

## Question 4

# Advice on the Legality and Efficacy of a “No-fault Stand Down Policy”

## Introduction

In considering the legality and efficacy of a “no-fault stand down policy”, the NRL’s standing down of Jack de Belin in 2019 provides useful guidance. While it demonstrates that such a regulation can be legally valid as a restraint of trade clause, the sports body may face additional challenges in establishing legality if it operates in a jurisdiction other than NSW. These hurdles make it advisable for the body to pay particular attention to how it frames the rule, and what evidence it is able to adduce should the policy be legally challenged. Furthermore, while the case shows that such a rule can have a positive effect in protecting the game’s image, interests, and welfare, it also demonstrates that such a rule will inevitably cause side-effects that could ultimately limit the policy’s efficacy. In tackling these limitations, the body should consider not only how the regulation is framed, but also how the body supports affected players and clubs, as well as alternate measures to supplement the rule’s ability to protect the sport’s reputation.

## Legality

### De Belin

A “no-fault stand down policy” can be legally valid, but this depends on the body’s ability to demonstrate its necessity. The *de Belin* case evinces that the main legal challenge faced would be with respect to the regulation’s validity as a restraint of trade clause, whereby the party seeking to enforce the rule must demonstrate that it only provides protection to an extent that is reasonably necessary to protect their legitimate interests when balanced against the interests of the public.<sup>1</sup>

Having found that the reputation of the ARLC and NRL is tied intrinsically with their athletes’ reputation, and that harm to the NRL’s reputation would entail substantial economic consequences, the Court in *de Belin* found that the ARLC’s “no-fault stand down” rule was reasonably necessary to protect the legitimate interests of the ARLC and NRL and that its enforcement was not contrary to public policy. These findings were due to the ARLC successfully establishing the following:

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<sup>1</sup> *De Belin v Australian Rugby League Commission Limited* [2019] FCA 688, ‘*de Belin*’.

## Question 3

# Implications of the Shayna Jack Case on Unintentional Doping Claims

## Introduction

Deemed a threat to both athletes' health and sporting excellence,<sup>1</sup> doping violations have generally been treated extremely stringently by the CAS despite the massive burdens that this has placed on athletes. However, the decision emanating from CAS A1/2020 *Shayna Jack v Swimming Australia & Australian Sports Anti-Doping (Jack)* potentially gives athletes more scope to reduce a ban for unintentional doping even if they cannot prove how the contamination occurred. While this may present a number of problems, the extent of this widening effect may ultimately be quite limited. Overall, this area of *lex sportiva* continues to be characterised by a high degree of uncertainty – a problem that could potentially be tackled via a reintroduction of the CAS's advisory opinion system.

## Background

Given the standard application of strict liability, a long-standing problem with doping cases has been the enormous technical and financial difficulties that athletes face when trying to prove the source of the contamination.<sup>2</sup> Despite this, the CAS has for the most part maintained an unyieldingly stringent approach in assessing proof, especially in its reluctance to accept character evidence.<sup>3</sup> However, there have also been a small number of exceptions to this,<sup>4</sup> with the latest being the *Jack* decision.

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<sup>1</sup> John William Devine, 'Doping Is a Threat to Sporting Excellence' (2011) 45(8) *British Journal of Sports Medicine* 637.

<sup>2</sup> Lindsay S. Brandon, 'Lawson V. IAAF: A View From The Perspective Of Athletes' Counsel', *Law in Sport* (16 July 2020) <<https://www.lawinsport.com/topics/item/lawson-v-iaaf-a-view-from-the-perspective-of-athletes-counsel>>.

<sup>3</sup> *Ruffoni v UCI* CAS 2018/A/5518, [133]; *IWBF v UK Anti-Doping & Gibbs* CAS 2010/A/2230 [11.5]; *I v FIA* CAS 2010/A/2268, [129]; *Andrea Iannone v FIM* CAS 2020/A/6978, [134] ('Iannone'), providing examples: CAS 2017/A/5369, CAS 2016/A/4919, CAS 2016/A/4676, and CAS 2017/A/5335; *Maurico Fiol Villanueva v Fédération Internationale de Nation (FINA)* CAS 2016/A/4534, [41] ('Villanueva').

<sup>4</sup> *Andrea Iannone v. FIM* (n 3). [134], citing *Jarrion Lawson v International Association of Athletics Federations* CAS 2019/A/6313 ('Lawson') and *Dominika Jamnický v CCES award* CAS 2019/A/6443 & CAS 2019/A/6593.

## Question 7

# Life Bans for Match-fixing: Only One Part of a Bigger Picture

## Introduction

In the worldwide fight against “the biggest threat to sport in the 21<sup>st</sup> century”,<sup>1</sup> various measures have been used in attempts to deter match-fixing. Given the seriousness of the problem, one countermeasure that is sometimes used is lifetime bans on athletes. However, the use of such a sanction is not without controversy. Given the significant variation that can exist in the circumstances of each incident, bans for limited durations can often be more proportionate. Moreover, the root causes of match-fixing are complex and multi-faceted, meaning that life bans, and even player bans and punishments more generally, are only able to target a small aspect of the underlying causes. In light of these limitations, discretion in ban duration and employment of an array of educational and structural measures are required to more comprehensively combat the overall problem of match-fixing.

## Background

A phenomenon dating back to at least the ancient Olympic Games,<sup>2</sup> match-fixing is a serious problem that erodes the integrity of sport by undermining its most defining attribute – controlled unpredictability.<sup>3</sup> To illustrate just how badly match-fixing can cripple a sport, professional boxing once “dominated sports talk” in the 60s, but since then has “imploded from within because of poor governance, corruption, and allegations that fights are rigged”.<sup>4</sup> In response to this threat, one measure commonly used is the banning of offending athletes. Given the magnitude of what is at stake, one might intuitively think that the longer the ban, the better – lifetime bans, such as the ban issued to Franco Feitt, would surely be the most effective deterrent. Yet, there are sound reasons why the proportionality and necessity of such bans are often questioned.

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<sup>1</sup> Kevin Carpenter, ‘Match-Fixing – The Biggest Threat To Sport In The 21st Century?’, *LawInSport* (June 2011) <<https://www-lawinsport-com.eu1.proxy.openathens.net/pdf/MatchFixingArticle.pdf>>.

<sup>2</sup> Zinon Papakonstantinou, ‘Match Fixing and Victory in Greek Sport’ (2016) 159(1) *Rheinisches Museum Für Philologie* 13.

<sup>3</sup> Jack Anderson, ‘Crime and Corruption in Sport’ (at the Stop Matchfixing seminar, Copenhagen, 10 September 2015) <<https://www.youtube.com/watch?v=vqHR3EEhpRM>>.

<sup>4</sup> *Ibid.*