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# Legal and Contractual Aspects of Agency and Player–Agent Relations in Professional Tennis

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## 1 Introduction

Just as in the context of other professional sports, agency plays an important behind-the-scenes role in professional tennis. Whether it is in the representation of players, the management of their sporting careers and schedules, or even the promotion of tournaments, the work of agents in the shadows of the sport of tennis is of increasing significance. At the same time – or rather, in conjunction with this – the profession and activities of tennis agents give rise to an ever-expanding array of legal questions and issues of both a regulatory and a contractual nature, which have yet to be elucidated, let alone investigated. Accordingly, this exploratory chapter seeks to offer an inceptive account of the central legal and contractual aspects of agency and player–agent relations in professional tennis, as well as an initial foray into the key legal issues arising from, and possible regulatory approaches to, the work of tennis agents. The chapter will begin with an overview of agency in tennis – including the history (and indeed heritage) of tennis agents in the wider context of sports agency, the different types of tennis agents active on the market and the roles that agents perform in the world of professional tennis – before proceeding to set out the multifaceted legal landscape in which these agents operate and the diverse regulatory frameworks governing the exercise of their professional activities. In the latter part of the chapter, the focus will then shift to contractual agreements between professional tennis players and player agents, by sketching the legal rules that are (potentially) applicable thereto and particularly the contractual duties to which tennis agents may be subject, and ultimately examining a number of specific legal issues relating to player–agent contracts and relations in professional tennis. In so doing, this

chapter will shed light on the implications both of and for the law in respect of tennis agency.

## 2 Agency in Tennis

The following sub-section will outline the essential nature and broader context of tennis agency, starting with a brief excursus into the historical development of agency in tennis, against the more general backdrop of agency in professional sport. It will then centre on the present-day phenomenon of agency in tennis, identifying the different kinds of agents that provide services on the professional tennis market, the main characteristics of this market and the principal roles that these agents fulfil. This summary will enable readers to gain an understanding of the tennis agents' industry and an appreciation of the relevance of their profession to the sport itself, which will serve as a useful background to the subsequent depiction and discussion of the rules and regulations applicable to their activities.

### 2.1 *Background to Sports Agents in General and Tennis Agents in Particular*

While little has been written to date on the law pertaining to professional tennis agency, there are relatively comprehensive works to be found in the literature on the sport of tennis per se, including its societal context and historical evolution<sup>1</sup> – and in some of these publications one does encounter references to tennis agents in particular, with at least one such work dedicating an entire chapter to the subject.<sup>2</sup> As Ruth eloquently expounds, player agents and sports managers have a long history in the realm of tennis, to the extent that the origins of tennis agency can be traced back to, and are actually intertwined with, those of professional sports agency itself. Indeed, whereas much of the attention in the literature (and certainly in legal scholarship) on sports agency has (perhaps understandably) been devoted to popular team sports (and most

<sup>1</sup> By way of illustration, see Robert J. Lake (ed.), *Routledge Handbook of Tennis: History, Culture and Politics* (Routledge, 2019); John Grasso, *Historical Dictionary of Tennis* (Scarecrow Press, 2011); Peter Doherty, *Empire, War, Tennis and Me* (Melbourne University Press, 2022); or Warren F. Kimball, *The United States Tennis Association: Raising the Game* (University of Nebraska Press, 2017).

<sup>2</sup> See Greg Ruth, *Tennis: A History from American Amateurs to Global Professionals* (University of Illinois Press, 2021), and specifically ch. 11 thereof, entitled 'The Impact of Sports Agents and Agencies on Professional Tennis'.

frequently to football,<sup>3</sup> as well as the traditional major league sports in North America<sup>4</sup>), it is worth recalling that the very first agencies to provide professional athlete representation services originally concentrated their activities on individual sports, and most notably on tennis, alongside golf.<sup>5</sup> This was true of ‘the earliest, most successful, and most historically significant agency’,<sup>6</sup> namely, the US-based International Management Group (IMG), which at its outset in the 1960s preferred to enrol tennis players and golfers as clients over players of team sports.<sup>7</sup> This was in large part due to financial considerations, as it was cheaper to ferry individual athletes to sporting exhibitions than entire teams, thereby making them more versatile in terms of their earning potential, for they could then also generate income from such events at the same time as bringing revenues from product endorsements (i.e. particularly clothing and equipment).<sup>8</sup> And while IMG’s very first clients were golfers,<sup>9</sup> the company’s expansion coincided with the International Tennis Federation’s (ITF) opening of hitherto exclusively amateur tennis tournaments (including the Grand Slam competitions) to professional tennis players<sup>10</sup> and the signing of its first tennis client in 1968 in the form of the world number 1 at the time, the legendary Australian player Rod Laver. In fact, tennis also lay at the root of the well-documented tussle between IMG and its historically closest and similarly renowned competitor, ProServ, whose first clients were Arthur Ashe and Stan

<sup>3</sup> For a brief account of the prominence of football agents in the wider context of sports agency, see William Bull and Michael Faure, ‘Agents in the Sporting Field: A Law and Economics Perspective’ (2022) 22 *Int Sports LJ* 17, at 19.

<sup>4</sup> Take, for example, Charles W. Ehrhardt and J. Mark Rodgers, ‘Tightening the Defense against Offensive Sports Agents’ (1988) 16 *Fla St UL Rev* 633; Alec Powers, ‘The Need to Regulate Sports Agents’ (1994) 4 *Seton Hall J Sport & Ent L* 253; and, more recently, Justin Park, ‘The Role of Athlete-Agents and the Law: A Conflict of Interest?’ (2015) 29 *Brigham Young U Pre L Rev* 107; Jodi S. Balsam, ‘“Free My Agent”: Legal Implications of Professional Athletes’ Self-Representation’ (2016) 16 *Wake Forest J Bus & IP L* 510.

<sup>5</sup> Ruth, *Tennis*, 200 ff.

<sup>6</sup> *Ibid.*, 199.

<sup>7</sup> It should also be noted that the very first individual sports agents actually date back to the 1920s, although these industry pioneers also collaborated with tennis players, among others; see Kenneth L. Shropshire and Timothy Davis, *The Business of Sports Agents* (University of Pennsylvania Press, 2008), 11.

<sup>8</sup> Ruth, *Tennis*, 200. Another factor Ruth identifies is rather contractual in nature, insofar as, unlike players of team sports, tennis players enjoyed greater contractual freedom, since they were not bound to any franchise (at 211).

<sup>9</sup> IMG’s founder, Mark McCormack, famously signed professional golfers Arnold Palmer, Gary Player and Jack Nicklaus – often referred to as ‘the Big Three’ – as his first clients.

<sup>10</sup> Cf. Men’s International Professional Tennis Council (MIPTC) Official Yearbook (1987), 7.

Smith, the top two American players at the time. ProServ was founded in 1970 by Donald Dell, the former US Davis Cup captain (and teammate of Ashe and Smith). Dell had received overtures of allegiance two years earlier from IMG's founder and fellow lawyer Mark McCormack, who was afraid of the potential competition Dell could bring to bear should he decide to venture into the sports agency business on his own account, given Dell's more sizeable network in the tennis world.<sup>11</sup> But when contract talks between IMG and Ashe – arranged by Dell – came to nothing, Dell ultimately did just that, agreeing to represent Ashe himself through his own sports management firm, which would specialise in the representation of tennis players.<sup>12</sup> In this way, Dell became what one might term the first tennis agent proper, and the arena of professional sports management firms emerged.

IMG and ProServ would go on to dominate this arena for the rest of the century, amassing between them a broad and star-studded array of clients along the way. Among these were the biggest names in tennis of the era (from Bjorn Borg to Martina Navratilova), as well as superstars of other sports (like Muhammad Ali and Michael Jordan).<sup>13</sup> Furthermore, these agencies extended their representation services to other bodies in tennis (such as the Russian Tennis Federation<sup>14</sup>), and even to tennis events themselves, including Wimbledon, or more precisely the All England Lawn Tennis and Croquet Club (AELTC).<sup>15</sup> And, in turn, this also precipitated an expansion of their areas of representation, beyond merchandising and licensing deals and into sponsorship agreements and broadcasting contracts.<sup>16</sup> By the turn of the millennium, IMG (which remained the largest sports management agency, dwarfing even ProServ) had represented hundreds of sportspeople and sporting entities and was grossing over a billion dollars a year, with operations in multiple countries across the globe.<sup>17</sup> At the same time, a number of other prominent sports agents and management firms had also entered the scene.<sup>18</sup>

<sup>11</sup> Ruth, *Tennis*, 207.

<sup>12</sup> *Ibid.*, 209.

<sup>13</sup> See further Shropshire and Davis, *The Business of Sports Agents*, 16 ff.

<sup>14</sup> Ruth, *Tennis*, 210.

<sup>15</sup> *Ibid.*, 212.

<sup>16</sup> On this expansion, see also George A. Metanias, Thomas J. Cryan and David W. Johnson, 'A Critical Look at Professional Tennis under Antitrust Law' (1987) 4 *Ent & Sports LJ* 57, at 58.

<sup>17</sup> Daniel S. Mason and Gregory H. Duquette, 'Globalisation and the Evolving Player-Agent Relationship in Professional Sport' (2005) 1 *Int J Sport Management & Marketing* 93, at 99.

<sup>18</sup> Shropshire and Davis, *The Business of Sports Agents*, 17.

## 2.2 *Types and Roles of Agents in Professional Tennis*

Since the dawn of corporate sports agency in the 1960s, the sector has come to be populated by agents with differing backgrounds; commonly legal, but also financial and commercial.<sup>19</sup> Many of these work for large-scale transnational agencies such as IMG or Octagon (a successor to ProServ), which provide a range of services to players, entities and event organisers in a variety of sports, including tennis. However, more recent years have also seen the emergence, alongside these 'all-inclusive' agencies, of smaller 'bespoke' firms, which are focused specifically on tennis representation and talent management, and 'built around a stable of select player clients'.<sup>20</sup> These are often established by players themselves, such as Roger Federer, who left IMG together with his long-lived agent to found the Team 8 Global management firm in 2012.<sup>21</sup> In addition, agency and representations services may also be provided, to one extent or another, by specialised law practices, accountants, financial advisers, investment companies and sports marketing firms, or some combination of them.<sup>22</sup> Indeed, agents may perform a variety of different roles in professional tennis. When it comes to player agency, as was already alluded to, contract representation constitutes the tennis agent's core activity, including contracts of endorsement and sponsorship<sup>23</sup> and licensing (e.g. for exhibitions or of image rights), as well as negotiations with coaches and (significantly, in terms of both the potential sporting and legal implications) for entries and appearances at tournaments.<sup>24</sup> At the same time, player agents may also (or possibly instead) provide tennis players with a range of managerial and administrative services, such as career counselling and advice, handling sporting schedules, travel and accommodation arrangements, or press and social media relations.<sup>25</sup> Furthermore, tennis agents may

<sup>19</sup> Balsam, 'Free My Agent', 515.

<sup>20</sup> See Michael Long, 'Switching Pitch: The Rise of the Boutique Tennis Agency', Sports Pro (16 November 2017), available at: [www.sportspromedia.com/analysis/switching-pitch-the-rise-of-the-boutique-tennis-agency/?zephrossoott=lufxvf](http://www.sportspromedia.com/analysis/switching-pitch-the-rise-of-the-boutique-tennis-agency/?zephrossoott=lufxvf).

<sup>21</sup> Ibid.

<sup>22</sup> See Balsam, 'Free My Agent', 529–32. This is also not to mention the fact that many professional athletes opt to represent themselves or rely on family members in contract negotiations, and increasingly so; on this, see further *ibid.*, 513 ff.

<sup>23</sup> On such deals, see further Tim Newcomb, 'The Anatomy of a Tennis Player's Sponsorship Deals', *Forbes* (4 May 2020), available at: [www.forbes.com/sites/timnewcomb/2020/05/04/the-anatomy-of-a-tennis-players-sponsorship-deals/?sh=6612e912789c](http://www.forbes.com/sites/timnewcomb/2020/05/04/the-anatomy-of-a-tennis-players-sponsorship-deals/?sh=6612e912789c); see also Mason and Duquette, 'Globalisation and the Evolving Player', 98 ff.

<sup>24</sup> See Metanias et al., 'A Critical Look', 59; and also Ruth, *Tennis*, 211.

<sup>25</sup> See Marc Hervez, 'What's the Role of a Good Tennis Agent?', *We Are Tennis* (5 March 2013), available at: <https://wearetennis.bnpparibas/en/news-tennis/news-results/2065-whats-the-role-of-a-good-tennis-agent>; and also John P. Sahl, 'The Changing Landscape

also, or alternatively, represent other bodies in the sport, or even play a role in the promotion and management of tournaments, including the solicitation of sales and sponsorship therefor, as well as television rights.<sup>26</sup> In so doing, the agent's primary function is to maximise revenues for the client (or 'principal'), through the deployment of specialist knowledge and expertise, which the principal does not necessarily possess.<sup>27</sup>

As far as the market on which tennis agents operate is concerned, while the sport itself continues to generate ever-larger profits, earning multiple millions from broadcasting rights and ticket sales to one Grand Slam event alone,<sup>28</sup> the size of the tennis agency sector would appear to remain relatively limited. Admittedly, statistics on sports agency are hard to come by, but, according to one rare study on sports agency that was produced for the European Commission in 2009,<sup>29</sup> there were an estimated twenty-two official tennis agents active in the European Union across eleven Member States at that time.<sup>30</sup> This is likely due in part to the tendency for individual players to engage one of the larger management firms,<sup>31</sup> combined with the fact that the higher earning potential is concentrated in the top-ranked tennis players, with a wide financial gap existing between these more dominant players and those ranked outside the top 100.<sup>32</sup>

of Intercollegiate Athletics – the Need to Revisit the NCAA's "No Agent Rule" (2020) 61 Santa Clara L Rev 1, at 20–4.

<sup>26</sup> Metanias et al., 'A Critical Look', 61–2.

<sup>27</sup> See further Mason and Duquette, 'Globalisation and the Evolving Player', 94 ff.; Mark Smienk, 'Regulation in the Market of Sports Agents: Or No Regulation at All?' (2009) 3–4 Int Sports LJ 70, 75 ff.; Bull and Faure, 'Agents in the Sporting Field', 22.

<sup>28</sup> Eric Barget, 'The Economics of Tennis' in Wladimir Andreff and Stefan Syzmanski (eds), *Handbook on the Economics of Sport* (Edward Elgar, 2006), 423.

<sup>29</sup> KEA-CDES-EOSE, 'Study on Sports Agents in the European Union' (2009), available at: <https://ec.europa.eu/assets/eac/sport/library/studies/study-sports-agents-in-eu.pdf>.

<sup>30</sup> Ibid., 35–40. Although, as this study also cautions, it is difficult to ascertain the size of the sports agent population with any degree of accuracy (at 30). Still, the numbers would appear to be of a similar magnitude in the United States, with roughly ten professional tennis agencies active on the US market as of 2014; see Scott Kestenbaum, 'Uniform Alternative Dispute Resolution: The Answer to Preventing Unscrupulous Agent Activity' (2014) 14 Pepp Disp Resol LJ 55, at 67.

<sup>31</sup> Ibid., 52.

<sup>32</sup> See D'Arcy Maine, "'Why Am I Here, Playing for Literally \$6?': The Stunning Financial Reality of Pro Tennis", ESPN (17 January 2023), available at: [www.espn.com/tennis/story/\\_/id/35414286/the-stunning-financial-reality-high-cost-pro-tennis](http://www.espn.com/tennis/story/_/id/35414286/the-stunning-financial-reality-high-cost-pro-tennis).

### 3 The Regulation of Agents in Professional Tennis

The rules that are (or may be) applicable to tennis agents and their activities are varied, both in terms of their content and their sources. The focus in this chapter will be on two central aspects of the law of professional tennis agency: first, the regulation of the profession itself; and second, the rules governing contractual relations between agents and players. We will begin in this sub-section by laying out the regulatory framework surrounding the exercise of (if not even the access to) the tennis agent's profession per se, and in the next sub-section we will move to consider the regulations and legal standards applicable to player-agent contracts, with a view to identifying certain concrete legal issues arising from such agreements. In each of these respects, it will be seen that the activities of tennis agents can be subject not only to domestic rules of both public and private origin, but also to transnational sporting regulations.

#### 3.1 Domestic Rules

Depending on the given jurisdiction, there may exist an assortment of domestic rules of specific application to the work of tennis agents. More precisely, there may be special rules relating to sports in general or tennis in particular that are material to the tennis agent's vocation, which might derive from contract-based regulations and in some cases could even be laid down in statutory law. Alternatively, in other countries there may be no *lex specialis* on the matter at all. Furthermore, of those jurisdictions where pertinent sports-related rules do exist, the scope of such rules may be limited to certain aspects of the conduct of agents and provision of agency services in the tennis sector, or could even extend to tennis agency as a lawful occupation.

To depart from the non-specialised end of the regulatory spectrum, there are many countries in which no specific provision has been made for professional tennis agency, either in national law or by means of private regulations of national tennis governing bodies. Take the United Kingdom, for example: not only is there an absence of statutory legislation on the subject there,<sup>33</sup> but the regulations of the national governing body in Britain (the Lawn Tennis Association, LTA) are also silent on the matter.<sup>34</sup> Obviously, this is not to say that the activities of tennis agents

<sup>33</sup> See KEA-CDES-EOSE, 'Study on Sports Agents', 30.

<sup>34</sup> Cf. LTA Rules (2023).

on British soil are entirely unregulated. On the contrary, being registered as self-employed workers or as businesses, tennis agents in the United Kingdom are officially recognised in one way or another by government authorities and, as such, must adhere to all attendant laws and statutes.<sup>35</sup> These will comprise not only applicable labour and/or company laws, but also statutes like the Fraud Act 2006 or the Bribery Act 2010, to name but just two. In addition, as will be further elaborated in the next sub-section, the common law of agency has developed an intricate body of legal authority covering the activities of intermediaries, including those active in the sport of tennis. However, beyond such regulations, legal rules specially applicable to tennis agency – whether of state origin or of a private nature – are essentially non-existent in Britain.<sup>36</sup> And the same can be said about various other countries one might care to mention, including civil law jurisdictions such as Germany and the Netherlands.<sup>37</sup> In many of these jurisdictions, one finds statutory regulations on private employment agencies and job placement services that may be of application to the business of sports agents as they are to other forms of agency;<sup>38</sup> but apart from these laws the activity has not been the object of any particular regulatory attention.

At the other end of the spectrum, there are other (if apparently fewer) countries in which one encounters both national legislation specific to sports agents (i.e. including tennis agents) and relevant regulations adopted by national tennis associations or federations. The prime example in this respect is France, where the sports agent's profession is primarily regulated in the *Code du sport*. This special codified statute, created in the 2000s, contains various provisions applicable to sports agents, which lay down strict requirements and standards on sports agency.<sup>39</sup> Most notable among these is the requirement for individuals to hold an official licence in order to legally carry

<sup>35</sup> KEA-CDES-EOSE, 'Study on Sports Agents', 30.

<sup>36</sup> To be precise, this is the case as far as regards purely domestic regulations. As will be seen in what follows, however, there also exist specific rules laid down by international governing bodies, which are applicable by extension in the countries of member associations, including Great Britain.

<sup>37</sup> KEA-CDES-EOSE, 'Study on Sports Agents', 65, 68–9. See also more recently, and for further detail, Richard Parrish, Andrea Cattaneo, Johan Lindholm et al., 'National Association Intermediary Regulations' (2018), available at: [www.edgehill.ac.uk/wp-content/uploads/documents/National-Associations-Report.pdf](http://www.edgehill.ac.uk/wp-content/uploads/documents/National-Associations-Report.pdf).

<sup>38</sup> *Ibid.*, 70.

<sup>39</sup> On the *Code du sport* in a comparative perspective, see further William Bull and Michael Faure, 'Regulation of Football Agents in Europe: A Comparative Law and Economics Analysis' (2023) 12 Am U Bus L Rev 1, at 23 ff.

out sports agency activities in the French jurisdiction.<sup>40</sup> Unlicensed individuals who undertake sports agency activities in France face a possible criminal penalty of two years' imprisonment along with a fine of at least €30,000,<sup>41</sup> and this may also be accompanied by a temporary or even permanent ban on obtaining the licence and carrying on the occupation.<sup>42</sup> At the same time, the issuance of said licence and the precise conditions attached thereto are assigned by the *Code du sport* to competent national sports federations<sup>43</sup> – which in the case of tennis corresponds to the *Fédération française de tennis* (FFT). For this purpose, the FFT constitutes a Sports Agents Commission within the meaning of the *Code du sport*<sup>44</sup> and maintains a list of sports agents authorised to exercise the profession in the realm of tennis.<sup>45</sup> In order to obtain the requisite licence from the FFT, the applicant must, among other things, pass an entry examination.<sup>46</sup> This exam consists of two parts, the first of which is designed to assess the candidate's aptitude to exercise the sports agent's profession (particularly in terms of their cognisance of relevant social, legal and sporting matters), while the second tests their knowledge of regulations enacted by the FFT, by international federations of which the FFT is a member, by the Association of Tennis Professionals (ATP) and by the Women's Tennis Association (WTA).<sup>47</sup> Applicants must also meet strict conditions of integrity, which prohibit access to the profession *inter alia* to persons 'convicted of acts contrary to honour, probity or rules of morality'<sup>48</sup> or 'affected by personal bankruptcy or a ban on management'.<sup>49</sup> Additionally, once licensed, FFT agents must comply with several good practice rules, including reporting obligations (such as the duty to regularly communicate activity reports, accounting documentation and contractual agreements to the FFT),<sup>50</sup> as well as conflict-of-interest-related requirements

<sup>40</sup> *Code du sport*, Art. L.222–7. As far as citizens of other EU or EEA States are concerned, these persons may perform sports agency activities on the French territory without obtaining a licence if they are already qualified as a sports agent in their country of origin (i.e. where the profession is regulated in the country in question), or if they have already been carrying on such activities for a period in their 'home' state (i.e. in the case that it does not regulate the profession); Art. L.222–15.

<sup>41</sup> *Code du sport*, Art. L.222–20.

<sup>42</sup> *Ibid.*, Art. L.222–21.

<sup>43</sup> *Ibid.*, Art. L.222–7.

<sup>44</sup> *Ibid.*, Art. R.222–1.

<sup>45</sup> *Statuts et règlements FFT* 2023, Art. 134.I.4.

<sup>46</sup> *Ibid.*, Art. 149.1(a).

<sup>47</sup> *Ibid.*, Art. 144.2.

<sup>48</sup> *Ibid.*, Art. 134.II.1(f).

<sup>49</sup> *Ibid.*, Art. 134.II.1(g).

<sup>50</sup> *Ibid.*, Art. 154.

(and particularly the duty to refrain from the so-called *double mandat*, or dual representation).<sup>51</sup> Failure to do so can result in disciplinary sanctions being imposed by the FFT on the licensed agent, including pecuniary fines as well as temporary suspension, if not permanent revocation of their licence.<sup>52</sup> Thus, the applicable sports law in France, as enshrined in the *Code du sport* and transposed in the FFT's *Règlement des agents sportifs*, not only prescribes rigorous requirements for access to the tennis agent's profession, but also couples these with stringent professional conduct regulations.

France is certainly not alone in having regulations governing the occupation and activities of tennis agents – although other states that have also introduced statutory legislation specifically on sports agency while delegating its promulgation in specie to regulatory authorities for the sport concerned, such as Hungary and Italy,<sup>53</sup> have adopted a registration-based model.<sup>54</sup> In Italy, for instance, a budgetary law of 2017<sup>55</sup> established the requirement for all sports intermediaries to be registered with the National Olympic Committee (the *Comitato Olimpico Nazionale Italiano*, CONI) and, in turn, with the relevant national sporting federation, which for tennis is the *Federazione Italiana Tennis e Padel* (FITP). Contracts entered into by professional sportspeople with unregistered agents would thereafter be deemed null and void.<sup>56</sup> An individual's registration is subject to successful completion of a habilitation exam intended to determine the candidate's suitability, especially with regard to knowledge of the sport and attendant law (in the same vein as the French licence exam).<sup>57</sup> To be eligible to take this qualifying test, applicants must be in possession of a secondary school diploma and free from certain criminal convictions (again, along similar lines to the French conditions of integrity).<sup>58</sup> Accordingly, only agents entered in the FITP's register are permitted to operate as 'agents of FITP athletes'<sup>59</sup> and those associated tennis players are only allowed to enlist the services of FITP-registered agents.<sup>60</sup> For their part, the FITP regulations stipulate a series of obligations and rules of conduct to which registered

<sup>51</sup> *Ibid.*, Art. 156.1.

<sup>52</sup> *Ibid.*, Art. 152.

<sup>53</sup> KEA-CDES-EOSE, 'Study on Sports Agents', 68–72.

<sup>54</sup> For an economic analysis of registration- and licence-based agency regulation, see Bull and Faure, 'Agents in the Sporting Field'.

<sup>55</sup> *Legge 27 dicembre 2017 n. 205*.

<sup>56</sup> *Ibid.*, Art. 1.373.

<sup>57</sup> *Ibid.*, Art. 1.373 and *Regolamento CONI degli Agenti Sportivi*, Art. 11.

<sup>58</sup> *Legge 27 dicembre 2017 n. 205*, Art. 1.373 and *Regolamento CONI degli Agenti Sportivi*, Art. 13.

<sup>59</sup> *FITP Regolamento Organico 2019*, Art. 4.2.1.

<sup>60</sup> *Ibid.*, Art. 4.1.1.

tennis agents must adhere, from general principles of honesty, good faith and professional diligence<sup>61</sup> to accounting and fiscal duties,<sup>62</sup> as well as the duty to avoid conflicts of interest with their clients and FITP members in general.<sup>63</sup> Furthermore, upon registering, the agent is bound to respect CONI's 'Code of sporting conduct'.<sup>64</sup> The infringement of any of these requirements may give rise to disciplinary and pecuniary punishments administered by the FITP's federal tribunal,<sup>65</sup> which can include suspension of the agent from the register.<sup>66</sup> Furthermore, players themselves can be sanctioned for making use of unregistered or suspended agents.<sup>67</sup>

As far as the United States is concerned, arguably the situation lies somewhere in the middle of the two extremes just described. In addition to general rules of the law of obligations that are applicable to fiduciary relationships (comparable to those applicable in the United Kingdom under the English common law of agency), there do exist statutory regulations on sports agents' activities (including in the field of tennis) at state level, which are modelled on the National Conference of Commissioners on Uniform State Laws' Uniform Athlete Agents Act (UAAA), adopted in 2000 and last amended in 2019.<sup>68</sup> Yet, while these model rules have been enacted in most States of the Union, they have not been introduced in all fifty and, moreover, they are specifically targeted at sports agents representing student (i.e. amateur) athletes.<sup>69</sup> It is true that the involvement of agents in the collegiate context stretches up to the intersection of amateur with professional sports (i.e. when college athletes complete their university studies and look to turn professional),<sup>70</sup> but the point remains that the UAAA only covers agents who recruit, advise or manage student athletes<sup>71</sup> – and this would appear to

<sup>61</sup> Ibid., Art. 4.6.1.

<sup>62</sup> Ibid., Art. 4.8.3(d).

<sup>63</sup> Ibid., Art. 4.8.2(g).

<sup>64</sup> Ibid., Art. 4.5.2.

<sup>65</sup> Ibid., Art. 4.10.1.

<sup>66</sup> Ibid., Art. 4.5.5.

<sup>67</sup> Ibid., Art. 4.10.2(b).

<sup>68</sup> For a detailed introduction to and overview of the UAAA, see Shropshire and Davis, *The Business of Sports Agents*, 157–64.

<sup>69</sup> KEA-CDES-EOSE, 'Study on Sports Agents', 79–80. This is also the case with the one federal intervention in the domain of sports agents, namely, the Sports Agent Responsibility and Trust Act of 2004; see further Kestenbaum, 'Uniform ADR', 64 ff.

<sup>70</sup> Ibid. On the transition from collegiate to professional sport examined specifically through the lens of tennis, see further Christopher M. Hartley, 'Double Fault: How the NCAA's No-Agent Rule Serves Legal and Policy Errors into the Courts of Tennis' (2019) 72 Ark L Rev 553, at 555 ff.

<sup>71</sup> Revised Uniform Athlete Agents Act (2015) (last amended 2019), § 2.2.

be reflected in most of the individual state enactments.<sup>72</sup> However, individual states are of course at liberty to adapt the UAAA when implementing it into their own laws, and some have done so. The California athlete agents regulation (now known as the Miller-Ayala Act), for example, is not limited to amateur athletes, but rather applies to sports agents in their dealings with both student athletes and professional athletes.<sup>73</sup> In addition, the Miller-Ayala Act provides greater substantive requirements and stricter sanctions for infringements as compared to those envisaged in the UAAA, with agents found to have violated the Act being subject to a mandatory revocation of their entitlement to operate in the state for at least one year, not to mention punishment by a fine of up to \$50,000 and/or imprisonment of up to one year.<sup>74</sup> Similarly, while the vast majority of states that have implemented the UAAA have adopted the registration system and accompanying integrity standards and duties that are foreseen by the UAAA,<sup>75</sup> not all have opted to impose registration requirements on sports agents<sup>76</sup> and even those that have may have chosen differing modalities (such as the need to register with a Secretary of State, or a department of professional registration, or a labour commission).<sup>77</sup> Still, these registration systems do converge around the position of the UAAA that, unlike in Italy, the passing of an examination does not form part of the requirements for registration. Instead, certification is based on an individual's prior training and experience, along with an absence of convictions for crimes involving moral turpitude and the like.<sup>78</sup>

In short, then, there exist sharply contrasting regulatory approaches of relevance to the profession and activities of tennis agents, not only

<sup>72</sup> Cf., for instance, the Mississippi Uniform Athlete Agent Act, § 73.42.3(b), or the Texas Occupations Code § 2051.001.2 juncto 3.

<sup>73</sup> California Business and Professions Code, § 18895.2(b)(1).

<sup>74</sup> Ibid., § 18897.93(a) and (b). See also Paul C. Weiler, Stephen F. Ross, Michael C. Harper et al., *Sports and the Law: Text, Cases, and Problems* (West Academic Publishing, 2023), 750.

<sup>75</sup> Revised Uniform Athlete Agents Act (2015) (last amended 2019), § 4 ff.

<sup>76</sup> Weiler et al., *Sports and the Law*, 751. See also Noah Henderson, 'Student-Athletes Need an Updated Uniform Athlete Agents Act', *Sports Illustrated*, NIL Daily (19 November 2023), available at: [www.si.com/fannation/name-image-likeness/news/student-athletes-need-a-nil-updated-uniform-athlete-agents-act-noah9](https://www.si.com/fannation/name-image-likeness/news/student-athletes-need-a-nil-updated-uniform-athlete-agents-act-noah9).

<sup>77</sup> Philip N. Fluhr Jr, 'The Regulation of Sports Agents and the Quest for Uniformity' (1999) 6 *Sports LJ* 1, at 6–7.

<sup>78</sup> Revised Uniform Athlete Agents Act (2015) (last amended 2019), § 5. Cf. Mississippi Uniform Athlete Agent Act, § 73.42.9; Texas Occupations Code § 2051.102; California Business and Professions Code, § 18896.

between but even within individual countries. For reasons of scope, we have limited ourselves to looking at a few prominent examples, but these alone serve to demonstrate some of the salient differences in this respect. In particular, it has become apparent that jurisdictions diverge in terms of whether to specifically regulate the sports agency business at all; whether to regulate only the conduct of the profession or also access to it; whether to make such access subject to a system of licensing or registration, based on an entry examination or some other criteria; and which sanctions to impose in the event of non-compliance. These kinds of disagreements are certainly not confined to the sport of tennis, but clearly they do impinge upon it as in other sports.<sup>79</sup>

### 3.2 *Transnational Rules*

Before turning our attention to the contracts that agents enter into with professional tennis players, the place of the regulations of international governing bodies in the regulatory panorama of tennis agency should also be acknowledged. Indeed, there are some rules of significance to tennis agents contained in the ITF Code of Conduct, the ATP Rulebook and the WTA Rulebook. Admittedly, these are not so extensive<sup>80</sup> and for the most part are applicable to agents insofar as they fall under the broader category of ‘related persons’ to players (i.e. along with coaches, physicians, family members, etc.), rather than dealing distinctly with their particular activities.<sup>81</sup> Nevertheless, these regulations do provide some standards of behaviour with which player agents (among others) are bound to agree and

<sup>79</sup> The sport that has attracted most attention in the debate surrounding the optimal approach to the regulation of sports agents is, again, football, where the international governing body, the *Fédération internationale de football association* (FIFA), introduced a licensing system for players’ agents in 1991, which was made subject to a qualifying exam in 1994. FIFA later replaced this licence with a registration system in 2015 and eliminated the habilitation exam in the process, before coming full circle with the enactment of the current FIFA Football Agent Regulations in 2023: for a discussion of this regulatory controversy in the context of football, see Bull and Faure, ‘Agents in the Sporting Field’.

<sup>80</sup> To the extent that sports agents’ activities are regulated in their own right by rules of sporting bodies – save in exceptional cases such as those of France and Italy that were already explained – this tends to be in team sports, where agents are involved in player transfers between clubs; KEA-CDES-EOSE, ‘Study on Sports Agents’, 77.

<sup>81</sup> ITF World Tennis Tour Code of Conduct 2023, Art. I; ATP Rulebook 2024, § VIII 8.05 (A)(1)(a); WTA Rulebook 2023, § XVII(B)(1)(f) (which instead employs the term ‘player support team member’). In the case of the WTA Rulebook, agents of elite young players (i.e. up to 18 years of age) are also specifically required to sign a Code of Ethics; § X(B)(5) (c)(ii)(b).

to comply in providing their services during the tournaments concerned. In particular, as persons assisting players in their participation in tennis tournaments, agents are under an obligation to refrain from engaging in aggravated or abusive behaviour or other conduct that is contrary to the integrity of the game of tennis.<sup>82</sup> Infractions of these rules can lead to an agent being stripped of their tournament accreditation and denied access to any tournament governed by the given association, potentially even permanently.<sup>83</sup> Being established by private regulatory authorities, these rules are grounded not in state laws but in contracts, meaning their enforcement is also necessarily contractual. On the other hand, because the rules laid down by the ITF, ATP and WTA – to which players and national tennis federations also agree to adhere – are inherently transnational, unlike domestic legislation they are not territorially limited (or at least not in and of themselves), and are therefore applicable to the actions of tennis agents across different jurisdictions.<sup>84</sup>

#### 4 Contractual Agreements between Professional Tennis Players and Agents

Having surveyed the statutory and contract-based regulations applicable to the profession of tennis agency itself, in this final sub-section we will zoom in on contractual agreements between professional tennis players and agents and the rules that govern these contracts, as well as the distinct legal issues to which such agreements can give rise. Of course, the primary source of obligations in player-agent relations is the contract between the parties, but this is subject to the relevant law on player-agent contracts.

##### 4.1 *The Law on Player-Agent Contracts*

In general terms, unlike the law on tennis agency as a profession, there are greater similarities in the regulatory approaches taken to tennis agency contracts across distinct jurisdictions. While the specific rules applicable to player-agent contracts and sources thereof may well differ, a broad

<sup>82</sup> ITF World Tennis Tour Code of Conduct 2023, Art. VI(A) and (B); ATP Rulebook 2024, § VIII 8.05(A)(1) and (2); WTA Rulebook 2023, § XVII(H)(1). See further Ben Livings and Karolina Włodarczak, 'Procedural Fairness in the International Tennis Federation's Disciplinary Regime' (2020) 18 Ent & Sports LJ 1, at 2 ff.

<sup>83</sup> ITF World Tennis Tour Code of Conduct 2023, Art. VI(A) and (B); ATP Rulebook 2024, § VIII 8.05(A)(1)(b) and (2)(e); WTA Rulebook 2023, § XVII(H)(3)(c).

<sup>84</sup> On the transnational nature of these rules, see Chapter 1 of this volume.

concordance can be identified in the substance of the laws governing such contracts, and particularly in terms of the standards to which agents are under a duty to adhere in their contractual dealings with players. In fact, it was already seen that where there exist sports laws governing the activities of tennis agents, such laws impose duties of good faith and conflict-of-interest-related obligations on them, including in their contractual relations with players. And the same is true of the general rules of private law that are applied to player-agent contracts in different countries.

In the case of civil law jurisdictions, the overarching, mandatory principle of good faith under general contract law (which is often enshrined in the national civil code<sup>85</sup>) governs the negotiation, formation, construction, interpretation and execution of contracts, including contracts of agency, and being a 'super-provision' this obviously has wide-ranging applications and far-reaching implications in and of itself. There may also be special rules of civilian contract law applicable to agency contracts, however. In Germany, for example, the civil code also contains a number of provisions covering brokerage contracts, such as rules on brokerage fees.<sup>86</sup> Similarly, the French civil code comprises a separate title on 'mandates' whereby a party confers upon an authorised representative the power to act in their name.<sup>87</sup> This prescribes certain obligations for the representative (not to mention the mandator), like the obligation for the agent to report to the mandator on their management of the mandate.<sup>88</sup> As for common law countries, there exist comparable obligations – which include an expansive utmost good faith obligation – under predominantly precedential rules of agency and fiduciary relationships.<sup>89</sup> Indeed, while the requirement to act in good faith is not a typical feature of the common law of contract in general, it famously is of the law on fiduciary relations in particular. Thus, as already alluded to, both the English and American legal systems recognise a common law doctrine of agency controlling the principal-agent relationship, by virtue of its fiduciary

<sup>85</sup> Cf. *Bürgerliches Gesetzbuch*, § 242; *Burgerlijk Wetboek*, Art. 6:248; *Code civil*, Art. 1104; *Codice civile*, Art. 1175.

<sup>86</sup> *Bürgerliches Gesetzbuch*, § 652 ff.

<sup>87</sup> *Code civil*, Art. 1984 ff.

<sup>88</sup> *Ibid.*, Art. 1993.

<sup>89</sup> Among the obligations prescribed by the common law of agency, another conduct standard that is worth noting in this context is the duty of competence that the agent owes to the principal, insofar as it relates to the suitability of the agent's performance (and, in this sense, reflects similar concerns to those underpinning the access requirements in other jurisdictions discussed previously). On common law agency principles as applied specifically to the agent-athlete relationship, see further Shropshire and Davis, *The Business of Sports Agents*, 88 ff., and also Weiler et al., *Sports and the Law*, 686 ff.

nature as one where an agent is given authority to act on behalf of a principal in their dealings with third parties.<sup>90</sup> The fiduciary duty of good faith requires the agent to act in accordance with general private law obligations of loyalty, honesty and openness, which fundamentally entail that fiduciaries must pursue their beneficiary's interest and place it above their own.<sup>91</sup> In the words of Lord Justice Jacob in the English case of *Imageview Management Ltd v. Jack* (which involved a football intermediary):

The law imposes on agents high standards. Footballers' agents are not exempt from these. An agent's own personal interests come entirely second to the interest of his client. If you undertake to act for a man you must act 100%, body and soul, for him. You must act as if you were him. You must not allow your own interest to get in the way without telling him.<sup>92</sup>

More particularly, it follows from these long-standing and well-established standards of fidelity that the sports agent is duty-bound to disclose to their athlete-client any real possibility of a conflict of interest that may arise in the agent's performance of his representative role, and to obtain the client's consent to said conflict before proceeding.<sup>93</sup> While this does not go as far as the outright ban on dual representation provided under the French sports law code,<sup>94</sup> it does mean that as a matter of principle the common law 'denies the right of an agent to assume any relationship that is antagonistic to his duty to his principal'.<sup>95</sup>

#### 4.2 *Legal Issues Arising from Player-Agent Relations in Professional Tennis*

Following directly on from the previous point, one of the most notable legal issues that can arise from player-agent relations is that of conflicts

<sup>90</sup> Shropshire and Davis, *The Business of Sports Agents*, 19. Of course this is not to mention other common law jurisdictions. For an account of the application of the common law of fiduciary duties to player agency also in Australia, for example, see Simon Johnson, 'Show Me the Money!!! Player Agents and Conflicts of Interest' (2006) 1 Aus & NZ Sports LJ 103.

<sup>91</sup> *Ibid.*, 20. See also Sukhninder Panesar, 'The Nature of Fiduciary Liability in English Law' (2007) 12 Cov LJ 1.

<sup>92</sup> [2009] EWCA Civ 63, at para. 6.

<sup>93</sup> Weiler et al., *Sports and the Law*, 687; *Imageview Management Ltd v. Jack* [2009] EWCA Civ 63, at paras 6–8. Furthermore, the measure of disclosure that is required is stringent, such that there is little prospect of consent being granted by the client; see further Johnson, 'Show Me the Money!!!', 111.

<sup>94</sup> *Code du sport*, Art. L.222–17.

<sup>95</sup> *Burleson v. Earnest*, 153 S.W.2d 869 (Court of Civil Appeals of Texas 1941), at 874.

of interest on the part of agents; a potential issue that is all but inherent in the multitude of services that player agents provide<sup>96</sup> and one that has only grown in magnitude since the advent of large-scale sports agencies.<sup>97</sup> As regards specifically professional tennis, such conflicts can arise not only due to the fact that (especially larger) agencies usually represent a plurality of players, whereby serving the interests of one player may come at the expense of another,<sup>98</sup> but also because (as already mentioned) tennis agents have also expanded their operations into the management of tournaments, which can give rise to legal questions if they wish for players they represent to appear in the tournaments they promote.<sup>99</sup> Both of these scenarios arose in the case of *Lendl v. ProServ Inc.*,<sup>100</sup> for instance, which concerned an action brought by Ivan Lendl against ProServ, his erstwhile representative agency, on the ground of breach of fiduciary duty. Lendl argued that ProServ had engaged in practices amounting to a conflict of interest in two respects: first, by signing him up to merchandising agreements and sporting events together with other tennis player clients as a way of securing more income for those clients, but on less advantageous conditions for himself; and second, by having him participate in events managed by ProServ for fees that were lower than the market rate he could command, in order to acquire greater profits for themselves.<sup>101</sup> While the case was ultimately settled out of court, it provided an early example of the contractual disputes between players and agents that can ensue under the common law of agency. Furthermore, the added role of player agents in the promotion of tennis tournaments might also give rise to issues under competition law. Since tennis agents (and again particularly all-inclusive agencies) can effectively attain monopoly power in their representation of top players, this may result in a spill-over monopolisation of their management of tournaments, to the illegal exclusion of actual and potential competing tournaments.<sup>102</sup> As Hainline puts it, '[w]ith this power,

<sup>96</sup> Park, 'The Role of Athlete-Agents', 110.

<sup>97</sup> Mason and Duquette, 'Globalisation and the Evolving Player', 102.

<sup>98</sup> Ibid.

<sup>99</sup> Metanias et al., 'A Critical Look', 62.

<sup>100</sup> No. B-88-254 (District of Connecticut 1988).

<sup>101</sup> Johnson, 'Show Me the Money!!!', 111.

<sup>102</sup> Jon S. Hainline, 'Matchpoint: Agents, Antitrust, and Tennis' (1987) 64 U Det L Rev 481, at 497-8. On competition law aspects of tennis more generally, see further Katarina Pijetlovic's contribution in Chapter 12 of this volume, and also Ryan M. Rodenberg and Daniel Hauptman, 'American Needle's Progeny? Tennis and Antitrust' (2012) 2 Pace IP Sports & Ent LF 10.

the player agents can determine the success of any tournament by deciding what top ten players will participate in a given event. If the players follow their agent's advice, the agent's event is likely to succeed at the expense of his competitors.<sup>103</sup> It was in light of these concerns that the now-disbanded Men's International Professional Tennis Council (MIPTC) actually adopted a 'conflicts of interest rule' prohibiting player representatives from simultaneously promoting and managing professional tournaments.<sup>104</sup> This itself led to an asserted violation of competition law in the United States, however, in the case of *Volvo v. MIPTC*.<sup>105</sup> In that case (which was also ultimately settled), IMG and ProServ (both of which were frequently involved in the management of tournaments) joined Volvo, a sponsor-client of ProServ, in challenging the MIPTC's rule on the basis that it infringed the Sherman Antitrust Act<sup>106</sup> – while the MIPTC counterclaim alleged anti-trust violations based on the agents' dual roles.<sup>107</sup>

Another important (and related) legal issue that was raised in that case – and that also concerns agents in their dealings with players – is that of restraint of trade. This common law doctrine rather concerns contractual restrictions on freedom to conduct business, and assesses the extent to which such restrictions are enforceable according to a reasonableness standard and with regard to public policy and the interests of the parties.<sup>108</sup> The most well-known tennis-specific case illustrating the issue of restraints in agency agreements is that of *Zverev v. Ace Group International Ltd*,<sup>109</sup> which involved a dispute between Alexander Zverev and his former sports agency Ace. In that case, Ace claimed a breach of

<sup>103</sup> Hainline, 'Matchpoint', 499.

<sup>104</sup> MIPTC Official Yearbook, Supp. 1 (1987).

<sup>105</sup> *Volvo North American Corp. v. Men's International Professional Tennis Council*, 857 F.2d 55 (2d Cir. 1988).

<sup>106</sup> See further Ryan M. Rodenberg, 'Age Eligibility Rules in Women's Professional Tennis: Necessary for the Integrity, Viability and Administration of the Game or an Unreasonable Restraint of Trade in Violation of Antitrust Law?' (2000) 7 Sports LJ 183, at 196 ff.

<sup>107</sup> See also Metanias et al., 'A Critical Look', 62–3.

<sup>108</sup> On the application of the restraint of trade doctrine specifically in the context of professional tennis, see Ilias Bantekas, 'Professional Tennis and Restraint of Trade in the English Common Law' (2023) 22 Va Sports & Ent LJ 1. See also more generally David Capper, 'When Is the Restraint of Trade Doctrine Engaged?' (2023) 1 Contract and Comm L Rev 196; and Stephen F. Ross, 'Labor Restraints under Antitrust Law' in James A. R. Nafziger, Thomas B. Stoel and Ryan Gauthier (eds), *Handbook on International Sports Law* (Edward Elgar, 2022), 423.

<sup>109</sup> [2020] EWHC 3513 (Ch).

contract on the part of Zverev (as well as his parent guarantors), since he had purported to end his relation with Ace notwithstanding the fact that the term of the representation agreement he had entered into with the agency at the age of 15 was not due to expire for another nine years. Zverev then sought a declaration before the UK High Court that the contract was unfair and oppressive. More precisely, Zverev contended that the lengthy duration of the contract, given its exclusive character, amounted to an unlawful restraint of trade that was not justified as reasonable, and was therefore unenforceable. And while the parties again eventually settled, the nature of the settlement firmly in Zverev's favour suggests that the High Court would have agreed with Zverev's contentions.<sup>110</sup> What is particularly remarkable about this outcome is that Zverev did not even claim to have sustained any financial disadvantage by reason of his protracted contract with Ace, which is the traditional line of argumentation in actions founded on the restraint of trade doctrine. Instead, it was the interest in having an agency relationship based on continued trust and confidence that motivated Zverev's claim, bearing in mind the particular importance of tournament prizes and image rights in professional tennis.<sup>111</sup> This case could therefore have significant ramifications for player-agent agreements and the ability of players to make alternative representational choices. Conversely, for agents this could entail a further limitation on the degree of contractual autonomy that they enjoy and the freedom to shape their relations with players as they desire.

<sup>110</sup> Bantekas, 'Professional Tennis', 11 ff.

<sup>111</sup> *Ibid.*, 13.