# Article XVII - v0.4.0 Draft EOS.IO Constitution - Choice of Law[[1]](#footnote-1)

# Purpose

Establishes the "choice of law" for aspects of legal interpretation, including arbitration, in which the Constitution is silent or ambiguous.

# Text of Article

Choice of law for disputes shall be, in order of precedence, this Constitution, the Maxims of Equity, and the laws of Malta.

# Discussion

I've been considering leaving this out of the Constitution entirely and letting the Arbitration system manage choice-of-law. On reflection I want to offer this Article, because I want the community to know about this topic in advance, rather than finding out (like opening a surprise present) later when a dispute is in the process of arbitration.

Obviously this Constitution is the supreme law of whatever blockchain community adopts it.

But the Constitution is very brief and cannot anticipate all cases. It's augmented by the commentary on each article, which will help arbitrators. But is that enough? No.

## Why the Maxims of Equity

The Maxims of Equity are a well regarded collection of maxims or sayings, that encapsulate the idea of fairness and justice, particularly regarding property. Dan has previously referenced the Maxims of Equity as a candidate for Choice of Law for the EOS Constitution.

The Maxims are not location-dependent or culture-dependent, making them a good option for providing backup to the text of the Constitution.

## Why Malta

The choice for choice-of-law was guided by these values

* Small and obscure is better than big and familar
* Connected to common legal traditions is better than disconnected
* Crypto-friendly is better than hostile or neutral

Experience with (inter alia) CACert indicates that picking a choice-of-law that's familiar to a large part of the international membership will cause those familiar with it to feel advantaged, and all others to feel disadvantaged. Since every choice must disadvantage some, equity suggests that having everyone more-or-less equally disadvantaged is preferable. This was demonstrated when CACert chose the laws of New South Wales, which wrong-footed nearly everyone, and that choice of law was proven quite satisfactory in practice. Thus "small and obscure" is preferred, in order to cause most people to deal with 'foreign' law.

A bonus effect of making nearly everyone deal with 'foreign' law is to shake the contract writer out of complacency. When working with familiar law, it can be easy to unconsciously assume all the parties agree on one or more unstated points. Working with unfamiliar law, the contract writer will be more likely to make explicit more of the points that need to be agreed.

There are a vast number of small and obscure places with legal systems. What else should we want?

Given the presumed commercial bent of the Governed Blockchain, it is probably good to have a small-and-obscure place that is connected via geography and legal tradition to large and well established commercial sectors such as NAFTA, AGOA, ASEAN, or the European Union. This narrows the list slightly.

And finally, a history of being crypto-friendly merely makes sense. This quickly brought to the fore such places as the Cayman Islands, Gibraltar, Malta, and so on, as opposed to (for example) merely small Andorra.

# References

* [Choice of Law](https://en.wikipedia.org/wiki/Choice_of_law)
* [Maxims of Equity](https://en.wikipedia.org/wiki/Maxims_of_equity)
* [Laws of Malta](http://www.justiceservices.gov.mt/) in English

1. https://forums.eosgo.io/discussion/877/article-xvii-v0-4-0-draft-eos-io-constitution-choice-of-law [↑](#footnote-ref-1)