Can I consent to my own injuries?

It is not often that we come across such a fascinating case dealing with the ancient principle of *volenti non fit injuria.* The *volenti* principle was formulated by Domitius Ulpian, a Roman Jurist serving as a Praetorian Prefect from 222 until 228 AD. Astonishingly, this principle is still applicable in our law. Back in ancient Rome, it was known as *nullainiuriaest, quæ in volentem fia,* which essentially means that a wrongdoer is not liable where an injured person has consented to the injury or the risk thereof.

What do we mean by "consented to injury", and is it even possible for me to consent to my own injuries?

Before we can shed light on whether you can consent to your own injuries, we must first ensure a proper understanding of consent as a ground of justification. Grounds of justification are special circumstances in which conduct that appears to be wrongful is rendered lawful because the violation of the interest is not unreasonable or contra *boni mores*.

The following are the requirements for valid consent:

1. The consent is given freely and voluntarily.
2. The person giving the consent must be capable of giving the consent (intellectually mature).
3. The consenting person must fully know the possible prejudice and must fully appreciate the nature and extent of the harm.
4. The consent must not be *contra boni* mores (against good morals).

There are two forms of consent:

1. Consent to injury, where the injured party consents to specific harm. For example, if you consent to a doctor removing your appendix.
2. Consent to the risk of injury. For example, rugby players accepting the risks of injuries during a tackle.

Now that we have dealt with the history of the principle and the requirements thereof, let us discuss the recent case that again gave rise to the *volenti* principle, namely, the case of *Jackson vs RAF*.

The case concerned Ms Jackson, a stuntwoman, who, while filming 'Resident Evil 6', was required to drive a motorbike, without a helmet, at an oncoming vehicle which was transporting a boom operator and a boom arm with a camera attached to it. On 5 September 2016, the day of the accident, the boom was lifted too late, and the camera struck Jackson, severely injuring her. A total of three runs were conducted in preparation for the stunt, the first and second runs were successful, but on the third run, the accident occurred, hereinafter referred to as the incident run.

She instituted legal action against the South African film company, the stunt coordinator, her employer, the driver of the boom vehicle (the driver), and the camera boom operator. She also instituted a separate action against the Road Accident Fund (RAF). The actions were later consolidated, but when the matter was heard before the Pretoria High Court, the RAF denied that the driver was negligent and that even if he was, Ms Jackson, as a stunt driver, had consented to the risk of damage – thus raising the defence of *volenti non fit injuria*.

Experts for Plaintiff and Defendant agreed in a joint minute that the 'boom up' call during the incident run occurred at least three seconds past the location where the boom was lifted in the first and second successful run.

The question begging an answer is why did the driver deviate from the two successful test runs? Apparently, the director instructed that 'boom up' call had to come one second later than during the rehearsal run to get a more exciting shot, and the driver miscalculated the margin of error on the command.

Coincidently, during cross-examination, the driver and the boom operator contradicted each other to the point that the RAF conceded that no reliance can be placed on their evidence.

Ms Jacson's evidence was that she did not consent to any other risk and that she was unaware that the director had given the driver instructions to decrease the safety margins from the rehearsal run to the incident run.

The Judge found that there was no evidence to substantiate that Ms Jackson had consented to a specific risk. She accepted the misadventures that might happen in the normal course of the stunt but not to the deviation from the previous successful runs. Even if she had voluntarily assumed the risk of harm of riding a motorcycle as a stunt rider, she did not assume the risk of diminishing the safety

margin without her knowledge because she assumed that the incident run would be a repeat of the rehearsal run.

The RAF, therefore, failed to prove the facts for the *volenti defence* because they could not prove valid consent.

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