COLLECTION OF SPORTS-RELATED CASE-LAW

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I. COMPATIBILITY OF CERTAIN SPORTS REGULATIONS WITH COMMUNITY LAW 5

A. SPORTS REGULATIONS CONTAINING NATIONALITY CLAUSES AND COMMUNITY LAW 5
a) Case of Walrave v UCI (ECJ, 12.12.74, case no. C-36/74)..... 5
b) Case of Doña v Montero (ECJ, 14.7.76, case no. C 13-76) 6
c) Case of Markakis v ASBL Fédération Royale Belge des Sociétés de Basketball (Belgian Royal Federation of Basketball Clubs - FRBSB) (Brussels Court of First 7
Instance, Belgium, 8.9.92) 8
B. SPORTS REGULATIONS CONTAINING TRANSFER AND NATIONALITY CLAUSES AND COMMUNITY LAW..... 9
a) Case of Bosman v Royal Club Liégeois SA and UEFA (ECJ, 15.12.95, case no. C-415/93) 9
b) Case of Lehtonen v Fédération Royale Belge des Sociétés de Basket-ball (Belgian Royal Federation of Basketball Clubs - FRBSB) (ECJ, 11.4.00, case no. C-176/96)..... 11
c) Case of Grubba v German Table Tennis Federation (Frankfurt am Main Appeal Court, Germany, 25 November 1997, case no. 2-14 0 254/97) 13
C. SPORTS REGULATIONS PROVIDING FOR NATIONAL QUOTAS AND SELECTION PROCEDURES FOR PARTICIPATION IN INTERNATIONAL TOURNAMENTS..... 15
a) Case of Deliège v Ligue francophone de judo (Francophone Judo League), Ligue belge de judo (Belgian Judo League), Union européenne de judo (European Judo Union), (ECJ 11.4.00, joined cases C-51/96 and C-191/97) 15
D. SUMMARY OF SPORTS-RELATED EUROPEAN REGULATIONS 16

II. COMPATIBILITY OF DRUG TESTING WITH THE RIGHT TO PRIVACY 18

a) Case of Hill v National Collegiate Athletic Association, Board of Trustees of Leland Stanford Junior University (Court of Appeal of California, USA, 25 September 1990)..... 18
b) Case of Miller v Cave City School (United States Court of Appeals (8th circuit), 31 March 1999) 19

III. DOPING..... 22

A. PROOF OF DOPING 22
a) Case of USA Triathlon v Spencer Smith (Court of Arbitration for Sport, Lausanne, 31.5.00)..... 22
b) Case Z. v. DFB (German Football Federation), DFB sports tribunal, 1999 23
c). Case of Dieter Baumann v. International Olympic Committee (IOC), National Olympic Committee of Germany and International Amateur Athletics Federation (IAAF), CAS, 22 septembre 2000..... 25
B. VALIDITY OF SPORTS FEDERATION RULES IN DOPING CASES AND THEIR COMPATIBILITY WITH COMMUNITY LAW..... 28
a) Case of Wilander and Novacek v Tobin and Jude (Court of Appeal of England and Wales, Civil Division, 20 December 1996) 28
C. JURISDICTION OF A CIVIL COURT TO ORDER A PRIVATE SPORTS ORGANIZATION TO STRIP A CHAMPION OF HIS TITLE..... 30
a) Case of Schulz v United States Boxing Association, IBF, Botha, Moorer (United States Court of Appeals (3rd circuit), 24 January 1997)..... 30
D. VALIDITY OF DOPING SANCTIONS 32
a) Case of Katrin Zimmerman Krabbe v Deutscher Leichtathletik Verband (DLV) and International Amateur Athletic Federation (IAAF) (Munich Court of Appeal, Germany, 28 March 1996)..... 32
b) Case of Edwards v The British Athletic Federation (High Court of Justice, Chancery Division, United Kingdom, 23.6.97)..... 34
c) Case of Bouras v IJF (Court of Arbitration for Sport (CAS) Lausanne, 20.12.99, CAS 99/A/230).. 35
d) Case of Johnson v Athletics Canada and IAAF (Ontario Court of Justice, Canada, 25.7.97)..... 37
e) Case of Vincent Guérin v FFF (Versailles Administrative Court, France, 2 July 1998)..... 38
f) Case of David Meca-Medina v FINA and Igor Majcen v FINA (Court of Arbitration for Sport, Lausanne, 29 February 2000, CAS 99/A/234 and CAS 99/A/235) 39

IV. INTERPRETATION OF SPORTS RULES..... 40

A. POSSIBILITY FOR AN ATHLETE TO BRING AN ACTION BEFORE A CIVIL COURT ON THE BASIS OF A FEDERAL LAW..... 40

a) Case of Michels v USOC (United States Court of Appeals - 7th circuit, 16 August 1984) *40*
B. JURISDICTION TO INTERPRET A FEDERATION'S RULES OF PROCEDURE IN DOPING CASES 41
a) Case of Smith v International Triathlon Union (Supreme Court of British Colombia, Vancouver, Canada, 26 August 1999) *41*
b) Delisa Walton-Floyd v The United States Olympic Committee (Court of Appeals of Texas, 1st district, Houston, USA, 26 February 1998) *43*
C. INTERPRETATION OF THE RULES OF AN INTERNATIONAL FEDERATION 45
a) Case of Korda v International Tennis Federation (ITF Ltd) (High Court of Justice, Chancery Division, United Kingdom, 29.1.99) *45*
b) Case of ITF Ltd v Korda (Court of Appeals (Civil Division), United Kingdom, 25.3.99) *45*
c) Case of ITF v Korda (CAS, Lausanne, 31 August 1999, CAS 99/223/A) *45*

V. CONTRACTS 48

A. EMPLOYMENT CONTRACTS 48
a) Case of Loranger v Mount Allison University (New Brunswick Court of Queen's Bench, Trial Division, Judicial District of Moncton, Canada, 9-10 November 1998) *48*
b) Case of Tanguay v Association Chamonix Mont-Blanc, (Court of Cassation, Social Chamber, France, 23 January 1997) *49*
c) Case of Bill Belichick v New York Jets (District Court, USA, 25.1.00) *50*
B. CONTRACTS ON BROADCASTING RIGHTS FOR SPORTS COMPETITIONS 52
a) Case of EBU (European Broadcasting Union) v SA Canal + (Paris Court of Appeal, 1st chamber, section A, France, 27 July 2000) *52*

VI. RESTRAINT OF TRADE 55

a) Case of Newport Association Football Club Ltd and others v Football Association of Wales Ltd (High Court of Justice, Chancery Division, United Kingdom, 12.4.95) *55*
b) Case of the German Football Federation (DFB) v German Federal Cartel Office (German Federal Supreme Court, 11.12.97) *56*

VII. DISCRIMINATION IN SPORT 59

A. GENDER-BASED DISCRIMINATION 59
a) Case of Kemether v Pennsylvania Interscholastic Athletic Association Inc. (United States District Court for the Eastern District of Pennsylvania, 8 November 1999) *59*
b) Case before the Châlons en Champagne Administrative Court, France (28 January 1999, cases 98-711 and 98-1034) *61*
B. OTHER FORMS OF DISCRIMINATION 62
a) Case of Olympique de Marseille (OM) v Union des Associations Européennes de Football (UEFA) (Berne Civil Court III, Switzerland, 9 September 1993) *62*

VIII. RESPONSIBILITY OF A FEDERATION TOWARDS AN ATHLETE 64

A. CONTRACTUAL RESPONSIBILITY OF A FEDERATION TOWARDS AN ATHLETE 64
a) Case of E.L. v Fédération Française de Gymnastique (French Gymnastics Federation - FFG) (Paris High Court, 1st chamber, 2nd section, France, 1 July 1999) *64*
B. FEDERATION'S LIABILITY FOR NEGLIGENCE IN RESPECT OF AN ATHLETE 65
a) Case of Michael Watson v British Boxing Board of Control Limited (BBBC) (High Court of Justice, United Kingdom, 2000) *65*
b) Case of Agar v Hyde and Agar v Worsley, High Court of Australia (HCA), 3.8.00 ..... *67*

IX. STATUS OF REFEREES 69

A. STATUS OF REFEREES IN THE EVENT OF A FAULT 69
a) . Case Ancion v. ASBL Union Royale Belge des Sociétés de Football Association (URBSFA), Brussels Labour Court (Interim Relief Division), Belgium, 20 April 2000 ..... *69*
b) . Case Lyra v. Marchand, Rita Berlaar and ASBL Union Royale Belge des Sociétés de Football Association (URBSFA), Malines Court of First Instance (Belgium), 8 February 2001 ..... *71*

X. INTELLECTUAL PROPERTY RIGHTS IN SPORT 73

A. COPYRIGHT 73
a) Case of National Basketball Association (NBA) v Motorola and STATS (New York Second Circuit Court of Appeals, USA, 480 US 941 (1987)) *73*
B. TRADE MARK OWNERSHIP 75
a) Case of National Football League v Coors Brewing Co. (99 Civ. 4627 at 496, SDNY, 4 August 1999) *75*

XI. MAIN PROVISIONS QUOTED 77

A. TREATIES, LAWS AND RULES 77
a) EEC Treaty *77*
b) Council of Europe Anti-Doping Convention of 16 November 1989 ..... *79*
c) French Act no. 89-432 of 28 June 1989 on prevention and repression of the use of doping products in sport: *80*
d) French Decree no.91-387 of 30 August 1991, Article 6: *81*
e) Section 1636 of the French Civil Code *81*
f) Amateur Sports Act 36 USC Sec. 382b *82*
g) Constitution of the United States of America *82*
B. SPORTS REGULATIONS 82
b) Rules of the International Amateur Athletic Federation (IAAF) 2000-2001, Rule 60: Sanctions: *83*
c) International Tennis Federation (ITF) Anti-Doping Programme - 1999: *83*

I. Compatibility of certain sports regulations with Community law

A. Sports regulations containing nationality clauses and Community law

a) Case of Walrave v UCI (ECJ, 12.12.74, case no. C-36/74)

Free movement of workers within the common market; discrimination based on nationality within the common market; application of these principles to the practice of sport in certain circumstances; applicability of such principles to sports association regulations

The Facts:
Two Dutch nationals, Mr Walrave and Mr Koch, who regularly participated as pacemakers in medium-distance cycle races known as "Stayers", regarded a provision of the International Cycling Union (UCI) regulations, according to which a pacemaker should be of the same nationality as his rider, to be discriminatory.
In this particular sport, each cyclist follows his pacemaker, who rides a motorbike. Walrave and Koch brought an action against the UCI and the Dutch and Spanish cycling federations. The federations appealed to the Utrecht District Court (Netherlands). In a ruling of 15 May 1974, the Court in turn referred the case to the European Court of Justice (ECJ) under Article 177 of the EEC Treaty, submitting a number of preliminary questions concerning the interpretation of Articles 7.1, 48 and 59.1 of the EEC Treaty and Council Regulation No.1612/68 of 15 October 1968 on freedom of movement for workers within the Community.

Questions for a preliminary ruling:
The basic question concerned whether the aforementioned texts should be interpreted as being incompatible with the UCI regulation relating to medium-distance world cycling championships behind motorcycles, according to which "the pacemaker must be of the same nationality as his rider".

The Law:
1. The ECJ began by examining whether Community law could apply to sport. It explained that the practice of sport was only subject to Community law insofar as it constituted an economic activity. To this effect, it gave the following reasons:
- having regard to the objectives of the Community, the practice of sport was only subject to Community law insofar as it constituted an economic activity within the meaning of Article 2 of the Treaty;

- the prohibition of discrimination based on nationality, set out in Articles 7, 48 and 59 of the EEC Treaty, did not affect the composition of sports teams, in particular national teams, the formation of which was a question of purely sporting interest and as such had nothing to do with economic activity.

2. The ECJ then explained that Community law, in this case the prohibition of discrimination based on nationality, applied not only to public authorities, but also to the rules of private sports associations. This principle applied to Articles 48 (workers) and 59 (services) of the Treaty:

- prohibition of discrimination based on nationality not only applied to the action of public authorities, but extended likewise to rules of any other nature aimed at regulating in a collective manner gainful employment and the provision of services.

3. The ECJ also explained that the rule on non-discrimination applied to all legal relationships which could be located within the territory of the community.

b) Case of Doña v Montero (ECJ, 14.7.76, case no. C 13-76)

Free movement of workers within the common market; discrimination based on nationality within the common market

The Facts:

In 1976, when the case was brought, a rule of the Italian football federation stipulated that only players who were affiliated to that federation could take part in matches as professional or semi-professional players, whilst affiliation in that capacity was in principle only open to players of Italian nationality.

Nevertheless, the president of an Italian football club had asked Mr Doña, an Italian national, to look abroad for footballers who would be willing to play for an Italian club. Mr Doña had then placed an advertisement to this effect in a Belgian sports newspaper. However, the principal refused to pay the costs incurred by Mr Doña on the grounds that he had acted prematurely. He quoted the Italian federation rules, which did not permit the "alignment" of foreign players.

Mr Doña then applied to the Rovigo judge for conciliatory proceedings for an order obliging the football club president to pay the costs incurred. Through an order of 7 February 1976, the judge asked the European Court of Justice (ECJ) to decide whether the nationality clause was compatible with Community law.

Questions for a preliminary ruling:

- The first two questions concerned whether Articles 7, 48 and 59 of the EEC treaty conferred upon all nationals of the Member States of the Community the right to provide a service anywhere in the Community and, in particular, whether football players also enjoyed the same right where their services were in the nature of a gainful occupation;
- Should the answer to these two questions be in the affirmative, the third question asked the Court essentially to rule whether the aforementioned right could also be

relied on to prevent the application of contrary rules drawn up by a sporting federation which was competent to control football on the territory of a Member State;
- In case the first three questions should be answered in the affirmative, the fourth question asked the Court whether the right in question could be directly invoked in the national courts and whether the latter were bound to protect it.

The Law:
The ECJ pointed out that any discrimination on grounds of nationality was prohibited under Article 7 of the EEC Treaty and that any national provision which limited the right to participate in an activity within the scope of application of Articles 48 to 51 or 59 to 66 of the EEC Treaty solely to the nationals of one Member State was incompatible with Community law.
The ECJ also stated that the activities of professional or semi-professional football players, which were in the nature of gainful employment or remunerated service, constituted an economic activity (within the meaning of Article 2 of the EEC Treaty) that was subject to Community law.
The ECJ explained, however, that these provisions did not prevent the adoption of rules or of a practice excluding foreign players from participation in certain matches for reasons which were not of an economic nature, which related to the particular nature and context of such matches and were thus of sporting interest only, such as, for example, matches between national teams from different countries.
The ECJ pointed out that the prohibition of discrimination based on nationality did not only apply to the action of public authorities but extended likewise to rules of any other nature aimed at collectively regulating gainful employment and services. The prohibition therefore also applied to sports organizations.
1. The ECJ declared that rules or a national practice, even adopted by a sports organization, which limited the right to take part in football matches as professional or semi-professional players solely to the nationals of the State in question, were incompatible with Article 7 and, as the case might be, with Articles 48 to 51 or 59 to 66 of the EEC Treaty, unless such rules or practice excluded foreign players from participation in certain matches for reasons which were not of an economic nature, which related to the particular nature and context of such matches and were thus of sporting interest only.
2. The ECJ stated that Article 48 on the one hand and the first paragraph of Article 59 and the third paragraph of Article 60 of the EEC Treaty on the other - in so far as they sought to abolish any discrimination against a person providing a service by reason of his nationality or of the fact that he resided in a Member State other than that in which the service was to be provided - had a direct effect in the legal orders of the Member States and conferred on individuals rights which national courts had to protect.

c) Case of Markakis v *ASBL Fédération Royale Belge des Sociétés de Basketball* (Belgian Royal Federation of Basketball Clubs - *FRBSB*) (Brussels Court of First

Instance, Belgium, 8.9.92)

Free movement of workers; discrimination based on nationality within the common market

The Facts:
Mr Antonios Markakis, a Greek national, signed a one-year contract of employment for a remunerated sportsman with Belgian club *Union St. Joseph Quaregnon* (valid from 1 July 1992 to 30 June 1993).
Article 245 of the rules of the *Fédération Royale Belge des Sociétés de Basketball* (Belgian Royal Federation of Basketball Clubs - *FRBSB*), which dealt with foreign players, prohibited such players from competing in national and provincial league promotion and relegation play-off matches.
The *Union St. Joseph Quaregnon* applied to the *FRBSB* for permission for Markakis, an EEC national, to compete professionally in the 2nd national division during the 1992/1993 season.
On 17 June 1992, the *FRBSB* rejected the application on the basis of the aforementioned Article 245 in particular.
In a writ dated 7 September 1992, Markakis sued the *FRBSB* and demanded, as an interim measure, that its decision against him and the Quaregnon club be suspended until the court reached a verdict on the merits. Markakis based his request on the EEC Treaty, which prohibits any discrimination on grounds of nationality, and on Council Regulation No.1612/68 on freedom of movement for workers within the Community.

The Law:
The Brussels Court of First Instance referred to the case-law of the European Court of Justice (ECJ).
In its judgments of 12.12.74 (*Walrave*) and 14.7.76 (*Doña*), the ECJ had decided that:
- the practice of sport was subject to Community law insofar as it constituted an economic activity within the meaning of Article 2 of the Treaty, in the case of an independent worker or service provider;
- rules of a sports organization which limited the right to compete as a professional solely to the nationals of the Member State in question were incompatible with Article 7 of the Treaty, unless they referred to competitions which were not of an economic nature and were of sporting interest only;
- the aforementioned Article 7 was directly applicable in the sense that it conferred on individuals rights that they could assert in court in a Member State.

The Brussels Court of First Instance decided that these principles also applied to the facts of the present case.
Markakis earned his living as a professional basketball player, so he was entitled to participate in play-off matches.
It was important to resolve the matter quickly, since the contract was only valid for one year.
There was therefore just cause, as an interim measure until the court reached a verdict, to grant Markakis the permission he had sought.

B. Sports regulations containing transfer and nationality clauses and Community law

a) Case of Bosman v *Royal Club Liégeois SA* and UEFA (ECJ, 15.12.95, case no. C-415/93)

Free movement of workers; incompatibility with the EEC Treaty of certain restrictive sports regulations relating to the transfer of professional footballers

The Facts:
The Bosman case originated in a dispute between Mr Jean-Marc Bosman, a Belgian professional footballer, and his club, the *Royal Club Liégeois (RCL)*, which played in the Belgian first division. In 1990, Bosman claimed that the Belgian football federation, the *Union des Associations Européennes de Football* (European Union of Football Associations - *UEFA*) and the *Fédération Internationale de Football Association* (International Federation of Association Football - *FIFA*) had prevented him from moving to a French club, *US Dunkerque*, in particular by demanding a so-called transfer fee.
On 8 August 1990, Mr Bosman brought an action against *RCL* before the Liège Court of First Instance.
Concurrently with that action, he applied for an interlocutory decision ordering *RCL* and the *Union Royale Belge des Sociétés de Football Association* (Belgian Royal Union of Football Clubs - *URBSFA*) to pay him a monthly advance until he found a new employer, restraining the defendants from impeding his engagement and referring a question to the European Court of Justice (ECJ) for a preliminary ruling.
The judge hearing the interlocutory application granted Bosman's request and referred to the ECJ for a preliminary ruling a question on the interpretation of Article 48 of the Treaty in relation to the rules governing transfers of professional players.
On 28 May 1991, the Liège Court of Appeal revoked the interlocutory decision of the Court of First Instance insofar as it referred a question to the ECJ for a preliminary ruling (case C-340/90 was removed from the ECJ register). However, it upheld the order against *RCL* to pay monthly advances to Mr Bosman.
In new pleadings lodged on 9 April 1992, Mr Bosman amended his initial claim and sought a declaration that the transfer rules and nationality clauses were not applicable to him and an order against *RCL*, *URBSFA* and *UEFA* to pay him compensation in respect of the damage he had suffered and loss of earnings. He also applied for a question to be referred to the ECJ for a preliminary ruling.
By judgment of 11 June 1992, the Liège Court of First Instance held admissible Mr Bosman's claims and made a reference to the Court of Justice for a preliminary ruling on the interpretation of Articles 48, 85 and 86 of the EEC Treaty (case C-269/92).
URBSFA, *RCL* and *UEFA* appealed against that decision.

Under a complex procedure, the Liège Court of Appeal decided to stay the proceedings and refer the following questions to the ECJ for a preliminary ruling:

Questions for a preliminary ruling:
Were Articles 48, 85 and 86 of the Treaty of Rome to be interpreted as:
- prohibiting a football club from requiring payment of a sum of money upon the engagement of one of its players who had come to the end of his contract by a new employing club (the validity of the transfer fee)?
- prohibiting the national and international sports associations or federations from including in their respective regulations provisions restricting access of foreign players from the European Community to the competitions which they organized (the validity of the nationality clause)?

The Law:
1. Article 48 of the EEC Treaty precluded the application of rules laid down by sports associations, under which a professional footballer who was a national of one Member State could not, on the expiry of his contract with a club, be employed by a club of another Member State unless the latter club had paid to the former club a transfer, training or development fee.
The reasons submitted by the federations for the existence of these transfer rules were not accepted by the ECJ. The need to maintain a financial and competitive balance between clubs and to train young players was rejected because these aims could be achieved by other means which did not affect the free movement of workers, such as the redistribution of a portion of clubs' gate receipts.
The ECJ held that the transfer rules directly affected players' access to the employment market in other Member States and were thus capable of impeding freedom of movement for workers.
2. Article 48 of the Treaty precluded the application of rules laid down by sports associations under which, in matches in competitions which they organized, football clubs could field only a limited number of professional players who were nationals of other Member States (prohibition of nationality clauses, particularly the "3+2" rule). Restrictions relating to the nationality of professional players who were nationals of other EU Member States and their participation in competitions between different football clubs or sports associations were prohibited.
3. The direct effect of Article 48 of the EEC Treaty could not be relied upon in support of claims relating to a fee in respect of transfer, training or development which had already been paid on, or was still payable under an obligation which had arisen before, the date of this judgment, except by those who had brought court proceedings before that date.

b) Case of Lehtonen v *Fédération Royale Belge des Sociétés de Basket-ball* (Belgian Royal Federation of Basketball Clubs - *FRBSB*) (ECJ, 11.4.00, case no. C-176/96)

Free movement of workers; compatibility with the EC Treaty of sports rules on the transfer of professional basketball players from other Member States

The Facts:
This dispute was between Mr Lehtonen and *Castors Canada Dry Namur-Braine* (hereinafter *"Castors Braine"*) on the one hand and the *Fédération Royale Belge des Sociétés de Basket-ball* (Belgian Royal Federation of Basketball Clubs - *FRBSB*) and the Belgian League on the other. It concerned the right of *Castors Braine* to field Mr Lehtonen in matches in the first division of the Belgian national basketball championship.
Mr Lehtonen was a basketball player of Finnish nationality. During the 1995/1996 season he played in a team which took part in the Finnish championship, and after that was over he was engaged by *Castors Braine*, a club affiliated to the *FRBSB*, to take part in the final stage of the 1995/1996 Belgian championship. To that end, on 3 April 1996 the parties concluded a contract of employment for a remunerated sportsman.
On 5 April 1996 the *FRBSB* informed *Castors Braine* that, if *FIBA* did not issue the licence (the necessary authorization given by a national federation to a player to allow him to play basketball for a club which was a member of that federation), the club might be penalized and that if it fielded Mr Lehtonen it would do so at its own risk.
Despite that warning, *Castors Braine* fielded Mr Lehtonen in the match of 6 April 1996 against *Belgacom Quaregnon*. The match was won by *Castors Braine*. On 11 April 1996, following a complaint by *Belgacom Quaregnon*, the *FRBSB* penalized *Castors Braine* by awarding to the other club by 20-0 the match in which Mr Lehtonen had taken part in breach of the *FIBA* rules on transfers of players within the European zone.
On 16 April 1996 Mr Lehtonen and *Castors Braine* brought proceedings against the *FRBSB* in the Brussels Court of First Instance, sitting to hear applications for interim relief. They sought for the *FRBSB* to be ordered to lift the penalty imposed on *Castors Braine* for the match of 6 April 1996 against *Belgacom Quaregnon*, and to be prohibited from imposing any penalty whatever on the club preventing it from fielding Mr Lehtonen in the 1995/1996 Belgian championship, on pain of a monetary penalty.
By agreement of 17 April 1996, the parties agreed to submit 'agreed submissions' by which they would seek a reference to the Court of Justice for a preliminary ruling, the dispute between them being frozen pending the Court's judgment.
In an order of 23 April 1996, the Brussels Court of First Instance, hearing applications for interim relief, referred to the ECJ for a preliminary ruling under Article 177 of the EEC Treaty (now Article 234 EC), a question on the interpretation of Articles 6 and 48 of the EEC Treaty (now, after amendment, Articles 12 and 39 EC) and Articles 85 and 86 of the Treaty (now Articles 81 and 82 EC).

Questions for a preliminary ruling:
Were the rules of a sports federation which prohibited a club from fielding a player in a competition for the first time if he had been engaged after a specified date contrary to the Treaty of Rome (in particular Articles 6, 48, 85 and 86) in the case of a professional player who was a national of a Member State of the European Union, notwithstanding the

sporting reasons put forward by the federations to justify those rules, namely the need to prevent distortion of competitions?

The Law:
Only questions relating to the interpretation of the Treaty rules on the principle of the prohibition of discrimination on grounds of nationality and on freedom of movement for workers were admissible: did Articles 6 and 48 of the Treaty preclude the application of rules laid down in a Member State by sports associations which prohibited a basketball club from fielding players from other Member States in matches in the national championship, where the transfer had taken place after a specified date?
1. Scope of the Treaty:
The Treaty, in particular Articles 6 and 48, may apply to sports activities and to rules laid down by sports associations, such as those at issue in the main proceedings, see *Walrave* and *Bosman* cases.
2. The principle of prohibition of discrimination on grounds of nationality:
Regarding salaried workers, this principle had been implemented and specifically applied by Article 48 of the Treaty.
3. Existence of an economic activity and whether Mr Lehtonen was a worker:
The order for reference described Mr Lehtonen as a professional basketball player. A contract of employment as a monthly remunerated sportsman was produced in court. Moreover, the concepts of economic activity and worker defined one of the fundamental freedoms guaranteed by the Treaty and, as such, could not be interpreted restrictively.
4. Existence of an obstacle to freedom of movement for workers:
Rules on transfer periods were liable to restrict the freedom of movement of players who wished to pursue their activity in another Member State, by preventing Belgian clubs from fielding in championship matches basketball players from other Member States where they had been engaged after a specified date. Those rules consequently constituted an obstacle to freedom of movement for workers.
Insofar as participation in such matches was the essential purpose of a professional player's activity, a rule which restricted that participation obviously also restricted the chances of employment of the player concerned (see *Bosman*).
5. Existence of justifications:
The setting of deadlines for transfers of players could meet the objective of ensuring the regularity of sports competitions. In this case, players from a federation outside the European zone were subject to a deadline of 31 March rather than 28 February, which applied only to players from federations in the European zone. At first sight, such a rule should be regarded as going beyond what was necessary to achieve the aim pursued.
The ECJ concluded that Article 48 of the EC Treaty (now Article 39 EC) precluded the application of rules laid down in a Member State by sports associations which prohibited a basketball club from fielding players from other Member States in matches in the national championship, where they had been transferred after a specified date, if that date was earlier than the date which applied to transfers of players from certain non-member countries, unless objective reasons concerning only sport as such or relating to differences between the position of players from a federation in the European zone and that of players from a federation not in that zone justified such different treatment.

c) Case of Grubba v German Table Tennis Federation (Frankfurt am Main Appeal Court, Germany, 25 November 1997, case no. 2-14 0 254/97)

Validity of nationality clauses relating to nationals of States associated with the European Union

The Facts:
For the final of the German men's table tennis championships held on 28.12.96 and the first match of the German national men's league on 5.11.97, the plaintiff, *TTC Zugbrücke Grenzu*, a registered table tennis club, fielded Polish national Andrzej Grubba alongside Chinese player Wang Tao. According to paragraph 9.3 of the competition rules of the defendant, the German Table Tennis Federation, a registered association, teams involved in official championship and cup matches may only include one foreigner, although nationals of European Union Member States, Iceland and Norway are not considered foreign.
In a decision of 8.1.97, the secretary of the league stripped the plaintiff of its victory in the championships final because it had fielded two foreigners (one Chinese and one Polish). Through its rulings of 4.2.97 and 20.2.97, the Federation's sports tribunal found the plaintiff's appeals against the league secretary's two decisions to be admissible, set them aside and decided that the original results should stand. Following appeals by the defendant and the plaintiff's opponent, the Federal Court set aside the decisions of the Federation's sports tribunal through its judgments of 28.2.97 and 7.4.97 and upheld the league secretary's disputed decisions.
The plaintiff then lodged an appeal against this decision with the Frankfurt am Main Appeal Court, asking it to set aside the judgments of the Federal Court and league secretary and to confirm that the original result should stand. With regard to the final of German championships, the plaintiff also asked the Court to order the defendant to uphold the original match result.

The Law:
Question: did the clause on foreigners set out in paragraph B9.3 of the competition rules of the German Table Tennis Federation contravene the provisions of European law that took priority over the principle of independence of association? Did it, in particular, breach the right to freedom of movement of Polish workers in the Member States of the European Community, as set out in Article 37 of the agreement between the European Community (EC) and Poland, or the prohibition of discrimination also laid down in Article 37 of the agreement?
Frankfurt am Main Appeal Court:
- Article 48 of the Treaty, concerning freedom of movement for workers within the common market, did not apply here, since Poland was not part of the EC and Article 48 did not apply to the free movement of the player Grubba. The case-law provided by the *Bosman* judgment did not help solve this question, since it was solely based on Article 48 of the EC Treaty and on Council Regulation No.1612/68 on freedom of movement for workers within the European Community.
- Article 37 of the agreement between the EC and Poland, which dealt with the free movement of workers, could not be assimilated to Article 48 of the EEC Treaty. Article

37 had a narrower scope, only banning discrimination "*as regards working conditions, remuneration or dismissal*". This was formally confirmed by Article 42 of the agreement between the EC and Poland, which stated that, in future, efforts should be made to "*examine further ways of improving the movement of workers*".
There was currently no known case-law relating to the agreement between the EC and Poland.
- However, with regard to the rule in Article 37 on the free movement of workers, the agreement between the EC and Poland was similar to certain provisions of Decision No. 1/80 of the EEC-Turkey Association Council on the establishment of the Association (ARB 1/80 EEC-Turkey). In its judgment of 6.6.95 in the *Bozkurt* case, the ECJ noted that the aim of the social provisions of Decision 1/80, ie free access to employment (Article 6), was to go one stage further, guided by Articles 48, 49 and 50 of the EC Treaty, towards securing freedom of movement for workers. Nevertheless, the ECJ did not approve of the outcome of totally free movement of workers, but on the basis of an individual case, noted that Article 6(2) of Decision No 1/80 of the Association Council could not be construed as conferring on a Turkish national who had belonged to the legitimate labour force of a Member State the right to remain in the territory of that State following an accident at work rendering him incapacitated for work.
- The Frankfurt am Main Appeal Court concluded that Mr Grubba's request was unfounded because the clause on foreigners in the version that formed the basis of the disputed decision by the legal bodies of the German Table Tennis Federation was compatible with German and European law.

NB:
Contrary to the judgment mentioned above, several European courts have recently extended Community status to all nationals of countries that have signed association or cooperation agreements with the European Union. There are around thirty such countries in Eastern Europe and North Africa.
Last February, for example, Nancy Administrative Court decided that Polish basketball player Ludmila Malaja could be treated as an EC citizen.
In November 2000, a court in Madrid, Spain awarded EC status to Russian Celta Vigo player, Valery Karpin. The Spanish Football Federation appealed against this decision.
In Italy, on the other hand, following a ruling by the Reggio Emilia court, condemning discrimination between players on the basis of their country of origin, the Italian Football Federation decided to treat Ukrainian AC Milan striker Andrei Shevchenko as an EC player. Major Italian clubs such as Lazio Rome are now calling for the abolition of all distinctions between EC and non-EC players.
The ECJ should have resolved this issue by summer 2001 in the context of the dispute between Hungarian footballer Tibor Balog and Belgian club Charleroi. The ECJ should have decided whether the Bosman ruling should be extended to include nationals of countries that have signed agreements with the European Union. However,. a last-minute amicable settlement reached between FIFA and Tibor Balog led to the player's withdrawing his appeal.

C. Sports regulations providing for national quotas and selection procedures for participation in international tournaments

a) Case of Deliège v *Ligue francophone de judo* (Francophone Judo League), *Ligue belge de judo* (Belgian Judo League), *Union européenne de judo* (European Judo Union), (ECJ 11.4.00, joined cases C-51/96 and C-191/97)

Freedom to provide services; validity of sports rules providing for national quotas and national federations' selection procedures for participation in international tournaments and which do not restrict freedom to provide services

The Facts:
The proceedings concerned a dispute between Ms Deliège and the *Ligue Francophone de Judo* (hereinafter *'LFJ'*), the *Ligue Belge de Judo* (hereinafter *'LBJ'*) and the president of the latter, Mr Pacquée, concerning the refusal to select her to participate in the Paris International Judo Tournament in the under-52 kg category.
By order of 16 February 1996 (C-51/96) and by judgment of 14 May 1997 (C-191/97), the Namur Court of First Instance, hearing an application for interim measures in the first case and dealing with the substance in the second, referred to the ECJ for a preliminary ruling two questions on the interpretation of Articles 59 (now, after amendment, Article 49 EC), 60, 66, 85 and 86 of the EC Treaty (now Articles 50 EC, 55 EC, 81 EC and 82 EC).

Questions for a preliminary ruling:
1. Were rules requiring professional or semi-professional sportsmen or persons aspiring to such status to have been authorized or selected by their national federation in order to be able to compete in an international competition and laying down national entry quotas contrary to the Treaty of Rome, in particular Articles 59 to 66 (freedom to provide services) and Articles 85 and 86 (competition rules)?
2. Was it contrary to the Treaty of Rome, in particular Articles 59, 85 and 86 of the Treaty, to require professional or semi-professional athletes or persons aspiring to such status to be authorized or selected by their federation in order to be able to compete in an international competition which did not involve national teams competing against each other?

The Law:
Only questions relating to interpretation of the Treaty rules on freedom to provide services were admissible.
1. It was important to verify whether an activity of the kind engaged in by Ms Deliège was capable of constituting an economic activity within the meaning of Article 2 of the

Treaty and more particularly, the provision of services within the meaning of Article 59 of that Treaty.
(Sport was subject to Community law only insofar as it constituted an economic activity within the meaning of Article 2 of the Treaty).
As regards the concepts of economic activities and the provision of services within the meaning of Articles 2 and 59 of the Treaty respectively, it should be pointed out that those concepts defined the field of application of one of the fundamental freedoms guaranteed by the Treaty and, as such, could not be interpreted restrictively.
According to settled case-law, the pursuit of an activity as an employed person or the provision of services for remuneration had to be regarded as an economic activity within the meaning of Article 2 of the Treaty.
Sports activities were capable of involving the provision of a number of separate, but closely related, services which might fall within the scope of Article 59 of the Treaty, even if some of those services were not paid for by those for whom they were performed.
It was for the national court to determine, on the basis of those criteria of interpretation, whether Ms Deliège's sporting activities, and in particular her participation in international tournaments, constituted an activity within the meaning of Article 59 of the Treaty.
2. If it was assumed that Ms Deliège's activity could be classified as a provision of services, it was necessary to consider whether the selection rules at issue in the main proceedings constituted a restriction on the freedom to provide services within the meaning of Article 59 of the Treaty.
In contrast to the rules applicable in the *Bosman* case, the selection rules at issue did not determine the conditions governing access to the labour market by professional sportsmen and did not contain nationality clauses limiting the number of nationals of other Member States who could participate in a competition.
A rule requiring professional or semi-professional athletes or persons aspiring to such status to have been authorized or selected by their federation in order to be able to participate in a high-level international sports competition, which did not involve national teams competing against each other, did not in itself, as long as it derived from a need inherent in the organization of such a competition, constitute a restriction on the freedom to provide services prohibited by Article 59 of the EC Treaty.

D. Summary of sports-related European regulations

1. The rules of private sports organizations are subject to Community law (cf. *Doña* case);

2. Sport is subject to Community law to the extent that it constitutes an economic activity within the meaning of Article 2 of the Treaty (cf. *Doña* and *Walrave* cases);

3. The activity of professional footballers constitutes a remunerated activity and is therefore subject to Community law (cf. *Doña* and *Bosman* cases);

4. Both Article 48 and Article 59 of the Treaty of Rome are equally applicable to the activity of professional footballers (cf. *Walrave* case);

5. The ECJ accepts a number of exceptions to the principles set out in Articles 48 and 59 of the Treaty. These exceptions are linked to reasons which are not of an economic nature and are thus of sporting interest only, e.g. rules or a practice excluding foreign players from participation in matches between national teams from different countries (cf. *Doña* case);

6. Transfer rules impede the freedom of movement of persons; the obligation for a club recruiting a player to pay transfer fees breaches the player's right to freedom of movement (cf. *Bosman* case);

7. Article 48 prohibits restrictions on players who are nationals of other EU Member States with regard to their participation in competitions between different clubs organized by national and international associations (cf. *Walrave* and *Bosman* cases);

8. A rule requiring athletes to have been authorized or selected by their federation in order to be able to participate in a high-level international sports competition, which does not involve national teams competing against each other, does not in itself, as long as it derives from a need inherent in the organization of such a competition, constitute a restriction on the freedom to provide services prohibited by Article 59 of the EC Treaty (cf. *Deliège* case);

9. Clauses on foreigners contained in the rules of national sports federations and under which nationals of a Member State, nationals of other Member States and nationals of other States within the European Economic Area (EEA) are treated differently to non-EU and non-EEA nationals are compatible with German and European law (cf. *Grubba* case).

II. Compatibility of drug testing with the right to privacy

a) Case of Hill v National Collegiate Athletic Association, Board of Trustees of Leland Stanford Junior University (Court of Appeal of California, USA, 25 September 1990)

Drug testing on student athletes, breach of constitutional right of privacy; justification of tests by a compelling interest

The Facts:
Jennifer Hill and Barry McKeever were members of Stanford University's football and American football teams respectively.
In 1987, they applied to the Santa Clara County Superior Court (California) for an injunction preventing the National Collegiate Athletic Association (NCAA) from enforcing its drug testing programme against them. Their main argument was that the tests violated the constitutional right of privacy.
In March 1988, the Santa Clara County Superior Court prohibited the NCAA from enforcing its drug testing programme against Stanford students on the grounds that these tests constituted a breach of the right of privacy guaranteed by the California State Constitution and that the NCAA had failed to establish that it had a compelling interest to carry out the tests.
The NCAA appealed to the Court of Appeal of California, contending that:
1. The constitutional guarantee of privacy did not extend to the private action of the NCAA and, in any case, the NCAA had a compelling interest in preventing drug abuse in intercollegiate athletics and protecting the integrity of its competitions. Moreover, the right of privacy did not prohibit the NCAA from obtaining information needed to enforce a valid prohibition;
2. The drug testing programme was narrowly drawn in order to accomplish its compelling goals; there were no adequate alternatives;
3. The Santa Clara County Superior Court's decision violated the free commerce clause of the United States Constitution and prevented the NCAA from establishing uniform rules to govern interstate athletic competitions.

The Law:
1. NCAA's character as a private entity: the Court recognized this character.
2. Necessity of the tests: the NCAA had to demonstrate that the conditions required by the case-law of *Bagley v Washington Township Hospital 1966* were satisfied:

(i) the testing programme should relate to the purposes of the NCAA regulations (participation of student athletes in intercollegiate competition);

(ii) the utility of imposing the programme should outweigh any resulting impairment of a constitutional right, in this case the right of privacy;

(iii) there were no less intrusive alternatives.

The NCAA's arguments were not satisfactory because:

(i) the NCAA had failed to demonstrate, in the tests previously carried out, that large numbers of student athletes were using drugs and that the object of the tests was to protect health, safety and the integrity of competitions;

(ii) the evidence showed that the test programme was too broad (testing for too many substances) and that its accuracy was questionable because a number of different laboratories carried out the tests, using different methods and reaching different results;

(iii) alternatives less intrusive to the right of privacy had not been considered, e.g. educational programmes.

3. Free interstate commerce as guaranteed by the United States Constitution:

This argument was rejected because it was necessary to protect a constitutional right - the right of privacy. There was no proof that the injunction imposed by the Santa Clara County Superior Court had interfered with interstate commerce and, since the NCAA was a resident of California, the Court could enter an injunction applicable to the NCAA both inside and outside California, prohibiting drug testing of Stanford students wherever the tests took place.

b) Case of Miller v Cave City School (United States Court of Appeals (8th circuit), 31 March 1999)

Drug testing of student athletes; breach of constitutional right of privacy; justification of tests by a compelling interest

The Facts:

Pathe Miller, a pupil of Cave City School, said that he wished to participate in sports activities. However, he and his parents refused to participate in the random testing programme designed to discourage drug use among students involved in sport. He was therefore excluded from all extracurricular activities. Pathe, through his parents, sought from the District Court declaratory and injunctive relief, alleging that the random testing required by the drug and alcohol screening programme violated his constitutional rights under the Fourth and Fourteenth Amendments.

The District Court granted summary judgment to the school.

Pathe Miller disputed this judgment before the United States Court of Appeals (8th circuit).

The Law:

Under the express terms of the United States Constitution, the "right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized" (Fourth Amendment).

It is also established that the acquisition and analysis of a urine sample constitute a search within the scope of the Fourth Amendment.
Pathe was therefore challenging a search covered by the Fourth Amendment.
Under the provisions of the school's screening programme, the search at issue - the random acquisition and analysis of a urine sample - was not supported by a warrant, probable cause or individualized suspicion.
However, in the case of *Vernonia Sch. Dist. v Acton*, the Supreme Court had held that the public school environment provided the requisite special needs so that a school district could dispense with those Fourth Amendment protections (warrant, probable cause or individualized suspicion).
The search should nevertheless be reasonable under the test defined by the Supreme Court in its *Vernonia* judgment: it was a question of weighing "the scope of the legitimate expectation of privacy" and "the character of the intrusion that is complained of" against "the nature and immediacy of the governmental concern".
The school in the *Vernonia* case had been experiencing an increase in drug use among students and a concomitant rise in discipline problems. It had been determined that student athletes were the leaders of the drug culture. In 1989, therefore, the school had implemented a drug policy that applied to all students who wished to participate in the athletics programme. Student athletes and their parents were required to give written consent for the students to be tested for certain substances, not only at the start of the season for the sport selected, but also randomly throughout the school year. In the absence of such consent, students were not permitted to participate in school athletics.
The Supreme Court applied the test and held that the policy was constitutional.

- First issue: privacy

Children in a public school had a lesser right of privacy than ordinary citizens because the school had a right of custody, supervision and control over its students. For example, all public school students had to undergo physical (sight and hearing) examinations and vaccinations. Students wishing to participate in school activities had a diminished right of privacy in comparison with non-participating students.

- Second issue: the character of the intrusion complained of

Under the terms of the Cave City policy, students were allowed to provide the urine sample in an area that allowed for individual privacy.
The purpose of the procedure was to determine which substances had been ingested by the student. The tests determined the presence or absence of the same substances in every sample, regardless of the identity of the student who provided it. The consequences of a positive test did not include expulsion or suspension from classes.
In this case, the intrusion was almost identical to that in the *Vernonia* case, where the Court found that the level of intrusion had not been significant.

- Third issue: the nature and immediacy of the school's concern and the efficacy of random testing for meeting it.

In the *Vernonia* case, the Supreme Court ruled that deterring drug abuse by schoolchildren was at least as important as efficiently enforcing laws against the importation of drugs.
The school had a concern, but there was no "immediate crisis" because there was no evidence of any drug or alcohol problem in the school. However, the possible problems

which the school was trying to combat were substantial. There was no reason why a school should have to wait until there was a problem before taking preventive measures. Furthermore, the State had an interest in discouraging drug and alcohol abuse. The immediacy was linked to the considerable risk of immediate harm that resulted when drug abuse problems surfaced.

The Court concluded that the school had an important and sufficiently immediate interest in discouraging drug abuse among students. The random testing policy served to promote that interest and was justified.

III. Doping

A. Proof of doping

a) Case of USA Triathlon v Spencer Smith (Court of Arbitration for Sport, Lausanne, 31.5.00)

Concentration of prohibited substance not established with certainty; case of doping

The Facts:
In October 1998, Spencer Smith competed in the triathlon championships organized in Hawaii by USA Triathlon (appellant). The event was therefore governed by the USA Triathlon Rules and Regulations.
On 3 October 1998, Smith underwent a drugs test in conformity with the rules and procedures of the ITU, to which USA Triathlon was affiliated. Dr Elmore Alexander, licensed by the United States Olympic Committee (USOC), was in charge of the testing programme. The urine samples were analysed by the IOC-accredited UCLA analytical laboratory in California.
On 2 November 1998, Smith learned from the British Triathlon Association (BTA) that he had tested positive for nandrolone. Sample B also tested positive on 9 December 1998.
On 29 March 1999, the BTA Disciplinary Panel dismissed the doping charges against Smith on the grounds that there was little, insufficient or no evidence to establish the integrity of the urine sample or a proper chain of custody in the critical period between its collection and its arrival at the UCLA Laboratory.
In accordance with ITU regulations, USA Triathlon lodged an appeal against this decision with the ITU Appeals Board on 9 June 1999.
The Appeals Board found that the urine analysed at the UCLA lab was that of Spencer Smith and that it did contain nandrolone metabolites. However, the panel further found that there was no document to confirm the concentration of nandrolone metabolites in the urine analysed . As a result, the appeal was dismissed for lack of evidence.
On 14 October 1999, USA Triathlon, under Section 5.11 of the ITU Doping Control Rules, appealed to the Court of Arbitration for Sport to confirm that Smith had committed a doping offence and to obtain the proper sanctions.

The Law:
The CAS concluded that the ITU Doping Control Rules were the rules in effect during the event concerned and that a strict liability standard was applicable.

As confirmed by Dr Alexander's testimony, the integrity of the sample and its chain of custody had been preserved.
It was accepted that Smith's urine sample contained nandrolone metabolites. The presumption of doping set out in Chapter X of the IOC Medical Code (applicable at the time of the offence) therefore existed.
However, because of a calculation error which emerged at the hearing concerning the concentration of nandrolone (3 ng/ml instead of 8 ng/ml; the IOC Medical Commission's minimum threshold had been 2 ng/ml since August 1998), the CAS found that the reliability of the tests had been called into question, that the doubt benefited the accused and that a definitive case of doping had not been established against Smith.
The appeal was denied.

b) Case Z. v. DFB (German Football Federation), DFB sports tribunal, 1999

Doping offence, burden of proof.

The Facts:
Licensed player Z was under contract to FC N (a German football club), and on 29 May 1999 played in the Bundesliga match against SC F(another German football club).
The urine sample taken from Z in the doping control after the match showed that Z had used androgenic anabolic steroids before the match.
During training and before matches, B., a nutrition specialist employed by FCN as a "dietary adviser", regularly supplied players with muesli, fruit juice and tablets whose precise origin and composition were not known to the players.
Z took without the slightest restriction all the drinks, tablets, capsules and other substances which B gave him, and in doing so tacitly accepted the administration of anabolic steroids.

The Law:
The doping control performed on Z on 29 May 1999 was conducted in accordance with the DFB's regulations.
The analyses revealed that Z must have used androgenic anabolic steroids.
According to the result of the investigation, the sports tribunal regarded it as extremely probable that Z administered these substances himself with full knowledge of what he was doing.
Pursuant to article 14a n°2 of the DFB Match Regulations, a doping case is constituted when substances from prohibited agents are used or when methods likely artificially to improve the physical or mental performances of a player are employed. The substance found in Z is prohibited according to the DFB list.
In the event of a proven case of doping, a sporting offence in the sense of article 5 n°2 of the legal and procedural regulations is objectively constituted.
The punishment of offences under sports law further requires that the athlete who has doped has, through his guilty conduct, committed an individual fault. The punishment may not be fixed arbitrarily nor be disproportionate.

In principle, the positive result of a doping control may normally allow the conclusion to be drawn that the athlete tested has applied the prohibited substance to himself and has committed a culpable act.
Only in particular *exceptional* situations of ignorance as to the administration of unknown substances (e.g. the forced administration of medicaments, loss of consciousness by the player), the occurrence of which is proved, does the fault of the player disappear.
Here, in these particular circumstances, it is not possible to exclude the possibility that B gave Z capsules containing steroids without Z's positively being aware of this. Indeed, the investigation of the case revealed that B, on his own initiative, made his own diagnoses as to the health and physical condition of various players and, on the basis of these assessments, administered, with no control or documentation, individually defined quantities of tablets, capsules and mixtures of drinks, without contacting the team doctor. The players themselves regarded B's actions as irresponsible.
The judgement against Z is based on acts whereby Z received prohibited anabolic steroids from the witness B and may have taken them without being positively aware of this.
Even in these circumstances, the approach taken must be based on the liability of Z under sports criminal law: each player personally takes responsibility for the substances which are administered to his body.
Z was in serious breach of the duties of monitoring and surveillance incumbent on every player. Before the match against N, Z took capsules and tablets which he had not obtained himself, or from a doctor, and for which he could not justify either the origin or the composition.
While an athlete cannot prove how prohibited substances entered his body, to assert that such substances were administered to him without his knowledge is not sufficient to exonerate him. On the contrary: under sports criminal law, this athlete is guilty of doping through negligence or recklessly, even if this is merely through regular failure to monitor his food intake and his corresponding intake of medicaments.
Consequently, Z must be found guilty pursuant to article 5 n°2 of the legal and procedural regulations.
The penalty to be imposed must always be adapted to fit the degree of individual fault and take into account the possible duration of the pursuit of competition sports activities.
A general and fixed minimum suspension of two years for every doping offence is untenable, legally-speaking, as it would violate the prohibition on excessive measures (cf. OLG Munich, 28 March 1996 Katrin Krabbe).
The suspension imposed for a first offence will generally include one competition season, and will not exceed one year.
In this particular case, a nine-month penalty was imposed.

c). Case of Dieter Baumann v. International Olympic Committee (IOC), National Olympic Committee of Germany and International Amateur Athletics Federation (IAAF), CAS, 22 septembre 2000

Doping, Removal of accreditation to the Olympic Games, Cas juridiction, principle of res judicata, due process ;

The Facts :
The athlete Dieter Baumann (« Baumann ») was nominated by the German National Olympic Committee (The « NOC ») to take part in the XXVII Olympic Games in Sydney. He was then accredited by the IOC.
Howevwe, the IOC Arbitration Panel on 18 September 2000 placed him under a sanction of a 2 year ban from competition for a doping offence and the IOC then removed his accreditation.
Baumann seeks the following order :

1. Set aside the decision of the IAAF dated 18 September 2000.
2. Set aside the decision of the IOC dated 20 September 2000 to cancel the accredittion of Baumann.
3. Determine that Baumann is eligible to compete in the Sydney OG.

The Deutscher Sportbund (the German Sports Association, the « DSB ») held a without warning out of competition control test on 19 October 1999. The test was carried out on Baumann while he was at training, The test was positive. On 15 November 1999, the DSB arranged for another test to be carried out on Baumann without giving warning. The result of the test was also positive.
On 1 December 1999, an examination of a tube of toothpaste of the brand « Elmex » taken from Baumann's house revealed that the toothpaste contained nandrolone.
On 2 December 1999, Baumann reported the commision of an offence by persons unknown to the Tübingen public prosecutor's office. He claimed that his toothpaste had been manipulated. The public prosecutor's office commenced an investigation.
On May 2000, the Tübingen public prosecutor's office discontinued the investigative proceedings started by Baumann on the basis that no criminal involvment by a tird party could be established.
On 23 June 2000, the Legal Committee of the DLV removed the Athlete's suspension on the grounds that the necessary suspicion for a doping offence did not exist.
On 30 August 2000, the Regional Court of Stuttgart granted an interim order against the IAAF on the application of Baumann. Pursuant to such order the IAAF was prohibited under penalty of up to DM 500 ?000 for each breach from placing a competition ban on the athlete until the end of the Olympic Games 2000 in Sydney. This was stated to be the case unless the strict liability rule under the IIAF Rules was nor applied and Baumann was heard by an arbitration panel.
On 13 September 2000, upon his arrival in Australia, Baumann was accredited and awarded the status of participant admitted to the Olympic Games
On 18 September 2000, the IAAF Arbitration Panel placed a ban on Baumann for a period of 2 years based on Rule 60.2 of the IAAF Rules.

The Law :
The issue before the CAS is wether the removal of the accreditation is well-founded or not**.**
The IAAF raises a preliminary ojection that the CAS is without jurisdiction to determine this matter, because it has not provided for CAS jurisdiction in its bylaws and because its Arbitration Panel has issued a final and biding determination on this dispute.
The CAS jurisdiction over Baumann is based on the entry form signed by all partipants in the Olympic Games an on Rule 74 of the Olympic Charter (The « OC »). The lack of a CAS arbitration clause in thr bylaws of the Federation has no bearing on its jurisdiction over the IAAF, because in connection with the Games such jurisdiction exists by virtue of Article 74 of the OC. By reason of their commitment to the Olympic Movement and their participation in the Olympic Games, the Ifs must be deemed to have suscribed to the arbitration clause in the OC.
Baumann submits the IAAF's Panel's decision is a nullity. His submission is based on three grounds :
A. The IAAF's failure to follow its Rules for the referral to arbitration nd ;
B. The IAAF's failure to provide due process and ;
C. The IAAF's failure to consider uncontroverted evidence.
A First ground:
Baumann submits the decision of the IAAF Panel is a nullity. He submits he was not given 28 days notice in acordance with rule 23 ; he was required to travel around the world for his IAAf hearing ; he was not made a party to a dispute the resolution of which would affect his entire career and reputation ; further he received some documents as late as a day before the hearing and he was denied the opportunity to be heard at the IAAf hearing.
These submissions are rejected. Evidence reveals Baumann received the IAAF statement by mid August in sufficient time for him to seek injunctive relief in the Court of Stuttgart to stop the IIAF from placing a competition ban on Baumann until the end of the Olympic Games in Sydney unless strict liability rule is not applied and the applicant is tried by a Court of Arbitration.
Further we finf the correspondence referred to above, nakes clear Baumann was given every opportunity to be heard at the arbitration panel hearing. The IAAF invited him to participate fully in the hearing to present evidence and argument.
B. Second ground :
While it is usual for an IAAF arbitration to be heard in Monaco, it was heard in Sydney where Baumann was, at the time, as an accredited member of the German NOC Team of athletes for the Olympics Games. Modern modes of communication were all available in Australia had Baumann made call upon them to assist in the presentation of evidence had he so elected. In all the circumstances, Baumann was allowed due process and there cannot therefore, be a finding based on allegations of procedural irregularities that IAAF panel's decision is nullity.
C. Third ground :
The third branch of Baumann's argument that the IAAF Panel decision is a nullity rests on the claim that the Panel ignored uncontroverted evidence including Baumann's oral testimony and certain factual findings of the DLV Legal Committee. To prevail in this argument, Baumann must demonstrate that significant uncontroverted facts were ignored

by the IAAF Panel and he must show that these facts would properly have changed the outcome of the case. Baumann's arguments fail to meet the first requirement. This Panel has carefully considered the various points raised by Baumann. All of his arguments are also encompassed within the DLV Legal Committee decision which has also been addressed by the IIAF Panel.
Accordingly, as the CAS Panel having found it has jurisdiction to hear this application, rejects the submissions of Baumann that the IAAF Arbitration Panel decision is a nullity. It follows that the IOC action in relying upon the IAAF decision, to remove the accreditation of Baumann is valid.

Chronological reminder concerning the Baumann Case :
On 19 October 1999 and on 15 November 1999, the German athlete Baumann tested positive for nandrolone.
Traces of nandrolone were found in his toothpaste at his home.
In May 2000, the Frankfurt district court in its interim ruling on Baumann's request decided that the provisions of the legal rules and rules of procedure of the DLV (article 84 IV) and the IAAF rule (Rule 55 No. 2 and No. 4), which stipulate that it is for each athlete to guarantee that no substance that is prohibited by the said rules enter the tissues of his body or his body liquids (implying the application of the principle of liability without fault), cannot be interpreted as meaning that a disciplinary sanction may be inflicted on an athlete even if he has not committed a fault.
Following this decision, on 23 June 2000, the Legal Committee of the DLV removed the athlete's suspension on the grounds that there was doubt he knowingly ingested the banned substance and there were irregularities in his urine sample.
The DLV removed the temporary suspension decided on 19 November 1999 on the grounds that the necessary suspicion for a doping offence did not exist.
On 13 July 2000 Baumann's was cleared by the Legal Committee of the DLV in respect of the doping suspicions. In August 2000, Baumann was nominated by the NOC as a member of the German Olympic Team.
On 30 August 2000, the Regional Court of Stuttgart granted an interim order against the IAAF on the application of the athlete. Pursuant to such order the IAAF was prohibited under penalty of up to DM 500'000 for each breach from placing a competition ban on Baumann until the end of the Olympic Games in Sydney. This was stated to be the case unless the strict liability rule under the IAAF Rules was not applied and Baumann was heard by an arbitration panel.
On 13 September 2000, upon his arrival in Australia Baumann was accredited and awarded the status of a participant admitted to the Olympic Games.
On 18 September 2000, the IAAF Arbitration Panel placed a ban on Baumann for a period of 2 years based on Rule 60.2 of the IAAF Rules. Baumann's accreditation has thus been removed by the IOC and by the DLV. Baumann appealled to the CAS disputing the removal of his accreditation. The CAS Panel rejected Baumann's submissions and decided that the IOC action in relying upon the IAAF decision to remove the accreditation of the athlete was valid. (see above mentioned decision).
On 23 February 2001, Baumann won a court ruling: a state court in Frankfurt ruled that he must be allowed to run at the indoor championship in Dortmund otherwise the DLV will be subject to a DM 50'000 fine.

The IAAF decided to apply Rule 53.3 which provides that if any athlete competes during the period of ineligility, this period of ineligibility will recommence from the time of competition.
This means Baumann will remain banned through 25 February 2003. He had originally been banned until 21 January 2002.

B. Validity of sports federation rules in doping cases and their compatibility with Community law

a) Case of Wilander and Novacek v Tobin and Jude (Court of Appeal of England and Wales, Civil Division, 20 December 1996)

Doping; validity of ITF rule banning and sanctioning doping; compatibility of the rule with provisions of the Treaty of Rome

The Facts:
The plaintiffs, Mats Wilander and Karel Novacek, gave positive samples in drug tests carried out after they were eliminated from the 1995 French Open Tennis Championship. They gave notice of their intention to exercise their right of appeal in accordance with the rules of the International Tennis Federation (ITF).
The ITF Appeals Committee (AC) was due to hear the appeal on the 20/21 December 1995, but that hearing was adjourned by mutual consent. The AC's role was limited to questions of procedure.
The hearing was adjourned for a second time when an application was made to the Judge in Chambers by the plaintiffs.
On 29 January 1996, the plaintiffs issued a writ against the ITF before the Court of First Instance. This was followed by an application to Mr Justice Lightman for an injunction to restrain the ITF from continuing with the appeal proceedings.
This application was dismissed on 14 March 1996.
The plaintiffs' statement of claim was the subject of a number of amendments. On 18 April 1996, Wilander and Novacek indicated that they wished to make their latest amendment, alleging that ITF Rule 53 on drug testing and sanctions was void as being contrary to Articles 48, 59, 60, 85 and 86 of the Treaty of Rome.
On 19 April 1996, Master Moncaster partially dismissed the plaintiffs' allegation that Rule 53 was in restraint of trade.
On 24 April 1996, the plaintiffs appealed against that decision and, on the same day, Master Moncaster dismissed the plaintiffs' application for leave to include their allegations based on the Treaty of Rome.
On 2 May 1996, the plaintiffs appealed against this decision.

The trial was due to commence on 4 June 1996. However, by that date the plaintiffs' appeals against Master Moncaster's two decisions had not yet been heard. The two appeals were therefore heard by Mr Justice Lightman.
On 13 June 1996, Mr Justice Lightman allowed the appeals in part and the plaintiffs were given leave to amend their statement of appeal so as to rely upon Article 59 of the Treaty of Rome. However, the appeal based on Articles 48, 60, 85 and 86 of the EEC Treaty was dismissed.

The Law:

First instance
In his judgment on the two appeals against Master Moncaster's decisions, Mr Justice Lightman rejected all the plaintiffs' arguments except that which relied on what he described as the "unpleaded factor". This factor was based on the absence of any appeal procedure available to a player under ITF Rule 53 and the requirement for such a procedure under the Council of Europe Anti-Doping Convention of 1989, the signatories to which included the United Kingdom and France.
This meant that the sportsman was entitled to two hearings, namely a hearing at first instance and a hearing on appeal. The availability of a challenge in the Courts of the land to a decision by a disciplinary tribunal, such as that of the Appeals Committee, for example, could not constitute, or be a substitute for, a right to an appeal hearing as part of the disciplinary procedure.
The fact that ITF Rule 53 did not provide for a right to appeal constituted a breach of the right to earn a living as a sportsman.
Mr Justice Lightman concluded that Rule 53 was void as incompatible with Article 59 of the Treaty of Rome.
The other submissions based on the Treaty of Rome were dismissed because ITF Rule 53, designed to prohibit and sanction doping, constituted a restriction justified by compelling reasons of general interest.

Appeal
1. Validity of ITF Rule 53 on drug tests and sanctions:
Rule 53 did not contravene Article 7 of the Council of Europe Anti-Doping Convention. Article 7 of the Anti-Doping Convention did not specify the precise nature of the appeal which was required. The possibility of appealing to the Appeals Committee and a civil court guaranteed the right of appeal required by Article 7. There was no reason why the appeal should not be brought before a civil court rather than an appellate disciplinary body as long as the position of the player was protected.
2. Articles 48 (freedom of movement of workers) and 59 (freedom to provide services) of the Treaty of Rome:
These provisions only applied to sport insofar as the disputed rules had an economic aspect.
Article 59 did not apply to rules such as ITF Rule 53 because they concerned only sporting conduct rather than economic matters. Moreover, Rule 53 was not discriminatory and did not affect the free movement of players in the common market.

The Court of Appeal concluded that Rule 53 was justified because it aimed to prevent players from taking drugs. Rule 53 was not disproportionate because it made provision for an appeal procedure. Therefore, a player's fundamental right to provide his services was not jeopardised.

C. Jurisdiction of a civil court to order a private sports organization to strip a champion of his title

a) Case of Schulz v United States Boxing Association, IBF, Botha, Moorer (United States Court of Appeals (3rd circuit), 24 January 1997)

Jurisdiction of a court to order a private sports organization to strip a champion of his title

The Facts:
On 9 December 1995, François Botha won the world heavyweight boxing title against Axel Schulz in Stuttgart in a fight organized by the International Boxing Federation (IBF). The fight was governed by the rules and regulations of the IBF/USBA (United States Boxing Association, affiliated to the IBF) and the local Boxing Commission.
In accordance with IBF Rule 20 and the document signed by each boxer before the bout, each boxer agreed to provide a urine specimen after the fight to be tested for, among other substances, anabolic steroids and pain killers. The rules stated that, should the specimen prove positive, disqualification and disciplinary action would follow.
Botha's specimen tested positive for anabolic steroids.
On 24 February 1996, the IBF held a hearing in New Jersey (USA). Botha admitted for the first time that he had taken a drug prescribed by his doctor for an arm injury, but had been unaware that it contained anabolic steroids.
The IBF decided not to vacate Botha's title because of mitigating circumstances. However, Botha was fined and ordered to fight Schulz again within 180 days.
Schulz brought before the New Jersey District Court an action against Botha, the IBF, the USBA and Moorer, claiming preliminary injunction relief. The Court found that the necessary criteria had been met and ordered the IBF and USBA to disqualify Botha.
The IBF/USBA and Botha appealed against the granting of this injunction.

The Law:
The IBF and USBA were private associations.
Under New Jersey law, a private association had the right to adopt, administer and interpret its internal regulations. When, however, an association failed to respect its own

rules and regulations, a civil court could intervene to protect the property rights and other substantial interests of those who were subject to its rules.
The critical question was whether the IBF violated its rules when it failed to disqualify Botha for his drug use.
1. Schulz' interest to take judicial action:
The rules drawn up by the IBF and USBA were clear: if a boxer used prohibited substances, he was disqualified. Schulz therefore had an interest to take judicial action.
2. Competence of the New Jersey District Court to interfere with the affairs of a private association:
The *Rutledge* case constituted the accepted precedent in these matters. According to this case-law, a court could invalidate a private organization's decision affecting a plaintiff's interest only if:
i) the plaintiff's interest was sufficient to warrant judicial action: here, this was the case because Schulz' reputation and status in the boxing community were affected by the IBF's decision. Furthermore, Schulz had an economic interest sufficient to warrant judicial action;
ii) that interest had been subjected to an unjustifiable interference, i.e. interference which violated either the public interest or fundamental fairness: here, the public interest had been violated because New Jersey law stated that it was in the best interest of the public that boxing should be subject to an effective and efficient system of strict control and regulation in order to promote public confidence in the conduct of boxing;
iii) the regulations of the State Department made clear that public confidence in boxing was promoted by banning the use of substances that could affect a boxer's performance. This was confirmed by the bout rules that boxers had to sign before fighting. Public confidence was harmed if one of the main organizations involved failed to respect its own rules.
The District Court was therefore justified in granting the preliminary injunction ordering the IBF to disqualify Botha.

D. Validity of doping sanctions

a) Case of Katrin Zimmerman Krabbe v *Deutscher Leichtathletik Verband (DLV)* and International Amateur Athletic Federation (IAAF) (Munich Court of Appeal, Germany, 28 March 1996)

Unsporting behaviour; excessive sanction

The Facts:
Katrin Krabbe was a German athlete and member of the German Athletics Federation (*DLV*). Analysis of a urine sample she gave in a drug test revealed the presence of clenbuterol.
Katrin Krabbe admitted that she had regularly taken a substance known as *Spiropent*, which contained clenbuterol. It was a commonly used medicine for asthma sufferers, available on prescription. However, Katrin Krabbe did not suffer from asthma and had obtained the *Spiropent* on the black market.
At the time of the events, clenbuterol was not on the *DLV's* list of prohibited substances. In principle, clenbuterol was used for fattening up pigs and calves in order to increase their muscle mass. To date, there was no evidence that its proven anabolic effect on animals applied also to human beings.
However, it was accepted that the athlete's behaviour was, in all probability, linked to an attempt to improve her performance.
The *DLV* punished the athlete for "unsporting behaviour" by suspending her for one year, beginning on 14 August 1992.
The IAAF Council, meanwhile, thought that the one-year suspension imposed by the *DLV* was insufficient and decided to suspend the athlete for three years (i.e. until 23 August 1995).
Katrin Krabbe appealed to the District Court (*Landgericht*) for a declaratory judgment which would make the suspensions imposed by the *DLV* and IAAF inapplicable. Her request was dismissed by the District Court.
The athlete then took her case to the Munich Court of Appeal.

The Law:
1. One-year suspension imposed by the *DLV*:
First of all, the Court decided that the two penalties (*DLV* and IAAF) were separate.
- The one-year suspension imposed by the *DLV* was legally enforceable because the appellant was contractually bound by the Federation rules and the decisions of the Legal Committee insofar as these decisions were justifiable before the civil courts. In this case, the sanction was applicable because the athlete was a member of the *DLV* and had applied for and received a "passport", which required her to comply with the

Federation rules applicable to sports activities during competitions and training and with sanctions imposed for breaches of those rules.
According to Article 116 of the German Civil Code (*BGB*), an implicit contract existed between the athlete and the Federation.

- The athlete submitted that clenbuterol was not on the *DLV's* list of prohibited substances and that any substances not figuring on the list were therefore presumed to be acceptable. The Court dismissed this argument because the *DLV* had rightly pointed out that the list of substances also banned the use of substances that had an identical effect to that of those on the list.
- Katrin Krabbe had contravened the principles of sporting behaviour and fair play by taking *Spiropent* bought on the black market - a substance for which a medical prescription was required - and by refusing to give accurate information on drug test forms. The evidence showed that Katrin Krabbe was aware of the problems linked to *Spiropent*.
- The one-year suspension imposed by the *DLV* Legal Committee was legally justified and did not breach the appellant's constitutional right to freedom of employment. The suspension was not unreasonable.
- The athlete's request for damages linked to the cancellation of sponsorship deals was unfounded, since the deals had been cancelled because of harm done to the image of Katrin Krabbe, who had admitted using *Spiropent* since 16 April 1992.

2. Sanction imposed by the IAAF:

The Court ruled that the *DLV* was obliged to apply the IAAF sanction because it was bound by the decisions of the International Federation under threat of sanctions. The German Federation could not, therefore, be accused of acting improperly by enforcing the IAAF sanction.

The appellant's action was admissible because, on the one hand, the IAAF rules did not make provision for a sanction imposed by the German Federation to be increased and, on the other, because the IAAF sanction was excessive.

In compliance with IAAF Rule 54, the *DLV* had decided, via its Legal Committee, to impose a twelve-month suspension for violation of the principles of sporting behaviour. Rule 54 was the rule applicable to non-doping cases. IAAF Rule 53.2.2 applied only if the disciplinary procedure described in Rule 54 had not been correctly followed by the National Federation. This implied that Rules 54 and 53.2 could not both be applied to the same case. Rule 53 could not be used as a legal basis for the punishment of "unsporting behaviour", which had already been considered and sanctioned by the relevant national sports federation.

Furthermore, if, contrary to the above, Rule 53.2 could serve as the legal basis for an extra sanction imposed by the IAAF, the extension of the suspension breached the principle of proportionality. The suspension of 3 years 9 months was excessive.

It was generally accepted that a four-year suspension usually meant the end of an athlete's career. The *DLV* Legal Committee therefore considered a two-year ban to be the maximum for a first offence against the rules on doping. The same opinion was held by the "*Deutsche Sportbund*" and the IOC.

Since unsporting behaviour was less serious than doping itself and since this was the athlete's first offence, the IAAF's sanction was excessive, disproportionate and unfair.

b) Case of Edwards v The British Athletic Federation (High Court of Justice, Chancery Division, United Kingdom, 23.6.97)

Doping, validity of sanction; breach of freedom to provide services as defended by the Treaty of Rome

The Facts:
The plaintiff, Paul M. Edwards, was an amateur athlete and member of the British Athletic Federation (defendant).
On 22 October 1994, pursuant to the rules of the IAAF, the British Athletic Federation suspended Edwards for four years after he tested positive for anabolic steroids.
Mr Edwards later applied to the IAAF (defendant) for reinstatement, in effect remitting the last two years of the ban. His application was refused. Edwards challenged the lawfulness of this refusal on the grounds that similar requests by other athletes in the same situation had been granted. These were members of other athletic associations within and outside the European Union (EU) whose local laws limited the length of such bans to two years:

- On 28 March 1996, the Munich Appeal Court had indicated in the case of Katrin Krabbe that, under German law, a period of suspension in excess of two years was disproportionate to a first offence of doping. The four-year suspension was therefore illegal under German law.
- Following this decision, on 7 and 13 January 1997 the German Athletic Federation had written to the IAAF Council, requesting that it reinstate two of its members, Mr Martin Bremer and Ms Tiedkte, who had been suspended for four years under the IAAF Rules, on the grounds of "exceptional circumstances" as defined in IAAF Rule 60.8. The IAAF had decided to reinstate the two athletes under IAAF Rules 60.8. This had given the IAAF an opportunity to define the "exceptional circumstances" provided for in Rule 60.8: they existed when an athlete's national law (or court ruling) prohibited a four-year ban.
- Since 22 March 1997, the IAAF had reinstated other athletes from within and outside the EU on this basis.

Edwards claimed that:
1. the IAAF could not lawfully treat his application differently on the ground that the four-year ban was lawful in Great Britain;
2. the refusal of his application constituted discrimination against him which was unlawful under the Treaty of Rome (Articles 59 to 66).
The IAAF challenged this contention, while the British Athletic Federation adopted a neutral stance.

The Law:

- Was the plaintiff, Mr Edwards, providing services within the EU, within the meaning of Articles 59 to 66 of the Treaty of Rome?
- If so, did Articles 59 to 66 apply to IAAF Rule 60?
- If so, did the application by the IAAF of Rule 60 constitute discrimination on grounds of nationality in the sense prohibited under Articles 59 to 66 of the Treaty of Rome?

1. Edwards contended that the four-year ban was an interference with his freedom to earn his living as an athlete within the EU and that therefore the validity of IAAF Rule 60 was dependent on Articles 59 to 66 of the Treaty of Rome. The IAAF maintained that Rule 60 lay outside the ambit of application of these Articles, basing its argument on the *Bosman* ruling: Community law was applicable to sport only insofar as it constituted an economic activity and did not apply to sports rules or events which were of sporting interest only. For example, Community law did not apply to rules concerning the length of matches. In this case, the critical question was whether IAAF Rule 60 on drug controls, particularly the provisions on sanctions for drug offences, constituted an exclusively sporting rule.
The purpose of IAAF Rule 60 was to regulate the sporting conduct of athletes and to ban cheating by taking drugs. The sanctions were therefore essential. The four-year ban was reasonable and justified. Nevertheless, it had serious economic consequences for athletes found guilty. This was, however, an inevitable by-product of anti-doping regulations.
A rule designed to regulate the sporting conduct of participants did not cease to be such a rule because it prevented those who broke it from earning remuneration by participating in the sport for an appropriate period.
2. Rule 60 did not constitute discrimination based on nationality because it applied equally to all members, even though its impact differed from State to State because of differences in national law. The policy which sought only to accommodate Rule 60 to these differences in national law was not discriminatory.
European law was designed to eliminate laws of Member States which discriminated between different nationals, not the existence in Member States of legal rules that were blind to the nationality of the persons affected. Community law respected States' right to determine the length of sanctions.
The application was rejected.

c) Case of Bouras v IJF (Court of Arbitration for Sport (CAS) Lausanne, 20.12.99, CAS 99/A/230)

Doping; disciplinary sanction; validity of administrative sanction

The Facts:
Djamel Bouras was a judoka and member of the French Judo Federation (*FFJDA*).
At the request of the French Ministry of Youth and Sport, Bouras was subjected to an out-of-competition drug test on 2 October 1997. He tested positive.
On 18 April 1998, the *FFJDA* Anti-doping Commission, to which the case had been referred, decided to impose a two-year suspension on Bouras, with one year suspended. Bouras lodged an appeal against this decision with the *FFJDA* Anti-doping Appeals Commission, which decided that the case was outside its jurisdiction.
The French Minister of Youth and Sport then asked the National Anti-doping Commission for its opinion. The Commission suggested that the sanction imposed by the *FFJDA* should not be increased because of doubts surrounding the origin of the

nandrolone metabolites found in Bouras' samples. On the basis of this opinion, the Minister of Youth and Sport ruled in a decree of 9 July 1998 that Bouras should be suspended for one year.
The International Judo Federation (IJF) took up the case and its Executive Committee heard the athlete and the *FFJDA* President on 9 October 1998. On 10 October 1998, since Bouras had said that a further analysis was about to prove his innocence, the IJF Executive Committee postponed its final decision, considering that Bouras had been suspended since 2 October 1997.
On 14 October 1998, Djamel Bouras appealed to the CAS, which decided to set aside the IJF's decision of 10 October and to suspend Bouras for fifteen months, i.e. until 19 March 1999 so as to take into account the period of suspension already served.
On the basis of this decision, the IJF decided to nullify the results achieved by Bouras at the World Championships in Paris in October 1997 and to withdraw the silver medal awarded on that occasion.
On 25 June 1999, Bouras lodged an appeal against this decision with the CAS, putting forward the following arguments:

- The IJF's decision had been taken without the involvement of both parties;
- The IJF had not been competent to rule on the case once it had been referred to the CAS;
- Under the "*non bis in idem*" rule, disciplinary action could not be taken against an athlete more than once for the same offence;
- Since the test had not been carried out during a competition, the IJF's decision had no legal foundation.

On 30 August 1999, the IJF filed its response, in which it stated that a distinction should be drawn between the disciplinary sanction, i.e. suspension, and the sporting sanction, i.e. disqualification and forfeiture of the medal, which it thought were automatic.

The Law:
The CAS declared Bouras' appeal admissible and set aside the decision taken by the IJF Executive Committee in April 1999, in which it disqualified the appellant from the 1997 World Championships and ordered the forfeiture of the medal he won on that occasion. The grounds for this decision were, firstly, that the decision to disqualify the athlete had no valid foundation either in the IJF Anti-doping Regulations, which at the time made no provision for out-of-competition drug tests, nor in the IOC Medical Code, which only made provision for suspension, rather than disqualification, as a result of this type of test. Furthermore, the appellant's results could not be invalidated, since he had not been suspended when participating in the World Championships. At the time of the event, the IJF regulations stated that suspensions should begin on the date on which the test result was announced rather than the day when the sample was given.

d) Case of Johnson v Athletics Canada and IAAF (Ontario Court of Justice, Canada, 25.7.97)

Doping; lifetime ban; validity of sanction; restraint of trade; denial of natural justice

The Facts:
The plaintiff, Benjamin Johnson, was banned for two years in 1988 at the Olympic Games in Seoul. He was then reinstated and participated in various competitions.
In 1993 he competed in an event in Montreal and was tested after the race. The sample tested positive and Johnson did not exercise his right of appeal under the rules of Athletics Canada (AC) and the International Amateur Athletics Federation (IAAF). He was therefore banned for life.
Johnson applied to the Ontario Court of Justice for a declaration that the lifetime ban issued against him by AC and the IAAF, which barred his participation in athletics events, was contrary to the common law doctrine of restraint of trade. He also sought an order to reinstate his eligibility to participate in activities organized by the respondents.
In his application, Johnson claimed that he had not appealed because of apprehension regarding the partiality of the Appeal Committee.
Johnson's primary submission was that the lifetime ban constituted restraint of trade. He also claimed that he had been denied natural justice because the proceedings of the IAAF and AC in 1993 had been unfair.

The Law:
1. Restraint of trade
Johnson contended that the lifetime ban constituted restraint of trade and of the activity from which he earned his livelihood.
The Court of Justice accepted that the lifetime ban was in restraint of trade because athletics enabled Johnson to exploit his talents in order to earn a living. It was clear that the financial gain resulted from participation in competitions. However, the ban was reasonable and was not an illegal restraint of trade because it was necessary to protect Johnson from the effects of use of prohibited substances for the sake of his own health. It was also necessary to protect the right of athletes to fair competition and to know that the race involved only their own skill, strength and spirit rather than their pharmacologist. The public also had an interest in the protection of the integrity of the sport.
2. Denial of natural justice
Johnson argued that the actions and proceedings of the IAAF and AC in 1993 had been unfair and that, as a result, he had been denied natural justice.
The constituent elements of natural justice had been set out by the Supreme Court of Canada in the case of *Lakeside Colony of Hutterian Brethren v Hoffer (1992): "The content of the principles of natural justice is flexible and depends on the circumstances in which the question arises. However, the most basic requirements are that of notice, opportunity to make representations and an unbiased tribunal".*
In the present case, Johnson had failed to avail himself of any of the various opportunities available to him for further hearings on the merits. The reasons he had given - bias against him - were insufficient.

The procedures in place in 1993 complied with the requirements of natural justice: the options available to Johnson had included a fast track, a standard track and, ultimately, a hearing before the IAAF. These procedures were new hearings and Johnson was entitled to be represented by counsel, to be present personally and to present further evidence including witnesses. Furthermore, he had been represented at the time by an experienced and capable counsel.
The application was dismissed.

e) Case of Vincent Guérin v *FFF* (Versailles Administrative Court, France, 2 July 1998)

Football; doping; positive test; irregular test procedure; disciplinary sanction lifted

The Facts:
Mr Vincent Guérin, a footballer affiliated to the *Fédération Française de Football* (French Football Federation - *FFF*), gave a positive drug test on 5 October 1997.
The *FFF* Doping Appeals Commission upheld the decision of the *FFF* Doping Controls Commission, which had suspended Guérin for 18 months, 12 of which were suspended. Guérin appealed to the competent Versailles Administrative Court in order to dispute the legality of the suspension imposed by the *FFF*. He relied on several arguments, particularly drawn from the Act of 28 June 1989 on prevention and repression of the use of doping products in sport and from Decree No. 91-387 of 30 August 1991. The Administrative Court only accepted one of these arguments, which was linked to the unequal volumes of urine used for the first and second analyses (45 ml and 15 ml respectively).

The Law:
In breach of the aforementioned provisions of Article 6 of the Decree of 30 August 1991, the urine sample was not equally distributed between the two flasks. The sample taken from Mr Guérin and analysis of it were therefore void.
Consequently, the decision in which the *FFF* Doping Appeals Commission suspended Guérin for 18 months, 12 of which were suspended, was set aside on the grounds that the medical tests had been carried out at the first division match in accordance with an incorrect procedure.

NB:
This outcome is not completely satisfactory, since the player won simply by relying on an incorrect procedure, which meant that the case could not be settled on its merits. A distinction needs to be drawn between (i) essential procedures, the omission or violation of which unquestionably invalidate proceedings because they are likely to influence directly the content of the decision, and (ii) non-essential procedures, the omission of which has no bearing on the decision and/or which do not form a true safeguard for the person to whom the decision is addressed.

f) Case of David Meca-Medina v *FINA* and Igor Majcen v *FINA* (Court of Arbitration for Sport, Lausanne, 29 February 2000, CAS 99/A/234 and CAS 99/A/235)

Doping; sanction; validity of four-year suspension

The Facts:
David Meca-Medina was a member of the Spanish Swimming Federation, affiliated to the *Fédération Internationale de Natation Amateur* (International Amateur Swimming Federation - *FINA*), which was domiciled in Switzerland.
Igor Majcen was a member of the Slovenian Swimming Federation, also affiliated to *FINA*.
The appellants were each suspended for four years by *FINA* on 8 August 1999 because they had tested positive in competition drug tests conducted on 31 January 1999 during the long distance World Cup race held in Salvador de Bahia in Brazil. They had finished first and second respectively and were tested at the end of the race.
The two cases were heard jointly.

The Law:
The burden of proof lay upon *FINA* to show that a doping offence had been committed. Such proof was provided by positive tests showing the presence in the human body of substances prohibited by *FINA's* doping control rules.
Consequently, in order to avoid or reduce the sanction imposed against them, the burden shifted to the appellants to show clearly both how the prohibited substance got into their bodies and that there was no negligence on their part in allowing it to do so.
The appellants were unable to produce such evidence, since the samples had been analysed in accordance with recognized scientific criteria and the tests had proved positive.
Moreover, the results obtained were indicative of the consumption of nandrolone precursors, a recognized cause of several positive tests (cf. CAS 98/214, *Bouras v IJF*).
Furthermore, the appellants failed to prove that the source of the prohibited substance was the innocent consumption of pork, since the facts submitted were not verifiable and were based on unproven scientific theories.
Finally, the impediment to the appellants' freedom to provide services within the European Community was justified (cf. *Wilander v Tobin (ITF), 1997*).
The appeal was dismissed.

IV. Interpretation of sports rules

A. Possibility for an athlete to bring an action before a civil court on the basis of a federal law

a) Case of Michels v USOC (United States Court of Appeals - 7th circuit, 16 August 1984)

Existence of the right of an athlete tested positive for drugs to appeal to a civil court under the Amateur Sports Act; interpretation of the Amateur Sports Act

The Facts:
In August 1983, Michels, an American weightlifter, tested positive for testosterone during the Pan American Games in Venezuela. The use of testosterone was banned under the IOC Medical Code. The International Weightlifting Federation (IWF) therefore suspended Michels from international competition for two years. Because this suspension prevented Michels from competing at the 1984 Olympic Games, the United States Weightlifting Federation (USWF) refused to let him compete for a place in the American weightlifting team.
In May 1984, Michels sued the United States Olympic Committee (USOC), the IWF and the USWF in the District Court, claiming that his test results were invalid and that no proper hearing of his case had been conducted. More specifically, Michels alleged that USOC had violated the Amateur Sports Act.
On 11 May 1984, the District Court issued a temporary restraining order permitting Michels to participate in the Olympic trials on 11 and 12 May 1984. Michels qualified as a reserve in the national team.
In June 1984, the District Court decided that an IWF proceeding to hear Michels' claim had not conformed with the IWF statutes and declared the suspension invalid.
The USWF nonetheless refused to name Michels as a reserve on the ground that the entire team could be disqualified if an ineligible athlete was on its roster.
On 7 July 1984, USOC convened a special panel to hear Michels' claims. The panel ruled against Michels. USOC adopted the panel's recommendation.
Because the deadline for submitting team lists for the Olympic Games was approaching fast, the District Court granted Michels' request for a preliminary injunction requiring USOC and the USWF to name Michels as a reserve, subject to a determination of Michels' rights by the IOC. The Court also ordered USOC to examine the merits of Michels' claim under available IOC procedures.

USOC appealed to the Court of Appeals to dissolve the preliminary injunction granted by the District Court for the Northern District of Illinois ordering USOC both to name Michels, who had tested positive for testosterone, as a reserve for the US Olympic weightlifting team and to address the merits of Michels' claims under IOC procedures.

The Law:
The principal purposes of the Amateur Sports Act were to (i) provide a means of settling disputes between organizations seeking to be recognized as the national governing body for a particular sport and (ii) to shield amateur athletes from being harmed by these struggles.
The Amateur Sports Act contained no private cause of action. Michels therefore could not receive relief under the Act in a federal court.
The preliminary injunction was therefore dissolved and Michels' claim dismissed.

Remarks by Judge Posner:
The only relevant duty imposed by the [Amateur Sports] Act is the duty of the United States Olympic Committee to establish procedures for resolving disputes "involving any of its members and relating to the opportunity of an amateur athlete … to participate in the Olympic Games …". Michels' dispute relates to the opportunity of an amateur athlete to participate in the Olympic Games but does not involve any of the members of the United States Olympic Committee. His dispute is with the International Weightlifting Federation, an international organization that is not a member of the USOC. In this case, there is no dispute between the USOC and the USWF, so Michels' dispute is outside the scope of the Amateur Sports Act.

B. Jurisdiction to interpret a federation's rules of procedure in doping cases

a) Case of Smith v International Triathlon Union (Supreme Court of British Colombia, Vancouver, Canada, 26 August 1999)

Doping; jurisdiction to interpret a sports federation's rules of procedure relating to exercise of the right of appeal before a private tribunal; lack of jurisdiction of civil courts; jurisdiction of the federation to interpret its own rules

The Facts:
In October 1998, Spencer Smith competed in the triathlon championships organized in Hawaii by USA Triathlon. The event was therefore governed by the USA Triathlon Rules and Regulations.

On 3 October 1998, Smith underwent a drug test in conformity with the rules and procedures of the ITU, to which USA Triathlon was affiliated. Dr Elmore Alexander, licensed by USOC, was in charge of the testing programme. The urine samples were analysed by the IOC-accredited UCLA analytical laboratory in California.
On 2 November 1998, Smith learned from the British Triathlon Association (BTA) that he had tested positive for nandrolone. Sample B also tested positive on 9 December 1998.
On 29 March 1999, the BTA Disciplinary Panel dismissed the doping charges against Smith on the grounds that there was little, insufficient or no evidence to establish the integrity of the urine sample or a proper chain of custody in the critical period between its collection and its arrival at the UCLA Laboratory.
In accordance with ITU regulations, USA Triathlon lodged an appeal against this decision with the ITU Appeals Board on 9 June 1999.
In turn, Smith sought a declaration from the Supreme Court of British Colombia stating either that the ITU Appeals Board had no jurisdiction to hear the appeal or that USA Triathlon's appeal to the ITU Appeals Board was unfounded.

The Law:
Smith claimed that USA Triathlon had no standing to appeal against the BTA's decision before the ITU Appeals Board because the ITU Rules and Guidelines stated that national federations could only appeal if the ITU rules had not been respected (Section 5 of the ITU Rules and Guidelines).
Smith also submitted that the ITU Appeals Board had no jurisdiction to hear the appeal.
For its part, USA Triathlon stated, firstly, that the ITU Rules and Guidelines had not been respected by the BTA and secondly that the Court should refrain from intervening prematurely in cases where a national sports organization had set down guidelines for investigating doping charges and appealing against decisions of the first instance.
The Court ruled that members of a national federation, in this case USA Triathlon, were in a contractual relationship with the ITU. The Court had jurisdiction to protect the civil and contractual rights of members. However, this jurisdiction was narrow and only applied if a decision had been taken without jurisdiction, in bad faith or contrary to the rules of natural justice.
The Court decided that the determination of whether a private tribunal such as the ITU Appeals Board was acting within its jurisdiction was dependent upon the construction of its rules. It was therefore up to the ITU to interpret its own rules.
Smith's application was dismissed.

b) Delisa Walton-Floyd v The United States Olympic Committee (Court of Appeals of Texas, 1st district, Houston, USA, 26 February 1998)

Interpretation of the Amateur Sports Act (American law); existence of the right of an athlete tested positive for drugs to appeal to a civil court under the Amateur Sports Act

The facts:
The appellant, Delisa Walton-Floyd, appealed against a summary judgment granted in favour of the United States Olympic Committee (USOC). The Court of Appeals had to determine whether USOC owed Mrs Floyd a duty pursuant to federal law and Texas common law.
Walton-Floyd was a middle-distance runner specializing in the 800 metres. During the 1980s she consistently ranked in the top ten in the United States for the 800 metres. In 1988, she finished fifth in the Seoul Olympic Games. After taking a year off, she resumed training with her husband, Stanley Floyd, as her coach.
In January 1991, Mr Floyd gave his wife a drug called *Sydnocarb*, which he had bought in Germany as a carbohydrate supplement. Mr Floyd had been unable to read the instructions on the box because they were in Russian. He therefore called the USOC hotline to make sure that *Sydnocarb* did not contain any substances banned by USOC. When his wife also called the hotline, the operator gave the same response, i.e. that *Sydnocarb* was a carbohydrate supplement which was not on the list of banned substances. Walton-Floyd therefore began using *Sydnocarb*.
During spring and summer 1991, Walton-Floyd and her husband called the hotline again. Each time they received the same answer.
In August 1991, Walton-Floyd competed in the IAAF World Championships in Tokyo, Japan. She tested positive for amphetamines. The IAAF conveyed the test results to The Athletic Congress, which suspended Walton-Floyd for four years.
Following the test, Walton-Floyd discovered that *Sydnocarb* had been the apparent source of amphetamines in her system and that it was a type of antidepressant.
Walton-Floyd filed a lawsuit alleging negligence on the part of USOC for providing her with false information about *Sydnocarb* and for breaching duties prescribed by the 1978 Amateur Sports Act 36 USC, paragraphs 371-96 (1988).
In a summary judgment, USOC replied that the Amateur Sports Act did not permit a private cause of action for damages and did not create any legal duties to prevent an athlete from experimenting with drugs. Federal law therefore precluded such actions.

The Law:
Walton-Floyd maintained that the Amateur Sports Act provided for an implied private cause of action that permitted the recovery of monetary damages based on USOC's failure to comply with the duties imposed on it by the Congress.
USOC argued that the Act did not imply a private cause of action based on the Act's legislative history, underlying purposes and case-law. Federal courts that had interpreted the Act and its legislative history had held that no private cause of action existed against USOC.

1. Existence of an implied private cause of action under the Amateur Sports Act:
a) Legislative history of the Amateur Sports Act:
- there was a strong preference that athletes resolve their disputes through the internal mechanisms provided by USOC rather than the judicial system;
- there were no express provisions for causes of actions for certain violations set out in the Act;
- the right to a private cause of action against USOC was set out in the USOC Constitution, which was not part of the Act;
- the original Act was designed to settle disputes between organizations seeking recognition as national governing bodies for a particular sport and to shield amateur athletes from suffering harm because of these internal conflicts.

b) Judicial precedents:
- in *Michels v USOC*, the Court of Appeals (Seventh Circuit) had decided that the Amateur Sports Act contained no private cause of action;
- in *DeFrantz v USOC*, the Court had cited in particular a provision of the Amateur Sports Act 36 USC, paragraph 395(c)(1), which granted any aggrieved party the right to review by arbitration after exhaustion of other USOC remedies. This confirmed the Act's intent to handle disputes internally.

The Court therefore ruled that the Amateur Sports Act did not imply any private cause of action.
2. Existence of a duty on USOC under the Amateur Sports Act in relation to the information provided by the hotline:
Such a duty did not exist under Texas tort law, cf. *Dolan v US Equestrian Team*.
Consequently, the appeal was dismissed and the summary judgment upheld.

C. Interpretation of the rules of an International Federation

a) Case of Korda v International Tennis Federation (ITF Ltd) (High Court of Justice, Chancery Division, United Kingdom, 29.1.99)

b) Case of ITF Ltd v Korda (Court of Appeals (Civil Division), United Kingdom, 25.3.99)

c) Case of ITF v Korda (CAS, Lausanne, 31 August 1999, CAS 99/223/A)

The Facts:
Mr Korda was a well known tennis player ranked fourth in the ATP standings in August 1998 and thirteenth at the end of 1998.
On 7 May 1998, Korda signed a form for participants in the Wimbledon tournament. In doing so, he agreed to comply with the provisions of the 1998 competitors' handbook, which stated in particular that the tournament was governed by the rules of the International Tennis Federation (ITF). In March 1998, the ITF published its "Programme".
During the tournament, Korda tested positive for nandrolone, which was classified as an anabolic steroid.
In conformity with Section M of the ITF Programme, the Independent Review Board suspended Korda for one year and decided that he should forfeit all computer ranking points and prize money earned at that tournament.
Korda exercised his right of appeal against the Review Board's decision before the ITF Appeals Committee (AC).
The AC decided that Korda had shown the existence of exceptional circumstances, which meant that only the forfeiture of points and prize money was justified and the one-year suspension should be withdrawn.
The exceptional circumstances lay in the fact that Korda had been unaware that he had taken the prohibited substance and had acted reasonably (decision of 22 December 1998).
On 8 January 1998, the ITF filed an appeal with the Court of Arbitration for Sport (CAS) with reference to Section V3 of its Programme. It argued that Korda's one-year suspension should be upheld.
In turn, Korda sued the ITF before the Chancery Division of the High Court of Justice, disputing the ITF's right to appeal to the CAS.
The ITF Programme prohibited and sanctioned the use of drugs, stipulating that a doping offence was committed whenever a prohibited substance was present in an athlete's body. This meant that the athlete had an objective responsibility; neither intent nor blame

needed to be proven. Under Section L8 of the Programme, the AC's decisions were final and binding on all parties.
The ITF based its right to appeal to the CAS on Section V3 of its Programme. It claimed that the Programme constituted an implicit contract between itself and Korda and that Section V3 entitled both parties to appeal on the merits before the CAS. Such a contractual relationship was borne out by the evidence, since Korda had conformed to the Programme rules from the beginning, agreeing in particular to provide a urine sample and exercising the rights conferred by the Programme (appeal to the AC).
Korda disputed this contractual relationship and contended that, in any case, the ITF was not entitled to lodge an appeal with the CAS on the basis of Section V3, since the right of appeal provided by Section V3 was limited to questions which the parties were unable to prove were outside the Court's jurisdiction.

The Law:
- Did Korda have a contractual relationship with the ITF and, if so,
- Did that relationship entitle the ITF to appeal to the CAS against a decision of the AC? This question raised the issue of interpretation and compatibility between Sections L8 and V3 of the ITF Programme:

  Section L8: The Appeals Committee's decision shall be final, complete and binding on all parties.

  Section V3: Any dispute arising out of any decision made by the AC shall be submitted exclusively to the CAS, which shall resolve the dispute in accordance with the Code of Sports-related Arbitration.

First instance
1. Existence of a contractual relationship
Such a relationship did exist, based on the evidence. For example:
- Korda admitted that he was aware that the Programme existed;
- In accordance with the Programme's provisions, Korda gave a urine sample and exercised his right to appeal to the AC;
- Before the AC had ruled in his favour, he informed the ITF that he wished to lodge an appeal with the CAS under Section V3.

2. Existence of the ITF's right of appeal to the CAS
The Chancery Division gave a strict interpretation of Section V3, ruling that an appeal could only be made to the CAS if it involved questions concerning the effect of the AC's decision on the parties and the enforcement of that decision, e.g. unreasonable restraint of trade or a breach of natural justice.

Appeal
The ITF appealed to the Court of Appeals.
The ITF argued that Section L8 should be interpreted by adding the phrase "subject to the provisions of Section V3".
The Court of Appeals agreed that this was the correct interpretation because:
1. The CAS appeals procedure provided for by the ITF Programme was the only means of disputing a decision of the AC, which was itself a tribunal of first instance since the decision of the Review Board was part of an administrative procedure.

2. Section L8 could not be interpreted strictly. The parties agreed on this point. Section L8 could in no way be understood as meaning that some decisions were final and others not.
3. Section V3 could in no way be interpreted as excluding some disputes and not others. The ITF was therefore permitted to appeal to the CAS.

CAS
Under its own rules, particularly Rule R57, the CAS had the power to review the facts and the law. In view of the facts of this case and the rules set out in the ITF Programme, the CAS decided that:
1. The presence of a prohibited substance in Korda's body had been established and so the doping offence was also confirmed;
2. There had been no "deviation" from the anti-doping control procedures contained in the ITF Programme. There had only been an irrelevant error relating to the collection of the samples. However, this could certainly not be described as a deviation from the procedure. Moreover, the AC had recognized that the procedure for collecting the samples, although unsatisfactory, had in no way affected the integrity of the test results. The "anti-technicality clause" contained in the ITF Programme should be interpreted as aiming to limit deviations.
3. The existence of exceptional circumstances had not been established. Ignorance of how the prohibited substance had come to be in the body was not sufficient to reverse the burden of proof;
4. The mandatory sanction provided for in Section M1a of the ITF Programme for a first offence relating to a category 1 prohibited substance, i.e. a one-year suspension, applied.

V. Contracts

A. Employment contracts

a) Case of Loranger v Mount Allison University (New Brunswick Court of Queen's Bench, Trial Division, Judicial District of Moncton, Canada, 9-10 November 1998)

Employment contract between coach and university; dismissal for failure to discharge duties; insufficient notice due to circumstances

The Facts:
Mr Loranger, a football coach at Mount Allison University, Canada, brought an action against the University for damages for wrongful dismissal.
Loranger was the University's football coach for five and a half years. His annual salary at the time of dismissal in September 1996 was $35,000.
He was dismissed because of his attitude to the use of banned substances by two team members. Loranger was opposed to the use of such substances and the team knew his position. However, he wanted to field a winning team. Loranger had heard rumours that two players had used steroids. One was a veteran player and the other was new to the team. Loranger took no steps with regard to the veteran on the ground that the player was aware of the drug policy and its consequences. Both players tested positive and were therefore suspended from the team.
The University President decided that Loranger's failure to test the players before they played amounted to negligence which harmed the University's public image.
He also thought that Loranger's failure to remove the players was equivalent to condoning the use of banned substances.

The Law:
The University had grounds to find fault with Loranger's behaviour.
However, Loranger was dismissed without reasonable notice because (i) he had never been informed of his responsibilities in this area; (ii) a similar situation had not arisen before; (iii) the quality of his work had never been questioned during his five and a half years of employment; (iv) in the absence of clear direction with respect to the use of banned substances, Loranger's focus had been on fielding a winning team; and (v) there was no evidence that he had actively encouraged the use of banned substances by his players; in fact, he had informed them that they should not use such substances.
Loranger had only acted negligently.

Loranger was therefore entitled to 12 months' notice.
Damages were awarded to the plaintiff.

b) Case of Tanguay v *Association Chamonix Mont-Blanc*, (Court of Cassation, Social Chamber, France, 23 January 1997)

Ice hockey, professional player, conditions of activity; legal subordination; employment contract

The Facts:
On 26 April 1990, a so-called "contract for the provision of services" was signed by Mr Tanguay and the Chamonix Mont-Blanc Hockey Club for the 1990-1991 season, which ran from 1 September 1990 to 30 April 1991. Tanguay was a professional ice hockey player.
On 31 July 1990, the club informed Mr Tanguay that it could not use his services because the contract was void. It explained that the contract was void because it did not have the legal capacity to employ players.
Tanguay brought an action with the industrial tribunal, requesting payment of damages for wrongful dismissal under Article L 122-3-6 of the French Employment Code on the grounds that he was tied to the club by a fixed-term employment contract.
On 7 December 1993, the Chambéry Court of Appeal reclassified the "contract for the provision of services" for ice hockey players as an employment contract and ordered the *ASSEDIC* (French unemployment insurance authority) to pay the sums due to the player for wrongful dismissal.

The Law:
The *ASSEDIC de l'Ain et des Deux Savoies* and the *AGS* appealed to the Court of Cassation on the grounds that the court which reclassified the "contract for the provision of services" as an employment contract should establish the facts concerning conditions of work, remuneration and legal subordination, which were all elements of an employment contract. In this case, the Court of Appeal, by merely analysing the terms of the agreement signed by the parties, without examining the actual conditions in which Tanguay's activities were to be carried out, had prevented the Court of Cassation from verifying the legal classification of the contract and had thus provided no legal foundation for its decision under Article L 121-1 of the French Employment Code.
The Court of Cassation ruled, on the contrary, that the Court of Appeal had correctly decided that the existence of a paid employment relationship depended neither on consent expressed by the parties nor on the name given to their agreement, but on the conditions in which the worker's activities were to be carried out.
Having subsequently noted that Tanguay had been recruited to work as a professional ice hockey player and was thus in a position of subordination to the club (he was obliged, under threat of sanctions, to remain physically fit on a daily basis and to participate in training, matches and friendly matches exclusively for the Chamonix Mont-Blanc

Hockey Club), the Court of Cassation ruled that the Court of Appeal's decision was legally justified.

NB:
The Court of Cassation expressed a desire to control the classification of contracts between sports clubs and their staff. Its decision should be apply generally, including to professional coaches. In particular, the Court stated in a standard way that "the existence of a paid employment relationship depends neither on consent expressed by the parties nor on the name given to their agreement, but on the conditions in which the worker's activities are to be carried out." The term used by the parties does not affect whether or not an employment contract exists.

c) Case of Bill Belichick v New York Jets (District Court, USA, 25.1.00)

Employment contract; enforcement of employment contracts within the American National Football League (NFL); breach of contract by coach refused; upholding of employment contracts, even those specifying a term considered long in view of the type of activity concerned

The Facts:
In 1997, Bill Belichick entered into an employment contract with the New York Jets ("Jets"), a member of the American National Football League (NFL). Under the terms of the agreement, Belichick was to serve for six years as the Jets' Assistant Head Coach under Head Coach Bill Parcells.
The contract specifically stated that, should Parcells resign, Belichick would automatically be promoted to Head Coach.
On 2 January 2000, Parcells resigned. Belichick was therefore named as Head Coach. On the same day, New England Patriots of the NFL, who had recently dismissed their head coach, requested permission from the Jets to offer the position of Head Coach to Belichick. The Jets refused.
On 5 January 2000, Belichick resigned from the Jets.
The Jets immediately informed the NFL that they continued to retain their contractual rights to Belichick despite his apparent resignation.
Unable to negotiate with the Patriots or any team other than the Jets, Belichick filed a grievance with the league on 6 January 2000, seeking a declaration that he was free of any contractual obligations to the Jets and could seek and accept employment with another NFL club.

The Law:
Belichick offered three arguments in support of his claim:
1. He had never actually assumed or accepted the Jets head coaching position. The rationale for this argument was based on the NFL's anti-tampering policy, which was designed both to protect teams who had invested in and made commitments to their

coaching staff, and to allow coaches, in certain circumstances, to explore employment alternatives while under contract to a particular organization. If Belichick had not accepted the position of Head Coach, he would have remained Assistant Head Coach and therefore would have been permitted to negotiate with other teams;
2. Parcells' decision to resign was part of a scheme orchestrated by the Jets to prevent Belichick from talking to other teams;
3. The Jets had breached his employment contract by not providing him with total control over football operations following Parcells' resignation because Parcells would maintain final say over many decisions.
The Jets countered by arguing that Belichick had specifically signed a contract with the Jets, agreeing to become Head Coach, and that a contract with another team would cause them irreparable harm in the light of his skills and ability.
On 21 January 2000, the NFL Commission responsible for hearing the grievance ruled in the Jets' favour. It ruled that Belichick had accepted the position of Head Coach before resigning, referring to the ten conversations he had held with the Jets on this subject during the previous year and to the fact that he had acted in his capacity as Head Coach on 3 and 4 January, prior to his resignation. It also found that insufficient evidence had been brought by Belichick.
The Commission decided that Belichick had breached his contract with the Jets without justification and enjoined Belichick to respect the remaining three years of his contract with the Jets.
On 24 January 2000, Belichick filed a lawsuit against the NFL with the District Court, alleging that it was violating the Sherman Act by directing a group boycott.
On 25 January 2000, the District Judge ruled that Belichick's request was unfounded. The following day, Belichick decided to drop the lawsuit and the Jets agreed to allow the Patriots to negotiate with Belichick in exchange for a compensation package.
The dispute was finally resolved through a friendly settlement.

NB:
The resolution of this dispute underscores the willingness of the courts and professional leagues to uphold employment contracts, even when those agreements specify a term that is considered long in view of the type of activity concerned.

B. Contracts on broadcasting rights for sports competitions

a) Case of EBU (European Broadcasting Union) v *SA Canal* + (Paris Court of Appeal, 1st chamber, section A, France, 27 July 2000)

Contracts on broadcasting rights for sports competitions; nullity of contract for failure to deliver

The Facts:

The European Broadcasting Union (EBU) was an organization subject to Swiss law working on behalf of radio and television broadcasters from the countries of the International Telecommunications Union based in the European broadcasting area. French broadcasters (particularly TV channels *TF1, FT2, FT3* and *Canal* +) were active EBU members via the *Groupement des Radiodiffuseurs Français* (Group of French Broadcasters - *GRF*).

The EBU acquired exclusive radio and television broadcasting rights for the European broadcasting area for the Olympic Summer and Winter Games in 2000, 2002, 2004, 2006 and 2008. The broadcasting rights for France cost a total of US$ 57,066,890. The *GRF* informed the EBU that, among its members, *FT2, FT3* and *Canal* + had decided to broadcast the Games. *Canal* + should therefore pay one-third of the aforementioned sum. Advances were paid by *Canal* + and by the public broadcasters.

Subsequently, in a ruling of 11 July 1996, the Court of First Instance of the European Communities set aside a European Commission decision of 11 June 1993 in which it had declared Article 85.1 of the Treaty of Rome inapplicable to the EBU Statutes and Rules governing television rights for sports events.

Following this decision, the EBU amended its Statutes in an attempt to obtain a new exemption from the Treaty of Rome provision, demanding that active member broadcasters guarantee, particularly at technical level, to reach at least 98% of homes capable of receiving TV broadcasts in their respective countries (statutory decision of 3 April 1998). The European Commission granted a new exemption on 10 May 2000. The decision of the Court of First Instance prevented *Canal* + from acquiring TV rights for sports competitions in partnership with the major European general-interest channels. However, the reform of the EBU Statutes did not have retrospective effect on rights previously acquired jointly by a member who had subsequently lost that status.

On 6 April 1998, following the statutory reforms, *Canal* + announced that it would not be broadcasting the Sydney Games. It also refused to pay its share of the bill for the TV rights.

The European Commission agreed in principle with the EBU Administrative Council's decision of 4 December 1998 to adapt a new regulation on the resale, through a bidding procedure, of the rights previously acquired by *Canal* +, which would retain those rights permanently if no other member wished to buy them.

Since no offers were received, *Canal +* remained the rightsholder in accordance with the aforementioned decision.
On 30 December 1999, *Canal +* asked the Paris High Court to order the EBU and *GRF* jointly to reimburse, without delay, the sums it had paid for broadcasting rights for the Sydney Olympic Games, on the grounds that its exclusion from Eurovision/Sports had deprived it of its rights to broadcast all the Olympic Games. *Canal +* claimed that it had lost its rights when the EBU launched the bidding procedure on 28 October 1999. It called for the annulment of its financial commitments relating to the Olympic Games entered into within the *GRF* framework.
In a judgment of 6 June 2000, the Paris High Court ruled against the EBU. The judges considered that, by putting the rights acquired by *Canal +* in 1997 up for sale, the EBU had failed to meet its obligation to deliver.
The EBU lodged an appeal with the Paris Court of Appeal, arguing in particular that:
1. *Canal +* had acquired broadcasting rights for the Olympic Games by September 1997, at which time it had taken possession of them. The sale was complete because agreement had been reached on the deal and the price;
2. The High Court's decision was not justified on the merits, since with regard to the sale of an intangible good, the EBU had met its obligation to deliver on the day on which the sale was concluded;
3. Following the act of a third party, the European Commission had forced the EBU to amend its Statutes and to implement a procedure relating to previous contracts, as a result of which there was only a chance that *Canal +* would have been ousted from the agreement;
4. This did not transpire, since *Canal +* had permanently acquired the rights before the proceedings were instituted;
5. When the case was referred to the Court, therefore, *Canal +* could not claim that the contract was flawed.
In its conclusions, *Canal +* asked the Court to uphold the High Court's ruling.

The Law:
1. Involvement of *Canal +* prior to the EBU's statutory reform of 3 April 1998:
The Court of Appeal upheld the High Court's decision insofar as a correct sale agreement relating to the rights for the Summer Games had been concluded between the EBU and *Canal +* before the statutory reform of 3 April 1998.
2. Scope of the EBU's statutory reform of 3 April 1998 and the existence of an agreement on the termination of the contract:
Following the reform of the EBU Statutes, *Canal +* had been excluded from Eurovision/Sports and was thus unable to participate in future joint acquisitions of rights to broadcast sports events. However, *Canal +* remained an active member of the EBU in all respects apart from the joint purchase of sports rights as part of the Eurovision group.
The reform of 3 April 1998 contained no provision on the effect of exclusion from Eurovision/Sports on the continuation of existing contracts. The statutory reform in itself had no impact on the *Canal +* contract relating to Summer Games TV rights. *Canal +* therefore remained the holder of those rights and was obliged to pay the full price for them.

Canal + could not, therefore, claim that, on account of the reform alone, the commitments it had entered into were no longer valid.
There was no agreement on termination of the contract.
3. The effect of offering the rights for sale:
Since no bids had been made, *Canal +* remained the holder of broadcasting rights for the Olympic Games on the grounds that ownership of those rights had been transferred when the agreement on the deal and the price had been agreed in September 1997. As intangible rights were involved and since there were no titles, there had been no failure to meet an obligation to deliver, since the rights had remained permanently in the possession of *Canal +* since September 1997.
Offering the rights for sale constituted temporary dispossession, which was equivalent to partial dispossession.
Under Article 1636 of the French Civil Code, a purchaser could only cancel a sale if it had been dispossessed to such a degree that it could be assumed that the purchaser would not have signed the contract if he had been forewarned.
The temporary dispossession or the risk of dispossession complained of by *Canal +* was not significant enough to justify the cancellation of its obligations.
4. All the requests lodged by *Canal +* were therefore dismissed and the broadcaster was ordered to pay costs.

VI. Restraint of trade

a) Case of Newport Association Football Club Ltd and others v Football Association of Wales Ltd (High Court of Justice, Chancery Division, United Kingdom, 12.4.95)

Decision of a regional football association in restraint of trade for affiliated clubs; application for a court declaration and a reasoned temporary injunction

The Facts:
On 30 November 1991, the Football Association of Wales (FAW) passed a resolution to create and impose a pyramid structure for all Welsh football clubs. The idea was to create a scheme similar to that in England and in other countries and thus be allowed to play in the European and UEFA Cups. The FAW therefore decided in November 1991 that no Welsh club would be allowed, under Rule 57, to be a member of any league in the English pyramid in the 1992-3 season and thereafter.
When this decision was taken, Wales' top three clubs had already been playing in the English Football League for many years. Rule 57 did not purport to affect these three clubs, who could continue to play their home matches in Wales.
On the other hand, eight other Welsh teams played in the English pyramid, playing their home matches in Wales. These clubs wished to continue playing in the English pyramid in order to be promoted. They therefore appealed against the FAW's decision. The FAW granted them a hearing in January 1992. Subsequently, three of the eight clubs decided to leave the FAW and join the English Football Association (FA). The FAW reacted by prohibiting the three clubs from playing their home matches in Wales.
As a result, the plaintiffs' income would fall considerably, even threatening their very survival.
The three clubs began by appealing to the FAW to change its decision. However, an FAW appeals panel dismissed their request. They then sought an arbitration and organized petitions and campaigns.
Having failed to persuade the FAW to change its mind, the three clubs brought an urgent court action seeking:
(i) a court decision (declaration) recognizing that the FAW decision to ban them from playing at home was void as being in unreasonable restraint of trade;
(ii) an injunction to prevent the defendant from continuing to act in restraint of trade and a temporary injunction allowing them to play in Wales during the following season, while hoping that a trial would be held before the subsequent season.
The defendant claimed that the Court had no jurisdiction to grant a decision (declaration) other than during a trial to settle the dispute. If such a declaration concerned a non-contractual relationship, the Court had no jurisdiction to grant a temporary injunction because such a measure was dependent on the declaration.

In other words, a temporary declaration could not be granted because it was a juridical nonsense - one could not provisionally determine the rights of the parties. An injunction could only be granted at trial as ancillary to a declaration. An injunction could therefore not be granted before trial - before the declaration to which it was ancillary.

The Law:
Mr Justice Blackburne had to decide whether the FAW's decision contained in Rule 57 was in unreasonable restraint of trade. In this regard, he referred to the case of *Pharmaceutical Society of Great Britain v Dickson.*
1. The plaintiffs had been denied permission to play in the English pyramid under Rule 57. These clubs were therefore unable to play home matches in Wales as long as they were part of the English pyramid. This amounted to restraint of trade.
2. Was this restraint justified?
No, because the November resolution was not necessary for the protection of the FAW's interests, i.e. the promotion of Welsh football and, more particularly, recognition of the new Welsh league by UEFA.
The purpose of the November resolution was to force the eight clubs to leave the English pyramid and to join the Welsh league.
Mr Justice Blackburne decided that Rule 57 was not justified on the grounds that:
(i) UEFA had never given its opinion on this matter;
(ii) the appeals panel appointed by the FAW thought it was not proven that UEFA would discriminate against Wales if the eight clubs were allowed to continue playing in the English pyramid;
(iii) UEFA's failure to respond to this question showed that it did not wish to suggest that the continued presence of the eight clubs in the English leagues could jeopardise the likelihood of it recognizing the Welsh league;
(iv) the fact that some clubs had been authorized by the FAW to continue playing in the English pyramid had not prevented UEFA from recognizing the Welsh league.
3. The plaintiffs' claims for damages were refused because the three clubs were no longer contractually linked to the FAW.

b) Case of the German Football Federation (*DFB*) v German Federal Cartel Office (German Federal Supreme Court, 11.12.97)

Collective sale of broadcasting rights by the German Football Federation; breach of German competition law

The Facts:
Until the end of the 1988-1989 season, rights to broadcast football matches played by German clubs in European competitions on German territory were negotiated by each club individually.
From the 1989-1990 season onwards, the German Football Federation (*DFB*) centralized the sale of these rights.

During the following two seasons, the *DFB* sold rights to televise either individual matches or several matches to various TV channels.
Between seasons 1992-1993 and 1997-1998, the *DFB* sold exclusive global rights to broadcast all European matches (except the Champions League and the Champions' Cup Final) to two agencies.
On 2 September 1994, the German Federal Cartel Office issued a decree, prohibiting the *DFB* from centralizing the sale of television rights to the home matches of German clubs competing in European competitions.
This Cartel Office decision was confirmed by the Berlin Chamber Court on 8 November 1995.
The *DFB* then appealed to the German Federal Supreme Court.
On 11 December 1997, the Supreme Court found in favour of the Federal Cartel Office, ruling that centralized marketing of television rights to matches played in Germany in European competitions was likely to restrict competition for rights to broadcast sports events in Germany and would therefore breach the ban on cartels imposed by Section 1 of the German Act on Restrictions on Competition.
The Court held that competition between clubs as holders of marketing rights for individual matches was being restricted without reasonable justification by the *DFB* regulations.

The Law:
1. Ownership of television rights
Under German law, television rights for a particular event were usually owned by the event organizer. The crucial issue for the Federal Supreme Court was to determine whether the *DFB* or the home club was the organizer of these matches and, therefore, the rightsholder.
The Court decided that the home clubs were the match organizers and therefore the rightsholders. It held that a match was a commercial product because of the combined efforts of the clubs involved. This included the employment of players, the obligation to have a stadium available for a match on national territory and the local organizational tasks such as ticket sales, marketing, provision of refreshments in the stadium and coordinating with the police on safety issues.
Moreover, Article 1 of the UEFA Regulations expressly stipulated that clubs were the rightsholders.
2. Restriction of competition
The centralized marketing of rights by the *DFB* eliminated competition between clubs in relation to the price and conditions for the televising of matches.
This restriction of competition between clubs led to price rises which were passed on to the consumer.
The relationship between professional clubs was competitive because of economic competition for spectators, sponsors, players and the sale of merchandise.
3. Independent nature of a football match
The Supreme Court had already established that a football match was an independent event, the rights to which were not necessarily sold collectively. The fact that a match was played as part of a competition and that its economic value depended on that competition did not necessarily mean that rights to the match should be negotiated

centrally. Moreover, German clubs had negotiated their rights individually until 1989. The Supreme Court had also expressly pointed out that, in some other European countries such as the United Kingdom, Italy and Sweden, broadcasting rights were negotiated individually by each club.

4. Maintaining an economic balance

The restriction of competition was not justified by political reasons such as the need to maintain a competitive balance within the professional league or to keep small clubs alive, since this would be achieved at the consumer's expense.

VII. Discrimination in sport

A. Gender-based discrimination

a) Case of Kemether v Pennsylvania Interscholastic Athletic Association Inc. (United States District Court for the Eastern District of Pennsylvania, 8 November 1999)

Arbitration; appointment of males only; gender-based discrimination

The Facts:
The Pennsylvania Interscholastic Athletic Association Inc. (PIAA) was a non-profit-making association of public and private secondary schools set up to control interscholastic athletic relations and athletic contests involving member schools. Officials appointed by PIAA member schools had to be registered with the PIAA in order to officiate at athletic events. For example, in order to become a PIAA-registered basketball official, a person had to pass a PIAA examination and agree to comply with PIAA rules. Member schools had to use a standard contract for officials.
On 13 February 1993, the PIAA adopted a policy on the employment and assignment of officials (EEOC Policy). Under this policy, the PIAA was to seek and employ qualified officials, to guarantee them equal opportunities for advancement (including promotion and training), employment and assignment. It also stipulated that these activities should be administered without discrimination based on race, colour, religion, gender, age, origin or descent. The EEOC Policy also stated that the PIAA should recruit, employ and promote officials to all positions and events regardless of gender, unless gender constituted a prerequisite for that position or event.
In November 1990, Noreen Kemether became registered as a PIAA official, joining the Delaware County Chapter of PIAA Basketball Officials ("Delco Chapter").
Harry Sheldrake was appointed by the Executive Committee of the Delco Chapter to take charge of assigning officials from 1984 until the 1995/96 season. James Faulkner succeeded him from 1996 to 1998. The Delco Chapter Evaluation Committee, composed only of men, drew up a list of male officials qualified to referee boys' varsity matches. There was no equivalent list of officials qualified to referee girls' matches. The Evaluation Committee, of which Sheldrake was a member, only considered male officials for boys' varsity matches. The PIAA was aware that some Chapters used this kind of evaluation system. The Evaluation Committee never considered Kemether for the level of matches she was qualified to officiate. The Committee President admitted that female

officials were only appointed to matches between girls' teams, regardless of any evaluation of their performance.
Kemether asked to be appointed to officiate matches between boys' teams. Sheldrake refused. Several witnesses testified that no PIAA boys' basketball match had ever been officiated by a female.
Furthermore, the PIAA selection procedure and the conditions required to officiate playoff matches automatically excluded female officials from boys' matches during the regular season. Consequently, female officials could not fulfil the requirement of having officiated ten matches during the regular season (the ten-match rule) and therefore could not be appointed to officiate boys' matches after the regular season.
On 30 October 1992, Kemether failed in a claim of sexual discrimination against the PIAA brought before the Equal Opportunities Commission. She then brought an action against the PIAA on the basis of Title VII of the 1964 Civil Rights Act, Title IX of the 1972 Education Amendment and the Pennsylvania Equal Rights Amendment, arguing that the PIAA had discriminated against her on grounds of gender by refusing to allow her to officiate interscholastic matches between boys' teams.

The Law:
1. Responsibility of the PIAA for the actions of the Delco Chapter and its assignors
a) Responsibility of the Delco Chapter for the actions of its assignors
(i) Assignors were employed by the Delco Chapter;
(ii) Sheldrake and Faulkner had apparent authority to act on Delco's behalf;
(iii) Sheldrake and Faulkner had been forced to act in a discriminatory manner because of their relationship with Delco.
b) Responsibility of the PIAA for the actions of the Delco Chapter
The Delco Chapter and its assignors had been forced to act in a discriminatory manner against Kemether because of the relationship between Delco and the PIAA. In appointing and evaluating officials, Delco had been acting under the apparent authority of the PIAA.
2. Title VII of the 1964 Civil Rights Act
- Kemether was an employee of the school and of the PIAA: she was employed by the school to which she was assigned during the regular season, when she officiated basketball matches, and an employee of the PIAA during the post-season period.
- During the regular season: it was clear that the Delco Chapter and its assignors had prevented schools from employing Kemether by refusing to evaluate her, assigning her only to girls' matches and refusing to assign her to matches in some seasons. The PIAA, which was liable for the Delco Chapter and its assignors' conduct, had violated Title 42 USC paragraph 200 e-2, under which it was illegal for an employer to refuse to employ or to discriminate against a person with regard to the terms of their employment contract on the grounds of gender. The PIAA could be held liable for the discriminatory attitude of the Delco Chapter and its assignors under Title VII.
- During the post-season period: the PIAA had introduced and maintained the ten-match rule partly as a pretext for perpetuating the practice of allowing only male officials to officiate boys' varsity matches.
3. Title IX

Title IX stated that no person could, on grounds of gender, be prevented from participating in or benefiting from education programmes or activities receiving federal financial assistance.
The Court concluded that Title IX applied to the PIAA as it acted on behalf of member schools which received federal funding.
The PIAA's attitude was discriminatory during both the regular season and the post-season period as a result of the ten-match rule.
4. Retaliatory measure under Titles VII and IX
Given that the PIAA was liable for the discriminatory conduct of the Delco Chapter and its assignors, the PIAA had carried out a retaliatory measure against Kemether in violation of Titles VII and IX.
5. Violation of the Pennsylvania Equal Rights Amendment
This Amendment stated in particular that equality should not be denied or abridged because of the sex of an individual.
The Court found that, as the responsible party, the PIAA had violated the Amendment during both the regular season and the post-season period.
The Court declared that there was discrimination and violation of the law. It ordered the PIAA to adopt appropriate rules.

b) Case before the Châlons en Champagne Administrative Court, France (28 January 1999, cases 98-711 and 98-1034)

Athletics; sports events; discrimination on grounds of gender and nationality

The Facts:
A municipal council responsible for organizing an international marathon decided that the number and magnitude of prizes to be awarded should differ according to the gender of participants.
An action was brought before the Châlons en Champagne Administrative Court, which was competent to hear the case, seeking for this decision to be declared illegal on the grounds that it constituted discrimination based on the gender of the participating athletes.

The Law:
The aforementioned decision of the municipal council did not constitute illegal discrimination between male and female athletes.
In view of the physical capacity required by top-level marathon runners and considering the performances that might be achieved in the event, female athletes were not in the same situation as their male counterparts, however much effort they put in.
Therefore, having organized two separate events for male and female athletes, the municipality was not obliged, under the principle of equality, to award the same prizes in both categories. In these circumstances, the prize money could not be regarded, even for professional athletes, as remuneration for equal work by men and women.

Neither was the principle of equality broken by the decision to award different amounts of prize money dependent on whether or not the participants were holders of a French Athletics Federation licence. The Court held that this discrimination was justified on the grounds of general interest, i.e. because it promoted the development of the marathon in France, particularly at the highest level.
However, the part of the disputed decision whereby special prizes were reserved for participants who were both licensed in France and of French nationality had to be set aside.

B. Other forms of discrimination

a) Case of Olympique de Marseille (OM) v Union des Associations Européennes de Football (UEFA) (Berne Civil Court III, Switzerland, 9 September 1993)

Discrimination; football club; decision to exclude club from championships

The Facts:
In a decision of 6 September 1993, the defendant (UEFA) refused to allow the appellant (OM) to participate in the Champions' Cup because of an act of attempted corruption.
On 9 September 1993, the appellant applied for a temporary injunction and interim measures to secure the immediate annulment of the defendant's decision and a ban on any future boycott or discrimination.

The Law:
The appellant's demands were made under public law on association and legislation on the protection of the human person. The court concerned had proper jurisdiction.
The Champions' Cup season started on 14 September 1993. The defendant had to be granted a court hearing, which was why the current procedure would almost certainly not be concluded by 14 September 1993. If OM were excluded from the Champions' Cup without a court hearing, it would clearly suffer damage which would be difficult to repair at a later date. Therefore, the appellant was entitled to an emergency procedure and a temporary injunction.
1. The Court decided to suspend the defendant's decision of 6.9.93, in which the appellant had been refused permission to participate in the competition, until the current procedure was finally settled.
2. The Court ordered the defendant immediately to authorize the appellant to participate in the Champions' Cup for the 1993/94 season.
3. Finally, the Court ruled that these measures should remain in force until a decision was reached on the application to set aside the decision (on the merits).

NB:
The procedure went no further and was not decided on the merits in relation to the substance of UEFA's decision to ban OM from participating in the Champions' Cup.

VIII. Responsibility of a federation towards an athlete

A. Contractual responsibility of a federation towards an athlete

a) Case of E.L. v *Fédération Française de Gymnastique* (French Gymnastics Federation - *FFG*) (Paris High Court, 1st chamber, 2nd section, France, 1 July 1999)

Contractual liability; sports federation; duty of safety towards athletes; federation's liability for the occurrence of damage; federation's liability for a delay in diagnosis of an injury

The Facts:
On 15 November 1994, E.L., a promising young French gymnast, suffered an injury to her spinal column which became apparent on landing in an acrobatic exercise during a training session with the French gymnastics team. The session was being held in preparation for the world team championships scheduled for 16 to 18 November 1994. The athlete's parents sued the *FFG* for damages, citing the Federation's responsibility firstly for the occurrence of the damage and secondly for the delay in diagnosing the injury.

The Law:
1. *FFG's* liability for the occurrence of the damage:
- When the event took place, the *FFG* was tied to E.L., represented by her parents, through an implicit agreement entrusting the Federation with responsibility for her safety (principal duty of care and diligence, a best-endeavours obligation).
- According to the experts, injuries to the lower back such as that suffered by E.L. and spondylosisthesis were known risks for young athletes. Preventive monitoring should be carried out by means of regular X-rays. Such checks had been carried out in this case, showing the gymnast to be a in a normal condition.
- The injury to E.L.'s spinal column was discovered when she felt pain on landing from a double somersault during training. However, the experts said that this exercise was not particularly dangerous and had been undertaken with all the usual precautions.

There was therefore no proof that the Federation was responsible for causing the injury.
2. *FFG's* duty of care towards the young athlete
- An examination showed that the pain of which E.L. complained from 15 November 1994 onwards had begun on landing from a double somersault. E.L. had participated

in subsequent training sessions and in the championships themselves on 16 and 18 November, even though she was known to be in pain.
- Since the pain did not go away, the Federation's medical staff, who should have been aware of the risk of lower back injuries, should have taken note and ensured an X-ray was carried out within three days of the onset of pain.

The *FFG* had therefore failed to discharge its duty of care.
As far as damages were concerned:
- Since the *FFG* was not responsible for causing the injury or for its gravity, demands for compensation linked to the gymnast's incapacity, medical costs and loss of a chance of an Olympic career should be rejected.
- The Federation's failure of duty concerned the delay in diagnosing the injury with a view to treating it. The consequences of this delay were simply the pain endured rather than the injury itself. The damage caused by the *FFG's* lack of action was therefore three days of unnecessary pain, since it was not proven that E.L. continued to suffer after the end of the championships at the end of the week, before she returned to Marseille.
  Damages of FF 10,000 were therefore awarded for the pain and suffering endured.

B. Federation's liability for negligence in respect of an athlete

a) Case of Michael Watson v British Boxing Board of Control Limited (BBBC) (High Court of Justice, United Kingdom, 2000)

Boxing; liability for negligence; Federation's duty of care; failure to fulfil that duty; Federation's liability

The Facts:
On 21 September 1991, Michael Watson, Commonwealth middleweight boxing champion, fought Chris Eubank for the World Middleweight Championship organized by the British Boxing Board of Control Limited (BBBC). In the middle of the eleventh round, Watson sustained several heavy punches. He emerged for the final round but was unable to defend himself and the fight was stopped at 10.54 p.m.
Watson fell into a coma. At around 11.01 p.m., Dr Shapiro entered the ring and Watson was stretched out on the canvas. Something was put into his mouth to help him breathe. He was then placed on a stretcher and taken to an ambulance. He arrived at North Middlesex Hospital at 11.22 p.m. The immediate examination showed him to be unconscious. The conventional resuscitation procedures were followed. Watson remained in the hospital until 11.55 p.m., when he was transferred to St Bartholomew's Hospital. There a scan revealed a subdural haematoma (haematoma in the brain). The operation to

evacuate the haematoma (the first of nine operations Watson underwent) took place at 1.30 a.m. on 22 September 1991.
The BBBC was established in 1929 and became a limited company in 1989. It controlled professional boxing within the United Kingdom.
At the time of the events, the BBBC rules concerning safety stipulated in particular that:

- two approved doctors should attend all fights, one of whom should be seated at the ringside at all times during the contest (Clause 3.8), while the other should be available near to the ring (Clause 3.10);
- a crewed ambulance should be present at all fights organized by the BBBC.

Furthermore, in 1953, the BBBC advised that its medical officers should have a knowledge of sports medicine and be able to give advice concerning superficial injuries and to institute the emergency treatment of an unconscious patient, including establishing an airway.
Watson suffered irreversible brain damage, leading to paralysis of one side of his body.
Watson sued the BBBC on the grounds of negligence of duty under tort law, arguing that the BBBC owed him a duty of care to provide appropriate medical assistance at the ringside. He claimed that the measures in place, namely the presence of three doctors, the availability of a stretcher and the attendance of an ambulance, were insufficient and that the BBBC was in breach of its duty.

The Law:
1. Duty of care
a) Mr Justice Kennedy found that the BBBC owed Watson a duty of care.
b) He criticized the BBBC for not providing the required medical equipment, particularly for resuscitation, and found that it had thus breached its duty of care.
2. Breach of duty
Having found there to be a duty of care, Mr Justice Kennedy held that the BBBC had breached its duty by failing to ensure that the doctors in attendance at the bout had the appropriate level of expertise to deal with the injury that Watson suffered.
According to the neurosurgeon who operated on Watson, the damage had been caused by the delay in treating the blood clot. He said that the doctor in attendance had not had the equipment, drugs or skills necessary to help Watson's breathing. He concluded that head injuries should be treated within the first hour and that, in Watson's case, that hour had been wasted.
3. Causation
Mr Justice Kennedy held that it was the haemorrhage and not the punches that had led to the damage to Watson's brain. For that reason, the timing of the treatment given was crucial. If the necessary treatment had not been delayed by 30 minutes, Watson could have avoided the effects of the injury and led a normal life had it not been for the BBBC's negligence.
The BBBC was ordered to pay Watson £1 million in damages.

NB:
1. Emergency procedures
The decision sent shockwaves through the world of sport. The duty of care imposed on the BBBC will also now apply in other sports. Since this tragedy, boxing now insists on the presence of doctors qualified in resuscitation and the treatment of head injuries. Since 1995 the Fédération Internationale d'Automobile (FIA) *has insisted that a resuscitation service be provided for all races.*
The British Horse Trials Association and the Fédération Internationale de Football Association (FIFA) *have decided to look into the implications of introducing similar regulations.*
The liability of sports bodies may be in question if they fail to take adequate steps to ensure the safety of their members. Such measures should be appropriate to the risks and injuries created by the particular sport. The problem is that this analysis of risks, injuries and procedures cannot be a one-off exercise. Sports develop and rules change, as do medical ideas and techniques.
2. Insurance
Sports bodies must ensure that their insurance policies cover injuries suffered by participants in events organized under their auspices.

b) Case of Agar v Hyde and Agar v Worsley, High Court of Australia (HCA), 3.8.00

Rugby, serious injury to two players during a match; International Rugby Football Board's duty of care

The Facts:
Mr Hyde and Mr Worsley, two Australian rugby players, suffered serious spinal injuries as the result of the impact of scrums.
They sued various people, including the respective match referees. However, the focus of the decision of the High Court of Australia (HCA) was to decide whether the International Rugby Football Board (IRBF), now the International Rugby Board (IRB), the body responsible for making, altering and interpreting the Laws of the Game of rugby union, owed Mr Hyde and Mr Worsley a duty of care to ensure that they were not exposed to an unnecessary risk of serious injury.
At first instance, Mr Justice Grove decided that the claims by Mr Hyde and Mr Worsley were bound to fail. The Australian Court of Appeal reversed that decision and the defendants appealed to the HCA, questioning whether the claim against the IRFB was well-founded.

The Law:
Mr Hyde and Mr Worsley alleged that, by reason of the capacity of the IRFB to make, alter and interpret the rules governing rugby union, each member of the Board owed a duty of care to all players of the sport, including Mr Hyde and Mr Worsley, to ensure that the rules did not expose the players to an unnecessary risk of serious injury.

They contended that:
(i) the Laws of the Game relating to scrummaging as they stood in 1986/1987 exposed them to an unnecessary risk of injury, and;
(ii) by failing to alter those laws so as to eliminate the unnecessary risk, each member of the Board was in breach of the duty of care.
The HCA concluded that members of the IRFB did not exert sufficient influence over the Laws of the Game to give rise to a duty of care to players.
It stressed that the Board members had been sued individually and that Mr Hyde and Mr Worsley therefore had to demonstrate that each member and not the Board as a whole owed them a duty of care and had breached that duty.
No individual member of the IRFB could amend the rules or control the game internationally. Each was one of a number of participants in a process by which the rules of the sport at international level could be made or changed.
Moreover, not only did no individual member of the IRFB have the power to change the rules of the game, the IRFB did not have the power to ensure that the rules it promulgated were adopted. There were several layers of authority responsible for the interpretation and implementation of the rules of the game that existed between the IRFB and the players, including the state, national or international associations and the officials for each rugby match.
Furthermore, the IRFB members did not have the power to control players' conduct. Mr Hyde and Mr Worsley had been injured as the result of breaches of the laws of the game by the forwards of the opposing team.
The HCA concluded that another factor diminished the degree of control exerted by the Board members: the players to whom the IRFB members allegedly owed a duty of care had submitted themselves voluntarily to the risks inherent in playing rugby.
Moreover, rugby union, particularly at international level, was not just a game for players, but also for spectators. Many spectators attended matches because of the vigorous nature of the contest. Young men were attracted to the game because it involved an opportunity to dominate physically other young men in circumstances in which injuries were inevitable.
Finally, the HCA stated that this dispute could give rise to an indeterminate number of claims by an indeterminate number of people throughout the world, a factor which led it to conclude that no duty of care arose in the circumstances.

IX. Status of referees

A. Status of referees in the event of a fault

a) . Case Ancion v. ASBL Union Royale Belge des Sociétés de Football Association (URBSFA), Brussels Labour Court (Interim Relief Division), Belgium, 20 April 2000

Football, referee, fault of the referee, yes, status of referees vis-à-vis labour law;

The Facts:
Mr Armand Ancion (Ancion) is a referee affiliated to the Union Royale Belge des Sociétés de Football (URBSFA) since 13 January 1976.
On 1 August 1994, he jointed the higher category of referees authorising him to referee international competitions with the Union Européenne de Football (UEFA) and the Federation Internationale de Football (FIFA).
In the most recent rankings, Ancion was among the seven best Belgian referees and the 47 best international referees. His refereeing was nonetheless called into question during three matches:

- on 24 November 1998, AS Monaco v. O Marseille: deemed excessive for handing out 10 yellow and 2 red cards;
- on 7 August 1999, VC Westerloo v. RC Genk: deemed excessive for handing out 9 yellow and 4 red cards; award of 5 penalties deemed disputable, even a product of his imagination; after this match, a working schedule aimed at enabling the applicant to regain better physical and mental condition was established by mutual agreement and applied.

After this last match, the applicant made statements to the press admitting that he had made refereeing errors and saying that he would be resigning immediately. After considering the situation, he approached the Central Refereeing Committee (CCA) on 6 March 2000.
After hearing the applicant on 18 March 2000, the CCA took the following decision:
"The CCA, noting that the referee Ancion has failed to comply with his obligations linked directly to his function in terms of both his conduct and the performance of his services, and that both the credibility and the bond of confidence that must exist between a referee and his Refereeing Committee have, in this case, been irreparably broken, definitively dispenses with the services of the person concerned."
After exhausting all the judicial remedies provided in the Federation's rules, Ancion appealed to the President of the Labour Court, sitting as an interim relief judge, in order to obtain from the Federation:

- his immediate reinstatement as an active category A referee for any match organised by the Federation, with a penalty of 15,000 BEF per day of any delay;
- withdrawal of allegations by the CCA calling into question Ancion's psychological health and a full apology (this point was settled during the proceedings).

The law:
The President of the Labour Court held the action to be admissible and declared himself competent *ratione materiae* because of the urgency of the case and the fact that the action was based on the alleged existence of an employment contract between the referee and the Federation (qualifying the employment relationship existing between Ancion and the Federation comes under the jurisdiction of the judge of the merits and not the interim relief judge).
The President held that the question to be answered was whether the referee was an employee of the Federation bound by an employment contract and subject to a relationship of subordination (in the strict meaning of the term, as a paid athlete or an artist in a show), or was hired by a sports event organiser as a self-employed worker.
The legal status of referees is not clear. The interim relief judge could legitimately base his ruling on *prima facie* evidence alone. He based himself on the fact that the Federation, as a precaution, obliged referees to participate in the salaried employees health and pensions system and paid the corresponding contributions; and on the fact that the individual accounts and pay slips adduced by Ancion, established by the Social Accounting Secretariat to which the Federation is affiliated and to which it has delegated part of the management of its staff, expressly mentions the Federation as the "employer" of Ancion, and him as an "employee". These references constitute recognition by the Federation of Ancion and constitute *prima facie* evidence of the existence of an employment contract between the parties. The judge held that this was recognition by the Federation of the status of referees as employees.
There was then the question of the legal validity of the disciplinary sanctions imposed by the CCA.
At this stage, the judge decided that: "While there is some doubt as to the actual legality of the measure as a disciplinary sanction, this does not alter the fact that this measure implies the termination of the contractual relationship, with the result that the interim relief judge is powerless to order the parties to re-establish such relationship, and in particular order reinstatement on the list of referees. The termination of the contract, even if this was not in accordance with the rules, may be resolved only as a matter of damages."
The application was therefore rejected.

Comment:
The case was subsequently settled amicably. The Federation reinstated Ancion in the list of first division referees. The case was therefore not judged on the merits. Ancion did not appeal against this order nor institute any proceedings to obtain damages. If referees were recognised as employees/salaried staff of federations, labour law would apply with all its consequences:

- *federations would no longer be able to downgrade their referees, suspend them or dismiss them without having to provide an explanation. They would, on the other hand, be required to:*
- *provide proof of the acts justifying the dismissal of referee;*
- *give notice of dismissal, taking into account salary and years of service;*
- *declare referees to the Social Security Office and pay social security contributions on their individual earnings;*
- *pay insurance premiums for accidents in the workplace.*

The argument that the referee is an employee should not be dismissed out of hand. Indeed, the referee acts according to the instructions he receives from the federation; and he receives compensation to cover his costs and payment for his services in accordance with the standards fixed by the federation. He is required to attend further training seminars and sit tests organised by the federation. He is not, in any case, a self-employed worker who makes himself available to third parties for performance of a freely-chosen service. He cannot choose which matches he referees.

b) . Case Lyra v. Marchand, Rita Berlaar and ASBL Union Royale Belge des Sociétés de Football Association (URBSFA), Malines Court of First Instance (Belgium), 8 February 2001

Football, referee, fault of the referee, yes;

The Facts :

On 23 August 1998 as part of the Belgian Cup, the Belgian clubs Lyra (Lyra) and Rita Belaar (Rita Berlaar), both from the third division, played each other. After the regulation 90 minutes of play, the score was one all (a draw).

In such a case, the rules of the URBSFA (article 10.2) provide that two 15-minute periods of extra time must be played. A penalty shootout will only be held after that, if necessary.

The referee made a mistake and decided to move straight to a penalty shootout. This was won by Lyra.

On 24 August 1998, Rita Berlaar filed a complaint with the URBSFA based on article 10.2 of the regulations. The competent Sports Committee decided, pursuant to article 21.1 of the Belgian Cup Regulations, to draw lots. Rita Berlaar won the draw, and was thus able to go into the next round of the Belgian Cup.

On the basis of articles 1382 et seq. of the Civil Code, Lyra sought judgement against the referee, opposing club and the federation, seeking, on the basis of the fault of the referee, a payment of 2,900,000 BEF to cover the damage it claimed to have suffered.

The Law:

The referee is guilty of negligence in the meaning of article 1382 of the Civil Code. As a professional, he should have known that, pursuant to article 10.2 of the regulations, extra

time should have been played first and then, if necessary, a penalty shootout held, which would finally have determined the winner.
This is serious negligence by an employee of the URBSFA, a professional referee who is supposed to know the rules in force.
The liability for negligence of the referee pursuant to article 1382 et seq. of the Civil Code is therefore established. The referee's decision not to order extra time thus constitutes an error with regard to applying the rules of the game. The judge rejects the action against the club Rita Berlaar and the federation, as no negligence on their part is established: in this respect, the decision by the URBSA (the drawing of lots) constitutes an obligatory decision by a third party based on the affiliation contract Lyra signed with the URBSFA.
The referee is consequently ordered personally to pay 100,000 BEF in damages to Lyra for "loss of the possibility to play in the next round".

Comment:
The federation, fearing that the decision would be upheld on appeal, paid all the costs as well as the damages itself.
According to Mr Volkaert, it emerges from this decision that:
1- The referee, although paid per match by the club visited, is an employee of the federation.
2- The professional referee alone is liable for any serious negligence on his part.
This raises several questions:
- *Does the amateur referee have the same liability as the professional referee?*
- *At what stage does negligence become serious?*
- *Must referees attached to federations take out insurance against risks related to negligence?*

X. Intellectual property rights in sport

A. Copyright

a) Case of National Basketball Association (NBA) v *Motorola* and *STATS* (New York Second Circuit Court of Appeals, USA, 480 US 941 (1987))

Supply of "real-time" information and statistics on basketball matches; breach of copyright and property rights of event organizers

The Facts:
The American National Basketball Association (NBA) sued *Motorola* for transmitting real-time information about basketball matches with a two-minute delay to users of *Motorola's* "Sports Trax" device, a hand-held pager that displayed updated scores and statistics of NBA games as they were played. The device cost $200 to buy.
The information available included the score, the team in possession of the ball, the free-throw bonus, the time elapsed and the time remaining.
The NBA also sued *STATS* for transmitting slightly more comprehensive real-time game information via the Internet (scores delayed by 15 seconds and statistics by one minute). *STATS* had originally approached the NBA to obtain a licence for this service, but could not agree terms. *STATS* had then decided to launch its service without the NBA's permission.
The District Court had previously found in favour of the NBA (cf. District Court (7th circuit), 805 Frd, 675, 1986). *Motorola* and *STATS* appealed to the New York Court of Appeals.
The Court had to decide whether the unauthorized transmission of "real-time" information on matches in progress constituted an infringement of the event organizer's copyright or property right.

The Law:
1. Breach of copyright
The NBA claimed that providing an unauthorized running update of game information was tantamount to a rebroadcast of the game and therefore constituted a breach of copyright.
In general, US copyright law protected original works of authorship. However, the Court of Appeals , in considering the originality of NBA games, stressed the distinction between the underlying event and the broadcast of the event.

The Court held that sports events were not "authored" and could therefore not be copyrighted as such. Unlike films, plays, television programmes or operas, sports events had no script and were the result of a set of unforeseeable circumstances.
Even if an athletic performance could resemble a work of authorship, it could not be copyrighted without impairing athletic competitions in the future. There would be obvious practical problems, not least the number of joint copyright owners which would include the league, the athletes, the umpires, stadium workers and fans.
The Court of Appeals drew a distinction with the recorded broadcasts of sports events, which were copyrightable. As an independent product, they constituted an original work of authorship due to coordination between cameraman and director. As required by US copyright law, the broadcast was a work that was fixed in a tangible medium of expression.
The Court of Appeals found that *Motorola* and *STATS* had not infringed the NBA's copyright over recorded broadcasts because they only reproduced facts, not the protected expression or description of the game that constituted the broadcasts. Furthermore, by not using any images of the broadcasts, but merely factual information which anyone could acquire without the involvement of a cameraman or director, they had not infringed any copyright.
2. Misappropriation of NBA's property rights
Under US law, an event organizer had a property right over that event. If a third party attempted to derive a commercial benefit from the event without the organizer's permission, the latter could claim unlawful misappropriation of his property right.
However, in this case, the NBA's state law misappropriation claim was pre-empted by the supreme, federal copyright law. Moreover, Congress' intention in adopting this federal Copyright Act (see preparatory work) had been to restrict copyright over this type of event, which it thought should remain in the public domain.
3. Exemption of "hot-scores"
In general, the use of strictly factual information did not constitute a misappropriation of property unless the results and statistics were transmitted simultaneously and therefore became "hot-scores", an asset of the event organizer enjoying legal protection.
The Court rejected this argument, stating that legal protection of game information was limited to only a very narrow scope of cases such as the transmission of information to newspapers by telephone (cf. *INS v Associated Press*, 248 US 21S).
4. Scope of exemption
The Court decided that certain forms of misappropriation could survive pre-emption. However, in this case, neither the pager nor the Internet transmission could be seen as being in competition with the first two products of the NBA, i.e. attending matches organized by the NBA and following a live broadcast.
As far as the third NBA product (collection and retransmission of the information) was concerned, *Motorola* and *STATS* were deemed to be in competition with *Gamestats*, the NBA's product for real-time transmission. However, the NBA had not suffered any damage because neither *Motorola* nor *STATS* used *Gamestats* pagers to collect their information.
Each service had its own network and assembled and transmitted the data itself.
There was no breach of copyright or of property rights.

B. Trade mark ownership

a) Case of National Football League v *Coors Brewing Co.* (99 Civ. 4627 at 496, SDNY, 4 August 1999)

Sport; trade mark ownership; trade mark infringement

The Facts:
In the USA, an agreement was signed in 1993 between the National Football League (NFL) and the National Football League Players Association (NFLPA), under which the parties agreed that the NFL was the rightful owner of the registered trade marks "NFL" and "National Football League".
The agreement also permitted the NFLPA to market its own trade mark except where it involved an NFL team colour, logo, nickname, geographic designation or other NFL indicia of any kind.
To further this end, the NFLPA created a company entitled "*Players Inc.*" to market its trade mark. However, *Players Inc.* had had limited success because the 1993 agreement restricted the NFLPA's freedom to use the "NFL" and "National Football League" trade marks.
In early 1999, *Players Inc*. signed a contract with *Coors*, a brewing company, purporting to grant to *Coors* the right to designate *Coors Light beer* as the "official beer of the NFL players" in a promotional campaign. The NFL warned both *Coors* and *Players Inc.* that it would not permit the use of its trade marks in the *Coors* promotion.
On 25 June 1999, the NFL filed a complaint against *Coors* and *Players Inc.* with the District Court for the Southern District of New York and moved for a temporary restraining order and a preliminary injunction.
The Court denied the temporary restraining order, but on 4 August 1999 granted a preliminary injunction preventing *Coors* from promoting its light beer as the "official beer of the NFL players".

The Law:
The NFL's complaint against *Coors* and *Players Inc.* was founded on claims of trade mark infringement and dilution, which were likely to harm the economic value of the NFL trade marks.
1. Trade mark infringement
The NFL argued that the agreement between *Players Inc.* and *Coors* constituted an indirect breach of the NFL's property rights since it exploited the goodwill and reputation of the NFL.
To establish a trade mark infringement claim under paragraph 32 of the Lanham Act, the plaintiff had to demonstrate that it had a valid trade mark entitled to protection and that the defendant's use of the mark was likely to cause confusion among consumers.
American federal courts usually applied a test developed in *Polaroid Corp v Polarads Elecs Corp* to determine the likelihood of confusion.

In balancing the factors developed in the *Polaroid* case, the Court found that:
(i) the NFL trade mark had long been a recognized brand name;
(ii) *Coors* had reproduced the mark in a manner similar to endorsements that the NFL licensed to corporate sponsors;
(iii) *Coors* products competed directly with existing NFL sponsors' products (*Anheuser-Busch* and *Miller*);
(iv) confusion could result (leading to diversion of sales or damage to goodwill);
(v) the record clearly demonstrated that *Coors* and *Players Inc.* intended to capitalize on the NFL's reputation and goodwill and create confusion in the marketplace by using the NFL's trade marks.
Consequently, the Court decided that the NFL's trade mark infringement claim was likely to succeed and granted the preliminary injunction.
2. Trade mark dilution
Under the Federal Trade Mark Dilution Act, trade mark dilution involved the concepts of mistake, deception and diminished capacity of a famous mark to distinguish goods or services and identify their source.
In assessing the NFL's trade mark dilution claim, the Court recognized that the NFL trade mark was famous and that modifying it by linking it to the word "players" would increase the likelihood of the NFL trade mark losing its function as a unique symbol or identifier. The Court held that the NFL's trade mark dilution claim was likely to succeed.
The Court concluded that (i) the NFL had made considerable investments over many years in its trade mark and licensing of that mark in order to produce substantial revenue, and that (ii) the defendants' proposed use of the trade mark would change the agreement on the NFL's right to control its marks (see 1993 agreement between the NFL and NFLPA) and impair their value.

XI. Main provisions quoted

A. Treaties, Laws and Rules

a) EEC Treaty

- Article 2:
The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing common policies or activities referred to in Articles 3 and 4, to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.

- Article 39 (ex Article 48):
1. Freedom of movement for workers shall be secured within the Community.
2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.
3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:
(a) to accept offers of employment actually made;
(b) to move freely within the territory of Member States for this purpose;
(c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
(d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission.
4. The provisions of this Article shall not apply to employment in the public service.

- Article 49 (ex Article 59):
Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be prohibited in respect of nationals of Member

States who are established in a State of the Community other than that of the person for whom the services are intended.
The Council may, acting by a qualified majority on a proposal from the Commission, extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Community.

- Article 50 (ex Article 60):
Services shall be considered to be "services" within the meaning of this Treaty where they are normally provided for remuneration, insofar as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.
"Services" shall in particular include:
(a) activities of an industrial character;
(b) activities of a commercial character;
(c) activities of craftsmen;
(d) activities of the professions.
Without prejudice to the provisions of the Chapter relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals.
- Article 81 (ex Article 85):
1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:
(a) directly or indirectly fix purchase or selling prices or any other trading conditions;
(b) limit or control production, markets, technical development, or investment;
(c) share markets or sources of supply;
(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.
3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
- any agreement or category of agreements between undertakings;
- any decision or category of decisions by associations of undertakings;
- any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

- Article 82 (ex Article 86):
Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market insofar as it may affect trade between Member States.
Such abuse may, in particular, consist in:
(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
(b) limiting production, markets or technical development to the prejudice of consumers;
(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

- Article 234 (ex Article 177):
The Court of Justice shall have jurisdiction to give preliminary rulings concerning:
(a) the interpretation of this Treaty;
(b) the validity and interpretation of acts of the institutions of the Community and of the ECB;
(c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide.
Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.
Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.

b) Council of Europe Anti-Doping Convention of 16 November 1989

Article 7 – Co-operation with sports organisations on measures to be taken by them

1. The Parties undertake to encourage their sports organisations and through them the international sports organisations to formulate and apply all appropriate measures, falling within their competence, against doping in sport.
2. To this end, they shall encourage their sports organisations to clarify and harmonise their respective rights, obligations and duties, in particular by harmonising their:
    a. anti-doping regulations on the basis of the regulations agreed by the relevant international sports organisations;
    b. lists of banned pharmacological classes of doping agents and banned doping methods on the basis of the lists agreed by the relevant international sports organisations;
    c. doping control procedures;

d. disciplinary procedures, applying agreed international principles of natural justice and ensuring respect for the fundamental rights of suspected sportsmen and sportswomen; these principles will include:
    i. the reporting and disciplinary bodies to be distinct from one another;
    ii. the right of such persons to a fair hearing and to be assisted or represented;
    iii. clear and enforceable provisions for appealing against any judgment made;
e. procedures for the imposition of effective penalties for officials, doctors, veterinary doctors, coaches, physiotherapists and other officials or accessories associated with infringements of the anti-doping regulations by sportsmen and sportswomen;
f. procedures for the mutual recognition of suspensions and other penalties imposed by other sports organisations in the same or other countries.

3. Moreover, the Parties shall encourage their sports organisations:
    a. to introduce, on an effective scale, doping controls not only at, but also without advance warning at any appropriate time outside, competitions, such controls to be conducted in a way which is equitable for all sportsmen and sportswomen and which include testing and retesting of persons selected, where appropriate, on a random basis;
    b. to negotiate agreements with sports organisations of other countries permitting a sportsman or sportswoman training in another country to be tested by a duly authorised doping control team of that country;
    c. to clarify and harmonise regulations on eligibility to take part in sports events which will include anti-doping criteria;
    d. to promote active participation by sportsmen and sportswomen themselves in the anti-doping work of international sports organisations;
    e. to make full and efficient use of the facilities available for doping analysis at the laboratories provided for by Article 5, both during and outside sports competitions;
    f. to study scientific training methods and to devise guidelines to protect sportsmen and sportswomen of all ages appropriate for each sport.

c) French Act no. 89-432 of 28 June 1989 on prevention and repression of the use of doping products in sport:

- Article 3

A National Anti-Doping Commission shall be established under the auspices of the Minister for Sport…Under the terms set out in Article 10, the Commission shall deal with infringements of this Act and, in accordance with the provisions of Article 11, shall propose to the Minister for Sport administrative sanctions against offenders.

- Article 10

Cases in which the investigations, controls, searches and seizures provided for above have shown that a person referred to in Article 1 para 1 of this Act has contravened the provisions of that paragraph or that such a person has refused or attempted to refuse to comply with those investigations, controls, searches or seizures, shall be referred to the National Anti-Doping Commission:

- by the Minister for Sport if the sports federation concerned has imposed no sanction or a sanction considered by the Minister to be inadequate, or which was not enforced, or if the federation was unable to penalize the offender;
- by the sports federation concerned if the federation wishes sanctions imposed against the offender to apply also to the other federations.

- Article 11

On the National Anti-Doping Commission's proposal, the Minister for Sport may impose a temporary or permanent ban on participation in the competitions and events referred to in Article 1.

d) French Decree no.91-387 of 30 August 1991, Article 6:

To be valid, the collection and analysis of the samples mentioned in the previous article should be carried out under the following conditions:
1. The equipment necessary for the collection of urine and removal of blood should be provided by a laboratory approved in accordance with Article 10 of this Decree;
2. The certified doctor shall divide each urine and blood sample equally between two sealed vessels, each labelled with a code number;
3. Breath-testing apparatus used to determine alcohol levels should conform with the standards set out in Article R.295 of the Highway Code.
4. With regard to the screening of alcohol levels, a second test maybe carried out immediately after verification that the apparatus is functioning correctly.

e) Section 1636 of the French Civil Code

If the purchaser is only dispossessed of part of a good and if its relationship with the whole is such that the purchaser has gained nothing without the part which has been taken away, he may cancel the sale.

f) Amateur Sports Act 36 USC Sec. 382b

In its constitution and bylaws, the Corporation 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, the Pan-American Games, world championship competition or other such protected competition as defined in such constitution and bylaws.

g) Constitution of the United States of America

- Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized.

- Fourteenth Amendment, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

B. Sports regulations

a) The International Triathlon Union Doping Control Rules provide in section 5.11: "An athlete or National Federation that loses a hearing or an appeal to the ITU Executive Board Doping Hearings and Appeal Board has the right to appeal to the Court of Arbitration for Sport".

b) Rules of the International Amateur Athletic Federation (IAAF) 2000-2001, Rule 60: Sanctions:

1. The following shall be regarded as “doping offences”:
i) the finding in an athlete’s body tissues or fluids of a prohibited substance;
(ii) the use or taking advantage of forbidden techniques;
(iii) admitting having taken advantage of, or having used, a prohibited substance or a prohibited technique;
(iv) the failure or refusal of an athlete to submit to doping control;
(v) the failure or refusal of an athlete to provide a blood sample;
(vi) assisting or inciting others to use a prohibited substance or prohibited technique, or admitting having assisted or incited others.
2. If an athlete commits a doping offence, he will be ineligible for the following periods:
(a) for an offence under Rule 60.1(i) or 60.1(iii) above involving the substances listed in Part I of Schedule 1 of the “Procedural Guidelines for Doping Control” or, for any of the other offences listed in Rule 60.1:
i) first offence - for a minimum of two years from the date of the hearing at which it is decided that a Doping Offence has been committed. When an athlete has served a period of suspension prior to a declaration of ineligibility, such a period of suspension shall be deducted from the period of ineligibility imposed by the relevant Tribunal;
(ii) second offence - for life.
(b) for an offence under Rule 60.1(i) or 60.1(iii) above, involving the substances in Part II of Schedule 1 of the “Procedural Guidelines for Doping Control”:
i) first offence — shall be given a public warning and be disqualified from the competition at which the sample was collected;
(ii) second offence - for a minimum of two years from the date of the hearing at which it was decided that a Doping Offence has been committed. When an athlete has served a period of suspension prior to a declaration of ineligibility, such a period of suspension shall be deducted from the period of ineligibility imposed by the relevant Tribunal;
(iii) third offence — for life.
(c) for an offence under Rule 60.1 (vii) involving any of the substances listed in Schedule 1 of the “Procedural Guidelines for Doping Control” - for life.

c) International Tennis Federation (ITF) Anti-Doping Programme - 1999:

- Section L8: The Appeals Committee's decision shall be final, complete and binding on all parties.
- Section V3: Any dispute arising out of any decision made by the Appeals Committee shall be submitted exclusively to the CAS, which shall resolve the dispute in accordance with the Code of Sports-related Arbitration.