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# **The legal liability of the various role players in professional boxing for an injury or death suffered by a boxer during a professional boxing bout held in South Africa**

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*“You don’t play boxing. You really don’t. You play golf, you play tennis,  
but you don’t play boxing.”*

- Sugar Ray Leonard

## A C K N O W L E D G E M E N T S

I was privileged to have been afforded the opportunity by caring and hard-working parents to study law (BA LLB) after matriculating in 1980. That opportunity opened the door to a fulfilling legal career and ultimately to this LLM (Research) dissertation, which I embarked upon in the senior years of my legal career.

The encouragement and moral support that I received from my wife (Linnette) and our four children (Megan, Dylan, Tyron and Brittany) during my LLM journey, was invaluable. Each one of them would pop into my study from time to time to enquire how my dissertation was progressing and I found those visits very uplifting. In my wildest dreams I had also never imagined that I would one day join my two daughters as fellow students at UP. It was a truly special experience for me.

I would also like to express my sincere gratitude to my supervisor, Professor Rian Cloete who enthusiastically supported my research proposal from the outset and ably guided my dissertation to completion. I hope that I have made him and the UP Law Faculty proud.

Finally, to all the professional boxers (past, present and future) who ply their fistic trade in the square ring, thank you for the entertainment that you provide to me and the many other boxing enthusiasts around the globe. I am also honoured and grateful to have had the opportunity to serve you and the 'sweet science' of boxing in my capacity as an administrator over the years.

In closing, I hope that this research study will heighten awareness amongst the various role players in professional boxing in South Africa regarding the critical importance of ensuring that all the medical safety measures that are provided for in our boxing laws are duly complied with, not only to make professional boxing safer for all the boxers, but also to assist those role players to avert legal liability for injuries or death that may arise in the ring on their watch.

**Gerald Andrew Ramsden**

3 January 2021

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## **A B S T R A C T**

In a sport like professional boxing where the infliction of bodily harm on one's opponent is the primary objective of both the participants, it is therefore not surprising that the risk of serious bodily injury (and even death) is omnipresent within the square ring that these modern-day gladiators ply their fistic trade. At the same time, those who control, organise and officiate these contests, as well as those who prepare the combatants for battle, often do so oblivious of the daunting legal risks that stalk them whilst they do so. This research study explores these legal risks in the context of the applicable laws and the respective roles performed by each of these role players. Whilst the research study has a South African focus, it also briefly examines the corresponding laws in the State of New York and the United Kingdom, with a view to using same as a comparative basis for making recommendations on how these legal risks can be averted and/or mitigated in South Africa. Although this research study reveals that few of these role players escape the net of potential liability posed by these legal risks, the recommendations that are made in this research study should hopefully provide some comfort to them, if those recommendations were to be adopted and implemented.

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# CHAPTER 1 : RESEARCH INTRODUCTION

## 1.1 Introduction

Professional boxing is widely accepted as a highly paid professional sporting activity in which the ultimate goal is to inflict a concussive head injury upon an opponent or at least cause sufficient bodily harm to render an opponent incapable of continuing the contest.<sup>1</sup> Although some boxing purists prefer to describe professional boxing in terms of the 'sweet science' in which the emphasis is placed on the boxers' respective offensive and defensive skills, the relatively high risk of injury and death to the participants nevertheless remains an inescapable reality in professional boxing.

In a sport where the risk of injury and possibly even death is omnipresent, it is to be expected that questions will arise whether legal liability for such injuries and death can be imputed to the various persons who control, promote, officiate and participate in these pugilistic contests. The answers to these questions are by no means straightforward, but are embedded in a conundrum of rather complex legal issues which straddle both public and private law.

## 1.2 Motivation of the study

Although professional boxing (or prizefighting, as it was known in its formative years) has been widely practised across South Africa since its introduction into South Africa in the early 1800's, and also has the distinction of being the only sport in South Africa that is currently regulated by its own specific legislation,<sup>2</sup> there is, however, a dearth of South African legal literature pertaining to professional boxing *per se*.<sup>3</sup> Similarly,

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<sup>1</sup> Beran "The law(s) of the rings: Boxing and the law" 2009 16 *Journal of Law and Medicine* 684-695 accessed at <https://www.researchgate.net> (Beran).

<sup>2</sup> The legal framework regulating professional boxing in South Africa is discussed in chapter 4 of this research paper.

<sup>3</sup> Although boxing is often cited by way of example in South African legal literature that discusses legal liability for injuries in sport generally, I am not aware of any South African legal literature that focuses specifically on professional boxing.

there are also no South African reported judgements (unlike in other jurisdictions) pertaining to the delictual aspects of professional boxing.

There is accordingly no legal guidance currently available to the various role players in South African professional boxing regarding their potential legal liability for injuries or death that may arise in a professional boxing bout in which they are involved in their respective capacities. In my experience as a professional boxing administrator,<sup>4</sup> these role players generally appear oblivious of the potential legal liability to which they are exposed and this often results in many of them performing their responsibilities in a somewhat nonchalant manner. What is most concerning about this tendency, is that many of these responsibilities that they perform within professional boxing have a direct or indirect bearing on the ultimate health and safety of the professional boxers concerned.

This research study is motivated by the desire to help fill the afore-mentioned literary void that currently exists in relation to professional boxing and to assist in educating the various role players in South African professional boxing regarding their potential legal liability for injuries and death that may arise in the boxing bouts that they are involved in. By educating the role players in this regard, it is hoped that it will in turn ultimately contribute to improving the overall health and safety of professional boxers in South Africa.

### **1.3 Problem statement**

The enquiry into whether legal liability can be imputed to the various role players in professional boxing for an injury or death suffered by a boxer during a professional boxing bout held in South Africa, requires one to traverse various branches of public and private law, the most notable being the law of delict, the law of contract and criminal law. The enquiry furthermore requires one to have a sound practical understanding of the intricacies of professional boxing. Due to this multitude of factors that impact on the enquiry, the enquiry is likely to be a challenging one. However, with

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<sup>4</sup> I have twenty-five years' experience as a professional boxing administrator, both at a national and continental level.

a fighting spirit akin to that of a professional boxer, one should not shy away from the challenge, but instead pursue it with vigour and determination to its final conclusion.

The precise ambit of the enquiry is encapsulated in the research questions couched in paragraph 1.4 below (the Research Questions).

## **1.4 Research Questions**

**1.4.1** Can legal liability be imputed to any of the following role players in professional boxing for an injury or death suffered by a boxer during a professional boxing bout held in South Africa:

- the controlling authority of professional boxing, namely Boxing SA;
- the international sanctioning organization that sanctions the bout as an international championship bout;
- the promoter and matchmaker of the bout;
- the officials of the bout;
- the supervisors of the bout;
- the medical personnel at the bout;
- the boxers participating in the bout; and
- the boxers' managers, trainers and seconds?

**1.4.2** What measures (if any) can be adopted in South Africa to avert and / or mitigate the afore- mentioned legal liability, having regard to the comparative legal position pertaining to professional boxing in the United Kingdom (UK) and the State of New York (NYS)?

## **1.5 Choice of comparative jurisdictions**

The UK and NYS (collectively, the Comparative Jurisdictions) have been chosen as the comparative jurisdictions for this research study, for the reasons outlined below.

Prizefighting (or professional boxing as it is known today) had its origins in the UK (more specifically London) in the 18<sup>th</sup> Century, from where it spread to other parts of the world, including South Africa and the United States of America (US). In the US,



NYS was the pioneer with regard to the legalisation and state-control of prizefighting, and many other states in the US have subsequently adopted NYS's regulatory system as the blueprint for the control of professional boxing in their respective states. In addition, the UK and NYS are presently also the epicentres of professional boxing in the world today.<sup>5</sup>

The combination of the afore-mentioned factors has made the UK and NYS natural choices as the two comparative jurisdictions used for this research study.

## 1.6 Methodology

In conducting the research for this study, literary sources, legislation and case law will be used. Although the approach to these sources will comprise primarily a pure theoretical investigation, the research will also critically evaluate the content of those sources. In addition, reliance will also be placed on my own personal knowledge and experience as a professional boxing administrator, particularly with regard to the manner in which the relevant laws are practically applied within professional boxing in South Africa. In closing, the research outcomes will be applied to propose certain recommended measures that can be adopted in South Africa to avert and / or mitigate the relevant legal liability, having regard to the legal position pertaining to professional boxing in the UK and NYS.

## 1.7 Outline of chapters

This research study commences with an introduction in **Chapter 1**. **Chapter 2** provides an overview of the modern history of professional boxing in South Africa and the Comparative Jurisdictions, focusing on the legal measures that have been introduced in these jurisdictions to control the conduct of prizefighting, which later evolved into professional boxing as we know it today. The purpose of this chapter is to provide an historical backdrop for the legal discussions that follow in the subsequent chapters. **Chapter 3** contains an overview of the more common types of injuries that a boxer can suffer during a professional boxing bout, particularly those that can be life-threatening or cause permanent disability to the injured boxer. Its purpose is to

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<sup>5</sup> Another epicentre of professional boxing in the world today is Las Vegas in the State of Nevada, US.

highlight the inherent risks in professional boxing and therefore the need for the various role players to perform their respective responsibilities diligently in an endeavour to avert same. **Chapter 4** identifies the laws that presently regulate professional boxing in South Africa and the Comparative Jurisdictions, and provides a broad overview of their respective provisions in so far as they are relevant to the Research Questions. Although the primary purpose of **Chapter 5** is to identify who the various role players are in professional boxing, it also touches on their respective functions and responsibilities. Those functions and responsibilities are discussed in further detail in **Chapter 6**, which also describes the various organizational phases of a professional boxing bout. **Chapter 7** applies the laws discussed in Chapter 4 to the Research Questions with a view to providing answers to same. This research study concludes with **Chapter 8** which contains recommendations regarding measures that can be adopted in South Africa to avert and / or mitigate the legal risks that the various role players face in respect of injuries or death that professional boxers may suffer in bouts in which they are involved in their respective capacities. In doing so, regard is had to the comparative legal position in the Comparative Jurisdictions.

### **1.8 Delimitations**

This research study pertains specifically to professional boxing and does not include amateur boxing. Although they are generally similar in nature, professional and amateur boxing differ significantly in the manner in which they are regulated, and also in the manner and intensity in which the bouts are conducted. This research study also does not cover other combat sports, such as mixed martial arts.

The injuries and death contemplated in the Research Questions are injuries or death suffered during a specific bout, and do not include injuries or death suffered from the long-term effects of professional boxing, such as chronic traumatic encephalopathy (CTE), also known as *dementia pugilistica* or punch-drunk syndrome. This research study also does not include the transmission of communicable diseases, such as human immunodeficiency virus (HIV) or the COVID-19 virus, during the course of a professional boxing bout.

The legal liability dealt with in this research paper is legal liability in terms of the law of delict (or tort law, as it is known in the Comparative Jurisdictions). This research study does not deal with criminal liability.

Although the content of this research paper applies to both male and female professional boxing, for purposes of convenience only pronouns denoting the male gender have been used.

This research study is based on research conducted up and to 3 January 2021.

## C H A P T E R 2 : T H E B U S I N E S S O F B O X I N G

### 2.1 Introduction

Boxing developed as a popular competitive sport in ancient Greece and Rome.<sup>6</sup> Whereas the Greeks emphasized the physical and mental attributes of the participants, the Romans treated boxing primarily as a gladiatorial spectacle in which the participants (who usually wore steel-studded hand wrappings and other dangerous paraphernalia) often fought to the death.<sup>7</sup> With the fall of the Roman Empire in 476 AD, boxing saw a gradual decline in popularity.<sup>8</sup>

During the 18th Century, boxing saw a revival in London with the advent of bare-knuckle prizefights in which the contestants fought for money and the spectators made wagers on the outcome.<sup>9</sup> This form of prizefighting, which gradually spread to other parts of the world (including South Africa and North America), gradually evolved into what we know as professional boxing today.

In modern times, professional boxing has become a multi-billion-dollar business, with the top professional boxers ranking amongst the richest athletes in the world.<sup>10</sup> Professional boxing presently provides a livelihood for a multitude of participants across the globe and plays a significant role in various other industries, particularly the entertainment and leisure industries. With regard to these latter industries, professional boxing provides much sought-after content for television broadcasters and in more recent times, also for online streaming service providers. The growth of the casino industry in the US, particularly in Las Vegas, Nevada, has been closely

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<sup>6</sup> British Boxing Board of Control "History of Boxing" available at <http://BBBC.com/content/history-boxing> (BBBC Webpage).

<sup>7</sup> Anderson "The Legality of Boxing: A Punch Drunk Love?" (2007) accessed at <https://www.amazon.com/Legality-Boxing-Punch-Drunk-Birkbeck-ebook> (Anderson).

<sup>8</sup> BBBC Webpage.

<sup>9</sup> BBBC Webpage.

<sup>10</sup> Forbes "The World's Highest-Paid Athletes" available at <https://www.forbes.com/athletes/list/#tab:overall> (Forbes). In the 2019 Forbes rankings, Canelo Alvarez, a popular Mexican professional boxer, ranked #4 with a total annual income of USD94m.

associated with professional boxing, which has been used by the various casinos to attract patrons to their gambling establishments.

A detailed history of professional boxing, from its origins in ancient times to the present day, is however beyond the scope of this research paper. What is contained in this chapter is an overview of the more recent history of professional boxing, specifically in South Africa, the UK and NYS, with the focus being on the legal measures that have been introduced in these jurisdictions to regulate the conduct of prizefighting, which later evolved into professional boxing as we know it today. The purpose of this overview is to provide an historical backdrop for the legal discussions that follow in the subsequent chapters of this research study.

## **2.2 South Africa**

Boxing was introduced into South Africa during the first British occupation of the Cape in 1795. Bouts were conducted under the London Prize Ring Rules<sup>11</sup> for nearly a century, with illegal bare-knuckle fights (often fought until the last man remained standing) being a common feature at the military camps in Cape Town and along the Eastern Cape frontier.<sup>12</sup>

Although prizefighting was illegal in South Africa prior to 1923, its popularity nevertheless burgeoned in the vibrant gold- and diamond-mining towns of Johannesburg and Kimberley.<sup>13</sup>

In 1923, Parliament enacted the Boxing and Wrestling Act No. 5 of 1923 (the 1923 Act) in terms of which prizefighting was legalized subject to stringent governmental controls, which included the prohibition of interracial bouts.<sup>14</sup>

In 1954, the 1923 Act was repealed by the Boxing and Wrestling Control Act No. 39 of 1954 (the 1954 Act), which revised the governmental controls of professional boxing, but nevertheless retained the prohibition on interracial bouts.

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<sup>11</sup> These are discussed in paragraph 2.3 below.

<sup>12</sup> Jackson *Champions - An Illustrated Encyclopaedia of SA Boxing* (undated) 9 (Jackson).

<sup>13</sup> Jackson 9. This was largely due to the involvement and financial support of various influential businessmen at the time, particularly the mining magnate Barney Barnato, who was a keen boxer and avid boxing fan.

<sup>14</sup> Jackson 9.

In November 1973, the 1954 Act was amended in order to allow the Minister of Sport and Recreation to relax the prohibition on interracial bouts in certain circumstances.<sup>15</sup> This opened the door for interracial bouts to take place in South Africa, albeit under a Ministerial concession.<sup>16</sup> The 1954 Act was subsequently amended to entirely remove the legislative prohibition on interracial bouts in South Africa.

With the advent of democracy in South Africa in 1994, which also saw the re-admission of South Africa as a member of the various international boxing organisations (following its earlier expulsion from those organisations during the apartheid era), the need arose to align South Africa's boxing legislation with the principles enshrined in the Constitution<sup>17</sup> and also with international best practice in professional boxing, particularly with regard to protecting the health and safety of professional boxers. This culminated in the enactment of the South African Boxing Act No. 11 of 2001 (the South African Boxing Act),<sup>18</sup> which repealed the 1954 Act, save for certain provisions allowing for the establishment of a provincial boxing commission in each of the provinces.<sup>19</sup>

In 2004, a new set of boxing regulations was promulgated in terms of the South African Boxing Act (the South African Boxing Regulations).<sup>20</sup> These regulations repealed the prior regulations that had been in force under the 1954 Act.

The South African Boxing Act and South African Boxing Regulations (collectively, the South African Boxing Legislation) currently still regulate professional boxing in South Africa and save for a minor amendment that was made to the South African Boxing

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<sup>15</sup> Jackson 10. This relaxation was introduced specifically to permit a white South African, Pierre Fourie to challenge an Afro-American, Bob Forster for his WBA light-heavy weight title in Johannesburg on the 1<sup>st</sup> December 1973. This was to become the first interracial professional boxing bout to be held in South Africa.

<sup>16</sup> Jackson 10.

<sup>17</sup> Constitution of the Republic of South Africa Act, 1996 (the Constitution).

<sup>18</sup> Published in Government Gazette 23461 dated 24 May 2002 and operative with effect from that date.

<sup>19</sup> To date, no provincial commissions have been established in the various provinces and Boxing SA (the national controlling authority established in terms of the South African Boxing Act) remains the sole controlling authority for professional boxing in South Africa.

<sup>20</sup> Published in GNR.368 of 26 March 2004 and operative with effect from that date.

Regulations in 2005,<sup>21</sup> they have remained unchanged since their initial enactment in 2004.<sup>22</sup>

In terms of the 1923 Act and later the 1954 Act, the administration and enforcement of the provisions of these Acts and the Regulations promulgated thereunder was entrusted to the South African National Boxing Board of Control (the South African Boxing Board), a statutory body established in terms of those Acts, and also to the various provincial and local boards (also being statutory bodies) which exercised, within their respective provinces or designated areas, as the case may be, the specific powers that had been delegated to them by the South African Boxing Board.

When the 1954 Act was repealed by the South African Boxing Act, the South African Boxing Board and all the afore-mentioned provincial and local boards were disbanded and replaced by Boxing South Africa (Boxing SA), the statutory body established in terms of the South African Boxing Act to administer and enforce the provisions of the South African Boxing Act and South African Boxing Regulations.

Boxing SA currently still functions as the sole controlling authority of professional boxing in South Africa.<sup>23</sup>

## **2.3 United Kingdom**

Following its decline in popularity after the fall of the Roman Empire, boxing was later revived in London during the 18th Century in the form of bare-knuckle prizefights in which the contestants fought for money and the spectators made wagers on the outcome.<sup>24</sup> These prizefights were fought largely on a free-for-all basis, with little or no formal control, rules or safeguards for the participants.

In 1743, a former boxing champion named John Broughton formulated a set of rules standardizing some prizefighting practices and eliminating others, such as hitting

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<sup>21</sup> Published in Government Gazette 27824 on 29 July 2005 under Notice R.760 and operative with effect from that date.

<sup>22</sup> The provisions of the South African Boxing Act and South African Boxing Regulations are discussed in further detail in Chapters 5 and 6 of this research study.

<sup>23</sup> In this regard, see note 19 above.

<sup>24</sup> BBBC Webpage; Beran.

opponents when they are down or seizing opponents by the hair. These rules became known as Broughton's Rules and were used in prizefights until 1838 when the Original London Prize Ring Rules, based on those Broughton Rules, were introduced.<sup>25</sup>

Modifications known as the Revised London Prize Ring Rules were later introduced in 1853 and they applied until the end of the 19th Century, when the Queensberry Rules came into use.<sup>26</sup>

The Queensbury Rules were drafted in 1857 by a boxer, John Graham Chambers, under the auspices of John Sholto Douglas, 8th Marquis of Queensberry (hence the name, Queensberry Rules).<sup>27</sup> Emphasising boxing skill rather than wrestling, and agility over strength, the Queensberry Rules helped to undo the popular image of boxing as a savage, brutal brawl.<sup>28</sup> Under the Queensberry Rules, bare-knuckle boxing was prohibited and padded boxing gloves had to be worn, bouts were divided into 3-minute rounds with 1-minute intervals of rest between them and a contestant who remained down after 10 seconds lost the bout.<sup>29</sup> The Queensbury Rules also stipulated that matches had to be conducted in a roped-in square, called a ring, having specific measurements.<sup>30</sup>

The Queensberry Rules have generally remained the accepted code for governing the conduct of professional boxing bouts across the globe. In South Africa, the UK and NYS, the Queensbury Rules have been incorporated into the respective rules and regulations that govern the conduct of professional boxing in each of these jurisdictions.

As the popularity of prizefighting grew across the UK, the need arose for a single controlling body to regulate its activities. In 1929, the British Boxing Board of Control (the BBBC) was formed to act as the controlling body for professional boxing in the United Kingdom.<sup>31</sup>

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<sup>25</sup> BBBC Webpage.

<sup>26</sup> BBBC Webpage.

<sup>27</sup> BBBC Webpage.

<sup>28</sup> BBBC Webpage.

<sup>29</sup> BBBC Webpage.

<sup>30</sup> BBBC Webpage.

<sup>31</sup> The BBBC evolved from the National Sports Club, which dated back to 1891. The BBBC initially existed as an unincorporated association when it was established in 1929, but in 1989 it was incorporated as a non-profit



Since its formation in 1929, the BBBC has been and continues to be the sole controlling body for professional boxing in the UK.<sup>32</sup> There is, however, no statutory basis for this and the BBBC's authority derives from the consent of the boxing fraternity in the UK.<sup>33</sup> All persons who apply to be licensed by the BBBC, whether as boxers or in any other capacity, agree to adhere to the rules and regulations issued by the BBBC.<sup>34</sup> The sanction underpinning the BBBC's rules and regulations is that anyone who breaches those rules and regulations or who takes part in professional boxing outside those rules may be banned from future participation in BBBC-controlled boxing.<sup>35</sup> Professional boxing in the UK is accordingly controlled through a system of self-regulation that is enforced through the BBBC's rules and regulations.<sup>36</sup>

By reason of the effective control that the BBBC has assumed over professional boxing in the UK, the BBBC is able to determine, and does in fact determine through its rules and regulations, the measures that are taken in professional boxing to protect and promote the health and safety of professional boxers.<sup>37</sup> In this regard, the BBBC's rules and regulations can be divided into three broad categories, namely: (a) rules designed to ensure that a boxer is not permitted to participate in a bout unless he is medically fit to do so; (b) rules designed to restrict the physical injuries that may be

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making company limited by guarantee. The articles of association of the BBBC provide that its objects include *inter alia* "[T]o promote and safeguard the interests of members of the company in the United Kingdom and throughout the world including members' (being boxers) interests in boxing bouts and tournaments... including... the encouragement and promotion of safety standards ..." *Watson v British Boxing Board of Control Ltd and another* [2001] QB 1134 (*Watson*) at 1143 - 1144.

<sup>32</sup> BBBC Webpage; *Watson* case at 1143. The BBBC's area of jurisdiction covers the entire UK, including Northern Ireland. For purposes of convenience, that area is referred to in this research study as the UK.

<sup>33</sup> The *Watson* case at 1143; Ecksel "A Venerable History: British Boxing Board of Control" available at [http://archive.boxing.media/a\\_venerable\\_history\\_british\\_boxing\\_board\\_of\\_control.html](http://archive.boxing.media/a_venerable_history_british_boxing_board_of_control.html) (Ecksel). In this regard, the position in the UK differs from that in South Africa and NYS where the controlling bodies in those jurisdictions have a statutory basis.

<sup>34</sup> The BBBC's application forms that are required to be completed by prospective licensees contain an express undertaking to this effect. Upon being licensed, licensees also become members of the BBBC.

<sup>35</sup> George "Watson v British Boxing Board of Control: Rule-Making in the Court of Appeal" (2002) *The Modern Law Review* 109 accessed at <https://onlinelibrary.wiley.com/doi/abs/10.1111/1468-2230.00370> (George).

<sup>36</sup> The BBBC has issued a book of rules and regulations which provides, in detail, for the manner in which professional boxing is to be conducted in the UK. In terms of those rules and regulations, contracts between a boxer and manager and a boxer and promoter have to be in a standard form which expressly provides that the parties will observe those rules and regulations. *Watson* case at 1143.

<sup>37</sup> The *Watson* case at 1161. This particular aspect played an important role in the finding made by the court in the *Watson* case that the BBBC owed the plaintiff a duty of care to ensure that he received the necessary medical attention at ringside after receiving a head injury during the professional boxing bout in which he had participated.

caused in the course of the bout; and (c) rules designed to ensure that a boxer receives appropriate medical attention when injured in the course of a bout.<sup>38</sup>

## 2.4 State of New York

In 1859, legislation was passed in NYS which prohibited persons from promoting and engaging in prizefighting. However, in 1896 the so-called Horton Law was passed which legalized prizefighting in NYS, but this law was later repealed in 1900 by the so-called Lewis Law, which once again prohibited prizefighting in NYS.<sup>39</sup>

This back-and-forth legislative banning and unbanning of prizefighting in NYS, eventually culminated in the passing of the so-called Walker Law in 1920, which once and for all legalized prizefighting in NYS. The Walker Law also established the New York State Athletic Commission (NYSAC) as the official controlling body for prizefighting in NYS.<sup>40</sup>

The NYSAC presently continues to exist as a statutory body in terms of Article 41 of the New York State General Business Law (Article 41).<sup>41</sup> The NYSAC exists as a division of the Department of State and its members are appointed by the Governor of NYS.<sup>42</sup>

The NYSAC has been established by Article 41 to *inter alia* protect the health, safety and general welfare of all participants in professional boxing,<sup>43</sup> preserve the integrity of professional boxing through the means of licensing, oversight and enforcement, and

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<sup>38</sup> Watson case at 1144.

<sup>39</sup>Boxrec "History of New York Boxing Legislation, Rules and Regulations" available at [https://boxrec.com/media/index.php/USA:\\_New\\_York\\_Laws](https://boxrec.com/media/index.php/USA:_New_York_Laws) (Boxrec).

<sup>40</sup> Boxrec. Unlike in the United Kingdom and South Africa where there is a singular controlling authority in respect of professional boxing for the entire country, in the US each state has its own professional boxing commission. The NYSAC has become the model boxing commission for many of the other states in the US.

<sup>41</sup> §1003 of Article 41. Like Boxing SA, the NYSAC has a statutory basis. The BBBC, on the other hand, has no statutory basis but operates through a system of self-regulation.

<sup>42</sup> §1003 of Article 41.

<sup>43</sup> Although Article 41 covers all "combat sports", which by definition includes professional boxing, only professional boxing will be discussed in this chapter. Subdivision 6 of §1000 of Article 41 defines "Professional" as "any participant in [professional boxing] pursuant to this article [41], other than an amateur, who is receiving or competing for, or who has ever received or competed for, any purse, money, prize, pecuniary gain, or other thing exceeding seventy-five dollars in value."

facilitate the development and responsible conduct of professional boxing throughout the entire NYS.<sup>44</sup>

The NYSAC has the power and duty to promulgate regulations governing the conduct of professional boxing in NYS.<sup>45</sup> In respect of medical matters, it has a medical division known as the Medical Advisory Board (MAB)<sup>46</sup> which has the power and duty to prepare and submit to the NYSAC for approval regulations and standards to safeguard the physical safety of professional boxers licensed by the NYSAC.<sup>47</sup>

Professional boxing is prohibited in NYS unless it is conducted under the supervision of the NYSAC or any entities sanctioned by it.<sup>48</sup>

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<sup>44</sup> §1003 of Article 41.

<sup>45</sup> §1013 of Article 41. These regulations are discussed in further detail in Part C of Chapter 4 of this research study.

<sup>46</sup> Its members are appointed by the Governor of NYS. Members must be duly licensed to practice medicine in NYS and have at least five years' experience in the practice of his profession.

<sup>47</sup> §1013 of Article 41. These medical rules are discussed in further detail in Part C of Chapter 4 of this research paper.

<sup>48</sup> §1001 and §1002 of Article 41. Although these sections empower the NYSAC to license other entities to also oversee the control of professional boxing events in NYS, for purposes of this this research study only the role of the NYSAC is dealt with since it remains the primary controlling authority of professional boxing in NYS and such other entities derive their powers from the NYSAC.

## CHAPTER 3 : HEALTH RISKS OF BOXING

### 3.1 Introduction

Many sports involve a risk of physical injury to the participants, but boxing is the only sport (save for mixed martial arts) where this is the primary objective of the exercise.<sup>49</sup> In essence, the aim of boxing is to land blows upon the opponent with the expressed purpose of inflicting a concussive head injury or at least causing sufficient bodily damage to render the opponent incapable of continuing with the bout.<sup>50</sup>

In the English case of *R v Brown*,<sup>51</sup> professional boxing was graphically described by the court as follows:

"For money, not recreation or personal improvement, each boxer tries to hurt the opponent more than he is hurt himself, and aims to end the bout prematurely by inflicting a brain injury serious enough to make the opponent unconscious, or temporarily by impairing his central nervous system through a blow to the midriff, or cutting his skin to a degree which would ordinarily be well within the scope of Section 20 [of the *Offences against the Person Act 1861* (24 & 25 Vict c 100)]. The boxers display skill, strength and courage, but nobody pretends that they do good to themselves or others. The onlookers derive entertainment, but none of the physical and moral benefits which have been seen as the fruits of engagement in many sports." <sup>52</sup>

In a sport where the primary objective of the two contestants is to inflict maximum bodily harm on each other, it stands to reason that there is a much higher risk of serious injury or even death arising from a professional boxing bout than in the case of other sports.<sup>53</sup>

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<sup>49</sup> Watson 1143.

<sup>50</sup> Beran 686.

<sup>51</sup> [1994] 1 AC 212 at 265.

<sup>52</sup> Quoted with approval in the *Watson* case 1143.

<sup>53</sup> Although these risks also exist in amateur boxing, they are however far higher in professional boxing because of its higher intensity and the more rounds in a professional boxing bout. A professional boxing bout can

This chapter provides a brief overview of the more common types of injuries that a boxer could suffer during a professional boxing bout, particularly those injuries that may be life-threatening or cause permanent disability to the injured boxer.

The purpose of this overview is not to examine the medical aspects of these injuries *per se*, but rather to identify their general nature and how they usually occur during a professional boxing bout.<sup>54</sup>

### 3.2 Facial cuts

Facial cuts, particularly those above the eyes, are one of the more common boxing injuries. Cuts are caused either from a blow by the gloved fist or from a clash of heads, which could either be ruled accidental or intentional by the referee. In the latter instance, it would constitute unlawful conduct in terms of the South African Boxing Regulations<sup>55</sup> and may result in the offending boxer being disqualified by the referee,<sup>56</sup> particularly if the referee has previously warned the wrongdoer about unlawfully using his head. In the latter instance, it could be argued that the cut that eventuates was reasonably foreseeable and could therefore have been prevented by the referee had the referee disqualified the wrongdoer earlier. Since facial cuts normally heal fully following suturing by a medical practitioner after the bout, they usually cause little to no medium- or long-term harm to a boxer. As such, boxers tend to accept facial cuts, whether caused accidentally or intentionally during the course of a boxing bout, as a normal occupational hazard and a boxer would therefore be ridiculed by his peers if he sought legal redress from either his opponent or the referee for a cut suffered during a professional boxing bout.

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comprise between four and twelve rounds of boxing, whereas an amateur boxing bout is usually only three rounds of boxing. In amateur boxing bouts, the referees also tend to stop bouts a lot quicker in order to prevent further bodily harm being suffered by an amateur boxer who is being outclassed by his opponent.

<sup>54</sup> The legal inquiry into whether legal liability can be imputed to any of the role players in respect of these injuries or a death arising therefrom, is dealt with Chapter 7 of this research study.

<sup>55</sup> S37(d) of the South African Boxing Regulations.

<sup>56</sup> S35(8) of the South African Boxing Regulations.

### 3.3 Head trauma

Head trauma is also fairly common in professional boxing since the head is generally the primary target of attack. Head trauma ranges in gravity from a minor concussion (usually evidenced by unsteadiness immediately after receiving a blow/s to the head, which may or may not be accompanied by a knock down) to an actual knockout (evidenced by a total loss of consciousness, which may either be temporary or longer in duration).

While the after-effects of most head trauma suffered during a boxing bout is relatively minor and of short duration (for example, a moderate headache or slight memory loss that may last for a few days), head trauma can at times unfortunately result in serious long-term physical disability<sup>57</sup> or even death.<sup>58</sup>

The more serious head trauma is accompanied by intracranial haemorrhage (ICH), also known as intracranial bleed, which entails acute bleeding inside the skull. Due to its dire medical consequences for boxers, ICH therefore requires further discussion, particularly with regard to how and when its symptoms manifest themselves during and/or after a boxing bout. These symptoms are important since they impact on the element of foreseeability when determining possible negligence on the part of *inter alia* the referee and ringside physician in situations where a boxer dies or becomes permanently disabled due to an ICH suffered during a professional boxing bout.

There are essentially four types of haematomas associated with ICH, all of which may be fatal to the injured boxer if left untreated. It is thus of critical importance that after a boxer suffers head trauma during a boxing bout that a rapid and accurate initial assessment is made of the boxer's condition at ringside so that he can receive the necessary medical attention as soon as possible.<sup>59</sup>

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<sup>57</sup> In the Watson case, Michael Watson, one of the boxers, sustained a subdural haemorrhage resulting in irreversible brain damage during his World Boxing Organisation title fight with Chris Eubank. The injury left him with a left sided partial paralysis and other physical and mental disability. Evidence led during the trial showed that the injuries had been significantly worsened because immediate resuscitation equipment was not available at ringside.

<sup>58</sup> Brian Baronet, a South African boxer, died in hospital from a brain injury three days after being knocked out by Kenny Vice in a professional boxing bout held in Durban on 14 June 1988.

<sup>59</sup> Cantu "Head injuries in sport" (1996) (vol 30) *British Journal of Sports Medicine* 289-296 (Cantu) at 292.

The first type of haematoma associated with ICH is known as an *epidural or extradural haematoma*.<sup>60</sup> It results from a tearing of the meningeal arteries which supply blood to the covering of the brain known as the cranial dura mater,<sup>61</sup> which causes blood to collect between the outer layer of the cranial dura mater (known as the periosteal layer) and the skull.<sup>62</sup> Due to high arterial pressure, it causes a significant collection of blood (known as a haematoma) to form between the periosteal layer of the cranial dura mater and the skull.<sup>63</sup> It is important to note that after suffering the initial head trauma (which is often accompanied by a short loss of consciousness), the boxer may have a lucid interval, possibly for hours, after regaining consciousness<sup>64</sup> and before starting to experience increasing headache and deteriorating levels of consciousness as the haematoma accumulates and the intracranial pressure on the underlying brain tissue increases. This lucid interval can create a misleading initial impression regarding the boxer's true medical condition and it is therefore important that a boxer who suffers head trauma during a bout should be monitored for a reasonable period afterwards in order to ascertain whether he or she starts to display any of these delayed symptoms associated with an extradural haematoma<sup>65</sup>. Since the boxer's underlying brain tissue is usually free from direct injury, if this type of haematoma is timeously removed by surgical intervention, the boxer will usually make a full recovery.<sup>66</sup> If, however, an extradural haematoma is not timeously attended to, the increasing intracranial pressure it causes can lead to the compression of the upper midbrain, and eventually compression of the entire brainstem and the death of the boxer.<sup>67</sup>

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<sup>60</sup> Cantu 292.

<sup>61</sup> The cranial dura mater is a thick, tough, outer covering of the brain comprising two layers namely, an outer periosteal layer and an inner meningeal layer. The outer periosteal layer is attached to the skull and contains the meningeal arteries. Drake, Vogl and Mitchell *Grays Anatomy for Students* (2015) (Drake) 873.

<sup>62</sup> Drake 891.

<sup>63</sup> Eisenberg and Johnson *Comprehensive Radiographic Pathology* (2007) (Eisenberg) 332. Drake 891.

<sup>64</sup> Drake 891.

<sup>65</sup> S24(5)(a) of the South Boxing Regulations provides that a boxer who has been knocked out, technically knocked out, sustained severe punishment or injured during a fight *shall* be examined by the ringside physician after the fight before he or she may leave the tournament venue. Since the symptoms of an epidural ICH may only present at a later state it is therefore critically important that proper effect be given to this important medical safety measure provided for in the South African Boxing Regulations.

<sup>66</sup> Cantu 292.

<sup>67</sup> Eisenberg 332.

A *subdural haematoma* is the second type of hematoma associated with ICH.<sup>68</sup> It results from venous bleeding, most commonly from a ruptured vein/s between the periosteal layer and inner meningeal layer of the cranial dura mater.<sup>69</sup> It may also result from a torn venous sinus or even a small artery on the surface of the brain.<sup>70</sup> The subdural haematoma is the leading direct cause of death in boxers.<sup>71</sup> With this injury, there is often associated injury to the brain tissue.<sup>72</sup> A subdural haematoma may progress rapidly, in which event the boxer usually does not regain consciousness after a knockout and will require immediate neurological attention.<sup>73</sup> Sometimes, however, due to the low pressure of venous bleeding, a subdural haematoma may develop slowly over a period of days to weeks, often associated with headache, agitation, confusion, drowsiness, and gradual neurological deficits.<sup>74</sup> Its timeous recognition and surgical removal will usually lead to a full recovery.<sup>75</sup>

An *intracerebral haematoma* is the third type of haematoma associated with ICH.<sup>76</sup> In this instance, the bleeding is into the brain tissue itself, usually from a ruptured intracerebral artery, although it may also result from the rupture of a congenital vascular lesion such as an aneurysm or arteriovenous malformation.<sup>77</sup> Intracerebral haematomas are not usually associated with a lucid interval and death usually occurs before the injured boxer may be moved to hospital.<sup>78</sup>

The fourth type of ICH is a *subarachnoid haemorrhage*, which is confined to the surface of the brain.<sup>79</sup> Following head trauma, bleeding is caused by the disruption of the tiny surface brain vessels and is analogous to a bruise.<sup>80</sup> Since the bleeding is superficial, surgery is usually not required and the injury is not life threatening.

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<sup>68</sup> Cantu 292.

<sup>69</sup> Eisenberg 332; Drake 890.

<sup>70</sup> Cantu 292.

<sup>71</sup> Cantu 292.

<sup>72</sup> Cantu 292.

<sup>73</sup> Eisenberg 332. Cantu 292.

<sup>74</sup> Cantu 292.

<sup>75</sup> Cantu 292.

<sup>76</sup> Cantu 292.

<sup>77</sup> Cantu 292.

<sup>78</sup> Cantu 292.

<sup>79</sup> Cantu 292.

<sup>80</sup> Cantu 292.



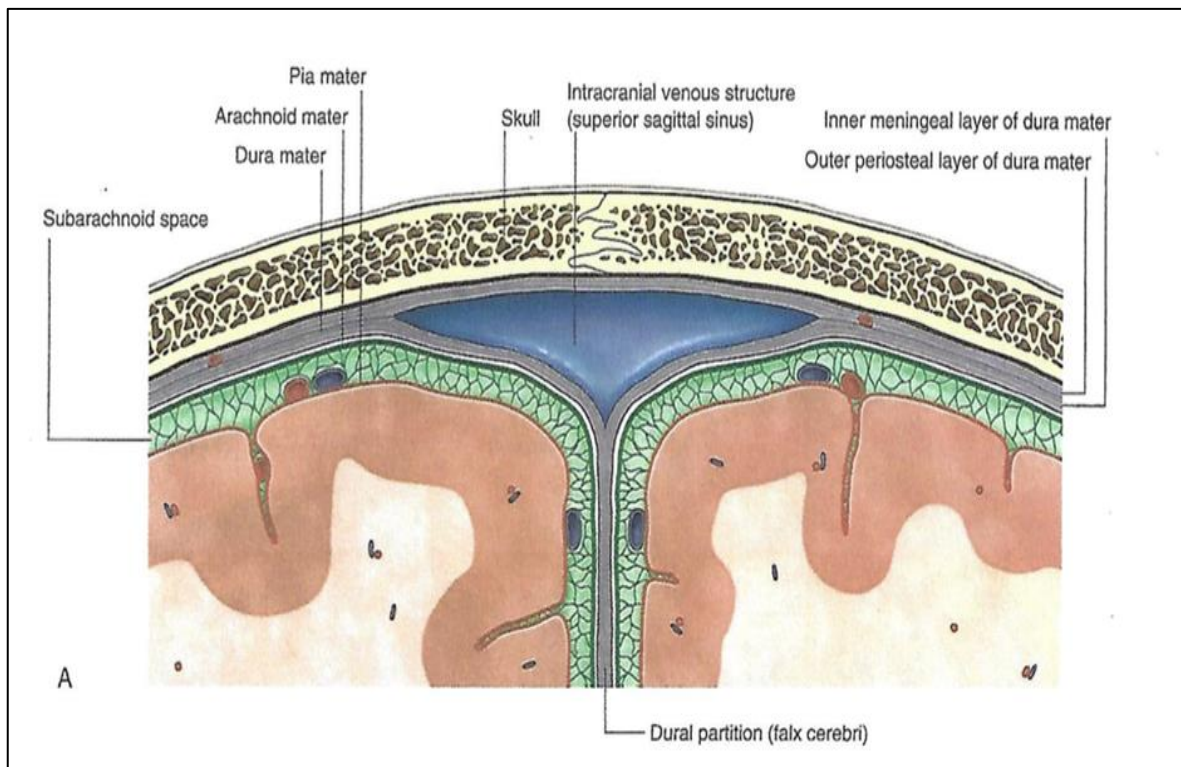


Fig. 1 Coronal view of cranial meninges (Drake 873)

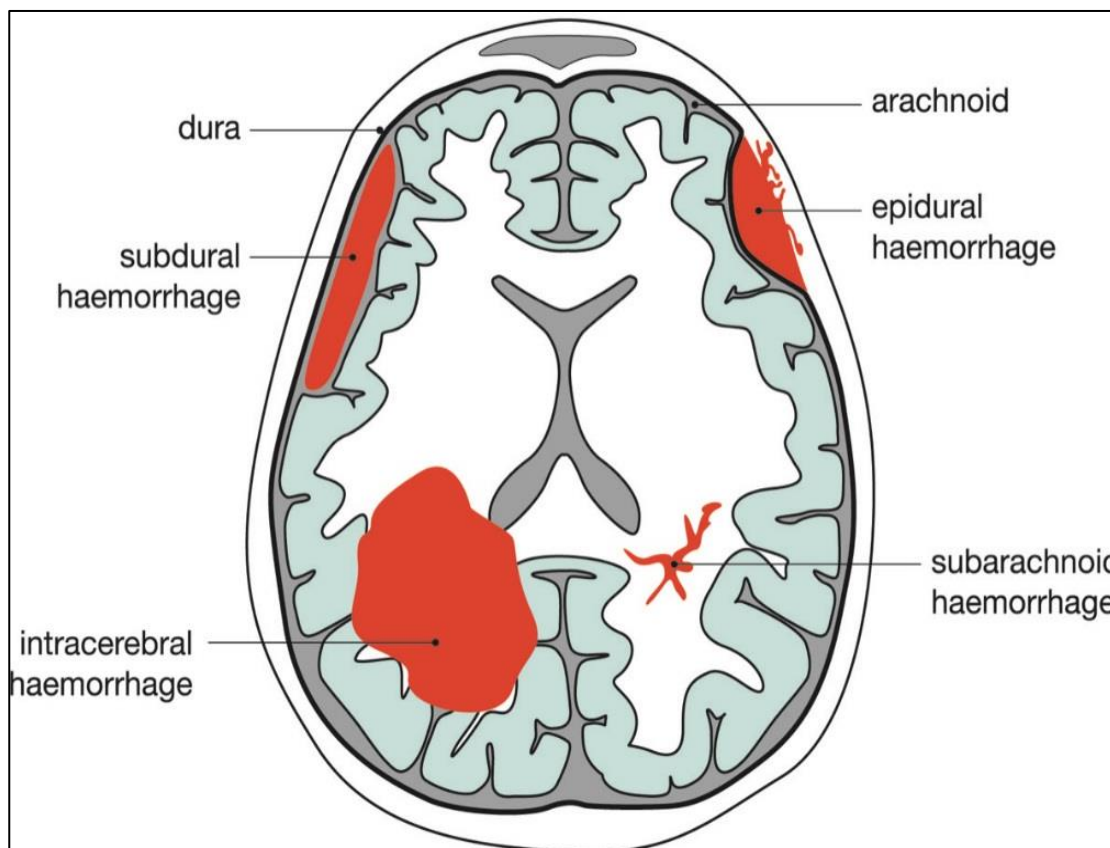


Fig. 2 Types of brain haemorrhage/bleed

(Accessed at <https://www.roydswithyking.com/solicitors-for-life/medical-negligence-claims/brain-injury-claim/brain-haemorrhage-and-medical-negligence>)

Due to the potentially fatal consequences of head trauma suffered by a professional boxer during a boxing bout, it is of critical importance that the injured boxer receives the necessary medical attention at ringside and is evacuated, as soon as reasonably possible, to a hospital with neurological facilities for further medical treatment.<sup>81</sup> The medical safety measures currently provided for in the South African Boxing Regulations make adequate provision for this to occur,<sup>82</sup> provided, of course, that these provisions are properly adhered to by the responsible role players during a professional boxing tournament.<sup>83</sup>

### 3.4 Other injuries

In a combat sport such as professional boxing, there is a variety of other types of injuries that can occur during a bout, some of which are self-inflicted (such as a twisted ankle or an injured hand) and others which are caused by a boxer's opponent (such as a broken jaw or fractured rib). The latter injuries may either be caused by lawful conduct (that is, conduct which complies with the South African Boxing Regulations, such as a lawful blow that breaks an opponent's jaw) or by unlawful conduct (that is, conduct that is stated to be unlawful in terms of s37 of the South African Boxing Regulations, such as a bitten ear<sup>84</sup>). The lawfulness or otherwise of the conduct causing the injury has a direct bearing on whether the wrongdoer could be held legally liable for the injury.<sup>85</sup>

There are also other types of injuries that a boxer may suffer during a boxing bout, but which are not self-inflicted or caused by his opponent. These injuries are usually caused by a failure in the equipment at a tournament, such as the ropes of the ring breaking during a boxing bout causing a boxer to fall out of the ring and injure himself.<sup>86</sup>

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<sup>81</sup> In the *Watson* case 1164, the medical experts that gave testimony stated that brain damage from ICH occurs cumulatively until death, and what happens in the first ten minutes is particularly critical and thereafter the effect of a delay is less important. They testified further that Mr Watson should have been resuscitated on losing consciousness, and then taken directly to the nearest hospital with neurosurgical capability, which should have been standing by to operate without delay.

<sup>82</sup> S24 of the South African Boxing Regulations.

<sup>83</sup> These provisions are discussed in further detail in Chapter 6 of this research study.

<sup>84</sup> S37(bb) of the South African Boxing Regulations.

<sup>85</sup> This issue is discussed further in Chapter 7 of this research study.

<sup>86</sup> This occurred in the South African heavyweight title fight between Ruan Visser and Tiaan Fick that was held in Cape Town on 16 December 2019. During the introductory announcements prior to the start of the bout, Ruan

If and when this occurs, it needs to be determined whether any of the other role players, such as the promoter or ringmaster, can be held legally liable for such an injury.<sup>87</sup>

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Visser, whilst warming up, leant against the ropes, which broke causing him to fall out of the ring and injure himself, resulting in the bout being cancelled before the opening bell.

<sup>87</sup> This issue is discussed in further detail in chapter 7 of this research study.

## C H A P T E R 4 : L E G A L F R A M E W O R K

### **4.1 Introduction**

Due to the inherently violent nature of professional boxing, which has as its primary objective the infliction of maximum bodily harm on one's opponent, it is not surprising that it in most developed countries professional boxing has attracted the attention of the lawmakers, who have sought to regulate its activities, particularly with regard to protecting the health and safety of the boxers. In addition to these specific legislative interventions, professional boxing is also subject to the general laws applicable in these countries, particularly those that regulate claims for compensation in respect of bodily injury.

The purpose of this chapter is to identify the laws that currently regulate professional boxing in South Africa and the Comparative Jurisdictions, and to provide a broad overview of those laws in so far as they are relevant to the Research Questions. In Chapter 7 of this research study, these laws will then be applied to various hypothetical scenarios in order to provide answers to the Research Questions.

Due to this being a South African based research study, the primary focus of this chapter will be on the laws applicable in South Africa. Although this chapter will also cover the laws applicable in the Comparative Jurisdictions, same will only be done to the extent required to provide a comparative basis for purposes of recommending possible measures that can be adopted in South Africa to avert and/or mitigate the legal risks that the various role players face in respect of injuries or death that professional boxers may suffer during bouts in which they are involved in their respective capacities.

## Part A: South Africa

### 4.2 Legislation

Professional boxing in South Africa is unique since it is the only sporting code that is currently regulated by its own specific legislation, namely the South African Boxing Act<sup>88</sup> and the South African Boxing Regulations promulgated thereunder.<sup>89</sup> The historical background to this legislation has been discussed previously in chapter 2 of this research paper.

The South African Boxing Act deals primarily with the organisational structure of professional boxing in South Africa, whilst the South African Boxing Regulations deal primarily with the operational aspects. Although the provisions of the South African Boxing Regulations have more relevance to the Research Questions, there are nevertheless certain aspects of the South African Boxing Act that required further discussion for purposes of this research study.

#### 4.2.1 South African Boxing Act

The objects of the South African Boxing Act<sup>90</sup> are *inter alia* to regulate, control and exercise general supervision over professional boxing at tournaments in South Africa;<sup>91</sup> and to provide for the registration and licensing of stakeholders in professional boxing and to ensure proper control and democratic practices in that process.<sup>92</sup>

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<sup>88</sup> South African Boxing Act No. 11 of 2001 (South African Boxing Act). The South African Boxing Act was published in Government Gazette 23461 dated 24 May 2002 and commenced on that same day. It has to date not undergone any amendments.

<sup>89</sup> GNR.368 of 26 March 2004, as amended by Notice R.760 published in Government Gazette 27824 dated 29 July 2005 (South African Boxing Regulations).

<sup>90</sup> These objects are set out in s2 of the South African Boxing Act. Although these objects do not expressly refer to the medical safety of the boxers, it is submitted that same falls within the ambit of the objects referred to in s2(b) and s2(c) of the South African Boxing Act, namely “to regulate, control and exercise general supervision over professional boxing at tournaments in South Africa”; and “to protect and regulate the interests ... of boxers ...”, respectively. As will be apparent from the various discussions in this research study, the medical safety of the boxers permeates like a golden thread throughout the South African Boxing Regulations.

<sup>91</sup> S2(b) of the South African Boxing Act.

<sup>92</sup> S2(h) of the South African Boxing Act. S7(1)(c) of the South African Boxing Act empowers Boxing SA to issue certificates of registration to the various stakeholders. S19 of the South African Boxing Act, in turn, prohibits persons from taking part in a professional boxing tournament as a boxer, official, trainer or manager, unless he is in possession of a valid certificate of registration issued by Boxing SA. S18 of the South African Boxing Act imposes a similar prohibition in respect of promoters.

The South African Boxing Act establishes a boxing commission which is a juristic person known as Boxing SA (Boxing SA).<sup>93</sup> Subject to the Constitution, Boxing SA has jurisdiction in all the provinces of South Africa.<sup>94</sup>

The South African Boxing Act repealed its predecessor, the 1954 Act, save for certain sections in the latter Act that dealt with the establishment of provincial boxing control commissions.<sup>95</sup> Although the provincial legislature in each province is accordingly empowered in terms of these remnants of the 1954 Act to establish a provincial boxing control commission in its province, to co-exist alongside Boxing SA, that has not however occurred in any of the provinces.<sup>96</sup> Boxing SA is therefore at present the only controlling authority for professional boxing in South Africa.

The powers of Boxing SA are fairly widely couched in the South African Boxing Act, particularly its power to register stakeholders.<sup>97</sup> In regard to this latter power, Boxing SA may test the ability of any person applying for a certificate of registration as a boxer, trainer or official as it deems fit,<sup>98</sup> and in respect of any person applying for registration as a promoter, manager and trainer it may request such person to furnish it with such information as it may deem necessary.<sup>99</sup> Boxing SA may also determine the period of validity of a certificate issued by it<sup>100</sup> and may suspend, cancel or renew any such certificate.<sup>101</sup> Boxing SA is also empowered to enforce any refusal, suspension, or cancellation of the registration of any boxer, official or promoter.<sup>102</sup>

In respect of the holding of tournaments in South Africa, Boxing SA may issue, subject to such conditions as it may deem fit, licences to registered promoters authorising the holding of tournaments.<sup>103</sup> Boxing SA may require from such applicants to furnish it

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<sup>93</sup> S4 of the South African Boxing Act.

<sup>94</sup> S6(1) of the South African Boxing Act.

<sup>95</sup> This was presumably done since sport is listed as a provincial competency in terms of the Constitution.

<sup>96</sup> Although a provincial boxing control commission already existed for each province under the 1954 Act, all those commissions were disbanded when the South African Boxing Act came into effect in 2002.

<sup>97</sup> S7(1)(c) of the South African Boxing Act.

<sup>98</sup> S7(1)(f) of the B South African Boxing Act.

<sup>99</sup> S7(1)(g) of the South African Boxing Act.

<sup>100</sup> S7(1)(c) of the South African Boxing Act.

<sup>101</sup> S7(1)(h) of the South African Boxing Act.

<sup>102</sup> S7(1)(o) of the South African Boxing Act

<sup>103</sup> S7(1)(i) of the South African Boxing Act. S18 of the South African Boxing Act, in turn, expressly prohibits any person from holding or assisting in holding any tournament unless a licence to hold such tournament has been issued to him by Boxing SA. Similarly, s19 of the South African Boxing Act prohibits persons from partaking in

with *inter alia* a certificate of physical and mental fitness in respect of the boxers who will participate in the tournament, issued in such form and by such medical practitioner, whether practising in South Africa or elsewhere, as it may approve, not later than 30 days prior to the tournament.<sup>104</sup> Boxing SA may at any time prior to the holding of a tournament, prohibit any boxer from participating in the tournament if, after such examination or test for physical and mental fitness as Boxing SA may deem fit, it is satisfied that the boxer should not be allowed to participate or if the boxer refuses to submit himself to such examination or test.<sup>105</sup>

In respect of both foreign boxers coming to participate in South Africa and South African boxers going to participate abroad, Boxing SA is empowered to request *inter alia* a current medical certificate showing their medical status.<sup>106</sup> Boxing SA may also require a boxer wishing to participate in a tournament outside South Africa to seek permission from Boxing SA in writing to do so.<sup>107</sup>

Boxing SA may establish an insurance and medical aid scheme to be used for such purposes as may be prescribed by regulation under the South African Boxing Act.<sup>108</sup> To date, this has not yet occurred.

S7(1)(t) of the South African Boxing Act grants Boxing SA a 'catch-all' power to take any steps which it considers necessary or expedient for the due and proper regulation or control of, or to enable it to exercise due and proper supervision over, boxing at tournaments.<sup>109</sup> This provision grants Boxing SA very wide powers with regard to the control of professional boxing in South Africa.

In terms of s27 of the South African Boxing Act, any person who contravenes any provisions of the South African Boxing Act is guilty of an offence and on conviction

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any tournament as a boxer or official; or training or managing any person with a view to his participation in a tournament; or negotiating with any boxer with a view to procuring his services as a boxer at a tournament, unless that person is in possession of a valid certificate of registration as a boxer, official, trainer, manager or promoter, as the case may be, issued to him by Boxing SA in terms of s7(1)(c) of the South African Boxing Act.

<sup>104</sup> S7(1)(j)(ii) of the South African Boxing Act.

<sup>105</sup> S7(1)(l)(i) of the South African Boxing Act. The various medical examinations that take place during the organisational process for a bout are discussed in Chapter 6 of this research study.

<sup>106</sup> S7(1)(p) and S7(1)(r) of the South African Boxing Act, respectively.

<sup>107</sup> S7(1)(v)(iii) of the South African Boxing Act.

<sup>108</sup> S7(1)(s) of the South African Boxing Act.

<sup>109</sup> S7(1)(t) of the South African Boxing Act.

liable to a fine or to imprisonment not exceeding 12 months or to both such fine and such imprisonment.

#### **4.2.2 South African Boxing Regulations**

As stated earlier, the South African Boxing Regulations which have been promulgated in terms of the South African Boxing Act deal primarily with the operational aspects of professional boxing, particularly what the roles and responsibilities are of the various role players.<sup>110</sup>

#### **4.3 Common law**

In addition to the afore-mentioned legislation which applies specifically to professional boxing, professional boxing is also regulated by the general provisions of the South African common law, both from a private law and public law perspective.

In this chapter, a brief overview will be provided of the salient principles of the common law in so far as they have relevance to the Research Questions. This overview is intended primarily for contextual purposes and will be elaborated on in the subsequent chapters of this research study, particularly in Chapter 7 when these principles are applied to various hypothetical scenarios relevant to the Research Questions.

##### **4.3.1 Private Law**

The two branches of the South African private law that have the most relevance to the Research Questions, are the law of delict and law of contract. The general principles of each of these branches of the private law are briefly summarised below.

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<sup>110</sup> The provisions of the South African Boxing Regulations are discussed in further detail in Chapters 5 and 6 of this research study.



#### 4.3.1.1 Law of Delict

It is trite that not every conduct that results in harm is actionable. This was explained as follows by Harms JA in *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA*:<sup>111</sup>

“The first principle of the law of delict, which is so easily forgotten and hardly appears in any local text on the subject, is, as the Dutch author Asser points out, that everyone has to bear the loss he or she suffers. The Afrikaans aphorism is that “skade rus waar dit val”. Aquilian liability provides for an exception to the rule and, in order to be liable for the loss of someone else, the *act or omission* of the defendant must have been *wrongful* and *negligent*<sup>112</sup> and *have caused the loss.*” (emphasis added)

The basic elements of a delictual action based on the *lex aquilia* accordingly comprise conduct (which may either be in the form of a positive act or an omission), wrongfulness, causation, fault (which may can either be in the form of intent or negligence) and harm (sometimes also referred to loss or damage). These five elements all need to be present for delictual liability to arise.<sup>113</sup>

A brief overview of each of the afore-mentioned elements of delictual liability is provided below.<sup>114</sup>

##### 4.3.1.1.1 Wrongfulness

Without wrongfulness, a defendant may not be held liable even if his conduct may have been negligent and caused harm to the plaintiff.<sup>115</sup>

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<sup>111</sup> 2006 (1) SA 461 (SCA) 468 (*Telematrix*); *Minister of Safety and Security v Van Duivenboden* 2002 (6) SA 431 (SCA) para 12 (*Van Duivenboden*).

<sup>112</sup> Although not expressly mentioned in this extract from *Telematrix*, the element of fault can also take the form of intent (*dolus*).

<sup>113</sup> Scott “Revisiting the elements of delict – the Mashongwa judgements” (2016) *THRHR* 551.

<sup>114</sup> This overview is not intended to be exhaustive, but rather intended for contextual purposes. It should accordingly be read in conjunction with the further legal discussion in in Chapter 7 of this research study which elaborates on these principles and applies them to the Research Questions through the medium of various hypothetical scenarios.

<sup>115</sup> Neethling, Potgieter and Visser (2015) *Law of Delict* 7th Edition 33 (Neethling).

#### 4.3.1.1.1 The general test of wrongfulness

The general test for determining whether conduct<sup>116</sup> which causes harm to another is wrongful is the legal convictions of the community (*boni mores*).<sup>117</sup> The test applies both in respect of positive acts and omissions, although in the case of positive acts the wrongfulness is often *prima facie* thereby obviating the need to apply the *boni mores* test in the particular circumstances.<sup>118</sup>

The *boni mores* test is an objective test based on the criterion of reasonableness.<sup>119</sup> In this regard, the basic question is whether, according to the legal convictions of the community and in light of all the prevailing circumstances of the particular case, the defendant infringed the interests of the plaintiff in an unreasonable manner.<sup>120</sup>

The basic principles underlying the element of wrongfulness have more recently been summarised as follows by the Constitutional Court in *Le Roux and Others v Dey*:<sup>121</sup>

“In the more recent past our courts have come to recognise, however, that in the context of the law of delict: (a) the criterion of wrongfulness ultimately depends on a judicial determination of whether – assuming all the other elements of delictual liability to be present – it would be *reasonable* to impose liability on the defendant for the damages flowing from specific conduct; and (b) that the judicial determination of that *reasonableness* would in turn depend on considerations of public and legal policy in accordance with constitutional norms. Incidentally, to avoid confusion it should be borne in mind that, what is meant by reasonableness in the context of wrongfulness has nothing to do with the reasonableness of the defendant’s conduct (which is part of the element of

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<sup>116</sup> Conduct for purposes of determining delictual liability can take the form of either a positive act or an omission. Neethling 30. It is important to distinguish between positive acts and omissions when enquiring whether conduct is wrongful since the enquiry into wrongfulness is normally more intricate in the event of an omission.

<sup>117</sup> *Minister van Polisie v Ewels* 1975 3 SA 590 (A) 597 (*Ewels*). Neethling 36.

<sup>118</sup> Neethling 45.

<sup>119</sup> Neethling 37 and the cases cited therein at fn 24.

<sup>120</sup> Neethling 37 and the cases cited therein at fn 24 and 25.

<sup>121</sup> *Le Roux and Others v Dey* 2011 (3) SA 274 (CC) para 122 (*Dey*).

negligence), *but it concerns the reasonableness of imposing liability on the defendant for the harm resulting from that conduct.*" (emphasis added).

In applying the *boni mores* test, the court must *ex post facto* balance the conflicting interests of the plaintiff and defendant, and the social consequences of imposing liability in similar instances, in light of all the relevant circumstances and in view of all pertinent factors in order to decide whether the infringement of the plaintiff's interests was reasonable or unreasonable.<sup>122</sup>

In the process of determining the reasonableness or unreasonableness of the defendant's conduct for purposes of wrongfulness, various factors may play a role. These factors include *inter alia*: (a) the nature and extent of the harm; (b) whether the harm was subjectively foreseen or reasonably foreseeable<sup>123</sup>; (c) the possible value to the defendant or society of the harmful conduct; (d) the costs and effort of steps which could have been taken to prevent the loss; (e) the degree of probability of the success of preventative measures; (f) the nature of the relationship between the parties; (g) whether the costs of preventing the harm would have been proportional to the harm that the plaintiff could suffer; (h) the motive of the defendant; (i) economic considerations; (j) the legal position in other countries; (k) ethical and moral issues; (l) as well as other considerations of public interest or public policy, including the values and norms underpinning the Constitution, 1996 and the Bill of Rights.<sup>124</sup>

The changing values and needs of the community over time enables the courts to continuously adapt the law regarding wrongfulness in order to align it therewith. The advent of the Constitution, 1996 and the Bill of Rights has played a big role in this regard.<sup>125</sup>

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<sup>122</sup> Neethling 38 and the cases cited therein at fn 28.

<sup>123</sup> In *MTO Forestry (Pty) Ltd v Swart NO 2017 5 SA 76 (SCA) (MTO)*, Leach JA held that it is potentially confusing to take foreseeability into account as a factor determining both wrongfulness and negligence since it can lead to conflating these two delictual elements, resulting in wrongfulness losing its important attribute as a measure of control over liability. Leach JA accordingly held that foreseeability of harm should not be considered in establishing wrongfulness but confined to establishing the issues of negligence and legal causation.

<sup>124</sup> Neethling 38-39 and the cases cited therein at fn 30-32.

<sup>125</sup> *Carmichele v Minister of Safety and Security (Centre for applied Legal Studies Intervening) 2001 4 SA 938 (CC) (Carmichele)*.

Although the *boni mores* test constitutes the basic norm for wrongfulness in our law, it is, however, seldom necessary to make direct use of this test to determine wrongfulness in relation to a positive act that results in harm (like physical injury or damage to property) since wrongfulness is normally presumed in those circumstances.<sup>126</sup> On the other hand, if the harm results from an omission, then wrongfulness is not normally presumed and liability then depends on the existence of a legal duty to act positively to prevent the harm from occurring. Whether or not such a legal duty exists in particular circumstances is a matter for judicial determination applying the *boni mores* test.<sup>127</sup> There are however certain factors that have crystallized in our case law that have become indicative of a legal duty when applying the *boni mores* test, for example a special relationship like that between a doctor and patient.<sup>128</sup>

#### 4.3.1.1.2 Wrongfulness in relation to breach of a statutory duty<sup>129</sup>

In regard to the question of whether a breach of a statutory duty will give rise to delictual liability, Cameron JA in *Olitzki Property Holdings v State Tender Board & Another*<sup>130</sup> remarked as follows:

“Where the legal duty the plaintiff invokes derives from breach of a statutory provision, the jurisprudence of this Court has developed a supple test. The focal question remains one of statutory interpretations, since the statute may on a proper construction by implication itself confer a right of action, or alternatively provide the basis for inferring that a legal duty exists at common law. The process in either case requires a consideration of the statute as a whole . . . . But where a common law duty is at issue, the answer now depends less on the application of formulaic approaches to statutory construction than on a broad assessment by the court *whether it is ‘just and reasonable’ that a civil claim for*

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<sup>126</sup> Neethling 45.

<sup>127</sup> *The South African Hang and Paragliding Association v Bewick* (1010/2013) [2015] ZASCA 34 para 5 (SA Paragliding); Neethling & Potgieter “Foreseeability: Wrongfulness and negligence of omissions in delict – the debate goes on” *Journal for Juridical Science* 2018:43(1).

<sup>128</sup> Neethling 59-73.

<sup>129</sup> This aspect of wrongfulness has particular relevance to professional boxing because in South Africa professional boxing is regulated by a statute, namely the South African Boxing Act and the South African Boxing Regulations promulgated thereunder.

<sup>130</sup> *Olitzki Property Holdings v State Tender Board & Another* 2001 (3) SA 1247 (SCA) para 12 (*Olitzki*).

*damages should be accorded. The conduct is wrongful, not because of the breach of the statutory duty per se, but because it is reasonable in the circumstances to compensate the plaintiff for the infringement of his legal right. The determination of reasonableness here in turn depends on whether affording the plaintiff a remedy is congruent with the court's appreciation of the sense of justice of the community. This appreciation must unavoidably include the application of broad considerations of public policy determined also in the light of the Constitution and the impact upon them that the grant or refusal of the remedy the plaintiff seeks will entail.'* (emphasis added)

The conduct will be wrongful, not due to the non-compliance with the statutory legal duty *per se*, but rather because it is reasonable in the circumstances to compensate the plaintiff for the infringement of his right, determined with reference to the legal convictions of the community and legal policy.<sup>131</sup>

In relation to professional boxing, the South African Boxing Act and South African Boxing Regulations impose various statutory duties on Boxing SA and the various other role players, which have a direct or indirect bearing on the medical safety of professional boxers.<sup>132</sup>

#### **4.3.1.1.3 Consent as a ground of justification**

Although conduct may appear to be wrongful because it violates the plaintiff's interests, it may however be rendered lawful by the existence of a recognised ground of justification, such as consent or self-defense.<sup>133</sup> In these instances, the violation of the plaintiff's interests by the defendant is therefore not unreasonable or *contra bonos mores* in the circumstances. The grounds of justification accordingly embody, in

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<sup>131</sup> *Olitzki* 1257. Neethling 66.

<sup>132</sup> Although these duties are not expressly referred to as "duties" in the South African Boxing Act and South African Boxing Regulations, they are referred to in conjunction with the word "shall", which makes compliance therewith peremptory. Chapter 7 of this research study, the legal implications for the various role players in the event that an omission to comply with these duties imputes liability on the relevant role players if same cause an injury or death to a boxer.

<sup>133</sup> Neethling 87.

essence, the legal convictions of the community.<sup>134</sup> The onus to prove a ground of justification rests on the defendant.<sup>135</sup>

Due to its obvious relevance to professional boxing, consent as a ground of justification accordingly warrants further attention for purposes of this research study.

The principle that a defendant is not liable where the injured person has consented to injury or the risk thereof, is embodied in the maxim *volenti non fit iniuria* (i.e., he who consents cannot be injured).<sup>136</sup>

The maxim *volenti non fit iniuria* (often referred to as *volenti* in short) is used to describe two forms of consent, namely: (a) consent to specific harm, as in the case of a surgical procedure, and (b) consent to assume the risk of injury (sometimes referred to as voluntary assumption of risk), as in the case of a participant in a sport assuming the risk of injury that may occur in that sport.<sup>137</sup> In the assumption of risk situation it is generally accepted that the participant assented to the risks inherent in that particular activity.<sup>138</sup>

Consent is a unilateral act, which may be given expressly (e.g., by a professional boxer signing a contract with a promoter to participate in a boxing bout) or tacitly (e.g., by a professional boxer gloving up and entering the ring to participate in a boxing bout).<sup>139</sup> The consent may, however, be revoked unilaterally at any stage. A boxer could thus, during the course of the bout, revoke his consent to being punched by his opponent by signifying to the referee that he wishes to retire from the bout, and should his opponent thereafter nevertheless continue punching him, his opponent could be found to be acting wrongfully since he would no longer be able to rely on his opponent's erstwhile consent.

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<sup>134</sup> Neethling 87.

<sup>135</sup> Neethling 88 and the cases cited therein at fn 369.

<sup>136</sup> Neethling 108.

<sup>137</sup> *Roux v Hattingh* 2012 6 SA 428 (SCA) (*Roux*) para 41; Neethling 108. In the context of professional boxing, voluntary assumption of risk would be the relevant form of *volenti* to be considered.

<sup>138</sup> *Roux* para. 41.

<sup>139</sup> Neethling 109.

Various specific requirements need to exist for valid consent since the law does not readily accept that a person consented to harm.<sup>140</sup> These requirements are as follows: (a) the consent needs to be given *freely or voluntarily*; (b) the consenting party must be *capable of expressing his will* (that is, not mentally impaired in any way which could affect his appreciation of his acts); (c) the consenting party must have *full knowledge of the nature and extent of the risk*, especially where consent to the risk of harm is concerned; (d) the consenting party must *appreciate fully what the nature and extent of the harm will be*; (e) the consenting party must in fact *subjectively consent* to the prejudicial act; (f) the *impairment must fall within the limits of the consent* and (g) the consent must *not be contra bonos mores*.<sup>141</sup> This latter requirement was explained as follows by Brand JA (in his separate concurring judgement) in *Roux*<sup>142</sup> in the course of determining whether a deliberate act of foul play during a rugby match that caused a serious injury to an opposing player, was wrongful in the circumstances:<sup>143</sup>

“In the assumption of risk situation, it is generally accepted that the participant assented to the risks inherent in the particular activity (see e.g., *Santam Insurance Co Ltd v Vorster* 1973 (4) SA 764 (A) at 779-781). These principles are fairly clear. The difficulty lies in their application – in deciding in every factual situation whether or not the harm that actually eventuated can be said to fall within the ambit of the inherent risk associated with the activity, like a rugby game.

From the nature of things, it is impossible to obtain certainty by formulating rules that will readily provide the answer in every case. As I see it, the best we can do is to indicate broad parameters that will hopefully assist in the factual inquiry that will have to be undertaken in every situation. Proceeding from this premise, the first principle is that *wrongfulness ultimately depends on considerations of public and legal policy*. Since public policy regards the game of rugby as socially acceptable, despite the likelihood of serious injury inherent in the very nature of the game, it seems to me that *conduct causing even serious injury cannot be*

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<sup>140</sup> Neethling 111.

<sup>141</sup> See Neethling 111-113.

<sup>142</sup> *Roux v Hattingh* 2012 6 SA 428 (SCA). All the other judges concurred with Brand JA's separate judgement.

<sup>143</sup> *Roux* para. 41-42.

*regarded as wrongful if it falls within the rules of the game. And it matters not, I believe, whether the conduct was negligent or intentional. But the converse does not necessarily hold true. The mere fact that the conduct causing the injury was in contravention of the rules of the game, will not automatically result in the imposition of legal liability.* The late tackle of an opponent after he has parted with the ball or a tackle from an offside position or running into an opponent in a dangerous way, may break the rules of rugby and may result in a penalty, but it will not necessarily lead to the imposition of delictual liability, even if the conduct was intentional. *This is so, I believe, because public and legal policy will accept this kind of conduct as a normal incident of the rugby game or inherent in the game. . .*

At the other end of the scale, I believe that conduct which constitutes a *flagrant contravention* of the rules of rugby, and which is *aimed at causing serious injury* or which is accompanied by full awareness that serious injury may ensue, will be regarded as wrongful and hence attract legal liability from the resulting harm. To illustrate this point, Labuschagne (*op cit* 87-8) borrowed an example from the English case of *R v Billingham* 1978 Crim LR 553 where it was held that a scrumhalf who hit his counterpart with a fist in an off the ball incident and broke his jaw, was liable for the resulting damages. Another example given by Labuschagne of conduct which, in his view, should be described as wrongful, is that of the rugby player biting his opponent. I have little doubt that in these situations our courts can be expected to impose delictual liability.” (emphasis added).<sup>144</sup>

Applying these principles, JA Brand went on to hold that since the Court had found that the conduct of the appellant in the case fell squarely within the category of an injury resulting from a flagrant contravention of the rules, accompanied by full awareness on his part of the seriousness of the potential injury that could ensue, he had no difficulty in endorsing its finding of wrongfulness.<sup>145</sup> In this regard, the main

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<sup>144</sup> In Chapter 7, scenario 2, these principles have been applied to a hypothetical scenario in which the conduct of a boxer which falls outside the rules of professional boxing causes an injury to his opponent.

<sup>145</sup> *Roux* para. 44. In this case, the appellant had intentionally executed a so-called ‘jack-knife’ manoeuvre that blocked the respondent’s channel in the scrum (he was the hooker for the opposing side) thereby seriously



judgement delivered by Plasket AJA in *Roux* described the Court's finding in the following terms:

"The egregious nature of Alex's conduct places it beyond the pale. Public and legal policy, I have no doubt, require such consent to be stigmatised as wrongful. I also take the view . . . that because the conduct amounted to such a serious violation of the rules, it is not normally associated with a game of rugby and is extremely dangerous, it would 'not have constituted conduct which rugby players would accept as part and parcel of the normal risks inherent to their participation in a game of rugby.' In the result, the conduct is wrongful and the justification of consent cannot avail Alex."<sup>146</sup> (emphasis added).

Although he conceded that it was not possible to formulate a hard and fast rule to determine wrongfulness in rugby, Brand JA nevertheless proposed the following general guidelines to assist in the wrongfulness enquiry in rugby: Firstly, the rule of thumb is that conduct causing even serious injury cannot be regarded as wrongful if it falls within the rules of the game. Secondly, the fact that the conduct causing the injury is in contravention of the rules of the game does not automatically result in wrongful conduct. This is so because the legal convictions of the community or *boni mores* may accept this conduct as inherent in the game. Thirdly, conduct which constitutes a flagrant contravention of the rules of rugby and which is aimed at causing serious injury or which is accompanied by full awareness that serious injury may ensue, will be regarded as wrongful and hence attract legal liability from the resulting harm. In such instances the malicious motive of the defendant will be decisively indicative of wrongfulness.<sup>147</sup>

The above-mentioned general guidelines can also be applied to professional boxing. In this regard, an unlawful low blow, for example, may not be regarded as wrongful since it could be considered to be 'inherent in the game', notwithstanding that it is contrary to the rules. On the other hand, if a professional boxer were, for example, to bite off a piece of his opponent's ear whilst in a clinch (as Mike Tyson did in his bout

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injuring his neck. The Court found that the manoeuvre was in flagrant contravention of the rules of the game and also contrary to the spirit and conventions of the game.

<sup>146</sup> *Roux* para. 28.

<sup>147</sup> *Roux* para. 42.

with Evander Holyfield), such conduct may be regarded as wrongful since it constitutes a 'flagrant contravention of the rules' and 'is aimed at causing serious injury or which is accompanied by full awareness that serious injury may ensue'. In the former example, the legal convictions of the community or *boni mores* may accept the low blow as being 'inherent in the game', whereas that is unlikely to be the case in the latter example.

Consent needs to be distinguished from a *pactum de non petendo*, which is a contractual undertaking not to institute an action against the wrongdoer for an injury that may be suffered. Although the effects are, in essence, the same, the reasons for the wrongdoer not being held liable are however different.<sup>148</sup> These differences are discussed hereunder.

#### **4.3.1.1.1.4 *Pactum de non petendo***<sup>149</sup>

Whilst consent negates wrongfulness, a *pactum de non petendo* does not, but the prejudiced person undertakes not to hold the actor liable for the resultant delict that has been committed.<sup>150</sup> The prejudiced person thus waives the delictual action that he would otherwise have at his disposal.<sup>151</sup> It is for this reason, that a *pactum de non petendo* is not a defence to an action instituted by a deceased's dependents.<sup>152</sup> However, since *volenti* excludes wrongfulness, a delict is not committed and therefore a deceased's dependents have no action against the actor.<sup>153</sup>

#### **4.3.1.1.2 Fault**

Fault, in the form of either intention (*dolus*) or negligence (*culpa*), is also a general requirement for delictual liability.<sup>154</sup>

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<sup>148</sup> Neethling 114.

<sup>149</sup> The relevance of a *pacta de non petendo* to injury or death suffered in a professional boxing bout is discussed in further later in this chapter under the heading 'Contract'.

<sup>150</sup> Neethling 114.

<sup>151</sup> Neethling 114.

<sup>152</sup> *Jameson's Minors v CSAR* 1908 TS 575 (Jameson's). Neethling 114.

<sup>153</sup> Neethling 114.

<sup>154</sup> Neethling 129.

Depending on the circumstances of a particular case, either fault or wrongfulness can be determined first.<sup>155</sup> Each, however, requires a distinct enquiry.<sup>156</sup>

Prior to determining fault, it is necessary to determine whether the defendant has the capacity to be held accountable.<sup>157</sup> Grounds affecting accountability are youth, mental disease or illness, intoxication or a similar situation induced by a drug and anger due to provocation.<sup>158</sup>

#### 4.3.1.1.2.1 Intention

A defendant acts intentionally if his will is directed at a result which he causes while conscious of the wrongfulness of his conduct.<sup>159</sup> Intention accordingly has two elements, namely direction of the will and consciousness (knowledge) of wrongfulness<sup>160</sup>.

Intention can have various forms, namely *dolus directus* (i.e. where the wrongdoer's will is directed to a result that was his principal object), *dolus indirectus* (i.e. where a wrongdoer directly intends one consequence but has knowledge that another consequence will unavoidably or inevitably also occur) or *dolus eventualis* (i.e. where the consequence is one which the wrongdoer does not desire but foresees may follow from his conduct).<sup>161</sup>

As mentioned earlier, not only must the wrongdoer direct his will, but he must also know or at least foresee the possibility that his conduct is wrongful (that is, contrary to law or constituting an infringement of another's right/s).<sup>162</sup>

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<sup>155</sup> *Hawekwa Youth Camp v Byrne* 2010 6 SA 83 (SCA) 91 (*Hawekwa*).

<sup>156</sup> Neethling 130. These two enquiries are often erroneously telescoped into one (along the lines of the duty of care doctrine in the UK) or conflated due to them sharing certain common elements such as reasonableness and foreseeability. The Supreme Court in *Stedall v Aspeling* (1326/2016) [2017] ZASCA 172 para. 13-14 (*Stedall*) has however warned against this occurrence. Neethling 159-160.

<sup>157</sup> Neethling 129.

<sup>158</sup> Neethling 131. For purposes of this research study, it will be assumed that the relevant role players all have the necessary capacity to be held accountable.

<sup>159</sup> Neethling 132.

<sup>160</sup> Neethling 132-133.

<sup>161</sup> Neethling 133.

<sup>162</sup> Neethling 135.

#### 4.3.1.1.2.2 Negligence

Whilst intent is tested subjectively, negligence is tested objectively according to the so-called 'reasonable man' test that was formulated as follows in *Kruger v Coetzee*:<sup>163</sup>

"For the purposes of liability, negligence arises if –

(a) a *diligens paterfamilias* in the position of the defendant –

- (i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss<sup>164</sup>; and
- (ii) would take reasonable steps to guard against such occurrence<sup>165</sup>; and

(b) the defendant failed to take such steps."<sup>166</sup>

Both forms of conduct, namely a positive act and an omission can be performed either intentionally or negligently<sup>167</sup>.

In the case of an expert, the test for negligence in relation to the exercise of the expert activity is the test of the so-called 'reasonable expert'.<sup>168</sup> In other words, in a professional boxing context, this would entail *inter alia* the reasonable ringside physician<sup>169</sup> or the reasonable referee<sup>170</sup>. The standard of expertise is described as

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<sup>163</sup> *Kruger v Coetzee* 1966 2 SA 428 (A) 430 (*Coetzee*). This test has subsequently been confirmed by the Constitutional Court in *inter alia Mashongwa v Passenger Rail Agency of SA* [2015] ZACC 36 (*Mashongwa*).

<sup>164</sup> This is the so-called 'reasonable foreseeability' leg of this two-legged negligence test.

<sup>165</sup> This is the so-called 'reasonable preventability of damage' leg of this two-legged negligence test.

<sup>166</sup> If this is the conclusion arrived at after the two above-mentioned legs of the test have also been answered in the affirmative, then the wrongdoer's conduct will generally be considered to be negligent in the circumstances.

<sup>167</sup> Neethling 141.

<sup>168</sup> Neethling 145.

<sup>169</sup> S24(1)(b) of the South African Boxing Regulations states that ringside physicians *shall* have completed a course on all aspects of boxing injuries, as approved by Boxing SA. In addition, ringside physicians need to be accredited as ringside physicians by Boxing SA in terms of s24(1)(c) of the South African Boxing Regulations. Ringside physicians are thus not regular medical practitioners but possess an expertise in boxing-related medical matters.

<sup>170</sup> S27(7) of the South African Boxing Regulations states that referees *shall* complete a course in the medical aspects of boxing, which course *shall* be run annually by Boxing SA in consultation with Boxing SA's medical portfolio committee. In addition, s4 of the South African Boxing Regulations states that in order to be registered as *inter alia* a referee, the person *must* have the relevant experience, undertake and pass an exam set by Boxing

“reasonable” since regard is had not to the highest degree of expertise in the relevant profession or occupation, but to the general or average level of expertise.<sup>171</sup>

The maxim *imperitia culpa adnumeratur* applies where a person undertakes an activity for which expert knowledge is required while he knows or should reasonably know that that he lacks the requisite expert knowledge and should therefore not undertake the activity in question. The wrongdoer’s blameworthiness is not to be found in his incompetence in performing the activity, but in the fact that, while he knows or should reasonably know that he is incompetent, he nevertheless attempts to perform the expert activity,<sup>172</sup> for example a regular medical practitioner performing the role of ringside physician or an amateur boxing referee officiating in a championship bout in the professional ranks.

In respect of the first leg of the test for negligence, namely reasonable foreseeability of harm, it is required that the occurrence of a particular consequence must be *reasonably foreseeable*, and not that damage in general was reasonably foreseeable.<sup>173</sup> This does not mean that the precise nature and extent of the harmful consequence, or the precise manner in which the damage was caused, must be reasonably foreseeable, but It is sufficient if the general nature of the consequence and the manner in which it was caused is foreseeable.<sup>174</sup>

In respect of the second leg of the test for negligence, namely *reasonable preventability of damage*, the question is whether, in an instance of reasonably foreseeable damage, the defendant took adequate reasonable steps to prevent the damage from occurring.<sup>175</sup>

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SA and complete an apprenticeship as determined by Boxing SA. Referees are thus required to possess an expertise not only in relation to boxing matters, but also in relation to the medical aspects of boxing.

<sup>171</sup> *Van Wyk v Lewis* 1924 AD 438 444 (*Lewis*). Neethling 145.

<sup>172</sup> Neethling 147.

<sup>173</sup> Neethling 149.

<sup>174</sup> Neethling 149.

<sup>175</sup> Neethling 151.

#### 4.3.1.1.3 Causation

For a delict to occur, there needs to be a *causal nexus* between the wrongdoer's conduct (whether it be a positive act or an omission) and the damage.<sup>176</sup>

Causation is normally determined according to a two-pronged inquiry, firstly by determining whether a factual causal nexus exists between the wrongdoer's conduct and the damage (i.e. so-called *factual causation*) and if so, whether the wrongdoer should be held legally liable for the damage (i.e. so-called *legal causation*).<sup>177</sup> The legal causation enquiry assists in limiting the extent of a wrongdoer's liability which could, if only the factual causation test were to be applied, potentially extend *ad infinitum*.<sup>178</sup>

##### 4.3.1.1.3.1 Factual causation

The generally accepted test for determining factual causation is the *condictio sine qua non* test (also known as the 'but for' test).<sup>179</sup>

The *condictio sine qua non* test, due to its nature, is applied differently with regard to positive acts and omissions.

With regard to positive acts, the *condictio sine qua non* test was formulated by Corbett JA as follows in *International Shipping Co (Pty) Ltd v Bentley*<sup>180</sup>:

"The first [enquiry] is a factual one and relates to the question whether the defendant's wrongful act was a cause of the plaintiff's loss. This has been referred to as "factual causation". The enquiry is generally conducted by applying the so-called 'but-for' test which is designed to determine whether a postulated cause can be identified as a *causa sine qua non* of the loss in

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<sup>176</sup> *First National Bank of South Africa Ltd v Duvenhage* 2006 5 SA 319 (SCA) 320 (*Duvenhage*); Neethling 183.

<sup>177</sup> Neethling 183-184.

<sup>178</sup> Neethling 183-184; In *SA Paragliding* para 37, the Supreme Court of Appeal described the role of legal causation as follows: "The issue of legal causation, or remoteness, is ultimately determined by considerations of policy which serves as a 'long stop' where right-minded people, including judges, will regard the imposition of liability in a particular case as untenable, despite the presence of all other elements of delictual liability ..."

<sup>179</sup> Neethling 185.

<sup>180</sup> *International Shipping Co (Pty) Ltd v Bentley* 1990 (1) SA 680 (A) at 700F-G (*Bentley*).

question. In order to apply this test, one must make a hypothetical enquiry as to what probably would have happened but for the wrongful conduct of the defendant. This enquiry may involve the mental elimination of the wrongful conduct and the substitution of a hypothetical course of lawful conduct and the posing of the question as to whether upon such a hypothesis the plaintiff's loss would have ensued or not. If it would in any event have ensued, then the wrongful conduct was not a cause of the plaintiff's loss; *aliter*, if it would not so have ensued. If the wrongful act is shown in this way not to be a *causa sine qua non* of the loss suffered, then no legal liability can arise."

In the case of a positive act, the defendant's conduct must be hypothetically removed in the mind to determine whether the relevant consequence would still have resulted and if it would not still have resulted, it can be said that the defendant's act was the factual cause of the damage.<sup>181</sup>

However, in the case of an omission, a hypothetical positive act (determined objectively) should be inserted into the particular set of facts to mentally remove the defendant's omission and if that positive act could have prevented the damage, it can be said that the defendant's omission was the factual cause of the damage.<sup>182</sup>

The afore-mentioned enquiries require a retrospective analysis of what would probably have happened, based upon the evidence and what could have been expected in the ordinary course of human endeavour.<sup>183</sup>

The Constitutional Court<sup>184</sup> has, however, emphasised that the application of the *condictio sine qua non* approach with regard to both positive acts and omissions should be applied flexibly since the strict application of this approach can result in an injustice in certain cases. In *Minister of Finance v Gore*<sup>185</sup> the flexible approach was formulated by the court as follows:

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<sup>181</sup> *Lee v Minister of Correctional Services* 2013 2 SA 144 (CC) (*Lee*); Neethling 187.

<sup>182</sup> *Minister of Safety and Security v Carmichele* 2004 3 SA 305 (SCA); Neethling 191.

<sup>183</sup> *Van Duivenboden* 2002 6 SA 431 (SCA) 449; Neethling 191-192.

<sup>184</sup> *Lee* 162.

<sup>185</sup> *Minister of Finance v Gore* 2007 1 SA 111 (SCA) 125 (*Gore*).

‘With reference to the onus resting on plaintiff, it is sometimes said that the prospect of avoiding the [damage] through the hypothetical elimination of the wrongful conduct must be more than 50%. This is often followed by the criticism that the all-or-nothing effect of the approach is unsatisfactory and unfair. A plaintiff who can establish a 51% chance, so it is said, gets everything, while a 49% prospect results in total failure. This, however, is not how the process of legal reasoning works. *The legal mind enquires: What is more likely?* The issue is one of persuasion, which is ill-reflected in formulaic quantification. The question of percentages does not arise . . . *Application of the ‘but for’ test is not based on mathematics, pure science or philosophy. It is a matter of common sense, based on the practical way in which the ordinary person’s mind works against the background of everyday-life experiences.*’ (emphasis added)

In conclusion, it should be noted that for factual causation it is usually sufficient if the defendant’s conduct has *in any way* contributed to the damage sustained by the plaintiff and need not be the only cause or the main cause, or a direct cause.<sup>186</sup> This is so because the legal causation test will, in turn, provide a necessary ‘long stop’ to ensure that the extent of the liability does not extend too far.<sup>187</sup>

#### **4.3.1.1.3.2 Legal causation**

The question of legal causation arises when determining which harmful consequences actually caused by the wrongdoer’s wrongful and culpable act, he should be held responsible for; in other words, which consequences should be imputed to him.<sup>188</sup>

Legal causation is normally only problematic where a chain of consecutive or remote consequences results from the wrongdoer’s conduct, and where it is alleged that he should not be held legally liable for all the consequences. In other cases, where the harm which the wrongdoer is to be held liable for clearly falls within the limit of his liability, the issue of legal causation is self-evident and the inquiry thus less onerous.<sup>189</sup>

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<sup>186</sup> Neethling 197.

<sup>187</sup> Neethling 197.

<sup>188</sup> Neethling 197.

<sup>189</sup> Neethling 198.



in *S v Mokgethi*,<sup>190</sup> which has since been confirmed in several other delictual cases,<sup>191</sup> the Supreme Court of Appeal described the flexible approach to determining legal causation as follows:

“I doubt whether a legal system can do without a dominant elastic criterion for determining legal causation. As is clear from the passages quoted above, policy considerations are relevant, and [the Court must guard] against the alleged wrongdoer’s liability exceeding the boundaries of reasonableness, fairness and justice. The various criteria [for legal causation] seem to me not to be significantly more exact than *a criterion (the flexible criterion) according to which [the Court determines] whether a sufficiently close link exists between an act and a consequence with reference to policy considerations*. I am not saying that one, or even more than one, of the criteria may not be employed on a subsidiary level in the application of the flexible criterion to a specific type of factual situation; but merely that none of the criteria can be used [exclusively] as a more concrete measure of limitation in all types of factual situations, and for the purposes of any form of legal liability.” (emphasis added).

The issue of legal causation, or remoteness, is thus ultimately determined by considerations of policy which serves as a ‘long stop’ where right-minded people, including judges, will regard the imposition of liability in a particular case as untenable, despite the presence of all other elements of delictual liability.<sup>192</sup> The reason that this form of limitation of liability is necessary is borne out in the following illustration provided in *South Australia Asset Management Corp v York Montague Ltd*,<sup>193</sup> which was cited with approval by the Supreme Court of Appeal in *SA Paragliding*:<sup>194</sup>

“A mountaineer about to undertake a difficult climb is concerned about the fitness of his knee. He goes to a doctor who negligently makes a superficial examination and pronounces the knee fit. The climber goes on the expedition, which he would not have undertaken if the doctor had told him the true state of his knee. He suffers

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<sup>190</sup> *S v Mokgethi* 1990 1 SA 32 (A) 39 (*Mokgethi*).

<sup>191</sup> These include *inter alia Bentley* 700.

<sup>192</sup> *SA Paragliding* para. 37.

<sup>193</sup> *South Australia Asset Management Corp v York Montague Ltd* [1996] 3 All ER 365 (HL) at 371(j).

<sup>194</sup> *SA Paragliding* para. 37.

an injury which is an entirely foreseeable consequence of mountaineering, but has nothing to do with his knee ... I would ... think that there was something wrong with a principle which, in the example which I have given, produced the result that the doctor was liable ... There seems no reason of policy which requires that the negligence of the doctor should require the transfer to him of all the foreseeable risks of the expedition.”

#### **4.3.1.1.3.3 *Novus actus interveniens***

A *novus actus interveniens* is an independent event, which, after the wrongdoer’s act has been concluded, either causes or contributes to the consequences concerned.<sup>195</sup> A *novus actus interveniens* may be brought about by the culpable conduct of the plaintiff himself, by the culpable conduct of a third party or by natural factors such as the weather.<sup>196</sup>

An event will qualify as a *novus actus interveniens* only if it was not reasonably foreseeable. If it was reasonably foreseeable at the moment of the act (or if it formed part of the risks inherent in the conduct of the defendant), then such an event may not be considered to be a *novus actus interveniens* that may influence the imputability of the harm to the defendant.<sup>197</sup>

#### **4.3.1.2 Law of Contract**

The South African Boxing Regulations prescribe standard-form contracts to be used between a promoter and a boxer,<sup>198</sup> and between a manager and a boxer.<sup>199</sup> These standard form contracts each contain a *pactum de non petendo*.<sup>200</sup>

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<sup>195</sup> Neethling 207.

<sup>196</sup> Neethling 218.

<sup>197</sup> *OK Bazaar (1929) Ltd v Standard Bank of South Africa Ltd* 2002 3 SA 688 (SCA) 697 (*OK Bazaar*).

<sup>198</sup> There are three such standard form contracts, namely Annexure G (Articles of agreement between boxer and promoter for a long-term engagement); Annexure H1 (Articles of agreement between boxer and promoter for a specific tournament); and Annexure H2 (Articles of agreement between boxer and promoter for a specific tournament if the purse money for such boxer is payable in a foreign currency).

<sup>199</sup> Annexure I (Articles of Agreement between manager and boxer).

<sup>200</sup> Clause 1.3 of Annexure G (Articles of Agreement between Boxer and Promoter for a Long Term Engagement) provides that “The boxer absolves the Promoter from any responsibility should he or she be injured during the term of this agreement, either during a bout promoted by the Promoter or during his training for such bout.” Clause 16 of Annexure H(1) (Articles of Agreement between Boxer and Promoter for a Specific Bout) provides

Although these standard form contracts are included as annexures to the South African Boxing Regulations, once they are used to conclude agreements between the respective parties, those contracts are then governed by the private law of contract, including *inter alia* the common law principles relating to *pacta de non petendo*.<sup>201</sup> As indicated earlier in this chapter, the *pacta de non petendo* contained in these contracts also has relevance from the law of delict perspective.

A contract can give rise to a claim for damages where a breach of a contractual term causes a party to suffer harm. In certain instances, a plaintiff may have concurrent claims for damages in terms of both contract and delict,<sup>202</sup> in which event the plaintiff may choose between the one and the other or sue in the alternative.<sup>203</sup>

In the context of the Research Questions, a claim for damages by a boxer in terms of contract is a moot point since the afore-mentioned standard-form contracts do not contain any terms that impose a duty of care obligation on either the promoter or manager *vis a vis* the boxer in respect of his health and safety.<sup>204</sup> The boxer's remedies against these role players for damages in respect of personal injury will therefore lie exclusively in the law of delict. The same will apply in respect of a boxer's claims against the other role players since in terms of the South African Boxing

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that "The Boxer has no claim against the Promoter, Boxing SA or any of Boxing SA's members or officials for any injuries he or she may sustain while training for the bout or during or after the tournament." Clause 14 of Annexure H(2) (Articles of Agreement between Boxer and Promoter for a Specific Bout if the Purse Money of the Boxer is Payable in a Foreign Country) provides that "The boxer has no claim against the Promoter or Boxing SA's [*there are words missing here*] for any injuries he or she may sustain whilst training for the bout or during or after the bout." Clause 1.3 of Annexure I ((Articles of Agreement between Boxer and Manager) provides that "The boxer absolves the Manager from any responsibility should he or she be injured during the term of this agreement, either within the ring or out of it."

<sup>201</sup> The legal effect that these *pacta de non petendo* in the standard form contracts between promoter and boxer, and between manager and boxer have on the liability of the promoter and manager in respect of an injury or death suffered by that boxer in a professional boxing bout, is discussed in further detail in Chapter 7 of this research study.

<sup>202</sup> For example, where a duty of care is owed in contract and also in delict, such in a doctor or hospital and patient relationship. Duties of care can arise independently of each other and exist side by side.

<sup>203</sup> *Holtzhausen v ABSA Bank Ltd* 2002 2 All SA 560 (SCA) PARAS 9-10.

<sup>204</sup> In the UK, however, the standard-form agreement between a boxer and manager prescribed by the BBBC Rules and Regulations imposes an express duty of care on the manager. The relevant clause states that the manager will use reasonable skill and care in performing his obligations under the agreement. and will in particular *inter alia* supervise and take all reasonable steps to preserve the health and safety of the boxer in the context of his profession. There is no similar provision in the standard-form agreement between a boxer and promoter.

Regulations no agreements are required to be concluded between the boxer and those other role players.

#### **4.3.2 Criminal law (Public Law)**

As stated in Chapter 1, the criminal law consequences arising from an injury or death suffered by a boxer during a professional boxing bout falls outside the scope of this research study.

## Part B: United Kingdom

### 4.4 Introduction

Unlike South Africa and NYS, the UK does not have specific legislation that controls the conduct of professional boxing. Professional boxing in the UK is instead controlled through a well-established system of self-regulation enforced through the rules and regulations set by the BBBC (BBBC Rules and Regulations).<sup>205</sup>

In addition, professional boxing in the UK is also regulated by the common law of the UK, particularly the law of torts, law of contract and the criminal law.

Set out below, is a brief overview of the aforementioned legal provisions in so far as they have relevance to professional boxing. The primary objective of the overview is to provide a comparative basis for purposes of recommending measures that can be adopted in South Africa to avert and/or mitigate the legal risks that the various role players face in respect of injuries or death suffered by boxers during bouts in which they are involved in their respective capacities.

### 4.5 Law of Tort

The tort of negligence in the UK bears strong similarities to the law of delict in South Africa in that it also provides remedies to compensate a claimant who has suffered damage caused by the wrongful conduct of another person.

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<sup>205</sup>The current version of the BBBC Rules and Regulations was set by the BBBC in 2019. The legal position of the BBBC differs from that of Boxing SA in that while the BBBC sets the rules that it administers, Boxing SA administers rules that are set by the Legislature (viz. the South African Boxing Regulations that have been promulgated by the Minister of Sport in terms of the South African Boxing Act. This is an important difference that needs to be borne in mind when an analogy is sought to be made between the respective roles and functions of the BBBC and Boxing SA, particularly based on the court's findings in *Watson*. Another important difference is that the BBBC is a private entity established for purposes of self-regulating its members (namely, its licensees), while Boxing SA is a statutory body vested with statutory powers and performing a public function.

There are, however, certain differences between the tort of negligence and the law of delict, the most notable being the manner in which the elements of fault and wrongfulness are treated.<sup>206</sup>

In order to prove that a tort of negligence was committed, a claimant must prove that:<sup>207</sup> (a) the defendant owed him a duty of care;<sup>208</sup> (b) the defendant negligently breached that duty of care;<sup>209</sup> and (c) the damage he suffered was caused by that breach.<sup>210</sup>

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<sup>206</sup> Neethling 158-160; *Stedall* para. 28. In the tort of negligence (as it is applied in the UK), duty of care is a core element, straddling both wrongfulness and fault (as those elements are known in the law of delict). In the law of delict, wrongfulness and fault are, on the contrary, treated as distinct elements, and accordingly determined separately for purposes of imputing liability to the wrongdoer. Although duty of care is not regarded as a separate element in the law of delict, it is nevertheless treated as a factor when determining the element of wrongfulness, particularly in relation to an omission. In the latter instance, it is referred in terms of a 'duty' or 'legal duty', as opposed to a duty of care *per se*.

<sup>207</sup> Morgan "Brain injuries in sport: Remedies under English law" 2018 accessed at

<https://www.morgansl.com/es/latest/brain-injuries-sport-remedies-under-english-law> (Morgan)

<sup>208</sup> In *Caparo Industries plc v Dickman* [1990] 2 AC 605, 617-618A (which was cited with approval by the Court of Appeal in *Watson* 1147), it was held that a duty of care will be imposed if the claimant can show that: (a) the damage he or she suffered was foreseeable; (b) that there was proximity between himself or herself and the defendant; and (c) that in all the circumstances it would be fair, just and reasonable to impose liability on the defendant. In *Marc Rich & Co AG v Bishop Rock Marine Co Ltd* [1994] 1 WLR 1071, 1077 (which was also cited with approval in *Watson* 1148), it was pointed out that these three requirements overlap with each other and are not to be treated as wholly separate and distinct requirements, but rather as convenient and helpful approaches to the pragmatic question whether a duty of care should be imposed in any given case. However, more recently in *Robinson v Chief Constable of West Yorkshire Police* [2018] 2 WLR 595, the court rejected the rigid tripartite test applied by *Caparo*, instead favouring an "incremental" approach by reference to existing precedents, as well as what would be "just and reasonable" in all circumstances. In that analysis, reasonable foreseeability remains an important factor. Morgan.

<sup>209</sup> *Watson* 1168. Determining whether the defendant was negligent is a two-stage process. Firstly, the court must determine the standard of care that the defendant owed the claimant (which is essentially a question of law) and secondly, the court must determine whether the actions of the defendant met that standard (which is essentially a question of fact). In *Watson* 116, the Court of Appeal applied the "ordinary test of reasonable skill and care" to the BBBC when finding that the BBBC had breached its duty of care to Mr Watson by not having the correct medical safety protocol in place at ringside (namely, the right doctors with the right equipment, meaning doctors able to intubate and put up a drip to treat the injured boxer immediately with mannitol; to have a prior arrangement with a hospital with a neurological unit; and to have that unit placed on standby).

<sup>210</sup> Morgan. The test for causation is two-fold. In the first instance, the claimant must establish factual causation by applying the 'but for' test (i.e. but for the defendant's breach of duty, on the balance of probabilities, would the claimant have suffered the damage?). If the answer is no, then the factual causation leg of the enquiry is satisfied. If it is yes, the defendant will not be liable, even if he has acted negligently in the circumstances. If factual causation is established, the enquiry then turns to legal causation to determine whether the relevant damage suffered was not too remote a consequence of the defendant's breach of duty. In *Watson* 117, the Court of Appeal upheld the trial court's factual finding that had the afore-mentioned medical safety protocol been in place at ringside, the outcome of Mr Watson's injuries would have been significantly better.

The *volenti non fit iniuria* defence also finds application in the tort of negligence in the UK and its requirements are substantially the same as those in respect of the *volenti* defence in the South African law of delict.<sup>211</sup> If successful, the *volenti* defence will entirely exclude liability on the part of the wrongdoer.<sup>212</sup>

Section 1 of the *Law Reform (Contributory Negligence) Act 1945*<sup>213</sup> states:

“Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.”

Thus, if a boxer is deemed to have been at fault in some way, for example by insisting on participating in a boxing bout despite experiencing signs of concussion from a knockout in his previous bout and being aware of the risk of Second Impact Syndrome (SIS),<sup>214</sup> there may be a reduction in the damages recoverable from a third party (such as the BBBC) on the basis of contributory negligence in terms of the afore-mentioned Act.<sup>215</sup>

#### 4.6 Law of Contract

The BBBC has standard form agreements that its licensees are obliged to use.<sup>216</sup> In this regard, there is a standard-form boxer/promoter agreement and a standard-form boxer/manager agreement.<sup>217</sup>

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<sup>211</sup> These requirements in so far as they relate to the *volenti* defence in the South African law of delict, are discussed in paragraph 3.1.1.1.3 of Part A of this chapter.

<sup>212</sup> Morgan. Based on Watson, the *volenti* defence is unlikely to extend to situations where there are inadequate safety measures at ringside for a professional boxing bout. By consenting to participate in a boxing bout, the boxer is not consenting to inadequate safety measures being present at ringside.

<sup>213</sup> 1945 chapter 28 8 and 9 geo 6.

<sup>214</sup> SIS occurs when a sportsman suffers a second concussion while still recovering from an earlier concussion. SIS can occur days or even weeks after the earlier concussion and can cause death or permanent disability.

<sup>215</sup> Morgan.

<sup>216</sup> Articles 7.1 and 10.1 of the BBBC Rules and Regulations. These Articles do, however, allow for another form of contract to be used if such contract has been previously approved by the BBBC, which approval shall not be unreasonably withheld provided that it is not inconsistent with the provisions of the BBBC Rules and Regulations.

<sup>217</sup> These standard-form agreements are attached to the BBBC Rules and Regulations as Form No. 35 and Form No. 36 respectively. Their provisions relating to medical safety matters are discussed later in this chapter.

Unlike in the case of the equivalent standard-form agreements prescribed by the South African Boxing Regulations, the afore-mentioned agreements do not contain a *pactum de non petendo*, i.e., a contractual waiver of liability. It does, however, unlike in the case of the South African standard-form agreement contain a provision obligating the manager to take all reasonable steps to preserve the health and safety of the boxer.<sup>218</sup>

#### **4.7 BBBC Rules and Regulations**

Set out below is a brief overview of the provisions of the BBBC Rules and Regulations that relate, directly or indirectly, to the medical safety of boxers. The primary objective of the overview is to provide a comparative basis for purposes of recommending possible measures that can be adopted in South Africa to avert and/or mitigate the legal risks that the various role players face in respect of injuries or death that professional boxers may suffer during bouts in which they are involved in their respective capacities.<sup>219</sup>

##### **4.7.1 Safety of the ring**

The specifications for the ring are prescribed in Article 3.4. An interesting safety feature that is not included in the South African Boxing Regulations is that the tension of the bottom rope must be “considerably less” than the tension of the top three ropes.<sup>220</sup>

##### **4.7.2 Boxers’ safety accessories**

A boxer must wear underneath his trunks a suitable protector approved by the BBBC Inspector or official in charge of the promotion.<sup>221</sup>

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<sup>218</sup> This provision is discussed in further detail later in this chapter.

<sup>219</sup> For purposes of expediency, the relevant provisions have been arranged under various headings created to describe their nature and purpose.

<sup>220</sup> The bottom rope is renowned for causing whiplash to a boxer who lands with his neck (particularly the back of his neck) against the bottom rope after being knocked down by his opponent. The medical effects of such whiplash can cause serious brain injury and even death to a boxer. In 1985, Jacob Morake unfortunately lost his life after being knocked down by Brian Mitchell and landing with his neck against the bottom rope and suffering severe whiplash that caused him to suffer fatal head trauma. By lessening the tension of the bottom rope, whiplash of this nature can be mitigated.

<sup>221</sup> Article 3.19 of the BBBC Rules and Regulations.



A boxer must at all times wear a properly fitted gumshield.<sup>222</sup>

Breaking by twisting, removal of padding by fingering and thumbing from the potential part of the glove is prohibited.<sup>223</sup>

#### **4.7.3 Hospital arrangements for contest**

Prior to any promotion taking place the Board will give written notification to the Accident and Emergency and Neurological units of the nearest hospital (Local Hospital) to the venue and advise that a promotion is to take place in their locality.<sup>224</sup>

Prior to the promotion taking place the promotor shall set up and maintain during the promotion the facility to communicate by telephone to the Local Hospital so that the Local Hospital can be advised immediately should an emergency occur at the promotion.<sup>225</sup>

#### **4.7.4 Medical Personnel at contest**

The promoter shall ensure that a minimum of two doctors, one of whom must be practised in the management of an unconscious patient, who have been approved by the Area Medical Officer attend at all promotions. A doctor practised in the management of an unconscious or partially conscious patient must be seated at ringside at all times during a contest. A doctor may of his own volition visit a corner of a boxer during the interval between rounds in order to assess his medical fitness to continue the contest. If the doctor is concerned about a boxer's fitness to continue the contest, he must signal to the referee to draw his attention prior to the start of the next round.<sup>226</sup>

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<sup>222</sup> Article 3.20 of the BBBC Rules and Regulations

<sup>223</sup> Article 3.23 of the BBBC Rules and Regulations In this regard, see fn 712 of this research study which discusses the legal action that was instituted against the trainer Panama Lewis who allegedly tampered with the padding of his boxer's gloves prior to the start of a bout.

<sup>224</sup> Article 8.6.1 of the BBBC Rules and Regulations. In terms of the South African Boxing Regulations this function is the responsibility of the promotor and not Boxing SA. It is, however, somewhat odd that Article 8.6.1 uses the word "will" instead of "shall".

<sup>225</sup> Article 8.6.2 of the BBBC Rules and Regulations

<sup>226</sup> Article 3.8 of the BBBC Rules and Regulations.

The promoter shall ensure that sufficient security is in place at the venue to enable medical assistance to be carried out without hinderance to boxers in the ring should the necessity arise. The Senior Medical Officer shall approve such arrangements prior to the promotion.<sup>227</sup>

It is the responsibility of the Senior Medical Officer to the promotion to ensure that all the safety procedures are in place for the promotion.<sup>228</sup>

#### **4.7.5 Medical safety equipment and facilities at contest**

The promoter shall procure that at all promotions a stretcher is available for use at the ringside.<sup>229</sup>

Each venue must have a room set aside exclusively for medical purposes. It shall be adequately lit, have an examination couch and possess hot and cold running water. The medical room shall be situated in close proximity to the boxers' dressing rooms and be reasonably accessible to and from the ring.<sup>230</sup>

The Senior Medical Officer shall arrange for full and adequate resuscitation equipment (including intubation and ventilation equipment) to be available at ringside. No contest shall take place unless fully trained personnel able to operate such resuscitation equipment are present throughout the promotion.<sup>231</sup>

An ambulance, crewed by trained paramedics, shall be on site throughout the promotion. The ambulance shall be for the sole use of injured boxers and the crew shall be appraised by the Senior Medical Officer of the identity and location of the advised Local Hospital.<sup>232</sup>

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<sup>227</sup> Article 8.6.5 of the BBBC Rules and Regulations.

<sup>228</sup> Article 8.6.6 of the BBBC Rules and Regulations. This is a significant difference from the position in terms of the South African Boxing Regulations which place this responsibility on the shoulders of the supervisory official (S33(2)(a) of the South African Boxing Regulations). It is submitted that the position under the BBBC Regulations is the preferable one.

<sup>229</sup> Article 3.10 of the BBBC Rules and Regulations.

<sup>230</sup> Article 9.38.2 of the BBBC Rules and Regulations.

<sup>231</sup> Article 8.6.3 of the BBBC Rules and Regulations.

<sup>232</sup> Article 8.6.4 of the BBBC Rules and Regulations.

#### **4.7.6 Medical examinations at and after contest**

All boxers shall be medically examined at the weigh-in or immediately prior to the commencement of the promotion. Each boxer must also be medically examined after every contest. If the examining doctor considers it necessary to do so he shall send a report to the Board or Area Council. A doctor must be available to give immediate attention to any boxer should this be required.<sup>233</sup>

At the conclusion of every contest the ringside doctors should enter the ring to make an immediate medical assessment of both boxers.<sup>234</sup>

No boxer may leave the venue after taking part in a bout without the permission of the medical officer(s). The Senior Medical Officer will provide where necessary and according to his discretion each boxer following his contest with a printed card of advice on reaction to head injuries. A boxer is responsible for ensuring that those accompanying him after the contest are aware of the content of such card or have been given the card or a copy of it.<sup>235</sup>

#### **4.7.7 Medical safety aspects within bout**

If a boxer beats the count but fails to satisfy the referee that he is in a position and condition to defend himself, the referee shall stop the contest.<sup>236</sup>

A referee shall have the power to interrupt the count where he considers that a fallen boxer is in need of urgent medical attention.<sup>237</sup>

A referee may consult the ringside doctor at any stage concerning the fitness of a boxer to continue a contest.<sup>238</sup>

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<sup>233</sup> Article 3.9 of the BBBC Rules and Regulations.

<sup>234</sup> Article 8.6.8 of the BBBC Rules and Regulations. The South African Boxing Regulations do not make provision for this and in practice a boxer is only examined in the ring if he is injured or has been knocked out.

<sup>235</sup> Article 8.6.9 of the BBBC Rules and Regulations. The corresponding section in the South African Boxing Regulations (s24(5)(a)) does not apply to all boxers but only those who have been knocked out, sustained severe punishment or injured during a bout. It is submitted that the position in terms of the BBBC Rules and Regulations is preferable from a medical safety perspective.

<sup>236</sup> Article 3.33.2 of the BBBC Rules and Regulations.

<sup>237</sup> Article 3.33.3 of the BBBC Rules and Regulations.

<sup>238</sup> Article 3.33.4 of the BBBC Rules and Regulations.

If at any time during a contest the referee decides, in his complete discretion, that one contestant is outclassed or is unable to continue as a result of injury or is not in a position to continue boxing he shall stop the contest.<sup>239</sup>

Various acts are listed as acts that are not permitted during a contest, for example hitting below the belt or hitting on the back of the head or neck.<sup>240</sup> If any of these acts occur, the referee may caution or disqualify the offending boxer.<sup>241</sup>

The boxer's manager or in his absence his chief second, shall alone have the responsibility of retiring a boxer in a contest. An indication of retirement shall not be given while a round is in progress.<sup>242</sup>

Radio and television interviews with boxers are not permitted in the ring following a contest. May only be conducted at ringside provided that the Senior Medical Officer present has examined the boxers and given permission for the interview and the Steward in Charge has also given his approval.<sup>243</sup>

#### **4.7.8 Medical safety aspects relating to other role players at contest**

A Steward or Area Representative may be appointed by the Board or Area Council to officiate in charge at any contest or promotion.<sup>244</sup> His powers and duties include *inter alia* to see that all applicable Rules and Regulations are adhered to.<sup>245</sup> In the absence of an appointed Steward or Representative of an Area Council and Steward or Area Council may officiate and be vested with those powers and duties.<sup>246</sup>

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<sup>239</sup> Article 3.34 of the BBBC Rules and Regulations.

<sup>240</sup> Article 3.38 of the BBBC Rules and Regulations.

<sup>241</sup> Article 3.38.1 of the BBBC Rules and Regulations.

<sup>242</sup> Article 3.43 of the BBBC Rules and Regulations. This provision differs in the following two respects from the corresponding provision in the South African Boxing Regulations: (a) in South Africa, only the chief second and not the manager has this power; and (b) in South Africa the retirement may also occur during the course of a round. It is submitted that the South African position is preferable from a medical safety perspective in that it gives the chief second the power, in addition to the power that the referee has, to stop the bout during the course of a round if the chief second is of the opinion that his boxer is receiving excessive punishment.

<sup>243</sup> Article 8.6.7 of the BBBC Rules and Regulations.

<sup>244</sup> Article 13.1 of the BBBC Rules and Regulations. In terms of the South African Boxing Regulations (s33), the corresponding official is the supervisory official designated by Boxing SA.

<sup>245</sup> Article 13.2 of the BBBC Rules and Regulations.

<sup>246</sup> Article 13.3 of the BBBC Rules and Regulations.

The Board or an Area Council may appoint and supervise Inspectors to carry out duties at the promotion, such as ensuring that all applicable Rules and Regulations are complied with.<sup>247</sup>

#### **4.7.9 Medical safety aspects in the licensing of boxers**

All boxers must be medically examined annually in accordance with the BBBC's standard medical form when their licences become due for renewal.<sup>248</sup>

If any applicant for a boxer's licence, not having previously held such a licence suffers from any of the listed medical conditions (for example any neurological abnormality), it may preclude the grant to him of a boxer's licence.<sup>249</sup>

A boxer applying for or renewing their boxer's licence shall be examined by a fully registered GMC Doctor<sup>250</sup> with a licence to practice.<sup>251</sup>

All boxers shall submit to the Board a satisfactory MRI brain scan report annually. All boxers must have a MR angiogram at the time of their first application for a licence. Prior to every contest the officiating Medical Officer shall satisfy himself that the boxer is medically fit to box the scheduled distance and is not suffering from any condition which may be aggravated by the contest or from any skin disease.<sup>252</sup>

A licence holder's licence may be suspended or withdrawn by the Board or an Area Council if *inter alia* in the opinion of the Board or an Area Council a licence holder, being a boxer, is not medically fit to box or in the opinion of the Board or Area Council a licence holder being a referee, is not fit to continue to officiate.<sup>253</sup>

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<sup>247</sup> Article 14.1 read with Article 14.2 of the BBBC Rules and Regulations. In terms of the South African Boxing Regulations (s33(1)(c)), the supervisory official may appoint inspectors to perform specified tasks at the tournament on an *ad hoc* basis.

<sup>248</sup> Article 5.12 of the BBBC Rules and Regulations.

<sup>249</sup> Article 8.1 of the BBBC Rules and Regulations.

<sup>250</sup> GMC refers to the General Medical Council, which is a public body that maintains the official register of medical practitioners within the UK.

<sup>251</sup> Article 8.2 of the BBBC Rules and Regulations.

<sup>252</sup> Article 8.5 of the BBBC Rules and Regulations.

<sup>253</sup> Article 4.9 of the BBBC Rules and Regulations.

Boxers when first licenced must sign a contract with a duly licensed manager for a period of one year.<sup>254</sup>

A foreign boxer applying to box in the BBBC's territory must *inter alia* be licenced in his own country and provide proof of his medical fitness to box.<sup>255</sup> He must also be represented by a locally licenced matchmaker,<sup>256</sup> who must engage the services of an interpreter if required.<sup>257</sup>

#### **4.7.10 Medical safety aspects in the licensing of non-boxers**

A manager licence shall not be granted to any person who has not held a licence in another category for a period of at least 3 years during the 10 years prior to the date of application.<sup>258</sup>

Applicants for a referee's licence shall be permitted to take part in practical tests to determine their suitability and competence.<sup>259</sup> Provision is made for different grades of licences for referees, each of which has its own licensing requirements and the type of bouts which may be officiated.<sup>260</sup> Irrespective of grade, a referee may not officiate after the age of 72 years.<sup>261</sup> A referee's licence may be suspended or withdrawn by the Board or an Area Council if *inter alia* in the opinion of the Board or an Area Council he is not fit to continue to officiate.<sup>262</sup>

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<sup>254</sup> Article 5.1.1 of the BBBC Rules and Regulations.

<sup>255</sup> Article 20.3 of the BBBC Rules and Regulations.

<sup>256</sup> Article 20.1 of the BBBC Rules and Regulations.

<sup>257</sup> Article 20.4.2 of the BBBC Rules and Regulations.

<sup>258</sup> Article 6.2 of the BBBC Rules and Regulations. The purpose of this requirement is presumably to ensure that a manager is suitably experienced to advise his boxer in respect of boxing related matters. A similar provision does not currently exist in the South Africa boxing regulations.

<sup>259</sup> Article 15.1.3 of the BBBC Rules and Regulations.

<sup>260</sup> Article 15.2 of the BBBC Rules and Regulations. It is submitted that is an important medical safety feature to ensure that each referee officiates bouts at his appropriate level of competence and suitability. The South African Boxing Regulations do not provide for a grading system for referees, which means that all referees irrespective of their level of competence and suitability are on par.

<sup>261</sup> Article 15.1.1.1 of the BBBC Rules and Regulations.

<sup>262</sup> Article 4.9 of the BBBC Rules and Regulations.

An applicant for a trainer or seconds licence must have a BBBC first aid qualification before being granted a licence.<sup>263</sup>

The Board may investigate allegations of misconduct (which includes incompetence) and if it finds a licensee guilty it may withdraw or suspend his licence.<sup>264</sup> The Board may also *mero motu* require a licensee to appear before it on any matter relating to the conduct of professional boxing.<sup>265</sup>

#### **4.7.11 Medical safety aspects in the sanctioning of contests**

Boxers over 18 years of age but under 19 years of age shall not box in a bout of more than 24 minutes of actual boxing. Boxers over 19 years of age but under 20 years of age shall not engage in a contest of more than 30 minutes of actual boxing.<sup>266</sup>

No boxer shall box in a contest within 6 clear days from his last contest. No boxer shall be permitted to engage in more than one contest on any one day.<sup>267</sup>

If after having contracted to box in any contest, a boxer is in the opinion of the Board or Area Council considered to be neglecting his training, the Board or Area Council shall have the power to cancel the contest and take any further action that it deems necessary.<sup>268</sup>

All boxers, trainers, managers and promoters are required to immediately inform the Board or Area Council of any illness, injury or physical condition to a boxer which they believe, or they may have been informed may affect the boxer's physical or medical fitness to box.<sup>269</sup>

In the event of a doctor not passing a boxer fit to take part in a contest; or a doctor reporting after a contest that a boxer is not fit to continue boxing for any period owing to injury or for any other reason; or any contest is stopped by the referee (other than

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<sup>263</sup> Article 16.7 of the BBBC Rules and Regulations. There is no corresponding provision in the South African Boxing Regulations.

<sup>264</sup> Article 25 of the BBBC Rules and Regulations.

<sup>265</sup> Article 29 of the BBBC Rules and Regulations.

<sup>266</sup> Article 5.3 of the BBBC Rules and Regulations.

<sup>267</sup> Article 5.4 (a) of the BBBC Rules and Regulations.

<sup>268</sup> Article 5.6 of the BBBC Rules and Regulations.

<sup>269</sup> Article 5.7 of the BBBC Rules and Regulations.

due to disqualification) or the retirement of a boxer, or by a boxer being counted out in a contest, then the licence of such boxer shall be automatically suspended for a period of 28 or 45 clear days or more at the discretion of the boards Senior Medical Officer present at the tournament. At the completion of the suspension period, the boxer shall not return to the ring until he has been certified fit to box by a doctor who may be appointed by the Board or at their discretion by an Area Council.<sup>270</sup>

If in the opinion of the Board Medical Officer a boxer is in need of further treatment or observation he shall be sent to hospital. The Board shall immediately suspend any boxer ignoring such medical advice.<sup>271</sup>

In the event that a boxer loses four consecutive contests his licence may be suspended until he appears before his Area Council for an investigation.<sup>272</sup>

A boxer may not take part in any contest or exhibition outside the UK without obtaining prior permission of the Board.<sup>273</sup>

#### **4.7.12 Safety aspects in approved boxer/manager agreement<sup>274</sup>**

The boxer appoints the manager as his agent and to enter into contracts on his behalf.<sup>275</sup>

The manager will use reasonable skill and care in performing his obligations under the agreement.<sup>276</sup> and will in particular *inter alia* supervise and take all reasonable steps to preserve the health and safety of the boxer in the context of his profession.<sup>277</sup>

As pointed out above, the agreement does not contain a *pactum de non petendo*.

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<sup>270</sup>Article 5.8 of the BBBC Rules and Regulations.

<sup>271</sup> Article 5.9 of the BBBC Rules and Regulations.

<sup>272</sup> Article 5.10 of the BBBC Rules and Regulations.

<sup>273</sup> Article 5.15 of the BBBC Rules and Regulations.

<sup>274</sup> Form No. 36 of the BBBC Rules and Regulations.

<sup>275</sup> Clause 2 of Form No. 36 of the BBBC Rules and Regulations.

<sup>276</sup> Clause 3 of Form No. 36 of the BBBC Rules and Regulations.

<sup>277</sup> Clause 3(i) of Form No. 36 of the BBBC Rules and Regulations. The corresponding stand-form contract in terms of the South African Boxing Regulations does not contain an equivalent contractual obligation on the part of the manager.



#### **4.7.13 Safety aspects in approved boxer/promoter agreement<sup>278</sup>**

As pointed out above, the agreement does not contain a *pactum de non petendo*. Unlike in the case of the boxer/manager agreement referred to above, this agreement does not contain a contractual undertaking by the promoter to take all reasonable steps to preserve the health and safety of the boxer.

#### **4.8 Criminal Law**

As stated in Chapter 1, the criminal law consequences arising from an injury or death suffered by a boxer during a professional boxing bout falls outside the scope of this research study.

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<sup>278</sup> Form No. 35 of the BBBC Rules and Regulations.

## Part C: State of New York

### 4.9 Introduction

As previously mentioned,<sup>279</sup> professional boxing in NYS is controlled by the NYSAC, which is empowered by legislation to enact and enforce regulations to govern the conduct of professional boxing in NYS (“NYSAC Regulations”).<sup>280</sup>

Article 41 is overlaid by certain federal laws that have been enacted by the U.S. Congress to govern professional boxing, namely the *Professional Boxing Safety Act* (“PBSA”)<sup>281</sup> and the *Muhammad Ali Boxing Reform Act* (“Ali Act”).<sup>282</sup> The provisions of these federal laws have to a large extent been incorporated into the NYSAC Regulations.<sup>283</sup> These federal laws contemplate the continued existence of, and regulation by, state athletic and boxing commissions (such as the NYSAC) of professional boxing within their respective states.<sup>284</sup>

In addition, professional boxing is also subject to the various laws that apply generally in NYS, particularly the law of torts in so far as it pertains to personal injury claims. The general laws of contract and criminal law also apply to professional boxing, although to a lesser degree.

Set out below, is a brief overview of the afore-mentioned legal provisions in so far as they have relevance to professional boxing. The primary objective of the overview is to provide a comparative basis for purposes of recommending measures that can be adopted in South Africa to avert and/or mitigate the legal risks that the various role players face in respect of injuries or death suffered by boxers during bouts in which they are involved in their respective capacities. For purposes of expediency, these

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<sup>279</sup> The history of the establishment of the NYSAC as the official controlling body for professional boxing in NYS is discussed in chapter 2 of this research paper.

<sup>280</sup> Article 41 of the *New York State General Business Law* (Article 41). Although this legislation applies to all “combat sports”, which by definition includes professional boxing, only its application to professional boxing is considered in this chapter.

<sup>281</sup> 15 USC §§6301, et seq.

<sup>282</sup> 15 USC §§6301, et seq.

<sup>283</sup> These federal laws are discussed in further detail in para. 3 of this chapter.

<sup>284</sup> Zabarauskas “The Regulation of professional boxing in New York” (2010) *New York Law Journal* Volume 243-No. 23.

legal provisions have been broadly categorized into those which apply specifically to professional boxing and those which also have general application in NYS.

#### **4.10 State Laws (Boxing-specific)**

##### **4.10.1 Article 41 of the General Business Law**

As mentioned earlier, Article 41 establishes the NYSAC. Although Article 41 imposes an obligation on the NYSAC to promulgate regulations to govern the conduct of *inter alia* professional boxing in the State of New York,<sup>285</sup> Article 41 in itself contains various important provisions that regulate the conduct of professional boxing in NYS.<sup>286</sup> These latter provisions are examined below, specifically those that relate, either directly or indirectly, to the medical safety of the boxers, before, during and after a professional boxing bout.

The NYSAC is enacted to protect the health, safety and general welfare of all participants in professional boxing and the spectators thereof; to preserve the integrity of professional boxing through the means of licensing, oversight, enforcement and the authorization of sanctioning entities;<sup>287</sup> and to facilitate the development and responsible conduct of professional boxing throughout the entire state.<sup>288</sup>

The NYSAC is vested with the sole direction, management, control and jurisdiction over *inter alia* all professional boxing, all licenses granted to persons to participate in professional boxing and all contracts directly related to professional boxing in NYS.<sup>289</sup>

No person is permitted to participate, either directly or indirectly, in professional boxing, or the holding of a professional boxing event,<sup>290</sup> or the operation of any training

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<sup>285</sup> The NYSAC Regulations which have been promulgated by the NYSAC pursuant to this section, are discussed in paragraph 2.2 below.

<sup>286</sup> Subdivision 6 of §1000 of Article 41 defines "Professional" as "any participant in [professional boxing] pursuant to this article [41], other than an amateur, who is receiving or competing for, or who has ever received or competed for, any purse, money, prize, pecuniary gain, or other thing exceeding seventy-five dollars in value."

<sup>287</sup> Although Article 41 empowers the NYSAC to license other sanctioning authorities to also oversee the control of professional boxing events in NYS, for purposes of this research study only the role of the NYSAC is discussed since it operates as the primary controlling authority of professional boxing in NYS.

<sup>288</sup> §1003.

<sup>289</sup> §1004.

<sup>290</sup> Whether as a promoter, referee, judge, matchmaker, timekeeper, boxer, manager, trainer or second.

facility providing contact sparring for *inter alia* professional boxers, unless such person has first procured a license from the NYSAC. The NYSAC is obliged to establish rules and regulations setting licensing standards for such persons.<sup>291</sup>

The NYSAC may revoke or suspend any licence that it has issued, if the licensee has, in the judgment of the NYSAC, violated any provision of Article 41 or any rule or order of the NYSAC, demonstrated conduct detrimental to the interests of professional boxing generally or to the public interest, or when the NYSAC deems it to be in the best interests of the health and safety of the licensee.<sup>292</sup>

Any boxer who suffered a knockout or technical knockout in a professional boxing bout may, upon the recommendation of the attending NYSAC physician, be suspended by the NYSAC, for a period determined by the NYSAC, and shall forfeit his license to the NYSAC during such period. Such license shall not be returned to the licensee until he has met all requirements, medical and otherwise, for reinstatement of his license. All such suspensions shall be recorded in his license by the NYSAC. If any other state revokes a licensee's license to compete in professional boxing in that state, then the NYSAC may act to revoke any license issued to such licensee pursuant to Article 41.<sup>293</sup>

Any person applying for a license as a boxer or for the renewal of such license shall undergo a comprehensive physical examination including clinical neurological examinations by a physician approved by the NYSAC. If, at the time of such examination, there is any indication of brain injury, or for any other reason the physician deems it appropriate, the applicant shall be required to undergo further neurological examinations by a neurologist including magnetic resonance imaging or other medically equivalent procedures. The NYSAC shall not issue a boxing license to the applicant until such examinations are completed and reviewed by the NYSAC.

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<sup>291</sup> Subdivision 1 of §1007.

<sup>292</sup> Subdivision 4 of §1007. This is a fairly broad discretionary power conferred on the NYSAC to protect the health and safety of professional boxers.

<sup>293</sup> Subdivision 4 of §1007.

The results of such examinations shall become a part of the applicant's permanent medical records as maintained by the NYSAC.<sup>294</sup>

The NYSAC may also issue temporary working permits to boxers, their managers, trainers and seconds authorising the holder of such permit to engage in a single professional boxing bout at a specified time and place. The NYSAC may require that boxers applying for temporary working permits undergo a physical examination and neurological test or procedure, including magnetic resonance imaging or medically equivalent procedure.<sup>295</sup>

Within the NYSAC there is established the Medical Advisory Board (MAB), comprising nine members appointed by the governor for a three-year term. Each member of the MAB needs to be duly licensed to practice medicine in NYS, and at the time of his appointment must have had at least five years' experience in the practice of his profession. The MAB has the power and is obliged to prepare and submit to the NYSAC for approval regulations and standards for the physical examination of boxers including, without limitation, pre-fight and post-fight examinations and periodic comprehensive examinations. In addition, the MAB's duties include *inter alia*: (a) to serve on a continuous basis in an advisory capacity to the NYSAC; (b) to prepare and submit to the NYSAC for approval, such additional regulations and standards of examination as in their judgment will safeguard the physical welfare of professional boxers; (c) to recommend to the NYSAC from time to time such qualified physicians, who may be designated and employed by the NYSAC for the purpose of conducting physical examinations of professional boxers and other medical services as the rules of the NYSAC require; (d) to develop or recommend appropriate medical education programs for all NYSAC personnel involved in the conduct of professional boxing so that such personnel can recognize and act upon evidence of potential or actual adverse medical indications in a professional boxer prior to, during or after the course of a bout; (e) to review the credentials and performance of each NYSAC physician on

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<sup>294</sup> §1010. The costs of all these examinations are borne by the applicant or the promoter with whom he or she is affiliated.

<sup>295</sup> §1011. This enables boxers and their support personnel who reside outside NYS to lawfully participate in a professional boxing bout in NYS.

an annual basis; and (f) to advise the NYSAC on any study of equipment, procedures or personnel which will, in their opinion, promote the safety of professional boxers.<sup>296</sup>

Article 41 provides for a number of important medical safety measures that need to be put in place at each professional boxing bout. These measures include *inter alia* the following: (a) a duly licensed referee must officiate the bout; (b) the NYSAC shall direct an employee of the NYSAC to be present at the bout to ascertain the conditions at the bout and report thereon in the manner and form prescribed by the NYSAC;<sup>297</sup> (c) the ring shall be inspected and approved by the NYSAC prior to the commencement of the bout;<sup>298</sup> (d) all the boxers shall be examined by a physician designated by the NYSAC before entering the ring and each such physician shall immediately file with the NYSAC a written report of such examination; (e) it is the duty of the promoter to have in attendance at the bout at least one physician designated by the NYSAC; (f) The physician shall terminate any bout if in the opinion of such physician any boxer has received severe punishment or is in danger of serious physical injury; (g) in the event of any serious physical injury to a professional boxer, such physician shall immediately render any emergency treatment necessary, recommend further treatment or hospitalization if required, and fully report the entire matter to the NYSAC within twenty-four hours and if necessary, subsequently thereafter; (h) such physician may also require that the injured boxer and his manager remain in the ring or on the premises or report to a hospital after the bout for such period of time as such physician deems advisable; (i) any professional boxer rendered unconscious or suffering head trauma as determined by such physician shall be immediately examined by such physician and shall be required to undergo neurological examinations by a neurologist including, but not limited to magnetic resonance imaging or medically equivalent procedure; (j) such physician may enter the ring at any time during a professional boxing bout and may terminate the bout if in his opinion it is necessary to prevent severe punishment or serious physical injury to the professional boxer;<sup>299</sup> (k) every

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<sup>296</sup> §1013.

<sup>297</sup> The role described for these employees is more akin to that of an observer as opposed to the more active role performed by the supervisory official in terms of the South African Boxing Regulations.

<sup>298</sup> There is no equivalent obligation imposed upon Boxing SA in terms of the South African Boxing Regulations.

<sup>299</sup> This power afforded to the physician is more far-reaching than that conferred upon the ringside physician by the South African Boxing Regulations. In the latter instance, the ringside physician may only, after being requested by the referee to examine an injured boxer, furnish the referee with his opinion, whereafter it is

promoter shall continuously provide accident insurance or such other form of financial guarantee deemed acceptable by the NYSAC, for the protection of the boxers appearing in their professional boxing tournaments. The failure to provide such insurance shall be cause for the suspension or revocation of the license of such defaulting promoter;<sup>300</sup> (m) a promoter shall in respect of each professional boxing tournament for which an admission fee is charged or received, notify the NYSAC at least ten days in advance of the holding of such bout.<sup>301</sup>

All contracts between *inter alia* a promoter and a boxer in respect of a professional boxing bout shall be subject to the approval of the NYSAC and copies thereof shall be filed with the NYSAC within forty-eight hours after the execution of such contract and at least ten business days prior to the bout, or the first of any series of bouts, to which they relate. The NYSAC may waive such filing deadline for good cause shown.<sup>302</sup>

No licensed promoter or matchmaker shall knowingly arrange fights where one professional has skills or experience significantly in excess of the other professional so that a mismatch results with the potential of physical harm to the professional.<sup>303</sup>

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within the referee's sole decision whether or not to stop the bout. In NYS, the physician may himself *mero motu* stop the bout and need not rely on the referee to do so on his advice.

<sup>300</sup> Such accident insurance or financial guarantee shall provide coverage to the professional boxers for: (i) medical, surgical and hospital care, with a minimum limit of fifty thousand dollars for injuries sustained while participating in any professional boxing bout operated under the control of such promoter and for a payment of fifty thousand dollars to the estate of any deceased athlete where such death is occasioned by injuries received during such bout; and (ii) medical, surgical and hospital care with a minimum limit of one million dollars for the treatment of a life-threatening brain injury sustained in a professional boxing bout operated under the control of such promoter, where an identifiable, causal link exists between the professional boxer's participation in such bout and the life-threatening brain injury. Where applicable, professional boxers shall be afforded the option to supplement the premiums for the accident insurance or financial guarantee to increase the coverage beyond the afore-mentioned minimum limits. The NYSAC may from time to time, promulgate regulations to adjust the amount of such minimum limits. This insurance is not dependant on any fault on the part of the promoter in respect of the injury or death. There is no equivalent provision in terms of the South African Boxing Regulations.<sup>301</sup> §1015.

<sup>302</sup> §1016. Unlike in the case of the South African Boxing Regulations, Article 41 does not require the use of standard form contracts.

<sup>303</sup> §1018. This places an obligation on promoters and matchmakers to avert mismatching opponents. In addition, all contracts for a boxing bout need to be submitted to the NYSAC for approval, who may, in terms of Section 210.1 of the NYSAC Regulations, disapprove of any such contract on the basis of mismatching.

Any licensee who shall knowingly violates any rule or order of the NYSAC or any provision of this Article 41 shall incur a prescribed civil penalty to be imposed by the NYSAC.<sup>304</sup>

Article 41 obliges the NYSAC to promulgate regulations governing the conduct of professional boxing that *inter alia*: (a) establish the requirements for the presence of medical equipment, medical personnel, an ambulance, other emergency apparatus and an emergency medical plan for an event; (b) establish responsibilities of all licensees before, during and after an event; (c) establish parameters and standards for required and permitted equipment items used by boxers;(d) establish parameters and standards for rings and appurtenances thereto; and (e) establish such other rules and conditions as are necessary to achieve the NYSAC's purpose.<sup>305</sup>

#### **4.10.2 NYSAC Regulations**

The NYSAC Regulation which have been promulgated by the NYSAC in terms of §1014 of Article 41 restate, amplify and or supplement the provisions of Article 41.

Set out below is a brief overview of the provisions of the NYSAC Regulations that relate to the medical safety of the boxers. Provisions in the NTSAC Regulations that are mere restatements of the provisions of Article 41 which have been discussed above, are repeated.

To facilitate the discussion of these provisions, they have been re-arranged under the various sub-headings below that have been created specifically for that purpose.

##### **4.10.2.1 Powers and duties of NYSAC**

At any professional boxing bout, each commissioner of the NYSAC shall have the full power to act on behalf of the NYSAC to interpret, construe and enforce all the rules of the NYSAC, and shall have the power and authority to immediately suspend, without prior notice, any license for any violation of the rules of the NYSAC or state laws.<sup>306</sup>

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<sup>304</sup> §1019.

<sup>305</sup>§1014. These regulations are discussed in para. 2.2 of this chapter.

<sup>306</sup> Section 206.2 of the NYSAC Regulations.



The representative of the NYSAC in charge of a professional boxing bout shall have complete authority, subject only to the direction of the NYSAC or a higher-ranking representative of the NYSAC, in respect of *inter alia* the weigh-in; the ring and ringside; the collection of proof of all required insurance premium payments and policies; the documenting and reporting of *inter alia* all injuries affecting the boxers; and in general, all matters under the NYSAC's jurisdiction.<sup>307</sup>

#### 4.10.2.2 Licensing and related matters

No person shall act as a boxer, referee, judge, manager, trainer/second, promoter, matchmaker or timekeeper in relation to professional boxing, unless he possesses a valid licence in that capacity issued by the NYSAC.<sup>308</sup>

The NYSAC shall have the authority to require any applicant for any license or permit, to appear before the MYSAC for oral and/or written examination or other demonstration as to his fitness and qualifications for the license or permit sought.<sup>309</sup>

To obtain a license to act as a professional boxer, and before each bout in which he participates in, such person shall present to the NYSAC *inter alia* the following information as required by the NYSAC: (a) his prior boxing history; (b) the his medical history relating to any physical condition, medical tests and procedures which relate to his ability to participate in professional boxing; and (c) a record of all medical suspensions; and submit to and pass any and all medical examinations and laboratory tests as prescribed by the NYSAC.<sup>310</sup>

The NYSAC Regulations also stipulate specific requirements for the licensing of promoters,<sup>311</sup> managers,<sup>312</sup> matchmakers,<sup>313</sup> and seconds.<sup>314</sup> In respect of seconds,

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<sup>307</sup> Section 206.3 of the NYSAC Regulations.

<sup>308</sup> Section 207.1.(a) of the NYSAC Regulations.

<sup>309</sup> Section 207.3 of the NYSAC Regulations.

<sup>310</sup> Section 207.5 of the NYSAC Regulations.

<sup>311</sup> Section 207.10 of the NYAC Regulations.

<sup>312</sup> Section 207.8 of the NYSAC Regulations.

<sup>313</sup> Section 207.11 of the NYSAC Regulations.

<sup>314</sup> Section 207.7 of the NYSAC Regulations.

the NYSAC may request applicants to demonstrate knowledge in respect of *inter alia* the treatment of injuries. In respect of managers, they are obliged periodically, as required by the NYSAC, to attend seminars relating *inter alia* to the health and safety of boxers.

On account of the important role played by a referee during a professional boxing bout, particularly with regard to the boxers' medical safety, the licensing requirements for referees are rather stringent. Prior to being issued a license as a professional boxing referee, an applicant shall *inter alia*: (i) demonstrate general fitness, trustworthiness, satisfactory skill, and knowledge of the rules and regulations of the NYSAC, to the satisfaction of the NYSAC, and pass an examination in a manner and form approved by the NYSAC; (ii) attend a neurological seminar conducted by a physician approved by the NYSAC or otherwise demonstrate his skills at recognizing detrimental neurological symptoms of boxers to the satisfaction of the NYSAC in a manner approved by the NYSAC in its discretion; (iii) satisfy the health and physical standards, including completion of an eye examination, as may be established from time to time by the NYSAC; and (v) have refereed a minimum of 400 rounds of any combination of officially sanctioned amateur or professional rounds, demonstrating sufficient ring experience and skill to the satisfaction of the NYSAC.<sup>315</sup>

Once licensed, referees with no prior professional experience in boxing, may also be required to complete a practical training program to the satisfaction of the NYSAC before being granted any assignment to a professional bout.<sup>316</sup>

Once licensed, each referee shall first be assigned a minimum of no fewer than four, four-round preliminary bouts, followed by a minimum of no fewer than four, six-round preliminary bouts, except as otherwise directed or authorized by the NYSAC. The referee's conduct and performance may at any time be reviewed and evaluated by the NYSAC or a NYSAC representative. If it is found that said referee's conduct and

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<sup>315</sup> Section 207.12.(a) of the NYSAC Regulations.

<sup>316</sup> Section 207.12.(b) of the NYSAC Regulations.

performance is satisfactory, that referee may thereafter officiate bouts of eight rounds or more.<sup>317</sup>

Licensed referees shall periodically, as required by the NYSAC in its discretion, attend seminars about the rules and regulations of the NYSAC and skills as a referee of professional boxing.<sup>318</sup>The performance of each professional referee may be reviewed and evaluated periodically by the NYSAC in its discretion.<sup>319</sup>

#### **4.10.2.3 Approval of tournaments and bouts**

No person may arrange, promote, organize, produce or hold a professional boxing bout in NYS unless the bout has been approved and is directly overseen by the NYSAC.<sup>320</sup>

A promoter shall make application to the NYSAC for approval of the date on which a professional boxing tournament is scheduled, at least 60 days prior thereto. The application shall include *inter alia* an assurance of appropriate medical capacity and controls.<sup>321</sup>

All boxing bouts proposed for the tournament must be submitted by the promoter in a form and manner as directed by the NYSAC. No professional boxing bout shall be authorized to take place until approved by the NYSAC.<sup>322</sup>

#### **4.10.2.4 Special rules for health, safety and integrity in professional boxing.**

No one shall participate in a professional boxing bout or engage in sparring unless medically fit to the satisfaction of the NYSAC. The NYSAC shall have the authority to

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<sup>317</sup> Section 207.12.(c) of the NYSAC Regulations.

<sup>318</sup> Section 207.12.(d) of the NYSAC Regulations.

<sup>319</sup> Section 207.12.(e) of the NYSAC Regulations.

<sup>320</sup> Section 207.1.(f) of the NYSAC Regulations.

<sup>321</sup> Section 207.15 of the NYSAC Regulations.

<sup>322</sup> Section 207.16 of the NYSAC Regulations.

examine boxers or require them to be examined for this purpose from time to time in its discretion, and boxers shall submit to any such examinations.<sup>323</sup>

No person who is subject to a medical suspension issued by the NYSAC shall be authorized to participate as a boxer in any professional boxing bout, except as otherwise authorized by federal law.<sup>324</sup>

To obtain a license or the renewal of a license as a professional boxer, applicants shall submit to a thorough medical examination by a physician approved by the NYSAC, in such form as approved by the NYSAC, and shall submit to such other medical tests and examinations as may be required by such physician and/or the NYSAC.<sup>325</sup>

All boxers applying for a license must complete and submit a physical examination in a form as required by the NYSAC, and submit a completed electrocardiographic examination, MRI, dilated eye examination by a licensed ophthalmologist and laboratory and other tests and examinations as may be required by the NYSAC physician and/or the NYSAC.<sup>326</sup>

Before participating in bouts, all boxers shall submit to medical examinations performed by a physician designated by the NYSAC within 36 hours before the bout and also within 3 hours before the bout, unless such times are modified by the NYSAC. Such examinations may include any such testing the examining physician finds necessary.<sup>327</sup>

Any injury or illness to a professional boxer before a bout, or while in training for any such bout, shall be fully reported in writing to the NYSAC within 24 hours of its onset, by the boxer *or* the boxer's manager.<sup>328</sup>

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<sup>323</sup> Section 208.1.(a) of the NYSAC Regulations.

<sup>324</sup> Section 208.1.(b) of the NYSAC Regulations.

<sup>325</sup> Section 208.2.(a) of the NYSAC Regulations.

<sup>326</sup> Section 208.2.(b) of the NYSAC Regulations.

<sup>327</sup> Section 208.3 of the NYSAC Regulations.

<sup>328</sup> Section 208.4 of the NYSAC Regulations.

The NYSAC shall prescribe the number of NYSAC-designated ringside physicians required to be in attendance at each professional boxing bout, and the type and quantity of medical and emergency equipment and instruments which shall be available at ringside or elsewhere on the premises. Ringside physicians designated by the NYSAC to work at professional boxing events shall be employed by the NYSAC and shall be physicians licensed in NYS pursuant to Article 131 of the Education Law.<sup>329</sup>

The duties of a ringside physician in respect of a professional boxing bout are as follows: (a) the ringside physician shall perform pre-bout and post-bout medical evaluations of each professional boxer in such manner and form as may be required by the NYSAC, and as the physician deems necessary and appropriate in his professional medical judgment;<sup>330</sup> (b) the ringside physician may terminate any professional boxing bout at any time if, in the opinion of such physician, the health or well-being of any boxer would be significantly jeopardized by continuation of the bout;<sup>331</sup> (c) as determined in the professional medical opinion of the ringside physician, he shall immediately render any emergency treatment deemed necessary in his professional medical opinion to an injured boxer, and shall recommend further treatment or hospitalization as deemed necessary in his professional medical opinion, and shall fully report the entire matter to the NYSAC, in such manner and form as may be required by the NYSAC; (d) the ringside physician may require that the injured boxer and his manager remain in the ring or on the premises or report to a hospital after the bout for such period of time as such physician deems advisable; (e) prior to the commencement of any professional boxing tournament, the NYSAC shall designate a lead physician or physician coordinator and a treating hospital for that tournament. Prior to the commencement of the first bout of the tournament, the lead physician or physician coordinator shall contact the designated treating hospital,

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<sup>329</sup> Section 208.5 of the NYSAC Regulations.

<sup>330</sup> In terms of section 208.6 of the NYSAC Regulations, professional boxers are obliged to fully cooperate with the physician during such examinations and evaluations, truthfully respond to all questions posed by such physician and act in good faith.

<sup>331</sup> This confers a very important power on a ringside physician to terminate a bout for medical safety reasons as and when he may deem fit. In terms of the South African Boxing Regulations, the ringside physician may not *mero motu* stop the bout but may only advise the referee in that regard and then only when requested thereto by the referee.

review the location of the designated NYSAC area(s) at the venue, review and walk the evacuation route for transportation of an injured boxer from the ring to the onsite ambulance. The lead physician or physician coordinator shall provide a briefing on the foregoing to all ringside physicians present and designated to work at the tournament, prior to commencement of the first bout.<sup>332</sup>

A ringside physician may enter the ring during the progress of a professional boxing bout at any time to fulfil his official duties. A ringside physician desiring to enter the ring for this purpose shall first signal the referee of his intention, upon which the referee shall stop the progress of the bout by signalling the timekeeper.<sup>333</sup> At any time during the progress of a bout, the referee may stop the bout by signalling the timekeeper, and require the ringside physician to enter the ring to examine a boxer.<sup>334</sup> Nothing in this provision shall be deemed to prohibit the ringside physician from entering the ring to examine any contestant during rest periods, with or without invitation from the referee, nor shall anything in this provision be deemed to restrict the ringside physician's authority pursuant to any other section of the NYSAC Regulations.<sup>335</sup>

All professional boxers shall receive a post-bout medical evaluation conducted by a physician designated by the NYSAC immediately following their participation in any bout. Any professional boxer who has sustained any injury or actual knockout in a bout, shall receive appropriate medical examination and, where deemed necessary in the opinion of the physician, emergency treatment from the evaluating physician. Such physician may direct the boxer to a hospital or to another treating physician for additional medical treatment, as deemed appropriate in the professional medical opinion of the evaluating physician. Such examination and treatment may include, but shall not be limited to, any or all of the procedures that he was required to undergo during his license process<sup>336</sup> or as is directed by the MAB, the NYSAC physician, the

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<sup>332</sup> Section 208.6 of the NYSAC Regulations.

<sup>333</sup> A ringside physician may thus *mero motu* during the course of a bout examine a boxer. In terms of the South African Boxing Regulations, he may only do so during an interval between rounds or during a round if requested thereto by the referee. A ring physician in NYS therefore has much wider powers than a ring physician in South Africa.

<sup>334</sup> This is the same position as in South Africa.

<sup>335</sup> Section 208.7 of the NYSAC Regulations.

<sup>336</sup> Those procedures are set out in section 208.2 of the NYSAC Regulations.

ringside physician and/or the NYSAC. The NYSAC may suspend such boxer until he or she is fully recovered and, similarly, may extend any such suspension already imposed.<sup>337</sup>

In the event that a professional boxer who has suffered a knockout or any severe injury has on account thereof been treated by his personal physician or has been hospitalized, or in the event a boxer sustains any knockout, injury, accident or illness which may affect the boxer's health and/or safety (whether or not such knockout, injury or accident occurs in a gymnasium), said boxer or his manager shall promptly submit to the NYSAC a full report regarding same, including, but not limited to, any report from such a physician or hospital.<sup>338</sup>

Any professional boxer who has lost three consecutive bouts by knockout or technical knockout, or who has lost six consecutive bouts in any manner, may, upon recommendation of the NYSAC physician, be automatically suspended and may be reinstated in the discretion of the NYSAC only after submitting to a medical examination of the type prescribed by the NYSAC.<sup>339</sup>

If a boxer is rendered unconscious during a bout, his seconds shall not assist such boxer until the ringside physician shall have examined such boxer and given instructions for his care.<sup>340</sup>

Any boxer who has suffered a knockout or technical knockout, or who endured significant punishment or physical trauma in a boxing bout may, based upon the professional medical opinion and recommendation of the attending or reviewing NYSAC physician, be suspended for a fixed period of time or until proof of medical fitness is provided to the NYSAC and shall forfeit his license to the NYSAC during such period. Such license shall not be returned to the boxer until he has met all

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<sup>337</sup> Section 208.8 of the NYSAC Regulations.

<sup>338</sup> Section 208.9 of the NYAC Regulations.

<sup>339</sup> Section 208.10 of the NYAC Regulations.

<sup>340</sup> Section 208.11(a) of the NYAC Regulations.

requirements, medical and otherwise, for reinstatement of such license. All such suspensions shall be recorded by a NYSAC official.<sup>341</sup>

A boxer losing by way of a technical knockout where there is evidence of head trauma, upon recommendation of the NYSAC physician, shall receive a medical suspension and shall not participate in any combative sports contact sparring, bouts or exhibitions for a minimum period of thirty (30) days and until proof of neurological clearance by a physician is provided to and approved by the NYSAC. A boxer losing by way of a knockout where there is evidence of head trauma shall, upon recommendation of the NYSAC physician, receive a medical suspension and shall not participate in any contact sparring, bouts or exhibitions for a minimum period of thirty (30) days and until proof of neurological clearance by a physician is provided to and approved by the NYSAC. At the discretion of the NYSAC physician, longer suspension periods may be issued.<sup>342</sup>

This section shall in no manner restrict the authority of a NYSAC physician to issue a medical suspension any time he or she believes it necessary, in his professional medical opinion, in the interest of the health and safety of the boxer.<sup>343</sup>

A licensed boxer suspended pursuant to this section may petition the NYSAC in writing for the reduction or removal of any such suspension by furnishing proof satisfactory to the NYSAC physician demonstrating a sufficiently improved medical or physical condition and overall fitness to engage in a professional boxing bout. Upon the furnishing of such proof by the suspended boxer, the NYSAC may reduce or remove any such suspension in accordance with the professional medical opinion of the NYSAC physician.<sup>344</sup>

No boxer shall be allowed to participate in any boxing bout until at least seven days have elapsed since his last bout.<sup>345</sup>

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<sup>341</sup> Section 208.11(b) of the NYAC Regulations.

<sup>342</sup> Section 208.11(c) of the NYAC Regulations.

<sup>343</sup> Section 208.11(d) of the NYAC Regulations.

<sup>344</sup> Section 208.11(e) of the NYSAC Regulations.

<sup>345</sup> Section 208.12 of the NYSAC Regulations.



All NYSAC-designated ringside physicians and licensed referees of professional boxing bouts shall attend such neurological training seminars as specified and approved by the NYSAC after consultation with the MAB.<sup>346</sup>

No professional boxer shall participate in any bout following weight loss of one percent or more of body weight within 24 hours prior to such bout, unless otherwise authorized by the NYSAC. A boxer may be disapproved for participation in a bout if, in the professional medical opinion of the reviewing physician, it would be unsafe for the boxer to compete in the bout due to a finding of dehydration or extreme weight loss.<sup>347</sup>

All licensed promoters of professional boxing shall continuously provide accident insurance, or such other form of financial guarantee deemed acceptable by the NYSAC, for the protection of boxers appearing in professional boxing bouts.<sup>348</sup>

No person may arrange, promote, organize, produce, or hold a professional boxing bout within NYS without meeting each of the following minimum requirements for the health and safety of boxers: (a) prior to any bout, each boxer must have and submit to an annual physical examination performed by a physician, including laboratory bloodwork demonstrating negative test results for Human Immunodeficiency Virus (HIV), Hepatitis B (HBsAg) and Hepatitis C; (b) In addition, a pre-bout physical examination of each boxer must be conducted prior to the start of each bout and within 36 hours of each bout by a physician, and the physician must certify upon the conclusion of the examination that it is the professional medical opinion of the examining physician that the boxer is medically fit to safely compete in the boxing bout; (c) at least one ambulance with medical personnel consisting of at least one paramedic with appropriate resuscitation equipment must be continuously present, and no bout may proceed unless such ambulance and paramedic are available and on site; and (d) at least one physician must be continuously present at ringside during any bout,

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<sup>346</sup> Section 208.13 of the NYSAC Regulations.

<sup>347</sup> Section 208.14 of the NYSAC Regulations.

<sup>348</sup> Section 208.15.(a) of the NYSAC Regulations. The types, amounts and further details of insurance such cover are specified in Section 208.15.(b)-(f). The types of insurance cover are those contemplated in Article 41.

and a post-bout medical evaluation of each boxer shall be conducted by an on-site physician immediately following the bout.<sup>349</sup>

#### 4.10.2.5 Contract Oversight

Contracts between professional boxers and promoters for bouts to be held within NYS shall be executed on forms approved by the NYSAC, and approved forms for such contracts shall be provided by the Commission upon request. All such contracts shall be filed with the Commission by such promoter within 48 hours after execution of such contract, and at least 10 business days prior to the bout to which they rely, unless otherwise directed or authorized by the NYSAC for good cause shown. All such contracts must be filed with and approved by the NYSAC to be valid. Such contracts will not be approved by the NYSAC, unless both boxers have signed contracts for the bout with the same promoter.<sup>350</sup>

Management contracts between professional boxers and their managers shall be executed in person before the NYSAC on forms approved by the NYSAC, unless otherwise authorized by the NYSAC, and all such contracts must be approved by and filed with the NYSAC.<sup>351</sup>

All contracts for activities within the jurisdiction of the NYSAC must conform to the requirements of federal and New York State law, including, as applicable, the provisions of the federal PBSA and Ali Act.<sup>352</sup>

The NYSAC shall have the authority, in its discretion, to act to Invalidate, enforce, mediate, arbitrate or modify *inter alia* promoter/boxer contracts filed with it for approval. All contracts directly related to the conduct of professional boxing activity in NYS must also comply with the applicable requirements of the federal PBSA.<sup>353</sup>

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<sup>349</sup> Section 208.16 of the NYSAC Regulations. As used in this section, 'physician' means a practitioner of medicine licensed in NYS to practice medicine pursuant to Article 131 of the Education Law.

<sup>350</sup> Section 209.2.(a) of the NYSAC Regulations.

<sup>351</sup> Section 209.2.(b)(1) of the NYSAC Regulations.

<sup>352</sup> Section 209.2.(c) of the NYSAC Regulations. These are discussed in further detail in paragraph 3 below.

<sup>353</sup> Section 206.12 of the NYSAC Regulations.

#### 4.10.2.6 Staging of Professional Boxing

All bouts shall be approved in advance by the NYSAC. Before approving any bout, the NYSAC may inquire into the relative merits of the boxers, their past records and whether or not they are suitable opponents. The NYSAC may disapprove any bout which is not in the best interests of boxing or of the health of any of the boxers.<sup>354</sup>

All professional boxing promoters shall provide medical information, facilities and equipment, including but not limited to a stretcher and emergency oxygen, adequate for emergency occasions, and all such medical facilities and equipment shall be approved in advance by the NYSAC. Specifications of the NYSAC for such medical information and equipment, and for the platform, padding and the covering of the ring floor may be prescribed by the NYSAC from time to time and forwarded by the NYSAC to each promoter. The promoters at all professional boxing bouts shall have attending physicians at ringside, in such number as required by the NYSAC in its discretion, and at least one ambulance with medical attendants consisting of at least one paramedic available at the site of the event at all times during competition and until such time as the attending physicians' completion of all post-bout medical evaluations and all boxers in the tournament have exited the venue, unless otherwise directed or authorized by the NYSAC.<sup>355</sup>

No professional boxing bout shall be permitted in any ring unless it has been inspected and approved by the Commission.<sup>356</sup>

The promoter shall have an attendant capable of making emergency repairs, corrections and adjustments to *inter alia* the ring, available at all times during a bout.<sup>357</sup>

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<sup>354</sup> Section 210.1 of the NYSAC Regulations. In addition, §1018 of Article 41 places an obligation on promoters and matchmakers to avert mismatching opponents.

<sup>355</sup> Section 210.21 of the NYSAC Regulations. In this regard, see also Section 208.16 of the NYSAC Regulations, discussed above.

<sup>356</sup> The NYSAC and not the promoter therefore has the ultimate responsibility to ensure that the ring is compliant with the provisions of this section.

<sup>357</sup> Section 210.25 of the NYSAC Regulations.

In addition to the ring and ring equipment, the promoter shall supply *inter alia* the following items, which shall be available for use as needed: (a) a clean stretcher and a clean blanket, placed in a location approved by the NYSAC throughout each promotion; (b) first aid oxygen apparatus or equipment; (c) NYSAC-approved gloves and back-up gloves for each boxer in each bout; and (d) other articles as may be required by the NYSAC.<sup>358</sup>

#### **4.10.2.7 Provisions pertaining to bout**

There shall be full compliance with the PBSA and the Ali Act.<sup>359</sup>

All boxers shall wear bandages on their hands during all bouts. All bandages must be applied in the dressing room before any bout in the presence of a representative of the NYSAC, who must sign the bandages to indicate approval. Gloves shall not be placed on the boxer's hands until the bandages have been approved as aforesaid.<sup>360</sup>

Boxing gloves must be approved by the NYSAC prior to use in any bout. Gloves shall be promoter-supplied and new, unless otherwise directed or authorized by the NYSAC. In all boxing bouts, the gloves of each boxer shall be put on in the dressing room under the supervision of a NYSAC representative. Gloves must be whole, clean, sanitary, free of debris, and in good condition. Gloves found to be twisted, manipulated, altered, unfit or ill-fitting, shall not be approved and must be replaced by the promoter. A NYSAC representative shall sign the tape placed over the tied laces to demonstrate approval of the gloving process. The gloves shall be removed after the bout under the supervision of a NYSAC representative.<sup>361</sup>

Male boxers must provide and wear a foul-proof genital guard of a type adequate as determined by the NYSAC in its discretion to satisfactorily reduce the risks of the boxer being disabled by a low blow/s received during the bout. In addition, a boxer shall

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<sup>358</sup> Section 210.26 of the NYSAC Regulations.

<sup>359</sup> Section 211.1(b) of the NYSAC Regulations. These laws are discussed in paragraph 4.11 below.

<sup>360</sup> Section 211.8 of the NYSAC Regulations.

<sup>361</sup> Section 211.9 of the NYSAC Regulations.

provide himself with two mouthpieces of a type approved by the NYSAC and shall wear one of such mouthpieces while participating in a bout.<sup>362</sup>

The ringside physicians shall be stationed at places designated by the NYSAC.<sup>363</sup>

No one shall throw any towel into the ring as a signal of defeat or for any other reason.<sup>364</sup>

Section 211.27 of the NYSAC Regulations lists a number of acts which constitute foul, dangerous and unsportsmanlike practices that are prohibited in all boxing bouts. These include *inter alia* kicking; head butting and hitting at the back of the neck.

All ring officials for a boxing bout, including *inter alia* the referee, shall be approved by the NYSAC.<sup>365</sup>

The referee plays a pivotal role in a boxing bout, particularly from the perspective of the boxers' health and safety. The referee's functions and duties are accordingly dealt with in detail in the NYSAC Regulations. In this regard, the NYSAC Regulations provide *inter alia* as follows: (a) the referee shall exercise immediate authority, direction and control over the bout; (b) before the start of the bout and from time to time, as he sees fit, during the course of the bout, he shall check the boxers' gloves, equipment, and persons to assure that no unsafe or improper condition/s shall be permitted to exist; (c) he shall observe carefully and continually the physical condition of the boxers and shall have full and final responsibility, either at his own discretion or upon recommendation from the attending ringside physician, for the immediate halting of the bout if the safety of a boxer would be jeopardized by the continuance of the bout; (d) the referee shall have exclusive authority in the event of injury to a boxer, to interrupt the progress of a round by directing the timekeeper to stop the clock and

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<sup>362</sup> Section 211.11 of the NYSAC Regulations.

<sup>363</sup> Section 211.12 of the NYSAC Regulations.

<sup>364</sup> Section 211.17 of the NYSAC Regulations. This differs from the position in terms of the South African Boxing Regulations where a boxer's chief second may retire his boxer from the bout at any time by throwing in the towel during the course of a round.

<sup>365</sup> Section 211.28 of the NYSAC Regulations.

calling the ringside physician into the ring to examine and advise upon the condition of the injured boxer; (e) the referee shall enforce the rules of boxing, as set forth by the NYSAC and in the Queensbury Rules; (f) the referee shall have the exclusive authority to stop a bout at any stage because of a major foul being committed by either boxer and to award the decision, under the circumstances, to the fouled boxer; (g) the referee shall have the exclusive authority to stop a bout at any stage on the grounds that it is too one-sided. In such event, he may award the bout to the superior boxer as a technical knockout.<sup>366</sup>

In terms of the NYSAC regulations, the judges have no power or obligation to draw the referee's attention to any foul committed during the course of a boxing bout.<sup>367</sup>

All boxing bouts shall be contested according to the Unified Rules of Boxing as adopted and amended by the Association of Boxing Commissions (ABC),<sup>368</sup> unless otherwise authorized or directed by the NYSAC. Under no circumstances, however, shall the broad powers of any physician as provided for in State law and the rules of the NYSAC be restricted in any manner by application of the Unified Rules of Boxing. The authority to render final determinations based on the application and interpretation of the Unified Rules of Boxing for bouts held within NYS shall be vested in the NYSAC.<sup>369</sup>

Upon the occurrence of any major foul in any round, the referee may disqualify the offending boxer and award the bout to the fouled boxer or may deduct one or more points from the offending boxer. Major fouls include *inter alia* hitting an opponent who is down or who is rising from down, or intentional butting; and/or low blows, intentional or unintentional. In respect of minor fouls, such as holding an opponent or hitting on the break, it is within the discretion of the referee as to whether the offending boxer

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<sup>366</sup> Section 211.32 of the NYSAC Regulations.

<sup>367</sup> This differs from the position in terms of s28(3) of the South African Boxing Regulations in terms whereof the judges are given the discretionary power, but not the obligation to draw the referee's attention, during the interval, to a foul committed by a boxer during that round.

<sup>368</sup> These are rules for the conduct of a bout, issued by the Association of Boxing Commissions. They are based to a large extent on the Queensbury Rules.

<sup>369</sup> Section 211.41 of the NYSAC Regulations.

should merely be warned or should be deducted one or more points because of the commission of the foul.<sup>370</sup>

The referee may stop a bout at any time if he considers it too one-sided, or if either boxer is in such condition that to continue would, in the judgment of the referee, be too dangerous to his health and safety.

The MAB has developed and published a document titled 'Medical Standards for Combat Sports Professionals' which elaborates on the afore-mentioned medical safety aspects pertaining to a professional boxing bout. For current purposes, it is unnecessary to examine the provisions thereof in further detail.

#### **4.11 Federal Laws (Boxing-specific)**

Passed in 2000, the Ali Act was Congress's second foray into the arena of professional boxing legislation, following the PBSA.<sup>371</sup>

While the PBSA is aimed at protecting boxers within the ring, the Ali Act is intended "to protect the rights and welfare of professional boxers ... by preventing certain exploitative, oppressive, and unethical business practices" outside the ring.<sup>372</sup>

Since the subject-matter of the Ali Act falls outside the scope of this research paper, only the provisions of the PBSA are briefly discussed below.

In order to improve and expand the medical safety system within professional boxing in the U.S, the PBSA prohibits the arrangement and organization of a professional boxing bout without meeting all the following requirements to protect the health and safety of the boxers: (a) a physical examination of each boxer by a physician certifying whether or not the boxer is physically fit to safely compete, copies of which must be provided to the relevant boxing commission; (b) an ambulance or medical personnel with appropriate resuscitation equipment continuously present on site; (c) a physician

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<sup>370</sup> Section 211.47 of the NYSAC Regulations.

<sup>371</sup> Ehrlichman "In This Corner: An Analysis of Federal Boxing Legislation" (2019) *Columbia Journal of Law & The Arts* 421 (Ehrlichman).

<sup>372</sup> *Ehrlichman* 421.

continuously present at ringside; and (d) health insurance for each boxer to provide medical coverage for any injuries sustained in the bout.<sup>373</sup>

The afore-mentioned provisions of the PBSA (as well as the provisions of the Ali Act) have been incorporated into the NYSAC Regulations, which expressly recognizes the need to comply with the provisions of those Acts.<sup>374</sup>

## **4.12 General Laws (Non-boxing specific)**

### **4.12.1 Tort of Negligence**

In NYS there are various forms of torts, including *inter alia* the tort of negligence. For purposes of this research paper, only this latter form of tort will be briefly examined since it is the area of tort law that will likely apply to the majority of claims for compensation that a professional boxer may institute in respect of injuries suffered during a professional boxing bout in NYS.

The tort of negligence in NYS is generally equivalent to the law of delict in South Africa,<sup>375</sup> in that it also provides remedies to compensate a claimant who has suffered damage caused by the wrongful and negligent conduct of another person.

Although the elements of the tort of negligence are generally similar to the elements of delict, they are, however, more akin to those of the tort of negligence in the United Kingdom in that the duty of care also plays a core element in respect of both wrongfulness and fault.

In order to prove a tort of negligence, a claimant must prove the following *five* elements:<sup>376</sup> (a) a duty of care owed by the defendant to the claimant;<sup>377</sup> (b) a breach

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<sup>373</sup> Ehrlichman 421.

<sup>374</sup> Section 211.1(b) of the NYSAC Regulations.

<sup>375</sup> In South Africa, a delict may be committed either negligently or intentionally. In NYS, the tort of negligence is treated as a separate form of tort to intentional tort.

<sup>376</sup> Owen "The Five Elements of Negligence" (2007) *Hofstra Law Review* 1671 (Owen); *Lapides v State*, 37 AD2d 755 [2<sup>nd</sup> Dept 2008].

<sup>377</sup> Owen 1674-1676. A duty of care is the first element that a claimant needs to prove, i.e. was there a duty of care owed to the claimant? This inquiry draws primarily upon fairness, justice and social policy.



of that duty of care;<sup>378</sup> (c) an actual causal connection between the defendant's conduct and the resulting damage;<sup>379</sup> (d) that the defendant's conduct is the proximate cause of the resulting harm;<sup>380</sup> and (e) that the claimant suffered harm resulting from the defendant's conduct.<sup>381</sup>

The defendant in a tort of negligence claim has a number of possible defences available to him, one of which is the *volenti non fit injuria* defence.<sup>382</sup> The requirements for *volenti* in NY are similar to those in South Africa, namely that the consenting participant is aware of the risk; has an appreciation of the nature of the risks; and voluntarily assumes the risks.<sup>383</sup> A participant consents to those commonly appreciated risks which are inherent in and arise out the nature of the sport and flow from such participation.<sup>384</sup>

If the claimant also acted negligently in the circumstances, and his negligence contributed to the damage he suffered, then the court is likely to apportion

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<sup>378</sup> Owen 1676-1679. This element implies the pre-existence of a standard of proper behaviour, which has evolved into the objective standard of a 'reasonable prudent person', i.e., how a reasonable prudent person would have acted in the circumstances. Persons with greater than normal skills and learning, like doctors, must exercise the greater skills that they actually or reasonably should possess, which accords with the corresponding position in South Africa and the UK.

<sup>379</sup> Owen 1679-1681. This is known as the element of 'cause in fact' (or 'factual cause') and may be described as the actual connection between the defendant's negligence and the claimant's harm. The test applied is the 'but-for-test', which requires that a defendant's negligence be a *sine qua non* of the plaintiff's harm, a necessary antecedent without which the harm would not have occurred. In other words, the defendant's negligence is a cause of the claimant's harm if the harm would not have occurred *but for* the defendant's negligence. NYS also applies a 'substantial factor' test for situations where multiple events combine to cause the harm that would have occurred even if one of them were removed. Jakubowitz "Help, I've Fallen and Can't Get Up!: New York's Application of the Substantial Factor Test" (2004) *Journal of Civil Rights and Economic Development* 593.

<sup>380</sup> Owen 1681-1685. Once factual cause has been established, proximate cause (the South African equivalent being legal causation) enquires whether in logic, fairness, policy and practicality, the wrongdoer ought to be held legally liable for the plaintiff's harm that in some manner is 'remote' from the wrongdoer's conduct. Proximate cause can be broadly defined as a reasonably close connection between the wrongdoer's breach and the plaintiff's harm, a connection that is not too remote. The concept of 'foreseeability' plays an important role in the enquiry into proximate cause. Like in the case of legal causation in the law of delict, the element of proximate cause provides a practical 'long-stop' to what could otherwise be infinite liability for a wrongful breach.

<sup>381</sup> This usually takes the form of physical injury or property damage.

<sup>382</sup> *Turcotte v Fell*, 68 NY2d 432 [1986] (*Turcotte*); *Tillayev v Fight Factory LLC*, 41 N.Y.S. 3d 452 (*Tillayev*).

<sup>383</sup> *Morgen v State of New York*, 90 NY2d 471 [1997] (*Morgen*), citing *Turcotte*.

<sup>384</sup> *Morgen* 471.

responsibility between the claimant and the defendant and thereby reduce the claimant's damages.<sup>385</sup>

#### **4.12.2 Law of Contract**

Unlike in the case of the South African Boxing Regulations and the BBBC Rules and Regulations, the NYSAC Regulations do not contain standard-form agreements.

To the extent that an exculpatory clause to waive a party's liability (i.e. a waiver clause) were to be included in an agreement between a boxer and manager or between a boxer and promoter, such a clause would need to explicitly and precisely limit the liability of the defendant for his negligent acts.<sup>386</sup> Broad and sweeping language in such a clause would be ineffective to bar an action by the boxer against a manager or promoter, as the case may be, based on his negligence that caused the boxer to suffer injury.<sup>387</sup>

#### **4.12.3 Criminal Law**

As stated in Chapter 1, the criminal law consequences arising from an injury or death suffered by a boxer during a professional boxing bout falls outside the scope of this research study.

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<sup>385</sup> The Comparative Negligence Statute (New York Civil Practice Law and Rules 1411) states that when both parties were negligent, the court must determine each party's percentage of fault and award damages proportionately.

<sup>386</sup> *Goss v Sweet*, 49 NY2d 102, 107 [1979] (*Goss*); *Tillayev*.

<sup>387</sup> *Goss* 108.

## C H A P T E R 5 : T H E R O L E P L A Y E R S

### 5.1 Introduction

To examine whether legal liability can be imputed to any of the role players in professional boxing for an injury or death suffered by a boxer during a professional boxing bout in South Africa, it is necessary to firstly identify who the various role players are in professional boxing and secondly, to determine what their respective functions and responsibilities are, particularly with regard to protecting the health and safety of the boxers.<sup>388</sup>

The South African Boxing Act and South African Boxing Regulations (collectively, the South African Legislation) identify various role players in professional boxing.<sup>389</sup> For purposes of this research paper, these role players have been categorized into the following broad categories based on the general nature of their respective functions and responsibilities:

- the boxers;
- the administrators, comprising Boxing SA and the various international sanctioning organisations;
- the organisers, comprising the promoters and match-makers;
- the officials, comprising the referee, judges, timekeeper and ring announcer;
- the supervisory official;
- the boxer's support staff, comprising the boxer's agent, manager, trainer and seconds; and
- the medical personnel, comprising the ringside physician and the first aid attendants or paramedics in attendance at a boxing bout.

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<sup>388</sup> Although the primary purpose of this chapter is to identify who the various role players in professional boxing are, it also touches on their respective functions and responsibilities. Those functions and responsibilities are discussed in further detail in Chapter 6 of this research study, which deals with the organizational phases of a professional boxing bout.

<sup>389</sup> These role players, as well as their respective functions and responsibilities, are generally the same as those in the UK and NYS. There are, however, certain important differences which are pointed out in the course of the discussions that follow in the ensuing chapters of this research paper.

Set out below is a brief description of each of the afore-mentioned role players in professional boxing.<sup>390</sup>

## 5.2 Boxers

The boxers are the main protagonists in professional boxing and generally earn their livelihood from it.<sup>391</sup>

Professional boxers are engaged by promoters and paid by them to participate in the boxing tournaments which the promoters stage from time to time. The contracts that the promoters conclude with the boxers for this purpose may either be for a single bout or for multiple bouts.<sup>392</sup> Promoters tend to prefer the former type of contract since it gives them the flexibility to decide whether or not to engage the boxer for a further bout after having assessed his performance in the current bout. However, in respect of boxers who are champions or major draw cards, promoters endeavour to bind them to long-term contracts in order to secure their services on an exclusive basis for as long as possible.<sup>393</sup> In the contract negotiations between promoters and boxers, the boxers are usually represented by their managers who endeavour to obtain the best possible deal for them, particularly with regard to the purse monies that they will be paid by the promoter for the bout.<sup>394</sup>

When discussing professional boxers, one instinctively tends to think only about the champions, but one should not lose sight of the "... rank and file, the 'preliminary boxers', club fighters, prospects and contenders, journeymen and opponents, trial horses and bums, who constitute the overwhelming majority [of professional boxers]

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<sup>390</sup> See note 338.

<sup>391</sup> Whilst professional boxing is the sole source of income for the majority of professional boxers, for some it is merely a means of augmenting their other source/s of income.

<sup>392</sup> The role of the promoters in professional boxing is discussed in further detail later in this chapter.

<sup>393</sup> It not unusual for promoters to become embroiled in costly litigation with the boxers and or rival promoters relating to the promotional rights in respect of boxers who are major draw cards. The South African Boxing Regulations restrict long-term term contracts between promoters and boxers to a maximum of 24 months, although it is permissible to renew those contracts for subsequent periods of 12 months each by mutual written agreement. See clause 3.1, read together with clause 4, of Annexure G of the South African Boxing Regulations. These contracts are examined in further detail in fn 200 of this research paper.

<sup>394</sup> The role of the managers in professional boxing is discussed in further detail later in this chapter.

and without whom the boxing economy would instantly collapse, even while they share only its crumbs.”<sup>395</sup>

### 5.3 Administrators

The administrators in professional boxing comprise, in the first instance, Boxing SA, the statutory body established by the *South African Boxing Act* to control professional boxing in South Africa and, in the second instance, the various international sanctioning organisations (such as the World Boxing Association and World Boxing Council) who play a role as and when their respective titles are contested in South Africa. These international sanctioning organisations perform primarily an administrative function in relation to their respective title bouts when staged in South Africa, whereas Boxing SA performs both an administrative and regulatory function in relation to all professional boxing bouts staged in South Africa.

The functions of Boxing SA and the international sanctioning organisations are discussed in further detail below.

#### 5.3.1 Boxing SA

The *South African Boxing Act* establishes a boxing commission known as Boxing SA,<sup>396</sup> which has jurisdiction in all the provinces of the Republic of South Africa.<sup>397</sup> Boxing SA is an independent juristic person,<sup>398</sup> which has a full-time chief executive officer<sup>399</sup> and various part-time members.<sup>400</sup>

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<sup>395</sup> Waquant “The pugilistic point of view. How boxers think and feel about their trade” (1995) *Theory and Society* 489 – 635 at 490 (Waquant).

<sup>396</sup> S4 of the South African Boxing Act.

<sup>397</sup> S6(1) of the South African Boxing Act.

<sup>398</sup> Ss4 and S of the South Africa Boxing Act.

<sup>399</sup> S12(1) of the South African Boxing Act. The chief executive officer is appointed by Boxing SA in consultation with the Ministers of Sport and Finance.

<sup>400</sup> Ss 9(1) and (2) of the South African Boxing Act. The members of Boxing SA are appointed by the Minister of Sport in consultation with the various boxing stakeholders.

For purposes of attaining its objects,<sup>401</sup> the *South African Boxing Act* confers wide powers upon Boxing SA.<sup>402</sup> These powers include *inter alia* the power to issue, suspend, cancel and renew certificates of registration for professional boxers, officials, trainers, managers and promoters.<sup>403</sup> The *South African Boxing Act* permits Boxing SA to exercise these latter powers in a discretionary manner.<sup>404</sup> In this regard, Boxing SA may test the ability of any person applying for a certificate of registration as a boxer, trainer or official;<sup>405</sup> may require any person applying for a certificate of registration as a trainer, promoter or manager to furnish it with such information as it may deem necessary;<sup>406</sup> and may issue, subject to such conditions as it may deem fit, licences authorising the holding of tournaments.<sup>407</sup>

The powers conferred upon Boxing SA by the *South African Boxing Act*, particularly the 'catch-all' powers contained in s7(1)(t) of the *South African Boxing Act*,<sup>408</sup> empower Boxing SA to exercise full control and supervision over the conduct of all aspects of

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<sup>401</sup> The *South African Boxing Act* does not expressly provide what Boxing SA's 'objects' are. Instead, s2 of the *South African Boxing Act* lists the objects of the *South African Boxing Act*, which include *inter alia* to 'regulate, control and exercise general supervision over professional boxing at tournaments in the Republic.' Since Boxing SA has been established as the controlling body responsible for implementing and enforcing the provisions of the *South African Boxing Act*, the objects of the *South African Boxing Act* can therefore, in effect, also be imputed to Boxing SA.

<sup>402</sup> S7(1) of the *South African Boxing Act*.

<sup>403</sup> S7(1)(c) read with s7(1)(h) of the *South African Boxing Act*.

<sup>404</sup> Ss7(1)(c) and 7(1)(h) of the *South African Boxing Act* use the word 'may' in relation to the exercise by Boxing SA of these powers. Boxing SA's discretion with regard to the exercise of these powers is, however, tempered somewhat by s7(2) of the *South African Boxing Act* which provides that Boxing SA must, if requested to do so, give written reasons to any person whose rights have been adversely affected by any administrative action of Boxing SA and must offer such a person the opportunity of a hearing to show cause why such action should not have been taken.

<sup>405</sup> S7(1)(f) of the *South African Boxing Act*.

<sup>406</sup> S7(1)(g) of the *South African Boxing Act*.

<sup>407</sup> S7(1)(i) of the *South African Boxing Act*. This section also uses the word 'may' in relation to the exercise by Boxing SA of these particular powers, thereby permitting Boxing SA to exercise these powers in a discretionary manner, subject to s7(2). The comments in note 355 regarding the effect of s7(2) of the *South African Boxing Act*, apply *mutatis mutandis* to these particular powers.

<sup>408</sup> S7(1)(t) of the *South African Boxing Act* provides that Boxing SA 'may take any steps which Boxing SA considers necessary or expedient for the due and proper regulation or control of, or to enable it to exercise due and proper supervision over, boxing at tournaments.' (emphasis added) These are very wide powers that are conferred upon Boxing SA by the *South African Boxing Act*.

professional boxing in South Africa,<sup>409</sup> including the protection of the health and safety of the boxers.<sup>410</sup>

As the statutory-appointed controlling authority of professional boxing in South Africa, Boxing SA is responsible for overseeing that all the provisions of the South African Boxing Legislation are duly complied with, including *inter alia* the provisions aimed at protecting the health and safety of the boxers. These provisions can be broadly categorized as follows: (a) the provisions that are designed to ensure that boxers are not permitted to participate in a boxing bout unless they are medically fit to do so; (b) the provisions that are designed to protect boxers from injury during a boxing bout; and (c) the provisions that are designed to ensure that the boxers receive the necessary medical attention at ringside if they are injured during a boxing bout. Examples of the first category of H&S provisions are: (i) the provisions that require a boxer to be medically examined by a doctor before he or she may be registered by Boxing SA as a boxer;<sup>411</sup> (ii) the provisions that preclude a boxer from being registered as a boxer if he or she suffers from any of the listed medical conditions;<sup>412</sup> (iii) the provisions that require a boxer's certificate of registration to be suspended or cancelled if he receives excessive punishment;<sup>413</sup> and (iv) the provisions that require that a boxer be medically examined by a doctor before every bout.<sup>414</sup> Examples of the second category of H&S provisions are: (i) the provisions relating to the protective covering for the ring floor<sup>415</sup> and corners;<sup>416</sup> (ii) the provisions limiting the number of rounds of

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<sup>409</sup> As is evident from the preamble to the South African Boxing Act, the *South African Boxing Act* only regulates professional boxing in South Africa. Amateur boxing in South Africa is administered by the South African National Amateur Boxing Organisation (SANABO) in terms of its constitution. SANABO is, in turn, affiliated to the South African Sports Confederation and Olympic Committee (SASCOC), which is regulated in terms of its constitution.

<sup>410</sup> As will be noted from the discussions that follow in this research paper, the South African Boxing Act, as well as the South African Boxing Regulations promulgated in terms thereof, contain numerous provisions which either directly or indirectly pertain to the protection of the health and safety of the boxers. In fact, the protection of the health and safety of the boxers is a golden thread that weaves throughout the provisions of the *South African Boxing Act* and South African Boxing Regulations. It is accordingly somewhat anomalous that the protection of the health and safety of the boxers is not expressly listed as one of the objects of the South African Boxing Act in terms of s2 thereof. Many of the powers conferred upon Boxing SA in terms of s7 of the *South African Boxing Act* also have as their ultimate effect the protection of the health and safety of the boxers – see, for example, s7(1)(l) of the *South African Boxing Act* which empowers Boxing SA to prohibit a boxer from participating in a tournament for medical reasons.

<sup>411</sup> S 3(1)(d) of the South African Boxing Regulations.

<sup>412</sup> S3(2) of the South African Boxing Regulations.

<sup>413</sup> S10 of the South African Boxing Regulations.

<sup>414</sup> S23(2)(a) of the South African Boxing Regulations.

<sup>415</sup> S20(5)(a) of the South African Boxing Regulations.

<sup>416</sup> S20(5)(c) of the South African Boxing Regulations.

a boxing bout;<sup>417</sup> and (iii) the provisions relating to the specifications for the bandaging and boxing gloves.<sup>418</sup> Examples of the third category of H&S provisions (which are of particular importance from a medical safety perspective) are: (i) the provisions that require the promoter to appoint a doctor, approved by Boxing SA, to be in attendance at the tournament and to have at his disposal two qualified first aid attendants or paramedics;<sup>419</sup> (ii) the provisions that require certain prescribed medical equipment to be available at the tournament;<sup>420</sup> and (iii) the provisions that require a boxer who has been knocked out, technically knocked out, sustained severe punishment or injured during a boxing bout to be examined by the ringside physician before he or she may leave the tournament venue.<sup>421</sup>

The afore-mentioned provisions in the South African Boxing Legislation aimed at protecting the health and safety of boxers, are discussed in further detail in Chapters 5 and 6 of this research study.

### 5.3.2 International Sanctioning Organizations

The international sanctioning organizations are private organizations that sanction international championship bouts.<sup>422</sup> Each of these organizations designates a world champion (as well as various other regional champions) in each weight division and ranks its top ten (or top twenty) contenders per weight division.<sup>423</sup>

The influence of these organizations is derived from the fact that without their official sanction, a boxing bout cannot be recognized as an international championship bout and is therefore less attractive to television and the viewing public.<sup>424</sup>

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<sup>417</sup> S19 of the South African Boxing Regulations.

<sup>418</sup> S22 of the South African Boxing Regulations.

<sup>419</sup> S24(1)(a) of the South African Boxing Regulations.

<sup>420</sup> S21(1)(c) of the South African Boxing Regulations.

<sup>421</sup> S24(5)(a) of the South African Boxing Regulations.

<sup>422</sup> Baglio "The Muhammed Ali Boxing Reform Act: the first jab at establishing credibility in professional boxing" (1999) *Fordham Law Review* 2257 at 2263 (Baglio). The four major international sanctioning organizations are the World Boxing Association (WBA), World Boxing Council (WBC), International Boxing Federation (IBF) and World Boxing Organization (WBO). Over the years there has been a proliferation of minor organizations, such as the International Boxing Organization (IBO) and World Boxing Federation (WBF).

<sup>423</sup> Baglio 2263.

<sup>424</sup> Baglio 2263.



These organizations charge promoters a sanction fee for permission to stage their respective championship bouts.<sup>425</sup> Each organization has its own rules that apply to its championship bouts, but all their rules are similar (save for certain minor technical differences) and all generally incorporate the principles enshrined in the Queensbury Rules.<sup>426</sup>

The South African Boxing Legislation does not confer any regulatory powers on these organizations with regard to their championship bouts when staged in South Africa. The role that these organisations play with regard to their championship bouts when staged in South Africa derives solely from their contractual arrangements with the relevant South African promoters whom they have sanctioned to stage these title bouts.<sup>427</sup> Thus, although those championship bouts are often touted as being fought ‘under the rules’ of the relevant international sanctioning organisation, those championship bouts when staged in South Africa nevertheless remain subject to the provisions of the South African Boxing Legislation, particularly to the extent that those rules may be in conflict with the provisions of the South African Boxing Legislation.<sup>428</sup> This is so because statutory provisions cannot be overridden by private contractual arrangements between parties.

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<sup>425</sup> In addition to the sanction fee, promoters are usually also required to pay the fees of the officials assigned to the bout, as well as the cost of their travel, board and lodging.

<sup>426</sup> The Queensbury Rules are discussed in Chapter 2 of this research paper.

<sup>427</sup> The international sanctioning organizations normally designate the officials for their championship bouts. S25(2) of the South African Boxing Regulations provides that in an international or world title bout, the officials may, by agreement, be appointed jointly by Boxing SA and the relevant international boxing organisation. In addition, the international sanctioning organisation normally also designates a supervisor for the championship bout. The role of this supervisor is discussed in further detail in Chapter 6 of this research paper.

<sup>428</sup> I am not aware of any instances in practice where a conflict has arisen between the provisions of those rules and the provisions of the South African Boxing Legislation, and it will be interesting to see how such a conflict is dealt with if and when it arises, particularly if it were to arise whilst the bout is underway. In respect of medical safety matters, the rules of the international sanctioning organisations (for example, the WBA) normally provide that the rules of the local boxing commission will apply, which in South Africa means that the provisions of the South African Boxing Legislation.

## 5.4 Organisers

The organisers of professional boxing bouts comprise the promoters and matchmakers.

### 5.4.1 Promoter

The promoters are the persons licensed by Boxing SA to stage professional boxing tournaments in South Africa. By staging professional boxing tournaments, the promoters create the means for professional boxers to earn their livelihood, which in turn gives rise to the wider boxing fraternity. Promoters are thus the lifeblood of professional boxing and the success or failure of professional boxing in any country is directly linked to the success or failure of its promoters.

The promoter assumes the financial risk for a tournament by guaranteeing the boxers their agreed purses and by paying all the other expenses associated with staging the tournament.<sup>429</sup> In turn, the promoter is compensated by the difference between the total revenues and total expenses for the tournament.<sup>430</sup> The revenue generated from a tournament generally comes from the following main sources, namely: (a) the live gate, which results from the renting of an arena and the sale of tickets, or for major fights staged at a casino, also from the site fee paid to the promoter, with the casino often retaining the right to the ticket sales;<sup>431</sup> (b) the sale of domestic and foreign television rights to the tournament (and more recently, also the live online streaming rights), which is usually the most significant source of revenue;<sup>432</sup> and (c) the sale of advertising rights, fight programs and other forms of merchandise.<sup>433</sup>

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<sup>429</sup> Baglio 2261

<sup>430</sup> Baglio 2261.

<sup>431</sup> For the so-called 'super bouts', the rival casinos in Las Vegas bid against each other to be able to stage those events (particularly for the prestige involved and for the large number of gamblers, particularly 'high-rollers', that enables them to attract to their casino) and can accordingly end up paying significant site fees to the relevant promoters.

<sup>432</sup> In recent times, these rights are now also being sold to live-streaming service providers (such as DAZN), often to the exclusion of the television companies. This trend is likely to grow in future as more and more people across the globe move away from the traditional forms of media to digital-based media to watch sport and other forms of entertainment through inter alia live streaming.

<sup>433</sup> Baglio 2262.

In modern times, the promotion of professional boxing tournaments has become a major business enterprise and promoters either stand to make vast riches from it or face financial ruin.

#### **5.4.2 Matchmaker**

Matchmakers are appointed by promoters to match boxers for the various bouts that will take place at their tournaments. Promoters are well aware that the success of their tournaments from an entertainment perspective is dependent on the matchmaking skills of the particular matchmaker that they use. In practice, matchmakers are usually closely aligned to particular promoters, often on an exclusive basis.

Save for obliging matchmakers to be registered by Boxing SA, the South African Boxing Legislation is silent on the functions and responsibilities of matchmakers.

Once a matchmaker has matched two boxers for a bout (usually through negotiations with their respective managers), those boxers are then contracted by the promoter to participate in the bout.<sup>434</sup> The matchmaker's role is thus primarily that of an intermediary between boxers and their managers on the one hand and promoters on the other hand.

### **5.5 Officials**

#### **5.5.1 Referee**

The referee is the chief official during a bout and takes up his position in the ring alongside the two boxers, hence often being referred to as the *'third man in the ring'*. The referee exercises general supervision over the bout.<sup>435</sup>

Due to the nature of his role in the bout, the referee plays a crucial role in protecting the safety of the boxers during the bout.<sup>436</sup>

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<sup>434</sup> S15(4) of the South African Boxing Regulations provides that a promoter may authorise a matchmaker to sign contracts with boxers on the promoter's behalf.

<sup>435</sup> S27(1) of the South African Boxing Regulations.

<sup>436</sup> The functions and responsibilities of the referee are discussed in further detail in Chapter 6 of this research paper.

### 5.5.2 Judges

In each bout there are three judges who are seated on three sides of the ring, with the timekeeper being seated on the fourth side.<sup>437</sup> The function of the judges is to each independently score the bout and be ready at all times to assist when requested by the referee to decide whether a foul has been committed during the bout.<sup>438</sup> The judges may at the end of a round also bring any other matter to the attention of the referee.<sup>439</sup> In practice, however, judges rarely play an active role in this regard and normally leave it to the referee to attend to matters in the ring. Likewise, the referee usually only solicits the judges' input on a potential foul (for example, a headbutt causing a cut) if he feels that he was unsighted when the potential foul occurred on account of his positioning in the ring at the time.

### 5.5.3 Timekeeper

The timekeeper is seated at the side of the ring close to the gong or bell and must be provided with a suitable stopwatch that enables him or her to make due allowance for any stoppages ordered by the referee during a round.<sup>440</sup> The timekeeper indicates the beginning and end of each round by sounding a gong or bell,<sup>441</sup> and is required to notify the referee and boxers by means of a suitable signal when there are ten seconds left in a round.<sup>442</sup>

### 5.5.4 Announcer

The announcer is appointed and remunerated by the promoter for each tournament.

Before a bout starts, the announcer announces from inside the ring the names of the boxers and their records, their weights, the title at stake (if any), the number and duration of rounds and the names of the referee, judges, timekeeper, supervisory

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<sup>437</sup> S28(1) of the South African Boxing Regulations.

<sup>438</sup> S28(3) of the South African Boxing Regulations.

<sup>439</sup> S28(3) of the South African Boxing Regulations.

<sup>440</sup> S29(1)(a) of the South African Boxing Regulations.

<sup>441</sup> S29(2) of the South African Boxing Regulations.

<sup>442</sup> S29(5) of the South African Boxing Regulations.

official and ringside physician.<sup>443</sup> After the bout, the announcer announces the result of the bout, as and when instructed thereto by the referee.<sup>444</sup>

The announcer performs his duties at a tournament subject to the direction and control of the supervisory official.<sup>445</sup>

In addition to performing his official duties at a tournament, the announcer also plays an important role in the overall entertainment spectacle of a tournament and in so doing, many announcers have gone on to achieve global celebrity status.<sup>446</sup>

### 5.5.5 Ringmaster

The ringmaster is categorised as an official in terms of the South African Boxing Regulations.<sup>447</sup> The ringmaster's responsibilities at a tournament are to be 'in control of the ring and all accessories',<sup>448</sup> distribute the gloves<sup>449</sup> and attend to any other related matters if requested thereto by the referee or supervisory official during the tournament.<sup>450</sup>

Due to the nature of the ringmaster's responsibilities at a tournament, particularly being in control of the ring, the ringmaster, plays an important role in the overall safety of the boxers at a tournament.<sup>451</sup>

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<sup>443</sup> S30(1) of the South African Boxing Regulations.

<sup>444</sup> S30(2) of the South African Boxing Regulations.

<sup>445</sup> S30(5) of the South African Boxing Regulations.

<sup>446</sup> Michael Buffer is a good example. His public appeal and legendary '*Let's get ready to rumble*' payoff line have enabled him to earn lucrative fees as a ring announcer at major boxing tournaments across the globe.

<sup>447</sup> Definition of 'official' in s1 of the South African Boxing Regulations.

<sup>448</sup> S31(a) of the South African Boxing Regulations. S20 of the South African Boxing Regulations prescribes the specifications for the ring, many of which have a direct bearing on the medical safety of the boxers, for example the requirement that the ring floor must be padded with a 1 cm layer of high-density closed-cell foam or chip foam.

<sup>449</sup> S31(b) of the South African Boxing Regulations.

<sup>450</sup> S31(c) of the South African Boxing Regulations.

<sup>451</sup> Notwithstanding the importance of this role, in practice Boxing SA seldom formally appoints a specific individual to perform the role of ringmaster at a tournament and the ringmaster's functions are normally performed, on a voluntary basis, by one or more of the other officials at the tournament, who perform same in addition to their official functions at the tournament. Furthermore, the setting up of the ring and the ongoing maintenance thereof during the course of the tournament is usually outsourced to an independent service provider that is engaged and remunerated by the promoter. The ringmaster's role, although officially recognised in the South African Boxing Regulations, is therefore a somewhat neglected position in South African

## 5.6 Supervisory official

The supervisory official is the person designated by Boxing SA to exercise overall control and supervision at a tournament.<sup>452</sup>

The supervisory official plays an important role at a tournament by ensuring that all the provisions of the South African Boxing Legislation are duly complied with, including *inter alia* the provisions aimed at protecting the health and safety of the boxers at the tournament. In this regard, the South African Boxing Regulations confers rather wide powers on the supervisory official that empower him to take final decisions on all matters relating to the tournament, including but not limited to the stoppage of the tournament.<sup>453</sup> In terms of these powers, a supervisory official is empowered, for example, to delay the start of a tournament or even call it off entirely if all the prescribed medical safety personnel and equipment are not present at the venue.

The supervisory official thus plays a crucial role with regard to protecting the health and safety of the boxers at the tournament.<sup>454</sup>

## 5.7 Boxer's Support Staff

The boxer's support staff comprises the boxer's agent, manager, trainer and seconds.

### 5.7.1 Agent

The South African Boxing Regulations introduced the concept of agents into South African professional boxing, which previously did not exist under the earlier legislation.

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professional boxing, which is not an ideal situation having regard to the important responsibilities bestowed upon the ring master in terms of the South African Boxing Regulations.

<sup>452</sup> Definition of '*supervisory official*' in s1 of the South African Boxing Regulations. Also, s31(1) of the South African Boxing Regulations.

<sup>453</sup> S33(1) of the South African Boxing Regulations.

<sup>454</sup> The supervisory official's functions and responsibilities are discussed in further detail in Chapter 6 of this research paper.

The South African Boxing Regulations prescribe that all foreign boxers engaged to box in South Africa shall be represented by an agent registered in terms of the South African Boxing Regulations.<sup>455</sup>

In terms of the South African Boxing Regulations, an agent shall be responsible for applying to Boxing SA for certificates of registration for a foreign boxer, his manager and seconds;<sup>456</sup> ensuring that the foreign boxer is in possession of an international boxer's licence and other documentation to the satisfaction of Boxing SA which contains the boxer's current licence status, boxing record, medical fitness to take part in the proposed bout and a written authorisation from his local commission to partake in the boxing bout;<sup>457</sup> attending the weigh-in with the foreign boxer and being at ringside during the bout;<sup>458</sup> and engaging the services of an interpreter, who shall be available at all material times, if the agent is unable to converse in the language of the foreign boxer or his manager.<sup>459</sup>

In practice, the aforementioned provisions of the South African Boxing Regulations are seldom given effect to or enforced by Boxing SA. Agents therefore presently play a relatively minor role in South African professional boxing.

### **5.7.2 Manager**

A manager is responsible for handling all of the boxer's business affairs, including the selection of a promoter/s, the negotiating of contractual terms with the promoter/s (particularly the amount of the purse monies payable), the selection of a trainer and approving opponents for the boxer.<sup>460</sup>

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<sup>455</sup> S7(3) of the South African Boxing Regulations.

<sup>456</sup> S7(4)(a) of the South African Boxing Regulations.

<sup>457</sup> S7(4)(b) of the South African Boxing Regulations.

<sup>458</sup> S7(4)(c) of the South African Boxing Regulations.

<sup>459</sup> S7(4)(d) of the South African Boxing Regulations. This function is particularly important since many foreign boxers arrive in South Africa unable to speak or understand English and this makes it difficult and sometimes impossible for the officials and medical personnel to communicate effectively with those foreign boxers. This is particularly problematic when it comes to exchanging important medical information. It is thus a concern that these provisions are not being given effect to, particularly those relating to the appointment by the agent of an interpreter for a foreign boxer.

<sup>460</sup> Baglio 2261.

The promoter's interests are in direct conflict with those of the boxer, because the less money that a boxer accepts as a purse for a particular bout, the more profits are available to the promoter. Due to this conflict of interest, it is essential that the boxer's manager negotiates vigorously to ensure that the boxer gets the best possible purse from the promoter.<sup>461</sup> As the legendary boxing historian Bert Sugar once remarked, "[t]he function of a good manager ... is getting the most money [for his boxer] for the least risk".<sup>462</sup>

The South African Boxing Regulations prescribe that no boxer shall be managed or advised by any person other than a manager or agent registered as such in terms of the South African Boxing Regulations<sup>463</sup>.

In terms of the South African Boxing Regulations, a contract between a manager and boxer must be concluded on a form similar to Annexure I (Articles of Agreement between a Boxer and Manager) of the South African Boxing Regulations and shall remain valid for a maximum period of two years from the date of its approval by Boxing SA.<sup>464</sup> A manager is obliged in terms of his contract with the boxer to procure a minimum of two bouts per year for the boxer.<sup>465</sup>

A manager's compensation is determined as a percentage of the boxer's purse for each boxing bout,<sup>466</sup> which means the bigger the boxer's purse, the bigger the manager's fee. There is thus an incentive for a manager to endeavour to negotiate the highest possible purse for the boxer, which could give rise to a conflict of interest for a manager, particularly if the bout is not in the best interests of the boxer (for example,

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<sup>461</sup> Baglio 2262.

<sup>462</sup> Grover & Reingold "The P.O.I.N.T of Fist City" 1996 *Business Week* 96 (Grover).

<sup>463</sup> S15(13) of the South African Boxing Regulations.

<sup>464</sup> S15(1) of the South African Boxing Regulations. S15(16) of the South African Boxing Regulations provides that the contract is not valid until approved in writing by Boxing SA who may require any modifications to ensure the proper control of boxing. In terms of s15(17) of the South African Boxing Regulations, the contract must be signed before Boxing SA

<sup>465</sup> S15(15) of the South African Boxing Regulations. Clause 2.4 of the standard form Articles of Agreement between a Boxer and Manager (Annexure I of the South African Boxing Regulations) imposes a contractual obligation on the manager in this regard.

<sup>466</sup> Clause 1.5 of the standard form Articles of Agreement between a Boxer and Manager (Annexure I of the South African Boxing Regulations). The percentage that a manager will be paid from each purse earned by a boxer needs to be agreed between the boxer and manager, and recorded in their contract.



if he will be mis-matched against a more experienced opponent in the bout which could put his health at risk).

S10(5) of the South African Boxing Regulations states that it is the responsibility of both the boxer and the boxer's manager to ensure that the provisions of ss10(1) and 10(2) of the South African Boxing Regulations are complied with.<sup>467</sup> These provisions prohibit the boxer from participating in any contact training during the period that his certificate of registration has been automatically suspended on account of a knockout as a result of a blow to the head or if he has sustained a knockout as a result of a blow to the head in two consecutive fights within a period of six months. The suspension periods are for ninety days and six months respectively.<sup>468</sup> The suspension periods provide important safety measures for the boxer concerned.

Clause 1.3 of the standard-form articles of agreement between a boxer and manager<sup>469</sup> contains a *pactum de non petendo* which reads as follows: "The Boxer absolves the Manager from any responsibility should he be injured during the term of this agreement, either within the ring or out of it."<sup>470</sup>

### 5.7.3 Trainer

The trainer is the person responsible for training the boxer in preparation for his participation in a boxing bout. The trainer usually also acts as the boxer's chief second during the boxing bout.<sup>471</sup>

The South African Boxing Regulations prescribe that no boxer shall be trained by any person other than a trainer registered as such in terms of the South African Boxing Regulations.<sup>472</sup>

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<sup>467</sup> S10(5) reads as follows: 'It shall be the responsibility of both the boxer and the boxer's manager to ensure that the provisions of sub regulations (1) and (2) are complied with.' (emphasis added)

<sup>468</sup> These suspension periods are discussed more fully in Chapter 6 of this research paper.

<sup>469</sup> Annexure I of the South African Boxing Regulations.

<sup>470</sup> The legal effect of a contractual waiver of liability is discussed in Chapter 4 of this research study.

<sup>471</sup> The functions and responsibilities of the chief second are discussed later in this chapter.

<sup>472</sup> S18(4) of the South African Boxing Regulations.

Unlike in the case of managers, the South African Boxing Regulations do not prescribe a standard form contract to be concluded between trainers and the boxers whom they train. Accordingly, there is no equivalent waiver of liability operative between trainers and boxers as there is between managers and boxers. Trainers and boxers may, however, voluntarily agree to conclude a written agreement between them and include therein a similar waiver of liability provision.<sup>473</sup>

#### 5.7.4 Seconds

The seconds are the persons who, seated or standing at the boxer's corner of the ring, assist or advise the boxer before the bout begins and during the intervals between rounds.<sup>474</sup> They also ensure that the boxer is equipped with all the prescribed medical safety equipment (for example, a gum shield), is properly attired and is gloved and bandaged prior to the bout.<sup>475</sup>

Each boxer is permitted to have three seconds in his corner, unless otherwise agreed by Boxing SA.<sup>476</sup> The boxer's trainer is usually one of his seconds.

Prior to the start of a bout, a chief second needs be nominated to the referee by each boxer,<sup>477</sup> and the said chief second alone may declare the retirement of the boxer from the bout by throwing a towel into the ring and by orally drawing the referee's attention to it.<sup>478</sup> S27(6)(b)(xv) of the South African Boxing Regulations provides that during the bout, the referee *shall* stop the bout if the boxer's chief second throws the towel into the ring signifying the retirement of the boxer.<sup>479</sup> The chief second therefore performs

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<sup>473</sup> In my experience, it is not common for trainers to conclude written agreements with the boxers whom they train.

<sup>474</sup> S32(1) of the South African Boxing Regulations.

<sup>475</sup> S22(3) of the South African Boxing Regulations. The putting on of the gloves and bandages must be supervised by an official designated by Boxing SA. In practice, this role is usually performed by the referee, and in the event of a championship bout, jointly by the referee and supervisory official.

<sup>476</sup> S32(2) of the South African Boxing Regulations.

<sup>477</sup> In practice, the boxer's trainer is usually nominated as the boxer's chief second. This often occurs by default.

<sup>478</sup> S32(3) of the South African Boxing Regulations.

<sup>479</sup> The use of the word "shall" makes this provision peremptory and therefore leaves the referee with no discretion whether or not to stop the bout in these circumstances. In the NYSAC Regulations, a boxer's corner is prohibited from throwing in the towel during a bout. In the BBBC Rules and Regulations the boxer's manager or in his absence his chief second, shall alone have the responsibility of retiring a boxer in a bout, but may not do so while a round is in progress.

an important safety function during a bout since apart from the referee, only the chief second may in terms of the South African Boxing Regulations call a halt to a bout in order to protect a boxer from enduring further punishment in the ring.

When a boxer is knocked-out, none of the boxer's seconds may touch him or her until the ringside physician has attended to the boxer and issued appropriate instructions to the seconds<sup>480</sup>. This is an important medical safety measure that is unfortunately not always adhered to in practice.

## **5.8 Medical Personnel**

The South African Boxing Regulations make provision for various medical functions to be performed during the various organizational phases of a boxing bout.<sup>481</sup>

During the bout, these medical functions are performed by the so-called ringside physician, who must have at his disposal first aid attendants or paramedics and certain prescribed emergency equipment. During the pre-contest phase, these medical functions are performed by other medical practitioners approved by Boxing SA. These medical personnel are described in further detail below.

### **5.8.1 Ringside Physicians**

The ringside physicians are a special category of medical practitioners that are accredited as such by Boxing SA<sup>482</sup> and who are also required to have completed a Boxing SA-approved course on all aspects of boxing injuries.<sup>483</sup>

The ringside physicians (as their name indicates) perform their medical responsibilities at ringside during a boxing tournament.<sup>484</sup>

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<sup>480</sup> S24(1)(h) of the South African Boxing Regulations.

<sup>481</sup> These organizational phases are discussed in Chapter 6 of this research study.

<sup>482</sup> S24(1)(c) of the South African Boxing Regulations

<sup>483</sup> S24(1)(b) of the South African Boxing Regulations.

<sup>484</sup> The functions and responsibilities of the ringside physician during a boxing tournament are discussed in further detail in Chapter 6 of this research study.

The ringside physician for each tournament is appointed by the promoter with the approval of Boxing South Africa.<sup>485</sup> The promoter remunerates the ringside physician for his services at the tournament.<sup>486</sup>

### **5.8.2 First Aid Attendants / Paramedics**

These persons are not required to be registered or accredited in any way by Boxing SA. They are regular qualified first aid attendants or paramedics who provide medical support to the ringside physicians at ringside during the tournament.<sup>487</sup>

In practice, the promoter appoints and pays the first aid attendants or paramedics who serve at the tournament. Unlike in the case of the ringside physician, Boxing SA does not need to approve their appointment.

### **5.8.3 Other medical practitioners**

The South African Boxing Regulations make provision for various other medical functions to be performed by other medical practitioners, who need not be accredited ringside physicians (as described above). In order to perform these other medical functions, these other medical practitioners merely need to be 'approved' by Boxing SA, as and when they perform those other medical functions.<sup>488</sup>

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<sup>485</sup> S24(1) of the South African Boxing Regulations.

<sup>486</sup> The remuneration payable to ringside physicians is set by Boxing SA.

<sup>487</sup> S24(1)(a) of the South African Boxing Regulations. Their functions and the emergency equipment that they are required to have with is discussed in Chapter 6 of this research paper.

<sup>488</sup> These other medical functions are performed during the pre-contest phase and pertain to the medical fitness of boxers to be registered as boxers and to thereafter participate in boxing bouts. These medical functions are discussed in further detail in Chapter 6 of this research study.

## C H A P T E R 6 : O R G A N I S A T I O N A L P H A S E S

### 6.1 Introduction

The South African Boxing Regulations prescribe various requirements that need to be complied with by the various role players before, during and after the staging of a professional boxing bout, many of which have a direct or indirect bearing on the health and safety of the boxers. To facilitate the discussion of these requirements, the organisational process of a professional boxing bout can be broken down into the following three broad phases:

- the pre-contest phase;
- the contest phase; and
- the post-contest phase.

The contest phase can, in turn, be broken further into the following three sub-phases:

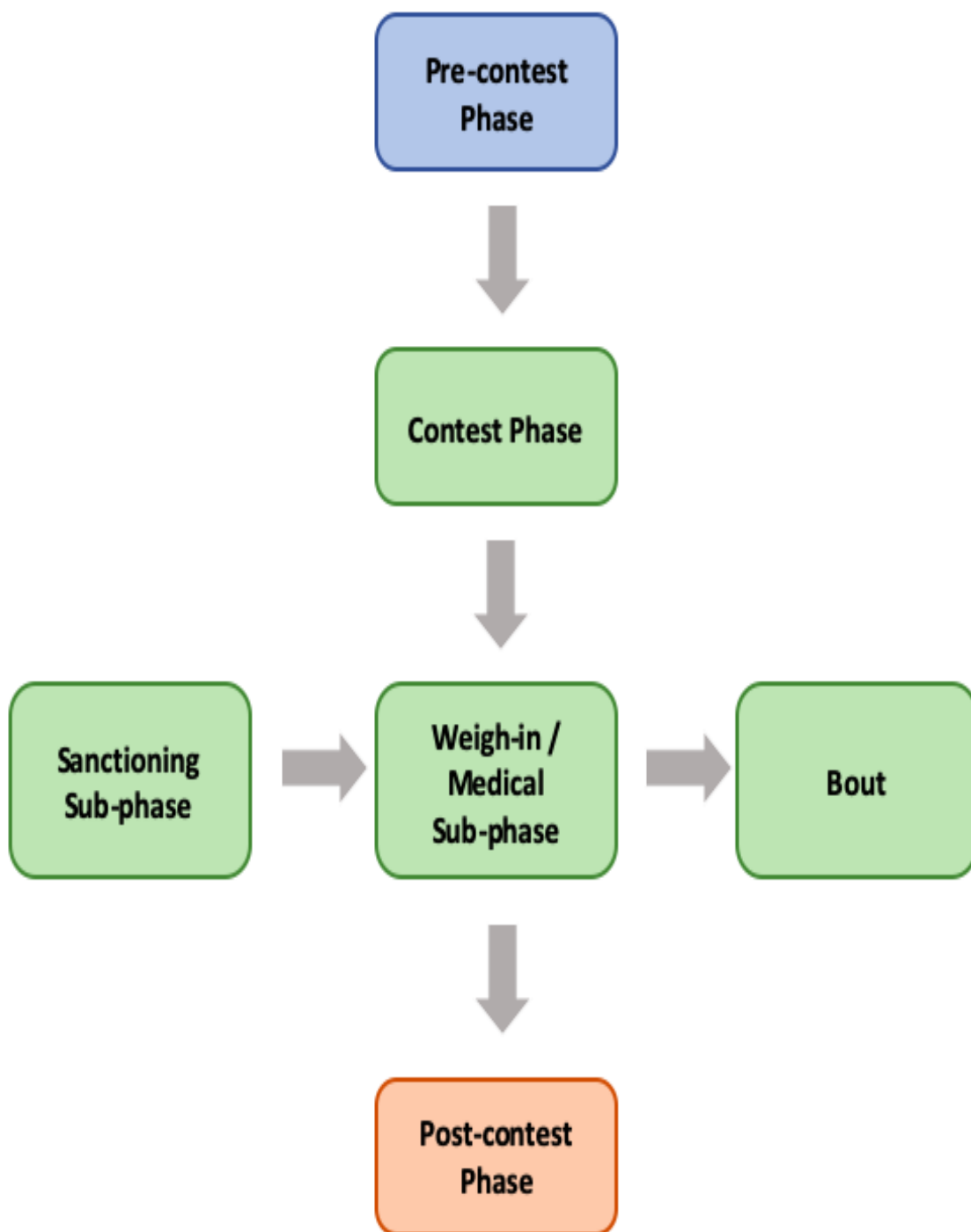
- the sanctioning phase;
- the weigh-in / medical examination phase; and
- the bout.

This chapter provides an overview of each of the afore-mentioned phases, identifying what requirements need to be complied with during each phase and by whom.<sup>489</sup> The discussion focuses primarily on the requirements that have a direct or indirect bearing on the health and safety of the boxers.

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<sup>489</sup> These phases can generally also be applied to a professional boxing bout staged in the UK or NYS. To the extent that there may be any differences in those jurisdictions, those differences will be noted in the discussions that follow in this chapter and in the ensuing chapters of this research study.

### The Organisational Phases of a Professional Boxing Bout



## 6.2 The Pre-contest Phase

### 6.2.1 Introduction

The genesis of a professional boxing bout can be traced back to the initial registration process, since no person may participate in a professional boxing bout, whether as a boxer or in any other capacity, unless he has been duly registered in that capacity by Boxing SA.

The registration process plays an integral part in the overall health and safety regime in professional boxing since it enables Boxing SA at the very outset of the process to assess the competency level and medical fitness of the persons applying to be registered as boxers, as well as the competency level of the persons applying to be registered in other capacities, particularly as referees. As will become evident from the discussion of the registration process, a number of important medical safety measures have been built into the registration process, which if neglected by Boxing SA and or the medical practitioners involved, can have dire medical consequences for the boxers during the subsequent contest phase.

What follows is an overview of the registration process generally and also the specific requirements that apply to each category of applicants, particularly the boxers and referees.<sup>490</sup>

### 6.2.2 The Registration Process

The South African Boxing Act<sup>491</sup> empowers Boxing SA to issue certificates of registration to boxers, officials<sup>492</sup>, trainers, managers and promoters. Any person who wishes to take part in a professional boxing tournament in any of the aforementioned capacities must apply annually to Boxing SA (on the prescribed application forms) to

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<sup>490</sup> The referee plays a key role in protecting the medical safety of the boxers during the bout and has accordingly been afforded special attention in this research paper.

<sup>491</sup> S7(1)(c) of the *South African Boxing Act*.

<sup>492</sup> The term 'official' is defined in s1 of the South African Boxing Regulations to mean a referee, judge, timekeeper, ringmaster or announcer.

be registered as such<sup>493</sup>. In terms of the South African Boxing Regulations, Boxing SA has a discretion whether or not to approve any application for registration<sup>494</sup>.

The South African Boxing Regulations impose specific requirements for the registration of the different categories of applicants. As will become evident from the discussion below, many of these requirements (particularly those in respect of boxers) incorporate medical safety measures and therefore play an important role in the overall medical safety regime applicable within South African professional boxing. What makes these requirements of particular importance is that they come into play at a very early stage in the organisational process and therefore afford Boxing SA an early opportunity to proactively protect the health and safety of the boxers. Boxing SA therefore needs to administer the registration process (including the annual renewal process) with the necessary care and diligence and avoid relegating it to a mere 'tick the box' exercise.

### **6.2.2.1 Registration Requirements for Boxers**

In addition to imposing certain age restrictions,<sup>495</sup> the South African Boxing Regulations also impose a number of important medical requirements that need to be complied with in relation to the registration of a boxer. In this regard, the boxer must submit to Boxing SA his written history as a boxer (with full supporting evidence)<sup>496</sup> and submit himself, at his own cost, to a medical examination by a registered medical practitioner and submit the results to Boxing SA in the prescribed form.<sup>497</sup> The boxer must undergo a similar medical examination at each annual renewal of his registration as a boxer.<sup>498</sup> Boxing SA may, in turn, request a first-time applicant to report to a

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<sup>493</sup> S2(1) of the South African Boxing Regulations.

<sup>494</sup> S2(2) of the South African Boxing Regulations reads as follows: 'If an application ... is approved ...' (emphasis added).

<sup>495</sup> In terms of s3(1)(a) of the South African Boxing Regulations, an applicant for registration as a boxer must be older than 18 years but younger than 35 years in the case of a first registration, provided that a boxer who has not participated in a bout for a continuous period of 12 months or longer shall be deemed to be a first registration.

<sup>496</sup> S3(1)(b) of the South African Boxing Regulations.

<sup>497</sup> S3(1)(d) of the South African Boxing Regulations.

<sup>498</sup> S3(1)(e) of the South African Boxing Regulations.



gymnasium to have his boxing ability tested by a person designated by Boxing SA<sup>499</sup> and, at each annual renewal of the boxer's registration, Boxing SA: (a) must review the application for renewal and if it is of the opinion that the boxer has 'endured excessive punishment',<sup>500</sup> Boxing SA may (despite the boxer undergoing a positive neurological investigation) refuse his application for renewal;<sup>501</sup> and (b) must, at each annual renewal, require a boxer who is 35 years or older to submit himself, at his own expense, to the medical examinations and tests that Boxing SA deems appropriate in order to determine whether it is in the best interests of the boxer's mental or physical well-being to continue boxing.<sup>502</sup>

In terms of s3(2) of the South African Boxing Regulations, a certificate of registration shall not be issued to a boxer if he or she suffers from any of the medical conditions specified in s3(2).<sup>503</sup>

After an applicant has been registered by Boxing SA as a boxer, his certificate of registration can in certain circumstances either be cancelled or suspended, sometimes automatically and at other times in the discretion of Boxing South Africa.<sup>504</sup> These circumstances as follows: (a) if a boxer has sustained a knockout as a result of a blow to the head, his certificate of registration *shall* be automatically suspended for a period of ninety days, during which period he or she shall not take part in any contact training;<sup>505</sup> (b) if a boxer has sustained a knockout as a result of a blow to the head in two consecutive fights within a period of six months, his certificate of registration shall be automatically suspended for a period of six months, during which period he shall not take part in any contact training;<sup>506</sup> (c) if a boxer is knocked out as a result of a

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<sup>499</sup> S3(1)(c) of the South African Boxing Regulations.

<sup>500</sup> The keeping of complete and accurate punishment indices (discussed later in this chapter) is necessary to enable Boxing SA to effectively perform this annual review process.

<sup>501</sup> S3(3) of the South African Boxing Regulations.

<sup>502</sup> S3(4) of the South African Boxing Regulations.

<sup>503</sup> These medical conditions include, for example, high blood pressure (hypertension amounting to a reading higher than 140/80 taken over several readings) and a lung disease.

<sup>504</sup> S10 of the South African Boxing Regulations.

<sup>505</sup> S10(1) of the South African Boxing Regulations. S10(5) of the South African Boxing Regulations provides that it shall be the responsibility of the boxer and the boxer's manager to ensure that these provisions are duly complied with.

<sup>506</sup> S10(2) of the South African Boxing Regulations. S10(5) of the South African Boxing Regulations provides that it shall be the responsibility of the boxer and the boxer's manager to ensure that these provisions are duly complied with.

blow to the body or the supervisory official is on reasonable grounds of the opinion that the boxer has endured excessive punishment, the supervisory official *may* suspend his certificate of registration for a period on thirty days;<sup>507</sup>(d) if a boxer has endured very excessive punishment as a result of an early technical knockout or multiple knockdowns, the supervisory official may suspend his certificate of registration for a period of sixty days;<sup>508</sup> (e) if a boxer has sustained a knockout as a result of a blow to the head in four consecutive fights or Boxing SA is on reasonable grounds of the opinion that he has endured excessive punishment, Boxing SA may order that such boxer retire in the interests of his mental or physical well-being;<sup>509</sup> and (f) if a boxer has sustained a knockout as a result of a blow to the head in five consecutive fights, his certificate of registration shall be automatically cancelled, and he shall not be re-admitted to boxing until he or she has undergone a medical examination, including a thorough neurological examination at his own expense by a neurologist or neurosurgeon appointed by Boxing SA.<sup>510</sup>

The aforementioned provisions of the South African Boxing Regulations play an important role in protecting the health and safety of boxers. Where these provisions provide for an automatic suspension or cancellation of the boxer's certificate of registration, it is important that such suspension is accurately documented by Boxing SA in its official records in order to ensure that it does not inadvertently sanction that boxer to participate in a boxing bout during his suspension period or after his certificate of registration has been cancelled. It is also the responsibility of both the boxer and his manager to ensure that the boxer does not take part in any contact training during a period of automatic suspension. In those instances where Boxing SA or the supervisory official is granted a discretion whether or not to impose a suspension, it is important that they exercise their discretion in a reasonable manner so as to protect the health and safety of the boxer concerned.<sup>511</sup>

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<sup>507</sup> S10(3) of the South African Boxing Regulations. Strangely, the provisions of s10(5) do not also apply to a suspension in terms of s10(3).

<sup>508</sup> S10(4) of the South African Boxing Regulations. Strangely, the provisions of s10(5) do not also apply to a suspension in terms of s10(4).

<sup>509</sup> S10(6) of the South African Boxing Regulations.

<sup>510</sup> S10(7) of the South African Boxing Regulations.

<sup>511</sup> In Chapter 7 of this research study, it will be examined what the legal implications are for the relevant role players should these provisions not be properly adhered to.

### 6.2.2.2 Registration Requirements for Promoters, Managers, Matchmakers and Agents

The South African Boxing Regulations provide that in order to be registered as a promoter, manager or matchmaker for the first time, an applicant *must* undertake and pass an oral and/or written examination set by Boxing SA for purposes of testing his or her knowledge of the South African Boxing Act, South African Boxing Regulations, the code of conduct established by Boxing SA,<sup>512</sup> the generally accepted rules of boxing and his knowledge of boxing management, promoting or matchmaking, as the case may be.<sup>513</sup> Boxing SA *must* annually review a promoter, manager or matchmaker's application for renewal and if Boxing SA is on reasonable grounds of the opinion that he or she has not performed satisfactorily during the past year, Boxing SA *may* refuse his application for renewal.<sup>514</sup> These provisions apply *mutatis mutandis* to the registration of agents.<sup>515</sup>

The South African Boxing Regulations accordingly oblige Boxing SA to vet the competency level of promoters, managers, matchmakers and agents, both during the initial registration process and also annually thereafter during the renewal process. As will become evident later in this research paper, this vetting process plays an important role in ensuring that these persons are knowledgeable about the important medical safety measures that the South African Boxing Regulations require them to comply with.

### 6.2.2.3 Registration Requirements for Officials

The South African Boxing Regulations provide that in order to be registered as an official for the first time, an applicant must be at least 18 years old, have the experience in either amateur or professional boxing that Boxing SA deems appropriate, undertake and pass a written/or practical examination set by Boxing SA and complete an

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<sup>512</sup> To the best of my knowledge, no such code has been established by Boxing SA to date.

<sup>513</sup> S5(1) of the South African Boxing Regulations.

<sup>514</sup> S5(2) of the South African Boxing Regulations.

<sup>515</sup> Ss7(1) and 7(2) of the South African Boxing Regulations.

apprenticeship.<sup>516</sup> Boxing SA must annually review an official's application for renewal and if Boxing SA is on reasonable grounds of the opinion that the official has not performed satisfactorily during the past year, Boxing SA may refuse his application for renewal.<sup>517</sup>

The South African Boxing Regulations accordingly oblige Boxing SA to vet the competency level of officials, both during the initial registration process and also annually thereafter during the renewal process. As will become evident later in this research paper, this vetting process plays an important role in ensuring that the referees in particular are suitably competent to protect the medical safety of the boxers during the boxing bouts that they officiate in.

#### **6.2.2.4 Registration Requirements for the Supervisory Official**

Although the supervisory official is designated by Boxing SA to exercise overall control and supervision at a tournament<sup>518</sup> and hence plays a crucial role in ensuring that all the prescribed medical safety measures are adhered to at the tournament, the supervisory official is not required in terms of the South African Boxing Regulations to either be registered in such capacity by Boxing SA or to possess any minimum qualifications or competencies. This is a rather anomalous situation given the important role that the supervisory official person performs at the tournament.

At a tournament in which an international championship title is at stake, the relevant international sanctioning organisation normally appoints, on an *ad hoc* basis, its own 'supervisor' to 'supervise' the international championship bout. The role of this 'supervisor' is not recognised in the South African Boxing Legislation and it is important that his role should not be conflated with that of the supervisory official designated by Boxing SA to control and supervise the tournament. Whilst in practice, the 'supervisor' appointed by the international sanctioning organisation is afforded *de facto* recognition as the 'supervisor' of the particular international championship bout, *de jure* the

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<sup>516</sup> S4(1) of the South African Boxing Regulations.

<sup>517</sup> S4(2) of the South African Boxing Regulations.

<sup>518</sup> Definition of 'supervisory official' in s1 of the South African Boxing Regulations.

supervisory official designated by Boxing SA nevertheless remains ultimately responsible in terms of the South African Boxing Regulations for the overall control and supervision of the tournament as a whole, including the medical safety aspects thereof.<sup>519</sup>

#### **6.2.2.5 Registration Requirements for Trainers and Seconds**

The South African Boxing Regulations provide that in order to be registered as a trainer or second for the first time, an applicant *must* undertake and pass an oral and/or written examination set by Boxing SA for purposes of testing his knowledge of the *South African Boxing Act*, South African Boxing Regulations, the code of conduct established by Boxing SA,<sup>520</sup> the generally accepted rules of boxing, the treatment of injuries, physical conditions, healthcare, nutrition, first aid, effects of drugs and alcohol on boxers and the bandaging of a boxer's hands.<sup>521</sup> Boxing SA *must* annually review a trainer's or second's application for renewal and if Boxing SA is on reasonable grounds of the opinion that he or she has not performed satisfactorily during the past year, Boxing SA may refuse his application for renewal.<sup>522</sup>

The South African Boxing Regulations thus oblige Boxing SA to vet the competency level of trainers and seconds, both during the initial registration process and also annually thereafter during the renewal process. As will become evident later in this research paper, this vetting process plays an important role in ensuring that these persons are knowledgeable about the medical safety measures that the South African Boxing Regulations require them to comply with.

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<sup>519</sup> The rules of the international sanctioning authorities (for example, the WBA) normally provide that the medical safety aspects of the international championship bout will be regulated by the rules of the local boxing commission, which in the case of South Africa means the South African Boxing Regulations.

<sup>520</sup> To the best of my knowledge, no such code has been established by Boxing SA to date.

<sup>521</sup> S6(1) of the South African Boxing Regulations.

<sup>522</sup> S6(2) of the South African Boxing Regulations.

### 6.2.3 Accreditation of Ringside Physicians

The South African Boxing Regulations make it obligatory that at every tournament a medical practitioner must be appointed by the promoter and be approved by Boxing SA, to be referred to as ‘the ringside physician’.<sup>523</sup>

The ringside physician must have completed a course on all aspects of boxing injuries, as approved by Boxing SA<sup>524</sup> and must be accredited by Boxing SA.<sup>525</sup>

Although ringside physicians are not required in terms of the South African Boxing Regulations to be registered as such by Boxing SA, the South African Boxing Regulations do, however, envisage that an accreditation system will be implemented by Boxing SA in respect of ringside physicians.<sup>526</sup>

As is evident from the above, the South African Boxing Regulations do not merely require the presence of a regular medical practitioner at a professional boxing tournament, but require the presence of one with particular attributes, namely a medical practitioner accredited by Boxing SA and who has completed a Boxing SA-approved course on all aspects of boxing injuries, that is, a so-called ringside physician.<sup>527</sup>

### 6.2.4 The appointment of First Aid Attendants / Paramedics

The South African Boxing Regulations make it obligatory that at every tournament the promoter must appoint two qualified first aid attendants or paramedics, equipped with the prescribed emergency equipment, to assist the ringside physician at the tournament.<sup>528</sup>

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<sup>523</sup> S24(1)(a) of the South African Boxing Regulations. In terms of s11(1)(i) of the South African Boxing Regulations, the promoter’s application to Boxing SA for the sanctioning of a tournament must contain confirmation that an accredited medical practitioner will be available at the venue for the duration of the tournament.

<sup>524</sup> S24(1)(b) of the South African Boxing Regulations.

<sup>525</sup> S24(1)(c) of the South African Boxing Regulations.

<sup>526</sup> S24(1)(c) of the South African Boxing Regulations.

<sup>527</sup> Ss24(1)(b) and (c) of the South African Boxing Regulations.

<sup>528</sup> S24(1)(c) of the South African Boxing Regulations.

The first aid attendants or paramedics are not required in terms of the South African Boxing Regulations to either be registered or accredited by Boxing SA. The South African Boxing Regulations merely state that they need to be 'qualified', but do not elaborate on what the required level of qualification is.

## 6.3 The Contest Phase

### 6.3.1 Introduction

As mentioned earlier in this chapter, the Contest Phase can for explanatory purposes be broken down into three sub-phases, namely the:

- sanctioning sub-phase;
- weigh-in / medical examination sub-phase; and
- the bout.

In respect of each of these sub-phases, the South African Boxing Regulations incorporate important requirements that need to be complied with which have a direct bearing on the protection of the health and safety of the boxers. These requirements are described below in relation to each of the sub-phases of the Contest Phase.

### 6.3.2 The Sanctioning Sub-phase

The South African Boxing Regulations provide that all applications by promoters for permission from Boxing SA to stage tournaments shall be made in writing and submitted to Boxing SA at least 30 days prior to the date of the tournament, and *shall* contain certain prescribed information.<sup>529</sup> The prescribed information includes *inter alia* the records of all the boxers,<sup>530</sup> confirmation that an accredited medical practitioner will be available at the venue for the duration of the tournament,<sup>531</sup> confirmation that an ambulance will be on standby at the venue for the duration of the tournament<sup>532</sup> and confirmation that a hospital close to the venue has been notified of

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<sup>529</sup> S11(1) of the South African Boxing Regulations.

<sup>530</sup> S11(1)(a) of the South African Boxing Regulations.

<sup>531</sup> S11(1)(i) of the South African Boxing Regulations

<sup>532</sup> S11(1)(j) of the B South African Boxing Regulations.

the tournament and that its neurological department and all other medical divisions necessary will be on standby for the duration of the tournament.<sup>533</sup> These are important medical safety considerations and it is accordingly important that Boxing SA should ensure that they have been duly complied with by the promoter before Boxing SA sanctions the tournament.<sup>534</sup>

With regard to the boxers whom the promoter intends engaging for the relevant tournament for which a sanction is being sought from Boxing SA, Boxing SA is also obliged in terms of the South African Boxing Regulations to ensure 'to the best of its ability' that the mismatching of boxers does not take place.<sup>535</sup> This is of particular importance since a mis-match can pose a serious medical safety risk to the over-matched boxer. In considering the proposed bouts for the tournament, Boxing SA also needs to ensure that none of the boxers in question are currently serving a period of suspension or have had their certificates of registration cancelled in terms of s10 of the South African Boxing Regulations.

The South African Boxing Regulations grant Boxing SA a discretion, after considering the aforesaid application, to either refuse to sanction the tournament on reasonable grounds or sanction the tournament subject to any conditions which Boxing SA may deem reasonable in the circumstances.<sup>536</sup> Even after Boxing SA has sanctioned a tournament, Boxing SA still has a discretion at any time prior to the tournament to revoke that sanction if the promoter is in breach of any of its obligations in terms of the South African Boxing Legislation or has breached any of the conditions that Boxing SA attached when it initially sanctioned the tournament.<sup>537</sup>

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<sup>533</sup> S11(1)(n) of the South African Boxing Regulations. This is a particularly important requirement since in the past certain medical evacuations of boxers with head injuries have gone awry since the hospital to which those boxers were taken did not have the necessary neurological facilities.

<sup>534</sup> At the tournament, the supervisory official once again needs to confirm that all these safety measures are in fact in place. This responsibility of the supervisory official in this regard is discussed in further detail later in this chapter.

<sup>535</sup> S23(4)(i) of the South African Boxing Regulations.

<sup>536</sup> S11(3) of the South African Boxing Regulations.

<sup>537</sup> S11(6) of the South African Boxing Regulations.



### 6.3.3 The Weigh-in / Medical Examination Sub-phase

Every boxer shall when weighing-in for a bout be examined by a registered medical practitioner<sup>538</sup> appointed by Boxing SA and, if the boxer is found to be physically fit to box, he or she shall be certified as such by that medical practitioner.<sup>539</sup> Special provisions apply to the medical examination of female boxers.<sup>540</sup> The weigh-in and the accompanying medical examination need to occur at least 24 hours before the bout, unless the boxers agree to another time with the approval of Boxing SA.<sup>541</sup>

The medical practitioner shall record his findings on a form similar to Annexure K of the South African Boxing Regulations, provided that the 'After Contest Recommendations' column shall be completed only after the bout.<sup>542</sup>

S23(2)(n) of the South African Boxing Regulations lists a number of specific medical conditions (for example, an unhealed hand fracture)<sup>543</sup> which prohibit a boxer from being declared medically fit to fight. S23(2)(n)(vi) of the South African Boxing Regulations is a catch-all provision which allows the medical practitioner to declare a boxer unfit to fight if he or she has any other indisposition that in the opinion of the medical practitioner conducting the medical examination may affect the boxer's ability to box or which may pose a risk to his medical safety or that of his opponent.

In regard to the weigh-in of the boxers, the South African Boxing Regulations provide that in non-championship bouts<sup>544</sup> differences in weights between contestants are

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<sup>538</sup> It should be noted that the registration contemplated here is not registration by Boxing SA but registration by the Health Professions Council of South Africa (HPCSA).

<sup>539</sup> S23(2)(a) of the South African Boxing Regulations.

<sup>540</sup> Ss23(2)(b), (d), (g), (h), (i) and (k) of the South African Boxing Regulations.

<sup>541</sup> S23(4)(d) of the South African Boxing Regulations.

<sup>542</sup> Annexure K contains a schedule of various medical aspects that the medical practitioner needs to check in respect of each boxer, for example his pulse, blood pressure and lung function. Once the medical practitioner has checked all the medical aspects listed in the form, he or she needs to sign the form thereby certifying that he or she has on the specified date examined the particular boxer and found him or her in a physical condition to engage in the particular boxing bout (should that be the case). The completion of the 'After Contest Recommendations' column of the form is discussed later in this chapter.

<sup>543</sup> S23(2)(n)(iii) of the South African Boxing Regulations.

<sup>544</sup> Championship bouts are treated differently in that there are certain punitive consequences for the boxers if they are overweight, for example a champion will lose his title on the scale if found to be overweight. In championship bouts, the boxers are given a two-hour period in which to try and shed the extra weight in order to make the relevant weight margin.

permitted with the prior approval of the contestants and Boxing SA,<sup>545</sup> provided that in the weight divisions below light heavyweight, the weight differences may not exceed certain amounts.<sup>546</sup>

This weigh-in and the accompanying medical examination are important events since they are the final pre-contest medical safety measures that occur before the boxers finally step into the ring for the contest. It is accordingly vital that they are conducted properly and thoroughly.

### **6.3.4 The bout**

By the time the actual bout takes place, there are numerous medical safety measures prescribed in the South African Boxing Regulations that will already have been implemented by the relevant role players along the way, assuming, of course, that those role players have duly complied with all their respective responsibilities in terms of the South African Boxing Regulations.

During the bout, there are also a number of important medical safety measures prescribed in the South African Boxing Regulations that need to be complied with and which could mean the difference between life and death for the boxers if they were to be seriously injured during the bout. For purposes of this discussion, these particular medical safety measures are dubbed the 'non-negotiables' due to the critical role that they play in the ultimate medical safety of the boxers during the bout.<sup>547</sup>

These medical safety measures are dependent on the input of certain core role players at the bout (namely, the supervisory official, ringside physician, first aid attendants and referee) and also the availability at the venue of the prescribed emergency equipment. What follows below is a brief overview of what these medical safety measures entail and who the responsible role players are for giving effect thereto.

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<sup>545</sup> These bouts are referred to as 'catchweight' bouts.

<sup>546</sup> S23(4)(l) of the South African Boxing Regulations.

<sup>547</sup> The *Watson* case provides a good example of the dire consequences for an injured boxer if these measures fail during a bout.

### 6.3.4.1 Medical personnel and equipment at venue

At every tournament, the promoter shall appoint a ringside physician, who needs to have at his disposal two qualified first aid attendants or paramedics and certain prescribed emergency equipment.<sup>548</sup> The prescribed emergency equipment comprises a portable resuscitator and airway, a stretcher and an ambulance, which shall at all times have unobstructed ingress and egress to and from the tournament venue.<sup>549</sup> No bout may proceed at the tournament unless all the aforesaid persons and emergency equipment are present and available at the venue.<sup>550</sup>

The ringside physician shall at all times during the tournament sit close to the ring in such a manner that his access to the ring is not hindered.<sup>551</sup> In practice, it is customary for the ringside physician to sit with the supervisory official at the ring apron, with the first aid attendants or paramedics seated in close proximity to him.

The ringside physician shall not leave the ringside until the decision of the final bout of the tournament has been announced, save for attending to an emergency as contemplated in s24(5)(a) of the South African Boxing Regulations.<sup>552</sup> In practice, it is customary for a promoter to appoint two ringside physicians at a tournament so that subsequent bouts are not be delayed if the ringside physician needs to leave his seat at ringside to attend to a boxer that has been injured in an earlier bout.<sup>553</sup> This is of particular importance if the tournament is being televised live since in that case it is not possible to delay the start of a subsequent bout pending the return of the ringside physician to his seat at ringside.

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<sup>548</sup> S24(1)(a) of the South African Boxing Regulations.

<sup>549</sup> S21(1)(c) of the South African Boxing Regulations.

<sup>550</sup> S24(1)(e) of the South African Boxing Regulations. At the tournament, the supervisory official is ultimately responsible for ensuring that these medical safety measures are complied with.

<sup>551</sup> S24(1)(d) of the South African Boxing Regulations.

<sup>552</sup> S24(1)(f) of the South African Boxing Regulations. S24(5)(a) of the South African Boxing Regulations provides that a boxer who has been knocked out, technically knocked out, sustained severe punishment or injured during a bout shall be examined by the ringside physician after the fight before he may leave the tournament venue.

<sup>553</sup> The treatment normally takes place in the injured boxer's change room or the medical room at the venue. In the event of a serious injury, the ringside physician may even accompany the injured boxer in the ambulance if the boxer needs to be taken to hospital.

The ringside physician shall render medical assistance to the injured contestants, offer emergency treatment for cuts and attend to any other medical needs of the boxers.<sup>554</sup>

In the event of any physical injury to a boxer at a tournament, the ringside physician shall immediately apply the required emergency treatment<sup>555</sup> and recommend further treatment in, or if necessary, admission to a hospital with neurosurgical facilities.<sup>556</sup>

The ringside physician shall, at the request of the referee, examine a boxer between rounds or at any other time.<sup>557</sup>

#### 6.3.4.2 Medical facilities at venue

The promoter of a tournament shall provide a medical room at the tournament venue,<sup>558</sup> which shall be adequately lit and ventilated, have an examination table, have running water, be situated in close proximity to the boxers' dressing rooms and be readily accessible from the ring<sup>559</sup>.

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<sup>554</sup> S24(1)(g) of the South African Boxing Regulations.

<sup>555</sup> S24(3)(a) of the South African Boxing Regulations.

<sup>556</sup> S24(3)(b) of the South African Boxing Regulations.

<sup>557</sup> S24(2) of the South African Boxing Regulations. The NYSAC Regulations (Article 4.1) expressly empower the ringside physician to enter the ring at any time during a professional boxing bout (i.e., *mero motu*) and to terminate the bout if in his opinion it is necessary to prevent severe punishment or serious physical injury to the professional boxer. The South African Boxing Regulations only permit the ringside physician to examine a boxer between rounds or at any other time 'at the request of the referee' (i.e., not *mero motu*). The South African Boxing Regulations also do not expressly empower the ringside physician to terminate the bout on his own accord. The only person that the South African Boxing Regulations expressly empower to terminate a bout for medical safety reasons is the referee. This also accords with customary practice in South Africa. Although the referee is not bound to follow the ringside physician's advice when he or she requests the ringside physician to examine a boxer, the referee would be foolhardy not to follow that advice especially if the advice is that the bout should be terminated for medical safety reasons. If the bout is an international championship bout, the championship rules of the various international sanctioning organisations, such as the World Boxing Association, usually expressly provide that only the referee may terminate the bout.

<sup>558</sup> S21(1)(c) of the South African Boxing Regulations.

<sup>559</sup> S21(2)(a) - (e) of the South African Boxing Regulations. In practice, a medical room is rarely provided, except if the bout is taking place at a casino, in which event the casino usually has an existing medical room at the venue. Medical treatment therefore normally occurs at ringside or in the injured boxer's change room.

### 6.3.4.3 Supervision of the bout

As previously mentioned in Chapter 5, the supervisory official is the person designated by Boxing SA to exercise overall control and supervision at a tournament.<sup>560</sup> The supervisory official therefore plays an important role in overseeing *inter alia* that all the prescribed medical safety measures at the tournament are duly complied with.

The supervisory official's role needs to be distinguished from the role played by the 'supervisor' appointed by an international sanctioning organisation to 'supervise' the bout if it is an international championship bout. For purposes of this discussion, the former individual is referred to as the 'supervisory official' (i.e., the name assigned to this individual by the South African Boxing Regulations) and the latter individual as the 'international championship supervisor'. As previously mentioned in Chapter 5, the international championship supervisor is not formally recognised in terms of the South African Boxing Regulations, and he therefore does not perform an official regulatory role in respect of the bout, unlike in the case of the supervisory official. The respective functions and responsibilities of these two individuals at the bout are discussed in further detail below.

#### 6.3.4.3.1 Role of the supervisory official

The South African Boxing Regulations provide that the supervisory official shall 'exercise overall control and supervision at a tournament and may take final decisions on all matters relating to the tournament, including but not limited to the stoppage of the tournament, save for the decision on the outcome of the bouts which shall be the prerogative of the referee and judges.'<sup>561</sup> The supervisory official thus has very wide powers and responsibilities at a tournament.

Prior to the commencement of the tournament, the supervisory official shall undertake certain important preliminary steps, namely: (a) convene a meeting of the security and medical personnel to ensure that the security and medical arrangements are adequate

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<sup>560</sup> Definition of '*supervisory official*' in s1 of the South African Boxing Regulations.

<sup>561</sup> <sup>561</sup> S33(1) of the South African Boxing Regulations.

and to discuss contingency plans to deal with emergency situations; (b) convene a rules meeting to confirm that all boxers and officials are familiar with the provisions of the *South African Boxing Act* and South African Boxing Regulations<sup>562</sup>; and (c) appoint suitably qualified persons as inspectors<sup>563</sup> for the purposes of performing specified tasks at the tournament.<sup>564</sup>

In addition to his afore-mentioned general responsibilities at the tournament, the supervisory official shall also complete a punishment index (in the prescribed form)<sup>565</sup> in respect of each bout<sup>566</sup> and submit same, together with his tournament report,<sup>567</sup> to Boxing SA immediately after the tournament, and such indices *shall* be retained by Boxing SA as part of its permanent records<sup>568</sup>. For purposes giving effect to the suspension periods prescribed in s10 of the South African Boxing Regulations,<sup>569</sup> it is important that the supervisory official completes the punishment indices fully and accurately, and duly applies his mind in those circumstances where the supervisor is given a discretion whether or not to suspend a boxer following the bout.

As is evident from the above, the supervisory official plays a critically important role at a professional boxing tournament, particularly in relation to the presence of the prescribed medical safety measures that need to be in place at a tournament. In practice, however, the importance of the supervisory official's role is often not fully

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<sup>562</sup> In practice, this normally occurs at the weigh-in, particularly in respect of an international championship bout and is referred to as the 'rules meeting'.

<sup>563</sup> The South African Boxing Regulations do not deal in any further detail with the functions and responsibilities these inspectors. In practice, the inspectors (if appointed, which is rarely the case) perform such duties as may be delegated to them by the supervisory official. Those duties relate primarily to the surveillance of the conduct of the boxers' seconds during the intervals between the rounds, particularly to ensure that no prohibited substances (such as smelling salts or stimulants) are administered to the boxers during the interval. In practice, they also often perform certain of the ringmaster's duties, such as distributing the gloves to the boxers in their change rooms. Unlike in NYS, for example, the role of inspectors in South Africa is under-utilized and at many tournaments no inspectors are appointed, particularly for non-championship bouts.

<sup>564</sup> S33(2) of the South African Boxing Regulations.

<sup>565</sup> Annexure L of the South Africa Boxing Regulations.

<sup>566</sup> S36(1) of the South African Boxing Regulations.

<sup>567</sup> S33(4) of the South African Boxing Regulations provides that the supervisory official shall compile a written report relating to the tournament, which shall include the decisions of all the bouts, the punishment indices, the purse monies paid to the boxers, an assessment of the security and medical arrangements at the tournament and a performance evaluation of the officials.

<sup>568</sup> S36(2) of the South African Boxing Regulations.

<sup>569</sup> The circumstances giving rise to these suspension periods are discussed in further detail elsewhere in this Chapter. In certain of the circumstances, the supervisory official is given a discretion whether or not to suspend a boxer, whilst in other circumstances the suspension is automatic.

understood or appreciated by either Boxing SA or the supervisory officials themselves. This can be attributed to the fact that there are no registration, testing or training requirements prescribed for supervisory officials in terms of the South African Boxing Regulations. As a result, the responsibilities imposed by the South African Boxing Regulations on the supervisory official at a tournament, particularly those in respect of the medical safety measures at the tournament, are often either not performed or performed inadequately, thereby exposing the supervisory official to a relatively high risk of potential legal liability in respect of an injury or death of a boxer at the tournament.<sup>570</sup>

#### **6.3.4.3.2 Role of international championship supervisor**

As mentioned earlier, the role of the international title supervisor is not recognised in terms of the South African Boxing Regulations. As such, the international title supervisor has no official regulatory powers in respect of the international championship bout. In practice, although the international title supervisor performs a 'supervisory' role in respect of the international championship bout, the supervisory official designated by Boxing SA nevertheless remains ultimately responsible in terms of the South African Boxing Regulations for the overall control and supervision of the tournament, including the international championship bout. This statutory responsibility cannot simply be abdicated to the international championship supervisor or, for that matter, to anyone else.<sup>571</sup>

#### **6.3.4.4 Role of the referee**

Due to the nature of the referee's powers and responsibilities in terms of the South African Boxing Regulations, the referee plays a pivotal role in protecting the health and safety of the boxers during the bout. Save for a boxer's chief second (who may

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<sup>570</sup> The legal liability of the supervisory official for an injury or death suffered by a boxer during a bout is discussed in further detail in Chapter 7 of this research paper.

<sup>571</sup> The rules of the international sanctioning authorities normally provide that the medical safety aspects of the title bout will be regulated by the rules of the local boxing commission, which in South Africa means the South African Boxing Regulations. In Chapter 7 of this research paper, it is examined whether any legal liability for an injury or death that occurs in an international championship bout can be imputed to the international title supervisor.

throw the towel in during the bout to signify the retirement of his boxer from the bout),<sup>572</sup> the referee is the only person who may stop the bout once it has commenced. In this regard, the South African Boxing Regulations provide that the referee shall stop the bout if a boxer is unable to resume boxing after the break, turns his back on his opponent during the bout or signals in some other manner to the referee that he does not wish to continue with the bout.<sup>573</sup> In these particular circumstances, the referee has no discretion and is obliged to stop the bout.

There are, however, other circumstances in which the referee has a discretion whether or not to stop a bout. In this regard, the South African Boxing Regulations provide that: (a) the referee shall stop the bout if he considers it to be one-sided, even though a boxer has not at that stage sustained excessive punishment;<sup>574</sup> or (b) if a boxer is unable to defend himself.<sup>575</sup> Furthermore, if a boxer is knocked down and rises during the count (that is, 'beats the count'), the referee *must* satisfy himself that the boxer is in a position to defend himself before ordering the contestants to "box on".<sup>576</sup> In all these circumstances, the referee is required to exercise a discretion with regard to the prevailing circumstances. These 'judgement calls' by the referee can, in effect, mean the difference between life and death for a boxer, and constitute the realm in which a referee is likely to face the greatest risk of legal liability should a boxer be injured or die in these circumstances.<sup>577</sup> When called upon to exercise his discretion in these circumstances, the referee is between a proverbial rock and a hard place because if he stops the bout 'too early' he will be chastised by the spectators for spoiling a good fight, but if he stops the bout 'too late' he will be chastised by the regulator (and possibly a court) for putting the boxer's life at risk. Most competent referees are, however, acutely aware of the risks of stopping a bout 'one punch too late' and will therefore generally err on the side of caution.

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<sup>572</sup> S27(6)(b)(xv) of the South African Boxing Regulations. The referee must stop the bout as soon as this happens.

<sup>573</sup> S27(6)(b)(iii) of the South African Boxing Regulations. The infamous '*no mas*' statement made by Roberto Duran to the referee when he quit on his stool during his bout with Sugar Ray Leonard is a good example of a boxer indicating to the referee that he does not want to continue with the bout.

<sup>574</sup> S27(6)(b)(iv) of the South African Boxing Regulations.

<sup>575</sup> S27(6)(b)(v) of the South African Boxing Regulations.

<sup>576</sup> S27(6)(b)(vi)(cc) of the South African Boxing Regulations.

<sup>577</sup> The legal liability of the referee for an injury or death suffered by a boxer in these circumstances is discussed in further detail in Chapter 7 of this research study.



The referee is also required to exercise a discretion in regard to elimination of unlawful conduct and behaviour by the boxers during the bout. In this regard, s27(6)(b)(x) of the South African Boxing Regulations provides that the referee shall stop a bout and at his discretion either warn or disqualify a boxer if he or she commits any of the acts constituting unlawful conduct and behaviour in terms of section 37 of the South African Boxing Regulations.<sup>578</sup> Many of these acts have the potential to cause serious bodily harm or even death to an opponent, for example hitting an opponent when he or she is down or when getting up after having been knocked down.<sup>579</sup> If a boxer were to be injured or die as a result of any of these acts of unlawful conduct and behaviour which have gone unpunished by the referee during a bout, questions may arise regarding the referee's liability for failing to take steps to prevent such harm from arising.<sup>580</sup>

In recognition of the important role that a referee plays during a professional boxing bout, the South African Boxing Regulations incorporate various measures that enable Boxing SA to assess the competency levels of its referees. These measures commence during the registration stage (and also at each annual renewal) and continue thereafter in the form of performance reviews that supervisory officials are obliged to conduct in respect of the referees at the end of each bout that they officiate in at a tournament.

To be registered as a referee for the first time, the applicant must have the experience in either amateur or professional boxing that Boxing SA deems appropriate; undertake and pass a written and or practical examination set by Boxing SA; and complete the apprenticeship determined by Boxing SA.<sup>581</sup> At each annual renewal of a referee's registration, Boxing SA may refuse to renew his registration if Boxing SA on reasonable grounds is of the opinion that the referee did not perform satisfactorily during the past year.<sup>582</sup>

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<sup>578</sup> S37 of the South African Boxing Regulations contains a list of acts that constitute unlawful conduct and behaviour by a boxer.

<sup>579</sup> In these examples, an opponent will be defenceless and vulnerable to injury if hit, particularly to the head.

<sup>580</sup> The legal liability of the referee for an injury or death suffered by a boxer in these circumstances is discussed in further detail in Chapter 7 of this research study.

<sup>581</sup> S4(1) of the South African Boxing Regulations.

<sup>582</sup> S4(2) of the South African Boxing Regulations.

After each bout, the supervisory official must evaluate and grade the referee's performance.<sup>583</sup> The referee must be graded as either satisfactory or unsatisfactory, having regard to such factors as the referee's ability to exercise effective control over the bout, his knowledge and application of the rules and his due regard for the medical safety of the boxers.<sup>584</sup> If the referee is graded as unsatisfactory, the supervisory official must provide written reasons for that grading to Boxing SA<sup>585</sup> and Boxing SA must then hold a hearing to decide what steps should be taken against the referee.<sup>586</sup> Pending the outcome of that hearing, the referee may not officiate in a further bout.<sup>587</sup> This important safety measure is not, however, always implemented in practice.

The aforementioned measures enable Boxing SA to ensure that the referees who officiate in professional boxing bouts are sufficiently competent and are capable of exercising effective control over the bouts, are knowledgeable of the rules and have due regard for the medical safety of the boxers. Due to the inherently dangerous nature of professional boxing, boxers need the assurance that in the heat of battle they can rely on a competent referee to look after their medical safety, particularly at those stages in a bout when they may not be able to reason lucidly for themselves or be fighting on instinct beyond the point where it is safe for him to continue to do so, or being driven by pride not to surrender despite the dire situation in which they find themselves in. This latter situation is well described in the following remark made by a Las Vegas boxing referee: "Unfortunately [referees] are put in a tough position when guys are too tough for their own good. Fighters can take quite a bit of punishment, and some (hurt) guys come back and throw punches and actually score . . . "[y]ou can see the fear in his eyes. He is practically begging you to stop the fight but is too much of a 'macho man' to surrender. They are looking for the referee to come to their rescue."<sup>588</sup>

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<sup>583</sup> S27(13)(a) of the South African Boxing Regulations.

<sup>584</sup> S27(13)(b) of the South African Boxing Regulations.

<sup>585</sup> S27(13)(c) of the South African Boxing Regulations.

<sup>586</sup> S27(14)(b) of the South African Boxing Regulations.

<sup>587</sup> S27(14)(c) of the South African Boxing Regulations.

<sup>588</sup> Feour, "Ref has to decide when to say when," *Las Vegas Review-Journal*, accessed at [http://www.reviewjournal.com/lvrj\\_home/2000/May-28-Sun-2000/sports/13665936.htm](http://www.reviewjournal.com/lvrj_home/2000/May-28-Sun-2000/sports/13665936.htm)

The referee also plays an important role in relation to ensuring that the boxers are properly bandaged and gloved,<sup>589</sup> and that they are wearing the prescribed safety equipment (namely, a mouthpiece and genital protector, and in the case of a female boxer, a mouthpiece, underbelt and breast protector).<sup>590</sup>

#### **6.3.4.5 Role of the judges**

The judges' independently score the bout and must be ready at all times to assist when requested by the referee to decide whether a foul has been committed, and may at the end of a round bring any other matter to the attention of the referee.<sup>591</sup> In practice, however, this latter function is seldom performed by the judges and they tend to only become involved in respect of fouls when requested by the referee to assist in that regard. This raises the question of whether legal liability can be imputed to a judge in circumstances where the judge witnesses a foul being committed by a boxer during a round (which goes unnoticed by the referee), but fails to draw same to the referee's attention at the end of the round, and such foul is then repeated by the offender in the next round causing injury or death to the opponent?<sup>592</sup>

#### **6.3.4.6 Role of the boxer's seconds**

A chief second must be nominated to the referee by each boxer prior to the start of a bout, and the said chief second alone may declare the retirement of the boxer from the bout by throwing a towel into the ring and by orally drawing the referee's attention thereto.<sup>593</sup> In this regard, the chief second plays an important role in a boxer's medical safety during a bout. Other than the referee, only the chief second may stop a bout. Since a chief second (who in practice is more often than not, also the boxer's regular

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<sup>589</sup> Ss22(3) and S27(6)(a)(iii) of the South African Boxing Regulations. These are important safety measures to ensure that the boxing gloves and or bandages are not tampered with by a boxer's seconds in order to give the boxer an unfair advantage, by, for example, reducing the padding in the gloves or by hardening the bandages with plaster of paris or other hardening substances. It is also important to ensure that both boxers are using the official gloves that have been supplied by the promoter and approved by Boxing SA, and that they both have the correct size gloves.

<sup>590</sup> Ss23(1)(f), (g) and (j) of the South African Boxing Regulations.

<sup>591</sup> S28(3) of the South African Boxing Regulations.

<sup>592</sup> This question is examined further in Chapter 7 of this research study.

<sup>593</sup> S32(3) of the South African Boxing Regulations.

trainer) knows his boxer far better than the referee and is thus usually best placed to assess when his boxer is hurt (usually evidenced by changes in neurological functioning exhibited by symptoms such as slurring, incoherence or an altered gait) and should therefore be retired from the bout, sooner rather than later. Unfortunately, in practice this important medical safety measure placed in the hands of the chief second is not exercised regularly enough and the chief seconds tend to abdicate the right to stop the bout to the referee.

At the end of each interval, the seconds must ensure that their boxer's corner is dry and clear of all debris.<sup>594</sup> This is an important responsibility since a wet corner can cause a boxer to slip during the bout and injure himself (for example, a twisted ankle) or even worse, get tagged by his opponent whilst off balance and or distracted from the slip, thereby suffering possible head trauma.

When a contestant is knocked out, none of his seconds may touch the boxer until the ringside physician has attended to the boxer and issued appropriate instructions to the seconds.<sup>595</sup> This is a prohibition that the seconds often lose sight of in their eagerness to come to the aid of their stricken boxer, which could result in dire medical consequences for the boxer. Fortunately, most referees react fairly quickly to shield the unconscious (or semi-conscious boxer) from interference by his seconds until the ringside physician has been able to enter the ring to attend to the boxer.

#### **6.4 The Post-contest Phase**

Should a boxer be hospitalised or treated by his personal physician for an injury sustained in the ring, he or his manager shall forthwith send to Boxing SA a full written report from the medical practitioners who treated the boxer.<sup>596</sup>

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<sup>594</sup> S32(8) of the South African Boxing Regulations.

<sup>595</sup> S24(1)(h) of the South African Boxing Regulations.

<sup>596</sup> S24(4) of the South African Boxing Regulations.

The ringside physician shall in the 'After Contest Recommendations' column on the prescribed form<sup>597</sup> make an appropriate recommendation regarding the suspension of a boxer who has been knocked out, technically knocked out, sustained severe punishment or injured during a bout, and the need for any special medical examination.<sup>598</sup> The recommendation may also stipulate that no contact training may be engaged in for a specified period<sup>599</sup>.

The ringside physician shall at the end of each tournament submit a written report to the supervisory official setting forth details of all medical treatment administered by him to contestants during or after the tournament, and any other relevant medical information which he or she may deem necessary to include in such report.<sup>600</sup>

A supervisory official shall within three days after the tournament forward to Boxing SA<sup>601</sup> a written report relating to the tournament, which shall include *inter alia* the punishment indices (described above) and an assessment of the medical arrangements at the tournament.<sup>602</sup>

In addition, the supervisory official shall evaluate and grade the performance of the referee in each bout and furnish same to Boxing SA.<sup>603</sup>

An important post-contest obligation imposed upon a boxer's manager is to ensure that the boxer refrains from taking part in any contact training whilst his certificate of registration is suspended due to having suffered excessive punishment in a bout, as

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<sup>597</sup> Annexure K (Medical Practitioners Report) of the South African Boxing Regulations. This is also the prescribed form on which the medical practitioner records the boxers' medical data from the medical that takes place at the weigh-in. Annexure K contains the following statement: 'Boxers will be suspended for a minimum of 30 days after knockout or hard fights, unless a longer period is recommended and will refrain from contact training for 14 days unless a longer period is recommended. If you recommend a special examination, indicate the nature of the examination. Boxing SA desires that physicians pay special attention to contestants' hands.'

<sup>598</sup> S24(5)(b) of the South African Boxing Regulations.

<sup>599</sup> This is listed as one of the possible recommendations that the ringside physician may make in the 'After Contest Recommendations' column in Annexure K (Medical Practitioners Report).

<sup>600</sup> S24(6) of the South African Boxing Regulations.

<sup>601</sup> S33(6) of the South African Boxing Regulations.

<sup>602</sup> S33(4) of the South African Boxing Regulations.

<sup>603</sup> S27(13)(a) of the South African Boxing Regulations.

contemplated in ss 10(1) and (2) of the South African Boxing Regulations.<sup>604</sup> This is a responsibility that the manager shares jointly with the boxer.

## **6.5 Closing remarks regarding the organisational phases**

Although the various medical safety measures that the South African Boxing Regulations prescribe for the contest phase are, for obvious reasons, of paramount importance, the medical safety measures that the South African Boxing Regulations prescribe for the other earlier phases of a boxing contest (namely, the pre-contest phase and post-contest phase) are also vitally important since if they are not properly adhered to (for example, if Boxing SA permits a boxer to participate in a bout without undergoing the prescribed medical examination at the weigh-in), it can also have dire medical consequences for the boxer during the ensuing bout. Similarly, for example, if the supervisory official at a tournament fails to notify Boxing SA in his tournament report that a boxer sustained a knockout during a bout, or if the supervisor did so, but Boxing SA fails to record and enforce the prescribed automatic suspension period, that could also have dire medical consequences for the boxer if he is permitted by Boxing SA to participate in a subsequent bout whilst he should have been serving an automatic suspension period.

It should therefore be evident from the foregoing discussion that all these medical safety measures prescribed by the South African Boxing Regulations across the various phases in the organisational process of a boxing bout, are inter-related and if one or more of them is not complied with it can have a knock-on effect further down the line and ultimately on the health and safety of the boxer concerned. These medical safety measures should accordingly be approached and implemented by the various role players on a holistic basis, rather than piecemeal. Like any other safety system, the medical safety system established for professional boxing in terms of the South African Boxing Regulations is only as strong as its weakest link. The safety chain in the safety chain starts with the initial registration (and renewal) by Boxing SA of the

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<sup>604</sup> S10(5) of the South African Boxing Regulations.

various role players and culminates with the post-contest reporting and record-keeping.<sup>605</sup>

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<sup>605</sup> These issues are considered in further detail in Chapter 7 of this research study, particularly in relation to the discussion of the elements of wrongfulness and causation in respect of a compensation claim for an injury or death suffered by a boxer during a professional boxing bout.

## C H A P T E R 7 : L E G A L L I A B I L I T Y

### 7.1 Introduction

In this chapter, the relevant laws of South Africa are applied to the Research Questions, having regard to the respective functions and responsibilities of the various role players during the various organisational phases of a professional boxing bout.<sup>606</sup>

To facilitate this enquiry, a number of hypothetical scenarios have been formulated that replicate possible situations that could arise in relation to each of the role players during the various phases in the organisational process of a professional boxing bout, including the bout itself.<sup>607</sup> These hypothetical scenarios are not intended to be exhaustive, but are merely illustrative of the possible situations that could arise in practice and call into question the legal liability of the various role players in respect of an injury or death suffered by a professional boxer during a professional boxing bout.<sup>608</sup>

The legal position in South Africa in respect of each of these scenarios is discussed below.

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<sup>606</sup> The Research Questions are described in Chapter 1 of this research study. The relevant laws of South Africa are discussed in Chapter 4 of this research paper. The respective functions and responsibilities of the various role players within professional boxing are discussed in Chapters 5, as well as in Chapter 6, of this research study.

<sup>607</sup> The various phases in the organisational process of a professional boxing bout are discussed in chapter 6 of this research study.

<sup>608</sup> In formulating these scenarios, I have drawn on my practical experience as a professional boxing administrator in South Africa for over 25 years.



## 7.2 Boxer

**Scenario 1: Boxer A and Boxer B participate in a professional boxing bout sanctioned in terms of the South African Boxing Regulations (Sanctioned Bout). During the Sanctioned Bout, Boxer A knocks out Boxer B with a lawful blow that causes Boxer B to suffer severe head trauma, resulting in Boxer B's permanent disability. Is Boxer A legally liable to compensate Boxer B in respect of that injury?**

Answer:

The defence of consent to the risk of injury (*volenti non fit iniuria*) is central to the enquiry whether delictual liability can be imputed to Boxer A in the current scenario. If this defence can be successfully relied upon by Boxer A, it will eliminate the delictual element of wrongfulness and accordingly justify Boxer A's conduct in the current scenario.

In order to successfully rely on the defence of consent to the risk of injury, Boxer A will need to prove, on a balance of probabilities, that: (a) Boxer B gave consent freely and voluntarily; (b) Boxer B was capable of volition; (c) Boxer B had full knowledge of the nature and extent of the risk; (d) Boxer B appreciated fully the nature and extent of the harm; (e) Boxer B in fact subjectively gave consent; and (f) the consent was not *contra bones mores*.<sup>609</sup> Although consent to bodily injury is usually regarded as *contra bones mores*, organized sport is generally an exception thereto.<sup>610</sup>

Like all professional boxers, Boxer B will have been fully aware of the normal risks inherent in a professional boxing bout. By his conduct of signing the contact to participate in the bout and thereafter entering the ring to participate in the bout, Boxer B will have consented to those risks, which would have included the risk of injury or even death caused by a lawful blow from his opponent during the bout.<sup>611</sup>

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<sup>609</sup> Neethling 111

<sup>610</sup> *Roux* is an example of the application of this exception to the game of rugby. Since professional boxing has been legalised by statute in South Africa, there is little doubt that this exception also applies to professional boxing.

<sup>611</sup> The effect that his opponent's unlawful conduct has on such consent, is dealt with in scenario 3 below.

In light of the above, Boxer A's reliance on the defence of consent to the risk of injury is likely to succeed, assuming that all the other afore-mentioned requirements for that defence are also present. Boxer A's conduct will accordingly not be wrongful in the circumstances and he will accordingly not be delictually liable for the injury that he caused Boxer B during the bout.

**Scenario 1.1: Same facts as Scenario 1, save that Boxer B dies. Is Boxer A legally liable to compensate Boxer B's dependents in respect of Boxer B's death?**

Answer:

Although vis-à-vis Boxer B, the defence of consent to the risk of injury excludes wrongfulness (as discussed in scenario 1 above), it will have no direct operation vis-à-vis Boxer B's dependants since they are *res inter alios acta* in so far as Boxer B is concerned.<sup>612</sup> Notwithstanding same, Boxer A's conduct vis-à-vis Boxer B's dependent will nevertheless be lawful since it will not be regarded as being unreasonable or *contra bonos mores* due to Boxer B's consent.<sup>613</sup>

Boxer A will therefore not be delictually liable to compensate Boxer A's dependants in respect of their loss of support due to Boxer B's death in the current circumstances.

**Scenario 2: During a Sanctioned Bout, Boxer B unequivocally signifies to Boxer A that he does not wish to continue with the bout.<sup>614</sup> Notwithstanding Boxer B's surrender, Boxer A continues to punch him to the head, causing Boxer B to suffer severe head trauma that results in his permanent disability. Is Boxer A legally liable to compensate Boxer B in respect of that injury?**

Answer:

Consent is a unilateral act and may be unilaterally revoked by the consenting party at any stage preceding the defendant's conduct.<sup>615</sup> Thus, once Boxer B unequivocally

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<sup>612</sup> Neethling 297.

<sup>613</sup> Neethling 297-298.

<sup>614</sup> This could, for example, be done by turning his back on his opponent and walking towards his corner (or the neutral corner) or by waving his gloves at his opponent in a manner that signifies submission.

<sup>615</sup> Neethling 109-110.

signified to Boxer A that he no longer wished to continue with the bout, he thereby revoked his consent to the normal risks inherent in that bout. From that point onwards, Boxer A's conduct of punching Boxer B could no longer be justified by Boxer B's erstwhile consent and his conduct became unlawful. Assuming that all the other delictual elements are present,<sup>616</sup> Boxer A will therefore be legally liable for the injury that he caused Boxer B in the current scenario.

**Scenario 2.1: Same facts as Scenario 2, except Boxer B dies. Is Boxer A legally liable to compensate Boxer B's dependents for loss of support arising from Boxer B's death?**

Answer:

Assuming that all the requirements for a dependants' action are present,<sup>617</sup> Boxer B's dependants will have a delictual claim for damages against Boxer A for loss of support in the current scenario.

**Scenario 3: During a Sanctioned Bout, Boxer A delivers a deliberate kick to Boxer B's head whilst Boxer B is down after having slipped, thereby causing Boxer B severe head trauma, resulting in his permanent disability. Is Boxer A legally liable to compensate Boxer B in respect of the injury?**

Answer:

Kicking an opponent during a bout, particularly whilst he is down, is so far removed from the generally accepted rules of professional boxing<sup>618</sup> that the draftsman of s37 of the South African Boxing Regulations did not deem it necessary to specifically list it amongst the various acts that are stated to constitute unlawful conduct in terms of s37 of the South African Boxing Regulations.<sup>619</sup> Kicking an opponent during a professional

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<sup>616</sup> Over and above wrongfulness, the other elements of a delict are conduct (act or omission), fault (*culpa* or *dolus*), causation and damage. In this scenario, fault is likely to take the form of *dolus*.

<sup>617</sup> In an action for damages for loss of support, the elements of the cause of action are (a) a wrongful act by the defendant causing the death of the deceased; (b) concomitant *culpa* (or *dolus*) on the part of the defendant; (c) a legal right to be supported by the deceased, which vested in the plaintiff prior to the deceased's death; and (d) *damnum*, in the sense of a real deprivation of anticipated support. *Evans v Shield Insurance Co Ltd* 1980 (2) SA 814 (A) at 838H-839C (*Evans*); *Neethling* 293-294.

<sup>618</sup> These rules are enshrined in the Queensbury Rules discussed Chapter 2 of this research study.

<sup>619</sup> S37 of the South African Boxing Regulations, entitled 'Unlawful conduct and behaviour by a boxer', contains a list of thirty-two acts by a boxer that are stated to constitute unlawful conduct and behaviour by a boxer during

boxing bout is also such a rare occurrence<sup>620</sup> and this too may explain why it has not been specifically mentioned in s37. Notwithstanding that it has not been specifically mentioned in s37, there can be little doubt that kicking an opponent during a professional boxing bout constitutes unlawful conduct. In fact, kicking ranks amongst the most publicly rebuked acts (save perhaps for biting) that a boxer can commit during a professional boxing bout.<sup>621</sup> It is against this background that one needs to determine whether Boxer A can rely on the defence of consent to the risk of injury in the current scenario.

The difference between Boxer A's conduct in the current scenario and his conduct in scenario 1 above, is that in scenario 1 his conduct falls within the rules of professional boxing, whilst in the current scenario his conduct falls outside of those rules. This difference has a significant impact on Boxer A's ability to rely on the defence of consent to the risk of injury.

One of the requirements for the defence of consent to the risk of injury is that the consent must not be *contra bonos mores*. This requirement was closely scrutinized by the Supreme Court of Appeal in *Roux*, which related to a delictual matter in which the defendant relied on the defence of consent to the risk of injury to avoid liability for a neck injury which he was alleged to have caused to an opponent during a rugby match.<sup>622</sup> The court in *Roux* held that the mere fact that the conduct causing the injury was in contravention of the rules of the game, did not automatically result in the imposition of legal liability since public and legal policy accepts certain contraventions of the rules (such as a late tackle or a tackle from an offside position) as a normal incident of the game or inherent in the game. The court held, however, that at the other end of the scale conduct which constitutes a 'flagrant' contravention of the rules of the game, and which is aimed at causing serious injury or which is accompanied by full

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a professional boxing bout. Although not expressly mentioned, the act of kicking an opponent would by its nature be covered by the catch-all category in s37(l), namely 'committing an unfair physical action that may injure an opponent.'

<sup>620</sup> The only known instance where a kick during a high-profile professional boxing bout has culminated in a disqualification occurred in 1976 during the South African heavyweight title bout between Gerrie Coetzee and Mike Schutte. The latter boxer was disqualified for kicking Coetzee after also having committed a number of earlier unlawful acts.

<sup>621</sup> The prohibition of kicking is the primary distinguishing feature between professional boxing and other combat sports such as kick-boxing or mixed martial arts.

<sup>622</sup> *Roux* 428.

awareness that serious injury may ensue', will be regarded as wrongful and hence attract legal liability in respect of the resulting harm. The court held that in such instances, the malicious motive of the defendant will be decisively indicative of wrongfulness. As examples of the latter type of conduct, the court referred to the situation where a rugby player punches an opponent in an off the ball incident and breaks his jaw or bites an opponent. The court held that since this latter type of conduct amounted to such a serious violation of the rules, it is not normally associated with a game of rugby and is extremely dangerous and would not constitute conduct which rugby players would accept as part and parcel of the normal risks inherent to their participation in a game of rugby. As a result, the court held that this type of conduct in a rugby game is wrongful and the justification of consent cannot avail the infringing player.<sup>623</sup>

If one applies the aforementioned legal principles to the current scenario, it is submitted that Boxer A's conduct (namely, kicking Boxer B on the head whilst he is down) would constitute a flagrant contravention of the rules of professional boxing and if it can be shown (which is likely to be the case) that it was aimed at causing serious injury to Boxer B or that it was accompanied by full awareness on the part of Boxer A that serious injury may ensue,<sup>624</sup> Boxer A's conduct in the current scenario will be regarded as wrongful and, if all the other delictual requirements are also present, Boxer A will be legally liable for the injury that he caused Boxer B.

**Scenario 3.1: Same facts as Scenario 3, except Boxer B dies. Is Boxer A legally liable to compensate Boxer B's dependents for loss of support arising from Boxer B's death?**

Answer:

Assuming that all the requirements for a dependants' action exist,<sup>625</sup> Boxer B's dependants will have a delictual claim for damages against Boxer A for loss of support.

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<sup>623</sup> The relevant extract from *Roux* in which these legal principles are explained by the Supreme Court of Appeal, appears in Part A of Chapter 4 of this research paper.

<sup>624</sup> Since the intention of professional boxing is to cause maximum bodily harm to one's opponent, it is submitted that it will generally be easier to establish a malicious motive in professional boxing than in a non-combative sport, such as rugby.

<sup>625</sup> These are discussed in fn 617 of this research study.

### 7.3 Boxing SA

**Scenario 4: Boxing SA permits an applicant who has high blood pressure (namely, a reading of 170/80 taken over several readings) to be registered as a professional boxer, notwithstanding that the provisions of s3(2)(a) of the South African Boxing Regulations expressly prohibit it from doing so. In the applicant's first bout as a professional boxer, he suffers a stroke attributable to his high blood pressure and the physical exertion of the bout, and is permanently disabled as a result thereof. Is Boxing SA legally liable to compensate the disabled boxer in respect of the injury?**

Answer:

The enquiry into whether delictual liability can be imputed to Boxing SA in the current scenario (as well as in the various other scenarios in this chapter which pertain to Boxing SA), turns primarily on the delictual elements of wrongfulness and causation (particularly, legal causation).

With regard to the element of wrongfulness, the issue is whether a breach of a public-law duty imposed upon an organ of state (namely, Boxing SA)<sup>626</sup> by a statute (namely, the South African Boxing Act) is wrongful, thereby giving rise to a delictual claim at the instance of a claimant that has been harmed by that breach (namely, the boxer in the current scenario). The breach in the current scenario is the omission by Boxing SA to apply the provisions of s3(2)(a) of the South African Boxing Regulations.<sup>627</sup>

It is well-established, following a line of constitutional court cases, that the breach of a public duty is not *per se* necessarily actionable in damages.<sup>628</sup> These cases have held that whether conduct gives rise to a delictual action (that is, whether the conduct can

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<sup>626</sup> Boxing SA, which is established in terms of the South African Boxing Act, constitutes an 'organ of state' as contemplated in s239 of the Constitution.

<sup>627</sup> S3(2)(a) of the South African Boxing Regulations provide that Boxing SA may not issue a certificate of registration to a boxer who has high blood pressure (hypertension amounting to a reading higher than 140/80 taken over several readings).

<sup>628</sup> *Minister of Home Affairs v Rahim and Others* [2016] ZACC 3 (*Rahim*); *Zealand v Minister for Justice and Constitutional Development and Another* [2008] ZACC 3 (*Zealand*); *Mashongwa v Passenger Rail Agency of SA* [2015] ZACC 36 (*Mashongwa*).

be regarded as wrongful) is a question of legal policy.<sup>629</sup> That question is not fact-bound to a particular case, but applies to all persons who find themselves caught up in the same situation as the claimant.<sup>630</sup> The proper enquiry is thus whether conduct *of the kind in issue* attracts civil liability for any harm that may have been caused thereby.<sup>631</sup>

In order to conclude that an omission of a public law duty is wrongful and thereby imputes delictual liability to the wrongdoer, Mogoeng CJ in *Mashongwa* held that the court needs to consider a number of important factors, some of which are the following: (i) whether the operating statute provides for a delictual claim for damages; (ii) whether the legislation's scheme is primarily about protecting individuals or advancing public good; (iii) whether the public power is discretionary; (iv) whether the imposition of liability for damages is likely to have a "chilling effect" on the performance of government functions; (v) whether the loss was foreseeable; and (vi) whether alternative remedies such as an interdict, review or appeal are available to the claimant.<sup>632</sup> Mogoeng CJ went on to add that an omission will be regarded as wrongful when it also "evokes moral indignation and the legal convictions of the community require that the omission be regarded as wrongful".<sup>633</sup>

Prior to applying the aforesaid test for wrongfulness to the facts in the current scenario, it is apt to make reference to the following *dictum* from *Rahim*:

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<sup>629</sup> *Rahim* at para 22.

<sup>630</sup> *Rahim* at para 22. In *Rahim*, the court had regard to the plight of persons who might find themselves in the position of the respondents, namely men, women and children who are in South Africa illegally and liable to summary deportation, who are the most vulnerable in our society, with no political or social influence over the laws that govern them, often living on the margins of society, without communal support, assistance or influence to ensure compliance with the law by public officials. Similarly, in *Mashongwa*, when transposing a breach of a public duty into a private law breach in delict, the court was mindful of the general vulnerability of the particular class of persons that the respondent belonged to, namely rail commuters constrained by the long distances they have to travel and who have limited financial resources, and who presumably enter the trains reasonably believing that the transport utility (*viz.* PRASA) is alive to the dangers to which train users are exposed in the course of their journeys and has taken such steps as are necessary to avert the reasonably foreseeable harm that could otherwise befall them.

<sup>631</sup> *Rahim* at para 22.

<sup>632</sup> *Mashongwa* at para 22.

<sup>633</sup> *Mashongwa* at para 23. In this regard, Mogoeng CJ cited the earlier decisions of *Van Duivenboden* at para 13; *Carmichele* at para 56; and *Ewels* at 597A-B.

“I see no basis upon which the vulnerable and marginalised are able to vindicate their rights other than through a delictual claim ... There are no reasons of principle or public policy or practicality that militate against recognising a delictual action. This is not a case in which fulfilment of the duty cast upon the Director-General impinges upon matters of government policy, or apart from damages awards, calls for allowance to be made for the appropriate allocation of resources. It calls only for the Director-General to do what the Legislature has required.”<sup>634</sup> (emphasis added)

Professional boxers are generally persons drawn from impoverished and socially challenged backgrounds, who, at a relatively young age,<sup>635</sup> seek refuge in professional boxing as a means (and often the only available means) of earning a much-needed livelihood both for themselves and their dependants.<sup>636</sup> On account of their socio-economic backgrounds, many of these youngsters are not very well-educated and are therefore generally uninformed about the intricacies of professional boxing outside of what happens in the ring itself. Although they are generally aware of the normal risks inherent in a professional boxing bout, they generally take for granted that Boxing SA will implement the necessary health and safety measures to protect them from these risks. This vulnerability of professional boxers as a group, coupled with the inherently dangerous nature of professional boxing, underpins the importance of Boxing SA’s role in ensuring that all the health and safety measures that the Legislature has incorporated into the South African Boxing Regulations in order to protect professional boxers, are properly adhered to by Boxing SA.

If one applies the aforementioned factors identified by Mogoeng CJ in *Mashongwa* to the enquiry whether Boxing SA’s conduct in the current scenario should be regarded as wrongful and therefore actionable in delict, it is submitted that one will arrive at an

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<sup>634</sup> *Rahim* at para 24. In this regard, the court in *Rahim* was mindful of Mogoeng CJ’s concern in *Mashongwa* that a court should refrain from *inter alia* arrogating to itself the authority to interfere in issues of state policy or to force the state to spend more of its resources (536F).

<sup>635</sup> This usually happens as soon as they turn eighteen, which is the minimum age to be registered as a professional boxer according to s3(1)(a) of the South African Boxing Regulations.

<sup>636</sup> The socio-economic vulnerability of professional boxers is well illustrated in the following extract from Waquant at 501: “Prizefighting is first and most evidently a working-class job, that is, a means of earning a living ... by exchanging the only tangible asset that those bereft of inherited wealth and education credentials possess: their bodies and the abilities it harbors.”



affirmative answer for the following reasons: (i) the fulfilment of the duty imposed upon Boxing SA by s3(2)(a) of the South African Boxing Regulations does not impinge upon matters of government policy, and nor, apart from damages awards, does it call for allowance to be made for the appropriate allocation of resources. To borrow from the terminology used by the court in *Rahim*,<sup>637</sup> it calls only for Boxing SA to do what the Legislature has required; (ii) the Boxing Legislation's scheme is primarily about protecting the health and safety of professional boxers;<sup>638</sup> (iii) the public power conferred upon Boxing SA in terms of s3(2)(a) of the South African Boxing Regulations is peremptory and not discretionary;<sup>639</sup> (iv) the imposition of liability for damages is unlikely to have a "chilling effect" on the performance of government functions, or more particularly in this case, Boxing SA's functions. On the contrary, it will have the effect of sharpening Boxing SA's attentiveness to the importance of performing its statutory functions properly so as to avert the adverse consequence of it not doing so; (v) the harm (namely, the injury to the boxer in question) is reasonably foreseeable since the particular medical condition in question (namely, high blood pressure) would put a boxer at risk if he were to participate in a rigorous physical activity like professional boxing bout,<sup>640</sup> and that is why it has been specifically listed in s3(2) amongst the various medical conditions that prohibit Boxing SA from issuing a certificate of registration to an applicant suffering from same; (vi) the injured boxer would have no alternative legal remedies against Boxing SA in the circumstances; and (vii) public policy would favour compensating the boxer in light of the general vulnerability of professional boxers (as described above) and their reliance on Boxing SA to protect their health and safety by adhering to the relevant measures provided for in the South African Boxing Regulations. Lastly, there would also be no additional cost to Boxing SA for giving effect to the provisions of s3(2)(a) of the South African Boxing Regulations, and in doing so, Boxing SA would in effect merely be doing what the Legislature requires of it.

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<sup>637</sup> *Rahim* at para 24.

<sup>638</sup> Discussed in fn 90 of this research study.

<sup>639</sup> S3(2) of the South African Boxing Regulations states that Boxing SA *shall* not issue a certificate of registration to a boxer if he or she suffers from any of the medical conditions specified therein. These medical conditions include *inter alia* high blood pressure amounting to a reading higher than 140/80 taken over several readings (s3(2)(a)).

<sup>640</sup> Baker *et al* "Cerebrovascular accident during competitive karate as a consequence of hypertension?" (2007) *Journal of Exercise Physiologyonline* accessed at <https://www.asep.org>. The case study found that in high intensity sport, such as karate and boxing, which entail severe exertion and direct blows to the chest wall and head, is considered dangerous to participants suffering from hypertension.

When account is taken of the afore-mentioned factors, there is thus a strong case to be made that the breach by Boxing SA of its public duty in the current scenario should be transposed into a private law breach in delict, and that the breach be regarded wrongful for purposes of a delictual action brought by the injured boxer against Boxing SA.<sup>641</sup>

The next enquiry that needs to be undertaken in the current scenario is whether Boxing SA's conduct caused the injury in question. In doing so, one needs to apply the usual two-pronged approach to causation, comprising an initial enquiry into factual causation, followed by a subsequent enquiry into legal causation. Both enquiries need to be answered in the affirmative in order for the conduct in question to satisfy the causation element.

When applying the *condictio sine qua non* test (i.e., the 'but for' test) to determine factual causation in the current scenario, the conclusion is reached that if Boxing SA had complied with its statutory duty in terms of s3(2)(a) of the South African Boxing Regulations, it would not have registered the applicant as a professional boxer and the applicant would therefore not have participated in the bout in question. In other words, Boxer B would not have been in the ring at all had Boxing SA done what the Legislature required it to do in terms of section 3(2)(a) of the South African Boxing Regulations namely, to refuse to register Boxer B as a professional boxer due to his prevailing medical condition.

The legal causation prong of the causation enquiry is somewhat more complex and entails the application of policy considerations in order to determine whether it would exceed the boundaries of reasonableness, fairness and justice to hold Boxing SA liable for the harm in question. In this regard, the Supreme Court of Appeal has proposed that a flexible (also known as an elastic) approach be applied to determine whether a sufficiently close link exists between the conduct and the consequence for such consequence to be imputed to the wrongdoer in view of policy considerations based on reasonableness, fairness and justice. Although there are various other

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<sup>641</sup> *Mashongwa* at para 27.

theories of legal causation that have been applied by our courts, the most regular one being the reasonable foreseeability theory which holds a wrongdoer liable for harm that was reasonably foreseeable, the Supreme Court of Appeal's formulation and application of the flexible approach makes it clear that all these other theories should function as pointers or criteria reflecting the policy considerations about when damage should be imputed to a person in any given circumstances.<sup>642</sup>

If, for purposes of the legal causation enquiry, one applies similar policy considerations to those that were applied earlier with regard to the wrongfulness enquiry, there is a strong case to be made that it would be reasonable, fair and just to hold Boxing SA delictually liable for the injury suffered by Boxer B in the current scenario. The harm in question would also have been reasonably foreseeable in that the particular medical condition (namely, hypertension amounting to a reading higher than 140/80 taken over several readings) was deemed serious enough by the Legislature to be specifically mentioned in s3(2)(a) as one of the medical ailments that constitutes an absolute bar to being registered as a professional boxer. For these reasons, Boxing SA's conduct in the current scenario is likely to satisfy the legal causation test, thereby imputing delictual liability to Boxing SA for Boxer B's injury.

**Scenario 4.1: Same facts as Scenario 4, except Boxer B dies. Is Boxing SA legally liable to compensate the deceased boxer's dependents for loss of support arising from the boxer's death?**

Answer:

Assuming that all the requirements for a dependants' action are present,<sup>643</sup> the boxer's dependants will have a delictual claim for damages against Boxing SA for loss of support.

**Scenario 5: Boxing SA fails to record in its permanent records an automatic 90-day suspension imposed on Boxer A on account of him having been knockout from a blow to the head during a Sanctioned Bout. During that 90-day period, a**

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<sup>642</sup> *Mokgethi* 39.

<sup>643</sup> These are discussed in fn 617 of this research study.

**promoter applies to Boxing SA to have a further bout involving Boxer A sanctioned, which Boxing SA sanctions. The bout takes place during the 90-day suspension period, Boxer A is knocked out from a blow to the head that causes him severe head trauma, resulting in his permanent disability. Is Boxing SA and/or anyone else legally liable to compensate Boxer A in respect of the injury?**

Answer:

Boxing SA is obliged to retain as part of its permanent records, the punishment indices submitted to it by the supervisory official after each tournament.<sup>644</sup> These punishment indices reflect *inter alia* if a boxer sustained a knockout during a bout as a result of a blow to the head and if he did, it triggers an automatic 90-day suspension of the boxer's certificate of registration.<sup>645</sup>

If Boxing SA keeps proper records of the punishment indices as it is obliged to do, Boxing SA will thus be in a position to know whether or not a particular boxer is currently subject to a 90-day suspension period when Boxing SA is approached by a promoter to sanction a bout involving that boxer. If that boxer is currently subject to a 90-day suspension period, Boxing SA will be obliged not to sanction the bout in question and if it does, Boxing SA's conduct in this regard will constitute an omission of its relevant duty in terms of the South African Boxing Regulations.

The enquiry into whether delictual liability can be imputed to Boxing SA on account of that omission will, as was the case in scenario 4, turn primarily on the delictual elements of wrongfulness and causation (particularly, legal causation).

For the same reasons as those which were expressed in scenario 4, there is a strong argument to be made that Boxing SA's omission in this current scenario will also be considered to be wrongful and also constitute the legal cause of Boxer A's injury for purposes imputing delictual liability on Boxing SA for the injury suffered by Boxer A in the current scenario.

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<sup>644</sup> S36(2) of the South African Boxing Regulations.

<sup>645</sup> S10(1) of the South African Boxing Regulations. As in the case of s3(2)(a) of the South African Boxing Regulations, the provisions of s10(1), which impose the automatic 90-day suspension period, are peremptory.

With regard to the element of fault in the current scenario, a court is likely to find that there was contributory fault on the part of Boxer A, as well as his manager, since s10(5) of the South African Boxing Regulations places a duty on both the boxer and his manager to ensure that the suspension period is duly complied with. That duty does not, however, negate the duty of Boxing SA, in its capacity as the controlling authority of professional boxing, to ensure that the suspension period is duly complied with, but will be relevant in limiting the extent of Boxing SA's liability in terms of the Apportionment of Damages Act 34 of 1956 (*Apportionment of Damages Act*).<sup>646</sup>

**Scenario 5.1: Same facts as Scenario 5, except that Boxer A dies. Is Boxing SA legally liable to compensate Boxer A's dependents for loss of support arising from his death?**

Answer:

Assuming that all the requirements for a dependant's action are present,<sup>647</sup> Boxer A's dependants will have a delictual claim for damages for loss of support.

In this instance, Boxing SA, Boxer A's deceased estate and Boxer A's manager will all be considered to be joint wrongdoers with regard to the delictual claim by Boxer A's dependants for damages for loss of support.<sup>648</sup> In principle, this means that Boxer A's dependents may claim the full amount from any of the three joint wrongdoers and that wrongdoer will then have a right of recourse against the other two joint wrongdoers.<sup>649</sup>

**Scenario 6: A promoter applies to Boxing SA to sanction a bout between Boxer A (who is making his professional debut after having had a relatively short and undistinguished amateur career) and Boxer B (who has an unbeaten record as a professional boxer of 15-0, with 15 knockouts), which Boxing SA sanctions.**

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<sup>646</sup> A detailed discussion regarding the extent of Boxing SA's liability for damages falls outside the scope of this research paper.

<sup>647</sup> These are discussed in fn 617 of this research study.

<sup>648</sup> S2(1B) of the Apportionment of Damages Act. As mentioned earlier, in addition to Boxing SA, the boxer and his trainer also have a duty in terms of s10(5) of the South African Boxing Regulations to ensure that a suspension period imposed on the boxer is duly complied with.

<sup>649</sup> Neethling 284.

**The bout takes place, Boxer A is knocked out in the first round from a lawful blow to the head that causes Boxer A severe head trauma, resulting in his permanent disability. Is Boxing SA and/or any of the other role players legally liable to compensate Boxer A in respect of the injury?**

Answer:

The South African Boxing Regulations impose a duty on Boxing SA to ensure “to the best of its ability” that the mismatching of boxers in a bout does not take place.<sup>650</sup> In practice, this duty is best given effect at the time when a promoter applies to Boxing SA to sanction the tournament at which the bout in question will take place.<sup>651</sup>

An application to sanction a tournament needs to include *inter alia* the details of all the bouts that will take place at the tournament, including the records of all the boxers that will participate in those bouts.<sup>652</sup> When considering the sanction application, Boxing SA is given a wide discretion and may either refuse to sanction the tournament<sup>653</sup> or sanction it subject to any conditions which Boxing SA may consider reasonable.<sup>654</sup> When exercising this discretion, Boxing SA needs to comply with its duty to avert mismatching and will therefore be obliged to refuse to sanction any of any bout included in the application that it considers to be a mismatch.<sup>655</sup>

In the current scenario, the boxers’ records are clearly indicative of a gross mismatch and the bout should therefore not have been sanctioned by Boxing SA.<sup>656</sup> The failure by Boxing SA to have done so, constitutes an omission by Boxing SA of its duty in terms of s23(4)(i) of the South African Boxing Regulations.

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<sup>650</sup> S23(4)(i) of the South African Boxing Regulations.

<sup>651</sup> S11 of the South African Boxing Regulations prescribes the procedure that needs to be followed when a promoter applies to Boxing SA to sanction a tournament.

<sup>652</sup> S11(1)(a) of the South African Boxing Regulations.

<sup>653</sup> S11(3)(a) of the South African Boxing Regulations.

<sup>654</sup> S11(3)(b) of the South African Boxing Regulations.

<sup>655</sup> Although the boxers’ records are all that Boxing SA has to go on when making this call, there may also be other extraneous factors that Boxing SA may take into account, such as the length and quality of a boxer’s amateur career in relation to a boxer making his professional debut.

<sup>656</sup> It is acknowledged that there will be scenarios in which the situation will not be as clear cut. In those instances, Boxing SA will need to have applied its mind to the boxers’ respective records and come to a decision whether or not the bout will be a mismatch. These scenarios often arise where a professional debutant with an illustrious amateur career is matched against a so-called journeyman with a mediocre professional record.

The enquiry into whether delictual liability can be imputed to Boxing SA on account of that omission will, as in the case of scenario 4, turn primarily on the delictual elements of wrongfulness and causation (particularly, legal causation).

For the same reasons as those which were expressed in scenario 4, there is a strong argument to be made that Boxing SA's omission in this current scenario will also be considered to be wrongful and also constitute the legal cause of Boxer A's injury for purposes imputing delictual liability on Boxing SA for the injury suffered by Boxer A in the current scenario.

With regard to the element of fault in this scenario, a court may find that there was contributory fault on the part of Boxer A in taking on an opponent that he ought reasonably to have known was far too experienced for him.<sup>657</sup> This contributory fault on the part of Boxer A will not, however, negate the duty of Boxing SA to avert the mismatch, but will be relevant for limiting the extent of Boxing SA's liability in terms of the Apportionment of Damages Act.

**Scenario 6.1: Same facts as Scenario 6, except that Boxer A dies. Is Boxing SA legally liable to compensate Boxer A's dependents in respect of his death?**

Answer:

Assuming that all the requirements for a dependants' action are present,<sup>658</sup> Boxer A's dependants will have a delictual claim for damages for loss of support.

In this instance, Boxing SA and Boxer A's deceased estate will be considered to be joint wrongdoers with regard to the loss of support.<sup>659</sup> In principle, this means that Boxer A's dependents may claim the full amount from any of the joint wrongdoers and that wrongdoer will then have a right of recourse against the other two joint wrongdoers.<sup>660</sup>

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<sup>657</sup> There may also be a case to be made against Boxer A's manager for advising Boxer A (assuming he did) to agree to this mismatch.

<sup>658</sup> These are discussed at fn 617 of this research paper.

<sup>659</sup> S2(1B) of the Apportionment of Damages Act.

<sup>660</sup> Neethling 284.

## 7.4 Promoter

**Scenario 7: A promoter stages a boxing tournament sanctioned by Boxing SA and during one of the bouts the ropes of the boxing ring fail causing Boxer A to fall from the ring and suffer an injury. Is the promoter and/or any other role players legally liable to compensate Boxer A in respect of the injury?**

Answer:

The South African Boxing Regulations state that the ringmaster's responsibilities at a tournament shall include *inter alia* being "in control of the ring and all accessories" (emphasis added).<sup>661</sup> This is an important responsibility at a tournament since a boxing ring is a potentially dangerous structure (or object, as it is termed in delictual parlance)<sup>662</sup> on account not only to its physical features (viz. being a temporary structure erected at a relatively high elevation above the ground, with its floor and ropes being the only physical barriers preventing those in it from falling to the ground below), but also due to the rigorous nature of the activities that take place in it (viz. a professional boxing contest in which the participants regularly fall or lean with their full bodyweights against the ropes) and 'bounce' around on the ring floor. For these reasons, it is reasonably foreseeable that if the ring or an integral component thereof (particularly the ropes or floor) were to fail during a bout, some or all of the persons in the ring at the time could fall to the ground below and sustain serious bodily injury.<sup>663</sup>

Whilst the element of control over a dangerous or (in this instance) a potentially dangerous object is an important factor in determining wrongfulness for purposes of a delictual action, it is not (in the absence of positive conduct creating danger) *per se* wrongful.<sup>664</sup> It still needs to be determined whether there is a legal duty on the person in control of it (viz. the ringmaster in this instance) to take precautionary measures and

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<sup>661</sup> S31(a) of the South African Boxing Regulations. The section does not define what being "in control of" means and nor is that phrase defined elsewhere in the South African Boxing Regulations. In terms of s31, the ringmaster's other responsibilities are to ensure that the ring floor is kept properly resined; ensure that a sufficient quantity of clean water is available; distribute the gloves; and attend to any other related matters if requested thereto by the referee or supervisory official.

<sup>662</sup> The law of delict uses the term 'object.'

<sup>663</sup> This would include the boxers and referee during rounds, and also the boxers' seconds, the ring announcer and the supervisory official during the intervals and/or at the completion of the bout.

<sup>664</sup> *Administrateur, Transvaal v Van der Merwe* 1994 4 SA 347 (A) (*Administrateur*) 359-360. Neethling 62-63.



if so, what measures to prevent damage arising from the potentially dangerous object (viz. the ring in this instance).<sup>665</sup> In this regard, it is generally accepted by our courts that the person in control of that object need only take those precautionary measures that can in the particular circumstances be reasonably and practicably required of him.<sup>666</sup> In applying this objective criterion of reasonableness, factors that play an important role include, *inter alia*, the probable or possible extent of the prejudice to others; the degree of risk of such prejudice eventuating; the interests which the defendant and community or both have in the act or omission in issue; whether there were reasonably practicable measures available to the defendant to avoid the prejudice; what the chances were of the measures being successful; and whether the cost involved in taking such measures was reasonably proportionate to the damage which the defendant could suffer. If, after weighing up all these factors, it is found that the objective criterion of reasonableness did not require the defendant to take any precautionary measures, then the defendant's omission to do so would accordingly not be wrongful in the circumstances.<sup>667</sup>

If one applies the aforesaid factors to the ringmaster's responsibilities as described in the South African Boxing Regulations, then the criterion of objective reasonableness would require that the ringmaster should, at the very least, conduct a physical inspection of the ring prior to the commencement of the tournament in order to assess its general safety and also to ensure that it complies with the specifications prescribed in the South African Boxing Regulations.<sup>668</sup> An inspection of this nature could be conducted by the ringmaster with relative ease<sup>669</sup> and would also not entail any additional cost. These factors, coupled with the fact that there is a relatively high risk that someone would get injured if the ring or any of its integral components were to fail during a bout, will render the ringmaster's conduct wrongful if he failed to undertake such an inspection prior to the commencement of the tournament or if, after having conducted such an inspection, he allowed the tournament to proceed notwithstanding

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<sup>665</sup> *Administrateur* 359-360; Neethling 62-63.

<sup>666</sup> *Administrateur* 361; Neethling 62-63.

<sup>667</sup> *Administrateur* 364; Neethling 62-63.

<sup>668</sup> S20 of the South African Boxing Regulations prescribes the specifications for the ring, many of which have a direct bearing on the medical safety of the boxers during the bout, for example the requirement that the ring floor must be padded with a 1 cm layer of high-density closed-cell foam or chip foam.

<sup>669</sup> The inspection would entail a general visual inspection of the ring, as well as climbing into the ring to check, in particular, the tension and alignment of the ropes, the evenness and stability of the ring floor etc.

safety defects in the ring that he may have detected during his inspection. Assuming that all the other elements for a delictual action are also present, the ringmaster would in those circumstances be liable for any injury caused by his aforesaid omission.

It should be noted, however, that in practice Boxing SA seldom formally appoints a ringmaster to serve at a tournament.<sup>670</sup> The ringmaster's responsibilities at a tournament (save for those pertaining to the ring)<sup>671</sup> are usually performed, on an informal and voluntary basis, by one or more of the referees and/or judges, who perform those responsibilities in addition to their normal responsibilities at the tournament. The erection of the ring, as well as any repairs that may be required to be made thereto during the course of the tournament,<sup>672</sup> is normally assigned to an independent contractor appointed by the promoter.<sup>673</sup> Thus, in practice, an enquiry into possible delictual liability on the part of the ringmaster in situations like the current scenario, is likely to remain a moot point until such time as Boxing SA starts to formally appoint a ringmaster to serve at a tournament as contemplated in the South African Boxing Regulations.

The question then arises whether legal liability can be imputed to any of the other role players in the current scenario, the most likely being Boxing SA and the promoter, including, the independent contractor referred to above.

Although in practice, the promoter normally supplies the ring for the tournament, the South African Boxing Regulations do not expressly oblige the promoter to do so. The South African Boxing Regulations merely state that the ringmaster shall be "in control

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<sup>670</sup> The South African Boxing Regulations are silent regarding who bears the responsibility of appointing a ringmaster for a tournament. This silence has likely contributed to the somewhat grey role that the ringmaster currently plays in practice, which is not an ideal situation having regard to the important responsibilities assigned to the ringmaster in terms of the South African Boxing Regulations.

<sup>671</sup> Even if these officials did undertake any of the responsibilities in respect of the ring, public policy would likely not regard it as just and reasonable to impose delictual liability on them under these particular circumstances.

<sup>672</sup> It is normally the referee or supervisory official that may call for such repairs to be made during a bout or between bouts. These running repairs usually relate to the tightening of a rope that may have become slack or the repositioning of a floorboard that may have shifted out of position during a bout.

<sup>673</sup> Although the South African Boxing Regulations do not expressly impose a duty on the promoter to provide the ring for the tournament, this is implied in s11(1)(f) of the South African Boxing Regulations which states that an application for the sanctioning of a tournament must contain an undertaking from the promoter that the ring will meet the prescribed technical specifications and that it will be erected timeously to enable Boxing SA to conduct an inspection thereof prior to the tournament. In practice, the promoters do always supply the ring.

of the ring” (see above), but do not state who is responsible for supplying the ring. In terms of s4(1) of the *Safety at Sports and Recreational Events Act*,<sup>674</sup> a controlling body<sup>675</sup>, an event organiser<sup>676</sup> or a stadium or venue owner, as the case may be, must put in place such measures as may be prescribed to ensure the physical safety and security of persons and their property at an event.<sup>677</sup> The prescribed measures referred to are primarily procedural in nature and relate primarily to the safety and security of the actual venue. The Events Safety Act is accordingly not directly relevant to the current enquiry.

Since neither the South African Boxing Regulations nor the Events Safety Act impose a specific statutory duty upon the promoter in respect of the safety of the ring, any delictual liability in this regard will accordingly need to be established in accordance with the general principles of the *actio lex aquilia*.

As the organizer of the event and also being the person who is in *de facto* control of the venue and the equipment used within the venue (including, the boxing ring and accessories), it is submitted that the legal convictions of the community would consider it reasonable to impose a legal duty on the promoter to take reasonable steps to ensure that the venue and the equipment in it are safe for use by the participants and spectators at the tournament.<sup>678</sup>

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<sup>674</sup> *Safety at Sports and Recreational Events Act* No. 2 of 2010 (Events Safety Act).

<sup>675</sup> Boxing SA qualifies as a ‘controlling body’ in terms of the definition in s1 of the Events Safety Act.

<sup>676</sup> The promoter qualifies as an ‘event organiser’ in terms of the definition in s1 of the Events Safety Act.

<sup>677</sup> A boxing tournament will qualify as an ‘event’ in terms of the definition in s1 of the Events Safety Act, provided that the venue or stadium at which it is held has seating or standing spectator capacity of at least 2000 persons as certified by a local authority. Smaller, so-called development boxing tournaments which usually take place in smaller towns and in rural areas, will therefore, in most instances, fall outside the ambit of the Events Safety Act.

<sup>678</sup> *Dey* para 122. It is important to note that the reasonableness of imposing a legal duty on the promoter for purposes of determining wrongfulness has nothing to do with the reasonableness of the measures that the promoter is required to take in respect of the enquiry into the negligence of his conduct. The only reported South African case dealing with the delictual liability of a promoter of an event, namely *Van Wyk v Thrills Incorporated* 1978 2 SA 641 (A) (*Van Wyk*), omitted to deal with the question of wrongfulness and proceeded directly to the enquiry into negligence. This seems to have arisen on account of the court having failed to separate the elements of wrongfulness and negligence, and having dealt with them simultaneously as is usually the case in relation to the duty of care element in England. Consequently, although the result may have been correct, the reasoning by which it was reached is of little help to the enquiry of wrongfulness in respect of the promoter in the current scenario.

In order to avert possible delictual liability in the current scenario (assuming that the elements of causation and negligence can be proved by Boxer A), the promoter will need to rely either on the defence of consent or on the *pactum de non petendo* contained in the standard form contract which the promoter will have concluded with the boxer.<sup>679</sup> Whilst consent (if established) will negate the element of wrongfulness, the *pactum de non petendo* will not, but will (if it is upheld by a court) exclude Boxer A from claiming damages from the promoter for the injury that he sustained during the bout.

In the current scenario, the defence of consent is unlikely to assist the promoter since an injury of this nature does not fall within the ambit of the normal risks inherent in a professional boxing bout and will accordingly not be regarded as being a risk that a boxer will have assumed when he entered the ring to participate in the bout.<sup>680</sup>

The question then arises whether the *pactum de non petendo* contained in the contract between the promoter and boxer could preclude Boxer A from claiming damages from the promoter in the current scenario.<sup>681</sup>

Exclusionary clauses of this nature are generally enforceable in South African law in terms of the maxim *pacta sunt servanda* (i.e. contracts freely and voluntarily entered into must be honoured), unless they are found by the court to be contrary to public policy (*contra boni mores*) in the particular circumstances.<sup>682</sup> In this regard, public policy considerations import the notions of fairness, justice and reasonableness.<sup>683</sup>

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<sup>679</sup> The details of the contract between a promoter and a boxer are discussed at fn 200 of this research study.

<sup>680</sup> *Boshoff v Boshoff* 1987 2 SA 694 (O) (*Boshoff*); *Roux* 428; In *Tillayev* 452 (a civil matter heard in NYS), a boxer was sparring in a ring when an area of the mat on which he stepped sunk in causing him to fall and break his femur. The court held that participants are not deemed to have assumed the risks of concealed or unreasonably increased risks, and accordingly the doctrine of assumption of the risk would not apply to defect equipment such as the ring mat in the present matter.

<sup>681</sup> Although there are three standard form boxer/promoter agreements contained in the South African Boxing Regulations (see details in fn 200 of this research study), the agreement contained in Annexure H(1) of the South African Boxing Regulations (viz. the one used for a specific tournament) is the one that is most commonly used in practice. The exclusionary clause contained in clause 16 of the latter agreement reads as follows: "The Boxer has no claim against the Promoter, Boxing SA or any of Boxing SA's members or officials for any injuries he or she may sustain while training for the bout or during or after the tournament."

<sup>682</sup> *Barkhuizen v Napier* 2007 5 SA 323 (CC) (*Barkhuizen*); *Naidoo v Birchwood Hotel* 2012 6 SA 170 (GSJ) 182; Scott "A Decision on Exclusion Clauses Avoided by Recourse to Delictual Principles on Wrongfulness" (2016) TSAR 766.

<sup>683</sup> *Barkhuizen* para 73.

The party seeking to avoid enforcement of the exclusionary clause bears the onus to demonstrate why its enforcement would be unfair and unreasonable in the given circumstances.<sup>684</sup>

The Constitutional Court has, however, cautioned that a court's power to declare a contractual clause unenforceable on the grounds that it is contrary to public policy, should be used sparingly and even then, only in the clearest of cases.<sup>685</sup>

The fact that many people in this country conclude contracts without any bargaining power and without understanding what they are agreeing to, are factors that need be taken into account for determining fairness when it comes to the enforcement of contractual clauses.<sup>686</sup> The importance of these factors in South African society is well illustrated in the following *dictum* of the Constitutional Court in *Mohlomi*:<sup>687</sup>

“ . . . [this is] a land where poverty and illiteracy abound and differences of culture and language are pronounced, where such conditions isolate the people whom they handicap from the mainstream of the law, where most persons who have been injured are either unaware of or poorly informed about their legal rights and what they should do in order to enforce those, and where access to the professional advice and assistance that they need so sorely is often difficult for financial or geographical reasons.”<sup>688</sup>

For the reasons stated earlier in this research paper,<sup>689</sup> it is submitted that professional boxers are likely to fall within the vulnerable category of persons contemplated by the Constitutional Court in the above *dictum* in *Mohlomi*. In addition, professional boxing bouts are generally hard to come by (particularly for debutants and novices) and thus professional boxers are generally left with little choice but to accept, at face value, whatever agreements promoters offer them for signing. These agreements are

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<sup>684</sup> *Barkhuizen* para 69.

<sup>685</sup> *Deadica 231 CC and Others v Trustees for the time being of the Oregon Trust* (1191/2018) [2020] ZASCA 76 para 47 (*Deadica*).

<sup>686</sup> *Barkhuizen* para 65

<sup>687</sup> *Mohlomi v Minister of Defence* 1997 (1) SA 124 (CC) para 14 (*Mohlomi*).

<sup>688</sup> See also *Barkhuizen* para 59; *Afrox Healthcare Bpk v Strydom* 2002 (6) SA 21 (SCA) para 12 (*Afrox*).

<sup>689</sup> Chapter 7 of this research study.

generally seldom read by the boxers, save perhaps for the clause specifying the purse monies that the boxer will be paid for participating in the bout. Even if these agreements were to be read by the boxers, they are unlikely to fully understand all the legal terms and conditions contained therein, particularly the meaning and effect of the exclusionary clause. In the unlikely event that a boxer did muster up the courage to question a promoter about the meaning and effect of the exclusionary clause (or any of the other clauses) contained in the agreement, he is likely to be met with a 'take it or leave it' response from the promoter, who is likely to tell him that it is a standard form agreement and therefore not open for negotiation. The boxer will also be acutely aware that if he were to push the envelope too far in the agreement negotiations, there are many other boxers waiting in the wings that the promoter could substitute him with and who would gladly accept the agreement 'as is. In the circumstances that prevail in practice, most boxers therefore have little or no bargaining power when it comes to negotiating the terms of the agreements that they conclude with promoters. Most professional boxers also do not have the financial means to obtain legal advice to assist him with regard to negotiating their agreements with the promoters.<sup>690</sup>

In light of the above circumstances, there is therefore a strong likelihood that a court would decline to enforce the exclusionary clause contained in the agreement between the promoter and Boxer A, on the grounds that it would be contrary to public policy to enforce it.

A court may furthermore also be reluctant to enforce the exclusionary clause on the basis that it does not expressly exclude liability for negligent conduct on the part of the promoter.<sup>691</sup> In this regard, there is a general presumption that where there is doubt in a given instance, the contracting parties are deemed not to have intended to exclude liability for negligent conduct.<sup>692</sup> Similarly, where an exemption clause is ambiguous

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<sup>690</sup> There are however exceptions in this regard, particularly when it comes to boxers who are champions or major drawcards.

<sup>691</sup> See fn 677 above. The exclusionary clause in question reads as follows: "The Boxer has no claim against the Promoter, Boxing SA or any of Boxing SA's members or officials for any injuries he or she may sustain while training for the bout or during or after *the tournament*."

<sup>692</sup> *Essa v Divaris* 1947 (1) SA 753 (A) (*Essa*); *South African Railways and Harbours v Lyle Shipping Co Ltd* 1958 (3) SA 416 (A) (*Lyle*).

or its language is capable of more than one meaning, the clause will be interpreted strictly by the court.<sup>693</sup>

The aforementioned factors are likely to weigh against a court enforcing the exclusionary clause if the promoter sought to rely on it to exempt him from any negligent conduct on his part in the current scenario. The alternative meaning that can be attributed to the wording of the exclusionary clause, which is neither 'fanciful' nor 'remote', is that the injuries that are intended to be exempted by the exclusionary clause are those injuries that a boxer may suffer in the normal course of a boxing bout, including injuries that he may suffer whilst training for the bout or whilst travelling to and from the bout. These injuries would include, for example, injuries suffered from by a punch he receives from an opponent during a contest or sparring, or injuries suffered in a motor vehicle accident whilst travelling to or from the bout. There is a variety of injuries that a boxer could suffer in relation to his boxing activities and which are not caused by the negligent conduct of the promoter or by any other persons referred to in the exclusionary clause.

Therefore, if a court were to apply a strict interpretation to the exclusionary clause (as it is required to do on account of the clause being capable of more than one meaning), the alternative meaning referred to above is likely to be the one that the court would favour, thereby excluding from the ambit of the exclusionary clause any injuries to the boxer which are caused by the promoter's negligent conduct. Although this approach to the enforcement of the exclusionary clause would expose promoters to the risk of

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<sup>693</sup> In *Lyle* 419D-E, the Appellate Division (as it was then known) held as follows: "Where one of the parties wishes to be absolved either wholly or partially from an obligation or liability which would or could arise at common law under a contract of the kind that the parties intend to conclude, it is for that party to ensure that the extent to which he, she or it is to be absolved is plainly spelt out. This strictness in approach is exemplified by the cases in which liability for negligence is under consideration. Thus, even where an exclusionary clause is couched in language sufficiently wide to be capable of excluding liability for negligent failure to fulfil a contractual obligation or for a negligent act or omission, it will not be regarded as doing so if there is another realistic and not fanciful basis of potential liability to which the clause could apply and so have a field of meaningful application". In *Durban's Water Wonderland (Pty) Ltd v Botha and another* 1999 (1) SA 982 (SCA) (*Botha*) at 989, the Supreme Court of Appeal held as follows: "... If there is ambiguity, the language must be construed against the *proferens* ... But the alternative meaning upon which reliance is placed to demonstrate the ambiguity must be one to which the language is fairly susceptible; it must not be 'fanciful' or 'remote' "; *Johannesburg Country Club v Stott and Another* 2004 (5) SA 511 (SCA) (*Stott*).

being sued by boxers who get injured due to their negligent conduct, promoters can (and should) insure themselves against such risk.<sup>694</sup>

**Scenario 7.1: Same facts as Scenario 7, except that Boxer A dies. Is the promoter legally liable to compensate Boxer A's dependents in respect of his death?**

Answer:

Assuming that all the requirements for a dependant's action are present,<sup>695</sup> Boxer A's dependants will have a delictual claim against the promoter for damages for loss of support.

In this instance, the promoter could not seek to rely on the exclusionary clause as a defence to such claim since it is settled law that a *pactum de non petendo* is not a defence to a dependents' action.<sup>696</sup>

## 7.5 Boxer's manager

**Scenario 8: An automatic 90-day suspension is imposed on Boxer A on account of him having been knockout from a blow to the head during a Sanctioned Bout. During that 90-day period, Boxer A's manager is aware that Boxer A has commenced contact training, but takes no steps to discourage him from doing so. During one of those contact training sessions, Boxer A is knocked out from a blow to the head that causes Boxer A severe head trauma, resulting in his permanent disability. Is Boxer A's manager legally liable to compensate Boxer A in respect of the injury?**

Answer:

S10(5) of the South African Boxing Regulations states that it is the responsibility of both the boxer and the boxer's manager to ensure that the provisions of ss10(1) and

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<sup>694</sup> In NYS, promoters are legally obliged to take out insurance in this regard. See further details in Part C of Chapter 4 of this research study.

<sup>695</sup> These are discussed at fn 617 of this research study.

<sup>696</sup> *Jameson's* 575; *Neethling* 114; *Stott* 4-5



10(2) of the South African Boxing Regulations are complied with.<sup>697</sup> These provisions prohibit a boxer from participating in any contact training during the period that his certificate of registration has been automatically suspended due to him having suffered a knockout from a blow to the head or where he has sustained a knockout from a blow to the head in two consecutive fights within a period of six months. In the former instance, the suspension period is ninety days, whilst in the latter instance it is six months.<sup>698</sup>

The enquiry into whether delictual liability can be imputed to the manager in respect of Boxer A's injury in the current scenario will turn primarily on the delictual elements of wrongfulness and causation (particularly, legal causation), and also whether the exclusionary clause contained in the standard form agreement between a manager and boxer can exempt the manager from delictual liability in this regard.<sup>699</sup>

The provisions of s10(5) of the South African Boxing Regulations impose a statutory duty on the manager to act positively to ensure that the boxer does not participate in any contact training during these suspension periods. In this regard, the question arises whether an omission by the manager to do so will be considered wrongful for purposes of a delictual action that Boxer A may institute against him for the injury he suffered.

In instances (such as the present one) where the relevant statute does not confer a right of action for a breach of the relevant statutory duty, wrongfulness depends on whether it will be just and reasonable in the circumstances to compensate a plaintiff who suffers harm as a result of such breach and this in turn, depends on the court's appreciation of the sense of justice of the community (i.e., public policy).<sup>700</sup>

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<sup>697</sup> S10(5) reads as follows: "It shall be the responsibility of both the boxer and the boxer's manager to ensure that the provisions of sub regulations (1) and (2) are complied with." (emphasis added). This section is rendered peremptory through the use of the word "shall".

<sup>698</sup> These suspension periods are discussed more fully in Chapter 6 of this research study.

<sup>699</sup> Clause 1.3 of the standard form boxer/manager agreement contained in Annexure I of the South African Boxing Regulations states as follows: "The Boxer absolves the Manager from any responsibility should he be injured during the term of this agreement, either within the ring or out of it."

<sup>700</sup> *Olitzki* para 12.

The intention of the prohibition on contact training during the suspension periods is to protect the boxer's health by allowing him sufficient time to fully recuperate after the earlier knockout/s.<sup>701</sup> The fact that the Legislature has imposed responsibility for ensuring compliance with this prohibition, not only on the shoulders of the boxer himself, but also on the shoulders of his manager, is indicative of the importance that the Legislature has placed on the compliance with this prohibition. Since boxers by nature would want to return to action as soon as possible, it was deemed necessary by the Legislature to involve the manager to ensure that the boxer abstains from contact training during these suspension periods.

In the circumstances, public policy is likely to regard it as just and reasonable to impose a legal duty on the manager to act positively in order to ensure that the boxer complies with the prohibition on contact training during these suspension periods and to hold the manager delictually liable for harm that the boxer may suffer on account of the manager's omission to do so. The steps required to be taken by the manager in this regard will fall within the enquiry into the element of fault.<sup>702</sup>

In addition to the elements of wrongfulness and fault, it also needs to be determined whether the manager's omission in respect of his legal duty in terms of s10(5) of the South African Boxing Regulations, can be regarded as the cause of Boxer A's injury. In this regard, one needs to apply the two-pronged approach to causation, namely an enquiry into factual causation, followed by an enquiry into legal causation. In the latter instance, the public policy considerations that contributed to a finding of wrongfulness on the part of the manager are likely to also contribute to a finding that the manager's conduct was the legal cause of Boxer A's injury in the current scenario.

Having established a *prima facie* case for delictual liability on the part of the manager in the current scenario, the question then arises whether the above-mentioned *pactum*

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<sup>701</sup> Medical science warns of the medical dangers posed if a sportsman were to suffer a subsequent concussion shortly after the first concussion. Quintana "Second impact syndrome in sports" (2016) *World Neurosurg* 647-9 cited in "Second Impact Syndrome" accessed at <https://www.sportsmedtoday.com/second-impact-syndrome-va-209.htm>.

<sup>702</sup> Reasonable steps in this regard will include advising the boxer of the existence of this prohibition and the possible medical risks for failing to comply therewith, as well as notifying same to the boxer's trainer and the gym that he usually spars at.

*de non petendo* (exclusionary clause) in the agreement between the manager and boxer would preclude Boxer A from claiming damages from the manager in the current scenario. In this regard, it is submitted that the same factors that weigh against the enforcement of the exclusionary clause in the agreement between the boxer and promoter would also weigh against the enforcement of the exclusionary clause in this instance. The exclusionary clause is therefore unlikely to shield the manager from delictual liability vis-à-vis Boxer A in the current scenario.

With regard to the element of fault, a court is likely to find that there was contributory fault on the part of Boxer A in the current scenario since s10(5) of the South African Boxing Regulations imposes a joint responsibility on the boxer and his manager to ensure that the boxer takes part in no contact training during these suspension periods. This contributory fault on the part of Boxer A will not negate the fault on the part of the manager, but will be relevant for limiting the extent of the manager's liability in terms of the Apportionment of Damages Act.<sup>703</sup>

**Scenario 8.1: Same facts as Scenario 8, except that Boxer A dies. Is Boxer A's manager legally liable to compensate Boxer A's dependents in respect of his death?**

Answer:

Assuming that all the requirements for a dependant's action are present,<sup>704</sup> Boxer A's dependants will have a delictual claim against the manager for damages for loss of support.

In relation to a dependant's action for loss of support, the manager would not be able to rely on the exclusionary clause as a defence since it is settled law that a *pactum de non petendo* is not a defence to a dependent's action.<sup>705</sup>

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<sup>703</sup> A detailed discussion regarding the extent of the manager's liability for damages falls outside the scope of this research paper.

<sup>704</sup> These are discussed at fn 617 of this research study.

<sup>705</sup> *Jameson's* 575 TS; *Neethling* 114; *Stott* 4-5

The same principles will apply with regard to a delictual claim by Boxer A's dependents against the manager.

**Scenario 9: The same facts as scenario 6. Boxer A's manager negotiated the bout on his behalf with the promoter. Is Boxer A's manager legally liable to compensate Boxer A in respect of the injury?**

Answer:

While there can be little doubt regarding the negligence of the manager in the current scenario, negligent conduct alone will not impute liability to the manager for Boxer A's injury unless all the other delictual elements are also present, namely wrongfulness and causation. In other words, it needs to be established, on a balance of probabilities, that the manager's negligent conduct *wrongfully caused* the injury in question.

In applying the general test for wrongfulness, namely whether the legal convictions of the community (*boni mores*) consider it reasonable to impute legal liability to the manager for his conduct in the circumstances,<sup>706</sup> the following factors will play an important role in that enquiry: the special relationship that exists between a manager and a boxer; the reliance that a debutant boxer would place on the advice given to him by his manager; and the vulnerability of the class of persons to which the boxer belongs, namely a class of persons who are often from challenged socio-economic backgrounds desperate to earn an income in a market where fights are relatively scarce due to an oversupply of boxers and a shortage of promoters; and the reasonable foreseeability of harm in the circumstances, aggravated by the serious nature of that harm (i.e. serious bodily injury or even death to which Boxer A would be exposed to at the hands of a vastly superior opponent). Although the standard-form manager/boxer agreement does not impose an express contractual duty of care on the manager to protect Boxer A's health and safety, the aforesaid factors are likely to impose a delictual duty of care on the manager to do so, which, if breached (as it was in the current scenario), will render the manager's conduct wrongful in the circumstances and therefore actionable at the instance of Boxer A.

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<sup>706</sup> Lee 167.

If, in respect of factual causation, one applies the *sine qua non* test, with the flexible common sense approach proposed by the Constitutional Court in *Lee*, then it is more probable than not that if Boxer A had been properly advised by his manager, then he would not have accepted the fight with the vastly more superior opponent, in which event he would not have suffered the harm that ensued.

In respect of the legal causation enquiry, the aforesaid factors which played a persuasive role in the wrongfulness enquiry, are also likely to play a persuasive role in the policy considerations applicable to the test for legal causation. In that regard, the manager's conduct, which displayed a recklessness disregard for the medical safety of Boxer A, is likely to evoke moral indignation from the community and make it fair, just and reasonable in the circumstances to impute legal causation to the manager for Boxer B's injury.<sup>707</sup>

With regard to the *volenti* defence, a strong argument can be made that the consent by Boxer B to participate in the bout was *contra bonos mores* in the circumstance and accordingly ineffective in negating the wrongfulness of the manager's conduct in the circumstances.<sup>708</sup> Further, as a debutant professional boxer, Boxer A would not have fully appreciated the extent of the harm that he was exposing himself to by taking on a vastly superior opponent and this would also affect the validity of Boxer A's consent. As his manager, the manager owed him a duty of care (see above), which duty would have extended to advising him against the gross mismatch that he was embarking on. It would therefore be unjust for the manager to now seek to rely on the defence of *volenti* to avoid liability for the very harm that it was his duty to have averted in the first instance.

The *pactum de non petendo* (exclusionary clause) in the agreement between the manager and boxer is unlikely to assist the manager in the current scenario for similar reasons to those provided in scenario 7 in respect of the promoter, namely that it would in the circumstances be contrary to public policy to enforce it. In this regard, public policy considerations import the notions of fairness, justice and reasonableness.<sup>709</sup> If

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<sup>707</sup> *Mokgethi* 40-41.

<sup>708</sup> *Neethling* 113.

<sup>709</sup> *Barkhuizen* para 73.

one has regard to the reckless nature of the manager's conduct in the current scenario, public policy is likely to dictate that it would be unfair, unjust and unreasonable to enforce that clause in the current scenario.

In the current scenario, legal liability is likely to be attributed to the manager, although the quantum of Boxer A's damages is likely to be reduced on the on account of his contributory negligence in taking part in the bout in question.

**Scenario 9.1: Same facts as Scenario 9, except that Boxer A dies. Is Boxer A's manager legally liable to compensate Boxer A's dependents in respect of his death?**

#### Answer

Assuming that all the requirements for a dependant's action are present,<sup>710</sup> Boxer A's dependants will have a delictual claim against the manager for damages for loss of support.

In relation to a dependant's action for loss of support, the manager would not be able to rely on the exclusionary clause as a defence since it is settled law that a *pactum de non petendo* is not a defence to a dependents' action.<sup>711</sup>

### **7.6 Boxer's trainer**

**Scenario 10: Prior to putting on Boxer A's gloves in the changeroom and unbeknown to Boxer A, Boxer A's trainer (who has many years' experience as a professional boxing trainer) removes padding from Boxer A's gloves in order to expose Boxer A's knuckles and thereby enhance the damaging effect that his blows will have on Boxer B during the bout. On account of this conduct, Boxer A's punches cause severe head trauma to his opponent (Boxer B) which result**

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<sup>710</sup> These are discussed at fn 617 of this research study.

<sup>711</sup> *Jameson's* 575 TS; *Neethling* 114; *Stott* 4-5

**in Boxer B's permanent disability<sup>712</sup>. Is Boxer A's trainer legally liable to compensate Boxer B in respect of the injury?**

Answer

With regard to the element of fault, the trainer's conduct in the current scenario will likely constitute *dolus* (intent), the requirements of which are described as follows in *Dantex*:<sup>713</sup> “[I]t is now accepted that *dolus* encompasses not only the intent to achieve a particular result, but also the consciousness that such a result would be wrongful or unlawful.” Intent thus has two components, namely direction of the will and consciousness of wrongfulness.<sup>714</sup> In respect of the first of these components (namely, direction of the will), the trainer's conduct in question clearly appears to have been directed at causing bodily harm Boxer B.<sup>715</sup> In respect of the second component of *dolus* (namely, consciousness of wrongfulness), it is commonly known in boxing circles that the gloves have been designed in a certain manner (particularly with regard to the type and quantity of padding inserted into the gloves) in order to protect the medical safety of the boxers.<sup>716</sup> As an experienced trainer, Boxer A's trainer would have been aware of this and would accordingly have known or at least foreseen that his conduct was wrongful in that it infringed Boxer B's constitutional right to bodily integrity.<sup>717</sup>

Although the legal convictions of the community (*boni mores*) constitute the basic norm for wrongfulness in our law,<sup>718</sup> it is often not necessary to resort to that test to determine wrongfulness where the nature of the positive conduct in question is *ex*

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<sup>712</sup> These facts are based on an event that occurred in New York in 1983 when a well-known professional boxing trainer named Panama Lewis allegedly removed padding from the gloves of his boxer (Luis Restos) in the changeroom prior to his bout with Billy Collins. The effect thereof was that Collins suffered severe head trauma. Lewis was subsequently imprisoned for his conduct and also sued in tort for the harm caused to Collins.

<sup>713</sup> *Dantex Investment Holdings (Pty) Ltd v Brenner* 189 1 SA 390 (A) 396 (*Dantex*).

<sup>714</sup> Neethling 132-133.

<sup>715</sup> In this scenario, the intent takes the form of *dolus directus*, namely that he had desired that the consequence of his conduct would be the harm to Boxer B. In respect of scenario 10.1, where Boxer B dies, the trainer's intent takes the form of *dolus eventualis*, namely that while not desiring to kill Boxer B, the trainer foresaw the possibility that his conduct in question may cause Boxer B's death and he reconciled himself with that fact.

<sup>716</sup> S22(1) of the South African Boxing Regulations prescribed the specifications for boxing gloves.

<sup>717</sup> S12(2) of the Constitution of the Republic of South Africa, 1996 provides that “[e]veryone has the right to bodily ... integrity”. It is submitted that the right afforded by s12(2) will be violated by any act of unconsented physical violence, including acts that would constitute common assault.

<sup>718</sup> *Lee* 167.

*facie* wrongful, for example, when a common assault is committed.<sup>719</sup> The only aspect that then needs to be determined is whether there are any grounds that may negate wrongfulness in the circumstances, for example the *volenti* defence.

In the current scenario, the trainer's conduct is *ex facie* wrongful and will also not be justified on the basis of the *volenti* defence. The reason why the defence of *volenti* will not assist the trainer in the current scenario is because his conduct amounted to such a serious violation of the rules, it is not normally associated with professional boxing and is extremely dangerous and would therefore not constitute conduct which professional boxers would accept as part and parcel of the normal risks inherent to their participation in a professional boxing contest. As a result, Boxer B would not have consented to injury arising from that form of conduct.<sup>720</sup> The justification of consent will therefore not negate the wrongfulness of the trainer's conduct in the current scenario.

The final element to be determined, is whether the trainer's conduct (*commissio*) was both the factual and legal cause of Boxer A's injury in the current scenario. The 'but for test' (*conditio sine qua non*) used to determine factual causation, requires, in respect of a *commissio*, that the court notionally "remove" the defendant's conduct to determine whether the relevant consequence would still have resulted. If it would still have occurred, then the wrongful act was not the factual cause of the harm, but if it would not have occurred, then it would be the factual cause of the harm.<sup>721</sup> In the latter instance, the enquiry will need to turn to whether the trainer's act was also the legal cause of Boxer B's harm. In this regard, the so-called flexible test used to determine legal causation enquires whether there is a close enough relationship between the trainer's conduct and the harm it caused to Boxer B for such harm to be imputed to the trainer in view of policy considerations based on reasonableness, fairness and justice.<sup>722</sup>

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<sup>719</sup> Neethling 45. However, in respect of infringements by way of omission, wrongfulness will need to be determined with reference to the *boni mores* wrongfulness criterion (Neethling 46).

<sup>720</sup> The relevant extract from *Roux* in which these legal principles are explained by the Supreme Court of Appeal, appears in Part A of 4 of this research study.

<sup>721</sup> Neethling 187; *Bentley* 700.

<sup>722</sup> *Mokgethi* 40-41; Neethling 200-201.



In the current scenario, the determination of factual causation may prove somewhat tricky since due to the nature of professional boxing, Boxer B would in the normal course have received blows to the head during the bout which could potentially have caused the head trauma. It would therefore need to be proved that it was the removal of the padding in the gloves that caused the injury in question. In the current scenario the court will accordingly apply a flexible approach to the enquiry to determine what is more likely to have occurred in the relevant circumstances having regard to common sense.<sup>723</sup> In this regard, it should be noted that for purposes of factual causation it will be sufficient if the trainer's conduct has in any way contributed to Boxer B's injury and it need therefore not be the only cause, main cause or direct cause.<sup>724</sup> The enquiry into legal causation is, however, likely to be less contentious since the morally reprehensible nature of the trainer's conduct is likely to arouse the moral indignation of society and make it reasonable, fair and just to impute liability to them for the injury suffered by Boxer A in the current scenario.<sup>725</sup>

Boxer A's trainer is therefore likely to be held delictually liable for the injury suffered by Boxer B in the current scenario.

**Scenario 10.1: Same facts as Scenario 10, except that Boxer B dies. Is Boxer A's trainer legally liable to compensate Boxer B's dependents in respect of Boxer B's death?**

Answer

Assuming that all the requirements for a dependants' action are present,<sup>726</sup> Boxer B's dependants will have a delictual claim for damages against Boxer A's trainer for loss of support in the current scenario.

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<sup>723</sup> Neethling 194.

<sup>724</sup> Neethling 197.

<sup>725</sup> *Mashongwa* para. 69.

<sup>726</sup> The elements for an action for loss of support are discussed in fn 617 of this research study.

## 7.7 Boxer's chief second

**Scenario 11: During a bout between Boxer A and Boxer B, Boxer A is being battered from pillar to post. At the onset of the interval between rounds, Boxer A staggers to his corner, slumps on to his stool. Boxer A is attended to by his chief second who notices that Boxer A's speech is slightly slurred and that he is not fully cognitive of the instructions the chief second is giving him. The bell signifies the start of the next round and the chief second assists Boxer A off his stool and urges him back into the fight despite Boxer A's medical condition. The round continues where the previous round ended, with Boxer A being battered from pillar to post. Shortly before the end of the round, whilst taking another barrage of punches to the head, Boxer A collapses to the ring floor with severe head trauma which results in his permanent disability. Is Boxer A's chief second legally liable to compensate Boxer A in respect of the injury?**

### Answer

Each boxer is permitted to have not more than three seconds at his corner during a bout.<sup>727</sup> Prior to the start of the bout, each boxer needs to nominate to the referee which of those seconds will his chief second, and the said chief second alone may declare the retirement of the boxer from the bout by throwing a towel into the ring and by orally drawing the referee's attention to it.<sup>728</sup>

The chief second therefore performs an important safety function during a professional boxing bout since apart from the referee, he is the only person empowered by the South African Boxing Regulations to stop the bout. Although the South African Boxing Regulations do not prescribe when a chief second should exercise his discretionary power to stop the bout, in practice it is usually done to protect his boxer from enduring

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<sup>727</sup> S32(2) of the South African Boxing Regulations. In practice, the boxer's trainer is usually one of these seconds and is usually also the person nominated by the boxer as his chief second for the bout.

<sup>728</sup> S32(3) of the South African Boxing Regulations. S27(6)(b)(xv) of the South African Boxing Regulations provides that the referee *shall* stop the bout if the boxer's chief second throws the towel into the ring signifying the retirement of the boxer (The use of the word "*shall*" makes this provision peremptory and therefore leaves the referee with no discretion whether or not to stop the bout in these circumstances). In the NYSAC Regulations, a boxer's corner is prohibited from throwing in the towel during a bout. In the BBBC Rules and Regulations the boxer's manager or in his absence his chief second, shall alone have the responsibility of retiring a boxer in a bout, but may not do so while a round is in progress.

further punishment in circumstances where the referee has failed (or been tardy) to do so.

The existence of this discretionary power in the hands of the chief second raises the question whether in situations like the current scenario, legal liability can be imputed to the chief second if he omits to stop the bout in order to protect his boxer from enduring further punishment that may result in injury or even death. The elements of wrongfulness<sup>729</sup> and negligence<sup>730</sup> are the essential issues that are required to be decided in this enquiry.<sup>731</sup>

The chief second's omission to stop the bout, even if found to be negligent in the circumstances,<sup>732</sup> will not necessarily make it wrongful.<sup>733</sup> The test for wrongfulness is whether in these circumstances, and in light of constitutional norms, the chief second's omission to stop the bout in order to protect Boxer A from suffering bodily harm not only 'evokes moral indignation, but also that the legal convictions of the community demand that it be regarded as wrongful and that the loss be compensated by the person who failed to act positively'<sup>734</sup>- or whether it would be over-burdensome to impose liability.<sup>735</sup> In the latter regard (i.e. whether it would be over-burdensome to impose liability), the enquiry relates to whether it would be reasonable in the circumstances to impose liability on the chief second for the injury to Boxer A which flowed from his omission to stop the bout; with the judicial determination of that reasonableness being based on considerations of public and legal policy in accordance with constitutional norms.<sup>736</sup>

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<sup>729</sup> Wrongfulness is, in essence, determined according to the *boni mores* test as formulated in *inter alia* *Hawekwa* para 22, i.e. the omission must be wrongful as juridically determined having regard to criteria of public and legal policy consistent with constitutional norms.

<sup>730</sup> Negligence is, in essence, determined according to the reasonable person test as formulated in *Coetzee*, i.e. whether the reasonable person in the chief second's position would have foreseen and guarded against damage.

<sup>731</sup> In summary, an omission is unreasonable and thus wrongful where, according to the *boni mores* test, a legal duty rested on the defendant to act positively in order to prevent the harm and he neglected to comply with such duty (*Neethling* 166).

<sup>732</sup> Applying the aforementioned reasonable man test to the current scenario, particularly the reasonable foreseeability of harm to Boxer A if the bout was not stopped before he endured further punishment, there is a strong likelihood that a court would find that the chief second's omission to stop the bout before the harm to Boxer A ensued was negligent in the circumstances.

<sup>733</sup> *Stedall* para. 13.

<sup>734</sup> *Minister of Law and Order v Kadir* 1995 (1) SA 303 (A) at 320 A-C (*Kadir*).

<sup>735</sup> *Stedall* at para 22.

<sup>736</sup> *Dey* para. 122. *Stedall* para. 12.

Having nominated the particular person in question as his chief second for the bout, Boxer A thereupon placed reliance on him to look after his medical safety during the bout and to accordingly stop the bout if he were to endure excessive punishment and be unable retire himself from the bout on account of not being at his full senses at the time. In the current scenario, the chief second could and should therefore have stopped the bout when the likelihood of harm to Boxer A became reasonably foreseeable due to the clear signs of medical distress that he was exhibiting during the bout. By omitting to exercise the discretionary power that the Legislature had bestowed upon him to stop the bout and having regard to the serious nature of the bodily harm that Boxer A could suffer if he were to be exposed to further punishment, it would therefore not be unreasonable – in the sense of reasonableness as explained above – to impose liability on the chief second for failing to exercise that power in order to protect the boxer who had entrusted him to do so. To stand by and witness his boxer endure ongoing punishment whilst exhibiting clear signs of being in medical distress not only evokes moral indignation, but the legal convictions of the community also demand that his conduct be regarded as wrongful and (if the other delictual elements are also present)<sup>737</sup> that he compensates Boxer A for the injury that flowed therefrom. It would not be over-burdensome to impose such liability on the chief second since he could and should insure himself against such risk, and he could and should also take proactive steps to mitigate that risk by acquiring the necessary training to properly recognize signs of medical distress in a boxer during a bout and to know when it is prudent from a medical safety perspective to stop the bout in order to protect the boxer under his care from suffering injury.

For similar reasons to those proffered in scenario 12 in respect of the referee, the defence of consent to the risk of injury is unlikely to assist the chief second in the current scenario. By participating in the bout, Boxer A is likely to argue that although he was aware of the risks of injury or death posed by professional boxing, he assumed those risks on the basis that proper effect would be given to the various medical safety measures that the Legislature has made provision for in the South African Boxing Regulations, including the power conferred upon his chief second to call a halt to the

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<sup>737</sup> In this regard, both factual and legal causation would need to be established.

bout if and when Boxer A was is in danger of suffering injury and could not retire himself from the bout on account of him not being at his full senses at the time.

Unlike in the case of a boxer and his manager, there is no written contract between a boxer and his chief second (or trainers) prescribed by the South African Boxing Regulations, and hence no *pactum de non petendo* that the chief second may seek to rely on to exclude Boxer A from claiming damages from him in respect of the injury that he suffered during the bout. The *pactum de non petendo* in the contract between the promoter and the boxer in respect of the bout will also not assist the chief second since a chief second does not fall within the scope of such *pactum de non petendo*.<sup>738</sup>

**Scenario 11.1: Same facts as Scenario 11, except that Boxer A dies. Is Boxer A's chief second legally liable to compensate Boxer A's dependents in respect of his or her death?**

#### Answer

Assuming that all the requirements for a dependants' action are present,<sup>739</sup> Boxer A's dependants will have a delictual claim for damages against Boxer A's chief second for loss of support in the current scenario.

### 7.8 Referee

**Scenario 12: During a Sanctioned Bout between Boxer A and Boxer B, Boxer A is being battered from pillar to post during a particular round. At the onset of the interval between rounds, the referee notices Boxer A staggering to his corner and slumping on to his stool. At the onset of the next round, Boxer A emerges from his corner visibly unsteady on his feet, whereupon he continues to be battered from pillar to post, offering little by way of either offense or defenses, whilst continuing to endure excessive punishment from Boxer B. Shortly before the end of the round, whilst being subjected to another barrage of heavy punches to the head, Boxer A collapses to the ring floor with severe**

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<sup>738</sup> The persons covered by the relevant clause are described therein as follows: "... the Promoter, Boxing SA or any of Boxing SA's members or officials ..." The chief second is not an "official". See fn 681 of this research study for further details regarding this clause.

<sup>739</sup> The elements for an action for loss of support are discussed in fn 617 of this research study.

**head trauma, resulting in his permanent disability. Is the referee legally liable to compensate Boxer A in respect of the injury?**

Answer

It is in situations like these that referees are most exposed to the risk of having legal liability imputed to them for injuries or death suffered by a boxer during a professional boxing contest.

Being the only person (other than the boxer's chief second) who is bestowed with authority to call a halt to the bout on the basis of concerns for a boxer's medical safety, it is therefore not surprising that when serious injuries or death occur during a professional boxing contest, it is usually the referee's conduct that is placed under the spotlight and probing questions are asked of him whether he should have stopped the bout earlier to avert the consequent injury or death to the boxer concerned. Whilst these questions may be easier to answer with the benefit of hindsight, particularly with the use of slow-motion replays, it needs to be borne in mind that in the heat of battle, the referee often only has seconds available to him to make what may later prove to be a life-changing decision for the affected boxer. Although the boxer's medical safety will (and should) be top of mind for the referee when he is called upon to make these important decisions, the referee will nevertheless also be mindful of not wanting to stop the bout prematurely and thereby prejudice the affected boxer's career prospects and also deprive the spectators and broadcasters of what may have been an exciting dual had he allowed it to run its course. It goes without saying, that the higher the profile of the bout in terms of public appeal, television coverage, the titles at stake etc, the more difficult these decisions become for the referee to make.

When evaluating the referee's conduct for purposes of determining whether to impute delictual liability to him for the injury suffered by Boxer A in the current scenario, the enquiry will turn primarily on the elements of fault (negligence), wrongfulness and causation.

The enquiry regarding the referee's negligence will proceed from the basis of the widely accepted test for negligence as formulated in the *locus classicus* of *Kruger v*

*Coetzee*.<sup>740</sup> For the purposes of this current scenario, that test can be couched in the following terms: would a reasonable person in the referee's position have reasonably foreseen harm befalling Boxer A in the current scenario? If so, would he have taken reasonable steps to prevent harm to Boxer A? If he would, did the referee take reasonable steps to avert the foreseeable harm that ultimately occurred?<sup>741</sup> Two positive answers and one negative answer in relation to these test questions will yield negligence on the part of the referee in the current scenario.

Having regard to the various tell-tale signs of medical distress exhibited by Boxer A in the prelude to his eventual knockout by Boxer B, the consequent harm which ensued would have been reasonably foreseeable by a reasonable person in the referee's position. Gauging from Boxer A's deteriorating medical condition and being aware of the gravity of the possible consequences to Boxer A if the risk of harm were to materialise, the reasonable person would have taken the reasonable step of stopping the bout earlier in order to prevent Boxer A from receiving further punishment and thereby also enabling him to receive the necessary medical attention as soon as possible. By having failed to act in this manner, the referee will accordingly have failed to take reasonable steps to avert the foreseeable harm that ultimately befell Boxer A. Boxer A would probably not have sustained the injury that culminated in his permanent disability had the referee stopped the bout earlier. It was thus negligent of the referee not to have done so and it would therefore be reasonable to impose delictual liability on him in the current scenario, if the other delictual elements (namely, wrongfulness and causation) are also proved.

With regard to the element of wrongfulness, a special relationship between parties (such as the custodial relationship that exists between a referee and the boxers whom he officiates) is conventionally recognised as one of the factors to be considered in deciding on the existence of a legal duty to act positively to avoid harm befalling another, a breach of which will entail wrongfulness.<sup>742</sup> This factor will, however, need to be measured against the overarching *boni mores* criterion to establish wrongfulness

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<sup>740</sup> Discussed in Part A of Chapter 4 of this research study.

<sup>741</sup> This wording is an adaptation of the wording that was used by Mogoeng CJ when he applied this test to the facts in *Mashongwa* at par. 31.

<sup>742</sup> Scott "Revisiting the elements of delict – the *Mashongwa* judgements" (2016) *THRHR* 566; Neethling 69ff.

in the current scenario.<sup>743</sup> Applying this approach to the issue of wrongfulness in the current scenario, a *prima facie* case exists that the legal convictions of the community will regard the referee as having a legal duty to prevent the boxers under his custodianship from suffering harm, the breach of which will render him liable for the harm suffered by Boxer A in the current scenario.

In a delictual action brought by Boxer A against the referee in the current scenario, the two possible defenses that the referee could raise are consent to the risk of injury (*volenti non fit inuria*) and waiver based on the the *pactum de non petendo* contained in the standard form contract which Boxer A would have concluded with the promoter in respect of the bout.<sup>744</sup> Whilst consent (if established) will negate the element of wrongfulness, the *pactum de non petendo* will not, but will (if it is upheld by a court) exclude Boxer A from claiming damages from the referee for the injury that he sustained during the bout.

Since boxers are generally well aware that boxing is dangerous and can result in injury and even death, it would normally follow that they should not be able to sue if they get injured during a professional boxing contest. On the contrary, it could, however, be argued that while boxers enter the ring assuming the risk of being injured during the bout, they also assume a certain level of competence on the part of the referee who has a legal duty to protect them, particularly in situations during the bout when they may, on account of injury, be unable to protect themselves.<sup>745</sup> Thus, in a situation like the current scenario where the referee has failed in his legal duty to protect Boxer A at a time when he was unable to protect himself, there is a relatively strong case to be made that the defence of consent to injury should not negate the element of wrongfulness in the current scenario.

The question then arises whether the *pactum de non petendo* contained in the contract between the promoter and boxer could preclude Boxer A from claiming damages from

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<sup>743</sup> Neethling 71.

<sup>744</sup> The details of the contract between a promoter and a boxer are discussed in fn 200 of this research study.

<sup>745</sup> "Ask the Cage Counsel: Can MMA referees be legally liable for fight-night errors?" (2011) *MMA Junkie Staff* accessed at <https://mmajunkie.usatoday.com/2011/08/ask-the-cage-counsel-can-mma-referees-be-legally-liable-for-fight-night-errors>.



the referee in the current scenario.<sup>746</sup> For the same reasons as those proffered in relation to the *pactum de non petendo* discussed in scenario 7 above,<sup>747</sup> the court may decline to enforce the exclusionary clause on the grounds that it would be contrary to public policy to enforce it. The court may further be reluctant to enforce the exclusionary clause on the basis that it does not expressly exclude liability for negligent conduct on the part of the referee,<sup>748</sup> the general presumption being that where there is doubt in a given instance, the contracting parties are deemed not to have intended to exclude liability for negligent conduct.<sup>749</sup> As a result, referees will be well advised to request Boxing SA to have them insured in respect of claims that may be brought against them on the basis that they have conducted themselves negligently whilst officiating in a bout.

The fact that the referee's conduct may have been wrongful and negligent in the current scenario, does not conclude the question whether liability should be imputed to him since the element of causation will still need to be established. In this regard, the test for factual causation is whether there is a causal link between the referee's negligent conduct and Boxer A's injuries (i.e., the 'but-for test'). In respect of legal causation, it will then need to be determined whether there is a close enough connection between the referee's negligent conduct and Boxer A's injuries to impute liability to the referee for that injury.<sup>750</sup>

Applying the 'but for test' to the issue of factual causation in the current scenario, it may be argued that had the referee stepped in and stopped the bout earlier when he noticed that Boxer A was in a deteriorating state of medical distress, it is more probable

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<sup>746</sup> As pointed out earlier, although there are three standard form boxer/promoter agreements contained in the South African Boxing Regulations (see details in footnote 200 above), the agreement contained in Annexure H(1) of the South African Boxing Regulations (viz. the one used for a specific tournament) is the one that is most commonly used in practice. The exclusionary clause contained in clause 16 of the latter agreement reads as follows: "The Boxer has no claim against the Promoter, Boxing SA or any of Boxing SA's members or officials for any injuries he or she may sustain while training for the bout or during or after the tournament." (emphasis added). Since the referee (who would fall within the category of "officials" in the aforementioned clause) is not a party to that agreement, the clause would vis-à-vis the referee constitute a *stipulatio alteri* which he could accept at any time.

<sup>747</sup> Discussed at Part A of Chapter 4 of this research study.

<sup>748</sup> The full reasons for

<sup>749</sup> *Essa* 753; *Lyle* 416.

<sup>750</sup> *Mashongwa* para. 63.

than not that Boxer A would not have suffered the injury that ultimately resulted in his permanent disability.<sup>751</sup>

In addition, it will then still be necessary to establish whether the referee's conduct should also be regarded as the legal cause of Boxer A's injury. Once it is established that the referee's conduct is sufficiently proximate to Boxer A's injury (which appears to be the case in the current scenario), then liability ought to be imputed to the referee provided that policy considerations based on the norms and values of our Constitution and justice also point to the reasonableness of imputing liability to the referee.<sup>752</sup> That the injury occurred during a bout in which the referee had a legal duty to protect the boxers, particularly in situations when they were unable to protect themselves and since the preventative measures for doing so (namely, by stopping the bout when it was no longer medically safe for them continue with the bout) could have been carried out by the referee with relative ease and also at no extra cost, his dereliction of duty by not doing so is likely to arouse the moral indignation of society, and since his negligent conduct is closely connected causally to the harm suffered by Boxer A, it would thus be reasonable, fair and just that liability be imputed to the referee.<sup>753</sup>

The referee is therefore likely to be held delictually liable for the injury suffered by Boxer A in the current scenario.

**Scenario 12.1: Same facts as Scenario 13, except that Boxer A dies. Is the referee legally liable to compensate Boxer A's dependents in respect of his death?**

Answer

Assuming that all the requirements for a dependants' action are present,<sup>754</sup> Boxer B's dependants will have a delictual claim for damages against Boxer A for loss of support in the current scenario.

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<sup>751</sup> *Mashongwa* para. 67.

<sup>752</sup> *Mashongwa* para. 68.

<sup>753</sup> *Mashongwa* para. 69.

<sup>754</sup> The elements for an action for loss of support are discussed in fn 617 of this research study.

**Scenario 13: During a Sanctioned Bout between Boxer A and Boxer B, the bout is being evenly contested until Boxer B pins Boxer A against the ropes and unleashes a barrage of heavy punches to Boxer A's head, with little to no defence or offence coming back from Boxer A. This barrage continues for a short while until Boxer A's knees eventually buckle, at which point the referee, who has been monitoring the proceedings all along, steps in to call a halt to the bout. After the stoppage, Boxer A is assisted by his trainers back to his corner, where he slumps into a coma due head trauma, which ultimately results in his permanent disability. Is the referee legally liable to compensate Boxer A in respect of the injury?**

Answer

The situation in this current scenario differs in two material respects from the situation in scenario 12. In the latter scenario, the bout was a one-sided contest and secondly, the knockout that eventually occurred in that scenario was preceded by a longer prelude during which Boxer B clearly exhibited various tell-tale signs of being in medical distress.

These differences have a significant impact on the foreseeability of harm and accordingly, whether negligence can be attributed to the referee in each of these scenarios.

Due to the various tell-tale signs of being in medical distress which Boxer A exhibited during the prelude to his eventual knockout in scenario 12, the discussion undertaken in respect of scenario 12 concluded that the consequent harm which ensued in that scenario was reasonably foreseeable by a reasonable person in the referee's position and this contributed to the finding that the referee was negligent in scenario 12.

In the current scenario, however, the foreseeability of harm was far less apparent since the harm arose during a specific exchange during the bout and until that point in time, the bout had been evenly contested by the boxers. When situations like these arise in practice (which is not uncommon), the referee is then faced with what is essentially a '50/50' decision since there is no bright line as to when the timing is right to call a halt to the bout to avert harm to the boxer in question. In these situations, referees

therefore need to make a judgement call when they exercise their discretion whether or not to call a halt to the bout. These decisions are often complicated by the fact that they need to be made on the spur of the moment, with scant time for proper reflection. It would therefore be unreasonable to attribute negligence to a referee who is later found to have stopped the bout too late, save, of course, if the boxer in question had displayed clear tell-tale signs of being in medical distress which should have reasonably prompted the referee to stop the bout earlier. In this regard, it also needs to be borne in mind that it is the expressed purpose of professional boxing to inflict a concussive head injury or at least cause sufficient bodily damage to render one's opponent incapable of continuing with the bout. It is on account of these factors that some boxing scribes have proposed that it would fairer to referees rather apply a gross negligence or recklessness standard to referees than the normal negligence standard which currently applies to them.<sup>755</sup>

In light of the above, it is therefore unlikely that the referee will be found to have acted negligently in the current scenario. Although the absence of negligence obviates the need to also consider the elements of wrongfulness and causation, it is submitted that if the need did arise to consider those elements, the same results would follow in respect of these elements as in scenario 12.

**Scenario 13.1: Same facts as Scenario 13, except that Boxer A dies. Is the referee legally liable to compensate Boxer A's dependents in respect of his death?**

Answer

Since the referee was not negligent in the current scenario, he will also not be liable to compensate Boxer A's dependants in respect of Boxer A's death.

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<sup>755</sup> Mayer M "Stepping in to step out of liability: The proper standard of liability in foreseeable judgement call situations" (2005) *DePaul Journal of Sports Law* accessed at <https://core.ac.uk/download/pdf/232971928.pdf>

## 7.9 Judges

**Scenario 14: In a Sanctioned Bout, the judges notice during a particular round that Boxer B is regularly rabbit punching Boxer A,<sup>756</sup> but the referee is seemingly unaware thereof. The judges are aware thereof, but do not bring it to the attention of the referee during the interval. In the next round, the rabbit punching continues and Boxer A is eventually rendered unconscious from a rabbit punch resulting in his permanent disability. Are the judges legally liable to compensate Boxer A in respect of the injury?**

### Answer

During the course of the bout, the referee is the boxers' primary provider of safety on account of the 'hands on' role that he plays in controlling the action in the ring. The referee is also obliged to give effect to various safety-related duties that are imposed upon him by the South African Boxing Regulations.<sup>757</sup>

On the contrary, the judges play a far more passive role from outside the ring, with their primary function being to score the bout. Unlike in the case of the referee, the South African Boxing Regulations do not impose any obligatory safety-related duties on the judges, but they are conferred with the discretionary power to bring any matters to the attention of the referee.<sup>758</sup>

In determining the wrongfulness of the judges' omission to draw Boxer B's dangerous and unlawful conduct to the referee's attention during the interval, the omission does not appear to fall into any of the crystallised categories of factors that are indicative of the existence of a legal duty on their part to act positively in these circumstances in order to prevent harm from occurring to Boxer A.<sup>759</sup> It is not imperative, however, that the omission in question needs to fall into one of those crystallised categories for there

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<sup>756</sup> A "rabbit punch" is an unlawful blow delivered by a boxer that strikes the back of the opponent's neck or head. The name originates from hunters who used to kill rabbits with a quick, sharp blow to the back of the rabbit's head. Rabbit punches can cause severe injury to the brain and spinal cord. Rabbit punches are expressly listed amongst the unlawful acts in section 37 of the South African Boxing Regulations.

<sup>757</sup> The role and duties of the referee are discussed in Chapters 5 and 6 of this research study, and also in scenarios 12 and 13 of this Chapter.

<sup>758</sup> S28(3) of the South African Boxing Regulations. The section uses the word "may" in regard to the exercise of this power by the judge.

<sup>759</sup> Neethling 60-73.

to be a legal duty to act, and in such event one needs to apply the general wrongfulness criterion, namely whether in view of all the circumstances, the judges' omission, in the words of the *Ewels* case,<sup>760</sup> evokes not merely moral indignation but should also be regarded as wrongful according to the legal convictions of the community and they should therefore render compensation for the harm suffered by Boxer A. If one draws an analogy between the omission by the judges in the current scenario and the omission by the champion swimmer in *Neethling's* example,<sup>761</sup> then it will probably be decided by a court that a legal duty rested on the judges to take positive steps to prevent harm by occurring to Boxer A. They had the statutory power to draw the dangerous and unlawful conduct of Boxer B to the referee's attention in the interval, and could have done so with relative ease. Although the power to ultimately stop Boxer B's unlawful conduct (either by means of a warning or disqualification) rested with the referee,<sup>762</sup> the judges will have fulfilled their legal duty in the current circumstances once they had passed the information on to the referee and it is not for them to pre-empt how the referee would have acted once he had received the information.

The judges' negligence in the current scenario will be determined in accordance with the test for negligence as formulated in *Kruger v Coetzee*.<sup>763</sup> For the purposes of this current scenario, that test can be couched in the following terms: would a reasonable person in the judges' position have reasonably foreseen harm befalling Boxer A in the current scenario? If so, would he have taken reasonable steps to prevent harm to Boxer A? If he would, did the judges take reasonable steps to avert the foreseeable harm that ultimately occurred?<sup>764</sup> If this test is applied to the circumstances in the current scenario, there is a strong case to be made that the judges' omission was negligent, as well as being wrongful in the circumstances.

What remains to be determined, is whether the judges' omission was both the factual and legal cause of Boxer A's injury in the current scenario. The 'but for test' (*conditio*

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<sup>760</sup> *Ewels* 597.

<sup>761</sup> *Neethling* 77-74.

<sup>762</sup> S27(6)(x) of the South African Boxing Regulations.

<sup>763</sup> Discussed at Part A of Chapter 4 of this research study.

<sup>764</sup> This wording is an adaptation of the wording that was used by Mogoeng CJ when he applied this test to the facts in *Mashongwa* para. 31.

*sine qua non*) used to determine factual causation, requires the court to determine what the judges could have done in the circumstances to prevent the harm occurring to Boxer A.<sup>765</sup> If the judges could in the circumstances have done something (in the form of a positive act) to change the factual course of events to a meaningful extent (which, it is submitted, they could have done by drawing the referee's attention to Boxer B's dangerous and unlawful conduct), the enquiry into causation then needs to turn to whether the omission can also be regarded as the legal cause of the harm in question. In this latter regard, the so-called flexible test for legal causation enquires whether there is a close enough relationship between the wrongdoer's conduct and its consequence for such consequence to be imputed to the wrongdoer in view of policy considerations based on reasonableness, fairness and justice.<sup>766</sup> The fact that the judges had the power to draw Boxer B's dangerous and unlawful conduct to the referee's attention with relative ease during the interval, coupled with the fact that it is commonly known in boxing circles that rabbit punching can inflict serious bodily harm to a boxer (i.e. the harm that ensued was reasonably foreseeable), the judges conduct of merely standing by and doing nothing to try and prevent it, is likely to arouse the moral indignation of society and make it reasonable, fair and just to impute liability to them for the injury suffered by Boxing A in the current scenario.<sup>767</sup>

For similar reasons to those proffered in respect of the referee in scenario 12, the judges in the current scenario are also unlikely to be able to rely on the defence of *volenti non fit inuria* or to rely on the *pactum de non petendo* if sued by Boxer A.

The judges are therefore likely to be held delictually liable for the injury suffered by Boxer A in the current scenario.

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<sup>765</sup> Neethling 197.

<sup>766</sup> *Mokgethi* 40-41; Neethling 200-201.

<sup>767</sup> *Mashongwa* para. 69.

**Scenario 14.1: Same facts as Scenario 15, except that Boxer A dies. Are the judges legally liable to compensate Boxer A's dependents in respect of his death?**

Answer

Assuming that all the requirements for a dependants' action are present,<sup>768</sup> Boxer A's dependants will have a delictual claim for damages against the judges for loss of support in the current scenario.

### **7.10 Supervisory official**

**Scenario 15: The supervisory official allows a bout to commence without checking that an ambulance is on standby at the venue. During the bout, Boxer A is knocked out and suffers head trauma but cannot be evacuated to hospital because of the absence of an ambulance at the venue. An ambulance is summoned, but only arrives at the venue an hour later due to the unavailability of ambulances in the area at the time. Boxer A is permanently disabled due to the delay in being operated on to remove a haematoma as a result of the knockout. Is the supervisory official legally liable to compensate Boxer A in respect of the injury?**

Answer

The supervisory official is the person designated by Boxing SA to exercise overall control and supervision at a tournament and is empowered in terms of the South African Boxing Regulations to take final decisions on all matters relating to the tournament, including the stoppage of the tournament.<sup>769</sup>

The supervisory official is tasked with a number of important duties at the tournament, many of which pertain to the medical safety of the boxers at the tournament. In this regard, the supervisory official plays a pivotal role in making sure that all the medical

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<sup>768</sup> The elements for an action for loss of support are discussed in fn 617 of this research study.

<sup>769</sup> Definition of '*supervisory official*' in s1 of the South African Boxing Regulations', read together with s33(1) of the South African Boxing Regulations. The supervisory official's functions and responsibilities are discussed in further detail in Chapter 6 of this research study.



safety measures at the tournament are duly complied with as prescribed by the South African Boxing Regulations. These measures, and the oversight thereof by the supervisory official, commence long before the bell rings for the opening bout of the tournament and end long after the final bout at the tournament has ended.

Prior to the commencement of a tournament, the supervisory official *shall* convene a meeting of the medical personnel to ensure that the medical arrangements for the tournament are adequate and to discuss contingency plans to deal with emergency situations.<sup>770</sup> The afore-mentioned medical measures include *inter alia* having an ambulance available at the venue for the duration of the tournament.<sup>771</sup> If the supervisory official is not satisfied that these medical measures for the tournament are adequate, he is empowered to stop the tournament in terms of the decision-making powers conferred upon him by the South African Boxing Regulations.<sup>772</sup>

Since the presence at the tournament of the prescribed safety measures at a tournament is peremptory in terms of the South African Boxing Regulations, a supervisory official is obliged to exercise his aforesaid powers and stop the tournament from proceeding either entirely or temporarily until an ambulance is present at the venue. Since the supervisory official in the current scenario failed to do so, he was in breach of his statutory duties to do so in terms of the South African Boxing Regulations.

In determining whether an omission of a public duty is wrongful and thereby imputes delictual liability to the wrongdoer, Mogoeng CJ in *Mashongwa* held that the court needs to consider a number of factors (such as the foreseeability of harm)<sup>773</sup> and also enquire whether the omission “evokes moral indignation and the legal convictions of the community require that the omission be regarded as wrongful”.<sup>774</sup>

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<sup>770</sup> S33(2)(a) of the South African Boxing Regulations.

<sup>771</sup> S21(c)(iii) of the South African Boxing Regulations.

<sup>772</sup> S33(1) of the South African Boxing Regulations.

<sup>773</sup> These factors are discussed on page 143 of this research study and will accordingly not be repeated here.

<sup>774</sup> *Mashongwa* at para 23. In this regard, Mogoeng CJ cited the earlier decisions of *Van Duivenboden* para 13; *Carmichele* para 56; and *Ewels* 597A-B.

The presence of an ambulance at the venue is an important (if not, the most important) feature of the medical safety measures at a tournament. It is critically important for a boxer who has suffered a head trauma during a bout (as in the current scenario) to be transported to a nearby hospital with neurological facilities as soon as possible.<sup>775</sup> If this is not done, the injured boxer could die or be left with permanent brain damage. A supervisory official will be aware of these risks and therefore the consequent harm suffered by Boxer A would have been reasonably foreseeable in the circumstances. His omission to stop the tournament from proceeding, notwithstanding knowing that there was no ambulance present at the venue, therefore put the boxers' lives at risk, and therefore it is more probable than not that his omission will have evoked moral indignation and that the legal convictions of the community will require that the supervisor's omission in the current scenario be regarded as wrongful.

In a delictual action brought by Boxer A against the supervisory official in the current scenario, the two possible defenses that the supervisory official could raise are consent to the risk of injury (*volenti non fit iniuria*) and waiver based on the the *pactum de non petendo* contained in the standard form contract which Boxer A will have concluded with the promoter in respect of the bout.<sup>776</sup> Whilst consent (if established) will negate the element of wrongfulness, the *pactum de non petendo* will not, but will (if it is upheld by a court) exclude Boxer A from claiming damages from the supervisory official for the injury that he sustained during the bout.

For similar reasons to those discussed in scenario 7 in respect of the referee, these defenses are unlikely to assist the supervisory official in the current scenario.<sup>777</sup> As a result, supervisory officials will be well advised to request Boxing SA to have them insured in respect of claims brought against them on the basis that they may have conducted themselves wrongfully whilst supervising at a tournament.

All that remains then in order to impute liability to the supervisory official in the current scenario, is the element of causation. With regard to factual causation (i.e. the 'but-for test') it follows that if the supervisory official had not permitted the tournament to

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<sup>775</sup> In Chapter 3 of this research study, the different types of head trauma encountered in professional boxing is discussed, as well as the medical consequences thereof.

<sup>776</sup> The details of the contract between a promoter and a boxer are discussed in fn 200 of this research study.

<sup>777</sup> Essa 753; Lyle 416.

proceed due to there having been no ambulance present at the venue, it is more probable than not that Boxer A would not have suffered the injury that ultimately resulted in his permanent disability.<sup>778</sup> The question then remains whether public policy would consider it reasonable to impute liability to the referee (that is, the test for legal causation)..<sup>779</sup> That the injury occurred during a tournament in which the supervisory official had a legal duty to protect the boxers by ensuring that all the prescribed medical safety measures were in place at the venue and he could have done so with relative ease and with no additional cost, his dereliction of duty by not doing so is likely to arouse the moral indignation of society, and since his negligent conduct is closely connected causally to the harm suffered by Boxer A, it would thus be reasonable, fair and just that liability be imputed to the supervisory official.<sup>780</sup>

The supervisory official is therefore likely to be held delictually liable for the injury suffered by Boxer A in the current scenario.

**Scenario 15.1: Same facts as Scenario 16, except that Boxer A dies. Is the supervisory official legally liable to compensate Boxer A's dependents in respect of his death?**

Answer

Assuming that all the requirements for a dependants' action are present,<sup>781</sup> Boxer A's dependants will have a delictual claim for damages against the supervisory official for loss of support in the current scenario.

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<sup>778</sup> *Mashongwa* para. 67.

<sup>779</sup> *Mashongwa* para. 68.

<sup>780</sup> *Mashongwa* para. 69.

<sup>781</sup> The elements for an action for loss of support are discussed in fn 617 of this research study.

## 7.11 International championship supervisor

### **Scenario 16: The same facts as scenario 16. Is the international championship supervisor legally liable to compensate Boxer A in respect of the injury?**

#### Answer

The role of the international championship supervisor differs materially from that of the supervisory official appointed by Boxing SA (i.e. the person discussed in scenario 15 above) since he does not perform a statutory duty. As pointed out earlier,<sup>782</sup> the role of the international championship supervisor is not recognised in terms of the South African Boxing Regulations and he is conferred with no powers or duties in terms thereof.

The international championship supervisor's appointment is made *mero motu* by the international sanctioning body and applies specifically to the particular championship bout taking place at the tournament. The international championship supervisor reports directly to the international sanctioning body and he has no direct contractual nexus with Boxing SA, the promoter or the boxers.

The legal position of the international championship supervisor is therefore a rather grey area in South African professional boxing, particularly since (as determined earlier) the supervisory official appointed by Boxing SA remains ultimately responsible in terms of the South African Boxing Regulations for the overall control and supervision of the tournament, including the international championship bout which constitutes a part of that tournament.<sup>783</sup> *De jure*, he therefore has no legal authority to overrule any decision that may be made by the supervisory official appointed by Boxing SA, either in respect of the tournament generally or the international championship bout specifically. *De facto*, however, this legal position is generally not fully understood by the various role players at the tournament, particularly since the international supervisory official usually assumes such authority with the implied consent of those role players, including the supervisory official appointed by Boxing SA. The

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<sup>782</sup> This aspect is discussed in Chapter 6 of this research study.

<sup>783</sup> Chapter 6 of this research study.

international championship supervisor therefore *de facto* controls and supervises the international championship bout.<sup>784</sup>

For his conduct (omission) to be wrongful in the current scenario, it would need to be established that the international championship supervisor had a legal duty to act positively to prevent the harm in question from occurring and that he failed to comply with that duty.<sup>785</sup> The enquiry is determined with reference to the legal convictions of the community, as established by the courts.<sup>786</sup> In this regard, all relevant factors need to be looked at in the prevailing circumstances, including *inter alia* control of a dangerous object (or situation), knowledge and foresight of possible harm and the creation of the impression that the interests of a third party will be protected (*Indicative Factors*).<sup>787</sup>

If one applies the Indicative Factors to the conduct of the international supervisory official in the current scenario, it could be argued that they would be likely to influence the convictions of the community that there was a legal duty on him to have acted positively to prevent the harm to Boxer A and that his failure to do so, rendered his conduct wrongful in the circumstances. The argument in this regard would proceed along the following lines: although the international championship supervisor did not *de jure* control and supervise the bout in question, he *de facto* did on the basis of him having assumed that role and responsibility by his conduct, with the implied consent of the other role players at the tournament. By doing so, those around him, particularly the boxers, relied on the impression created by him in this regard, that he would look after their interests, particularly the medical safety interests of the boxers. The latter interest would include ensuring that all the medical safety measures prescribed by the South African Boxing Regulations were properly place, including the presence of an ambulance for the duration of the bout. The international championship supervisor would also have been fully aware that if an ambulance were not present it could have grave consequences for a boxer suffering head trauma during the bout. Being in

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<sup>784</sup> In this regard, the supervisory official appointed by Boxing SA normally vacates his seat at the head of the official table at the ring apron just prior to the start of the international championship bout and the international championship supervisor then takes up such seat for the duration of the international championship bout.

<sup>785</sup> Neethling 58 and the cases cited at fn 147.

<sup>786</sup> Neethling 59 and the cases cited at fn 149.

<sup>787</sup> Neethling 59-73 and the cases cited in fn 149-253.

control of the bout (albeit *de facto*), he therefore assumed control of a dangerous situation (namely, a professional boxing bout) in which the possibility of serious injury or even death was reasonably foreseeable if an ambulance was not present at the venue to transport a boxer with a head trauma to a suitable neurological facility without delay. To have acted positively to avert that harm (namely, by stopping the bout from proceeding until an ambulance was present at the venue), could have been undertaken by the international championship supervisor with relative ease and at no additional cost. Even if he had doubted his powers in terms of the South African Boxing Regulations to implement those steps, he could (and should have) then brought the defective situation to the attention of the supervisory official appointed by Boxing SA and requested him to implement those steps.

In the aforesaid circumstances, the international championship supervisor's omission would be likely to not only evoke moral indignation, but the legal convictions of the community would also likely require that his omission be regarded as wrongful in the circumstances, and that he be liable to compensate Boxer A for the resultant bodily harm.

For similar reasons to those discussed in scenario 15 with regard to the supervisory official appointed by Boxing SA, the defenses of consent to the risk of injury (*volenti non fit inuria*) and waiver based on the the *pactum de non petendo* contained in the standard form contract which Boxer A will have concluded with the promoter in respect of the bout,<sup>788</sup> are unlikely to assist the international championship supervisor in the current scenario.<sup>789</sup> As a result, the international championship supervisor will be well advised to request the international sanctioning body to have him insured in respect of claims brought against him on the basis that he may have conducted himself wrongfully whilst supervising the international championship bout.<sup>790</sup>

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<sup>788</sup> The details of the contract between a promoter and a boxer are discussed in fn 200 of this research study.

<sup>789</sup> *Essa* 753; *Lyle* 416.

<sup>790</sup> At the rules meeting conducted by the international championship supervisor with the two boxers and their respective trainers, at the official weigh-in, the boxers are often requested to sign waiver forms, these waivers are likely to befall the same fate as the waivers discussed above. In my experience, these waivers are in most instances just signed by the boxers without being read or questioned. At that point in time, they in any event have no choice but to sign same and move on.

With regard to the element of causation, both factual and legal causation are likely to be satisfied in the current scenario for similar reasons to those discussed in scenario 15 in relation to the supervisory official appointed by Boxing SA.

The international championship supervisor is therefore likely to be held delictually liable for the injury suffered by Boxer A in the current scenario, jointly with the supervisory official appointed by Boxing SA.

**Scenario 16.1: Same facts as Scenario 16.1, except that Boxer A dies. Is the international championship supervisor legally liable to compensate Boxer A's dependents in respect of his death?**

Answer

Assuming that all the requirements for a dependants' action are present,<sup>791</sup> Boxer A's dependants will have a delictual claim for damages against the international championship supervisor for loss of support in the current scenario.

## 7.12 Ringside physician

**Scenario 17: During a Sanctioned Bout, Boxer A is knocked out by a heavy blow to the head, regains consciousness, is examined by the ringside physician and is permitted by the ringside physician to leave the ring for his change room (without the ringside physician issuing appropriate instructions to his seconds), notwithstanding that Boxer A was complaining to the ringside physician during the examination that he was experiencing a severe headache, dizziness and blurred vision. The ringside physician subsequently also fails to examine Boxer A before Boxer A leaves the tournament venue. Whilst en route home, Boxer A loses consciousness due to an intercranial haemorrhage and suffers permanent disability on account thereof. Is the ringside physician legally liable to compensate Boxer A in respect of the injury?**

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<sup>791</sup> The elements for an action for loss of support are discussed in fn 617 of this research study.

## Answer

The medico-legal position of the ringside physician at a professional boxing tournament is unique in that whilst he performs his general responsibilities in his capacity as a medical practitioner,<sup>792</sup> he is also required in his capacity as ringside physician to perform certain specific responsibilities in terms of the South African Boxing Regulations.<sup>793</sup>

In terms of the South African Boxing Regulations, the ringside physician is also required to possess certain skills and attributes, over and above those possessed by a regular medical practitioner.<sup>794</sup>

As is evident from the discussion that follows, the interplay of all the afore-mentioned factors has a shaping effect on the elements of wrongfulness, negligence and causation when determining whether legal liability should be imputed to the ringside physician for the injury suffered by Boxer A in the current scenario.

For purposes of the enquiry into possible delictual liability on the part of the ringside physician in the current scenario, his conduct in question constitutes an *omission*, namely failing to recommend that Boxer A receive further medical treatment in or be admitted to a hospital with neurological facilities<sup>795</sup> when Boxer A complained to him about having a severe headache, dizziness and blurred vision while he was examining Boxer A in the ring after the knockout<sup>796</sup>; and by subsequently also failing to examine Boxer A again before Boxer A left the tournament venue.<sup>797</sup>

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<sup>792</sup> There are a number of statutes that regulate medical matters in South Africa, including *inter alia* the National Health Care Act 61 of 2003.

<sup>793</sup> The ringside physician's role and responsibilities at a professional boxing tournament are prescribed in S24 of the South African Boxing Regulations, the details of which are discussed in chapter 6 of this research paper.

<sup>794</sup> The South African Boxing Regulations provide that a ringside physician shall have completed a course on all aspects of boxing injuries, as approved by Boxing SA (s24(1)(b)) and must also be accredited as a ringside physician by Boxing SA (s24(1)(c)).

<sup>795</sup> In terms of s11(1)(n) of the South African Boxing Regulations, the promoter is required to have a nearby hospital with neurological facilities on standby for the duration of the tournament. In terms of s21(1)(c)(iii) of the South African Boxing Regulations, the promoter is required to have an ambulance on standby at the venue for the duration of the tournament. Assuming that all these safety measures were in place for this particular tournament, then Boxer A could without delay and with relative ease have been transported to the aforesaid hospital if the ringside physician had recommended that same be done after examining him in the ring.

<sup>796</sup> These are all common symptoms of a possible intercranial haemorrhage.

<sup>797</sup> In terms of s24(5)(a) of the South African Boxing Regulations, a boxer who has been knocked out *shall* be examined by the ringside physician after the fight before he may leave the tournament venue. This subsequent



Omissions are *prima facie* lawful and will only attract liability if the omission is wrongful in the particular circumstances, which will only be the case if a legal duty rested on the defendant (viz. the ringside physician in the current scenario) to act positively to prevent the relevant harm from occurring and he failed to comply with that duty.<sup>798</sup> The question of whether such a legal duty exists needs to be answered with reference to the legal convictions of the community (*boni mores*) and the reasonableness criterion (i.e. whether the ringside physician could reasonably (according to the *boni mores*) have been expected to act positively in the particular circumstances).<sup>799</sup> In this regard, all factors which, according to the *boni mores*, may be indicative of such a legal duty must be considered.<sup>800</sup> Although there is no *numerus clausus* of such factors, certain factors have however evolved in our case law which may be indicative of a legal duty to act positively to prevent harm.<sup>801</sup> These factors, in so far as they may have relevance to the current scenario, are as follows:<sup>802</sup> (a) control by the defendant over a dangerous object (or dangerous situation); (b) knowledge and foresight by the defendant of possible harm; (c) breach of a statutory duty by the defendant; (d) a special relationship between the parties; (e) a particular office occupied by the defendant; and (f) creation by the defendant of the impression that the interests of a third party will be protected.

In some cases the existence of a legal duty may be ascribed to a single factor, whilst in other cases (such the current scenario) it may be ascribed to the interplay of several factors.<sup>803</sup> In the current scenario, the legal duty of the ringside physician to act positively to prevent the relevant harm from occurring to Boxer A may be ascribed to the interplay of the following factors referred to above, namely: the ringside physician occupied a public office in terms of the South African Boxing Regulations (albeit a temporary office for the duration of the particular tournament); by virtue of that office

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examination is vitally important due to the fact that there can be a delay in the onset of the symptoms of an intercranial haemorrhage as demonstrated in Chapter 3 of this research study.

<sup>798</sup> Neethling 58 and the cases cited therein at fn 147.

<sup>799</sup> Neethling 58-56 and the cases cited therein at fn 149.

<sup>800</sup> Neethling 59 and the cases cited therein at fn 152.

<sup>801</sup> Neethling 59.

<sup>802</sup> Neethling 60 - 73 and the cases cited therein at fn 154 - 252.

<sup>803</sup> In *Ewels* 590, the duty on the policeman to prevent the assault on the plaintiff may be deduced from the statutory duty to prevent crime, from the special relationship between policeman and citizen, and the public office occupied by the policeman.

he had a statutory duty to render medical assistance to Boxer A in the event of Boxer A getting injured during the bout and if deemed necessary, to recommend further treatment in or admission to a hospital with neurological facilities;<sup>804</sup> by virtue of the special relationship between a ringside physician and boxer in terms of the South African Boxing Regulations (and also the special relationship between a doctor and patient generally);<sup>805</sup> the control that the ringside doctor exercised over all medical aspects at the professional boxing tournament, which can be regarded a potentially dangerous situation due to the high risk of injury to the participating boxers; and the fact that Boxer A knew that the ring physician was present at ringside in an official capacity and accordingly relied on him to look after his medical interests during the bout, particularly if he were to sustain an injury.

Since the ringside physician failed to comply with his aforesaid legal duty in the current scenario, his omission will accordingly be wrongful and liability will be imputed to him for Boxer A's injury if all the other delictual elements are also present, namely the elements of fault (negligence) and causation.

In regard to the element of negligence, the following test for medical negligence as formulated in *Van Wyk v Lewis*<sup>806</sup> will be applied to the conduct of the ringside physician in the current scenario:

“[A] medical practitioner is not to bring to bear upon the case entrusted to him the highest possible degree of professional skill, but he is bound to employ reasonable skill and care. And in deciding what is reasonable the court will have regard to the general level of skill and diligence possessed and exercised at the time by the members of the branch of the profession to which the practitioner belongs.” (emphasis added)

In the current scenario, the ringside physician's conduct for purposes of determining negligence will accordingly be tested against the general level of skill and diligence possessed and exercised at the time by ringside physicians, as opposed to regular

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<sup>804</sup> Ss24(1)(g) and 24(3) of the South African Boxing Regulations.

<sup>805</sup> See fn 785 above.

<sup>806</sup> 1924 AD 438 444.

medical practitioners. As mentioned above, ringside physicians are required in terms of the South African Boxing Regulations to have completed a course on all aspects of boxing injuries, as approved by Boxing SA and are also required to be accredited as a ringside physician by Boxing SA. The ringside physician's negligence will thus be assessed with reference to the 'reasonable ringside physician', who would be knowledgeable on all aspects of boxing injuries, which would in turn make him aware of the common symptoms of a possible intercranial haemorrhage in a boxer (particularly after having suffered a knockout from a heavy blow to the head), how to properly manage same at ringside and when to recommend that the boxer in question receive further treatment at or be admitted to a hospital with neurological facilities. The reasonable ringside physician would also be aware that time was of the essence in getting the boxer in question to the said hospital. If he did not deem it necessary to make that recommendation at the time of his examination in the ring, the reasonable ringside physician would be aware of the need to continue to monitor the boxer after he left the ring and would issue appropriate instructions to his seconds in that regard. As a final precautionary step, the reasonable ringside physician would also conduct a final examination on the boxer in question before he left the tournament venue.

Applying the aforesaid negligence test to the ringside physician in the current scenario, there is a strong argument to be made that he failed to meet the required standard and that his conduct was accordingly negligent in the circumstances.

All that remains then in order to impute liability to the ringside physician in the current scenario, is the element of causation. With regard to factual causation (i.e. the 'but-for test') it follows that if the ringside physician had as soon as reasonably possible after he had examined Boxer A in the ring recommended that Boxer A receive further treatment at or be admitted to a hospital with neurological facilities, or at the very least have examined him again before Boxer A left the tournament venue, it is more probable than not that Boxer A's injury would not have resulted in his permanent disability.<sup>807</sup> The question then remains whether public policy would consider it reasonable to impute liability to the ringside physician (that is, the test for legal

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<sup>807</sup> *Mashongwa* para. 67. As mentioned earlier in Chapter 3 of this research paper, most intercranial haemorrhages can be successfully treated if the injured boxer receives the appropriate medical treatment in a hospital as soon as reasonably possible after sustaining the injury.

causation).<sup>808</sup> In the current scenario, the ringside physician could and should have recognised the common symptoms of an intercranial haemorrhage in Boxer A and since the ringside physician had a statutory duty to attend to the medical safety of the boxers at the tournament, and could, with relative ease have ensured that the injured boxer received further treatment at or was admitted to a hospital with neurological facilities, his dereliction of duty by not doing so is likely to arouse the moral indignation of society, and since his negligent conduct is also closely connected causally to the harm suffered by Boxer A, it would thus be reasonable, fair and just that liability be imputed to the ringside physician.<sup>809</sup>

For similar reasons to those proffered in scenario 11 in respect of the referee, the defense of consent to injury is unlikely to assist the ringside physician in the current scenario. By participating in the bout, Boxer A is likely to argue that although he was aware of the risks of injury or even death posed by professional boxing, he assumed those risks on the basis that proper effect would be given to the various medical safety measures that the Legislature has made provision for in the South African Boxing Regulations, particularly those measures attributable to the ringside physician, such as making sure that he received further medical assistance at or was admitted to a hospital with neurological facilities if he were to suffer head trauma during the bout.

There is no written contract between a boxer and the ringside physician, and hence no *pactum de non petendo* that the ringside physician can seek to rely on to exclude Boxer A from claiming damages from him for the injury that he suffered during the bout. The *pactum de non petendo* in the contract between the promoter and the boxer in respect of the bout, will also not assist the ringside physician since the ringside physician will not fall within the scope of that *pactum de non petendo*.<sup>810</sup>

The ringside physician is therefore likely to be held delictually liable for the injury suffered by Boxer A in the current scenario.

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<sup>808</sup> *Mashongwa* para. 68.

<sup>809</sup> *Mashongwa* para. 69.

<sup>810</sup> The persons covered by the relevant clause are described therein as follows: "... the Promoter, Boxing SA or any of Boxing SA's members or officials ..." The ringside physician does not fall within any of these categories of persons. This clause is discussed in fn 736 of this research study.

**Scenario 17.1: Same facts as Scenario 17, except that Boxer A dies. Is the ringside physician legally liable to compensate Boxer A's dependents in respect of his death?**

Answer

Assuming that all the requirements for a dependants' action are present,<sup>811</sup> Boxer B's dependants will have a delictual claim for damages against Boxer A for loss of support in the current scenario.

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<sup>811</sup> The elements for an action for loss of support are discussed in fn 617 of this research study.

## C H A P T E R 8 : R E C O M M E N D A T I O N S

### **8.1 Introduction**

The final enquiry pertaining to the Research Questions, is what measures (if any) can be adopted in South Africa to avert and/or mitigate the legal liability that faces the various role players in South African professional boxing in respect of injury or death suffered by a boxer during a professional boxing bout, having regard to the comparative legal position pertaining to professional boxing in the UK and the NYS.

Set out below, are a number of legal measures recommended to avert and/or mitigate the afore-mentioned legal liability, most of which can be implemented with relative ease and at minimal cost to the role players concerned. These recommendations fall into two broad categories, namely those that pertain to implementation and training measures, and those that require amendments to be made to the South African Boxing Regulations in order to give effect to them.

#### **8.1.1 Implementation and Training**

The potential legal liability that the various role players face in professional boxing is directly related to the medical safety risks that professional boxers face, which in turn depends not only on the adequacy of the medical safety measures provided for in the relevant boxing laws, but also on the manner in which those medical safety measures are implemented by the responsible role players.

The current boxing laws in South Africa rank amongst the best in the world, particularly from a medical safety perspective. Although there are additional measures that can be introduced into those laws to improve same, much of the legal risks that the various role players face in respect of injuries or death to the boxers, can be averted and/or mitigated by merely ensuring that the current provisions of the South African Boxing Regulations are properly implemented. As pointed out earlier in this research study, any non-compliance with those measures at one level (for example in the pre-contest

phase) can have a knock-on effect in the subsequent phase/s and ultimately on the health and safety of the boxers. It is therefore imperative that proper implementation of these measures takes place at all levels and in a holistic manner.

In this regard, it is recommended that Boxing SA, in its capacity as the sole controlling authority for professional boxing in South Africa, should forthwith embark on an intensive training program for all role players in order to educate them on their respective roles and responsibilities in professional boxing, and the potential legal risks that they face should they fail to give proper effect thereto. The training should in addition include the recognition of detrimental neurological symptoms in boxers. Suitably qualified and experienced persons should be engaged by Boxing SA to assist with this training program to ensure that it encompasses a blend of both theory and practical application. By educating all the role players in this regard, it will not only advance the medical safety of the boxers, but also help to avert and/or mitigate the potential legal liability that these role players face in the event that a boxer gets injured or dies during a professional boxing contest.

From an implementation perspective, it is also recommended that ringside physicians pay special attention to ensuring that the following important medical safety measures provided for in the South African Boxing Regulations are properly implemented at all professional boxing tournaments held in South Africa:

- (a) Since the symptoms of an intercranial haemorrhage may only become apparent a while after the contest has ended, it is crucial that the post-bout medical examination prescribed in s24(5)(a) of the South African Boxing Regulations is undertaken by the ringside physician in respect of each boxer that has been knocked out, technically knocked out, sustained severe punishment or been injured during a contest, before that boxer leaves the venue. The ringside physician should document that each examination took place, what his findings were and what recommendations (if any) he made in respect of further medical treatment for the boxer concerned. The ringside physician should also ensure that the first aid attendants/paramedics and also the ambulance remain in attendance at the venue until such time as all the aforesaid examinations have been satisfactorily completed and the ringside physician advises them that they may leave the venue. The

ringside physician should also not leave the venue until the last boxer has left.

- (b) It is recommended that the afore-mentioned post-bout examination be extended to include *all* boxers that participate at the tournament, as is currently provided for in article 8.6.8 of the BBBC Rules and Regulations and also in section 208.16 of the NYSAC Regulations. An appropriate amendment will need to be made to s24(5)(a) of the South African Boxing Regulations to make these examinations peremptory.
- (c) Boxing SA needs to ensure that all ringside physicians complete a course on all aspects of boxing injuries as a pre-requisite for being accredited as a ringside physician by Boxing SA. Further, only accredited ringside physicians should be permitted by Boxing SA to perform the duties of a ringside physician at a professional boxing tournament. These measures are already provided for in the South African Boxing Regulations, but need to be given proper effect to by Boxing SA.
- (d) It is not sufficient for the promoter to notify a nearby hospital with neurological facilities to be on standby for the duration of the tournament, at the time that he applies to Boxing SA for the tournament to be sanctioned. It is recommended that the ringside physician should also contact the said hospital *on the day of the tournament* to verify that they will in fact be on standby for the duration of the tournament and to also ascertain what the said hospital's admission requirements are. This latter step is of particular importance to ensure that there are no time delays in getting an injured boxer admitted to the said hospital should he require emergency medical treatment for a head trauma, when time is of the essence. In the COVID-19 era many hospitals have adopted revised admission requirements and may also have reached full capacity, hence the importance of the ringside physician making these enquiries *on the actual day of the tournament*. An appropriate amendment will need to be made to s24 of the South African Boxing Regulations to make these additional measures peremptory.
- (e) Boxing SA should formally appoint a ringmaster for each tournament in order to alleviate the uncertainty that currently exists in practice relating to the responsibility for the safety of the ring at a tournament. This is already provided



for in the South African Boxing Regulations, but needs to be properly implemented by Boxing SA.

- (f) Boxing SA should formally appoint a supervisory official for each tournament. This is a critical role player at a tournament and there should therefore be no uncertainty who the designated person is. A supervisory official should not be permitted to perform any other roles or responsibilities at the tournament, for example refereeing or judging any bouts. His sole focus should be on his role and responsibilities as the supervisory official at the tournament. This is already provided for in the South African Boxing Regulations, but needs to be properly implemented by Boxing SA.

### **8.1.2 Amendments to South African Boxing Regulations**

In addition to improving the implementation of the existing medical safety provisions in the South African Boxing Regulations, it is recommended that the following new measures should be introduced into the South African Boxing Regulations to help avert and/or mitigate the potential legal liability that the various role players face in the event of a boxer getting injured or dying during a professional boxing contest:

- (a) S33(2)(a) of the South African Boxing Regulations should be amended to make the ringside physician and not the supervisory official responsible for ensuring that all the prescribed medical safety measures are in place at the tournament. This is currently the position in terms of article 8.6.6 of the BBBC Rules and Regulations. It is submitted that the ringside physician is better suited to undertake this important responsibility.
- (b) A new provision should be inserted into the South African Boxing Regulations to the effect that *all* boxers must be examined by the ringside physician in the ring immediately after every bout, as is currently the case in the UK in terms of article 8.6.8 of the BBBC Rules and Regulations. This is an important medical safety measure that can be used to detect any symptoms of a possible intercranial haemorrhage or other serious injury. These examinations should not only apply to boxers who have been knocked out, technically knocked out, sustained severe

punishment or been injured during a contest, as is currently the case in South Africa.

- (c) In s20 of the South African Boxing Regulations, an additional provision should be added to the effect that the tension of the bottom rope should be less than the tension of the other ropes, as is currently provided for in article 3.4 of the BBBC Rules and Regulations. The bottom rope is renowned for causing whiplash to a boxer who lands with his neck (particularly the back of his neck) on the bottom rope when he is knocked down. The medical effects of the whiplash caused in this manner can result in serious brain injury or even death. By lessening the tension of the bottom rope, the risk of whiplash of this nature can be mitigated.
- (d) The current requirements in the South African Boxing Regulations for the registration of referees (and for the annual renewal of their registrations) should be enhanced by the inclusion of additional requirements including *inter alia* fitness tests, eye tests, compulsory attendance of an appropriate neurological seminar and suitable amateur experience as a referee. These requirements are currently provided for in section 207.12.(a) of the NYSAC Regulations. In addition, newly registered referees should be obliged to undergo a practical training program and should also be gradually phased-in with regard to the number of rounds in a bout that they are allowed to officiate, accompanied by an ongoing assessment of their performance. These latter requirements are currently provided for in section 207.12.(b) and section 207.12.(c) respectively of the NYSAC Regulations.
- (e) A grading system for referees, similar to the one currently prescribed in article 15.2 of the BBBC Rules and Regulations, should be introduced into the South African Boxing Regulations to ensure that only referees with the requisite skill and experience officiate in certain bouts. Having regard to the important role that the referee plays in protecting the boxers' medical safety during a bout, this will provide an important new medical safety measure with regard to the referee's role. It will also ensure that referees are not thrown into the deep end, thereby exposing them to undue legal risks should they err in their decision-making during the bout.
- (f) The current requirements in the South African Boxing Regulations for the registration of boxers (and for the annual renewal of their registrations) should be

enhanced by the inclusion of *inter alia* more stringent medical examinations and tests, such as MRI scans and ophthalmologist reports, as is currently provided for in section 208.2.(b) of the NYSAC Regulations. The costs of these tests may however prove prohibitive for boxers, particularly debutants and novices who do not receive large purses, and Boxing SA will need to find innovative ways to make these costs more affordable for boxers.

- (g) The current requirements in the South African Boxing Regulations for the registration of trainers and seconds should be enhanced by the inclusion of a requirement that they should have an appropriate first aid qualification, as is currently provided for in article 16.7 of the BBBC Rules and Regulations. In addition, they must have attended a suitable training program relating to the recognition of detrimental neurological symptoms in boxers.
- (h) The South African Boxing Regulations should make it obligatory that the promoter has in place adequate medical insurance to cover the medical treatment that may be required by the boxers participating in his tournament, as is currently provided for in section 208.15 of the NYSAC Regulations. It is insufficient to make provision for an injured boxer to be evacuated to a hospital for further medical treatment, unless advance provision has also been made to cover the reasonable costs of his medical treatment. This recommendation will have financial consequences for promoters, but it is submitted that its benefits for the medical safety of the boxers far outweigh the adverse financial consequences for the promoters. To ease this financial burden on promoters, Boxing SA could either seek to procure a subsidised group medical insurance scheme for promoters or build the insurance premiums into the registration and renewal fees for promoters or into the tournament sanction fee.
- (i) The South African Boxing Regulations should make it obligatory for Boxing SA to provide indemnity insurance to cover the ringside physician, supervisory official, referee and other officials whilst performing their respective responsibilities at a professional boxing tournament. That insurance could possibly also be extended to cover the boxers' trainers and seconds, particularly the chief seconds who play an

important role in the boxers' medical safety during a bout.

- (j) Currently in terms of the South African Boxing Regulations, only the referee and a boxer's chief second may stop a bout, but not the ringside physician (unlike in NYS). In order to add an additional medical safety measure during the bout, the South African Boxing Regulations should be amended to permit the ringside physician to also stop the bout *mero motu* at any time during the bout, as is currently provided for in section 208.7 of the NYSAC Regulations.
  
- (k) The South African Boxing Regulations should be amended by adding a provision to the effect that after a bout both boxers' gloves should be removed in the ring under the supervision of the referee or an inspector, as is currently provided for in section 211.9 of the NYSAC Regulations. This will provide an additional safety measure to ensure that the boxers' gloves have not been tampered with, either before or during the bout.
  
- (l) The role and responsibilities of the international championship supervisor needs to be clarified in the South African Boxing Regulations. The recommendation is that he should perform his functions in respect of the championship bout subject to the powers that the supervisory official designated by Boxing SA performs in respect of the tournament as a whole. In addition, the South African Boxing Regulations should provide that the international championship bout will be conducted in accordance with the South African Boxing Regulations except where they are at variance with the rules of the international sanctioning authority, in which event the latter rules shall apply subject to the prior approval of Boxing SA. This is currently provided for in article 23.1 of the BBBC Rules. In this way, not only will there be clarity about the rules that apply to the international championship bout, but it will also clarify the role and functions of the international championship supervisor in relation to the international championship bout. At present, these issues are somewhat vague in the South African Boxing Regulations.

## 8.2 Concluding Remarks

Although this research study has revealed the wide extent of potential legal liability

amongst the various role players in professional boxing for injuries or death that a boxer may suffer during a professional boxing bout held in South Africa, there are nevertheless various measures readily available, which if adopted and implemented by the Legislature or Boxing SA, as the case may be, would not only avert and/or mitigate those legal risks, but would also enhance the overall health and safety of professional boxers in South Africa.

## B I B L I O G R A P H Y

### **LEGISLATION**

#### **South Africa**

Constitution of the Republic of South Africa, 1996

Apportionment of Damages Act 34 of 1956

South African Boxing Act 11 of 2001

Safety at Sports and Recreational Events Act 2 of 2010

#### **United Kingdom**

Law Reform (Contributory Negligence) Act 1945

#### **New York State**

Article 41 of the New York State General Business Law

The Comparative Negligence Statute (New York Civil Practice Law and Rules 1411)

Professional Boxing Safety Act 15 USC §§6301

Muhammad Ali Boxing Reform Act 15 USC §§6301

## **RULES AND REGULATIONS**

### **South Africa**

Boxing Regulation, 2004 (GNR. 368 of 26 March 2004: Boxing Regulations, as amended by Notice R.76, Government Gazette 27824 of 29 July 2005)

### **United Kingdom**

British Boxing Board of Control Ltd Rules and Regulations 2019

### **New York State**

New York State Combative Sports Law and Rules 2020

Medical Standards for Combat Sports Professionals (2020)

### **Other**

Unified Rules of Boxing as adopted and amended by the Association of Boxing Commissions

## **BOOKS**

Drake, Vogl and Mitchell *Grays Anatomy for Students* (Elsevier 2015)

Eisenberg and Johnson *Comprehensive Radiographic Pathology* (Elsevier 2007)

Jackson Champions - *An Illustrated Encyclopaedia of SA Boxing* (Jeff Ellis undated)

Neethling, Potgieter and Visser *Law of Delict* (LexisNexis 2015)

**CASE LAW****South Africa**

*Administrateur, Transvaal v Van der Merwe* 1994 4 SA 347 (A)

*Afrox Healthcare Bpk v Strydom* 2002 (6) SA 21 (SCA)

*Barkhuizen v Napier* 2007 5 SA 323 (CC)

*Boshoff v Boshoff* 1987 2 SA 694 (O)

*Carmichele v Minister of Safety and Security (Centre for applied Legal Studies Intervening)* 2001 4 SA 938 (CC)

*Deadica 231 CC and Others v Trustees for the time being of the Oregon Trust* (1191/2018) [2020] ZASCA 76

*Dantex Investment Holdings (Pty) Ltd v Brenner* 189 1 SA 390 (A)

*Durban's Water Wonderland (Pty) Ltd v Botha and another* 1999 (1) SA 982 (SCA)

*Essa v Divaris* 1947 (1) SA 753 (A)

*Evans v Shield Insurance Co Ltd* 1980 (2) SA 814 (A)

*First National Bank of South Africa Ltd v Duvenhage* 2006 5 SA 319 (SCA)

*Hawekwa Youth Camp v Byrne* 2010 6 SA 83 (SCA)

*Holtzhausen v ABSA Bank Ltd* 2005 2 All SA 560 (SCA)



*International Shipping Co (Pty) Ltd v Bentley* 1990 (1) SA 680 (A)

*Jameson's Minors v CSAR* 1908 TS 575

*Johannesburg Country Club v Stott and Another* 2004 (5) SA 511 (SCA)

*Kruger v Coetzee* 1966 2 SA 428 (A)

*Le Roux & Others v Dey* 2011 (3) SA 274 (CC)

*Lee v Minister of Correctional Services* 2013 2 SA 144 (CC)

*Mashongwa v Passenger Rail Agency of SA* [2015] ZACC 36

*Minister of Home Affairs v Rahim and Others* [2016] ZACC 3

*Minister of Finance v Gore* 2007 1 SA 111 (SCA)

*Minister of Law and Order v Kadir* 1995 (1) SA 303 (A)

*Minister of Safety and Security v Carmichele* 2004 3 SA 305 (SCA)

*Minister of Safety and Security v Van Duivenboden* 2002 (6) SA 431 (SCA)

*Minister van Polisie v Ewels* 1975 (3) SA 590 (A)

*Mohlomi v Minister of Defence* 1997 (1) SA 124 (CC)

*MTO Forestry (Pty) Ltd v Swart NO* 2017 5 SA 76 (SCA)

*Naidoo v Birchwood Hotel* 2012 6 SA 170 (GSJ) 182

*OK Bazaar (1929) Ltd v Standard Bank of South Africa Ltd* 2002 3 SA 688 (SCA) 697

*Olitzki Property Holdings v State Tender Board & Another* 2001 (3) SA 1247 (SCA)

*Roux v Hattingh* 2012 6 SA 428 (SCA)

*S v Mokgethi* 1990 1 SA 32 (A)

*South African Railways and Harbours v Lyle Shipping Co Ltd* 1958 (3) SA 416 (A)

*Stedall v Aspeling* (1326/2016) [2017] ZASCA 172

*Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA*  
2006 (1) SA 461 (SCA)

*The South African Hang and Paragliding Association v Bewick* (1010/2013) [2015]  
ZASCA 34

*Van Wyk v Lewis* 1924 AD 438

*Zealand v Minister for Justice and Constitutional Development and Another* [2008]  
ZACC 3

## **United Kingdom**

*Caparo Industries plc v Dickman* [1990] 2 AC 605

*Marc Rich & Co AG v Bishop Rock Marine Co Ltd* [1994] 1 WLR 1071

*Robinson v Chief Constable of West Yorkshire Police* [2018] 2 WLR 595

*South Australia Asset Management Corp v York Montague Ltd* [1996] 3 All ER 365  
(HL)

*Watson v British Boxing Board of Control Ltd and another* [2001] QB 1134

**New York State**

Goss v Sweet, 49 NY2d 102, 107 [1979]

*Lapides v State*, 37 AD2d 755 [2nd Dept 2008]

Morgen v State of New York, 90 NY2d 471 [1997]

Tillayev v Fight Factory LLC, 41 N.Y.S. 3d 452

Turcotte v Fell, 68 NY2d 432 [1986]

**JOURNAL ARTICLES**

Anderson The Legality of Boxing: A Punch Drunk Love? (2007) accessed at <https://www.amazon.com/Legality-Boxing-Punch-Drunk-Birkbeck-ebook>

Baglio “The Muhammed Ali Boxing Reform Act: the first jab at establishing credibility in professional boxing” (1999) *Fordham Law Review* 2257

Baker et al “Cerebrovascular accident during competitive karate as a consequence of hypertension?” (2007) *Journal of Exercise Physiologyonline* accessed at <https://www.asep.org>

Beran “The law(s) of the rings: Boxing and the law” 2009 16 *Journal of Law and Medicine* 684-695 accessed at <https://www.researchgate.net>

British Boxing Board of Control “History of Boxing” available at <http://BBBC.com/content/history-boxing>

Cantu “Head injuries in sport” (1996) *British Journal of Sports Medicine* 289-296

Ecksel “A Venerable History: British Boxing Board of Control” available at [http://archive.boxing.media/a\\_venerable\\_history\\_british\\_boxing\\_board\\_of\\_control.html](http://archive.boxing.media/a_venerable_history_british_boxing_board_of_control.html)

Ehrlichman “In This Corner: An Analysis of Federal Boxing Legislation” (2019) *Columbia Journal of Law & The Arts* 421

Forbes “The World’s Highest-Paid Athletes” available at <https://www.forbes.com/athletes/list/#tab:overall>

George “Watson v British Boxing Board of Control: Rule-Making in the Court of Appeal” (2002) *The Modern Law Review* 109 accessed at <https://onlinelibrary.wiley.com/doi/abs/10.1111/1468-2230.00370>

Jakubowitz “Help, I’ve Fallen and Can’t Get Up!: New York’s Application of the Substantial Factor Test” (2004) *Journal of Civil Rights and Economic Development* 593

Mayer “Stepping in to step out of liability: The proper standard of liability in foreseeable judgement call situations” (2005) *DePaul Journal of Sports Law* accessed at <https://core.ac.uk/download/pdf/232971928.pdf>

Morgan “Brain injuries in sport: Remedies under English law” (2018) accessed at <https://www.morgansl.com/es/latest/brain-injuries-sport-remedies-under-english-law>

Neethling & Potgieter “Foreseeability: Wrongfulness and negligence of omissions in delict – the debate goes on” *Journal for Juridical Science* (2018) 145

Owen “The Five Elements of Negligence” (2007) *Hofstra Law Review* 1671

Quintana “Second impact syndrome in sports” (2016) *World Neurosurg* 647-9, cited in “Second Impact Syndrome” accessed at <https://www.sportsmedtoday.com/second-impact-syndrome-va-209.htm>

Scott “Revisiting the elements of delict – the Mashongwa judgements” (2016) *THRHR* 551

Scott “A Decision on Exclusion Clauses Avoided by Recourse to Delictual Principles on Wrongfulness” (2016) *TSAR* 766

Waquant “The pugilistic point of view. How boxers think and feel about their trade” (1995) *Theory and Society* 489

## **WEBSITES**

“Ask the Cage Counsel: Can MMA referees be legally liable for fight-night errors?” (2011) *MMA Junkie Staff* accessed at <https://mmajunkie.usatoday.com/2011/08/ask-the-cage-counsel-can-mma-referees-be-legally-liable-for-fight-night-errors>

Boxrec “History of New York Boxing Legislation, Rules and Regulations” available at [https://boxrec.com/media/index.php/USA:\\_New\\_York\\_Laws](https://boxrec.com/media/index.php/USA:_New_York_Laws)

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