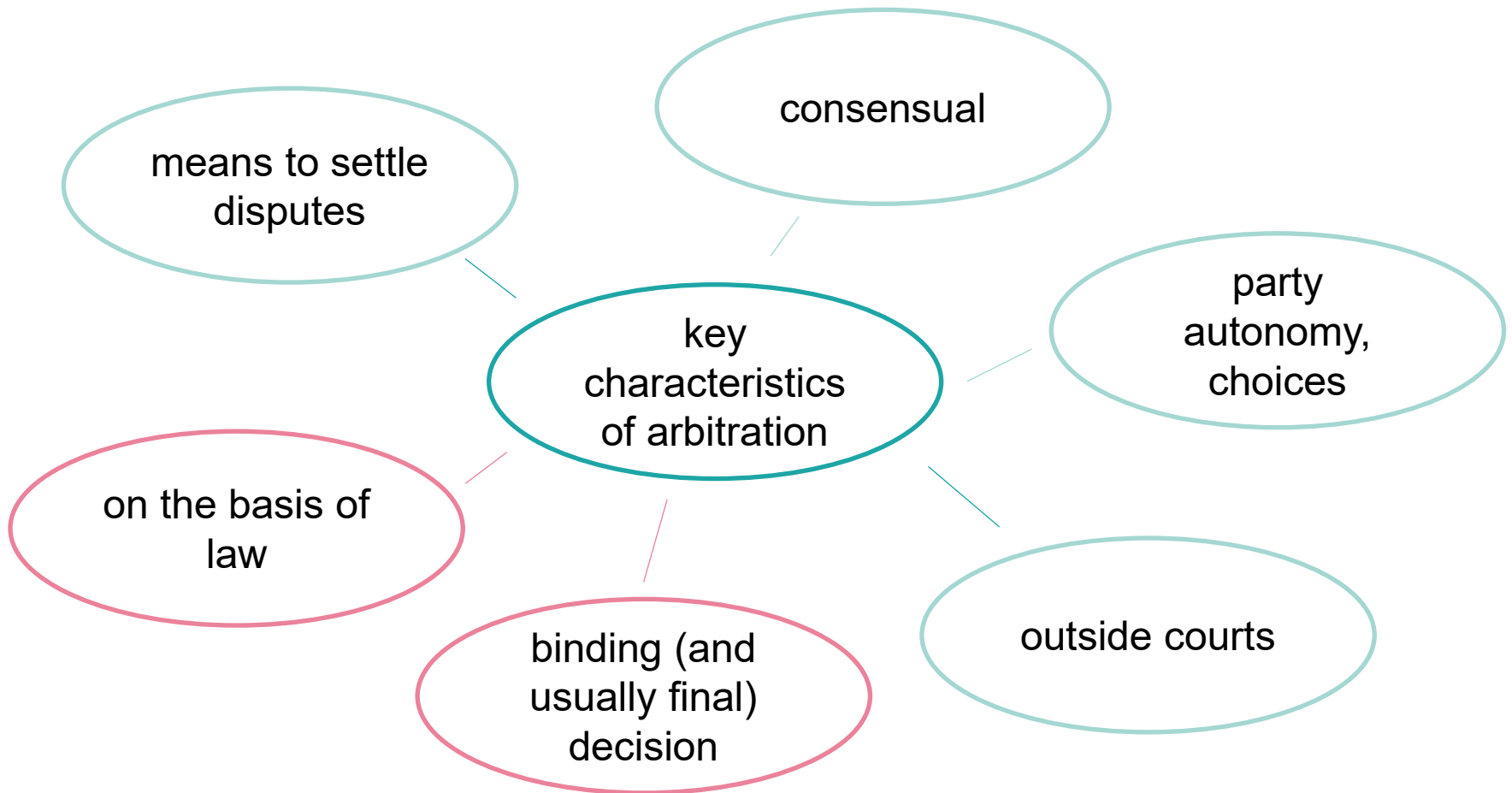
What is international arbitration?

Party autonomy



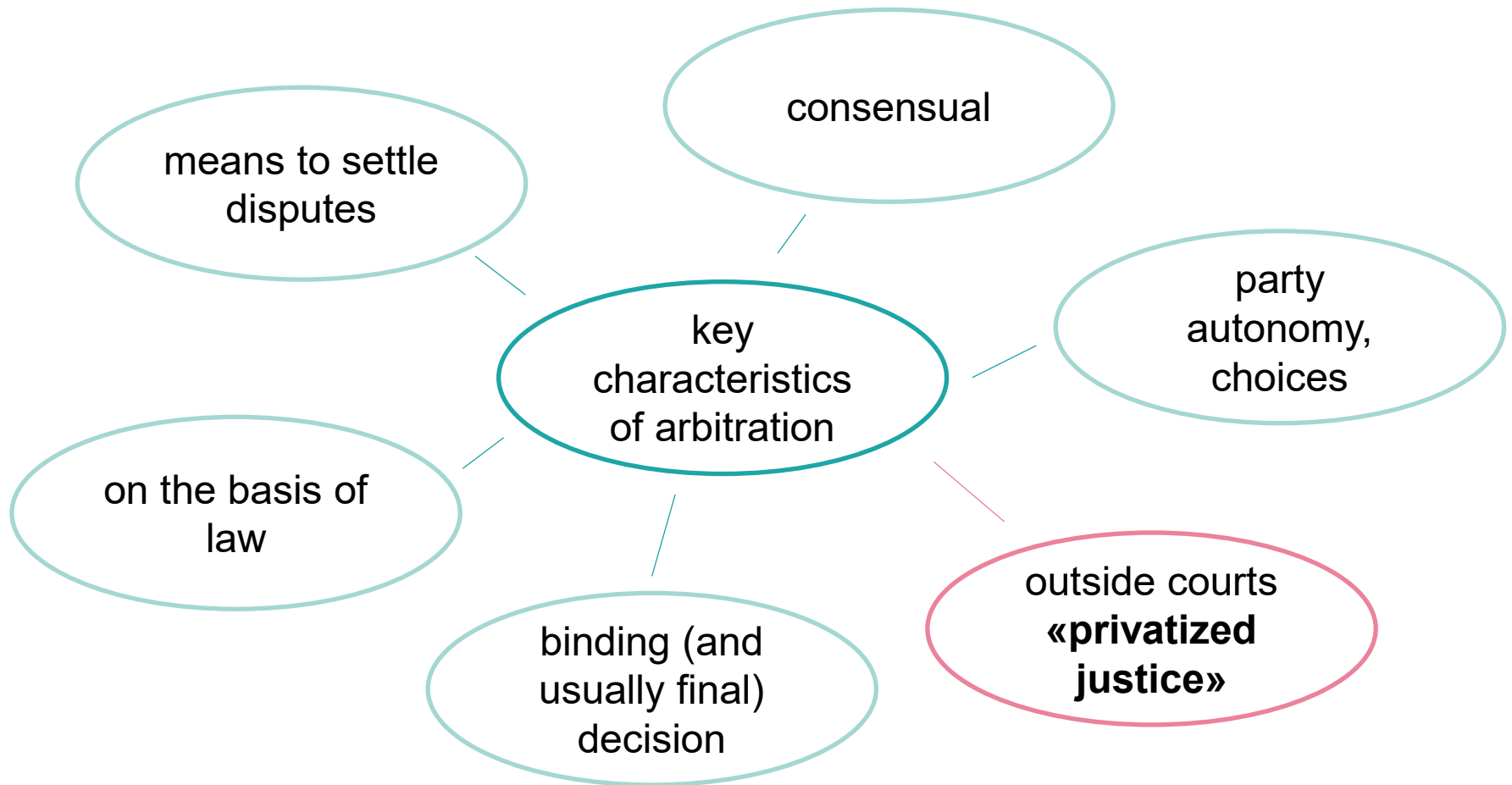
What are the characteristics of arbitration?

Let's brainstorm!



What are the characteristics of arbitration?

Let's brainstorm!



What is international arbitration?

Legal procedure outside (domestic/international) courts

**practical
hurdles**



**legal
hurdles**

- justice system may be ...
 - non-specialized judges
 - dysfunctional
 - under-resourced
 - politically influenced, corrupt
 - non-interested
- costs, duration, ...
- extraterritorial moment
 - foreign legal system
 - foreign language
- ...
- domestic courts
 - procedural, jurisdictional or substantive restrictions on lawsuits
 - restriction on evidence
 - enforcing judgment abroad
- international bodies/tribunals
 - state must be a party
 - admissibility issues (e.g. exhaustion of domestic remedies)
- ...

What is international arbitration?

One possible definition

«[...] arbitration represents a consensual procedure for the final settlement of disputes [...] on the basis of law by adjudicators of their own choosing.»

Charles H Brower, «Arbitration»,
Max Planck Encyclopedias of International Law
February 2007, para 1



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What types of disputes?

The diversity is great!

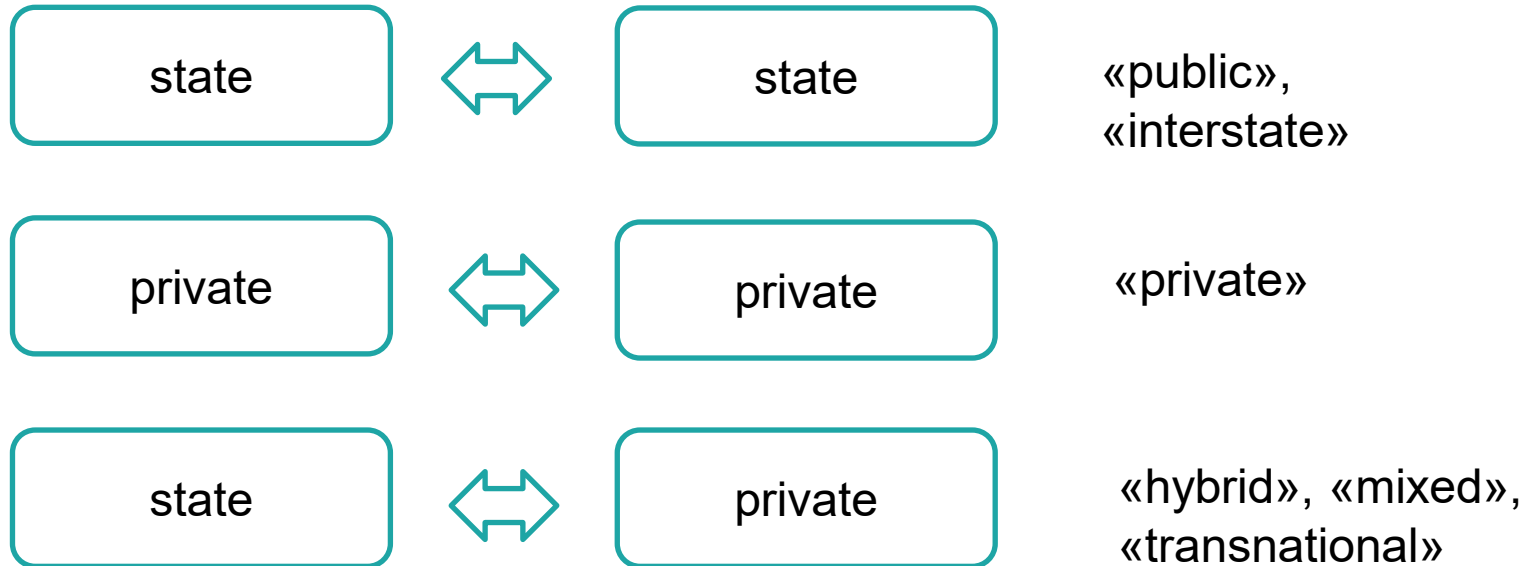
Types of disputes

Possible criteria to categorize disputes



Types of disputes

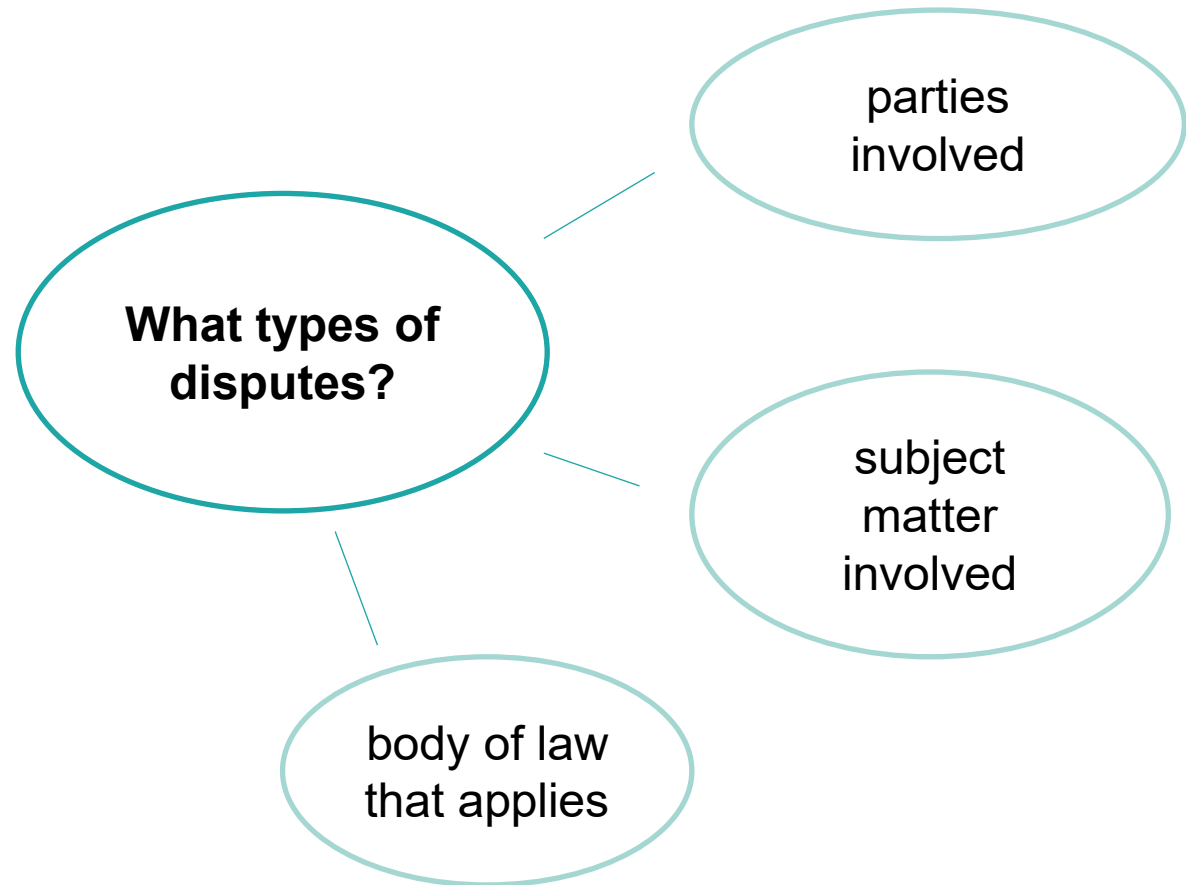
Parties involved



reality is even more complex

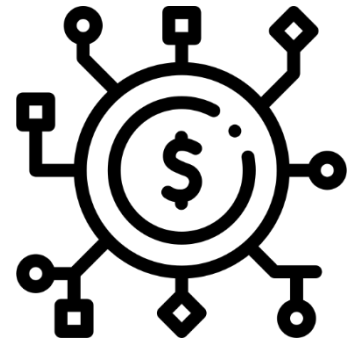
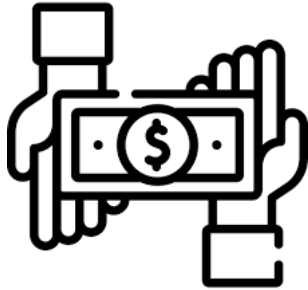
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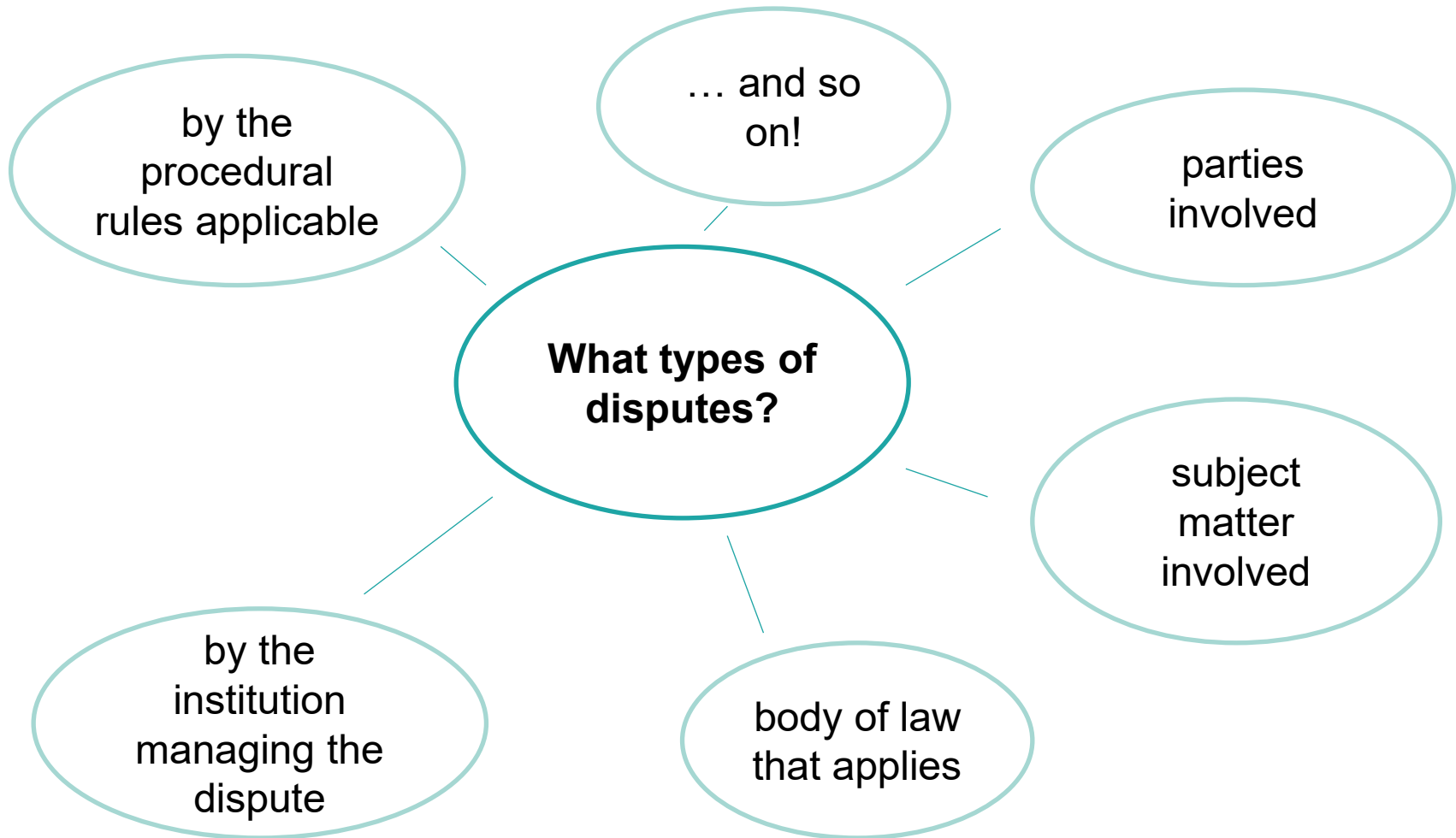
Types of disputes

Subject matter, bodies of law



Types of disputes

Possible criteria to categorize disputes





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Comparative approach

The LAB Schools

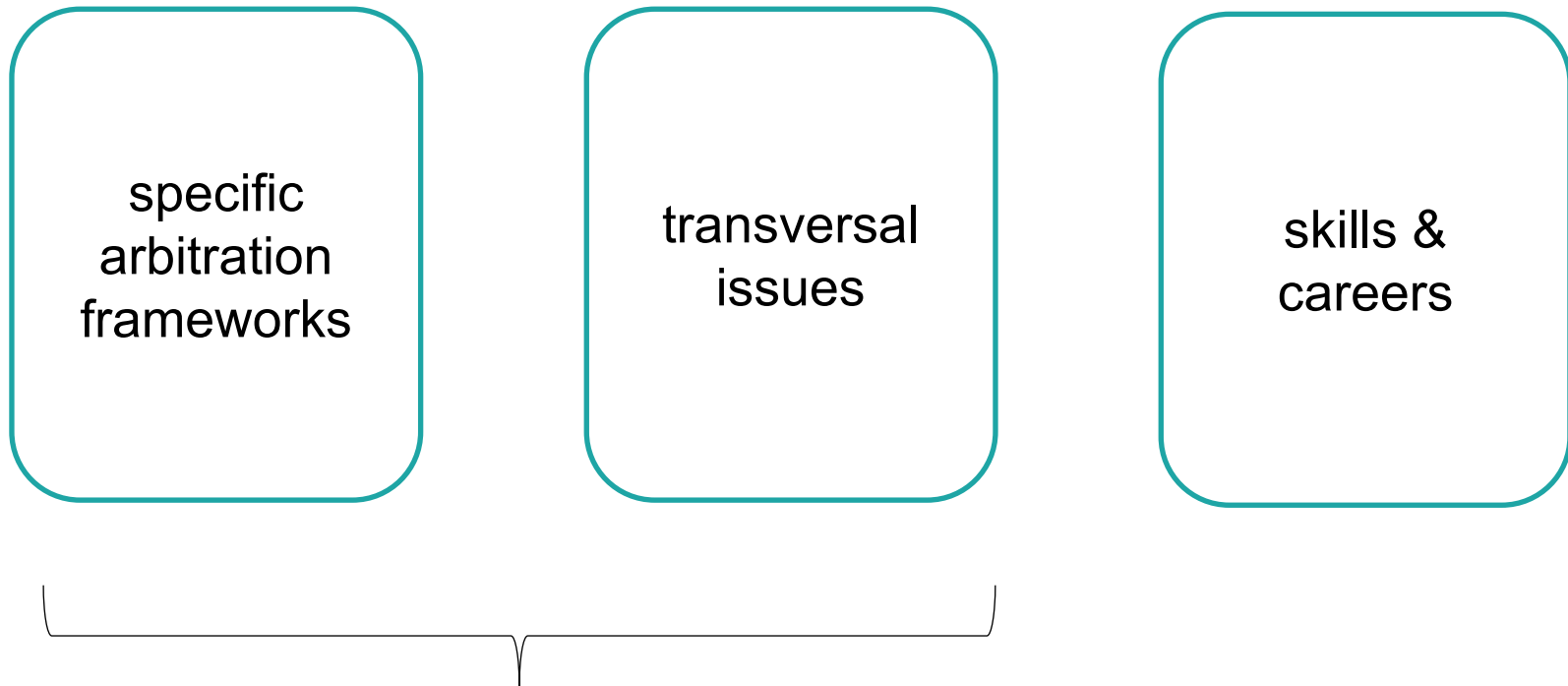
Comparative approach

London Summer and Basel Winter Arbitration School



Comparative approach

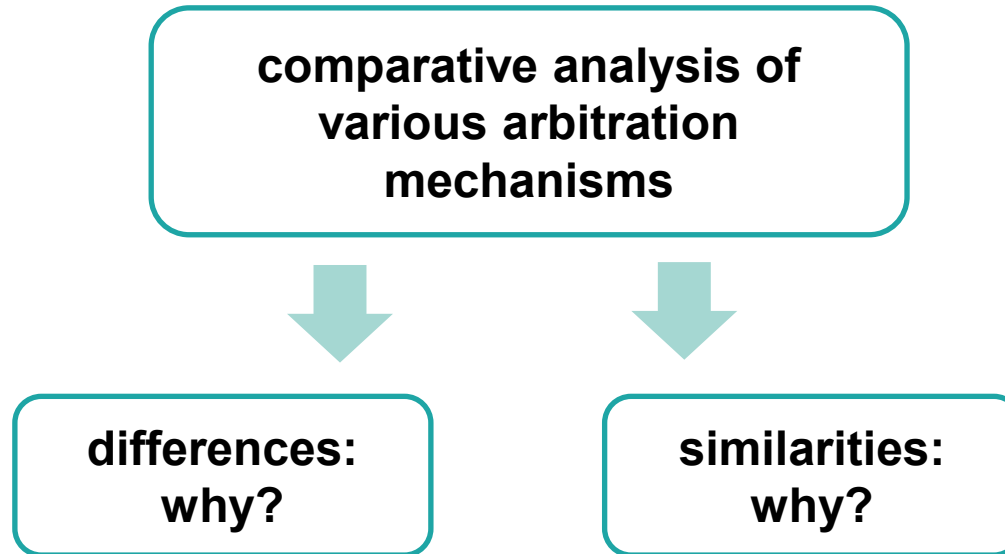
The three pillars of the LSAS and BWAS



comparative approach

Comparative approach

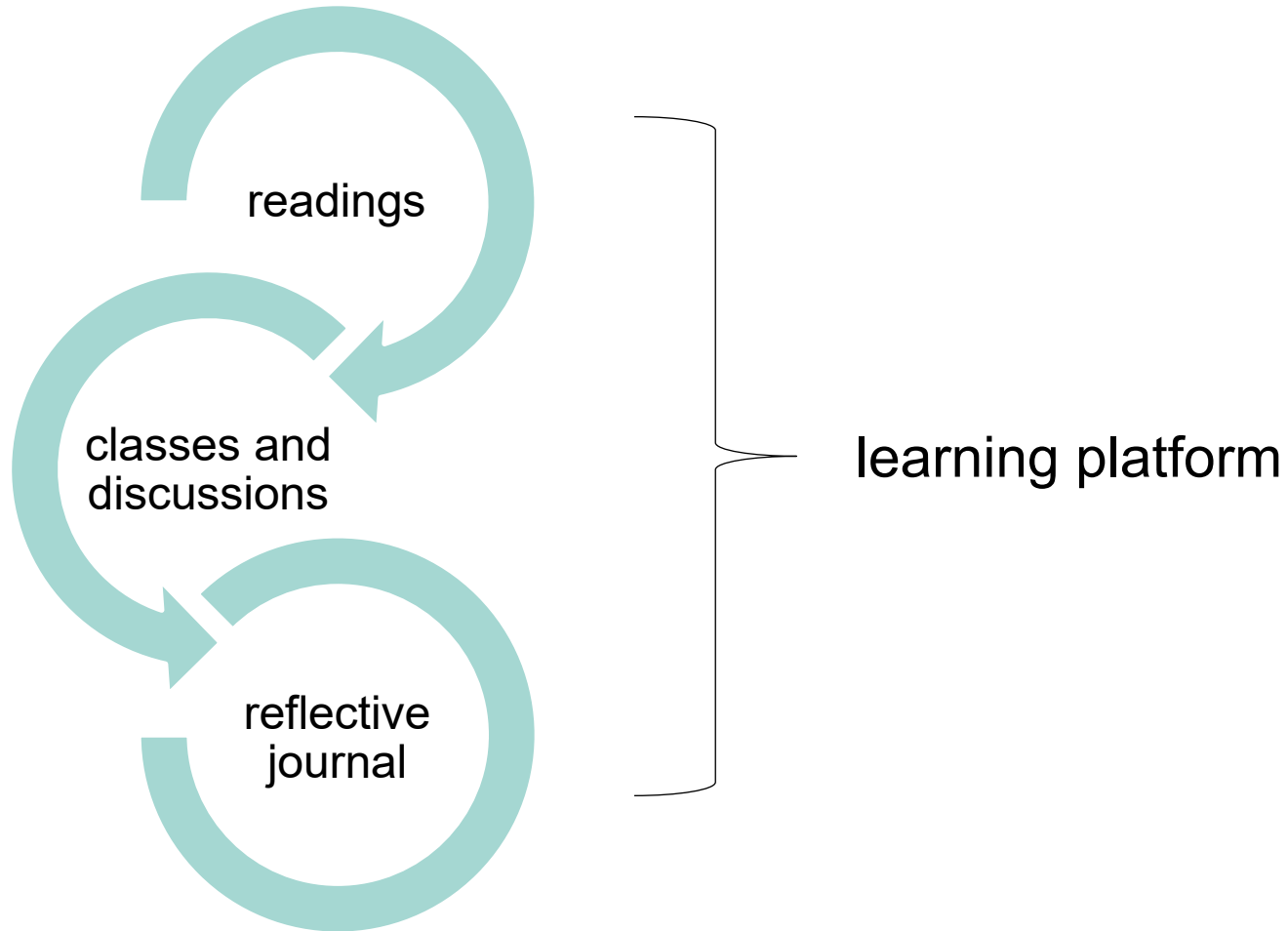
Differences and similarities between arbitration mechanisms



- deepens understanding of «arbitration toolbox» and ratio behind choices
 - stimulates discussion of benefits and limitations of choices
 - key for understanding which framework is suitable for which dispute
 - helpful when designing new framework or formulating reform proposal

Comparative approach

Teaching method





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Thank you
for your attention!

Contact
anna.petrig@unibas.ch