

Table of Contents

<i>Part I.....</i>	30
The Institutional Framework.....	30
A. International Co-Operation.....	30
I. The Council of Europe's Anti-Doping Convention.....	30
1. The Council of Europe and the Anti-Doping Convention.....	30
2. Aim of the Convention.....	31
3. Main Provisions	31
a) Definition and Scope	31
b) Domestic Co-Ordination	31
c) Measures to Restrict the Availability and Use of Doping Agents and Methods.....	32
d) Laboratories	33
e) Education	33
f) Co-Operation with the Sports Organisations	34
g) International Co-Operation	35
h) Information	35
i) Monitoring Group	35
4. Monitoring Group	36
a) The Monitoring Group and its Competences.....	36
b) Composition.....	36
c) Monitoring Compliance	37
d) Compliance and the Compliance with Commitments' Project.....	37
II. The European Union (EU)	38
1. A Common Approach to Doping	38
2. The Basis for a Future Community Anti-Doping Policy.....	39
a) Public Health, Culture, Consumer Protection and Education, Development and Youth Policy.....	40
b) Research and Technological Development	40
c) Harmonisation of Legislation.....	41
d) Social and Employment Policy	41
e) Third Pillar of the EU.....	42
3. Current Anti-Doping Activities and Legal Basis.....	43
a) Opinion of the European Group for Ethics and New Technology	43
b) EU Participation in the WADA.....	43
c) Applying Community Instruments	44
III. World Anti-Doping Agency (WADA).....	45

1. The Establishment of the WADA	45
2. The Objective of the WADA	45
3. The Composition of the WADA	46
4. The Functions of the WADA	46
5. The WADA Anti-Doping Code	47
IV. International Anti-Doping Arrangement (IADA)	48
1. Objective	48
2. The IADA Quality Project	48
B. Sports Organisations.....	49
I. The Organisation of Sport	49
II. International (Global and Regional) Organisations.....	49
1. The Olympic Movement	49
a) Organisational Structure.....	49
b) IOC	50
c) NOCs.....	50
2. Olympic Movement and the Fight against Doping.....	50
3. Obligations of the NOCs	51
4. International Federations.....	51
III. National Federations, Clubs and/or Athletes.....	51
IV. Court of Arbitration for Sport (ICAS/CAS)	56
1. Introduction.....	56
2. The Legal Framework for CAS Decisions	57
a) Origin and History of the CAS.....	57
b) Appellate Jurisdiction of the CAS	58
aa) Arbitration Agreement	58
bb) Time Limits and Exhaustion of Internal Remedies.....	59
cc) Procedure and Award	59
<i>Part II.....</i>	61
Public Law	61
A. Autonomy of Associations – A European Legal Comparison of Anti-Doping Rules in Sport	61
I. Introduction	61
1. The European Sport Model	61
2. The Council of Europe's Anti-Doping Convention.....	62
II. Factual Outlines of European Sport Associations	64
III. The Relationship between Sport and Politics.....	65
IV. Law Relating to the Freedom of Association – Constitutional Provisions.....	67
1. Citizen or Human Right	68
2. Sport as a Constitutional Topic	68

Table of Contents 7

3. Implementing Statutes.....	69
V. Individual Guarantees of the Freedom of Association	69
1. Freedom to Form Associations/Freedom of Membership	70
2. The Autonomous Establishment of an Internal Organisation.....	71
3. Formation of Internal Codes of Conduct.....	72
a) Statutes and By-Laws.....	72
b) The Effectiveness of Association Rules for Individual Athletes	73
c) Administrative Supervision.....	73
4. Judicial Review of Association Measures	74
a) Competence of Public Courts	75
b) Balance of Interests	75
VI. Recent Governmental Activities in the Fight against Doping.....	77
VII. Conclusions.....	78
Appendix (1).....	80
Appendix (2).....	81
Appendix (3).....	83
Appendix (4).....	86
Appendix (5).....	88
Appendix (6).....	89
Appendix (7).....	93
B. A Comparative Legal Analysis of Anti-Doping Activities – General Framework and Criminal Law Aspects	95
I. Preliminary Remarks on Organisation and Methods of the Project.....	95
II. General Topics/Basic Information	96
1. Prominent Doping Cases.....	96
2. ‘Catalysts’ in the Discussion on Doping	97
3. General Objectives of Anti-Doping Policies/Protected Legal Values	98
4. On the History of Anti-Doping Activities from the Legal Perspective	99
5. General Legal Framework.....	100
6. Doping Definitions in (State) Legislation	102
7. Establishment of Doping Controls in (Competitive) Sports	104
a) The Division of Responsibilities between ‘State’ and ‘Sport’	104
b) Implementation of a Doping Ban and Doping Controls	106
8. Anti-Doping Activities in Popular Sports	108
III. Combating Doping by Means of Criminal Law	108
1. Special Anti-Doping Provisions in Criminal Law.....	108
a) Occurrence and Place of Regulation	108
b) Sphere of Potential Offenders – Is the Doping Athlete also Punishable?	109

c) Prohibited Acts in Criminal Doping Provisions	111
aa) Elements of Distribution-Related Offences.....	111
bb) Elements of Doping Offences Related to the Application of Doping Agents.....	113
cc) Application of Masking Methods by Third Parties.....	113
d) Substances/Objects Covered in the Offence.....	114
e) Exceptions from Prohibition for Therapeutic Purposes.....	116
f) Must the Offence Bring about a Particular Result?.....	117
g) Subjective Element of the Offence.....	117
h) Punishability of Attempted Doping.....	119
i) Parties to Crime	119
j) Aggravating Elements.....	120
aa) More General Formulations	120
bb) Special Formulations	121
cc) Mitigating Elements	122
k) ‘Preliminary’ Offences/Flanking Offences	122
l) Further Prerequisites for Punishability? (e.g., Lodging of a Complaint)	123
m) Relation of the Special Criminal Doping Offences to Disciplinary Measures of the Sport Associations – with Particular Reference to the Criminalisation of Personal Use by the Athlete.....	123
n) Threatened Sanctions	124
aa) Basic Doping Offence, Third Party Offender.....	124
bb) Basic Elements of the Offence, Athlete as Offender (‘Personal Use’)	125
cc) Aggravated Forms of Commission.....	125
dd) Mitigated, ‘Preliminary’ and Negligent Offences	126
ee) Supplementary Punishments and Consequences	126
ff) Disciplinary Measures.....	127
2. Drug Offences and Doping	128
3. Importance of General Criminal Offences such as Bodily Harm in the Doping Context.....	130
a) Offences Protecting Intangible Individual Legal Interests.....	130
b) Offences Protecting Financial Interests.....	132
c) Miscellaneous Offences, Including Those outside of Central Criminal Law, with Significance for Anti-Doping Activities	133
4. Special Offences Applying to Physicians and Pharmacists; Physicians’ Professional Law	135
5. Punishment of Clubs	136
6. Aspects of International Criminal Law	136
a) Foreign Citizens/Domestic Offence	136

Table of Contents	9
b) Domestic Citizens/Foreign Offence	137
c) Internet	138
7. Procedural Issues/Prosecution Regulations	138
a) Investigative Measures	138
b) Cooperation of the Investigative Law Enforcement Agencies with Sports Institutions.....	140
c) Relationship Between Criminal Proceedings and Disciplinary Proceedings Anchored in Sports Organisations	140
8. Law Enforcement Practice	141
IV. Anti-Doping Measures outside of Criminal Law	142
1. State and State-Sponsored Anti-Doping Measures outside of Criminal Law.....	142
2. ‘Supplementary’ Measures of Organized Sports to Combat Doping in Top-Level Sports.....	145
3. International Cooperation.....	146
a) IOC.....	146
b) Council of Europe	146
c) European Union.....	146
d) United Nations	147
e) Additional Forms of Cooperation at the State Level	147
V. Outlook	148
VI. Results and Conclusions.....	148
1. Results.....	149
2. Conclusions/Recommendations	151
<i>Part III</i>	161
Sport Rules and Regulations	161
A. Introduction.....	161
B. Aspects Researched.....	162
I. Definition of Doping (Description of the Doping Offence).....	162
1. Introduction and Points of Departure	162
2. The Offence of the Use of Doping	166
a) The Description of the Offence of the Use of Doping	166
aa) Doping is the Use of Substances and Methods for a Specific Purpose.....	166
bb) Doping is the Use of Certain, Specified Substances and Methods.....	171
cc) Doping is the Use of Certain, Specified Substances and Methods for a Specific Purpose.....	178
dd) Doping is the Presence of a Prohibited Substance in the Body of an Athlete	181
ee) Intentional Doping.....	187

ff) Masking Agents and Methods	189
gg) The Aim of the Use of a Prohibited Substance: Doping or Medical Care?	191
hh) Possession of a Prohibited Substance.....	194
ii) Criminal Conviction	194
jj) No Change of Address.....	195
kk) Elastic Provisions.....	195
b) Ancillary Doping Infractions (Concerning the Use of Doping)	196
aa) The Failure to Report to Doping Control and the Refusal to Submit to Doping Control	196
bb) The Admission to Having Used a Prohibited Substance or Method.....	200
3. Offences other than the Use of Doping	203
a) Third-Party Assistance in the Use of Doping	203
b) The Doping of Horses	209
c) The Illegal Trade in Prohibited Doping Substances	212
4. The Doping Substances and Methods	216
a) The Doping Substances	216
aa) Doping Substances which are Prohibited Unconditionally.....	216
bb) Doping Substances which are Prohibited Conditionally	216
b) Doping Methods.....	220
II. The Purpose of the Ban on Doping (Arguments against the Use of Doping)....	221
1. Introduction.....	221
2. The Use of Doping Leads to an Unfair Advantage	223
a) Thesis 1: Doping Enhances the Sport Performance.....	223
b) Thesis 2: Athletes Using Doping Gain an Unfair Advantage.....	224
3. The Use of Doping Endangers the Athletes' Health.....	226
4. The Use of Doping is Contrary to Fairness	229
5. The Use of Doping is Contrary to Ethics	231
6. The Use of Doping is Contrary to the Rules of Sport.....	233
7. Conclusion	234
III. List of Prohibited Substances and Methods	235
1. Introduction.....	235
2. List of Substances in the Olympic Movement Anti-Doping Code	235
Appendix A.....	235
1. Substances Occurring on Lists other than that of the IOC.....	242
II. Doping Control outside of a Competition Context.....	250
1. Introduction.....	250
2. Competence to Conduct Out-of-Competition Controls	255

a) The Division of Powers within the International Federations – Controls by International Federations	255
aa) Powers of the Internal Organs	255
bb) Selection of National Federations by International Federations....	257
cc) The Duty of the National Federations to Co-Operate	257
dd) The Duty of Individual Athletes to Co-Operate.....	259
ee) Applicable Rules	259
ff) Out-of-Competition Controls by Third Parties.....	259
gg) The Co-Operation Between the International Federations and the WADA.....	260
b) The Division of Powers in the International Context – Controls by National Federations.....	260
aa) Appointment by an International Federation.....	261
bb) Own Initiative of a National Federation.....	261
cc) Request to another National Federation for Controls	262
dd) Applicable Rules.....	262
ee) Duty to Inform the International Federation.....	263
3. Doping Substances and Methods subject to Controls.....	263
4. Cost of Out-of-Competition Doping Controls.....	266
5. The Organisation of the Out-of-Competition Controls.....	267
a) General	267
b) The Selection of the Athletes	268
aa) Athletes who Wish to Resume Competing after their Sanction Period	269
bb) Athletes who Wish to Resume Competing after Retirement.....	270
cc) Other Selection Criteria.....	270
dd) The Selection Is Confidential.....	272
ee) The Doping Control Officers.....	272
ff) Appointment of Doping Control Officers	273
c) The Whereabouts of the Athlete	274
d) Contact with the Athlete.....	276
aa) Two Options: an Appointment or an Unannounced Visit.....	276
bb) Another Possibility for Making an Appointment	277
cc) After an Appointment has been Made	277
dd) Involvement of the National Federation.....	278
ee) The Athlete's Whereabouts cannot be Traced.....	279
e) The Actual Out-of-Competition Control	280
aa) The Athlete is not Present at the Address Supplied.....	280
bb) Identification of the Doping Control Officer	281
cc) Identification of the Athlete.....	283

dd) Respect for the Athlete's Privacy.....	283
ee) The Refusal to Submit to a Doping Control	285
ff) Supplying a Urine Sample.....	287
gg) Supplying a Blood Sample.....	289
hh) Storage and Dispatch of the Samples.....	289
ii) Analysis of the Samples.....	290
jj) Recapitulation.....	290
6. Sanctions.....	291
7. Deviation from the Rules	292
III. Fundamental Rights of the Athlete and Procedural Mental Guarantees.....	294
1. Introduction.....	294
2. Human Rights Treaties.....	295
3. Disciplinary Law in Sport	295
4. The Various Fundamental Rights.....	298
a) The Right to be Informed of the Charges	299
aa) At International Level	299
bb) At National Level.....	300
b) Open Court.....	302
c) Confidentiality.....	303
d) The Right to Inspection of the File.....	303
e) The Right to Appear in Person/The Right to be Heard.....	304
aa) At International Level	304
bb) At National Level.....	306
f) Impartiality of the Tribunal.....	309
g) The Right to Representation.....	310
aa) At International Level	310
bb) At National Level.....	310
h) The Right to be Assisted by an Interpreter.....	312
i) The Right to Submit Evidence	313
aa) Reversal of the Burden of Proof	315
bb) Distribution of the Burden of Proof with regard to Strict Liability	316
j) The Right to Call Witnesses and/or Experts.....	319
aa) At International Level	319
bb) At National Level.....	320
k) The Right to Conduct the Doping Trial in Writing	321
aa) At International Level	321
bb) At National Level.....	322
cc) Last Word.....	323

Table of Contents	13
I) Reasoned and Public Decision	324
m) Remedies at Law	325
aa) Opposing a Judgment	325
bb) Right of Appeal.....	326
cc) Cassation	329
dd) Appeal to the Court of Arbitration for Sport (CAS).....	330
5. The Anti-Doping Convention of the Council of Europe and Fundamental Rights.....	332
6. The CAS and Fundamental Rights.....	332
IV. System of Sanctions.....	333
1. Sanctions and the World Doping Conference	333
2. Sanctions for Individual Athletes in Cases of ‘Hard Doping’	337
a) Introduction	337
b) The Various Types of Sanctions	338
aa) 1 st Offence: Suspension of 2 Years, 2 nd Offence: Life-Long Ban – FISA, ICF, FIE, IWF, IJF, FILA, IBU, ITTF, FITA, FIVB, FIBT, WCF, IIHF and FIL	338
(1) FISA	339
(2) ICF	340
(3) FIE	340
(4) IWF	341
(5) IJF	342
(6) FILA.....	342
(7) IBU	343
(8) ITTF	343
(9) FITA.....	344
(10) FIVB	344
(11) FIBT.....	344
(12) WCF.....	345
(13) IIHF	345
(14) FIL	346
bb) 1 st Offence: Suspension of 1 Year, 2 nd Offence: Life-Long Ban – ITF, ATP, WTA	347
cc) 1 st Offence: Suspension of 2 Years, 2 nd Offence: Minimum Suspension of 3 Years –ISU.....	348
dd) 1 st Offence: Maximum Suspension of 2 Years, 2 nd Offence: Life-Long Ban – AIBA, FIG, FINA and ITU	348
(1) AIBA	348
(2) FIG	349
(3) FINA	349

(4) ITU	350
ee) 1 st Offence: Maximum Suspension of 2 Years, 2 nd Offence: Suspension of 4 Years – IHF	351
ff) 1 st Offence: Minimum Suspension of 2 Years, 2 nd Offence: Life-Long Ban – IAAF, FIBA and WTF	351
(1) IAAF	351
(2) FIBA	352
(3) WTF	353
gg) 1 st Offence: Minimum Suspension of 4 Years, 2 nd Offence: Life-Long Ban – IPC and FINA	353
(1) IPC	353
(2) FINA	354
hh) 1 st Offence: Flexible Ban, 2 nd Offence: Flexible Ban, 3 rd Offence: Life-Long Ban – UCI and ISF	355
(1) UCI	355
(2) ISF	357
ii) 1 st Offence: Flexible Ban, 2 nd Offence: Flexible Ban, 3 rd Offence: Flexible Ban – FIH	357
jj) 1 st Offence: Maximum Life-Long Ban – FISA, FIFA and FIS	359
(1) FISA	359
(2) FIFA	359
(3) FIS	359
kk) No Malice: Suspension of 1 to 3 Months + Fine, Malice: Suspension of 3 Months to 2 Years + Fine – FEI	360
ll) 1 st Offence: Ban on Participation in One or Several Competitions; Fine up to US-\$ 100,000; Suspension from all Competitions for at least Two Years, 2 nd Offence: Ban on Participation in any Competition; Fine up to US-\$ 1,000,000; Suspension from all Competitions for 4 Years to Life – IOC	360
c) Summary	361
3. Sanctions for Individual Athletes in Cases of ‘Soft Doping’	364
a) Introduction	364
b) The Various Types of Sanctions	364
aa) 1 st Offence: Advice, 2 nd Offence: Suspension of 3 Months, 3 rd Offence: Suspension of 1 Year – ITF	364
bb) 1 st Offence: Public Warning, 2 nd Offence: Minimum Suspension of 2 Years, 3 rd Offence: Life-Long Ban – IAAF	365
cc) 1 st Offence: Suspension of 3 Months, 2 nd Offence: Suspension of 1 Year, 3 rd Offence: Life-Long Ban – ITF	366
dd) 1 st Offence: Maximum Suspension of 3 Months, 2 nd Offence: Maximum Suspension of 2 Years, 3 rd Offence: Possible Life-Long Ban – FIG and FINA	366

Table of Contents 15

(1) FIG.....	366
(2) FINA	367
ee) 1 st Offence: Maximum Suspension of 90 Days, 2 nd Offence: Suspension of 2 Years – ITU	367
ff) 1 st Offence: Maximum Suspension of 3 Months + Fine, 2 nd Offence: Suspension of 6 Months to 1 Year + Fine, 3 rd Offence: Life-Long Ban + Fine – UCI.....	367
gg) 1 st Offence: Maximum Suspension of 3 Months, 2 nd Offence: Suspension of 2 Years, 3 rd Offence: Minimum Suspension of 3 Years – ISU.....	369
hh) 1 st Offence: Maximum Suspension of 3 Months, 2 nd Offence: Suspension of 2 Years (Possibly Longer), 3 rd Offence: Ban of 5 Years to Life – FIH	369
ii) 1 st Offence: Maximum Suspension of 3 Months, 2 nd Offence: Suspension of 2 Years, 3 rd Offence: Life-Long Ban – IOC, IBF, FISA, IBA, FIBA, ICF, UIPM, WTF, ITTF, FITA, FIVB, ISAF, WCF, IIHF and FIL	370
(1) IOC	370
(2) IBF	371
(3) FISA.....	371
(4) IBA	371
(5) FIBA	372
(6) ICF	372
(7) UIPM	372
(8) WTF	373
(9) ITTF	373
(10) FITA.....	373
(11) FIVB	374
(12) ISAF	374
(13) WCF	375
(14) IIHF	375
(15) FIL	376
jj) 1 st Offence: Suspension of 3 Months, 2 nd Offence: Suspension of 2 Years, 3 rd Offence: Life-Long Ban – FIE, IJF, FIBT and IBU....	376
(1) FIE	376
(2) IJF	377
(3) FIBT	377
(4) IBU	378
kk) 1 st Offence: Suspension of 6 Months, 2 nd Offence: Suspension of 2 Years, 3 rd Offence: Life-Long Ban – IWF	378
ll) 1 st Offence: Maximum Suspension of 3 Months, 2 nd Offence: Minimum Suspension of 3 Years, 3 rd Offence: Life-Long Ban – ISF .	378

mm) 1 st Offence: Suspension of 3 Months, 2 nd Offence: Suspension of 4 Years, 3 rd Offence: Life-Long Ban – IPC	379
nn) 1 st Offence: Possible Suspension of 2 Years, 2 nd Offence: Possible Disqualification for Life – AIBA	379
oo) Malice: Suspension of 3 Months to 2 Years + Fine, No Malice: Suspension of 1 Month and 3 Months + Fine – FEI.....	380
pp) Discretionary Determination of the Sanction – FIFA, ISSF and FIS	381
(1) FIFA	381
(2) ISSF	381
(3) FIS.....	382
qq) 1 st Offence: Suspension of 2 Years, 2 nd Offence: Suspension of 4 Years – IHF	382
rr) 1 st Offence: Suspension of 2 Years, 2 nd Offence: Life-Long Ban – FILA.....	383
ss) Doping: Warning + Ban + Fine + Suspension of 1 to 3 Months, Intentional Doping: Ban + Fine + Suspension of 2 to 8 Years – IOC .	383
c) Summary	384
4. Primary and Secondary Team Sanctions	385
a) Primary Team Sanctions	385
b) Secondary Team Sanctions	385
aa) The Match is Declared Lost	386
bb) Disqualification of the Entire Team.....	387
cc) Other Sport Sanctions for the Entire Team.....	389
dd) Lack of Sanctions for the Entire Team.....	390
5. Proportionality and Restraint of Trade	391
a) Proportionality.....	391
b) Restraint of Trade.....	393
6. Sport Sanctions	395
a) Disqualification	395
b) Return of Prizes, Medals, etc.	399
7. Sanctions at the National Level.....	400
a) Extreme Varieties	401
aa) First Offence.....	401
bb) Second Offence.....	401
cc) Third Offence	402
b) ‘Exotic’ Varieties	403
aa) Suspension from Membership	403
bb) Ban from Representation	404
cc) Termination of Funding.....	404
dd) Suspension in Specified Areas.....	404

Table of Contents	17
ee) Sanctions according to Category	405
c) Discretionary Powers and Flexible Sanctions	405
aa) Full Discretionary Powers	405
bb) Flexible Sanctions.....	407
V. Adoption and Mutual Recognition of Doping Sanctions	410
1. Introduction.....	410
2. Olympic Movement Lausanne Agreement 1994.....	411
3. The Olympic Movement Anti-Doping Code 2000	412
4. IOC Olympic Charter.....	412
5. The IOC Medical Code	413
6. World Anti-Doping Agency (WADA).....	414
7. Newest National Anti-Doping Legislation.....	415
8. The Relevant Regulations of the 34 IFs	416
(1) International Amateur Athletic Federation (IAAF).....	416
(2) International Rowing Federation (Fisa).....	420
(3) International Badminton Federation (IBF)	421
(4) International Baseball Association (IBA).....	421
(5) International Basketball Federation (FIBA)	421
(6) International Amateur Boxing Association/ International Canoe Federation (ICF)	422
(7) International Cycling Union (UCI)	423
(8) International Equestrian Federation (FEI).....	424
(9) International Fencing Federation (FIE)	424
(10) International Association Football Federation (FIFA)	425
(11) International Gymnastics Federation (FIG).....	426
(12) International Weightlifting Federation (IWF)	426
(13) International Handball Federation (IHF).....	427
(14) International Hockey Federation (FIH)	427
(15) International Judo Federation (IJF)	428
(16) International Wrestling Federation (FILA)	430
(17) International Amateur Swimming Federation (FINA)	431
(18) International Union for Modern Pentathlon (UIPM)	432
(19) International Biathlon Union (IBU)	433
(20) International Softball Federation (ISF)	433
(21) International Taekwondo Federation (WTF).....	433
(22) International Tennis Federation (ITF)	434
(23) International Table Tennis Federation (ITTF).....	434
(24) International Sport Shooting Federation (ISSF-UIT)	434
(25) International Archery Federation (FITA).....	435

(26) International Triathlon Union (ITU)	435
(27) International Volleyball Federation (FIVB).....	436
(28) International Sailing Federation (ISAF)	436
(29) International Bobsleigh and Tobogganing Federation (FIBT) ...	437
(30) World Curling Federation (WCF)	437
(31) International Ice Hockey Federation (IIHF).....	438
(32) International Luge Federation (FIL).....	439
(33) International Skating Union (ISU)	439
(34) International Ski Federation (FIS).....	439
9. Summary	440
B. Results of a Case Study on Doping in Sport.....	442
I. Introduction	442
II. Results.....	444
III. Summary.....	468
IV. Conclusions	470
Appendix.....	471
A. Medical Limits (Cut-Off Limits in Doping Control).....	499
I. Introduction	499
II. Medical and Scientific Background	500
1. Drugs and the Human Body	500
2. Doping Substances With Cut-Off Limits	502
a) Caffeine.....	503
b) Ephedrine	504
c) Cannabis.....	504
d) Morphine.....	505
e) Testosterone-Epitestosterone (T/E) Ratio.....	505
f) Epitestosterone.....	506
g) Salbutamol	506
h) Nandrolone.....	506
i) Hematocrit and Haemoglobin	508
j) Conclusions.....	509
3. Contamination by Forbidden Substances	510
a) Nutritional Supplements.....	510
b) Other Sources.....	511
aa) Meat	511
bb) Hemp Products.....	512
4. Analytical Background.....	513
5. Conclusions.....	515
III. Legal Analysis	515

Table of Contents

19

1. The Use of Limits in Other Fields of Law.....	516
a) Environmental Law	516
aa) Procedure of Setting up Cut-Off Limits	516
bb) Advantages and Disadvantages of Cut-Off Limits.....	518
b) Food Law	519
c) Road Traffic Law	519
d) Conclusions.....	520
2. The Use of Limits in Doping Control.....	520
a) Analysis of Current Cut-Off Limits.....	520
b) Possible Limits for Forbidden Substances	521
c) Suitability of Substance Classes for Cut-Off Limits.....	522
aa) Exogenous Substances	523
(1) Substances With Short Effect	523
(2) Substances With Long-Lasting Effect.....	523
bb) Endogenous Substances	524
cc) Body Parameters	525
3. Conclusions.....	525
IV. Legal Review.....	526
1. Standard of Control.....	526
2. Suitability of the Current Cut-Off Limits.....	528
a) Evidential Value of a Positive Doping Sample	528
b) Consequences of the Suitability of Cut-Off Limits	530
aa) Endogenous Production.....	531
bb) Therapeutical Application.....	532
cc) Contaminations.....	533
c) Conclusions	534
3. Implementation of Effect-Related Limits.....	534
a) Equal Opportunities.....	535
b) Protection of Health	535
c) Image of Sport.....	536
d) Conclusions.....	537
4. Reasonableness of the Current Cut-Off Limits	537
5. Formal Aspects Concerning Cut-Off Limits	539
6. Conclusions.....	541
V. Outlook and Alternatives	542
1. Expected Problems with Cut-Off Limits.....	542
2. Alternative Approaches.....	542
a) Individual Limits	543
b) Steroid Profile	543

c) Drug Diary	544
d) Health Rules.....	545
3. Conclusions.....	546
VI. General Conclusions.....	546
B. Summary and Conclusions	548
I. The Definitions of Doping and the Description of the Doping Offence	548
1. ‘Use’-Infractions	549
2. ‘Non-Use’-Infractions	551
II. Why Combat Doping? The Arguments.....	552
III. List of Prohibited Substances and Methods	553
IV. Out-of-Competition Testing	554
V. The Fundamental Rights of Athletes in Doping Trials.....	554
VI. System of Sanctions.....	557
1. Sanctions for Individual Athletes in Cases of ‘Hard Doping’	557
2. Sanctions for Individual Athletes in Cases of ‘Soft Doping’	559
VII. Mutual Recognition of Sanctions	561
VIII. Inquiry into the Application and Interpretation of the Sports Rules on Doping	561
IX. Cut-Off Limits	562
<i>Part IV</i>	563
Analysis of Doping Cases of the Court of Arbitration for Sport.....	563
A. Introduction.....	563
I. Historical Introduction and the CAS Today	563
1. How Does the CAS Function?	564
2. Ordinary Cases.....	564
3. Appeal Cases.....	565
4. General Procedure.....	565
5. Ad Hoc Division Cases	566
6. Legal Status of CAS Awards	568
7. Challenges to CAS Awards.....	568
II. Preliminary Matters Concerning this Study of the Appellate Jurisdiction of the CAS	569
1. Methodology	570
2. Practical Matters	571
a) Sources	571
b) Translations.....	571
III. A Note on the List of the Court of Arbitration for Sport’s Doping Appellate Awards and Opinions Considered in the Course of this Study	573
B. Aspects of the CAS Jurisprudence Researched	579
I. Introduction	579

Table of Contents

21

II. The Doping Awards and Opinions in 'Digested' Form.....	580
C. Summary and Conclusions	618
I. Summary	618
1. Definition of Doping (The Description of the Doping Offence)	618
2. The Purpose of the Ban on Doping (Arguments Against the Use of Doping)	620
3. List of Prohibited Substances and Methods	622
a) Exceptional Cases	622
b) Cases of Inadvertent Ingestion	623
c) Masking Cases	624
d) General Doping Cases.....	624
e) Horse Cases.....	626
4. Doping Control and Testing in and out of Competition	627
5. Evidential Rules	627
6. Fundamental Rights of the Athlete and Procedural Guarantees	628
a) Basic Procedural Failure	629
b) Benefit of the Doubt.....	629
c) Proportionality.....	630
d) Due Process and De Novo Cases	630
7. System of Sanctions	631
a) Holding to the Rules.....	632
b) The Lex Mitior.....	632
c) Proportionality.....	633
8. Competence to Impose Sanctions.....	633
9. Mutual Recognition of Sanctions	634
II. Conclusions.....	635
Appendix.....	638
<i>Part V</i>	659
General Conclusions and Recommendations	659
A. Statutory Law (Constitutional Issues, National Legislation).....	661
I. Conclusions	661
1. Constitutional Issues: Autonomy of Associations	661
2. National Legislation: Country Reports.....	662
3. Constitutional Issues: Autonomy of Associations	665
4. National Legislation: Country Reports.....	665
B. Sports Law (Law of the Sports Associations).....	667
I. Conclusions	667
1. The Description of the Doping Offence	668

2. The Purposes of the Ban on Doping (Arguments Against the Use of Doping)	668
3. List of Prohibited Substances and Methods	669
4. Doping Control Outside of a Competition Context.....	669
5. Fundamental Rights of the Athlete and Procedural Guarantees	670
6. System of Sanctions.....	670
7. Adoption and Mutual Recognition of Doping Sanctions.....	671
8. Application and Interpretation of the Sports Rules on Doping (Case Medical Limits (Cut-off Limits in Doping Control)).....	671
II. Recommendations.....	672
1. The Description of the Doping Offence	672
2. The Purpose of the Ban on Doping	672
3. List of Prohibited Substances and Methods	672
4. Doping Control Outside of a Competition Context.....	673
5. Fundamental Rights of the Athlete and Procedural Guarantees	673
6. System of Sanctions.....	673
7. Adoption and Mutual Recognition of Doping Sanctions.....	673
8. Application and Interpretation of the Sports Rules and Regulations on Medical Limits (Cut-off-Limits in Doping Control).....	674
C. Court of Arbitration for Sport (CAS)	675
I. Conclusions	675
II. Recommendations.....	676
D. Main Recommendations Concerning Harmonisation.....	676
I. Statutory Law	676
II. Sports Law and CAS.....	677
Literature and Documents	679
E. Literature	679
F. Documents	699