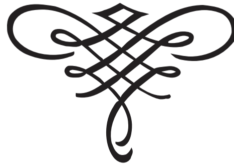
THE LAW OF SPORTS AND ENTERTAINMENT IN UGANDA

First Edition

Isaac Christopher Lubogo



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IN UGANDA

ISAAC CHRISTOPHER LUBOGO

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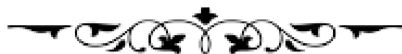
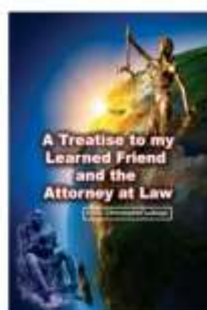
Dedication



To my only true friend, my conforter my redeemer my refuge the Lord God most High, in You oh God I have my only hope and this is for you my God even the Lord God most High.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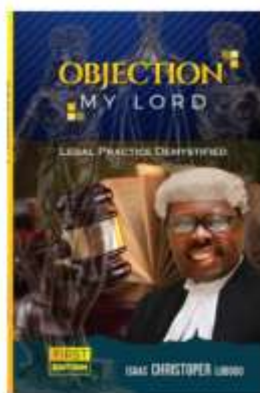
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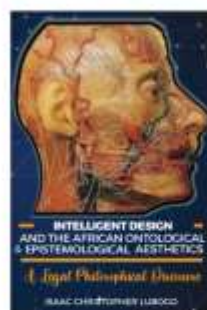
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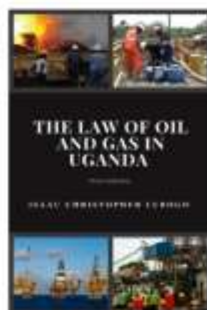
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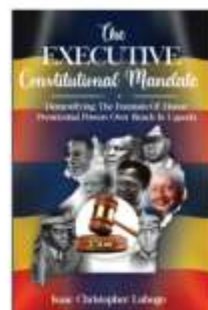
The
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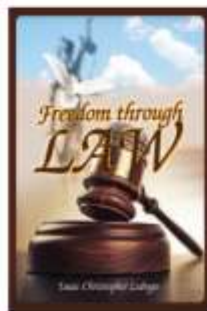
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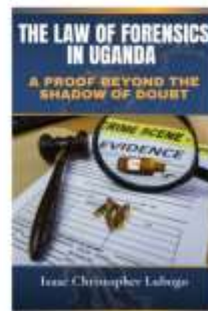
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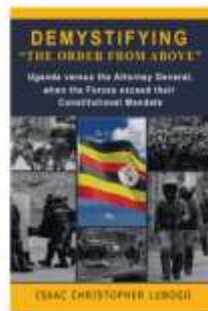
DEMYSTIFYING
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THE LAW OF PENOLOGY
AND CRIMINOLOGY
"I CAN'T BREATHE"

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THE LAW OF SPORTS AND ENTERTAINMENT IN UGANDA

FIRST EDITION

CHAPTER ONE

Introduction to Sports

> ❞
> *The African Union Policy Framework for the Sustainable Development of Sport in Africa (2008-2018)* defines Sports as *a physical activity that is governed by set of rules or customs involving specific administration, governing body, organization*

Sports can be defined as institutionalized competitive activity which involves two or more opponents and stresses physical exertion by serious competitors who represent or are part of formally organized associations[1]. According to the Oxford Dictionary, sport is an amusement, diversion, fun, pastime and game. Sports have been differentiated from games on the basis of the high physical skill factor they involve, and a sociologist has defined sport as institutionalized competitive activity which involves two or more opponents and stresses physical exertion by serious competitors who represent or are part of formally organized associations. Others define, sport, as a combination

[1] Kitaka Aziz (LLB. Makerere University) - Sports And the law in Uganda pg. 1

of physical and mental activity, governed by a set of rules or customs with social, educational and cultural dimensions.

According to **Bellis Mary**[2], The documented history of sports goes back to at least 3000 years. In the beginning, sports often involved preparation for war or training as hunters which explain why so many early games involved throwing of spears, stones and rocks and sparring one on one with opponents.

The physical activity that developed into sports had early links with ritual, warfare and entertainment. As far back as the beginning of sport, it was related to military training. For example, competition was used as a means to determine whether individuals were fit and useful for services.
With the first Olympic Games in 776 BC that included events such as foot and chariot races, wrestling, jumping, discus and javelin throwing- the ancient Greeks introduced formal sports to the world.

THE BIOGRAPHY OF GAMES

The various examples of common games played under sports worldwide with their brief origins include;

(a) *Cricket. It originated from South East England sometime in the late 16th century.*

(b) *Baseball. This was invented by Alexander Cartwright (1820-1892) in 1845 in New York and members of his Knicker bocker baseball club devised the first rules and regulations that became the accepted standard for the modern game of baseball.*

(c) *Softball. This was invented in 1887 by George Hancock, reporter of the Chicago board of trade.*

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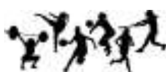
[2] "A brief History of Sports". Thought co. Accessed on August 31st 2021.



(d) *Basketball. The first formal rules of the game were devised in 1892.*

(e) *Rugby. It was invented 2000 years ago. It started as a Roman game called harpatum (from the Greek word that means seize). It made its modern debut in 1749 I'm Warwickshire England.*

(f) *Football (American). This is a descendant of rugby and soccer and is mainly played in the USA.*

(g) *Ice skating. This was invented by the Dutch in the 14th century.*

(h) *Swimming. This is credited to England and is said to have started in 1837. It started with six indoor pools with diving boards. It was launched with the launch of modern Olympic Games in Greece in 1896.*

(i) *Tennis. Modern tennis was played by 11th century French monks. However, there exists evidence that it was played by ancient Egyptians, Greeks and Romans.*

(j) *Volleyball. This was invented in 1895 by an American from Massachusetts called William Morgan.*

(k) *Soccer. Also known as football, it is the most played and watches sport in the contemporary world. It is said to be played by 240m people around the globe on a regular basis according to FIFA. The history of football can be traced back to 2000 years ago to ancient China and it is said to have started with a bunch of players kicking around an animal hide ball. Football came to England in the mid-19th century and it's the English that claim a credit for codifying the first uniform rules for the sport which made tripping opponents and touching the ball with hands forbidden (penalty kick was introduced in 1891)*

(l) *Boxing. This originated in Egypt circa 3000 BC. It died out with the Roman Empire but bounced back in the 17th century. The English officially organized amateur boxing in 1880. The game made Olympics debut in 1904 in St. Louis Missouri in USA.*

The world today embraces sports as a major source of entertainment, whereas a big population of people, companies, institutions and organizations are involved in active sports either as key players of as funders. According to a recent report, more than a quarter of the world's adult population today is involved in sports. Even in the presence of geographical barriers and physical varying legal jurisdictions, social differences like language barrier, international sports competitions (e.g. Olympics, Fifa World cup, African cup of nations among others and the transnational sports events still remain attended to even amid the covid-19 times from 2020. Owing to the dominance of sports affiliations all over the world, it has become somewhat 'a world language with many dialects.[3]

Sugden[4] notes that the fraternal and character building qualities of sports and its capacity to bring together diverse people and communities as demonstrated in regional sport festivals (such as the challenge cup, the EAUG) make sport a social good.
The Greeks are instrumental in shaping the present day sports. Their historical attachment with sports is so rich and it determines the present day activities. The present day Olympic Games were foreseen by activities that gathered crowds in the Olympia stadium in Greece, in approximately 776 BC. These included events like foot and chariot races, wrestling, jumping and discus and javelin throwing from which, its

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[3] Matthew J. Mitten, " 'Sports Law'; implications for the development of international, comparative, And national law, And Global Dispute resolution, Research Paper No. 10-31, 2010, page 40.

[4] Sugden .J, Critical left-realism and sport interventions in divided societies, International review for sociology of sport, 2010, p.45 and 253-272. http://users.polisci.wisc.edu/schatzberg/ps616/Sugden2010.

reliably stated that these Ancient Greeks introduced formal sports in the world.[5] The Greek tradition formed the ancient Greek adage of a 'Healthy mind in a healthy body,' an opinion that contains all positive aspects of sports in the shaping of the personality of the citizen. In the social sense, the purpose of sports is to elevate the values of social participation and inspiration, values that are particularly fundamental within the general concept of democracy.
Sports play an important role within development of personality and society in general. It is of no wonder that sports is a constitutional right and we are yet to discuss the legal framework relating to sports in Uganda.

THE STATE OF SPORTS IN UGANDA

The Republic of Uganda is the second most populous landlocked country in the world, second only to Ethiopia. It is located in East Africa and is bordered by Kenya, South Sudan, Rwanda, Tanzania and the Democratic Republic of Congo. As with most African nation, Uganda does not have the vast resources that can be used to improve the facilities in the country for sports but that has not dampened their passion for sports. Uganda has embraced a number of sports such as baseball, cricket, tennis, golf, swimming, cycling, and boxing. Uganda also occupies a significant part of Lake Victoria which they share with neighbors Kenya and Tanzania. This has also spawned a growing interest in sailing.

When it comes to sheer popularity, football is the king in Uganda followed closely by rugby and basketball. Their national football team nicknamed 'The Cranes' have taken the Council for East and Central Africa Football Associations (CECAFA) Cup a staggering 13 times. The CECAFA Cup is the oldest of all the football tournaments in the whole of Africa. Their national rugby team is also recognized as one of the strongest in the region and their national basketball team, nicknamed 'The

[5] Mary Bells; A brief history of Sports "From Rocks and Spears to Laser Tag" Accessed on 2nd November 2021 at thoughtco.com/history

Silverbacks' has made its debut in the FIBA Africa Championship in 2015. Another popular recreational sport is pool. The sport is widespread, every small town has multiple pool tables and it's easy to learn compared to the likes of basketball and rugby. The national open breaks gate records at the MTN Arena in Lugogo.

The ministry of Education is the government arm responsible for controlling all sports activities in Uganda. Within its aims is “to provide technical support, guide, coordinate, regulate and promote quality education, training and sports to all persons in Uganda for national integration, development and individual advancement”. The mandate of this ministry is to provide quality education and sports services in the country which are constitutional obligations for the Ugandan state and government.[6]

Under this ministry, sports is managed under the Department of Physical Education and Sports. However, other organs through the Ministry Education and sports for example the National Council of Sports and the Uganda Olympic Committee also play an active role in regulating sports activities in Uganda.

The National Council of Sports (NCS) is a statutory organ whose establishment, status and powers are enshrined under the National Council of Sports Act of 1964, to among other things; Develop, promote and control sports activities in Uganda on behalf of the government, under the Ministry of Education and Sports. The NCS which is also linked to the Supreme Council for Sports in Africa (SCSA) and other relevant sports organizations serves as a regulator and apex organization that coordinates all sports activities in the country in conjunction with the registered National Sports Associations/Federations.[7]

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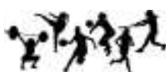
[6] https://www.education.go.ug

[7] Article by Kitaka Aziz- (LLB Makerere University)- Sports and the Law in Uganda



The Uganda Olympic Committee (UOC) was constituted in 1950 and recognized by the International Olympic Committee (IOC) in 1956. The UOC represents Uganda in the international sports events like, the Olympics (winter and summer), and the Common Wealth Games and amongst the leading and most noticeable sports occasions in the world that attract the world's best athletes who compete before millions of spectators and sports fans watching them live and on television. The UOC is therefore affiliated to; The International Olympic Committee (IOC), the Association of National Olympic Committee (ANOC),the Common Wealth Games Federation (CGF), the Association of National Olympic Committee of Africa (ANOCA) and the Islamic Solidarity Sports Federation (ISSF)[8].

[8]Ibid

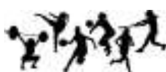
CHAPTER TWO

Comparative Analysis of Sports

INTERNATIONAL STANDARDS

Sports law is one of the newest branches of the legal system. It is determined by the fundamental principles and specific normative solutions belonging to the constitutional, civil, criminal, administrative law and other areas of law mentioned below in this article. Hence, sports law and its totality is the result of the unification of the different segments in a separate system primarily motivated by practical needs. We will make an effort to argument and justified the need for the separation of the sports law as a separate legal entity.

From the beginning of 21st century, the legal systems of some countries recognized and accepted sports law in order to protect, through legal regulation of sport and sporting activities, the values that sports provide and promote. The purpose of the state is to intervene in sporting relations, by providing legal standards that regulate the functioning of sports system and the realization of sporting activities.



Law is defined as a set of rules that regulate human behavior and which prescribes coercive sanctions.[9] Considering this definition we can conclude that because sport is one of main human activities, it is in the responsibility of the state and its legal system to provide special norms to govern this issue. In addition, the state's role is to enable and support the realization of the social functions of sport, which are possible only if the system has special pre-defined rules and laws for sports and sporting activities that enjoy protection by the state.

Comparing sports law with criminal, civil, constitutional and administrative law we can conclude that sports law is young but highly developed complex branch of law. Also sports law is a special legal discipline on numerous universities, institutes and other educational and scientific institutions in the countries of Western Europe and North America. The numerous experiences and results of scientific researches and institutions are of particular importance in the development of new sporting regulations and mechanisms for legal protection in sport and the individuals who are involved in sports.

It is indisputable that sports, from its creation to this date, was carried out on the basis of certain pre-established rules. These special pre-established rules provide fulfillment of the core values on which the sport is based, represented by the fundamental principles that provide the fair play and free competition.[10] In fact, the interaction that occurred from the relationship between sports and law as two separate phenomena that are each individually developed, providing the emergence of the sports law as a separate branch of law.

[9] Ibid, p.75;

[10] Ibid, p.73;

DEFINING SPORTS LAW, SPORTS AND SPORTING STANDARDS

To this day there is no specific or generally accepted definition on sports law. One of the reasons for the lack of a unique and acceptable definition of sports law is the fact that this branch of the legal system is developed much later and is set apart as a separate legal branch. Another reason is its rapid development during the last decade that was indicated from the significantly expanded regulation of a growing number of sports and other legal relations and social relations that occur in connection with sport.

The most widely observed definition on sports law as a separate branch of the legal system is the following one:

”

Sports law "is a systematic set of regulations in the field of sports system and sporting activities."

The definition on sports law as a science is the following one: "Sports science is a system of legal concepts of sport, sports organizations, sports activities, athletes, sports infrastructure and legal proceedings related to civil rights in sports and performing sports activities."

In modern society, sports represents a highly profitable activity, which in its normative content seriously takes place in all areas of law, primarily in law of obligation, commercial law, criminal law and etc. Sports Law encompasses a multitude areas of law brought together in unique ways.

Sports law and its legal regulation, represents a kind of law which determines the area of legal relationships that are developing in this field of sport. Sport is a special legal area that defines specific decisions

regarding sports activities. Relations in sport cannot be imagined without an appropriate legal framework that defines these relations. In the narrow sense sports law and legislation of sport include the entire system of sports activities and the types of sports, relationships within the sports events and sports events. Sports law also specifies requirements arising during the occurrence of sporting events, or on behalf of the participants.

The purpose of sports law is to regulate all issues that arise in sports and propose specific and practical proven solutions so that legal provisions can regulate disputes in the world of sports.

Therefore, only by applying sports law, sports can play a serious role in society, for the benefit of all those involved in sport. This particularly applies to regulations regarding competitions as well as other associated elements of organized sports. We have to note that many of the sports activities are often organized outside the state borders, which leads to a new aspect of the sport with international dimension.

The vigorous development of the sports law must be in touch with its specific legal practice because for these legal disputes there is absence of theoretical solutions and the theory in this matter is far behind the practical needs. There is an obvious lack of serious analysis of numerous legal principles, institutions and there is also a lack of specific normative solutions. This problem is of a general nature, which is present in many countries, including those with most developed jurisprudence. Sports law covers all state norms governing social relations in sports.

Legal norms are rules of conduct or social laws prescribed by the legislature. Unlike moral, customary, religious and technical norms, legal norms have:

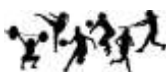
- *Disposition, rules of conduct, imperative or tenure / limit behavior , choosing another type of behavior, and*
- *Sanction, behavior of other entities to the offender disposition, punishment;*

Although the law is one of the social phenomena that defines other social phenomena like sports, sports and sports activities, sports exist regardless its definition.
In circumstances where sports changes its dimension, transcending the boundaries of the nation-state, the question of its international character and its international defining is more and more interesting.
In the field of international law, the European Charter for Sport from 1992 under the auspices of the Council of Europe, gives the following definition of sport:

Sport means all forms of physical activity, which, through casual or organized participation, aim at expressing or improving physical fitness and mental wellbeing, forming social relationships or obtaining results in competition at all levels..[11] In the Charter, sports is seen as a special social right on every individual and encourages national governments to take measures for providing this right. This concept is with accordance to the trends in modern society and it is accepted in Macedonian legislative. Hence, the Constitution of Republic of Macedonia, in the part for the basic rights and freedoms of man and citizens, guarantees the freedom of association to exercise and protect their political, economic, social, cultural and other rights and beliefs. Within the realization of economic, social and cultural rights in the Constitution, it is stated that the state encourages and assists technical education and sport, which is a basic foundation for changing the position and role of the state and creating a completely different value system and attitude towards sport.

Also, Amendment XVII provides a guarantee by which citizens participate in the local government, directly and through representatives in the decision making process on issues of local importance, particularly in the areas of public services, urban and rural planning, environmental protection, local economic development, local finance, public works,

[11] United Nations Educational, Scientific and Cultural Organization



culture, sports, social and child protection, education, health care and other fields determined by law, which in itself suggests a new dimension to sport and the commitment of citizens participation in sports activities by creating the legal conditions of the country to participate in sports. But besides the fact that the proclamation of sports in our country is very explicit, sports is still on the margins of the state.

Our opinion is that there must be crucial changes in Macedonian legislation inspired from the above-mentioned Charter of Sports.

On EU level, sports is referred in Article 165 of the Treaty on the Functioning of the European Union, according to which, sport is characterized by its specific nature, structure, based on voluntary activity and social and educational functions.

Also the concept on sports is evident by the case law of the European Court of Justice, including one of the key decisions about the relationship of EU law and sport **Bosman v. Union Royale Belge Sociétés de Football Association,**[12] also known as the **Bosman case**[13] or the Bosman ruling. This is a 1995 European Court of Justice decision concerning freedom of movement for workers, freedom of association, and direct effect of article 39 (formerly 48) of the EC Treaty. The case was an important decision on the free movement of labour and had a profound effect on the transfers of football players within the European Union (EU). The decision banned restrictions on foreign EU players within national leagues and allowed players in the EU to move to another club at the end of a contract without a transfer fee being paid.[14]

---

[12] Court of Justice of the European Communities (ECJ) in Bosman v. Union Royale Belge

Sociétés de Football Association, (case C-415/93 [1995] ECR I-4921, hereinafter Bosman case).

[13] For more see: Borja García, "From regulation to governance and representation: agendasetting and the EU's involvement in sport", Entertainment and Sports Law Journal, ISSN 1748-944X, July 2007.

[14] Barbara Bogusz, Adam Jan Cygan, Erika M. Szyszczak (2007): The Regulation of Sport in the European Union, Edward Elgar Publishing, Jan 1, p.38;

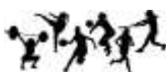
REASONS FOR THE EXISTENCE OF SPORTS LAW

With the emergence of sports crime and offenses that started to occur during or while performing sports activities or in connection with sports activities, the need for legal regulation of sport and sporting activities became crystal clear. The legal regulation of sports was necessary in order to establish sanctions for violations of the legal norms, established rules of the game and rules of sportsmanship. The creation of these legal norms provides the basis for the establishment of a legal mechanism of criminal justice in sport and sport related activities, as well as space for the emergence of state intervention in sports relations.
From a historical angle, the need of special rules for sport competitions was discussed by Plato in his monumental "Laws", where he explicitly states that the existence of special norms for sports. The internationalization of the sport[15] led international law that would have its impact of particular importance and to dominate in this particular area.

Some theoreticians have begun increasingly to question the traditional view that no corpus of law exists that can be characterized as an independent field of law called sports law. Amongst the critics of the traditional view, are those who have staked out what represents a middle ground. Others, for instance, say that it is more appropriate to apply the "sports and the law" rather than the "sports law" designation to legal matters that arise in the sports context.[16]

[15] D. Šuput, Dokumenti međunarodnih organizacija koji propisuju zabranu upotrebe dopinga u sportu, u: Strani pravni život br. 2/2009, Institut za uporedno pravo, Beograd, 2009, p. 292;

[16] Timothy Davis (2001):What Is Sports Law?, 11 Marq. SportsL. Rev. 211, p.213;



LEGAL INTERVENTION IN SPORTS LAW

Sports as well as all areas of society, nowadays cannot work and survive as independent and free from external influences from other systems in society. In particular, the isolation of sports from other social disciplines is impossible in the cases during sporting events with consequences like injury or death of a participant. This means that the concept of absolute autonomy of sporting regulations in the handling of such events in the world has not been defensible for a long time. The question that arises is not whether the state has the legitimacy to intervene in a sporting event, but what should be done to prevent these criminal acts. At this point, we distinguish between direct and indirect interference with the laws of the sport.[17]

The choice of type and way of manifesting the intensity of the intervention should be primarily based on the criteria of suitability, efficiency and social efficiency of a particular legal intervention. Such interference should always be by using the right legal instrument, one that is within the legitimate public interest and proportionate to the objectives that should be achieved. As for the public interest, it seems most convenient to detect problems that are emerging in practice, because it emphasizes the need for legislation itself in relation to different aspects of the sport. This is especially important in doping scandals and corruption, and increasing fan violence at sporting events. We also think that of a great importance would be the link between practices of different countries on the basis of specific national conditions with different traditions and manners, because such questions often vary in different countries largely because of the different determined geo specific and social conditions.

Regarding the necessity for stronger legal intervention in sports, the need for enforcement of the criminal law and the identification of crimes and

[17] Richard Parrish (2003): Sports law and policy in the European Union, Manchester University Press;

their perpetrators in terms of sports is more and more obvious. This is essential for defining, identifying and incriminating, with proper convictions, the following crimes related to sport and sporting events: corruption, bribery, money laundering, and forgery, misuse, fixing of sporting events and organized sport crime. These crimes are derogating the entire sports system in all countries in the world.
We also once more emphasize the need for the redefining some spheres of private law, contract law, labor law and trade law which must make some adjustments in the field of sports.

Sports and sports activities cannot develop, grow, progress and exist separated from the legal system. On the contrary, they should be in accordance with the legal provisions that define sports and sports activities and give rules of conduct for better fulfillment of the main goals of sports. Sports autonomy can solely be based on the constitution, laws and courts decisions in national states.

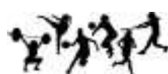
SUBSTANTIVE AREAS OF LAW IMPLICATED BY SPORTS

Whether or not sports law represents a separate corpus of law it is more than certain that sports is related to various substantive areas of law. It is often said that sports law, with its wide variety of legal aspects, probably encompasses more areas of the law than any other legal discipline. We will attempt to illustrate how sports intersect law.

Contract Law

Despite having been displaced considerably by antitrust and labor law as it relates to defining relationships, contract law retains a vitally important role in the business of sports.[18] Collective bargaining agreements are largely governed by labor law principles. Nevertheless, contract law

[18] Timothy Davis, Balancing Freedom of Contract and Competing Values in Sports, 38 S.Tex. L. REv. 1115, 1134-35 (1997).



principles retain their importance with respect to the interpretation and application of the terms of agreements. Moreover, freedom of contract is one of the fundamental premises underlying the justification for the agreement. In addition, contract principles remain relevant with respect to terms of player/team contracts that are open to individualized negotiation, notwithstanding uniform player contracts in the major team sports.[19] For example, in professional football the following are provisions that are subject to individualized negotiation:

a) *The amount of a signing or reporting bonus.*
b) *The time of payment of bonus.*
c) *The desirability of a loan.*
d) *The length of the contractual relationship.*
e) *Skill or injury guarantees.*
f) *Function of initial-year salary and annual increments.*
g) *The importance of final year salary.*
h) *Option clauses.*
i) *Salary adjustment agreements.*
j) *Roster bonuses.*
k) *Individual and team incentives.*[19]

Beyond player/team agreements, principles of contract law are relevant to the creation, formation and enforcement of a wide variety of agreements that are struck in the sports world. These include endorsement contracts, coach/team contracts, arena lease agreements, and student-athlete/university scholarship agreements and letters of intent.[20]

Thus, courts have relied upon familiar contract law concepts such as the doctrine of consideration, the parole evidence rule, the statute of frauds,

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[19] Timothy Davis,What Is Sports Law?, 11 Marq. Sports Law Review 211 (2001), p.220; [19] Ibid, p.220;

[20] Robert C.R. Siekmann, Janwillem Soek: Lex Sportiva: What is Sports Law? Springer, Jan 19, 2012 - Biography & Autobiography, p.10;

and the implied duty of good faith and fair dealing in resolving disputes related to the forgoing types of sports related contracts.

Labor Law

In most cases, players in all of the major team sports are represented by labor unions. Because of this, labor law and antitrust law have emerged to impact significantly the law that governs team's sports.

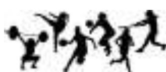
Tort Law

Generally, tort principles applicable in other contexts are equally applicable in sports settings. Nevertheless, because of the unique characteristics of sports, the application of certain tort doctrine is imbued with difficulty such as in cases of tort liability stemming from on-the-field conduct. In this regard, Weller and Roberts[21] state: Sports, however, pose a unique problem to the law of personal injury. The aim of a sporting event is to produce spirited athletic competition on the field or floor. In sports such as boxing, football etc. a central feature of the contest is the infliction of violent contact on the opponent. In other sports, such as basketball such contact is an expected risk, if not a desired outcome, of intense competition. Even sports such as golf that are intrinsically non-violent for their participants may inflict harmful contacts upon the spectators. This characteristic feature of sports requires the law to undertake a delicate balancing act when it tailors for use in sports litigation the standards of liability developed to govern relationships in very different aspects of life. The jurisprudence of personal injury in sports should include: Liability for Player-to-Player Conduct and assumption of the Risk.

Constitutional and Statutory Law

Traditionally, private law was viewed as providing the principal legal mechanism for regulating the sports industries. However, public law concepts, in addition to labor and antitrust law, play an increasingly important role in governing legal relationships in sports. Moreover,

[21] Timothy Davis (2001): What Is Sports Law?, 11 Marq. SportsL. Rev. 211, p.231;



constitutional principles have been called upon to adjudicate the respective rights of parties involved in the sports world.

Other Substantive Areas

In addition to the forgoing, legal practice in the sports context may require familiarity with additional substantive areas of the law including: administrative law, criminal law, tax law, and intellectual property law etc.[22]

SOURCES OF SPORTS LAW

The sports law has many sources that contain norms and provisions that regulate the main issues of sports and sport activities. Besides the sources of sports law, which are the fruit of the work of international organizations and law enforcement agencies of individual countries, there are numerous documents ascribed as "general legal acts", transnational - international non-governmental sports organizations and national sports organizations that adopt and prescribe sporting rules "rules of competition, rules for the organization and conduct of sports competitions in individual disciplines", as well as sanctions for possible infringements. Source of law in the formal sense is a general legal act in writing adopted by the competent state authority. Given the fact that sports is a positive legal right discipline, the sources of sports law are constitutional and legal regulations and international treaties.

NATIONAL SOURCES OF SPORTS LAW (CASE OF MACEDONIA)

Having in mind the importance of individual national legal acts, the national sources of sports law will be presented by the division that takes into account the importance of the legal act in terms of sports right. Here we separate the sources of main and secondary sources of sports law.

[22] Timothy Davis (2001): What Is Sports Law?, 11 Marq. SportsL. Rev. 211, p.238;

Main national sources of sports law are:

a) **The Constitution of Republic of Macedonia**[23] **and Amendment XVII.**[24] In Article 20 of the Constitution of Republic of Macedonia in the part of fundamental rights and freedoms of man and citizen it is guaranteed the freedom of association to exercise and protect their political, economic, social, cultural and other rights and beliefs. Within the realization of economic, social and cultural rights in the Constitution, it is stated that the state encourages and assists technical education and sport, which is a basic foundation for changing the position and role of the state and create a completely different value system and attitude to sport.

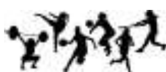
   Also, Amendment XVII provides a guarantee by which citizens participate in the local government, directly and through representatives in decision making process on issues of local importance, particularly in the areas of public services, urban and rural planning, environmental protection, local economic development, local finance , public works, culture, sports, social and child protection, education, health care and other fields determined by law , which in itself suggests a new dimension to the sport and commitment of citizens participation in sports activities and by creating the legal conditions of the country to participate in sports .

b) **The Law of Sports**[25] **is a source of law that fully regulates all areas of sports law.** The Law regulates the conditions under which sport is performed and exercised, in order to fulfill the public interest in the sport under the jurisdiction of the Republic

[23] Constitution of Republic of Macedonia (Official Gazette No.52/91);

[24] Amendment XVII (Official Gazette No.91/01);

[25] Law of Sports (Official Gazette of RM No.29/02);



of Macedonia (local and regional), management of sports facilities owned by the Republic of Macedonia (local and regional) as well as other issues of importance to the sport. The Law of Sports attempts to fully define sports in terms of this Law. Hence, in terms of this law, sports is defined as an activity that encompasses all forms of sports athletes of all ages and sports - recreational activities of citizens. Sports activities are performed by sports associations and other entities in the field of sports. Other entities in terms of this Law are: sole trader and trading company registered for sports activities, as well as a legal entity which besides sport activities is registered for other activities as well.

c) **Law on Asso iations and Foundations.**[26] This Law regulates the conditions and procedures for the establishment, registration and termination of associations, foundations, unions, organizational forms of foreign organizations in the country, available assets, monitoring, status changes and the status of public benefit organizations. This law is the basis for establishing the association as a first step of the organizational form of a sports organization. The Law also, defines the procedure for the establishment.

SECONDARY DOMESTIC SOURCES

Secondary domestic sources are those that govern individual sports areas. These include:

a) *Statutes of sports federations and organizations;*
b) *Rules for competition in individual sports;*
c) *The disciplinary rulebooks and;*
d) *Other acts adopted by the sports federations and organizations.*

[26] Law on Associations and Foundations (Official Gazette of RM No.52/10);

INTERNATIONAL SOURCES OF SPORTS LAW

International sources of sports law are international instruments relevant to sports law with a possibility of direct application. Given their specificity, international documents that are adopted by international sports organizations are obligatory to sport federations and organizations. These include:

- *The International Convention against doping in sport, adopted on 19 October 2005;*[27]
- *Nordic Anti-Doping Convention from 1985;*[28]
- *Convention against doping from Council of Europe and the Additional Protocol to the Convention against doping from Council of Europe;*[29]
- *Convention against doping from Council of Europe in Strasbourg, adopted on 16 November 1989;*[30]
- *International Convention against doping in sport adopted on October 19, 2005 by the General Assembly of UNESCO;*[29]
- *Action Plan of the European Union for fight against drug from 2000-2004, adopted by the Council of Europe;*[30]

[27] International Convention against Doping in Sport 2005, Paris, 19 October 2005;Also see Paul Marriott-Lloyd, International Convention against Doping in Sport, UNESCO, 2006; and Michael Straubel (2006): The International Convention Against Doping in Sport: Is It the Missing Link to USADA Being a State Actor and WADC Coverage of

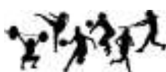
U.S. Pro Athletes? Marquette Sports Law Review, Fall, Volume 19, Article 5;

[28] Norwegian Confederation of Sports, Finnish Central Sports Federation (1985): Nordic Anti-doping Convention, Norwegian Confederation of Sports;

[29] International Convention Against Doping In Sport, Miscellaneous No.3 (2006), Paris, 19 October 2005;

[30]Action Plan to Combat Drugs (2000-2004) available on

http://europa.eu/legislation_summaries/justice_freedom_security/combating_drugs/l33092_en.htmlast access 08.06.2020;



- *The European Charter for Sport - adopted by the Committee of Ministers of Council of Europe;*[31]
- *The European Charter for all sports - adopted by the Committee of Ministers of Council of Europe;*[32]
- *Declaration by the EU for the specific characteristics of sport and social function of sport in Europe;*[33]
- *Conclusions from the First Conference of EU on sports, where is defined the European model of sport;*[34]

GOVERNANCE OF SPORT

The rules that are applied to sport can be classified into four types:

a) *The rules of the game. Each sport has its own technical rules and laws of the game. These are us duly established by the international sporting federations. These are the constitutive core*

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[31] The European Sports Charter (adopted by the Committee of Ministers on 24 September 1992);

[32] See also recommendation No. R (86) 18 of the committee of ministers to member states on the european charter on sport for all: disabled persons (Adopted by the Committee of Ministers on 4 December 1986 at the 402nd meeting of the Ministers' Deputies), Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe;

[33] Declaration on the specific characteristics of sport and its social function in Europe, of which account should be taken in implementing common policies, The European Council, 13948/00;

[34] Conclusions Of The First European Union Conference On Sport: The declaration on sport included in the Treaty of Amsterdam calls on the European institutions to give sports organizations a hearing before taking any important questions affecting sport. The Commission, in response to this call, assembled the principal actors in European sport in order to discuss the major issues which this sector will be facing in the years to come. The results of the conference should provide material for the discussions of the ministers responsible for sport, as well as for the report which the Commission is to submit to the European Council in Helsinki next December.

of the sport. They are by definition unchallengeable in the course of the game.

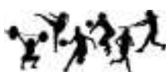
b) *The ethical principles of sport. These are not technical formal rules but govern issues of fairness and integrity. They cover what is usually referred to as 'the spirit of the game. These general principles can be at issue whenever sporting associations are challenged in the courts. They represent a distinct 'legal' order with its own characteristics that are specific to each sport. But this is an internal Lex specialist, not distinctively global even when administered by international sporting federations.*

c) *International sports law. This is accepts that there are general principles of law that are automatically applicable to sport. Basic protections, such as due process and the right to a fair hearing, are by this route incorporated into sport and represent a 'rule of law' in sport.*

d) *Global sports law. This describes the principles that emerge from the rules and regulations of international sporting federations as a private contractual order. They are distinctive and unique.*[35]

The work of the conference demonstrated the conviction that European sport, as diverse as it may be, has common characteristics that need to be preserved from possible commercial distortions. Sport, and in particular 'sport for all', is for European society an excellent means of social cohesion as well as an activity which goes beyond the strictly economic framework. Two principles define European sport: democracy and solidarity. It is in the interests of both public authorities and sports organizations that they be preserved.

[35]KEN FOSTER (2008): Is There a Global Sports Law?, available on www2.warwick.ac.uk/fac/soc/law/elj/eslj/issues/volume2/.../foster.pdf, last access 06.09.2013;



Sport has to be in a position to fit into the new commercial framework in which it has to evolve, without losing either its identity or its autonomy which underline the functions it fulfils in the social, cultural, health or educational fields.

Our opinion is that the norms of global sports law need to be unique. They cannot simply be the incorporation of general principles of public international law, for these have an independent validity and application. The rule of law in sport also operates upon sport and does not emerge from the practice of international sporting federations.

CONCLUSION

It is indisputable that sports, from its creation to this date, was carried out on the basis of certain pre-established rules. These special pre-established rules provide fulfillment of the core values on which the sport is based represented by the fundamental principles that provide the fair play and free competition. In fact, the interaction that occurred from the relationship between sports and law as two separate phenomena that are each individually developed provided the emergence of the sports law as a separate branch of law. Comparing Sports law with criminal, civil, constitutional and administrative law we came to the conclusion that sports law is young but highly developed complex branch of law. Also sports law is a special legal discipline on numerous universities, institutes and other educational and scientific institutions in the countries of Western Europe and North America. The numerous experiences and results of scientific researches and institutions are of particular importance in the development of new sporting regulations and mechanisms for legal protection in sport and the individuals who are involved in sports.

Our opinion regarding sports law's character as a separate discipline is merely a matter of academic curiosity. No doubt, some will say the debate is only relevant to academics. Such a conclusion however, may be

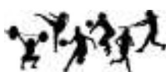
too narrow-minded or prejudiced. As alluded to above, such an attitude fails to recognize that the development of sports law can be viewed as evidence of the transformation of relationships in the sports context. In a more fundamental sense, however, perhaps the significance of whether sports law is a field of practice may lie in the perceptions of those who practice, study or write in the area.

We again note that the vigorously development of the sports law must be in touch with its specific legal practice because for these legal disputes there is absence of theoretical solutions and the theory in this matter is far behind the practical needs. There is obvious lack of serious analysis of numerous legal principles, institutions and there is also a lack of specific normative solutions. This problem is of a general nature, which is present in many countries, including those with most developed jurisdictions. Sports and sports activities cannot develop, grow, progress and exist separated from the legal system. Contrary, they should be in accordance with the legal provisions that define sports and sports activities and give rules of conduct for better fulfillment of the main goals of sports. Sports autonomy can solely be based on the constitution, laws and courts decisions in national states.

LEGAL THEORIES CONCERNING SPORTS LAW IN UGANDA.

Professor Kenneth L. Shropshire a Sports law Professor is of the view that, developments such as state and federal legislation impact sports (for example, state statutes regulating sports agents' e.t.c), suggest a growing sports-only corpus of law. He deems it more convincing to apply the sports and the law rather than the sports law designation to legal matters that arise in the sports context.

In light of Prof. Kenneth's view, it is noteworthy that the field of Sports Law mainly deals with matters of disputes related to or stemming from sports activities and therefore attract legal attention. Related topics to this would be; sports and ethics, sports and corporate structure, sports and



disability, sports and race, sports and disability, sports and race, sports and gender, sports and taxation, international issues in sports law and numerous other permutations. The beauty of sports law and which is unique to it is that Sports law works hand in hand with other areas of law. Accordingly, public and private laws can be considered as appropriate mechanisms for controlling the social norms of sports. The issue of whether sports law represents a unique area of law has sparked off debate in different schools of thought. The subscribers to this school of thought have these three positions;

No separately identifiable body of law exists that can be designated as sports law and the possibility that such a corpus of law will ever develop is extremely remote; Although sports law does not presently represent a separately identifiable substantive area of law, recent developments suggest that in the near future it will warrant such recognition; or A body of law presently exists that can appropriately be designated as sports law. The above views are discussed thus; The Traditional View: "Sports Law" Does Not Exist. They traditionalists believe that sports law as an independent subject does not exist, rather it's a combination of aspects but more so a relationship created between sports and other subjects. According to this perspective, the term sports law is a misnomer given that sport represents a form of activity and entertainment that is governed by the legal system in its entirety.' one commentator noted that, "I have often said there is no such thing as sports law.

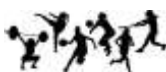
Instead it is the application to sport situations of disciplines such as contract law, administrative law... competition law, intellectual property law, defamation and employment law... Remember there is no such thing as sports law." Adopting this sentiment, the authors of a leading "sports law" textbook propose that "the term 'sports law' is somewhat misleading. In reality, sports law is nothing more or less than law as applied to the sports industry."In elaborating, these authors state that "the study of 'sports law' does not involve an entirely unique or discrete body of special principles divorced from traditional legal concepts." In sum, adherents to the traditional perspective argue that "sports law sim- ply entails the

application of basic legal precepts to a specific industry" that are drawn from other substantive areas of the law. Consequently, no separately identifiable body of law exists that can be characterized as sports law. The Moderate Position: "Sports Law" May Develop Into a Field of Law. There is a tendency by some writers to believe in the absence of a separate body of law called sports law, rather to emphasize that a clear terminology should be that “sports and the law.” Amongst the critics of the traditional view, are those who have staked out what represents a middle ground.

Professor Kenneth Shropshire acknowledges that developments, such as state and federal legislation impacting sports (for example, state statutes regulating sports agents, and federal statutes such as Title IX), suggest a "growing sports-only corpus" of law. Professor Shropshire concludes however, that the body of sports-only law has not reached a point of maturation such that a "unique substantive corpus" exists that can be categorized as sports law[36]. Consequently, he believes it is more appropriate to apply the "sports and the law" rather than the "sports law" designation to legal matters that arise in the sports context.

Another adherent to the moderate position is Professor Burlette Carter who argues that sports law is in the midst of an exciting, yet challenging, transformative process. According to Professor Carter, this process parallels the increased focus by law schools on sports, and the growing significance of sports regulation to participants, organizations and communities. She believes that these developments will better shape the contours of this emerging field of study." This in turn, will eventually transform sports law from "a course without a corpus" to a widely recognized independent substantive area of law. Similar sentiments were expressed in the groundbreaking treatise authored by John Weistart and Cym Lowell. The Law of Sports.' Therein, the authors addressed the following question: "Is there really any such thing as 'the law of sports?""

[36] Professor Kenneth L. Shropshire, Introduction; Sports Law, 35AM.BUS.L.J.(1998), p.16



4 At the outset, they noted the hypothesis expressed by traditionalists that no such thing exists as sports law since there is no body of law unique to sports.' Writing in late 1970s, they observed, however, that based upon their research it soon became clear that there were many areas in which sports- related problems required a specially focused analysis. On some matters, there are legal doctrines which apply in the sports area and nowhere else. This is the case, for example, with respect to such diverse matters as baseball's antitrust exemption and some of the tax rules to be applied to the recapture of depreciation on player contracts.

Weistart and Lowell also identified another phenomenon that might lend credence to the notion of the existence of sports law as a field of study. They noted factual peculiarities residing in sports that require the unique application of generally applicable legal doctrine and thus produce results that would not occur in other contexts. They provide examples drawn from amateur and professional sports: In the area of amateur sports, for example, the proscription against sex discrimination is based on the same political and sociological notions which have led to statutes and court decisions outlawing sex discrimination in employment, housing, and public benefits. However, none of these areas raise the issues (and tensions) which are posed by the significant differences in the revenue-generating potentials of traditional men's and women's sports.... Sections 1 and 2 of the Sherman Act do not contain different language to be applied in sports cases. In that sense, then, the law relevant to the sports industry is the same as will be applied to other areas of commerce.

A glance at the cases, however, will suggest that there is a good deal of judicial reasoning in the sports areas which is not very conventional.' Weistart and Lowell conclude their analysis by emphasizing areas in which the factual uniqueness of sports problems require specialized analysis. In this regard, they caution courts to take care in drawing analogies. Thus, while not expressly adopting the position that recognizes the existence of a course of study called sports law, Weistart and Lowell strongly suggest that two phenomena, the unique application of legal doctrine to the sports context and the factual uniqueness of sports

problems that require the need for specialized analysis, support the notion that a body of law called sports law might exist.

"SPORTS LAW": A SEPARATE FIELD OF LAW

Imperative too, it is to examine the views of those who argue that sports law currently exists as a field of law. Adherents to this view emphasize the growing body of case and statutory law specific to the sports industry as evidence of the existence of a separately identifiable body of law. A leading advocate of this perspective is a British scholar, Simon Gardiner, who also demonstrates that the "sports law" or "sports and the law" debate has not been confined to the United States. Pointing to the increasing body of judicial and legislative law specific to sports, Professor Gardiner argues that it is true to say that [sports law] is largely an amalgam of inter- related legal disciplines involving such areas as contract, taxation, employment, competition and criminal law but dedicated legislation and case law has developed and will continue to do so. As an area of academic study and extensive practitioner involvement, the time is right to accept that a new legal area has been born - sports law. Commentators also propose that references to sports law as merely an amalgamation of various other substantive areas of the law ignores an important present day reality - very few substantive areas of the law fit into separate categories that are divorced from and independent of other substantive areas of the law. Doctrinal overlap exists not only within sports law, but within other areas of law as well.

As of now, Professor Carter notes that, "the field of sports law has moved beyond the traditional anti- trust and labor law boundaries into sports representation and legal ethics, sports and corporate structure, sports and disability, sports and race, sports and gender, sports and taxation, international issues in sports law and numerous other permutations."' Proponents of the sports law designation and those sympathetic to the view, also argue that reticence to recognize sports law as a specific body of law may reflect attitudes regarding the intellectual seriousness of sports. In this regard, they emphasize the tendency to marginalize the

study of sports rather than treat it as any other form of business. The intellectual marginalization of sport has been attributed, in part, to the belief that social relations existent in sports were not deemed proper subjects for reconstruction into legal relationships. Thus, private and public law were considered "inappropriate [mechanisms for] controlling the social norms of sport."' The competing and increasingly predominant view, however, casts sports as a significant economic activity suitable, like other big businesses, to regulation whether it be self or external as noted by Professor Carter:

The historical conception of sports law within the general realm of legal matters and the treatment of this field as not on par with other forms of legal practice derives from our general assumptions about the nature of sport itself and the athletes who participate in it. The notion is that sport is not like business; it is merely entertainment. Professor Carter's conclusion that sport, notwithstanding such earlier assumptions, "is now a business,"' finds validation in numerous ways. For example, a 1998 issue of The Nation, the first issue in the magazine's history to focus on sports, assigned a figure of $350 billion to what the editor characterized as the gross national sports product.

CHAPTER THREE

Sports as a human rights issue

IS THE RIGHT TO COMPETE FEASIBLE?

The Constitution of Uganda 1995 doesn't particularize the right to sports expressly like in other jurisdiction for instance in Greece protection given under article 16, par. 9 of the Greek Constitution insufficient for the State to protect and develop the sports culture in Greece. **Art.45 of the Constitution of the Republic of Uganda** states that the rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned. In Uganda we can also impute the existence of rights that support existence of sports to be base of protection of sports.

National Objectives and Directive Principles of State Policy XVII. Recreation and sports. Provides that the State shall promote recreation and sports for the Citizens of Uganda.

Art .21(1) states that All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law. **Art. 26(1)** provides that every person has a right to own property either individually or in

association with others. right that is affected in the case of sports events is that of freedom of assembly. **Art 29(1) (e)** freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organizations. **Art. 34(3)** provides that no child shall be deprived by any person of medical treatment, education or any other social or economic benefit by reason of religious or other beliefs.

International instruments

Article 1 of the International Charter on Physical Education and Sport (1978) (ICPES) asserts the practice of physical education and sport as being a fundamental right for all: every human being has a fundamental right of access to physical education and sport … [and the]… freedom to develop physical, intellectual and moral powers through physical education and sport must be guaranteed both within the educational system and in other aspects of social life
By way of a further example, **Article 24 of the UNDHR** grants 'the right to rest and leisure', and

Article 31 of the Convention on the Rights of a Child, 1990, recognizes 'the right of the child to rest and leisure, to engage in play and recreational activities'. In a similar vein, **Article 30(5) of the Convention on the Rights of Persons with Disabilities(RPD) 2006**, requires state parties to take appropriate measures to enable 'persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities'. There has been little judicial consideration of any of these provisions. However, by implication, the right to rest and leisure could very well includesporting activities, and the reference in the RPD to disabled persons having equal access to sportingactivities implies that there is a right to such activities in the first instance.

The Supreme Court of India has emphasized in MaganbhaiIshwarbhai Patel v Union of India,that unless there is a law in India in conflict with

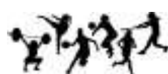
an international treaty, the treaty must stand. Similary so was the Court in **Vishaka v State of Rajasthan, (1997) 6 Supreme Court Cases 241** proposed that international conventions and norms are to be read into constitutional rights which are absent in the municipal law of India, so long as there is no inconsistency with such domestic law. In any event, the point is that there is a relationship between international law and the content of domestic legislation in establishing the 'governing rules' of human rights law. To that end, the question as to whether there is any evidence of a right to sport in legislative and constitutional schemes in Australia, or other countries, is considered in due course.

As for secondary sources, such as judicial decision-making and the writing of eminent publicists, there has been little to no judicial consideration of the issue by international tribunals and only minimal commentaries by eminent international law publicists. There are, however, publicists writing about human rights in sport, such as issues of gender and race equality. Further, the link between sports and human rights has been made. By way of example, Bill Jonas made the following comment in a speech at a Sport and Human Rights Conference:

> "I want to suggest nevertheless that it is the outstanding victories of men and women in sport which demonstrate to us, through undeniable and indisputable action, the defiance of discrimination, the struggle against adversity, and the untruths of prejudice, that are the hallmarks of our own efforts in the name of genuinely universal human rights."

Limitation

Just like for every law, there is an exception and the exception sometimes proves the rule, so for most rights, a limitation lies in the enjoyment thereof. The constitution allows for instances of limiting rights of an



individual under **Art.43**..[37] such include instances where they are in contravention with other person's right or public interest. Constitutional rights that have been manifestly restricted because of a main sports event are thoserelated to rights to property as guaranteed in **Article 26 of the Constitution** and it also prohibits deprivation of property except for dully proven public benefit and always after full compensation. Whether sports events can be characterized as expressing "public benefit" is subject to question; however, private properties were deprived without proper remuneration as well as wetlands, lakes and other natural systems were transformed for the construction of the premises needed during the organization of the Olympic Games in Athens in 2004. This had raised a large number of cases against the State.

In adjudicating upon matters of human rights, Court will weigh up the harm done by infringing a fundamental right and whether any benefits are to be achieved by the law or government policy. This was stated in **S v Makwanyan and Another 1995 (6) BCLR 665 (cc). Similary, according to Defrantz v. United States Olympic Committee 492 F. Supp. 1181**

The President of the United States advises the United States Olympic Committee, on or before May 20, 1980, that international events have become compatible with the national interest and the national security is no longer threatened, the USOC will enter its athletes in the 1980 Summer Games. Plaintiffs describe these attempts by the Administration to persuade the USOC to vote not to send an American team to Moscow as "a campaign to coerce defendant USOC into compliance with the President's demand for a boycott of the Olympic Games." Amended Complaint for Declaratory and Injunctive Relief, Plaintiffs' second cause of action, a constitutional claim, alleges that defendant's action constituted "governmental action" which abridged plaintiffs' rights of

[37]Some exceptions are cited in Charles Onyango Obbo v. A.G (constitutional petition 15 of 1997)

liberty, self-expression, personal autonomy and privacy guaranteed by the First, Fifth and Ninth Amendments to the United States Constitution.

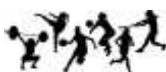
Held: in Constitutionally Protected Rights, Assuming arguendo that the vote of the USOC constituted state action; we turn briefly to plaintiffs' contention that by this action they have been deprived of their constitutional rights to liberty, to self-expression, to travel, and to pursue their chosen occupation of athletic endeavor. Were we to find state action in this case, we would conclude that defendant USOC has violated no constitutionally protected right of plaintiffs.

In Uganda today there are a number of laws regulating sports today which include the 1995 constitution of Uganda, National council of sports Act, 1964, National council of sports Regulations, 2014 among other international laws and Instruments.

The Uganda constitution under objective XVII stipulates that, ``the state shall promote recreation and sports for the citizens of Uganda. This objective basically shows the will by the Uganda government to promote sports and it can therefore be said that sports is a constitutionally recognized right in Uganda.

Article 26 of the 1995 Ugandan constitution legalizes intellectual property in sports. It provides that every person has a right to own property either individually or with association of others. Basically this provides for trademarks, copy rights, image rights among others and therefore sportsmen and sports clubs have intellectual property rights and enjoy the same in Uganda.

Traditionally, sports law has been merely considered as an amalgamation of various areas of law such as contract law, labour law and tort law. As per this perspective, sports law lacks an identifiable body of regulations and was co-dependent on the legal system in general. However, the transformation of sports in Uganda from a source of entertainment to a field of commerce requires a legal backbone to support its development.



The global sports industry is now a fully-fledged business warranting the circulation of billions of dollars.[38] Uganda's sports industry is getting more commercialized and thus needs a robust, uniform and codified sports legal regime.

Attempts have been made to come up with a new sports legal regime, that is the **Physical Activity and Sports Bill, 2018**. The bill seeks to address various loopholes in the existing law and yet even it has certain grey areas. There is no doubt that Sports law is a unique field consisting of many legal issues including the administration and regulation of sports franchise. To seek to isolate sport as an activity that stands alone in human affairs, untouched by 'politics' or 'moral considerations' and unconcerned for the fates of those deprived of human rights is as unrealistic as it is (self-destructively) self-serving.

In June 2006 (at the time of the Foreign Policy School), the recently elected UN Human Rights Council (the body replacing the notorious and ineffective Human Rights Commission) held its inaugural meeting in Geneva; in July, the second World Forum on Human Rights was held in Nantes, France – marking the 40th anniversary of the adoption of the International Covenants on Civil and Political Rights, and Economic, Social and Cultural Rights by the General Assembly of the United Nations. And yet, despite all of the recent attention to human rights, and despite the human rights achievements in sport discussed below, human rights are also continually and routinely violated in ways that are directly or indirectly related to sports. This is not always obvious because of the widespread tendency to represent sport as essentially positive. Rather than seeing sport as a social construction, given meaning by the participants and by more powerful defining agents (e.g., the media, sport organizations), sport is far too often represented only in positive terms, almost as a universal panacea. Consider the following:

[38] The global sports industry is worth up to $620 billion today; https://www.de.kearney.com/communications-media-technology/article?/a/the-sports-market.

Sport has the power to unite people in a way little else can. Sport can create hope where there was once only despair. It breaks down racial barriers. It laughs in the face of discrimination. Sport speaks to people in a language they can understand. (Nelson Mandela, cited by Muir, 2007) Speaking at the **2006 World Economic Forum (Davos), Kofi Annan (UN Secretary General from 1997–2006) said:**

> *"It is a global language capable of bridging social, cultural and religious divides. It can be a powerful tool for fostering understanding, tolerance and peace...it teaches us teamwork and fair-play. It builds self-esteem and opens up new opportunities. This in turn can contribute to the wellbeing of whole communities and countries."*

And, in reference to the Olympic Truce, International Olympic Committee President Jacques Rogge said: 'Sport fosters understanding between individuals, facilitates dialogue between divergent communities and breeds tolerance between nations'. Each of these statements is absolutely true, and so is its opposite. Competitive sport is based on principles of social exclusion; and sport may be used to promote ideological conformity, nationalism, militarism and inequitable attitudes about gender, race and disability. To take just one example of the contradictory potential of sport, consider the diverse uses of some sporting stadia. On the one hand, they are sites for the celebration of sporting excellence. They may be used for rock concerts and evangelical meetings, but some have also been the site of militaristic rallies, and even of the severest violations of human rights. For example, during Hurricane Katrina, in New Orleans in 2005, many of the poorer citizens were housed in covered sport stadia the Superdome in New Orleans and then, when living conditions became truly appalling, the Astrodome in Houston. It is unlikely that authorities would ever have considered housing the middle class or the wealthy for extended periods of time in what proved to be such atrocious conditions. Worse violations have occurred in stadia as diverse as the Velodrome d'Hiver in Paris (used

during the Second World War as a staging point for French Jews before shipment to concentration camps), the soccer stadium in Kabul in the 1990s (used by the Taliban as a site for public executions), and the soccer stadium in Santiago, Chile (used to house, interrogate/torture, and possibly execute those rounded up following the CIA supported military coup against the democratic government of Salvador Allende in 1973).

HUMAN RIGHTS IN QUESTION

Human rights touch almost every aspect of life. Taken as a whole, they suggest a way of living together in peace, dignity and freedom. Attempts are made to categorize rights, however, and give some priority over others. At the same time, innovative connections are breathing new vigor into them. 'Rights are located in the fundamental philosophical, and sociological questions about the nature of citizenship, the nature of society, and the relationship between the two'. In 1993, every country endorsed the 1948 International Declaration of Human Rights at the Vienna World Conference on Human Rights, and reaffirmed it in 2005 at the UN World Summit in New York.

However, since 1993, we have seen both an increase in violations of human rights (e.g., genocide, increased use of torture) and, during this same period, recognition of gay marriage. These contradictions are evident in a growing number of struggles regarding the meaning and implementation of human rights. Clashes of rights are evident in, for example, the conflicts between the right to gender equity and the right to religious freedom; these are the sites of ongoing struggles regarding such traditions as a male-only priesthood, or the fact that only males constitute a minyan. Clashes between majority and minority rights are evident in the US legal device of 'reasonable accommodation' for persons with a disability, or questions about what constitutes accommodation reasonable for religious minorities in Que ´bec. The notion of human rights has been diluted or co-opted by conservative elements (e.g., 'the right to private property', 'the right to life'), and even trivialized by the advertising industry. A larger philosophical debate concerns cultural relativism – the

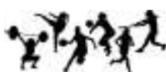
universality of human rights versus the extent to which rights are contingent on a particular cultural context. Bhabha points to the importance of acknowledging social and cultural diversity, and the need for agreed-upon standards to prevent violence, injustice and the exploitation of groups and individuals.8 'Must our growing acknowledgement of the need to respect diversity within and between cultures pull us further away from agreement on fundamental human rights?' Appiah proposes a solution to this dilemma, one that reconciles 'diversity' and 'commonality' by addressing the numerous ways in which people already find ways to agree.

As Hunt notes, 'human rights are still easier to endorse than to enforce'. She goes on to suggest, however, that the success of human rights lies in the fact that it is no longer possible to ignore them – it is no longer possible to pretend that some humans are less human than others: 'you know the meaning of human rights because you feel distressed when they are violated. The truths of human rights might be paradoxical in this sense, but they are nonetheless self evident. China is a case in point. Long considered to be a 'black hole' for human rights, it is becoming increasingly evident that, because of global contact and communications, the rights of some Chinese have grown. This applies particularly to the wealthy, and to those living in coastal areas, but with growing contact and communications, and the exposure that will inevitably result from the 2008 Olympics, human rights may become increasingly 'self evident'.

Academic critiques of the notion of 'universal' human rights, as they are outlined in the 30 articles of the Universal Declaration, focus on two overlapping concerns

(a) That they are Western in origin, and have a Westernizing effect where implemented; and

(b) That they are individualizing, guaranteeing the freedom to 'own' that reflects a specific historical and political system of capitalism. 'With the very partial exception of **Articles 28 and 29, the 30** *articles*



> *say hardly anything about collective rights'. These critiques have been adopted selectively by non-Western and non-capitalist nation states as a justification for not implementing human rights as outlined in the Universal Declaration particularly on the basis that such rights violated certain aspects of their national and political cultures.*

This debate was particularly evident in the way that, of the two main implementing Covenants (1976) for the Universal Declaration on Human Rights, the Covenant on Civil and Political Rights has been far easier to implement than the Covenant on Economic, Social and Cultural Rights. Capitalist countries had problems with the latter even in 1948, and right-wing commentators have recently taken to referring to economic, social and cultural rights as 'new' rights, and making pronouncements such as: 'Food, jobs and housing are certainly necessities. But no useful purpose is served by calling them "rights".' The debate was most evident in the recent struggle to establish the UN Human Rights Council.

The former Human Rights Commission was notorious for including as members a number of nation states that were considered to be among the worst violators of human rights. International and national efforts to implement human rights were relatively dormant under the Commission for some 25 years, during which time many nations shifted politically to the right, and began to abandon public sector responsibility for implementing human rights. Only 1% of the UN budget was allocated to human rights, and during this period, it is civil society organizations (NGOs) that have helped to keep human rights alive. In the struggle to rectify this situation, arguments against the formation of a reconstituted and elected Human Rights Council have ranged from Cuba's concern that a more formidable Council would be used as a tool against Cuba's sovereignty, to the United States' position that the bar for membership on the Council should be set even higher. The Council was finally elected in May, 2006 (the US finally voted for the Council but did not stand for membership) and, as noted, held its inaugural meeting in Geneva in June. Contradictions continue to plague the notion of human rights. Gibney

points to two concerns regarding the spread of human rights that are evident at this time of intense globalization.

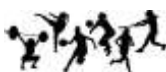
The first is that the current proliferation of rights across the globe may owe more to the inequalities in power, resources, and technology that epitomize international society than to the intrinsic appeal of the idea of rights itself. The second is that the spread of civil and political rights might collude in the expansion of global capitalism by reinforcing a view of human entitlements that greatly undervalues the importance of economic equality and security. These joint concerns suggest the possibility of a world where human rights are in the ascendancy, but where many people are becoming more insecure and exercising less power over their lives.

Given Teeple's recent argument regarding the paradox of human rights that, on the one hand guarantee citizens rights as possessions while, on the other hand, failing to mandate the responsibility for ensuring those rights or to outline the means to enable citizens to realize them, there appears to be little hope. However, I want to work from the premise that a framework of human rights, however flawed, is better than no framework. A framework of universal human rights 'provide[s] a moral and legal basis for improving the life chances of many traditionally excluded and disadvantaged groups of people. [Such a framework] raisesS the standard of public accountability, and offer[s] a point of mobilization for those who have been unfairly treated or remain disadvantaged.'

HUMAN RIGHTS AND SPORT

The various ways in which human rights are achieved in and through sports may be classified into three overlapping categories:

- *The right to participate in sports;*
- *The possibility that sport may assist in the achievement of human rights;*



- *The use of sports to achieve rights for specific classes of persons, which combines aspects of the right to participate in sports with the more general use of sports to achieve human rights.*

THE RIGHT TO PARTICIPATE IN SPORTS

Despite the tendency to 'essentialise' sport in positive ways noted previously, and despite the familiar moral claims of sports – the rhetoric of universality, fair play, character, and a 'level playing field' few of the initial proponents of modern sports ever intended them to be universal and inclusive. On the contrary, sports were developed as socialization and pleasure for imperial upper-class males.

Race, class, and gender exclusions were routinely maintained in sports, and still are though to a lesser extent. Although there were various attempts to break through the social and material barriers to participationbetweenthetwoworldwars,thebarriersdidnotreallybegintogive wayuntilafterthe Second World War, in the same period that led to the Universal Declaration of Human Rights (1948), and to various liberation, civil rights, equal rights, and other democratizing movements around the world.

The Universal Declaration indirectly advocates the right to participate in sport through **Article 24 ('everyone has the right to rest and leisure') and Article 27** ('the right freely to participate in the cultural life of the community').However, the first specific international declarations of the right to participate in sport and physical activity emerged in the 1970s. European nations developed the European Sport for All Charter (1976), the first Article of which stated: Every individual shall have the right to participate in sport. This was followed by the International Charter of Physical Education and Sport, adopted by the General Conference of UNESCO in 1978. The first Article states: The practice of physical education and sport is a fundamental right for all.

In 1992, the Council of Europe refined the European Sports Charter to take into account high performance and professional sport issues such as violence and doping, and ideas about competitiveness and personal achievement. Article 1 states: Governments, with a view to the promotion of sport as an important factor in human development, shall take the steps necessary to apply the provisions of this Charter in accordance with the principles set out in the Code of Sport Ethics in order to enable every individual to participate in sport.

Even the IOC, an organization dedicated to high performance sport, declares as one of its Fundamental Principles that:
The practice of sport is a human right. Every individual must have the possibility of practicing sport in accordance with his or her needs.
The right to participate in sport and other forms of active leisure is now a matter of policy in many high income countries (particularly in Europe) where it is recognized as 'Sport for All'. The implementation of such policies has taken on greater urgency in the last few years since physical activity has been identified as contributing to reducing health care costs and combating obesity.

However, achievement of the right to participate in sport has been mixed. The most success has been achieved in Scandinavian countries, and in other high income countries significant gains have been reported in the participation rates of women and persons with a disability. However, the Sport for All campaigns in many European nations appear to have stalled, often with significantly less than 50% of the population participating regularly. Renewed research efforts need to be made to determine the appropriate circumstances and policies that might lead to optimum realization of the right to participate in sport. In low- and middle-income countries, the right to participate in sport has either not been addressed, or has often been addressed in ways that are neo-colonialist, leading, for example, to the loss of existing physical cultures (by continuing to replace 'non-Western body cultures with imperial games', or to the establishment of systems of sport that emphasize the development of high

performance athletes rather than broad-based participation). Two brief examples illustrate this:

The Olympic Solidarity Commission provides unprecedented financial assistance to sport development, with a budget that has grown significantly over the three most recent four- year budget periods (to US$244m. in 2005–08). The funds are primarily intended to support the Olympic participation of developing nations. However, it is clear that a great deal of the money actually goes, directly or indirectly, to developed nations – athlete and coach development often take place at training centres in Western countries, or funds support Western coaches travelling to developing nations.

Similarly, of the 583 Olympic Solidarity scholarship athletes who participated at the Athens Olympics (2004), 216 were from Europe while only 95 were from Africa, and wealthy nations receive a significant proportion of the Continental Programs budget. A more equitable redistribution of funds might be one that is inversely proportional to the ranking of countries according to the United Nations Development Program. The Olympic Solidarity Commission was established in 1961 in an attempt to assist with regard to the situation in many post-colonial nations. However, the current use of Olympic Solidarity funds may be seen as neocolonialist. The current program of aid is too didactic and directive (top-down), based on the assumption that Western systems of high performance training, coaching, and sport management are appropriate for all countries, and that the West has nothing to learn from non-Western nations. Just as Western ideas and systems are brought to developing nations, athletes and coaches are also taken from developing nations for training in Western countries.

The second example concerns programmes of development through sport. The International Working Group Sport for Development and Peace, now lists hundreds of agencies that are providing various forms of ‘sport aid’ to low- and middle-income countries. While it is important to encourage the enthusiasm and fund-raising efforts of young people from

high- income countries who are rushing to participate in such programmes, there is a clear problem of neo-colonialism similar to that of Olympic Solidarity, a clear need for regulation, a need for more locally defined programmes, for more accountability and evaluation, and for greater efforts to establish sustainability with a clear exit strategy – one that might follow the model established by Me ́decins sans Frontie ́res.

THE ACHIEVEMENT OF HUMAN RIGHTS THROUGH SPORT

There is only one major example of a human rights campaign where sport is widely acknowledged to have been involved in its success, namely, the campaign against apartheid in South Africa. White supremacist governments in South Africa began to implement apartheid policies in 1948, relegating non-whites to second class citizenship that included a ban from participation on national sports teams (and attempts to ensure that no non-whites competed on teams from other countries playing in South Africa). International concern in sport organizations was slow to develop, with sport organizations generally accepting the principle that 'sport and politics should be separate'. The first anti-apartheid step taken by a sport organization was in 1956 when the International Table Tennis Federation replaced the all-white South African Table Tennis Union with the non-racial South African Table Tennis Board (SATTB).

However, SATTB players were not permitted to travel to represent South Africa, having had their passports confiscated by the South African government. Many factors were involved in the success of the long struggle against apartheid; however, isolation of the pro-apartheid South African sports federations by the international sport community delivered a powerful message. By 1985, no other country was prepared to play against a South African national team in any major sport. The message achieved particular significance because some South African athletes and teams were among the best in the world. That rejection by the international sport community was continually played out on the front pages of major newspapers in South Africa. It is important to remember

that while the anti-apartheid campaign gained the world's attention, the isolation of South Africa was achieved ultimately in the long slow process of negotiation through the international organizations.

In countless corridor discussions, assemblies and negotiations, where the votes that determined whether an organization would use its power to discourage further contact with South Africa were obtained and counted, anti- apartheid leaders relied heavily on the moral and legal authority of the Universal Declaration on Human Rights and the Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1965), which was binding upon all signatory governments. The United Nations was a continuing source of strength in the struggle against apartheid. In 1965, CERD was the first of the United Nations Conventions to deal with a specific class of persons (those who are subject to racial discrimination), and provided the basis for other declarations and agreements.

However, it should be noted that the International Olympic Committee (IOC) had, in the previous year, banned South Africa from the 1964 Tokyo Olympics because of apartheid, a ban that lasted until 1992. Because South Africa was a member of the Commonwealth, in 1971 the Singapore Declaration on Commonwealth Principles affirmed the Commonwealth stance against racial discrimination. Following a boycott of the 1976 Montre ´al Olympics by a number of African countries (because of the participation of New Zealand, which had maintained some sporting ties with South Africa), the Commonwealth Prime Ministers met in Scotland in 1977 to sign the Gleneagles Agreement on Sporting Contacts with South Africa. The Gleneagles Agreement was reaffirmed by the Commonwealth in 1979, as part of the Lusaka Declaration on Racism and Racial Prejudice. Finally, in 1985, the United Nations Human Rights Commission established the International Convention against Apartheid in Sports. It is widely accepted that, as apartheid came to an end between 1989 and 1994, the bans on sporting contacts with South Africa had played a role. It was fitting that one of the symbolic markers of the end of apartheid was the invitation by the IOC of

a multi-racial team from South Africa to participate in the 1992 Barcelona Olympics.

SPORT AND THE HUMAN RIGHTS OF SPECIFIC CLASSES OF PERSONS

The right to participate in sports, and the achievement of human rights through sports, come together in various human rights campaigns by specific classes of persons. Increasingly, marginalized groups and populations have begun to announce their presence and claim their right to human rights with the use of sport. Using just one sport, football (soccer), recent examples include:

- *The Homeless World Cup, with teams comprised of homeless individuals from various cities;*
- *The Railroad All Stars, a soccer team of female sex workers in Guatemala;*
- *The Millennium Stars, a soccer team of former child soldiers in Liberia;*

Teams of amputees, who are victims of land mines and reprisal amputations in West Africa. These examples replicate larger classes of persons who, throughout the world, have struggled for greater involvement in sport (the right to participate), often as part of a larger struggle for human rights, and/or in the belief that participation in sport will enable the achievement of human rights. The following briefly outlines some of these struggles.

Gender

The second class status of women in sport was increasingly recognized during the twentieth century, and became a minor focus of the second wave of feminism during the 1960s and 1970s. The first major victory for women's rights in sport occurred in 1972 in the United States, where Title IX – the Educational Amendments to the Civil Rights Act – obliged

many public educational institutions to increase the resources for women's sports. This legislation had a powerful impact on increasing the participation of girls and women in sport (although a negative effect on the number of coaching and administrative positions for women), and many have argued that such increases in participation are related to increasing gender equity in the United States. In 1979, the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) included article 10g, which specifically endorses the right of girls and women to participate in sports. Organizations to support women's sport participation began to emerge in high-income countries, e.g., the Women's Sports Foundation (WSF, United States) in 1974, and the Canadian Association for the Advancement of Women in Sport and Physical Activity (CAAWS) in 1981.

Gender equity campaigns and legislation in many countries have helped to increase women's participation (e.g., in Canada, the 1982 Charter of Rights and Freedoms brought sports under the guidance of federal and provincial human rights codes). However, it was the emergence in the mid-1990s of lobby groups to advocate specifically for women's rights in sport, most importantly the International Working Group on Women in Sport (1994) and Atlanta Plus, that drove adherence to CEDAW and obliged patriarchal organizations such as the IOC to begin to deal with gender equity issues in sport.
Disability The struggle for disability rights began in the second half of the twentieth century; it is contemporary with, but initially received less attention than, other human rights movements. However, the organization of sports by and for athletes with a mental or a physical disability, culminating in the Special Olympics and the Paralympic Games, has resulted in a significant growth in participation. Many argue that the demonstration of skill and effort by athletes with a disability signals to able-bodied individuals the capacity and equality of those with a disability. The new United Nations Convention on the Rights of Persons with Disabilities (CRPD) is currently open for signature by all States; Article 30 deals specifically with the right of persons with a disability to participate in cultural life, recreation, leisure and sport.

Sexuality

Sport Has been a particularly hostile environment for gay and lesbian athletes. However, in line with sexuality rights movements in various countries, and the inclusion of sexuality in human rights and equity legislation, gay and lesbian sport teams and leagues have been established in many cities in high-income countries and the organization of the Gay Games (and the recent alternative Out Games (Montreal, 2006) to celebrate gay and lesbian sports have led to reports of slowly growing inclusion and less 'compulsory heterosexuality'. National and international sport organizations have recently reached agreements on the inclusion of transgendered athletes in high performance sports.

Aboriginal and racial minorities

Aboriginal human rights movements around the world have frequently attempted to revive traditional cultures, including physical cultures. This has sometimes led to the re-establishment of traditional games and games festivals (e.g., the Arctic Winter Games). However, aboriginal athletes also participate in modern sports and their accomplishments add immeasurably to community pride and possibly to the status, equity and human rights struggles of aboriginal peoples. For example, many consider Kathy Freeman's 400m victory at the 2000 Sydney Olympics to be a powerful symbolic moment in the struggle for aboriginal rights in Australia. The anti-apartheid movement, discussed above, was contemporary with and preceded other campaigns for racial human rights in sports. Leading up to the 1968 Mexico City Olympic Games, the Olympic Movement for Human Rights advocated a boycott by Black American athletes, but ended with a sacrificial gesture by two black athletes from the US, Tommy Smith and John Carlos, who gave the 'Black power' salute on the podium. The campaign in the United States continues with Richard Lapchick's annual racial report cards, monitoring the progress of Black athletes in university and professional sports and in leadership positions in sports. In the United Kingdom, the Sporting Equals campaign continues the advocacy of racial rights, together with specific campaigns in cricket and football. Similar monitoring and campaigns exist or are planned in a number of countries.

Poverty

Social class is the 'elephant in the room' in terms of human rights, equity and sport participation. Even in high-income countries there is a well-established linear relationship between income and participation in sport and physical activity – the higher the income, the higher the rate of participation. Poverty is the single greatest barrier to participation. Human rights and equity legislation deal quite well with classes of humans based on specific identity characteristics, as noted above; such legislation is much less effective in dealing with the material conditions of life. This is connected to the way in which, as noted previously, the UN Covenant on Civil and Political Rights has been far easier to implement than the UN Covenant on Economic, Social and Cultural Rights.

Workers

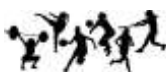
Related in part to poverty rights is the issue of workers' rights. More research attention has been directed to the class of persons who work in the sports and sporting goods industries. The recognition that athletes must be afforded the same protections enjoyed by all citizens derives much of its moral and legal force from human rights legislation. However, the well-documented violations of athletes rights to health, freedom of speech and other well- established human rights indicates that a different set of 'working' conditions appears to apply to those in professional and high performance sport (cf. Rhoden's recent book referring to wealthy Black professional athletes in the US as '$40 million slaves'). Workers in the sporting goods industries have also received a great deal of attention in recent years, spearheaded by the anti- Nike campaign. Concerns about the export of jobs to low wage countries, sweatshop working conditions and child labour have resulted in a sustained campaign to monitor and improve the conditions for workers in the sporting goods and sport apparel industries. Some successes have been achieved in improving the rights of those employed in the sports industries, although there are widespread concerns about the consequences of the elimination of the Multifibre Arrangement on 31 December 2004.

Although there are UN Conventions relating to the rights of many of the classes of persons discussed above, and although successes have been achieved in all cases with regard to both the right to participate in sport and the achievement of more widespread human rights, it is important to note the artificiality of identifying persons in terms of a single characteristic. People are not defined only by their gender, their sexuality or their disability. Since everyone has a gender, sexuality, race/ethnicity, age, social class and varying levels of ability/disability, classification in terms of a single category often limits the opportunities for analysis of sport and human rights, and more intersectional analyses are clearly needed.

Foreign policy, sport and human rights

There is a clear reluctance on the part of governments to become involved in foreign policy issues relating to sport, and it is only under extreme circumstances (e.g., an Olympic boycott) that there is evidence of direct involvement. A comparison of the anti-apartheid campaign with the gender equity campaigns in sport shows the different responses of governments. It became impossible for Commonwealth leaders, who were responsible for reporting their progress on CERD, and who were developing their own post-colonial racial equity initiatives, to ignore the apartheid policies of one of their members, and to ignore the growing campaign (in addition to trade boycotts, etc.) to isolate South Africa from international sport.

The last University of Otago Foreign Policy School to deal with sport took place in 1976, and it is not difficult to surmise what the main topic of discussion was in the year of the Montreal Olympic boycott, and the year before the Gleneagles Agreement. Despite the New Zealand government's attempt to distance itself from the national sport organizations in cricket and rugby (the main organizations to attempt to maintain sporting ties with South Africa), involvement in the anti-apartheid campaign became inevitable. Foreign policy interventions are barely evident, and in much more subtle forms in the campaign for



gender equity in sport (and other areas), which is occurring far more prominently at a national level. Certainly national governments were responsible, under international law, for reporting their progress on CEDAW, which specifically includes the right to participate in sports.

However, at a more subtle level, both governments and NGOs such as the International Olympic Committee have been obliged to respond to the international lobbying efforts of organizations such as the IWG on Women and Sport and Atlanta Plus by creating more participation and leadership opportunities for women in international sport. A second evident foreign policy intervention, although again at a very low-key level, concerns the UN Millennium Development Goals (MDGs).
The MDGs represent a renewed commitment to achieving many of the rights first outlined in the 1948 Universal Declaration on Human Rights, establishing a timetable (2015) for the realization of these eight Goals:

- *Eradicate extreme poverty and hunger.*
- *Achieve universal primary education*
- *Promote gender equality and empower women*
- *Reduce child mortality*
- *Improve maternal health.*
- *Combat HIV/AIDS, malaria and other diseases*
- *Ensure environmental sustainability*
- *Develop a global partnership for development*

The Millennium Development Goals, by taking into account poverty and social class, age, gender and health status, provide a limited combination of social structural categories, and encourage the type of intersectional analyses proposed above. Leading up to 2005, the International Year of Sport and Physical Education, two major documents were produced relating sport and physical education to achievement of the MDGs. These documents argue, with limited evidence that increased participation in sport will assist in the achievement of the MDGs. While increased participation is a worthy goal, it will be important to determine the specific circumstances under which such participation leads to the

achievement of human rights. The International Working Group on Sport for Development and Peace received limited evidence for the benefits of sport on gender relations, youth development, health, disability and peace and conflict resolution.

The proliferation of NGOs involved in development through sport[39] is tied to the achievement of the MDGs and, to the extent that national governments assist and support the NGOs, the connection between sport, human rights and foreign policy is again evident. The connection is also evident in athlete migration and citizenship issues (see Joseph Maguire, this volume); in the increasingly difficult decisions that are now being made by governments, rather than sport governing bodies, regarding which countries are eligible as competitors (e.g., whether it is appropriate to participate in international cricket matches with Zimbabwe, while that country is under the leadership of Robert Mugabe); in the political decisions regarding sport tourism, economic development and the hosting of major sports events; and in the relationships between and influence of transnational corporations on governments and the decisions that are made about international sports[40]

In future terms, I suspect that various governments will be obliged to deal with some difficult foreign policy issues relating to the Beijing Olympics in 2008. Will Taiwan declare its independence? Will China favour Taiwan with its preferred name? Will the issues of human rights, Falun Gong, Tibet, ILO concerns and the Multifibre Arrangement all begin to re-emerge in complex and unpredictable ways as China becomes the focus of the world's attention? And will communications access be free as both the Chinese government and international broadcasters attempt to control information, and the type of coverage of the Olympics that is likely to appear on YouTube? However, I want to conclude by raising one more issue. Women, people of colour and persons with a disability

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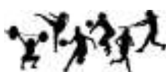
[39](see Bruce Kidd, this volume)

[40]*(see Andrew Jennings, this volume).*



are classes of persons that are addressed by major UN Conventions, and who have enjoyed, to varying degrees, gains in human rights in general, and in sport in particular. The UN Convention on the Rights of the Child (CRC) came into effect in 1989 and, to date, children remain as the major class of persons who have enjoyed almost no increase in human rights in general, or in sport.

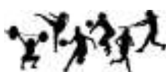
There are International Working Groups for Women and Sport, Sport and Disability, and for Sport, Development and Peace, but not one for Children and Sport. National and international sport organizations, and governments, have singularly failed to deal with issues regarding the human rights of children, and some Articles of the CRC are occasionally or routinely violated in sports. In addition to the need to realize the right to participate in sports, there are three major areas of concern with regard to children in sports:

- *Child labour in the sporting goods industries;*
- *The trafficking of children for the purposes of sport;*
- *The treatment of children in high performance sport*.

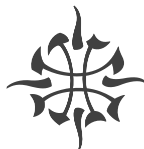
The regulation of child labour in the sporting goods industry is the responsibility of both governments and corporations. The choice of sporting goods and uniforms, and the selection of sporting goods corporations as sponsors, are the responsibilities of national and international sport federations. The need to conform to the CRC by recognizing childhood as a period of growth and development, the regulation of conditions under which children practice and compete, and under which they are bought and sold (traded) for the purposes of sport, is also a responsibility of governments, national and international sport federations, and umbrella organizations such as the IOC. The status of children should be the next major international foreign policy initiative in sport.

With regard to the achievement of human rights through sport, only in the anti-apartheid campaign did sport unequivocally assist in the

achievement of racial equity in South Africa. In other cases, there is abundant anecdotal evidence of assumed relationships between participation in sport and the achievement of a broader range of human rights. What is needed is much more systematic evidence of the circumstances under which the opportunity to participate in sport might result in learning the skills and motivation to win the struggle for human rights for various classes of persons. Perhaps, in terms of the right to participate in sports and the possibility of achieving other rights through sports, the most important point to make in conclusion is that there is an overwhelming need to focus on the material conditions of participation, and of life. As Gary Armstrong notes with regard to the neighborhood football programs established in Liberia following the civil war, ‘rehabilitation and re-integration projects [whether in sport or some other form] are doomed to fail if there is no better life offered to the disaffected demilitarized’.



CHAPTER FOUR



Gambling, Integrity at Stake

Simply put, Gambling can be defined as placing something of value at risk in hopes of gaining something of greater value. Traditional forms of gambling include wagering in casinos and on lotteries, horse and dog racing, card games and sports events.

The level of participation in Gambling is so high today in that 86% of the general adult population have endorsed a lifetime participation in traditional forms of gambling and 52% of adults reporting participation in last year-lottery gambling. Gambling has been legalized world over in the past half a century across all sport with the practice mostly seen in soccer with authorized betting companies. It is imperative to note that gambling has an illegal side of it through forms of match fixing, betting.

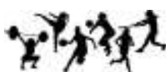
Before being in a position to apply the reversal method to the case law of the ECJ on sports betting, it must be determined which decisions of the ECJ belong to the case-law. For that purpose, we need a definition which circumscribes sports betting. In his Article, Kaburakis gives no definition of sports betting. With reference to previous jurisprudence, he states: one would anticipate a similar ECJ analysis in a per se sport betting case (italics added, RS); indeed it did not take long after Läärä for such a case to come before the court. He continues: The factual background of Zenatti is revisited by the ECJ in the ensuing Gambelli and Placanica

cases, which set the tone for modern legal handling of EU sport betting policies. In the Services Directive it is stated in **Article 2(h)** that gambling activities involve wagering a stake with pecuniary value in games of chance .In the EL Code of Conduct for Sports Betting gambling is identified as all types of games, including lotteries and betting transactions, involving wagering a stake with monetary value in games in which participants may win in full or in part, a monetary prize based, totally or partially, on chance or uncertainty of an outcome. According to the EL Code, sports betting includes all sports betting based games (i.e. fixed and running odds, totalisator/toto games, live betting, othergames and football pools offered by sports betting operators, etc.). In this context, sports is defined as all physical human activities with specific rules, shared by a great number of participants, and involving competition amongst the different participants.

Otto **Sjöberg and Anders Gerdin v. Swedish State (2010) (hereafter: Sjöberg/Gerdin).** The Lotterilag governs all categories of gambling offered to the public in Sweden. The objectives of Swedish gaming policy were summarised as follows in the travaux préparatoires for the Lotterilag:

The main purpose underlying the gaming policy is to have in future a healthy and safe gaming market in which social protection interests and the demand for gaming are provided for in controlled forms. Profits from gaming should be protected and always reserved for objectives which are in the public interest or socially beneficial, that is, the activities of associations, equestrian sports and the State. As has been the case hitherto, the focus should be on prioritising social protection considerations whilst offering a variety of gaming options and taking heed of the risk of fraud and unlawful gaming.

Held: Mr Sjöberg and Mr Gerdin were each ordered by the Stockholms tingsrätt (District Court, Stockholm) to pay a criminal penalty of SEK 50000 in respect of infringement of the Lotterilag.



S.24 of the Contracts Act Subsection (1) an agreement made by way of an unlicensed wager is void. For the purposes of this section, "wager" means a promise to pay money or other consideration on the occurrence of an uncertain event.

THE LOTTERIES AND GAMING ACT, 2016

S.1 defines betting means making or accepting a bet on

- *The outcome of a race, competition or other event or process;*
- *The likelihood of anything occurring or not occurring; or*
- *Whether anything is or is not true.*

Gaming means the playing of a game of chance for winnings in money or money's worth and for the avoidance of doubt, includes gambling; lottery includes any game, scheme or arrangement, system, plan, promotional competition or device for distributing prizes or property by lot or chance, whether by throwing or casting of dice, tickets, cards, lots, numbers or figures;

National lottery means lottery conducted by or on behalf of the Minister responsible for finance with the view of raising funds for a purpose defined by the Minister;

S.2 establishes the board

S. 4. Provides for the functions of the Board.

The Board shall;

- *Regulate and supervise the establishment, management and operation of lotteries, gaming, betting and casinos in Uganda;*
- *License casinos in Uganda;*
- *License persons operating in a casino and any other employee of a casino;*
- *Approve devices or equipment for lotteries, gaming, betting and casinos;*

- *Designate and license premises for lotteries, gaming, betting and casinos;*
- *Collect lottery, gaming, betting, and the casino tax from both the owners and the gamblers;*
- *Approve games that may be made available for casinos lotteries, gaming, betting and casinos;*
- *Approve and set standards for the supply, installation or adaptation of gaming and betting software;*
- *Participate and contribute to good causes in accordance with this Act;*
- *Protect members of the public from adverse effects of gaming and betting including the promotion of transparency and accountability;*
- *Implement Government policy relating to lotteries, gaming, betting and casinos;*
- *Promote public awareness of the gaming and betting industry;*
- *Receive, investigate and arbitrate complaints relating to lotteries, gaming, betting and casinos and take appropriate action;*
- *Advise and make recommendations to the Minister on matters relating to lotteries, gaming, betting and casinos; and*
- *Perform any other function conferred upon it under this Act.*

S.26 provides that a person shall not establish or operate a casino or provide a gaming or betting machine without a licence issued under this Act.

S. 27. Board to issue licences.

- *The Board may issue a casino, gaming or betting licence.*
- ***The Board may issue the following operating licences;***
    - *i* *A licence to operate a casino, or a casino operating licence;*
    - *ii* *A licence to provide facilities for playing bingo, or a bingo operating licence;*

ILLEGAL GAMBLING

The problems associated with illegal gambling and the influence it may exert on sporting events are of special concern for athletic administrators and others, because gambling affects the integrity of the games, the games themselves, and public confidence in athletes and sports. Some argue that betting on games is encouraged by the press, which prints the spread (expected margin of victory for the favored team) of games and the odds in its sports pages, as well as advertisements for weekly tip sheets and betting aids. Although some contend that betting on athletics is enjoyable and is a form of entertainment, others contend that gambling has a negative impact on society and sports For example, a 2003 study conducted by the NCAA's National Study on Collegiate Sports Wagering and Associated Health Risks surveyed 21,000 student-athletes concerning gambling.

The research revealed that 35% of men student-athletes had wagered on sports in the past year, and 10% of women student-athletes engaged in similar behavior. The study also stated that Division III athletes are most likely to bet on sports, followed by Division II; Division I athletes were least likely to bet. According to a 2000 University of Michigan study of 640 NCAA referees and officials, 40% admitted to gambling on sports, and 2% knew of officials who had called a game inaccurately due to gambling interests (see note 1). The following sections examine the dangers of illegal gambling on athletics and the steps athletic administrators and organizations have taken to preserve the integrity of their sports. Although illegal gambling is a major problem for both intercollegiate and professional sports, they will be treated separately due to the unique legal problems each area presents.

INTERCOLLEGIATE ATHLETICS AND GAMBLING

Over the years, gambling on intercollegiate athletics has steadily increased, most notably with the significant amount of money that is currently being wagered on the NCAA men's Division I basketball

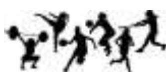
tournament. However, very little of that is legal betting, and for every dollar bet legally in the United States, approximately $150 is bet illegally. Problems associated with and arising from wagering have continually plagued college athletics. The problem of greatest concern to the NCAA and legal authorities is the practice of point shaving. Point shaving occurs when athletes are paid to score fewer points than they otherwise would, so that the point differential is less than the predicted spread. Less frequently, players are paid to lose a game outright. In 1945, five Brooklyn College basketball players were expelled from school after they admitted to accepting bribes to lose a game.

In 1951, 32 players at seven schools were caught shaving points in 86 games. A gambling scandal at Boston College during the 1978 –1979 season led to the conviction of the basketball player Rick Kuhn, who was sentenced to 10 years in prison on federal gambling charges (see note 6). In 1985, a gambling and drug scandal was uncovered at Tulane University. That incident, which involved a number of basketball players, led to Tulane President Eamon Kelly's decision to drop the Division I men's basketball program "forever." However, just four years later, in 1989, the program was revived for competition in the Metro Conference. In the 1990s, prominent point-shaving scandals occurred at Arizona State University and Northwestern University (see exhibit 16.1). The NCAA prohibits the participation in any form of legal or illegal sports gambling because of its potential to undermine the integrity of sports contests and jeopardize the welfare of the student-athlete and the intercollegiate athletics com- munity.

The NCAA's disapproval of illegal gambling on intercollegiate athletics is clearly spelled out in the following by law.

GAMBLING ACTIVITIES

Staff members of the athletics department of a member institution and student athletes shall not knowingly:



1) *Provide information to individuals involved in organized gambling activities concerning intercollegiate athletics competition;*
2) *Solicit a bet on any intercollegiate team;*
3) *Accept a bet on any team representing the institution;*
4) *Solicit or accept a bet on any intercollegiate competition for any item (e.g., cash, shirt, dinner) that has tangible value; or*
5) *Participate in any gambling activity that involves intercollegiate athletics or professional athletics, through a bookmaker, a parlay card, or any other method employed by organized gambling.*

The NCAA has continued to add to its investigative staff to keep up with the gambling problem. Many NCAA investigators are former FBI agents who attempt to maintain contacts with bookmakers, both in Nevada, where sports gambling is legal, and in states where it is not. This unorthodox relationship between book- makers and NCAA investigators is based on mutual concern that sporting events not be rigged to reach a predetermined outcome. The bookmakers cannot afford a rigged game for economic reasons, because their winning percentages and profit margins are based on a point spread, which they formulate on the theory that the game is not rigged. The NCAA and the individual schools' concerns are based on the integrity of the game and on their reputations.

The bookmakers usually alert investigators if there is a sizable change in the point spread on a particular game. Such a change is suspicious, and may indicate that bettors have placed large wagers on a team. Of course, heavy betting may occur for other reasons, such as a coach's announcement of an injury to a key player. If no legitimate reasons are found, however, it increases the possibility that gamblers have fixed the game by bribing a coach, player, or official. Remember, bribes are not necessarily made to ensure that a team loses just that it wins by fewer points than the predicted point spread. Once suspicions are aroused, college officials, such as the president and athletic director, are informed by the NCAA. They may also be notified if investigators hear street talk

about suspicious activity taking place in the institution's athletic program.

PROFESSIONAL SPORTS AND GAMBLING

The success of the professional sports industry hinges on maintaining a high level of integrity so that the viewing public has no doubt about the outcome of the event. If people were to believe that there was a connection between the teams and the players and organized gambling, the integrity of the game could be damaged. Therefore, any connection to gambling raises serious concerns. For example, when Major League Baseball was in the process of approving the Walt Disney Company as the controlling owner of the Anaheim Angels, the league sought and received assurances from Disney that it would not have gambling on its cruise ships. The connection between gambling and professional sports is not a recent occur- rence in the United States. The decision to appoint the first commissioner of baseball, Kennesaw Mountain Landis, was a direct result of the Chicago "Black Sox" fi x of the 1919 World Series. The Imperfect Diamond, by Lee Lowenfi sh and Tony Lupien, re- calls how Landis was appointed because of the public uproar over the scandal:

The tale of the "Black Sox " scandal has been memorably told by Eliot As in of in Eight Men Out. As in of observed how the closing of the racetracks during World War I had led the professional gamblers to flock to the ball parks. The owners did little to watch out for irregularities. Key contacts between gamblers and players were made easily.

In late June 1921, seven of the accused fixers of the 1919 World Series went on trial in a Chicago courtroom. Public sympathy was rising for the players victims of Charles Comiskey's stinginess. " The magnates led the public to believe that the ballplayers got about $10,000 a year when they got as little as $2,600," defense attorney Ben Short declared to the jury. "At the end of the season, they have nothing left but a chew of tobacco, a glove, and a few pairs of worn-out socks." It was a strange trial. The owners recognized that airing the game's dirty linen was not in their best

interests. Therefore, they decided to provide good attorneys to aid in the players' defense. Later, baseball would punish its sinners by extralegal weapons in its arsenal. Powerful New York gambler Arnold Rothstein, deeply implicated in the scandal as the man who gave the go-ahead, greatly helped the owners' strategy by arranging for the theft of the players' confessions from the Chicago district attorney's office. Unable to use its most damning evidence in the trial, the prosecution was doomed. On August 2, 1921, the jury acquitted all the players. Some of the Black Sox dreamed of reinstatement for the duration of the 1921 season. Commissioner Landis, in office since March, quickly crushed that hope. He pronounced, "Regardless of the verdict of juries, no player that entertains propos- als or promises to throw a game; no player that sits in a conference with a bunch of crooked players and gamblers where the ways and means of throwing games are discussed, and does not promptly tell his club about it, will ever play professional baseball" **(Lowenfish and Lupien, The Imperfect Diamond [New York: Stein & Day, 1980], pp. 96, 103–104).**

Ever since the Black Sox scandal, baseball has been extremely sensitive to the issue of gambling. In baseball, the general policy is that baseball owners, officers, directors, and employees cannot own or work for any legalized gambling entities, including casinos and racetracks. However, while the leagues have taken very firm stands against players and their involvement in gambling (see note 2), that has not always been the case with owners. For example, at the same time Bowie Kuhn was banning Willie Mays and Mickey Mantle from baseball (see note 2(c)), George Steinbrenner, owner of the Yankees, was able to keep his interest in the Tampa Downs racetrack in Florida. Baseball has since changed its rules to prohibit its owners from owning any interests in gambling operations, and did suspend Steinbrenner in 1990 for his involvement with former gambler Howard Spira during the 1980s.

A multimillion-dollar sports betting bust involving several high-profile NHL player suspects occurred in 2006, when former player and assistant coach of the Phoenix Coyotes Rick Tocchet and two others were charged

with taking millions of dollars in bets on sports. The gambling ring reportedly involved Wayne Gretzky's wife as a potential bettor. Tocchet was immediately put on indefinite leave by the Coyotes and is currently waiting on charges of bookmaking. Two others have pled guilty to bookmaking charges in order to receive reduced sentences for implicating Tocchet. Supposedly, no bets were made on hockey; however, the charges have hurt the NHL's reputation and have put coaches more in the spotlight regarding their off-the-rink behavior.

The NBA, the NFL, and the NHL all allow their owners to own legal gambling operations as long as they are not involved in any activity that includes taking bets on league games. The leagues have no prohibition on their owning racetracks or casinos as long as all league games are removed from the betting boards. For ex- ample, the NFL allowed Edward DeBartolo, Jr., then owner of the five-time Super Bowl champion San Francisco 49ers, to pursue gambling licenses even though it bans coaches, players, and other personnel from making promotional appearances involving casinos and gambling cruises. However, in 1997 DeBartolo was forced to give up control of the team after it was discovered that he was the target of an investigation into gambling fraud and extortion. DeBartolo, who paid a $1 million fi ne for his involvement in the affair, has since given up his stake in the team, and his estranged sister, Denise DeBartolo York, and her husband, John York, have assumed full ownership and control.

While the leagues may have no clear policy concerning the gambling interests of their owners, they have worked hard to keep people from gambling on their games through state lotteries and offshore sports books. The leagues lobbied for the passage of the Professional and **Amateur Sports Protection Act of 1992** and for the **Internet Gambling Prohibition Act of 1999 (see section 16.2.3, "Internet Gambling").**
The Professional and Amateur Sports Protection Act of 1992 (28 U.S.C. S.3701) prohibits state lotteries based on sports events, except in those states where such lotteries already existed. Besides their lobbying efforts, the leagues have fi led lawsuits to prohibit the use of their games in

government lotteries. For example, in OFC Comm **Baseball v. Markell**,[41] MLB, the NFL, the NBA, the NHL, and the NCAA brought suit against the governor and state of Delaware after its legislature proposed to allow gambling on individual games. The Third Circuit found that such a provision would violate PASPA. The case was reminiscent of NFL v. Governor of Delaware,[42] in which the league sued the gover- nor and the director of the state lottery to bar the state from using a lottery based on the outcome of NFL games. The league argued that such a lottery would harm the image of the league by forcing it into association with gambling.

The NFL also claimed trademark violation and misappropriation. The court, in upholding the right of the state to conduct such a lottery, held that the use of NFL schedules, scores, and public popularity in the Delaware lottery did not constitute a misappropriation of the league's property. The court did, however, grant the NFL limited injunctive relief, which required the lottery to employ a disclaimer of association with the NFL on all tickets, advertising, and other materials prepared for public distribution.

INTERNET GAMBLING

A growing problem involving sports gambling is the Internet, which provides gamblers with the opportunity to place wagers on professional and college sporting events from the privacy of their homes in virtual anonymity. The Internet also makes betting on sports easier. Instead of going through a bookie, all a gambler needs to place a bet are a computer, Internet access, and a credit card. Many of these bets are placed with casinos in off-shore locations in other countries where betting is legal. However, in 2006 a major piece of legislation greatly affected Internet gambling in the United States. The Unlawful Internet Gambling Enforcement Act of 2006 was passed by Congress and signed by

[41] 579 F.3d 293 (3rd Cir. 2009),

[42] 435 F. Supp. 1372 (D. Del. 1977),

President George W. Bush; it prohibits gambling sites from receiving payments from U.S. financial institutions including credit card, check, or lending companies. The bill has caused major gaming sites to withdraw from the U.S online gambling market, including Partypoker.com. The act defines a bet or wager as risking something of value on the outcome of a contest. Fantasy leagues are defined as legal, but they are subject to restrictions. Fantasy teams are not "based on the current membership of an actual team," meaning that a fantasy team cannot be simply a current sports franchise with all of its actual players. Prizes for fantasy league winners must also be made in advance of the contest.

From a de jure (valid in law) perspective, such activity is clearly illegal and should be prosecuted in order to uphold respect for existing laws. From a de facto (a situation which is accepted for all practical purposes, but is not strictly legal or correct) perspective, there is far too much activity for authorities to police effectively, and the harm created by such activities is usually minimal or nonexistent. Most fantasy leagues require an entry fee totaling less than $10 per week, and most office pools, such as for the NCAA tournament or Kentucky Derby, require entry fees of $20 or less. While these activities seem to constitute gambling in the legal sense of the word, they do not appear to be much of a threat to either society at large or the integrity of sports. A criticism of gambling from a legal perspective is speculation that compulsive gamblers will commit illegal activity and mistreat their families because of their gambling debts.

A criticism of gambling from a sports perspective is the speculation that gambling will lead to the fixing of games. Neither of these concerns appears to be valid in the context of fantasy sports and office pools, due to the small per-person amounts that are wagered. Furthermore, certain states — such as Indiana, Wisconsin, New Jersey, and New York — have laws which stipulate that gambling is legal if it involves a game of skill rather than of chance For example, it would be legal to create a prize money pool for a chess tournament in such states, but not legal to create a prize money pool for a bingo tournament. One could argue, in these

states, that one's ability to evaluate talent (players in fantasy leagues, teams or horses in office pools) is the material factor in the game, rather than luck. There is little case precedent in this area.

In **Boardwalk Regency Corp. v. Attorney General of New Jersey**[43], the court found that the material factor in the game of backgammon was a dice roll, not skill, and therefore gambling on backgammon was found to be illegal. Professional sports leagues, players associations, the NCAA, and television net- works have all benefited from the enthusiasm over fantasy leagues and office pools Because the Internet has spawned a boom in fantasy leagues, their legal future probably hinges on developments in Internet gambling law. Such laws will have less effect on office pools. While 22.9 million people participated worldwide in online office pools for the 2007 NCAA Division I-A men's basketball tournament, according to the Bloomington Pantagraph, the vast majority of o ffi ce pools are cash enterprises kept within one locale. The Pantagraph also estimated that an average of 13.5 minutes are spent each day by employees looking at their NCAA tournament picks and that the 19-day tournament costs employers an estimated $1.2 billion per year. Yet with such a loss in productivity, only 6% of employers said they would not allow office pools in their companies. Consequently, office pools are prosecuted only sporadically by police.

[43]457 A.2d 847 (N.J. Super. Ct. Law Div. 1982),

CHAPTER FIVE

Contract and Agency law of sports

Over the years, sports like football have been extremely monetized with footballers and managers bagging billions of shillings annually in salaries. For example, Manchester United's Christiano Ronaldo is set to take home approximately 249b in Uganda shillings from his salary. Following closely are Roger Federer (tennis), Lebron James(basketball), Tiger Woods(golf), Lionel Messi among a host of others. To bring the picture closer to home, Ronaldo earns 1.1m in euros per week and Messi earns approximately 729000 in euros. Aside the salaries of these sportsmen being breathtakingly high, they are involved in other transactions such as endorsements and sales. For example, English club Manchester city in the summer of 2021 parted with 117m euros to sign Jack Graelish from Aston villa. The most expensive footballers to date are PSG's Kylian Mbappe and Neymar that cost 145 and 222m euros respectively.

With that amount of money injected in the game, it naturally follows that there are contracts involved and by extension contractual rights and obligations, these may be borne by teams, players and on some occasions, agents. Add that to the fact that sport is a human interaction

that naturally has rules and you suddenly have a need for rules governing sport, whether it be wrestling, kickboxing or rugby both on and off the pitch.

WHAT IS A CONTRACT?

S.10 of the Contracts Act defines a contract as an agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound.
Contracts themselves contain various essential elements. There must be an offer and an acceptance, and there must also be what is called consideration. The terms of the contract must be certain, and the parties must intend to form a legally binding agreement. The parties must also have the legal capacity to make a contract. Finally, the purpose of the contract must be legal.

Types of sports contracts

1) *Sporting agreements*
2) *Contracts to perform*

An amateur event may involve a contract where the competitors pay an entry fee and agree to abide by set rules. Such was the situation in ***Clarke v Dunraven***. Two members of a yacht club entered a club race having given written undertakings to abide by club rules. One rule was that any yacht disobeying any of the rules was liable for ‘all damages arising therefrom’. In breach of a rule of sailing, one of the yachts ran into another yacht, sinking it. The court found that there was a contract upon which the owner of the damaged yacht could sue the other yatch owner

Sponsorship contracts

The general popularity of sport and sportspeople, and the amounts of money involved in the marketing of goods and services in our society,

have already been mentioned. These factors contribute to the degree to which sportspeople are in demand as product image makers and endorsers. Many sports, even ‘minor’ sports, have one or more sponsors, and sporting organizations, teams and individuals may all be involved in sponsorship arrangements.

Management/ Agency Contracts

Professional sportspeople often sign long and detailed management contracts under which it is agreed that particular people or organizations will represent their interests in negotiating and generally overseeing their sporting activities.

The contract of employment

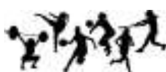
The nature of many professional sporting contracts means that they are classified as contracts of employment at law. The growth of the sports industry and the availability of large amounts of money for its best participants mean that many sportspeople are in a position to make a very comfortable living from their sport.

Restraint of trade

Everyone has various rights at law, and one of the most important is the right to work. The courts have traditionally recognised that this right is something that should not normally be taken away from a person, although this recognition involves existing legal doctrines and no separate action is available for the right to work as such. The doctrine of restraint of trade is aimed at protecting a person’s right to work, and promoting free and competitive economic conditions.
The doctrine provides that all restraints of trade are prima facie void; that is, generally not permissible. Clauses that restrain trade may be included in a contract.

Defenses to Breach of Contract

What Are Valid Defenses Against a Breach of Contract Claim?
The most common defenses to enforcement of a contract or liability for damages are:



Enforcement of the contract would violate public policy.
Example: A contract to lease part of a liquor license will not be enforced because splitting a liquor license between two parties and two locations violates the public policy of the state. See ***Digesu v. Weingardt***[44],

Performance of the contract has become impossible or the purpose of the contract has become frustrated.
Example: Dan hires Tom to paint his house, but the house burns down before the contract can be performed.

The contract is illegal.
Example: The contract is for commission of murder.

The contract lacks consideration.
Example: Tom promises to give $20 to Dan, but Dan does not have to do or give anything in return.

The contract was obtained by fraud.
Example: Blue Company refuses to sell to Red Company, so Red Company sends Pink Company to buy goods from Blue Company and turn them over to Red Company.

The contract limits the amount of damages that can be recovered.
Example: The contract states that in the event of a minor breach, the damages will be $100 regardless of the actual loss.

The contract contains a mutual mistake, stating something different from what either party intended.
Example: Both parties intended a delivery date of March 15, but the contract says April 15.

[44]91 N.M. 441, 575 P.2d 950 (1978).

The contract contains a unilateral mistake that was material to the agreement and the other party knew or should have known of the mistake.
Example: Maria paid Tom a lot of money for a painting signed “Picasso.” Tom knew that Maria thought Pablo Picasso painted it, when really Arnold Picasso was the painter, but Tom did not correct the misunderstanding.

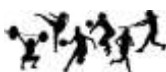
The parties have accepted the contract performance, or a substitution for the performance, as adequate. This is called accord and satisfaction.
Example: Tim owes Frank $100 on a contract debt. Frank agrees to accept a radio worth $50 in exchange for discharging the debt. When Frank changes his mind and sues for the additional $50.00, the Court will not enforce the original contract because Frank has accepted the radio as performance of the contract.

One (or both) of the parties lacked capacity to make the contract.
Example: A party to the contract is 16 years old or is mentally incompetent

AGENTS AND AGENCY LAW IN SPORTS

Sports agents generally did not exist prior to the era of free agency in sports. Now almost every professional athlete has an agent representing his or her interests. From National Football Leagues, professional athletes have selected agents to handle issues such as contract negotiations, endorsements, business matters, legal issues, and financial planning.

Section 118 of the Contracts Act 2010 defines “agent” means a person employed by a principal to do any act for that principal or to represent the principal in dealing with a third person; “Principal” means a person who employs an agent to do any act for him or her or to represent him or her in dealing with a third person;



The law has defined agency as “the fiduciary relation [that] results from the manifestation of consent by one person to another that the other shall act in his behalf and subject to his control, and consent by the other to so act.”

The law imposes a fiduciary duty upon an agent. This duty involves a relationship of trust and confidence between the agent and the principal. In a y agency relationship, one party agrees to act on behalf of the other and in the latter’s best interest. One of the primary functions of the agent is to carry out the desires and wishes of the principal. The agent must be loyal to the principal and furthermore it is incumbent upon the agent to act solely and exclusively in the best interest of the principal and not in the interest of the agent or other parties. The agency relationship involves a principal, who retains an agent to represent the principal’s interests to a third party. In the sports context, the principal is the athlete, and the agent is the party the athlete retains to represent him or her. Both agency and contract law govern this relationship.

S. 119 of the Contracts Act. Capacity to employ agent.
A person may employ an agent, where that person;

- Is eighteen years or more;
- Is of sound mind; and
- Is not disqualified from appointing an agent by any law to which that person is subject.

S.120 of the Contracts Act. Capacity to act as agent.
A person may act as an agent where that person;

- Is eighteen years or above;
- Is of sound mind; and
- Is not disqualified from acting as an agent by any law to which he or she is subject.

S.121 of the Contracts Act . Consideration not necessary.

Consideration is not necessary to create an agency.

Duties of an agent

An agent has certain duties under the law that must be discharged to the principal. These include the following:

A duty to act in the best interest of the principal.

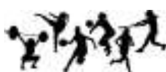
S.146(1) An agent shall conduct the business of a principal according to the directions given by the principal or, in the absence of any directions, according to the usage and customs which prevail, in doing business of the same kind, at the place where the agent conducts the business. (2) Where an agent acts contrary to subsection (1) and any loss is suffered, the agent shall make good the loss to the principal and where any profit accrues, the agent shall account for it. A duty to keep the principal informed of all significant matters concerning the agency relationship.

S.148 of the Contracts Acts 2010 provides that an agent shall, in case of difficulty, use all reasonable diligence to communicate with a principal and to seek to obtain the instructions of the principal. A duty to obey instructions given to the agent by the principal concerning the agency relationship.

S.148 provides that an agent shall, in case of difficulty, use all reasonable diligence to communicate with a principal and to seek to obtain the instructions of the principal. A duty to account to the principal for all funds handled on the principal's behalf.

S .147 provides that an agent shall render proper accounts to a principal on demand.

A duty to exercise reasonable care in the performance of the agent's duties.



S.146(1), An agent shall act with reasonable diligence and conduct the business of the agency with as much skill as is generally possessed by a person engaged in similar business, unless the principal has notice of the lack of skill by the agent. Subsection 2 states that an agent shall compensate a principal in respect of the direct consequences of his or her own neglect, lack of skill or misconduct but not in respect of loss or damage which are indirectly or remotely caused by the neglect, lack of skill or misconduct of the agent.

Bias v. Advantage International, Inc., 905 F.2d 1558 (D.C. Cir. 1990), involves the former number-one draft pick of the Boston Celtics, Len Bias, whose estate sued his former agent. Bias died of a cocaine overdose two days after he was selected as the second overall pick in the 1986 NBA draft. The lawsuit alleged that the agent failed to properly perform his duties as an agent because he failed to finalize an endorsement contract before the death of Bias and also failed to procure life insurance on Bias's behalf before he died.

Brown v. Woolf, 554 F. Supp. 1206 (D.C. Ind. 1983), the agent was sued for fraudulent misrepresentation and breach of fiduciary duty. The aforementioned Woolf was one of the first successful sports agents in the sports world. His former client sued him, and Woolf sought to have the case dismissed on summary judgment. The court found that a question of fact existed as to whether or not Woolf engaged in fraudulent misrepresentation during his representation of the plaintiff, so his motion for summary judgment was denied.

Conflicts of interest

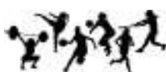
One of the primary functions of an agent is to avoid all actual or potential conflicts of interest. It is incumbent upon the agent to avoid a conflict of interest so that the agent can dedicate his or he efforts fully to the principal's concerns. Conflicts of interest raise concerns about an agent s fiduciary duty required under the law. For example, it would be a conflict of interest and a breach of an agent s duty of loyalty to the principal to represent two principals in the same transaction unless both principals

were fully aware of the situation and consented to the representation. If an agent makes full disclosure of any conflict of interest and the athlete is fully ware of the existing conflict, the agent will no have breached any fiduciary duty wed to the athlete. The duty of confidentiality also requires the agent to keep all information received by the principal in confidence during the relationship. The agent's duty of confidentiality continues ven after the agent–athlete relationship has been terminated. Possible conflict situations could exist for an agent by representing players on the same team at the same position. They could also exist if an agent represented a coach and player on the same team.

Detroit Lions, Inc. v. Argovitz,)[45], is an example of a situation in which an agent, who was also functioning as an owner, failed to properly disclose all potential and real conflicts of interests so that a player could make a fully informed decision regarding his future team. Billy Sims was a professional football player who was represented by Jerry Argovitz. Sims was unaware that Argovitz was also the owner of a team called the Houston Gamblers. Argovitz wanted to sign Sims to a contract with the Houston Gamblers. The Gamblers were a professional team in the United States Football League (USFL). The USFL was formed in 1982 and attempted, with some success, to lure away top players from the NFL to play in its newly formed league. The league was successful in signing quarterbacks Steve Young and Jim Kelly as well as running back Herschel Walker to long-term contracts. The USFL disbanded in1986 still owing millions of dollars to players on signed contracts. It is against this backdrop thatthis case is presented.

In **ZINN v. PARRISH 644 F.2d 360 (7th Cir. 1981)**, Zinn was Parrish's agent. He negotiated several K's with the Bengals for Parrish. He charged a 10% commission on all deals as his fee. During the '74 season, Zinn negotiated a 4 yr 250k deal for Parrish with the Bengals. Shortly after this, Parrish fired Zinn and refused to pay him his commission. Other

[45]580 F. Supp. 542 (6th Cir. 1984



obligations Zinn had to perform for Parrish included: Getting endorsements. Business investment advice. Tax advice Etc.

The Issue was whether Zinn is in breach his K with Parrish?

Holding: no liable for breach since Zinn's representation of Parrish did not violate the 1940 Act which makes void any K for investment advice made by an unregistered adviser. Zinn did not violate this rule. He never held himself out to be an investment advisor. Zinn provided ordinary business advice rather than advice on securities. Employment Procurement Issue: Parrish could not, without being in breach of his Bengal's K, enter into negotiations with other teams while he was under K with the Bengals. Thus, unless he decided to contract for future services the year following the term of the option clause with the Canadian or World Football League, Parrish's only sensible course of action throughout the time Zinn managed him was to negotiate with the Bengals. Parrish had no complaints of Zinn's representation up-to the '74 K. Parrish claims Zinn should have gotten other offers from other leagues to up his bargaining power. Given what Zinn accurately perceived as the unreliability of any offers he might have obtained from the WFL, his representation of Parrish during this period was more than reasonable. The court concludes that it is impossible to fault Zinn for is representation of Parrish,

Other Obligation issues: At all events, there is no claim that there was a failure to negotiate employment K's with other athletic organizations. Until Parrish terminated the K, the evidence was clear that Zinn made consistent, good faith efforts to obtain off-season employment and endorsement Ks. The district ct confused success with good faith efforts in concluding that Zinn's failure to obtain in many cases jobs or Ks for Parrish was a failure to perform. Moreover, Zinn did give business advice to Parrish on his real estate purchases, and did secure tax advice for him. Up to when Zinn was fired he did the best job he could do. Therefore Parrish was in breach of K and should have to pay up.

Section 135, **Termination of agency.**

An agency is terminated where

- A principal revokes his or her authority;
- An agent renounces the business of the agency;
- The business of the agency is completed;
- A principal or an agent dies;
- A principal or an agent becomes of unsound mind;
- A principal is adjudicated an insolvent under the law;
- The principal and agent agree to terminate; or
- The purpose of the agency is frustrated.

Section 136 of the Contracts Act 2010 provides termination of agency where agent has interest in subject matter. Where the agent has an interest in the property which forms the subject matter of an agency, the agency shall not, in the absence of an express contract, be terminated to the prejudice of that interest.

CHAPTER SIX

The Ugandan legal regime on Sports

INTRODUCTION.

Uganda has embraced a number of sports such as tennis, golf, swimming, cycling, cricket, baseball, motor sport, badminton among others. But when it comes to sheer popularity, football is the king in Uganda followed closely by Rugby and Basketball. Sports in Uganda is mandated and driven by the Ministry of Education and Sports (MES) which is a cabinet level ministry of Uganda.

It is mandated to provide technical support, guide, coordinate, regulate and promote quality education, training and sports to all persons in Uganda for national integration, development and individual advancement. Under this ministry, sports is managed under the Department of Physical Education and sports. However, other organs through the Ministry Education and sports for example the National Council of Sports and the Uganda Olympic Committee also play an active role in regulating sports activities in Uganda. The National Council of Sports (NCS) is a statutory organ whose establishment, status and powers are enshrined under the **National Council of Sports Act of 1964,** to among other things; Develop, promote and control sports activities in

Uganda on behalf of the government, under the Ministry of Education and Sports. The NCS which is also linked to the Supreme Council for Sports in Africa (SCSA) and other relevant sports organizations serves as a regulator and apex organization that coordinates all sports activities in the country in conjunction with the registered National Sports Associations/Federations.

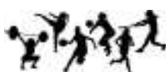
The 1995 Constitution of Uganda.

Uganda has embraced today a number of sports such as tennis, golf, swimming, cycling, motor sport, football, among others. Sports in Uganda is mandated and driven by the Ministry of Education and Sports which is a cabinet level ministry in Uganda. One of its mandate is to provide technical support, regulate and guide sports in Uganda. In the exercise of its duties, the ministry is not only guided by the constitution or statutes but is also mandated to make regulations by the minister governing sports and related matters; a combination of all these is discussed below;

To start with, The Uganda constitution under objective XVII stipulates that, ``the state shall promote recreation and sports for the citizens of Uganda. This objective basically shows the will by the Uganda government to promote sports and it can therefore be said that sports is a constitutionally recognized right in Uganda.

Article 26 of the 1995 Ugandan constitution legalizes intellectual property in sports. It provides that every person has a right to own property either individually or with association of others. Basically this provides for trademarks, copy rights, image rights among others and therefore sportsmen and sports clubs have intellectual property rights and enjoy the same in Uganda.

The National Council of Sports Act, 1964 is also one of the laws regulating sports in Uganda. This act establishes the National Council of sports and other purposes connected therewith. This act provides for the



objects of the council and its functions, funds of the council, members of the council, regulations and annual reports.
Under Section 10 of this Act, the minister is conferred powers to make regulations of the council and these regulations are found under "The National Council of Sports Regulations, 2014".

The National Council Of Sports Regulations, 2014.

These regulations are made basing on the powers conferred to the Minister by **Section 10 of the National Council of Sports Act.** These regulations provide for the incorporation and registration of National sports associations, and forms for application for registration under **Schedule 1 of these regulations. Regulation 3** of these regulations provides for the incorporation of every "national sports association" in accordance with the laws of Uganda. A "National Sports Association" means an organization promoting and supervising a particular sport throughout the country and includes federation.

Regulation 4 provides for the registration of National Sports Associations by the Council. **Regulations 4(2), 4(3) and 4(4),** provide for exceptions to Regulation 4 i.e. not registering more than one National Sports Associations, not registering a national association which is Incorporated as a company.
Regulation 13(1) provides for the national sports associations to organize sports competitions for the sports they are recognized for. **Regulation 13(3)** provides that the National sports associations shall issue clear rules and regulations regarding the participation of any person or club in a competition organized by the association.

The lotteries and Gaming Act also regulates sports in Uganda today. **Section 2 of this act** establishes the Lotteries and Gaming Board and the board that shall basically regulate and supervise the establishment, management and operation of the lotteries, gamming, betting and casinos in Uganda. In Uganda today a number of betting companies have been established lawfully and these basically deal in games like football among others.

The contracts Act, 2010 also helps in regulating sports in Uganda today. It provides basis and principles for formation of a sports law contract. Section 10 of the contracts defines a contract as an agreement made with free consent of parties with capacity to contract, for lawful consideration and with a lawful object with a lawful object, with intention to be legally bound.

The contracts act also provides for agents. **Section 118 of the contracts Act 2010** defines an agent to means a person employed by a principal to do any act for that principal or to represent the principal in dealing with a third party. In Uganda today sports agents are recognized and such contracts with agents are entered into with respect to the provisions of the contracts Act. In other jurisdictions, the issue of agents has been litigated upon and the legal position of agents decided. **InZinn v. Parrish**[46]

The facts of the case are that the Appellant Leo Zinn brought suit against appellee Lemar Parrish to recover agent fees due him under a personal management contract pursuant to Ill. Rev. Stat., ch. 72 S.2. Defendant filed a motion for summary judgment, arguing that the contract was unenforceable because of Zinn's failure to obtain a license under the Illinois Private Employment Agency Act, Ill.Rev.Stat., ch. 48, S.197a et seq. ("the Employment Agency Act"). United States Court of Appeals for the Seventh Circuit reversed and remanded. On remand, the district court found in favor of appellee holding that appellant's failure to register as an investment adviser under the Investment Advisers Act of 1940, 15 U.S.C.S. S.80b-1 et seq. (the 1940 Act), voided the contract and he had failed to perform his obligations under the contract.

The issue Was whether the appellant agent required to register as an investment adviser under the Investment Advisers Act of 1940, the failure of which would render the contract entered into by the appellant voidable?

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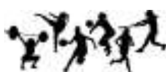
[46]- 644 F.2d 360 (7th Cir. 1981)



The rule per then was;

As a remedial statute, the Investment Advisers Act of 1940, 15 U.S.C.S. S 80b-1 et seq., must be read broadly in order to effectuate its purpose of protecting the public and investors against malpractices by persons paid for advising others about securities. At the same time, the definitional requirements of the statute must be interpreted so as not to sweep in persons whose activities Congress did not intend to regulate on the theory that they posed no national concern.

ANSWER: **No.**

Court concluded thus;
On review, the court found that the activities of appellant did not place him under the requirements of the 1940 Act. The court further found that appellant had reasonably and in good faith performed his duties under the contract. The court also found that appellee had terminated his relationship with appellant after appellant negotiated a large contract in breach of the contract. Accordingly, the court reversed the judgment and remanded for calculation of damages and interest

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In Detroit Lions, Inc. v. Argovitz - 580 F. Supp. 542 (E.D. Mich. 1984) the facts are that; Jerry Argovitz, an agent for Billy R. Sims, a football player, was in negotiations with a team for the services of his client. As negotiations progressed, the agent's bid for a franchise in an opposing league was approved and the agent became a part owner of another football team. The agent's football team, Houston Gamblers, began negotiating for the services of Sims, and ultimately Sims signed with Houston Gamblers, having been led to believe that the original team seeking his services was not sincerely interested. Sometime thereafter, Sims filed an action seeking to invalidate the contract with Houston Gamblers arguing that the agent breached his fiduciary obligations to the client by not keeping the client informed of all of his options and failing to use the offer made by the agent's team to seek a better offer from the original team.

The issue majorly was whether the agent breached his fiduciary duty to the client, thereby warranting the rescission of the contract between the client and the agent's football team?

ANSWER: **Yes.**

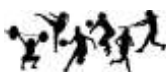
The rule was that; where an agent has an interest adverse to that of his principal in a transaction in which he purports to act on behalf of his principal, the transaction is voidable by the principal unless the agent disclosed all material facts within the agent's knowledge that might affect the principal's judgment.

HELD; The court determined that the agent did in fact breach his duty to the client by failing to inform the client that the agent had an interest adverse to the client's and failed to negotiate with the original team in the client's best interest. The court determined that the conduct of the agent was so egregious that rescission was the only proper remedy.
On the other hand, there are a number of international law and instruments that Uganda uphold and these include the International Charter on Physical Education And sports (1978), the convention on Rights of children, among others. These laws have also helped regulate sport in Uganda today.

> *It is imperative to note that Constitutional provisions also provide for other relevant issues in sport law which include which all contribute to the proper governance of sporting activities in Uganda.* ”

These include laws concerning;

Drug abuse;
It is true that under the laws of Uganda, drug abuse is illegal. This notion is also similarly seen in the Ugandan sports community were it is



forbidden for any athlete to engage in sports activities while being under the influence of illegal drugs. The Constitution of Uganda greatly condemns the use of excessive drugs by any Ugandan and therefore no Ugandan is granted the liberty to use illegal drugs in the performance of sports. **Article 23(1)(f)** provides that a person shall be deprived personal liberty in case that person is reasonably suspected to be, of unsound mind or addicted to drugs or alcohol, for the purpose of care or treatment of that person or the protection of the community. This therefore means that even in sports, if an athlete uses illegal drugs, he or she violets **Article 23(1)(f) of the constitution of Uganda**

.

Racial discrimination;

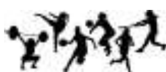
The discrimination of races by people all over the world is seen as a misconduct. Such act is greatly condemned since no one is different of the other because of sick colour, religion e.t.c., as a famous musician called Lucky Dube once sung that, "One People But Different Color". The Constitution of Uganda also greatly condemns discrimination among Ugandans. **Article 21(2)** provides that a person shall not be discriminated against on the grounds of sex, race, colour, ethnic origin, tribe, creed or religion, social or economic standing, political opinion or disability. In a nutshell, any athlete in Uganda who practices racial segregation violets **Article 21(2) of the Uganda Constitution**.

Gender discrimination;

The discrimination of women is greatly common in many fields of life since in most cases women are seen as being weak since they are in most cases dominated by men. The Constitution of Uganda greatly condemns the discrimination of citizens by sex since this creates unreasonable gender inequality. **Article 21(2) of the constitution of Uganda** partly provides that "a person shall not be discriminated against on the ground of sex…." Therefore even in the Sports context, Gender discrimination as condemned by the Uganda Constitution should not be practiced by athletes or sports clubs since such an act can be in violation of **Article 21(2) of the Uganda Constitution.**

The Uganda Olympic Committee (UOC) was constituted in 1950 and recognized by the International Olympic Committee (IOC) in 1956. The UOC represents Uganda in the international sports events like, the Olympics(winter and summer), and the Common Wealth Games and amongst the leading and most noticeable sports occasions in the world that attract the world's best athletes who compete before millions of spectators and sports fans watching them live and on television. The UOC is therefore affiliated to; The International Olympic Committee (IOC), the Association of National Olympic Committee (ANOC), the Common Wealth Games Federation (CGF), the Association of National Olympic Committee of Africa (ANOCA) and the Islamic Solidarity Sports Federation (ISSF).

However, like any other sector, sports is also regulated by national laws and which are enacted by the Ugandan Legislature and such laws can be entrenched under what is called "Sports law". Sports law can be seen as a concomitant of other substantive areas of law since it is in one way or another intertwined with other areas of law. This is because one cannot talk about "sports law" and does not talk about Contract law, Labour law, Tort law, Anti-trust law and Constitutional law. This notion therefore demonstrates the uniqueness of Sports law amongst other areas of law since the sports industry in a broader sense covers various aspects like (contracts, employment, agreements, violent fights, drug abuse e.t.c), which are also of great interest within the legal sectors. In a nutshell, Sports law with its wide variety of legal aspects, probably encompasses more areas of law than other legal disciplines.



A CRITICAL ANALYSIS OF THE PHYSICAL ACTIVITY AND SPORTS BILL OF 2018 IN ADDRESSING SPORTS IN UGANDA.

Traditionally, sports law has been merely considered as an amalgamation of various areas of law such as contract law, labor law and tort law. As per this perspective, sports law lacks an identifiable body of regulations and was co-dependent on the legal system in general.[47] However, the transformation of sports in Uganda from a source of entertainment to a field of commerce requires a legal backbone to support its development. The global sports industry is now a fully-fledged business warranting the circulation of billions of dollars.[48] Uganda's sports industry is getting more commercialized and thus needs a robust, uniform and codified sports legal regime. Attempts have been made to come up with a new sports legal regime, that is the Physical Activity and Sports Bill, 2018. The bill seeks to address various loopholes in the existing law and yet even it has certain grey areas. There is no doubt that Sports law is a unique field consisting of many legal issues including the administration and regulation of sports franchise. That said, the major clauses in the bill are analyzed thus;

Section 35 of the bill provides for the establishment of a Sports Dispute Tribunal. The rationale behind a sports disputes tribunal is to check the spiraling number of sports disputes that end up in ordinary courts. Sports scholars have argued sport-related disputes need to be handled independently to ensure specialized and accurate results in a fast track manner. Taking sports matters out of the national courts and bringing them in front of a specialized sports tribunal provides a quicker and more reliable method of dispute resolution. A specialized system for dispute

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[47] Timothy Davis, What Is Sports Law? 11 Marquette Sports Law Rev. 211 (2001)

[48] The global sports industry is worth up to $620 billion today; https://www.de.kearney.com/communications-media-technology/article?/a/the-sports-market.

resolution of every field is more reliable than a general dispute resolution n system.[49]

As Megarry, a former English Vice Chancellor, put it in **Mcinnes v. Onslow-Fane 50,** sports bodies are "far better fitted to judge than the courts". Section 38[51]stipulates the jurisdiction of the Tribunal to include an appeal lodged by an aggrieved national sports federation against a decision of the Council whose Constitution specifically allows for appeals to be made to the tribunal, other sports-related disputes that all parties to the dispute agree to refer to the Tribunal and that the Tribunal agrees to hear and appeals from decisions of the Registrar under this Act. The Tribunal may, in determining disputes apply alternative dispute resolution methods for sports disputes and provide expertise and assistance regarding alternative dispute resolution to the parties to a dispute.[52]

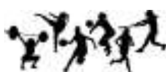
In **Proline Academy V Lawrence Mulindwa and 4 Others HCT-00-CV-MA-0459-2009**, It was the applicant's case that the 4th respondent, acting on behalf of the purported FUFA executive and FUFA, later made a decision excluding or ejecting Nalubaale Football Club from participating in the Super League, 2009/2010 without affording a hearing to any of the parties involved including the applicant. The 4th respondent took over rights and interests of Nalubaale Football Club in FUFA organized and sanctioned football competitions, including Uganda Super League 2009/2010 upon reaching a Memorandum of Understanding (MOU) with Nalubaale Football. The issue in this case was of locus stand as the respondents objected sating that the applicants had no locus standi in the matter at hand to bring the suite. Learned Counsel for the respondents submitted that the application seeks to quash a decision of

[49]https://www.mondaq.com/arbitration-dispute-resolution/959668/fifa-before-and-after-electing-court-of-arbitration-for-sports.

[50] [1976] Chancery Division

[51]The Physical Activity and Sports Bill, 2018

[52]Section 39, ibid



the 5th respondent to exclude Nalubaale Football Club from the National League; that a person aggrieved for purposes of an application of this nature must be a man/person who has suffered a legal grievance, a man/person against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something. He has cited to me Attorney General of theGambia vs Njie[53] in support of his argument. Counsel's argument is that the applicant herein is not any such aggrieved person.

The case also set court to such determining the instances whether judicial review was applicable in this matter while giving grounds for it. The applicant's main application (No. 142 of 2009) contains a prayer for an injunctive order restraining the respondents from carrying on with the Super League, 2009/2010 without the participation of the applicant, "the assignor (sic) of the rights of Nalubaale Football Club. unfortunately, the case was dismissed without costs, for lack of a cause of action.
The National Council of Sports was established by the National Council of Sports Act, 1964[54] which was the first Ugandan legislation tailored specifically for sport and is still in force to date. The objectives action of the Council were inter alia to aid, facilitate and encourage national sports associations.[55] **Section 2 of the bill** provides that the continuance of the National Council of Sports in force as a body corporate with perpetual succession and an official seal. The National Council of Sports is a vital apex body in the administration, development, promotion and control of sports activities in Uganda. The National Council of Sports has a legal objective to put in place standards and regulations to guide the sports industry in all government entities and the private sector with a view to redressing any bottlenecks encountered.[56] Section 5 of the bill sets out the functions of the Council which inter alia include; to carry out the day

[53][1961] 2 ALL ER 504

[54]Cap 48, Laws of Uganda

[55]Section 3, National Council of Sports Act, 1964 (Cap 48)

[56]Section 4(e), The Physical Activity and Sports Bill of 2018

to day functions and objectives of the Board, to regulate the activities of National Sports Federations and to sponsor coaches and sports organizers for training in relevant sports disciplines. **Section 47(1) of the bill** stipulates for sources of funding of the Council. The Council shall in the performance of its functions have due regard to sound financial principles.[57]

A National Sports Association is an organization promoting and supervising a particular sport throughout the country and includes federation. Section 9 of the National Council of Sports Act provided for establishment of national sports associations and their registration with the council. The National Council for Sports Regulations were passed in 2014 to regulate the Act.

Regulation 3 (1) and 4 (4) made it mandatory for all sports associations to incorporate under the laws of Uganda, but not as companies, respectively. The Physical Activity Sports Bill, under Section 21, clearly elucidates the minimal requirements for all National Sports Associations in the country inter alia a certified copy of the constitution of the applicant and a certified copy of a certificate of incorporation issued under the Act.

Section 22(2) of the Bill provides that the Registrar shall upon satisfaction that an applicant has met the requirements under this Act register the applicant as a national sports federation and issue it with a certificate of registration.

Section 22(3)(a) of the Bill states that a certificate of registration issued shall be conclusive evidence of authorization to operate throughout the Country.

Section 22(6) of the bill stipulates that the Registrar shall not register more than one national sports federation to run the same sports discipline.

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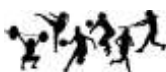
[57]Section 48, ibid



Section 43(1) of the bill stipulates that the National Olympic Committee is designated as the Anti-Doping Agency of Uganda. **Section 43(2)[58]** provides that the Agency shall be the only organization permitted to carry out anti-doping activities in Uganda and its authority shall be recognized by all national federations in Uganda.

The Uganda Anti-doping agency is charged with implementing the World Anti-Doping Code and associated International Standards.[59] The World Anti-Doping Code is the document that harmonizes regulations regarding anti-doping in sport across all sports and all countries of the world. The Code provides a framework for anti-doping policies, rules, and regulations for sport organizations and public authorities.[60] The use of drugs or other substances to enhance performance in sports competition is prohibited. The justification given by the World Anti-Doping Agency is that athletes should compete on a fair and equal footing.[61] The World Anti-Doping Agency (WADA) annually publishes Prohibited lists detailing substances and methods banned in sports in-and out-of-competition.[62]

Section 44[63] provides for other the functions of the Agency amongst them; to promote participation in sport, free from doping in order to protect the health and well-being of competitors and the rights of all persons who take part in sport, create awareness in order to discourage the practice of doping in sport among the public and carry out investigations in matters of doping in sports.

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[58]The Physical Activity and Sports Bill of 2018

[59]Section 44(1)(d), The Physical Activity and Sports Bill, 2018

[60]https://www.wada-ama.org/en/questions-answers/world-anti-doping-code

[61]Vincent Geeraets (2018) Ideology, Doping and the Spirit of Sport, Sport, Ethics and Philosophy

[62]https://www.wada-ama.org/en/resources/science-medicine/prohibited-list-documents

[63]The Physical Activity and Sports Bill, 2018

Section 58(1).[64] provides for the establishment of a Sports Development Fund. The Sports Development Fund shall be managed by the Board.[65] Despite the increased success of Ugandan sports team such as the netball and football teams on the world stage, there remains a challenge of underfunding.

Section 58(3).[66] stipulates the sources of the Sports Development Fund to consist money appropriated by Parliament, loans obtained by the Government, grants from donors, all sums of money paid as fees under the Act and any other source approved by the Minister. Uganda has a lot of untapped talent that needs to be scouted and nurtured.

Section 28 of the bill provides for establishment of the Uganda Sports Institute that shall be a semi-autonomous body, governed by the Board.

Section 29 of the bill states the functions of the institute to include;

a) *Establish and manage sports training academies,*
b) *Organize, administer and co-ordinate sports courses for technical and sports administration personnel and*
c) *Promote research and development of talent in sports, in collaboration with institutions of higher learning, national sports federations and other stakeholders. The funds and assets of the Institute shall comprise such moneys as may be appropriated by Parliament for the purposes of the Institute, gifts, donations and funds accruing from investments made by the Institute.*.[67]

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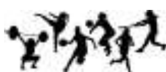
[64]ibid

[65]Section 58(2) ibid

[66]The Physical Activity and Sports Bill, 2018

[67] Section 34, The Physical Activity and Sports Bill, 2018



Conclusion and Recommendations

Section 72(2) of the bill saves the National Council for Sports Regulations, 2014 for as long as they are not inconsistent with it. It is notable that these regulations created a conflict with international laws. An instance is when the legal team of FIFA stated that any form of forced incorporation of FUFA under the Trustees Incorporation Act would be considered as interference in contravention to the FIFA Statutes, **Article 14, paragraph 1 and Article 19 paragraph 1.**[68]

Similarly, Regulation 4(4)[69] guaranteed corporate governance off sports associations in Uganda. Corporate governance promotes transparency and accountability, investor confidence. Corporate governance is defined in the text as a body of rules to oversee the conduct of business to safe guard the rights and interests of all company constituents. Currently National Sports Associations can lawfully incorporate as Trusts or Cooperatives in Uganda. However, trusts are not the ideal mode of incorporation to boost sport in Uganda as they inter alia leave out the vital mechanisms of corporate governance.

In addition to the Physical Activity and Sports Bill, 2018 that regulates all National Sports Associations, I recommend that there should be enactment of a statutory Instrument tailored for each particular National Statutory Association (NSA). The Ugandan Parliament should work in conjunction with the National Council of Sports in order to enact statutory instruments regulating the Act in every registered National Sports Association for example, “The FUFA regulations, The Uganda Boxing Federation regulations etc., in order to nationally legalize every sport in Uganda. The National Council of Sports and the National Sports Associations should consider the peculiarities of the particular NSA and determine how could each can be administered. The NSAs could each be given corporate status through the Act or Statutory Instruments issued by

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[68]https://www.fufa.co.ug/fifa-responds-to-ncs-over-fufas-registration-as-trustee-incorporation-act/

[69]The National Council for Sports Regulations, 2014

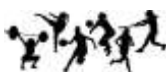
the Minister when the NSAs meet the general and minimal requirements in the primary Act. The bill seemingly mandates the tribunal as the court of final appeal. **Section 69(2) of the bill** only provides for appeals by sports federation aggrieved by the decision of the Sports Appeals Tribunal to a court of law with the jurisdiction. The bill does not provide for an avenue of an appeal for a regular litigant such as an athlete aggrieved with the decision of the sports disputes tribunal. This is contrary to Article 132 of the Constitution of Uganda that stipulates that the Supreme Court shall be the final court of appeal.

In **Uganda Super League Limited V Federation of Uganda Football Association**[70], the applicant sought an interim order to stay the execution of contract between the respondent and Azam TV (a third party) which had an effect of breach against the 2-year contract with the applicant. The applicant lost in the trial court with court stating that the 2- year contract had been rightly terminated after just one year and that it would not give an order forcing the respondent to end the new contract with a third party. Court while referring to **Somali Democratic republic v. Anoop S. Sunderial Treon**[71]stated that; in the normal course of things, where a notice of appeal has been filed and a substantive application for stay is pending in court, this court may grant an order of stay. This is to prevent the applicant's right to appeal and the appeal itself from being nugatory. But the court will not issue an order of stay if the appeal appears not to be bonafide, or there are other sufficient exceptional circumstances.

In my well-considered opinion, a proper appeal process should be included in the bill. Furthermore, in forming the Sports Disputes Tribunal as a mandate of the Minister, it implies that it is not an independent tribunal. It is subject to the whims of the Minister in terms of its membership. This is not the custom when it comes to international sports disputes tribunals in that they are meant to be specialized autonomous bodies. Though linked to the Executive through a system of checks and

[70]Civil Application No. 67 of 2015

[71]Civil application No. 11 of 1988 (SC)



balances, fundamentally, the Judiciary and other quasi-judicial bodies like the sports disputes tribunal have to be free from influence by other arms of governance. Appointment of members of the tribunal to certain matters should be left to an independent committee as well, just like International Council of Arbitration for Sport (ICAS) does.

It is notable that the objectives of the Sports Development Fund are not provided for by the bill. Rather, the Act envisages that the Minister with approval of cabinet shall through statutory instrument prescribe the objectives of the fund. This makes the objectives of the fund ambiguous and susceptible to the Minister's discretion which could be exercised arbitrarily. Setting the objectives of the fund after establishing the fund is putting the cart before the horse! The objectives of the Sports development fund ought to be expressly stated by the Act. Establishment of a fund whose objectives are not clearly stated makes it susceptible to corruption and embezzlement of such funds.

Finally, Sports law is an area that's growing at higher rate in Uganda today and it's a constitutionally recognized right and several sports have evolved in Uganda today including football, table tennis, basket ball, rugby among others. A number of laws in Uganda have been enacted to effectuate the progress of sports in Uganda including the 1995 constitution, the National council of sports Act, National council of sports regulation, 2014 and many other laws.

THE LEGAL NATURE OF SPORTING ORGANIZATIONS

Incorporation as an association

If financial gain is not one of an organization's objects, it may choose to incorporate under the association's legislation of its state, which provides a relatively simple, cheap means of incorporation.

The Trustees Incorporation Act Cap 165

Section 1(1), Trustees or a trustee may be appointed by anybody or association of persons established for any religious, educational, literary, scientific, social or charitable purpose, and such trustees or trustee may apply, in the manner hereafter mentioned, to the Minister for a certificate of registration of the trustees or trustee of such body or association of persons as a corporate body.

The National Council of Sports Regulations, S.I- 38 of 2014.

Regulation 3. Incorporation of a national sports association.

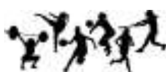
(1) Every national sports association shall be incorporated in accordance with the laws of Uganda.
(2) A "national sports association" means an organization promoting and supervising a particular sport throughout the country and includes a federation.

For the purposes of sub regulation **(2),** the council shall, in determining whether a national association is present throughout the country, take into account;

- The nature of the sport;
- The popularity of the sport;
- The presence of facilities to play the sport;
- The plan of the association to promote the sport; and
- Any other relevant factor.

Regulation 4. Registration of national sports associations.

(1) Every national sports association shall be registered with the council.
(2) The council shall not register a national sports association unless that association meets the requirements of a national sports association specified in **regulation 3, 5, 6, 7 and 8.**



(3) The council shall not register more than one national sports association in respect of each sport in Uganda.
(4) The council shall not register a national association which is incorporated as a company.
(5) An application to register a national sports association shall be in Form A in the Schedule.

In conclusion, The Physical Activity and Sports Bill, with necessary amendments, is welcome regulatory development in the Sports fraternity which is on the rise with increased commercialization of the sector. The field of sports law has moved beyond the traditional anti-trust and labor law boundaries into sports representation and legal ethics, sports and corporate structure, sports and disability, sports and race, sports and gender, sports and taxation and international issues in sports law.[72] It therefore follows that Uganda's sports industry needs a robust, uniform and codified sports legal regime. Nevertheless, a doctrinal overlap will always exist within sports law.

As discussed above, it is no doubt that Sports law is a unique field of law as compared to other fields of law since it encompasses virtually every substantive area of law. This implies that legal practice for a lawyer involved in the business of sports can be varied and substantively rich. Thus a sports law Lawyer can be viewed as the "Ultimate general practitioner" given the broad array of legal subjects that must be mastered. This certainly belies the idea that if sports law is greatly developed in Uganda, many legal issues pertaining the administration of sports law which have been overlooked by the sports community can be addressed by sports lawyers (litigators). Among such issues include;

- Representing Athletes through contract negotiations and disputes with their sports clubs, taxpaying, legal consultations, insurance

[72]Burlette Carter, Introduction: What Makes a "Field" a Field? 1 VA. J. SPORTS & L. 234,245 (1999)

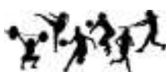
matters, incorporating the clients, representing athletes in court e.t.c.

- Representing sports trainers and couches. In Uganda, trainers and couches seek legal representation. In this context, the lawyer may be called upon to perform numerous tasks including, negotiating and drafting employment contracts, endorsement of contracts with merchandisers and representing coaches in team and league disputes.

- Acting as counsel for a major or minor league sports team or individual team. The lawyer who acts as counsel for a team or league will need to negotiate contracts with employees including coaches and administrative staff, negotiating lease agreements relating to sports venues and construction related to contracts, negotiating endorsement contracts with sports merchandisers, negotiating television and radio contracts e.t.c.

- Representing Education institutions. Under this, sports lawyers can be called upon to represent their clients in broad and varied ways, including representing Colleges and University in negotiating and enforcement of employment contracts with coaches, players and athletic directors, representing University and Colleges in law shits addressing such matters e.t.c.

In a nutshell, the above indicate how sports law together with sports lawyers are important in the sports community and how all this calls for a need to develop sports law in Uganda. This can relatively be done through the Nations Schools of Law acting as the main springboards for fostering the study of “Sports Law”. Therefore, law schools like, Makerere University law school, UCU school of law, IUIU school of law, KIU school of law among others have to be encouraged to start offering Sports Law as a mastering course i.e “Master of Laws in Sports Law(L.L.M)” in order to produce people who can be termed as “Sports



lawyers". This can greatly lead to the development of sports law as well established field of law.

Similarly, the government of Uganda through the Ugandan Parliament should also work hand in hand with the National Council of Sports (NCS) in order to enact various "sports related Acts of parliament or legislation regulating laws in every registered National Sports Association for example, "The FUFA Act, The Uganda Boxing Federation Act, The Uganda Badminton Association Act" e.t.c, in order to nationally legalize every sport in Uganda as well as developing "SPORTS LAW".

CHAPTER SEVEN

Olympic Sports and other International sports organization

From as old as the history of ancient Greece, Olympic games have grown to become a major subject in international sports. however, while the underlying concept to the games may still be intact, the organizational structure of the games is greatly different today compared to the early games. The Olympic Games have become a business, much like other sporting events. For individuals working in or with Olympic contests, a thorough under- standing of the modern Olympic movement is imperative in order to effectively manage Olympic-related entities. Issues such as drug testing, eligibility of athletes, and boycotts of Olympic Games by countries have been sources of litigation for the International Olympic Committee (IOC). This section will review the structure and briefly examine the economics of the Olympic Games.

Organizational Structure

Created in 1894 to revive the ancient Greek games, the IOC is an international, nongovernmental, not-for-profit organization located in Switzerland. Its main duty is to oversee all aspects of the Olympic movement, but its most visible role is that of supervisor for the summer and winter Olympic Games. As the highest governing body of the Olympics, the IOC owns all of the rights to the Olympic symbol, anthem, flag, and motto.

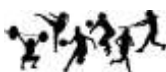
The international nature of the Olympics complicates its study from a legal perspective since the countries in the Olympic movement have different laws, judicial systems and decisions, and different individual rights. The International Olympic Committee (IOC), International Federations (IFs), National Olympic Committees (NOCs), and National Governing Bodies (NGBs) all have their own by-laws or charters. However, the IOC Charter is the ultimate governing document for all such organizations. Likewise, the IOC is the "supreme authority" on all matters pertaining to the Olympic Games. Exhibit 1.8 shows the organizational structure of the IOC.

The highest ranking body in the IOC hierarchy is the Executive Board. The Executive Board is elected by delegates of each organizational member in an annual meeting. This group of delegates who serve a one-year term is called a session. The session elects a president of the IOC (current president Jacques Rogge was elected in 2001), who serves an initial eight-year term and thereafter can be elected to one four-year term. The session also elects four vice presidents and six other members of the Executive Board who all serve four-year terms. The vice presidents and six other members can be re-elected, but not in the same year that their original term expires, unless they are elected by the president. The Executive Board meets either when the president orders a meeting or when a majority of its members request a meeting.

The Executive Board's main functions are the following:

- To attend to the observance of the Olympic Charter
- To assume responsibility for the administration of the IOC
- To approve the IOC's internal organization and all internal regulations relating to the organization
- To be responsible for the management of the IOC's finances
- To report to the session on any proposed rule changes
- To submit to the session the names of persons it recommends for election to the IOC
- To establish the agenda for the sessions
- To appoint the director general (on recommendation from the president)
- To keep records of the IOC
- To pass legislation and policy to ensure proper adherence to the Olympic Charter and the proper organization of the Olympic Games
- To perform any other duties assigned to it by the session

In **Defrantz v. US Olympic Committee**, the plaintiff brought a case against the defendant national Olympic committee in violation of the Olympic charter for purportedly, failing to perform its role of organizing and ensuring USA participates in the Olympics at Moscow. Court expounded on the functions of the National Olympic Committee of USA Visa viz the International Olympic Committee and finally held among others, thus;



> *Resolution of this issue also disposes of plaintiffs' allegation that defendant violated the Act by breaching a duty to organize, finance, and control participation in the events and competition of the Olympic Games by United States athletes. Because defendant had the authority to decide not to send a team to compete in the summer Olympics, it could not have breached this duty, which does not arise and become relevant, when the USOC has decided that an American team will not participate in the Olympics.* ”

Beneath the Executive Board is the administration of the IOC. The administration is led by the director general and directors. The director general is similar to a chief operating officer of a corporation in that under the direction of the president of the IOC, he or she directs the day-to-day operations of the organization. The individual directors in the administration control specific areas of the IOC such as international cooperation, Olympic Games coordination, finance, marketing, legal affairs, technology, operations, communications, medical, and relations with the International Federations, National Olympic Committees, and Organizing Committees of Olympic Games (OCOG). The main duties of the administration are as follows:

- Implementing decisions made by the session, the Executive Board, and the president
- Implementation and follow-up of work from all commissions
- Serve as a liaison with all IFs, NOCs, and OCOGs
- Coordinate the preparation of all Olympic Games and other Olympic events
- Disseminate information within the Olympic movement
- Consult candidate cities on their bids to host the Olympic Games

- Promote sport, education, and culture with international governmental and non-governmental agencies
- Execute tasks assigned by the president and the Executive Board

Beneath the IOC administration are the individual international federations (IFs). The IFs are nongovernmental bodies given the authority by the IOC to administer specific sports on the international level. IFs must adhere to the Olympic movement rules and regulations regarding fair play, humanitarian efforts, environmental concerns, and elevating the status of women in sport, but they maintain their independence as far as establishing and enforcing rules governing their respective sports.

They set their definitions of “amateur” and decide whether or not professional athletes will be allowed to compete in the Olympic Games in their particular sports. IFs are also responsible for the organization and execution of their sport at all Olympic Games and any other games affiliated with the IOC such as the Panam Games. For example, the international federation for the sport of basketball is known by the acronym FIBA (for Fédération Internationale de Basketball). Since the IFs are responsible for individual sports on an international level, they are directly above the national governing bodies of each sport. As an example, the NGB of basketball in the United States is called USA Basketball. As such, USA Basketball works with FIBA and must adhere to FIBA’s rules and regulations. To be eligible to participate in the Olympic Games, an individual must be deemed eligible by the particular IF and NGB presiding over the sport. Rule 45 of the Olympic Charter explains how Olympic athletes become eligible for competition:

To be eligible for participation in the Olympic Games, a competitor must comply with the Olympic Charter as well as with the rules of the IF concerned as approved by the IOC, and must be entered by his NOC. He must notably:

- Respect the spirit of fair play and nonviolence, and behave accordingly on the sports field
- Refrain from using substances and procedures prohibited by the rules of the IOC, the IFs, or the NOCs
- Respect and comply in all aspects with the World Anti-Doping Code (see http://www. olympic.org) In addition, the bylaw to Rule 45 describes the role of the IFs and obligations of athletes when participating in the Olympic Games:
- Each IF establishes its sport's own eligibility criteria in accordance with the Olympic Charter. Such criteria must be submitted to the IOC Executive Board for approval.
- The application of the eligibility criteria lies with the IFs, their affiliated national federations, and the NOCs in the fields of their respective responsibilities.
- Except as permitted by the IOC Executive Board, no competitor who participates in the Olympic Games may allow his person, name, picture, or sports performance to be used for advertising purposes during the Olympic Games.
- The entry or participation of a competitor in the Olympic Games shall not be conditional on any financial consideration

Therefore, the eligibility rules for each sport are determined by the IF of that sport an issue that came under international scrutiny when more professional athletes were allowed to participate in the Olympic Games. The National Olympic Committees administer Olympic programs for a particular nation. For example, the United States Olympic Committee (USOC) is the NOC for all activities related to the Olympics in the United States. Despite the nonpolitical ideals of the Olympics, most governments exert a high level of influence over their countries' NOCs. The United States is no different, as witnessed by the political 1980 boycott of the Moscow games and various legislation devoted to the Olympics. In particular, Congress passed the Amateur Sports Act in 1978 and amended it in 1998, establishing the USOC's authority over international amateur sports competition (as opposed to the Amateur Athletic Union [AAU] or NCAA). A responsibility of the National

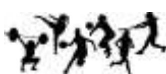
Olympic Committees is to establish training programs and funds so athletes have a competitive opportunity to earn a spot on the Olympic roster.

The NOCs also supervise any attempt by a city in their country to host an Olympic Games. If there is more than one city from a country vying to host the games, then that country's NOC must decide which city will represent the country in the selection process in front of the IOC. In addition, the NOCs implement any rule changes passed by the IOC in their national Olympic programs. It is this structure that theoretically maintains a uniform playing field from country to country then a city is chosen to host an Olympic Games by the IOC, a managing body from that city is formed to coordinate all the operations undertaken to stage the games. These bodies are known as local organizing committees (LOCs). For example, the Salt Lake Organizing Committee (SLOC) was the organizing body for Salt Lake City, Utah, when it hosted the 2002 Winter Olympics. The LOCs are responsible for developing infrastructure, facilities, transportation, athlete housing, and any other elements deemed necessary by the IOC to ensure a successful Olympiad. Most countries' LOCs receive some funding from their national government to stage the games; the United States is the only country that does not grant any federal government subsidies to a city hosting the Olympic Games. Thus, the host city is burdened with providing additional revenue from the games in order to off- set the expenditures undertaken in hosting the games. This topic will be covered in more depth later.

OLYMPIC CHARTER

Brief Background

Modern Olympism was conceived by Pierre de Coubertin, on whose initiative the International Athletic Congress of Paris was held in June 1894. The International Olympic Committee (IOC) constituted itself on 23 June 1894. The first Olympic Games (Games of the Olympiad) of modern times were celebrated in Athens, Greece, in 1896. In 1914, the



Olympic flag presented by Pierre de Coubertin at the Paris Congress was adopted. It includes the five interlaced rings, which represent the union of the five continents and the meeting of athletes from throughout the world at the Olympic Games. The first Olympic Winter Games were celebrated in Chamonix, France, in 1924.Olympic Charter (O.C).

The Olympic Charter is the codification of the fundamentals principles of Olympism and the rules and bye-laws adopted by the International Olympic Committee. (I.O.C) it is responsible for organizing and monitoring the actions and functions of the Olympic Movement and establishes the conditions for the celebration of the Olympic Games. It establishes the relations between the International Federations, the National Olympic Committees and the Olympic Movement. It was established in 1908 but this title officially came to light in 1978. The Olympic Charter establishes the International Olympic Committee which exercises supervisory powers upon all members subject to it. Under article 10 of the O.C which explains membership to the committee, it requires that a member eligible under this organization are persons that speak English or French and are citizens of and reside in a country which possesses a National Olympic Committee recognized by the I.O.C.

The I.O.C is responsible for ensuring the regular celebration of the Olympic Games and encouraging the organization of Amateur sports competitions. According to article 9. It meets when summoned by the president who convokes a meeting at any time upon the written request of no less than one third of the members as under article 18. The meetings are presided over by the president in whose absence, the vice president takes over. The president is electable for a term of 8 years and is privileged to be re-elected for another 4 years per article 12 and is deputized by three electable vice presidents.

Fundamental Principles of Olympism

1) Olympism is a philosophy of life, exalting and combining in a balanced whole the qualities of body, will and mind. Blending sport with culture and education, Olympism seeks to create a way of life based on the joy of effort, the educational value of good

example, social responsibility and respect for universal fundamental ethical principles.

2) The goal of Olympism is to place sport at the service of the harmonious development of humankind, with a view to promoting a peaceful society concerned with the preservation of human dignity.

3) The Olympic Movement is the concerted, organized, universal and permanent action, carried out under the supreme authority of the IOC, of all individuals and entities who are inspired by the values of Olympism. It covers the five continents. It reaches its peak with the bringing together of the world's athletes at the great sports festival, the Olympic Games. Its symbol is five interlaced rings.

4) The practice of sport is a human right. Every individual must have the possibility of practicing sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play.

5) Recognizing that sport occurs within the framework of society, sports organizations within the Olympic Movement shall have the rights and obligations of autonomy, which include freely establishing and controlling the rules of sport, determining the structure and governance of their organizations, enjoying the right of elections free from any outside influence and the responsibility for ensuring that principles of good governance be applied.

6) The enjoyment of the rights and freedoms set forth in this Olympic Charter shall be secured without discrimination of any kind, such as race, color, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status.

7) Belonging to the Olympic Movement requires compliance with the Olympic Charter and recognition by the IOC.

It is imperative to note that the interpretative arm of this Olympic Charter is the Independent Court of Arbitration to Sport (CAS) with

headquarters in Lausanne (Switzerland) recognized under **article 57 of the FIFA Statutes.** It is charged with resolving dispute between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents.

Principle 4. The practice of sport is a human right. Every individual must have the possibility of practicing sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play.

Principle 6. The enjoyment of the rights and freedoms set forth in this Olympic Charter shall be secured without discrimination of any kind, such as race, color, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status.

Rule 2.18. The IOC's role is to promote safe sport and the protection of athletes from all forms of harassment and abuse.

Rule 2.1 was included in the Charter in 2019.

Principle 6 of the Olympic Charter is now also reflected in **Article 13.2(a) of the 2024 HCC** core requirement.

HOST CITY CONTRACT (HCC) 2024(NOW: OLYMPIC HOST CONTRACT (OHC))

In February 2017, following the adoption of the Olympic Agenda 2020 in December 2014, explicit obligations focusing on the protection of human rights were added to the Host City Contract (HCC) for the 2024 Games.[73] The majority of Games-related human rights abuses may potentially fall into one of the following categories:

[73] HCC 2026 and HCC 2028 include similar human right obligations.

- Violation of labor rights;
- Forced evictions;
- Repression of civil rights, in particular the right to freedom of expression and the right to peaceful assembly.

It is important to note that the UN Guiding Principles referred to in Article 13.2.b 2024 HCC is a non-binding legal framework intended to minimize adverse human rights impacts triggered by business activities. The core human right provision i.e. article 13 HCC 2024 does not specify which human rights the Host City, the Host National Olympic Committee (NOC) and the Organizing Committees for the Olympic Games (OCOG) should respect and protect.

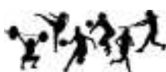
Article 13. Respect of the Olympic Charter and promotion of Olympism

- **Article 13.1.** The Host City, the Host NOC and the OCOG undertake to abide by the provisions of the Olympic Charter and the IOC Code of Ethics and agree to conduct their activities related to the organization of the Games in a manner which promotes and enhances the fundamental principles and values of Olympism, as well as the development of the Olympic Movement.

- **Article 13.2.** Pursuant to their obligations under

- **Article 13.1**, the Host City, the Host NOC and the OCOG shall, in their activities related to the organization of the Games:

  a) prohibit any form of discrimination with regard to a country or a person on grounds of race, color, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status;



b) protect and respect human rights and ensure any violation of human rights is remedied in a manner consistent with international agreements, laws and regulations applicable in the Host Country and in a manner consistent with all internationally-recognised human rights standards and principles, including the United Nations Guiding Principles on Business and Human Rights, applicable in the Host Country; and

c) refrain from any act involving fraud or corruption, in a manner consistent with any international agreements, laws and regulations applicable in the Host Country and all internationally recognized anti-corruption standards applicable in the Host Country, including by establishing and maintaining effective reporting and compliance.

- **Article 13.3.** The IOC, through its Coordination Commission referred to in Article 27, shall establish a reporting mechanism to address the obligations referred to in Article.13.1 and Article13.2 in connection with the activities of the Host City, the Host NOC and the OCOG related to the organization of the Games.

Sustainability measures have been added to the HCC.

Article 15. Sustainability and Olympic legacy (protection of labour rights to a certain extent)

- **15.1,** The Host City, the Host NOC and the OCOG undertake to carry out all activities foreseen under the HCC in a manner which embraces sustainable development and contributes to the United Nations' Sustainable Development Goals.

- 15.2, Pursuant to their obligations under S.15.1, the Host City, the Host NOC and the OCOG shall in particular:

a) define, implement and communicate a comprehensive and integrated sustainability programme as well as a legacy programme compliant with the provisions of the "HCC – Operational Requirements – Sustainability and Olympic Legacy"; and

b) take all necessary measures, where necessary in cooperation with Host Country Authorities and other third parties, to ensure that their activities in relation to the organisation of the Games comply with any international agreements, laws and regulations applicable in the Host Country, with regard to planning, construction, protection of the environment, health and safety, labour and working conditions and cultural heritage.

In case of non-compliance with the HCC, **Article 36** provides that the IOC may decide to retain all amounts held in the General Retention Fund or withhold any grant to be made to the OCOG pursuant to the HCC.

Article 36 Measures in case of non-compliance with the HCC

- **36.2**. In the event of any non-compliance by the Host City, the Host NOC and/or the OCOG with any of their obligations pursuant to the HCC, including any failure to comply with any deadline included in the Games Delivery Plan, the IOC shall be entitled to take any or several of the following measures:

    a) Retain all amounts held in the General Retention Fund;

    b) Withhold (in whole or in part) any payment due, or grant to be made, to the OCOG pursuant to the HCC, including without limitation in relation to S.8 and S.9;

c) Keep any and all amounts retained or withheld, including interest, as liquidated damages;

d) Set-off any and all of its obligations pursuant to the HCC against any claim against the Host City, the Host NOC and/or the OCOG for any damages resulting from any non-compliance by any such party(ies), or any sums held in the General Retention Fund or otherwise withheld pursuant to **S.36.2**; and

e) After giving a reasonable notice, perform any obligation that the Host City, the Host NOC and/or the OCOG may have failed to perform in accordance with the HCC, at the cost of the Host City, the Host NOC or the OCOG, jointly and severally. 3 (…)

Article 38.2 allows the IOC to terminate the HCC and withdraw the Games from the HC in case of violation. **Article 38.2.** The IOC shall be entitled to terminate the HCC and to withdraw the Games from the Host City, the Host NOC and the OCOG if: (…) there is a violation of or failure to perform by the Host City, the Host NOC and/or the OCOG any material obligation pursuant to the HCC or under any applicable law. The CAS is competent to hear any dispute in connection with the HCC.

Article 51 Governing law and arbitration

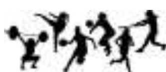
- **Article 51.2**. Any dispute concerning the validity, interpretation or performance of the HCC shall be determined conclusively by arbitration, to the exclusion of the state courts of Switzerland, of the Host Country or of any other country; it shall be decided by the Court of Arbitration for Sport in accordance with the Code of Sports-Related Arbitration of such Court. The arbitration shall take place in Lausanne, in the Canton of Vaud, Switzerland. If, for any reason, the Court of Arbitration for

Sport denies its competence, the dispute shall then be determined conclusively by the state courts in Lausanne, Switzerland.

Mission and role of the IOC

The mission of the IOC is to promote Olympism throughout the world and to lead the Olympic Movement. The IOC's role is:

- To encourage and support the promotion of ethics and good governance in sport as well as education of youth through sport and to dedicate its efforts to ensuring that, in sport, the spirit of fair play prevails and violence is banned;
- To encourage and support the organization, development and coordination of sport and sports competitions;
- To ensure the regular celebration of the Olympic Games;
- To cooperate with the competent public or private organizations and authorities in the endeavor to place sport at the service of humanity and thereby to promote peace;
- To take action to strengthen the unity of the Olympic Movement, to protect its independence and to preserve the autonomy of sport;
- To act against any form of discrimination affecting the Olympic Movement;
- To encourage and support the promotion of women in sport at all levels and in all structures with a view to implementing the principle of equality of men and women;
- To protect clean athletes and the integrity of sport, by leading the fight against doping, and by taking action against all forms of manipulation of competitions and related corruption.



RECOGNITION BY THE IOC

(a) The IOC may grant formal recognition to the constituents of the Olympic Movement.
(b) The IOC may recognize as NOCs national sports organizations, the activities of which are linked to its mission and role. The IOC may also recognize associations of NOCs formed at continental or world level. All NOCs and associations of NOCs shall have, where possible, the status of legal persons. They must comply with the Olympic Charter. Their statutes are subject to the approval of the IOC.
(c) The IOC may recognize IFs and associations of IFs.
(d) The recognition of associations of IFs or NOCs does not in any way affect the right of each IF and of each NOC to deal directly with the IOC, and vice-versa.
(e) The IOC may recognize non-governmental organizations connected with sport, operating on an international level, the statutes and activities of which are in conformity with the Olympic Charter.
(f) In each case, the consequences of recognition are determined by the IOC Executive Board.
(g) Recognition by the IOC may be provisional or full. Provisional recognition, or its withdrawal, is decided by the IOC Executive Board for a specific or an indefinite period.

The IOC Executive Board may determine the conditions according to which provisional recognition may lapse. Full recognition, or its withdrawal, is decided by the Session. All details of recognition procedures are determined by the IOC Executive Board.

Legal status

- The IOC is an international non-governmental not-for-profit organization, of unlimited duration, in the form of an association with the status of a legal person, recognized by the Swiss Federal

Council in accordance with an agreement entered into on 1 November 2000.

- Its seat is in Lausanne (Switzerland), the Olympic capital.
- The object of the IOC is to fulfill the mission, role and responsibilities as assigned to it by the Olympic Charter.
- In order to fulfill its mission and carry out its role, the IOC may establish, acquire or otherwise control other legal entities such as foundations or corporations

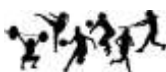
GOVERNANCE OF OLYMPIC GAMES

The International Federation

Recognition of Ifs, in order to develop and promote the Olympic Movement, the IOC may recognize as Ifs international non-governmental organizations administering one or several sports at world level and encompassing organizations administering such sports at national level.
The statutes, practice and activities of the IFs within the Olympic Movement must be in conformity with the Olympic Charter, including the adoption and implementation of the World Anti-Doping Code. Subject to the foregoing, each IF maintains its independence and autonomy in the administration of its sport.

International Federations and National Governing Bodies

As mentioned earlier, the IFs are the governing bodies for a specific Olympic sport worldwide. They determine eligibility rules, game rules, and other procedures related to a particular sport. Let us return to our example of FIBA, the IF for the sport of basketball. FIBA is responsible for the overall management of all Olympic-related basketball activities, contests, and regulations. Operating from its statutes and laws, FIBA governs the NGBs to safeguard the game against corruption, to grow the game worldwide, and to foster competition between member nations. Since FIBA is an IF, the rules of play differ from collegiate or professional rules to which most Americans are accustomed. For



example, the size of the lane in FIBA rules is 19', 8.2" × 19', 0.3"; in the NBA the lane is 16' × 19'; and in NCAA competition the lane is 12' × 19'. FIBA also passes rules on eligibility of players. For instance, starting with the 1992 Barcelona Summer Olympics, FIBA allowed professional basketball players to participate in Olympic competition. Until that time, all the teams, including those from the United States, comprised amateur players. As a result of FIBA's rule change, the United States sent to the 1992 Olympics a team largely composed of NBA players, who routed all of their opponents. This "Dream Team" was met with great anticipation from around the world as the United States showcased its best athletes. However, these players were s elected instead of amateur collegiate players, the population who had represented the United States until then. USA Basketball is the NGB for international basketball in the United States.

As an NGB, USA Basketball is subject to the rules and regulations set forth by FIBA. However, within this framework, USA Basketball governs all basketball- related activities undertaken by the United States as it pertains to FIBA-sanctioned international competition and to national competition that falls under the Olympic umbrella. USA Basketball comprises 26 members of differing levels — active, associate, and affiliate. Active members are national sport organizations, such as the NCAA, AAU, and NBA that operate a nationally active basketball program. Associate members, such as Athletes in Action and the Harlem Globetrotters, also con- duct active basketball operations but do not qualify for active membership. Affiliate members like Basketball Travelers, Inc., and Sport Tours International, Inc., are basically for commercial groups that are involved in basketball in their businesses.

THE LEGAL GOVERNANCE

World Anti-doping Code (WADC) 2021

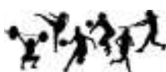
The compliance with the principles of human rights are enshrined in the WADC including the principle of fair hearings. Purpose, scope and organization of the world anti-doping program and the code, p.9. Rule

of law to ensure that all relevant stakeholders have agreed to submit to the Code and the International Standards, and that all measures taken in application of their anti-doping programs respect the Code, the International Standards, and the principles of proportionality and human rights. The Code has been drafted giving consideration to the principles of proportionality and human rights, p. 10. Introduction, p.17 (…) They [the sports-specific rules] are not intended to be subject to or limited by any national requirements and legal standards applicable to such proceedings, although they are intended to be applied in a manner which respects the principles of proportionality and human rights.

Fair Hearings, For any Person who is asserted to have committed an anti-doping rule violation, the Anti-Doping Organization with responsibility for Results Management shall provide, at a minimum, a fair hearing within a reasonable time by a fair, impartial and Operationally Independent hearing panel in compliance with the WADA International Standard for Results Management. A timely reasoned decision specifically including an explanation of the reason(s) for any period of Ineligibility and Disqualification of results under **Article 10.10** shall be Publicly Disclosed as provided in **Article 14.3**.

Appeals Involving Other Athletes or Other Persons. In cases where **Article 13.2.1** is not applicable [Appeals Involving International-Level Athletes or International Events where the decision may be appealed exclusively to CAS], the decision may be appealed to an appellate body in accordance with rules established by the National Anti-Doping Organization. The rules for such appeal shall respect the following principles:

- A timely hearing;
- A fair, impartial, and Operationally Independent and Institutionally Independent hearing panel;
- The right to be represented by counsel at the Person's own expense; and
- A timely, written, reasoned decision.



If no such body as described above is in place and available at the time of the appeal, the Athlete or other Person shall have a right to appeal to CAS.[74] Each government should respect arbitration as the preferred means of resolving doping-related disputes, subject to human and fundamental rights and applicable national law

FIFA

Following pressure exercised by transnational mobilization of social movements and increasing public scrutiny, FIFA has taken measures regarding Human Rights in the last years. Critics have notably arisen in relation to violation of human rights linked to the Russia World Cup in 2018 and to the exploitation of migrant workers on World Cup construction sites in Qatar. A distinction can be made between human rights impacts related to (i) FIFA's events i.e. World Cup-related human risks range from labour and housing rights issues to restriction of freedom of speech, freedom of movement, and public security concerns and (ii) human rights impacts related to FIFA's daily activities i.e. issue of trafficking of child footballers and abuse/harassment of female players.

[74] Clarification of the standards of independence that apply to the adjudicatory bodies. Based on Art. 6 (1) of the European Convention on Human Rights ("ECHR"), different standards apply to the first and the second instances. According to this provision only one instance needs to comply with all procedural guarantees of Art. 6 (1) ECHR (including the principle of independence). This requirement is always met if a final appeal to the CAS is possible, since the CAS has been found [by the ECtHR in the Mutu Pechstein case (02.10.2018), no138 et seq.] to be a true and independent arbitral tribunal which, in addition, respects the athletes' right to a public hearing (cf. Art. R57 (2) [amended following the ECtHR judgement in Mutu Pechstein]). If the appellate body established by the rules of a NADO is competent to (finally) decide the case, Art. 13.2.2 WADC 2021 ensures that the same standards are met at the local appellate level. Otherwise, the athlete or other person has a right to appeal the first instance decision directly to the CAS. (Haas U., The Revision of the World Anti-Doping Code 2021, CAS Bulletin March 2020).

FIFA Statutes 2016

Article 3: Human rights. FIFA is committed to respecting all internationally recognised human rights and shall strive to promote the protection of these rights.[75]

Article 4: Non-discrimination, equality and neutrality. Discrimination of any kind against a country, private person or group of people on account of race, skin colour, ethnic, national or social origin, gender, disability, language, religion, political opinion or any other opinion, wealth, birth or any other status, sexual orientation or any other reason is strictly prohibited and punishable by suspension or expulsion.

FIFA remains neutral in matters of politics and religion. Exceptions may be made with regard to matters affected by FIFA's statutory objectives.

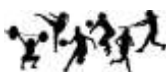
FIFA Human Right Policy, May 2017

Article 1: Commitment, FIFA is committed to respecting human rights in accordance with the UN Guiding Principles on Business and Human Rights (UNGPs).

Article 2: Determination of the HR recognized. FIFA's commitment embraces all internationally recognised human rights, including those contained in the International Bill of Human Rights (consisting of the

[75] Through the integration of human rights in Article 3 of the FIFA Statute, it is a possibility that they will play a greater role in disputes at the CAS, which if invoked by the parties would have to assess the compliance of a particular FIFA decision or regulation with internationally recognised human rights. Yet, the availability of such a procedural route to challenge the human rights compatibility of FIFA's decisions will be dependent on whether many of the primarily affected actors will have standing at the CAS.

FIFA could also allow affected third-parties to challenge its decisions on human rights grounds at the Court of Arbitration for Sport., Antoine Duval, FIFA and Human Rights: Introduction to the symposium 4 July 2019.



Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) and the International Labour Organization's Declaration on Fundamental Principles and Rights at Work. Where FIFA may have adverse impacts on the human rights of people belonging to specific groups or populations that require special attention, it will also consider other international standards and principles that elaborate on the rights of such individuals, including in particular those standards concerning indigenous peoples, women, national, ethnic, religious and linguistic minorities, children, disabled people, migrant workers and their families and human rights defenders. Moreover, where FIFA's operations extend to situations of armed conflict, it will also respect the standards of international humanitarian law.

Article 5: FIFA's salient human rights risks. Given the nature of its operations, FIFA's involvement with adverse human rights impacts is most likely to occur through its relationships with other entities. FIFA's salient human rights risks include, for example: labour rights, land acquisition and housing rights, discrimination, security and players' rights.

Article 6: Engagement in an ongoing due diligence process. Guided by its human rights approach (see below), FIFA embeds its commitment throughout the organisation and engages in an ongoing due diligence process to identify, address, evaluate and communicate the risks of involvement with adverse human rights impacts. FIFA is committed to providing for or cooperating in remediation where it has caused or contributed to adverse human rights impacts and will seek to promote or cooperate in access to remediation where it is otherwise linked to adverse impacts through its relationships with third parties, including by exploring all options available to it.

FIFA Human Rights Advisory Board created in March 2017: publishes reports evaluating FIFA's human rights progress and making

recommendations on how FIFA should address human rights issues linked to its activities. Complaint mechanism for human rights defenders introduced in May 2018, just before the start of the World Cup in Russia. 2024 and 2026 FIFA World Cup bidding and hosting requirements: sustainability and legacy considerations are regarded as important elements of the bid evaluation.

UEFA

2024 EURO bidding requirements and staging agreement Sector 03 Political, Social and Environmental Aspects

Human rights

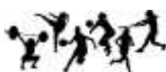
The Bidders have the obligation to respect, protect and fulfil human rights and fundamental freedoms, with a duty to respect human, labour and child rights during the Bidding Procedure and, if appointed, until the end of the dismantling of UEFA EURO 2024. 'Human rights' refers to the set of rights and freedom to which all human beings are considered to be entitled to, whatever their nationality, place of residence, sex, sexual orientation, national or ethnic origin, colour, religion, language, age, or any other status. These rights are all interrelated, interdependent and indivisible.

Reference to the United Nations' Guiding Principles on Business and Human Rights.

World Athletics

In order to respect human rights, the Bidders should aim at:

- Culturally embedding human rights; 20/04/2017 Sector 03 Political, Social and Environmental Aspects | Page 5 UEFA EURO 2024 Tournament Requirements



- Proactively addressing human rights risks;
- Engaging with relevant stakeholders and implementing means of reporting and accountability.

Reporting indicators could for instance be:

1) Measures to prevent child labour in supply chains involved in UEFA EURO 2024 delivery or to prevent labour rights violations, in particular when building or renovating the Stadiums.

2) Evidence of meaningful consultation of stakeholders and vulnerable groups affected by UEFA EURO 2024.

3) A complaint mechanism and effective remedies for human rights infringements (including labour standards and corruption due diligence) in direct relation with the organisation of UEFA EURO 2024.

Compliance indicators could be:

a) ethic code comprising basic values;

b) Comprehensive risk assessment with regard to corruption, fraud and any other criminal acts and unethical behavior;

c) Compliance management system according to the risk assessment and in line with international standards, including: – code of conduct; – guidelines on gifts, invitations, conflict of interest; – secure reporting system (including mechanism to protect and secure the anonymity of whistleblowers and complainants who do not want to be publicly identified).

Constitution, Article 4.1, The purposes of World Athletics is to:. preserve the right of every individual to participate in Athletics as a sport, without unlawful discrimination of any kind undertaken in the spirit of friendship, solidarity and fair play

COMMONWEALTH GAMES FEDERATION

Integration of the UNGP across the CWGF's operations. Commonwealth Consensus Statement on Promoting Human Rights in and through Sport, 5 October 2017

Human Right Policy Gold Cost 2018 Commonwealth Games Corporation

Policy statement,
The purpose of this policy is to demonstrate GOLDOC's commitment to human rights, transparency and accountability and to guide and direct actions and decisions taken by GOLDOC in relation to its human rights impacts in the planning and delivery of GC2018.

Guiding principles
GOLDOC will adopt the guiding principles set out in the UNGP as an appropriate reference standard to ensure a holistic approach to the management of human rights across GC2018 planning and delivery.

Scope
This policy applies to the delivery of GC2018 by GOLDOC, including its workforce, contractors and volunteers, from planning and implementation to review and post-Games activities. GOLDOC also strongly encourages all other stakeholders associated with GC2018.

INTERNATIONAL PARALYMPIC COMMITTEE

IPC joined the Advisory Council of Center for Sport and Human Rights, 2018,Co-operation Agreement signed with the United Nations Commissioner for Human Rights to further the rights of persons with disabilities, 3 December 2020

FORMULA ONE GROUP

Statement of Commitment to Respect for Human Rights, April 2015. The Formula 1 companies are committed to respecting internationally recognized human rights in its operations globally. Whilst respecting human rights in all of our activities, we focus our efforts in relation to those areas which are within our own direct influence. We do so by taking proportionate steps to:

- understand and monitor through our due diligence processes the potential human rights impacts of our activities;

- identify and assess, by conducting due diligence where appropriate, any actual or potential adverse human rights impacts with which we may be involved either through our own activities or as a result of our business relationships, including but not limited to our suppliers and promoters;

- consider practical responses to any issues raised as a result of our due diligence, within the relevant context; (d) engage in meaningful consultation with relevant stakeholders in relation to any issues raised as a result of our due diligence, where appropriate; and

- respect the human rights of our employees, in particular the prohibitions against forced and child labour, the freedom to associate and organise, the right to engage in collective

bargaining, and the elimination of discrimination in employment and occupation.

Where domestic laws and regulations conflict with internationally recognised human rights, the Formula 1 companies will seek ways to honour them to the fullest extent which does not place them in violation of domestic law.

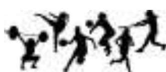
United Nations Guiding Principles on Business and Human Rights

Applicable to Sporting Governing Bodies (SGBs) and all sporting organizations within the world of professional sport, including leagues, clubs, national associations, academies, dispute resolution services, regulatory and enforcement agencies. UNGPs include the human rights of the players within their purview.

The Universal Declarations of Players Rights (UDPR), 14 December 2017

The World Player Rights Policy (WPRP) published by the World Players Association (WPA), July 2017, policy document that anticipated and complements the UDPR.

Institute for Human Rights and Business, 11 White Papers published on Mega-Sporting Events Platform and Human Rights on 31 January 2017 presenting an analysis of the current state of the art on various aspects of human rights in sport.



PROCEDURAL RIGHTS AND EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

Article 6 ECHR, Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

    - To be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
    - To have adequate time and facilities for the preparation of his defence;
    - To defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
    - To examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on

his behalf under the same conditions as witnesses against him;

- To have the free assistance of an interpreter if he cannot understand or speak the language used in court.

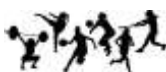
Article 8, Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Indirect application of Article 6 S.1ECHR, CAS 2012/A/2747 WADA v. Judo Bond Nederland (JBN), para. 5.17: Application of Article 6 S.1ECHR, right to a fair trial

Right to a fair trial.

Under **Art. 6 S.1 of the European Convention on Human Rights (ECHR)** everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law in determination of his civil rights and obligations. An exclusion of any external review (be it by a state court or an arbitral tribunal) of disciplinary decisions taken by the judicial organs of an association would be in contradiction with this fundamental right, since internal bodies of federations do not meet these requirements. According to the principle of good faith ("Vertrauensprinzip") the rules and regulation of a federation should be interpreted in a way that are consistent with the mandatory provisions and principles. An (ex ante) exclusion of any external review of disciplinary measures in the rules and regulations of an association would be null and void from a Swiss law perspective.



CAS 2017/A/5003 Jérôme Valcke v. FIFA para. 260ff.: privilege against self-incrimination The privilege against self-incrimination has been recognized as an implied right under Article 6 of the European Convention on Human Rights. The privilege against self-incrimination is the result of a balance of interest and, thus, must be assessed in light of the respective procedural and factual framework.

Retro-active application of the law.

CAS 2015/A/4304 Tatyana Andrianova v. All Russia Athletic Federation (ARAF), pars. 46 – 50, the CAS recognized that fair proceeding excludes the retroactive application of a longer statute of limitation. It does not necessarily follow from the qualification of the statute of limitation as a "procedural rule" that there are no limits to a retroactive application of such rule. Instead, it follows from **Art. 6(1) ECHR** that the procedure must be "fair". CAS panels have repeatedly found that arbitral tribunals are indirectly bound by the ECHR. Applying retroactively a longer statute of limitation to a case that was already time-barred at the time of the entry into force of the new provision is incompatible with a "fair proceeding". All the interests protected by a statute of limitation, in particular the legitimate procedural interests of the "debtor"/"defendant" would be violated if an association could retroactively allow for the persecution of a disciplinary offense already time-barred. Such open-ended approach to disciplinary cases poses a serious threat to the principle of legal certainty that constitutes a violation of **Art. 6(1) ECHR**. Therefore, the 10-year statute of limitation in **Rule 47 of the 2015 IAAF Anti-Doping Rules (ADR)** can only apply to those cases that were not already time-barred on 1 January 2015, i.e. at the time of the entry into force of the 2015 ADR.

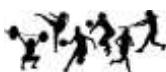
A right to a judicial review.

As regards the remedy of Judicial Review, it is a principle, fairly notorious in my view, that the prerogative order of certiorari is designed to prevent abuse of, or the outright abuse of, power or jurisdiction by public authorities. The legal authorities show that the primary object of the prerogative orders of certiorari and prohibition is to make the machinery of government operate properly and in the public interest. Judicial Review is concerned not with the decision per se but the decision making process.

Essentially, it involves an assessment of the manner in which a decision is made. It is not an appeal and the jurisdiction is exercised in a supervisory manner, not to vindicate rights as such, for instance in the instant matter that the applicant is or is not entitled to participate in the National Super League being organized by the respondents, but to ensure that public powers are exercised in accordance with basic standards of legality, fairness and rationality. In Ugandan jurisdiction, this was stated in **Kyamanywa Andrew K. Tumusiimevs** The IGG.[76]and the point requires no further elaboration. Suffice it to say, however, that the power extends to the acts and ordersof a competent statutory public authority, which has power to impose a liability or give a decision, which determines the rightsor property of the affected parties. Bodies which are bound to explain and defend in any forum the decisions they take in the performanceof their duties are amenable to judicial review.

InCAS 2011/A/2362 Mohammad Asif v. International Cricket Council (ICC), Para. 41: CAS compliant with **art. 6 ECHR** due to its full power to review the facts and the law. **Article R57 of the CAS Code** confers upon CAS panel's full power to review the facts and the law. Furthermore, according to the jurisprudence of the European Court on Human Rights, where a party has access to a court with full judicial

[76]HCT-00-CV-MA-0243-2008 (unreported)



review jurisdiction (including on the merits), the administrative decision of a competition authority is not in breach of Article 6 of the European Convention on Human Rights. See also **CAS 2019/A/6388Karim Keramuddin v. FIFA paras 155, 156** and **CAS 2007/A/1396 & 1402 World Anti-Doping Agency (WADA) and UCI v. Alejandro Valverde & Real Federación Española de Ciclismo (RFEC), para 43[77]-[78]; See also TAS 2017/A/4999, para. 52**

In **CAS 2019/A/6388 Karim Keramuddin v. FIFA paras. 124 – 137**: as a matter of principle, the hearing of "anonymous" witnesses is not per se prohibited as running against the fundamental right to a fair trial, as recognized by the ECHR **(Article 6)** (and the Swiss Constitution **(art. 29(2)).** The European Court of Human Rights (the "ECtHR"), in fact, allowed the use of "protected" or "anonymous" witnesses even in criminal cases (covered also by the far-reaching guarantees set by **Article 6(3) of the ECHR),** if procedural safeguards are adopted. In the same way, the Swiss Federal Tribunal (SFT), in a decision dated 2 November 2006 (6S.59/2006, ATF 133 I 33, at S.4), confirmed that anonymous witness statements do not breach the right to a fair trial when such statements support the other evidence provided to the court. The CAS has also recognized that, when evidence is offered by means of anonymous witness statements, the right to be heard which is

[77] This CAS jurisprudence [de novo jurisprudence] is actually in line with European Court of Human Rights decisions, which in par. 41 of the Wickramsinghe Case concluded that"even where an adjudicatory body determining disputes over civil rights and obligations does not comply with Article 6 (1) [ECHR] in some respect, no violation of the Convention will be found if the proceedings before that body are subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 (1)" (emphasis added).

See also CAS 2009/A/1957 Fédération Française de Natation (FFN) v. Ligue Européenne de Natation (LEN), paras 14, 18 – 25

[78] "In proceedings relating to arbitration, the state courts are under a duty to guarantee that the inalienable values of the ECHR that form part of public policy ('ordre public') are observed. From this it follows that the arbitral tribunals like the CAS are at least indirectly bound by this system of values under ECHR" (HAAS,U., Role and Application of Art 6 of the European Convention on Human Rights (ECHR) in CAS procedures, CAS Seminar, Montreux, 2011).

guaranteed by **Article 6 of the ECHR and Article 29(2)** of the Swiss Constitution is affected, but that a panel may still admit anonymous witnesses without violating such right to be heard if the circumstances so warrant and provided that certain strict conditions are met **(CAS 2009/A/1920; CAS 2011/A/2384 & CAS 2011/A/2386 pars. 21-23 & 26-32).** On the other hand, this principle in article 6 is only applicable in criminal proceedings and not in small disciplinary matters as was seen in; **CAS 2013/A/3139 Fenerbahçe SK v. UEFA, para. 90:** Inapplicability, even indirectly in disciplinary cases, of **Articles 6 S.2 (presumption of innocence) and S.3(d) ECHR** (examination of witnesses for everyone charged with a criminal offence), because, according to CAS arbitrators, sports sanctions do not come under criminal law within the meaning of the Convention: "Insofar as the Club relies on **Article 6(2) of the ECHR** in order to argue that UEFA violated the nulla poena sine lege principle, this argument must fail as **Article 6(2)** is only applicable to criminal proceedings and the present proceedings are not of a criminal nature". See also **TAS 2017/A/4999 para. 97**[79]**. CAS 2010/A/2311 & 2312 Stichting Anti-Doping Autoriteit Nederland (NADO) & the Koninklijke Nederlandsche Schaatsenrijders Bond (KNSB) v. W, para. 33: Article 6 S.3 ECHR** only applies to criminal proceedings.

Art. 6.3 ECHR applies to criminal proceedings only. According to Swiss Law, sport-related disciplinary proceedings conducted by a sport federation against an athlete are qualified as civil law disputes and not as criminal law proceedings. This finding is also in line with constant CAS jurisprudence.

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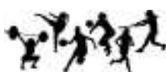
[79] "La Formation rappelle que les procédures disciplinaires revêtent un caractère civil et que les principes de la procédure pénale n'étaient, de ce fait, pas applicables devant la Commission disciplinaire de l'IAAF. Selon la jurisprudence de la CEDH, seule une procédure pénale ou une procédure disciplinaire requalifiée par la CEDH comme étant de nature pénale ou entraînant des conséquences d'ordre pénal entre dans le champ de l'article 6 de la Convention Européenne des Droits de l'Homme."



The panel can order the examination of witnesses where deemed necessary even when this is not a court. This was stated in **CAS 2011/A/2463 Aris FC v. Javier Edgardo Campora & Hellenic Football Federation (HFF), Paras 12 – 16:** "In application of Article R44.3 of the CAS Code, a CAS panel has the power to order the examination of witnesses if deemed necessary. In this respect, the mere fact for a panel to refuse, for valid reasons, to use its investigatory powers to hear a witness does not violate the principle of equality of arms provided for in the European Convention for Human Rights (ECHR). As a general rule, only shortcomings in legal representation which are imputable to the State authorities can give rise to a violation of **Article 6(3)(c) ECHR".**

Right to privacy and property.

Be it noted as held in case law hereby that **Article 8 ECHR** is not to be applied directly. **TAS 2011/A/2433 Amadou Diakite c. FIFA, para. 57 and TAS 2012/A/2862 FC Girondins de Bordeaux c. FIFA, para. 105:** No direct application of international human rights treaties, in particular **art.8 ECHR** regarding the right to private life.

For example, refusal of the applicability of Article 1 of the Additional Protocol to the ECHR on respect for property or **Article 8 ECHR** on the right to privacy, see 2862 para 107. See also **CAS 2009/A/1957 Fédération Française de Natation (FFN) v. Ligue Européenne de Natation (LEN), paras 14, 18 – 25)**

Substantive rights

Indirect application of certain fundamental rights of a state nature under the concept of public policy. Where the ECHR is inadequate in explaining the fundamental right, recourse is given to Swiss law to fill the gaps of the applicable regulation regarding protection of human rights. **CAS 2019/A/6345 Club Raja Casablanca v. FIFA**, para."To the extent that there are gaps in these statutes [FIFA Statutes], the Sole Arbitrator will have recourse to Swiss law (which, anyway reflects a standard of protection of human rights at least equivalent to that

embedded in the European Convention on Human Rights) in order to fill the observed gaps". Sports men and women are also entitled to personal rights to take part in any activity of one's choice in accordance with **Articles 27 and 28** of the Swiss Civil Code relating to the protection of personality.

The freedom to exercise a sporting activity of one's choice

TAS 2012/A/2720 FC Italia Nyon & D. c. LA de l'ASF & ASF & FC Crans para. 10.23.

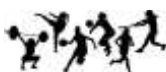
Other rights include;

- *The right to fulfilment through sporting activity*
- *The respect of privacy [Article 8 ECHR]*

In a Russian case, the athlete contended that the recordings were illegally obtained evidence in violation of her fundamental and procedural rights as well as the principle of good faith. The Athlete based her argument particularly on a violation of her privacy rights. However, the Panel held that "Considering all the elements above, the Sole Arbitrator finds that the interest in discerning the truth must prevail over the interest of the Athlete that the covert recordings are not used against her in the present proceedings. The Sole Arbitrator is not prepared to accept that the principle of good faith has been violated in the proceedings at hand", **CAS 2016/O/4481, para. 106.**

- *Professional freedom and economic freedom*
- *In terms of substantive public policy, strict application of the principle of proportionality of sanctions and personality rights:*

It should be noted that Only a manifest and serious violation, out of proportion to the conduct sanctioned or going beyond a "mere" disregard of **Articles 27 and 28 of the Swiss Civil Code** could lead to the annulment of a CAS award before the SFT. Thus, an award has been annulled for having confirmed a disciplinary sanction which infringed a



player's economic freedom and which had the effect of handing him over to the "arbitrariness of his former employer" , **CAS 2010/A/2261 & 2263 Zaragoza & Matuzalem v. FIFA in which the CAS** panel dismissed the player's submissions related to **Articles 27 and 28 CC**, the CAS decision was then annulled by the SFT for a violation of privacy contrary to public policy **(Art. 190 (2) (e) PILA) SFT 4A_558/2011.**

Article 3 ECHR prohibits the exertion of forced labour.

RECOURSE TO THE GENERAL PRINCIPLES OF LAW CONSTITUTING THE LEX SPORTIVA

Principle of proportionality, in particular sanctions

"The Panel notes that it is a widely accepted general principle of sports law that the severity of a penalty must be in proportion with the seriousness of the infringement. The CAS has evidenced the existence and the importance of the principle of proportionality on several occasions. In the cases **TAS 91/56 (S. v. FEI) and TAS 92/63 (G. v. FEI)**, the CAS stated that "the seriousness of the penalty […] depends on the degree of the fault committed by the person responsible" (Digest of CAS Awards 1986-1998, Staempfli Editions, Berne 1998, 96 and 121)". **CAS 66/A/246 Ward c. FEI para. 31. See also CAS 2011/O/2422 USOC v. IOC in the so-called "Osaka rule" case.**

Protection of legitimate expectations

"[W]here the conduct of one party has led to legitimate expectations on the part of a second party, the first party is estopped from changing its course of action to the detriment of the second party" (AEK Athens and SK Slavia Prague v. Union of European Football Associations, CAS 98/200, para. 60). Indeed, the concept of legitimate expectations – in particular the concept of protecting athletes' legitimate expectations – has repeatedly been recognised by the CAS, for example, in the USA

Shooting (**USA Shooting & Q v. International Shooting Union, CAS 94/129**), **(Watt v. Australian Cycling Federation, CAS 96/153)** and **Prusis (Prusis v. International Olympic Committee, CAS 02/001)** decisions cited by USATF. In the case of **US Swimming v. FINA (CAS 96/001). CAS 2002/O/401 IAAF c. USATF para. 68.**

The other rights are listed below;

- *Prohibition to contradict oneself to the detriment of others (venire contra factum proprium)* ***CAS 2010/A/2058 British Equestrian Federation v. FEI, para. 18***

- *Principle of legal certainty, TAS 2004/A/791 Le Havre AC c. FIFA, Newsatle United & Charles N'Zogbia para. 50.*

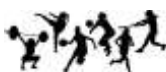
- *Principle of legality and predictability of sanctions, CAS 2014/A/3832 & 3833 Vanessa Vanakorn v. FIS, para. 86.*

- *Principle of prohibition of arbitrary or unreasonable rules and measures CAS 98/200 AEK Athènes & SK Slavia Prague c. UEFA, para 156.*

- *Respect for the rights of the defence ,CAS 2000/A/290 A. Xavier et al. c. UEFA, para. 10, in particular the right to be heard, TAS 2007/O/1381 A. Valverde et al. c. UCI, paras. 82, 83 and more generally the right to a fair procedure CAS 2013/A/3309 FC Dynamo Kyiv v. Gerson Alencar de Lima junior & SC Braga, para. 87*

- *Principle of non-retroactivity in repressive matter. CAS 2000/A/289 UCI c. C. & FFC, para. 7, subject to lex mitior*

- *Principle of prohibition of denial of justice. CAS 2017/A/5086 Mong Joon Chung v. Fédération Internationale de Football*



Association (FIFA); CAS 2020/A/6693 Alexandra Shelton v. Polish Olympic Committee (POC) & Polish Fencing Federation (PFF), award of 28 September 2020, para. 113.

- *Principle non bis in idem, CAS 2015/A/4319 paras. 70-72; CAS 2007/A/1396 & 1402, para. 119*

- *Principle of strict interpretation in repressive matters, TAS 99/A/230 D. Bouras c. FIJ, para. 10*

- *Principle of justice and good faith, CAS 2014/A/3828 IHF v. FIH & Hockey India paras. 153 ff.*

- *Principle "nulla poena sine culpa" CAS 2014/A/3516 George Yerolimpos v. World Karate Federation (WKF), para. 104*

- *Principle of professional mobility and contractual freedom, CAS 2007/A/1363 TTF Liebherr Ochsenhausen v. ETTU, para. 18*

- *Principle of freedom of expression, CAS 2014/A/3516 George Yerolimpos v. WKF, para. 116; CAS 2020/A/6693 Alexandra Shelton v. Polish Olympic Committee (POC) & Polish Fencing Federation (PFF), award of 28 September 2020, para. 137 (6)*

- *Fundamental right of an athlete to be notified of and be given the opportunity to attend the opening of his B sample in a doping context CAS 2014/A/3639* ***Amar Muralidharan v. NADA para****. Application of certain principles on the basis of the applicable regulations*

- *Prohibition of discrimination. Discrimination is generally prohibited within the rules of Ugandan, applicable to all sectors including sports. In the Ugandan laws, it is in article 21 of the 1995 constitution of the Republic of Uganda.* ***2014/A/3759 Dutee Chand v. Athletics Federation of India (AFI)& IAA,***

para. 448: *Discrimination of the Hyperandrogenism Regulations on a prima facie basis based on IOC Charter, the IAAF Constitution and the laws of Monaco. Hyperandrogenism is a situation of possessing excessive make sex hormones in females and its effects on the body.*

The Hyperandrogenism Regulations only apply to female athletes and this I consider so unfair and a sign of inequality. It is not in dispute that it is prima facie discriminatory to require female athletes to undergo testing for levels of endogenous testosterone when male athletes do not. Take for instance, recently a south African athlete, a one Caster Semenya was banned from running in the 800m distance Tokyo race subject to international track rules regarding her elevated testosterone levels. Because of this natural character, Semenya is unable to take part and represent her country in a race she would be most likely to win. Isn't this a violation of her right to practice her profession? Besides, it is notable that males are not subjected to this test. Hence a discrimination against one gender and more so, it appears that such a limitation is a direct despise and an affront upon her nature which she cannot reverse.

Hence, it is not in dispute that the Hyperandrogenism Regulations place restrictions on the eligibility of certain female athletes to compete on the basis of a natural physical characteristic (namely the amount of testosterone that their bodies produce naturally) and are therefore prima facie discriminatory on that basis too. Regulations suspended.

Discriminatory regulations on a prima facie basis warranted to ensure fairness of competitionsalso exist. This is visible in; CAS 2018/O/5794 Caster Semenya, The DSD (Difference in Sexual Developments) regulations are discriminatory but on the current state of the evidence, such discrimination is necessary, reasonable and proportionate to ensure the fairness of

competitions, the integrity of women's athletics and the maintenance of the "protected class" of female athletes in certain events.[80] *The supreme court, i.e. SFC (Swiss Federal Court) upheld the ruling that these mandatory "testosterone rules" by the world Athletics were lawful. This judgment has been condemned by some critics as a disappointing decision from the perspective of human rights and gender justice, and reflects broader structural inequalities in international sports arbitration. That this also represents the lack of adequate safeguard to ensure athletes' access to justice.*

- *Prohibition of discriminatory conduct* ***CAS 2017/A/5306 Guangzhou Evergrande Taobao FC v. Asian Football Confederation (AFC) para. 146****: Discriminatory conduct under the AFC Code.*

- *Prohibition of labour rights discrimination,* ***CAS 2010/A/2204 Joint Stock Company Football Club Ural v. Russian Football Union (RFU) para. 50****: labour right discrimination contrary to the applicable national law: "Bearing in mind that* ***part 2 Art.22 of the Labour Code of the Russian Federation*** *stipulates, inter alia, the obligation for the employer to ensure equal payment to employees for their labor of equal value, all these arguments and evidence provided lead the Panel to believe that there was a discrimination of the labour rights of these Players relative to other players and officials of the Appellant".*

- *Prohibition of racism.* ***Article 58(1)(a) of the FIFA DC*** *reads as follows: "Anyone who offends the dignity of a person or group of persons through contemptuous, discriminatory or*

[80] The appeal made by Caster Semenya and ASAF before the Swiss Federal Tribunal against the CAS decision has been dismissed. See Infra. An appeal against the SFT decision is pending before the ECtHR.

denigratory words or actions concerning race, colour, language, religion or origin shall be suspended for at least five matches. Furthermore, a stadium ban and a fine of at least CHF 20,000 shall be imposed. If the perpetrator is an official, the fine shall be at least ***CHF 30,000". CAS 2014/A/3562 Josip Simunic v. FIFA:*** *Disciplinary sanctions for behaviour offending the dignity of a group of persons after the conclusion of the match (racism) – words having a discriminatory connotation.*

- *Prohibition of sexual harassment. Sexual harassment is prohibited in* ***article 23 para. 4 & 5- FCE****. This was discussed in* ***CAS 2019/A/6388 Karim Keramuddin v. Fédération Internationale de Football Association (FIFA):*** *life ban for the appellant who committed offences that violated basic human rights and damaged the mental and physical dignity and integrity of young female players, i.e. Lack of protection, respect or safeguard (violation of* ***articles 23 para. 1 FCE;*** *Sexual harassment (violation of* ***articles 23 para. 4 FCE****); Threats and promises of advantages (****violation of articles 23 para. 5 FCE****); Abuse of position (****violation of article 25 FCE,para 231.***

- *Proportionality of sanctions,* ***CAS 2020/O/6689 WADA v. RUSADA:(…)pursuant to Article 4.4.2 of the [International Standard for Code Compliance with Signatories] ISCCS****, the Panel is to interpret and apply the ISCCS in light of the fact that it has been drafted giving due consideration to the principles of respect of human rights, proportionality and other applicable legal principles (para. 545). The Panel bears firmly in mind at all times the paramount need to consider notions of proportionality in the imposition of Signatory Consequences (para. 719). In applying principles of proportionality, the Panel does not consider it is necessary to extend the application of any of the Proposed Signatory Consequences to the Youth Olympic Games (para 732). (...) the Panel considers it would be*

disproportionate to impose severe restrictions on the next generation of Russian athletes. In particular, as the doping schemes addressed in the McLaren Reports occurred between 2012 and 2016, (...) it very unlikely that any athletes who will be participating in the Youth Olympic Games were involved in those schemes (para 733). The Panel considers that these young athletes ought to be encouraged to participate in international sporting events as a generation of athletes that respect clean sport. (...) it is necessary to protect the new generation of Russian athletes to achieve the goal of clean Russian sport. (para 734).

Human rights, ***CAS 2020/O/6689 WADA v. RUSADA: (…)pursuant to Article 4.4.2 of the [International Standard for Code Compliance with Signatories]*** *ISCCS, the Panel is to interpret and apply the ISCCS in light of the fact that it has been drafted giving due consideration to the principles of respect of human rights, proportionality and other applicable legal principles (para. 545). [T]he requirement to compete as neutral athletes, in the manner determined by the Panel (which permits use of national colours and the name Russia on a limited basis), does not violate the human dignity or any other right of Russian athletes. The neutrality requirements set by the Panel do not exceed the high threshold required to constitute such an infringement (para. 810). With respect to the question of collective punishment, this is primarily a principle of international humanitarian law or criminal law, and there is no specific prohibition on collective punishment in the ECHR (para 811).*

Direct application of certain principles of Community law

- Prohibition of discrimination.
  CAS 2009/A/1788 UMMC Ekaterinburg v. FIBA Europe e.V., para. 8: Application of nondiscrimination EC law principles to Russian cases involving economic activities in the EU. Guarantee of the free movement of workers, **CAS 2012/A/2852 SCS Fotbal Club CFR 1907 Cluj SA & Manuel Ferreira de Sousa Ricardo & Mario Jorge Qintas Felgueiras v. FRF, para. 77** "The ECJ made it clear that the practice of sport could be treated as an economic activity like any other and that organised sporting activities were subject to the same guarantees under Community law as were other economic activities. In that connection, the ECJ established that professional football players are workers who have a personal right not to be subject to discriminatory or restrictive rules which prevents them from leaving their country to pursue gainful employment in other Member States. Although sporting federations still hold regulatory authority to determine regulations' substantive principles concerning player movement rights, they too are subject to and must respect Community law and principles". See also **TAS 2016/A/4490 RFC Seraing c. FIFA** regarding the taking into consideration of European Union law as applicable law and the legality of Articles 18a and 18b RSTP with regard to freedom of movement and competition law. The appeal against the CAS decision has been dismissed by the Swiss Tribunal Federal (SFT 4A_260/2017). Interpretation of a federation's rules and regulations in light of principles of "human rights" **CAS 2015/A/4304 Tatyana Andrianova v. ARAF, para. 45,** "a federation cannot opt out from an interpretation of its rules and regulations in light of principles of

"human rights" just by omitting any references in its rules and regulations to human rights".

- Freedom of speech
  CAS 2020/A/6693 Alexandra Shelton v. Polish Olympic Committee (POC) & Polish Fencing Federation (PFF), award of 28 September 2020, para. 137 (6): "the POC [Polish NOC] would necessarily have to had regard to the Appellant's free speech rights, guaranteed by, inter alia, Article 9 of the European Convention on Human Rights. The importance of imperative of protecting free speech was emphasized by the CAS panel in CAS/2014/A/3516 as follows: "116. The Panel wishes to emphasize the importance of protecting - of course subject always to the limits imposed by law - freedom of speech and the right to criticize in good faith those in positions of authority even if there may be errors of fact in the criticism; the jurisprudence of the European Court of Human Rights is indicative, and, in jurisdictions to which it applies, compulsive".

However, all the fundamental rights found in international treaties cannot be invoked through general principles of law: refusal by arbitrators to apply the principles in dubio pro reo and the presumption of innocence. Furthermore, there is no clear consecration of the right to respect for private life, which is likely to be threatened by the anti-doping fight.

Anti-doping rules not contrary to human rights legislation

CAS 2011/A/2353 Erik Tysse v. Norwegian Athletics Federation (NAF) & IAAF, Para. 39 Even if it were applicable, there is no violation of the European Convention for Human Rights due to the fact that the No Fault and No Significant Fault provisions in both the WADA Code and the IAAF Rules protect athletes against any violation in this respect.

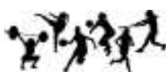
CAS 2010/A/2307 World Anti-Doping Agency (WADA) v. Jobson Leandro Pereira de Oliveira, Confederação Brasileira de Futebol (CBF) & Superior Tribunal de Justiça Desportiva (STJD), paras. 99 – 105: The Compatibility of a Two-Year Suspension with International Law and Human Rights Requirements (…) both CAS jurisprudence and various legal opinions confirm that the WADC mechanisms are not contrary to human rights legislation.

SPORT AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

Mutu & Pechstein v. Switzerland, 2 October 2018: right to a fair trial, Article 6 S.1 ECHR: Direct applicability of the guarantees of **Article 6 S.1 ECHR** to CAS arbitrations.

Article 6 S.1 of the Convention is applicable rationae materiae to disputes of a civil nature. For Mutu, which is contesting the CAS award condemning it to pay damages to Chelsea, the rights in question are of a proprietary nature and result from a contractual relationship. For Pechstein, who is contesting the CAS award confirming a suspension, this is a disciplinary proceeding in which the right to practice a profession is of a civil nature (paras. 56 – 59).

Article 6 S.1 of the Convention is applicable rationae personae. The CAS is not a state court but an entity emanating from the ICAS, i.e. a private law foundation. The complaints raised before the ECHR concern in particular the regularity of the composition of the arbitral tribunal and the procedures followed before this body. However, in a limited number of circumstances, in particular with regard to the regularity of the composition of the arbitral panel, Swiss law provides for the jurisdiction of the Federal Court to hear the validity of CAS awards (**Articles 190 and 191 of the LDIP**). In the present cases, the SFT rejected the appeals of the claimants, thus giving res judicata force to the arbitral awards in question in the Swiss legal order. The disputed acts or omissions are therefore likely to engage the responsibility of the



respondent State under the Convention **(see, mutatis mutandis, Nada c. Suisse [GC], n° 10593/08, S.120-122, CEDH 2012).** It also follows that the ECtHR has jurisdiction ratione personae to hear the grievances of the claimants regarding the acts and omissions of the CAS validated by the Federal Supreme Court. (paras. 62 – 67)

Since CAS arbitrations are subject to review by the Federal Court, the refusal of the Federal Court to review their validity under Article 6 § 1is likely to result in the liability of Switzerland, as a party to the Convention. The Court thus invalidates the thesis of the inapplicability in principle of the ECHR because of the private nature of the arbitration. The opening of a possible appeal against a CAS award before the Federal Supreme Court, a state court, thus establishes the jurisdiction ratione personae of the European Court and the applicability of Article 6 § 1ECHR i.e. right to a fair trial including the right to a public hearing (Translated from French).

FNASS et al. c. France, n° 481581/11 et 77769/13 18 janv. 2018 (not a CAS case) No violation of the principle of respect for private and family life in relation to Article 8 ECHR due to the whereabouts obligation for target group athletes. The Court had examined the merits of this obligation, as enshrined in the French Sport Code pursuant to the World Anti-Doping Code, considering that the infringement of these rights pursued legitimate aims.

Platini v. Switzerland, 11 February 2020: right to a fait trial, **Article 6 S.1 ECHR** and right to respect for private and family life and home (Article 8 of the Convention): No violation of those principles
The Court noted that the applicant had been afforded the domestic institutional and procedural safeguards allowing him to challenge FIFA’s decision and submit his arguments in his defence.

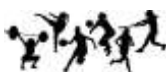
Erwin Bakker v. Switzerland, 26 September 2019, Article 6 S.1 of the ECHR. Given the specificity of the proceedings before the CAS and the SFT, the restriction on the right of access to a court was neither

arbitrary nor disproportionate to the aim pursued, namely the proper administration of justice. Consequently, this right was not infringed in its very substance, sufficient reasoning by the Federal Court, Application inadmissible.

SFT JUDGEMENTS DEALING WITH THE APPLICATION OF HUMAN RIGHTS BY THE CAS

4A_558/2011 Matuzalem, 27 March 2012. The threat of an unlimited occupational ban based on **Art. 64 (4) of the FIFA Disciplinary Code** constitutes an obvious and grave encroachment in the Appellant's privacy rights and disregards the fundamental limits of legal commitments as embodied in **Art. 27 (2) Swiss Code of Obligations (SCO).** Should payment fail to take place, the award under appeal would lead not only to the Appellant being subjected to his previous employer's arbitrariness but also to an encroachment in his economic freedom of such gravity that the foundations of his economic existence are jeopardized without any possible justification by some prevailing interest of the world football federation or its members. In view of the penalty it entails, the CAS arbitral award of June 29, 2011 contains an obvious and grave violation of privacy and is contrary to public policy **(Art. 190 (2) (e) PILA) (at 4.3.5).**

4A_260/2017 Seraing, 20 February 2018 .Within the scope of substantive public policy, the appellant attacked the CAS award for violation of **Art. 27 (2) Swiss Civil Code that prohibits excessive commitments (at 5.4.1).** The SFT reiterated that there needs to be a severe and obvious violation of **Art. 27 (2) CC** to fall within the scope of substantive public policy, a condition that was not fulfilled in this case: By prohibiting Third Parties' Ownerships (TPOs), FIFA is restricting the economic freedom of the clubs for certain types of investment but does not suppress it. Clubs remain free to pursue investments, as long as they do not secure them by assigning the economic rights of the players to third party investor (at 5.2).



4A_486/2019 Trabzonspor c. TFF, Fenerbahce et FIFA, 17 August 2020, consid. The SFT has confirmed that violations of Article 6§1 of the ECHR cannot be considered by the SFT, unless they match with other grounds for appeal listed in the Swiss Act on International Law (PILA) (art. 190 S.2). The argument was raised in relation to the refusal of CAS to hold a public hearing. A party to the arbitration agreement cannot complain directly to the Federal Supreme Court in a civil action against an award that the arbitrators have violated the ECHR, even though the principles deriving from the ECHR can be used, where appropriate, to give concrete form to the guarantees invoked on the basis of **Art. 190 para. 2 PILA.**

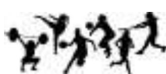
Since a breach of treaty law does not per se coincide with a breach of public policy within the meaning of Article 190(2)(e) PILA, it is for the appellants to show how the alleged breach of **Article 6 S. 1ECHR** constitutes a breach of public policy in procedural terms. See also ATF 142 III 360 consid. 4.1.2; 4A_268/2019 consid. 4A_248_2019 & 4A 398_2019 **Caster Semenya & ASAF v. IAAF**, 25 August 2020. The SFT dismissed the appeal made by Caster Semenya and the ASAF against the CAS decision upholding the CAS's ruling that had found that, while the Difference in Sexual Development (DSD) regulations were discriminatory, "such discrimination is a necessary, reasonable and proportionate means of achieving the legitimate objective of ensuring fair competition in female athletics in certain events and protecting the 'protected class' of female athletes in those events". It considered that fairness in sport is a legitimate concern and forms a central principle of sporting competition. The SFT stressed that it is also an aspect important to the ECtHR. The decision is also compatible with public order regarding the athlete personality and human dignity[81]. **4A 318/2020 Sun Yang V. AMA & FINA, 22 December 2020, consid. 7.9**

[81] An appeal is pending before the ECtHR against the SFT decision.

The SFT admitted Sun Yang's application for review of the CAS award of 28 February 2020. The appellant's submission that he discovered, in May 2020, the existence of circumstances likely to cast serious doubt on the impartiality of the president of the panel, the subsequent challenge of the president of the panel on the basis of **Art. 121 (a) of the SFT Act** and the annulment of the CAS award have been admitted. The SFT that the decisive factor is whether a party's apprehensions about a lack of impartiality on the part of an arbitrator can be regarded as objectively justifiable.An arbitrator must be and must also appear to be independent and impartial. While agreeing that an arbitrator is, in principle, free to defend his convictions on social media, in this case, the cause for animal rights, an arbitrator must still express any opinions with a certain restraint and irrespective of whether he is acting in his capacity as an arbitrator.It is certain terms used in the tweets published by the arbitrator that are problematic. In particular, the use of the terms "yellow face" are racist qualifiers and are inadmissible. In view of the fact that the arbitrator made such remarks, not only on two occasions, but also after his appointment as president of a Panel, it must be admitted that the appellant's apprehensions, a Chinese citizen, as to the possible bias of the arbitrator may be regarded as objectively justified. The circumstances considered from the standpoint of a reasonable third party with knowledge of them are such as to raise doubts about the impartiality of the arbitrator and create the appearance of prevention.

Economic Overview of Olympic Bodies

While the Olympic movement was originally designed to promote goodwill and international competition, it has since become a multimillion-dollar enterprise. Funding must be procured to finance the staging of the Olympic Games. Athletes need funding for equipment, training, travel, and competition. Full-time employees in the IOC, IFs, NOCs, and NGBs are all usually paid salaries and benefits, and offices for the organization and employees must be provided. Therefore, the modern Olympic Games have needed to rely on fundraising, donations, and commercialism in order to sustain their existence for the past 100 years. However, it was not until the 1984 summer games, when the IOC



developed a comprehensive plan for marketing the Olympic Games called "controlled commercialism," those Olympic revenues began to grow substantially. The IOC designed this plan to stabilize the finances of the Olympic organizations; to build an ongoing marketing program for all LOCs, instead of starting over with every Olympic Games; to distribute revenues earned equally throughout the Olympic organizational hierarchy; to control broadcasts of the Olympics enabling the world to view the games; and to control commercialism and promote the Olympic ideals throughout the world.

The IOC marketing efforts fall under the control of the IOC Marketing Department, which works with sponsors, broadcasters, national organizing committees and local organizing committees to develop new and creative ways to develop revenue in each organization's respective territory. One program, the Olympic Partners (TOP) program, began in 1985 in an effort to secure more sponsorship dollars and provide sponsors with greater return on their investment, is organized in four-year increments (called quadrenniums) surrounding an Olympic Game. Sponsors pay a sum of money to associate their brand name with the Olympics and be able to conduct promotions and run advertising utilizing the Olympic logo. This revenue has decreased the dependence the IOC had in previous years on the revenue received from selling broadcast rights. For example, in the 2001–2004 quadrennium, TOP revenue was approximately 34% of the total revenue received by the IOC, while television revenue was only 53%, down substantially from the 90% share television revenue accounted for 19 years earlier.

International Olympic Committee Responses to Prevailing Legal Issues

The awarding of the Olympic Games to a host city has become an increasingly competitive and controversial process. In 1995, the IOC awarded the 2002 Winter Olympics to Salt Lake City. In subsequent years, the IOC faced the largest corruption scandal in its history. Ten IOC members resigned or were expelled in cases allegedly involving fraud, conspiracy, and bribery. Investigators deter- mined that IOC members

accepted more than $1 million in cash, improper gifts, and favors from backers of Salt Lake City's LOC in order to influence their votes. Prior to the 2008 Summer Olympics in Beijing, China, there was a large amount of scrutiny and criticism around the world for China's hosting the Games despite what many considered to be a poor human rights record. Traditionally, the Olympic torch travels from Olympia, Greece, around the world and finally to the host city during the opening ceremonies. However, during the 2008 relay, the runners and the route were routinely met with protests and security issues, particularly in North America and Europe. As a result, the relay was often rerouted without notice and security was significantly increased. IOC President Jacques Rogge described the situation as a "crisis" and threatened to sanction any athlete who engaged in excessive propaganda during the Games. In addition, groups around the world called on their respective nations to boycott the Games but to no avail

Sport related issues (A case of USA)

The courts in the United States have sometimes faced the question of whether to respect the autonomy of private organizations or to accommodate the public good. The sports world has increasingly emerged as an epicenter of this debate. Even private recreational organizations, such as country clubs, can be susceptible to significant financial damages by engaging in discrimination. Furthermore, the PGA's lost legal battle with Casey Martin demonstrates how even the highest profile sport organizations can be compelled to alter their established regulations (see note 1). Industry professionals working in these or similar associations can better understand laws of equal protection and the Americans with Disabilities Act. Professional athletes in sports governed by associations such as the PGA, LPGA, and ATP may not find the level of advocacy in their organizations that occurs in the unionized sports. As a result, athletes in these individual sports are on their own. One reason for this is because of the broad scope and goals of these organizations. For example, the PGA claims 28,000 members and a dedication to the promotion of the game of golf. By contrast, the National Basketball Players Association (a union) represents fewer than 500 active

NBA players and states goals that are solely geared toward the promotion of player interests Furthermore, athletes in sports such as tennis and golf are not guaranteed income merely by participating in professional athletic competitions. Generally, such athletes earn income in two ways, tournament prize money and product endorsements. Owing to the latter, the player agent becomes especially vital for athletes in these sports.

Facilities, agency firms, and media

Corporate mergers at the turn of the 21st century began to unite the three formerly distinct industry segments of facilities, agency firms, and media. The development of the agency business can largely be traced to the growth of Inter- national Management Group (IMG). IMG was created by Mark McCormack, who became the first modern sports agent in 1960 via a handshake agreement with then 31-year-old golfer Arnold Palmer. IMG evolved to have a prominent role in nearly all facets of nearly all sports; it has represented athletes, broadcasters, events, and institutions while also having subsidiaries involved in marketing, television, and media. The resulting vertical integration raised potential legal and conflict-of- interest issues To address these concerns, IMG sold off its baseball, football, and hockey representation divisions to Creative Artists Agency (CAA) in 2005. CAA, who also purchased SFX's football portfolio, has emerged as one of the leading representation agencies in the world, blending its sports clientele with clients working in music, TV, film and art, and literature. CAA represented all the NFL MVPs from 2003 to 2007 and David Beckham in the $250 million deal that brought the English soccer star to the MLS Some agencies, like the Bonham Group, have developed a strong niche by focusing its representation on corporate and property clients like facilities, convention centers, universities, and entertainment properties. Two of the most important revenue-producing avenues for sports teams and leagues are stadium naming rights and broadcasting rights. Consequently, practitioners in these sectors should become cognizant of the antitrust issues in professional sports. At the same time, there are legal issues pertaining directly to facility owners, agency firms, and media is directly relevant to all three sectors.

CHAPTER EIGHT

The Anti-Doping in Sports Law

DOPING IN SPORTS

Doping has been another point of controversy for the sports industry. The term refers to the use of performance-enhancing drugs in athletic competition. Doping is contrary to the spirit of sport as it removes the level playing field. Further there are concerns for athletes' general health and wellbeing concerns that doping could ruin the reputation of sport. We need to maintain the integrity of sport

A brief history of regulation

Several European nations began to enact anti-doping laws in the 1960s, and the Medical Commission of the IOC was established in 1967. The first drug tests at an Olympic Games were conducted in 1968. Olympics in Seoul where athletes were sent home after testing positive to banned substances. Australian modern pentathlon representative Alex Watson was sent home after testing positive to caffeine. Watson had excessive amounts of caffeine in his system, but maintained that he took no drugs but merely drank coffee during the competition.

In other jurisdictions like in Australia, the Australian Sports Drug Agency (ASDA) was set up under the Australian Sports Drug Agency Act in 19915 to collect samples from athletes and arrange testing. Its processes and policies have been developed and refined under the Act and regulations since that time. The Act gives ASDA the power to test certain athletes in accordance with specific criteria. It has been amended to conform to the WADA Code. In the 2003–04 financial year ASDA conducted 6614 tests, 71 per cent being 'out of competition' tests. The tests resulted in 24 adverse findings from 19 athletes (one international). This included one positive test result for the drug. ASDA also fulfils an educational role, and can provide advice on the use of various drugs and assistance for sporting organizations in developing doping policies.

The WADA code

The impetus for the WADA Code was the recognition that a unified approach to anti-doping was the only effective way to reduce the use of performance enhancing drugs in sport. On the adoption of the WADA Code at the Copenhagen Conference in 2003, IOC president Jaques Rogge stated:

> ”
>
> *The revelations of the Tour de France taught us that 30 years of parallel but uncoordinated efforts by governments and the sports movement were not successful. The sports movements have called for the help of governments within WADA and the governments have accepted.*

WADA Code prohibitions

The WADA Code prohibits an increased range of doping activities.
The following are doping offences under the code:

- The presence of a prohibited substance or its markers in an athlete's bodily specimen (this means that the issue of intent is irrelevant –consumption may be inadvertent)

- Use or attempted use of a prohibited substance or method
- Refusal to comply with a request to supply a sample, or evading a test
- Failing to provide the required whereabouts information, or missing tests
- Tampering with doping control
- Possession of prohibited substances or methods
- trafficking
- Being involved in a contravention.

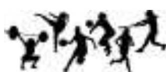
The Prohibited List

WADA's mandatory prohibited list came into effect on 1 January 2004. Substances and methods are considered for inclusion on the. WADC list where they satisfy any two of the following three criteria:

- Medical or other scientific evidence, pharmacological effect or experience that the substance or method has the potential to enhance sporting performance

- Medical or other scientific evidence, pharmacological effect or experience that the substance or method represents an actual or potential health risk to an athlete

- WADA's determination that the use of the substance or method violates the spirit of sport described in the introduction to the code.
- Substances that mask the use of other prohibited substances or methods can be included.



Doping Cases

AFL vs AGE Case: Age wanted to identify drug dealers in AFL -Judge held you cannot write a speculative piece on who is taking drugs
Shane Warne Case:-Shane Warne was tested positive for taking a diuretic in 2003, Shane held that he had no intension to enhance performance; just appearance. However, because WADA holds strict liability; this was not a viable argument for Warne, and as a result was banned for 12 months

Maria Sharapova v.The International Tennis Federationbefore the Court for Arbitration of SportS. The International Tennis Federation ("ITF" or the "Respondent") is the International Olympic Committee-recognized international sports federation for the sport of tennis, and has its headquarters in London, United Kingdom. One of the objects and purposes of the ITF is to promote the integrity of tennis and to protect the health and rights of tennis players. To these ends, the ITF, a signatory to the World Anti-Doping Code (the "WADC") established by the World Anti-Doping Agency ("WADA"), adopted the Tennis Anti-Doping Programme (the "TADP") to implement the provisions of the WADC.Maria Sharapova (the "Player" or the "Appellant") is a top-level professional tennis player of Russian nationality born on 19 April 1987. The Player has been a resident in the United States of America since 1994, and has competed regularly on the WTA Tour1 since 2001. She is one of only ten women to hold the Career Grand Slam, having won four Grand Slam events in a single discipline. She also won the silver medal in women's singles at the 2012 Summer Olympic Games in London

CAS ruled, "The decision rendered by the Independent Tribunal of the International Tennis Federation on 6 June 2016 is set aside," and "Ms. Maria Sharapova is suspended for a period fifteen (15) months commencing 26 January 2016." The ITF Tribunal had suspended her for 24 months.

International MishaAloian CAS AD 16/11Olympic Committee v. The Athlete is found to have committed an anti-doping rule violation pursuant to Article 2.1 of the IOC ADR and/or Article 2.2 of the IOC. 2. The results obtained by the Athlete in the Men's -52kg boxing event at the Olympic Games Rio 2016, in which he ranked 2nd and for which he was awarded a silver medal, are disqualified with all Consequences, including forfeiture of the medal, Olympic diploma and medallist pin. On 3 November 2016, a hearing was held at the CAS Court Office in Lausanne. The Appellant was represented by Mr. André Sabah (Senior Legal Counsel of the IOC), Ms. Viola Maerz (Legal Counsel of the IOC) and y Mr. Nicolas Zbinden (Counsel for the IOC). The Athlete was present and represented by Mr. ArtemPatsev (Counsel for the Athlete). Mr. Victor Berezov also attended as an observer for the Russian Olympic Committee. Translation Russian – English/English – Russian was provided by the independent interpreter Mr. Andrej Dolgov. The Sole Arbitrator was assisted by Mr. Fabien Cagneux, Counsel to the CAS.

After a failure to establish standardized regulations and procedures, the World Anti-Doping Agency (WADA) was created in 2004 as the ultimate authority on doping and drug testing in international competition. Sometimes an athlete is disqualified for a positive drug test immediately prior to his or her Olympic event. When this occurs, it does not afford much time for the athlete to obtain due process. In order to handle disputes over matters such as a positive drug test, the Court of Arbitration for Sport (CAS) was created in 1983. It also allows disputes that arise during (or right before) the Olympic Games to be settled quickly and relatively inexpensively by the CAS Ad Hoc Division (AHD). I t is important to point out that CAS arbitration can be used to settle disputes over matters other than doping. For example, it can be used to settle conflicts between IFs and NGBs and disputes involving sponsorship or television rights contracts. Athletes, sports federations, clubs, sponsors, suppliers, and television companies all have access to CAS.

Many argue that perhaps the greatest threat to the image, integrity, and even the continued existence of elite-level international competitions, from the World Cup to the Tour de France to the Olympic Games themselves, is the use of illicit performance-enhancing drugs. When a millisecond difference between gold and silver can amount to millions in endorsement contracts and appearance fees, some athletes are willing to risk using drugs to get that winning edge. With so much at stake, it is not surprising to see some athletes get caught testing positive for drug use. The Tour de France, the world's premier cycling event, has a long history of suspicion of illegal drug use.

A British cyclist died in 1967 after a stage in which he used amphetamines; in 1998 six teams were forced to drop out and the leading team, Festina, was disqualified because of suspected doping; American Lance Armstrong was constantly dogged by accusations and investigations of doping when he won seven straight Tour de Frances from 1999 to 2005, despite never having been found to have committed a violation; in 2006 American Floyd Landis, the declared winner of the 2006 tour, was stripped of his title after it was revealed he had tested positive for testosterone after a mountain stage 2007 prerace favorite Alexandre Vinokourov withdrew from the race after he tested positive for blood doping; lastly, the eventual 2007 winner, Alberto Contador of Spain, has been accused of being involved in a doping operation called Operación Puerto that kept his team out of the 2006 tour. Drug use by Olympic athletes is nothing new.

Ancient Greek athletes are reported to have used various substances to increase their strength and endurance. In the 1960 Olympic Games in Rome, two athletes died from overdosing on drugs they took before competing in their events. To protect the health of the athletes and to ensure fair and equable competition, the International Olympic Committee began to routinely perform drug tests at the 1968 summer Olympic Games in Mexico City, and began full-scale testing at the 1976 summer Olympic Games in Montreal o discourage drug use by athletes,

any athlete caught doping faces the loss of medals and a suspension from competition. One of the more publicized case is that of Canadian sprinter Ben Johnson, who tested positive for steroids at the Olympic Games in Seoul in 1988 and was stripped of his gold medal and world record. Despite all the actions of the IOC, some athletes may continue to use drugs to gain a competitive advantage. Therefore, to protect the future of the Olympic Games, the IOC held the World Conference on Doping in Sport in February 1999 at Lausanne, Switzerland. The purpose of the conference was to establish uniform policies under which all athletes and sports federations would be tested. The conference, which was attended by approximately 600 representatives of national Olympic committees, national governing bodies, government offi cials, and athletes, was held to establish an international anti-doping agency, develop penal- ties (including a proposed automatic two-year suspension for all doping offenses), and get the international governing bodies of sports such as swimming and track and field to agree to the same rules.

The end result was the creation of the World Anti-Doping Agency (WADA), fi nanced by intergovernmental organizations, governments, and other public and private bodies. In 2004 over 1,000 delegates of sports organizations and governments gave their approval to the World Anti-Doping Code created by WADA. For the first time ever, the code created standardized antidoping rules and regulations for all sports and all countries. Although the code does not have the force of law, all international and national Olympic committees adopted the code and have the power to sanction non-compliant organizations. FIFA, the international governing body of perhaps the world's most popular sport, soccer, did not accept the code until 2006, before the World Cup in Germany, during which no positive tests were reported. Prior to accepting the code, WADA forced the Court of Arbitration for Sport (CAS) to issue a ruling that FIFA's testing did not comply with WADA rules and WADA threatened to advocate for soccer's omission from the Olympics until FIFA complied. The current WADA Prohibited List prohibits nine different types of substances: anabolic agents, hormones and related substances, beta-2 agonists, hormone antagonists and

modulators, diuretics and other masking agents, stimulants, narcotics, cannabinoids and glucocorticosteroids, as well as substances banned in particular sports (see note 1). In 2010, WADA had a budget of $28 million, with the IOC contributing almost $13 million and the member nations of the IOC contributing a matching amount. The United States was the largest contributor to the WADA budget at over $1.87 million (see note 1). Although the IOC has adopted the WADA Code as its standard for drug test- ing, the IOC Executive Board is ultimately responsible for establishing the policies and procedures used in Olympic-related drug testing. While some believe that IOC drug sentences have been unduly harsh, many believe that the IOC has a conflict of interest in any drug testing program. The IOC, while wanting to ensure fair competition, also must be concerned with the impact a positive doping test could have on the Olympic image, resulting in the loss of corporate sponsorship and fans.

A major point of interest concerns unannounced or short-term testing. Canada, England, Sweden, and a handful of other countries have instituted frequent, random, out-of-competition testing for anabolic steroids. The purpose of this type of testing is to combat the use of performance-enhancing drugs taken during training. In many cases, the evidence of drug use has left the body by the time of the competition. However, the drugs' impact will have already carried over and given the athlete a possible advantage. For example, steroids are training drugs and are not used for a certain period of time before a competition, thereby avoiding a drug test which might occur during a competition.

The U.S. Olympic Committee (USOC) employs its own drug education pro- gram for events involving national team tryouts and competitions. This program helps the USOC to instruct its athletes about the vast international drug regulations and to support its program to deter drug use. In October 2000, the USOC turned over responsibility for testing of Olympic and Pan American athletes to the U.S. Anti-Doping Agency (USADA). Any athlete eligible to compete in events sanctioned by his or her sports federation or by the USOC will be subject to un- announced

out-of-competition testing. The IOC has adopted the WADA Code and Prohibited List. T he testing process begins with the collection of two specimens (A and B). Specimen A is tested; if a positive result occurs, another sample from A will be tested. If this second test of specimen A results in another positive test, the athlete will be notified immediately by the USADA. This notification will also tell the athlete the time and date of the testing of specimen B. The athlete may witness this testing or a surrogate representative will be assigned to witness the testing of specimen B. If specimen B tests positive, the appropriate penalties will be imposed. The athlete has the right to request a hearing on the positive drug result. Penalties for positive tests vary, depending on the substance. A confirmed first positive test will result in a suspension ranging from three months to two years. A confirmed second positive test will result in a two-year suspension for some substances and a lifetime ban for other substances. The USADA's strict policies were put into effect prior to the 2002 Winter Olympic games in Salt Lake City. Before the games, the USADA administered unannounced tests on most of the 2,500 athletes competing in the games. All athletes at the games carried a "doping passport" which showed when and how they were drug tested. During the games, the USADA administered postevent drug tests to athletes in the fi rst four places of their respective events. A "doping escort" was as- signed to each athlete and administered the test within an hour of the event's finish. If an athlete tested positive for any prohibited substance, a series of hearings decided if the athlete would be stripped of his or her medals and banned from future competition.

The USADA operates a 24-hour, toll-free drug hotline that athletes, coaches, trainers, doctors, and administrators can call for more information on banned drugs, drug testing procedures, and the drug education program. In 2008, the USADA spent over $2.76 million on research and education related to the deterrence of the use of performance-enhancing drugs in sports. About 87% of the agency's $13.3 million annual budget is funded by the federal government, while the USOC covers the rest. I n some cases, national governing bodies (NGBs) and international federations (IFs) will call for stricter penalties for

positive tests than the USOC or IOC. For example, the NGB for the biathlon may recommend a four-year penalty for the use of a substance, whereas the USOC/IOC may recommend a two-year penalty. In that case, the governing body's sanction will take precedence over the USOC/ IOC prescribed penalties.

Historically, due to several parties' being involved in international competition (IFs, NGBs, IOC, etc.), complications can arise over penalties after positive tests Prior to the creation and implementation of WADA standards, disputes over drug penalties often wound up in courts and before different governing bodies, creating confusion with regards to jurisdiction and testing standards. The problem arises as to which organization and/or country has the final authority in disputes involving a drug testing program. By creating a uniform code and more streamlined appeals process, WADA has reduced many of these issues. I n order to handle disputes over matters such as a positive drug test or eligibility, the Court of Arbitration for Sport (CAS) was created in 1983.

The CAS was designed to be an independent agency that could serve as a neutral and final arbitrator in sports disputes but also requires sports organizations to voluntarily subject themselves to its jurisdiction, as all Olympic IFs have done (for more on the role of the CAS, "Court of Arbitration for Sport"). The option of the CAS allows disputes that arise during (or right before) the Olympic Games to be settled quickly and inexpensively. The CAS sets up ad hoc (nonpermanent) courts and sends representatives to the Olympic Games in the event that a situ- ation arises where a hearing and ruling must be pronounced within twenty-four hours of the disputed claim. Athletes, NGBs, and IFs all have access to CAS. As drug testing policies and penalties have become more stringent with the creation of USADA and WADA, the importance of the CAS as the ultimate authority in disputes has increased.

A further application of the lex sportiva is within the administrative review processes of sports organizations, especially the appellate panels of the international sports federations (IFs) such as the International

Amateur Athletic Federation (IAAF). There is a critical need for such guidance to enhance the integrity and credibility of the IFs and to improve their image as essential elements in the regime of international sports. Otherwise, their administrative and appellate decisions tend to spark suspicions and controversy. All too often, IF decisions appear to be based on political expediency. In two leading cases, for example, the IAAF lifted anti-doping suspensions against world-class medalists Merlene Ottey of Jamaica and Javier Sotomayor of Cuba.8 In both instances clear scientific evidence to support their suspensions seems to have been compromised by either faulty review of the evidence (Ottey) or extrinsic factors such as empathy by the IF administrative council with the particular athlete (Sotomayor) that called into question both the independence and the binding force of the arbitration. It is hard to escape the conclusion that 'the IAAF panel was no more independent in its actions than the national panels whose decisions they were reviewing [and that an] international arbitration system that is not independent and for which there is a political override, no matter how well intended, will ultimately bring both itself and its sports federation into dispute.'

IF decisions such as in the Ottey and Sotomayor cases have important implications for the future of international sports competition and its organizational structure. Such decisions bespeak a critical need for the kind of corrective juris- prudence that the CAS can supply in the absence of other independent and impartial tribunals with special competence to hear international sports-related disputes. Over time CAS arbitration can also lend greater coherence, rationality, uniformity, and influence to international sports law. It is in everybody's interest to pursue these objectives for the sake of greater predictability and stability of expectations.

The more the teleology of CAS is directed toward greater predictability and stability of expectations, however, the more formal the arbitral process may be viewed. That perspective would give rise to expectations of fully reasoned opin- ions, rules of evidence, meticulous use of precedent, and other characteristics of litigation. Fulfilling such

expectations in CAS proceedings might seem to strengthen the process of international sports law in attaining greater stability and integrity, confidence in the consistency of outcomes among the cases, and growth of a reliable corpus of interpretation, a lex specialis. The merits of a robust lex sportiva may be questioned, however. Ordinarily, arbitration represents a happy compromise between the uncertainties of more informal methods of dispute resolution, such as negotiation and mediation, and the formality and inflexibility of adjudication. The opportunity to choose specialized experts to decide a dispute is a particularly attractive feature of arbitration.

What would arguably be lost by formalizing the CAS process, however, are several other advantages of arbitration: confidentiality; relatively low cost; simplified proce- dures; speed; mediative quality; capacity to help restore, preserve and maintain relationships between disputing parties; flexibility and customization to particular circumstances and the wishes of the parties; and international enforceability.10 Delays and transactional costs mount as formality increases, and formalized arbitration more and more begins to resemble litigation. Fortunately for parties to CAS arbitration, the Code of Sports-related Arbitra- tion discourages an approximation of adjudication. The Code restricts discovery of evidence, protects confidentiality between the parties, encourages conciliation and mediation within the CAS framework, allows party autonomy in choosing the applicable law, provides for party discretion and flexibility in selecting the arbitral panel, and offers an alternative of expedited procedure.

The parties' costs of arbitration are limited to relatively modest fixed rates. Appeals are free of charge. Timelines for conciliation and appeals procedures are a matter of a few months rather than years. Moreover, the Code provides that awards will not be made public (as court decisions normally are) unless an award so provides and all parties agree. Happily, CAS practices have conformed well to the Code. They have been sufficiently flexible, however, to enable the CAS to tailor its exercise of discretion to the circumstances of individual cases so as, for example, to

strike appropriate balances between privacy and the public interest, depending on the nature of a dispute. Despite these constraints on formalization of the CAS, the aspiration to create a lex sportiva may arguably give a judicial cast to its proceedings. A judgment in 2003 by the Swiss Federal Tribunal bears out this observation. At issue in A. & B. v. IOC was a publiclaw appeal of a CAS award in the previous year. The controverter arbitration concerned a decision by the IOC Executive Board to disqualify two cross-country skiers on the basis of positive tests for doping during three competitions in December 2001 and in February 2002 during the Salt Lake City Winter Games.

The appeal also challenged the two-year suspensions that were subsequently imposed on the skiers by the International Ski Federation (FIS). The court first established that the CAS ruling at issue involved points of law and not just sporting rules (rules of the game) on the basis that the serious sanction of suspension from competition constituted 'a genuine statutory punishment that affects the legal interests of the person.' Much of the court's opinion thereafter addressed a claim that the FIS, IOC, and CAS lacked a requisite independence and impartiality. After examining claims of institutional and personal bias and exhaustively reviewing the history of the CAS and its decoupling from the IOC in 1994, the court concluded that the CAS was sufficiently independent of the IOC and FIS for its decisions to be considered 'true awards, equivalent to the judgements of State courts.'

The court's litmus of verity in arbitral awards—'true' awards are equivalent to judicial decisions be speak sits general characterization of the CAS as a body 'more akin to a judicial authority independent of the parties.'14 But how can CAS deliberations be assimilated to adjudication if the plaintiffs, according to the court, had freedom to select arbitrators and procedures? And how can CAS decisions be assimilated to judicial decisions if their publication remains within the discretion of the CAS and only with the consent of the parties? Nevertheless, the court observed that '[a] true ''supreme court of world sport'' is growing rapidly and continuing to develop.'15 The court further observed that 'states and all

parties concerned by the fight against doping … endorse the judicial powers [sic] of the CAS.' It is hard to imagine that the court in A. & B. v. I.O.C. actually meant to equate arbitral proceedings with adjudication. Perhaps the Swiss court's identification of the CAS with a court of law was only metaphorical. If not, then the Swiss court must have been prepared to vest authority in the CAS to resolve the very issues of public law, human rights, and due process (natural justice) that have been presumed to lie beyond the tribunal's competence. That may be acceptable under Swiss law, which governs the CAS, but may arouse serious apprehensions among prospective foreign parties sufficient to deter them from submitting their disputes to the CAS for arbitration. For a prospective party not bound to CAS jurisdiction by any prorogation provisions, the idea of conceding plenary, binding, more or less judicial authority to an arbitral body that is governed, at least to the extent of the lex arbitrii, by national law may simply be unacceptable. Worse yet, formalized arbitral decisions on sensitive issues of public law, labor relations and human rights may invite parallel litigation in other legal systems. In any event, the Swiss court's puzzling obiter dictum complicates the growth of the lex sportiva. The CAS would be well advised to proceed cautiously in constructing the lex sportiva. Nobody would deny that the tribunal needs to assume a strong enough stature to withstand extravagant interference by domestic courts and expect that its awards will be recognized and enforced under the New York Convention on Arbitral Awards.

But the CAS runs considerable risk when it allows itself to be presented as an institution resembling a national court of law, with all of the expectations and problems associated with international recognition and enforcement of court judgments and all of a party's skepticism about the impartiality of a foreign court. Leaving the jurisdictional questions aside, what has been the range of disputes before CAS panels? What does the CAS case law teach? How well-developed is the lex sportiva? From its beginning, the CAS has given advisory opinions and decided contentious cases involving two dominant themes: jurisdictional questions and eligibility of athletes for sanctioned competition. Most of the latter cases

have involved athletes whose eligibility for competition had been suspended or terminated for life by national sports bodies or IFs on the basis of anti-doping sanctions imposed by their national sports bodies or international federations. In one of its first cases, which was conducted in camera, the CAS decided a dispute between an athletic club and a national sports body that had imposed a sanction against the club. In another early case, the tribunal rendered an advisory opinion in favor of the Norwegian Olympic Committee in which it upheld the right of an NOC to exclude an athlete from sanctioned competition for life after violating the NOC's anti- doping rules within the IOC framework. Over time the CAS has fashioned specific rules and principles from its decisions with broad application. For example, equitable considerations have softened CAS review of anti-doping sanctions against athletes.

Despite a prevailing rule among IFs of strict liability for doping, CAS awards generally disclose an inclination to avoid unnecessarily harsh results. These awards, in turn, have helped shape the World Anti-Doping Code. Second, in determining the validity of such sanctions, the CAS has consistently relied on the authority of international sports law such as the IOC's Medical Code and Drug Formulary Guidelines, at least until their replacement by the World Anti-Doping Code, rather than its own construction of doping standards and sanctions. Third, an important advisory opinion of the CAS helped resolve jurisdictional issues in doping cases by establishing the priority of IFs over NOCs in the event of a jurisdictional conflict between them. In a fourth case, Ragheeb v. IOC, the CAS confirmed that it could review an issue of eligibility only on the basis of an arbitration agreement or a specific accreditation of an athlete for competition by the IOC. Because CAS decisions have conformed closely with trends and expectations within the larger process of international sports law, they have been playing a role in defining and refining the applicable rules in that process. In confirming its broad jurisdiction, the CAS has not hesitated to deny claims based on a manipulation of rules for strategic advantage.

In one case, for example, the CAS reprimanded an NOC for violating the principle offair play by improperly seeking disqualification of a competing team to elevate the standing of its team in competition even though the NOC had not been directly injured by the competing team. Another important contribution of CAS jurisdictional decisions is the non- interference rule according to which the CAS will not interfere with the rules of the game or official calls in the course of competition. In drawing a line between nonreviewable rules of the game and reviewable rules that transcend the immediacy of competition, three cases of the CAS are instructive. The first arose out of an incident during the 1996 Atlanta Games. In reviewing a referee's disqualification of Boxer M for landing a below-the-belt punch on his opponent, the CAS applied customary international standards, drawn particularly from practice in the United States, France, and Switzerland. The CAS concluded from the general practice that a technical decision, standard or rule during competition—in other words, a nonreviewable game rule—is shielded from arbitral or judicial scrutiny unless the rule or its application by sports officials is arbitrary, illegal, or the product of a wrong or malicious intent against an athlete. In such cases, the rule or its application is reviewable. Sanctions appearing to be excessive or unfair on their face are also reviewable. The rationale for the Boxer M decision was two-fold: those IFs have the responsibility to enforce rules, and referees or ring judges are in a better position than arbitrators to decide technical matters.

A second application of the non-interference rule was the AOC Advisory Opinion. There the CAS considered the reviewability of a decision by the international swimming federation (FINA), less than a year before the 2000 Olympic Games, to approve the use of fullbody ('long john') swimsuits. These highly elastic suits, which were first marketed by Speedo, attempted to simulate natural sharkskin. They were designed to increase a swimmer's speed and endurance, to reduce drag, and possible to enhance the buoyancy of the swimmer. The FINA Bureau, after lengthy discussion, ruled that 'the use of these swimsuits does not constitute a violation of the FINA Rules.' In response to this ruling, the

Australian Olympic Committee (AOC), concerned about possible claims of unfairness at the Sydney Games, asked the CAS for an advisory opinion. The AOC inquired whether the FINA ruling had complied with FINA's own rules and whether, in any event, use of the suits would raise contestable issues of fairness. In a thorough and thoughtful opinion, the CAS properly held that FINA had reached its decision in compliance with its own rules and that its ruling, which was tantamount to approval of bodysuits, did not raise any reviewable issues of unfair procedure, bad faith, conflict with general principles of law, or unreasonableness. In the third case regarding the non-interference rule, the CAS again applied this approach in an advisory opinion that had been requested by the Canadian Olympic Committee. Among the issues was whether the Council of the International Badminton Federation (IBF) had acted within its jurisdiction and its published Rules when it made certain changes in scoring of events. The CAS ruled that it had not. The opinion by Ian Blackshaw, consistent with the dictum in the AOC Advisory Opinion, held that the IBF, having failed to comply with its own Rules, had exceeded its powers. The IBF Council's decision to change the scoring was therefore ultra vires.

In examining the jurisprudential legacy of the emerging lex sportiva, two studies of CAS case law are especially instructive. In one of them, a leading CAS arbitrator examined the cases heard by the Ad Hoc Division at the 2000 Games in Sydney. In the first part of his study, he divided the fifteen cases arising from the 2000 Games into five broad categories: doping violations, IF suspensions of athletes, commercial advertising issues, dispute with sports officials, and nationality issues as a matter of eligibility. In one of the doping cases a German athlete, Dieter Baumann, petitioned for removal of a two year ban Baumann's eligibility that had been imposed by the IOC under a strict liability rule. The IAAF claimed that the CAS was without jurisdiction because at that time its Bylaws did not recognize CAS jurisdiction. The CAS examined Rule 29 of the Olympic Charter, which provides that 'their statutes, practice and activities [ofallIFs]must be in conformity with the Olympic Charter.'

Under Rule 74 of the Olympic Charter, the IAAF was therefore subject to the jurisdiction of the CAS.

Also, the principle of res judicata did not apply to bar CAS review of the IAAF decision because neither Baumann nor the IOC had been a party to the IAAF arbitration. Acting therefore as an appeals court over the IAAF, the CAS upheld the IAAF decision to suspend Baumann's eligibility on the basis that the IAAF had properly addressed the evidence. In a similar due process or natural justice claim, the CAS upheld a suspension by the IAAF of Mihaela Melinte. The most highly publicized case decided by the Ad Hoc Division of the CAS in Sydney involved Andrea Raducan, a young Romanian gold medalist in the Women's Individual All-Round event in gymnastics.

After she failed a drug test, the IOC revoked the award of her gold medal. On Raducan's petition on appeal, the two issues before the CAS were whether only a de minimis amount of a prohibited drug (pseudoephedrine) that had been found in her system, together with the circumstances of her ingestion of the substance—in pills given to her by her team doctor as a flu remedy—were sufficient to relieve her from responsibility and a consequent revocation of her gold medal. The CAS, applying an established rule of strict liability to uphold the invalidation of Raducan's performance, found that the de minimis amount of the drug in her bloodstream and the circumstances of her ingestion of it were relevant only to the discretion given to the IOC in its application of disciplinary sanctions.

The IOC, however, softened its decision, simply revoking her medal without imposing any additional disciplinary measures. Two cases involved suspensions from eligibility of weightlifters. In one of the cases the CAS confirmed its independence by refusing to be bound by a Samoan court order that had exonerated one weightlifter. In the other case, the CAS struck down an IOC decision. In these and other cases before and after Sydney, the CAS has made clear that the only acceptable basis for suspending the eligibility of an athlete is an explicit rule. The

Ad Hoc Division in Sydney also heard a commercial case42 involving an alleged infraction of a Bye-law to Rule 61 of the Olympic Charter that regulates the size and other aspects of commercial advertizing on clothing. What is important about the case was a determination that inconsistency in applying the Bye-law among competitors was immaterial. The CAS seemed to be saying that two wrongs do not make a right. Other cases confirmed the established presumption that CAS arbitration would not reverse in-competition decisions. Two cases involved the nationality and alleged statelessness under the Olympic Charter of Cuban-born athletes, one competing for the United States and the other for Canada.

In a series of decisions in those cases that were based on Rule 46 of the Olympic Charter concerning nationality of athletes, the CAS addressed issues of interpretation, res judicata, estoppel, the balance between fairness and finality in arbitration, and third-party interests. In the second part of the same study of the lex sportiva, the author expanded his enumeration of the five categories of arbitral decisions in Sydney by adding two categories that have been discussed earlier in this chapter, namely, those involving the jurisdiction of the CAS and the manipulation of sporting rules for strategic advantage. A second major study of the lex sportiva, which was funded by the European Union, focused sharply on the CAS appellate cases involving doping issues.

The investigation principally examined the extent to which the CAS cases revealed a more or less deliberate harmonization of public law and sports law to promote an effective anti-doping regime. The authors of the study came to two important conclusions. First, the study determined that there was only a limited possibility of extracting harmonizing information from the CAS awards. Second, the authors of the study emphasized the limitations of relying on tribunals, rather than legislative reform, to accomplish any program as ambitious as a harmonization of rules. 'In one sense … the CAS is at the ''wronged'' of the process [of harmonization] as it only received a case [– it cannot actively seize a case –] when all other remedies have been exhausted.'

A correlative limitation is that the CAS cannot play an active role in developing a harmonized anti-doping regime. On the other hand, 'if there were no CAS, or equivalent body, it is difficult to believe that the [more or less national] systems of strict liability would have survived so long without destructive domestic legal challenge.' The authors of this second study of CAS awards made three suggestions to enhance the legitimacy of the CAS and, implicitly, to bolster the role of its emerging lex sportiva. First, the CAS, on a principle of transparency, should make its jurisprudence more freely available, presumably by releasing transcripts, recordings or other renditions of all but the most confidential discussions of issues. Second, the tribunal should distill a set of fundamental procedural rights from its case law that it will expressly guarantee (presumably extending beyond the assurances of those rights implicit in its own procedural rules). Third, the CAS should avoid the present interchange of arbitrators, legal counsel appearing before arbitrators, and the arbitrators themselves so as to avoid even the appearance of bias that might be derived from such interchange of personnel. Ultimately, the reputation of the CAS relies on the twin pillars of independence and impartiality. Indeed, the study concludes with the observation that '[a] truly independent and distinct body of arbitrators/sports judges should have a future priority.'

The Future

The CAS deserves acclaim for two decades of high quality, productive arbitration of sportsrelated disputes. Among its accomplishments is the gradual development of a new and useful jurisprudence derived from its awards. This lex sportiva, though still incipient, is emerging as a means of resolving and potentially helping avoid a broad range of sportsrelated disputes. Principles and rules derived from CAS awards are becoming clearer on such issues as the jurisdiction and review powers of the CAS, eligibility of athletes, and the scope of strict liability in doping cases. The conformity of these principles and rules with the process of international sports law underscores their legitimacy.

A truly effective body of jurisprudence generated by CAS awards, however, will require more development before the emerging lex sportiva can become a truly effective regime of authority. Much will depend on the ability of the CAS to address lingering questions about its impartiality and certain ambiguities in its institutional status that greater formalization of its proceedings would create. Its resemblance to a judicial body, in particular, might be seen to contradict provisions in the CAS Code of Sports- Related Arbitration. It is likely, however, that the role of the lex sportiva in helping shape international sports law will continue to expand.

CHAPTER NINE

Torts and negligence in sports

"You must take reasonable care to avoid acts or omissions which you can reasonably foresee would likely to injure your neighbour. Who then in law is my neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question".

Per ***Lord Atkin*** *In* ***Donoghue v Stevenson.(1932) AC 5621***

Tort is a civil wrong, other than breach of contract, for which a remedy may be obtained usually in the form of damages; a breach of a duty that the law imposes on persons who stand in a particular relationship to one another.[82] The law regarding tort is greatly dependent upon the duty of care. In Tort Law, duty is the obligation either to do or not to do something. In negligence of duty of (reasonable) care is the responsibility

[82] Black's Law Dictionary 9th Edititon.

to act reasonably so as to avoid injuring others.[83] In the case of **Wanjiru v Mash East Services Ltd.**[84] Court ruled that: For the tort of negligence to be established, the plaintiff must show that the defendant, owed her a legal duty of care and that duty was breached causing injury to the plaintiff.[85]According to **Kabiito v. A.G & 2 Ors**[86]court while making reference to the Kenyan case of **Kimmy Paul Semenye v. Aga Khan Hospital & 2 Ors**[87]definednegligence as the act of doing something or an omission by a reasonable man, guided upon considerations which regulate the conduct of human affairs[88].

PROOF OF NEGLIGENCE

The burden of proving negligence lies on the plaintiff. He or she must prove not only that the defendant was negligent but also that the negligence was the cause of the damage he has suffered. The standard of proof should be on the balance of probabilities since it's a civil action. In **weakling v London and South Western Railway**; An action was brought by a widow under the Fatal Accidents Act alleging that her husband had met his death through negligence of the defendants. The only evidence available was that the deceased body had been discovered lying at the side of the railway line near a railway crossing. Court held that the plaintiff could not succeed unless she brought further evidence to show that her husband actually died at the hands of or that the negligence of the railway authority.

[83] Cathy T. Okrent, TORTS AND PERSONAL INJURY LAW, 4TH EDITION, 1997, New York, DelmerCangage, P.20.

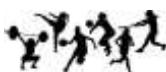
[84] [2016] UGGCCD125.

[85]https://uli.org>hc-civil-division 11:18 AM 19 March, 2020.

[86]Civil suit 26 of 2012 [2019]

[87][2006] KLR

[88]See also – Stanley Kamihanda v. A.G HCCS No. 1201 of 1998 reported in KALR [2003] Pg. 333



The task is not always easy but the plaintiff's task has been less difficult by the doctrine of Res Ipsa Loquitur meaning a thing speaks for itself. This means that where a thing is closely under the management of the defendant or his servants and the accident is in such as in its ordinary course of events happen, but may not have happened if those who have the management of of such a thing use proper care, the accident itself affords primafacie evidence of negligence. It is an essential condition of the operation of the doctrine, that a thing is under the control of two or more persons, then unless they are in law responsible for each other's act, res ipsa loquitur can not apply.

As we have seen, it is for the plaintiff to prove that the defendant was negligent and not for the defendant to prove that he wasn't negligent. However, the effect of the doctrine is to throw to the defendant the burden of giving some explanation of the accident which shows that he wasn't negligent. If he or she fails, the plaintiff succeeds. In **Wing v LGCC (1911) 2 KB 652;** The plaintiff was walking in a public street when a barrel of flour fell from an upper floor window of the defendant's warehouse and injured him. Court held that the accident was sufficient primafacie evidence of negligence on the side of the defendant and the burden was on him to show cause for barrels do not usually fall out of the window by themselves in the absence of negligence.

THE STANDARD OF PROOF

This is on the the balance of probabilities. The negligent act is judged on standard or prudence of an ordinary man, reasonable man. The degree of care varies from person to person for example that of a surgeon may be different from that by a first aider after a road accident. The degree of the later could be a relative one. In **Ali Bisaso v Fresh Foods LTD (1974),** The plaintiff employed by the defendant while carrying a basket fell and sustained injuries. It was held that the employer had not discharged his duty for provision of safe system.

DEFENCES

Contributory negligence;

This is raised when the plaintiff has not taken reasonable care of himself as a reasonable person. At common law before 1945, this was a complete defence but currently its simply a mitigating factor. In **Firipo Munyampirwa v Associated Match Company CS 341 1970**, The plaintiff brought a suit against the defendant alleging negligence on the part of the defendant's driver. The plaintiff's leg had been fractured when the defendant's lorry carrying logs fell on his leg. The plaintiff had participated in using weak and old ropes to tie the same logs. Court held that he was 50% contributory negligent.

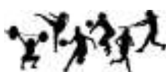
The doctrine of alternative danger is an exception to contributory negligence. A man should take reasonable care for his safety although later events show that he would have been safer had he acted differently. Thus what is done or not done in a moment of agony or despair can't be called contributory negligence **Jones v Boyce(1816).** But even in such situations, a person must exercise care and caution as a reasonable man.

Inevitable accident;

In **Interfreight (u) ltd v East African Development Bank**; court held that inevitable accident can be a defence to a charge of negligence but it cannot succeed unless the defendant can prove something happened over which he had no control and the effect of which could have not been avoided by the exercise of the duty of care and skill and the burden of proof lies on the defendant setting it up.

Volenti non fit injuria

This is voluntary assumption of risk. The claimant knowing the risks involved gives himself to the same. In **Roggenkamp v bennet (1950)80 CLR 292,** the defence was successful as the claimant accepted and accepted the services of a drunken man. However, in Rootes v Shelton



(1967) it was held that the plaintiff may accept the inherent risks involved in the sport, but not non inherent risks or the risk of negligence outside the sport.

Illegality

In ***Gola v Preston (1991)172 CLR 243; Gaudron and MC Hugh JJ*** Held that, "whilst illegality doesn't automatically deprive the plaintiff of a right to sue, where they are in a joint illegal enterprise, it is not feasible to determine the appropriate standard of care and thus no duty arises.

NEGLIGENCE IN SPORTS

In this chapter, we review instances of tortious negligence in sports activities and how these are handled.

Intentionally injured spectator

GEESLIN v. BRYANT.[89]This is a diversity case in which the plaintiff, Bill Geeslin, brought Tennessee state law tort claims of assault, battery, and intentional infliction of emotional distress against professional basketball player Kobe Bryant. There is no dispute that Tennessee law applies in this diversity case.

Assault and Battery

The tort of battery requires an intentional act that causes bodily contact that is unpermitted, harmful, or offensive. When a plaintiff has given consent for the contact, or a defendant has a just cause or excuse for the contact, there is no battery. Similarly, assault has recently been described by the Supreme Court of Tennessee as the intentional creation of "an apprehension of harm in the plaintiff." There is no dispute about the fact that Bryant's initial contact with Geeslin was involuntary. Geeslin's claim is that as Bryant got up, he, "without provocation, violently struck Mr. Geeslin with [his] elbow, causing the injuries and damages." Geeslin's

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[89]453 Fed.Appx. 637, 2011 WL 6415119 (C.A.6 2011) PER CURIAM.

support for this claim is his deposition testimony that It was “obvious” that Bryant intended to harm him, and As Bryant left the scene of contact, he “kind of pushed his arm towards me and glared at me and walked away.” Geeslin has presented no evidence distinguishing injury caused by his initial contact with Bryant from any injury caused by what Geeslin has described as Bryant's “intentional forearm” following the initial collision. However, as outlined above, Geeslin presented his description of the events, including offensive contact by Bryant which he claims caused him injury. Bryant, on the other hand, offered neither deposition testimony nor an affidavit in opposition to the motion.

Although the district court found that Geeslin had “assumed the risk or consented to the entire contact between he and the Defendant,” by virtue of taking the courtside seat, we find that analysis applies only to the initial contact between Geeslin and Bryant and not the secondary, offensive contact described by Geeslin. In viewing the evidence in the light most favorable to Geeslin, as we must, we find that a material question of fact remains on his assault and battery claims. For this reason, the district court's entry of summary judgment for Bryant on these claims was improper.

Intentional Infliction of Emotional Distress

A claim for intentional infliction of emotional distress or outrageous conduct in Tennessee requires a showing by the plaintiff of

- *Intentional or reckless conduct;*
- *Conduct so outrageous it is not tolerated by civilized society; and*
- *A serious mental injury to plaintiff resulting from the conduct.*

As the Tennessee Court of Appeals has described it, a successful claim for intentional infliction of emotional distress “is limited to mental injury which is so severe that no reasonable [person] would be expected to endure it.” While Geeslin generally described symptoms including anxiety and sleeplessness following the incident, we find this is not evidence of a “severe mental injury,” which is required for this claim to

survive summary judgment. We also note that Geeslin's description of the rough push by Bryant in leaving the scene of the collision does not reach the level of “outrageous” behavior sufficient to support such a claim. Summary judgment for Bryant was appropriate here. On the day the jury trial was set to begin, the parties reached a confidential settlement of the dispute.

Liability of referees

Over a number of years it has been argued that a referee might be liable for injury caused to participants through failure to enforce the rules. In **Smolden v Whitworth** an injured rugby referee was found liable in negligence for his failure to control the setting of rugby scrums in a junior match. Special rules of scrum safety applied in the match; the referee had allowed a number of dangerous scrums to form, and another hooker had already been injured. Linesmen had warned of potential injury. In the particular circumstances it was found that the referee had not acted in the manner of a reasonably competent referee.

In **Alcock v Chief Constable of the South Yorkshire Police [1991] 4 All ER 907**

Facts: D caused a large disaster at a sports stadium for which they admit liability. P are people who were not there but connected to the various victims and claim shock causing psychiatric illness. It was broadcast on television.

Issue: Can we expand psychiatric damage arising from shock to a wider class of persons, include seeing on television, and modifying aftermath so it’s not just immediate?

Holding: The class of persons must be decided on a case by case basis, television not generally but in some circumstances may be equivalent to seeing and hearing, and immediacy remains a requirement.

PARTICIPANT NEGLIGENCE

In Wooldridge v Sumner [1963] 2 QB 43 “The practical result of this analysis of the application of the common law of negligence to participant and spectator would, I think, be expressed by the common man in some such terms as these: "A person attending a game or competition takes the risk of any damage caused to him by any act of a participant done in the course of and for the purposes of the game or competition, notwithstanding that such act may involve an error of judgment or a lapse of skill, unless the participant's conduct is such as to evince a reckless disregard of the spectator's safety".

THE TORT OF NEGLIGENCE

Negligence is an unintentional tort that focuses on an individual’s conduct or actions. Accordingly, negligence is distinguished from intentional torts, which focus on the individual’s state of mind or intent. Negligent conduct is defined as the failure to use ordinary care and caution, as would be expected by a prudent person, for the protection of others against an unreasonably great risk of harm. The ability of the injured party to sue and to recover damages for negligence is based on the idea that one who acts should anticipate the consequences of those actions that might involve unreasonable danger to others. A person must take precautions only against unreasonable risks of harm. Unreasonable risks are those whose danger is apparent or should be apparent to one in the position of the actor.

The law, however, does not seek to burden the freedom of human action with excessive or unreasonable demands and restraints. Therefore, one is not expected to guard against situations or occurrences that are unlikely. The reasonable person standard measures the standard of care required. The reasonable person is one who selects a course of action that would be selected by an ordinary, prudent person residing in the affected community under the same conditions. The law excuses all persons from liability for accidents that are either unavoidable or unforeseeable. The

following four elements must be proven by the plaintiff in order to sustain a negligence claim:

- Duty of care owed by the defendant
- Breach of that duty by the defendant
- Actual and proximate causation
- Damages

Duty of Care Owed

The plaintiff in a negligence case must initially establish the duty of care owed to him or her by the defendant. Duty is divided into two categories: a duty to act and a duty not to act in an unreasonable manner. A duty of care is an obligation, recognized by law, that requires an individual or a group to conform to a particular standard of conduct toward another. A general duty of care governs all activities. A person engaged in an activity has a legal duty to act as an ordinarily, prudent, reasonable person and thereby take precautions against creating un- reasonable risks of injury to other persons.

A person need only take precautions against foreseeable risks of injury. Other factors, such as statutes or status of the parties (e.g., doctor or coach), may limit or extend this general duty. The duty of care required of an individual is established by reference to any special qualifications. In the case of a professional (e.g., doctor or trainer), a duty of care is determined by uniform requirements that establish minimum standards of behavior. All professionals are judged not as individuals in society at large but as members of a specified class. When acting in a professional capacity, the professional person will be judged by the standards of the profession in the same or similar communities.

The concept of legal duty is based on the relationship that exists between the parties involved. Certain relationships, such as employer-employee, principal-agent, teacher-student, and coach-athlete, establish a legal duty to act. An employer, for example, has the duty to render aid and assistance to an employee who is injured during the course of

employment. However, absent a duty imposing relationship, an individual is not liable for an omission to act.

A moral obligation to act does not create a legal duty to act and hence the individual who failed to act cannot be held liable for negligence. If one without a duty to act does undertake to act, however, that person may be held liable if he or she acts negligently. By acting, one can create a duty between oneself and another that may not have previously existed. For example, a person who undertakes to rescue another may not abandon the rescue attempt if it becomes inconvenient. By acting, the would-be rescuer has created a duty to continue to aid the person in trouble. In sports cases the duty is often described as the "reasonable care" necessary to avoid creating risks that may result in injuries to players or spectators.

For example, Peter Perry suffered a serious neck injury in a high school football practice. Coach Foot attempted to provide medical assistance. In doing so, he became responsible for causing further damage that left Peter paralyzed. Peter may prevail in a negligence suit against the coach if the court finds that Coach Foot had a duty to act and breached that duty by not acting as a "reasonable football coach" would have acted in this situation, causing actual damage. The determination of a legal duty will rest on whether the court designates the act or non-act as misfeasance, nonfeasance, or malfeasance. Misfeasance is the term applied to lawful conduct that is improperly done. Nonfeasance is an omission of an action that ought to be taken. Malfeasance is the doing of an act that is wholly wrongful and unlawful.

Reasonable Person Standard

Even if a particular relationship does not exist between parties, a person owes to others the duty of exercising reasonable care in his or her activities. The courts "measure" the conduct in each negligence case against the "reasonable person" standard — that is, how a person of ordinary sense, using ordinary care and skill, would react under similar circumstances. It is important to note that the conduct of the "reasonable

person" is not necessarily "perfect" conduct but is that of a prudent and careful individual.

As employed by the courts, the standard of reasonableness takes into account the risk apparent to an actor, the capacity of the actor to meet the risk, and the circumstances under which the person confronts that risk. The "reasonable person" possesses the level of knowledge common to the com- munity in which the injury occurs. A negligent defendant who possesses superior knowledge, skill, or intelligence will be held to a greater degree of care — that is, conduct that conforms to that of others with similar knowledge and /or skill. For example, a team doctor performing a procedure on an athlete on the playing field would be held to the same standard of skill and conduct exhibited by other team doctors in the same specialty performing a similar procedure.

When the reasonable person standard entails a degree of skill or knowledge higher than that of a judge or layperson sitting on a jury, qualified expert testimony is utilized to establish the proper standard of care for the defendant. Again, using the case of a team doctor sued for negligence, both parties would probably call as witnesses other qualified team doctors to testify as to how the procedure is usually performed and what precautions or steps are taken under normal circumstances. This expert testimony would help establish the appropriate standard of care. The jury would then determine whether the defendant doctor met that standard of care. The reasonable person is deemed to possess physical characteristics identical to those of the defendant. If the actor is exceptionally strong, for example, the standard of care demands that the person exhibit conduct which parallels that of a reasonably prudent person of comparable strength under similar circumstances. However, the reasonable person standard does not take into account the temperament or emotions of the individual actor.

The law seeks an objective standard, not a subjective one based on a person's mental attributes. There are several reasons for this. First, it would be extremely difficult, if not impossible, to prove what was in an

individual’s mind at the time of the particular conduct. Second, the harm caused by a negligent act is not changed by the actor’s particular thoughts or feelings. Finally, the courts have determined that a person must learn to conform to the standards of the community and to pay for violating those standards. In extreme cases of mental deficiency, the actor cannot comprehend the danger inherent in certain conduct.

In the past, the courts applied the reasonable person standard when dealing with insane defendants. This was based on the public policy consideration of promoting the responsibility of guardians for those in their care. Recently, courts have held that insane persons are not negligent if their mental state prevented them from understanding or avoiding the danger. A “greater degree of care” may be required when dealing with an inherently dangerous object or an activity in which it is reasonably foreseeable that an accident or injury may occur.

Standard of Care for Children

Children as defendants in a negligence case present an important exception to the reasonable person standard. Children are not held to the same objective standard of duty that is applied to adults. The courts recognize that at young age levels there exists a wide range of mental capabilities and experiences. The law attempts to accommodate for this range by viewing the reasonable child as one who exercises in his or her actions a degree of care that is to be expected of children of like age, intelligence, and experience. For example, in a baseball game, an 11-year-old boy swung at a pitched ball and missed it; the bat slipped from his hands, struck his teammate in the head, and caused serious injuries.

The court held that there was no negligence because the batter exercised a reasonable degree of care for a person of his age, intelligence, and experience. However, under this more subjective standard, it follows that if the 11-year- old boy has intelligence vastly superior to that of his peers, the child will be held to the standard of care encompassing his superior knowledge. Several states have established age brackets that purport to distinguish childhood from adulthood. This method has been criticized,

however, because of the problems inherent in setting an accurate age level guideline regarding mental capabilities. An exception to the application of this subjective standard for children occurs when a child engages in an activity normally reserved for adults such as driving an automobile or hunting with a gun. In cases such as these, the courts in many jurisdictions will apply the reasonable standard for adults without any special consideration of the fact that the individual is a child.

Breach of Duty Owed

Once a plaintiff has demonstrated that the defendant owed the plaintiff a duty of care, the plaintiff must prove the defendant violated this duty by establishing that the defendant's conduct imposed an unreasonable risk of harm on the plain- tiff. There are three methods by which the plaintiff may sustain this burden of proof:

- Direct evidence of negligence
- Violation of a statute
- Res ipsa loquitur

Direct evidence of negligence is evidence tending to establish negligence through firsthand proof of actual factual occurrences. A prime example of direct evidence is eyewitness testimony. For instance, Larry Lacrois suffered an injury to his back in a high school lacrosse game. The athletic trainer told Coach Winatallcosts not to allow Larry to play. Coach Winatallcosts, ignoring the trainer's warning, coerced Larry to play the last 10 minutes because the state championship was on the line. As a result of further play, Larry was more severely injured. Coach Winatallcosts breached the duty of care he owed Larry. If Larry sued, the trainer's testimony would constitute direct evidence of negligence.

When direct evidence is not available, a plaintiff may still prove his or her case by certain procedural devices. One such device is a presumption. A presumption is a legal fiction that requires the judge or jury to assume the existence of one fact on the basis of the existence of another factor group of facts. It is used in the absence of sufficient direct evidence to

prove the fact itself. The classic example is the common legal presumption that a person who has been missing seven years without explanation is dead. Other presumptions include negligence per se and res ipsa loquitur.

Violation of a Statute Negligence Per Se

Violation of a statute is sometimes referred to as negligence per se. Negligence per se means that upon finding a violation of an applicable statute, there is a conclusive presumption of negligence. This conclusive presumption requires that a jury find for the plaintiff, although the plaintiff still has to prove the amount of damages. It does not allow the jury to weigh all the evidence and independently determine the relative liabilities of the parties. Although in some states, the violation of a valid statute may be considered negligence per se, in other states, the violation of a statute, ordinance, or administrative regulation is deemed only evidence of negligence. In order for a statutory violation to provide evidence of negligence, the complaining party must establish two points. First, the statutory violation must be causally related to the plaintiff's harm and second that the statute protects against the particular harm for which the plaintiff seeks to recover. If an individual's taillights are out in violation of a statute, that violation may be used to establish negligence only when the failure of the taillights causes an accident.

However, if the driver of one car rear-ends another car, it is of little or no significance that the rear-ending car's taillights do not work in violation of a motor vehicle safety statute. A statute requiring working taillights was most likely not meant to prevent a car without working taillights from rear-ending another car. It was probably meant for the exact opposite.

Therefore, evidence that the rear-ending car's taillights did not work is not particularly relevant in determining whether or not the rear-ending car driver was negligent in the operation of his vehicle when he rear-ended another car. When a violation of a statute is treated as evidence of negligence and not negligence per se, it is accorded a different weight. A

jury will not be required to conclude negligence; instead, a violation merely establishes an inference of negligence that may or may not be accepted by the jury.

Res Ipsa Loquitur

The last method of establishing the negligence of the defendant is through the use of the legal doctrine of res ipsa loquitur ("the thing speaks for itself "). Res ipsa loquitur permits the fact finder to infer both negligence and causation from circumstantial evidence. It is, in effect, another type of presumption which enables the plaintiff to establish that more likely than not, the harm to the plaintiff was a result of the defendant's negligence. In order to defeat the application of this doctrine, the defendant must establish that there is another, equally believable explanation of the injury to the plaintiff. The most common types of cases utilizing res ipsa loquitur involve airplanes and elevators. When those machines fail, it is almost always because of the operator or supervisor's negligence. The possibility that the operator or supervisor can rebut this presumption by demonstrating "another, equally believable explanation" of plaintiff's injuries is obviously minimal. Res ipsa loquitur is strictly a procedural device designed to allow a plaintiff to establish an otherwise unprovable case. In negligence cases, direct evidence of the defendant's negligence may not be available. This doctrine allows a plaintiff to recover on the basis of what probably happened. The following three requirements must be met before the doctrine will be applied:

- The event ordinarily does not occur except through the negligence of someone.
- The plaintiff must show that the instrument which caused plaintiff's injury was in the exclusive control of the defendant at the relevant time.
- The plaintiff must show that his or her injury was not due to plaintiff's own action.

LIABILITY OF PARTICIPANTS

The liability stemming most directly from sports activity is that for injuries to participants. At one time, most sport-related injuries were viewed as a natural outgrowth of the competitive and physical nature of sports. This attitude was sup- ported by the traditional belief that a participant assumes the dangers inherent in the sport and is therefore precluded from recovery for an injury caused by another participant. Although this theory has some merit, it fails to address injuries that occur during a game that are not necessarily an outgrowth of competitive spirit.

This traditional attitude has been strictly scrutinized in decisions, beginning with **Nabozny v. Barnhill (Ill. App. Ct. 1975),** that clearly establish that a player does not necessarily assume the risk of all injuries resulting from the gross recklessness of another player (see note 1f), nor does the player necessarily consent to intentional attacks falling outside the recognized rules of the sport. Thus, the defenses of assumption of the risk or of consent must be reviewed on a case-by-case basis to determine their applicability.

This change in attitude has occurred in part because of the increasing number of serious injuries to sports participants. The increased volume of sports participation resulting from the involvement of boys and girls, and men and women, in unprecedented numbers has produced a corresponding increase in the number of sports-related injuries, leading to efforts by governing bodies to reduce injury risks. For example, the National Collegiate Athletic Association (NCAA) attempts to survey injuries resulting from participation in intercollegiate games through the NCAA Injury Surveillance System. The 2004 – 2005 survey indicated that foot- ball posed by far the highest risk to student-athletes, with 39.1 injuries per 1,000 athlete exposures. For more information, see http://www.ncaa.org.

A second reason for the change in attitude is that professional sports, and to some extent intercollegiate and Olympic athletics, is now viewed as businesses. Because of this, people are more inclined to consider lawsuits to be viable responses to sports injuries. Many athletic organizations have greater revenues and may have deep pockets to pay large awards. A third reason is that legal precedents have been established which allow injured athletes to recover.

Finally, the rise in sport-related lawsuits is a result of society becoming increasingly reliant on the judicial system for the resolution of disputes. An increase in claims of negligence and other tortious conduct has paralleled the rising number of sports injuries in recent years. One factor behind the rise in participant versus participant lawsuits is the steady erosion of the athlete’s traditional reluctance to sue fellow participants. The increasing recognition of the dangers involved in playing a game against an opponent who does not follow an accepted safety rule has increased the likelihood of a lawsuit. Players are refusing to accept injury-provoking actions of opponents when the actions are not sanctioned by the rules of the game. There are legal precedents that recognize that each player has a legal duty to refrain from unreasonably dangerous acts. Courts have found that many sports, including soccer, softball, football, and golf, have created safety rules to help define the often unclear line between legal and illegal behavior on the field.

A safety rule is one that is initiated to protect players and to prevent injuries. The existence of safety rules mandates that in many situations a player be charged with a legal duty to every other player involved in the activity. In cases involving the alleged violation of a safety rule, the courts have held that a player is liable for tort action only if his or her conduct displays deliberate, willful, or reckless disregard for the safety of other participants and results in injury to another participant. Thus, a participant may recover either for an intentional tort or for gross negligence, but ordinarily will not be able to recover based on a negligence theory. However, case law indicates that there are situations in sports for which the commonly accepted defenses of assumption of

risk and contributory negligence are not adequate to bar recovery by the plaintiff.

Liability of coaches and teachers

Coaches and teachers, as individuals, are always responsible for any intentional torts they commit in their capacity as coaches or physical education teachers. They are generally not shielded from liability by virtue of their positions through the defenses of consent, privilege, and immunity. The coach is judged by the standard of a "reasonable coach" and the teacher by the standard of a "reasonable teacher." There are some limited exceptions in which coaches and teachers are held to a lower standard of care and will not be held liable unless they are deemed to be grossly negligent. One situation involves coaches or teachers who are considered to be in loco parentis that is, the coach or teacher is placed in the position of the parents of the student-athlete. A coach or teacher may, however, have a number of defenses available

Since minors are often involved in these cases, note should be taken that certain defenses, such as contributory negligence, comparative negligence, and assumption of the risk, may be affected by the different standard of care for children. The defense of sovereign immunity is frequently important for coaches and teachers. Generally, the coach or teacher cannot be sued individually when the school district is protected under sovereign immunity. However, this protection may not cover the coach who is acting outside the scope of employment or who has performed his or her job in a clearly improper manner (acted with misfeasance). The sovereign immunity protection is also limited to coaches at public institutions, as opposed to coaches at private institutions.

Until recently, very little litigation was brought against coaches and teachers as a result of the sovereign immunity protection and the reluctance of potential plaintiffs to bring lawsuits. This was especially true in the case of coaches and teachers, who were often members of the community and highly respected for their work. However, the coach and

teacher are increasingly likely to be sued due to the greater likelihood of injured student-athletes fi ling lawsuits and the erosion of the sovereign immunity doctrine. In many cases, the institution is sued under the doctrine of respondent superior (also called vicarious liability) for the individual coach's or teacher's negligence, although the individual is also named as a defendant. In future cases, the coach and teacher may be sued individually more often.

Areas of responsibility for which a coach or teacher may be successfully sued include supervision, instruction and training, and medical assistance. Coaches and teachers have also been sued under the theory of vicarious liability for the actions of fans and players, but these lawsuits usually have not been successful.
Prior to addressing those areas individually, certain important points are beneficial for institutional administrators to remember regarding the liability of coaches and teachers. Those include the following:

- *Coaches and teachers must be aware of safety issues when coaching and instructing.*
- *Coaches and teachers must be careful with punishment-type drills.*
- *In terms of risk management, administrators need to know the activities of the coaches and teachers.*
- *Also in terms of risk management, coaches and teachers need to be aware of liability issues.*
- *Coaches and teachers must be aware of school district and athletic association rules.*

Adherence to these key points may prove tremendously valuable in eliminating potential liability of coaches and teachers as well as subsequent institutional liability under vicarious liability theories by minimizing potentially injurious situations.

Failure to Provide Adequate Supervision

Although coaches and teachers are not regarded as insurers of everyone under their care, they are responsible for providing reasonable supervision to the student-athletes under their direction. Examples of failure to provide adequate supervision include negligent supervision at a football game and failure to provide the proper equipment for the game. Examples may also include improperly supervising an off-season weight training program or encouraging an injured student-athlete to play.

An additional responsibility for the coach or teacher is to check the playing area to make sure it is in proper condition and that nothing is on or near the playing area that could cause injury, including benches, other participants, and spectators. Finally, the coach or teacher also may be sued for non playing field activities such as supervising student-athletes who are going to or from the playing field. The coach or teacher is responsible for providing reasonable supervision.

Any supervisory capacity carries with it the responsibility to exercise due care that is, the care of a "reasonable supervisor". This due care must be provided for the safety of anyone who is likely to or actually does come into contact with the area under supervision. The duty entails using reasonable care in either rectifying dangerous situations or warning those who may encounter them of the possible hazards. A supervisor generally is not liable for any intentional acts of his employees unless the supervisor directed the action and the employer benefited from it. A school district or supervisor is liable in such instances only if the institution, or one to which the district or supervisor is legally responsible, breaches the requisite standard of care. The school district and /or supervisor will only be liable if the employee and the action taken satisfy the requirements of vicarious liability. Also, the doctrine of sovereign immunity may bar the action depending on the state where the action took place.

A supervisor is not, however, an insurer of everyone's safety; rather, the super- visor needs only to exercise reasonable care. Unless there is

information or notice to the contrary, the supervisor is entitled to assume that all under his or her super- vision will exercise due care. Thus, a spectator who is injured by another spectator may not enforce a claim against a school district or its administrators unless the school district or administrator, having notice that the other spectator was likely to cause an unreasonably dangerous condition, failed to take steps to prevent the injury. Past experience, moreover, will be considered when assessing liability. For example, if the same spectator appeared at a later contest and injured a fellow spectator, the school district might be held liable for negligent supervision because the first situation provided warning of the person's potentially dangerous nature.

The duty of care required may depend on the type of event. Hockey games, for instance, may require more security and precautions than track and field events. The general rule is that the coach has no duty regarding the matching up of participants. Yet the prudent athletics administrator would ensure reasonable matchups in order to minimize risk of litigation in this area, as well as decrease the potential for injury to the participant.

Liability of facility owners and possessors

T he duty that the owner or possessor of a facility owes varies, depending on the status of the party who was injured while on the premises. Therefore, to establish the extent of duty for owners, operators, supervisors, or possessors of land, the status of the person injured must first be determined. Generally, there are two classes of persons: licensees and invitees. A licensee is one who enters the property of another, with the owner's consent, for the licensee's own purposes. The occupier of the property owes licensees only a duty of ordinary care. There is no obligation to inspect the area to discover dangers that are currently unknown, nor to warn of conditions that should be obvious to the licensee. The occupier of the property owes a licensee a duty to warn only when a risk is known or should have been known by the occupier under the reasonable person standard, and when the licensee is unaware of the danger.

An invitee is someone who is invited onto the property and whose presence benefits the occupant. An invitee is owed a greater degree of care by the owner, operator, supervisor, or occupier of the property. There is an affirmative duty to make safe both known defects as well as those defects that should have been discovered by reasonable inspection. The basis of liability is the implied representation at the time of the invitation that the premises are safe to enter. The invitation does not have to be extended personally for an individual to be classified as an invitee. For example, an advertisement which invites people to buy tickets and enter a stadium is considered an invitation for this purpose. The invitation implies that reasonable care has been exercised for the safety of the invitee. The owner or possessor of the property is not, however, an insurer of the safety of the invitee.

That is, the owner does not guarantee safety under all possible circumstances. Instead, the owner or possessor must exercise only reasonable care for the invitee's protection. The distinction between licensee and invitee is important because the different standards of care that may be applied can be decisive in determining the outcome of a lawsuit. An athlete or a spectator at a sports event is characterized as a business invitee. A business invitee is a visitor who brings a monetary benefit to the person in possession of the property. The business invitee is also a person whom the possessor encourages to enter onto the property. By such encouragement the possessor implicitly represents that the premises are safe to enter. The distinction between patent and latent defects is also important in any discussion of the liability of owners and possessors of sports facilities. Both types of defects are potentially injury-causing, but an owner or operator can only be held liable for defects which are discoverable.

A patent defect is one that is plainly visible or that could easily be discovered upon inspection. A facility owner or a lessee is liable for obvious defects, such as debris on steps that creates a hazard, if they cause an injury. A latent defect is a hidden or concealed defect that could not be discovered by reasonable inspection. It is a defect of which

the owner has no knowledge or of which, in the exercise of reasonable care, the owner should not have knowledge. Owners and lessees are generally not liable for injuries caused by latent defects. In the eyes of the law, when a facility is leased, it is in effect sold for a period of time. Thus, the lessee the person taking control of the property assumes the responsibilities of the lessor the person giving up control of the property toward those who enter the property. The lessor still has a duty, however, to disclose any concealed or dangerous conditions any known latent defects to lessees, their guests, and others reasonably expected to be on the premises. For this duty to attach, the lesser does not have to believe that the condition is dangerous or to have definite knowledge of the defect.

Instead, it is sufficient that the lessor be informed of facts from which a reasonable person would conclude that there is a possible danger. However, the lessor has no duty to warn about patent defects, which are defined as known, open, or obvious conditions. When a property is leased for a purpose that includes admission to the public, the lessor has an affirmative duty to exercise reasonable care to inspect and repair the leased property. This duty is imposed to prevent an unreasonable risk to the public. Liability will extend only to parts of the premises open to the public and to invitees who enter for the purpose for which the place was leased. Facility owners and possessors also have a duty to exercise reasonable care in maintaining the premises and in supervising the conduct of others at the facility. They are, however, entitled to assume that participants will obey the rules and that employees will not be negligent, absent notice to the contrary.

Thus, their duty does not include protecting consumers from unreasonable risks. An unreasonable risk is one in which the probability of injury outweighs the burden of taking adequate precautions. The general rule is that facility owners and possessors are liable for conditions on their premises which cause physical harm if they know or should reasonably have known about the existence of the dangerous condition when such a condition poses an unreasonable risk to an invitee. The

requirement of reasonable care is supported by the proposition that a spectator or a participant assumes all the ordinary and inherent risks of the particular sport.

These inherent risks are those commonly associated with the sport. The application of this common knowledge rule will depend on the circumstances. No invitee, whether a player or a spectator, assumes the risk that an owner will fail to meet his or her duty of reasonable care. Having considered the legal rules and responsibilities that apply to facility owners and operators, we turn now to practical implications for sport managers. A facility owner and possessor's duty of reasonable care can be divided into three areas. First is the duty to protect invitees from injurious or defective products.

An owner and possessor must exercise reasonable care in the selection of equipment necessary for the operation of the facility. Second, owners and possessors must exercise reasonable care in the maintenance of the facility itself and any equipment in the facility. Standards of safety, suitability, and sanitation must be maintained. In addition, if an invitee uses any of the equipment and the facility owner or possessor supervises, then the facility owner or possessor is held to a standard of reasonable care. Third, an owner and possessor must guard against foreseeable harmful risks caused by other invitees. A breach of any of these duties may subject a facility owner or operator to liability for negligence. In recent years, courts have examined whether a facility owner or operator's duty to guard against foreseeable risks of harm includes a requirement to have automated external defibrillators (AED's) on the premises. Although relatively few courts have considered the issue, those that have done so have thus far declined to impose a duty to maintain AED's on owner/operators. Promoters and other sports event organizers often use a facility for only a day or a few days. They do not own the facility, and they are not in a long-term lease situation; therefore, they cannot be considered permanent tenants. Examples include mixed martial arts events, Harlem Globetrotter games, and ice shows.

The promoter owes a duty of reasonable care in the maintenance and supervision of the facility. With respect to maintenance, the owner is more likely to be responsible for patent defects that are uncorrected. With respect to supervision, the promoter is responsible for reasonable care in the running of the event, although the determination of reasonable care may differ depending on the type of event. For example, the amount and type of necessary security may differ for a family event as opposed to a rock concert. The promoter, however, is not responsible for unique or unforeseeable events in the absence of notice that an injury is apt to occur. Therefore, courts have often refused to find liability for patrons' injuries caused by other spectators. Promoters are required only to exercise reasonable precautions. Nevertheless, to protect themselves in the event that an invitee is successful in a claim against a promoter, facility owners or possessors may require promoters to execute lease agreements. An agreement will usually require the promoter to obtain general liability insurance and agree to indemnify and hold harmless the facility owner or possessor.

The events where alcoholic beverages are sold, additional concerns will apply. Owners of facilities that allow alcoholic drinks to be consumed at athletic events have consequently instituted some of the following procedures:

- To purchase beer, customers must go to the concession stand. Beer vendors are no longer allowed to sell beer to customers in their seats. In addition, low-alcohol (3.2 beers) and no-alcohol beer are offered for sale.

- At football games, the sale of beer is discontinued at the beginning of the third quarter; at baseball games, beer sales may be ended at the seventh inning stretch or earlier.

- The largest container of beer sold is 20 ounces instead of 32.

- Season ticket holders can lose their ticket rights for subsequent seasons if they become involved in fights or other such rowdy behavior or even if they give their tickets to others who proceed to engage in such behavior.

- No-alcohol seating sections are designated.

Control of alcohol beverage sales in the facility, limiting or supervising the practice of tailgating in pregame and postgame situations, and ensuring that security is present inside and outside the facility are further examples of reason- able precautions taken by facility operators. At a minimum, sponsored activities require some type of increased safety measures, especially if there have been incidents of rowdiness or other disruptive behavior in the past. If such measures are undertaken, liability should be greatly reduced.

Another potential problem area for facility owners is tailgating, which has become a standard component of the traditional college football weekend. In fact, many colleges and universities have actively promoted the concept, seeking to capitalize on its popularity to market their intercollegiate athletic programs. In most cases, tailgating is a harmless afternoon's pleasure for fans, but on occasion it can lead to excessive drinking and rowdy behavior. In general, there has been an increasing concern by society and state legislatures and courthouses about excessive drinking and its impact on public safety. It is this aspect of tailgating that must concern facility administrators. Sports administrators have also been concerned about drinking at intercollegiate events. The National Collegiate Athletic Association has long banned the sale of alcoholic beverages at NCAA tournaments and postseason championship events, and many campuses have policies that limit consumption of alcoholic beverages at on-campus athletic events. In summary, the following checklist is offered to help facility owners protect themselves against possible litigation:

- Anticipate any potentially injurious conditions in the facility (stadium, arena, pool, etc.) or event site (baseball field, soccer field, etc.) in order to identify and reduce risk.

- Ensure that the facility is adequately maintained and perform regular inspections (with written reports) on the condition of the facility.

- In designing a facility, make safety a top concern of the architects and planning committee. Ensure that safe materials are used throughout the facility (glass, padding, mats, etc.).

- Designate an individual on the staff to serve as the safety expert.

- Develop a clear, written policy concerning safety in the facility, institute a reporting procedure for potential problems, and document any mishaps in detail.

- Develop policies for crowd management, including alcohol consumption at the facility.

- Develop clear, written guidelines for management of crises.

- Ensure that all personnel are trained in safety procedures; to the extent possible, include staff in identifying potential safety hazards.

Liability of medical personnel

Medical professionals are generally liable for the negligent acts and omissions they commit against a patient in the course of their practice if such conduct does not meet the standards expected of a professional at the same rank. Going beyond the liability of the medical personnel, the entire institution can be sued for the negligent acts of the medic.

Vicarious liability in tort is a strict liability doctrine in nature. In the case of **Watsemwa & Anor. V Attorney General** It was held that the medical staff at Mulago Hospital had negligently handled the birth of the 2nd plaintiff. And the Government, through the Attorney General, was held liable for the act of the negligent medical staff. In the recent years, the High Court has approached cases of professional negligence towards clients, where a duty of care undoubtedly exists.

In Watsemwa & Anor. V Attorney General, is a leading case in the area of professional negligence, more so; amongst medical staff. In that case, a senior doctor instructed a nurse to handle a patient even with the doctor's solid knowledge that the situation needed a more experienced doctor of his experience or more. On the contrary, all the affairs were left in the hands of the less experienced nurse hence, the suit arose. Court found for the plaintiff and awarded the same huge monies in damages.

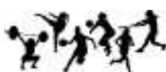
In Bolam v Friern Hospital Management Committee established the test for subjecting medical personnel in the face of suits, under professional negligence wherein Court pronounced itself, holding that, a doctor can avoid liability for professional negligence should the same convince court through substantially admissible evidence that any other doctor would have acted in the same professional manner.

For causation to be established: A defendant's conduct must cause the damage the claimant has suffered.[90] The factual causation seeks to answer the question that, "but for the conduct of the defendant, would the injury and damage to the plaintiff have occurred?"

In **Cork v Kirby MacLean Ltd**.[91] It was held that, 'if the damage would have not happened but for a particular fault, then the fault is the cause of the damage, if it would have happened just the same way, fault

[90] https://www.lawteacher.net/modules

[91] [1952] 2 ALLER 402.S



or no fault, the fault is not the cause of the harm or cause of the damage.' Proximate cause means that you must show that the harm was caused by the tort you are claiming for.[92]

A person or an organization in charge of a sports activity has a duty to provide reasonable medical assistance to participants as well as to spectators. To determine if this duty has been met, both the quality and the speed of the treatment must be considered. The quality of the treatment will be assessed by looking at the qualifications of the provider and the type of treatment offered. The speed of the treatment may be determined by the response time and availability of medical personnel. There are many different levels of health care providers within the American medical system. With respect to athletic events, these providers may be doctors or nurses; more often they are trainers or emergency medical technicians (EMTs). The standard of care required of each medical provider is based on the person's training and qualifications.

A higher standard of care is established if the class of medical personnel possesses skills and training beyond what is expected of the reasonable layperson. For example, the standard of care imposed on the medical profession is that the doctor must have met the level of skill and knowledge common to the profession and adhered to a uniform standard of conduct. In the case of a specialist, however, the duty has increasingly become more stringent. A specialist must act with the skill and knowledge reasonable within his or her specialty.

Thus, the growing ranks of doctors practicing sports medicine may eventually lead to widespread recognition of sports medicine as a distinct specialty, thus leading to a higher standard of care for doctors specializing in sports injuries in negligence lawsuits brought by injured athletes. In court, the relevant standard of care will usually be established by expert testimony. Generally, medical personnel are considered independent contractors rather than employees, even though they may be

[92] https://en.m.wikipedia.org>wiki>tort

paid by a school district, facility owner, or other supervisory body. As independent contractors, even if medical personnel are found negligent, their negligence cannot be imputed to their employers under the doctrine of vicarious liability. To determine if a doctor or other medical person is an independent contractor, the court considers the degree of control exercised by the employee's supervisor over actual medical decisions. There have been cases in which the employer has been held liable under the doctrine of vicarious liability.

In these cases, courts have found that the employer exercised control and direction over the medical personnel. There are some special considerations for a doctor involved in the area of athletics. The first concerns the relationship between doctor and patient. Typically, the doctor is paid by the patient. However, in sports, the doctor is hired and paid by the athletic organization. Usually, there is a confidential relationship between doctor and patient. When the doctor is employed by a third party, however, the normal relationship is not established. In effect, then, team doctors have two masters to serve: the athletic organization for which they work and the players they treat. In addition, while both the organization and the player are concerned with restoring the player to full health, there are situations in which the team may seek a shorter rehabilitation program while the player may favor a more cautious timeframe for recovery.

The team doctor is placed in the middle. The doctor's dilemma is highlighted by suits involving the team doctor if the player believes the doctor has not placed his or her long-term recovery before the program's wishes. In one case, a team doctor and athletic trainer allowed a college football player to play with a sprained neck, altering the player's equipment to restrict movement. The player was injured during the game and rendered quadriplegic. Such a case also raises the issue of the duty of a player to refuse to play with an injury after a team doctor has declared him or her healthy enough to participate. In addition to this potential conflict, the normal confidential relationship between a doctor and patient

(the athlete) changes when a third party, the athletic organization, pays the doctor.

The athletic organization typically has full access to the athlete's medical records and often discusses the appropriate treatment for the injured athlete with the doctor and patient. In some situations, the athletic organization has access to the medical records and the athlete does not. The potential for abuse in this situation was demonstrated in **Kreuger v. San Francisco Forty-Niners , 234 Cal. Rptr. 579 (Cal. App. 1st Dist. 1987)**. Kreuger, a player with the 49ers, sued team personnel for fraudulent concealment of medical information. The court found that due to the team's interest in keeping Kreuger on the fi eld, he never received a full disclosure of the extent of his knee injury and thus continued to play when he should have retired from the game. As another example, Rafael Septien, a placekicker formerly with the Dallas Cowboys, sued the Cowboys for full access to his medical records. The confidential relationship between a doctor and a patient may also preclude a doctor's release of information to the athletic organization or anyone else without permission from the patient.

Another consideration concerns the prescribing of painkilling drugs to enable the athlete to continue playing for the benefit of the team but to the potential detriment of the player's career and postcareer activities. There have been situations on the professional level in which athletes — for example, Bill Walton and Dick Butkus have brought lawsuits against their employers and team physicians for prescribing painkilling drugs that allowed them to play without informing them of the potential harm to their long-term careers. These cases could be applicable at the collegiate level given similar circumstances. Furthermore, they raise the issue of the responsibility a doctor has to his patient, the injured player, and the responsibility the doctor has to his or her employer, the team. One final consideration is that even though doctors may be negligent in their handling of an injured player, they may not be legally liable under normal tort analysis. When a player is injured through intentional or negligent actions on the part of a coach, referee, player, spectator, or

anyone else, subsequent negligent action will not usually relieve the original tortfeasor from liability created by the original action. Doctors may, however, be liable as an additional defendant if their conduct is found to be a substantial factor in the injury or if additional injuries occurred because of their negligence. Nevertheless, subsequent medical negligence is generally not an unforeseeable and unreasonable cause that would relieve the original party from liability.

Liability of officials, referees, and umpires

Officials, referees, and umpires have sought recovery in civil litigation for injuries suffered in the course of employment. They may also be protected against violence, in certain states, by criminal statutes. Game officials may incur tort liability as a result of their actions or inactions on the playing field. There have been two distinct areas in which suits against officials, referees, and umpires have been fi led: the personal injury area, in which the official, referee, or umpire is sued for negligence, and judicial review of an official's, referee's, or umpire's decision. There have been a few reported cases in both of these areas since few cases have been fi led and many of those have been settled. However, this area has the potential for increased litigation. In the personal injury area, the official, referee, or umpire may be sued for negligence in a number of different situations.

The first is when there has been a failure to inspect the premises. For instance, a plaintiff may contend that a referee should have inspected the field for holes or other dangerous conditions that could cause injury to players. In the second situation, the game official fails to keep the playing area free of equipment and /or spectators. For example, a ball or bat may be left on the playing field and a player may trip, fall, and be injured by the equipment. With respect to spectators, an injured spectator might contend that the official, umpire, or referee should have stopped play on the field and warned the spectators to move from the playing area. Similarly, a player who is injured by running into a spectator might contend that officials should have moved the spectator away from the playing area.

The third situation involves weather conditions. An injured player may con- tend that the official, referee, or umpire should not have started the game or that the game should have been stopped. The fourth situation involves equipment. It could be argued that the official, referee, or umpire has the responsibility to pre- vent a player from participating if the player's equipment is obviously ill fitting. A situation that may be more likely to result in successful litigation is when a referee does not enforce a rule, especially a safety rule requiring certain equipment (such as helmets) or banning dangerous items (such as earrings). The fifth and final situation involves a potential claim that the official, referee, or umpire did not prop- erly enforce the rules of the games. For example, the plaintiff may allege that the basketball referees failed to control the game by not calling fouls or technical fouls and that this resulted in a much rougher game, proximately causing the injuries suffered by the plaintiff. The area of judicial review of an official's, referee's, or umpire's decision is one that has been infrequently litigated.

Generally, courts are reluctant to review playing field decisions, whether involving errors in judgment or misapplication of a rule. Plaintiffs have not been successful in this area, and the courts will continue to show their reluctance to become involved in decisions on the playing field unless fraud or corruption can be found. A problem not related to the liability of referees, officials, and umpires, but one that an athletic administrator and the official should be aware of, is the type of relationships created by the association of referees, officials, and umpires. The official may be classified as an independent contractor or an employee. This distinction becomes important if an official is injured in the course of performing his or her duties. If acting as an independent contractor, the official will not be eligible for workers' compensation; but if classified as an employee, the official would be entitled to receive those benefits. In addition, the athletic administrator could be held liable for the actions of the referee under the legal theory of vicarious liability if the referee is deemed to be an employee. The athletic administrator will generally not be held responsible for the actions of the official if he or she is an independent con- tractor. The interpretation of a referee's status differs from state to

state on the basis of state laws and the legal relationship between the referees and the hiring institution. An examination of legal cases involving the question to determine a particular state's interpretation of the relationship is advised. The following liability checklist will help officials, referees, and umpires protect themselves against possible litigation:

1. Inspect playing surface, including sidelines and end lines, for visible and potential hazards.

2. Determine if weather conditions are appropriate for competition and do not allow coaches or other athletic officials to influence the decision.

3. Inspect game equipment such as bases and goalposts.

4. Ensure that players wear safety equipment required by the rules of the league or athletic association.

5. Inspect players' equipment for safety and make sure that players are not wearing any potentially dangerous jewelry or accessories.

LIABILITY INSURANCE

Liability insurance is a form of indemnity whereby the insurer undertakes to indemnify or pay the insured for a loss resulting from legal liability to a third per- son. It is based on contract law principles. Liability insurance protects an insured person against financial loss resulting from lawsuits brought against him or her for negligent behavior. Common subjects for liability insurance in athletics are risks from use of the premises, from faulty products, from use of vehicles, and from the practice of professions. Insurance is effective even if the insured has committed a minor violation of the criminal law.

A minor violation will not invalidate the insurance or deprive the defendant of protection. An insurance policy may be invalidated, however, if the insured's conduct was so outrageous that it would be against public policy to indemnify it. The policy may also be invalidated if the insured misrepresented a material fact at the time of the application for the policy. One of the standard provisions in any insurance policy requires the insured to cooperate fully with the insurance company by providing full and accurate information about the accident. It may also require the insured to attend the trial, to take part in it if required, and to do nothing for the injured party that would harm the insurance company. A violation of any of the preceding requirements would relieve the insurance company of liability to the injured third party.

The term subrogation is often found in tort cases involving insurance claims. Subrogation is the right of the insurance company that has paid the legal obligation of the insured party to recover payment from the third party who was negligent. For example, a fan is injured at a baseball stadium by a foul ball that passed through a hole in the netting behind home plate, and the hole was there because of the negligence of a third-party contractor who damaged the screen during installation. If the liability insurer for the stadium pays the injured fan, it has the same right, under subrogation, to sue the installer for negligence as its insured, the stadium owner, had. Typically, insurance policies contain a clause that explicitly entitles the insurer to be subrogated to his insured cause of action against any party who caused a loss that the insurer paid. The insurer can also be entitled to subrogation in the absence of an express contractual provision; this is called equitable subrogation . In some states, however, an insurance company must prove it was not a gratuitous payment in order to recover under equitable subrogation.

The response by institutions and sports associations to the increasing number of lawsuits brought under a tort liability theory is to use insurance. The National Federation of High School Associations and many state high school athletic associations and their member schools have adopted a liability/ lifetime catastrophe medical plan. The plan

covers the National Federation of State High School Associations, the state high school athletic/activity associations, their member schools and school districts, and member school administrators, athletic directors, coaches, and trainers. This type of insurance allows the student-athlete who suffers a catastrophic injury to waive suit and opt for medical, rehabilitation, and work-loss benefits for the rest of his or her life. The philosophy behind the insurance plan is to provide needed benefits to the injured student-athlete without the time, costs, and risks involved in litigation. If the injured student-athlete opts for the benefits provided by the insurance policy, the institution saves time, expense, and a possible award in favor of the plaintiff. T he NCAA instituted a similar catastrophic injury protection plan.

The NCAA's plan accomplished two important objectives. First, by having this type of plan, it reduced if not eliminated the number of workers' compensation cases fi led against NCAA member institutions. Second, the NCAA insurance policy assists the catastrophically injured student- athlete by providing benefits immediately, without time delays, without the costs of litigation, and without the uncertainties involved in litigation. The student-athlete who is catastrophically injured as a result of negligence of an institution or one of its employees retains the right to litigate the case and not collecting the benefits provided by the NCAA policy.

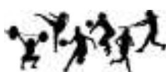
WAIVER AND RELEASE OF LIABILITY

In the law, there are often competing legal theories in a given situation. The resolution of this type of situation is usually based on the preeminent public policies existing at the time the conflict arises. In the area of waivers and releases of liability, the underlying principles of tort law and contract law conflict. Waivers or exculpatory agreements are contracts that alter the ordinary negligence principles of tort law. Contract law is based on the idea that any competent party should have the absolute right to make a binding agreement with any other competent party.

The only limit to this right is that a contract is invalid if it violates public policy. For example, a contract in which the parties agree to commit a crime would violate an important public policy of protecting public order, and thus would be unenforceable. Tort law, on the other hand, is based on the idea that all persons should be responsible for negligent or intentional actions that cause injury to other persons. Waivers, then, create a conflict between the right to enter into contracts and the policy that one should be held responsible for injury-causing negligent actions. This conflict has been resolved in favor of the general rule that waivers and releases of liability will be enforceable unless they frustrate an important public policy goal or unless the party getting the waiver is unfairly dominant in the bargaining process.

This resolution is based on the general contract law principle that a party is bound by the signing of a contract unless there is evidence of fraud, misrepresentation, or duress. In order to determine if fraud, misrepresentation, or duress exists, a court will consider whether the party waiving its rights knew or had an opportunity to know the terms. This does not mean that merely failing to read or to understand a waiver and release of liability will invalidate it; rather the language by which one party waives its rights must be conspicuous and not be hidden in fi ne print so that a care- ful reader is unlikely to see it. The waiver and release of liability must also result from a free and open bargaining process. Therefore, if one party forces the other to agree to a waiver, it will not be enforceable. Another consideration is whether the express terms of the waiver and release of liability are applicable to the particular conduct of the party whose potential liability is being waived. In other words, the language of the waiver must be clear, detailed, and specific. However, no waiver or release of liability will be enforceable if it attempts to insulate one party from wanton, intentional, or reckless misconduct. Therefore, only liability for negligent actions can be waived. If the person signing the waiver and release of liability is a minor, other issues are raised. Under basic contract principles, a minor may repudiate an otherwise valid contract.

A problem may also arise when parents sign waivers for their children. Courts are struggling with the issue of the rights of minors that may be waived by their parents. For competent adult participants in sports activities, waivers and releases of liability are generally upheld unless the waiver or release of liability violates public policy. However, questions are frequently litigated in the area of auto racing. Courts have reasoned that a driver is under no compulsion to race; therefore, a driver has the ability to decide whether to race and to assume all the risks inherent in auto racing. This may include risks that arise as a result of negligence on the part of the event's promoters. Courts are generally more reluctant to enforce a waiver and release of liability signed by spectators, based on the theory that they may not be as familiar with the risks of auto racing and that they are entitled to assume that the premises are reasonably safe.



CHAPTER TEN

Intellectual Property and Image rights in Sports

TRADEMARK

> **Article 26 of the Constitution of the Republic of Uganda** *states that every person has a right to own property either individually or in association with others.*

A trademark means a sign or mark or combination of signs or marks capable of being represented graphically and capable of distinguishing goods or services of one undertaking from those of another undertaking. A sign or mark includes any word, symbol, design, slogan, logo, sound, smell, colour, brand label, name, signature, letter, numeral or any combination of these capable of being represented graphically[93].

[93] (Section 1 of the Trademarks Act 17/2010.)

A trademark protects goods whereas a service mark protects services. There are different types of marks: a service mark eg IAA & AAR, a collective mark eg Mukwano, a certification mark eg UNBS, a defensive mark, an associated mark and well known marks eg Philips.[94]
Uganda applies both local and international laws and treaties to trademark-related matters.

NATIONAL LAWS

National laws applicable to trademarks include the following:

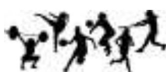
- *the Constitution of the Republic of Uganda 1995 (as amended);*
- *the Trademarks Act 2010;*
- *the Geographical Indications Act 2013;*
- *the Copyright and Neighbouring Rights Act 2006;*
- *the Uganda National Bureau of Standards Act, Cap 327; and*
- *the National Intellectual Property Policy 2019.*

INTERNATIONAL LAWS AND TREATIES

International laws and treaties applicable to trademarks include the following:

- *the Nairobi Treaty on the Protection of the Olympic Symbol (21 October 1983);*
- *the Convention Establishing the WIPO (18 October 1973);*
- *the Paris Convention for the Protection of Industrial Property (14 June 1965);*
- *the Agreement on Trade-Related Aspect of Intellectual Property Rights (January 1995);*

[94] Abinyo Susan – enforcing intellectual property rights in uganda accessed at https://www.wipo.int on 7th December 2021



- *the Banjul Protocol on Marks Within the Framework of the African Regional Industrial Property Organisation (ARIPO) (21 November 2000);*
- *the Harare Protocol on Patents and Industrial Designs Within the Framework of the ARIPO (25 April 1984);*
- *the Lusaka Agreement on the Creation of the ARIPO (8 August 1978); and the Nice Agreement on International Classification of Goods and Services 1957 (Uganda is not a party to this agreement, however, it has adopted use of Nice Classification).*

UNREGISTERED MARKS

Uganda does not allow owners of unregistered trademarks to institute proceedings for the prevention or recovery of damages. However, the Trademarks Act offers protection to unregistered trademarks in Uganda where they are registered in a country or place from which the goods or services originate. The Trademarks Act provides that a trademark owner whose goods or services are registered in their home country or country of origin, may object or oppose the registration of a trademark in Uganda that resembles or is identical to their trademark (registered in their home country). This protection is accorded only to countries whose laws offer reciprocal treatment to Ugandan trademarks.

An unregistered trademark will also be protected where, in an application for registration, the applicant proves that they or their predecessors in business have used in Uganda the unregistered trademark continuously before the date of registration of the other mark in the country or place of origin.

Protection of unregistered rights is limited. To this end, there is no established test for use that will afford the unregistered mark protection. However, the recognition of unregistered rights is often attributed to substantial goodwill accrued by use of the unregistered mark and notoriety or popularity of the same, both of which are subjective.

Uganda recognises the assignment of unregistered trademarks alongside registered marks on condition that the unregistered mark was used in the same business as the registered trademark. In addition, the assignment must occur at the same time and with the same person with whom the registered trademark is being assigned and in respect of all the goods or services for which the unregistered mark has been used.
The law does not specify how much use is required for the assignment of an unregistered trademark to apply. Accordingly, it appears to be based on numerous factors.

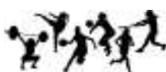
REGISTERED MARKS

Any legal person (eg, individual or company, among others) may apply to register or own a mark. Should the said party elect to proceed through a representative, they would have to execute a form of authorization of agent, which is a statutory form stating:

- The party delegating the authority;
- The party to whom authority is delegated;
- The party's address;
- The scope of instructions; and
- The nationality of the principal.

The form is then signed or sealed by the appointing authority with no need for notarisation or legalisation. The use of an agent is optional for local applicants; however, foreign applicants must use agents who are advocates of the High Court of Uganda.

The protection of trademarks is extended to signs or marks or a combination of signs or marks capable of being represented graphically and of distinguishing the goods or services of one undertaking from another. The law has defined signs or marks to include any word, symbol, slogan, logo, sound, smell, colour, brand label, name, signature, letter, numeral or a combination thereof.



The registration of an olfactory mark is difficult since the law requires a trademark to be capable of being represented graphically. To date, Uganda has not granted any such application.

PROCEDURES FOR REGISTERED MARKS

Examination

Before filing an application, an applicant may obtain advice from the registrar of trademarks as to whether the proposed trademark may be registered based on distinctiveness and whether it is capable of distinguishing goods or services of the proposed undertaking from other undertakings.

Following an application for a trademark, in a preliminary examination the registrar will consider the following factors:

- Similarities with existing trademarks;
- Distinctiveness and graphical presentation of the mark;
- whether the mark is offensive to public policy and morality;
- whether the mark is similar to protected symbols (eg, the Red Cross or Geneva Cross), armorial bearings, ensigns such as national flags, emblems or any words, letters or signs that are likely to lead persons to believe that they have government patronage or authorisation;
- Any words such as patent, registered trademark, registered design, copyright or words to likely affect registration; and laudatory words (eg, 'best').

During the examination process, the registrar is empowered either to accept an application absolutely or subject it to any limitations, amendments, modifications and conditions that they deem fit. Further, the registrar may (with the applicant's consent) treat an application for registration as one filed under Part B rather than rejecting it in its entirety.

Registration

A person that wishes to register a trademark should conduct a search to see whether the trademark is capable of distinguishing goods or services of the proposed undertaking from existing undertakings. The applicant may apply for a search by formal letter to the registrar. Searches include:

- Identical trademark searches;
- Similar trademark searches;
- Search per class; search of all classes; and
- Search on trade names and slogans dating back to 1912.

In the event that the said trademark is available, the applicant may submit the mark for examination by the registrar using a statutory form reflecting the trademark and class in which they wish to register. The registrar's examination considers whether there is conflict with existing marks or regulations, as well as whether the mark is offensive to morality.

An unopposed application takes between 70 and 90 days. Whereas the search report can be made immediately available to an applicant, review of the application and grant of a notice to the National Gazette takes approximately five to 10 days. The applicant is then required to advertise the application for 60 days in the Gazette. The timelines are subject to various factors, such as the availability of space in the Gazette and the backlog in the registry.

Opposition

According to Ugandan law, any person may oppose or object to the registration of a trademark. A party may oppose the registration of a trademark within 60 days of the date of advertisement in the Gazette by serving a notice of opposition, in duplicate, stating the grounds for opposition. The registrar will then cause the opposition to be served on the applicant. An applicant is afforded 42 days from the date of receipt of the notice of opposition to respond by counter-statement, laying out the grounds supporting their application.

Regarding evidence, the opponent is required to provide evidence by way of statutory declaration supporting their opposition within 42 days of receipt of the counter-statement. On receipt of the supporting evidence, the applicant is similarly required to provide their evidence by way of statutory declaration, also within 42 days. Finally, the opponent may give further evidence in reply within 30 days of receipt of the applicant's evidence.
Parties usually file their evidence in support concurrently with the notice of opposition and counter-statement.

On receipt of the last evidence and submissions, the registrar is mandated to give the parties a date for the hearing. If the registrar deems it fit, they may extend the time within which to take any action. The timeline for opposition is dependent on the conduct of the parties. The only fixed timeline is the 60 days within which to oppose, which may take between four and six months.

REMOVAL OF TRADEMARK

A trademark can be removed from the Register of Trademarks following:

- Cancellation by way of application by an aggrieved party for non-use (three years and one month prior to of filing the application for removal) or through an application regarding proof of prior registration in the country or place of origin;
- Cancellation by way of application or surrender of the entry of the trademark from the register by a registered owner;
- Cancellation where the requirements for a defensive mark are no longer satisfied or where there is no longer any likelihood that use of the trademark in relation to the goods or services would detract from its distinctive character; or
- An application to the court or registrar requesting that a registered trademark be revoked on grounds of infringement, fraud, error, defect, omission or an entry wrongly remaining on the register.

Renewal of a trademark should to be made no more than three months before its expiry. Renewal is completed by application to the registrar along with payment of the requisite fees and lasts for 10 years.
A registered trademark owner may apply to change the name on a registered mark by filing a standard form with the registrar and paying the requisite fees.

ENFORCEMENT

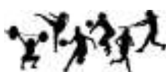
The Trademarks Act provides that a person may not institute proceedings to recover damages in respect of an unregistered trademark.
A registered trademark owner can enforce its rights through administrative, civil and criminal proceedings. In civil proceedings, the cause of action is infringement. In criminal proceedings, offences include:

- Forging or counterfeiting a trademark;
- False entries on the register;
- Falsely representing a trademark as registered;
- Unlawful removal of a registered trademark from trademarked goods;
- Falsely applying a registered trademark; and selling goods with false marks.

Offences relating to trademarks for services are not specifically provided for. For example, it is an offence to sell goods bearing false marks, but there is no such law in respect of services bearing false marks.

REMEDIES

The Trademarks Act grants owners both civil and criminal remedies. For civil remedies, a rights holder may apply for:
an interim, temporary or permanent injunction against the infringer; an Anton Piller order or an entry, inspection and removal order in



accordance with the Trademarks Act; damages; an account of the profits earned as a result of the infringement; delivery up of the infringing goods; prohibition from the removal of assets from the jurisdiction of the court or wasting of assets; forfeiture and disposal of infringing goods or materials; orders to expunge or vary any entry in the trademark registry; suspension by Customs of the release into free circulation of the infringing goods; and costs of the suit.

Criminal remedies include a fine/penalty, imprisonment or both.

When it comes to damages as a remedy, the law provides that the trademark owner is entitled to claim damages in respect of loss sustained by the trademark owner as a result of infringement, whether or not the person responsible for the infringement has been successfully prosecuted. In general, punitive damages are at the discretion of the courts and, depending on the nature of the case and the extent of the damage, courts may award punitive damages in a successful infringement suit.

Proceedings

The remedies awarded follow the type of proceedings. In Uganda, administrative, civil and criminal proceedings are adopted depending on the cause of action. These include:

Oppositions; objections and administrative applications for rectification; removal for non-use and to vary or expunge an entry on the register; actions for infringement; and passing off by an aggrieved party.

In criminal proceedings, the police are required to undertake investigations to verify complaints raised. If substantiated, the director of public prosecutions, on behalf of the state, will institute criminal proceedings against the accused. However, a private person may institute private criminal proceedings. Most criminal proceedings stem from a complaint being raised by an affected party. In some unique circumstances, the state, through its parastatal bodies and departments, may file complaints on behalf of the public and the same will then be

prosecuted. The standard of proof in criminal proceedings is beyond reasonable doubt as a constitutional requirement.

In civil proceedings for infringement cases, the main issue to consider is likelihood of confusion. The court considers the similarity of the trademarks in terms of look, colours, spelling, pronunciation and the actual goods and services offered. In addition to similarity, courts will consider the distinctiveness of the trademark against the alleged infringing trademark.

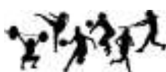
The courts generally consider the proof of loss presented as evidence. Evidence may include the dilution of the trademark, loss of clientele and loss of reputation, among other things, to calculate damages. Courts also rely on mitigating factors to determine whether an award of damages is justifiable, such as the purpose of the infringement, the conduct of the defendants and the damage suffered by the plaintiff. Courts are less inclined to grant damages where the infringement was not geared towards making a profit and was used for a charitable or other cause.

OWNERSHIP CHANGES AND RIGHT TRANSFERS

The rights in a trademark may be partially or wholly assigned. An assignment must be in writing and although it usually includes goodwill, it is not mandatory. Although the law does not specifically require an assignment to be notarised, general practice has found that a notarised deed of assignment is preferred. However, it must be attested.

An assignment must be recorded with the Registry of Trademarks to become effective by way of application no later than six months from the date of the assignment if, at the time of the assignment, the trademark was used in business in respect to goods or services otherwise than in connection with the goodwill of that business.

The registrar may extend this period at their discretion. A record of an assignment entitles the assignee to a certificate of assignment. An



application for registration of an assignment may be made conjointly by the assignor or the assignee or singly by the assignee.

The registrar may refuse to enter an assignment on the register where the party making the application has not adduced evidence of title to the satisfaction of the registrar. If the registrar suspects that there has been an element of fraud in an assignment, they may apply to court to have the register rectified.

A trademark owner may license its rights to another party. Although not mandatory, it is in the interest of a licensee to ensure that a licence is registered for business relations and protection of their rights. Any use of a trademark by a licensee is attributed to the trademark owner. Proof of use and a valid licence are required to support this use. In the event of an exclusive licence, the licensee is deemed by law to be the trademark owner in an action for infringement.
The crediting of trademark owners by registered users under licence or assignment from the trademark owner depends on the agreement between the trademark owner and the licensee or assignee. Whereas some parties may insist on being credited, others may restrain the assignee or licensee from using their information for trade purposes.

RELATED RIGHTS

Trademark and other rights overlap, especially in respect to copyrights, industrial designs and business names. A design can be registered as a trademark (logo or brand), as well as obtaining copyright (whether registered or not) or industrial design protection. In this instance, any works considered to be of an artistic nature can obtain double protection under copyright or industrial designs and trademarks. However, a design cannot obtain both copyright and industrial design protection.

In the case of business names, a trademark owner can have protection by virtue of an earlier business name registration and subsequent trademark registration. In fact, the use of the business name prior to the trademark

being registered will be taken as valid use in any claim of trademark infringement. Although the trademark and business names departments within the country's record system are separate, there is a link between business names which are also known trademarks. Uganda has no specific competition laws in place, as such, on several occasions, courts have relied on their inherent power to prohibit anti-competitive business practices.

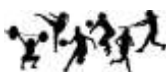
ONLINE ISSUES

Uganda has no specific domain name registration policy; however, use and registration of domain names is in accordance with ICANN rules and policy. Uganda usually adopts the UDRP. In any dispute, the complainant may file a complaint with a recognised institution (eg, WIPO or the National Arbitration Forum) where their complaints are decided by appointed panellists. Complainants can seek remedies such as cancellation or the transfer of the domain name.

Ugandan trademark laws do not specifically provide any provision regarding the unauthorised use of trademarks in domain names, metatags, links or frames; however, the Electronic Transactions Act 2012 and the Computer Misuse Act 2011 provide restrictions and protection against infringement through the use of electronic devices or computers and this extends to infringement of trademark rights through e-commerce.

In Dallas Cowboys Football Club, Ltd. v. America's Team Properties, Inc.[95], the Cowboys sued a Minnesota clothing company who registered its name as a trademark and printed the slogan "America's Team" on various shirts sold at sporting events. The court found that the Cowboys' use of "America's Team" extended all the way to 1979, giving it trademark priority over the defendant. Furthermore, the team's use had acquired secondary meaning and thus the defendant infringed on the Cowboys' trademark.

[95]616F. Supp. 2d 622 (N.D.Tex. 2009)



In Adidas America, Inc. v. Payless Shoesource, Inc.[96], a jury awarded Adidas $304.6 million after it determined that Payless infringed on and acted willfully, maliciously, or in wanton and reckless disregard of Adidas's trademark and trade dress rights. The jury found that 268 different styles and colors of Payless shoes resembled Adidas's trademarks and created a likelihood of confusion.

Arsenal Football Club plc v Matthew Reed, Brief facts of the Arsenal case are as follows. Arsenal owned UK trade mark registrations for "ARSENAL", "ARSENAL GUNNERS", a cannon device and a crest device (the "Arsenal Marks"). Mr Reed had been selling football memorabilia depicting the Arsenal Marks from stalls near Arsenal's ground at Highbury (at which notices stating that the products were not official were prominently displayed) for around 30 years. Arsenal sued for trade mark infringement and passing off.

The ECJ had held that the use of the Arsenal Marks was "such as to create the impression that there is a material link in the course of trade" between the goods and Arsenal, and found that
"there is a clear possibility in the present case that some consumers, in particular if they come across the goods after they have been sold by Mr Reed and taken away from the stall where the notice appears, may interpret the sign as designating Arsenal FC as the undertaking of origin of the goods"

REMEDIES FOR INFRINGEMENT

A registered trademark owner enjoys the same legal remedies for the infringement of any other property right, namely:

- Damages;
- Injunctions;

[96] 2008 WL 4279812 (D. Or. September 12, 2008),

- Accounts

To familiarize the reader with intellectual property law and introduce the concept of intellectual property, this chapter begins with an example of how a typical sporting event intersects with intellectual property. First, the names of the competing teams, their respective uniforms, and other related items should be registered as trademarks. The owners of the teams have a property interest in all of the merchandise for sale to the general public. This interest ensures that the owners receive revenue when jerseys, hats, socks, T-shirts, or any other piece of apparel is sold to fans. Once the games start, there is music played. The music is copyrighted and owned by other entities.

The owners of the teams must get permission, or a license, to use this music. This music is generally licensed through one of the two leading agencies (ASCAP or BMI) that handle the license for a fee. These licensing agencies represent the musicians and collect licensing fees for all public performances of their music, whether it is on radio, television, or the Internet. After these royal- ties are collected by the agencies, they are distributed to the writers and copyright holders of the songs. Songs are usually packaged together so that the purchaser gets more than one song for the fee. The fee varies according to such factors as the popularity of the song, the number of times the song is used, and the number of songs purchased at a time. The home team usually sells a program detailing information about the game and its participants. Some of the information is normally obtainable by the general public, but when it is compiled in this certain way, it becomes copyrightable and a property interest.

Additionally, the game will likely be videotaped and broadcast over the radio and /or television. This is significant because once it is broadcast on film, radio, or television, the game itself has created a copyrightable interest; use or broadcast of the game is now a property interest and can be bought and sold. The players also have a property interest in their name and likeness. The players are recognized publicly because they

compete in a national or local spotlight. In intercollegiate or Olympic situations, the players do not own their own pictures, but the university or governing body does. This is a significant difference between professional athletes and collegiate and Olympic athletes.

The concept of the player's right to publicity has become a major topic of dispute. The right to publicity is the athlete's right to control and profit from the commercial use of his or her name or likeness. Although there has been a demand for a federal law concerning the right to publicity, many states have laws that protect the right to publicity for people who are considered to be celebrities. Laws concerning the right to publicity currently vary from state to state.

However, collegiate and Olympic athletes cannot capitalize on their own identity during the games/events. This has caused some conflicts because colleges, schools, and governing bodies can make enormous amounts of money from a player's likeness and affiliation for what is a relatively small investment (e.g., a college scholarship). One example is a university selling jerseys with a particular player's number. The university, not the player, earns money from this merchandise, even though it may be the player's popularity that is driving the sale. As demonstrated, many issues of propertyinterest are raised when a sporting event occurs. Whether it is the trademarked logo of a favorite sports team, ("Service Marks and Collective Marks"), the copyrighted broadcast of a sporting event, or the patent of the sporting equipment used during the game, intellectual property is an important and ever-increasing legal issue in the sports industry. The legal system provides certain rights and protections for owners of property.

The kind of property that results from mental labor is called intellectual property. Rights and protections for owners of intellectual property are based on federal, patent, trademark, and copyright laws and state trade secret laws. In general, trademarks protect a name or symbol that identifies the source of goods or services; copyrights protect various forms of written and artistic expression; and patents protect inventions of

tangible things. This chapter first presents the legal principles of intellectual property law, including relevant legislation, terms, and the basics of intellectual property law.

The chapter then discusses the functions of trademarks, trademark infringement, and ambush marketing. Some recent cases that have defined the crucial issues involved in the use of sports trademarks include "Identification Function of a Trademark," "Secondary Meaning," and "Trademark Infringement.", "Licensing Program for Intercollegiate Athletics," these cover the relationship of intellectual property law to intercollegiate athletics. It discusses licensing programs, the increasing use of licensing agents by colleges and universities for the sale of products bearing school logos, and issues concerning nicknames and trademark laws. The final three sections of the chapter deal with copyright, patent law, and the right to publicity. The sections on copyright law and the right to publicity contain discussions of the growing issues in intellectual property law and the Internet.

TRADEMARK LAW

The names, logos, and symbols associated with sports organizations have become very marketable items. Their primary purpose has historically been to create an identifiable image through which an athletic organization can promote the sale of its product or service. More recently, however, the sale of a name, logo, or symbol in association with caps, pennants, T-shirts, jerseys, and other souvenirs has become a significant revenue generator in and of itself for an athletic organization. As a result, these organizations have fought many legal battles to retain the exclusive right to dictate who will put their name, logo, or symbol on these profitable items. The licensing of trademarks is big business in sports. In addition to gate receipts, television, and other sources of income, the consumer's appetite for sport-related items with a team affiliation has created a significant revenue stream for manysport organizations. Most professional sports leagues, for example, have developed licensing programs to capitalize on the public demand.

College athletic departments, conferences, and the NCAA itself, as well as other organizations such as the U.S. Olympic Committee and the U.S. Tennis Association, have done likewise.

In professional sports leagues, the league has the rights and controls team marks. The leagues (such as Major League Baseball, the National Football League, the National Basketball Association, and the National Hockey League) formed separate entities, often known as a “properties” division, that primarily deal with the licensing of the league and club trademarks (including teams and league names and logos) to vendors who manufacture products featuring these marks and, in turn, sell these products to retailers and to the general public. The merchandising revenue is then divided among the teams, usually on an equal or pro rata basis. A pro rata distribution of licensing revenues helps smaller-market clubs compete with larger-market clubs in their leagues. For example, merchandise with the New York Yankees logo might comprise more than 10% of licensing revenues among clubs for Major League Baseball clubs, yet the Yankees are entitled to only 1/30 of the revenue generated from the licensing of Yankee marks. Like the leagues, players associations have formed entities that handle licensing issues for athletes. For example, the NFL Players Association (NFLPA) formed Players, Inc., which is the licensing arm of the NFLPA. Players, Inc. provides marketing and licensing services to companies interested in using names and like- nesses of current and past NFL players. Any program involving six or more NFL players requires a Players, Inc. license. The revenues received from this licensing are then distributed, pro rata, to the players and used for other association needs. These revenues can be quite significant; for example, it has been reported that the total licensing revenue for the MLBPA exceeds $52 million per year.

Not surprisingly, consumer demand for merchandise associated with professional and amateur athletic organizations has prompted a number of manufacturers to attempt to cash in on this lucrative opportunity by using names, logos, or symbols associated with a team or organization without authorization. Such attempts have, on a number of occasions,

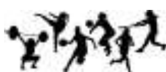
resulted in litigation in which the athletic organization sought to protect its exclusive right to its name, logo, or symbol, usually on the basis of trademark laws. The denial of a license to manufacture sports merchandise has resulted in litigation. American Needle, a headwear manufacturer and previous licensee of NFL Properties (NFLP) and the individual clubs of the NFL, sued when NFLP granted an exclusive merchandising license to Reebok, claiming that the exclusive license violated **Section 1 of the Sherman Act**. Originally the District Court granted the NFL's motion for summary judgment, see American Needle, Inc v. New Orleans Saints, 496 F. Supp. 2d 941 affirmed in American Needle v. NFL[97],. However, the Supreme Court reversed and remanded, ruling that the NFL could not be considered a single entity for licensing purposes . For more on this case and its potential impact on the world of sports, "Single-Entity" Defense by the "Big Four."

THE LANHAM ACT OF 1946

The Federal Trademark Act of 1946, 15 U.S.C. 1051–1127, commonly known as the Lanham Act, governs the law of trademarks, the registration of trademarks, and remedies for the infringement of registered trademarks. Many common law principles governing this area have been incorporated into the Act. The Lanham Act was passed to "simplify trademark practice, secure trademark owners in their good- will which they have built up, and to protect the public from imposition by the use of counterfeit and imitated marks and false descriptions." This act sets trademark guidelines for colleges, universities, corporations, organizations, and individuals.

The general purpose of trademark legislation is to protect the owner of the mark, as well as prevent others from using distinctive marks that will confuse people into thinking they are dealing with the owner of the trademark when they are not. The Lanham Act's definition of trademark was distilled from, and is consistent with, definitions appearing in court

[97]*538 F.3d 736*



decisions both under prior trademark laws and the common law. Trademark is defined as "any word, name, symbol, or device or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured or sold by others." Trademarks refer to goods and are distinguished from service marks and collective marks.

SERVICE MARKS AND COLLECTIVE MARKS

The Lanham Act also protects service marks and collective marks. A service mark is "a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others." While a trademark identifies and distinguishes the source and quality of a tangible product, a service mark identifies and distinguishes the source and quality of an intangible service. An example of a service mark is "NCAA." This stands for events or products related to the National Collegiate Athletic Association, as differentiated from other sporting bodies and associations. The term collective mark, as defined in the Lanham Act, means a trademark or service mark used by the "members of a cooperative, association, or other collective group or organization and includes marks used to indicate membership in a union, an association or other organization." An example of a collective mark in sports is "Major League Baseball." A trademark serves the following functions:

1. It designates the source of origin of a particular product or service, even though the source is unknown to the consumer

2. It denotes a particular standard of quality, which is embodied in the product or service.

3. It identifies a product or service and distinguishes it from the products or services of others. 4. It symbolizes the goodwill of its owner and motivates consumers to purchase the trademarked product or service.

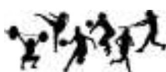
4. It represents a substantial advertising investment and is treated as a species of property

5. It protects the public from confusion and deception, ensures that consumers are able to purchase the products and services they want, and enables the courts to fashion a standard of acceptable business conduct.

League and sports teams' names and logos, when used to identify the activities of leagues and teams, are service marks. Normally, a mark for goods appears on the product or on its packaging; a service mark appears in advertising for the services. In sports, trademarks are used to pro- mote team loyalty and the sale of licensed merchandise; service marks are used for promoting athletic events. The overall objective behind establishing a trademark is to set one brand apart from another. The registration of a trademark ensures the owner that competitors will not capitalize on the owner's efforts to establish brand loyalty and that they will not profit from confusing consumers through the use of the same mark or a similar mark. An example of a trademark is "Boston College Eagles." The name of the school and its nickname identify the mark as representing that particular school. In addition, the colors of red and yellow in conjunction with the Boston College logo help consumers identify with that institution. Common law protection is secured by the use of the trademark and extends only so far as is necessary to prevent consumer confusion. State registration is a quick and inexpensive option for local businesses that cannot qualify for federal registration because the mark is not used in interstate or foreign commerce. State registration is also useful for local anti-infringement and anticounterfeiting efforts.

IDENTIFICATION FUNCTION OF A TRADEMARK

Although the trademark may not disclose the origin of the goods, it does provide the purchaser with a way of recognizing the goods of a particular seller or manufacturer. When the seller or manufacturer has conveyed



origin and authenticity of the goods to the purchaser through the trademark, the seller or manufacturer has something of value. This identification function of the trademark also serves as a symbol of the goodwill established by a business. Trademarks therefore “are symbols by which goodwill is advertised and buying habits established.” Goodwill is a business value that arises from the reputation of a business and its relations with its customers. It is unique to the particular business. Goodwill has also been defined as “buyer momentum” and “the lure to return.” Goodwill is an intangible asset of a business. An intangible asset exists only in connection with something else. It is an idea or formula, not something that can be touched.

A tangible asset, on the other hand, is something that can be touched. A pitching machine or hockey puck is a tangible asset. Trademarks should be distinctive and should not be either generic or merely descriptive of the goods or services to which they pertain. Words such as colatable tennis, and photocopier are examples of nondistinctive or generic terms. Generic names of products and services do not qualify for trademark protection. They rep- resent the actual product and are not associated with the source or manufacturer of the product. This is because the generic word defines only the product or service, not its source. The trademark laws, however, protect terms such as Coca- Cola and Ping-Pong. They clearly are identified with the manufacturer and qualify as being distinctive terms. In many countries, trademarks that comprise only letters and /or numbers (the proposed trademark cannot be pronounced as a word or words or has too few letters) or are surnames are considered indistinct. Nevertheless, these legal flaws in trademarks are not always fatal, and in a number of instances, a trademark registration can still be obtained for trademarks that are arguably

- Descriptive
- A surname
- Geographic or
- Indistinct.

When non distinctive words become distinctive and qualify for trademark protection, they are said to have acquired secondary meaning. Trademarks are generally distinctive symbols, pictures, or word that sellers affix to distinguish and identify the origin of their products. Trademark status may also be granted to distinctive and unique packaging, color combinations, building designs, product styles, and overall presentations. Service marks receive the same legal protection as trademarks but are meant to distinguish services rather than products. In the United States, trademarks may be protected by both federal statutes, under the Lanham Act, and by state statute and /or common law. The United States Congress enacted the Lanham Act under its constitutional grant of authority to regulate interstate and foreign commerce. A trademark registered under the Lanham Act has nationwide protection.

However, if a trademark is not registered under the Lanham Act, it still may be protected. Under state common laws, marks are protected as part of the common law of unfair competition, and registration of the mark is not required to prove ownership. Trademark or service mark rights continue indefinitely, since these marks identify the source of goods or services. A mark can be registered for 10 years and can be renewed for subsequent 10-year periods. This procedure is in contrast to other forms of intellectual property protection, such as patents or copyrights, which have finite terms. Between the fifth and sixth year after the date of initial trademark registration, the registrant must fi le an affidavit setting forth certain information to keep the registration active. If an affidavit is not fi led, the registration is canceled. To maintain rights in the mark, it must be used, must not be abandoned, and must be protected so as not to become generic.

SECONDARY MEANING

Secondary meaning is a mental recognition in the buyer's mind associating symbols, words, colors, and designs with goods from a single source. Secondary meaning is a very important concept in trademark law. Secondary meaning "tests the connection in the buyer's mind between

the product bearing the mark and its source." In a commercial sense, secondary meaning is buyer association, mental association, drawing power, or commercial magnetism.

The purpose of the Lanham Act is to prevent consumer confusion as to the source of goods. If a good has acquired secondary meaning, the public associates the product with a certain source and the mark is then afforded greater protection under federal law. For example, the Cleveland Indians' trademarked logo is distinct, unique, and widely associated with Major League Baseball, even though neither the word Cleveland nor Indians appears anywhere in the design. Due to its widely recognized association with the baseball club, the Lanham Act would likely prevent the unauthorized use of similar images to promote other products. Secondary meaning is particularly important when the trademark is non distinctive. Non distinctive marks may not be registered and protected under the Lanham Act as trademarks until they have become distinctive of the goods in commerce.

It is also possible to receive trademark status for identification that is not on its face distinct or unique, but developed a secondary meaning over time that identifies it with the product or seller. The owner of a trademark has exclusive right to use it on the product it was intended to identify, and often on related products. An example of a non distinctive mark is a descriptive mark. A mark is descriptive if it describes the intended purpose, function, or use of the goods, the size of the goods, the class of users of the goods, a desirable characteristic of the goods, or the end effect upon the user. Some examples of descriptive marks are "Beer Nuts" for salted nuts, "Holiday Inn" for a motel, and "Raisin Bran" for cereal made with raisins and bran. Descriptive marks are considered weak marks and, at most, are given narrow trademark protection. Weak marks, as the name suggests, are marks that only describe the product and are not necessarily a unique or creative name. Descriptive marks are not usually given trademark protection, because they do not adhere to the Lanham Act's distinctiveness requirement. Descriptive marks also lack

secondary meaning, since the mark does not cause mental recognition of the product in the buyer's mind.

However, secondary meaning does not have to be demonstrated when the trademark is distinctive. Distinctive marks may be registered and protected under the Lanham Act as trademarks. Some examples of distinctive marks are arbitrary, fanciful, and suggestive marks, which are considered strong marks, and therefore are given strong trademark protection. Arbitrary marks are "words, names, symbols, or devices" that are in common linguistic use but that, when used with the goods or services in issue, neither suggest nor describe any ingredient, quality, or characteristic of those goods or services. Some examples of arbitrary marks are "Cobra" golf clubs and "Puma" athletic wear. Fanciful marks are coined words that have been invented for the sole purpose of functioning as a trademark. Such marks comprise words that are either totally unknown in the language or are completely out of common usage at the time, as with obsolete or scientific terms. Some examples of fanciful marks are "Clorox" bleach, "Kodak" photographic supplies, and "Polaroid" cameras. Suggestive marks are legally indistinguishable from arbitrary marks. An example of a suggestive mark would be "Greyhound" for a bus line, a name that suggests speed and sleekness. Suggestive marks generally imply a characteristic of the product they represent. For example, the name "Harlem Globetrotters" suggests that the team is a group that travels around the world playing basketball.

Trademark Infringement

An inherent threat to trademark owners of highly visible sporting events, teams, schools, and the Olympics is the pirating of their marks. Capitalizing on the fans' desire to identify with a favorite franchise or athletic organization, numerous businesses have exploited the goodwill and marketability of sports organizations by producing anything from hats to T-shirts to jerseys to pennants that carry a team name, nickname, team player name or number, logo, or symbol of the organization without authorization. This type of exploitation can have damaging

consequences. First, the unauthorized use of a mark is injurious, because the market demand for any product or service is finite, and sales of unlicensed merchandise will reduce licensed sales, especially since it can be underpriced. Second, assuming consumer confusion, if the unlicensed merchandise is of a lesser quality, it will reflect negatively on the quality of the licensed merchandise and also on the organization. Thus the goodwill and the reputation that the trade- mark owner established would be damaged, resulting in a decreased value of the trademark. Therefore, it is very important for sports organizations to protect their marks. After being made aware of the infringement, the trademark owner can demand that the activity cease. If the demand is ignored, the owner is left with no other recourse but to pursue legal remedies provided under the Lanham Act and common law.

The Lanham Act defines trademark infringement as the reproduction, counterfeiting, copying, or imitation in commerce of a registered mark "in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or to cause mistake, or to deceive without consent of the registrant." To succeed in a trademark suit, the trademark owner must first establish a protectable property right in the name or mark it seeks to defend. Second, the owner must establish that the infringing party's use of a similar mark is likely to cause confusion, mistake, or deception in the market as to the source, origin, or sponsorship of the products on which the marks are used. Trademark rights are established by;

- Actual use of the mark or
- The filing of a proper application to register a mark in the United States

Patent and Trade- mark Office (USPTO) stating that the applicant has a bona fi de intention to use the mark in commerce regulated by the U.S. Congress. Federal registration is not required to establish rights in a mark, nor is it required to begin use of a mark. However, federal registration can secure benefits beyond those rights acquired by merely

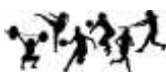
using a mark. For example, the owner of a federal registration is presumed to be the owner of the mark for the goods and services specified in the registration, and to be entitled to use the mark nationwide. In addition, under the Lanham Act, the registration of a mark with the USPTO constitutes prima facie evidence that the registrant owns the mark and has the exclusive right to use the mark, and that the registration itself is valid.

The burden is then placed on the one challenging the mark to rebut the presumption of validity. There are two related but distinct types of rights in a mark: the right to register and the right to use. Generally, the first party who either uses a mark in commerce or files an application in the USPTO has the ultimate right to register that mark. The USPTO's authority is limited to determining the right to register. The right to use a mark can be more complicated to determine.

This is particularly true when two parties have begun use of the same or similar marks without knowledge of one another and neither has a federal registration. Only a court can render a decision about the right to use, such as issuing an injunction or awarding damages for infringement. When making its decision, the court will attempt to determine factually which party was the first to use the mark in commerce.

Second, the court will weigh the positive and negative reasons for allowing each party to use the particular mark. This issue was highlighted in Hawaii-Pacific Apparel Group, Inc. v. Cleve- land Browns Football Co[98]. in a dispute over who owned the "Dawg Pound" trademark. The Browns and NFL Properties Inc. (NFLP) had registered the marks "Cleveland Browns Dogs" and "Cleveland Browns Dawgs" with the State of Ohio Trademark Office in 1985 after Browns fans became known as the Dawg Pound. The request was granted in 1988 for a period of 10 years. NFLP and the Browns licensed the trademarks to various apparel and novelty manufacturers. Unaware of the registered

[98]LLC, 418 F. Supp. 2d 501 (S.D.N.Y. 2006)



trademarks, Hawaii Pacific Apparel Group (HP) started a line of apparel featuring phrases such as “Dawg Pound” in 1986 and attempted to register the phrase in 1994 with the U.S. Patent and Trademark Office. Its request was denied as a result of the opposition from NFLP. The situation became complicated when the Browns left Cleveland for Balti- more in 1995, thus eliminating the Dawg Pound. HP was able to register the phrase “Lil Dawg Pound” in 1996. When a new Cleveland Browns franchise was created to start play in 1999, the new Cleveland Browns and NFLP attempted to register “Dawg Pound” with the USPTO in 1999, but they were denied due to a likelihood of confusion between the brands. HP sued when the Browns ignored HP’s cease and desist order and decided to use the phrase anyway. The district court ruled that despite never registering the mark “Dawg Pound” (an action that is not required by the Lanham Act), NFLP and the Browns had proof of using the mark in licensing agreements since 1989, while HP did not use the phrase until 1994.

It was also determined that NFLP never abandoned the mark when the Browns left Cleveland because NFLP had sent cease and desist letters to HP during the time the Browns did not exist. There are three ways that an organization or individual can lose rights in a mark. First, abandonment of a trademark is stopping the use of it with an intention not to resume its use. The second is by licensing the mark to others without controlling the nature and quality of the licensee’s goods or services under the mark.

Finally, rights to a mark may be lost when there is misuse of the mark by the organization or a failure to police against the mark’s misuse by others — so that it ceases to indicate source but becomes just another generic word in the language, such as escalator, aspirin, and cellophane. A defendant in a trademark infringement case, in addition to contending that the “word, name, symbol, or device” is indistinguishable from that of other owners or manufacturers, may contend that the mark is functional and, therefore, not worthy of trademark status. A functional mark can be defined as a mark that does not describe or distinguish the product, but is

necessary for the product to exist. This was one of the key issues in Dallas Cowboys Cheerleaders Inc. v. Pussycat Cinema, Ltd[99]., where the defendant alleged that cheer- leading uniforms were a purely functional item necessary for the performance of cheerleading routines and, therefore, incapable of becoming the subject of a trademark. The infringer may also contend that the owner of the mark, though once possessed of a property interest in the mark, had abandoned or relinquished its right.

Here, however, rather than relying on the owner's failure to prosecute alleged infringers or allowing the uncontrolled use of the mark for a period of time as evidence of abandonment, the infringer must establish both the intent of the owner to abandon the mark and the loss of all indication as to the source of the mark's origin. Abandonment of a mark is not as simple as stopping the use of a trade- mark. In Indianapolis Colts, Inc. v. Metropolitan Baltimore Football Club[100], a case involving the former Baltimore Colts team that moved to Indianapolis, the Canadian Football League and one of its owners were sued for using the name Baltimore CFL Colts, even though the owner of the Baltimore Colts had moved his franchise to Indianapolis and there were no longer any Baltimore Colts. The court enjoined the CFL team from using the name because it was likely to confuse a substantial number of consumers.

The defendant's reliance on Major League Baseball Properties Inc. v. Sed Non Olet Denarius, Ltd[101]., , a case where the Los Angeles Dodgers unsuccessfully challenged a Brooklyn restaurant called the Brooklyn Dodger on trademark infringement grounds, proved to be futile. The Indianapolis Colts court distinguished the case by saying there was no likelihood for confusion because "[n]o one would think the Brooklyn Dodgers baseball team reincarnated in a restaurant." Even though an alleged infringer may be unable to prove the validity of a mark, this does

[99]604 F.2d 200 (2d Cir. 1979),

[100]L.P., 34 F.3d 410 (7th Cir. 1994),

[101]817 F. Supp. 1103, 1128 (S.D.N.Y. 1993)

not settle the infringement issue under the Lanham Act. The owner of the mark still bears the burden of establishing that the infringement is likely to cause con- fusion, mistake, or deception in the market as to the source, origin, or sponsorship of the products on which the mark is used. One might expect that the similarity or duplication of a registered mark would be sufficient to establish confusion, but such has not been the case.

Courts generally have required the production of evidence to establish that individuals make the critical distinction as to sponsorship or endorsement, or direct evidence of actual confusion between the authentic and counterfeit products. The “likely to cause confusion” issue has proven to be the key question in the majority of sports trademark cases. The Ninth Circuit interpreted it thus in order to determine whether there is a likelihood of confusion in a trademark infringement case, the Court must consider numerous factors, including inter alia, the strength or weakness of the marks, similarity in appearance, sound, and meaning, the class of goods in question, the marketing channels, evidence of actual confusion, and evidence of the intention of defendant in selecting and using the alleged infringing mark.

Of paramount concern is whether there is a likelihood of confusion such that the public believes that the goods are endorsed or authorized by someone other than the trademark owner. As can be seen through the Ninth Circuit interpretation of likelihood of confusion, the court must take numerous factors into account when judging whether two marks are likely to be confused. An important early case dealing with likelihood of confusion in sports is National Football League Properties, Inc. v. Wichita Falls Sportswear, Inc.[102]., In this case, the defendant company, Wichita Falls Sportswear, was manufacturing and selling NFL football jersey replicas that, due to their similarity to authentic NFL jerseys, created the likelihood of confusion in the minds of the consumer. Wichita Falls manufactured jerseys in the blue and green colors of the Seattle

[102]532 F. Supp. 651 (W. D. Wash. 1982).

Seahawk uniforms. The court held that NFL Proper- ties had the burden of proving

(1) That the secondary meaning of the descriptive term (e.g., Seattle) related the jersey to the NFL team, and
(2) That Wichita Falls' activities created a likelihood of confusion. The NFL was able to prove that placing Seattle on the jersey created a likelihood of confusion in the buyer's mind over whether these were authentic, licensed jerseys.

In addition, there are circumstances where products display a disclaimer pro- claiming that the trademark owner does not endorse the articles. In Boston Professional Hockey Ass'n. v. Dallas Cap & Emblem Mfg.[103], the defendant manufactured products that contained registered and unregistered marks of various NHL teams. The defendant included a disclaimer on its products indicating that use of the marks was not authorized. The court concluded that the defendant's use of a disclaimer did not prevent liability under the Lanham Act. The court's conclusion was based on the belief that there would likely be a degree of consumer confusion. The confusion requirement was met since "the defendant duplicated the protected trademarks and sold them to the public knowing that the public would identify them as being the team's trademarks.

The certain knowledge of the buyer that the source and origin of the trademark symbols were in [the] plaintiff's satisfies the requirement of the act." In addition, the court found that the team had an interest in its own individualized symbol and was entitled to legal protection against such unauthorized duplication. In Major League Baseball Properties, Inc. v. Opening Day Productions, Inc., 385 F. Supp. 2d 256, (S.D.N.Y. 2005), Major League Baseball Properties (MLBP) sought a declaration that they were not infringing on an "opening day" trademark held by the defendant. In 1990, the defendant and MLBP discussed a partnership featuring a line of "opening day" merchandise to be sold year-round with

[103] 510 F.2d 1004 (5th Cir. 1975

nationwide promotions featuring a single corporate sponsor leading up to base- ball's opening day, but discussions ended that year with no agreements being made.

The defendant claimed that MLBP was infringing on its "opening day" trademark when MLBP began a national promotion with True Value Hardware surrounding MLB's opening day in 1995 (even though no "opening day" merchandise was actually sold during the promotion). Without successfully registering the trade- mark, the defendant was unable to prove that it had made sufficient use of the mark (it had sold only 360 shirts on a test basis) or that a likelihood of confusion arose by MLBP's usage of the term. Furthermore, it was ruled that "opening day" was a descriptive mark and could not be registered under the Lanham Act unless it had acquired secondary meaning, which it had not for the defendant. Summary judgment was granted for MLBP. Another issue dealing with licensing is the situation where the permission of two organizations is needed to produce goods or services. In professional sports, the athlete has a right to publicity and desires to have an influence over what products bear his likeness. By the same token, leagues stand to profit from licensing players' names and likenesses to many producers in order to benefit the entire league economically. For example, in Major League Baseball Properties, Inc. v. Pacific Trading Cards, Inc., 150 F.3d 149 (2d Cir. 1998), the Major League Base- ball Players Association gave permission to the defendant to produce trading cards; however, the league did not provide its permission. Major League Baseball Properties, Inc., the licensing arm for the Major League clubs, sued the defendant, seeking to block distribution of the company's cards. Major League Baseball Properties, Inc., alleged that the defendant violated the clubs' trademark rights. Specifically, Major League Baseball Properties argued that the team logos and uniforms could not be used without their permission. Pacific had had a licensing agreement with the owners until the previous year. Pacific countered that it was not violating trademark rights because it was not using the owners' pictures of the players and was not marketing the cards as officially owner endorsed. The district court did not issue a preliminary injunction prohibiting distribution of the

baseball cards. However, on appeal, the district court's decision was vacated in order for the matter to be settled out of court.

AMBUSH MARKETING

Within the sports industry, a recent trend related to trademark law has been ambush marketing, which is defined as the intentional efforts of a company to weaken or "ambush" a competitor's official association with a sports entity that was acquired through the payment of sponsorship fees. The company that is ambushing has not paid any money to the sports organization to affiliate its organization with the event. Companies have undertaken this marketing tactic through many different avenues, including the purchase of advertising time on television before and during an official event. The purchase of commercial time allows the ambushing company to associate itself with a sporting event without having to pay the official sponsor fees.

Another form of ambush marketing is the sponsoring of a contest surrounding a sporting event without using the name of the event in its promotional materials. Ambush marketing may be difficult to challenge legally. This is because the ambushing company usually takes steps to avoid creating a "likelihood of confusion," which is prohibited by the Lanham Act. Disclaimers are often used to communicate information to the consumer that the company sponsoring the contest or featured in the commercial is not a sponsor of the sporting event, is not affiliated with any such sponsors, and claims no ownership rights to the sporting event. Ambush marketing has been costly to sports organizations trying to sell rights to their sporting events to companies for sponsorship revenue. As more and more ambush marketing occurs, the value placed on "official sponsor" language can decrease and the sports organizations lose out financially. It is extremely difficult for the sports organizations to challenge ambush marketing techniques.

First, companies have become increasingly sophisticated and creative in their methods of testing the gray area between legal marketing activity,

which is covered by the commercial and free speech provisions of the First Amendment and the fair use doctrine and illegal marketing activity that could constitute trademark infringement and unfair competition. Sports organizations need to show that a likelihood of confusion exists in the consumer's mind, a very difficult thing to prove. The following are examples of how ambush marketing can occur in the sports industry. One example of ambush marketing is the purchase of advertising signage around an event where a main competitor is also purchasing signage. This type of ambush marketing is prevalent around major events with multiple promotional and advertising opportunities such as the Olympics or the Super Bowl.

Another example is if a competing office supply store sets up a gigantic billboard on the street leading to the Staples Center in Los Angeles. Finally, a company buys advertising on a television show that is sponsored by its main competitor. All of these forms of ambush marketing attempt to weaken the effect of an official sponsorship without spending the money for the sponsorship. The second reason it is hard to challenge ambush marketing is that few decided cases address the legal parameters of ambush marketing, and fewer still specifically refer to the term ambush marketing. Third, most ambush marketing campaigns last only a brief period of time, making the time and cost of litigation prohibitive. Sports organizations are also fearful of the consequences of a negative ruling on ambush marketing, which could open the floodgates to future problems. However, sports organizations can defend themselves against ambush marketing by planning ahead and anticipating the actions of competitive marketers. One method of defense is to make sure that all potential issues are specifically and precisely addressed in the contract stage. An organization should use the contract to maintain tight reign over elements that are under its control (i.e., trademark registration, names, logos, mascots). Legislation, such as the Ted Stevens Amateur Sports Act, has also helped strengthen the rights of organizations that are battling ambush marketing.

Licensing Programs for Intercollegiate Athletics

In search of the economic benefits to be reaped from the sale of caps, pennants, T-shirts, jerseys, and souvenirs bearing a school's name or logo, many universities have instituted licensing programs in order to merchandise properties associated with their athletic teams. What is developing is a situation analogous to that in the major professional sport leagues, in that a licensing agent handles the licensing program for one or more university athletic departments. One such agent, the Collegiate Licensing Company (CLC), in 2010 represented nearly 200 colleges and universities, several postseason football bowl games, multiple college conferences, and the Downtown Athletic Club, the presenter of the Heisman Trophy.

There are several reasons why a university or bowl game might use a licensing agent. For example, a university may not have the expertise or time to register the marks, negotiate licensing agreements with manufacturers, police mark infringers, and litigate when necessary. Also, a licensing agent often packages marks to manufacturers on a state, regional, or conference basis. For example, a licensing agent will package all of the marks of the Atlantic Coast Conference to one manufacturer. Therefore, a manufacturer who desires to produce Duke University apparel will also acquire the rights to produce apparel for Wake Forest University, another member of the ACC. This may save on costs for the manufacturer, who does not have to negotiate separately with each school. Along with the advantages of using a licensing agent, there are several potential disadvantages.

The university may prefer to control the selection of manufacturers and the quality of products, as well as to maintain flexibility in arranging licensing agreements. For example, universities that handle their own licensing programs may vary fees according to the type of product, the sales volume, whether the item is academically oriented, and other factors. A university that contracts with a licensing agent generally pays 40% to 50% of the royalty revenues generated to the agent, which reduces the university's net royalty revenues to 3% or 4% (instead of 6%

to 8%). Also, the university may prefer to retain control of the decision-making authority with respect to enforcement of mark infringement cases. Universities face a number of decisions and challenges in the area of trade- marks and service marks. Initially, there is the decision of whether to begin a licensing program. If the answer is affirmative, the university should consider registering the existing marks on both the state and the federal level. The university may later be faced with the decision of whether to register a new mark — for instance, the phrase "Fab Five" for the University of Michigan basketball team in the early 1990s.

The university must weigh the advantages and disadvantages of handling the licensing program itself or contracting with a licensing agent. In either situation, the university must establish public association between the mark, as used on various products, and the university's sponsorship. The university must decide whether and what collateral marks and products will be sold.

Finally, the university must be able to enforce the marks. If the university undertakes its own licensing program, it must police the mark wherever the products are sold. This may be only on a local basis in the state or region of the university, or it may be on a national basis if the school has a national reputation and sells its products nationwide. Policing marks against infringers is one of the key determinants of long-term success for intercollegiate licensing programs. This is a costly and timely undertaking, and one that may well reduce the profitability of a licensing program for universities that do not realize significant royalty revenues. It remains to be seen whether universities will be able to establish the expertise, allocate the manpower, and spend the dollars necessary for effective enforcement of their marks. This issue alone may be a compelling reason for many universities to contract with a licensing agent, who, with tremendous economies of scale, can police and enforce marks. Regardless of whether the university decides to handle the licensing program by itself or to contract with a licensing agent, it must make some decisions regarding the distribution of royalty revenues. Among the alternatives to be considered in distributing royalty revenues are appropriating money for athletic scholarships, for the general

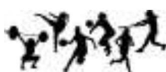
scholarship fund, for the general university fund, and /or returning the money to the campus bookstore. There is a wide range of ways in which colleges and universities have distributed royalty revenues on campus.

Litigation Involving Intercollegiate Licensing Programs

The practice of licensing college trademarks is a multimillion-dollar industry. Revenues from the sale of licensed products bearing the logos of popular colleges and universities can bring in millions of dollars annually. Therefore, it is not surprising that litigation has arisen between universities, manufacturers, and retailers over who owns the rights to the marks of the school. Discussed below is an early case that arose when colleges and universities and manufacturers were first beginning to realize the potential revenue from trademarked items. In University of Pittsburgh v. Champion Products, Inc.[104], the U.S. District Court declined to extend the Wichita Falls holding to intercollegiate athletics, thus reversing an appeals court decision that had applied the Wichita Falls rationale. The initial decision of the court of appealshad extended the Wichita Falls decision by holding that the University of Pitts- burgh had a right of relief against a manufacturer that allegedly infringed the university's trademark.

This was seen as an especially important development in sports trademark law, because manufacturers/sellers had enjoyed unrestricted use of educational institutions' symbols for years. However, the district court, on remand from its original decision that dealt with an unrelated question, found that "there is no likelihood of confusion, whether of source, origin, sponsorship, endorsement, or any other nature, between the soft goods of . . . Pitt." Soft goods include such items as T-shirts, hats, and sweatshirts. The court declined to apply the Wichita Falls rationale, which the appeals court had suggested might govern. Therefore, Champion was allowed to produce goods bearing the Pittsburgh logo without fear of litigation. Since the 1930s, the school had goods with its insignia manufactured and sold by one company, initially

[104]686 F.2d 1040 (3d Cir.), cert. denied, 459 U.S. 1087 (1982)



for the school’s athletic department, somewhat later for retail sales in the local area, and eventually for national distribution. In the mid-1970s, the school registered its marks under state and federal trademark laws in order to protect what it believed were valuable rights.

This was due to the increasing popularity and national prominence of Pitt’s football team. School officials sought to enter into a licensing agreement with Champion for continued use of the insignia. Champion was the premier manufacturer of soft goods imprinted with the insignia of educational institutions and reproduced emblems of more than 10,000 schools, colleges, and universities. At the time, the company reported annual sales in excess of $100 million. Champion had no such licensing agreement with any other schools, and Champion refused to enter into an agreement with Pitt. Pitt went to court to stop Champion’s unauthorized use of the school’s insignia. The district court denied Pitt’s request for a temporary injunction pending trial due to the doctrine of laches (neglect to take lawful action for an unreason- able time). The court of appeals, however, ruled that Pitt’s delay in bringing an infringement action did not prevent its right to future injunctive relief. The case was remanded to the district court. In the district court, the plaintiff in the case had to prove four elements to be successful in its case. These elements, considered essential for success in any trademark case based on unfair competition, were likelihood of confusion, non- functionality, secondary meaning, and priority of use. In the district court’s ruling against Pitt, the court stated that Pitt did not “provide any real evidence of confusion.” The court held that the university’s presentation was very weak, and instead of showing a likelihood of confusion, the university showed little chance of any confusion whatsoever.

The district court, in discussing the functionality aspect of the case, noted that “the insignia on these soft goods serves a real, albeit aesthetic function for the wearers.” Similarly, the court found no likelihood that, in regard to secondary meaning, the university was being associated with the manufacture of the product. Finally, as to priority of use, Pitt had to show that it had priority “of trademark use in commerce.” The district

court ruled that the Pitt insignia was an ornament and not eligible for trademark protection. The court noted that Pitt had failed to prove any of the elements necessary to make its case. An issue not discussed in the Pitt case but a common point of contention in trademark disputes is when each party began using the desired trademark and whether one party has abandoned its claim to the trademark. While this chapter has focused on the legal issues involved in trademarks, litigation may well be obviated by purely business considerations.

On the intercollegiate level, despite its success on the merits in the University of Pittsburgh case, Champion Products settled the case and executed a licensing agreement with the university. There are several reasons for the move to licensing agreements and away from litigation. First, the manufacturer that challenges the university faces litigation expenses. Second, a manufacturer may have other business dealings with a university that may be adversely affected by litigation. For example, Champion Products supplied uniforms for intercollegiate athletic programs at many universities, and the loss of this business has been costly. When Champion settled the Pitt case by executing a licensing agreement, many other manufacturers decided to do the same. Universities must make prudent decisions about the products on which they license their marks. In December 2007, the state attorney general's of New York and Florida jointly announced that Student Financial Services, a college student loan company, was "co-branding" its loan offerings with official school insignias and mascots, thus creating the impression that the loans were officially endorsed by the school. In the deal, the school or athletic department received around $15,000 up front and $75 to $100 per applicant. The company accepted a settlement agreement effectively putting it out of business by forcing it to terminate all existing lending agreements, launch an advertising campaign to warn students to protect themselves when looking for loans, and to stop other cash inducements, such as paying students to refer their friends. None of the 63 schools involved (57 were Division I) or the loan company faced a financial penalty from the individual states, but legal action by students is still possible.

TRADEMARK LAW AND NICKNAMES

Intellectual property law affects various aspects of intercollegiate athletics. Universities must be careful to protect their copyrights as well as trademark rights. For example, the Washington Redskins nearly lost federal protection of its trade- marks because the term “redskin” was considered disparaging to groups of Native Americans. This would not have foreclosed the Washington Redskins from using their logos or names, but it would have denied them federal trademark protection. They could have licensed merchandise with their name and logo and utilized state trademark common law for protection. However, as noted earlier, federal protection is more desirable.

The NCAA took matters into its own hands in August 2005, banning schools that use “hostile or abusive” Native American nicknames, mascots, or imagery from participating in NCAA postseason tournaments and from hosting postseason games. For example, nicknames such as “Braves” and “Indians” were considered to be “hostile and abusive.” The Florida State University Seminoles were among five schools that were able to obtain the approval of local tribes, allowing it to keep its nickname without penalty. The University of Illinois officially retired mascot Chief Illiniwek on February 21, 2007, but was allowed to retain the nickname “Fighting Illini.” Illinois stopped production of official Illiniwek merchandise in June 2007. The mascot had previously survived a lawsuit which claimed that it was in violation of the Illinois Civil Rights Act of 2003 (see note 1).

In addition, the University of North Dakota sued the NCAA in an attempt to keep its “Fighting Sioux” nickname and logo, resulting in a settlement in October 2007. As a result of the settlement, North Dakota was given a three-year window to win the approvals of the local tribes. Some colleges and universities had already altered their team nicknames or changed some of their practices. St. Johns University and the University of Massachusetts are two examples of schools that have already switched from the nick- name Redman. In addition, the University of Oklahoma

mascot, "Little Red," no longer performs war dances on the sidelines. Miami University (Ohio) changed its name from the Miami Redskins to the Miami Red Hawks.

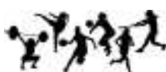
TRADEMARK LAW AND THE OLYMPICS

The Olympic Games also present intellectual property issues. The International Olympic Committee owns the familiar "Olympic Rings," giving it the right to use the mark all over the world. In the United States, the U.S. Olympic Committee (USOC) has pursued violators who tried to use the protected marks and terminology of the USOC. In fact, protection has been provided not only through use of trademark law but also through the Ted Stevens Amateur Sports Act (the goal of which is to promote and coordinate amateur athletic activity in the United States, to recognize certain rights for U.S. amateur athletes, to provide for the resolution of disputes involving national governing bodies, and for other purposes), which contains a section devoted entirely to the protection of Olympic terminology and symbols.
Excerpts from Ted Stevens Olympic and Amateur Sports Act: § 220506. Exclusive right to name, seals, emblems, and badges

- Exclusive right of corporation. Except as provided in sub- section (d) of this section, the corporation has the exclusive right to use the name "United States Olympic Committee";

- The symbol of the International Olympic Committee, consisting of 5 inter- locking rings, the symbol of the International Paralympics C ommittee, consisting of 3 TaiGeuks, or the symbol of the Pan-American Sports Organization, consisting of a torch surrounded by concentric rings;

- The emblem of the corporation consisting of an escutcheon having a blue chief and vertically extending red and white bars on the base with 5 inter- locking rings displayed on the chief; and



- The words “Olympic”, “Olympiad”, “Citius Altius Fortius”, “Paralympic”, “Paralympiad”, “Pan-American”, “America Espirito Sport Fraternite”, or any combination of those words.

Contributors and suppliers.
The corporation may authorize contributors and suppliers of goods or services to use the trade name of the corporation or any trademark, symbol, insignia, or emblem of the International Olympic Committee, International Paralympic Committee, the Pan-American Sports Organization, or of the corporation to advertise that the contributions, goods, or services were donated or supplied to, or approved, selected, or used by, the corporation, the United States Olympic team, the Paralympic team, the Pan-American team, or team members.

Civil action for unauthorized use.
ept as provided in subsection (d) of this section, the corporation may fi le a civil action against a person for the remedies provided in the Act of July 5, 1946 (15 U.S.C. 1051 et seq.) (popularly known as the Trademark Act of 1946) if the person, with- out the consent of the corporation, uses for the purpose of trade, to induce the sale of any goods or services, or to promote any theatrical exhibition, athletic performance, or competition

- *The symbol described in subsection (a)(2) of this section;*
- *The emblem described in subsection (a)(3) of this section;*
- *The words described in subsection (a)*
- *of this section, or any combination or simulation of those words tending to cause confusion or mistake, to deceive, or to falsely suggest a connection with the corporation or any Olympic, Paralympic, or Pan-American Games activity; or (4) any trademark, trade name, sign, symbol, or insignia falsely representing association with, or authorization by, the International Olympic Commit- tee, the International Paralympic Committee, the Pan-American Sports Organization, or the corporation.*

Pre-existing rights and geographic reference

(a) *A person who actually uses the emblem described in* ***subsection (a)(3)*** *of this section, or the words or any combination of the words described in subsection (a)(4) of this section, for any lawful purpose before September 21, 1950, is not prohibited by this section from continuing the lawful use for the same purpose and for the same goods or services.*

(b) *A person who actually used, or whose assignor actually used, the words or any combination of the words described in* ***subsection (a)(4) of this section****, or a trademark, trade name, sign, symbol, or insignia described in* ***subsection (c)(4) of this section, for any lawful purpose before September 21, 1950****, is not prohibited by this section from continuing the lawful use for the same purpose and for the same goods or services.*

(c) *Use of the word "Olympic" to identify a business or goods or services is permitted by this section where;*

- Such use is not combined with any of the intellectual properties referenced in subsections (a) or (c) of this section;

- It is evident from the circumstances that such use of the word "Olym- pic" refers to the naturally occurring mountains or geographical region of the same name that were named prior to February 6, 1998, and not to the corporation or any Olympic activity; and

- Such business, goods, or services are operated, sold, and marketed in the State of Washington west of the Cascade Mountain range and operations, sales, and marketing outside of this area are not substantial.

The USOC has been involved in several lawsuits against different businesses that attempted to use the words and /or symbols of the Olympics. These cases have generally involved attempts by various companies to use variations on the word "Olympics" in association with their organization, product or event. Organizations frequently try to appropriate the notions of goodwill, purity, competition and ethics from the Olympic Games. The USOC has been largely successful in these cases, as demonstrated by the following notes.

COPYRIGHT LAW

Copyright has been defined as a set of exclusive rights granted to the author or creator of an original work, including the right to copy, distribute and adopt the work.[105]Copyright law bears the effect that an author of original work receives exclusive ascertainable period of time to exploit and benefit from the work including its publication, distribution and reproduction.[106]

Historical background.

Internationally, it is believed that the issue of intellectual; property arose from the 1710 Anne statute or is occasionally related to the practices developed in the sixteenth century to regulate the book trade. After the 1710 Anne Statute comes the Berne convention which set out standard principles of copyright protection. Later on, the universal copyright convention and the 1994 Geneva Agreement on Tariffs and Trade, the 1995 World Trade Organization and sought standards to harmonize the regulation, administration and enforcement of intellectual property generally and have had a great impact on the copyright law in Uganda for instance sec 1 part (ii) of the TRIPS agreement provides the rights which are similar to those in the Uganda Copyright Laws making the Ugandan

[105] Prof. George William Kakoma v. A.G per Bamwine PJ.HCCS No. 197 of 2008

[106] Colton, C. Principles of Intellectual Property Law (London, Cavendish , 1999) p. 167

copyright act a reflection of these international principles on copyright and neighboring rights.

Uganda received these copyright laws through the reception clause in the 1920 Order in Council. These laws gained domestication after the reception clause by the 1902 O.I.C wherein Uganda got the Copyright Act of 1956 that became the copyright act of 1964 but its content remained without any modifications and this survived until the new act of 2006.[107]Not only was the old act was modeled on English law but also outdated and incapable of accommodating the technological changes over time and relatively the standardization and effective harmonization of a legislative policy framework relating to copyright protection in Uganda. Article 189 of the 1995 Uganda constitution together with the sixth schedule imparts a duty on government to respect copyrights, patents and trademarks and all forms of intellectual property. Owing to one's constitutional right to property within article 26, the law of intellectual property comes in play to implement and advocate respectively.

The Common features of intellectual property rights are Territoriality[108] Anti-competitiveness,[109] Tradeability, Divisibility[110] independence and Volatility.

[107] According to Kawooya, Kakungulu & Akubu, (Uganda in Armstrong) 'the role of copyright "copyright in Uganda remained was initially designed to protect British authors and publishers within the Ugandan protectorate.

[108]Intellectual property rights, being creatures of statute, are confined to the territory where they are created though they have importance that transcends national boundaries.

[109] Peter J Groves, LLB, MA, PhD-Sourcebook on Intellectual Property pg. 16

[110]Intellectual property rights are capable of being sliced up in many different ways for example one may be authorized to reproduce, another to issue copies, The other to record, make performances etc.

Distinction between moral rights and economic rights

Moral rights are bent towards protecting the integrity of the author while economic rights seek to protect his financial interests of the owner or author of the protected work.
Unlike economic works which subsist only so long as the work is still protected, moral rights are enjoyed in perpetuity even after the demise if the author, his successor can enforce them and the author's integrity remains protected even long after the copyright has fallen in the public domain.

As stipulated in **section 10(3)** moral rights are not assignable i.e. are inalienable. Finally, moral rights belong to only the author whereas economic rights belong to the owner of the work who may take the form of an assignee, licensee, or transferee of the protected work.[111] Unlike, trademarks, there is no registration requirement for copyright to subsist in a work.

Originality

For copyright to subsist in literary, dramatic, musical and artistic works, they must be 'original'. In Ladbroke (Football) Ltd v William Hill (Football) Ltd[112].the court held that the word 'original' requires only that 'the work should not be copied but should originate from the author'.

Protected Works

The names of sports events will not usually qualify for protection as literary works. If combined with a distinctive logo, they may qualify as 'artistic works'.
Sound Recordings Films Broadcasts and Cable Programmes
Duration of the copyright

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[111] D.J. Bakibinga & R. M. Kakungulu Intellectual Property Law in East Africa pg. 30

[112][1964] 1 WLR 273

Defences.

'Fair Dealing'

One of the defences to a claim of copyright infringement unauthorised copying of the protected material – is 'fair dealing'. What amounts to 'fair dealing' is problematical in practice and depends on the circumstances of each case. The famous English Judge of the last century, Lord Denning, has described 'fair dealing' as 'a matter of impression'. 'Fair dealing' is not a carte blanche to reproduce copyright works. In BBC v British Satellite Broadcasting Ltd[113], used excerpts from the BBC's

World Cup football coverage in their news broadcasts. They gave an acknowledgement to the BBC. The Court held that, although they were mainly of the goals, the excerpts amounted to 'fair dealing'. This case led to the issue of the 'Sports News Access Code of sports events and compiling sports programming and content to be transmitted electronically, especially through the new media, such as the internet.

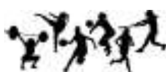
Categories of rights under the CNRA

- Economic rights.

  These generally include reproducing, distributing or selling copies of the work, publicly performing or displaying the work, broadcasting the work or preparing derivative works based on the work. Examples of derivative works include making a sound recording or motion picture of a literary work, or translating or adapting a work. Section 9 CNRA states that the owner of a protected work shall have, in relation to that work, the exclusive right to do or authorize other persons to;

  1) To publish, produce or reproduce the work. An example of this is visible in Chaplin v. Leslie Frewin (Publishers) Ltd

[113] 36 BSB



[1966] 1 Ch. 71 court held that the owner had sufficiently assigned the exclusive right of producing, publishing and selling the works to the publisher.

2) To distribute or make available to the public the original or copies of the work through sale or other means of transfer of ownership. In the case of John Murray (publishers)Ltd v. George William Ssekindu & Anor HCCS 1018 [1997] the plaintiffs obtained damages against the defendant who was selling counterfeit copies of the plaintiff's books without the plaintiff's permission thus causing a decline in the latter's sales.

3) To perform the work in public

4) To broadcast the work.

5) To communicate the work to the public by wire or wireless means… making the work available to the public.

6) To make a derivative work. **In Byrne v. Statist Co. [1914] 1 KB 622** court held that a translation of another person's work is a derivative work and thereby considered original. However, a slight change in the original person's work by for instance the size alone, does not introduce a new work as visible in L Batlin & Son Inc. v. Synder.

7) To commercially rent or sell the original or copies of the work. In Classic Art Works Ltd v Vincent Lukenge and Children of Grace[114] it was held that "the copyright owner may assign his or her economic rights in a copyright to another person, licence another person to use the

[114] HCCS No. 207/2010

economic rights, transfer to another person or bequeath the economic rights in a copyright in whole or on part.[115]"

8) To do in relation to that work any act known or to be known in the future.

9) To reproduce transcription in braille which is accessible to blind people.

However, for one to exercise their right of copyright, the work in dispute should not be trivial as the famous maxim states "deminimus non curat lex." In **Sinanide v La MaisonKosmeo**[116] the advertising slogan 'Beauty is a social necessity, not a luxury' was held to be too slight a work to found allegations of infringement by use of the rival slogan 'A youthful appearance is a social necessity.' A similar stance was taken in **Al Hajji Nasser NtegeSebagala v Mtn Uganda Ltd and Ano**ther[117].

Moral rights.

Section 2 CNRA defines moral rights to mean "the right to claim authorship or performance as is provided in sections 10 and 23.Moral rights have an international recognition visible in article 27 of the Universal Declaration of Human Rights (UDHR) which states that "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."Article 6 of the Berne Convention,(though not specifically binding on Uganda) whilst it does not say so in so many words, makes it clear that an assignment of copyright does not carry with it any assignment of moral rights. Section 10 CNRA provides for the moral rights of the author thus;

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[115] Also noted that "The rights can only be assigned or transferred in writing."

[116](1928) 44 TLR 574 -

[117]High Court Civil Suit No 283 of 2012

10(1) the author of any work protected by copyrights shall have a moral right

(a) To claim authorship of that work, except where the work is included incidentally or accidentally in reporting current events by means of media or other means.
(b) To have the authors name or pseudonym mentioned or acknowledged each time the work is used or whenever any of the acts under section 9 is done in relation to that work, except where it is not practicable to do so. And
(c) To object to and seek relief in connection with any distortion, mutilation, alteration of the work.

This was the position in the case of **Angella Katatumba v Anti-corruption Coalition**[118], where the learned judge affirmed the right to seek relief in respect of any distortion, alteration or modification of the work. The learned Judge upon considering evidence of the song, held that the plaintiff's moral rights were infringed upon and therefore was entitled to relief under **section 10 (2) of the Copyright and Neighboring Rights Act.**

However, court in **Francis Day and Hunter, Limited & Twentieth Century Fox Corp. Ltd.& Ors [1940] A.C 113** held that in order for a claim for infringement of copyright to succeed, it must be shown that there was a substantial taking of part of the plaintiff's work. The author of a work has a right to withdraw the work from circulation if it no longer reflects the authors convictions or intellectual concept. And if the author doses do, shall indemnify any authorized user of that work who might in any material way, be affected by the withdrawal. The moral right under sub-section (1) is not assignable to any person , except for purposes of its enforcement.

The rights of paternity, integrity and privacy continue to subsist as long as the copyright in the work subsists: The right against false attribution

[118] CS No. 307 of 2011

continues until 20 years after the death of the person falsely attributed as author or director.

The remedies of copyright infringement include injunctions, damages such as exemplary, punitive, general and special damages as discussed in **Stella Atal v. Ann Kiruta T/A 97 Africa Arts & Craft HCCS No. 0967/2004**.

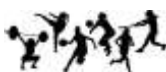
Criticism.

Moral rights have been criticized for making the author appear like the sole fountain of knowledge imparting their personality on all resulting work. In particular, it has been criticized for the fact that it fails to acknowledge the collaborative and inter-textual nature of the creative process.the alien nature of moral rights which are imposed even beyond the domestic jurisdiction of the author's continent and these tend to antagonize with a country's domestic laws.

On the other side, the copyright laws have proved ineffective due to some reasons such as the ignorance of some people about these laws. Some people are not aware of their rights and because of this, they are unable to exercise them. The lack of proper follow up and implementation, also contributes to the inefficacy of copyright laws. There's shallowness in the Ugandan jurisprudence pertaining to the few judicial decisions on copyright rights.
Under the neighboring rights, there remains a challenge on the unauthorized copying or broadcasting of live performances and unauthorized reproduction of recordings or of radio and television broadcasts.

Copyright law; a case of USA

Copyright law arises upon creation and, under current law, endures for the life of the author plus 70 years. Copyright law applies to both unpublished and published works. Registration of a copyrighted work with the Copyright Office in Washington, D.C., is not required for



existence of the copyright; however, it is a prerequisite to a lawsuit for copyright infringement and to certain legal remedies (e.g., injunctive relief). The familiar copyright notice is no longer required on copies of works published after March 1, 1989.

However, it is still in the copyright owner's interest to place a copyright notice on publicly distributed copies of published works. The notice should include the copyright symbol, ©, or the word "copyright" or its abbreviation, followed by the year of first publication of the work and the name of the copyright owner. One area where copyright law and sports have intersected concerns the pro- viding of real-time scores of professional sporting events without the consent of the governing leagues.

In **NBA v. Motorola, Inc**[119], the NBA filed suit against the manufacturer and promoter of handheld pagers that provided real-time information about professional basketball games, alleging copy- right infringement. The league also sought to enjoin an online provider, Sports Team Analysis and Tracking Systems (STATS) of the same information. The pager was able to provide the teams playing;

Score changes;

- The team in possession of the ball;
- Whether the team was in the free-throw bonus;
- The quarter of the game; and
- Time remaining in the quarter. The information was recorded by STATS reporters who watched the games on television or listened to them on the radio.

The reporters then entered that information into a computer which was then relayed to stats host computer from where it was retransmitted to the p agers. The entire process took approximately two to three minutes. The

[119]105 F.3d 841 (2d Cir. 1997)

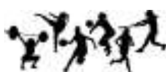
district court found Motorola and STATS liable for misappropriation and granted the NBA's request for a permanent injunction. While the media has the right to report hot news, it cannot report on information where:

- A plaintiff generates or gathers information at a cost;
- The information is time-sensitive;
- A defendant's use of the information constitutes free riding on the plaintiff's efforts;
- The defendant is in direct competition with a product or service offered by the plaintiffs; and
- The ability of other parties to free-ride on the efforts of the plaintiff or others would so reduce the incentive to produce the product or service that its existence or quality would be substantially threatened.

In reversing the injunction, the Second Circuit determined that Motorola and STATS did not meet this test, finding that Motorola's transmission of real-time statistics could not possibly serve as a disincentive for the NBA to continue to produce its primary product, that of professional basketball games. The court of appeals also held that the professional basketball games were not "original works of authorship," and therefore there was no copyright infringement. A similar issue arose in **Morris Communications Corp. v. PGA Tour, Inc[120].**

Though the claim was based on alleged antitrust violations as opposed to copyright infringement. In Morris, the PGA was granted summary judgment, preventing Morris from providing real-time scoring for professional golf events. The process, known as the Real-Time Scoring System (RTSS) went as follows. The PGA employed "hole reporters" who follow each group of golfers on the golf course and tabulate the scores of each player at the end of each hole of golf played. The scores are then collected by volunteers located at each of the 18 greens on the golf course, who, with the aid of handheld wireless radios, relay the

[120]364 F.3d 1288 (11th Cir. Fla. 2004),



scoring information to a remote production truck staffed by personnel employed by the defendant. The scores of all participating golfers are then processed at the remote production truck and transmitted by the defendant to its Web site, pgatour.com. At the same time, real-time scores are also transmitted to an on-site media center where members of the media are able to access the scores.

The PGA did not allow media to release the scores until they were posted on pgatour.com in order to protect its investment in a real-time scoring system. Morris claimed that the PGA was monopolizing the market for real-time golf scores, but the Eleventh Circuit found that the PGA was justified in its restrictions because it wanted to prevent Morris from free-riding on its RTSS technology. In doing so, the Court specifically stated "this case is not about copyright law" and did not address Morris's right of access to real-time golf scores, only its ability to sell them.

In these cases, the courts allowed companies to provide real-time scores through their Web sites and handheld pagers, respectively. Although leagues and organizations own the rights to broadcast games, companies have been allowed to provide real-time scores because they are not rebroadcasts of the game, and are solely pro- viding information, not commentary or detailed information. With the expansion of Internet technology, this area of copyright law has seen more litigation. Some copyrighted material can, however, be used without the owner's permission in the context that the work is for "fair use." Section 107 of the Copyright Act of 1976 provides that "the fair use of a copyrighted work, including such use by reproduction in copies or phono-records or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright."

Also, according to Section 107, there are several factors that must be considered in making a determination of fair use. Those factors are as follows:

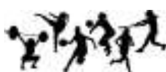
- The purpose and character of the use, including whether such use is of a commercial nature or is for non profit educational purposes
- The nature of the copyrighted work
- The amount and substantiality of the portion used in relation to the copy- righted work as a whole
- The effect of the use upon the potential market for or value of the copyrighted work.

For example, in sports, ABC used a biography about the legendary wrestler Dan Gable without permission from the copyright owner, Iowa State University. ABC argued that it was not subject to copyright infringement because it used a portion of the biography as fair use and that the information was of a public interest; however, the court found that ABC was not exempt because of fair use. The network's use of the fi lm had a profit-making character, and the network usurped an extremely significant market for the film[121]. Another questionable area of copyright law and sports is whether specific plays or moves can be copyrighted. While individual plays and moves are generally considered public ideas or facts, scripts and compilations may be subject to copyright law.

COPYRIGHT LAW AND THE INTERNET

The Internet is becoming a troublesome area for intellectual property law with- out clear-cut answers. Internet problems cover several areas, including broadcast rights, the use of sports teams' names and logos, and the use of athletes' names. Ever-growing technology presents a problem for sports organizations. Right now, fans can listen to games, just as they would the radio, over the Internet. Currently, teams own the rights to broadcast games over the Internet. In the future, we will likely see Internet broadcast rights negotiated the same way we see television and radio rights negotiated today.

[121]See Iowa State University Research Foundation, Inc. v. American Broadcasting Company, Inc., 621 F.2d 57 (2d Cir. 1980).



However, the advent of Internet broadcasting brings about some new potential problem areas and issues, including "policing" and pro- tecting the rights holder across an entity as broad and global as the Internet. Two federal acts that have been passed to address the ever-changing legal problems of intellectual property and the Internet are the Digital Millennium opyright Act (DMCA) and the No Electronic Theft Act (NET Act). The DMCA was implemented to ensure that a holder of a copyright cannot have its copyrighted material posted on the Internet without authorization. Among other things, the act allows for penalties for people who attempt to circumvent copyright protection systems or who sell equipment that allows people to avoid these protection systems. The NET Act makes it illegal for someone to willfully infringe a copyright;

- For purposes of commercial advantage or private financial gain, or
- By the reproduction or distribution, including by electronic means, during any 180-day period of one or more copies of one or more copyrighted works that have a total retail value of more than $1,000.

The basic premise behind the NET Act is to punish people who willfully infringe upon copyrighted material on the Internet for financial gain. Another problem in this area is "cybers quatting." Cyber squatters are people who register sports teams' domain names before the team does. Many of these cyber squatters register the domain names in hopes of later selling the domain names to the named party.

The Anti cyber squatting Consumer Protection Act (15 U.S.C. § 1125(d)) was enacted to prevent the deliberate and bad-faith registration of Internet domain names in violation of trademark rights. Cyber squatting is also a problem for athletes. Cyber squatters register the names of famous sports figures, or even potentially famous sports figures, in hopes of later selling the Internet addresses to the athletes at a profit. The major

sports leagues have begun to take a proactive approach to cyber squatters. The four major leagues and the Collegiate Licensing Company formed the Coalition to Advance the Protection of Sports Logos. This group has brought action against two cyber squatters under the Anti-Cyber squatting Protection Act (ACPA). The group brought action in late 1999 against Jeff Burgar, a profile cyber squatter, who registered names such as chargers1.com, redskins1. com, and goclippers.com. The action resulted in the transfer of 175 domain names and a $16,000.00 penalty against Burgar. Although the leagues are attempting to be proactive in protecting their marks on the Internet, cyber squatters are becoming more creative. Cyber squatters are even registering the names of high school athletes who may make it big in the future. The Anti-Cyber squatting Consumer Protection Act also provides some protection to individual athletes.

Any person who in good faith registers a domain name that consists of the name of another living person, or a name substantially similar thereto, without that person's consent, with the specific intent to profit from such name by selling the domain name for financial gain to that person or any third party, shall be liable in a civil action by such person.
This section of the act indicates that individual persons will have the ability to bring a civil suit if another uses his or her name. However, the cyber squatter must have the specific intent to profit from the sale of the domain name. In addition to the ACPA, organizations and individuals can utilize the Uniform Domain Name Dispute Resolution Policy promulgated by the Internet Corporation for Assigned Names and Numbers. This policy provides an arbitration process that offers an alternative to litigation for domain name disputes.

The policy requires that the domain name be identical or confusingly similar to the trademark owner's mark. The owner must also demonstrate that the registered domain name was registered in bad faith and that the registrant has no legitimate interest in the domain name. Even though these methods for domain name resolution have been developed and have proven to be effective in the short term, there is some question as to how

effective they can continue to be. Questions exist as to whether the ACPA will be effective as disputes become more international.

IMAGE RIGHTS

What are image rights?

The right to privacy, including image rights, is protected under Article 27 of the Constitution of Uganda. In **Proactive Sports Management Limited v Rooney &Ors Lady Justice Arden** defined image rights as a term "used to describe rights that individuals have in their personality, which enables them to control the exploitation of their name or picture."

The facts of the case in **Proactive v Rooney were that in 2003, footballer Wayne Rooney,** set up a company, Stoneygate Ltd, to exploit his image rights and he assigned his image rights to it. Stoneygate Ltd then appointed a sports agency, Proactive Ltd to act as its agent. The parties entered into an image rights agreement which allowed Proactive to negotiate endorsement contracts. The relationship lasted successfully for five years until the parties fell out and Stoneygate terminated the agreement and appointed another company in its place. Proactive took proceedings, claiming that Stoneygate was in breach of agreement, and that Proactive was entitled to commission due under the agreement. Stoneygate argued that Proactive was not entitled to commission and that the agreement was unenforceable on the grounds that it was unreasonable restraint of trade. The Court of Appeal ruled that Proactive was not entitled.

In **Asege Winnie v. Opportunity Bank (U) Limited & Maad Limited,** the plaintiff, a successful commercial farmer based in (Dakabela) Soroti District, brought this suit against Opportunity Bank (U) Limited for breach of her constitutional right to privacy, breach of confidence, among others. The defendant bank used her photography on advertising flyers, brochures and calendars to market their 'Save for your success with the Agro Save Account'. The plaintiff had not been consulted nor did she consent to the use of her photograph. On the issue of whether the

defendant and the third party (a marketing agency – Maad Ltd) were liable for breach of confidence, privacy among others, the High Court held that the plaintiff and the third party were in breach of the plaintiff's right to privacy when they used her photograph in the manner in which they did without her consent.

In **Basajjabaka Yakub v. MTN Uganda Ltd**, the plaintiff sued the Defendant Telecommunications Company alleging the illegal use of his photograph on a billboard for advertising purposes without his consent or authority, thereby deriving a benefit and causing him stress, putting his life at risk as he had received phone calls alleging he had bagged huge sums of money from the use of his picture.

The court found that the fact that the plaintiff averred that his image was published on a billboard without his consent established a cause of action within the broad framework of the International Covenant on Civil and Political Rights (ICCPR) which prohibits arbitrary and unlawful interference with the privacy of any person. Court further held that whereas the plaintiff's right to privacy was not infringed when his photograph was taken in a public space, the right was nonetheless infringed upon when the image was published on a billboard without the plaintiff's consent. Court awarded nominal damages of UGX 40,000,000 593–593 to the plaintiff in addition to a permanent injunction restraining the defendant from further use of the plaintiff's image on the billboard or any other form of publication was issued.

International level of protection

Despite the widely recognized commercial value of image rights, there is currently no international standard or harmonised legal concept for recognising an image right. While certain jurisdictions, such as the US, Germany and France offer statutory protection against the exploitation of an individual's image, English law provides no cause of action for the infringement of image rights as such. Although a celebrity may currently obtain protection through various statutory and common law rights, such as the developing law of privacy, breach of confidence and, in particular,

the tort of passing off none of these rights were designed to protect image or personality rights.

Many countries traditionally link the concept of personality rights to the right to privacy. While the former protects against economic loss caused by the commercial appropriation of an individual's personality the right to privacy protects against the intrusion of an individual's private sphere. It is worth noting that Guernsey, a small British island in the English Channel, has taken the creation and recognition of image rights to a new level by introducing a registrable statutory image right under its Image Rights (Bailiwick of Guernsey) Ordinance in 2012. Registration under the Ordinance creates a recognised defined image right for the first time which is published in Guernsey’s Register of personalities and images. The proprietor of the registered personality obtains a legal property right similar to a trade mark which can then be assigned and licensed.

Moreover, the proprietor of the registered image right has exclusive rights in the images registered against or associated with that registered personality. This new registration system for image rights has been welcomed by practitioners for bringing important clarity to the meaning and scope of image rights. However, it should be noted that a year after the establishment of the new system, it has not attracted as many registrations as expected. Potential registrants and celebrities may question the practical relevance of the remedy and its enforceability in other jurisdictions. Only the first high profile court case could put this new legislation to the test and effectively dispel concerns about the efficiency of the new system.
Below are important factors to consider when drafting an image right agreement;

- Sponsorship conflicts of interests
- Performance and Breach
- Image rights agreement should be carefully drafted to minimise the risk of ambiguity in such clauses. The parties’ rights and

obligations should be clearly defined to increase the likelihood that they will be effective in the event that a dispute arises.

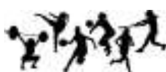
Tax Avoidance

Footballers, financial advisors and the clubs will often seek to use image right agreements as a probate remedy for tax avoidance. Such agreements can be used to reduce a player's income tax bill and his or her sports club's national insurance contributions. For example, in order to pay less national tax, the agents would separate image rights for foreign players from the rest of the standard terms in a player contract, such as basic wage, signing on-fees or loyalty fees.

In Sports Club, Evelyn and Jocelyn plc v Inspector of Taxes 2000, the Inland Revenue (HRMC) had challenged such image rights arrangements entered into by the premiership football club Arsenal and two of its players, Dennis Bergkamp and David Platt. Bergkamp had his own image rights company incorporated in the Dutch Antilles in 1991 and had assigned his image rights to the company. Platt also had an offshore image right company which contracted with another company. Both players signed employment contracts with Arsenal Football Club in 1995. Arsenal signed separate agreements with their image rights companies which provided Arsenal with the right to exploit the player's image rights in return for an agreed fee. Agassi v Robinson 2006 1 WLR 1380.(Inspector of Taxes (2006) residents outside the UK pay tax on their earnings in the UK and a share of sponsorship income, even if this income is earned through an offshore image rights company.

Are "image rights" goodwill?

In the absence of an identifiable IPR e.g. registered trade mark or copyright, when an "image right" is assigned, the asset concerned must, in HMRC's view be goodwill. The law of passing off will protect the goodwill that a claimant has in his reputation. Following the case involving the racing driver Eddie Irvine (Irvine and others v Talksport [2003]) where there is goodwill, misrepresentation and damage, the law of passing-off may be used in the UK to protect "image rights".



CAN "IMAGE RIGHTS" BE ASSIGNED?

Again, HMRC highlight that in the absence of identifiable IPR the assignment is likely to be of goodwill.40 HMRC refers to trade mark rights and acknowledges that, due to their registered nature, these may be considered to be readily assignable image rights and not goodwill. This is an important distinction and one which may prove useful to many clients in this position.

In the case of **Denis Oliech, Macdonald Mariga & Anor V East African Breweries Ltd**, the plaintifs claimed for violation of their image rights as a cause of action so they demanded payment from EAB Ltd for using their images to promote the national team and their own products. The East African Breweries Ltd declined to rely on the KES110 million sponsorship deal they had with Harambee stars management Board. **Clause 9** of their agreement stated that the sponsor shall have the right to use the images of members of the Harambee stars for promotion.

There was no dispute that EAB Ltd had a group agreement with the entire Harambee stars team in respect of the images but can the agreement be relied upon when certain players were singled out and their photos used in adverts? In this case EAB Ltd took a picture of these 3 players while celebrating a goal and used it for advert and the players argue that their consent was not sought and must be compensated for breach of their image rights. Court in ruling said that there is no recognized law in regards to image rights and that the closest recognition is in the copyright Act which defines artistic work to include photographs as a third party in the case of commissioned work as copyright owner, However imagine rights is a principle under common law that can't be undermined.

Broadcasting and multimedia rights

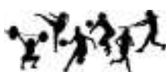
The protection of telecommunications privacy is provided for in the Uganda Communications Act and the Regulations made there under.[122] In Lukwago Erias v. Attorney General, the applicant, the Lord Mayor of Kampala City moved to court under Article 50 of the Constitution for declarations and orders that his fundamental human rights had been violated by the respondent's officers and for compensation. The applicant sought many orders including that (c) the respondent's officers violated his right to privacy and personal liberty under Articles 27 and 23 respectively were violated by the respondent's officers. Justice Henrietta Wolayo held that the undisputed entry into the applicant's home at Bulaw, Rubaga Division by the respondent's officers on the morning of 21 September 2017 was not necessary and it violated his right to privacy under Article 27 of the Constitution. Accordingly, the court awarded the applicant UGX 50,000,000 as compensation for the violation of his rights and freedoms.

In the sports arena, all sports entities potentially have a valuable property right in the accounts and descriptions of their games and events, whether these activities are broadcast on radio, television, cable television, the Internet, or via cellular phones. The importance of these contracts cannot be overstated, because they provide enormous amounts of revenue

Patent law

A patent is a document, issued by the federal government, that grants its owner a legally enforceable right to exclude others from claiming ownership of the invention described and claimed in the document. The Patent Act governs patent protection. It allows an individual to acquire a patent for an invention or discovery of "any new useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." There is a further specification that the invention

[122] Ronald Kakungulu-Mayambala (2021) - Cyber Law in Uganda. Pg. 186



or discovery be non obvious. The Supreme Court has adopted the view that such patent protection is applicable to "anything under the sun that is made by man." Congress allows this right, through the Patent Act (35 U.S.C. S.1–376), for a term ending 20 years from the date of the fi ling of an application for patent, to encourage the public disclosure of technical advances and as an incentive for investing in their commercialization. Thus, the overall progress of technical innovation is favored, while at the same time inventors are rewarded for their specific contributions.

Like other forms of property, the rights symbolized by a patent can be inherited, sold, rented, mortgaged, and even taxed. When a patent expires, or is held invalid, the right to exclude others from use of a patent ceases. The public is the ultimate beneficiary of the technical advance. Examples of patents that are used in a sports setting include baseball "donuts" (warm-up weights that wrap around a baseball bat), golf swing machines, golf putting machines, and even athletic shoes. The Nike Air shoes and the Reebok Pump were both products used in the sports industry, and their technical innovation was patented to protect the inventor and the company that owned the rights. Congress has specified that a patent will be granted if the inventor fi les a timely application at the U.S. Patent and Trademark Office that adequately describes a new, useful, and unobvious invention of proper subject matter. To be timely, an application must be fi led within one year of certain acts (by the inventor or others) that place the invention in the hands of the public (e.g., patented or published anywhere in the world, on sale or in public use in this country).

This one-year grace period, however, is not available in most foreign countries. A U.S. inventor who wants to obtain corresponding foreign patents must fi le an application in the United States before any written or oral public presentation of the invention complete enough to enable others to practice the invention. Moreover, the application must describe the best manner ("best mode") known to the inventor of carrying out the invention. The proper subject matter of a patent is any product, process, apparatus, or composition, including living matter, such as genetically

engineered bacteria or plants. Purely mental processes, newly discovered laws of nature, and methods of doing business are not proper subjects for a patent. Most inventors seek a patent to obtain the actual or potential commercial advantages that go along with the right to exclude others. Given the high cost of research and development, the opportunity to recoup these costs through commercial exploitation of the invention may be the primary justification for undertaking research in the first place. The described invention must be new.

This means that it must not have been invented first by another person or identically known, or used by others in this country, or patented or published anywhere in the world before the actual invention date (not the application fi ling date). The invention also must be useful. It must serve some disclosed or generally known purpose. Section 103 of the Patent Act has an additional requirement of un-obviousness, meaning that the differences between the invention and the prior public knowledge in its technical field must be such that a person having ordinary skill in this field would not have found the invention obvious at the time it was made. Patent rights can be commercially exploited in two basic ways:

(1) directly, by the inventor's practice of the invention to obtain an exclusive marketplace advantage (as where the patent technology results in a better product or produces an old product less expensively) and /or

(2) indirectly, by receiving income from the sale or licensing of the patent. It is important to note that a patent does not give the inventor the right to practice the invention. The inventor can practice his or her invention only if by so doing he or she does not also practice the invention of an earlier unexpired patent. Licenses can be nonexclusive, allowing many parties, including the inventor, to practice the invention simultaneously. An example of a nonexclusive license is a baseball pitching machine. This device to help hitters during practice is used all over the country. A patent allows the inventor and many players to use the machine at

the same time. A patent may also provide commercial advantages in addition to the potential for an exclusive market position or licensing income. A patent often lends business credibility to start-up ventures and can open doors to both markets. An improvement patent may also make it possible to cross-license any basic patents held by others that block the path to the market.

THE RIGHT OF PUBLICITY

Individual persons have the right to control and profit from the commercial use of their name, likeness, and persona, generally known as the "right of publicity." Using a person's name, likeness, or persona without his or her permission can amount to misappropriation, a state law tort claim. The right of publicity must be balanced with the First Amendment, which allows for the reporting of newsworthy events or stories of public interest. The right of publicity is different from the right to privacy or the tort of defamation, which holds public figures such as athletes to a higher standard of proof in cases of possible invasion. Income derived from endorsements and the licensed use of athletes' names and images constitutes an increasingly important stream of income for professional athletes.

As the different types and uses of electronic media continue to expand, it is important that athletes, coaches, executives, and other notable people in the world of sports protect their identities against unlicensed and unlawful profiteering. Makers and providers of videos, games, sporting goods, and a vast array of other products and services may attempt to use an athlete's name or picture in conjunction with the product, suggesting the athlete's endorsement. Whether the use of the athlete's identity is for commercial purposes is an important factor. For example, in **ETW Corp. v. Jireh Publishing Inc**.[123]golfer Tiger Woods claimed that an artist's creation and sale of 5,000 limited edition prints commemorating Woods's historic 1997 Masters victory infringed on his trademark and violated his

[123]99 F. Supp. 2d 829 (N.D. Ohio 2000), aff'd, 332 F.3d 915 (6th Cir. 2003),

right of publicity. In granting summary judgment for the defendant, the court noted that a certificate of authenticity accompanied the work and that the print's packaging included a statement by the artist expressing his desire to create "serious art" about sports.

The court found that the print was not a "mere poster" or item of "sports merchandise" but rather "an artistic creation seeking to express a message" entitled to broad constitutional protection. Accordingly, the court held that the common law right of publicity was superseded by the First Amendment and could not prohibit its sale. The increasing popularity of fantasy sports has also raised important questions about what information is in the public domain and what rightfully belongs to the athlete. In fantasy sports, individuals acting as "owners" form leagues and draft and assemble teams of players to compete, with the winners determined by the statistical performance of real players.

In an attempt to capitalize on this growing industry, the interactive arm of Major League Baseball entitled Major League Baseball Advanced Media (MLBAM) signed a five-year, $50 million deal with the Major League Baseball Players Association (MLBPA) in 2005 to acquire the players' online publicity rights, including for use in fantasy sports. MLBAM then licensed fantasy game creators, such as ESPN and Yahoo!, the right to use players' names, likenesses, pictures, and biographical data in conjunction with the games. Prior to 2005, the MLBPA sold these licenses. When MLBAM refused to offer C.B.C. Distribution and Marketing a license in 2005, as the MLBPA previously had, C.B.C. brought suit seeking a declaratory judgment that the players' names and statistics were in the public domain and that unlicensed use of such information in fantasy gaming would not violate the players' right to publicity. In C.B.C. Distribution and Marketing, Inc. v. Major League Baseball Advanced Media, L.P., 443 F. Supp. 2d 1077 (E.D. Mo. 2006), aff'd, 505 F.3d 818 (8th Cir. 2007), cert. denied, 128 S.Ct. 2872 (2008), the court agreed, r uling that the names and statistics of play- ers lacked the originality required for copyright protection and that the First Amendment rights of C.B.C. took precedence over the players' right to

control publicity. As a result of the ruling, ESPN opted out of a seven-year, $140 million licensing deal with MLBAM in January 2008

CHAPTER ELEVEN

Discrimination in Sports

THE CASE OF OSCAR PISTORIUS

Three prominent issues of discrimination in the global sports arena are instructive. The first issue involves Oscar Pistorius, a South African runner born without fibulae, who has worn prosthetic legs since he was eleven months old. The International Amateur Athletic Federation (IAAF) ruled, however, that competitive running on his ''cheetah'' legs, which contain springs, violates IAAF rules. When Pistorius appealed this decision to CAS, the tribunal, after reviewing the results of scientific testing and analysis, concluded that he had no ''overall net- advantage'' or metabolic advantage over his competitors. But what is the test of fairness, given what was acknowledged to be a substantial measure of indeterminacy in the scientific analysis? On the one hand, the ''cheetah'' legs would seem to be as fair as oxygen tents, ice filled vests for runners before a race to cool their core temperatures, and other technology employed by runners. Also, expensive medical procedures unavailable or unaffordable in much of the world, such as i ask eye surgery for golfers, would seem to be no less discriminatory than spring-assisted prosthetic legs. On the other hand, international sports federations have properly taken measures to avoid too much reliance by athletes on technology and facilitative wearing apparel. For example, FINA, the international

swimming federation, now bans a large variety of body suits that were acceptable for a few experimental years, on the basis that the suits inordinately aid speed, buoyancy, and endurance, in violation of FINA's standards. In doing so, FINA acted in part for reasons of fairness to earlier athletes who had not benefited from the body suits. In the end, we are left wondering: what sports equipment, clothing, and training technology is fair and what is unfair? Clearly, international sports federations need to take the principle of fairness more seriously and interpret it more precisely.

THE CASE OF CASTER SEMENYA

During the 2009 world championships in track and field, laboratory testing raised questions about the gender of South African runner Caster Semenya. The questions became front-page features when Semenya easily won the women's 800 meter race and the IAAF failed to protect the still-inconclusive laboratory results. Eventually, the IAAF concluded that Semenya had been eligible for the women's event, but questions of both procedural and substantive fairness remained. Why had the IAAF allowed inconclusive test results to be leaked to the media? Why had Semenya not been granted a medically supervised, therapeutic-use exemption to enable her to boost her androgen level and suppress her testosterone level, from which both women and men athletes have benefited? Should naturally mixed- gender athletes be allowed to compete in their choice of either men's or women's events?

THE CASE OF THE WOMEN SKI-JUMPERS

Finally, let us consider an issue of gender equality. Several world-class women ski-jumpers brought a civil action in the courts of British Columbia, Canada, claiming that the organizing committee of the 2010 Winter Games in Vancouver had violated Canada's Charter of Rights and Freedoms. Their claim was based on the Vancouver Olympic Committee's routine implementation of an IOC decision to bar women ski-jumpers from the Winter Games. In reaching a final judgment, the

British Columbia Court of Appeal first upheld findings of the provincial Supreme Court that the gender-based bar to participation was, indeed, discriminatory; that the organizing committee's planning, organizing, financing, and staging of the 2010 Games was tantamount to a governmental activity under a Canadian constitutional test of an ascribed activity; and that the organizing committee was therefore subject to the anti-discrimination provisions of Canada's human rights Charter in making all local arrangements within its control for the Winter Games. The courts held, however, that the organizing committee, in its contractual relationship with the IOC, could not control the selection of sports or sports events in the program; it therefore had no discretion to allow women's ski jumping. The critical decision-maker was a non-party to the action, namely the IOC, to which the Charter did not apply. The class action brought by the women ski jumpers therefore failed. Although the decision is technically reasonable in the context of a conflict between national and international authority and fully in conformity with the authority vested in the IOC under international sports law, it seems reasonable to ask whether the outcome was fair.

Since the 1970s, gender discrimination in sports has become a highly litigated topic. The initial development of athletic opportunities for women may be attributed, to a large extent, to Title IX of the Education Amendments of 1972, a federal statute that prohibits gender discrimination. Title IX gave women an important legal option to fight gender discrimination, and in turn the availability of legal options brought about an increased reliance on the legal system to redress gender discrimination. Women brought complaints about unequal treatment to court and were often successful in their litigation. Throughout the mid-1980s, however, a series of setbacks besieged the women's athletic movement. The failure to enact the federal Equal Rights Amendment and limitations imposed on Title IX enforcement by the Supreme Court in **Grove City College v. Bell, 465 U.S. 555 (1984),** brought the opportunities for women to attack perceived gender discrimination through the court system and legislation at a virtual standstill throughout much of this period. With the passage of the Civil Rights Restoration Act

by Congress in 1988 and, consequently, the resolution that athletic programs which did not directly receive federal funds were nevertheless bound by Title IX, the movement toward equality in athletics regained momentum. In 1992, the U.S. Supreme Court found, in **Franklin v. Gwinnett County Public Schools, 503 U.S. 60 (1992),** that victims of discrimination under Title IX could be entitled to monetary damages. This decision to make funds available for winners of Title IX lawsuits gave plaintiffs additional strength in Title IX cases, caused a proliferation of lawsuits by student-athletes, and forced many athletic departments to comply with regulations or settle pending litigation in fear of paying large settlements to plaintiffs.

Today, Title IX, along with other legal options, are effective legal theories for increasing opportunities for women in athletics in the courtroom. Participation in women's athletics has increased for many reasons. A major factor is the drastic change in social attitudes about women, including a new perception among women of their own athletic capabilities and interest in participation. After the U.S. Women's National Soccer Team won the Women's World Cup in the summer of 1999, many credited Title IX for the victory. Title IX has enabled women to demand equality in sports, which in turn has given them the opportunity to compete. A generation later, U.S. women are seeing the results.

In 2009, the United States is home to a professional women's basketball league (WBNA) and a professional women's soccer league (WPS). Also, women have had great success in individual sports such as tennis and golf for many years. Before the passage of Title IX, women composed only 7% of the total n umber of athletic participants in high school and 16% in college. By 1992, 37% of all interscholastic participants and 35% of all NCAA intercollegiate participants were women. In a report released in 2009, the NCAA found that during the 2008 –2009 academic year, there were 182,503 female athletes competing at NCAA member schools, which is nearly 43% of collegiate athletes, and the number of female participants in intercollegiate athletics increased 58% in the 1990s

alone. The Miller Lite Report in 1985 and the Melpomene Institute in 1995 concluded that women who were active in sports at a young age feel greater confidence and self-esteem in their physical and social selves than women who were sedentary as youths. The Women's Sports Foundation notes that women who participate in sports are more likely to experience academic success than women who do not participate in sports.

Also, girls who participate in sports are more likely to do well in science courses. The NCAA reports higher graduation rates for female athletes than for women students in general (71% vs. 64% in 2006). While participation in women's sports has increased dramatically since the passage of Title IX, other problems have emerged. According to the 2010 "Women in Intercollegiate Sport," report, by R. Vivian Acosta and Linda Carpenter of Brooklyn College, while the data show a near all time high for participation by women in our nation's intercollegiate athletics programs . . . the representation of females coaching men's teams remains remarkably low. Also, the number of women in administrative roles is roughly at the same level as the mid-1970s. Most plaintiffs utilize Title IX as the primary legal theory in their gender discrimination lawsuits. However, some plaintiffs also use the constitutional law theory of equal protection and a state equal rights amendment if the state has enacted one. For employment discrimination cases involving gender, Title IX is often used, but plaintiffs also make use of Title VII, a federal anti employment discrimination law, and the Equal Pay Act, a federal law that ensures equal pay for equal work and experience. Title IX, however, has been the most important of the legal theories used in gender discrimination cases.

The first type of Title IX cases involved participation rates of females in athletics. Plaintiffs were largely successful in these cases, and this type of litigation has consistently been decided in favor of increasing opportunities for women. The most important case on participation rates is Cohen v. Brown University. The second area being litigated under Title IX involves equitable financial assistance. In these cases, courts look at how men and women's teams are funded as well as the equivalent

availability of athletic scholarships to men and women. The third area of potential litigation involves "other benefits" that schools provide to athletic teams. The area of "other benefits" involves topics such as equality of access to facilities; coaching staff and support staff; publicity for both men and women; and equal quality of facilities for both genders. Title IX, despite its generally favorable consequences for women, has not been without its many opponents. With the mandate to increase opportunities for women in athletics, athletic departments have taken varied approaches on how to address their particular situations and comply with the legislation.

The most frequent downside to Title IX has been the elimination of men's athletic programs to compensate for the addition of women's programs. Many universities have not had the necessary funds to add women's programs while maintaining the same number of men's athletic programs. Athletic departments have been forced to cut men's sports such as wrestling, gymnastics, and baseball. In addition to cut- ting sports, departments have also reduced the number of scholarships available to men's athletic teams. The elimination of men's athletic programs has led to a number of lawsuits filed by male athletes, claiming reverse discrimination under Title IX. Generally, men have not been successful with their claims of reverse discrimination. Some athletic departments, albeit rarely, have been able to fully accommodate the interests of female athletes while not reducing participation opportunities for male athletes.

These athletic programs generally are very well funded. The most common approach used to comply with Title IX in intercollegiate athletics has been to increase women's opportunities while reducing men's opportunities. Therefore Title IX has many opponents who believe that Title IX has unfairly taken away opportunities for male athletes. Chapter 8 is organized into three major sections. The first part of the chapter discusses the various legal theories and principles utilized in gender discrimination cases in high school and intercollegiate athletics, and the legality, scope, and applicability of Title IX. The second part of

the chapter discusses early legal challenges to Title IX and the evolution of the policy from the 1970s through the early 21st century. The final part of the chapter discusses gender discrimination cases involving individual athletes. The cases have been grouped according to the presence or absence of teams available for either gender and according to whether the sport involved is a contact or noncontact sport.

LEGAL THEORIES IN GENDER DISCRIMINATION CASES

Gender discrimination in high school and intercollegiate athletics has been challenged using a variety of legal arguments, including Title IX of the Education Amendments of 1972, state equal rights amendments, and equal protection laws under the U.S. Constitution. Equal protection arguments are based on the 5th and 14th Amendments of the U.S. Constitution, which guarantee equal protec- tion of the law to all persons within the United States. The law states, "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws". Title IX has had the greatest impact in attacking gender discrimination in athletics.

Although the original legislation was passed in 1972, implementation was delayed for the promulgation of regulations and policy interpretations. Even with the delay, many have claimed that the rise in women's participation in athletics was directly related to the passage of Title IX. Title IX states, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefi ts of, or be subjected to discrimination under any education program or ac- tivity receiving Federal fi nancial assistance." A state equal rights amendment can also be used to attack alleged gender discrimination. However, not all states have passed such legislation. State equal rights amendments, and the proposed and defeated federal Equal Rights Amendment, were formulated to provide more protection from sex-based discrimination than the federal Constitution provides under the equal protection clause of the 14th Amendment. The goal of the legislation is to

protect against all sex-based discrimination and to protect women's rights. Most gender discrimination challenges have been based on either the equal protection laws or Title IX, or both.

For example, in Adams v. Baker[124], a 15-year-old female plaintiff sought a preliminary injunction, alleging that the school district violated her equal protection rights and violated Title IX because it did not allow her on the school's all-male wrestling team. The court concluded that the school district's reasons for not allowing plaintiff on the wrestling team were either not "important governmental objectives" or "not substantially related" to its objectives and granted the preliminary injunction for Adams on the grounds of equal protection. However, if the plaintiff had only fi led a complaint under Title IX, she would not have been successful; the court stated, "Because wrestling is a contact sport, Title IX does not require that Valley Center High School allow a female to try out for the boys wrestling team." The court ruled that plaintiff was not likely to succeed on the merits of her Title IX claim, and therefore an injunction was not warranted on those grounds. However, the plain- tiff was still able to receive the injunction due to the violation of equal protection under the U.S. Constitution.

Regardless of whether plaintiffs employ a Title IX or an equal protection approach in a gender discrimination case, they generally will argue that they are being deprived of equality under the law. When a court deals with claims of equal protection or Title IX violations, there are three important factors that courts commonly will consider when analyzing whether there is actual discrimination. The first factor that a court will consider is whether a sport is a contact sport. Total exclusion from sports, and especially noncontact sports, is generally considered a prima facie violation of equal education opportunities. However, Title IX provides for a "contact sport exception" that allows athletic programs to bar women from engaging in contact sports with men. The second factor that the court will consider is the quality or quantity of avail- able

[124]919 F.Supp. 1496 (D. Kan. 1996),

opportunities for each gender. The OCR in the Department of Education (formerly part of the Department of Health, Education and Welfare) monitors compliance with the dictates of the law. Under the OCR interpretation of Title IX, courts must look to see if the institution in question is meeting the interests of the underrepresented gender and whether equal treatment is given. Under an equal protection analysis, courts will determine if the regulations in place unfairly dis- criminate against one gender. The third factor that a court will consider is the age and level of competition involved in the dispute. The younger the athletes involved, the fewer actual physi- ological differences exist. Without demonstrable physiological differences, the justification of inherent biological differences as a rational basis for the exclusion of one sex from athletic participation is negated. Courts are reluctant to enforce discriminatory practices at a young age, when there are only negligible physiological differences between the two sexes.

TITLE IX

Title IX, since its inception in 1972, has undergone a series of changes and revisions while remaining true to its original mission of abolishing discrimination based on gender in federally funded activities. From the original policy interpretation by the Department of Health, Education, and Welfare (HEW) through the decision in Grove City College v. Bell, the passage of the Civil Rights Restoration Act, and subsequent litigation, the history and effect of Title IX will be discussed within the following sections.

Legislative History of Title IX

Section 901 (a) of Title IX of the Education Amendments of 1972 contains the following language:
No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Title IX became law on July 1, 1972, as Public Law 92–318 (codified at 20 U.S.C. §§1681–1987). It specifically and clearly recognizes the problems of gender discrimination and forbids such discrimination in any program, organization, or agency that receives federal funds. Athletics and athletics programs, however, were not specifically mentioned in Title IX when it first became law in 1972. HEW, taking the position that sports and physical education were an integral part of education, specifically included athletics, despite strong lobbying efforts to exempt revenue-producing intercollegiate sports from the Title IX requirements. This specific inclusion of athletics into Title IX occurred in 1974 and extended from general athletic opportunities to athletic scholarships. The principles governing athletic scholarships included the idea that all recipients of federal aid must provide "reasonable opportunities" for both genders to receive scholarship aid.

The existence of reasonable opportunities is determined by examining the ratio of male to female participants. Scholarship aid must then be distributed according to this participation ratio (see 45 C.F.R. §86.13 (c). A long process of citizen involvement preceded the first set of regulations. In July 1975, the Department of Health, Education, and Welfare issued the regulations designed to implement Title IX. These regulations are found in Title 45, Code of Federal Regulations (C.F.R.). The regulations were criticized by many as being vague and inadequate. In December 1978, HEW attempted to alleviate the criticism by releasing a proposed policy interpretation that attempted to explain but did not change the 1975 requirements. However, not until December 1979, seven years after the original passage of Title IX, did the Office for Civil Rights (OCR), the successor to HEW, release the policy interpretation for Title IX. These final guidelines specifically included interscholastic and intercollegiate athletics. Developed after numerous meetings and countless revisions, they reflected comments from universities, legislative sources, and the public.

Office of Civil Rights (OCR) Policy Interpretation of Title IX

The policy interpretation, finalized in 1979, focused on three areas that the OCR evaluates to determine whether an institution is in compliance with Title IX regulations with regard to athletics. In assessing compliance with Title IX, the OCR looks at several factors, including athletic expenditures and program components. Athletic expenditures need not be equal, but the pattern of expenditures must not result in a disparate effect on opportunity. Institutions may not discriminate in the provision of necessary equipment, supplies, facilities, and publicity for sports programs.

Another step that also was crucial to providing clear guidelines in the interpretation of Title IX legislation and what Title IX compliance involves was the publication of the Title IX Athletics Investigator's Manual in 1990 by the Office of Civil Rights. This manual superseded the Interim Title IX Intercollegiate Athletics Manual 1980 and the memorandum "Guidance for Writing Title IX Intercollegiate Athletics Letters of Findings," issued in 1982. This manual set out three main areas that are involved in Title IX compliance and would be investigated by the OCR and the courts when ruling on whether an institution is complying with Title IX. The OCR also released a report in 1997, Title IX: 25 Years of Progress, which provides an overview of the impact of Title IX in improving educational opportunities for students. In 2003, the assistant secretary for the OCR issued further clarification in a "Dear Colleague" letter.

The first area that is identified in the Investigator's Manual, and that the OCR assesses, is the extent to which the institution has met the interests and abilities of male and female students. The policy interpretation requires that the school "equally and effectively" accommodate the athletic interests and abilities of both men and women. This determination requires an examination of the institution's assessment of the athletic interests and abilities of its students, its selection of o ffered sports, and its available competitive opportunities. The OCR evaluates the level of competitive opportunities in one of three ways:

- Are intercollegiate competitive opportunities provided in numbers substantially proportionate to the respective enrollment of each gender?
- Is the institution's current and historical practice of program expansion responsive to the athletic interests of the underrepresented gender?
- Does the institution fully accommodate the abilities and the interests of the underrepresented gender in the current program?

In analyzing this area, the OCR and the courts must determine the extent to which the institution has met the interests and abilities of male and female students. In other words, a determination must be made as to whether there are equal opportunities to participate for both men and women and whether the opportunities are at equivalent levels of competition. In analyzing this particular area, the OCR and the courts compare the ratio of male and female athletes to the ratio of undergraduate full-time students of each gender. The ratios should be equivalent. If the OCR determines that an institution complies with any one of these tests, the institution is judged to have effectively accommodated the interest and the abilities of its student-athletes. Second, the OCR assesses the financial assistance that male and female athletes receive from the institution. This involves assessing whether an institution's athletic scholarships are awarded on a "substantially proportional" basis. In analyzing this area, the OCR and the courts determine the proportion of scholarship dollars that are spent on male and female athletes and compare this proportion to the pro- portion of athletes of each gender.

However, if a disparity is explained by legitimate and nondiscriminatory factors, the OCR will find compliance. These proportions should be equivalent when an institution is complying with Title IX. For example, compare schools A, B, and C. At school A, 50% of the athletes are female, but only 25% of the total financial assistance goes to females. At school B, 50% of athletes are female, and 45% of the financial assistance

goes to females. At school C, 50% of the athletes are female, and 50% of the financial assistance goes to females. School A would not be in compliance with Title IX because the 25% assistance to females is significantly below the 50% participation rate. School C is clearly in compliance because the proportion of financial assistance equals the proportion of participation to females. School B's situation requires further analysis. Although if the disparity is unexplained and greater than 1% the OCR will presume discrimination is taking place, as explained in the 1998 OCR Letter on Financial Aid.

The policy manual also suggests certain nondiscriminatory factors that may ex- plain disparities in financial assistance to men's and women's athletic programs. An example of a nondiscriminatory factor would be the difference between in- state and out-of-state tuition. Two students in a public institution may both have a scholarship for one year, but since one of the students is from out of state, his or her scholarship has a much higher price tag. Donations from private individuals to athletic programs do count when considering financial equity under Title IX. The third area of assessment under the policy interpretation is the degree to which the institution provides equal treatment, benefits, and opportunities in certain pro- gram areas. Some areas considered by the OCR in evaluating equivalent treatment include equipment, coaching, and facilities. The OCR may use additional factors in determining whether an institution is providing equivalent opportunity for members of both genders in its sports program. However, some of these factors (publicity, academic tutoring, housing, and dining services) are relevant in intercollegiate programs but are not generally relevant in assessing a sports program in a secondary school. The OCR has distinguished 11 program component areas that have been targeted when investigating this area:

- Provision and maintenance of equipment and supplies
- Scheduling of games and practice times
- Travel and per diem allowances
- Opportunity to receive coaching and assignment and compensation of coaches

- Provision of locker rooms and practice and competitive facilities
- Provision of medical and training facilities and services
- Provision of housing and dining facilities and services
- Publicity
- Provision of support services
- Recruitment of student-athletes

Title IX requires that both genders receive comparable or equivalent services in each of these program component areas. However,the Investigator's Manual identifies some potential differences that do not cause the institution to be out of compliance with Title IX. These differences are allowed if they are based on certain factors the OCR has identified as nondiscriminatory:

- Unique nature of the particular sport
- Special circumstances of a temporary nature
- The need for greater funding for crowd control at more popular athletic events
- Differences that have not yet been remedied but that an institution is voluntarily working to correct

In the area of compensation for men's and women's coaches, HEW assessed rates of compensation, length of contracts, experience, and other factors, while taking into account mitigating conditions such as nature of duties, number of assistants to be supervised, number of participants, and level of competition. As long as these differences in the program component areas are based on one of the non- discriminatory factors, the OCR and the courts have not found noncompliance with Title IX. The major issues raised regarding Title IX revolve around the scope of the legislation and the programs to which it is applicable. The July 1975 policy regulations issued by HEW covered three areas of activity within educational in- stitutions: employment, treatment of students, and admissions.

Several sections of the regulations concerned with the treatment of students included specific requirements for interscholastic, intercollegiate, intramural, and club athletic programs. Another section of the HEW Title IX regulations specifies requirements for athletic programs.Contact sports are subject to regulations distinct from those governing noncontact sports. The regulations in this section state that separate teams are acceptable for contact sports and for teams in either contact or noncontact sports in which selection is based on competitive skill.

There is one exception to the rule forbidding separate teams when a selection is based on competitive skill: if a school sponsors a team in a particular sport for one gender, but not for the other, and if athletic opportunities for the excluded gender have been historically more restricted than athletic opportunities for the other gender, members of the excluded gender must be allowed to try out for the team. The exception does not apply if the sport is a contact sport. For noncontact sports, if only one team exists, both sexes must be allowed to compete for positions on the team.

OCR Analysis and Method of Enforcement

The procedures for Title IX analysis are established in the regulations that list specific factors that should be examined in determining whether or not equality in athletics exists. The number of sports, the type of arrangements, and benefits offered to women competing in athletics are reviewed. When teams of one gender are favored in such areas as funding, coaching, and facilities, resulting in severely reduced opportunities for the other gender to compete, the courts will closely examine program expenditures, number of teams, and access to facilities to de- termine if the school is fulfilling the requirements of Title IX. Title IX does not require a sport-by-sport analysis but rather an overall program assessment. The OCR has stated that the reduction or cutting of teams, male or female, is disfavored and not required for compliance with Title IX. The final area of coverage within the regulations is the method of enforcement of Title IX. The procedure to be followed is initiated by

the OCR, which makes random compliance reviews and also investigates complaints submitted by individuals.

The first step in the process is to examine the records kept by the institution under investigation in order to review its attempt to comply with Title IX. Each institution must adopt and publish compliance procedures and designate one employee to carry out its Title IX responsibilities, including investigation of complaints. The institution must notify all students and employees of the designated employee's name, office address, and telephone number. After a preliminary review, the OCR has the option to conduct a full hearing or to drop the case. If the OCR calls a full hearing, the institution has the right to have counsel present and to appeal an adverse decision; the complainant has neither of these rights.

The affected individual is not a party involved in the hearing. Instead, the OCR becomes the complainant and pursues the claim. If the OCR finds that there has not been substantial compliance, it may turn its finding over to federal or local authorities for prosecution under the appropriate statutes. This section has provided the basic legislative history of Title IX legislation and the subsequent policy interpretation. For an in-depth discussion of the earliest cases involving Title IX, ensuing policy reinterpretations, review of recent cases involving Title IX, and the effect that Title IX has had upon intercollegiate athletics.

EQUAL RIGHTS AMENDMENTS

Although there are many legal alternatives to allegations of gender discrimination, there has been a recent push for a nationwide comprehensive prohibition of gender discrimination. Supporters of the Equal Rights Amendment (ERA) argued that passage of a constitutional amendment would remedy the lack of such a general prohibition. In order to amend the U.S. Constitution, the proposed amendment must first be passed by a three-fourths vote of both the U.S. Senate and the House of Representatives. Then it must be ratified by at least 38 state legislatures.

The ERA was passed in both houses of Congress in 1972, but it did not receive the necessary 38 ratifications from state legislatures by the required deadline of July 1, 1982. While uniform prohibition of gender discrimination has not materialized, many states and the District of Columbia have enacted their own Equal Rights Amendments.

Thus Equal Rights Amendments have impacted athletics at the state level but not at the federal level. Several cases have been decided in favor of the complainant on the basis of a state ERA. It is important to note that many of these cases, however, could have been brought on other arguments in states without ERAs. As of 2010, 22 states have included an Equal Rights Amendment within their constitution that provides more protection against sex-based discrimination. Supporters of a constitutional amendment continue to argue that the effectiveness and importance of an Equal Rights Amendment can be demonstrated in Commonwealth v. Pennsylvania Interscholastic Athletic Association. In Commonwealth, the court decided that the rule of the PIAA violated the Penn- sylvania State Equal Rights Amendment, which states, “Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual.” Although the plaintiffs had also claimed a violation of the equal protection clause of the Constitution, the court did not have to consider this claim because it was found that the PIAA had violated the state ERA. Regardless of the precarious position in which protection against gender discrimination exists, the existence of an Equal Rights Amendment on the state level is often helpful and may even be crucial to the success of gender discrimination cases.

Gender discrimination cases involving individual athletes

The subsections and cases that follow are discussed in terms of the presence or absence of teams available to either gender. Within each category, the subsections and cases are further divided into those dealing with contact sports and those dealing with non-contact sports. This was done because the approach taken and sometimes the results reached by the courts differ due to more important factors. The division of

subsections and cases is not by legal theory since very often the litigant makes use of one, two, or even three prominent theories for example, equal protection, Title IX, and state Equal Rights Amendments (in certain states). The courts view contact sports and noncontact sports differently.

Thus, in cases involving gender discrimination in athletics, the arguments used will vary depending on whether or not the particular sport is designated a contact sport. Under Title IX, contact sports include boxing, wrestling, rugby, ice hockey, foot- ball, basketball, and other sports in which the purpose or major activity involves bodily contact. In some jurisdictions, baseball and soccer have also been labeled contact sports. In a sport designated as contact, certain arguments are commonly propounded. The most frequent argument raised by defendants is that women, as a group, lack the physical qualifications necessary for safe and reasonable competition against men in a sport in which bodily contact is expected to occur. It is argued that women are more susceptible to injury because they have a higher percentage of adipose (fatty) tissues and a lighter bone structure. Because of these differences, the argument goes, contact sports are dangerous for all women. Physiological differences between the genders have generally been found to be a valid reason for the exclusion of one sex from a contact sport. Plaintiffs counter this argument by insisting that determinations of physical capability should be made on a case-by-case basis.

When there is no other opportunity for participation in a certain sport, a blanket prohibition is over- inclusive and violates equal protection by assuming that all women have identical physical structures and that all men are stronger and more athletically capable than women. Indeed, the health and safety rationale behind such total exclusion may fail a court challenge, as has been demonstrated in some cases. In one case, a woman who was five feet, nine inches tall and weighed over 200 pounds was denied a chance to play football because her supposedly lighter bone structure would render her more susceptible to injury. There were, however, no height or weight requirements for men, and the court thus found exclusion from participation to be unacceptable. Although the most

important consideration used to substantiate separate teams for contact sports is the health and safety of the participants, this argument does not apply to noncontact sports. Since there is no legitimate and important state interest for allowing exclusion from noncontact sports, citing gender as the sole exclusionary factor would constitute a violation of the U.S constitutional guarantees of the equal protection clause. Thus the arguments made by defendants in noncontact sports gender discrimination cases are different.

One argument is that if men and women are allowed to compete together and / or against each other, the psychological development of both would be impaired. This stance is generally based on a variation of the "tradition" argument, which says that allowing men and women to compete as equals will irreparably disturb the in-mate nature of relationships between the genders. Another argument is that if men and women are allowed to compete together, men will dominate the coed teams. The underlying rationale here is that since men are inherently stronger and more physically capable than women, coed teams will actually limit opportunities for women. Plaintiffs argue that a justification of this sort does not take into account individual differences among participants. It also does not recognize the argument that if women are given opportunities to compete against men from the beginning of their athletic careers, their capabilities will improve and men may not be able to totally dominate the athletic field.

Men's Team, No Women's Team

The general rule in both contact and noncontact sports is that when only a men's team is available, both genders must be allowed to try out for and play on that team. In contact sports under Title IX, females do not have to be allowed to try out for male teams. However, if the institution does not allow a woman or girl to try out, it must then conduct the tryouts in a nondiscriminatory manner. In ERA and equal protection cases, courts are split on the issue of allowing females to participate on male teams in contact sports when there are no teams in the same sport. Determination as to the student-athlete's capability and risk of injury should be made on

an individual basis, with the recognition that the contact or non contact sports designation makes a difference only if there is opportunity for athletes of both genders to compete. If there is ample opportunity for women to compete on their own, courts appear to be less apt to allow women to compete with men in contact sports.

Contact Sports

In cases where contact sports are involved and there is no women's team, there is a split in decisions as to whether to allow a female to play on the men's team. In some cases, as represented by Lantz v. Ambach[125], and Saint v. U. Nebraska School Activities Ass'n[126], the courts have upheld the plaintiff's gender discrimination claim and have allowed participation on the men's team. In other cases, the plaintiff female has been unsuccessful because she has not been able to prove that she has a right to participation (see note 2) or that her arguments fall under the auspices of Title IX (see note 4).

While most recent court cases have generally held that women do not possess a right to participate on all-male teams, in Mercer v. Duke University[127], the federal appellate court ruled that Duke had the right to prevent a female from trying out for an all-male contact sport. However, once Duke allowed a female to try out for the team, she had to be afforded the same treatment as all other p layers. Owing to various factors, including the evolution of women's sport opportunities, an increased use of coed sports teams, and the willingness to settle cases before litigation arises, the volume of these types of cases has decreased in recent years. Although recent cases have generally been decided against female plaintiffs, a split still remains.

[125]620 F. Supp. 663 (S.D.N.Y. 1985),

[126]684 F. Supp. 626 (D. Neb. 1988),

[127]190 F.3d 643 (4th Cir. 1999),

Noncontact Sports

In cases in which noncontact sports are involved and there is a men's team and no women's team, the majority of cases allow the women to participate on the men's team. Specifically, women have been allowed to participate on men's teams in cross-country, baseball, golf, and tennis where there were no women's teams. Few courts have prevented women from participating on the men's teams. In cases where private organizations are involved, the plaintiff women must also prove state action, which cannot always be demonstrated. One area of athletics where the separation between genders became controversial was in Little League Baseball. It was not until after a series of lawsuits in the mid-1970s that Little League Baseball began to allow girls to participate in official competition. Litigation in this area of gender discrimination has decreased due to increased opportunities for women's teams in interscholastic athletics as well as an increased acceptance of females participating on traditionally all-male teams. Finally, it is increasingly rare to find interscholastic or intercollegiate athletic programs that do not field teams for genders in noncontact sports such as tennis, cross-country, golf, and softball / baseball.

Women's Team, No Men's Team

In most cases where an athletic program sponsors women's teams but no corresponding men's teams, the sport is noncontact. Unlike the situations contained in the previous section, where a men's team but not a women's team was provided in a noncontact sport, men are generally not allowed to play on all-female teams. However, there have been exceptions. One sport that has recently tested the above doctrine is interscholastic field hockey. A sport that is played by both genders on the international level, field hockey is considered in most areas of the United States to be a women's sport on the high school level. Courts are split over whether field hockey should be considered a contact sport or not. If field hockey is construed as a contact sport, exclusion of males would be permitted under Title IX without any inquiry into purposes or motives for the exclusion. However, if field hockey is found to be a noncontact sport, the plaintiff could proceed on a Title IX claim. In 2001, Massachusetts,

California, and Maine were the only three states that allowed boys to play on high school field hockey teams.

In Massachusetts, six of the state's high school field hockey teams had boys on their rosters, including the two Division I state champion teams from the two previous years. While several parents and opposing coaches have called for a ban on male players, or a realigned league for males only, such action would violate the Massachusetts Interscholastic Athletic Association's (MIAA) rule 43, which states, "No student shall be denied in any implied or explicit manner the opportunity to participate in any interscholastic activity because of his or her gender." In the 1970s, the MIAA had a rule explicitly excluding boys from girls' teams, but that rule was found in- valid by the Supreme Judicial Court of Massachusetts based on equal protection laws and Massachusetts' ERA in **Attorney General v. Massachusetts Interscholastic Athletic Ass'n**.[128], If field hockey gains popularity among high school age boys, it is likely that court cases over male inclusion in the sport will increase. A similar trend occurred with volleyball, which began in the United States as a traditionally female sport but saw a rise in male participation in the 1990s. Male plaintiffs that bring claims of discrimination for exclusion from female teams generally use the same legal theories that females use in bringing claims of discrimination for not being allowed participation on men's teams. The two most common theories used by plaintiffs are equal protection and Title IX. Most courts will not uphold a Title IX claim unless the plaintiffs can show that opportunities for males have been limited. Similarly, equal protection arguments have often been denied because courts have held that athletic associations have a rational reason for separating men's and women's athletic teams or allowing women to field single-sex squads. In cases in which there is a women's team and no men's team for noncontact sports, the majority of decisions have not allowed the male to participate on the women's team. Only in Gomes v. Rhode Island Interscholastic League did the court uphold the male's gender discrimination claim and allow him to play on the

[128]393 N.E.2d 284 (Mass. 1979).

women's volleyball team. The Gomes case, however, is not a very strong precedent. In this situation, Gomes received a judgment for an injunction in the middle of the season. The appellate court was going to attempt immediate review of the issue, but the league persuaded the court to wait until the end of the team's schedule so that the season would not be disrupted. The merits of the case were never evaluated since the court deemed the case moot because Gomes had graduated. The majority of the decisions in this area are similar to **Clark v. Arizona Inter- scholastic Ass'n,** with the court refusing to allow boys to compete on the girls' volleyball team. The plaintiff male has been successful for a variety of reasons, including lack of state action when a private organization is involved, prohibition of males on women's teams to redress disparate treatment of females in scholastic athletic programs, promotion of athletic opportunities for females and the fact that males already have more athletic opportunities than females. In addition, there has been some litigation on what types of sports constitute "contact sports." For instance, the argument has now arisen over whether field hockey should be considered a contact sport. As with the previous sections concerning discrimination against individual athletes, the number of these types of cases has decreased in recent years due to increased opportunities and lack of willingness to enter into costly litigation.

Women's Teams and Men's Teams

Four different types of legal arguments are raised in cases in which there are teams for both genders. The first type is in cases in which the plaintiff women argue that "separate but equal is not equal." In these situations, the women sue to participate on the men's team because the competition may be better and the women are far superior to the participants on the women's teams. As O'Connor v. Board of Education of School District No. 23 illustrates, the court will generally approve "separate but equal" teams and rule against plaintiff females who want to play on boys' teams based on playing ability arguments. The second type of argument is that the separate teams are not equal, especially with respect to the benefits and opportunities provided to the teams. In Aiken v. Lieuallen, plaintiff female athletes contended that they were discriminated against in the

areas of transportation, officiating, coaching, and the school's commitment to competitive programs. The third type of case occurs when two teams exist but the women compete under different rules than the men. These situations, challenged on equal protection grounds, have produced mixed results. The trend recently does not allow different rules to exist when those rules are based purely on the gender of the athletes, especially when those rules place those who play under them at a disadvantage if they want to continue in the sport. The fourth type of case involves different seasons for the same men's and women's sport. The courts have historically held that separate seasons of play are not a denial of equal protection of the law; however, the sentiment within the court system is changing, as evidenced by the decision in Communities for Equity v. Michigan High School Athletic Ass'n and in Alston v. Virginia High School League, Inc.

SEPARATE BUT EQUAL

When there are both men's and women's teams in the same sport, challenges for participation on the other team have been unsuccessful. The doctrine of "separate but equal" remains applicable to gender distinctions, even though it has been rejected for distinctions based on race. Thus if separate teams exist for men and women, there may be a prohibition against coed teams or against women competing against men. The doctrine of "separate but equal" raises the critical question of whether such separate teams are substantially equal. The fact that two teams exist does not necessarily satisfy the doctrine. "Separate but equal" is based on the concept that the exclusion of a group is not unconstitutional if the excluded group is provided with comparable opportunities. If women are excluded from the men's basketball team but are provided with an equal team of their own, the school district will not be in violation of the Title IX under the "separate but equal" theory. When the genders are segregated in athletics, there must be an overall equality of expenditures, coaching, and access to facilities. Without this substantial equality, the existence of separate teams and the prohibition of

women competing with men may be unconstitutional. Apart from these circumstances, the segregation of the genders in athletics is generally upheld, although the court is careful to examine the specific circumstances in each case before making a determination. The court usually considers whether or not the particular sport in question is considered to be a contact or a noncontact sport. Physiological differences between the genders have been found to be a valid reason for the exclusion of one gender from a contact sport. Contact sports include boxing, wrestling, rugby, ice hockey, football, basket- ball, and other sports in which the major activity involves bodily contact. As the rights of female athletes have increasingly been served in recent years, the number of cases in this area has decreased. The quality of competition has increased in women's sports, making females less likely to demand an opportunity to play on men's teams. Furthermore, the treatment of female athletic teams has begun to equal the support that male teams receive on the interscholastic and intercollegiate levels, leading to a decrease in "separate but equal" cases

Contact Sports

In cases in which there are both women's and men's teams in contact sports, the courts have generally not allowed a female to participate on the men's team. In O'Connor v. Board of Education of School District No. 23, the court denied the gender discrimination allegation of a female who wanted to participate in better competition by playing on the men's team. The other issue that may be raised is whether the separate men's and women's teams are in fact equal. For example, in Aiken v. Lieuallen, members of the female basketball team at the University of Oregon argued that they did not receive the same treatment as the men's basketball team at the university. The school was found to be in violation because it discriminated against the female players in the areas of transportation, coaching, and officiating.

Noncontact Sports

In cases in which there are both women's and men's teams in noncontact sports, the courts have generally not allowed the female to participate on the men's team. The rationale is that separate but equal is equal since this enhances athletic opportunities for females. As mentioned previously, as the quality of female athletics has grown since the 1980s, the demand by women to participate on men's teams for increased competition has decreased sharply. This trend is evidenced in the notes, with few cases being heard since the inception of Title IX in 1972.

VARSITY SPORT VERSUS CLUB SPORT

Another trend that has been occurring in recent Title IX litigation involves the argument that a sport that has been operating under "club" status should be raised to "varsity" status when the counterpart gender has a varsity team in that same sport. This argument has been used by women athletes who feel that denial of varsity status to their sport is a violation of Title IX, given that the male student-athletes have a varsity team in the same sport. This argument is based on the Title IX interpretation that calls for proportional ratios of sport participation opportunities offered to men and women student-athletes. The plaintiffs would have to prove initially that the school was out of compliance with Title IX and that adding this particular sport program as a varsity sport would constitute compliance with Title IX. If the school thought it was not in compliance with Title IX, it could raise the women's team to varsity status, thereby increasing participation opportunities. The plaintiffs could also argue a Title IX complaint based on equal benefits and opportunities provided to the sport programs. The plaintiffs' argument could revolve around the fact that if a school offers a varsity team in a particular sport for men, then it must offer the same sport for women at the varsity level and provide it with the benefits and opportunities that the men's team receives. The plaintiffs would need to prove that student-athletes have the interest and ability to compete on the varsity level and that there is ample competition to sustain a team. This type of argument was used in Cook et al. v. Colgate University, in which

the plaintiff female student-athletes argued that their club sport of women's ice hockey should be raised to varsity status and that failure to do so was a violation of Title IX. This approach to Title IX compliance is relatively new, and the courts have yet to rule on this type of complaint.

CHAPTER TWELVE

Arbitration

Arbitration is here the parties refer a dispute to a neutral called an arbitrator with the understanding that the arbitrators' decision called an award would be binding on the parties. It is a form of Alternative Dispute Resolution (ADR). Court based ADR can be defined a process by which parties who have filed their dispute in court are given an opportunity at an early stage before the hearing of the dispute by the Judge to have the said dispute referred to ADR first with a view to finalizing it or narrowing the issues involved.[129] Formerly, there was a traditional perception under common law system that disputed had to be resolved through an adversarial method if dispute resolution. This appears to be a direct result of the training given to lawyers and judicial officers. That judgement is then given for a party and against another.

Thus may not always work when parties seek dispute resolution through ADR. Other traditionalist gave a reason that since courts of law (in particular the High court), have unlimited jurisdiction, any attempt by a party to remove a dispute from a court to an ADR process was perceived as an attempt to oust the court's jurisdiction contrary to article 139 of the

[129] Meierhoefer, Barbara S. 1990- Annexed Arbitration in Ten District Courts Washington, DC

1995 constitution. a good example of such was laid in **Ruth Bemba & anor v. QAFCB**[130]. Similary in recent times, section 9 of the new Arbitration and conciliation Act cap 4 has come under criticism as being inconsistent with article 139 of the 1995 constitution of the republic of Uganda in the case of **Iraqi Fund for External Development v. A.G.**.[131]

In professional sports, conflicts regularly arise over the rights of players as outlined in the terms of the collective bargaining agreement, standard player con- tract, and league /governing body documents. Before unionization in professional sports, the commissioner of each sport had the final say in handling disputes, grievances, or other conflicts. While the commissioner still enjoys considerable power such as the ability to veto a trade, approve or disapprove a contract, or implement a fine the commissioner's power in the grievance procedure has been greatly diminished. When unionization occurred on a wide scale in professional sports, one of the first demands that the players associations made was for the implementation of a grievance procedure that was not controlled by the league. The intent of the grievance procedure is twofold: first, to keep litigation outside of the formal court sys- tem (the arbitration process is quicker, cheaper, and private); and, second, to give players due process rights. A grievance is an alleged wrong that is contrary to the written language or the intent of the written language in a collective bargaining agreement or, by implication, a league bylaw and /or standard player contract. The NFL-NFLPA 2006 – 2012 agreement defines a grievance in the following manner:

Article IX. Non-Injury Grievance. Section 1. Definition. Any dispute (hereinafter referred to as a grievance) arising after the execution of this Agreement and involving the interpretation of, application of, or compliance with, any provision of this Agreement, the NFL Player Contract, or any other applicable provision of the NFL Constitution or Bylaws pertaining to terms and conditions of employment of NFL

[130]833 of 1989

[131]HCCS 1391 of 2000

players, will be resolved exclusively in accordance with the procedure set forth in this Article, except wherever another method of dispute resolution is set forth else-where in this Agreement, and except wherever the Settlement Agreement pro- vides that the Special Master, Impartial Arbitrator, the Federal District Court or the Accountants shall resolve a dispute. Players associations argued for an independent arbitrator to preside over grievances because they identified a conflict of interest in the commissioner acting as arbitrator. First, players asserted the commissioner would not be able to remain impartial if the grievance was against a decision he himself had made. Second, the players claimed that the commissioner of a professional sports league is hired and fi red by the owners of that league, and therefore is not an impartial entity but may have a bias for the owners. Players demanded a system whereby an independent party would act as final arbitrator. What eventually emerged was a grievance procedure for certain disputes that contained numerous steps, including a hearing with the commissioner, and ended with a final and binding decision made by an impartial arbitrator.

As mentioned previously, the commissioner retained jurisdiction for some disputes. It is important to note that the basic grievance procedure is used for violations of the collective bargaining agreement, and also of any contracts and / or rules and regulations that are referred to in the contract. Therefore, a violation of the standard player contract is handled through the grievance procedure. In addition to the basic grievance procedure, players have negotiated a salary arbitration process (NHL, MLB) and an injury grievance process (NFL). Below is a brief outline of the grievance procedures as found in the collective bargaining agreements in the National Football League and Major League Baseball. MLB Procedure (Article XI, Basic Agreement)

- Grievant makes a verbal complaint to club or player representative, followed by discussion. If matter is not resolved, a written grievance is fi led. A representative issues an opinion to player and MLBPA.

- Grievant appeals decision to a representative of the Players Relations Committee, followed by discussion. Written opinion is issued.
- Grievant appeals decision further to a tripartite arbitration panel, consisting of a representative of management, a representative of the MLBPA, and an impartial chairperson of the panel.

Not included in this procedure; salary, benefits, commissioner matters (matters that deal with the integrity of baseball).

NFL PROCEDURE (ARTICLE IX AND X, BASIC AGREEMENT)

Noninjury.

This procedure pertains to the terms and conditions of employment and applies to all noninjury disputes that result from a violation of the collective bargaining agreement, players' contract, and all other documents listed in the agreement. The grievance goes through a joint panel made up of NFLPA representatives and management council representatives. If appealed, the grievance goes to the Player Club Relations Committee, and if still not resolved, goes to a notice arbitrator who submits a list of arbitrators, one of which must be chosen. Decision by arbitrator is final and binding. It should be noted that if the grievance involves a suspension, the player or the NFLPA has the right to appeal directly to the notice arbitrator. b) Injury. This type of grievance occurs when a player's contract is terminated due to an injury sustained while working for the team. The player must fi le a written grievance within 20 days, specifying injury, time of injury, and activity involved. The club may claim several defenses, including

- Player did not pass preseason test,

- Player did not disclose injury,
- Injury occurred before preseason and player signed a waiver,
- Injury was non football- related. A neutral physician will examine the player and submit a report. If report is appealed, the procedure is the same as for a non injury grievance.

GRIEVANCE PROCEDURES IN PROFESSIONAL SPORTS

This outlines the types of grievance procedures that apply for each of the four major professional sports leagues. Before grievance arbitration is initiated, a procedure exists to determine whether cases can be decided without going to arbitration. For example, if a provision in a collective bargaining agreement has been accidentally violated, management will, in all likelihood, attempt to settle the dispute outside of the formal process. This could also be the case if a provision has been so obviously violated that going through the procedure would be sure to result in a loss. An impartial arbitrator is retained when both parties feel correct in their interpretation of the case and believe an impartial arbitrator would agree with their explanation.

Earlier, this chapter discussed the Messersmith /McNally arbitration decision that paved the way for free agency in professional baseball. This case is significant because it illustrates the importance that the grievance procedure can have. Baseball players had challenged the use of the reserve system, using antitrust theory in the court system, but had been unsuccessful in all those cases because of the antitrust immunity enjoyed by professional baseball. The players next turned to the grievance procedure as a mechanism to settle the dispute. The MLB Players Association believed that the option clause, which was part of the standard player contract, was applicable for only one year after the initial contract expired. The league contended that the option clause gave it the right to renew a player's contract year after year, as had been done since the 1880s. The league attempted to argue that the arbitrator did not have jurisdiction over the case, but the arbitrator, Peter Seitz, dismissed this

defense. Seitz found in favor of the players and granted them the right to unrestricted free agency.

More important, the decision confirmed that the option on a contract was valid for one year only. It is important to remember that the purpose of grievance arbitration is to limit the amount of litigation that enters the formal court system. The courts have increasingly yielded to the decisions made by arbitrators, and have also been reluctant to interpret grievance arbitration clauses. Only when there is a clear breach of the purpose of the procedure will the court system intervenes. A decision made by an arbitrator will usually serve as a precedent only within that particular sport. For example, an NBA arbitration hearing reduced the suspension of Latrell Sprewell for the 1997 assault on his coach P. J. Carlesimo. However, if identical circumstances were to occur with an NHL player and his coach, the arbitrator would not be compelled to consider the facts of the Sprewell case.

On the other hand, arbitrators must consider past decisions and practices of com missioners, clubs, and arbitrators within the same sport. For example, when an MLB arbitration panel reduced the suspension of John Rocker for his “sexist, racist, homophobic and xenophobic” remarks, it did so in part because of baseball’s historical indifference and lack of clear policy regarding similar incidents. In February 2008, District Court Judge David Doty for the District of Minnesota overruled and reversed arbitrator Stephen Burbank’s ruling that former Atlanta Falcons quarterback Michael Vick must return almost $20 million in bonus money after Vick was sentenced to prison for dog fighting, see **White v. NFL, 2008 WL 304885 (D. Minn. February 4, 2008)**. Doty presided over the original **White v. NFL, 41 F.3d 402 (8th Cir. 1994)** lawsuit and the resulting stipulation and settlement agreement that created the current NFL Collective Bargaining Agreement. Doty presided over all subsequent litigation regarding the NFL CBA. Unhappy with the reversal, the NFL fi led an unsuccessful motion for the decision to be vacated and for Doty to remove himself from any future disputes involving the NFL CBA, claiming that he was biased against the league.

UNLAWFUL DISCHARGE

One area in which grievances are commonly fi led pertains to unlawful discharge or termination. While this issue is not as pervasive in professional sports as it is in other industries (due in part to the high number of guaranteed professional sports contracts), there have been several cases where players feel they have been unjustly terminated or discharged. The collective bargaining agreements in the NBA, NFL, and MLB all have language that allows a team to lawfully discharge a player when he fails to exhibit sufficient skill.

SALARY ARBITRATION

Salary arbitration is a process used only in Major League Baseball and the National Hockey League. The basic premise behind the procedure is to give players who have played a certain number of years an opportunity to have their salary set by a neutral third party based on market conditions. In both the baseball and hockey procedures, players present their cases before arbitrators who make decisions based on evidence given by both the team and the player. Players file for arbitration for two reasons:

- The player believes he can win his case;
- The player is using the threat of arbitration as a bargaining tool in his negotiations with his team. John Gaherin, who acted as a labor negotiator for Major League Baseball owners, had suggested the idea of salary arbitration for baseball in the 1960s.

Gaherin and his successor, Ed Fitzgerald, encouraged the owners and the commissioner to adopt salary arbitration for two reasons:

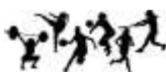
- To end player holdouts; and, more important,
- To dissuade the players in their efforts to end baseball's antitrust exemption and the reserve clause. Fitzgerald convinced the owners to adopt salary arbitration in 1973, three years before free

agency. The measure passed the owners by a 22–2 vote, and had the approval of Commissioner Bowie Kuhn. Major League Baseball uses what is known as final-offer or last-best-offer arbitration. The system is set up so that representatives of the player and the team each submit a figure they believe the player is worth for one season of play. The arbitrators, as per the collective bargaining agreement, will consider:

a) Career contribution;
b) Quality of previous seasons;
c) Player's past compensation;
d) Competitive salaries;
e) Physical and mental defects;
f) Recent performance record of the club.

The arbitrators will then pick either the salary given by the player or by the team. The arbitrators must choose one of the two salaries given, and may not select a compromise salary. It is important to remember that neither party knows what the other is going to offer. In Major League Baseball, players are eligible for salary arbitration after their third year of service in the league or if they are a "super-two," meaning that they are in the top 17% of major league ser- vice among players with at least two years of service and at least 86 days of service in the immediately preceding season. Service is accrued in terms of days spent on the Major League roster. In Major League Baseball, the arbitrator can only award a one-year contract. The player will go through the arbitration process every year that he is eligible until he becomes a free agent following his sixth season or if he signs a long-term contract with his existing team prior to reaching free agency.

As an example, consider one of the first salary arbitration cases. In 1974, the Minnesota Twins offered pitcher Dick Woodson $23,000 for one year, and Wood- son offered to pitch for $30,000. The arbitrator therefore was forced to decide whether Woodson was worth more or less than $26,500 (the midpoint). If the arbitrator felt that Woodson was worth less



than $26,500, he would be given $23,000. If the arbitrator felt that Woodson was worth more than $26,500, he would be awarded $30,000. As it turned out, the arbitrator found in favor of Woodson, and he was granted $30,000. While the Minnesota Twins were quite dismayed at the club's loss in this early hearing, the salary arbitration awards have increased significantly since the mid-1970s. The combination of free agency and arbitration-mandated salaries has produced salary arbitration hearings with millions of dollars at stake, rather than the few thousand that were at stake in the Woodson case. For example, in 2008, Philadelphia Phillies first baseman Ryan Howard offered to play for $10 million. The Phillies offered Howard $7 million, a $6.1 million raise over his previous year's salary of $900,000.

The arbitrators found in favor of Howard. Again, this does not necessarily mean that arbitrators felt Howard was worth $10 million, but it does mean that the arbitrators felt that Howard was worth more than $8.5 million (the midpoint between $7 million and $10 million). As of the 2010 season, the highest arbitration award ever was $10 million, given to Philadelphia Phillies first baseman Ryan Howard. Los Angeles Angels of Anaheim closer Francisco Rodriguez and Washington Nationals out fielder Alfonso Soriano received $10 million in 2008 and 2006, respectively, as well; how- ever, they actually lost their cases. The last-best-offer system of arbitration in Major League Baseball has led to it being used less frequently as teams often sign their players before going to arbitration. According to the MLBPA, from 1990 through 2009, 1,806 cases were fi led and only 203, or 11%, actually made it to arbitration. The National Hockey League's system of salary arbitration is different from that of Major League Baseball. The NHL uses conventional interest arbitration, under which the arbitrator is not forced to pick "either/or," but estimates what the arbitrator believes the player is worth and offers that as the decision. In addition, unlike as in Major League Baseball, the arbitrator may award the player a contract of more than one year.

Like the system employed in Major League Baseball, neither party in a salary arbitration dispute knows what the other is going to offer. For example, if the Chicago Blackhawks offered Patrick Kane a $5 million one-year contract and Kane asked for $7 million, the arbitrator could decide Kane is worth $6 million and award that salary. Salary arbitration eligibility in the NHL varies depending upon the age when the player signs his first contract and his relative professional experience. For example, a player who signed his first contract between ages 18 and 20 needs five years of professional experience while a player 25 years or older only needs one year of professional experience. Prior to the 2005 collective bargaining agreement that ended a 10-month lockout, only players could elect salary arbitration but now the clubs can also with respect to certain classes of players.

The 1993 salary arbitration hearing between the Boston Bruins and Raymond Bourque offers a valuable look into the machinations of the salary arbitration process. Bourque asked for a contract that would pay him approximately $4.25 mil- lion per year, and the Bruins offered $1.8 million per year. The arbitrator, Richard Bloch, began his analysis by reviewing Bourque's achievements and contributions to the Bruins over his 14-year career. The arbitrator then compared Bourque's statistics with 23 other top defensive players; in these comparisons, he appeared near or at the top of almost all. Bloch noted in his decision. It is fully appropriate, in the course of fashioning the contract award, to place one's self in the parties' position, considering the "market" for a player or given category of player and attempting to discern, to whatever extent possible, the respective positions and the responses. In this context, even accepting a frame of reference that would accommodate non-defensive players, for comparison purposes, the long-term nature of those arrangements and the impact of salary may simply not be ignored.

The arbitration award was set at $2.25 million per year, based on comparisons with other notable impact players of the time, including Steve Yzerman, Eric Lindros, and Joe Sakic. If a team feels the player is likely to win a large award in arbitration, the team will do all it can to

settle before the case goes to an arbitrator. Even when players lose their arbitration cases, they usually receive an increase in salary over the previous year.

AGENT-ATHLETE DISPUTE RESOLUTION

An important facet of the relationship between the player agent and players associations concerns the role of the players associations in resolving disputes between players and their agents. Players associations have taken the responsibility of settling any disputes that arise over fees or the interpretation of contracts through an arbitration process.

AGENT-AGENT LITIGATION AND ARBITRATION

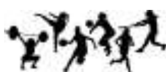
In certain situations, especially those involving greater amounts of money and accusations, some player agents have forgone the players associations grievance procedures in favor of civil lawsuits. Common claims brought by agents are client theft, interference with contractual relations, and misappropriation of trade secrets resulting from one more agents leaving a particular firm either for a competing one or in order to start his / her own. Often following the result of the suit, the respective players association responds with its own complaints and often decertifies or suspends the agent in question. The player agent can then appeal through the grievance arbitration process outlined in the players association's agent regulations.

PROTECTING ARBITRATION

FIFA describes its Statutes as 'the constitution of FIFA and world football'. This is perfectly accurate. They are not a state constitution, but they bring together the rules and working methods of FIFA, the organization that stands at the apex of the global governance pyramid of the sport of football. The rules constitute the entity which is FIFA. FIFA's Statutes make careful provision for the dominant role of

arbitration, and they place the CAS in a presiding role. Article 59(1) of the currently applicable Statutes directs that: ‘The confederations, member associations and leagues shall agree to recognise CAS as an independent judicial authority and to ensure that their members, affiliated players and officials comply with the decisions passed by CAS.’ The same obligation is extended to intermediaries and licensed match agents. Article 57 adds that ‘FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents’, and that: ‘The provisions of the CAS Code of Sports- related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law The aim, however, is more ambitious than simply to engage CAS in dispute resolution.

The FIFA Statutes seek to confer exclusive jurisdiction on CAS. **Article 59(2)** provides that ‘Recourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations’ and also that: ‘Recourse to ordinary courts of law for all types of provisional measures is also prohibited.’ **Article 59(3)** seeks to ensure the implementation of this exclusion of ordinary courts within the several lower layers of the organizational pyramid over which FIFA rules as the global body. **Article 59(3)** provides: The associations shall insert a clause in their statutes or regulations, stipulating that it is prohibited to take disputes in the association or disputes affecting leagues, members of leagues, clubs, members of clubs, players, officials and other association officials to ordinary courts of law, unless the FIFA regulations or binding legal provisions specifically provide for or stipulate recourse to ordinary courts of law. Instead of recourse to ordinary courts of law, provision shall be made for arbitration. Such disputes shall be taken to an independent and duly constituted arbitration tribunal recognized under the rules of the association or confederation or to CAS.



The associations shall also ensure that this stipulation is implemented in the association, if necessary by imposing a binding obligation on its members … Were a party to this contractual network to seek to break out of its bonds and to route a claim through the ordinary courts of a state then it would be open to FIFA to rely on these provisions as a reason why such ordinary courts should not claim jurisdiction to hear a case. An agreement to commit to arbitration and not to liti- gate is binding as a contract in the normal way.

A national court should respect the contractually agreed exclusion of its own jurisdiction over the matter. The multi- jurisdictional excursion that would be needed to provide an exhaustive account of practice will not be pursued here: suffice to say that at national level, through judicial practice and commonly pursuant to statutory mandate, and at international level, most of all because of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, also known as the New York Convention, the promise not to litigate is typically enforced. Remedies vary according to circumstances and there are distinctions at the level of detail between common and civil law systems but, beyond simple refusal to consider the substance of a case which the parties have agreed to send to arbitration, they include orders to compel arbitration, antisuit injunctions, non- recognition of judgments which are obtained in breach of a valid agreement to arbitrate, and conceivably an award of damages. In the consumer context the EU asserts a power to check whether clauses that require that disputes be taken exclusively to arbitration are fair and, if they are not, to treat them as unenforceable.

This is one aspect of the EU's relative readiness to intervene in the process of arbitration in order to protect its values and it is for that reason generally treated with some hostility by arbitration specialists. The wider context of EU interventionism, and its possible application to sport, is considered more fully later. There is, however, more to FIFA's exclusion of recourse to ordinary courts of law under its Statutes. Article 59(3)'s concluding sentence adds teeth. It provides that: 'The associations shall

impose sanctions on any party that fails to respect this obligation and ensure that any appeal against such sanctions shall likewise be strictly submitted to arbitration, and not to ordinary courts of law.'
Article 61 provides more broadly that 'Any violation of the foregoing provisions will be punished in compliance with the FIFA Disciplinary Code'. Such sanctions are on occasion imposed, in the event that these contractual obligations are disrespected. FIFA, then, establishes a contractual network into which other parties in the 'pyramid' of sporting governance most prominently, the continental confederations and national associations are locked, under which they accept and will enforce on their clubs and players the central place of the CAS and normally too, in conjunction, the exclusion of recourse to ordinary courts of law.

And, moreover, sanctions are available to discipline those who would seek to break out of this sys- tem of arbitration by engaging with ordinary courts. This amounts to a thorough and vigorous protection of the lex sportiva. The plan is to resolve sporting disputes internally by isolating them from the ordinary courts of law. Comparable provisions allocating to the CAS the job of arbitrating disputes may be found in the constitutions of many other sporting bodies, and usually in company with an exclusivity proviso that shuts off recourse to ordinary courts of law. For example, Article 61 of the Olympic Charter is entitled 'Dispute Resolution'. It provides that any dispute relating to the application or interpretation of decisions of the IOC 'may be resolved solely by the IOC Executive Board and, in certain cases, by arbitration before the Court of Arbitration for Sport (CAS)'; and that any dispute 'arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS), in accordance with the Code of Sports-R elated Arbitration'.

There is in fact a high level of coordination among governing bodies. Most sports federations are based in Switzerland. Reasons for this include matters of tax and transparency (in relative terms there is not much of either), but the effect is to promote shared practice. In general, sports

federations have much in common with each other, though, judged according to their organizational character, functions, and strategic roles, they are not identical.

THE CAS

The CAS was founded in 1984. It is based in Lausanne in Switzerland. In for- mal terms the CAS is a 'court' only in name. It is an arbitration tribunal that draws its authority from the agreements entered into by the parties which choose to submit to its jurisdiction. It offers the advantages offered by arbitration in general. The CAS is the sports- specific reflection of the general preference which underpins arbitration for a desirable method for streamlining access to justice through tailored procedures that are quicker and cheaper than those of the ordinary courts and possessed of more specific expertise. It is, in its own right, an intriguing example of the trend towards creating a single global adjudicative body with expertise. The CAS's profile is high and rising as the centrality of its role in the development of the lex sportiva is beyond dispute. The publication in 2016 of the first ever Yearbook of International Sports Arbitration, which is mainly though not exclusively concerned with CAS practice and decisions, emphasizes its prominence.

The CAS is emerging as the source of case law and of principles of an increasingly dense lex sportiva. The CAS does not operate according to a formal system rooted in precedent in the way that a common lawyer might recognize and expect, for it decides disputes on their facts. Writing over ten years ago, Erbsen cautioned against a complacently homogenous account of the CAS's elaboration of a lex sportiva. In particular he pressed the need to understand where, when, and how the CAS will identify principled methods of interpretation and adjudication in circumstances where a sporting rule or code fails to provide a textually clear answer to a dispute. Foster, writing at the same time, emphasized that when faced with disciplinary cases that expose the profound asymmetry of power that prevails in the relationship between governing body and athlete, the CAS should be attentively interventionist to a

degree that would not be apt in other areas where it exercises jurisdiction The caution against uncritical embrace of the label lex sportiva is well made. But this is not to deny that the CAS's accumulated decisions reveal themes and principles.

Moreover, more recent accounts observe that it tends increasingly to cite its own previous rulings, thereby building a sense of continuity and enhancing predictability. In particular, fairness is emerging as a guiding principle, especially well developed in its procedural (rather than its substantive) dimension. It has been argued that CAS practice reveals a strain of willingness to defer to the autonomy of sporting bodies but on condition that their practice meets standards of good governance, including compliance with published rules, transparency, and ensuring a fair hearing. It is propelled in this direction by the critical gaze of some national courtst his is considered later, The CAS's approach deserves to be understood as something more than merely instrumental. The CAS aspires to shape a procedurally respectable scheme of review of an insulated and developing lex sportiva, at the apex of which it sits, but beneath which is flourishing a rather dense form of governance which is largely invisible to the ordinary courts.

The practice of the World Anti-Doping Agency (WADA) provides a particularly rich case study into the development of a remarkably detailed self- contained regime, which occasionally also provokes appeal decisions before the CAS. It would be a mistake to exaggerate the consistency of the CAS's practice. Its job is to resolve disputes, not to craft an intellectually pure stream of principles. We will explore a wild inconsistency in its approach to the calculation of compensation payable to clubs whose players have terminated their contracts with- out just cause. But overall there is more convergence than divergence in its accumulated decisional practice. The CAS's decisions are significant in their own right and they also set the tone for the future. Accordingly the CAS may not be a court in a formal sense, yet it is in functional terms a 'court'. It presides over a system of private ordering but it is ordering.

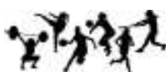
The CAS has its own procedural rules, found in the Code of Sports Related Arbitration. They state that in ordinary arbitration: 'The Panel shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to Swiss law.' And so in some cases the CAS will apply the law of the contract as stipulated by the parties. In arbitration before the CAS on appeal which will be the norm where the matter has originated in a decision by FIFA or another sports governing body it is provided that: … the Panel shall decide the dispute according to the applicable regulations and, subsidiarity, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports- related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate.

So, for example, in Adrian Mutu v Chelsea Football Club the relevant employment contract was governed by English law and therefore English law fell to be applied to determine the damages due to the club as a consequence of the breach of the contract by the player, whose drug use had led to a ban and his unavailability for selection. A sum of compensation in excess of €17 million had been ordered through FIFA's dispute resolution procedure and this was duly approved by the CAS and an appeal to the Swiss Federal Tribunal by the player failed. There is a degree of inconsistency in the attitude of CAS Panels to the application of relevant provisions of EU law. A strong statement in favour of adhesion to EU law in CAS decision- making is found in AEK Athens and Slavia Prague, where the parties agreed that the Panel should apply EC (as it then was) and Swiss competition law, but the Panel found that 'even if the parties had not validly agreed on its applicability to this case, it should be taken into account anyway'. It added that Article 19 of the Swiss Federal Statute on Private International Law directs that an arbitration tribunal sitting in Switzerland must take into consideration foreign mandatory rules, even of a law different from the one determined through the choice- of- law process, provided that three conditions are met. These hold that, first, such rules must belong to that special category of norms which need to be applied irrespective of the law applicable to

the merits of the case; second, there must be a close connection between the subject matter of the dispute and the territory where the mandatory rules are in force; and, third, the mandatory rules must aim to protect legitimate interests and crucial values and their application must allow an appropriate decision.

The three conditions were in the Panel's view met and so, pursuant to Article 19 of the Swiss Federal Statute, EU competition law has to be taken into account by the CAS. A similar approach was taken to EU free movement law in the CAS ruling in Celtic v UEFA, which concerned the transfer of a player. The Panel concluded that the conditions of Article 19 of the Swiss statute were satisfied and it therefore applied what is now Article 45 of the Treaty on the Functioning of the European Union (TFEU) to test the compatibility of a demand for compensation with EU law. Following the Court of Justice's reasoning in Bosman, it decided that EU law precluded any such demand.

In Galatasaray v UEFA the CAS Panel expressly adopted a desire to converge with the reasoning of the Panel in AEK Athens and Slavia Prague and, citing Article 19 of the Swiss statute, agreed that it would take account of the Treaty rules on both free movement and on competition as mandatory provisions of EU law.
It then, however, resisted the claim that UEFA's Financial Fair Play regulations offended against the requirements of EU law. The test drawn from Article 19 of the Swiss statute and applied in the ruling is not sports- specific. It would in principle apply to any matter falling for determination by an arbitration tribunal sitting in Switzerland. However, the sporting context is relevant to the ease with which the test is met: the second in particular is readily met precisely because of the location of major football clubs. Under this reasoning the CAS is always required to take into account both EU competition law and EU free movement law in any case with a connection to the EU. Practice admittedly varies: but a powerful pragmatic reason pushing the CAS to take EU law seriously lies in the likelihood that, in the absence of such respect, the finality of its rulings will in turn be disrespected by courts within the EU determined to



prevent subversion of the provisions of EU internal market law which count as an expression of public policy. This is considered further later in this section.

CONCLUSION

Understanding the development and application of labor law in sports is important for both employers and employees in the world of professional sports. Particularly in professional sports, labor law provides the guideline for the often complex and contentious relationship between players and owners. Issues regarding collective bargaining agreements and labor disputes are among the most pressing and relevant issues in modern professional sports. It is clear that an understanding of these issues, as well as the history, laws, and processes involved in professional sports labor relationships is important for anyone in sports law or in sports. For those not involved in sports where the athletes are unionized, sports managers and sports lawyers may face the possibility that the athletes might want to unionize. In addition, these sports managers and sports lawyers may deal with nonplaying personnel who are unionized. This is particularly true in facilities, such as gyms, as well as colleges and universities.

CHAPTER THIRTEEN

Health Aspects

PHYSICAL ACTIVITY AND FITNESS TIPS

Around the first century AD, The Roman Poet Juvenal coined the famous phrase when he wrote “orandum eat it sit mens sana in corpore sano” which means “you should pray for a healthy mind in a healthy body.”A healthy body is of course obtained through doing regular physical activity.

Any sport anywhere in the world has three key elements;

- It is a physical activity
- It is competitive and;
- It maintains physical and mental ability and skills while at the same time being a source of entertainment to participants from both sides of the spectrum, that is, both the spectators and participants.

As already noted, sports rotates around physical activity which is on its own a source of many health benefits for hearts, bodies and the mind.

Other than serving the purpose of entertainment to spectators, sports contribute to physical wellness or health of the individual participants and to the socio-economic and political development of a country. Among the key facts gathered from the World Health Organization, physical activity contributes to preventing and managing non communicable diseases such as cardiovascular diseases, cancer and diabetes. Physical activity reduces symptoms of depression and anxiety. It enhances thinking, learning and judgment skills. Physical activity ensures healthy growth and development in young people and also improves overall wellbeing. On rather a bad note, 1 in 4 adults globally, do not meet the global recommended levels of physical activity yet up to 5 million deaths a year could be averted if the global population was more physically active. Accordingly, people who are insufficiently active have a 20% to 30% increased risk of death compared to people who are sufficiently active and of these, 80% of the world's adolescent population is insufficiently physically active.

What is physical activity?

WHO defines physical activity as any bodily movement produced by skeletal muscles that requires energy expenditure. Physical activity refers to all movement including during leisure time, for transport to get to and from places, or as part of a person's work. Both moderate- and vigorous-intensity physical activity improve health[132].Popular ways to be active include walking, cycling, wheeling, sports, active recreation and play, and can be done at any level of skill and for enjoyment by everybody. Regular physical activity is proven to help prevent and manage non-communicable diseases such as heart disease, stroke, diabetes and several cancers. It also helps prevent hypertension, maintain healthy body weight and can improve mental health, quality of life and well-being.
WHO guidelines and recommendations provide details for different age groups and specific population groups on how much physical activity is needed for good health.

[132]https://www.who.int/news-room/facts-sheets/detail/physical-activity accessed on 2nd November 2021

WHO recommendations on keeping physical activity.

For children under 5 years of age.

In a 24-hour day, infants (less than 1 year) should:

- be physically active several times a day in a variety of ways, particularly through interactive floor-based play; more is better. For those not yet mobile, this includes at least 30 minutes in prone position (tummy time) spread throughout the day while awake;
- not be restrained for more than 1 hour at a time (e.g., prams/strollers, high chairs, or strapped on a caregiver's back);
- Screen time is not recommended.
- When sedentary, engaging in reading and storytelling with a caregiver is encouraged; and have 14-17h (0-3 months of age) or 12-16h (4-11 months of age) of good quality sleep, including naps.
- In a 24-hour day, children 1-2 years of age should:
    a) spend at least 180 minutes in a variety of types of physical activities at any intensity, including moderate- to vigorous-intensity physical activity, spread throughout the day; more is better;
    b) not be restrained for more than 1 hour at a time (e.g., prams/strollers, high chairs, or strapped on a caregiver's back) or sit for extended periods of time.

For 1 year olds, sedentary screen time (such as watching TV or videos, playing computer games) is not recommended. For those aged 2 years, sedentary screen time should be no more than 1 hour; less is better. When sedentary, engaging in reading and storytelling with a caregiver is encouraged; and have 11-14h of good quality sleep, including naps, with regular sleep and wake-up times.

In a 24-hour day, children 3-4 years of age should:

- spend at least 180 minutes in a variety of types of physical activities at any intensity, of which at least 60 minutes is

moderate- to vigorous-intensity physical activity, spread throughout the day; more is better;

- not be restrained for more than 1 hour at a time (e.g., prams/strollers) or sit for extended periods of time.

Sedentary screen time should be no more than 1 hour; less is better.
When sedentary, engaging in reading and storytelling with a caregiver is); encourage; and have 10-13h of good quality sleep, which may include a nap, with regular sleep and wake-up times. For more information World Health Organization. Guidelines on physical activity, sedentary behaviour and sleep for children under 5 years of age.

Children and adolescents aged 5-17 years;

- should do at least an average of 60 minutes per day of moderate-to-vigorous intensity, mostly aerobic, physical activity, across the week.
- should incorporate vigorous-intensity aerobic activities, as well as those that strengthen muscle and bone, at least 3 days a week.
- should limit the amount of time spent being sedentary, particularly the amount of recreational screen time.
-

Adults aged 18–64 years;

- should do at least 150–300 minutes of moderate-intensity aerobic physical activity;
- or at least 75–150 minutes of vigorous-intensity aerobic physical activity; or an equivalent combination of moderate- and vigorous-intensity activity throughout the week should also do muscle-strengthening activities at moderate or greater intensity that involve all major muscle groups on 2 or more days a week, as these provide additional health benefits and may increase moderate-intensity aerobic physical activity to more than 300 minutes; or do more than 150 minutes of vigorous-intensity aerobic physical activity; or an equivalent combination of moderate- and vigorous-intensity activity throughout the week for additional health benefits. Should limit the amount of time spent

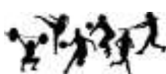
being sedentary. Replacing sedentary time with physical activity of any intensity (including light intensity) provides health benefits, and to help reduce the detrimental effects of high levels of sedentary behaviour on health, all adults and older adults should aim to do more than the recommended levels of moderate- to vigorous-intensity physical activity

Adults aged 65 years and above

Same as for adults; and as part of their weekly physical activity, older adults should do varied multi component physical activity that emphasizes functional balance and strength training at moderate or greater intensity, on 3 or more days a week, to enhance functional capacity and to prevent falls.

Pregnant and postpartum women

All pregnant and postpartum women without contraindication should:
do at least 150 minutes of moderate-intensity aerobic physical activity throughout the week incorporate a variety of aerobic and musclestrengthening activities should limit the amount of time spent being sedentary. Replacing sedentary time with physical activity of any intensity (including light intensity) provides health benefits.



People living with chronic conditions (hypertension, type 2 diabetes, HIV and cancer survivors) should do at least 150–300 minutes of moderate-intensity aerobic physical activity; or at least 75–150 minutes of vigorous-intensity aerobic physical activity; or an equivalent combination of moderate- and vigorous-intensity activity throughout the week should also do muscle-strengthening activities at moderate or greater intensity that involve all major muscle groups on 2 or more days a week, as these provide additional health benefits. As part of their weekly physical activity, older adults should do varied multi component physical activity that emphasizes functional balance and strength training at moderate or greater intensity, on 3 or more days a week, to enhance functional capacity and to prevent falls. May increase moderate-intensity aerobic physical activity to more than 300 minutes; or do more than 150 minutes of vigorous-intensity aerobic physical activity; or an equivalent combination of moderate- and vigorous-intensity activity throughout the week for additional health benefits. He should limit the amount of time spent being sedentary. Replacing sedentary time with physical activity of any intensity (including light intensity) provides health benefits, and to help reduce the detrimental effects of high levels of sedentary behavior on health, all adults and older adults should aim to do more than the recommended levels of moderate- to vigorous-intensity physical activity.

Children and adolescents living with disability:

Should do at least an average of 60 minutes per day of moderate-to vigorous intensity, mostly aerobic, physical activity, across the week. Should incorporate vigorous-intensity aerobic activities, as well as those that strengthen muscle and bone, at least 3 days a week. Should limit the amount of time spent being sedentary, particularly the amount of recreational screen time.

Adults living with disability:

Should do at least 150–300 minutes of moderate-intensity aerobic physical activity; or at least 75–150 minutes of vigorous-intensity aerobic physical activity; or an equivalent combination of moderate- and vigorous-intensity activity throughout the week, should also do muscle-strengthening activities at moderate or greater intensity that involve all major muscle groups on 2 or more days a week, as these provide additional health benefits.

As part of their weekly physical activity, older adults should do varied multi component physical activity that emphasizes functional balance and strength training at moderate or greater intensity, on 3 or more days a week, to enhance functional capacity and to prevent falls. May increase moderate-intensity aerobic physical activity to more than 300 minutes; or do more than 150 minutes of vigorous-intensity aerobic physical activity; or an equivalent combination of moderate- and vigorous-intensity activity throughout the week for additional health benefits. Should limit the amount of time spent being sedentary. Replacing sedentary time with physical activity of any intensity (including light intensity) provides health benefits, and to help reduce the detrimental effects of high levels of sedentary behavior on health, all adults and older adults should aim to do more than the recommended levels of moderate- to vigorous-intensity physical activity. It is possible to avoid sedentary behavior and be physically active while sitting or lying. E.g. Upper body led activities, inclusive and/or wheelchair-specific sport and activities.

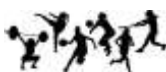
BENEFITS AND RISKS OF PHYSICAL ACTIVITY AND SEDENTARY BEHAVIOR

Regular physical activity, such as walking, cycling, wheeling, doing sports or active recreation, provides significant benefits for health. Some physical activity is better than doing none. By becoming more active throughout the day in relatively simple ways, people can easily achieve the recommended activity levels.

Physical inactivity is one of the leading risk factors for non communicable diseases mortality. People who are insufficiently active have a 20% to 30% increased risk of death compared to people who are sufficiently active.

For one who does Regular physical activity, it helps to:

- improve muscular and cardio respiratory fitness;
- improve bone and functional health;



- reduce the risk of hypertension, coronary heart disease, stroke, diabetes, various types of cancer (including breast cancer and colon cancer), and depression;
- reduce the risk of falls as well as hip or vertebral fractures; and
- help maintain a healthy body weight.

In children and adolescents, physical activity improves:

- physical fitness (cardio respiratory and muscular fitness)
- cardio metabolic health (blood pressure, dyslipidaemia, glucose, and insulin resistance)
- bone health
- cognitive outcomes (academic performance, executive function)
- mental health (reduced symptoms of depression)
- reduced adiposity

In adults and older adults, higher levels of physical activity improves:

- risk of all-cause mortality
- risk of cardiovascular disease mortality
- incident hypertension
- incident site-specific cancers (bladder, breast, colon, endometrial, oesophageal adenocarcinoma, gastric and renal cancers)
- incident type-2 diabetes
- prevents of falls
- mental health (reduced symptoms of anxiety and depression)
- cognitive health
- sleep
- measures of adiposity may also improve

For pregnant and post-partum women, Physical activity confers the following maternal and fetal health benefits: a decreased risk of:

- pre-eclampsia,
- gestational hypertension,
- gestational diabetes (for example 30% reduction in risk)
- excessive gestational weight gain,
- delivery complications
- postpartum depression
- newborn complications,
- and physical activity has no adverse effects on birth weight or increased risk of stillbirth.

HEALTH RISKS OF SEDENTARY BEHAVIOUR

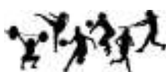
Lives are becoming increasingly sedentary, through the use of motorized transport and the increased use of screens for work, education and recreation. Evidence shows higher amounts of sedentary behaviour are associated with the following poor health outcomes:
In children and adolescents:

- increased adiposity (weight gain)
- poorer cardiometabolic health, fitness, behavioural conduct/pro-social behaviour
- reduced sleep duration

In adults:
all-cause mortality, cardiovascular disease mortality and cancer mortality incidence of cardiovascular disease, cancer and type-2 diabetes.

LEVELS OF PHYSICAL ACTIVITY GLOBALLY

More than a quarter of the world's adult population (1.4 billion adults) are insufficiently active worldwide, around 1 in 3 women and 1 in 4 men do not do enough physical activity to stay healthy. Levels of inactivity are twice as high in high-income countries compared to low-income



countries, there has been no improvement in global levels of physical activity since 2001 insufficient activity increased by 5% (from 31.6% to 36.8%) in high income countries between 2001 and 2016. Increased levels of physical inactivity have negative impacts on health systems, the environment, economic development, community well-being and quality of life.

Globally, 28% of adults aged 18 and over were not active enough in 2016 (men 23% and women 32%). This means they do not meet the global recommendations of at least 150 minutes of moderate-intensity, or 75 minutes vigorous-intensity physical activity per week. In high-income countries, 26% of men and 35% of women were insufficiently physically active, as compared to 12% of men and 24% of women in low-income countries. Low or decreasing physical activity levels often correspond with a high or rising gross national product.

The drop in physical activity is partly due to inaction during leisure time and sedentary behavior on the job and at home. Likewise, an increase in the use of "passive" modes of transportation also contributes to insufficient physical activity. Globally, 81% of adolescents aged 11-17 years were insufficiently physically active in 2016. Adolescent girls were less active than adolescent boys, with 85% vs. 78% not meeting WHO recommendations of at least 60 minutes of moderate to vigorous intensity physical activity per day.

HOW TO INCREASE PHYSICAL ACTIVITY

Countries and communities must take action to provide everyone with more opportunities to be active, in order to increase physical activity. This requires a collective effort, both national and local, across different sectors and disciplines to implement policy and solutions appropriate to a country's cultural and social environment to promote, enable and encourage physical activity.

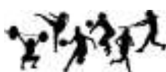
Policies to increase physical activity aim to ensure that: walking, cycling and other forms of active non-motorized forms of transport are accessible and safe for all; labor and workplace policies encourage active commuting and opportunities for being physically active during the work day; childcare, schools and higher education institutions provide supportive and safe spaces and facilities for all students to spend their free time actively; primary and secondary schools provide quality physical education that supports children to develop behavior patterns that will keep them physically active throughout their lives; community-based and school-sport programs provide appropriate opportunities for all ages and abilities; sports and recreation facilities provide opportunities for everyone to access and participate in a variety of different sports, dance, exercise and active recreation; and health care providers advise and support patients to be regularly active.

WHO ACTION TOWARDS ACHIEVING PHYSICAL ACTIVITY.[133]

In 2018 WHO launched a new Global Action Plan on Physical Activity 2018-2030 which outlines four policy actions areas and 20 specific policy recommendations and actions for Member States, international partners and WHO, to increase physical activity worldwide. The global action plan calls for countries, cities and communities to adopt a 'whole-of-system' response involving all sectors and stakeholders taking action at global, regional and local levels to provide the safe and supportive environments and more opportunities to help people increase their levels of physical activity.

In 2018, the World Health Assembly agreed on a global target to reduce physical inactivity by 15% by 2030 and align with the Sustainable Development Goals. The commitments made by world leaders to develop

[133] https://www.who.int/news-room/facts-sheets/detail/physical-activity accessed on 2nd November 2021



ambitious national SDG responses provides an opportunity to refocus and renew efforts at promoting physical activity.

The WHO toolkit ACTIVE launched in 2019 provides more specific technical guidance on how to start and implement the 20 policy recommendations outlined in the global action plan. The global action plan and ACTIVE propose policy options that can be adapted and tailored to local culture and contexts to help increase levels of physical activity globally, these include:

The development and implementation of national guidelines for physical activity for all age groups;

- establishing national coordinating mechanisms involving all relevant government departments and key non-government stakeholders to develop and implement coherent and sustainable policy and actions plans; implementing community wide communication campaigns to raise awareness and knowledge of the multiple health, economic and social benefits of being physically active; invest in new technologies, innovation and research to develop cost effective approaches to increasing physical activity, particularly in low resource contexts; ensure regular surveillance and monitoring of physical activity and policy implementation.

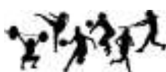
- To help countries and communities measure physical activity in adults, WHO has developed the Global Physical Activity Questionnaire (GPAQ). This questionnaire helps countries monitor insufficient physical activity as one of the main NCD risk factors. The GPAQ has been integrated into the WHO STEP-wise approach, which is a surveillance system for the main NCD risk factors.

- To assess physical activity among schoolchildren WHO has collaborated on a questionnaire module which has been integrated

into the Global school-based student health survey (GSHS). The GSHS is a WHO/US CDC surveillance project designed to help countries measure and assess the behavioural risk factors and protective factors in 10 key areas among young people aged 13 to 17 years.

WHO is also working with international experts on the development of methods and instruments to assess physical activity in children under the age of five years of age and under 10 years of age. In addition, WHO is testing the use of digital and wearable technologies, such as pedometers and accelerometers, in national population surveillance of physical activity in adults. This work will be extended to include children and will inform the development of updated global guidance on the monitoring of physical activity and sedentary behaviours.

To support a 'whole of system' response, WHO is collaborating across multiple sectors to strengthen coordination, advocacy and alignment of policy and actions. WHO has established partnerships to help support Member States in their efforts to promote physical activity – these include working with the United Nations Educational, Scientific and Cultural Organization (UNESCO) to advance and align the implementation of GAPPA and the Kazan Action Plan on physical education, sports and physical activity. WHO is also working with many other UN agencies in the shared agenda to promote Sport for Development and Peace. Within the sports system WHO is collaborating with the International Olympic Committee and International Sports Federations, The International Federation of Football Associations, FIFA, and others to support and strengthen the promotion of health through sports and the sports for all agenda.



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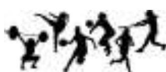

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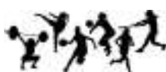

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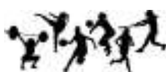
See Indian Gaming Regulatory Act, Pub. L. 102 Stat. 2467, 100-497 (Oct. 17, 1988) (legalizing all forms of gambling for Indians as are legal for others).

See Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin, 770 F. Supp. 480 (W.D. Wisc. 1991), appeal dismissed 957 F.2d 515 (7th Cir. 1992) (dismissing case for lack of jurisdiction).

See id. (noting balancing of state interests with private casino owners interest).
See JOHN KENNETH GALBRAITH, THE GREAT CRASH 1929 (1961) (explaining how stock market crash affects gambling) [hereinafter Galbraith]; see alsoJ. BuL-GATZ, PONZI SCHEMES, INVADERS FROM MARS & MORE ExTRAoRDINARY POPULAR DELUSIONS



AND THE MADNESS OF CROWDS 101 (1992) [hereinafter Bulgatz] (noting how events like stock market crash cause mass hysteria).

See DAVID DREMAN, CoNTRARIAN INVESTMENT STRATEGY: THE PSYCHOLOGY OF STOCK MARKET SUCCESS 63 (1979) (analyzing stock market tendencies and responses to changes in market).

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Other political players have been involved. In the case of Indian casinos, for example, tribal governments, state governors, federal agencies and Congress have given their approval, often because of adverse court rulings.

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Appendix 1

DEFRANTZ V. UNITED STATES OLYMPIC COM., 492 F. SUPP. 1181 (D.D.C. 1980)

U.S. District Court for the District of Columbia - 492 F. Supp. 1181 (D.D.C.1980)
May 16, 1980

492 F. Supp. 1181 (1980) Anita DeFRANTZ etal., Plaintiffs, v. UNITED STATES OLYMPIC COMMITTEE, Defendant. Civ. A. No. 80-1013.

United States District Court, District of Columbia. May 16, 1980. 1182 William H. Allen, Edward R. Mackiewicz, Covington & Burling, Washington, D.C., for plaintiffs.

Patrick H. Sullivan, James S. Morris, Michael S. Press, Whitman & Ransom, Washington, D.C., for defendant.

JOHN H. PRATT, District Judge.

MEMORANDUM OPINION

Plaintiffs, 25 athletes and one member of the Executive Board of defendant United States Olympic Committee (USOC), have moved for an

injunction barring defendant USOC from carrying out a resolution, adopted by the USOC House of Delegates on April 12, 1980, not to send an American team to participate in the Games of the XXIInd Olympiad to be held in Moscow in the summer of 1980. Plaintiffs allege that in preventing American athletes from competing in the Summer Olympics, defendant has exceeded its statutory powers and has abridged plaintiffs' constitutional rights.

For the reasons discussed below, we find that plaintiffs have failed to state a claim *1183 upon which relief can be granted. Accordingly, we deny plaintiffs' claim for injunctive and declaratory relief and dismiss the action.

THE FACTS

In essence, the action before us involves a dispute between athletes who wish to compete in the Olympic Games to be held in Moscow this summer,[1] and the United States Olympic Committee, which has denied them that opportunity in the wake of the invasion and continued occupation of Afghanistan by Soviet military forces. Because this dispute confronts us with questions concerning the statutory authority of the USOC, its place and appropriate role in the international Olympic movement, and its relationship to the United States Government and with certain United States officials, we begin with a brief discussion of the organizational structure of the Olympic Games and the facts which have brought this action before us. These facts are not in dispute.

According to its Rules and By-laws, the International Olympic Committee (IOC) governs the Olympic movement and owns the rights of the Olympic games.[2] IOC Rules provide that National Olympic Committees (NOC) may be established "as the sole authorities responsible for the representation of the respective countries at the Olympic Games,"[3] so long as the NOC's rules and regulations are approved by the IOC.[4] The USOC is one such National Olympic Committee.

The USOC is a corporation created and granted a federal charter by Congress in 1950. Pub.L. No. 81-805, 64 Stat. 899. This charter was revised by the Amateur Sports Act of 1978, Pub.L. No. 95-606, 92 Stat. 3045, 36 U.S.C. S.371 et seq. Under this statute, defendant USOC has "exclusive jurisdiction" and authority over participation and representation of the United States in the Olympic Games.

The routine procedure initiating the participation of a national team in Olympic competition is the acceptance by the NOC of an invitation from the Olympic Organizing Committee for the particular games.[5] In accordance with this routine procedure under IOC Rules, the Moscow Olympic Organizing Committee extended an invitation to the USOC to participate in the summer games. Recent international and domestic events, however, have made acceptance of this invitation, which must come on or before May 24, 1980, anything but routine.

On December 27, 1979, the Soviet Union launched an invasion of its neighbor, Afghanistan. That country's ruler was deposed and killed and a new government was installed. Fighting has been at times intense, casualties have been high, and hundreds of thousands of Afghan citizens have fled their homeland. At present, an estimated 100,000 Soviet troops remain in Afghanistan, and fighting continues.

President Carter termed the invasion a threat to the security of the Persian Gulf area as well as a threat to world peace and stability and he moved to take direct sanctions against the Soviet Union. These sanctions included a curtailment of agricultural and high technology exports to the Soviet Union, and restrictions on commerce with the Soviets. The Administration also turned its attention to a boycott of the summer Olympic Games as a further sanction against the Soviet Union.

1184 As the affidavit of then Acting Secretary of State Warren Christopher makes clear, the Administration was concerned that "[t]he presence of American competitors would be taken by the Soviets as evidence that their invasion had faded from memory or was not a matter of great consequence or concern to this nation." Affidavit of Acting

Secretary of State Warren Christopher, at 3. The Administration's concern was sharpened because "[t]he Soviet Union has made clear that it intends the Games to serve important national political ends. For the U.S.S.R., international sports competition is an instrument of government policy and a means to advance foreign policy goals." Id.

With these concerns in mind, the Administration strenuously urged a boycott of the Moscow games. On January 20, 1980, President Carter wrote the President of the United States Olympic Committee to urge that the USOC propose to the IOC that the 1980 summer games be transferred from Moscow, postponed, or cancelled if the Soviet forces were not withdrawn within a month. On January 23, 1980 the President delivered his State of the Union Message, in which he said that he would not support sending American athletes to Moscow while Soviet military forces remained in Afghanistan.

Following these statements, the United States House of Representatives passed, by a vote of 386 to 12, a Concurrent Resolution opposing participation by United States athletes in the Moscow Games unless Soviet troops were withdrawn from Afghanistan by February 20th. The Senate passed a similar resolution by a vote of 88 to 4.

As this was unfolding, the USOC's 86 member Executive Board held a meeting in Colorado Springs on January 26, 1980, inviting White House counsel Lloyd Cutler to address them "because no officer or any member of the Board was knowledgeable about the far-reaching implications of the Soviet invasion." Affidavit of Robert J. Kane, at 3. According to USOC President Kane, in early January some USOC officers became concerned that sending American athletes to Moscow could expose them to danger if hostility erupted at the games, and that acceptance of the invitation could be seen as tacit approval of or at least acceptance of the Soviet invasion. Mr. Culter also met with USOC officers at least twice in February to discuss the matter further. On each occasion, according to the Kane affidavit, Mr. Cutler urged Mr. Kane to convene an emergency meeting of the USOC Executive Board to act on the Moscow problem.

However, legal counsel for the USOC advised Mr. Kane that only the House of Delegates and not the USOC Executive Board could decide whether or not to send a team to Moscow.

On March 21, 1980, President Carter told members of the Athletes Advisory Council, an official body of the USOC, that American athletes will not participate in the Moscow summer games. On April 8, 1980, the President sent a telegram to the president and officers of the USOC and to its House of Delegates, urging the USOC vote against sending an American team to Moscow. In an April 10th speech, the President said that "if legal actions are necessary to enforce [my] decision not to send a team to Moscow, then I will take those legal actions." Among the legal measures the President apparently contemplated was invoking the sanctions of the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq. On April 10 and 11, 1980, the 13 member Administrative Committee of the USOC met in Colorado Springs and voted to support a resolution against sending a team to Moscow. Only Anita DeFrantz, a plaintiff in this action, dissented.

At the President's request and over initial objections by the USOC, Vice President Mondale addressed the assembled House of Delegates prior to their vote on April 12, 1980. The Vice President strongly and vigorously urged the House of Delegates to support a resolution rejecting American participation in the summer games in Moscow.

After what USOC President Kane describes in his affidavit as "full, open, complete and orderly debate by advocates of *1185 each motion," the House of Delegates, on a secret ballot, passed by a vote of 1,604 to 798, a resolution which provided in pertinent part:

RESOLVED that since the President of the United States has advised the United States Olympic Committee that in light of international events the national security of the country is threatened, the USOC has decided not send a team to the 1980 Summer Games in Moscow ... FURTHER RESOLVED, that if the President of the United States advises the United

States Olympic Committee, on or before May 20, 1980, that international events have become compatible with the national interest and the national security is no longer threatened, the USOC will enter its athletes in the 1980 Summer Games.

Plaintiffs describe these attempts by the Administration to persuade the USOC to vote not to send an American team to Moscow as "a campaign to coerce defendant USOC into compliance with the President's demand for a boycott of the Olympic Games." Amended Complaint for Declaratory and Injunctive Relief, ¶ 10. In addition, plaintiffs' complaint alleges that the President and other Executive Branch officials threatened to terminate federal funding of the USOC and that they raised the possibility of revoking the federal income tax exemption[6] of the USOC if the USOC did not support the President's decision to boycott the 1980 Games.[7] The complaint also alleges that these officials state that the Federal government would provide increased funding to the USOC if the USOC supported a boycott.

Plaintiffs state three causes of action in their complaint. The first, a statutory claim, is that defendant violated the Amateur Sports Act of 1978, supra, in the following respects:

- Defendant exercised a power it does not have to decide that no United States amateur athletes shall participate in the 1980 Games.
- Defendant breached a duty to organize, finance and control participation in the events and competitions of the Olympic Games by United States athletes.
- Defendant denied to United States amateur athletes the opportunity to compete in these Games on a basis other than their want of athletic merit, or for a sports related reason.
- Defendant yielded its exclusive jurisdiction over Olympic matters to the political leaders of the nation.
- Defendant acted in a political manner.

- Defendant yielded its autonomy and has succumbed to political and economic pressure.

Plaintiffs' second cause of action, a constitutional claim, alleges that defendant's action constituted "governmental action" which abridged plaintiffs' rights of liberty, self-expression, personal autonomy and privacy guaranteed by the First, Fifth and Ninth Amendments to the United States Constitution.

Plaintiffs' third cause of action is that the USOC has violated its Constitution, By-laws and governing statute, injuring the USOC and violating the rights of plaintiff Shaw, a member of the USOC's Executive Board, and that defendant is subject to an action to compel compliance with its Constitution, By-laws and governing statute.

*1186 Plaintiffs allege that unredressed, these violations will result in great and irreparable injury to the athletes. "Many would lose a once-in-a-lifetime opportunity to participate in the Olympic Games, and the honor and prestige that such participation affords. Most of the class members are at or near their physical peaks at the present time and will not physically be capable of reaching the same or higher levels at a later period of their lives." Amended Complaint for Declaratory and Injunctive Relief, ¶ 19.

In summary, plaintiffs ask this court to declare the April 12, 1980 resolution of the USOC House of Delegates null and void because it violated statutory authority and constitutional provisions and to permanently enjoin the USOC from carrying out that resolution.

Defendant and the Government have moved to dismiss pursuant to Rule 12(b) (6), Fed.R.Civ.P. and argue for dismissal of this action on several grounds. They contend that the Amateur Sports Act of 1978 has not been violated by defendant, that the Act does not deny the USOC the authority to decide not to send an American team to the Moscow Games, that the Act does not grant plaintiffs a right to compete in the Olympics if the USOC decides not to enter a team, and that plaintiffs lack a cause of

action under the Act to maintain this lawsuit. As for the constitutional claims, they argue that the decision of the USOC was not "state action" and therefore, that plaintiffs have no cognizable constitutional claims. They further argue that even if the action of the USOC could be considered "state action," no rights guaranteed to plaintiffs under the Constitution were abridged.

Because of the time constraints involved in this action, this court granted plaintiffs' motion that a trial of the action on the merits be advanced and consolidated with the hearing of the application for a preliminary and permanent injunction.

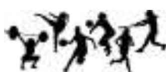
Oral argument was heard by this court on May 13, 1980. At that time, the court granted the motion of the United States to appear as Amicus Curiae and the court denied the motion of the Washington Legal Foundation to appear as Amicus Curiae.[8]

ANALYSIS

This action presents us with several issues for decision, falling into two distinct categories; one is statutory and the other is constitutional. We turn first to the statutory issues.[9]

1. The Amateur Sports Act of 1978

Plaintiffs allege in their complaint that by its decision not to send an American team to compete in the summer Olympic Games in Moscow, defendant USOC has violated the Amateur Sports Act of 1978, supra, (The Act) in at least six respects, which we have listed above. We deal with two of the alleged violations here. Reduced to their essentials, these allegations are that the Act does not give, and that Congress intended to deny, the USOC the authority to decide not to enter an American team in the Olympics, except perhaps for sports-related reasons, and that the Act guarantees to certain athletes[10] a right to



compete in the Olympic Games which defendant denied them. We consider each allegation in turn.[11]

(a) The USOC's Authority Not to Send a Team to Moscow

The United States Olympic Committee was first incorporated and granted a federal charter in 1950. Pub.L. No. 81-805, supra. However, predecessors to the now federally-chartered USOC have existed since 1896, and since that time, they have exercised the authority granted by the International Olympic Committee to represent the United States as its National Olympic Committee in matters pertaining to participation in Olympic games. It is unquestioned by plaintiffs that under the International Olympic Committees Rules and By-laws, the National Olympic Committees have the right to determine their nation's participation in the Olympics. IOC Rule 24B provides that "NOC's shall be the sole authorities responsible for the representation of the respective countries at the Olympic Games ..." and Chapter 5, paragraph 7 of the By-laws to Rule 24 provides that "[r]epresentation covers the decision to participate . . ." (emphasis supplied). Nothing in the IOC Charter, Rules or By-laws requires a NOC, such as the USOC, to accept an invitation to participate in any particular Olympic contest and the President of the IOC has said that participation in the Olympic games is entirely voluntary. As defendant has argued, an invitation to participate is just that, an invitation which may be accepted or declined.

Because defendant USOC clearly has the power under IOC Rules to decide not to enter an American team in Olympic competition, the question then becomes whether the Amateur Sports Act of 1978, which rewrote the USOC's charter, denies the USOC that power. Plaintiffs emphatically argue that it does, and defendant and the Government just as emphatically argue that it does not.

Plaintiffs' argument is simple and straightforward: The Act by its terms does not expressly confer on the USOC the power to decline to participate in the Olympic Games, and if any such power can be inferred

from the statute, the power must be exercised for sports-related reasons. Defendant and the Government respond that the Act gives the USOC broad powers, including the authority to decide not to accept an invitation to send an American team to the Olympics.

The principal substantive powers of the USOC are found in § 375(a) of the Act.[12] In determining whether the USOC's authority under the Act encompasses the right to decide not to participate in an Olympic contest, we must read these provisions in the context in which they were written. In writing this legislation, Congress did not create a new relationship between the USOC and the IOC. Rather, it recognized an already long-existing relationship between the two and statutorily legitimized that relationship with a federal charter and federal incorporation.[13] The legislative history *1188 demonstrates Congressional awareness that the USOC and its predecessors, as the National Olympic Committee for the United States, have had a continuing relationship with the IOC since 1896.[14] Congress was necessarily aware that a National Olympic Committee is a creation and a creature of the International Olympic Committee, to whose rules and regulations it must conform. The NOC gets its power and its authority from the IOC, the sole proprietor and owner of the Olympic Games.

In view of Congress' obvious awareness of these facts, we would expect that if Congress intended to limit or deny to the USOC powers it already enjoyed as a National Olympic Committee, such limitation or denial would be clear and explicit. No such language appears in the statute. Indeed, far from precluding this authority, the language of the statute appears to embrace it. For example, the "objects and purposes" section of the Act speaks in broad terms, stating that the USOC shall exercise "exclusive jurisdiction" over "... all matters pertaining to the participation of the United States in the Olympic Games . . .." (emphasis supplied). We read this broadly stated purpose in conjunction with the specific power conferred on the USOC by the Act to "represent the United States as its national Olympic committee in relations with the International Olympic Committee," and in conjunction with the IOC Rules and By-laws, which

provide that "representation" includes the decision to participate. In doing so, we find a compatibility and not a conflict between the Act and the IOC Rules on the issue of the authority of the USOC to decide whether or not to accept an invitation to field an American team at the Olympics. The language of the statute is broad enough to confer this authority, and we find that Congress must have intended that the USOC exercise that authority in this area, which it already enjoyed because of its long-standing relationship with the IOC. We accordingly conclude that the USOC has the authority to decide not to send an American team to the Olympics.

Plaintiffs next argue that if the USOC does have the authority to decide not to accept an invitation to send an American team to the Moscow Olympics, that decision must be based on "sports-related considerations." In support of their argument, plaintiffs point to §§ 392(a) (5) and (b) of the Act, which plaintiffs acknowledge "are not in terms applicable to the USOC,"[15] but rather concern situations in which national governing bodies of various sports,[16] which are subordinate to the USOC, are asked to sanction the holding of international competitions below the level of the Olympic or Pan American Games in the United States or the participation of the United States athletes in such competition abroad. These sections provide that a national governing body may withhold its sanctions only upon clear and convincing evidence that holding or participating in the competition "would be detrimental to the best interests of the sport." Plaintiffs argue by analogy that a similar "sports-related" limitation must attach to any authority the USOC might have to decide not to participate in an Olympic competition. We cannot agree.

The provision on which plaintiffs place reliance by analogy is specifically concerned *1189 with eliminating the feuding between various amateur athletic organizations and national governing bodies which for so long characterized amateur athletics.[17] As all parties recognize, this friction, such as the well-publicized power struggles between the NCAA and the AAU, was a major reason for passage of the Act, and the provisions plaintiffs cite, among others, are aimed at

eliminating this senseless strife, which the Senate and House Committee reports indicate had dramatically harmed the ability of the United States to compete effectively in international competition.[18] In order to eliminate this internecine squabbling, the Act elevated the USOC to a supervisory role over the various amateur athletic organizations, and provided that the USOC establish procedures for the swift and equitable settlement of these disputes. As indicated above, it also directed that the national governing bodies of the various sports could only withhold their approvals of international competition for sports-related reasons. Previously, many of these bodies had withheld their sanction of certain athletic competitions in order to further their own interests at the expense of other groups and to the detriment of athletes wishing to participate.

In brief, this sports-related limitation is intimately tied to the specific purpose of curbing the arbitrary and unrestrained power of various athletic organizations subordinate to the USOC not to allow athletes to compete in international competition below the level of the Olympic Games and the Pan American Games. This purpose has nothing to do with a decision by the USOC to exercise authority granted by the IOC to decide not to participate in an Olympic competition.

In an attempt to escape this conclusion, plaintiffs seek to bolster their argument by pointing to an amendment offered by Congressman Drinan during consideration of this legislation by the House Judiciary Committee. That amendment would have prohibited the use of Federal funds[19] in support of United States athletic involvement in countries which engage in gross violations of human rights. Congressman Drinan clearly indicated he considered the Soviet Union as one such country. Plaintiffs argue that the defeat of the amendment by the Committee was an indication that the Congress meant the USOC to act independently of national policy, by implication supporting the view that any decision not to compete in the Olympics must be sports-related rather than related to national policy reasons. We cannot read that much into a single Committee's disposition of an amendment, which did not address the scope of the USOC's power to decide against fielding an American team

for the Moscow Games or any other Olympics because of national interest considerations. To the extent we try to divine Congressional intent from its defeat, we find it equally as plausible that the Committee very well may have intended, as the Government has argued, to keep the USOC free of statutory restraints.

We therefore conclude that the USOC not only had the authority to decide not to send an American team to the summer Olympics, but also that it could do so for reasons not directly related to sports considerations.[20]

(b) Athletes Statutory Right to Compete in the Olympics

Plaintiffs argue that the Act provides, "in express terms" an "Athlete's Bill of Rights,"[21] pointing to the following provisions in the Act's "objects and purposes" section, which directs that the USOC shall: provide for the swift resolution of conflicts, and disputes involving amateur athletes, national governing bodies, and amateur sports organizations, and protect the opportunity of any amateur athlete, coach, trainer, manager, administrator, or official to participate in amateur athletic competition. (emphasis supplied).

36 U.S.C. S. 374(8). A similar provision is contained in S 382b, which provides that:

The [USOC] shall establish and maintain provisions for the swift and equitable resolution of disputes involving any of its members and relating to the opportunity of an amateur athlete, coach, trainer, manager, administrator, or official to participate in the Olympic Games . . or other such protected competition as defined in such constitution and bylaws.

Plaintiffs argue that the Report of the President's Commission on Olympic Sports,[22] which was the starting point for the legislation proposed, and the legislative history supports their argument that the

statute confers an enforceable right on plaintiffs to compete in Olympic competition. Again, we are compelled to disagree with plaintiffs.

The legislative history and the statute are clear that the "right to compete," which plaintiffs refer to, is in the context of the numerous jurisdictional disputes between various athletic bodies, such as the NCAA and the AAU, which we have just discussed, and which was a major impetus for the Amateur Sports Act of 1978. Plaintiffs recognize that a major purpose of the Act was to eliminate such disputes. However, they go on to argue that the Presidential report, which highlighted the need for strengthening the USOC in order to eliminate this feuding, made a finding that there is little difference between an athlete denied the right to compete because of a boycott and an athlete denied the right to compete because of jurisdictional bickering.

The short answer is that although the Congress may have borrowed heavily from the Report on the President's Commission, it did not enact the Report. Instead, it enacted a statute and that statute relates a "right to compete" to the elimination of jurisdictional disputes between amateur athletic groups, which for petty and groundless reasons have often deprived athletes of the opportunity to enter a particular competition. Sections 382b and 374(8) originated in Senate Bill 2727, and were adopted by the House of Representatives without change. We quote at length from the Senate Report, S.Rep. No. 770, supra, at 5-6, which clarifies beyond doubt the meaning of the language unsuccessfully relied on by plaintiffs:

Athletes' Rights

That section of S. 2727 relating to an athlete's opportunity to participate in amateur athletic competition represents a compromise reached in the amateur sports community and accepted by the Committee. Language contained in the first version of the Amateur Sports Act, S. 2036, would have included a substantive provision on athletes' rights. This provision

met with strong resistance by the high school and college communities. Ultimately, the compromise reached was that certain substantive provisions on athletes' rights would be included in the USOC Constitution, and not in the bill. As reported, S. 2727 makes clear that amateur athletes, coaches, trainers, managers, administrators, and other officials have the right, which will be guaranteed in the Olympic Committee Constitution, to take part in the Olympic Games, the Pan-American Games, world championship competition, and other competition designated by the Olympic Committee.

1191 Athletes are to be encouraged that this is a positive step forward. For the first time, their rights to compete in amateur athletic competition are legislatively being recognized. S. 2727 acknowledges that athletes must be given an opportunity to decide what is best for their athletic careers . . .. [T]he decision should not be dictated by an arbitrary rule which, in its application, restricts, for no real purpose, an athlete's opportunity to compete.

Further, as differences between amateur sports organizations are settled, athletes will no longer be used as pawns by one organization to gain advantage over another. The Committee feels that S. 2727, by establishing guidelines for the amateur sports community, will bring about a resolution of those controversies which have so long plagued amateur sports. With the coordinating efforts of the Olympic Committee, the vertical structure which S. 2727 promotes, and a cooperative attitude on the part of amateur sports organizations, athletes should, in the future, realize more opportunities to compete than ever before. (emphasis supplied).

The Senate Report makes clear that the language relied on by plaintiffs is not designed to provide any substantive guarantees, let alone a Bill of Rights. Further, to the extent that any guarantees of a right to compete are included in the USOC Constitution as a result of this provision, they do not include a right that amateur athletes may compete in the Olympic Games despite a decision by the USOC House of Delegates not to accept

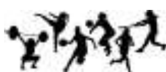
an invitation to enter an American team in the competition. This provision simply was not designed to extend so far. Rather, it was designed to remedy the jurisdictional disputes among amateur athletic bodies, not disputes between athletes and the USOC itself over the exercise of the USOC's discretion not to participate in the Olympics.

(c) Statutory Cause of Action

Plaintiffs argue that they have a private cause of action under the Amateur Sports Act of 1978 to maintain an action to enforce their rights under that Act. This argument assumes (1) the existence of a right and (2) the capability of enforcing that right by a private cause of action. As the foregoing discussion establishes, we have found that the statute does not guarantee plaintiffs a right to compete in the Olympics if the USOC decides not to send an American team to the Olympic Games and we have found that defendant has violated no provision of the Act. Thus, the "right" the plaintiffs seek to enforce under the Act simply does not exist. (Plaintiffs have pointed to no express private right of action in the statute, and none exists). Under these circumstances, we cannot find that plaintiffs have an implied private right of action under the Amateur Sports Act to enforce a right which does not exist.

Assuming, arguendo, the existence of some right, such as the right to compete, plaintiffs still have the difficult task of demonstrating the existence of a private cause of action to enforce such right. "The question of the existence of a statutory cause of action is, of course, one of statutory construction. . . . [O]ur task is limited solely to determining whether Congress intended to create the private right of action asserted . . .." Touche Ross & Co. v. Redington, 442 U.S. 560, 568, 99 S. Ct. 2479, 2485, 61 L. Ed. 2d 82 (1979). The Supreme Court recently has reaffirmed that the basic inquiry is one of Congressional intent, despite earlier cases indicating several areas of exploration.

It is true that in Cort v. Ash [422 U.S. 66, 95 S. Ct. 2080, 45 L. Ed. 2d 26], supra, the Court set forth four factors that it considered `relevant' in



determining whether a private remedy is implicit in a statute not expressly providing one. But the Court did not decide that each of [those] factors is entitled to equal weight. The central inquiry remains whether Congress intended to create, either expressly or by implication, a private cause of action.

Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11, 23, 100 S. Ct. 242, 249, 62 L. Ed. 2d 146 (1979), quoting Touche Ross & *1192 Co. v. Redington, supra, 442 U.S. at 575, 99 S. Ct. at 2489.

Our discussion of Congressional intent will be exceedingly brief, for we have indicated in the preceding sections that the legislative history of the Act reveals unequivocally that Congress never intended to give plaintiffs a right to compete in the Olympics if the USOC determines not to enter a team. It necessarily follows that Congress therefore did not intend to create an implied private cause of action under the statute allowing plaintiffs to sue to enforce a right to compete in the Olympics. To believe otherwise is to believe that by its silence Congress intended to confer a cause of action to enforce nonexistent rights. This we cannot do. Not only is the legislative history barren of any implication that Congress intended to confer an enforceable right to compete in the Olympics in the face of a decision by the USOC not to compete, but it is also barren of any implication that Congress intended to create a private cause of action in such circumstances.

As noted above, to the extent Congress provided protection for amateur athletes to compete, it did so in terms of eliminating the rivalries between sports organizations. For this reason, § 395 of the Act establishes detailed procedures for the USOC's consideration and resolution of jurisdictional and eligibility issues, subject to review by arbitration under 36 U.S.C. § 395(c) (1). Even for disputes covered by § 395, there is therefore no private cause of action.

Because we conclude that the rights plaintiffs seek to enforce do not exist in the Act, and because the legislative history of the Act nowhere allows the implication of a private right of action, we find that plaintiffs have no

implied private right of action under the Amateur Sports Act of 1978 to maintain this suit.[23]

2. Constitutional Claims

Plaintiffs have alleged that the decision of the USOC not to enter an American team in the summer Olympics has violated certain rights guaranteed to plaintiffs under the First, Fifth and Ninth Amendments to the United States Constitution. This presents us with two questions:

(1) Whether the USOC's decision was "governmental action" (state action), and, assuming state action is found,

(2) Whether the USOC's decision abridged any constitutionally protected rights.

(a) State Action

Although federally chartered, defendant is a private organization. Because the Due Process Clause of the Fifth Amendment, on which plaintiffs place great reliance, applies only to actions by the federal government,[24] plaintiffs must show that the USOC vote is a "governmental act," i. e., state action. In defining state action, the courts have fashioned two guidelines. The first involves an inquiry into whether the state:

*1193 . . . has so far insinuated itself into a position of interdependence with [the private entity] that it must be recognized as a joint participant in the challenged activity. Burton v. Wilmington Parking Authority, 365 U.S. 715, 725, 81 S. Ct. 856, 862, 6 L. Ed. 2d 45 (1961).

In Burton, the Supreme Court found state action, but it did so on wholly different facts than those existing here. The private entity charged with racially discriminating against plaintiff was a restaurant which was

physically and financially an integral part of a public building, built and maintained with public funds, devoted to a public parking service, and owned and operated by an agency of the State of Delaware for public purposes. Noting the obvious and deep enmeshment of defendant and the state, the court found that the state was a joint participant in the operation of the restaurant, and accordingly found state action. Here, there is no such intermingling, and there is no factual justification for finding that the federal government and the USOC enjoyed the "symbiotic relationship" which courts have required to find state action. The USOC has received no federal funding [25] and it exists and operates independently of the federal government. Its chartering statute gives it "exclusive jurisdiction" over "all matters pertaining to the participation of the United States in the Olympic Games. . .." 36 U.S.C. S 374(3). To be sure, the Act does link the USOC and the federal government to the extent it requires the USOC to submit an annual report to the President and the Congress. But this hardly converts such an independent relationship to a "joint participation."

The second guideline fashioned by the courts involves an inquiry of whether there is a sufficiently close nexus between the state and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the state itself.

Jackson v. Metropolitan Edison Co., 419 U.S. 345, 351, 95 S. Ct. 449, 453, 42 L. Ed. 2d 477 (1974).

Jackson provides an indication of how close this nexus must be in order to find state action. In that case, the Supreme Court found there was no state action even though the defendant was a utility closely regulated by the state, and even though the action complained of (the procedure for termination of electrical services) had been approved by the state utility commission.[26] In the instant case, there was no requirement that any federal government body approve actions by the USOC before they become effective.

Plaintiffs clearly recognize this, but they argue that by the actions of certain federal officials, the federal government initiated, encouraged, and approved of the result reached (i. e., the vote of the USOC not to send an American team to the summer Olympics). Plaintiffs advance a novel theory. Essentially, their argument is that the campaign of governmental persuasion, personally led by President Carter, crossed the line from "governmental recommendation," which plaintiffs find acceptable and presumably necessary to the operation of our form of government, into the area of "affirmative pressure that effectively places the government's prestige behind the challenged action," and thus, results in state action. We cannot agree.

Plaintiff can point to no case outside the area of discrimination law which in any way supports their theory, and we can find none. Furthermore, this Circuit's Court of Appeals has addressed what level of governmental involvement is necessary to find *1194 state action in cases not involving discrimination.

Each party cites numerous cases dealing with the amount of governmental involvement which is necessary before a private entity becomes sufficiently entangled with governmental functions that federal jurisdiction attaches. If any principle emerges from these cases, it would appear to be that, at least where race is not involved, it is necessary to show that the Government exercises some form of control over the actions of the private party. (emphasis supplied). Spark v. Catholic University of America, supra, at 1281-82.

Here there is no such control. The USOC is an independent body, and nothing in its chartering statute gives the federal government the right to control that body or its officers. Furthermore, the facts here do not indicate that the federal government was able to exercise any type of "de facto" control over the USOC. The USOC decided by a secret ballot of its House of Delegates. The federal government may have had the power to prevent the athletes from participating in the Olympics even if the USOC had voted to allow them to participate, but it did not have the power to

make them vote in a certain way. All it had was the power of persuasion. We cannot equate this with control. To do so in cases of this type would be to open the door and usher the courts into what we believe is a largely nonjusticiable realm, where they would find themselves in the untenable position of determining whether a certain level, intensity, or type of "Presidential" or "Administration" or "political" pressure amounts to sufficient control over a private entity so as to invoke federal jurisdiction.

We accordingly find that the decision of the USOC not to send an American team to the summer Olympics was not state action, and therefore, does not give rise to an actionable claim for the infringements of the constitutional rights alleged.

(b) Constitutionally Protected Rights

Assuming arguendo that the vote of the USOC constituted state action, we turn briefly to plaintiffs' contention that by this action they have been deprived of their constitutional rights to liberty, to self-expression, to travel, and to pursue their chosen occupation of athletic endeavor. Were we to find state action in this case, we would conclude that defendant USOC has violated no constitutionally protected right of plaintiffs.

We note that other courts have considered the right to compete in amateur athletics and have found no deprivation of constitutionally protected rights. As the Government has pointed out in Parish v. National Collegiate Athletic Association, 506 F.2d 1028 (5th Cir. 1975), basketball players sought an injunction to prevent the NCAA from enforcing its ruling declaring certain athletes ineligible to compete in tournaments and televised games. The court, quoting Mitchell v. Louisiana High School Athletics Association, 430 F.2d 1155, 1158 (5th Cir. 1970), stated that:

the privilege of participation in interscholastic activities must be deemed to fall outside the protection of due process.

Plaintiffs have been unable to draw our attention to any court decision which finds that the rights allegedly violated here enjoy constitutional protection, and we can find none. Plaintiffs would expand the constitutionally-protected scope of liberty and self-expression to include the denial of an amateur athlete's right to compete in an Olympic contest when that denial was the result of a decision by a supervisory athletic organization acting well within the limits of its authority. Defendant has not denied plaintiffs the right to engage in every amateur athletic competition. Defendant has not denied plaintiffs the right to engage in their chosen occupation. Defendant has not even denied plaintiffs the right to travel, only the right to travel for one specific purpose. We can find no justification and no authority for the expansive reading of the Constitution which plaintiffs urge. To find as plaintiffs recommend would be to open the floodgates to a torrent of lawsuits. The courts have correctly recognized that *1195 many of life's disappointments, even major ones, do not enjoy constitutional protection. This is one such instance.

At this point, we find it appropriate to note that we have respect and admiration for the discipline, sacrifice, and perseverance which earns young men and women the opportunity to compete in the Olympic Games. Ordinarily, talent alone has determined whether an American would have the privilege of participating in the Olympics. This year, unexpectedly, things are different. We express no view on the merits of the decision made. We do express our understanding of the deep disappointment and frustrations felt by thousands of American athletes. In doing so, we also recognize that the responsibilities of citizenship often fall more heavily on some than on others. Some are called to military duty. Others never serve. Some return from military service unscathed. Others never return. These are the simple, although harsh, facts of life, and they are immutable.

NOTES

[1] Of the 25 athletes who are named plaintiffs in this action, the record now before us indicates that only one has been selected as a member of the 1980 United States Olympic Team. The complaint alleges that most of the other named plaintiffs stand an "excellent chance" of selection as the result of competitive athletic trials being held this Spring. Plaintiffs have moved for certification as a class action pursuant to Rule 23(b) (2), Fed.R.Civ.P. Included in this intended class are athletes who have already been selected for the 1980 United States Olympic Team.

- International Olympic Committee Olympic Charter, Rule 4.
- Id., Rule 24B.
- Id., By-laws Ch. 5(a).
- Id., Rule 61.
- Plaintiffs have submitted as Exhibit G an April 9, 1980 Washington Post article which reports that a White House official acknowledged that lifting the USOC's tax exempt status had been discussed by Administration officials with members of Congress but that the idea was not being proposed at that time.

- Plaintiffs have submitted as Exhibit E an April 10, 1980 New York Times article which reports that a USOC official said 16 corporations were delinquent in pledges to the USOC and that one corporation, Sears, Roebuck & Company, acknowledged it was withholding a contribution because of delays by the USOC on the boycott issue. The article also reported that a Sears official said the action was taken after "the chairman had talked with Anne Wexler, an assistant to President Carter." The report adds that Miss Wexler denied that any pressure had been put on Sears.
- Defendant consented to the Washington Legal Foundation filing an amicus brief but plaintiffs refused to consent.

- In response to questioning from the court at oral argument, counsel for plaintiffs indicated that class action certification in

this case is not necessary to insure that appropriate relief would be granted to the envisioned class by any order this court may issue. If we were to rule in favor of the named plaintiffs, the class of athletes envisioned by plaintiffs would receive full benefit of that ruling. Accordingly, we deny plaintiffs' motion for certification as a class pursuant to Rule 23(b) (2), Fed.R.Civ.P.

- By virtue of their athletic abilities.

- Plaintiffs raise four other violations of the Act in their complaint: defendant yielded its autonomy and has succumbed to political and economic pressure; defendant acted in a political manner; defendant yielded its exclusive jurisdiction over Olympic matters to the political leaders of the nation; and defendant breached a duty to organize, finance, and control participation in the events and competitions of the Olympic Games by United States athletes. The first three refer to the exercise of "political pressure" on the USOC by the Administration and the USOC's response to the political pressure. At oral argument, counsel for plaintiffs conceded that the significant statutory questions could be decided without reference to whether the Administration exerted political pressure on defendant. We agree with plaintiffs and for this reason, we do not consider these three alleged violations against the plaintiffs. As for the last alleged violation, we deal with this issue below.

- They are to: "(1) serve as the coordinating body for amateur athletic activity in the United States directly relating to international amateur athletic competition; (2) represent the United States as its national Olympic committee in relations with the International Olympic Committee ...; (3) organize, finance, and control the representation of the United States in the competitions and events of the Olympic Games ... and obtain, either directly or by delegation to the appropriation national governing body, amateur representation for summer games." 36

U.S.C. § 375(a) (1), (2), (3). The "objects and purposes" section of the Act includes the provision, also found in the 1950 Act, that the USOC shall "exercise exclusive jurisdiction ... over all matters pertaining to the participation of the United States in the Olympic Games ... including the representation of the United States in such games . . .." Id., § 374(3).

- To the extent the USOC was granted extended power by the 1978 Act, the legislative history makes clear, and the plaintiffs do not dispute the fact, that these powers were primarily designed to give the USOC supervisory authority over United States amateur athletic groups in order to eliminate the numerous and frequent jurisdictional squabbles among schools, athletic groups and various national sports governing bodies.

- See S.Rep. No. 770, 95th Cong., 2d Sess. 2 (1978); H.R.Rep. No. 95-1627, 95th Cong., 2d Sess. (1978), reprinted in [1978] U.S.Code Cong. & Admin.News, p. 7478.

- Plaintiffs' Memorandum in Reply to Memoranda of the Defendant and the United States as Amicus Curiae and in Opposition to Defendant's Motion to Dismiss, at 5.

- A national governing body is a non-profit amateur sports organization which acts as this country's representative in the corresponding international sports federation for that particular sport. It sets goals and directs policy in the sport it governs and has the power to sanction internal competitions held in the United States in their sport.
- See S.Rep. No. 770, supra, at 2, 5-6; H.R. Rep. No. 95-1627, supra, at 7484-5.

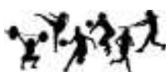
- See S.Rep. No. 770, supra, at 3; H.R.Rep. No. 95-1627, at 7482-83

- Congress authorized federal funding of $16 million "to finance the construction, improvement, and maintenance of facilities for programs of amateur athletic activity and to defray direct operating costs of programs of amateur athletic activity. . . ." 36 U.S.C. § 384(a). Although this funding has been authorized, it has never been appropriated. To date, the USOC has received no federal funding.

- Resolution of this issue also disposes of plaintiffs' allegation that defendant violated the Act by breaching a duty to organize, finance, and control participation in the events and competition of the Olympic Games by United States athletes. Because defendant had the authority to decide not to send a team to compete in the summer Olympics, it could not have breached this duty, which does not arise and become relevant, when the USOC has decided that an American team will not participate in the Olympics
.
- Plaintiffs Reply Memorandum, supra, at 9.

- I President's Commission on Olympic Sports, Final Report (1977).

- Plaintiffs have also alleged as a cause of action that in addition to violating its governing statute, defendant USOC has also violated its Constitution and By-laws, injuring plaintiff Shaw, a member of USOC's Executive Board. In particular, plaintiffs argue in their memorandum, at 33, that the USOC has violated its corporate purpose of coordinating amateur sports so as to obtain the "most competent amateur representation" in the Olympic Games. This corporate purpose appearing in the USOC Constitution is identical to that appearing in the Act, S 374(4), and we have already found that defendant has not violated that statute. Just what other specific violations of the USOC Constitution and By-



laws plaintiffs are alleging does not appear in the complaint or in the plaintiffs' memoranda. To the extent they allege violations of provisions also contained in the Act, we have already determined that question. To the extent they involve a yielding to "political pressures," we note that on April 23, 1980 the IOC Executive Board reviewed the actions of the USOC and concluded that they were not in violation of IOC Rule 24(C), which requires that NOC's "must be autonomous and must resist all pressures of any kind whatsoever, whether of a political, religious or economic nature." To the extent that plaintiffs are alleging that defendant has violated any provision of its Constitution and By-laws requiring it to be autonomous, we adopt the conclusion of the IOC and find that this resolves any such allegations in favor of defendant.

- Public Utilities Commission v. Pollak, 343 U.S. 451, 72 S. Ct. 813, 96 L. Ed. 1068 (1952).

- Federal funds were authorized under the Amateur Sports Act of 1978 but have never been appropriated. But the mere receipt of federal funds by a private entity, without more, is not enough to convert that entity's activity into state action. Spark v. Catholic University of America, 510 F.2d 1277 (D.C.Cir. 1975).

- The termination procedure was contained in a general tariff filed with the Public Utility Commission. The Commission approved the tariff without focusing on or specifically approving the termination provision.

Appendix 2

THE NATIONAL SPORTS BILL, 2021

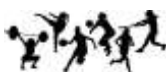
MEMORANDUM

1. **Principles of the Bill.**

The object of the Bill is to repeal the National Council of Sports Act. Cap 48; to establish the Uganda Sports Commission; consolidate and modernize the law relating to the incorporation and registration of national sports organisations and community sports clubs; to provide for the management, promotion, development and regulation of professional, amateur and recreational sports in the Uganda; to streamline the recreation, registration and management national sports organisations and community sports clubs; to codify the obligations of the State under international sports governing statutes; to prevent match fixing, corruption, illegal manipulation and illegal betting in sports; encourage and promote drug-free sports; to dissolve the National Council of Sports and reconstitute a new body known as the Uganda Sports Commission; and to provide for related matters.

2. **Gaps in existing Laws**

Uganda has embraced a number of sports disciplines including football, baseball, cricket, tennis, Archery golf, swimming, cycling, boxing, Netball, golf, lawn tennis, handball, hockey, wood ball, motor sport,



kayak, rugby, weightlifting, taekwondo, volley Ball and athletics and Uganda is recognized the world over as a sports loving country.

Each sports discipline is organised and regulated by a national sports association including Uganda Athletics Federation, Uganda Archery Federation, Uganda Badminton Association, Federation of Uganda Basketball Association, Uganda Netball Federation, Uganda Boxing Federation, Uganda Canoe/Kayak Federation, Federation Of Motor Sports Clubs Of Uganda, Uganda Cycling Association, Uganda Lawn Tennis Association, Uganda Taekwondo Federation Uganda Volleyball Federation Uganda Weightlifting Federation Uganda Wrestling Federation, Uganda Shooting Federation, Uganda Hockey Federation, Uganda Handball Federation, and Federation of Uganda Football Association, which are all affiliated to their respective international sports governing body.

The above national sports associations and federations are all incorporated and registered under various laws, including the Trustees Incorporation Act Cap 165, National Council for Sports Act, Cap 48, the Companies Act, 2010, the Partnerships Act, 2010 and the Non-Governmental Organisations Act, 2016.
The lack of uniformity in the registration and incorporation of national sports associations and federations has resulted in governance and administration challenges including, lack of legal personality, multiple reporting and regulatory legal regimes, forum shopping by sports clubs and national sports associations, interference and lack of independence of national sports associations contrary to international sports governing body regulations, existence of numerous national sports associations regulating a single sports discipline, disputes and wrangles, wastage and mal-administration of the affairs and funds of national sports associations and federations.

The lack of a single piece of legislation regulating the incorporation and registration of national sports associations and federations has resulted in little or no oversight by the National Council for Sports since the

requirements for registration and incorporation under the different laws are different, thereby resulting in different obligations being imposed on the different national sports associations and federations under the relevant laws under which they are incorporated.

3. Remedies

This Bill there seeks to-

(a) Consolidate and update the law on incorporation and registration of national sports associations and federations;

(b) Regulate the operation and administration of national sports associations and federations and community sports clubs;

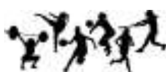
(c) regulate the raising, funding and management of national and representative teams;

(d) to codify the obligations of the State under international sports governing statutes;

(e) create a Tribunal for purposes of settlement of sports disputes;

(f) create a Sports Fund for purposes of providing a predictable and sustainable means of funding national sports in Uganda;

(g) Prohibition various vices prevalent today in sports administration including doping, violence and hooliganism, manipulation of sports results, dealing with counterfeit sports products, unauthorized use of sports results in betting as well as abuse of the commercial rights of national sports associations and federations;



Provisions of the Bill

The Bill has 75 clauses, divided into eight parts.

Part I—Preliminary

This part incorporates clauses 1 and 2 dealing with commencement of the Bill and Interpretation of the major words and phrases used in the Bill.
Part II– establishment of Uganda sports commission
This part incorporates clauses 3 to 18 dealing with establishment of the Uganda Sports Commission, Functions of the Commission, Powers of the Commission, Headquarters of the Commission, Composition of the Commission, Tenure of Office member of the Commission, Remuneration of Members of the Commission, Appointment of Committees, Meetings of the Commission, Delegation of functions of the Commission, Secretariat of the Commission, General Secretary, Functions of General Secretary, Other officers and staff of the Commission, Independence of the Uganda Sports Commission and Directions by the Minister;

Part III –recognition, registration and incorporation of national sports organizations

This part incorporates clauses 19 to 31 dealing with declaration of national sports discipline, incorporation and registration of a community sports club, registration and recognition of a national sports association, incorporation and registration of a National Sports Federation, rejection of applications for registration or incorporation, register of national sports organisations, revocation and suspension of national sports organisation, functions of the national sports organisations, independence of a national sports organisation, general provisions relating to national sports organisations, dissolution of a National Sports Organisation, compliance of National Sports Organisations and report on activities of national sports federations.

Part IV - Financial provisions

This part incorporates clauses 32 to 40 dealing with duty to operate on sound financial principles, power to invest funds, commission to prepare budget, accounts of Fund, financial year, financial Management of National Sports Organisations, funds of national sports organisations, vesting of property in national sports associations and asset register of a national sports organisation.

Part V- National sports fund

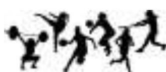
This part incorporates clauses 41 to 44 dealing with the Sports Fund, objects of the Fund, source of money for the Fund and administration of the Fund.

Part VI – Arbitration Of Sports Disputes

This part incorporates clauses 44 to 50 dealing with establishment of Tribunal, Jurisdiction of the Tribunal, Arbitration to be provided in constitution, constitution of Tribunal for exercise of powers, powers of the Tribunal and Procedure of the Tribunal.

Part VII – Offences and Penalties

This part incorporates clauses 51 to 63, dealing with prohibition of unlawful utilization of Commercial Rights, prohibition of electronic media production of sporting events and competitions, prohibition of broadcast of sporting events and competitions, prohibition of dealing with counterfeit Materials, prohibition of unlawful access to sports events and competitions, prohibition of unauthorized use of sports results in betting, prohibition of betting by specified persons, manipulation of sports result or competition, prohibition of Doping, prohibition of acts of violence and hooliganism, offences committed by legal persons, imposition of administrative penalties and general Penalty.



Part VIII Miscellaneous

This part deals incorporates clauses 64 to 75 dealing with absence of National Sports Organisation, national Olympics Committee, national Anti-Doping Committee, international Affiliation of national sports organisation, management of sports teams and athletes, vesting of sports infrastructure in the Commission, effect of registration on existing sports associations or federations, report on enforcement of this act, repeal of Cap 48, savings and transitional Provisions, regulations and amendment of Schedules.

Magogo Moses Hassim, MP,
Budiope East, Buyende District,

THE NATIONAL SPORTS BILL, 2021

ARRANGEMENT OF CLAUSES

Clauses

PART I—PRELIMINARY

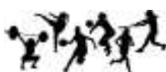
1. Commencement
2. Interpretation

PART II – ESTABLISHMENT OF UGANDA SPORTS COMMISSION

3. Establishment of the Uganda Sports Commission
4. Functions of the Commission
5. Powers of the Commission
6. Headquarters of the Commission
7. Composition of the Commission
8. Tenure of Office member of the Commission
9. Remuneration of Members of the Commission
10. Appointment of Committees
11. Meetings of the Commission
12. Delegation of functions of the Commission
13. Secretariat of the Commission
14. General Secretary
15. Functions of General Secretary
16. Other officers and staff of the Commission
17. Independence of the Uganda Sports Commission
18. Directions by the Minister

PART III –Recognition, Registration and Incorporation of National Sports Organizations

19. Declaration of national sports discipline
20. Incorporation and registration of a community sports club



21. Registration and recognition of a national sports association
22. Incorporation and registration of a National Sports Federation
23. Rejection of applications for registration or incorporation
24. Register of national sports organisations
25. Revocation and suspension of national sports organisation
26. Functions of the national sports organisations
27. Independence of a national sports organisation
28. General provisions relating to national sports organisations
29. Dissolution of a National Sports Organisation
30. Compliance of National Sports Organisations
31. Report on activities of national sports federations

PART IV - FINANCIAL PROVISIONS
32. Duty to operate on sound financial principles
33. Power to invest funds
34. Commission to prepare budget
35. Accountability for funds
36. Financial year
37. Financial Management of National Sports Organisations
38. Funds of national sports organisations
39. Vesting of property in national sports associations
40. Asset register of a national sports organisation

PART V- NATIONAL SPORTS FUND
41. The Sports Fund.
42. Objects of the Fund
43. Source of money for the Fund
44. Administration of the Fund.

PART VI -ARBITRATION OF SPORTS DISPUTES
45. Establishment of Tribunal
46. Jurisdiction of the Tribunal
47. Arbitration to be provided in constitution
48. Constitution of tribunal for exercise of powers
49. Powers of the Tribunal

50. Procedure of the Tribunal

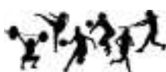
PART VII – OFFENCES AND PENALTIES

51. Prohibition of unlawful utilization of Commercial Rights
52. Prohibition of electronic media production of sporting events and competitions
53. Prohibition of broadcast of sporting events and competitions
54. Prohibition of dealing with counterfeit Materials
55. Prohibition of unlawful access to sports events and competitions
56. Prohibition of unauthorized use of sports results in betting
57. Prohibition of betting by specified persons
58. Manipulation of sports result or competition
59. Prohibition of Doping
60. Prohibition of acts of violence and hooliganism
61. Offences committed by legal persons
62. Imposition of administrative penalties
63. General Penalty

PART VIII—MISCELLANEOUS

64. Absence of National Sports Organisation
65. National Olympics Committee
66. National Anti-Doping Committee
67. International Affiliation of national sports organisation
68. Management of sports teams and athletes
69. Vesting of sports infrastructure in the Commission
70. Effect of registration on existing sports associations or federations
71. Report on enforcement of this act
72. Repeal of Cap 48
73. Savings and transitional Provisions
74. Regulations
75. Amendment of Schedules

SCHEDULE 1: Currency Point
SHEDULE 2: National Sports Disciplines



A BILL FOR AN ACT

ENTITLED

THE NATIONAL SPORTS ACT, 2021

An Act to repeal the National Council of Sports Act. Cap 48; to establish the Uganda Sports Commission; consolidate and modernize the law relating to the incorporation and registration of national sports organisations and community sports clubs; to provide for the management, promotion, development and regulation of professional, amateur and recreational sports in the Uganda; to streamline the recreation, registration and management national sports organisations and community sports clubs; to codify the obligations of the State under international sports governing statutes; to prevent match fixing, corruption, illegal manipulation and illegal betting in sports; encourage and promote drug-free sports; and for any other related matter; to dissolve the National Council of Sports and reconstitute a new body known as the Uganda Sports Commission; and to provide for related matters.

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY

1. Commencement

This Act shall commence on a date appointed by the Minister, by statutory instrument.

2. Interpretation

In this Act, unless the context otherwise requires—

"athlete" means any person who competes in amateur or professional sport;

"Amateur sport" means an activity involving physical exertion or skill in which an individual or team competes against another for pleasure or as

past time or for recreational or health purposes or as training to become professional;

“Brand” means a name, term, design, symbol, or other feature that distinguishes an organization or product;
“Betting” means setting, making or accepting a bet on –

(a) The outcome of a race, competition or other sports event or process;
(b) The likelihood of any sports occurrence or none occurrence;
(c) The likelihood of anything occurring or not occurring; or
(d) Whether anything is true or not true;

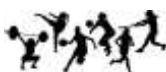
“Betting Organisations” means organisation licensed under The Lotteries and Gaming Act to operate a betting business;

“Commercial Rights” means any and all rights of a commercial nature connected with a sports event, including image rights, audio-visual broadcasting rights, new media rights, endorsement and official supplier rights, sponsorship rights, merchandising rights, licensing rights, advertising rights, hospitality rights, promotional rights, incorporeal rights and rights arising under copyright law and all intellectual property rights;

“Commission” means the Uganda Sports Commission established under section 3;

“Community Sports Club” means an organisation incorporated, recognised and registered by the Commission under section 27;

“Currency points” has the value assigned to it in Schedule 1;
“doping" means the use of prohibited substances and methods in any sporting activity whether competitive or recreational in order to artificially enhance performance;



"event" means a series of separate competitions conducted by a national sports association;

“Fund” means the National Sports Fund established under section 40;

“International Federation” means a recognized international sports governing body that oversees, manages and regulates a particular sports discipline;

“Minister” means the Minister responsible for sports;

“National Sports Association” means a sports association recognised and registered by the Commission to manage, develop, promote and regulate an amateur sports discipline;

“national sports federation” means an organization incorporated, recognised and registered by the Commission to manage, develop, promote and regulate a professional and amateur sport discipline;

“National Sports Organisation” means a community sports club, a national sports association and a national sports federation;

“Olympic Sport” means a sport, discipline or event recognized by the International Olympics Committee.

“Physical Activity” means any bodily movement produced by skeletal muscles that requires energy expenditure;

“Professional sport” means an activity involving physical exertion and or skill in which an individual or team competes against another as an economic activity with the objective of earning fees or making profit;
“sport” means an activity involving physical exertion and or skill in which an individual or team competes against another or others;

"Sports competition" means any sport event organized in accordance with the rules set by a national sports association;

"Tribunal" means the National Sports Tribunal established under section 45;

"Ugandan Sports Branded Material" means any material having the brand of a national sports federation or a recognized by the National Council of Sports and any material having the brand of members of an NSF

"WADA" means the World Anti-Doping Agency.

PART II – ESTABLISHMENT OF UGANDA SPORTS COMMISSION

3. Establishment of the Uganda Sports Commission

(1) The National Council of Sports established in section 2 of the National Council for Sports Act is continued in existence and shall be known as the Uganda Sports Commission.
(2) The Commission shall be a body corporate with perpetual succession and a common seal and may, in its corporate name, for and in connection with its objects and functions under this act –

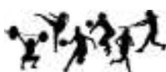
(a) Acquire, hold and dispose of movable and immovable property;

(b) Sue or be sued;

(c) Enter into any contract and other transaction as may be expedient;

(d) Do all such other acts and things for the proper discharge of its functions as may lawfully be done by a body corporate?

4. Functions of the Commission



The functions of the Commission shall be to -

(a) Incorporate, recognize and register national sports federations;

(b) To recognize a sports discipline as a national sports discipline;

(c) Regulate the national sports federations registered under this Act by ensuring that national sports federations strictly abide by their respective constitutions and this Act;

(d) Acquire, construct, rehabilitate, maintain and manage all Government-owned sports facilities;

(e) Establish and manage sports infrastructure for the utilization of national sports federations and their members;

(f) Undertake sports research, education and training of sports administrators and other sports human resources;

(g) Formulate Government policies on sports;

(h) To make recommendations to the Minister in relation to the enactment of laws and regulations governing sports in Uganda;

(i) To fund and facilitate the activities of national sports teams, National Athletes and sports clubs representing Uganda in international sports competitions;

(j) Make recommendations to the Minister on any matter relating to the management and administration of a sports discipline;

(k) Approve the expenditure of national sports federations in receipt of grants made by or through the Commission;

(l) Collaborate with respective national sports federations in the identification and development of sporting talent, provision of sports equipment, facilities and technical training;

(m) Encourage and facilitate cooperation among national sports federations and to be a liaison body between national sports federations and Government in regard to all matters relating to sport and recreation;

(n) Develop guidelines for the promotion and development of professional sport, mass sport, recreation and physical education;

(o) Approve international and national sports competitions and festivals organized by a national sports federation or the affiliate members of national sports federations;

(p) Perform any other function incidental or consequential to the above functions as may be necessary for the better promotion and development of sports in Uganda.

5. Powers of the Commission

The Commission may–

(a) Purchase, hold, manage and dispose of any property whether moveable or immovable;

(b) Enter into any contract or other transaction as my be expedient;

(c) Charge fees for services provided by it;

(d) Impose a fine on a person who contravenes any of the provisions of this Act;

(e) Arrange with local authorities for the provision of sporting facilities at the local government;

(f) Appoint the members of the National Sports Tribunal;

(g) Consider compliance reports of a national sports federation;

(h) Require the national sports federations to inculcate patriotism, sportsmanship and discipline in all sportspersons;

(i) Award, in consultation with national sports federations, medals, trophies and other incentives for the encouragement and promotion of sporting activities; and

(j) Regulate the activities of national sports federations to ensure compliance with the respective constitution of the national sports federation.

6. Headquarters of the Commission

The Commission shall have its head office in Kampala and may establish branches in other areas of Uganda as it may deem appropriate.

7. Composition of the Commission

(1) The Commission shall consist of the following members-
(a) A chairperson and a deputy chairperson;

(b) One representative appointed each of the national sports federation;

(c) The head of Uganda Olympic Committee;

(d) A representative of the Ministry responsible for Sports;

(e) A representative of the Ministry responsible for Finance, Planning and Economic development;

(f) A representative of the Ministry responsible for Trade, Industry and Cooperatives;

(g) A representative of the Ministry responsible for Gender, Labour and Social Development;

(h) A representative of the Ministry responsible for Tourism, Wildlife and Antiquities; and

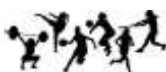
(i) The General Secretary.

(2) Members of the Commission shall elect amongst their membership, a Chairperson and Deputy Chairperson.

(3) A person elected Chairperson or Deputy Chairperson shall be replaced by the entity the person represents in the Commission.

8. Tenure of Office member of the Commission

(1) A member of the Commission shall hold office for a period of five years and the appointment maybe renewed for one more term only.
(2) A member of the Commission may, at any time, resign his or her office by a letter addressed to the General Secretary.
(3) A member of the Commission shall cease to be a member of the Commission where the member-
(a) Dies;
(b) Is recalled by the entity the member represents in the Commission; or
(c) Ceases to hold an office in the entity that the member represents in the Commission.
(4) Where a vacancy exists in the membership of the Commission, the General Secretary shall notify the relevant authority of such vacancy and the relevant authority shall appoint another person to fill the vacancy.



(5) Any person appointed under subsection (4) shall hold office for the remainder of the term of the previous member and shall be eligible for reappointment for one more term only.

9. Remuneration of Members of the Commission

Save for the General Secretary who shall be paid such remuneration as shall be specified in his or her instrument of appointment, a Member of the Commission shall be paid by the entity the member represents.

10. Appointment of Committees

(1) The Commission may appoint such Committees as it considers necessary to discharge its functions under this Act.
(2) A Committee established under subsection (1) shall comprise of members of the Commission and such other person as the Committee may consider necessary.
(3) The Committee shall be chaired by a member of Council and shall carry out such functions as the Commission may assign to it.

11. Meetings of the Commission

(1) The Commission shall meet to discharge its functions at least once every three months at such time and place as the Chairperson may appoint.
(2) The Chairperson shall preside over the meetings of the Commission and in the absence of the Chairperson, the Deputy Chairperson shall preside.
(3) Where at a meeting of the Commission, the chairperson and deputy chairperson of the Commission are unable or unavailable to preside over a meeting of the Commission; the meeting shall be presided over by a person elected by the members of the Commission from among their number.

(4) The quorum at any meeting of the Commission shall be half of the members of the Commission and the quorum shall only be required for voting.

(5) All decisions at a meeting of the Commission shall be by simple majority of the votes of all members of the Commission present and where there is equality of votes, the person presiding shall have a casting vote.

(6) The Commission may co-opt any person to advice the Commission and the person co-opted shall have no vote on any matter for decision by the Commission.

(7) The validity of any proceedings of the Commission shall not be affected by any vacancy among its members or any defect in the appointment or nomination of any member of the Commission.

(8) Any member having personal interest in any matter before the Sports Council shall disclose his or her interest and shall have no vote on that matter.

12. Delegation of functions of the Commission

(1) The Commission may, by instrument of delegation, delegate to the Chairperson, Deputy Chairperson, a member of the Commission or a committee established under section 10, any of the powers, duties or functions under this Act.

(2) The terms and conditions regulating the exercise of the powers delegated under this section shall be contained in the instrument of delegation.

13. Secretariat of the Commission

(1) There shall is established a Secretariat of the Commission which shall be responsible for executing the functions and policies of the Commission.

(2) The Secretariat shall consist of –

(a) The General Secretary, who shall be the head of the Secretariat; and

(b) Other officers and staff, as the Commission may determine.

14. General Secretary

(1) There shall be a General Secretary who shall be appointed by the Minister on the recommendation of the Commission on terms and conditions that the Commission may determine.

(2) The General Secretary shall be a person having considerable knowledge and experience in commerce, finance, law or sports administration.

(3) The General Secretary shall hold office for a period of five years and shall be eligible for re-appointment for a one more term only.

(4) The Minister may, on the recommendation of the Commission, terminate the services of the General Secretary for justifiable cause.

(5) The General Secretary shall be responsible for the day to day operations of the Commission.

15. Functions of General Secretary

(1) Subject to the general supervision and control of the Commission, the General Secretary shall –
(a) Be the Chief Executive of the Commission;
(b) The day-to-day operation and administration of the Uganda Sports Commission;
(c) Implement the policies and programs agreed objectives, performance targets and service standards agreed upon by the Commission;
(d) Manage the funds and property of the Commission;
(e) Advice the Commission on matters relating to sports and other functions of the Commission;

(f) Administer, organize, supervise and exercise disciplinary control over the staff of the Commission;

(g) Keep records of all the transactions of the Commission;

(h) Keep the minutes of meetings and other records of the Commission;

(i) Liaising with the relevant national sports federation with a view of implementing the functions of the Commission and promoting sports in Uganda; and

(j) Performing any other function necessary for the proper implementation of this Act or as may be assigned by the Commission.

(2) The General Secretary shall in the performance of his or her functions be answerable to the Commission.

16. Other officers and staff of the Commission

(1) The Commission shall appoint such other officers and staff of the Commission as may be necessary for the proper and efficient functioning of the Commission.

(2) The officers and employees appointed under this section shall hold office on such terms and conditions as may be determined by the Commission.

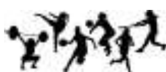
17. Independence of the Uganda Sports Commission

The Commission shall be independent in the performance of its functions, duties and the exercise of its powers under this Act.

18. Directions by the Minister

The Minister may, in writing, give directions to the Commission with respect to the policy to be observed and implemented by the Commission.

PART III –Recognition, Registration and Incorporation of National Sports Organisations



19. Declaration of national sports discipline

(1) The Commission shall, on application, declare a sports discipline, a national sport.

(2) A person intending to have a sports discipline declared a national sport shall, in the prescribed form, make an application to the Commission.

(3) The application referred to in subsection (1) shall be made by a citizen of Uganda or by a person resident in Uganda and shall be accompanied by the prescribed fee.

(4) The Commission shall, in determining whether a sports discipline is eligible for declaration as a national sport, take into account-

(a) The nature of the sport;

(b) The popularity of the sport;

(c) The potential socio-economic impact of the sport;

(d) The recognition of the sport by an International sports governing body;

(e) The presence of facilities to play the sport;

(f) The plan of the national sports federation to promote the sport in Uganda; and

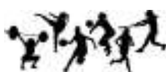
(g) Any other factor the Commission determines necessary.

(5) The Commission may, on application or on its own volition, withdraw the recognition of a sports discipline as a national sports discipline.

(6) Notwithstanding subsection (1), the sports disciplines listed in schedule 2 of this Act shall, from the commencement of this Act, be deemed to have been recognized as national sports disciplines and shall continue to exist as if the sports discipline was declared a national sports discipline in accordance with this Act.

20. Incorporation and registration of a community sports club

(1) A person shall not operate a community sports club unless the community sports club is registered by the Commission in accordance with this section.
(2) A person intending to incorporate a community sports club shall make an application to the Commission in the prescribed form.
(3) The application shall be accompanied by the prescribed fee and-
(a) The constitution of the community sports club;
(b) A description of the identifying symbols, slogans and colors of the community sports club;
(c) A letter of recommendation from the local Government Council of the area the community sports club intends to operate;
(d) Proof that the members of community sports club are citizens of or residents in Uganda; and
(e) Any other matter as may be prescribed by the Minister, by regulations.
(4) Where the Commission is satisfied that the applicant is eligible for incorporation and registration as a community sports club, the Commission shall, in the prescribed form, issue a certificate of incorporation to the community sports club and register the community sports club in the register of community sports clubs.
(5) The incorporation and registration of community sports club under this section will empower a community sports club participate in amateur and professional sports disciplines organized by a national sports association or national sports federation.
(6) A community sports club shall, upon incorporation and registration be deemed to be a body corporate with perpetual succession and a common seal and with power to sue and be sued in its corporate name and to do or suffer to be done all things which may be or are suffered by a body corporate.



21. Registration and recognition of a national sports association

(1) A person shall not operate a national sports association unless the national sports association is registered by the Commission in accordance with this section.

(2) A person intending to operate a national sports association shall make an application to the Commission in the prescribed form.

(3) The application shall be accompanied by the prescribed fee and-

(a) The name of the association;

(b) The constitution of the association;

(c) The names of all leaders of the association;

(d) The sports discipline the association intends to govern;

(e) The governance structure of the association;

(f) A list of all the members of the association;

(g) A description of the identifying symbols, slogans and colours of association;

(h) Evidence that-

(i) The sports discipline is a national sport;

(ii) The association has presence in at least half of all districts of Uganda; and

(iii) The leaders of the association were elected by a national delegates conference comprised of persons drawn from at least half of all districts of Uganda;

(i) The head office and postal address of the association; and

(j) Any other information as the Council may prescribe.

(4) The Commission shall examine the application and cause independent inquiries to be made in order to ascertain the truth or correctness of the information contained in the application.

(5) The Commission shall publish the application in a newspaper of wide national circulation inviting objections from the public and a person may, fourteen days from the date of publication, object to the registration of the association as a national sports association.

(6) The Commission shall examine any objection raised against the registration of the association, if any, and shall inform the applicant of the objection.

(7) The applicant shall within seven days from date of notification referred to in subsection (6) respond to the objection in writing.

(8) The Commission shall upon being satisfied that the association is eligible for registration as a national sports association, issue a certificate of registration to the association and register the association in the register of national sports associations.

(9) The certificate of registration issued under this section shall be valid for a period of one year and shall be renewed by the Commission, upon payment of the prescribed fees.

(10) The relationship between or among members of a national sports association registered under this section shall be deemed to be a partnership in accordance with Partnerships Act, 2010.

22. Incorporation and registration of a National Sports Federation

(1) A national sports association desirous of being incorporated as a national sports federation shall, in the prescribed form, make an application to the Commission.

(2) The application shall be accompanied by the prescribed fee and a certificate of registration as a national sports association issued by the Commission under section 21.

(3) The Commission shall only incorporate a national sports association as a national sports federation upon satisfaction that the national sports association has capacity to manage, develop, promote and regulate a professional and amateur sport discipline and has operated as a national sports association for a period of one year.

(4) The Commission shall upon being satisfied that a national sports association is eligible for incorporation and registration as a national sports federation, issue a certificate of incorporation and register the association in the register of national sports federations.

(5) Upon incorporation, the national sports federation shall be a body corporate with perpetual succession and a common seal and with power to sue and be sued in its corporate name and to do or suffer to be done all things which may be or are suffered by a body corporate.
(6) A national sports federation incorporated under this Act shall be deemed a company limited by guarantee.

23. Rejection of applications for registration or incorporation

(1) The Commission may reject an application made under section 21, 22 and 23 if the commission is satisfied that-
(a) The applicant is not eligible for incorporation or registration under sections 21, 22 or 23;
(b) There is already in existence, a national sports association or national sports federation responsible for the proposed sports discipline;
(c) The proposed name of the applicant is misleading or discriminatory; or
(d) For any other justifiable reasons.
(2) The Commission shall, within thirty days and in writing, notify the applicant of the rejection of its application.
(3) A person aggrieved by the decision of the Commission may, within twenty-one days from the date of the decision of the Commission and upon payment of the prescribed fees, appeal to the Tribunal, whose decision shall be final.

24. Register of national sports organizations

(1) The Commission shall keep and maintain a register for National Sports Organizations.
(2) The register shall contain the following information-
(a) the name of the national sports organisation;
(b) the registered office and address of the national sports organisation;
(c) the names of the persons managing the affairs of the national sports organisation;

(d) the national sports discipline the national sports association or national sports federation governs; and

(e) the national sports disciplines in which the community sports club participates in;

(f) any other information as may be prescribed by the Minister, by regulations.

(3) The register may be accessed by the public upon payment of the prescribed fee.

(4) The National Sports Organisation entered on the register shall remain registered until-

(a) its registration is cancelled; or

(b) the National Sports Organisation is voluntarily by its own decision deregistered, wound up or dissolved.

(5) A national sports organisation shall in writing, notify the Commission any changes in its registered information.

25. Revocation and suspension of national sports organization

(1) The recognition or registration or incorporation of a national sports organisation may be suspended or revoked by the Commission where-

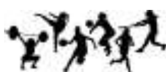
(a) the recognition or registration or incorporation of the national sports organisation was obtained by fraud or deception;

(b) the national sports organisation no longer meets the criteria for recognition or registration or incorporation as a national sports organisation;

(c) the national sports organisation is no longer recognised by the international sports governing body or in the case of a community sports club, by the relevant national sports association or national sports federation;

(d) the national sports organisation no longer serves the purpose for its recognition, registration or incorporation;

(e) the national sports organisation is insolvent.



(2) The Commission shall before revoking or suspending the recognition or registration or incorporation of a national sports organisation inform the national sports organisation of its intention and request the national sports organisation to show cause why its recognition or registration or incorporation should not be suspended.

(3) The national sports organisation shall, within seven days of receipt of the notice referred to in subsection (2), respond in writing, to the Commission.

(4) The Commission shall in deciding whether to revoke or suspend the recognition, registration or incorporation of the national sports organisation, notify, in writing, the international sports governing body to which the national sports organisation is affiliated to, if any.

(5) The international sports governing body shall, within thirty days of receipt of the notification referred to subsection (4), respond to the notice, in writing and the Commission may consider such response when making a decision under this section.

(6) The Commission shall, before revoking the incorporation or registration of the national sports association suspend its operation for a period not exceeding six months to enable the national sports organisation remedy the causes of the suspension.

(7) Where after the expiration of the period referred to in subsection (6) the national sports organisation has not remedied the causes of suspension to the satisfaction of the Commission, the Commission shall revoke the recognition or registration or incorporation of the national sports organisation.

(8) Where the recognition, registration or incorporation of the national sports organisation is suspended or revoked, the national sports organisation shall cease operations and the Commission may request the respective international governing body to appoint a normalization

committee to take over and control the affairs of the national sports discipline until the suspension terminates or until a new national sports organisation is registered by the Commission.

26. Functions of the national sports organizations

(1) A national sports organisation shall perform the following functions-

(a) in the case of a community sports club, to-

(i) protect the interests of its constituent members;

(ii) participate in a sports discipline organized by a national sports association or national sports federation; and

(iii) own assets of that belong to the community sports club

(b) in the case of a national sports association or national sports federation, to-

(i) own assets of that belong to the National Sports Federation;

(ii) manage, develop, regulate, promote and protect amateur in the case of a national sports association and in the case of a national sports federation, to manage, develop, regulate, promote amateur and professional sports in its respective sports discipline;

(iii) promote and co-ordinate all activities of its respective sports discipline;

(iv) protect the interests of its constituent members;

(v) develop and manage the national teams, athletes and teams representing Uganda of the respective sports discipline;

(vi) liaise with the Commission to ensure the provision of the necessary facilities required to promote the national sports in Uganda;

(vii) organize and regulate sports competitions in the respective sports discipline;

(viii) to develop and enforce rules and regulations governing the respective sports discipline;

(ix) to represent the sports discipline on the National Olympics Committee;

(x) to represent Uganda on the international governing body for the sports discipline; and
(xi) to carry out any other functions as empowered by the constitution of the national sports association or national sports federation.

(2) Notwithstanding subsection (1), a national sports organisation shall, with the written approval of the Commission-

(a) organize or host a sports completion in Uganda;

(b) participate in a sports competition outside the territorial jurisdiction of Uganda;

(c) enter or send the respective sports national team, representative or individual participant in a sports competition outside the territorial jurisdiction of Uganda;

(d) hire a non-Ugandan expatriate to undertake any activity on behalf of the national sports organisation or the respective sports national team or club ; or

(e) be affiliated to an international sport governing body for the respective sports discipline.

(3) A national sports organisation intending to do any of the activities under subsection (2) apply to the Commission for authorization.

(4) The Commission shall within five workings days from the date of application made under subsection (3) respond to the application by either granting the authorization sought, with or without conditions, or in writing, reject the application.

(5) Where the Commission does not respond to the application within the time prescribed in subsection (4), the application shall be deemed to have been granted.

(6) Where the Commission rejects the application, the national sports organisation may appeal the decision to the Tribunal, whose decision shall be final.

27. Independence of a national sports organization

(1) A national sports organisation shall be independent in the-
(a) performance of its functions, duties and the exercise of its powers; and

(b) interpretation and application of the statutes and regulations of the sporting discipline as set by the national sports organisation itself or its respective international affiliation body.

(2) Notwithstanding subsection (1), the Commission may by notice in writing served on a national sports organisation give to the national sports organisation directions consistent with the applicable law, the rules of the sports discipline developed by the international governing body for the sports discipline and best sports practices to ensure proper administration and management of the national sports organisation.

28. General provisions relating to national sports organizations

(1) Each national sports discipline shall be organized, promoted, regulated, managed and supervised exclusively by a registered and recognised national sports association or national sports federation.
(2) The commission shall recognise, register or incorporate only one national sports association or national sports federation for each national sports discipline.
(3) The name adopted by the national sports organisation shall not be the same as the name adopted or used by another organisation, person or entity.
(4) A national sports organisation shall conduct its affairs in a transparent manner and with strict compliance with the constitution of the

respective national sports organisation, the relevant laws and lawful directions of the Commission.

(5) The Commission shall only recognize leaders of national sports organisations that are elected or appointed in accordance with the constitution of the respective National Sports Organisation and registered with the Commission.

(6) Where a National Sports Organisation is unable to fulfill its financial obligations to its creditors, the management of the National Sports Organisation in accordance with its constitution or any creditor may, in accordance with the Insolvency Act, 2011 may declare the National Sports Organisation insolvent.

(7) The certificates of registration shall authorise the national sports organisation to exercise the functions of a national sports organisations prescribed in this Act.

(8) A person shall not operate as a national sports organisation unless recognised or registered or incorporated by the commission in accordance with this Act.

(9) Any person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding five hundred currency points or imprisonment for a period not exceeding three years or to both fine and imprisonment.

29. Dissolution of a National Sports Organisation

(1) A national sports organisation may be dissolved either voluntarily or involuntarily in accordance with this Act.

(2) A national sports organisation may be dissolved by the Commission where-

(a) the activities of the national sports organisation contravene any of the provisions of this Act or any other law; or

(b) the national sports organisation has acted against the security, unity and territorial integrity of Uganda.

(3) Notwithstanding subsection (2), the members of a national sports organisation may voluntarily dissolve their Organisation in accordance with their own Constitution.

(4) In accordance with the respective constitution of a national sports organisation, the management of a national sports organisation, shall, within seven days of making the decision to dissolve a national sports organisation, notify the commission, in writing.

(5) The Commission may, upon receipt of the notice referred to in subsection (4), issue a certificate of dissolution to the respective national sports organisation.

30. Compliance of National Sports Organisations

(1) The Commission shall annually conduct a compliance test on a national sports organisation to examine the national sports organization's compliance with this Act or the constitution of the national sports organisation.

(2) The compliance test referred to in subsection (1) may be carried out by the by the Commission or by any other person or entity as determined by the Commission.

(3) A national sports organisation shall co-operate with the Commission or by a person or entity determined by the Commission under subsection (2).

(4) A national sports organisation shall, within one month of being requested by the Commission or the person or entity appointed by the Commission, submit to the Commission or the person or entity appointed by the Commission, information relating to any matter of interest to the Commission or the person or entity appointed by the Commission.

(5) The results of a compliance test shall be submitted to the Commission and the Commission shall in case take of non-compliance by a national sports organisation, inform the national sports organisation and direct the national sports organisation to remedy the non-compliance immediately, but in any case not later ninety days from the date of notification of non-compliance.

(6) Where a national sports organisation does not remedy the causes of its non-compliance within the time prescribed in subsection (5), the

Commission shall suspend the activities of the national sports organisation until it remedies the causes of its non-compliance.

(7) Where the activities of a national sports organisation-

(a) the Commission shall inform the international sports governing body to which the national sports organisation is affiliated to, the suspension of a national sports organisation; and

(b) national sports organisation shall be barred from receiving any financial support from the Commission or any other person.

(8) Where a national sports organisation is suspended under subsection (6) for a period exceeding six months and the national sports organisation does not, to the satisfaction of the Commission, remedy the causes of the suspension, the Commission shall terminate the registration and incorporation of the national sports organisation.

(9) A person aggrieved by the decision of the Commission under this section may appeal the decision to the Tribunal and the decision of the Tribunal shall be final.

31. Report on activities of national sports federations

(1) A national sport federation shall, within four months of the end of each financial year, submit to the Commission an annual report of the activities and operations of a national sports federation.

(2) The report referred to in subsection (1) shall be accompanied with-

(a) financial statements of a national sports federation, including its audited books of accounts;

(b) estimates of revenue and expenditure for the next financial year;

(c) a report on the activities of a national sports federation;

(d) approved minutes of the annual general meeting of a sports federation;

(e) a copy of the constitution of a national sports federation;

(f) a list of members of a national sports federation;

(g) a list of the persons in administration of a national sports federation;

(h) a statement on the planned activities of a national sports federation;
(i) a list of sponsors of a national sports federation to be awarded certificate of sports value addition; and
(j) any other information as may requested by the Commission or as may be prescribed by the Minister, by regulations.
(3) The Commission shall examine the report and give directions to the national sports federation as the Commission deems necessary.

PART IV - FINANCIAL PROVISIONS

32. Duty to operate on sound financial principles

In performing its functions under this Act, the Commission shall have due regard to sound financial principles.

33. Power to invest funds

The Commission shall, with approval of the Minister responsible for Finance, invest any surplus money from the Fund in conformity with good commercial principles.

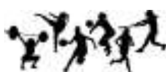
34. Commission to prepare budget

(1) The General Secretary, three months before the beginning of each financial year, prepare and submit to the Commission for approval, estimates of the income and expenditure of the Commission.

(2) The estimates of income and expenditure approved under subsection (1) shall be submitted to the Minister, for approval.

(3) The Commission shall not incur any expenditure exceeding its budget without the approval of the Minister.

35. Accountability for funds



(1) The Commission shall keep proper books of accounts and records of its transaction and affairs.

(2) The Commission shall prepare annual accounts within three months of the close of its financial year and shall promptly submit the accounts to the Auditor General.

(3) The Auditor General shall audit the accounts within two months of receipt of the annual accounts of the Commission, and shall submit the report on the audited accounts to Parliament.

36. Financial year.

The financial year of the Commission shall be the twelve months beginning on the first day of July of each year and ending on the last day of June in the following calendar year.

37. Financial Management of National Sports Organisations

(1) A national sports organisation that shall keep proper books of accounts and records of its transaction and affairs and report about the finances received in accordance with this Act.

(2) A national sports organisation shall in discharge of its functions have regard to sound financial and commercial principles.

(3) A national sports organisation shall cause to be prepared and submitted to the Commission, a statement of accounts including-

(a) balance sheet, an income and expenditure account and a source and application of funds statement; and

(b) any other information in respect of the financial affairs of the national sports organisation as the Minister may, by statutory instrument, prescribe.

38. Funds of national sports organisations

(1) A national sports organisation may solicit, receive and utilize financial resources or assistance from a domestic or international source.

(2) Without limiting the general effect of subsection (1), the funds of a national sports organisation may consist of—

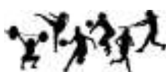
(a) grants, gifts, donations, loans or other endowments given to a national sports organisation;
(b) dividends or income from investments or from the sale, lease and disposal of property by a national sports organisation;
(c) funds made available to a national sports organisation by the Commission; or
(d) funds from any other source received by the national sports association or sports club in the performance of its functions under this Act.

39. Vesting of property in national sports associations

(1) All property belonging to a national sports organisation shall vest in the national sports organisation and shall be registered in the name of the national sports organisation.
(2) The property belonging to a national sports organisation shall only be applied for the activities of the national sports organisation or for activities that benefit the national sports organisation and its members.
(3) Property belonging to a national sports organisation shall not be sold, transferred, assigned or otherwise disposed of except as provided for in the constitution of the national sports organisation.
40. Asset register of a national sports organisation
(1) A national sports organisation shall keep and maintain an asset register for all assets owned by the national sports organisation.
(2) The asset register shall be regularly up dated by the management of a national sports organisation and may be accessible by the public.

PART V- NATIONAL SPORTS FUND

41. The Sports Fund.
(1) There is established a Fund to be known as the National Sports Fund.
(2) The Fund shall vest in and be managed by the Commission.
42. Objects of the Fund



The object of the Fund is to secure a predictable and sustainable means of funding national sports in Uganda by providing a source of funds to support the activities of the Commission and national sports organisations regulate, manage and promote national sports in Uganda.

43. Source of money for the Fund

The moneys of the Fund shall consist of-

(a) money appropriated by Parliament for the purposes of the Fund;

(b) money borrowed by the Commission, with the approval of the Minister responsible for Finance;

(c) money received for the purposes of the Fund by way of voluntary contributions;

(d) grants, gifts or other endowments and donations made to the Fund, with the approval of the Minister responsible for finance, by a foreign government, national or international agency, foreign and national institutions or person, body or entity;

(e) income derived from operations of this Act or otherwise accruing to the Fund;

(f) payment from fees, fines and charges imposed on any person under this Act; and

(g) any other money received by the Commission in the performance of its functions under this Act.

44**. Administration of the Fund.**

(1) The Fund shall be administered by the Commission.

(2) The General Secretary shall ensure that all monies collected by the Commission are immediately deposited into the Fund.

(3) The Commission may authorise the General Secretary to make withdrawals from the Fund for purposes of offsetting the expenses of the Commission in accordance with the approved annual work plan and budget.

(4) The Minister shall, in consultation of national sports organisations and acting on the advice of the Commission, by statutory instrument, make regulations for the management of the Fund.

PART VI – ARBITRATION OF SPORTS DISPUTES

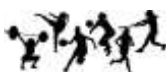
45. Establishment of Tribunal

(1) There is established a Tribunal to be known as the National Sports Tribunal.
(2) The Commission shall provide and regularly update a list of arbitrators from whom a panel of arbitrators shall be appointed by parties to a suit.
(3) A person shall not be qualified to be included on the list of arbitrators referred to in subsection (2) unless that person is-
(a) a judge or justice of a court of judicature in Uganda;
(b) an advocates of the High Court qualified for appointment as a judge of the High Court; and
(c) an experienced football administrators with a legal background.
(4) The Commission shall publish the list referred to in subsection (2) in the gazette and a newspaper of wide national circulation.

46. Jurisdiction of the National Sports Tribunal

The Tribunal shall have jurisdiction over all sports disputes arising between-
(a) the Commission and a national sports organisation;
(b) a national sports organisation and its members;
(c) national sports organisations; and
(d) parties to the dispute who have agreed to refer disputes to the Tribunal.

47. Arbitration to be provided in constitution



(1) There shall be a provision in the constitution of every national sports organisation-

(a) recognizing the jurisdiction of the Tribunal and obligating the settlement of sports disputes between the national sports organisation and its members, by the Tribunal;

(b) recognizing the decision of the Tribunal as final;

(c) obligating a national sports organisation and its members to respect and comply with the decision of the Tribunal; and

(d) prohibiting the settlement of sports disputes between the national sports organisation and its members by courts of judicature, including the interpretation and application of the constitution and regulations of the national sports organisation.

(2) A constitution of a national sports organisation that deviates or does not make provision for the matters referred to in subsection (2) shall be null and void.

(3) The Commission shall not recognize, register or incorporate a national sports organisation that does not include provisions prescribed in subsection (2) in their respective Constitutions.

48. Constitution of tribunal for exercise of powers

(1) Save as may be otherwise agreed between parties to the dispute, the tribunal shall be constituted for a proceeding when all the members appointed by the parties to the dispute are present.

(2) For the avoidance of doubt, each party to the dispute shall appoint one arbitrator from the list of arbitrators

49. Powers of the Tribunal

(1) The Tribunal shall make such orders and give such directives as it considers necessary.

(2) The tribunal may, on its own volition or upon application by an aggrieved party, review its judgments and orders.

(3) Judgments and orders of the tribunal shall be executed and enforced in the same manner as judgments and orders of the High Court.

(4) The Tribunal may, in determining disputes under this Act, apply alternative dispute resolution methods for sports disputes and provide expertise and assistance regarding alternative dispute resolution to the parties to a dispute.

50. Procedure of the Tribunal

(1) The tribunal shall meet as and when there is need to exercise its jurisdiction under this Act.
(2) A decision of the tribunal shall be binding if it is supported by a majority of the members of the Tribunal.
(3) A witness before the tribunal shall have the same immunities, obligations and privileges as a witness before the High Court.
(4) The tribunal shall conduct its proceedings without procedural formality but shall observe the rules of natural justice.
(5) Except as prescribed in this Act, the tribunal may regulate its own procedure.

PART VII – OFFENCES AND PENALTIES

51. Prohibition of unlawful utilization of Commercial Rights

(1) A person who utilizes or enjoys the commercial rights of national sports organisation without the written consent of a national sports organisation commits an offence and is liable, on conviction, to imprisonment for a period not exceeding five years or to a fine not exceeding one hundred and twenty currency points, or to both fine and imprisonment.
(2) A person who contravenes subsection (1) shall, in addition to the fine or penalty imposed under subsection (1), pay a national sports organisation damages and compensation for the loss suffered by the national sports organisation.

52. Prohibition of electronic media production of sporting events and competitions

(1) A person who, without authorization of a national sports organisation, captures by camera the still or moving pictures or records by an audio recorder, activities at an event or competition organised by a national sports organisation or the member of a national sports organisation commits an offence and is liable on conviction, to imprisonment for a period not exceeding five years or to a fine not exceeding one hundred and twenty currency points, or to both fine and imprisonment.

(2) A person who contravenes subsection (1) shall, in addition to the fine or penalty imposed under subsection (1), pay a national sports organisation damages and compensation for the loss suffered by the national sports organisation.

53. Prohibition of broadcast of sporting events and competitions

(1) A person who, without the authorization of a national sports organisation, broadcasts an event or competition organised by a national sports organisation commits an offence and is liable on conviction, to imprisonment for a period not exceeding five years or to a fine not exceeding one hundred and twenty currency points, or to both fine and imprisonment.

(2) A person who contravenes subsection (1) shall, in addition to the fine or penalty imposed under subsection (1), pay the national sports organisation damages and compensation for the loss suffered by the national sports organisation.

(3) Notwithstanding subsection (1), the Minister shall, acting on the advice of the Commission, by statutory instrument, regulate the broadcasting of events and competitions by media house.

54. Prohibition of dealing with counterfeit Materials

(1) A person who-

(a) imports, manufactures, distributes, produces, distributes, sells or offers for sale or trades or displays for sale any counterfeited Ugandan sports branded materials, attire, apparel or any other item without the authorization of a national sports organisation;
(b) has in his or her possession or has on his or her body or any part of the body any counterfeited Ugandan sports branded materials, attire, apparel or any other item;
commits an offence and is liable on conviction, to imprisonment for a period not exceeding five years or to a fine not exceeding one hundred and twenty currency points, or to both fine and imprisonment.
(2) A person who contravenes subsection (1) shall, in addition to the fine or penalty imposed under subsection (1), pay the national sports organisation damages and compensation for the loss suffered by the national sports organisation.

55. Prohibition of unlawful access to sports events and competitions

(1) A person who, without authorization, enters, stays, remains or allows a person to enter, stay, remain or access a sports event or competition organised by a national sports organisation commits an offence and is liable on conviction, to imprisonment for a period not exceeding five years or to a fine not exceeding one hundred and twenty currency points, or to both fine and imprisonment.
(2) A person who contravenes subsection (1) shall, in addition to the fine or penalty imposed under subsection (1), pay the national sports organisation damages and compensation for the loss suffered by the national sports organisation.

56. Prohibition of unauthorized use of sports results in betting

(1) A person licensed under the Lotteries and Gaming Act, 2015 shall not allow betting on sports action or use results of sports competitions organized or authorized by a national sports organisation without the written authorization of a national sports organisation.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two thousand currency points or to imprisonment for a period not exceeding ten years, or to both fine and imprisonment.

(3) A person who contravenes subsection (1) shall, in addition to the fine or penalty imposed under subsection (2), pay the national sports organisation damages and compensation for the loss suffered by the national sports organisation.

57. Prohibition of betting by specified persons

(1) A person, being-

(a) a match official, referee, umpire, match adjudicator or any such person whatever name called;

(b) a coach, trainer or any such person whatever name called;

(c) an athlete, footballer, participant in sports discipline or any such person whatever name called;

(d) the owner of a sports club;

(e) a member of the national sports association; or

(f) an employee of a national sports association or sports club;

shall not bet or advise a person on any betting activity in relation to a sports activity, event or competition organized by a national sports organisation.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to imprisonment for a period not exceeding ten years.

58. Manipulation of sports result or competition

(1) A person who manipulates a sports result or course of a sports competition commits an offence and is liable on conviction to imprisonment for five years.

(2) For purposes of subsection (1), a person shall be taken to manipulate a sports result or the course of a sports competition where that person-

(a) directly or indirectly, promises, offers or gives any undue advantage to another person with the aim of improperly altering the result or course of a sports competition;
(b) directly or indirectly, solicits or accepts any undue advantage, promise or offer, for himself, herself or for any other person, with the aim of improperly altering the result or course of a sports competition; or
(c) predetermines a sporting occurrence or result of a sports competition;
(d) acts in a manner that ensures the occurrence of any improper performance, act, omission or an outcome which is the subject of an illegal bet relating to a sport or any sporting event;
(e) provides confidential information relating to a sport or a sporting event to any person and the person to whom information is provided, uses the information to improperly alter the result or course of a sports competition;
(f) receives money or any other reward or benefit individually or collectively to underperform or to withdraw a sports completion or event;
(g) being the umpire, match adjudicator, match referee or any other person by whatever name called, deliberately misapplies the rules of the sport or sporting event for financial reward or benefit; or
(h) being a curator, a member of a venue staff, ground staff or support staff or any person in charge of a turf, playing ground or playing surface, by whatever name called, receives a financial reward or benefit to prepare any turf, ground or playing surface of any sport or sporting event in a manner that alters the result or course of a sports competition.
(3) A person who knows or has reason to believe that a person has committed or intends to commit an offence under subsection (1) shall report the matter to the police, the Commission or other authorized person.
(4) A person who knows or has reason to believe that a person has committed or intends to commit an offence and does not report to police, Commission or other authorized person as required in subsection (3), commits an offence and is liable on conviction to imprisonment for five years or a fine not exceeding five thousand currency points or to both fine and imprisonment.

(5) A person who reports the commission of an offence under this section shall be treated a whistleblower and shall be protected from victimization.

(6) A person who victimizes a person who has reported an offence as required in subsection (3) commits an offence and is liable on conviction to imprisonment for five years.

59. Prohibition of Doping

(1) A sportsperson who uses, consumes or has in his or her possession a substance or method of sport banned by the World Anti-Doping Agency commits an offence and is liable, on conviction, to imprisonment for a period not exceeding five years.

(2) A person who –

(a) administers to a sportsperson a substance or a method of sport banned by the World Anti-Doping Agency;

(b) encourages the use of a substance or a method of sport banned by the World Anti-Doping Agency; or

(c) sells, displays for sell or has in his or her possession a substance or a method of sport banned by the World Anti-Doping Agency,

commits an offence and is liable, on conviction, to imprisonment for a period not exceeding five years.

(3) A sportsperson convicted of an offence under subsection (1) shall, in addition to the penalty prescribed in subsections (1) and (2) be banned from participating in amateur or professional sport for a period as may be determined by the Committee or any other government anti-doping body.

(4) In this section, a “sportsperson” means a person participating in a sporting event or sports competition organized by a national sports organisation or regulated by an international sports governing body.

60. Prohibition of acts of violence and hooliganism

(1) A person who, while being a spectator at a sporting event or sports competition organized by a national sports organisation, does any act-

(a) calculated to lead to destruction or damage to any property;

(b) that leads to physical injury to any person;

(c) that disturbs the peace and order at a sporting event or sports competition;

(d) with intent to disrupt a sporting event or competition or to intimidate or annoy any person or a match official, referee, umpire, match adjudicator, coach, trainer, an athlete, footballer or participant in sports discipline or any such person whatever name called-

(i) threatens to or injures, assaults, shoots, strikes or unlawfully restrains such a person;

(ii) throws or casts a projectile, a liquid or a substance upon such a person, or otherwise applies any such fluid or any matter to such a person;

(iii) incites any person to do an act of violence against such person;

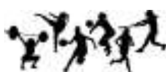
(iv) abuses, uses obscene language or gesture or does any indecent act aimed at such a person;

commits an offence and is liable, on conviction, to imprisonment for a period not exceeding ten years or to a fine not exceeding four hundred and eighty currency points or to both fine and imprisonment.

(2) A person convicted of an offence under subsection (1) shall, in addition to the penalty prescribed in subsection (1),-

(a) be banned from participating in or attending sports events and competitions for a period not exceeding three years; and

(b) make good the loss and damage suffered by any person as a result of the unlawful action.



61. Offences committed by legal persons

(1) A legal person shall be deemed to commit an offence under this Act if the act or omission constituting the offence was committed—

(a) by a shareholder, director, employee, manager, officer or any other principal officer or natural person in the legal person who—

(i) has the power to represent the legal person;

(ii) the authority to take decisions on behalf of the legal person; or

(iii) has authority to exercise control over the affairs of the legal person; or

(b) for the benefit of the legal person.

(2) The liability of a legal person shall not exclude criminal proceedings against a natural person who—

(a) participates in the commission of an offence; or

(b) actually, does the act or omission that constitute an offence under this Act.

(3) Where an offence prescribed under this Act is committed by a legal person, court shall—

(a) hold a shareholder, director, employee, manager, officer or any other principal officer in the legal person to be responsible for the actions of the legal person and therefore, liable for the offence committed and punished as provided in this Act; and

(b) in addition to any penalty stipulated in the relevant provision-

(i) impose a penalty not exceeding twenty thousand currency points on each count;

(ii) order for the cancellation of the registration of the legal person as a corporate body; or

(iii) temporarily or permanently disqualify the legal person from the practice of any commercial activity.

62. Imposition of administrative penalties

(1) The Commission, may in addition to or as an alternative to the prescribed penalty, impose administrative penalties on a person, body or entity that infringes the provisions of this Act.

(2) The administrative penalties imposed by the Commission shall not exceed the fine imposed for breach of the relevant provision of this Act and where no fine is imposed, the administrative penalty shall not exceed five hundred currency points.

63. General Penalty

A person who contravenes a provision of this Act for which no penalty has been prescribed shall, on conviction, be liable to a fine not exceeding one hundred currency points or imprisonment for a period not exceeding one year.

PART VIII—MISCELLANEOUS

64. Absence of National Sports Organisation

(1) Where a national sports discipline-

(a) has no respective national sports organisation to regulate or manage or promote it;

(b) has its respective national sports organisation de-registered by the commission as provided for in this Act; or

(c) has its respective national sports organisation dissolved or wound up,

the Commission shall, in consultation with the international sports governing body to which the national sports discipline is meant to be affiliated, appoint a committee to manage the affairs of the national sports organisation and undertake processes leading to the creation of a substantive national sports organisation for the national sports discipline.

(2) The Commission may, in addition to or as an alternative to subsection (1), take custody of the assets of the national sports

organisation until a national sport organisation is established, incorporated or registered as required in this Act.

65. National Olympics Committee

(1) There is established a committee to be known as the National Olympics Committee.
(2) The National Olympics Committee shall be a body corporate with perpetual succession and a common seal and with power to sue and be sued in its corporate name and to do or suffer to be done all things which may be or are suffered by a body corporate.
(3) The National Olympics Committee shall comprise of-
(a) a representative of the Commission;
(b) a representative from each of the national sports organisation governing an Olympics sport; and
(c) any other person as prescribed in the constitution of the National Olympics Committee.
(4) The Minister shall, by statutory instrument, prescribe the functions and management of the National Olympics Committee.

66. National Anti-Doping Committee

(1) There is established a Committee to be known as the National Anti-doping Committee.
(2) The Anti-doping Committee shall develop and implement policies, systems and procedures to ensure proper implementation of policies and programs against doping in sports.
(3) The Minister shall, by statutory instrument, prescribe the functions and management of the Anti-doping Committee.

67. International Affiliation of national sports organization

(1) A national sports organisation may, in accordance with this Act, affiliate with an international sports governing body responsible for the relevant sports discipline.

(2) For the avoidance of doubt, a national sports organisation that is, before the Commencement of this Act, affiliated to an international sports governing body, shall continue to be affiliated to that international sports governing body.

(3) For purposes of affiliating to an international sports governing body, the certificate of incorporation or registration issued to a national sports organisation shall, in addition to other requirements that may be prescribed by the Minister, by regulations, be required and submitted prior to approval of affiliation by the Commission.

(4) The interpretation and application of this Act shall recognise the provisions of the statutes and regulations of the international sports governing body to which a national sports organisation is affiliated to.

68. Management of sports teams and athletes in international sports competitions

(1) A national team shall only be constituted by a national sports association or a national sports federation for a recognised sports discipline.

(2) A national sports association or a national sports federation shall be responsible for developing, selecting, summoning and managing the national team or a representative team for the respective sports discipline.

(3) A national sports association or a national sports federation shall regulate the management of a national team and a representative team for the respective sports discipline.

(4) Without limiting the general effect of subsection (2), a national sports association or a national sports federation shall-

(a) be responsible for selecting the sports national teams;

(b) facilitate the preparation and participation of a sports national team and sports national representatives in international sports events and competitions;

(c) finance a sports national team and national representative teams participating in international sports competitions and events

(d) facilitate the preparation and participation of the sports national team representing Uganda in international sports competitions;

(e) mobilise, solicit and manage funds of the sports national team, including funds received from the Government to finance the expenses of the sports national team;

(f) manage the welfare of members of the national sports teams;

(g) employ and appoint coach and other technical personnel for the national sports teams; and

(h) coordinate Government and the Commission's involvement in matters relating to a sports national team.

(5) A national sports association or a national sports federation shall seek the written approval of the commission to prior to-

(a) entering or participating the sports national team or individual athletes in international sports competitions;

(b) hosting an international team in any competition organised by a national sports association or national sports federation; or

(c) hiring a non-citizen to provide technical expertise to a national sports organisation or one of its constituent clubs or teams.

(6) The Minister shall by statutory instrument regulate the management of national teams and athletes in multi-discipline international sporting events and competitions.

69. Vesting of sports infrastructure in the Commission

(1) All the public land allocated to sports activities, sports stadia, buildings and sports infrastructure owned by Government shall vest in the Commission.

(2) Land titles and ownership documentations of the public land and sports infrastructure shall be transferred and issued in the names of the Commission.

(3) The Commission shall keep, maintain, repair and manage all public sports infrastructure.

(4) A local Government shall gazette and set aside public land to be used for promotion and development of sports and the establishment of public sports infrastructure.

(5) The Commission shall not lease, pledge, sale or otherwise encumber the land allocated for sports activities, a sports stadium or any other sports infrastructure owned by Government without the approval of Parliament.

(6) The Commission shall only apply the trust property and any income derived from the trust property to or for the purposes of the trust and if any land forming the whole or part of the trust property shall be sold, the proceeds of the sale shall be paid and applied in such manner as the Minister, with the advice of the Commission, shall direct.

(7) This section shall not apply to land governed by the Nakivubo War Memorial Stadium Trust Act, Cap. 47.

70. Effect of registration on existing sports associations or federations

(1) Upon the registration and incorporation of an existing Sports Association or Federation under this Act;
(a) all land, buildings, rights, funds, securities and credits possessed or owned by a national sports organisation and benefit of all contracts entered into by a national sports organisation prior to the commencement of this Act, shall vest in a national sports organisation as they were previously vested in that national sports organisation prior to the commencement of this Act.
(b) all rights, powers, liabilities and duties, whether arising under any written law or otherwise, which immediately before the commencement of this Act were vested in, imposed on or enforceable by or against a national sports organisation prior to the commencement of this Act, shall be vested in, imposed on or be enforceable by or against that national

sports organisation as they existed prior to the commencement of this Act.

71. Report on enforcement of this act

The Commission shall annually prepare and submit to the Minister, a report on the enforcement of this Act.

72. Repeal of Cap 48

(1) The National Council of Sports Act, Cap. 48 is repealed.

(2) Notwithstanding the repeal of the National Council of Sports Act-

(a) all persons who were employed by the National Council of Sports immediately before the commencement of this Act shall be deemed to have transferred their services to the Commission.
(b) all property, assets, rights and interests of the National Council of Sports under the revoked Act shall vest in the Commission; and

(c) all obligations and liabilities subsisting against the National Council of Sports under the revoked Act shall continue to subsist against the Commission.
(3) The employees of the National Council of Sports whose services are transferred to the Commission shall transfer to the Commission on similar terms as those enjoyed by the employees before the transfer.

(4) Any pending court proceedings, court actions, judgments or court orders which were enforceable by or against the National Council of Sports immediately before the commencement of this Act, and are connected with the assets vested in the Commission or the functions of the Commission, shall be enforceable by or against the Commission as they would have been enforced by or against the National Council of Sports immediately before the commencement of this Act.

(5) Subject to this Act, anything commenced under the revoked Act may be continued and completed under this Act.

73. Savings and transitional Provisions

(1) A national sports association or a national sports federation in existence immediately before the commencement of this Act shall continue to exist as if the same had been incorporated under this Act.

(2) A national sports association or a national sports federation existing immediately before the commencement of this Act shall, within six months from the commencement of this Act, comply with the provisions of this Act relating to incorporation and registration of national sports associations or national sports federations and shall be issued with a certificate of incorporation or registration as required by this Act.

(3) Land, buildings, rights, funds, securities and credits possessed or owned by and the benefit of all contracts entered into by a national sports association or national sports federation prior to the commencement of this Act, shall vest in that national sports association or national sports federation as they were previously vested in that national sports association or national sports federation prior to the commencement of this Act.

(4) All rights, powers, liabilities and duties, whether arising under any written law or otherwise, which immediately before the commencement of this Act were vested in, imposed on or enforceable by or against a national sports association or national sports federation prior to the commencement of this Act, shall be vested in, imposed on or be enforceable by or against that national sports association or national sports federation as they existed prior to the commencement of this Act.

(5) A national sports association or federation which fails to fulfill the requirements for registration or incorporation of national sports organisations within the time prescribed in subsection (2) shall be deemed to have ceased to exist as a national sports organisation except that where –

(a) an application for registration has been made and has not been rejected; or
(b) an appeal has been lawfully made and remains undetermined,
the national sports association or federation shall continue to exist until the Commission or the Tribunal determines the status of the applicant.
(6) Where a national sports association or federation ceases to exist under subsection (1), the Commission shall by notice in the gazette inform the general public of the cessation of existence of the national sports association or federation.
(7) A person interested in incorporating or registering national sports association or federation shall comply with the provisions of this Act relating to registration and incorporation of national sports associations or federations.

74. Regulations

The Minister may, after consultation with the Commission, by statutory instrument, make regulations for better carrying into effect the purposes and provisions of this Act and, in particular, for the following matters—
(a) the establishment, incorporation and registration of national sports associations and federations;
(b) the functions of national sports associations and federations;
(c) the establishment and composition of national committees, including subcommittees, other than committees of national associations;
(d) the management and control of the Fund, the National Olympics Committee and the National Anti-doping Committee; and
(e) the operation and procedures of the Tribunal.

75. Amendment of Schedules

The Minister may, by statutory instrument and with the approval of Cabinet, amend the Schedules to this Act.

SCHEDULE 1

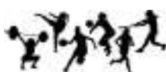
Section 2
Currency Point

A currency point is equivalent to Twenty Thousand Shillings.

SCHEDULE 2

NATIONAL SPORTS DISCIPLINES

1 American Football
2 Archery
3 Athletics
4 Badminton
5 Baseball and Softball
6 Basketball
7 Body Building and Fitness
8 Boxing
9 Canoe Kayak
10 Chess
11 Cricket
12 Cycling
13 Darts
14 Deaf Sports
15 Dragon Boat
16 Draughts
17 Fencing
18 Floorball
19 Football
20 Golf
21 Gymnastics
22 Handball
23 Hockey



24 Judo
25 Kabadi
26 Kick Boxing
27 Lacrosse
28 Ludo
29 Motor Sports Associations
30 Netball
31 Paralympic
32 Pool
33 Roll Ball
34 Rowing
35 Rugby
36 Scrabble
37 Skating
38 Sports Climbing
39 Squash Rackets
40 Swimming
41 Table Tennis
42 Taekwondo
43 Tennis
44 Ultimate Frisbee
45 University Sports
46 Volleyball
47 VX
48 Weightlifting
49 Woodball
50 Wrestling
51 Zurkhaneh Sports.

Appendix 3

WORLD ANTI DOPING CODE - 2021

World Anti-Doping Code

WORLD ANTI-DOPING
CODE
2021

World Anti-Doping *Code*

The World Anti-Doping *Code* was first adopted in 2003 and took effect in 2004. It was subsequently amended four times, the first time effective 1 January 2009, the second time effective 1 January 2015, the third time effective 1 April 2018 (compliance amendments) and the fourth time effective 1 June 2019 (reporting of certain endogenous substances as *Atypical Findings*). The revised 2021 World Anti-Doping *Code* is effective as of 1 January 2021.

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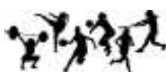

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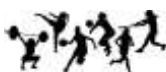

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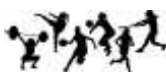

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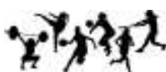

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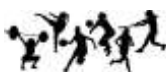


PURPOSE, SCOPE AND ORGANIZATION OF THE WORLD ANTI-DOPING PROGRAM AND THE *CODE*

The purposes of the World Anti-Doping *Code* and the World Anti-Doping Program which supports it are:

- To protect the *Athletes*' fundamental right to participate in doping-free sport and thus promote health, fairness and equality for *Athletes* worldwide, and
- To ensure harmonized, coordinated and effective anti-doping programs at the international and national level with regard to the prevention of doping, including:

Education — to raise awareness, inform, communicate, to instill values, develop life skills and decision-making capability to prevent intentional and unintentional anti-doping rule violations.

Deterrence — to divert potential dopers, through ensuring that robust rules and sanctions are in place and salient for all stakeholders.

Detection — an effective *Testing* and investigations system not only enhances a deterrent effect, but also is effective in protecting clean *Athletes* and the spirit of sport by catching those committing anti-doping rule violations, while also helping to disrupt anyone engaged in doping behavior.

Enforcement — to adjudicate and sanction those found to have committed an anti-doping rule violation.

Rule of law — to ensure that all relevant stakeholders have agreed to submit to the *Code* and the *International Standards*, and that all measures taken in application of their anti-doping programs respect the *Code*, the *International Standards*, and the principles of proportionality and human rights.

The *Code*

The *Code* is the fundamental and universal document upon which the World Anti-Doping Program in sport is based. The purpose of the *Code* is to advance the anti-doping effort through universal harmonization of core anti-doping elements. It is intended to be specific enough to achieve complete harmonization on issues

where uniformity is required, yet general enough in other areas to permit flexibility on how agreed-upon anti-doping principles are implemented. The *Code* has been drafted giving consideration to the principles of proportionality and human rights.[1]

The World Anti-Doping Program

The World Anti-Doping Program encompasses all of the elements needed in order to ensure optimal harmonization and best practice in international and national anti-doping programs. The main elements are:

Level 1: The *Code*

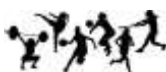
Level 2: *International Standards* and *Technical Documents*

Level 3: Models of Best Practice and Guidelines

International Standards

International Standards for different technical and operational areas within the anti-doping program have been and will be developed in consultation with the *Signatories* and governments and approved by *WADA*. The purpose of the *International Standards* is harmonization among *Anti-Doping Organizations* responsible for specific technical and operational parts of anti-doping programs. Adherence to the *International Standards* is mandatory for compliance with the *Code*. The *International Standards* may be revised from time to time by the *WADA* Executive Committee after reasonable consultation with *Signatories*, governments and other relevant stakeholders.

1 [Comment: The Olympic Charter and the International Convention against Doping in Sport 2005 adopted in Paris on 19 October 2005 ("UNESCO Convention"), both recognize the prevention of and the fight against doping in sport as a critical part of the mission of the International Olympic Committee and UNESCO, and also recognize the fundamental role of the Code.]



International Standards and all revisions will be published on the *WADA* website and shall become effective on the date specified in the *International Standard* or revision.[2]

Technical Documents

Technical Documents relating to mandatory technical requirements for the implementation of an *International Standard* may be approved and published from time to time by the *WADA* Executive Committee. Adherence to *Technical Documents* is mandatory for compliance with the *Code*. Where the implementation of a new or revised *Technical Document* is not time sensitive, the *WADA* Executive Committee shall allow for reasonable consultation with *Signatories*, governments and other relevant stakeholders. *Technical Documents* shall become effective immediately upon publication on the *WADA* website unless a later date is specified.[3]

2 [Comment: The International Standards contain much of the technical detail necessary for implementing the Code. International Standards will, in consultation with Signatories, governments and other relevant stakeholders, be developed by experts and set forth in separate documents. It is important that the WADA Executive Committee be able to make timely changes to the International Standards without requiring any amendment of the Code.]

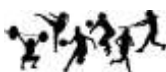
3 [Comment: For example, where an additional analytical procedure is required before reporting a Sample as an Adverse Analytical Finding, that procedure would be mandated in a Technical Document issued immediately by the WADA Executive Committee.]

Models of Best Practice and Guidelines

Models of best practice and guidelines based on the *Code* and *International Standards* have been and will be developed to provide solutions in different areas of anti-doping. The models and guidelines will be recommended by *WADA* and made available to *Signatories* and other relevant stakeholders, but will not be mandatory. In addition to providing models of anti-doping documentation, *WADA* will also make some training assistance available to *Signatories*.[4]

4 [Comment: These model documents may provide alternatives from which stakeholders may select. Some stakeholders may choose to adopt the model rules and other models of best practices verbatim. Others may decide to adopt the models with modifications. Still other stakeholders may choose to develop their own rules consistent with the general principles and specific requirements set forth in the Code.

Model documents or guidelines for specific parts of anti-doping work have been developed and may continue to be developed based on generally recognized stakeholder needs and expectations.]



FUNDAMENTAL RATIONALE FOR THE WORLD ANTI-DOPING *CODE*

Anti-doping programs are founded on the intrinsic value of sport. This intrinsic value is often referred to as "the spirit of sport": the ethical pursuit of human excellence through the dedicated perfection of each *Athlete's* natural talents.

Anti-doping programs seek to protect the health of *Athletes* and to provide the opportunity for *Athletes* to pursue human excellence without the *Use* of *Prohibited Substances* and *Prohibited Methods*.

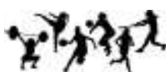
Anti-doping programs seek to maintain the integrity of sport in terms of respect for rules, other competitors, fair competition, a level playing field, and the value of clean sport to the world.

The spirit of sport is the celebration of the human spirit, body and mind. It is the essence of Olympism and is reflected in the values we find in and through sport, including:

- Health
- Ethics, fair play and honesty
- *Athletes'* rights as set forth in the *Code*
- Excellence in performance
- Character and *Education*
- Fun and joy
- Teamwork
- Dedication and commitment
- Respect for rules and laws
- Respect for self and other *Participants*
- Courage
- Community and solidarity

The spirit of sport is expressed in how we play true.

Doping is fundamentally contrary to the spirit of sport.



PART ONE
DOPING CONTROL

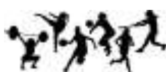
INTRODUCTION

Part One of the *Code* sets forth specific anti-doping rules and principles that are to be followed by organizations responsible for adopting, implementing or enforcing anti-doping rules within their authority, e.g., the International Olympic Committee, International Paralympic Committee, International Federations, *National Olympic Committees* and Paralympic Committees, *Major Event Organizations*, and *National Anti-Doping Organizations*. All such organizations are collectively referred to as *Anti-Doping Organizations*.

All provisions of the *Code* are mandatory in substance and must be followed as applicable by each *Anti-Doping Organization* and *Athlete* or other *Person*. The *Code* does not, however, replace or eliminate the need for comprehensive anti-doping rules to be adopted by each *Anti-Doping Organization*. While some provisions of the *Code* must be incorporated without substantive change by each *Anti-Doping Organization* in its own anti-doping rules, other provisions of the *Code* establish mandatory guiding principles that allow flexibility in the formulation of rules by each *Anti-Doping Organization* or establish requirements that must be followed by each *Anti-Doping Organization* but need not be repeated in its own anti-doping rules.[5]

5 [Comment: Those Articles of the Code which must be incorporated into each Anti-Doping Organization's rules without substantive change are set forth in Article 23.2.2. For example, it is critical for purposes of harmonization that all Signatories base their decisions on the same list of anti-doping rule violations, the same burdens of proof and impose the same Consequences for the same anti-doping rule violations. These rules must be the same whether a hearing takes place before an International Federation, at the national level or before the Court of Arbitration for Sport.

Code provisions not listed in Article 23.2.2 are still mandatory in substance even though an Anti-Doping Organization is not required to incorporate them verbatim. Those provisions generally fall into two categories. First, some provisions direct Anti-Doping Organizations to take certain actions but there is no need to restate the provision in the Anti-Doping Organization's own anti-doping rules. For example, each Anti-Doping Organization must plan and conduct Testing as required by Article 5, but these directives to the Anti-Doping Organization need not be repeated in the Anti-Doping Organization's own rules. Second, some provisions are mandatory in substance but give



Anti-doping rules, like competition rules, are sport rules governing the conditions under which sport is played. *Athletes*, *Athlete Support Personnel* or other *Persons* (including board members, directors, officers, and specified employees and *Delegated Third Parties* and their employees) accept these rules as a condition of participation or involvement in sport and shall be bound by these rules.[6] Each *Signatory* shall establish rules and procedures to ensure that all *Athletes*, *Athlete Support Personnel* or other *Persons* under the authority of the *Signatory* and its member organizations are informed of and agree to be bound by anti-doping rules in force of the relevant *Anti-Doping Organizations*.

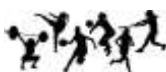
Each *Signatory* shall establish rules and procedures to ensure that all *Athletes*, *Athlete Support Personnel* or other *Persons* under the authority of the *Signatory* and its member organizations are informed of the dissemination of their private data as required or authorized by the *Code*, and are bound by and compliant with the anti-doping rules found in the *Code*, and that the appropriate *Consequences* are imposed on those *Athletes* or other *Persons* who breach those rules. These sport-specific rules and procedures, aimed at enforcing anti-doping rules in a global and harmonized way, are distinct in nature from criminal and civil proceedings. They are not intended to be subject to or limited by any national requirements and legal standards applicable to such proceedings, although they are intended to be applied in a manner which respects the principles of proportionality and

each Anti-Doping Organization some flexibility in the implementation of the principles stated in the provision. As an example, it is not necessary for effective harmonization to force all Signatories to use one single Results Management process as long as the process utilized satisfies the requirements stated in the Code and the International Standard for Results Management.]

6 [Comment: Where the Code requires a Person other than an Athlete or Athlete Support Person to be bound by the Code, such Person would of course not be subject to Sample collection or Testing, and would not be charged with an anti-doping rule violation under the Code for Use or Possession of a Prohibited Substance or Prohibited Method. Rather, such Person would only be subject to discipline for a violation of Code Articles 2.5 (Tampering), 2.7 (Trafficking), 2.8 (Administration), 2.9 (Complicity), 2.10 (Prohibited Association) and 2.11 (Retaliation). Furthermore, such Person would be subject to the additional roles and responsibilities according to Article 21.3. Also, the obligation to require an employee to be bound by the Code is subject to applicable law.]

human rights. When reviewing the facts and the law of a given case, all courts, arbitral hearing panels and other adjudicating bodies should be aware of and respect the distinct nature of the anti-doping rules in the *Code* and the fact that those rules represent the consensus of a broad spectrum of stakeholders around the world with an interest in fair sport.

As provided in the *Code*, each *Anti-Doping Organization* shall be responsible for conducting all aspects of *Doping Control*. Any aspect of *Doping Control* or anti-doping *Education* may be delegated by an *Anti-Doping Organization* to a *Delegated Third Party*, however, the delegating *Anti-Doping Organization* shall require the *Delegated Third Party* to perform such aspects in compliance with the *Code* and *International Standards*, and the *Anti-Doping Organization* shall remain fully responsible for ensuring that any delegated aspects are performed in compliance with the *Code*.



ARTICLE 1 DEFINITION OF DOPING

Doping is defined as the occurrence of one or more of the anti-doping rule violations set forth in Article 2.1 through Article 2.11 of the *Code*.

ARTICLE 2 ANTI-DOPING RULE VIOLATIONS

The purpose of Article 2 is to specify the circumstances and conduct which constitute anti-doping rule violations. Hearings in doping cases will proceed based on the assertion that one or more of these specific rules have been violated.

Athletes or other *Persons* shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the *Prohibited List*.

The following constitute anti-doping rule violations:

2.1 Presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's Sample*

2.1.1 It is the *Athletes'* personal duty to ensure that no *Prohibited Substance* enters their bodies. *Athletes* are responsible for any *Prohibited Substance* or its *Metabolites* or *Markers* found to be present in their *Samples*. Accordingly, it is not necessary that intent, *Fault*, *Negligence* or knowing *Use* on the *Athlete's* part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.[7]

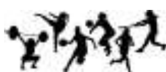
7 [Comment to Article 2.1.1: An anti-doping rule violation is committed under this Article without regard to an Athlete's Fault. This rule has been referred to in various CAS decisions as "Strict Liability". An Athlete's Fault is taken into consideration in determining the Consequences of this anti-doping rule violation under Article 10. This principle has consistently been upheld by CAS.]

2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in the *Athlete's* A *Sample* where the *Athlete* waives analysis of the B *Sample* and the B *Sample* is not analyzed; or, where the *Athlete's* B *Sample* is analyzed and the analysis of the *Athlete's* B *Sample* confirms the presence of the *Prohibited Substance* or its *Metabolites* or *Markers* found in the *Athlete's* A *Sample*; or where the *Athlete's* A or B *Sample* is split into two parts and the analysis of the confirmation part of the split *Sample* confirms the presence of the *Prohibited Substance* or its *Metabolites* or *Markers* found in the first part of the split *Sample* or the *Athlete* waives analysis of the confirmation part of the split *Sample*.[8]

2.1.3 Excepting those substances for which a *Decision Limit* is specifically identified in the *Prohibited List* or a *Technical Document*, the presence of any reported quantity of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's Sample* shall constitute an anti-doping rule violation.

2.1.4 As an exception to the general rule of Article 2.1, the *Prohibited List*, *International Standards*, or *Technical Documents* may establish special criteria for reporting or the evaluation of certain *Prohibited Substances*.

8 [Comment to Article 2.1.2: The Anti-Doping Organization with Results Management responsibility may, at its discretion, choose to have the B Sample analyzed even if the Athlete does not request the analysis of the B Sample.]



2.2 *Use* or *Attempted Use* by an *Athlete* of a *Prohibited Substance* or a *Prohibited Method*[9]

2.2.1 It is the *Athletes'* personal duty to ensure that no *Prohibited Substance* enters their bodies and that no *Prohibited Method* is *Used*. Accordingly, it is not necessary that intent, *Fault*, *Negligence* or knowing *Use* on the *Athlete's* part be demonstrated in order to establish an anti-doping rule violation for *Use* of a *Prohibited Substance* or a *Prohibited Method*.

2.2.2 The success or failure of the *Use* or *Attempted Use* of a *Prohibited Substance* or *Prohibited Method* is not material. It is sufficient that the *Prohibited Substance* or *Prohibited Method* was *Used* or *Attempted* to be *Used* for an anti-doping rule violation to be committed.[10]

9 [Comment to Article 2.2: It has always been the case that Use or Attempted Use of a Prohibited Substance or Prohibited Method may be established by any reliable means. As noted in the Comment to Article 3.2, unlike the proof required to establish an anti-doping rule violation under Article 2.1, Use or Attempted Use may also be established by other reliable means such as admissions by the Athlete, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, including data collected as part of the Athlete Biological Passport, or other analytical information which does not otherwise satisfy all the requirements to establish "Presence" of a Prohibited Substance under Article 2.1.

For example, Use may be established based upon reliable analytical data from the analysis of an A Sample (without confirmation from an analysis of a B Sample) or from the analysis of a B Sample alone where the Anti-Doping Organization provides a satisfactory explanation for the lack of confirmation in the other Sample.]

10 [Comment to Article 2.2.2: Demonstrating the "Attempted Use" of a Prohibited Substance or a Prohibited Method requires proof of intent on the Athlete's part. The fact that intent may be required to prove this particular anti-doping rule violation does not undermine the Strict Liability principle established for violations of Article 2.1 and violations of Article 2.2 in respect of Use of a Prohibited Substance or Prohibited Method.

An Athlete's Use of a Prohibited Substance constitutes an anti-doping rule violation unless such Substance is not prohibited Out-of-Competition and the Athlete's Use takes place Out-of-Competition. (However, the presence of a Prohibited Substance or its Metabolites or Markers in a Sample collected In-Competition is a violation of Article 2.1 regardless of when that Substance might have been administered.)]

2.3 Evading, Refusing or Failing to Submit to *Sample* Collection by an *Athlete*

Evading *Sample* collection; or refusing or failing to submit to *Sample* collection without compelling justification after notification by a duly authorized *Person*.[11]

2.4 Whereabouts Failures by an *Athlete*

Any combination of three missed tests and/or filing failures, as defined in the *International Standard* for *Results Management*, within a twelve-month period by an *Athlete* in a *Registered Testing Pool*.

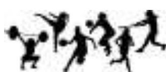
2.5 *Tampering* or *Attempted Tampering* with any Part of *Doping Control* by an *Athlete* or Other *Person*

2.6 *Possession* of a *Prohibited Substance* or a *Prohibited Method* by an *Athlete* or *Athlete Support Person*

2.6.1 *Possession* by an *Athlete In-Competition* of any *Prohibited Substance* or any *Prohibited Method*, or *Possession* by an *Athlete Out-of-Competition* of any *Prohibited Substance* or any *Prohibited Method* which is prohibited *Out-of-Competition* unless the *Athlete* establishes that the *Possession* is consistent with a *Therapeutic Use Exemption* ("*TUE*") granted in accordance with Article 4.4 or other acceptable justification.[12]

11 [Comment to Article 2.3: For example, it would be an anti-doping rule violation of "evading Sample collection" if it were established that an Athlete was deliberately avoiding a Doping Control official to evade notification or Testing. A violation of "failing to submit to Sample collection" may be based on either intentional or negligent conduct of the Athlete, while "evading" or "refusing" Sample collection contemplates intentional conduct by the Athlete.]

12 [Comment to Articles 2.6.1 and 2.6.2: Acceptable justification would not include, for example, buying or Possessing a Prohibited Substance for purposes of giving it to a friend or relative, except under justifiable medical circumstances where that Person had a physician's prescription, e.g., buying Insulin for a diabetic child.]



2.6.2 *Possession* by an *Athlete Support Person In-Competition* of any *Prohibited Substance* or any *Prohibited Method*, or *Possession* by an *Athlete Support Person Out-of-Competition* of any *Prohibited Substance* or any *Prohibited Method* which is prohibited *Out-of-Competition* in connection with an *Athlete*, *Competition* or training, unless the *Athlete Support Person* establishes that the *Possession* is consistent with a *TUE* granted to an *Athlete* in accordance with Article 4.4 or other acceptable justification.[13]

2.7 *Trafficking* or *Attempted Trafficking* in any *Prohibited Substance* or *Prohibited Method* by an *Athlete* or Other *Person*

2.8 *Administration* or *Attempted Administration* by an *Athlete* or Other *Person* to any *Athlete In-Competition* of any *Prohibited Substance* or *Prohibited Method*, or *Administration* or *Attempted Administration* to any *Athlete Out-of-Competition* of any *Prohibited Substance* or any *Prohibited Method* that is Prohibited *Out-of-Competition*

2.9 Complicity or *Attempted* Complicity by an *Athlete* or Other *Person*

Assisting, encouraging, aiding, abetting, conspiring, covering up or any other type of intentional complicity or *Attempted* complicity involving an anti-doping rule violation, *Attempted* anti-doping rule violation or violation of Article 10.14.1 by another *Person*.[14]

13 [Comment to Articles 2.6.1 and 2.6.2: Acceptable justification may include, for example, (a) an Athlete or a team doctor carrying Prohibited Substances or Prohibited Methods for dealing with acute and emergency situations (e.g., an epinephrine auto-injector), or (b) an Athlete Possessing a Prohibited Substance or Prohibited Method for therapeutic reasons shortly prior to applying for and receiving a determination on a TUE.]

14 [Comment to Article 2.9: Complicity or Attempted Complicity may include either physical or psychological assistance.]

2.10 Prohibited Association by an *Athlete* or Other *Person*

2.10.1 Association by an *Athlete* or other *Person* subject to the authority of an *Anti-Doping Organization* in a professional or sport-related capacity with any *Athlete Support Person* who:

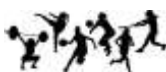
2.10.1.1 If subject to the authority of an *Anti-Doping Organization*, is serving a period of *Ineligibility*; or

2.10.1.2 If not subject to the authority of an *Anti-Doping Organization*, and where *Ineligibility* has not been addressed in a *Results Management* process pursuant to the *Code*, has been convicted or found in a criminal, disciplinary or professional proceeding to have engaged in conduct which would have constituted a violation of anti-doping rules if *Code*-compliant rules had been applicable to such *Person*. The disqualifying status of such *Person* shall be in force for the longer of six (6) years from the criminal, professional or disciplinary decision or the duration of the criminal, disciplinary or professional sanction imposed; or

2.10.1.3 Is serving as a front or intermediary for an individual described in Article 2.10.1.1 or 2.10.1.2.

2.10.2 To establish a violation of Article 2.10, an *Anti-Doping Organization* must establish that the *Athlete* or other *Person* knew of the *Athlete Support Person's* disqualifying status.

The burden shall be on the *Athlete* or other *Person* to establish that any association with an *Athlete Support Person* described in Article 2.10.1.1 or 2.10.1.2 is not in a professional or sport-related capacity and/or that such association could not have been reasonably avoided.



Anti-Doping Organizations that are aware of *Athlete Support Personnel* who meet the criteria described in Article 2.10.1.1, 2.10.1.2, or 2.10.1.3 shall submit that information to *WADA*.[15]

2.11 Acts by an *Athlete* or Other *Person* to Discourage or Retaliate Against Reporting to Authorities

Where such conduct does not otherwise constitute a violation of Article 2.5:

2.11.1 Any act which threatens or seeks to intimidate another *Person* with the intent of discouraging the *Person* from the good-faith reporting of information that relates to an alleged anti-doping rule violation or alleged non-compliance with the *Code* to *WADA*, an *Anti-Doping Organization*, law enforcement, regulatory or professional disciplinary body, hearing body or *Person* conducting an investigation for *WADA* or an *Anti-Doping Organization*.

2.11.2 Retaliation against a *Person* who, in good faith, has provided evidence or information that relates to an alleged anti-doping rule violation or alleged non-compliance with the *Code* to *WADA*, an *Anti-Doping Organization*, law enforcement, regulatory or professional disciplinary

15 [Comment to Article 2.10: Athletes and other Persons must not work with coaches, trainers, physicians or other Athlete Support Personnel who are Ineligible on account of an anti-doping rule violation or who have been criminally convicted or professionally disciplined in relation to doping. This also prohibits association with any other Athlete who is acting as a coach or Athlete Support Person while serving a period of Ineligibility. Some examples of the types of association which are prohibited include: obtaining training, strategy, technique, nutrition or medical advice; obtaining therapy, treatment or prescriptions; providing any bodily products for analysis; or allowing the Athlete Support Person to serve as an agent or representative. Prohibited association need not involve any form of compensation.

While Article 2.10 does not require the Anti-Doping Organization to notify the Athlete or other Person about the Athlete Support Person's disqualifying status, such notice, if provided, would be important evidence to establish that the Athlete or other Person knew about the disqualifying status of the Athlete Support Person.]

body, hearing body or *Person* conducting an investigation for *WADA* or an *Anti-Doping Organization*.[16]

For purposes of Article 2.11, retaliation, threatening and intimidation include an act taken against such *Person* either because the act lacks a good faith basis or is a disproportionate response.[17]

ARTICLE 3 PROOF OF DOPING

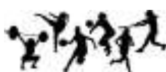
3.1 Burdens and Standards of Proof

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 panel, 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.[18] 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

16 *[Comment to Article 2.11.2: This Article is intended to protect Persons who make good faith reports, and does not protect Persons who knowingly make false reports.]*

17 *[Comment to Article 2.11.2: Retaliation would include, for example, actions that threaten the physical or mental well-being or economic interests of the reporting Persons, their families or associates. Retaliation would not include an Anti-Doping Organization asserting in good faith an anti-doping rule violation against the reporting Person. For purposes of Article 2.11, a report is not made in good faith where the Person making the report knows the report to be false.]*

18 *[Comment to Article 3.1: This standard of proof required to be met by the Anti-Doping Organization is comparable to the standard which is applied in most countries to cases involving professional misconduct.]*



facts or circumstances, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability.

3.2 Methods of Establishing Facts and Presumptions

Facts related to anti-doping rule violations may be established by any reliable means, including admissions.[19] The following rules of proof shall be applicable in doping cases:

3.2.1 Analytical methods or *Decision Limits* approved by *WADA* after consultation within the relevant scientific community or which have been the subject of peer review are presumed to be scientifically valid. Any *Athlete* or other *Person* seeking to challenge whether the conditions for such presumption have been met or to rebut this presumption of scientific validity shall, as a condition precedent to any such challenge, first notify *WADA* of the challenge and the basis of the challenge. The initial hearing body, appellate body or *CAS*, on its own initiative, may also inform *WADA* of any such challenge. Within ten (10) days of *WADA's* receipt of such notice and the case file related to such challenge, *WADA* shall also have the right to intervene as a party, appear as amicus curiae or otherwise provide evidence

19 [Comment to Article 3.2: For example, an Anti-Doping Organization may establish an anti-doping rule violation under Article 2.2 based on the Athlete's admissions, the credible testimony of third Persons, reliable documentary evidence, reliable analytical data from either an A or B Sample as provided in the Comments to Article 2.2, or conclusions drawn from the profile of a series of the Athlete's blood or urine Samples, such as data from the Athlete Biological Passport.]

in such proceeding. In cases before *CAS*, at *WADA's* request, the *CAS* panel shall appoint an appropriate scientific expert to assist the panel in its evaluation of the challenge.[20]

3.2.2 *WADA*-accredited laboratories, and other laboratories approved by *WADA*, are presumed to have conducted *Sample* analysis and custodial procedures in accordance with the *International Standard* for Laboratories. The *Athlete* or other *Person* may rebut this presumption by establishing that a departure from the *International Standard* for Laboratories occurred which could reasonably have caused the *Adverse Analytical Finding*.

If the *Athlete* or other *Person* rebuts the preceding presumption by showing that a departure from the *International Standard* for Laboratories occurred which could reasonably have caused the *Adverse Analytical Finding*, then the *Anti-Doping Organization* shall have the burden to establish that such departure did not cause the *Adverse Analytical Finding*.[21]

20 [Comment to Article 3.2.1: For certain Prohibited Substances, WADA may instruct WADA-accredited laboratories not to report Samples as an Adverse Analytical Finding if the estimated concentration of the Prohibited Substance or its Metabolites or Markers is below a Minimum Reporting Level. WADA's decision in determining that Minimum Reporting Level or in determining which Prohibited Substances should be subject to Minimum Reporting Levels shall not be subject to challenge. Further, the laboratory's estimated concentration of such Prohibited Substance in a Sample may only be an estimate. In no event shall the possibility that the exact concentration of the Prohibited Substance in the Sample may be below the Minimum Reporting Level constitute a defense to an anti-doping rule violation based on the presence of that Prohibited Substance in the Sample.]

21 [Comment to Article 3.2.2: The burden is on the Athlete or other Person to establish, by a balance of probability, a departure from the International Standard for Laboratories that could reasonably have caused the Adverse Analytical Finding. Thus, once the Athlete or other Person establishes the departure by a balance of probability, the Athlete or other Person's burden on causation is the somewhat lower standard of proof –

3.2.3 Departures from any other *International Standard* or other anti-doping rule or policy set forth in the *Code* or in an *Anti-Doping Organization's* rules shall not invalidate analytical results or other evidence of an anti-doping rule violation, and shall not constitute a defense to an anti-doping rule violation;[22] provided, however, if the *Athlete* or other *Person* establishes that a departure from one of the specific *International Standard* provisions listed below could reasonably have caused an anti-doping rule violation based on an *Adverse Analytical Finding* or whereabouts failure, then the *Anti-Doping Organization* shall have the burden to establish that such departure did not cause the *Adverse Analytical Finding* or whereabouts failure:

(i) a departure from the *International Standard* for *Testing* and Investigations related to *Sample* collection or *Sample* handling which could reasonably have caused an anti-doping rule violation based on an *Adverse Analytical Finding*, in which case the *Anti-Doping Organization* shall have the burden to establish that such departure did not cause the *Adverse Analytical Finding*;

(ii) a departure from the *International Standard* for *Results Management* or *International Standard* for

"could reasonably have caused." If the Athlete or other Person satisfies this standard, the burden shifts to the Anti-Doping Organization to prove to the comfortable satisfaction of the hearing panel that the departure did not cause the Adverse Analytical Finding.]

22 [Comment to Article 3.2.3: Departures from an International Standard or other rule unrelated to Sample collection or handling, Adverse Passport Finding, or Athlete notification relating to whereabouts failure or B Sample opening – e.g., the International Standard for Education, International Standard for the Protection of Privacy and Personal Information or International Standard for Therapeutic Use Exemptions – may result in compliance proceedings by WADA but are not a defense in an anti-doping rule violation proceeding and are not relevant on the issue of whether the Athlete committed an anti-doping rule violation. Similarly, an Anti-Doping Organization's violation of the document referenced in Article 20.7.7 shall not constitute a defense to an anti-doping rule violation.]

Testing and Investigations related to an *Adverse Passport Finding* which could reasonably have caused an anti-doping rule violation, in which case the *Anti-Doping Organization* shall have the burden to establish that such departure did not cause the anti-doping rule violation;

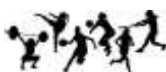
(iii) a departure from the *International Standard* for *Results Management* related to the requirement to provide notice to the *Athlete* of the B *Sample* opening which could reasonably have caused an anti-doping rule violation based on an *Adverse Analytical Finding*, in which case the *Anti-Doping Organization* shall have the burden to establish that such departure did not cause the *Adverse Analytical Finding*;[23]

(iv) a departure from the *International Standard* for *Results Management* related to *Athlete* notification which could reasonably have caused an anti-doping rule violation based on a whereabouts failure, in which case the *Anti-Doping Organization* shall have the burden to establish that such departure did not cause the whereabouts failure.

3.2.4 The facts established by a decision of a court or professional disciplinary tribunal of competent jurisdiction which is not the subject of a pending appeal shall be irrebuttable evidence against the *Athlete* or other *Person* to whom the decision pertained of those facts unless the *Athlete* or other *Person* establishes that the decision violated principles of natural justice.

3.2.5 The hearing panel in a hearing on an anti-doping rule violation may draw an inference adverse to the *Athlete* or other *Person* who is asserted to

23 [Comment to Article 3.2.3 (iii): An *Anti-Doping Organization* would meet its burden to establish that such departure did not cause the *Adverse Analytical Finding* by showing that, for example, the B *Sample* opening and analysis were observed by an independent witness and no irregularities were observed.]



have committed an anti-doping rule violation based on the *Athlete's* or other *Person's* refusal, after a request made in a reasonable time in advance of the hearing, to appear at the hearing (either in person or telephonically as directed by the hearing panel) and to answer questions from the hearing panel or the *Anti-Doping Organization* asserting the anti-doping rule violation.

ARTICLE 4 THE *PROHIBITED LIST*

4.1 Publication and Revision of the *Prohibited List*

WADA shall, as often as necessary and no less often than annually, publish the *Prohibited List* as an *International Standard*. The proposed content of the *Prohibited List* and all revisions shall be provided in writing promptly to all *Signatories* and governments for comment and consultation. Each annual version of the *Prohibited List* and all revisions shall be distributed promptly by *WADA* to each *Signatory*, *WADA*-accredited or approved laboratory, and government, and shall be published on *WADA's* website, and each *Signatory* shall take appropriate steps to distribute the *Prohibited List* to its members and constituents. The rules of each *Anti-Doping Organization* shall specify that, unless provided otherwise in the *Prohibited List* or a revision, the *Prohibited List* and revisions shall go into effect under the *Anti-Doping Organization's* rules three (3) months after publication of the *Prohibited List* by *WADA* without requiring any further action by the *Anti-Doping Organization*.[24]

24 [Comment to Article 4.1: The Prohibited List will be revised and published on an expedited basis whenever the need arises. However, for the sake of predictability, a new Prohibited List will be published every year whether or not changes have been made. WADA will always have the most current Prohibited List published on its website. The Prohibited List is an integral part of the International Convention against Doping in Sport. WADA will inform the Director-General of UNESCO of any change to the Prohibited List.]

4.2 *Prohibited Substances* and *Prohibited Methods* Identified on the *Prohibited List*

4.2.1 *Prohibited Substances* and *Prohibited Methods*

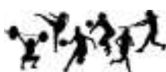
The *Prohibited List* shall identify those *Prohibited Substances* and *Prohibited Methods* which are prohibited as doping at all times (both *In-Competition* and *Out-of-Competition*) because of their potential to enhance performance in future *Competitions* or their masking potential, and those substances and methods which are prohibited *In-Competition* only. The *Prohibited List* may be expanded by *WADA* for a particular sport. *Prohibited Substances* and *Prohibited Methods* may be included in the *Prohibited List* by general category (e.g., anabolic agents) or by specific reference to a particular Substance or Method.[25]

4.2.2 *Specified Substances* or *Specified Methods*

For purposes of the application of Article 10, all *Prohibited Substances* shall be *Specified Substances* except as identified on the *Prohibited List*. No *Prohibited Method* shall be a *Specified Method* unless it is specifically identified as a *Specified Method* on the *Prohibited List*.[26]

25 [Comment to Article 4.2.1: Out-of-Competition Use of a Substance which is only prohibited In-Competition is not an anti-doping rule violation unless an Adverse Analytical Finding for the Substance or its Metabolites or Markers is reported for a Sample collected In-Competition.]

26 [Comment to Article 4.2.2: The Specified Substances and Specified Methods identified in Article 4.2.2 should not in any way be considered less important or less dangerous than other doping Substances or methods. Rather, they are simply Substances and Methods which are more likely to have been consumed or used by an Athlete for a purpose other than the enhancement of sport performance.]



4.2.3 *Substances of Abuse*

For purposes of applying Article 10, *Substances of Abuse* shall include those *Prohibited Substances* which are specifically identified as *Substances of Abuse* on the *Prohibited List* because they are frequently abused in society outside of the context of sport.

4.2.4 New Classes of *Prohibited Substances* or *Prohibited Methods*

In the event *WADA* expands the *Prohibited List* by adding a new class of *Prohibited Substances* or *Prohibited Methods* in accordance with Article 4.1, *WADA's* Executive Committee shall determine whether any or all *Prohibited Substances* or *Prohibited Methods* within the new class shall be considered *Specified Substances* or *Specified Methods* under Article 4.2.2 or *Substances of Abuse* under Article 4.2.3.

4.3 Criteria for Including Substances and Methods on the *Prohibited List*

WADA shall consider the following criteria in deciding whether to include a substance or method on the *Prohibited List*:

4.3.1 A substance or method shall be considered for inclusion on the *Prohibited List* if *WADA*, in its sole discretion, determines that the substance or method meets any two of the following three criteria:

4.3.1.1 Medical or other scientific evidence, pharmacological effect or experience that the substance or method, alone or in combination with other substances or methods, has the potential to enhance or enhances sport performance;[27]

4.3.1.2 Medical or other scientific evidence, pharmacological effect or experience that the *Use* of the substance or method represents an actual or potential health risk to the *Athlete*;

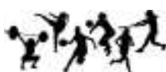
4.3.1.3 *WADA's* determination that the *Use* of the substance or method violates the spirit of sport described in the introduction to the *Code*.

4.3.2 A substance or method shall also be included on the *Prohibited List* if *WADA* determines there is medical or other scientific evidence, pharmacological effect or experience that the substance or method has the potential to mask the *Use* of other *Prohibited Substances* or *Prohibited Methods*.[28]

4.3.3 *WADA's* determination of the *Prohibited Substances* and *Prohibited Methods* that will be included on the *Prohibited List*, the classification of substances into categories on the *Prohibited List*, the classification of a substance as prohibited at all times or *In-Competition* only, the classification of a substance or method

27 [Comment to Article 4.3.1.1: This Article anticipates that there may be substances that, when used alone, are not prohibited but which will be prohibited if used in combination with certain other substances. A substance which is added to the Prohibited List because it has the potential to enhance performance only in combination with another substance shall be so noted and shall be prohibited only if there is evidence relating to both substances in combination.]

28 [Comment to Article 4.3.2: As part of the process each year, all Signatories, governments and other interested Persons are invited to provide comments to WADA on the content of the Prohibited List.]



as a *Specified Substance*, *Specified Method* or *Substance of Abuse* is final and shall not be subject to any challenge by an *Athlete* or other *Person* including, but not limited to, any challenge based on an argument that the substance or method was not a masking agent or did not have the potential to enhance performance, represent a health risk or violate the spirit of sport.

4.4 Therapeutic Use Exemptions ("TUEs")

4.4.1 The presence of a *Prohibited Substance* or its *Metabolites* or *Markers*, and/or the *Use* or *Attempted Use*, *Possession* or *Administration* or *Attempted Administration* of a *Prohibited Substance* or *Prohibited Method* shall not be considered an anti-doping rule violation if it is consistent with the provisions of a *TUE* granted in accordance with the *International Standard* for *Therapeutic Use Exemptions*.

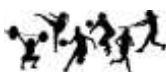
4.4.2 *Athletes* who are not *International-Level Athletes* shall apply to their *National Anti-Doping Organization* for a *TUE*. If the *National Anti-Doping Organization* denies the application, the *Athlete* may appeal exclusively to the appellate body described in Article 13.2.2.

4.4.3 *Athletes* who are *International-Level Athletes* shall apply to their International Federation.[29]

29 [Comment to Article 4.4.3: If the International Federation refuses to recognize a TUE granted by a National Anti-Doping Organization only because medical records or other information are missing that are needed to demonstrate satisfaction with the criteria in the International Standard for Therapeutic Use Exemptions, the matter should not be referred to WADA. Instead, the file should be completed and re-submitted to the International Federation.

If an International Federation chooses to test an Athlete who is not an International-Level Athlete, it must recognize a TUE granted by that Athlete's National Anti-Doping Organization.]

4.4.3.1 Where the *Athlete* already has a *TUE* granted by their *National Anti-Doping Organization* for the substance or method in question, if that *TUE* meets the criteria set out in the *International Standard* for *Therapeutic Use Exemptions*, then the International Federation must recognize it. If the International Federation considers that the *TUE* does not meet those criteria and so refuses to recognize it, it must notify the *Athlete* and the *Athlete's National Anti-Doping Organization* promptly, with reasons. The *Athlete* or the *National Anti-Doping Organization* shall have twenty-one (21) days from such notification to refer the matter to *WADA* for review. If the matter is referred to *WADA* for review, the *TUE* granted by the *National Anti-Doping Organization* remains valid for national-level *Competition* and *Out-of-Competition Testing* (but is not valid for international-level *Competition*) pending *WADA's* decision. If the matter is not referred to *WADA* for review within the twenty-one-day deadline, the *Athlete's National Anti-Doping Organization* must determine whether the original *TUE* granted by that *National Anti-Doping Organization* should nevertheless remain valid for national-level *Competition* and *Out-of-Competition Testing* (provided that the *Athlete* ceases to be an *International-Level Athlete* and does not participate in international-level *Competition*). Pending the *National Anti-Doping Organization's* decision, the *TUE* remains valid for national-level *Competition* and *Out-of-Competition Testing* (but is not valid for international-level *Competition*).



4.4.3.2 If the *Athlete* does not already have a *TUE* granted by their *National Anti-Doping Organization* for the substance or method in question, the *Athlete* must apply directly to the *Athlete's* International Federation for a *TUE* as soon as the need arises. If the International Federation (or the *National Anti-Doping Organization*, where it has agreed to consider the application on behalf of the International Federation) denies the *Athlete's* application, it must notify the *Athlete* promptly, with reasons. If the International Federation grants the *Athlete's* application, it must notify not only the *Athlete* but also the *Athlete's National Anti-Doping Organization*, and if the *National Anti-Doping Organization* considers that the *TUE* does not meet the criteria set out in the *International Standard* for *Therapeutic Use Exemptions*, it has twenty-one (21) days from such notification to refer the matter to *WADA* for review. If the *National Anti-Doping Organization* refers the matter to *WADA* for review, the *TUE* granted by the International Federation remains valid for international-level *Competition* and *Out-of-Competition Testing* (but is not valid for national-level *Competition*) pending *WADA's* decision. If the *National Anti-Doping Organization* does not refer the matter to *WADA* for review, the *TUE* granted by the International Federation becomes valid for national-level *Competition* as well when the twenty-one (21) day review deadline expires.

4.4.4 A *Major Event Organization* may require *Athletes* to apply to it for a *TUE* if they wish to *Use* a

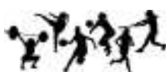
Prohibited Substance or a *Prohibited Method* in connection with the *Event*. In that case:

4.4.4.1 The *Major Event Organization* must ensure a process is available for an *Athlete* to apply for a *TUE* if he or she does not already have one. If the *TUE* is granted, it is effective for its *Event* only.

4.4.4.2 Where the *Athlete* already has a *TUE* granted by the *Athlete's National Anti-Doping Organization* or International Federation, if that *TUE* meets the criteria set out in the *International Standard* for *Therapeutic Use Exemptions*, the *Major Event Organization* must recognize it. If the *Major Event Organization* decides the *TUE* does not meet those criteria and so refuses to recognize it, it must notify the *Athlete* promptly, explaining its reasons.

4.4.4.3 A decision by a *Major Event Organization* not to recognize or not to grant a *TUE* may be appealed by the *Athlete* exclusively to an independent body established or appointed by the *Major Event Organization* for that purpose. If the *Athlete* does not appeal (or the appeal is unsuccessful), the *Athlete* may not *Use* the substance or method in question in connection with the *Event*, but any *TUE* granted by the *Athlete's National Anti-Doping Organization* or International Federation for that substance or method remains valid outside of that *Event*.[30]

30 [Comment to Article 4.4.4.3: For example, the CAS Ad Hoc Division or a similar body may act as the independent appeal body for particular Events, or WADA may agree to perform that function. If neither CAS nor WADA are performing that function, WADA retains the right (but not the obligation) to review the TUE decisions made in connection with the Event at any time, in accordance with Article 4.4.6.]



4.4.5 If an *Anti-Doping Organization* chooses to collect a *Sample* from an *Athlete* who is not an *International-Level Athlete* or *National-Level Athlete*, and that *Athlete* is *Using* a *Prohibited Substance* or *Prohibited Method* for therapeutic reasons, the *Anti-Doping Organization* must permit the *Athlete* to apply for a retroactive *TUE*.

4.4.6 *WADA* must review an International Federation's decision not to recognize a *TUE* granted by the *National Anti-Doping Organization* that is referred to it by the *Athlete* or the *Athlete's National Anti-Doping Organization*. In addition, *WADA* must review an International Federation's decision to grant a *TUE* that is referred to it by the *Athlete's National Anti-Doping Organization*. *WADA* may review any other *TUE* decisions at any time, whether upon request by those affected or on its own initiative. If the *TUE* decision being reviewed meets the criteria set out in the *International Standard* for *Therapeutic Use Exemptions*, *WADA* will not interfere with it. If the *TUE* decision does not meet those criteria, *WADA* will reverse it.[31]

4.4.7 Any *TUE* decision by an International Federation (or by a *National Anti-Doping Organization* where it has agreed to consider the application on behalf of an International Federation) that is not reviewed by *WADA*, or that is reviewed by *WADA* but is not reversed upon review, may be appealed by the *Athlete* and/or the *Athlete's National Anti-Doping Organization*, exclusively to *CAS*.[32]

31 [Comment to Article 4.4.6: WADA shall be entitled to charge a fee to cover the costs of: (a) any review it is required to conduct in accordance with Article 4.4.6; and (b) any review it chooses to conduct, where the decision being reviewed is reversed.]

32 [Comment to Article 4.4.7: In such cases, the decision being appealed is the International Federation's TUE decision, not WADA's decision not to review the TUE decision or (having reviewed it) not to reverse the TUE decision. However, the time to appeal the TUE decision does not begin to run until the date that WADA communicates its decision. In any event, whether the decision has been reviewed by WADA or not, WADA shall be given notice of the appeal so that it may participate if it sees fit.]

4.4.8 A decision by *WADA* to reverse a *TUE* decision may be appealed by the *Athlete*, the *National Anti-Doping Organization* and/or the International Federation affected, exclusively to *CAS*.

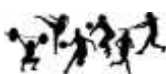
4.4.9 A failure to render a decision within a reasonable time on a properly submitted application for grant/recognition of a *TUE* or for review of a *TUE* decision shall be considered a denial of the application thus triggering the applicable rights of review/appeal.

4.5 Monitoring Program

WADA, in consultation with *Signatories* and governments, shall establish a monitoring program regarding substances which are not on the *Prohibited List*, but which *WADA* wishes to monitor in order to detect potential patterns of misuse in sport. In addition, *WADA* may include in the monitoring program substances that are on the *Prohibited List*, but which are to be monitored under certain circumstances—e.g., *Out-of-Competition Use* of some substances prohibited *In-Competition* only or the combined *Use* of multiple substances at low doses ("stacking")—in order to establish prevalence of *Use* or to be able to implement adequate decisions in regards to their analysis by laboratories or their status within the *Prohibited List*.

WADA shall publish the substances that will be monitored.[33] Laboratories will report the instances of reported *Use* or detected presence of these substances to *WADA*. *WADA* shall make available to International Federations and *National Anti-Doping Organizations*, on at least an annual basis, aggregate information by sport regarding the monitored substances. Such monitoring program reports shall not contain additional details that

33 [Comment to Article 4.5: In order to improve the efficiency of the monitoring program, once a new substance is added to the published monitoring program, laboratories may re-process data and Samples previously analyzed in order to determine the absence or presence of any new substance.]



could link the monitoring results to specific *Samples*. *WADA* shall implement measures to ensure that strict anonymity of individual *Athletes* is maintained with respect to such reports. The reported *Use* or detected presence of a monitored substance shall not constitute an anti-doping rule violation.

ARTICLE 5 *TESTING* AND INVESTIGATIONS

5.1 Purpose of *Testing* and Investigations

Testing and investigations may be undertaken for any anti-doping purpose.[34]

5.1.1 *Testing* shall be undertaken to obtain analytical evidence as to whether the *Athlete* has violated Article 2.1 (Presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's Sample*) or Article 2.2 (*Use* or *Attempted Use* by an *Athlete* of a *Prohibited Substance* or a *Prohibited Method*) of the *Code*.

5.2 Authority to Test

Any *Athlete* may be required to provide a *Sample* at any time and at any place by any *Anti-Doping Organization* with *Testing* authority over him or her.[35] Subject to the limitations for *Event Testing* set out in Article 5.3:

34 [Comment to Article 5.1: Where Testing is conducted for anti-doping purposes, the analytical results and data may be used for other legitimate purposes under the Anti-Doping Organization's rules. See, e.g., Comment to Article 23.2.2.]

35 [Comment to Article 5.2: Additional authority to conduct Testing may be conferred by means of bilateral or multilateral agreements among Signatories. Unless the Athlete has identified a sixty-minute Testing window during the following described time period, or otherwise consented to Testing during that period, before Testing an Athlete between the hours of 11:00 p.m. and 6:00 a.m., an Anti-Doping Organization should have serious and specific suspicion that the Athlete may be engaged in doping. A challenge to whether an Anti-Doping Organization had sufficient suspicion for Testing during this time period shall not be a defense to an anti-doping rule violation based on such test or attempted test.]

5.2.1 Each *National Anti-Doping Organization* shall have *In-Competition* and *Out-of-Competition Testing* authority over all *Athletes* who are nationals, residents, license-holders or members of sport organizations of that country or who are present in that *National Anti-Doping Organization's* country.

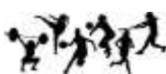
5.2.2 Each International Federation shall have *In-Competition* and *Out-of-Competition Testing* authority over all *Athletes* who are subject to its rules, including those who participate in *International Events* or who participate in *Events* governed by the rules of that International Federation, or who are members or license-holders of that International Federation or its member National Federations, or their members.

5.2.3 Each *Major Event Organization*, including the International Olympic Committee and the International Paralympic Committee, shall have *In-Competition Testing* authority for its *Events* and *Out-of-Competition Testing* authority over all *Athletes* entered in one of its future *Events* or who have otherwise been made subject to the *Testing* authority of the *Major Event Organization* for a future *Event*.

5.2.4 *WADA* shall have *In-Competition* and *Out-of-Competition Testing* authority as set out in Article 20.7.10.

5.2.5 *Anti-Doping Organizations* may test any *Athlete* over whom they have *Testing* authority who has not retired, including *Athletes* serving a period of *Ineligibility*.

5.2.6 If an International Federation or *Major Event Organization* delegates or contracts any part of *Testing* to a *National Anti-Doping Organization* directly or through a National Federation, that *National Anti-Doping Organization* may collect additional *Samples* or direct the laboratory to perform additional types of analysis at the *National Anti-Doping Organization's* expense. If



additional *Samples* are collected or additional types of analysis are performed, the International Federation or *Major Event Organization* shall be notified.

5.3 *Event Testing*

5.3.1 Except as otherwise provided below, only a single organization shall have authority to conduct *Testing* at *Event Venues* during an *Event Period*. At *International Events*, the international organization which is the ruling body for the *Event* (e.g., the International Olympic Committee for the Olympic Games, the International Federation for a World Championship and Panam Sports for the Pan American Games) shall have authority to conduct *Testing*. At *National Events*, the *National Anti-Doping Organization* of that country shall have authority to conduct *Testing*. At the request of the ruling body for an *Event*, any *Testing* during the *Event Period* outside of the *Event Venues* shall be coordinated with that ruling body.[36]

5.3.2 If an *Anti-Doping Organization*, which would otherwise have *Testing* authority but is not responsible for initiating and directing *Testing* at an *Event*, desires to conduct *Testing* of *Athletes* at the *Event Venues* during the *Event Period*, the *Anti-Doping Organization* shall first confer with the ruling body of the *Event* to obtain permission to conduct and coordinate such *Testing*. If the *Anti-Doping Organization* is not satisfied with the response from the ruling body of the *Event*, the *Anti-Doping Organization* may, in accordance with procedures described in the *International Standard* for *Testing* and Investigations, ask *WADA* for permission to conduct *Testing* and to

36 [Comment to Article 5.3.1: Some ruling bodies for International Events may be doing their own Testing outside of the Event Venues during the Event Period and thus want to coordinate that Testing with National Anti-Doping Organization Testing.]

determine how to coordinate such *Testing*. *WADA* shall not grant approval for such *Testing* before consulting with and informing the ruling body for the *Event*. *WADA's* decision shall be final and not subject to appeal. Unless otherwise provided in the authorization to conduct *Testing*, such tests shall be considered *Out-of-Competition* tests. *Results Management* for any such test shall be the responsibility of the *Anti-Doping Organization* initiating the test unless provided otherwise in the rules of the ruling body of the *Event*.[37]

5.4 *Testing* Requirements

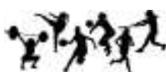
5.4.1 *Anti-Doping Organizations* shall conduct test distribution planning and *Testing* as required by the *International Standard* for *Testing* and Investigations.

5.4.2 Where reasonably feasible, *Testing* shall be coordinated through *ADAMS* in order to maximize the effectiveness of the combined *Testing* effort and to avoid unnecessary repetitive *Testing*.

5.5 *Athlete* Whereabouts Information

Athletes who have been included in a *Registered Testing Pool* by their International Federation and/or *National Anti-Doping Organization* shall provide whereabouts information in the manner specified in the *International Standard* for *Testing* and Investigations and shall be subject to *Consequences* for Article 2.4 violations as provided in Article 10.3.2. The International Federations

37 [Comment to Article 5.3.2: Before giving approval to a National Anti-Doping Organization to initiate and conduct Testing at an International Event, WADA shall consult with the international organization which is the ruling body for the Event. Before giving approval to an International Federation to initiate and conduct Testing at a National Event, WADA shall consult with the National Anti-Doping Organization of the country where the Event takes place. The Anti-Doping Organization "initiating and directing Testing" may, if it chooses, enter into agreements with a Delegated Third Party to which it delegates responsibility for Sample collection or other aspects of the Doping Control process.]



and *National Anti-Doping Organizations* shall coordinate the identification of such *Athletes* and the collection of their whereabouts information. Each International Federation and *National Anti-Doping Organization* shall make available through *ADAMS* a list which identifies those Athletes included in its *Registered Testing Pool* by name. *Athletes* shall be notified before they are included in a *Registered Testing Pool* and when they are removed from that pool. The whereabouts information they provide while in the *Registered Testing Pool* will be accessible through *ADAMS* to *WADA* and to other *Anti-Doping Organizations* having authority to test the *Athlete* as provided in Article 5.2. Whereabouts information shall be maintained in strict confidence at all times; shall be used exclusively for purposes of planning, coordinating or conducting *Doping Control*, providing information relevant to the *Athlete Biological Passport* or other analytical results, to support an investigation into a potential anti-doping rule violation, or to support proceedings alleging an anti-doping rule violation; and shall be destroyed after it is no longer relevant for these purposes in accordance with the International Standard for the Protection of Privacy and Personal Information.

Anti-Doping Organizations may, in accordance with the *International Standard* for *Testing* and Investigations, collect whereabouts information from *Athletes* who are not included within a *Registered Testing Pool* and impose appropriate and proportionate non-*Code* Article 2.4 consequences under their own rules.

5.6 Retired *Athletes* Returning to *Competition*

5.6.1 If an *International-* or *National-Level Athlete* in a *Registered Testing Pool* retires and then wishes to return to active participation in sport, the *Athlete* shall not compete in *International Events* or *National Events* until the *Athlete* has made himself or herself available for *Testing*, by giving six-months prior written notice to their International Federation and *National Anti-Doping Organization*. *WADA*, in consultation

with the relevant International Federation and *National Anti-Doping Organization*, may grant an exemption to the six-month written notice rule where the strict application of that rule would be unfair to an *Athlete*. This decision may be appealed under Article 13.[38]

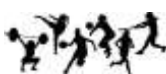
5.6.1.1 Any competitive results obtained in violation of Article 5.6.1 shall be *Disqualified* unless the *Athlete* can establish that he or she could not have reasonably known that this was an *International Event* or a *National Event*.

5.6.2 If an *Athlete* retires from sport while subject to a period of *Ineligibility*, the *Athlete* must notify the *Anti-Doping Organization* that imposed the period of *Ineligibility* in writing of such retirement. If the *Athlete* then wishes to return to active competition in sport, the *Athlete* shall not compete in *International Events* or *National Events* until the *Athlete* has made himself or herself available for *Testing* by giving six-month prior written notice (or notice equivalent to the period of *Ineligibility* remaining as of the date the *Athlete* retired, if that period was longer than six (6) months) to the *Athlete's* International Federation and *National Anti-Doping Organization*.

5.7 Investigations and Intelligence Gathering

Anti-Doping Organizations shall have the capability to conduct, and shall conduct, investigations and gather intelligence as required by the *International Standard* for *Testing* and Investigations.

38 [Comment to Article 5.6.1: Guidance for determining whether an exemption is warranted will be provided by WADA.]



ARTICLE 6 ANALYSIS OF *SAMPLES*

Samples shall be analyzed in accordance with the following principles:

6.1 Use of Accredited, Approved Laboratories and Other Laboratories

For purposes of directly establishing an *Adverse Analytical Finding* under Article 2.1, *Samples* shall be analyzed only in *WADA*-accredited laboratories or laboratories otherwise approved by *WADA*. The choice of the *WADA*-accredited or *WADA*-approved laboratory used for the *Sample* analysis shall be determined exclusively by the *Anti-Doping Organization* responsible for *Results Management*.[39]

6.1.1 As provided in Article 3.2, facts related to anti-doping rule violations may be established by any reliable means. This would include, for example, reliable laboratory or other forensic testing conducted outside of *WADA*-accredited or approved laboratories.

39 [Comment to Article 6.1: For cost and geographic access reasons, WADA may approve laboratories which are not WADA-accredited to perform particular analyses, for example, analysis of blood which should be delivered from the collection site to the laboratory within a set deadline. Before approving any such laboratory, WADA will ensure it meets the high analytical and custodial standards required by WADA. Violations of Article 2.1 may be established only by Sample analysis performed by a WADA-accredited laboratory or another laboratory approved by WADA. Violations of other Articles may be established using analytical results from other laboratories so long as the results are reliable.]

6.2 Purpose of Analysis of *Samples* and Data

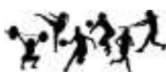
Samples and related analytical data or *Doping Control* information shall be analyzed to detect *Prohibited Substances* and *Prohibited Methods* identified on the *Prohibited List* and other substances as may be directed by *WADA* pursuant to Article 4.5, or to assist an *Anti-Doping Organization* in profiling relevant parameters in an *Athlete's* urine, blood or other matrix, including for DNA or genomic profiling, or for any other legitimate anti-doping purpose.[40]

6.3 Research on *Samples* and Data

Samples, related analytical data and *Doping Control* information may be used for anti-doping research purposes, although no *Sample* may be used for research without the *Athlete's* written consent. *Samples* and related analytical data or *Doping Control* information used for research purposes shall first be processed in such a manner as to prevent *Samples* and related analytical data or *Doping Control* information being traced back to a particular *Athlete*.[41] Any research involving *Samples* and related analytical data or *Doping Control* information shall adhere to the principles set out in Article 19.

40 [Comment to Article 6.2: For example, relevant Doping Control-related information could be used to direct Target Testing or to support an anti-doping rule violation proceeding under Article 2.2, or both. See also Comments to Articles 5.1 and 23.2.2.]

41 [Comment to Article 6.3: As is the case in most medical or scientific contexts, use of Samples and related information for quality assurance, quality improvement, method improvement and development or to establish reference populations is not considered research. Samples and related information used for such permitted non-research purposes must also first be processed in such a manner as to prevent them from being traced back to the particular Athlete, having due regard to the principles set out in Article 19, as well as the requirements of the International Standard for Laboratories and International Standard for the Protection of Privacy and Personal Information.]



6.4 Standards for *Sample* Analysis and Reporting[42]

Laboratories shall analyze *Samples* and report results in conformity with the *International Standard* for Laboratories.

6.4.1 Laboratories at their own initiative and expense may analyze *Samples* for *Prohibited Substances* or *Prohibited Methods* not included on the standard *Sample* analysis menu, or as requested by the *Anti-Doping Organization* that initiated and directed *Sample* collection. Results from any such analysis shall be reported to that *Anti-Doping Organization* and have the same validity and *Consequences* as any other analytical result.

6.5 Further Analysis of a *Sample* Prior to or During *Results Management*

There shall be no limitation on the authority of a laboratory to conduct repeat or additional analysis on a *Sample* prior to the time an *Anti-Doping Organization* notifies an *Athlete* that the *Sample* is the basis for an Article 2.1 anti-doping rule violation charge. If after such notification the *Anti-Doping Organization* wishes to conduct additional analysis on that *Sample*, it may do so with the consent of the *Athlete* or approval from a hearing body.

6.6 Further Analysis of a *Sample* After it has been Reported as Negative or has Otherwise not Resulted in an Anti-Doping Rule Violation Charge

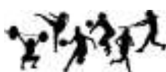
After a laboratory has reported a *Sample* as negative, or the *Sample* has not otherwise resulted in an anti-doping rule violation charge, it may be stored and subjected to further analyses for the purpose of Article 6.2 at any

42 [Comment to Article 6.4: The objective of this Article is to extend the principle of "Intelligent Testing" to the Sample analysis menu so as to most effectively and efficiently detect doping. It is recognized that the resources available to fight doping are limited and that increasing the Sample analysis menu may, in some sports and countries, reduce the number of Samples which can be analyzed.]

time exclusively at the direction of either the *Anti-Doping Organization* that initiated and directed *Sample* collection or *WADA*. Any other *Anti-Doping Organization* with authority to test the *Athlete* that wishes to conduct further analysis on a stored *Sample* may do so with the permission of the *Anti-Doping Organization* that initiated and directed *Sample* collection or *WADA*, and shall be responsible for any follow-up *Results Management*. Any *Sample* storage or further analysis initiated by *WADA* or another *Anti-Doping Organization* shall be at *WADA*'s or that organization's expense. Further analysis of *Samples* shall conform with the requirements of the *International Standard* for Laboratories.

6.7 Split of A or B *Sample*

Where *WADA*, an *Anti-Doping Organization* with *Results Management* authority and/or a *WADA*-accredited laboratory (with approval from *WADA* or the *Anti-Doping Organization* with *Results Management* authority) wishes to split an A or B *Sample* for the purpose of using the first part of the split *Sample* for an A *Sample* analysis and the second part of the split *Sample* for confirmation, then the procedures set forth in the *International Standard* for Laboratories shall be followed.



6.8 *WADA's* Right to Take Possession of *Samples* and Data

WADA may, in its sole discretion at any time, with or without prior notice, take physical possession of any *Sample* and related analytical data or information in the possession of a laboratory or *Anti-Doping Organization*. Upon request by *WADA*, the laboratory or *Anti-Doping Organization* in possession of the *Sample* or data shall immediately grant access to and enable *WADA* to take physical possession of the *Sample* or data.[43] If *WADA* has not provided prior notice to the laboratory or *Anti-Doping Organization* before taking possession of a *Sample* or data, it shall provide such notice to the laboratory and to each *Anti-Doping Organization* whose *Samples* or data have been taken by *WADA* within a reasonable time after taking possession. After analysis and any investigation of a seized *Sample* or data, *WADA* may direct another *Anti-Doping Organization* with authority to test the *Athlete* to assume *Results Management* responsibility for the *Sample* or data if a potential anti-doping rule violation is discovered.[44]

43 [Comment to Article 6.8: Resistance or refusal to WADA taking physical possession of Samples or data could constitute Tampering, Complicity or an act of non-compliance as provided in the International Standard for Code Compliance by Signatories, and could also constitute a violation of the International Standard for Laboratories. Where necessary, the laboratory and/or the Anti-Doping Organization shall assist WADA in ensuring that the seized Sample or data are not delayed in exiting the applicable country.]

44 [Comment to Article 6.8: WADA would not, of course, unilaterally take possession of Samples or analytical data without good cause related to a potential anti-doping rule violation, non-compliance by a Signatory or doping activities by another Person. However, the decision as to whether good cause exists is for WADA to make in its discretion and shall not be subject to challenge. In particular, whether there is good cause or not shall not be a defense against an anti-doping rule violation or its Consequences.]

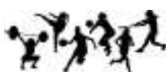
ARTICLE 7 *RESULTS MANAGEMENT*: RESPONSIBILITY, INITIAL REVIEW, NOTICE AND *PROVISIONAL SUSPENSIONS*[45]

Results Management under the *Code* (as set forth in Articles 7, 8 and 13) establishes a process designed to resolve anti-doping rule violation matters in a fair, expeditious and efficient manner. Each *Anti-Doping Organization* conducting *Results Management* shall establish a process for the pre-hearing administration of potential anti-doping rule violations that respects the principles set forth in this Article. While each *Anti-Doping Organization* is permitted to adopt and implement its own *Results Management* process, *Results Management* for every *Anti-Doping Organization* shall at a minimum meet the requirements set forth in the *International Standard* for *Results Management*.

7.1 Responsibility for Conducting *Results Management*

Except as otherwise provided in Articles 6.6, 6.8 and 7.1.3 through 7.1.5 below, *Results Management* shall be the responsibility of, and shall be governed by, the procedural rules of the *Anti-Doping Organization* that initiated and directed *Sample* collection (or, if no *Sample* collection is involved, the *Anti-Doping Organization* which first provides notice to an *Athlete* or other *Person* of a potential anti-doping rule violation and then diligently

45 [Comment to Article 7: Various Signatories have created their own approaches to Results Management. While the various approaches have not been entirely uniform, many have proven to be fair and effective systems for Results Management. The Code does not supplant each of the Signatories' Results Management systems. This Article and the International Standard for Results Management do, however, specify basic principles in order to ensure the fundamental fairness of the Results Management process which must be observed by each Signatory. The specific anti-doping rules of each Signatory shall be consistent with these basic principles. Not all anti-doping proceedings which have been initiated by an Anti-Doping Organization need to go to hearing. There may be cases where the Athlete or other Person agrees to the sanction which is either mandated by the Code or which the Anti-Doping Organization considers appropriate where flexibility in sanctioning is permitted. In all cases, a sanction imposed on the basis of such an agreement will be reported to parties with a right to appeal under Article 13.2.3 as provided in Article 14 and published as provided in Article 14.3.]



pursues that anti-doping rule violation). Regardless of which organization conducts *Results Management*, it shall respect the *Results Management* principles set forth in this Article, Article 8, Article 13 and the *International Standard* for *Results Management*, and each *Anti-Doping Organization's* rules shall incorporate and implement the rules identified in Article 23.2.2 without substantive change.

7.1.1 If a dispute arises between *Anti-Doping Organizations* over which *Anti-Doping Organization* has *Results Management* responsibility, *WADA* shall decide which organization has such responsibility. *WADA's* decision may be appealed to *CAS* within seven (7) days of notification of the *WADA* decision by any of the *Anti-Doping Organizations* involved in the dispute. The appeal shall be dealt with by *CAS* in an expedited manner and shall be heard before a single arbitrator. Any *Anti-Doping Organization* seeking to conduct *Results Management* outside of the authority provided in this Article 7.1 may seek approval to do so from *WADA*.

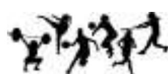
7.1.2 Where a *National Anti-Doping Organization* elects to collect additional *Samples* pursuant to Article 5.2.6, then it shall be considered the *Anti-Doping Organization* that initiated and directed *Sample* collection. However, where the *National Anti-Doping Organization* only directs the laboratory to perform additional types of analysis at the *National Anti-Doping Organization's* expense, then the International Federation or *Major Event Organization* shall be considered the *Anti-Doping Organization* that initiated and directed *Sample* collection.

7.1.3 In circumstances where the rules of a *National Anti-Doping Organization* do not give the *National Anti-Doping Organization* authority over an *Athlete* or other *Person* who is not a national, resident, license holder, or member of a sport

organization of that country, or the *National Anti-Doping Organization* declines to exercise such authority, *Results Management* shall be conducted by the applicable International Federation or by a third party with authority over the *Athlete* or other *Person* as directed by the rules of the International Federation. For *Results Management* purposes, for a test or a further analysis conducted by *WADA* on its own initiative, or an anti-doping rule violation discovered by *WADA*, *WADA* shall designate an *Anti-Doping Organization* with authority over the *Athlete* or other *Person*.[46]

7.1.4 For *Results Management* relating to a *Sample* initiated and taken during an *Event* conducted by a *Major Event Organization*, or an anti-doping rule violation occurring during such *Event*, the *Major Event Organization* for that *Event* shall assume *Results Management* responsibility to at least the limited extent of conducting a hearing to determine whether an anti-doping rule violation was committed and, if so, the applicable *Disqualifications* under Articles 9 and 10.1, any forfeiture of any medals, points, or prizes from that *Event*, and any recovery of costs applicable to the anti-doping rule violation. In the event the *Major Event Organization* assumes only limited *Results Management* responsibility, the case shall be referred by the *Major Event Organization* to the applicable International Federation for completion of *Results Management*.

46 [Comment to Article 7.1.3: The Athlete's or other Person's International Federation has been made the Anti-Doping Organization of last resort for Results Management to avoid the possibility that no Anti-Doping Organization would have authority to conduct Results Management. An International Federation is free to provide in its own anti-doping rules that the Athlete's or other Person's National Anti-Doping Organization shall conduct Results Management.]



7.1.5 *WADA* may direct an *Anti-Doping Organization* with *Results Management* authority to conduct *Results Management* in a particular case. If that *Anti-Doping Organization* refuses to conduct *Results Management* within a reasonable deadline set by *WADA*, such refusal shall be considered an act of non-compliance, and *WADA* may direct another *Anti-Doping Organization* with authority over the *Athlete* or other *Person*, that is willing to do so, to take *Results Management* responsibility in place of the refusing *Anti-Doping Organization* or, if there is no such *Anti-Doping Organization*, any other *Anti-Doping Organization* that is willing to do so. In such case, the refusing *Anti-Doping Organization* shall reimburse the costs and attorney fees of conducting *Results Management* to the other *Anti-Doping Organization* designated by *WADA*, and a failure to reimburse costs and attorney's fees shall be considered an act of non-compliance.[47]

7.1.6 *Results Management* in relation to a potential whereabouts failure (a filing failure or a missed test) shall be administered by the International Federation or the *National Anti-Doping Organization* with whom the *Athlete* in question files whereabouts information, as provided in the *International Standard* for *Results Management*. The *Anti-Doping Organization* that determines a filing failure or a missed test shall submit that information to *WADA* through *ADAMS*, where it will be made available to other relevant *Anti-Doping Organizations*.

47 [Comment to Article 7.1.5: Where WADA directs another Anti-Doping Organization to conduct Results Management or other Doping Control activities, this is not considered a "delegation" of such activities by WADA.]

7.2 Review and Notification Regarding Potential Anti-Doping Rule Violations

Review and notification with respect to a potential anti-doping rule violation shall be carried out in accordance with the *International Standard* for *Results Management*.

7.3 Identification of Prior Anti-Doping Rule Violations

Before giving an *Athlete* or other *Person* notice of a potential anti-doping rule violation as provided above, the *Anti-Doping Organization* shall refer to *ADAMS* and contact *WADA* and other relevant *Anti-Doping Organizations* to determine whether any prior anti-doping rule violation exists.

7.4 Principles Applicable to *Provisional Suspensions*[48]

7.4.1 Mandatory *Provisional Suspension* after an *Adverse Analytical Finding* or *Adverse Passport Finding*

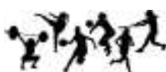
The *Signatories* described below in this paragraph shall adopt rules providing that when an *Adverse Analytical Finding* or *Adverse Passport Finding* (upon completion of the *Adverse Passport Finding*

48 [Comment to Article 7.4: Before a Provisional Suspension can be unilaterally imposed by an Anti-Doping Organization, the internal review specified in the Code must first be completed. In addition, the Signatory imposing a Provisional Suspension shall ensure that the Athlete is given an opportunity for a Provisional Hearing either before or promptly after the imposition of the Provisional Suspension, or an expedited final hearing under Article 8 promptly after imposition of the Provisional Suspension. The Athlete has a right to appeal under Article 13.2.3.

In the rare circumstance where the B Sample analysis does not confirm the A Sample finding, the Athlete who had been Provisionally Suspended will be allowed, where circumstances permit, to participate in subsequent Competitions during the Event.

Similarly, depending upon the relevant rules of the International Federation in a Team Sport, if the team is still in Competition, the Athlete may be able to take part in future Competitions.

Athletes and other Persons shall receive credit for a Provisional Suspension against any period of Ineligibility which is ultimately imposed or accepted as provided in Article 10.13.2.]



review process) is received for a *Prohibited Substance* or a *Prohibited Method*, other than a *Specified Substance* or *Specified Method*, a *Provisional Suspension* shall be imposed promptly upon or after the review and notification required by Article 7.2: where the *Signatory* is the ruling body of an *Event* (for application to that *Event*); where the *Signatory* is responsible for team selection (for application to that team selection); where the *Signatory* is the applicable International Federation; or where the *Signatory* is another *Anti-Doping Organization* which has *Results Management* authority over the alleged anti-doping rule violation. A mandatory *Provisional Suspension* may be eliminated if: (i) the *Athlete* demonstrates to the hearing panel that the violation is likely to have involved a *Contaminated Product*, or (ii) the violation involves a *Substance of Abuse* and the *Athlete* establishes entitlement to a reduced period of *Ineligibility* under Article 10.2.4.1. A hearing body's decision not to eliminate a mandatory *Provisional Suspension* on account of the *Athlete's* assertion regarding a *Contaminated Product* shall not be appealable.

7.4.2 Optional *Provisional Suspension* Based on an *Adverse Analytical Finding* for *Specified Substances*, *Specified Methods*, *Contaminated Products*, or Other Anti-Doping Rule Violations

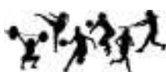
A *Signatory* may adopt rules, applicable to any *Event* for which the *Signatory* is the ruling body or to any team selection process for which the *Signatory* is responsible or where the *Signatory* is the applicable International Federation or has *Results Management* authority over the alleged anti-doping rule violation, permitting *Provisional Suspensions* to be imposed for anti-doping rule violations not covered by Article 7.4.1 prior to analysis of the *Athlete's* B *Sample* or final hearing as described in Article 8.

7.4.3 Opportunity for Hearing or Appeal

Notwithstanding Articles 7.4.1 and 7.4.2, a *Provisional Suspension* may not be imposed unless the rules of the *Anti-Doping Organization* provide the *Athlete* or other *Person* with: (a) an opportunity for a *Provisional Hearing*, either before the imposition of the *Provisional Suspension* or on a timely basis after the imposition of the *Provisional Suspension*; or (b) an opportunity for an expedited hearing in accordance with Article 8 on a timely basis after imposition of a *Provisional Suspension*. The rules of the *Anti-Doping Organization* shall also provide an opportunity for an expedited appeal against the imposition of a *Provisional Suspension*, or the decision not to impose a *Provisional Suspension*, in accordance with Article 13.

7.4.4 Voluntary Acceptance of *Provisional Suspension*

Athletes on their own initiative may voluntarily accept a *Provisional Suspension* if done so prior to the later of: (i) the expiration of ten (10) days from the report of the B *Sample* (or waiver of the B *Sample*) or ten (10) days from the notice of any other anti-doping rule violation, or (ii) the date on which the *Athlete* first competes after such report or notice. Other *Persons* on their own initiative may voluntarily accept a *Provisional Suspension* if done so within ten (10) days from the notice of the anti-doping rule violation. Upon such voluntary acceptance, the *Provisional Suspension* shall have the full effect and be treated in the same manner as if the *Provisional Suspension* had been imposed under Article 7.4.1 or 7.4.2; provided, however, at any time after voluntarily accepting a *Provisional Suspension*, the *Athlete* or other *Person* may withdraw such acceptance, in which event the *Athlete* or other *Person* shall not receive any credit for time previously served during the *Provisional Suspension*.



7.4.5 If a *Provisional Suspension* is imposed based on an A *Sample Adverse Analytical Finding* and a subsequent B *Sample* analysis (if requested by the *Athlete* or *Anti-Doping Organization*) does not confirm the A *Sample* analysis, then the *Athlete* shall not be subject to any further *Provisional Suspension* on account of a violation of Article 2.1. In circumstances where the *Athlete* (or the *Athlete's* team as may be provided in the rules of the applicable *Major Event Organization* or International Federation) has been removed from an *Event* based on a violation of Article 2.1 and the subsequent B *Sample* analysis does not confirm the A *Sample* finding, if, without otherwise affecting the *Event*, it is still possible for the *Athlete* or team to be reinserted, the *Athlete* or team may continue to take part in the *Event*.

7.5 *Results Management* Decisions

7.5.1 *Results Management* decisions or adjudications by *Anti-Doping Organizations*, must not purport to be limited to a particular geographic area or sport and shall address and determine without limitation the following issues: (i) whether an anti-doping rule violation was committed or a *Provisional Suspension* should be imposed, the factual basis for such determination, and the specific *Code* Articles violated, and (ii) all *Consequences* flowing from the anti-doping rule violation(s), including applicable *Disqualifications* under Articles 9 and 10.10, any forfeiture of medals or prizes, any period of *Ineligibility* (and the date it begins to run) and any *Financial Consequences*, except that *Major Event Organizations* shall not be required to determine *Ineligibility* or *Financial Consequences* beyond the scope of their *Event*.[49]

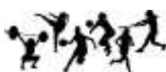
49 [Comment to Article 7.5.1: Results Management decisions include Provisional Suspensions.]

7.5.2 A *Results Management* decision or adjudication by a *Major Event Organization* in connection with one of its *Events* may be limited in its scope but shall address and determine, at a minimum, the following issues: (i) whether an anti-doping rule violation was committed, the factual basis for such determination, and the specific *Code* Articles violated, and (ii) applicable *Disqualifications* under Articles 9 and 10.1, with any resulting forfeiture of medals, points and prizes. In the event a *Major Event Organization* accepts only limited responsibility for *Results Management* decisions, it must comply with Article 7.1.4.[50]

7.6 Notification of *Results Management* Decisions

Athletes, other *Persons*, *Signatories* and *WADA* shall be notified of *Results Management* decisions as provided in Article 14 and the *International Standard* for *Results Management*.

50 [Comment to Article 7.5.2: With the exception of Results Management decisions by Major Event Organizations, each decision by an Anti-Doping Organization should address whether an anti-doping rule violation was committed and all Consequences flowing from the violation, including any Disqualifications other than Disqualification under Article 10.1 (which is left to the ruling body for an Event). Pursuant to Article 15, such decision and its imposition of Consequences shall have automatic effect in every sport in every country. For example, for a determination that an Athlete committed an anti-doping rule violation based on an Adverse Analytical Finding for a Sample taken In-Competition, the Athlete's results obtained in the Competition would be Disqualified under Article 9 and all other competitive results obtained by the Athlete from the date the Sample was collected through the duration of the period of Ineligibility are also Disqualified under Article 10.10; if the Adverse Analytical Finding resulted from Testing at an Event, it would be the Major Event Organization's responsibility to decide whether the Athlete's other individual results in the Event prior to Sample collection are also Disqualified under Article 10.1.]



7.7 Retirement from Sport[51]

If an *Athlete* or other *Person* retires while a *Results Management* process is underway, the *Anti-Doping Organization* conducting the *Results Management* process retains authority to complete its *Results Management* process. If an *Athlete* or other *Person* retires before any *Results Management* process has begun, the *Anti-Doping Organization* which would have had *Results Management* authority over the *Athlete* or other *Person* at the time the *Athlete* or other *Person* committed an anti-doping rule violation, has authority to conduct *Results Management*.

ARTICLE 8 *RESULTS MANAGEMENT*: RIGHT TO A FAIR HEARING AND NOTICE OF HEARING DECISION

8.1 Fair Hearings

For any *Person* who is asserted to have committed an anti-doping rule violation, the *Anti-Doping Organization* with responsibility for *Results Management* shall provide, at a minimum, a fair hearing within a reasonable time by a fair, impartial and *Operationally Independent* hearing panel in compliance with the *WADA International Standard* for *Results Management*. A timely reasoned decision specifically including an explanation of the reason(s) for any period of *Ineligibility* and *Disqualification* of results under Article 10.10 shall be *Publicly Disclosed* as provided in Article 14.3.[52]

51 [Comment to Article 7.7: Conduct by an Athlete or other Person before the Athlete or other Person was subject to the authority of any Anti-Doping Organization would not constitute an anti-doping rule violation but could be a legitimate basis for denying the Athlete or other Person membership in a sports organization.]

52 [Comment to Article 8.1: This Article requires that at some point in the Results Management process, the Athlete or other Person shall be provided the opportunity for a timely, fair and impartial hearing. These principles are also found in Article 6.1 of the Convention for the Protection

8.2 *Event* Hearings

Hearings held in connection with *Events* may be conducted by an expedited process as permitted by the rules of the relevant *Anti-Doping Organization* and the hearing panel.[53]

8.3 Waiver of Hearing

The right to a hearing may be waived either expressly or by the *Athlete's* or other *Person's* failure to challenge an *Anti-Doping Organization's* assertion that an anti-doping rule violation has occurred within the specific time period provided in the *Anti-Doping Organization's* rules.

8.4 Notice of Decisions

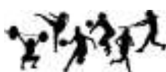
The reasoned hearing decision, or in cases where the hearing has been waived, a reasoned decision explaining the action taken, shall be provided by the *Anti-Doping Organization* with *Results Management* responsibility to the *Athlete* and to other *Anti-Doping Organizations* with a right to appeal under Article 13.2.3 as provided in Article 14 and published in accordance with Article 14.3.

8.5 Single Hearing Before *CAS*

Anti-doping rule violations asserted against *International-Level Athletes*, *National-Level Athletes* or other *Persons* may, with the consent of the *Athlete* or other *Person*, the *Anti-Doping Organization* with *Results Management*

of Human Rights and Fundamental Freedoms and are principles generally accepted in international law. This Article is not intended to supplant each Anti-Doping Organization's own rules for hearings but rather to ensure that each Anti-Doping Organization provides a hearing process consistent with these principles.]

53 [Comment to Article 8.2: For example, a hearing could be expedited on the eve of a major Event where the resolution of the anti-doping rule violation is necessary to determine the Athlete's eligibility to participate in the Event or during an Event where the resolution of the case will affect the validity of the Athlete's results or continued participation in the Event.]



responsibility, and *WADA*, be heard in a single hearing directly at *CAS*.[54]

ARTICLE 9 AUTOMATIC *DISQUALIFICATION* OF INDIVIDUAL RESULTS

An anti-doping rule violation in *Individual Sports* in connection with an *In-Competition* test automatically leads to *Disqualification* of the result obtained in that *Competition* with all resulting *Consequences*, including forfeiture of any medals, points and prizes.[55]

ARTICLE 10 SANCTIONS ON INDIVIDUALS[56]

10.1 *Disqualification* of Results in the *Event* during which an Anti-Doping Rule Violation Occurs

An anti-doping rule violation occurring during or in connection with an *Event* may, upon the decision of the ruling body of the *Event*, lead to *Disqualification* of all

54 [Comment to Article 8.5: In some cases, the combined cost of holding a hearing in the first instance at the international or national level, then rehearing the case de novo before CAS can be very substantial. Where all of the parties identified in this Article are satisfied that their interests will be adequately protected in a single hearing, there is no need for the Athlete or Anti-Doping Organizations to incur the extra expense of two hearings. An Anti-Doping Organization may participate in the CAS hearing as an observer.]

55 [Comment to Article 9: For Team Sports, any awards received by individual players will be Disqualified. However, Disqualification of the team will be as provided in Article 11. In sports which are not Team Sports but where awards are given to teams, Disqualification or other disciplinary action against the team when one or more team members have committed an anti-doping rule violation shall be as provided in the applicable rules of the International Federation.]

56 [Comment to Article 10: Harmonization of sanctions has been one of the most discussed and debated areas of anti-doping. Harmonization means that the same rules and criteria are applied to assess the unique facts of each case. Arguments against requiring harmonization of sanctions

of the *Athlete's* individual results obtained in that *Event* with all *Consequences*, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1.[57]

Factors to be included in considering whether to *Disqualify* other results in an *Event* might include, for example, the seriousness of the *Athlete's* anti-doping rule violation and whether the *Athlete* tested negative in the other *Competitions*.

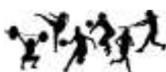
10.1.1 If the *Athlete* establishes that he or she bears *No Fault or Negligence* for the violation, the *Athlete's* individual results in the other *Competitions* shall not be *Disqualified*, unless the *Athlete's* results in *Competitions* other than the *Competition* in which the anti-doping rule violation occurred were likely to have been affected by the *Athlete's* anti-doping rule violation.

10.2 *Ineligibility* for Presence, *Use* or *Attempted Use* or *Possession* of a *Prohibited Substance* or *Prohibited Method*

The period of *Ineligibility* for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential elimination, reduction or suspension pursuant to Article 10.5, 10.6 or 10.7:

are based on differences between sports including, for example, the following: in some sports the Athletes are professionals making a sizable income from the sport and in others the Athletes are true amateurs; in those sports where an Athlete's career is short, a standard period of Ineligibility has a much more significant effect on the Athlete than in sports where careers are traditionally much longer. A primary argument in favor of harmonization is that it is simply not right that two Athletes from the same country who test positive for the same Prohibited Substance under similar circumstances should receive different sanctions only because they participate in different sports. In addition, too much flexibility in sanctioning has often been viewed as an unacceptable opportunity for some sporting organizations to be more lenient with dopers. The lack of harmonization of sanctions has also frequently been the source of conflicts between International Federations and National Anti-Doping Organizations.]

57 [Comment to Article 10.1: Whereas Article 9 Disqualifies the result in a single Competition in which the Athlete tested positive (e.g., the 100 meter backstroke), this Article may lead to Disqualification of all results in all races during the Event (e.g., the swimming World Championships).]



10.2.1 The period of *Ineligibility*, subject to Article 10.2.4, shall be four (4) years where:

10.2.1.1 The anti-doping rule violation does not involve a *Specified Substance* or a *Specified Method*, unless the *Athlete* or *other Person* can establish that the anti-doping rule violation was not intentional.[58]

10.2.1.2 The anti-doping rule violation involves a *Specified Substance* or a *Specified Method* and the *Anti-Doping Organization* can establish that the anti-doping rule violation was intentional.

10.2.2 If Article 10.2.1 does not apply, subject to Article 10.2.4.1, the period of *Ineligibility* shall be two (2) years.

10.2.3 As used in Article 10.2, the term "intentional" is meant to identify those *Athletes* or other *Persons* who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.[59] An anti-doping rule violation resulting from an *Adverse Analytical Finding* for a substance which is only prohibited *In-Competition* shall be rebuttably presumed to be not "intentional" if the substance is a *Specified Substance* and the *Athlete* can establish that the *Prohibited Substance* was Used *Out-of-Competition*. An anti-doping rule violation resulting from an *Adverse Analytical Finding*

58 [Comment to Article 10.2.1.1: While it is theoretically possible for an Athlete or other Person to establish that the anti-doping rule violation was not intentional without showing how the Prohibited Substance entered one's system, it is highly unlikely that in a doping case under Article 2.1 an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance.]

59 [Comment to Article 10.2.3: Article 10.2.3 provides a special definition of "intentional" which is to be applied solely for purposes of Article 10.2.]

for a substance which is only prohibited *In-Competition* shall not be considered "intentional" if the substance is not a *Specified Substance* and the *Athlete* can establish that the *Prohibited Substance* was *Used Out-of-Competition* in a context unrelated to sport performance.

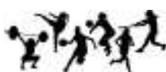
10.2.4 Notwithstanding any other provision in Article 10.2, where the anti-doping rule violation involves a *Substance of Abuse*:

10.2.4.1 If the *Athlete* can establish that any ingestion or *Use* occurred *Out-of-Competition* and was unrelated to sport performance, then the period of *Ineligibility* shall be three (3) months *Ineligibility*.

In addition, the period of *Ineligibility* calculated under this Article 10.2.4.1 may be reduced to one (1) month if the *Athlete* or other *Person* satisfactorily completes a *Substance of Abuse* treatment program approved by the *Anti-Doping Organization* with *Results Management* responsibility.[60] The period of *Ineligibility* established in this Article 10.2.4.1 is not subject to any reduction based on any provision in Article 10.6.

10.2.4.2 If the ingestion, *Use* or *Possession* occurred *In-Competition*, and the *Athlete* can establish that the context

60 [Comment to Article 10.2.4.1: The determinations as to whether the treatment program is approved and whether the Athlete or other Person has satisfactorily completed the program shall be made in the sole discretion of the Anti-Doping Organization. This Article is intended to give Anti-Doping Organizations the leeway to apply their own judgment to identify and approve legitimate and reputable, as opposed to "sham", treatment programs. It is anticipated, however, that the characteristics of legitimate treatment programs may vary widely and change over time such that it would not be practical for WADA to develop mandatory criteria for acceptable treatment programs.]



of the ingestion, *Use* or *Possession* was unrelated to sport performance, then the ingestion, *Use* or *Possession* shall not be considered intentional for purposes of Article 10.2.1 and shall not provide a basis for a finding of *Aggravating Circumstances* under Article 10.4.

10.3 *Ineligibility* for Other Anti-Doping Rule Violations

The period of *Ineligibility* for anti-doping rule violations other than as provided in Article 10.2 shall be as follows, unless Article 10.6 or 10.7 are applicable:

10.3.1 For violations of Article 2.3 or 2.5, the period of *Ineligibility* shall be four (4) years except: (i) in the case of failing to submit to *Sample* collection, if the *Athlete* can establish that the commission of the anti-doping rule violation was not intentional, the period of *Ineligibility* shall be two (2) years; (ii) in all other cases, if the *Athlete* or other *Person* can establish exceptional circumstances that justify a reduction of the period of *Ineligibility*, the period of *Ineligibility* shall be in a range from two (2) years to four (4) years depending on the *Athlete* or other *Person's* degree of *Fault*; or (iii) in a case involving a *Protected Person* or *Recreational Athlete*, the period of *Ineligibility* shall be in a range between a maximum of two (2) years and, at a minimum, a reprimand and no period of *Ineligibility*, depending on the *Protected Person* or *Recreational Athlete's* degree of *Fault*.

10.3.2 For violations of Article 2.4, the period of *Ineligibility* shall be two (2) years, subject to reduction down to a minimum of one (1) year, depending on the *Athlete's* degree of *Fault*. The flexibility between two (2) years and one (1) year of *Ineligibility* in this Article is not available to *Athletes* where a pattern of last-minute whereabouts changes or other conduct raises a serious suspicion that the *Athlete* was trying to avoid being available for *Testing*.

10.3.3 For violations of Article 2.7 or 2.8, the period of *Ineligibility* shall be a minimum of four (4) years up to lifetime *Ineligibility*, depending on the seriousness of the violation. An Article 2.7 or Article 2.8 violation involving a *Protected Person* shall be considered a particularly serious violation and, if committed by *Athlete Support Personnel* for violations other than for *Specified Substances*, shall result in lifetime *Ineligibility* for *Athlete Support Personnel*. In addition, significant violations of Article 2.7 or 2.8 which may also violate non-sporting laws and regulations, shall be reported to the competent administrative, professional or judicial authorities.[61]

10.3.4 For violations of Article 2.9, the period of *Ineligibility* imposed shall be a minimum of two (2) years, up to lifetime *Ineligibility*, depending on the seriousness of the violation.

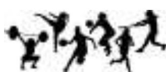
10.3.5 For violations of Article 2.10, the period of *Ineligibility* shall be two (2) years, subject to reduction down to a minimum of one (1) year, depending on the *Athlete* or other *Person's* degree of *Fault* and other circumstances of the case.[62]

10.3.6 For violations of Article 2.11, the period of *Ineligibility* shall be a minimum of two (2) years, up to lifetime *Ineligibility*, depending on the seriousness of the violation by the *Athlete* or other *Person*.[63]

61 [Comment to Article 10.3.3: Those who are involved in doping Athletes or covering up doping should be subject to sanctions which are more severe than the Athletes who test positive. Since the authority of sport organizations is generally limited to Ineligibility for accreditation, membership and other sport benefits, reporting Athlete Support Personnel to competent authorities is an important step in the deterrence of doping.]

62 [Comment to Article 10.3.5: Where the "other Person" referenced in Article 2.10 (Prohibited Association by an Athlete or Other Person) is an entity and not an individual, that entity may be disciplined as provided in Article 12.]

63 [Comment to Article 10.3.6: Conduct that is found to violate both Article 2.5 (Tampering) and Article 2.11 (Acts by an Athlete or Other Person to Discourage



10.4 *Aggravating Circumstances* which may Increase the Period of *Ineligibility*

If the *Anti-Doping Organization* establishes in an individual case involving an anti-doping rule violation other than violations under Article 2.7 (*Trafficking* or *Attempted Trafficking*), 2.8 (*Administration* or *Attempted Administration*), 2.9 (Complicity or *Attempted* Complicity) or 2.11 (Acts by an *Athlete* or Other *Person* to Discourage or Retaliate Against Reporting) that *Aggravating Circumstances* are present which justify the imposition of a period of *Ineligibility* greater than the standard sanction, then the period of *Ineligibility* otherwise applicable shall be increased by an additional period of *Ineligibility* of up to two (2) years depending on the seriousness of the violation and the nature of the *Aggravating Circumstances*, unless the *Athlete* or other *Person* can establish that he or she did not knowingly commit the anti-doping rule violation.[64]

10.5 Elimination of the Period of *Ineligibility* where there is *No Fault or Negligence*

If an *Athlete* or other *Person* establishes in an individual case that he or she bears *No Fault or Negligence*, then the otherwise applicable period of *Ineligibility* shall be eliminated.[65]

or Retaliate Against Reporting to Authorities) shall be sanctioned based on the violation that carries the more severe sanction.]

64 [Comment to Article 10.4: Violations under Articles 2.7 (Trafficking or Attempted Trafficking), 2.8 (Administration or Attempted Administration), 2.9 (Complicity or Attempted Complicity) and 2.11 (Acts by an Athlete or Other Person to Discourage or Retaliate Against Reporting to Authorities) are not included in the application of Article 10.4 because the sanctions for these violations already build in sufficient discretion up to a lifetime ban to allow consideration of any Aggravating Circumstance.]

65 [Comment to Article 10.5: This Article and Article 10.6.2 apply only to the imposition of sanctions; they are not applicable to the determination of whether an anti-doping rule violation has occurred. They will only apply in exceptional circumstances, for example, where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, No Fault or Negligence would not apply in the following circumstances:

10.6 Reduction of the Period of *Ineligibility* based on *No Significant Fault or Negligence*

10.6.1 Reduction of Sanctions in Particular Circumstances for Violations of Article 2.1, 2.2 or 2.6.

All reductions under Article 10.6.1 are mutually exclusive and not cumulative.

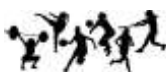
10.6.1.1 *Specified Substances* or *Specified Methods*

Where the anti-doping rule violation involves a *Specified Substance* (other than a *Substance of Abuse*) or *Specified Method*, and the *Athlete* or other *Person* can establish *No Significant Fault or Negligence*, then the period of *Ineligibility* shall be, at a minimum, a reprimand and no period of *Ineligibility*, and at a maximum, two (2) years of *Ineligibility*, depending on the *Athlete's* or other *Person's* degree of *Fault*.

10.6.1.2 *Contaminated Products*

In cases where the *Athlete* or other *Person* can establish both *No Significant Fault or Negligence* and that the detected *Prohibited Substance* (other than a *Substance of Abuse*) came from

(a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1) and have been warned against the possibility of supplement contamination); (b) the Administration of a Prohibited Substance by the Athlete's personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance); and (c) sabotage of the Athlete's food or drink by a spouse, coach or other Person within the Athlete's circle of associates (Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction under Article 10.6 based on No Significant Fault or Negligence.)



a *Contaminated Product*, then the period of *Ineligibility* shall be, at a minimum, a reprimand and no period of *Ineligibility*, and at a maximum, two (2) years *Ineligibility*, depending on the *Athlete* or other *Person's* degree of *Fault*.[66]

10.6.1.3 *Protected Persons* or *Recreational Athletes*

Where the anti-doping rule violation not involving a *Substance of Abuse* is committed by a *Protected Person* or *Recreational Athlete*, and the *Protected Person* or *Recreational Athlete* can establish *No Significant Fault or Negligence*, then the period of *Ineligibility* shall be, at a minimum, a reprimand and no period of *Ineligibility*, and at a maximum, two (2) years *Ineligibility*, depending on the *Protected Person* or *Recreational Athlete's* degree of *Fault*.

66 [Comment to Article 10.6.1.2: In order to receive the benefit of this Article, the Athlete or other Person must establish not only that the detected Prohibited Substance came from a Contaminated Product, but must also separately establish No Significant Fault or Negligence. It should be further noted that Athletes are on notice that they take nutritional supplements at their own risk. The sanction reduction based on No Significant Fault or Negligence has rarely been applied in Contaminated Product cases unless the Athlete has exercised a high level of caution before taking the Contaminated Product. In assessing whether the Athlete can establish the source of the Prohibited Substance, it would, for example, be significant for purposes of establishing whether the Athlete actually Used the Contaminated Product, whether the Athlete had declared the product which was subsequently determined to be contaminated on the Doping Control form.

This Article should not be extended beyond products that have gone through some process of manufacturing. Where an Adverse Analytical Finding results from environment contamination of a "non-product" such as tap water or lake water in circumstances where no reasonable person would expect any risk of an anti-doping rule violation, typically there would be No Fault or Negligence under Article 10.5.]

10.6.2 Application of *No Significant Fault or Negligence* beyond the Application of Article 10.6.1[67]

If an *Athlete* or other *Person* establishes in an individual case where Article 10.6.1 is not applicable, that he or she bears *No Significant Fault or Negligence*, then, subject to further reduction or elimination as provided in Article 10.7, the otherwise applicable period of *Ineligibility* may be reduced based on the *Athlete* or other *Person's* degree of *Fault*, but the reduced period of *Ineligibility* may not be less than one-half of the period of *Ineligibility* otherwise applicable. If the otherwise applicable period of *Ineligibility* is a lifetime, the reduced period under this Article may be no less than eight (8) years.

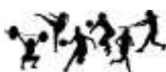
10.7 Elimination, Reduction, or Suspension of Period of *Ineligibility* or Other *Consequences* for Reasons Other than *Fault*

10.7.1 *Substantial Assistance* in Discovering or Establishing *Code* Violations[68]

10.7.1.1 An *Anti-Doping Organization* with *Results Management* responsibility for an anti-doping rule violation may, prior to an appellate decision under Article 13 or the expiration of the time to appeal, suspend a part of the *Consequences* (other than *Disqualification* and mandatory *Public Disclosure*) imposed in an individual

67 [Comment to Article 10.6.2: Article 10.6.2 may be applied to any anti-doping rule violation, except those Articles where intent is an element of the anti-doping rule violation (e.g., Article 2.5, 2.7, 2.8, 2.9 or 2.11) or an element of a particular sanction (e.g., Article 10.2.1) or a range of Ineligibility is already provided in an Article based on the Athlete or other Person's degree of Fault.]

68 [Comment to Article 10.7.1: The cooperation of Athletes, Athlete Support Personnel and other Persons who acknowledge their mistakes and are willing to bring other anti-doping rule violations to light is important to clean sport.]



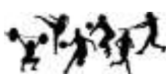
case where the *Athlete* or other *Person* has provided *Substantial Assistance* to an *Anti-Doping Organization*, criminal authority or professional disciplinary body which results in: (i) the *Anti-Doping Organization* discovering or bringing forward an anti-doping rule violation by another *Person*; or (ii) which results in a criminal or disciplinary body discovering or bringing forward a criminal offense or the breach of professional rules committed by another *Person* and the information provided by the *Person* providing *Substantial Assistance* is made available to the *Anti-Doping Organization* with *Results Management* responsibility; or (iii) which results in *WADA* initiating a proceeding against a *Signatory*, *WADA*-accredited laboratory or *Athlete* passport management unit (as defined in the *International Standard for Laboratories*) for non-compliance with the *Code*, *International Standard* or *Technical Document*; or (iv) with the approval by *WADA*, which results in a criminal or disciplinary body bringing forward a criminal offense or the breach of professional or sport rules arising out of a sport integrity violation other than doping. After an appellate decision under Article 13 or the expiration of time to appeal, an *Anti-Doping Organization* may only suspend a part of the otherwise applicable *Consequences* with the approval of *WADA* and the applicable International Federation.

The extent to which the otherwise applicable period of *Ineligibility* may be suspended shall be based on the seriousness of the anti-doping rule

violation committed by the *Athlete* or other *Person* and the significance of the *Substantial Assistance* provided by the *Athlete* or other *Person* to the effort to eliminate doping in sport, non-compliance with the *Code* and/ or sport integrity violations. No more than three-quarters of the otherwise applicable period of *Ineligibility* may be suspended. If the otherwise applicable period of *Ineligibility* is a lifetime, the non-suspended period under this Article must be no less than eight (8) years. For purposes of this paragraph, the otherwise applicable period of *Ineligibility* shall not include any period of *Ineligibility* that could be added under Article 10.9.3.2.

If so requested by an *Athlete* or other *Person* who seeks to provide *Substantial Assistance*, the *Anti-Doping Organization* with *Results Management* responsibility shall allow the *Athlete* or other *Person* to provide the information to the *Anti-Doping Organization* subject to a *Without Prejudice Agreement*.

If the *Athlete* or other *Person* fails to continue to cooperate and to provide the complete and credible *Substantial Assistance* upon which a suspension of *Consequences* was based, the *Anti-Doping Organization* that suspended *Consequences* shall reinstate the original *Consequences*. If an *Anti-Doping Organization* decides to reinstate suspended *Consequences* or decides not to reinstate suspended *Consequences*, that decision may be appealed by any *Person* entitled to appeal under Article 13.



10.7.1.2 To further encourage *Athletes* and other *Persons* to provide *Substantial Assistance* to *Anti-Doping Organizations*, at the request of the *Anti-Doping Organization* conducting *Results Management* or at the request of the *Athlete* or other *Person* who has, or has been asserted to have, committed an anti-doping rule violation, or other violation of the *Code*, *WADA* may agree at any stage of the *Results Management* process, including after an appellate decision under Article 13, to what it considers to be an appropriate suspension of the otherwise-applicable period of *Ineligibility* and other *Consequences*. In exceptional circumstances, *WADA* may agree to suspensions of the period of *Ineligibility* and other *Consequences* for *Substantial Assistance* greater than those otherwise provided in this Article, or even no period of *Ineligibility*, no mandatory *Public Disclosure* and/or no return of prize money or payment of fines or costs. *WADA's* approval shall be subject to reinstatement of *Consequences*, as otherwise provided in this Article. Notwithstanding Article 13, *WADA's* decisions in the context of this Article 10.7.1.2 may not be appealed.

10.7.1.3 If an *Anti-Doping Organization* suspends any part of an otherwise applicable sanction because of *Substantial Assistance*, then notice providing justification for the decision shall be provided to the other *Anti-Doping Organizations* with a right to appeal under Article 13.2.3 as provided in Article 14.

In unique circumstances where *WADA* determines that it would be in the best interest of anti-doping, *WADA* may authorize an *Anti-Doping Organization* to enter into appropriate confidentiality agreements limiting or delaying the disclosure of the *Substantial Assistance* agreement or the nature of *Substantial Assistance* being provided.

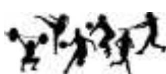
10.7.2 Admission of an Anti-Doping Rule Violation in the Absence of Other Evidence

Where an *Athlete* or other *Person* voluntarily admits the commission of an anti-doping rule violation before having received notice of a *Sample* collection which could establish an anti-doping rule violation (or, in the case of an anti-doping rule violation other than Article 2.1, before receiving first notice of the admitted violation pursuant to Article 7) and that admission is the only reliable evidence of the violation at the time of admission, then the period of *Ineligibility* may be reduced, but not below one-half of the period of *Ineligibility* otherwise applicable.[69]

10.7.3 Application of Multiple Grounds for Reduction of a Sanction

Where an *Athlete* or other *Person* establishes entitlement to reduction in sanction under more than one provision of Article 10.5, 10.6 or 10.7, before applying any reduction or suspension under Article 10.7, the otherwise applicable period

69 [Comment to Article 10.7.2: This Article is intended to apply when an Athlete or other Person comes forward and admits to an anti-doping rule violation in circumstances where no Anti-Doping Organization is aware that an anti-doping rule violation might have been committed. It is not intended to apply to circumstances where the admission occurs after the Athlete or other Person believes he or she is about to be caught. The amount by which Ineligibility is reduced should be based on the likelihood that the Athlete or other Person would have been caught had he or she not come forward voluntarily.]



of *Ineligibility* shall be determined in accordance with Articles 10.2, 10.3, 10.5, and 10.6. If the *Athlete* or other *Person* establishes entitlement to a reduction or suspension of the period of *Ineligibility* under Article 10.7, then the period of *Ineligibility* may be reduced or suspended, but not below one-fourth of the otherwise applicable period of *Ineligibility*.

10.8 *Results Management* Agreements

10.8.1 One-Year Reduction for Certain Anti-Doping Rule Violations Based on Early Admission and Acceptance of Sanction

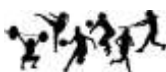
Where an *Athlete* or other *Person*, after being notified by an *Anti-Doping Organization* of a potential anti-doping rule violation that carries an asserted period of *Ineligibility* of four (4) or more years (including any period of *Ineligibility* asserted under Article 10.4), admits the violation and accepts the asserted period of *Ineligibility* no later than twenty (20) days after receiving notice of an anti-doping rule violation charge, the *Athlete* or other *Person* may receive a one-year reduction in the period of *Ineligibility* asserted by the *Anti-Doping Organization*. Where the *Athlete* or other *Person* receives the one-year reduction in the asserted period of *Ineligibility* under this Article 10.8.1, no further reduction in the asserted period of *Ineligibility* shall be allowed under any other Article.[70]

70 [Comment to Article 10.8.1: For example, if an Anti-Doping Organization alleges that an Athlete has violated Article 2.1 for Use of an anabolic steroid and asserts the applicable period of Ineligibility is four (4) years, then the Athlete may unilaterally reduce the period of Ineligibility to three (3) years by admitting the violation and accepting the three-year period of Ineligibility within the time specified in this Article, with no further reduction allowed. This resolves the case without any need for a hearing.]

10.8.2 Case Resolution Agreement

Where the *Athlete* or other *Person* admits an anti-doping rule violation after being confronted with the anti-doping rule violation by an *Anti-Doping Organization* and agrees to *Consequences* acceptable to the *Anti-Doping Organization* and *WADA*, at their sole discretion, then: (a) the *Athlete* or other *Person* may receive a reduction in the period of *Ineligibility* based on an assessment by the *Anti-Doping Organization* and *WADA* of the application of Articles 10.1 through 10.7 to the asserted anti-doping rule violation, the seriousness of the violation, the *Athlete* or other *Person's* degree of *Fault* and how promptly the *Athlete* or other *Person* admitted the violation; and (b) the period of *Ineligibility* may start as early as the date of *Sample* collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Article is applied, the *Athlete* or other *Person* shall serve at least one-half of the agreed-upon period of *Ineligibility* going forward from the earlier of the date the *Athlete* or other *Person* accepted the imposition of a sanction or a *Provisional Suspension* which was subsequently respected by the *Athlete* or other *Person*. The decision by *WADA* and the *Anti-Doping Organization* to enter or not enter into a case resolution agreement, and the amount of the reduction to, and the starting date of the period of *Ineligibility*, are not matters for determination or review by a hearing body and are not subject to appeal under Article 13.

If so requested by an *Athlete* or other *Person* who seeks to enter into a case resolution agreement under this Article, the *Anti-Doping Organization* with *Results Management* responsibility shall allow the *Athlete* or other *Person* to discuss an



admission of the anti-doping rule violation with the *Anti-Doping Organization* subject to a *Without Prejudice Agreement*.[71]

10.9 Multiple Violations

10.9.1 Second or Third Anti-Doping Rule Violation

10.9.1.1 For an *Athlete* or other *Person's* second anti-doping rule violation, the period of *Ineligibility* shall be the greater of:

[a] A six-month period of *Ineligibility*; or

[b] A period of *Ineligibility* in the range between:

[i] the sum of the period of *Ineligibility* imposed for the first anti-doping rule violation plus the period of *Ineligibility* otherwise applicable to the second anti-doping rule violation treated as if it were a first violation, and

[ii] twice the period of *Ineligibility* otherwise applicable to the second anti-doping rule violation treated as if it were a first violation.

The period of *Ineligibility* within this range shall be determined based on the entirety of the circumstances and the *Athlete* or other *Person's* degree of *Fault* with respect to the second violation.

71 [Comment to Article 10.8.2: Any mitigating or aggravating factors set forth in this Article 10 shall be considered in arriving at the Consequences set forth in the case resolution agreement, and shall not be applicable beyond the terms of that agreement.

In some countries, the imposition of a period of Ineligibility is left entirely to a hearing body. In those countries, the Anti-Doping Organization may not assert a specific period of Ineligibility for purposes of Article 10.8.1 nor have the power to agree to a specific period of Ineligibility under Article 10.8.2. In these circumstances, Article 10.8.1 and 10.8.2 will not be applicable but may be considered by the hearing body.]

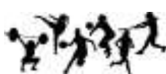
10.9.1.2 A third anti-doping rule violation will always result in a lifetime period of *Ineligibility*, except if the third violation fulfills the condition for elimination or reduction of the period of *Ineligibility* under Article 10.5 or 10.6, or involves a violation of Article 2.4. In these particular cases, the period of *Ineligibility* shall be from eight (8) years to lifetime *Ineligibility*.

10.9.1.3 The period of *Ineligibility* established in Articles 10.9.1.1 and 10.9.1.2 may then be further reduced by the application of Article 10.7.

10.9.2 An anti-doping rule violation for which an *Athlete* or other *Person* has established *No Fault or Negligence* shall not be considered a violation for purposes of Article 10.9. In addition, an anti-doping rule violation sanctioned under Article 10.2.4.1 shall not be considered a violation for purposes of Article 10.9.

10.9.3 Additional Rules for Certain Potential Multiple Violations

10.9.3.1 For purposes of imposing sanctions under Article 10.9, except as provided in Articles 10.9.3.2 and 10.9.3.3, an anti-doping rule violation will only be considered a second violation if the *Anti-Doping Organization* can establish that the *Athlete* or other *Person* committed the additional anti-doping rule violation after the *Athlete* or other *Person* received notice pursuant to Article 7, or after the *Anti-Doping Organization* made reasonable efforts to give notice of the first anti-doping rule violation. If the *Anti-Doping Organization* cannot establish this, the violations shall be considered together



as one single first violation, and the sanction imposed shall be based on the violation that carries the more severe sanction, including the application of *Aggravating Circumstances*. Results in all *Competitions* dating back to the earlier anti-doping rule violation will be *Disqualified* as provided in Article 10.10.[72]

10.9.3.2 If the *Anti-Doping Organization* establishes that an *Athlete* or other *Person* committed an additional anti-doping rule violation prior to notification, and that the additional violation occurred twelve (12) months or more before or after the first-noticed violation, then the period of *Ineligibility* for the additional violation shall be calculated as if the additional violation were a stand-alone first violation and this period of *Ineligibility* is served consecutively, rather than concurrently, with the period of *Ineligibility* imposed for the earlier-noticed violation. Where this Article 10.9.3.2 applies, the violations taken together shall constitute a single violation for purposes of Article 10.9.1.

10.9.3.3 If the *Anti-Doping Organization* establishes that an *Athlete* or other *Person* committed a violation of Article 2.5 in connection with the *Doping Control* process for an underlying asserted anti-doping rule violation, the violation of Article 2.5 shall be treated

72 [Comment to Article 10.9.3.1: The same rule applies where, after the imposition of a sanction, the Anti-Doping Organization discovers facts involving an anti-doping rule violation that occurred prior to notification for a first anti-doping rule violation—e.g., the Anti-Doping Organization shall impose a sanction based on the sanction that could have been imposed if the two violations had been adjudicated at the same time, including the application of Aggravating Circumstances.]

as a stand-alone first violation and the period of *Ineligibility* for such violation shall be served consecutively, rather than concurrently, with the period of *Ineligibility*, if any, imposed for the underlying anti-doping rule violation. Where this Article 10.9.3.3 is applied, the violations taken together shall constitute a single violation for purposes of Article 10.9.1.

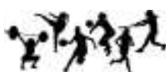
10.9.3.4 If an *Anti-Doping Organization* establishes that an *Athlete* or other *Person* has committed a second or third anti-doping rule violation during a period of *Ineligibility*, the periods of *Ineligibility* for the multiple violations shall run consecutively, rather than concurrently.

10.9.4 Multiple Anti-Doping Rule Violations during Ten-Year Period

For purposes of Article 10.9, each anti-doping rule violation must take place within the same ten-year period in order to be considered multiple violations.

10.10 *Disqualification* of Results in *Competitions* Subsequent to *Sample* Collection or Commission of an Anti-Doping Rule Violation

In addition to the automatic *Disqualification* of the results in the *Competition* which produced the positive *Sample* under Article 9, all other competitive results of the *Athlete* obtained from the date a positive *Sample* was collected (whether *In-Competition* or *Out-of-Competition*), or other anti-doping rule violation occurred, through the commencement of any *Provisional Suspension* or *Ineligibility* period, shall, unless fairness requires



otherwise, be *Disqualified* with all of the resulting *Consequences* including forfeiture of any medals, points and prizes.[73]

10.11 Forfeited Prize Money

An *Anti-Doping Organization* or other *Signatory* that has recovered prize money forfeited as a result of an anti-doping rule violation shall take reasonable measures to allocate and distribute this prize money to the *Athletes* who would have been entitled to it had the forfeiting *Athlete* not competed. An International Federation may provide in its rules whether or not the redistributed prize money shall be considered for purposes of its ranking of *Athletes*.[74]

10.12 *Financial Consequences*

Anti-Doping Organizations may, in their own rules, provide for proportionate recovery of costs or financial sanctions on account of anti-doping rule violations. However, *Anti-Doping Organizations* may only impose financial sanctions in cases where the maximum period of *Ineligibility* otherwise applicable has already been imposed. Financial sanctions may only be imposed where the principle of proportionality is satisfied. No recovery of costs or financial sanction may be considered a basis for reducing the *Ineligibility* or other sanction which would otherwise be applicable under the *Code*.

73 [Comment to Article 10.10: Nothing in the Code precludes clean Athletes or other Persons who have been damaged by the actions of a Person who has committed an anti-doping rule violation from pursuing any right which they would otherwise have to seek damages from such Person.]

74 [Comment to Article 10.11: This Article is not intended to impose an affirmative duty on the Anti-Doping Organization or other Signatory to take any action to collect forfeited prize money. If the Anti-Doping Organization elects not to take any action to collect forfeited prize money, it may assign its right to recover such money to the Athlete(s) who should have otherwise received the money. "Reasonable measures to allocate and distribute this prize money" could include using collected forfeited prize money as agreed upon by an International Federation and its Athletes.]

10.13 Commencement of *Ineligibility* Period

Where an *Athlete* is already serving a period of *Ineligibility* for an anti-doping rule violation, any new period of *Ineligibility* shall commence on the first day after the current period of *Ineligibility* has been served. Otherwise, except as provided below, the period of *Ineligibility* shall start on the date of the final hearing decision providing for *Ineligibility* or, if the hearing is waived or there is no hearing, on the date *Ineligibility* is accepted or otherwise imposed.

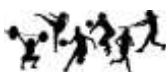
10.13.1 Delays Not Attributable to the *Athlete* or other *Person*

Where there have been substantial delays in the hearing process or other aspects of *Doping Control*, and the *Athlete* or other *Person* can establish that such delays are not attributable to the *Athlete* or other *Person*, the body imposing the sanction may start the period of *Ineligibility* at an earlier date commencing as early as the date of *Sample* collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of *Ineligibility*, including retroactive *Ineligibility*, shall be *Disqualified*.[75]

10.13.2 Credit for *Provisional Suspension* or Period of *Ineligibility* Served

10.13.2.1 If a *Provisional Suspension* is respected by the *Athlete* or other *Person*, then the *Athlete* or other *Person* shall receive a credit for such period of *Provisional Suspension* against any period of *Ineligibility* which may ultimately be imposed. If the *Athlete* or other

75 [Comment to Article 10.13.1: In cases of anti-doping rule violations other than under Article 2.1, the time required for an Anti-Doping Organization to discover and develop facts sufficient to establish an anti-doping rule violation may be lengthy, particularly where the Athlete or other Person has taken affirmative action to avoid detection. In these circumstances, the flexibility provided in this Article to start the sanction at an earlier date should not be used.]



Person does not respect a *Provisional Suspension*, then the *Athlete* or other *Person* shall receive no credit for any period of *Provisional Suspension* served. If a period of *Ineligibility* is served pursuant to a decision that is subsequently appealed, then the *Athlete* or other *Person* shall receive a credit for such period of *Ineligibility* served against any period of *Ineligibility* which may ultimately be imposed on appeal.

10.13.2.2 If an *Athlete* or other *Person* voluntarily accepts a *Provisional Suspension* in writing from an *Anti-Doping Organization* with *Results Management* authority and thereafter respects the *Provisional Suspension*, the *Athlete* or other *Person* shall receive a credit for such period of voluntary *Provisional Suspension* against any period of *Ineligibility* which may ultimately be imposed. A copy of the *Athlete* or other *Person's* voluntary acceptance of a *Provisional Suspension* shall be provided promptly to each party entitled to receive notice of an asserted anti-doping rule violation under Article 14.1.[76]

10.13.2.3 No credit against a period of *Ineligibility* shall be given for any time period before the effective date of the *Provisional Suspension* or voluntary *Provisional Suspension* regardless of whether the *Athlete* elected not to compete or was suspended by a team.

76 [Comment to Article 10.13.2.2: An Athlete's voluntary acceptance of a Provisional Suspension is not an admission by the Athlete and shall not be used in any way to draw an adverse inference against the Athlete.]

10.13.2.4 In *Team Sports*, where a period of *Ineligibility* is imposed upon a team, unless fairness requires otherwise, the period of *Ineligibility* shall start on the date of the final hearing decision providing for *Ineligibility* or, if the hearing is waived, on the date *Ineligibility* is accepted or otherwise imposed. Any period of team *Provisional Suspension* (whether imposed or voluntarily accepted) shall be credited against the total period of *Ineligibility* to be served.

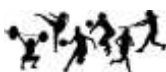
10.14 Status during *Ineligibility* or *Provisional Suspension*

10.14.1 Prohibition against Participation during *Ineligibility* or *Provisional Suspension*

No *Athlete* or other *Person* who has been declared *Ineligible* or is subject to a *Provisional Suspension* may, during a period of *Ineligibility* or *Provisional Suspension*, participate in any capacity in a *Competition* or activity (other than authorized anti-doping *Education* or rehabilitation programs) authorized or organized by any *Signatory*, *Signatory's* member organization, or a club or other member organization of a *Signatory's* member organization, or in *Competitions* authorized or organized by any professional league or any international- or national-level *Event* organization or any elite or national-level sporting activity funded by a governmental agency.[77]

An *Athlete* or other *Person* subject to a period of *Ineligibility* longer than four (4) years may,

77 [Comment to Article 10.14.1: For example, subject to Article 10.14.2 below, Ineligible Athletes cannot participate in a training camp, exhibition or practice organized by their National Federation or a club which is a member of that National Federation or which is funded by a governmental agency. Further, an Ineligible Athlete may not compete in a non-Signatory professional league (e.g., the National Hockey League, the National Basketball Association, etc.), Events organized by a non-Signatory International Event organization or a non-Signatory national-level Event organization



after completing four (4) years of the period of *Ineligibility*, participate as an *Athlete* in local sport events not sanctioned or otherwise under the authority of a *Code Signatory* or member of a *Code Signatory*, but only so long as the local sport event is not at a level that could otherwise qualify such *Athlete* or other *Person* directly or indirectly to compete in (or accumulate points toward) a national championship or *International Event*, and does not involve the *Athlete* or other *Person* working in any capacity with *Protected Persons*.

An *Athlete* or other *Person* subject to a period of *Ineligibility* shall remain subject to *Testing* and any requirement by an *Anti-Doping Organization* to provide whereabouts information.

10.14.2 Return to Training

As an exception to Article 10.14.1, an *Athlete* may return to train with a team or to use the facilities of a club or other member organization of a *Signatory*'s member organization during the shorter of: (1) the last two (2) months of the *Athlete*'s period of *Ineligibility*, or (2) the last one-quarter of the period of *Ineligibility* imposed.[78]

without triggering the Consequences set forth in Article 10.14.3. The term "activity" also includes, for example, administrative activities, such as serving as an official, director, officer, employee, or volunteer of the organization described in this Article. Ineligibility imposed in one sport shall also be recognized by other sports (see Article 15.1, Automatic Binding Effect of Decisions). An Athlete or other Person serving a period of Ineligibility is prohibited from coaching or serving as an Athlete Support Person in any other capacity at any time during the period of Ineligibility, and doing so could also result in a violation of 2.10 by another Athlete. Any performance standard accomplished during a period of Ineligibility shall not be recognized by a Signatory or its National Federations for any purpose.]

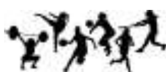
78 [Comment to Article 10.14.2: In many Team Sports and some individual sports (e.g., ski jumping and gymnastics), Athletes cannot effectively train on their own so as to be ready to compete at the end of the Athlete's period of Ineligibility. During the training period described in this Article, an Ineligible Athlete may not compete or engage in any activity described in Article 10.14.1 other than training.]

10.14.3 Violation of the Prohibition of Participation during *Ineligibility* or *Provisional Suspension*

Where an *Athlete* or other *Person* who has been declared *Ineligible* violates the prohibition against participation during *Ineligibility* described in Article 10.14.1, the results of such participation shall be *Disqualified* and a new period of *Ineligibility* equal in length to the original period of *Ineligibility* shall be added to the end of the original period of *Ineligibility*. The new period of *Ineligibility*, including a reprimand and no period of *Ineligibility*, may be adjusted based on the *Athlete* or other *Person's* degree of *Fault* and other circumstances of the case. The determination of whether an *Athlete* or other *Person* has violated the prohibition against participation, and whether an adjustment is appropriate, shall be made by the *Anti-Doping Organization* whose *Results Management* led to the imposition of the initial period of *Ineligibility*. This decision may be appealed under Article 13.

An *Athlete* or other *Person* who violates the prohibition against participation during a *Provisional Suspension* described in Article 10.14.1 shall receive no credit for any period of *Provisional Suspension* served and the results of such participation shall be *Disqualified*.

Where an *Athlete Support Person* or other *Person* assists a *Person* in violating the prohibition against participation during *Ineligibility* or a *Provisional Suspension*, an *Anti-Doping Organization* with authority over such *Athlete Support Person* or other *Person* shall impose sanctions for a violation of Article 2.9 for such assistance.



10.14.4 Withholding of Financial Support during *Ineligibility*

In addition, for any anti-doping rule violation not involving a reduced sanction as described in Article 10.5 or 10.6, some or all sport-related financial support or other sport-related benefits received by such *Person* will be withheld by *Signatories*, *Signatories'* member organizations and governments.

10.15 Automatic Publication of Sanction

A mandatory part of each sanction shall include automatic publication, as provided in Article 14.3.

ARTICLE 11 *CONSEQUENCES* TO TEAMS

11.1 *Testing of Team Sports*

Where more than one member of a team in a *Team Sport* has been notified of an anti-doping rule violation under Article 7 in connection with an *Event*, the ruling body for the *Event* shall conduct appropriate *Target Testing* of the team during the *Event Period*.

11.2 *Consequences* for *Team Sports*

If more than two members of a team in a *Team Sport* are found to have committed an anti-doping rule violation during an *Event Period*, the ruling body of the *Event* shall impose an appropriate sanction on the team (e.g., loss of points, *Disqualification* from a *Competition* or *Event*, or other sanction) in addition to any *Consequences* imposed upon the individual *Athletes* committing the anti-doping rule violation.

11.3 *Event* Ruling Body or International Federation may Establish Stricter *Consequences* for *Team Sports*

The ruling body for an *Event* may elect to establish rules for the *Event* which impose *Consequences* for *Team Sports* stricter than those in Article 11.2 for purposes of the *Event*.[79] Similarly, an International Federation may elect to establish rules imposing stricter *Consequences* for *Team Sports* within its authority than those in Article 11.2.

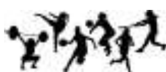
ARTICLE 12 SANCTIONS BY *SIGNATORIES* AGAINST OTHER SPORTING BODIES

Each *Signatory* shall adopt rules that obligate each of its member organizations and any other sporting body over which it has authority to comply with, implement, uphold and enforce the *Code* within that organization's or body's area of competence. When a *Signatory* becomes aware that one of its member organizations or other sporting body over which it has authority has failed to fulfill such obligation, the *Signatory* shall take appropriate action against such organization or body.[80] In particular, a *Signatory's* action and rules shall include the possibility of excluding all, or some group of, members of that organization or body from specified future *Events* or all *Events* conducted within a specified period of time.[81]

79 [Comment to Article 11.3: For example, the International Olympic Committee could establish rules which would require Disqualification of a team from the Olympic Games based on a lesser number of anti-doping rule violations during the period of the Games.]

80 [Comment to Article 12: This Article is not intended to impose an affirmative duty on the Signatory to actively monitor each of its member organizations for acts of non-compliance, but rather only requires the Signatory to take action when it becomes aware of such acts.]

81 [Comment to Article 12: This Article makes it clear that the Code does not restrict whatever disciplinary rights between organizations may otherwise exist. For sanctions against Signatories for non-compliance with the Code, see Article 24.1]



ARTICLE 13 *RESULTS MANAGEMENT*: APPEALS[82]

13.1 Decisions Subject to Appeal

Decisions made under the *Code* or under rules adopted pursuant to the *Code* may be appealed as set forth below in Articles 13.2 through 13.4 or as otherwise provided in the *Code* or *International Standards*. Such decisions shall remain in effect while under appeal unless the appellate body orders otherwise.

13.1.1 Scope of Review Not Limited

The scope of review on appeal includes all issues relevant to the matter and is expressly not limited to the issues or scope of review before the initial decision maker. Any party to the appeal may submit evidence, legal arguments and claims that were not raised in the first instance hearing so long as they arise from the same cause of action or same general facts or circumstances raised or addressed in the first instance hearing.[83]

82 [Comment to Article 13: The object of the Code is to have anti-doping matters resolved through fair and transparent internal processes with a final appeal. Anti-doping decisions by Anti-Doping Organizations are made transparent in Article 14. Specified Persons and organizations, including WADA, are then given the opportunity to appeal those decisions. Note that the definition of interested Persons and organizations with a right to appeal under Article 13 does not include Athletes, or their National Federations, who might benefit from having another competitor Disqualified.]

83 [Comment to Article 13.1.1: The revised language is not intended to make a substantive change to the 2015 Code, but rather for clarification. For example, where an Athlete was charged in the first instance hearing only with Tampering but the same conduct could also constitute Complicity, an appealing party could pursue both Tampering and Complicity charges against the Athlete in the appeal.]

13.1.2 *CAS* Shall Not Defer to the Findings Being Appealed

In making its decision, *CAS* shall not give deference to the discretion exercised by the body whose decision is being appealed.[84]

13.1.3 *WADA* Not Required to Exhaust Internal Remedies[85]

Where *WADA* has a right to appeal under Article 13 and no other party has appealed a final decision within the *Anti-Doping Organization's* process, *WADA* may appeal such decision directly to *CAS* without having to exhaust other remedies in the *Anti-Doping Organization's* process.

13.2 Appeals from Decisions Regarding Anti-Doping Rule Violations, *Consequences, Provisional Suspensions,* Implementation of Decisions and Authority

A decision that an anti-doping rule violation was committed, a decision imposing *Consequences* or not imposing *Consequences* for an anti-doping rule violation, or a decision that no anti-doping rule violation was committed; a decision that an anti-doping rule violation proceeding cannot go forward for procedural reasons (including, for example, prescription); a decision by *WADA* not to grant an exception to the six-months notice requirement for a retired *Athlete* to return to competition under Article 5.6.1; a decision by *WADA* assigning *Results Management* under Article 7.1; a decision by an *Anti-Doping Organization* not to bring forward an *Adverse Analytical Finding* or an *Atypical Finding* as an

84 [Comment to Article 13.1.2: CAS proceedings are de novo. Prior proceedings do not limit the evidence or carry weight in the hearing before CAS.]

85 [Comment to Article 13.1.3: Where a decision has been rendered before the final stage of an Anti-Doping Organization's process (for example, a first hearing) and no party elects to appeal that decision to the next level of the Anti-Doping Organization's process (e.g., the Managing Board), then WADA may bypass the remaining steps in the Anti-Doping Organization's internal process and appeal directly to CAS.]

anti-doping rule violation, or a decision not to go forward with an anti-doping rule violation after an investigation in accordance with the *International Standard* for *Results Management*; a decision to impose, or lift, a *Provisional Suspension* as a result of a *Provisional Hearing*; an *Anti-Doping Organization's* failure to comply with Article 7.4; a decision that an *Anti-Doping Organization* lacks authority to rule on an alleged anti-doping rule violation or its *Consequences*; a decision to suspend, or not suspend, *Consequences* or to reinstate, or not reinstate, *Consequences* under Article 10.7.1; failure to comply with Articles 7.1.4 and 7.1.5; failure to comply with Article 10.8.1; a decision under Article 10.14.3; a decision by an *Anti-Doping Organization* not to implement another *Anti-Doping Organization's* decision under Article 15; and a decision under Article 27.3 may be appealed exclusively as provided in this Article 13.2.

13.2.1 Appeals Involving *International-Level Athletes* or *International Events*

In cases arising from participation in an *International Event* or in cases involving *International-Level Athletes*, the decision may be appealed exclusively to *CAS*.[86]

13.2.2 Appeals Involving Other *Athletes* or Other *Persons*

In cases where Article 13.2.1 is not applicable, the decision may be appealed to an appellate body in accordance with rules established by the *National Anti-Doping Organization*. The rules for such appeal shall respect the following principles:

- a timely hearing;
- a fair, impartial, and *Operationally Independent* and *Institutionally Independent* hearing panel;
- the right to be represented by counsel at the *Person's* own expense; and

86 [Comment to Article 13.2.1: CAS decisions are final and binding except for any review required by law applicable to the annulment or enforcement of arbitral awards.]

- a timely, written, reasoned decision.

If no such body as described above is in place and available at the time of the appeal, the *Athlete* or other *Person* shall have a right to appeal to *CAS*.

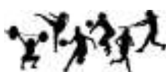
13.2.3 *Persons* Entitled to Appeal

13.2.3.1 Appeals Involving *International-Level Athletes* or *International Events*

In cases under Article 13.2.1, the following parties shall have the right to appeal to *CAS*: (a) the *Athlete* or other *Person* who is the subject of the decision being appealed; (b) the other party to the case in which the decision was rendered; (c) the relevant International Federation; (d) the *National Anti-Doping Organization* of the *Person's* country of residence or countries where the *Person* is a national or license holder; (e) the International Olympic Committee or International Paralympic Committee, as applicable, where the decision may have an effect in relation to the Olympic Games or Paralympic Games, including decisions affecting eligibility for the Olympic Games or Paralympic Games; and (f) *WADA*.

13.2.3.2 Appeals Involving Other *Athletes* or Other *Persons*

In cases under Article 13.2.2, the parties having the right to appeal to the appellate body shall be as provided in the *National Anti-Doping Organization's* rules but, at a minimum, shall include the following parties: (a) the *Athlete* or other *Person* who is the subject of the decision being appealed; (b) the other party to the case in which the decision was rendered; (c) the relevant International



Federation; (d) the *National Anti-Doping Organization* of the *Person's* country of residence or countries where the *Person* is a national or license holder; (e) the International Olympic Committee or International Paralympic Committee, as applicable, where the decision may have an effect in relation to the Olympic Games or Paralympic Games, including decisions affecting eligibility for the Olympic Games or Paralympic Games, and (f) *WADA*. For cases under Article 13.2.2, *WADA*, the International Olympic Committee, the International Paralympic Committee, and the relevant International Federation shall also have the right to appeal to *CAS* with respect to the decision of the appellate body. Any party filing an appeal shall be entitled to assistance from *CAS* to obtain all relevant information from the *Anti-Doping Organization* whose decision is being appealed and the information shall be provided if *CAS* so directs.

13.2.3.3 Duty to Notify

All parties to any *CAS* appeal must ensure that *WADA* and all other parties with a right to appeal have been given timely notice of the appeal.

13.2.3.4 Appeal Deadline for Parties Other than *WADA*

The deadline to file an appeal for parties other than *WADA* shall be as provided in the rules of the *Anti-Doping Organization* conducting *Results Management*.

13.2.3.5 Appeal Deadline for *WADA*

The filing deadline for an appeal filed by *WADA* shall be the later of:

(a) Twenty-one (21) days after the last day on which any other party having a right to appeal could have appealed,

or

(b) Twenty-one (21) days after *WADA*'s receipt of the complete file relating to the decision.[87]

13.2.3.6 Appeal from Imposition of *Provisional Suspension*

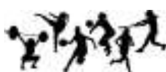
Notwithstanding any other provision herein, the only *Person* who may appeal from the imposition of a *Provisional Suspension* is the *Athlete* or other *Person* upon whom the *Provisional Suspension* is imposed.

13.2.4 Cross Appeals and other Subsequent Appeals Allowed[88]

Cross appeals and other subsequent appeals by any respondent named in cases brought to *CAS* under the *Code* are specifically permitted. Any party with a right to appeal under this Article 13 must file a cross appeal or subsequent appeal at the latest with the party's answer.

87 [Comments to Article 13.2.3: Whether governed by CAS rules or Article 13.2.3, a party's deadline to appeal does not begin running until receipt of the decision. For that reason, there can be no expiration of a party's right to appeal if the party has not received the decision.]

88 [Comment to Article 13.2.4: This provision is necessary because since 2011, CAS rules no longer permit an Athlete the right to cross appeal when an Anti-Doping Organization appeals a decision after the Athlete's time for appeal has expired. This provision permits a full hearing for all parties.]



13.3 Failure to Render a Timely Decision by an *Anti-Doping Organization*[89]

Where, in a particular case, an *Anti-Doping Organization* fails to render a decision with respect to whether an anti-doping rule violation was committed within a reasonable deadline set by *WADA*, *WADA* may elect to appeal directly to *CAS* as if the *Anti-Doping Organization* had rendered a decision finding no anti-doping rule violation. If the *CAS* hearing panel determines that an anti-doping rule violation was committed and that *WADA* acted reasonably in electing to appeal directly to *CAS*, then *WADA's* costs and attorney fees in prosecuting the appeal shall be reimbursed to *WADA* by the *Anti-Doping Organization*.

13.4 Appeals Relating to *TUEs*

TUE decisions may be appealed exclusively as provided in Article 4.4.

13.5 Notification of Appeal Decisions

Any *Anti-Doping Organization* that is a party to an appeal shall promptly provide the appeal decision to the *Athlete* or other *Person* and to the other *Anti-Doping Organizations* that would have been entitled to appeal under Article 13.2.3 as provided under Article 14.

13.6 Appeals from Decisions under Article 24.1

A notice that is not disputed and so becomes a final decision under Article 24.1, finding a *Signatory* non-compliant with the *Code* and imposing consequences

89 [Comment to Article 13.3: Given the different circumstances of each anti-doping rule violation investigation and Results Management process, it is not feasible to establish a fixed time period for an Anti-Doping Organization to render a decision before WADA may intervene by appealing directly to CAS. Before taking such action, however, WADA will consult with the Anti-Doping Organization and give the Anti-Doping Organization an opportunity to explain why it has not yet rendered a decision. Nothing in this Article prohibits an International Federation from also having rules which authorize it to assume authority for matters in which the Results Management performed by one of its National Federations has been inappropriately delayed.]

for such non-compliance, as well as conditions for *Reinstatement* of the *Signatory*, may be appealed to *CAS* as provided in the *International Standard* for *Code* Compliance by *Signatories*.

13.7 Appeals from Decisions Suspending or Revoking Laboratory Accreditation

Decisions by *WADA* to suspend or revoke a laboratory's *WADA* accreditation may be appealed only by that laboratory with the appeal being exclusively to *CAS*.

ARTICLE 14 CONFIDENTIALITY AND REPORTING

The principles of coordination of anti-doping results, public transparency and accountability and respect for the privacy of all *Athletes* or other *Persons* are as follows:

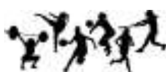
14.1 Information Concerning *Adverse Analytical Findings*, *Atypical Findings*, and other Asserted Anti-Doping Rule Violations

14.1.1 Notice of Anti-Doping Rule Violations to *Athletes* and other *Persons*

The form and manner of notice of an asserted anti-doping rule violation shall be as provided in the rules of the *Anti-Doping Organization* with *Results Management* responsibility.

14.1.2 Notice of Anti-Doping Rule Violations to *National Anti-Doping Organizations*, International Federations and *WADA*

The *Anti-Doping Organization* with *Results Management* responsibility shall also notify the *Athlete's National Anti-Doping Organization*, International Federation and *WADA* of the assertion of an anti-doping rule violation simultaneously with the notice to the *Athlete* or other *Person*.



14.1.3 Content of an Anti-Doping Rule Violation Notice

Notification shall include: the *Athlete's* or other *Person's* name, country, sport and discipline within the sport, the *Athlete's* competitive level, whether the test was *In-Competition* or *Out-of-Competition*, the date of *Sample* collection, the analytical result reported by the laboratory and other information as required by the *International Standard* for *Results Management*, or, for anti-doping rule violations other than Article 2.1, the rule violated and the basis of the asserted violation.

14.1.4 Status Reports

Except with respect to investigations which have not resulted in a notice of an anti-doping rule violation pursuant to Article 14.1.1, the *Anti-Doping Organizations* referenced in Article 14.1.2 shall be regularly updated on the status and findings of any review or proceedings conducted pursuant to Article 7, 8 or 13 and shall be provided with a prompt written reasoned explanation or decision explaining the resolution of the matter.

14.1.5 Confidentiality

The recipient organizations shall not disclose this information beyond those *Persons* with a need to know (which would include the appropriate personnel at the applicable *National Olympic Committee*, National Federation, and team in a *Team Sport*) until the *Anti-Doping Organization* with *Results Management* responsibility has made *Public Disclosure* as permitted by Article 14.3.[90]

90 [Comment to Article 14.1.5: Each Anti-Doping Organization shall provide, in its own anti-doping rules, procedures for the protection of confidential information and for investigating and disciplining improper disclosure of confidential information by any employee or agent of the Anti-Doping Organization.]

14.2 Notice of Anti-Doping Rule Violation or Violations of *Ineligibility* or *Provisional Suspension* Decisions and Request for Files

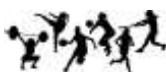
14.2.1 Anti-doping rule violation decisions or decisions related to violations of *Ineligibility* or *Provisional Suspension* rendered pursuant to Article 7.6, 8.4, 10.5, 10.6, 10.7, 10.14.3 or 13.5 shall include the full reasons for the decision, including, if applicable, a justification for why the maximum potential sanction was not imposed. Where the decision is not in English or French, the *Anti-Doping Organization* shall provide an English or French summary of the decision and the supporting reasons.

14.2.2 An *Anti-Doping Organization* having a right to appeal a decision received pursuant to Article 14.2.1 may, within fifteen (15) days of receipt, request a copy of the full case file pertaining to the decision.

14.3 *Public Disclosure*

14.3.1 After notice has been provided to the *Athlete* or other *Person* in accordance with the *International Standard* for *Results Management*, and to the applicable *Anti-Doping Organizations* in accordance with Article 14.1.2, the identity of any *Athlete* or other *Person* who is notified of a potential anti-doping rule violation, the *Prohibited Substance* or *Prohibited Method* and nature of the violation involved, and whether the *Athlete* or other *Person* is subject to a *Provisional Suspension* may be *Publicly Disclosed* by the *Anti-Doping Organization* with *Results Management* responsibility.

14.3.2 No later than twenty (20) days after it has been determined in an appellate decision under Article 13.2.1 or 13.2.2, or such appeal has been waived, or a hearing in accordance with Article 8 has been waived, or the assertion of



an anti-doping rule violation has not otherwise been timely challenged, or the matter has been resolved under Article 10.8, or a new period of *Ineligibility*, or reprimand, has been imposed under Article 10.14.3, the *Anti-Doping Organization* responsible for *Results Management* must *Publicly Disclose* the disposition of the anti-doping matter including the sport, the anti-doping rule violated, the name of the *Athlete* or other *Person* committing the violation, the *Prohibited Substance* or *Prohibited Method* involved (if any) and the *Consequences* imposed. The same *Anti-Doping Organization* must also *Publicly Disclose* within twenty (20) days the results of appellate decisions concerning anti-doping rule violations, including the information described above.[91]

14.3.3 After an anti-doping rule violation has been determined to have been committed in an appellate decision under Article 13.2.1 or 13.2.2 or such appeal has been waived, or in a hearing in accordance with Article 8 or where such hearing has been waived, or the assertion of an anti-doping rule violation has not otherwise been timely challenged, or the matter has been resolved under Article 10.8, the *Anti-Doping Organization* responsible for *Results Management* may make public such determination or decision and may comment publicly on the matter.

14.3.4 In any case where it is determined, after a hearing or appeal, that the *Athlete* or other *Person* did not commit an anti-doping rule violation, the fact that the decision has been

91 [Comment to Article 14.3.2: Where Public Disclosure as required by Article 14.3.2 would result in a breach of other applicable laws, the Anti-Doping Organization's failure to make the Public Disclosure will not result in a determination of non-compliance with Code as set forth in Article 4.2 of the International Standard for the Protection of Privacy and Personal Information.]

appealed may be *Publicly Disclosed*. However, the decision itself and the underlying facts may not be *Publicly Disclosed* except with the consent of the *Athlete* or other *Person* who is the subject of the decision. The *Anti-Doping Organization* with *Results Management* responsibility shall use reasonable efforts to obtain such consent, and if consent is obtained, shall *Publicly Disclose* the decision in its entirety or in such redacted form as the *Athlete* or other *Person* may approve.

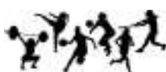
14.3.5 Publication shall be accomplished at a minimum by placing the required information on the *Anti-Doping Organization's* website and leaving the information up for the longer of one (1) month or the duration of any period of *Ineligibility*.

14.3.6 Except as provided in Articles 14.3.1 and 14.3.3, no *Anti-Doping Organization* or *WADA*-accredited laboratory, or official of either, shall publicly comment on the specific facts of any pending case (as opposed to general description of process and science) except in response to public comments attributed to, or based on information provided by the *Athlete*, other *Person* or their entourage or other representatives.

14.3.7 The mandatory *Public Disclosure* required in 14.3.2 shall not be required where the *Athlete* or other *Person* who has been found to have committed an anti-doping rule violation is a *Minor*, *Protected Person* or *Recreational Athlete*. Any optional *Public Disclosure* in a case involving a *Minor*, *Protected Person* or *Recreational Athlete* shall be proportionate to the facts and circumstances of the case.

14.4 Statistical Reporting

Anti-Doping Organizations shall, at least annually, publish publicly a general statistical report of their *Doping Control* activities, with a copy provided to *WADA*. *Anti-Doping Organizations* may also publish reports showing the



name of each *Athlete* tested and the date of each *Testing*. *WADA* shall, at least annually, publish statistical reports summarizing the information that it receives from *Anti-Doping Organizations* and laboratories.

14.5 *Doping Control* Information Database and Monitoring of Compliance

To enable *WADA* to perform its compliance monitoring role and to ensure the effective use of resources and sharing of applicable *Doping Control* information among *Anti-Doping Organizations*, *WADA* shall develop and manage a *Doping Control* information database, such as *ADAMS*, and *Anti-Doping Organizations* shall report to *WADA* through such database *Doping Control*-related information, including, in particular,

a) *Athlete Biological Passport* data for *International-Level Athletes* and *National-Level Athletes*,

b) Whereabouts information for *Athletes* including those in *Registered Testing Pools*,

c) *TUE* decisions, and

d) *Results Management* decisions,

as required under the applicable *International Standard(s)*.

14.5.1 To facilitate coordinated test distribution planning, avoid unnecessary duplication in *Testing* by various *Anti-Doping Organizations*, and to ensure that *Athlete Biological Passport* profiles are updated, each *Anti-Doping Organization* shall report all *In-Competition* and *Out-of-Competition* tests to *WADA* by entering the *Doping Control* forms into *ADAMS* in accordance with the requirements and timelines contained in the *International Standard* for *Testing* and Investigations.

14.5.2 To facilitate *WADA's* oversight and appeal rights for *TUEs*, each *Anti-Doping Organization* shall report all *TUE* applications, decisions and supporting documentation using *ADAMS* in accordance with the requirements and timelines

contained in the *International Standard* for *Therapeutic Use Exemptions*.

14.5.3 To facilitate *WADA's* oversight and appeal rights for *Results Management*, *Anti-Doping Organizations* shall report the following information into *ADAMS* in accordance with the requirements and timelines outlined in the *International Standard* for *Results Management*: (a) notifications of anti-doping rule violations and related decisions for *Adverse Analytical Findings*; (b) notifications and related decisions for other anti-doping rule violations that are not *Adverse Analytical Findings*; (c) whereabouts failures; and (d) any decision imposing, lifting or reinstating a *Provisional Suspension*.

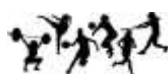
14.5.4 The information described in this Article will be made accessible, where appropriate and in accordance with the applicable rules, to the *Athlete*, the *Athlete's National Anti-Doping Organization* and International Federation, and any other *Anti-Doping Organizations* with *Testing* authority over the *Athlete*.[92]

14.6 Data Privacy[93]

Anti-Doping Organizations may collect, store, process or disclose personal information relating to *Athletes* and other *Persons* where necessary and appropriate to conduct their *Anti-Doping Activities* under the *Code*

92 [Comment to Article 14.5: ADAMS is operated, administered and managed by WADA, and is designed to be consistent with data privacy laws and norms applicable to WADA and other organizations using such system. Personal information regarding Athletes or other Persons maintained in ADAMS is and will be treated in strict confidence and in accordance with the International Standard for the Protection of Privacy and Personal Information.]

93 [Comment to Article 14.6: Each government should put in place legislation, regulation, policies or administrative practices for: cooperation and sharing of information with Anti-Doping Organizations; sharing of data among Anti-Doping Organizations as provided in the Code[...]].



and *International Standards* (including specifically the International Standard for the Protection of Privacy and Personal Information), and in compliance with applicable law.

ARTICLE 15 IMPLEMENTATION OF DECISIONS

15.1 Automatic Binding Effect of Decisions by *Signatory Anti-Doping Organizations*

15.1.1 A decision of an anti-doping rule violation made by a *Signatory Anti-Doping Organization*, an appellate body (Article 13.2.2) or *CAS* shall, after the parties to the proceeding are notified, automatically be binding beyond the parties to the proceeding upon every *Signatory* in every sport with the effects described below:

15.1.1.1 A decision by any of the above-described bodies imposing a *Provisional Suspension* (after a *Provisional Hearing* has occurred or the *Athlete* or other *Person* has either accepted the *Provisional Suspension* or has waived the right to a *Provisional Hearing*, expedited hearing or expedited appeal offered in accordance with Article 7.4.3) automatically prohibits the *Athlete* or other *Person* from participation (as described in Article 10.14.1) in all sports within the authority of any *Signatory* during the *Provisional Suspension*.

15.1.1.2 A decision by any of the above-described bodies imposing a period of *Ineligibility* (after a hearing has occurred or been waived) automatically prohibits the *Athlete* or other *Person* from participation (as described in Article 10.14.1) in all sports within the

authority of any *Signatory* for the period of *Ineligibility*.

15.1.1.3 A decision by any of the above-described bodies accepting an anti-doping rule violation automatically binds all *Signatories*.

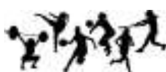
15.1.1.4 A decision by any of the above-described bodies to *Disqualify* results under Article 10.10 for a specified period automatically *Disqualifies* all results obtained within the authority of any *Signatory* during the specified period.

15.1.2 Each *Signatory* is under the obligation to recognize and implement a decision and its effects as required by Article 15.1.1, without any further action required, on the earlier of the date the *Signatory* receives actual notice of the decision or the date the decision is placed into *ADAMS*.

15.1.3 A decision by an *Anti-Doping Organization*, an appellate body or *CAS* to suspend, or lift, *Consequences* shall be binding upon each *Signatory* without any further action required, on the earlier of the date the *Signatory* receives actual notice of the decision or the date the decision is placed into *ADAMS*.

15.1.4 Notwithstanding any provision in Article 15.1.1, however, a decision of an anti-doping rule violation by a *Major Event Organization* made in an expedited process during an *Event* shall not be binding on other *Signatories* unless the rules of the *Major Event Organization* provide the *Athlete* or other *Person* with an opportunity to an appeal under non-expedited procedures.[94]

94 [Comment to Article 15.1.4: By way of example, where the rules of the Major Event Organization give the Athlete or other Person the option of choosing an expedited CAS appeal or a CAS appeal under normal CAS procedure, the final decision or adjudication by the Major Event Organization is binding on other Signatories regardless of whether the Athlete or other Person chooses the expedited appeal option.]



15.2 Implementation of Other Decisions by *Anti-Doping Organizations*

Signatories may decide to implement other anti-doping decisions rendered by *Anti-Doping Organizations* not described in Article 15.1.1 above, such as a *Provisional Suspension* prior to a *Provisional Hearing* or acceptance by the *Athlete* or other *Person*.[95]

15.3 Implementation of Decisions by Body that is not a *Signatory*

An anti-doping decision by a body that is not a *Signatory* to the *Code* shall be implemented by each *Signatory* if the *Signatory* finds that the decision purports to be within the authority of that body and the anti-doping rules of that body are otherwise consistent with the *Code*.[96]

95 [Comment to Articles 15.1 and 15.2: Anti-Doping Organization decisions under Article 15.1 are implemented automatically by other Signatories without the requirement of any decision or further action on the Signatories' part. For example, when a National Anti-Doping Organization decides to Provisionally Suspend an Athlete, that decision is given automatic effect at the International Federation level. To be clear, the "decision" is the one made by the National Anti-Doping Organization, there is not a separate decision to be made by the International Federation. Thus, any claim by the Athlete that the Provisional Suspension was improperly imposed can only be asserted against the National Anti-Doping Organization. Implementation of Anti-Doping Organizations' decisions under Article 15.2 is subject to each Signatory's discretion. A Signatory's implementation of a decision under Article 15.1 or Article 15.2 is not appealable separately from any appeal of the underlying decision. The extent of recognition of TUE decisions of other Anti-Doping Organizations shall be determined by Article 4.4 and the International Standard for Therapeutic Use Exemptions.]

96 [Comment to Article 15.3: Where the decision of a body that has not accepted the Code is in some respects Code compliant and in other respects not Code compliant, Signatories should attempt to apply the decision in harmony with the principles of the Code. For example, if in a process consistent with the Code a non-Signatory has found an Athlete to have committed an anti-doping rule violation on account of the presence of a Prohibited Substance in the Athlete's body but the period of Ineligibility applied is shorter than the period provided for in the Code, then all Signatories should recognize the finding of an anti-doping rule violation and the Athlete's National Anti-Doping Organization should conduct a hearing consistent with Article 8 to determine whether the longer period of Ineligibility provided in the Code should be imposed. A Signatory's implementation of a decision or its decision not to implement a decision under Article 15.3, is appealable under Article 13.]

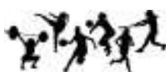
ARTICLE 16 *DOPING CONTROL* FOR ANIMALS COMPETING IN SPORT

16.1 In any sport that includes animals in *Competition*, the International Federation for that sport shall establish and implement anti-doping rules for the animals included in that sport. The anti-doping rules shall include a list of *Prohibited Substances*, appropriate *Testing* procedures and a list of approved laboratories for *Sample* analysis.

16.2 With respect to determining anti-doping rule violations, *Results Management*, fair hearings, *Consequences*, and appeals for animals involved in sport, the International Federation for that sport shall establish and implement rules that are generally consistent with Articles 1, 2, 3, 9, 10, 11, 13 and 17 of the *Code*.

ARTICLE 17 STATUTE OF LIMITATIONS

No anti-doping rule violation proceeding may be commenced against an *Athlete* or other *Person* unless he or she has been notified of the anti-doping rule violation as provided in Article 7, or notification has been reasonably attempted, within ten (10) years from the date the violation is asserted to have occurred.



PART TWO
EDUCATION AND RESEARCH

ARTICLE 18 *EDUCATION*

18.1 Principles

Education programs are central to ensure harmonized, coordinated and effective anti-doping programs at the international and national level. They are intended to preserve the spirit of sport and the protection of *Athletes*' health and right to compete on a doping free level playing field as described in the Introduction to the *Code*.

Education programs shall raise awareness, provide accurate information and develop decision-making capability to prevent intentional and unintentional anti-doping rule violations and other breaches of the *Code*. *Education* programs and their implementation shall instill personal values and principles that protect the spirit of sport.

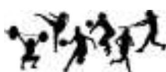
All *Signatories* shall, within their scope of responsibility and in cooperation with each other, plan, implement, monitor, evaluate and promote *Education* programs in line with the requirements set out in the *International Standard* for *Education*.

18.2 *Education* Program and Plan by *Signatories*

Education programs as outlined in the *International Standard* for *Education* shall promote the spirit of sport and have a positive and long-term influence on the choices made by *Athletes* and other *Persons*.

Signatories shall develop an *Education* plan as required in the *International Standard* for *Education*. Prioritization of target groups or activities shall be justified based on a clear rationale of the *Education* Plan.[97]

97 [Comment to Article 18.2: The Risk Assessment that Anti-Doping Organizations are required to conduct under the International Standard for Testing and Investigations provides a framework relating to the risk of doping within sports. Such assessment can be used to identify priority target groups for Education programs. WADA also provides Education resources for Signatories to use to support their program delivery.]



Signatories shall make their *Education* plans available to other *Signatories* upon request in order to avoid duplication of efforts where possible and to support the recognition process outlined in the *International Standard* for *Education*.

An *Anti-Doping Organization's Education* program shall include the following awareness, information, values-based and *Education* components which shall at a minimum be available on a website.[98]

- Principles and values associated with clean sport
- *Athletes'*, *Athlete Support Personnel's* and other groups' rights and responsibilities under the *Code*
- The principle of *Strict Liability*
- Consequences of doping, for example, physical and mental health, social and economic effects, and sanctions
- Anti-doping rule violations
- Substances and Methods on the *Prohibited List*
- Risks of supplement use
- *Use* of medications and *Therapeutic Use Exemptions*
- *Testing* procedures, including urine, blood and the *Athlete Biological Passport*
- Requirements of the *Registered Testing Pool*, including whereabouts and the use of *ADAMS*
- Speaking up to share concerns about doping

98 *[Comment to Article 18.2: Where, for example, a particular National Anti-Doping Organization does not have its own website, the required information may be posted on the website of the country's National Olympic Committee or other organization responsible for sport in the country.]*

18.2.1 *Education* Pool and Target Groups Established by *Signatories*

Signatories shall identify their target groups and form an *Education* pool in line with the minimum requirements outlined in the *International Standard* for *Education*.[99]

18.2.2 *Education* Program Implementation by *Signatories*

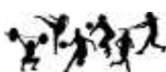
Any *Education* activity directed at the *Education* pool shall be delivered by a trained and authorized *Person* according to the requirements set out in the *International Standard* for *Education*.[100]

18.2.3 Coordination and Cooperation

WADA shall work with relevant stakeholders to support the implementation of the *International Standard* for *Education* and act as a central repository for information and *Education* resources and/or programs developed by *WADA* or *Signatories*. *Signatories* shall cooperate with each other and governments to coordinate their efforts.

99 [Comment to Article 18.2.1: The Education pool should not be limited to National- or International-Level Athletes and should include all Persons, including youth, who participate in sport under the authority of any Signatory, government or other sports organization accepting the Code.]

100 [Comment to Article 18.2.2: The purpose of this provision is to introduce the concept of an Educator. Education shall only be delivered by a trained and competent Person, similar to Testing whereby only trained and appointed Doping Control officers can conduct tests. In both cases, the requirement for trained personnel is to safeguard the Athlete and maintain consistent standards of delivery. Further details on instituting a simple accreditation program for Educators are outlined in the WADA Model Guidelines for Education, including best practice examples of interventions that can be implemented.]



On a national level, *Education* programs shall be coordinated by the *National Anti-Doping Organization*, working in collaboration with their respective national sports federations, *National Olympic Committee*, National Paralympic Committee, governments and *Educational* institutions. This coordination shall maximize the reach of *Education* programs across sports, *Athletes* and *Athlete Support Personnel* and minimize duplication of effort.

Education programs aimed at *International-Level Athletes* shall be the priority for International Federations. *Event*-based *Education* shall be a mandatory element of any anti-doping program associated with an *International Event*.

All *Signatories* shall cooperate with each other and governments to encourage relevant sports organizations, *Educational* institutions, and professional associations to develop and implement appropriate Codes of Conduct that reflect good practice and ethics related to sport practice regarding anti-doping. Disciplinary policies and procedures shall be clearly articulated and communicated, including sanctions which are consistent with the *Code*. Such Codes of Conduct shall make provision for appropriate disciplinary action to be taken by sports bodies to either support the implementation of any doping sanctions, or for an organization to take its own disciplinary action should insufficient evidence prevent an anti-doping rule violation being brought forward.

ARTICLE 19 RESEARCH

19.1 Purpose and Aims of Anti-Doping Research

Anti-doping research contributes to the development and implementation of efficient programs within *Doping Control* and to information and *Education* regarding doping-free sport.

All *Signatories* and *WADA* shall, in cooperation with each other and governments, encourage and promote such research and take all reasonable measures to ensure that the results of such research are used for the promotion of the goals that are consistent with the principles of the *Code*.

19.2 Types of Research

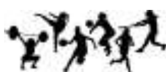
Relevant anti-doping research may include, for example, sociological, behavioral, juridical and ethical studies in addition to scientific, medical, analytical, statistical and physiological investigation. Without limiting the foregoing, studies on devising and evaluating the efficacy of scientifically-based physiological and psychological training programs that are consistent with the principles of the *Code* and respectful of the integrity of the human subjects, as well as studies on the *Use* of emerging substances or methods resulting from scientific developments should be conducted.

19.3 Coordination of Research and Sharing of Results

Coordination of anti-doping research through *WADA* is essential. Subject to intellectual property rights, the results of such anti-doping research shall be provided to *WADA* and, where appropriate, shared with relevant *Signatories* and *Athletes* and other stakeholders.

19.4 Research Practices

Anti-doping research shall comply with internationally recognized ethical practices.



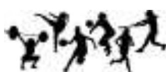
19.5 Research Using *Prohibited Substances* and *Prohibited Methods*

Research efforts should avoid the *Administration* of *Prohibited Substances* or *Prohibited Methods* to *Athletes*.

19.6 Misuse of Results

Adequate precautions should be taken so that the results of anti-doping research are not misused and applied for doping purposes.

PART 2 *Education* and Research



PART THREE

ROLES AND RESPONSIBILITIES

All *Signatories* and *WADA* shall act in a spirit of partnership and collaboration in order to ensure the success of the fight against doping in sport and the respect of the *Code*.[101]

101 [Comment: Responsibilities for Signatories and Athletes or other Persons are addressed in various Articles in the Code and the responsibilities listed in this part are additional to these responsibilities.]

ARTICLE 20 ADDITIONAL ROLES AND RESPONSIBILITIES OF *SIGNATORIES* AND *WADA*

Each *Anti-Doping Organization* may delegate aspects of *Doping Control* or anti-doping *Education* for which it is responsible but remains fully responsible for ensuring that any aspect it delegates is performed in compliance with the *Code*. To the extent such delegation is made to a *Delegated Third Party* that is not a *Signatory*, the agreement with the *Delegated Third Party* shall require its compliance with the *Code* and *International Standards*.[102]

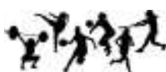
20.1 Roles and Responsibilities of the International Olympic Committee

20.1.1 To adopt and implement anti-doping policies and rules for the Olympic Games which conform with the *Code* and the *International Standards*.

20.1.2 To require, as a condition of recognition by the International Olympic Committee, that International Federations and *National Olympic Committees* within the Olympic Movement are in compliance with the *Code* and the *International Standards*.

20.1.3 To withhold some or all Olympic funding and/ or other benefits from sport organizations that are not in compliance with the *Code* and/or the *International Standards*, where required under Article 24.1.

102 *[Comment to Article 20: Obviously, an Anti-Doping Organization is not responsible for a failure to comply with the Code by its non-Signatory Delegated Third Parties if the Delegated Third Party's' failure is committed in connection with services provided to a different Anti-Doping Organization. For example, if FINA and FIBA both delegate aspects of Doping Control to the same non-Signatory Delegated Third Party, and the provider fails to comply with the Code in performing the services for FINA, only FINA and not FIBA would be responsible for the failure. However, Anti-Doping Organizations shall contractually require Delegated Third Parties to whom they have delegated anti-doping responsibilities to report to the Anti-Doping Organization any finding of non-compliance by the Delegated Third Parties.]*



20.1.4 To take appropriate action to discourage non-compliance with the *Code* and the *International Standards* (a) by *Signatories*, in accordance with Article 24.1 and the *International Standard* for *Code* Compliance by *Signatories*, and (b) by any other sporting body over which it has authority, in accordance with Article 12.

20.1.5 To authorize and facilitate the *Independent Observer Program*.

20.1.6 To require all *Athletes* preparing for or participating in the Olympic Games, and all *Athlete Support Personnel* associated with such *Athletes*, to agree to and be bound by anti-doping rules in conformity with the *Code* as a condition of such participation or involvement.

20.1.7 Subject to applicable law, as a condition of such position or involvement, to require all of its board members, directors, officers, and those employees (and those of appointed *Delegated Third Parties*), who are involved in any aspect of *Doping Control*, to agree to be bound by anti-doping rules as *Persons* in conformity with the *Code* for direct and intentional misconduct, or to be bound by comparable rules and regulations put in place by the *Signatory*.

20.1.8 Subject to applicable law, to not knowingly employ a *Person* in any position involving *Doping Control* (other than authorized anti-doping *Education* or rehabilitation programs) who is *Provisionally Suspended* or is serving a period of *Ineligibility* under the *Code* or, if a *Person* was not subject to the *Code*, who has directly and intentionally engaged in conduct within the previous six (6) years which would have constituted a violation of anti-doping rules if *Code*-compliant rules had been applicable to such *Person*.

20.1.9 To vigorously pursue all potential anti-doping rule violations within its authority including investigation into whether *Athlete Support Personnel* or other *Persons* may have been involved in each case of doping.

20.1.10 To plan, implement, evaluate and promote anti-doping *Education* in line with the requirements of the *International Standard* for *Education*.

20.1.11 To accept bids for the Olympic Games only from countries where the government has ratified, accepted, approved or acceded to the *UNESCO Convention*, and (where required under Article 24.1.9) to not accept bids for *Events* from countries where the *National Olympic Committee*, the National Paralympic Committee and/or the *National Anti-Doping Organization* is not in compliance with the *Code* or the *International Standards*.

20.1.12 To cooperate with relevant national organizations and agencies and other *Anti-Doping Organizations*.

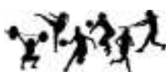
20.1.13 To respect the operational independence of laboratories as provided in the *International Standard* for Laboratories.

20.1.14 To adopt a policy or rule implementing Article 2.11.

20.2 Roles and Responsibilities of the International Paralympic Committee

20.2.1 To adopt and implement anti-doping policies and rules for the Paralympic Games which conform with the *Code* and the *International Standards*.

20.2.2 To require, as a condition of membership of the International Paralympic Committee, that International Federations and National Paralympic Committees within the Paralympic Movement are in compliance with the *Code* and the *International Standards*.



20.2.3 To withhold some or all Paralympic funding and/or other benefits from sport organizations that are not in compliance with the *Code* and/or the *International Standards*, where required under Article 24.1.

20.2.4 To take appropriate action to discourage non-compliance with the *Code* and the *International Standards* (a) by *Signatories*, in accordance with Article 24.1 and the *International Standard* for *Code* Compliance by *Signatories*, and (b) by any other sporting body over which it has authority, in accordance with Article 12.

20.2.5 To authorize and facilitate the *Independent Observer Program*.

20.2.6 To require all *Athletes* preparing for or participating in the Paralympic Games, and all *Athlete Support Personnel* associated with such *Athletes*, to agree to and be bound by anti-doping rules in conformity with the *Code* as a condition of such participation or involvement.

20.2.7 Subject to applicable law, as a condition of such position or involvement, to require all of its board members, directors, officers, and those employees (and those of appointed *Delegated Third Parties*), who are involved in any aspect of *Doping Control*, to agree to be bound by anti-doping rules as *Persons* in conformity with the *Code* for direct and intentional misconduct, or to be bound by comparable rules and regulations put in place by the *Signatory*.

20.2.8 Subject to applicable law, to not knowingly employ a *Person* in any position involving *Doping Control* (other than authorized anti-doping *Education* or rehabilitation programs) who is *Provisionally Suspended* or is serving a period of *Ineligibility* under the *Code* or, if a *Person* was not subject to the *Code*, who has directly and intentionally engaged in conduct within the previous six (6) years which would have constituted a violation

of anti-doping rules if *Code*-compliant rules had been applicable to such *Person*.

20.2.9 To plan, implement, evaluate and promote anti-doping *Education* in line with the requirements of the *International Standard* for *Education*.

20.2.10 To vigorously pursue all potential anti-doping rule violations within its authority including investigation into whether *Athlete Support Personnel* or other *Persons* may have been involved in each case of doping.

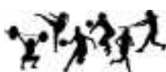
20.2.11 To cooperate with relevant national organizations and agencies and other *Anti-Doping Organizations*.

20.2.12 To respect the operational independence of laboratories as provided in the *International Standard* for Laboratories.

20.3 Roles and Responsibilities of International Federations

20.3.1 To adopt and implement anti-doping policies and rules which conform with the *Code* and *International Standards*.

20.3.2 To require, as a condition of membership, that the policies, rules and programs of their National Federations and other members are in compliance with the *Code* and the *International Standards*, and to take appropriate action to enforce such compliance; areas of compliance shall include but not be limited to: (i) requiring that their National Federations conduct *Testing* only under the documented authority of their International Federation and use their *National Anti-Doping Organization* or other *Sample* collection authority to collect *Samples* in compliance with the *International Standard* for *Testing* and Investigations; (ii) requiring that their National Federations recognize the authority of the *National Anti-Doping Organization* in their country in accordance with Article 5.2.1 and assist as appropriate with the *National*



Anti-Doping Organization's implementation of the national *Testing* program for their sport; (iii) requiring that their National Federations analyze all *Samples* collected using a *WADA*-accredited or *WADA*-approved laboratory in accordance with Article 6.1; and (iv) requiring that any national level anti-doping rule violation cases discovered by their National Federations are adjudicated by an *Operationally Independent* hearing panel in accordance with Article 8.1 and the *International Standard* for *Results Management*.

20.3.3 To require all *Athletes* preparing for or participating in a *Competition* or activity authorized or organized by the International Federation or one of its member organizations, and all *Athlete Support Personnel* associated with such *Athletes*, to agree to and be bound by anti-doping rules in conformity with the *Code* as a condition of such participation or involvement.

20.3.4 Subject to applicable law, as a condition of such position or involvement, to require all of its board members, directors, officers, and those employees (and those of appointed *Delegated Third Parties*), who are involved in any aspect of *Doping Control*, to agree to be bound by anti-doping rules as *Persons* in conformity with the *Code* for direct and intentional misconduct, or to be bound by comparable rules and regulations put in place by the *Signatory*.

20.3.5 Subject to applicable law, to not knowingly employ a *Person* in any position involving *Doping Control* (other than authorized anti-doping *Education* or rehabilitation programs) who is *Provisionally Suspended* or is serving a period of *Ineligibility* under the *Code* or, if a *Person* was not subject to the *Code*, who has directly and intentionally engaged in conduct within the previous six (6) years which would have constituted a violation

of anti-doping rules if *Code*-compliant rules had been applicable to such *Person*.

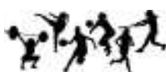
20.3.6 To require *Athletes* who are not regular members of the International Federation or one of its member National Federations to be available for *Sample* collection and to provide accurate and up-to-date whereabouts information as part of the International Federation's *Registered Testing Pool* consistent with the conditions for eligibility established by the International Federation or, as applicable, the *Major Event Organization*.[103]

20.3.7 To require each of their National Federations to establish rules requiring all *Athletes* preparing for or participating in a *Competition* or activity authorized or organized by a National Federation or one of its member organizations, and all *Athlete Support Personnel* associated with such *Athletes*, to agree to be bound by anti-doping rules and the *Results Management* authority of *Anti-Doping Organization* in conformity with the *Code* as a condition of such participation.

20.3.8 To require National Federations to report any information suggesting or relating to an anti-doping rule violation to their *National Anti-Doping Organization* and International Federation and to cooperate with investigations conducted by any *Anti-Doping Organization* with authority to conduct the investigation.

20.3.9 To take appropriate action to discourage non-compliance with the *Code* and the *International Standards* (a) by *Signatories*, in accordance with Article 24.1 and the *International Standard* for *Code* Compliance by *Signatories*, and (b) by any other sporting body over which they have authority, in accordance with Article 12.

103 [Comment to Article 20.3.6: This would include, for example, *Athletes* from professional leagues.]



20.3.10 To authorize and facilitate the *Independent Observer Program* at *International Events*.

20.3.11 To withhold some or all funding to their member or recognized National Federations that are not in compliance with the *Code* and/or the *International Standards*.

20.3.12 To vigorously pursue all potential anti-doping rule violations within their authority including investigation into whether *Athlete Support Personnel* or other *Persons* may have been involved in each case of doping, to ensure proper enforcement of *Consequences*, and to conduct an automatic investigation of *Athlete Support Personnel* in the case of any anti-doping rule violation involving a *Protected Person* or *Athlete Support Person* who has provided support to more than one *Athlete* found to have committed an anti-doping rule violation.

20.3.13 To plan, implement, evaluate and promote anti-doping *Education* in line with the requirements of the *International Standard* for *Education*, including requiring National Federations to conduct anti-doping *Education* in coordination with the applicable *National Anti-Doping Organization*.

20.3.14 To accept bids for World Championships and other *International Events* only from countries where the government has ratified, accepted, approved or acceded to the *UNESCO Convention*, and (where required under Article 24.1.9) to not accept bids for *Events* from countries where the *National Olympic Committee*, the National Paralympic Committee and/or the *National Anti-Doping Organization* is not in compliance with the *Code* or the *International Standards*.

20.3.15 To cooperate with relevant national organizations and agencies and other *Anti-Doping Organizations*.

20.3.16 To cooperate fully with *WADA* in connection with investigations conducted by *WADA* pursuant to Article 20.7.14.

20.3.17 To have disciplinary rules in place and require National Federations to have disciplinary rules in place to prevent *Athlete Support Personnel* who are *Using Prohibited Substances* or *Prohibited Methods* without valid justification from providing support to *Athletes* within the International Federation's or National Federation's authority.

20.3.18 To respect the operational independence of laboratories as provided in the *International Standard* for Laboratories.

20.3.19 To adopt a policy or rule implementing Article 2.11.

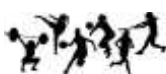
20.4 Roles and Responsibilities of *National Olympic Committees* and National Paralympic Committees

20.4.1 To ensure that their anti-doping policies and rules conform with the *Code* and the *International Standards*.

20.4.2 To require, as a condition of membership, that the policies, rules and programs of their National Federations and other members are in compliance with the *Code* and the *International Standards*, and to take appropriate action to enforce such compliance.

20.4.3 To respect the autonomy of the *National Anti-Doping Organization* in their country and not to interfere in its operational decisions and activities.

20.4.4 To require National Federations to report any information suggesting or relating to an anti-doping rule violation to their *National Anti-Doping Organization* and International Federation and to cooperate with investigations conducted by any *Anti-Doping Organization* with authority to conduct the investigation.



20.4.5 To require, as a condition of participation in the Olympic Games and Paralympic Games that, at a minimum, *Athletes* who are not regular members of a National Federation be available for *Sample* collection and to provide whereabouts information as required by the *International Standard* for *Testing* and Investigations as soon as the *Athlete* is identified on the long list or subsequent entry document submitted in connection with the Olympic Games or Paralympic Games.

20.4.6 To cooperate with their *National Anti-Doping Organization* and to work with their government to establish a *National Anti-Doping Organization* where one does not already exist, provided that, in the interim, the *National Olympic Committee* or its designee shall fulfill the responsibility of a *National Anti-Doping Organization*. For those countries that are members of a *Regional Anti-Doping Organization*, the *National Olympic Committee*, in cooperation with the government, shall maintain an active and supportive role with their respective *Regional Anti-Doping Organization*.

20.4.7 To require each of their National Federations to establish rules (or other means) requiring all *Athletes* preparing for or participating in a *Competition* or activity authorized or organized by a National Federation or one of its member organizations, and all *Athlete Support Personnel* associated with such *Athletes*, to agree to and be bound by anti-doping rules and *Anti-Doping Organization Results Management* authority in conformity with the *Code* as a condition of such participation or involvement.

20.4.8 Subject to applicable law, as a condition of such position or involvement, to require all of its board members, directors, officers, and those employees (and those of appointed *Delegated Third Parties*), who are involved in any aspect

of *Doping Control*, to agree to be bound by anti-doping rules as *Persons* in conformity with the *Code* for direct and intentional misconduct, or to be bound by comparable rules and regulations put in place by the *Signatory*.

20.4.9 Subject to applicable law, to not knowingly employ a *Person* in any position involving *Doping Control* (other than authorized anti-doping *Education* or rehabilitation programs) who is *Provisionally Suspended* or is serving a period of *Ineligibility* under the *Code* or, if a *Person* was not subject to the *Code*, who has directly and intentionally engaged in conduct within the previous six (6) years which would have constituted a violation of anti-doping rules if *Code*-compliant rules had been applicable to such *Person*.

20.4.10 To withhold some or all funding, during any period of *Ineligibility*, to any *Athlete* or *Athlete Support Person* who has violated anti-doping rules.

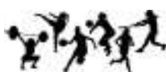
20.4.11 To withhold some or all funding to their member or recognized National Federations that are not in compliance with the *Code* and/or the *International Standards*.

20.4.12 To plan, implement, evaluate and promote anti-doping *Education* in line with the requirements of the *International Standard* for *Education*, including requiring National Federations to conduct anti-doping *Education* in coordination with the applicable *National Anti-Doping Organization*.

20.4.13 To vigorously pursue all potential anti-doping rule violations within their authority including investigation into whether *Athlete Support Personnel* or other *Persons* may have been involved in each case of doping.

20.4.14 To cooperate with relevant national organizations and agencies and other *Anti-Doping Organizations*.

20.4.15 To have disciplinary rules in place to prevent *Athlete Support Personnel* who are *Using Prohibited*



Substances or *Prohibited Methods* without valid justification from providing support to *Athletes* within the *National Olympic Committee's* or National Paralympic Committee's authority.

20.4.16 To respect the operational independence of laboratories as provided in the *International Standard* for Laboratories.

20.4.17 To adopt a policy or rule implementing Article 2.11.

20.4.18 To take appropriate action to discourage non-compliance with the *Code* and the *International Standards* (a) by *Signatories*, in accordance with Article 24.1 and the *International Standard* for *Code* Compliance by *Signatories* and (b) by any other sporting body over which it has authority, in accordance with Article 12.

20.5 Roles and Responsibilities of *National Anti-Doping Organizations*[104]

20.5.1 To be independent in their operational decisions and activities from sport and government, including without limitation by prohibiting any involvement in their operational decisions or activities by any *Person* who is at the same time involved in the management or operations of any International Federation, National Federation, *Major Event Organization*, *National Olympic Committee*, National Paralympic Committee, or government department with responsibility for sport or anti-doping.[105]

104 [Comment to Article 20.5: For some smaller countries, a number of the responsibilities described in this Article may be delegated by their National Anti-Doping Organization to a Regional Anti-Doping Organization.]

105 [Comment to Article 20.5.1: This would not, for example, prohibit a National Anti-Doping Organization from acting as a Delegated Third Party for a Major Event Organization or other Anti-Doping Organization.]

20.5.2 To adopt and implement anti-doping rules and policies which conform with the *Code* and the *International Standards*.

20.5.3 To cooperate with other relevant national organizations and agencies and other *Anti-Doping Organizations*.

20.5.4 To encourage reciprocal *Testing* between *Anti-Doping Organizations*.

20.5.5 To promote anti-doping research.

20.5.6 Where funding is provided, to withhold some or all funding, during any period of *Ineligibility*, to any *Athlete* or *Athlete Support Person* who has violated anti-doping rules.

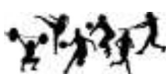
20.5.7 To vigorously pursue all potential anti-doping rule violations within their authority including investigation into whether *Athlete Support Personnel* or other *Persons* may have been involved in each case of doping and to ensure proper enforcement of *Consequences*.

20.5.8 To plan, implement, evaluate and promote anti-doping *Education* in line with the requirements of the *International Standard* for *Education*.

20.5.9 Each *National Anti-Doping Organization* shall be the authority on *Education* within their respective countries.

20.5.10 Subject to applicable law, as a condition of such position or involvement, to require all of its board members, directors, officers, and those employees (and those of appointed *Delegated Third Parties*), who are involved in any aspect of *Doping Control*, to agree to be bound by anti-doping rules as *Persons* in conformity with the *Code* for direct and intentional misconduct, or to be bound by comparable rules and regulations put in place by the *Signatory*.

20.5.11 Subject to applicable law, to not knowingly employ a *Person* in any position involving *Doping Control*



(other than authorized anti-doping *Education* or rehabilitation programs) who is *Provisionally Suspended* or is serving a period of *Ineligibility* under the *Code* or, if a *Person* was not subject to the *Code*, who has directly and intentionally engaged in conduct within the previous six (6) years which would have constituted a violation of anti-doping rules if *Code*-compliant rules had been applicable to such *Person*.

20.5.12 To conduct an automatic investigation of *Athlete Support Personnel* within their authority in the case of any anti-doping rule violation by a *Protected Person* and to conduct an automatic investigation of any *Athlete Support Person* who has provided support to more than one *Athlete* found to have committed an anti-doping rule violation.

20.5.13 To cooperate fully with *WADA* in connection with investigations conducted by *WADA* pursuant to Article 20.7.14.

20.5.14 To respect the operational independence of laboratories as provided in the *International Standard* for Laboratories.

20.5.15 To adopt a policy or rule implementing Article 2.11.

20.5.16 To take appropriate action to discourage non-compliance with the *Code* and the *International Standards* (a) by *Signatories*, in accordance with Article 24.1 and the *International Standard* for *Code* Compliance by *Signatories* and (b) by any other sporting body over which it has authority, in accordance with Article 12.

20.6 Roles and Responsibilities of *Major Event Organizations*

20.6.1 To adopt and implement anti-doping policies and rules for its *Events* which conform with the *Code* and the *International Standards*.

20.6.2 To take appropriate action to discourage non-compliance with the *Code* and the *International Standards* (a) by *Signatories*, in accordance with Article 24.1 and the *International Standard* for *Code* Compliance by *Signatories*, and (b) by any other sporting body over which it has authority, in accordance with Article 12.

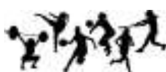
20.6.3 To authorize and facilitate the *Independent Observer Program*.

20.6.4 To require all *Athletes* preparing for or participating in the *Event*, and all *Athlete Support Personnel* associated with such *Athletes*, to agree to and be bound by anti-doping rules in conformity with the *Code* as a condition of such participation or involvement.

20.6.5 Subject to applicable law, as a condition of such position or involvement, to require all of its board members, directors, officers, and those employees (and those of appointed *Delegated Third Parties*), who are involved in any aspect of *Doping Control*, to agree to be bound by anti-doping rules as *Persons* in conformity with the *Code* for direct and intentional misconduct, or to be bound by comparable rules and regulations put in place by the *Signatory*.

20.6.6 Subject to applicable law, to not knowingly employ a *Person* in any position involving *Doping Control* (other than authorized anti-doping *Education* or rehabilitation programs) who is *Provisionally Suspended* or is serving a period of *Ineligibility* under the *Code* or, if a *Person* was not subject to the *Code*, who has directly and intentionally engaged in conduct within the previous six (6) years which would have constituted a violation of anti-doping rules if *Code*-compliant rules had been applicable to such *Person*.

20.6.7 To vigorously pursue all potential anti-doping rule violations within its authority including investigation into whether *Athlete Support*



Personnel or other *Persons* may have been involved in each case of doping.

20.6.8 To plan, implement, evaluate and promote anti-doping *Education* in line with the requirements of the *International Standard* for *Education*.

20.6.9 To accept bids for *Events* only from countries where the government has ratified, accepted, approved or acceded to the *UNESCO Convention*, and (where required under Article 24.1.9) to not accept bids for *Events* from countries where the *National Olympic Committee*, the National Paralympic Committee and/or the *National Anti-Doping Organization* is not in compliance with the *Code* or the *International Standards*.

20.6.10 To cooperate with relevant national organizations and agencies and other *Anti-Doping Organizations*.

20.6.11 To respect the operational independence of laboratories as provided in the *International Standard* for Laboratories.

20.6.12 To adopt a policy or rule implementing Article 2.11.

20.7 Roles and Responsibilities of *WADA*

20.7.1 To accept the *Code* and commit to fulfill its roles and responsibilities under the *Code* through a declaration approved by *WADA's* Foundation Board.[106]

20.7.2 To adopt and implement policies and procedures which conform with the *Code* and the *International Standards*.

20.7.3 To provide support and guidance to *Signatories* in their efforts to comply with the *Code* and the *International Standards* and monitor such compliance in accordance with Article 24.1 of the *Code* and the *International Standard* for *Code* Compliance by *Signatories*.

106 [Comment to Article 20.7.1: WADA cannot be a Signatory because of its role in monitoring Signatory compliance with the Code.]

20.7.4 To approve *International Standards* applicable to the implementation of the *Code*.

20.7.5 To accredit and reaccredit laboratories to conduct *Sample* analysis or to approve others to conduct *Sample* analysis.

20.7.6 To develop and publish guidelines and models of best practice.

20.7.7 To submit to the *WADA* Executive Committee for approval, upon the recommendation of the *WADA Athletes* Committee the *Athletes*' Anti-Doping Rights Act which compiles in one place those *Athletes*' rights which are specifically identified in the *Code* and *International Standards*, and other agreed upon principles of best practice with respect to the overall protection of *Athletes*' rights in the context of anti-doping.

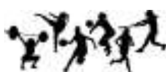
20.7.8 To promote, conduct, commission, fund and coordinate anti-doping research and to promote anti-doping *Education*.

20.7.9 To design and conduct an effective *Independent Observer Program* and other types of *Event* advisory programs.

20.7.10 To conduct, in exceptional circumstances and at the direction of the *WADA* Director General, *Testing* on its own initiative or as requested by other *Anti-Doping Organizations*, and to cooperate with relevant national and international organizations and agencies, including but not limited to, facilitating inquiries and investigations.[107]

20.7.11 To approve, in consultation with International Federations, *National Anti-Doping Organizations*, and *Major Event Organizations*, defined *Testing* and *Sample* analysis programs.

107 [Comment to Article 20.7.10: WADA is not a Testing agency, but it reserves the right, in exceptional circumstances, to conduct its own tests where problems have been brought to the attention of the relevant Anti-Doping Organization and have not been satisfactorily addressed.]



20.7.12 Subject to applicable law, as a condition of such position or involvement, to require all of its board members, directors, officers, and those employees (and those of appointed *Delegated Third Parties*), who are involved in any aspect of *Doping Control*, to agree to be bound by anti-doping rules as *Persons* in conformity with the *Code* for direct and intentional misconduct, or to be bound by comparable rules and regulations put in place by the *Signatory*.

20.7.13 Subject to applicable law, to not knowingly employ a *Person* in any position involving *Doping Control* (other than authorized anti-doping *Education* or rehabilitation programs) who is *Provisionally Suspended* or is serving a period of *Ineligibility* under the *Code* or, if a *Person* was not subject to the *Code*, who has directly and intentionally engaged in conduct within the previous six (6) years which would have constituted a violation of anti-doping rules if *Code*-compliant rules had been applicable to such *Person*.

20.7.14 To initiate its own investigations of anti-doping rule violations, non-compliance of *Signatories* and *WADA*-accredited laboratories, and other activities that may facilitate doping.

20.8 Cooperation Regarding Third Party Regulations

Signatories shall cooperate with each other, *WADA* and governments to encourage professional associations and institutions with authority over *Athlete Support Personnel* who are otherwise not subject to the *Code* to implement regulations prohibiting conduct which would be considered an anti-doping rule violation if committed by *Athlete Support Personnel* who are subject to the *Code*.

ARTICLE 21 ADDITIONAL ROLES AND RESPONSIBILITIES OF *ATHLETES* AND OTHER *PERSONS*

21.1 Roles and Responsibilities of *Athletes*

21.1.1 To be knowledgeable of and comply with all applicable anti-doping policies and rules adopted pursuant to the *Code*.

21.1.2 To be available for *Sample* collection at all times.[108]

21.1.3 To take responsibility, in the context of anti-doping, for what they ingest and *Use*.

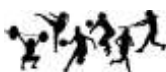
21.1.4 To inform medical personnel of their obligation not to *Use Prohibited Substances* and *Prohibited Methods* and to take responsibility to make sure that any medical treatment received does not violate anti-doping policies and rules adopted pursuant to the *Code*.

21.1.5 To disclose to their *National Anti-Doping Organization* and International Federation any decision by a non-*Signatory* finding that the *Athlete* committed an anti-doping rule violation within the previous ten (10) years.

21.1.6 To cooperate with *Anti-Doping Organizations* investigating anti-doping rule violations.[109]

108 [Comment to Article 21.1.2: With due regard to an Athlete's human rights and privacy, legitimate anti-doping considerations sometimes require Sample collection late at night or early in the morning. For example, it is known that some Athletes Use low doses of EPO during these hours so that it will be undetectable in the morning.]

109 [Comment to Article 21.1.6: Failure to cooperate is not an anti-doping rule violation under the Code, but it may be the basis for disciplinary action under a Signatory's rules.]



21.1.7 To disclose the identity of their *Athlete Support Personnel* upon request by any *Anti-Doping Organization* with authority over the *Athlete*.

21.2 Roles and Responsibilities of *Athlete Support Personnel*

21.2.1 To be knowledgeable of and comply with all anti-doping policies and rules adopted pursuant to the *Code* and which are applicable to them or the *Athletes* whom they support.

21.2.2 To cooperate with the *Athlete Testing* program.

21.2.3 To use their influence on *Athlete* values and behavior to foster anti-doping attitudes.

21.2.4 To disclose to their *National Anti-Doping Organization* and International Federation any decision by a non-*Signatory* finding that they committed an anti-doping rule violation within the previous ten (10) years.

21.2.5 To cooperate with *Anti-Doping Organizations* investigating anti-doping rule violations.[110]

21.2.6 *Athlete Support Personnel* shall not *Use* or *Possess* any *Prohibited Substance* or *Prohibited Method* without valid justification.[111]

110 [Comment to Article 21.2.5: Failure to cooperate is not an anti-doping rule violation under the Code, but it may be the basis for disciplinary action under a Signatory's rules.]

111 [Comment to Article 21.2.6: In those situations where Use or personal Possession of a Prohibited Substance or Prohibited Method by an Athlete Support Person without justification is not an anti-doping rule violation under the Code, it should be subject to other sport disciplinary rules. Coaches and other Athlete Support Personnel are often role models for Athletes. They should not be engaging in personal conduct which conflicts with their responsibility to encourage their Athletes not to dope.]

21.3 Roles and Responsibilities of Other *Persons* Subject to the *Code*

21.3.1 To be knowledgeable of and comply with all anti-doping policies and rules adopted pursuant to the *Code* and which are applicable to them.

21.3.2 To disclose to their *National Anti-Doping Organization* and International Federation any decision by a non-*Signatory* finding that they committed an anti-doping rule violation within the previous ten (10) years.

21.3.3 To cooperate with *Anti-Doping Organizations* investigating anti-doping rule violations.

21.4 Roles and Responsibilities of *Regional Anti-Doping Organizations*

21.4.1 To ensure member countries adopt and implement rules, policies and programs which conform with the *Code*.

21.4.2 To require, as a condition of membership, that a member country sign an official *Regional Anti-Doping Organization* membership form which clearly outlines the delegation of anti-doping responsibilities to the *Regional Anti-Doping Organization*.

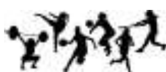
21.4.3 To cooperate with other relevant national and regional organizations and agencies and other *Anti-Doping Organizations*.

21.4.4 To encourage reciprocal *Testing* between *National Anti-Doping Organizations* and *Regional Anti-Doping Organizations*.

21.4.5 To promote and assist with capacity building among relevant *Anti-Doping Organizations*.

21.4.6 To promote anti-doping research.

21.4.7 To plan, implement, evaluate and promote anti-doping *Education* in line with the requirements of the *International Standard* for *Education*.



ARTICLE 22 INVOLVEMENT OF GOVERNMENTS[112]

Each government's commitment to the *Code* will be evidenced by its signing the Copenhagen Declaration on Anti-Doping in Sport of 3 March 2003, and by ratifying, accepting, approving or acceding to the *UNESCO Convention*.

The *Signatories* are aware that any action taken by a government is a matter for that government and subject to the obligations under international law as well as to its own laws and regulations. While governments are bound only by the requirements of the relevant international intergovernmental treaties (and notably of the *UNESCO Convention*), the following Articles set forth the expectations of the *Signatories* to support them in the implementation of the *Code*.

22.1 Each government should take all actions and measures necessary to comply with the *UNESCO Convention*.

22.2 Each government should put in place legislation, regulation, policies or administrative practices for: cooperation and sharing of information with *Anti-Doping Organizations*; sharing of data among *Anti-Doping Organizations* as provided in the *Code*; unrestricted transport of urine and blood *Samples* in a manner that maintains their security and integrity; and unrestricted entry and exit of *Doping Control* officials and unrestricted access for *Doping Control* officials to all areas where *International-Level Athletes* or *National-Level Athletes*

112 [Comment to Article 22: Most governments cannot be parties to, or be bound by, private non-governmental instruments such as the Code. For that reason, governments are not asked to be Signatories to the Code but rather to sign the Copenhagen Declaration and ratify, accept, approve or accede to the UNESCO Convention. Although the acceptance mechanisms may be different, the effort to combat doping through the coordinated and harmonized program reflected in the Code is very much a joint effort between the sport movement and governments.

This Article sets forth what the Signatories clearly expect from governments. However, these are simply "expectations" since governments are only "obligated" to adhere to the requirements of the UNESCO Convention.]

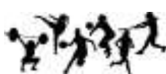
live or train to conduct no advance notice *Testing*, subject to applicable border control, immigration and access requirements and regulations.

22.3 Each government should adopt rules, regulations or policies to discipline officials and employees who are involved in *Doping Control*, sport performance or medical care in a sport setting, including in a supervisory capacity, for engaging in activities which would have constituted a violation of anti-doping rules if *Code*-compliant rules had been applicable to such *Persons*.

22.4 Each government should not permit any *Person* to be involved in any position involving *Doping Control*, sport performance or medical care in a sport setting, including in a supervisory capacity, where such *Person*: (i) is serving a period of *Ineligibility* for an anti-doping rule violation under the *Code*, or (ii) if not subject to the authority of an *Anti-Doping Organization*, and where *Ineligibility* has not been addressed in a *Results Management* process pursuant to the *Code*, has been convicted or found in a criminal, disciplinary or professional proceeding to have engaged in conduct which would have constituted a violation of anti-doping rules if *Code*-compliant rules had been applicable to such *Person*, in which case the disqualifying status of such *Person* should be in force for the longer of six (6) years from the criminal, professional or disciplinary decision or the duration of the criminal, disciplinary or professional sanction imposed.

22.5 Each government should encourage cooperation between all of its public services or agencies and *Anti-Doping Organizations* to timely share information with *Anti-Doping Organizations* which would be useful in the fight against doping and where to do so would not otherwise be legally prohibited.

22.6 Each government should respect arbitration as the preferred means of resolving doping-related disputes, subject to human and fundamental rights and applicable national law.

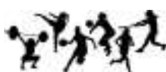


22.7 Each government that does not have a *National Anti-Doping Organization* in its country should work with its *National Olympic Committee* to establish one.

22.8 Each government should respect the autonomy of a *National Anti-Doping Organization* in its country or a *Regional Anti-Doping Organization* to which its country belongs and any *WADA*-accredited or approved laboratory in its country and not interfere in their operational decisions and activities.

22.9 Each government should not limit or restrict *WADA's* access to any doping *Samples* or anti-doping records or information held or controlled by any *Signatory*, member of a *Signatory* or *WADA*-accredited or approved laboratory.

22.10 Failure by a government to ratify, accept, approve or accede to the *UNESCO Convention* may result in ineligibility to bid for and/or host *Events* as provided in Articles 20.1.11, 20.3.14 and 20.6.9, and the failure by a government to comply with the *UNESCO Convention* thereafter, as determined by UNESCO, may result in meaningful consequences by UNESCO and *WADA* as determined by each organization.



PART FOUR

ACCEPTANCE, COMPLIANCE, MODIFICATION AND INTERPRETATION

ARTICLE 23 ACCEPTANCE AND IMPLEMENTATION

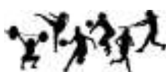
23.1 Acceptance of the *Code*

23.1.1 The following entities may be *Signatories* to the *Code*: the International Olympic Committee, International Federations, the International Paralympic Committee, *National Olympic Committees*, National Paralympic Committees, *Major Event Organizations*, *National Anti-Doping Organizations* and other organizations having significant relevance in sport.

23.1.2 The International Olympic Committee; International Federations recognized by the International Olympic Committee; the International Paralympic Committee; *National Olympic Committees*; National Paralympic Committees; *National Anti-Doping Organizations*; and *Major Event Organizations* recognized by one or more of the aforementioned entities shall become *Signatories* by signing a declaration of acceptance or by another form of acceptance determined to be acceptable by *WADA*.

23.1.3 Any other entity described in Article 23.1.1 may submit an application to *WADA* to become a *Signatory* which will be reviewed under a policy adopted by *WADA*. *WADA*'s acceptance of such applications shall be subject to conditions and requirements established by *WADA* in such policy.[113] Upon acceptance of an application by *WADA*, the applicant's becoming a *Signatory* is subject to the applicant signing a declaration

113 [Comment to Article 23.1.3: For example, these conditions and requirements would include financial contributions by the entity to cover WADA's administrative, monitoring and compliance costs that may be attributable to the application process and the entity's subsequent Signatory status.]



of acceptance of the *Code* and an acceptance of the conditions and requirements established by *WADA* for such applicant.

23.1.4 A list of all acceptances will be made public by *WADA*.

23.2 Implementation of the *Code*

23.2.1 The *Signatories* shall implement applicable *Code* provisions through policies, statutes, rules or regulations according to their authority and within their relevant spheres of responsibility.

23.2.2 The following Articles as applicable to the scope of the *Anti-Doping Activity* which the *Anti-Doping Organization* performs must be implemented by *Signatories* without substantive change (allowing for any non-substantive changes to the language in order to refer to the organization's name, sport, section numbers, etc.):[114]

- Article 1 (Definition of Doping)
- Article 2 (Anti-Doping Rule Violations)
- Article 3 (Proof of Doping)
- Article 4.2.2 (*Specified Substances* or *Specified Methods*)
- Article 4.2.3 (*Substances of Abuse*)
- Article 4.3.3 (*WADA's* Determination of the *Prohibited List*)
- Article 7.7 (Retirement from Sport)
- Article 9 (Automatic *Disqualification* of Individual Results)

114 [Comment to Article 23.2.2: Nothing in the Code precludes an Anti-Doping Organization from adopting and enforcing its own specific disciplinary rules for conduct by Athlete Support Personnel related to doping but which does not, in and of itself, constitute an anti-doping rule violation under the Code. For example, a National or International Federation could refuse to renew the license of a coach when multiple Athletes have committed anti-doping rule violations while under that coach's supervision.]

- Article 10 (Sanctions on Individuals)
- Article 11 (*Consequences* to Teams)
- Article 13 (Appeals) with the exception of 13.2.2, 13.6, and 13.7
- Article 15.1 (Automatic Binding Effect of Decisions)
- Article 17 (Statute of Limitations)
- Article 26 (Interpretation of the *Code*)
- Appendix 1 – Definitions

No additional provision may be added to a *Signatory's* rules which changes the effect of the Articles enumerated in this Article. A *Signatory's* rules must expressly acknowledge the Commentary of the *Code* and endow the Commentary with the same status that it has in the *Code*. However, nothing in the *Code* precludes a *Signatory* from having safety, medical, eligibility or Code of Conduct rules which are applicable for purposes other than anti-doping.[115]

23.2.3 In implementing the *Code*, *Signatories* are encouraged to use the models of best practice recommended by *WADA*.

23.3 Implementation of Anti-Doping Programs

Signatories shall devote sufficient resources in order to implement anti-doping programs in all areas that are compliant with the *Code* and the *International Standards*.

115 [Comment to Article 23.2.2: For example, an International Federation could decide, for reputational and health reasons, to have a Code of Conduct rule prohibiting an Athlete's Use or Possession of cocaine Out-of-Competition. In an anti-doping Sample collection Out-of-Competition, such International Federation would be able to have the laboratory test for cocaine as part of the enforcement of its Code of Conduct policy. On the other hand, the International Federation's Code of Conduct could not impose additional sanctions for the Use of cocaine In-Competition since that is already covered by the sanction scheme established in the Code. Other possible examples include rules governing the use of alcohol or oxygen. Similarly, an International Federation could use data from a Doping Control test to monitor eligibility relating to transgender and other eligibility rules.]

ARTICLE 24 MONITORING AND ENFORCING COMPLIANCE WITH THE *CODE* AND *UNESCO CONVENTION*

24.1 Monitoring and Enforcing Compliance with the *Code*[116]

24.1.1 Compliance by *Signatories* with the *Code* and the *International Standards* shall be monitored by *WADA* in accordance with the *International Standard* for *Code* Compliance by *Signatories*.

24.1.2 To facilitate such monitoring, each *Signatory* shall report to *WADA* on its compliance with the *Code* and the *International Standards* as and when required by *WADA*. As part of that reporting, the *Signatory* shall accurately provide all of the information requested by *WADA* and shall explain the actions it is taking to correct any *Non-Conformities*.

24.1.3 Failure by a *Signatory* to provide accurate information in accordance with Article 24.1.2 itself constitutes an instance of *Non-Conformity* with the *Code*, as does failure by a *Signatory* to submit accurate information to *WADA* where required by other Articles of the *Code* or by the *International Standard* for *Code* Compliance by *Signatories* or other *International Standard*.

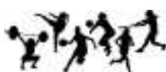
24.1.4 In cases of *Non-Conformity* (whether with reporting obligations or otherwise), *WADA* shall follow the corrective procedures set out in the *International Standard* for *Code* Compliance by *Signatories*. If the *Signatory* or its delegate fails to correct the *Non-Conformities* within the specified timeframe, then (following approval of such course by *WADA*'s Executive Committee) *WADA* shall send a formal notice to the *Signatory*,

116 [Comment to Article 24.1: Defined terms specific to Article 24.1 are set forth at the end of Appendix 1 to the Code.]

alleging that the *Signatory* is non-compliant, specifying the consequences that *WADA* proposes should apply for such non-compliance from the list of potential consequences set forth in Article 24.1.12, and specifying the conditions that *WADA* proposes the *Signatory* should have to satisfy in order to be *Reinstated* to the list of *Code*-compliant *Signatories*. That notice will be publicly reported in accordance with the *International Standard* for *Code* Compliance by *Signatories*.

24.1.5 If the *Signatory* does not dispute *WADA's* allegation of non-compliance or the consequences or *Reinstatement* conditions proposed by *WADA* within twenty-one (21) days of receipt of the formal notice, the non-compliance alleged will be deemed admitted and the consequences and *Reinstatement* conditions proposed will be deemed accepted, the notice will automatically become and will be issued by *WADA* as a final decision, and (without prejudice to any appeal filed in accordance with Article 13.6) it will be enforceable with immediate effect in accordance with Article 24.1.9. The decision will be publicly reported as provided in the *International Standard* for *Code* Compliance by *Signatories* or other *International Standards*.

24.1.6 If the *Signatory* wishes to dispute *WADA's* allegation of non-compliance, and/or the consequences and/or the *Reinstatement* conditions proposed by *WADA*, it must notify *WADA* in writing within twenty-one (21) days of its receipt of the notice from *WADA*. In that event, *WADA* shall file a formal notice of dispute with *CAS*, and that dispute will be resolved by the *CAS* Ordinary Arbitration Division in accordance with the *International Standard* for *Code* Compliance by *Signatories*. *WADA* shall have the burden of proving to the *CAS* Panel, on the balance of probabilities, that the *Signatory* is non-compliant (if that is disputed). If the *CAS* Panel decides that



WADA has met that burden, and if the *Signatory* has also disputed the consequences and/or the *Reinstatement* conditions proposed by *WADA*, the *CAS* Panel will also decide, by reference to the relevant provisions of the *International Standard* for *Code* Compliance by *Signatories*: (a) what consequences should be imposed from the list of potential consequences set out in Article 24.1.12 of the *Code*; and (b) what conditions the *Signatory* should be required to satisfy in order to be *Reinstated*.

24.1.7 *WADA* will publicly report the fact that the case has been referred to *CAS* for determination. Each of the following *Persons* shall have the right to intervene and participate as a party in the case, provided it gives notice of its intervention within ten (10) days of such publication by *WADA*:

24.1.7.1 the International Olympic Committee and/or the International Paralympic Committee (as applicable), and the *National Olympic Committee* and/or the National Paralympic Committee (as applicable), where the decision may have an effect in relation to the Olympic Games or Paralympic Games (including decisions affecting eligibility to attend/participate in the Olympic Games or Paralympic Games); and

24.1.7.2 an International Federation, where the decision may have an effect on participation in the International Federation's World Championships and/or other International *Events* and/or on a bid that has been submitted for a country to host the International Federation's World Championships and/or other *International Events*.

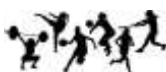
Any other *Person* wishing to participate as a party in the case must apply to *CAS*

within ten (10) days of publication by *WADA* of the fact that the case has been referred to *CAS* for determination. *CAS* shall permit such intervention (i) if all other parties in the case agree; or (ii) if the applicant demonstrates a sufficient legal interest in the outcome of the case to justify its participation as a party.

24.1.8 *CAS*'s decision resolving the dispute will be publicly reported by *CAS* and by *WADA*. Subject to the right under Swiss law to challenge that decision before the Swiss Federal Tribunal, the decision shall be final and enforceable with immediate effect in accordance with Article 24.1.9.

24.1.9 Final decisions issued in accordance with Article 24.1.5 or Article 24.1.8, determining that a *Signatory* is non-compliant, imposing consequences for such non-compliance, and/or setting conditions that the *Signatory* has to satisfy in order to be *Reinstated* to the list of *Code*-compliant *Signatories*, and decisions by *CAS* further to Article 24.1.10, are applicable worldwide, and shall be recognized, respected and given full effect by all other *Signatories* in accordance with their authority and within their respective spheres of responsibility.

24.1.10 If a *Signatory* wishes to dispute *WADA*'s allegation that the *Signatory* has not yet met all of the *Reinstatement* conditions imposed on it and therefore is not yet entitled to be *Reinstated* to the list of *Code*-compliant *Signatories*, the *Signatory* must advise *WADA* in writing within twenty-one (21) days of its receipt of the allegation from *WADA*. In that event, *WADA* shall file a formal notice of dispute with *CAS*, and the dispute will be resolved by the *CAS* Ordinary Arbitration Division in accordance with Articles 24.1.6 to 24.1.8. *WADA* shall have the burden to prove to the *CAS*



Panel, on the balance of probabilities, that the *Signatory* has not yet met all of the *Reinstatement* conditions imposed on it and therefore is not yet entitled to be *Reinstated*. Subject to the right under Swiss law to challenge *CAS*'s decision before the Swiss Federal Tribunal, *CAS*'s decision shall be final and enforceable with immediate effect in accordance with Article 24.1.9.

24.1.11 The various requirements imposed on *Signatories* by the *Code* and the *International Standards* shall be classified either as *Critical*, or as *High Priority*, or as *General*, in accordance with the *International Standard* for *Code* Compliance by *Signatories*, depending on their relative importance to the fight against doping in sport. That classification shall be a key factor in determining what consequences should be imposed in the event of non-compliance with such requirement(s), in accordance with Article 10 of the *International Standard* for *Code* Compliance by *Signatories*. The *Signatory* has the right to dispute the classification of the requirement, in which case *CAS* will decide on the appropriate classification.

24.1.12 The following consequences may be imposed, individually or cumulatively, on a *Signatory* that has failed to comply with the *Code* and/or the *International Standards*, based on the particular facts and circumstances of the case at hand, and the provisions of Article 10 of the *International Standard* for *Code* Compliance by *Signatories*:

24.1.12.1 Ineligibility or withdrawal of *WADA* privileges:

(a) in accordance with the relevant provisions of *WADA*'s Statutes, the *Signatory's Representatives* being ruled ineligible for a specified period to hold any *WADA* office or any position as a member of any *WADA* board or committee or other body (including but not limited

to *WADA's* Foundation Board, the Executive Committee, and any Standing Committee] (although *WADA* may exceptionally permit *Representatives* of the *Signatory* to remain as members of *WADA* expert groups where there is no effective substitute available);

(b) the *Signatory* being ruled ineligible to host any event organized or co-hosted or co-organized by *WADA*;

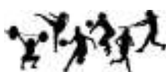
(c) the *Signatory's Representatives* being ruled ineligible to participate in any *WADA Independent Observer Program* or *WADA* Outreach program or other *WADA* activities;

(d) withdrawal of *WADA* funding to the *Signatory* (whether direct or indirect) relating to the development of specific activities or participation in specific programs; and

24.1.12.2 the *Signatory's Representatives* being ruled ineligible for a specified period to hold any office of or position as a member of the board or committees or other bodies of any other *Signatory* (or its members) or association of *Signatories*.

24.1.12.3 *Special Monitoring* of some or all of the *Signatory's Anti-Doping Activities*, until *WADA* considers that the *Signatory* is in a position to implement such *Anti-Doping Activities* in a compliant manner without such monitoring.

24.1.12.4 *Supervision* and/or *Takeover* of some or all of the *Signatory's Anti-Doping Activities* by an *Approved Third Party*, until *WADA* considers that the *Signatory* is in a position to implement such *Anti-Doping*



Activities itself in a compliant manner without such measures:

[a] If the non-compliance involves non-compliant rules, regulations and/ or legislation, then the *Anti-Doping Activities* in issue shall be conducted under other applicable rules [of one or more other *Anti-Doping Organizations*, e.g., International Federations or *National Anti-Doping Organizations* or *Regional Anti-Doping Organizations*] that are compliant, as directed by *WADA*. In that case, while the *Anti-Doping Activities* [including any *Testing* and *Results Management*] will be administered by the *Approved Third Party* under and in accordance with those other applicable rules at the cost of the non-compliant *Signatory*, any costs incurred by the *Anti-Doping Organizations* as a result of the use of their rules in this manner shall be reimbursed by the non-compliant *Signatory*.

[b] If it is not possible to fill the gap in the *Signatory's Anti-Doping Activities* in this way [for example, because national legislation prohibits it, and the *National Anti-Doping Organization* has not secured an amendment to that legislation or other solution], then it may be necessary as an alternative measure to exclude *Athletes* who would have been covered by the *Signatory's Anti-Doping Activities* from participating in the Olympic Games/Paralympic Games/other *Events*, in order to protect the rights of clean *Athletes* and to preserve public confidence in the integrity of competition at those events.

24.1.12.5 A *Fine*.

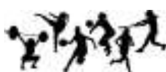
24.1.12.6 Suspension or loss of eligibility to receive some or all funding and/or other benefits from the International Olympic Committee or the International Paralympic Committee or any other *Signatory* for a specified period (with or without the right to receive such funding and/or other benefits for that period retrospectively following *Reinstatement*).

24.1.12.7 Recommendation to the relevant public authorities to withhold some or all public and/or other funding and/or other benefits from the *Signatory* for a specified period (with or without the right to receive such funding and/or other benefits for that period retrospectively following *Reinstatement*).[117]

24.1.12.8 Where the *Signatory* is a *National Anti-Doping Organization* or a *National Olympic Committee* acting as a *National Anti-Doping Organization*, the *Signatory's* country being ruled ineligible to host or co-host and/or to be awarded the right to host or co-host an *International Event* (e.g., Olympic Games, Paralympic Games, any other *Major Event Organization's Event*, World Championships, regional or continental championships, and/or any other *International Event*):

(a) If the right to host or co-host a World Championship and/or other *International Event(s)* has already been awarded to the

117 [Comment to Article 24.1.12.7: Public authorities are not Signatories to the Code. In accordance with Article 11(c) of the UNESCO Convention, however, State Parties shall, where appropriate, withhold some or all financial or other sport-related support from any sports organization or Anti-Doping Organization that is not in compliance with the Code.]



country in question, the *Signatory* that awarded that right must assess whether it is legally and practically possible to withdraw that right and re-assign the *Event* to another country. If it is legally and practically possible to do so, then the *Signatory* shall do so.

(b) *Signatories* shall ensure that they have due authority under their statutes, rules and regulations, and/or hosting agreements, to comply with this requirement (including a right in any hosting agreement to cancel the agreement without penalty where the relevant country has been ruled ineligible to host the *Event*).

24.1.12.9 Where the *Signatory* is a *National Anti-Doping Organization* or a *National Olympic Committee* or a National Paralympic Committee, exclusion of the following *Persons* from participation in or attendance at the Olympic Games and the Paralympic Games and/or other specified *Events*, World Championships, regional or continental championships and/or any other *International Events* for a specified period:

(a) the *National Olympic Committee* and/or the National Paralympic Committee of the *Signatory's* country;

(b) the *Representatives* of that country and/or of the *National Olympic Committee* and/or the National Paralympic Committee of that country; and/or

(c) the *Athletes* and *Athlete Support Personnel* affiliated to that country and/or to the *National Olympic Committee* and/or to the National Paralympic

Committee and/or to the National Federation of that country.

24.1.12.10 Where the *Signatory* is an International Federation, exclusion of the following *Persons* from participation in or attendance at the Olympic Games and the Paralympic Games and/or other *Events* for a specified period: the *Representatives* of that International Federation and/or the *Athletes* and *Athlete Support Personnel* participating in the International Federation's sport (or in one or more disciplines of that sport).

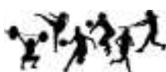
24.1.12.11 Where the *Signatory* is a *Major Event Organization*:

(a) *Special Monitoring* or *Supervision* or *Takeover* of the *Major Event Organization's Anti-Doping Activities* at the next edition(s) of its *Event*; and/or

(b) Suspension or loss of eligibility to receive funding and other benefits from and/or the recognition/membership/patronage (as applicable) of the International Olympic Committee, the International Paralympic Committee, the Association of *National Olympic Committees*, or other patron body; and/or

(c) loss of recognition of its *Event* as a qualifying event for the Olympic Games or the Paralympic Games.

24.1.12.12 Suspension of recognition by the Olympic Movement and/or of membership of the Paralympic Movement.



24.1.13 Other Consequences

Governments and *Signatories* and associations of *Signatories* may impose additional consequences within their respective spheres of authority for non-compliance by *Signatories*, provided that this does not compromise or restrict in any way the ability to apply consequences in accordance with this Article 24.1.[118]

24.2 Monitoring Compliance with the *UNESCO Convention*

Compliance with the commitments reflected in the *UNESCO Convention* will be monitored as determined by the Conference of Parties to the *UNESCO Convention*, following consultation with the State Parties and *WADA*. *WADA* shall advise governments on the implementation of the *Code* by the *Signatories* and shall advise *Signatories* on the ratification, acceptance, approval or accession to the *UNESCO Convention* by governments.

ARTICLE 25 MODIFICATION AND WITHDRAWAL

25.1 Modification

25.1.1 *WADA* shall be responsible for overseeing the evolution and improvement of the *Code*. *Athletes* and other stakeholders and governments shall be invited to participate in such process.

118 [Comment to Article 24.1.13: For example, the International Olympic Committee may decide to impose symbolic or other consequences on an International Federation or a National Olympic Committee pursuant to the Olympic Charter, such as withdrawal of eligibility to organize an International Olympic Committee Session or an Olympic Congress; while an International Federation may decide to cancel International Events that were scheduled to be held in the country of a non-compliant Signatory, or move them to another country.]

25.1.2 *WADA* shall initiate proposed amendments to the *Code* and shall ensure a consultative process to both receive and respond to recommendations and to facilitate review and feedback from *Athletes* and other stakeholders and governments on recommended amendments.

25.1.3 Amendments to the *Code* shall, after appropriate consultation, be approved by a two-thirds majority of the *WADA* Foundation Board including a majority of both the public sector and Olympic Movement members casting votes. Amendments shall, unless provided otherwise, go into effect three (3) months after such approval.

25.1.4 *Signatories* shall modify their rules to incorporate the 2021 *Code* on or before 1 January 2021, to take effect on 1 January 2021. *Signatories* shall implement any subsequent applicable amendment to the *Code* within one (1) year of approval by the *WADA* Foundation Board.[119]

25.2 Withdrawal of Acceptance of the *Code*

Signatories may withdraw acceptance of the *Code* after providing *WADA* six-months written notice of their intent to withdraw. *Signatories* shall no longer be considered in compliance once acceptance has been withdrawn.

119 [Comment to Articles 25.1.3 and 25.1.4: Under Article 25.1.3, new or changed obligations imposed on Signatories automatically go into effect three (3) months after approval unless provided otherwise. In contrast, Article 25.1.4 addresses new or changed obligations imposed on Athletes or other Persons which can only be enforced against individual Athletes or other Persons by changes to the anti-doping rules of the relevant Signatory (e.g., an International Federation). For that reason, Article 25.1.4 provides for a longer period of time for each Signatory to conform its rules to the 2021 Code and take any necessary measures to ensure the appropriate Athletes and other Persons are bound by the rules.]

ARTICLE 26 INTERPRETATION OF THE *CODE*

26.1 The official text of the *Code* shall be maintained by *WADA* and shall be published in English and French. In the event of any conflict between the English and French versions, the English version shall prevail.

26.2 The comments annotating various provisions of the *Code* shall be used to interpret the *Code*.

26.3 The *Code* shall be interpreted as an independent and autonomous text and not by reference to the existing law or statutes of the *Signatories* or governments.

26.4 The headings used for the various Parts and Articles of the *Code* are for convenience only and shall not be deemed part of the substance of the *Code* or to affect in any way the language of the provisions to which they refer.

26.5 Where the term "days" is used in the *Code* or an *International Standard*, it shall mean calendar days unless otherwise specified.

26.6 The *Code* shall not apply retroactively to matters pending before the date the *Code* is accepted by a *Signatory* and implemented in its rules. However, pre-*Code* anti-doping rule violations would continue to count as "First violations" or "Second violations" for purposes of determining sanctions under Article 10 for subsequent post-*Code* violations.

26.7 The Purpose, Scope and Organization of the World Anti-Doping Program and the *Code* and Appendix 1, Definitions, shall be considered integral parts of the *Code*.

ARTICLE 27 TRANSITIONAL PROVISIONS

27.1 General Application of the 2021 *Code*

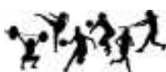
The 2021 *Code* shall apply in full as of 1 January 2021 (the "Effective Date").

27.2 Non-Retroactive except for Articles 10.9.4 and 17 or Unless Principle of "Lex Mitior" Applies

Any anti-doping rule violation case which is pending as of the Effective Date and any anti-doping rule violation case brought after the Effective Date based on an anti-doping rule violation which occurred prior to the Effective Date shall be governed by the substantive anti-doping rules in effect at the time the alleged anti-doping rule violation occurred, and not by the substantive anti-doping rules set out in this 2021 *Code*, unless the panel hearing the case determines the principle of "lex mitior" appropriately applies under the circumstances of the case. For these purposes, the retrospective periods in which prior violations can be considered for purposes of multiple violations under Article 10.9.4 and the statute of limitations set forth in Article 17 are procedural rules, not substantive rules, and should be applied retroactively along with all of the other procedural rules in the 2021 *Code* (provided, however, that Article 17 shall only be applied retroactively if the statute of limitations period has not already expired by the Effective Date).

27.3 Application to Decisions Rendered Prior to the 2021 *Code*

With respect to cases where a final decision finding an anti-doping rule violation has been rendered prior to the Effective Date, but the *Athlete* or other *Person* is still serving the period of *Ineligibility* as of the Effective Date, the *Athlete* or other *Person* may apply to the *Anti-Doping Organization* which had *Results Management* responsibility for the anti-doping rule violation to consider a reduction in the period of *Ineligibility* in light of the 2021 *Code*. Such application must be made before the period of *Ineligibility* has expired. The decision rendered by the *Anti-Doping Organization* may be appealed pursuant to Article 13.2. The 2021 *Code* shall have no application to any anti-doping rule violation case where a final decision finding an anti-doping rule violation has been rendered and the period of *Ineligibility* has expired.



27.4 Multiple Violations Where the First Violation Occurs Prior to 1 January 2021

For purposes of assessing the period of *Ineligibility* for a second violation under Article 10.9.1, where the sanction for the first violation was determined based on pre-2021 *Code* rules, the period of *Ineligibility* which would have been assessed for that first violation had 2021 *Code* rules been applicable, shall be applied.[120]

27.5 Additional *Code* Amendments

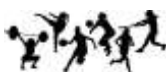
Any additional *Code* amendments shall go into effect as provided in Article 27.1.

27.6 Changes to the *Prohibited List*

Changes to the *Prohibited List* and *Technical Documents* relating to substances or methods on the *Prohibited List* shall not, unless they specifically provide otherwise, be applied retroactively. As an exception, however, when a *Prohibited Substance* or *Prohibited Method* has been removed from the *Prohibited List*, an *Athlete* or other *Person* currently serving a period of *Ineligibility* on account of the formerly *Prohibited Substance* or *Prohibited Method* may apply to the *Anti-Doping Organization* which had *Results Management* responsibility for the anti-doping rule violation to consider a reduction in the period of *Ineligibility* in light of the removal of the substance or method from the *Prohibited List*.

120 [Comment to Article 27.4: Other than the situation described in Article 27.4, where a final decision finding an anti-doping rule violation has been rendered prior to the existence of the Code or under the Code in force before the 2021 Code and the period of Ineligibility imposed has been completely served, the 2021 Code may not be used to re-characterize the prior violation.]

PART 4 Acceptance, Compliance, Modification and Interpretation



APPENDIX 1
DEFINITIONS

DEFINITIONS[121]

ADAMS: The Anti-Doping Administration and Management System is a Web-based database management tool for data entry, storage, sharing, and reporting designed to assist stakeholders and *WADA* in their anti-doping operations in conjunction with data protection legislation.

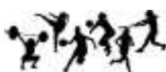
Administration: Providing, supplying, supervising, facilitating, or otherwise participating in the *Use* or *Attempted Use* by another *Person* of a *Prohibited Substance* or *Prohibited Method*. However, this definition shall not include the actions of bona fide medical personnel involving a *Prohibited Substance* or *Prohibited Method Used* for genuine and legal therapeutic purposes or other acceptable justification and shall not include actions involving *Prohibited Substances* which are not prohibited in *Out-of-Competition Testing* unless the circumstances as a whole demonstrate that such *Prohibited Substances* are not intended for genuine and legal therapeutic purposes or are intended to enhance sport performance.

Adverse Analytical Finding: A report from a *WADA*-accredited laboratory or other *WADA*-approved laboratory that, consistent with the *International Standard* for Laboratories, establishes in a *Sample* the presence of a *Prohibited Substance* or its *Metabolites* or *Markers* or evidence of the *Use* of a *Prohibited Method*.

Adverse Passport Finding: A report identified as an *Adverse Passport Finding* as described in the applicable *International Standards*.

Aggravating Circumstances: Circumstances involving, or actions by, an *Athlete* or other *Person* which may justify the imposition of a period of *Ineligibility* greater than the standard sanction. Such circumstances and actions shall include, but are not limited to: the *Athlete* or other *Person Used* or *Possessed* multiple *Prohibited Substances* or *Prohibited Methods*, *Used* or *Possessed* a *Prohibited Substance* or *Prohibited Method* on multiple occasions or committed multiple other anti-doping rule violations; a normal individual would be likely to enjoy the performance-enhancing

121 [Comment to Definitions: Defined terms shall include their plural and possessive forms, as well as those terms used as other parts of speech.]



effects of the anti-doping rule violation(s) beyond the otherwise applicable period of *Ineligibility*; the *Athlete* or *Person* engaged in deceptive or obstructive conduct to avoid the detection or adjudication of an anti-doping rule violation; or the *Athlete* or other *Person* engaged in *Tampering* during *Results Management*. For the avoidance of doubt, the examples of circumstances and conduct described herein are not exclusive and other similar circumstances or conduct may also justify the imposition of a longer period of *Ineligibility*.

Anti-Doping Activities: Anti-doping *Education* and information, test distribution planning, maintenance of a *Registered Testing Pool*, managing *Athlete Biological Passports*, conducting *Testing*, organizing analysis of *Samples*, gathering of intelligence and conduct of investigations, processing of *TUE* applications, *Results Management*, monitoring and enforcing compliance with any *Consequences* imposed, and all other activities related to anti-doping to be carried out by or on behalf of an *Anti-Doping Organization*, as set out in the *Code* and/or the *International Standards*.

Anti-Doping Organization: *WADA* or a *Signatory* that is responsible for adopting rules for initiating, implementing or enforcing any part of the *Doping Control* process. This includes, for example, the International Olympic Committee, the International Paralympic Committee, other *Major Event Organizations* that conduct *Testing* at their *Events*, International Federations, and *National Anti-Doping Organizations*.

Athlete: Any *Person* who competes in sport at the international level (as defined by each International Federation) or the national level (as defined by each *National Anti-Doping Organization*). An *Anti-Doping Organization* has discretion to apply anti-doping rules to an *Athlete* who is neither an *International-Level Athlete* nor a *National-Level Athlete*, and thus to bring them within the definition of "*Athlete*." In relation to *Athletes* who are neither *International-Level* nor *National-Level Athletes*, an *Anti-Doping Organization* may elect to: conduct limited *Testing* or no *Testing* at all; analyze *Samples* for less than the full menu of *Prohibited Substances*; require limited or no whereabouts information; or not require advance *TUEs*. However, if an Article 2.1, 2.3 or 2.5 anti-doping rule violation is committed by any *Athlete* over

whom an *Anti-Doping Organization* has elected to exercise its authority to test and who competes below the international or national level, then the *Consequences* set forth in the *Code* must be applied. For purposes of Article 2.8 and Article 2.9 and for purposes of anti-doping information and *Education*, any *Person* who participates in sport under the authority of any *Signatory*, government, or other sports organization accepting the *Code* is an *Athlete*.[122]

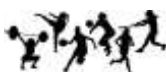
Athlete Biological Passport: The program and methods of gathering and collating data as described in the *International Standard* for *Testing* and Investigations and *International Standard* for Laboratories.

Athlete Support Personnel: Any coach, trainer, manager, agent, team staff, official, medical, paramedical personnel, parent or any other *Person* working with, treating or assisting an *Athlete* participating in or preparing for sports *Competition*.

Attempt: Purposely engaging in conduct that constitutes a substantial step in a course of conduct planned to culminate in the commission of an anti-doping rule violation. Provided, however, there shall be no anti-doping rule violation based solely on an *Attempt* to commit a violation if the *Person* renounces the *Attempt* prior to it being discovered by a third party not involved in the *Attempt*.

Atypical Finding: A report from a *WADA*-accredited laboratory or other *WADA*-approved laboratory which requires further investigation as provided by the *International Standard* for Laboratories or related *Technical Documents* prior to the determination of an *Adverse Analytical Finding*.

122 [Comment to Athlete: Individuals who participate in sport may fall in one of five categories: 1) International-Level Athlete, 2) National-Level Athlete, 3) individuals who are not International- or National-Level Athletes but over whom the International Federation or National Anti-Doping Organization has chosen to exercise authority, 4) Recreational Athlete, and 5) individuals over whom no International Federation or National Anti-Doping Organization has, or has chosen to, exercise authority. All International- or National-Level Athletes are subject to the anti-doping rules of the Code, with the precise definitions of international and national level sport to be set forth in the anti-doping rules of the International Federations and National Anti-Doping Organizations.]



Atypical Passport Finding: A report described as an *Atypical Passport Finding* as described in the applicable *International Standards*.

CAS: The Court of Arbitration for Sport.

Code: The World Anti-Doping *Code*.

Competition: A single race, match, game or singular sport contest. For example, a basketball game or the finals of the Olympic 100-meter race in athletics. For stage races and other sport contests where prizes are awarded on a daily or other interim basis the distinction between a *Competition* and an *Event* will be as provided in the rules of the applicable International Federation.

Consequences of Anti-Doping Rule Violations ("Consequences"): An *Athlete's* or other *Person's* violation of an anti-doping rule may result in one or more of the following: (a) *Disqualification* means the *Athlete's* results in a particular *Competition* or *Event* are invalidated, with all resulting *Consequences* including forfeiture of any medals, points and prizes; (b) *Ineligibility* means the *Athlete* or other *Person* is barred on account of an anti-doping rule violation for a specified period of time from participating in any *Competition* or other activity or funding as provided in Article 10.14; (c) *Provisional Suspension* means the *Athlete* or other *Person* is barred temporarily from participating in any *Competition* or activity prior to the final decision at a hearing conducted under Article 8; (d) *Financial Consequences* means a financial sanction imposed for an anti-doping rule violation or to recover costs associated with an anti-doping rule violation; and (e) *Public Disclosure* means the dissemination or distribution of information to the general public or *Persons* beyond those *Persons* entitled to earlier notification in accordance with Article 14. Teams in *Team Sports* may also be subject to *Consequences* as provided in Article 11.

Contaminated Product: A product that contains a *Prohibited Substance* that is not disclosed on the product label or in information available in a reasonable Internet search.

Decision Limit: The value of the result for a threshold substance in a *Sample*, above which an *Adverse Analytical Finding* shall be reported, as defined in the *International Standard* for Laboratories.

Delegated Third Party: Any *Person* to which an *Anti-Doping Organization* delegates any aspect of *Doping Control* or anti-doping *Education* programs including, but not limited to, third parties or other *Anti-Doping Organizations* that conduct *Sample* collection or other *Doping Control* services or anti-doping *Educational* programs for the *Anti-Doping Organization*, or individuals serving as independent contractors who perform *Doping Control* services for the *Anti-Doping Organization* (e.g., non-employee *Doping Control* officers or chaperones). This definition does not include *CAS*.

Disqualification: See *Consequences of Anti-Doping Rule Violations* above.

Doping Control: All steps and processes from test distribution planning through to ultimate disposition of any appeal and the enforcement of *Consequences*, including all steps and processes in between, including but not limited to, *Testing*, investigations, whereabouts, *TUEs*, *Sample* collection and handling, laboratory analysis, *Results Management* and investigations or proceedings relating to violations of Article 10.14 (Status During *Ineligibility* or *Provisional Suspension*).

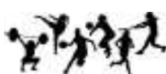
Education: The process of learning to instill values and develop behaviors that foster and protect the spirit of sport, and to prevent intentional and unintentional doping.

Event: A series of individual *Competitions* conducted together under one ruling body (e.g., the Olympic Games, World Championships of an International Federation, or Pan American Games).

Event Period: The time between the beginning and end of an *Event*, as established by the ruling body of the *Event*.

Event Venues: Those venues so designated by the ruling body for the *Event*.

Fault: *Fault* is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an *Athlete's* or other *Person's* degree of *Fault* include, for example, the *Athlete's* or other *Person's* experience, whether the *Athlete* or other *Person* is a *Protected Person*, special considerations such as impairment, the degree of risk that should have been perceived by the *Athlete* and the level of



care and investigation exercised by the *Athlete* in relation to what should have been the perceived level of risk. In assessing the *Athlete's* or other *Person's* degree of *Fault*, the circumstances considered must be specific and relevant to explain the *Athlete's* or other *Person's* departure from the expected standard of behavior. Thus, for example, the fact that an *Athlete* would lose the opportunity to earn large sums of money during a period of *Ineligibility*, or the fact that the *Athlete* only has a short time left in a career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of *Ineligibility* under Article 10.6.1 or 10.6.2.[123]

Financial Consequences: See *Consequences of Anti-Doping Rule Violations* above.

In-Competition: The period commencing at 11:59 p.m. on the day before a *Competition* in which the *Athlete* is scheduled to participate through the end of such *Competition* and the *Sample* collection process related to such *Competition*. Provided, however, *WADA* may approve, for a particular sport, an alternative definition if an International Federation provides a compelling justification that a different definition is necessary for its sport; upon such approval by *WADA*, the alternative definition shall be followed by all *Major Event Organizations* for that particular sport.[124]

123 [Comment to Fault: The criterion for assessing an Athlete's degree of Fault is the same under all Articles where Fault is to be considered. However, under Article 10.6.2, no reduction of sanction is appropriate unless, when the degree of Fault is assessed, the conclusion is that No Significant Fault or Negligence on the part of the Athlete or other Person was involved.]

124 [Comment to In-Competition: Having a universally accepted definition for In-Competition provides greater harmonization among Athletes across all sports, eliminates or reduces confusion among Athletes about the relevant timeframe for In-Competition Testing, avoids inadvertent Adverse Analytical Findings in between Competitions during an Event and assists in preventing any potential performance enhancement benefits from Substances prohibited Out-of-Competition being carried over to the Competition period.]

Independent Observer Program: A team of observers and/or auditors, under the supervision of *WADA*, who observe and provide guidance on the *Doping Control* process prior to or during certain *Events* and report on their observations as part of *WADA's* compliance monitoring program.

Individual Sport: Any sport that is not a *Team Sport*.

Ineligibility: See *Consequences of Anti-Doping Rule Violations* above.

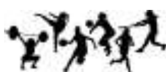
Institutional Independence: Hearing panels on appeal shall be fully independent institutionally from the *Anti-Doping Organization* responsible for *Results Management*. They must therefore not in any way be administered by, connected or subject to the *Anti-Doping Organization* responsible for *Results Management*.

International Event: An *Event* or *Competition* where the International Olympic Committee, the International Paralympic Committee, an International Federation, a *Major Event Organization*, or another international sport organization is the ruling body for the *Event* or appoints the technical officials for the *Event*.

International-Level Athlete: *Athletes* who compete in sport at the international level, as defined by each International Federation, consistent with the *International Standard* for *Testing* and Investigations.[125]

International Standard: A standard adopted by *WADA* in support of the *Code*. Compliance with an *International Standard* (as opposed to another alternative standard, practice or procedure) shall be sufficient to conclude that the procedures addressed by the *International Standard* were performed properly.

125 [Comment to International-Level Athlete: Consistent with the International Standard for Testing and Investigations, the International Federation is free to determine the criteria it will use to classify Athletes as International-Level Athletes, e.g., by ranking, by participation in particular International Events, by type of license, etc. However, it must publish those criteria in clear and concise form, so that Athletes are able to ascertain quickly and easily when they will become classified as International-Level Athletes. For example, if the criteria include participation in certain International Events, then the International Federation must publish a list of those International Events.]



International Standards shall include any *Technical Documents* issued pursuant to the *International Standard*.

Major Event Organizations: The continental associations of *National Olympic Committees* and other international multi-sport organizations that function as the ruling body for any continental, regional or other International *Event*.

Marker: A compound, group of compounds or biological variable(s) that indicates the *Use* of a *Prohibited Substance* or *Prohibited Method*.

Metabolite: Any substance produced by a biotransformation process.

Minimum Reporting Level: The estimated concentration of a *Prohibited Substance* or its *Metabolite(s)* or *Marker(s)* in a *Sample* below which *WADA*-accredited laboratories should not report that *Sample* as an *Adverse Analytical Finding*.

Minor: A natural *Person* who has not reached the age of eighteen years.

National Anti-Doping Organization: The entity(ies) designated by each country as possessing the primary authority and responsibility to adopt and implement anti-doping rules, direct the collection of *Samples*, manage test results and conduct *Results Management* at the national level. If this designation has not been made by the competent public authority(ies), the entity shall be the country's *National Olympic Committee* or its designee.

National Event: A sport *Event* or *Competition* involving *International-* or *National-Level Athletes* that is not an *International Event*.

National-Level Athlete: *Athletes* who compete in sport at the national level, as defined by each *National Anti-Doping Organization*, consistent with the *International Standard* for *Testing* and Investigations.

National Olympic Committee: The organization recognized by the International Olympic Committee. The term *National Olympic Committee* shall also include the National Sport Confederation in those countries where the National Sport Confederation

assumes typical *National Olympic Committee* responsibilities in the anti-doping area.

No Fault or Negligence: The *Athlete* or other *Person's* establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had *Used* or been administered the *Prohibited Substance* or *Prohibited Method* or otherwise violated an anti-doping rule. Except in the case of a *Protected Person* or *Recreational Athlete*, for any violation of Article 2.1, the *Athlete* must also establish how the *Prohibited Substance* entered the *Athlete's* system.

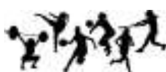
No Significant Fault or Negligence: The *Athlete* or other *Person's* establishing that any *Fault* or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for *No Fault or Negligence*, was not significant in relationship to the anti-doping rule violation. Except in the case of a *Protected Person* or *Recreational Athlete*, for any violation of Article 2.1, the *Athlete* must also establish how the *Prohibited Substance* entered the *Athlete's* system.

Operational Independence: This means that (1) board members, staff members, commission members, consultants and officials of the *Anti-Doping Organization* with responsibility for *Results Management* or its affiliates (e.g., member federation or confederation), as well as any *Person* involved in the investigation and pre-adjudication of the matter cannot be appointed as members and/or clerks (to the extent that such clerk is involved in the deliberation process and/or drafting of any decision) of hearing panels of that *Anti-Doping Organization* with responsibility for *Results Management* and (2) hearing panels shall be in a position to conduct the hearing and decision-making process without interference from the *Anti-Doping Organization* or any third party. The objective is to ensure that members of the hearing panel or individuals otherwise involved in the decision of the hearing panel, are not involved in the investigation of, or decisions to proceed with, the case.

Out-of-Competition: Any period which is not *In-Competition*.

Participant: Any *Athlete* or *Athlete Support Person*.

Person: A natural *Person* or an organization or other entity.



Possession: The actual, physical *Possession*, or the constructive *Possession* (which shall be found only if the *Person* has exclusive control or intends to exercise control over the *Prohibited Substance* or *Prohibited Method* or the premises in which a *Prohibited Substance* or *Prohibited Method* exists); provided, however, that if the *Person* does not have exclusive control over the *Prohibited Substance* or *Prohibited Method* or the premises in which a *Prohibited Substance* or *Prohibited Method* exists, constructive *Possession* shall only be found if the *Person* knew about the presence of the *Prohibited Substance* or *Prohibited Method* and intended to exercise control over it. Provided, however, there shall be no anti-doping rule violation based solely on *Possession* if, prior to receiving notification of any kind that the *Person* has committed an anti-doping rule violation, the *Person* has taken concrete action demonstrating that the *Person* never intended to have *Possession* and has renounced *Possession* by explicitly declaring it to an *Anti-Doping Organization*. Notwithstanding anything to the contrary in this definition, the purchase (including by any electronic or other means) of a *Prohibited Substance* or *Prohibited Method* constitutes *Possession* by the *Person* who makes the purchase.[126]

Prohibited List: The list identifying the *Prohibited Substances* and *Prohibited Methods*.

Prohibited Method: Any method so described on the *Prohibited List*.

Prohibited Substance: Any substance, or class of substances, so described on the *Prohibited List*.

126 [Comment to Possession: Under this definition, anabolic steroids found in an Athlete's car would constitute a violation unless the Athlete establishes that someone else used the car; in that event, the Anti-Doping Organization must establish that, even though the Athlete did not have exclusive control over the car, the Athlete knew about the anabolic steroids and intended to have control over them. Similarly, in the example of anabolic steroids found in a home medicine cabinet under the joint control of an Athlete and spouse, the Anti-Doping Organization must establish that the Athlete knew the anabolic steroids were in the cabinet and that the Athlete intended to exercise control over them. The act of purchasing a Prohibited Substance alone constitutes Possession, even where, for example, the product does not arrive, is received by someone else, or is sent to a third-party address.]

APPENDIX 1 Definitions

Protected Person: An *Athlete* or other natural *Person* who at the time of the anti-doping rule violation: (i) has not reached the age of sixteen (16) years; (ii) has not reached the age of eighteen (18) years and is not included in any *Registered Testing Pool* and has never competed in any *International Event* in an open category; or (iii) for reasons other than age has been determined to lack legal capacity under applicable national legislation.[127]

Provisional Hearing: For purposes of Article 7.4.3, an expedited abbreviated hearing occurring prior to a hearing under Article 8 that provides the *Athlete* with notice and an opportunity to be heard in either written or oral form.[128]

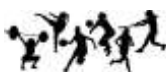
Provisional Suspension: See *Consequences of Anti-Doping Rule Violations* above.

Publicly Disclose: See *Consequences of Anti-Doping Rule Violations* above.

Recreational Athlete: A natural *Person* who is so defined by the relevant *National Anti-Doping Organization*; provided, however, the term shall not include any *Person* who, within the five years (5) prior to committing any anti-doping rule violation, has been an *International-Level Athlete* (as defined by each International Federation consistent with the *International Standard* for *Testing* and Investigations) or *National-Level Athlete* (as defined by each *National Anti-Doping Organization* consistent with the *International Standard* for *Testing* and Investigations), has

127 [Comment to Protected Person: The Code treats Protected Persons differently than other Athletes or Persons in certain circumstances based on the understanding that, below a certain age or intellectual capacity, an Athlete or other Person may not possess the mental capacity to understand and appreciate the prohibitions against conduct contained in the Code. This would include, for example, a Paralympic Athlete with a documented lack of legal capacity due to an intellectual impairment. The term "open category" is meant to exclude competition that is limited to junior or age group categories.]

128 [Comment to Provisional Hearing: A Provisional Hearing is only a preliminary proceeding which may not involve a full review of the facts of the case. Following a Provisional Hearing, the Athlete remains entitled to a subsequent full hearing on the merits of the case. By contrast, an "expedited hearing", as that term is used in Article 7.4.3, is a full hearing on the merits conducted on an expedited time schedule.]



represented any country in an *International Event* in an open category or has been included within any *Registered Testing Pool* or other whereabouts information pool maintained by any International Federation or *National Anti-Doping Organization*.[129]

Regional Anti-Doping Organization: A regional entity designated by member countries to coordinate and manage delegated areas of their national anti-doping programs, which may include the adoption and implementation of anti-doping rules, the planning and collection of *Samples*, the management of results, the review of *TUEs*, the conduct of hearings, and the conduct of *Educational* programs at a regional level.

Registered Testing Pool: The pool of highest-priority *Athletes* established separately at the international level by International Federations and at the national level by *National Anti-Doping Organizations*, who are subject to focused *In-Competition* and *Out-of-Competition Testing* as part of that International Federation's or *National Anti-Doping Organization's* test distribution plan and therefore are required to provide whereabouts information as provided in Article 5.5 and the *International Standard* for *Testing* and Investigations.

Results Management: The process encompassing the timeframe between notification as per Article 5 of the *International Standard* for *Results Management*, or in certain cases (e.g., *Atypical Finding*, *Athlete Biological Passport*, whereabouts failure), such pre-notification steps expressly provided for in Article 5 of the *International Standard* for *Results Management*, through the charge until the final resolution of the matter, including the end of the hearing process at first instance or on appeal (if an appeal was lodged).

129 [Comment to Recreational Athlete: The term "open category" is meant to exclude competition that is limited to junior or age group categories.]

APPENDIX 1 Definitions

Sample or Specimen: Any biological material collected for the purposes of *Doping Control*.[130]

Signatories: Those entities accepting the *Code* and agreeing to implement the *Code*, as provided in Article 23.

Specified Method: See Article 4.2.2.

Specified Substance: See Article 4.2.2.

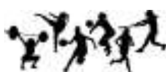
Strict Liability: The rule which provides that under Article 2.1 and Article 2.2, it is not necessary that intent, *Fault*, *Negligence*, or knowing *Use* on the *Athlete's* part be demonstrated by the *Anti-Doping Organization* in order to establish an anti-doping rule violation.

Substance of Abuse: See Article 4.2.3.

Substantial Assistance: For purposes of Article 10.7.1, a *Person* providing *Substantial Assistance* must: (1) fully disclose in a signed written statement or recorded interview all information he or she possesses in relation to anti-doping rule violations or other proceeding described in Article 10.7.1.1, and (2) fully cooperate with the investigation and adjudication of any case or matter related to that information, including, for example, presenting testimony at a hearing if requested to do so by an *Anti-Doping Organization* or hearing panel. Further, the information provided must be credible and must comprise an important part of any case or proceeding which is initiated or, if no case or proceeding is initiated, must have provided a sufficient basis on which a case or proceeding could have been brought.

Tampering: Intentional conduct which subverts the *Doping Control* process but which would not otherwise be included in the definition of *Prohibited Methods*. *Tampering* shall include, without limitation, offering or accepting a bribe to perform or fail to perform an act, preventing the collection of a *Sample*, affecting or making impossible the analysis of a *Sample*, falsifying documents submitted to an *Anti-Doping Organization* or *TUE* committee or hearing panel, procuring false testimony

130 [Comment to Sample or Specimen: It has sometimes been claimed that the collection of blood Samples violates the tenets of certain religious or cultural groups. It has been determined that there is no basis for any such claim.]



from witnesses, committing any other fraudulent act upon the *Anti-Doping Organization* or hearing body to affect *Results Management* or the imposition of *Consequences*, and any other similar intentional interference or *Attempted* interference with any aspect of *Doping Control*.[131]

Target Testing: Selection of specific *Athletes* for *Testing* based on criteria set forth in the *International Standard* for *Testing* and Investigations.

Team Sport: A sport in which the substitution of players is permitted during a *Competition*.

Technical Document: A document adopted and published by *WADA* from time to time containing mandatory technical requirements on specific anti-doping topics as set forth in an *International Standard*.

Testing: The parts of the *Doping Control* process involving test distribution planning, *Sample* collection, *Sample* handling, and *Sample* transport to the laboratory.

Therapeutic Use Exemption (TUE): A *Therapeutic Use Exemption* allows an *Athlete* with a medical condition to *Use* a *Prohibited Substance* or *Prohibited Method*, but only if the conditions set out in Article 4.4 and the *International Standard* for *Therapeutic Use Exemptions* are met.

Trafficking: Selling, giving, transporting, sending, delivering or distributing (or *Possessing* for any such purpose) a *Prohibited Substance* or *Prohibited Method* (either physically or by any electronic or other means) by an *Athlete*, *Athlete Support Person* or any other *Person* subject to the authority of an *Anti-Doping Organization* to any third party; provided, however, this definition

131 [Comment to Tampering: For example, this Article would prohibit altering identification numbers on a Doping Control form during Testing, breaking the B bottle at the time of B Sample analysis, altering a Sample by the addition of a foreign substance, or intimidating or attempting to intimidate a potential witness or a witness who has provided testimony or information in the Doping Control process. Tampering includes misconduct which occurs during the Results Management process. See Article 10.9.3.3. However, actions taken as part of a Person's legitimate defense to an anti-doping rule violation charge shall not be considered Tampering. Offensive conduct towards a Doping Control official or other Person involved in Doping Control which does not otherwise constitute Tampering shall be addressed in the disciplinary rules of sport organizations.]

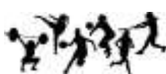
shall not include the actions of bona fide medical personnel involving a *Prohibited Substance Used* for genuine and legal therapeutic purposes or other acceptable justification, and shall not include actions involving *Prohibited Substances* which are not prohibited in *Out-of-Competition Testing* unless the circumstances as a whole demonstrate such *Prohibited Substances* are not intended for genuine and legal therapeutic purposes or are intended to enhance sport performance.

UNESCO Convention: The International Convention against Doping in Sport adopted by the 33rd session of the UNESCO *General* Conference on 19 October 2005, including any and all amendments adopted by the States Parties to the Convention and the Conference of Parties to the International Convention against Doping in Sport.

Use: The utilization, application, ingestion, injection or consumption by any means whatsoever of any *Prohibited Substance* or *Prohibited Method*.

WADA: The World Anti-Doping Agency.

Without Prejudice Agreement: For purposes of Articles 10.7.1.1 and 10.8.2, a written agreement between an *Anti-Doping Organization* and an *Athlete* or other *Person* that allows the *Athlete* or other *Person* to provide information to the *Anti-Doping Organization* in a defined time-limited setting with the understanding that, if an agreement for *Substantial Assistance* or a case resolution agreement is not finalized, the information provided by the *Athlete* or other *Person* in this particular setting may not be used by the *Anti-Doping Organization* against the *Athlete* or other *Person* in any *Results Management* proceeding under the *Code*, and that the information provided by the *Anti-Doping Organization* in this particular setting may not be used by the *Athlete* or other *Person* against the *Anti-Doping Organization* in any *Results Management* proceeding under the *Code*. Such an agreement shall not preclude the *Anti-Doping Organization*, *Athlete* or other *Person* from using any information or evidence gathered from any source other than during the specific time-limited setting described in the agreement.



DEFINITIONS SPECIFIC TO ARTICLE 24.1

Aggravating Factors: This term encompasses a deliberate attempt to circumvent or undermine the *Code* or the *International Standards* and/or to corrupt the anti-doping system, an attempt to cover up non-compliance, or any other form of bad faith on the part of the *Signatory* in question; a persistent refusal or failure by the *Signatory* to make any reasonable effort to correct *Non-Conformities* that are notified to it by *WADA*; repeat offending; and any other factor that aggravates the *Signatory's* non-compliance.

Approved Third Party: One or more *Anti-Doping Organizations* and/or *Delegated Third Parties* selected or approved by *WADA*, following consultation with the non-compliant *Signatory*, to *Supervise* or *Takeover* some or all of that *Signatory's Anti-Doping Activities*. As a last resort, if there is no other suitable body available, then *WADA* may carry out this function itself.

Critical: A requirement that is considered to be *Critical* to the fight against doping in sport. See further Annex A of the *International Standard* for *Code* Compliance by *Signatories*.

Fine: Payment by the *Signatory* of an amount that reflects the seriousness of the non-compliance/*Aggravating Factors*, its duration, and the need to deter similar conduct in the future. In a case that does not involve non-compliance with any *Critical* requirements, the *Fine* shall not exceed the lower of (a) 10% of the *Signatory's* total annual budgeted expenditure; and (b) US $100,000. The *Fine* will be applied by *WADA* to finance further *Code* compliance monitoring activities and/or anti-doping *Education* and/or anti-doping research.

General: A requirement that is considered to be important to the fight against doping in sport but does not fall into the categories of *Critical* or *High Priority*. See further Annex A of the *International Standard* for *Code* Compliance by *Signatories*.

High Priority: A requirement that is considered to be *High Priority* but not *Critical* in the fight against doping in sport. See further Annex A of the *International Standard* for *Code* Compliance by *Signatories*.

APPENDIX 1 Definitions

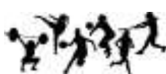
Non-Conformity: Where a *Signatory* is not complying with the *Code* and/or one or more *International Standards* and/or any requirements imposed by the *WADA* Executive Committee, but the opportunities provided in the *International Standard* for *Code* Compliance by *Signatories* to correct the *Non-Conformity/ Non-Conformities* have not yet expired and so *WADA* has not yet formally alleged that the *Signatory* is non-compliant.

Reinstatement: When a *Signatory* that was previously declared non-compliant with the *Code* and/or the *International Standards* is determined to have corrected that non-compliance and to have met all of the other conditions imposed in accordance with Article 11 of the *International Standard* for *Code* Compliance by *Signatories* for *Reinstatement* of its name to the list of *Code*-compliant *Signatories* (and *Reinstated* shall be interpreted accordingly).

Representatives: Officials, directors, officers, elected members, employees, and committee members of the *Signatory* or other body in question, and also (in the case of a *National Anti-Doping Organization* or a *National Olympic Committee* acting as a *National Anti-Doping Organization*) *Representatives* of the government of the country of that *National Anti-Doping Organization* or *National Olympic Committee*.

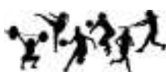
Special Monitoring: Where, as part of the consequences imposed on a non-compliant *Signatory*, *WADA* applies a system of specific and ongoing monitoring to some or all of the *Signatory's Anti-Doping Activities*, to ensure that the *Signatory* is carrying out those activities in a compliant manner.

Supervision: Where, as part of the consequences imposed on a non-compliant *Signatory*, an *Approved Third Party* oversees and supervises the *Signatory's Anti-Doping Activities*, as directed by *WADA*, at the *Signatory's* expense (and *Supervise* shall be interpreted accordingly). Where a *Signatory* has been declared non-compliant and has not yet finalized a *Supervision* agreement with the *Approved Third Party*, that *Signatory* shall not implement independently any *Anti-Doping Activity* in the area(s) that the *Approved Third Party* is to oversee and supervise without the express prior written agreement of *WADA*.



Takeover: Where, as part of the consequences imposed on a non-compliant *Signatory*, an *Approved Third Party* takes over all or some of the *Signatory's Anti-Doping Activities*, as directed by *WADA*, at the *Signatory's* expense. Where a *Signatory* has been declared non-compliant and has not yet finalized a *Takeover* agreement with the *Approved Third Party*, that *Signatory* shall not implement independently any *Anti-Doping Activity* in the area(s) that the *Approved Third Party* is to take over without the express prior written agreement of *WADA*.

wada-ama.org/code



Isaac Christopher Lubogo

ABOUT THE BOOK

Uganda today has experienced a tremendous global growth and awareness of sports, the sports industry has increasingly become very popular for both entertainment and livelihood and Uganda can no longer be able to be left behind. The need to regulate and legally facilitate the smooth running of sports has caused a growing demand for qualified sports law professionals in other jurisdictions. This need is very much apparent in Uganda like never before and hence the need to teach sports law as a course unit in law schools as we prepare our nation to approach legal issues in sports. Thee book surveys several areas of the law that intersect with sports. The diverse nature of sports requires lawyers to have specific expertise in the specialized nature of sports law to effectively represent their clients whether they are professionals or amateur athletes, leagues or clubs, sports venues and stadium owners, operators or businesses and sports organizations or Associations.

The intention of the book is to enhance Understanding the fundamental legal principles common to the professional sports industry and summarize significant sports industry case law and discuss the ramifications for practitioners in Uganda and Internationally. To also help Explain the essence of labor law, tort law, constitutional law and sports law and how these bodies of law coexist and understand the roles and interaction of sports leagues, clubs, sponsors, sports unions, agents, and arbitrators and the laws that govern them. The book will shed light on the process of contract bargaining in professional sports and the interplay of agents and free agency in sports law and practically negotiate a standard sportsmans Contract in compliance with the terms and conditions of the governing legal regimes from other fields of the law and sports law.
The book also further enhances an Understanding in the Licensing processes of sports organizations and Associations in Uganda and Internationally and have a better understanding of how to make ethical decisions and solve problems with an eye towards the relevant legal and ethical issues in sport.

Lastly I intend to help Develop an understanding of the Anti-Doping Movement in Sports and the legal frame work thereof and understand the Dispute Resolution Mechanisms in Sports both national and internationally with a specific understanding of the legal framework and working of the International Court of Arbitration for Sport.