## Legal & Procedural Frameworks in Anti-Doping

Balancing Fairness, Proportionality, and Consistency

in the Modern CAS Era

20 November 2025

#### The Anti-Doping Ecosystem



#### **WADA**

Sets the global standards (World Anti-Doping Code). Monitors compliance but relies on other bodies for enforcement.



#### **NADOs & IFs**

National Anti-Doping Orgs & International
Federations (often delegated to ITA).
Responsible for testing and initial results
management (done directly or delegated
to CAS ADD/Sport Resolutions).



#### **CAS**

The "Supreme Court" of sport.

Provides the final, binding
arbitration for international disputes.

#### **CAS: The Final Arbiter**

The Court of Arbitration for Sport (CAS) plays a pivotal role in harmonizing anti-doping jurisprudence globally.

- **De Novo Review:** CAS panels can review the entire case from scratch, fixing procedural errors from lower tribunals.
- Exclusive Jurisdiction: For international athletes, CAS is the sole avenue for appeal, ensuring a unified interpretation of the Code.
- Standard Setter: Its awards create de facto precedents that shape how rules are applied worldwide. The New York Convention.



#### The "Strict Liability" Baseline

- The Core Principle: Athletes are solely responsible for what is found in their system, regardless of intent or negligence.
- Burden of Proof: Once a substance is detected (Adverse Analytical Finding), the burden shifts entirely to the athlete to prove the source and lack of intent.
- Rationale: Designed to protect the integrity of sport; proving "intent to cheat" would be nearly impossible for authorities in every case.
- The Tension: This rigid standard often clashes with concepts of procedural fairness when contamination or sabotage is involved.

#### **Balancing Proportionality**



#### A Move Towards Fairness?

While the Code mandates specific sanctions, CAS jurisprudence (e.g., *Halep*) increasingly applies the general principle of proportionality, whether expressly or impliedly.

#### **Key Trends:**

- Panels are reducing bans where the standard sanction seems "excessive" relative to the degree of fault.
- Distinction between "Cheaters" and "Careless Athletes" is becoming more pronounced in sentencing.
- This flexibility ensures that strict liability doesn't result in manifest injustice.

#### The Consistency Challenge

#### **Global Disparities**

A major procedural hurdle is the disparity in resources.

Athletes from developed nations with top legal teams often secure better outcomes ("No Significant Fault") compared to those from developing regions with limited access to specialized counsel or lesser known athletes.

#### **Jurisdictional Variance**

While CAS aims for uniformity, first-instance tribunals (National Anti-Doping Orgs) often interpret rules differently. One tribunal might ban an athlete for 2 years, while another gives a reprimand for similar facts, forcing WADA to appeal to CAS to restore consistency.

#### **Emerging Procedural Trends**

- The "Unintentional Doping" Defense: A shift towards "No Fault" pleas based on contamination (e.g., meat, supplements, transdermal creams).
- **Burden of Proof Evolution:** Cases like *Lawson* established that athletes must provide "concrete evidence" of the source, not just speculation.
- Case Resolution Agreements: A (growing?) trend to settle disputes without a full hearing to save time and resources, as seen in high-profile cases.

## Athletes Need to Play Defense Up Front

Winning Unintentional Doping Cases through Proactive Measures

#### The Reality of Doping Cases

Most reported anti-doping cases do **not** involve intentional cheating.

- Violations often stem from inadvertent mistakes.
- Primary Culprits: Nutritional supplements and whereabouts failures.
- The Goal: Implement early defenses to avoid these career-threatening pitfalls.

## The Supplement Minefield

Contamination, Adulteration, and Risk



#### **Defense Strategy: Due Diligence**



#### **Check the Label**

Always compare ingredients against the current WADA Prohibited List.

Never assume safety.



#### **Research Online**

Use resources like **Global DRO**.

Investigate the manufacturer's reputation and history.



#### **Consult Pros**

Seek advice from doctors or sports professionals knowledgeable about anti-doping rules.

#### **Defense Strategy: Documentation**

#### **Document Everything**

Keep records of purchases, usage logs, and all communication with manufacturers.

#### Certified Suppliers

Prioritize products certified by **Informed Sport** or **NSF**.





#### **A**Retain Samples

Save a small unused portion of every supplement. This is crucial for testing if a violation occurs.

#### **■**Keep Receipts

Maintain a paper trail including batch/lot numbers for every product consumed.

#### **Managing Whereabouts**

#### **♥**Accuracy is Key

Athletes must provide accurate location info for unannounced testing. This is a strict strict liability obligation.

"I forgot to update it" is rarely an accepted excuse.

#### **Travel Vigilance**

Travel is the highest risk period for missed tests. Update your slot immediately upon itinerary changes.

Missed a test? Take it as a serious warning. Immediate action is required to prevent a strike.

## "The WADA Prohibited List should be an athlete's constant companion."

Review annually. Know how to search it.



#### **Key Takeaways**

- Proactivity: Don't wait for a positive test to start your defense.
- Skepticism: Treat every supplement as a potential risk.
- Organization: Meticulous records can save your career.
- Responsibility: You are solely responsible for what enters your body.



#### Case Study: Valieva

The Incident: Beijing Olympic Winter Games 2022, Russian women's figure skater is informed she tested positive for a sample collected weeks earlier for a heart medication.









the Osympic spirit was deceared 'dead' specteriby after Russian figure shater Kamila Valievu wacheared to comporte in Bedjindespite a failed drugs test, with thlit-year-old's age cited as a befactor.

Valieva, the first female skater to land a quadruple Jump in Gamehistory, will start her attempt to win a second gold during this morning's

Fat if comes after one of the most days in Wiscont Origing; history, one which left the whole integrity of the legit of Court or Indians, and the legit of Court of the Part o

Olympics.

The United States Olympic Committee Jahvelled the incident 'another chapter in the systemic and personer disagrand for clean sportly Russia'.

The Global Abbete movement

stated that it had lost all faith in the anti-doping system.

The International Olympic Com>

illa Yolikno, 15, man cleared by the Coxet of Arbitration for Sport to compete in Seijing again teday despite testing positive for the bunned beart

anded out in Briging for the team vent and probably also the womels individual execut until Valievois use had been resolved. Valievois future had been thrown to doubt after the tested positive

faith in the

Vallevu's flature had been the
into-doubt after the tested post
rapic Com-

had faced the presipert of becoming the youngest athlete to be banned in for doping during the Olympic Games but instead Cas ruled that the skely in her sample heing tested -Valieva was informed of the result

were grounde for her to be allowed to compete. Crucially, the Cas panel ruled that because Valiera's age maltes her a "protected person" under the World Anti-Doping Code, she may be eligision - once her case is heard in full eventually.

Cas director general Matthieu Boob said: "The athlete should benefit from the following exceptional circumstances: She is under 16 and a

Tiger's miracle Genge: I saved rival from choking

to Wignore

Archer to miss all summer Tests

the Archer is suilibrily to play any set cricker this summer as England amage his ceiturn from an elbowpury - but he is posed to play in a Hunther. Archer, 26, has not played a Test too last Ferbusary ofter undergoing to operations on a stress fracture this right clows. He trained with he T20 squad-during their series in he West Indies, but England are Jamaing without him for this somser's home Teets. Instruct, he will Jay in the shorter formats, and is idely to be available for all of the fundred.

12 months on from Woods' borror crash that shocked world of golf 2.32

Elis Genge has revealed how he alled for medical attention and dissinistered emergency help for taly forward Schastian Negri, who cas choking after being knocked necessions during Sunday's fits bitions match in Rome.

England upon Genge said. \*I to see if he reacted. He just caron cholding, so I tried to roll him his side. I was unbored away by needer, so let them carry on; egyl thanked Genge yesterday, mg. "You are a top man. All good side and feeling a lot better."

The sport section of the Daily Telegraph

Everything you need to know about your team

Our coverage of your Premier League club is

# 15 years old, tested positive for heart medication Trimetazidine



#### 11 Feb. 2022

IOC and WADA filed submissions with CAS Ad Hoc Division



13 Feb. 2022

RUSADA, ROC, Athlete filed their answers



#### 14 Feb. 2022

Operative decision issued by CAS panel, dismissing the applications of the IOC, WADA, and ISU



Reasoned decision issued by CAS panel, and Womens' Figure Skating Short Program, Valieva 4th

ISU filed submissions with CAS Ad Hoc Division

12 Feb. 2022 8:30pm in Beijing, hearing commences, until 3:30am

13 Feb. 2022 Womens' Figure Skating Short Program, Valieva 1st

15 Feb. 2022

- Not about doping per se
- Was about fairness.
- Reasons:
  - There was provision for a provisional suspension to be lifted for adults

"As put well by an early CAS panel with esteemed arbitrators:

- "The fight against doping is arduous, and it may require strict rules. But the rule-makers and the rule-appliers must begin by being strict with themselves. Regulations that may affect the careers of dedicated athletes must be predictable." CAS 94/129, para. 34.
- "... This decision is based on the facts presented to the Panel, the instigating fact of which was untenable delay by the Stockholm laboratory caused by reasons not attributable to the Athlete and the anchor of which is that the Athlete is a Protected Person. This case was not about the underlying alleged anti-doping rule violation and the Panel takes no position on that; Ms Valieva will have the opportunity to challenge that evidence in other proceedings unrelated to this one, as required by the relevant anti-doping rules and regulations. Furthermore, the Panel is mindful the subject of the present decision is not whether or not the Athlete, with the status of a Protected Person, committed an ADRV, but whether or not the Provisional Suspension was to be reinstated. In the light of the circumstances above, the Panel believes that this decision is the one that best protects the interest of sport without harming athletes or vindicating the collectively well-accepted goal of 'Clean Sport'."

### Case Study: Jannik Sinner

**The Incident:** In March 2024, Sinner tested positive twice for Clostebol (an anabolic steroid) at trace levels.

The Explanation: Transdermal contamination via his physiotherapist, who used a spray (Trofodermin) on a cut on his own finger before massaging Sinner.

Initial Ruling: An independent tribunal found "No Fault or Negligence," allowing him to keep playing, though he lost Indian Wells points.



#### **Procedural Timeline: The Sinner Case**

# Aug 2024 Independent Tribunal finds "No Fault". No ban imposed. Resolution: WADA & Sinner agree to a 3-month retroactive ban via settlement.

Positive tests for Clostebol during Indian Wells.

March 2024

WADA appeals the decision to CAS, seeking a 1-2 year ban.

**Sept 2024** 

"

The Case Resolution Agreement in the Sinner matter represents a pragmatic shift—prioritizing certainty over the risks of prolonged litigation.

**Legal Commentary on 2025 Settlement** 

#### Impact on Athlete Rights & Due Process



#### **Transparency vs. Privacy**

The Sinner case was criticized for its initial secrecy. While protecting the athlete's reputation, it raised questions about "double standards" compared to other provisionally suspended athletes.



#### **Settlement Culture**

Moving towards negotiated settlements (like the 3-month ban) empowers athletes to manage risk but may obscure the legal reasoning that helps shape future jurisprudence.

#### **Questions & Discussion**

How do we balance the strict necessity of clean sport with the nuances of accidental contamination in an increasingly complex sporting, living, and health/wellness environment?



#### **THANK YOU!**

#### **JEFFREY G. BENZ**

BA, JD, MBA, MA (candidate)

Attorney Barrister Arbitrator Mediator
Fellow, Chartered Institute of Arbitrators
Fellow, College of Commercial Arbitrators

Arbitrator/Mediator, Court of Arbitration for Sport (since 1999)

Attorney (CA, CO, HI, NY); Barrister (England & Wales) CEDR Accredited & IMI Certified Mediator Certified E-Discovery Specialist

#### **JAMS**

Downtown Los Angeles/London www.jamsadr.com

**4 NEW SQUARE CHAMBERS** 

Lincoln's Inn | London www.4newsquare.com