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Doping Regulations and Strict Liability in Sports

Introduction

The core of competitive sports relies on the principle that perseverance, ability, and fair competition and not artificial performance enhancement. Unfortunately, the spread of doping is threatening this ideal and it is creating doubts in people's minds about the integrity of sports organizations and the veracity of athletic accomplishments. To help preserve the principles of sport and to provide all participants with a level playing field, governing bodies of international sport have implemented comprehensive anti-doping regulations. A key principle around which the anti-doping regulations are formulated is the doctrine of strict liability, which means that regardless of whether or not an athlete has any intent, negligence or fault to use a banned substance, they can be found liable if that substance is found within their system.

Strict liability has strengthened the global campaign against doping by making it impossible for a competitor to avoid being held responsible for their actions by arguing they didn't know about it or did so accidentally. There has also been a great deal of legal and ethical controversy surrounding the implementation of this policy. High-profile examples of athletes ingesting contaminated dietary supplements, taking prescription drugs that were banned, and taking in substances unknowingly have raised questions about how much of a burden the rule has placed on athletes, especially as there was no intent to use substances to gain an unfair advantage. As the sports world continues to change and the fields of medicine and nutrition continue to grow, the biggest challenge will be finding ways to protect the integrity of fair competitions while ensuring that the penalties imposed are fair, appropriate, and proportionate given the circumstances of each situation.

This article examines the rationale behind the strict liability principle in anti-doping law, analyses its advantages and criticisms through landmark doping cases, and evaluates whether the existing regulatory framework adequately balances sporting integrity with the rights of athletes.

Understanding the Principle of Strict Liability in Sports

Strict liability is the cornerstone of the global anti-doping regime. Under the World Anti-Doping Code (WADC), an athlete commits an anti-doping rule violation merely by the presence of a prohibited substance or its metabolites in their body, irrespective of whether the substance was consumed intentionally, negligently, or accidentally.¹ Thus, it is not necessary for the prosecution to show mens rea (guilty intent) or an intention to commit an offence. The evidence of simply having the prohibited drug present will suffice to establish liability. The application of this principle demonstrating that a guilty mind does not need to be proven in order to find culpability is a major shift from traditional principles of criminal law.

Strict liability in competitive sports is based on how unique they are. Anti-doping authorities argue that if you had to prove someone intended to do something wrong before you could enforce anti-doping laws, it would be extremely difficult because most athletes can simply say that any positive test was caused by accidental ingestion of something or a mistake by a supplement company or doctor.² The principle of athlete accountability for prohibited substances is fundamental to ensure fairness in competition, maintaining public trust in sport and establishing consistent policies throughout all jurisdictions under the anti-doping framework.

However, strict liability should not be confused with absolute liability. Strict liability is based on a violation of the anti-doping rules and will be applied automatically regardless of any fault. However, when it comes time for sanctions to be imposed and the degree of the athlete's fault is very important. The 2021 version of the World Anti-Doping Agency (WADA) Code allows reductions of a sanction when an athlete can show there was "no fault" or "negligence". But only in cases where an athlete can prove they were ingesting contaminated products or inadvertently ingested something that contained performance-enhancing substances.³ Thus, although the doctrine imposes a stringent evidentiary burden upon athletes, the Code incorporates mechanisms intended to ensure proportionality in punishment.

The concept of strict liability continues to be a highly debated issue in international sports law. Critics argue that this type of liability can impose an unfair penalty on athletes who are not receiving a competitive edge and have exercised reasonable care, thus creating a conflict between regulatory efficiency and individual justice.⁴ Conversely, critics argue that if the principle is weakened, this will affect how well cheating by using drugs is enforced and promote the use of weak defences to beat drug-testing systems. As sport depends more and more on being able to use nutritional supplements, therapeutic drugs and sophisticated medical support, the issue at hand is

¹ World Anti-Doping Agency, *World Anti-Doping Code* arts. 2.1–2.2 (2021).

² National Anti-Doping Agency, India, *National Anti-Doping Rules, 2021* art. 2.1 cmt., amended Apr. 12, 2024.

³ World Anti-Doping Agency, *World Anti-Doping Code* arts. 10.5–10.6 (2021).

⁴ Aniruddha Kambhampati & Shaun Star, *Playing True? A Critique of the 2021 WADA Code*, 21 *Int'l Sports L.J.* 196 (2021).

how to create an environment where the principle of strict liability can still exist but with fair, clear and proportional application.⁵

Why Does WADA Adopt the Principle of Strict Liability?

The adoption of strict liability by the World Anti-Doping Agency (WADA) is founded on the objective of preserving the integrity of sport and ensuring that all athletes compete on an equal footing. Anti-doping authorities contend that requiring proof of intent before establishing a violation would significantly weaken the enforcement of anti-doping rules. In many cases, it would be practically impossible to determine whether an athlete knowingly consumed a prohibited substance or whether its presence resulted from accidental ingestion, contaminated supplements, or misinformation provided by support personnel.⁶ By imposing liability solely on the basis of the presence of a prohibited substance, the anti-doping framework minimizes evidentiary uncertainties and strengthens the effectiveness of enforcement.

The principle of personal accountability is an important component of the rules governing the antidoping movement. It also establishes one of the basic principles of modern antidoping corruption laws. The World Anti-Doping Code states that an athlete is responsible for ensuring that no prohibited substances enter his or her body, regardless of how those substances get there. The obligation issued in the Code reflects an opinion that elite athletes are in a better position than most people to determine which medicines, nutritional supplements and other types of treatment to use. Thus, elite athletes must be extremely careful when taking any substance that might affect their eligibility to compete.

Protecting clean athletes is yet another reason for imposing strict liability. The trust in competitive sports relies on the belief that wins are based on skill and not enhanced through drug use. If athletes could avoid liability just by admitting that they didn't know of or intend to use a drug, the trust of the public in the fairness of the athletic competition would be lost, and also would give willfully using performance-enhancing drugs the chance to find ways around proving their guilt.

In conclusion, WADA's implementation of strict liability will create uniformity and consistency among international sporting events. Athletes from around the globe will be competing with respect to one regulatory framework rather than being subject to different domestic criminal laws or standards of proof. By establishing a common legal framework that applies equally in all jurisdictions, the World Anti-Doping Code provides a solid foundation for enforcement of anti-doping rules by both national and international bodies and additionally fosters legal certainty by

⁵ Christopher A. Bell, *Strict Liability: Controversies over Anti-Doping Laws in International Sport*, 39 *Berkeley J. Int'l L. Blog* (2022).

⁶ World Anti-Doping Agency, *World Anti-Doping Code* art. 2 cmt. (2021).

providing clarity about how those anti-doping rules will be enforced and punished.⁷ Although the Code allows sanctions to be reduced where athletes establish *No Fault or Negligence* or *No Significant Fault or Negligence*, the initial finding of liability remains essential to preserving the credibility, predictability, and effectiveness of the global anti-doping system.

Case Studies: The Practical Application of Strict Liability

The application of strict liability has been shaped significantly by decisions of the Court of Arbitration for Sport (CAS) and disciplinary tribunals under the World Anti-Doping Code. While the doctrine has strengthened anti-doping enforcement, several landmark cases illustrate the practical and ethical challenges associated with holding athletes liable irrespective of intent.

The case of Maria Sharapova has become one of the best-known illustrations of the application of strict liability under current sports law. Maria Sharapova had a positive drug test for Meldonium in early 2016 after the World Anti-Doping Agency (WADA) had placed this substance on their list of banned substances. While Ms. Sharapova maintained that she had taken this substance for valid medical purposes and did not know it was now considered to be banned, the Court of Arbitration for Sport (CAS) ruled that there was no intent by Ms. Sharapova to cheat and therefore reduced her sentence from two years to fifteen months.⁸ Although the sanction was reduced, the finding of an anti-doping rule violation remained intact, illustrating that the absence of intent affects the severity of punishment rather than the determination of liability itself.

A similar approach was adopted in the case of Shawne Merritt, the Olympic gold medallist who tested positive for dehydroepiandrosterone (DHEA), a prohibited substance. Merritt successfully demonstrated that the substance had entered his body through an over-the-counter medication used for a medical condition rather than with the intention of improving athletic performance.⁹ While his sanction was reduced because of the absence of significant fault, the case reaffirmed that athletes bear ultimate responsibility for every substance they ingest, irrespective of its source.

The Sinner case has also sparked new discussions about the fairness of strict liability. The athlete has tested positive for the anabolic steroid Clostebol because of a transfer from his physiotherapist during treatment. While investigators found no evidence that Sinner had intentionally doped or been contaminated by support personnel, he is subject to a disciplinary procedure because the World Anti-Doping Code charges athletes with the responsibility for any substance found in their bodies.¹⁰ The controversy generated significant debate within the sporting community regarding

⁷ Richard H. McLaren, *Harmonisation of Global Anti-Doping Rules Under the 2021 World Anti-Doping Code*, 22 Int'l Sports L.J. 3, 8–14 (2022).

⁸ *Maria Sharapova v. International Tennis Federation*, CAS 2016/A/4643, Award ¶¶ 80–92 (Ct. Arb. Sport Oct. 4, 2016).

⁹ *United States Anti-Doping Agency v. Shawne Merritt*, AAA No. 77 190 00225 10 (Am. Arb. Ass'n 2010).

¹⁰ *International Tennis Integrity Agency, Independent Tribunal Decision in the Matter of Jannik Sinner* (2024); World Anti-Doping Agency, *WADA Statement Regarding the Jannik Sinner Case* (2024).

whether strict liability imposes an unrealistic burden on athletes who rely extensively on coaches, nutritionists, and medical professionals.

Overall, these examples indicate that strict liability is not meant to function as unconditional liability. The existence of a prohibited substance establishes a violation, but the disciplinary bodies still have some discretion to determine the athlete's degree of culpability, before they arrive at a penalty. The goal of this delineation is to maintain the integrity of the anti-doping system while maintaining that penalties issued will be in accordance to the severity of the situation, or case. At the same time, these cases also illustrate the inherent conflict that exists within the anti-doping system: protecting the integrity of sport can conflict with the fair principles of punishing athletes (punishing them, although they did not intentionally set out to cheat). As the fields of sports medicine and nutrition continue to grow, these cases indicate that the regulations governing anti-doping should continue to be modified, so that further distinctions can be made between intentional doping and truly unintentional violations.

Reforming Anti-Doping Regulations: Towards a Fairer Framework

While strict liability has worked to enhance anti-doping enforcement, the application of that principle may benefit through the introduction of a more nuanced system to help differentiate between intentional and unintentional violations. One potential model might establish a system of graduated liability, in which an athlete's liability would be determined in part based on their degree of fault related to the anti-doping rule violation. For example, athletes who intentionally use performance-enhancing drugs and do so knowing they are violating the anti-doping rules and/or the intent to conceal their actions (evidence of intent or doping/drugs motivated by the intent to enhance their performance) should continue to receive severe penalties. On the other hand, cases that involve an athlete who unintentionally ingests a banned substance due to a contaminated supplement, prescribed medication, or the negligence of a third party should be subject to proportionally reduced sanctions without diminishing the finding of a violation of the anti-doping rules. This type of model would preserve the deterrent aspects of strict liability and ensure that a penalty is appropriate for the athlete's actual level of culpability.

A second important reform should be a system of shared responsibility between athletes, their coaches and support staff. Modern elite athletes depend on many support staff such as coaches, nutritionists, physiotherapists and sports physicians and administrators for health advice and nutritional planning. However, under the current anti-doping rules, the athlete is totally accountable for any anti-doping violations. WADA should also consider establishing further liability for accredited support staff for any failure to act appropriately or to fulfil their role appropriately. The introduction of a system of shared responsibility would create greater professionalism among members of the athlete's entourage and ensure an equitable distribution of responsibility amongst those who participate in decision making.

Additionally, anti-doping agencies will need to enhance preventive measures by implementing mandatory certification and employing digital verification methods. A significant portion of inadvertent violations result from unwittingly consuming drugs and dietary supplements that are tainted by prohibited substances. Instituting a worldwide certification programme for sports supplements, together with a centralised digital database that provides athletes with the ability to check the status of their supplements or medications prior to use, would significantly lessen the number of inadvertent infractions. The incorporation of artificial intelligence and barcode verification into current anti-doping systems will provide athletes with real-time compliance data and decrease the chances of unintentionally violating any rules related to doping.

Last but not least, the adjudication of anti-doping cases needs to have much stronger reliance on scientific evidence (including independent expert panels of pharmaceutical and toxicological professionals) rather than on arbitrary adjudication procedures or decisions by sporting bodies, particularly where science and procedures conflict with subjective assessments of evidence. All athletes charged with an anti-doping violation must be provided with speedy and fair processes to resolve disputes or appeals, which means that robust procedures must be put in place to ensure that an athlete is able to participate in any significant international competitions during the course of those processes. Through implementing these reforms, there will continue to be a significant improvement in the credibility and integrity of the anti-doping system through ensuring that the processes used to impose disciplinary actions against athletes remain transparent, scientific, objective and fair without detracting from the global commitment to clean sports.

Conclusion

The principle of strict liability has become the basis of the international anti-doping system as it provides a consistent and effective means to prevent athletes from using banned substances. The principle does not require a finding of intent, which helps to maintain the integrity of sport, foster public trust in competition, and prevent athletes from taking a cavalier attitude to using banned substances. However, the principle of strict liability has also given rise to an inherent dilemma between regulatory efficiency and individual justice. The cases of contaminated supplements, medical treatment, and negligence of support personnel illustrate that not all anti-doping violations are attributable to intentional conduct aimed at acquiring a competitive edge.

As such, the challenge is not whether strict liability should be abolished but rather how it should evolve. A modernised anti-doping framework must continue to hold athletes accountable but provide for the principle of fairness as a means of providing a meaningful distinction between intentional and truly inadvertent violations of the anti-doping rules. For example, by introducing graduated liability for violations, improving the accountability of support personnel, and utilising more scientific evidence will help maintain proportionality in the imposition of sanctions while minimising any detrimental effect on doping control.

Thus, the legitimacy of the law prohibiting doping is based on both whether or not it can identify individuals who are dishonest as well as whether or not it can effectively protect individuals who compete fairly from being harmed as a result of competing in the same sport with dishonest competitors. The law must strive to maintain the integrity of the sport while using a systematic method of determining both the certainty of punishment and the fairness of the punishment imposed to find justice in deciding whether or not someone has cheated.