

Introduction to Sports Law FS 2021

Total: 50 points

Questions 1 & 2: 17.5 points

Question 3: 7.5 points

Questions 4 & 5: 17.5 points

Question 6: 7.5 points

Die folgende Skizze gibt die Gliederung der zu behandelnden inhaltlichen Aspekte vor; bei der Klausur wurde eine ausformulierte Argumentation erwartet. Die Vergabe der vollen Punktzahl setzt einen systematischen Aufbau der Anspruchsprüfung, die saubere Subsumtion des Sachverhalts unter die gesetzlichen Tatbestandselemente und eine fallbezogene Problemerkörterung voraus.

Question 1	It is expected that candidates recognize that it needs to be established whether an anti-doping rule violation pursuant to the FINA Doping Control Rules was committed (no direct application of the WADA Code)
	Possible anti-doping rule violations: DC 2.3 / DC 2.5
	DC 2.5 needs to be examined first since the threat of sanction is higher (compared to 2.3)
	Burden and standard of proof: FINA carries the burden of proof, the standard is comfortable satisfaction; no strict liability
	<p>Candidates are expected to properly define "tampering" and "doping control" and to apply these provisions to the present case, e.g. with the following elements:</p> <ul style="list-style-type: none"> • The Doping Control Team identifies itself • The Athlete knows the Team, asks no questions, starts the test • Destruction of trophy / discussions as reasons to abort the test or question its legitimacy? • Compelling justification • Explicit warning to the athlete • Opening of sample and destroying it • Intentional actions • Alternative "<i>proper path</i>", i.e. undergoing doping control session under objection and immediately inform ADO about the exceptional circumstances

Question 2	It is expected that candidates recognize the applicable provision (DC 10.3.1)
	<p>Default (basic) sanction: 4 years</p> <p>Question regarding "intentional", if not mentioned under question 1 above.</p> <p>Discussion whether there are exceptional circumstances, possible reduction of the sanction based on the degree of fault?</p> <p>Application to the present case: Circumstances show that the degree of guilt is likely quite high.</p>
Note to Questions 1/2	<p>Reduced points were awarded if DC 2.3 was applied correctly. If DC 2.5 was applied, no additional points were awarded if candidates applied, in addition, DC 2.3.</p> <p>An extra point was awarded if students recognized that the exam follows the case of "Sun Yang"</p>

Question 3	<p>Candidates were expected to recognise the essential problem:</p> <p>The CAS-Code provides for a full <i>de novo</i> review in CAS Appeal proceedings. Therefore, in principle, there is a free re-examination of a case as to the facts and the law.</p> <p>Case law of CAS, however, states that sanctions are only examined for being "<i>grossly and evidently disproportionate</i>".</p> <p>Is this a contradiction?</p> <p>All arguments were accepted, importance was given to a clear and proper reasoning.</p>
Extra Point	Reference to art. 13.1.1 FINA DC

Question 4	Candidates were expected to recognize the key topic: The possibility to challenge an arbitrator pursuant to art. R34 CAS-Code
	Prerequisites for a challenge according to art. R34, deadline, jurisdiction, procedure according to art. R34 para. 2.

	Reasons for a challenge: Public Facebook posts with a clear link to the present case, legitimate doubts regarding the impartiality/neutrality of the arbitrator?
--	--

Question 5	Candidates were expected to recognize the topic, i.e. a possible challenge before the Swiss Federal Tribunal.
	The key difficulty is to find the correct "object" of a challenge: Decision of the challenge commission or the ICAS Board / formal constitution of the Panel / final Award by CAS?
	Importance that in all steps of the procedure, a reservation must be made that the objection to the composition of the Panel is maintained (otherwise risk to forfeit this ground for appeal).
	Other formal requirements for an appeal: <ul style="list-style-type: none"> - Legitimate interest - Deadline of 30 days - SFT bound by the facts established by CAS - No waiver
	Correct application of art. 190 para. 2 (a) PILA

Question 6	Candidates were expected to recognize that a possible "Revision" (i.e. review of an award) before the SFT must be examined.
	Criteria according to art. 190a PILA
	Application to the present case, in particular the consideration that a simple google research would have revealed the information / problem regarding the "due diligence" that each party must apply.
Extra Point	Reference to Sun Yang, but with important changes in details of the facts