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## WHEEL CLAMPING - TOWING AWAY AND IMPOUNDING

It is well known the world over that there are three principal scourges of modern society : AIDS, the tax man, and wheel clampers. In South Africa, the equivalent of the clampers are known as “towers-away and impounders”. As anyone who has ever been a victim of the latter will confirm, it is they who are most steeped in iniquity.

There you are, parked on the side of the road, minding your own business (or rather, your car is minding its own business while you’re somewhere else, attending to yours) when along comes a dirty great tow truck, manned, not by voracious tow truck drivers, but by officials of the Metro Police and, your car wakes up to find itself in a municipal pound, which people used to think was only for unfortunate stray dogs. As you know the National Road Traffic Act No 93 of 1996 off by heart, you immediately confront the authorities and quote Section 66(3) of the Act which says that ;

***“No person shall without lawful excuse, tamper with a vehicle or with any part of the equipment or the accessories of any vehicle or wilfully damage it, or throw any object at any such vehicle”.***

*“There”, you say, “you have unlawfully tampered with my vehicle by loading it onto a tow away truck and removing it”. “No”, says the traffic officer, “I was acting with a lawful excuse after you had contravened Regulation 305(1) of the Act by parking your vehicle on a public road “in contravention of a road traffic sign”. I am empowered in terms of Regulation 305(6) of those regulations to remove and impound your vehicle and I must now ask you kindly to “bear the costs of such removal and impoundment”, in a sum of money which belongs in the realm of fable.*

Wheel clampers, as has been mentioned, are a different sub-species of the same noxious tribe, but we are thankful, in South Africa, not to be subject to their activities on an official scale, although there are notices which threaten wheel clamping in private or public parking garages. One supposes, that it could be said in favour of the wheel clamber, as opposed to the tower-away and impounder, that at least when you return to where your car was left minding its own business, it is, although rendered immobile by the wheel clamp, still there, and you do not experience the trauma of believing that it has been stolen. At least, that is until you realise what might have happened, and confirm your belief by phoning the municipal pound.

If you are clamped, say in a private parking garage, the effect is, of course, that your vehicle is completely immobilised. You are only able to secure the removal of the clamps by payment of a sum of money, a punishment which not only does not fit the

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crime, but is wildly disproportionate thereto.

Wheel clamping has become big business in the UK and has been “*privatised*” in many instances. This means that the power to inflict these medieval punishments on innocent motorists and motor cars alike has been farmed out to professional clampers who, like tax gatherers of ancient times, receive a percentage of whatever is extracted from the poor motorist. It is accordingly, very much in the interests of these gentry to spread their reign of terror as widely as possible.

In an English television programme on the subject, private wheel clampers were portrayed as modern-day highway robbers, and this has prompted a public outcry. Apparently drivers are refusing to clam up and pay up after being clamped down, and are calling for laws to be passed to remedy their plight.

In terms of Section 40 of Britain’s Administration of Justice Act, it is unlawful to harass a debtor by means of “*distress, humiliation or blackmail*”.

“*Distress*” is not used in its usual sense meaning “*anguish*” or “*affliction*” (although that is its usual result) but consists of seizing the property of another in order to secure the performance of a duty, such as the payment of overdue rent. But because the reason for wheel clamping is not to secure the performance of a duty, but rather to prevent an obstruction, the remedy of distress seems tenuous or even unlawful.

An English case,

***Arthur and Another v Anker and Another***

heard in the English Court of Appeal in November 1995 dealt with a fracas which can be said to have had its lighter moments, although the parties to the litigation did not find it amusing. The owner of a private parking ground contracted with a private firm of wheel clampers to prevent unauthorised parking in his parking area. The clampers displayed notices at the car park entrance warning that vehicles parked without authority would be clamped, and a specific release fee would be charged and that obstructing vehicles might be towed away to their pound.

The third participant in the battle that was to follow namely, the “Clampee”, then arrived on the scene. He parked his car in an “*unauthorised position*” in the parking ground and the car was clamped, but when he returned, he refused to pay the fee for the release of his car. The Clampers refused to remove the clamps, so he enlisted the aid of his own tow truck service to come and pick up his clamped car and remove it from the car park so that he could later on remove the clamps by sawing them off the wheel and still not pay a “*release fee*”. At this stage, following the natural instinct of his

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profession and, as a dog chases a bone, the Clamper began immediately to affix a clamp to the tow away truck summoned by the Clampee and was then, perhaps not surprisingly, abused and assaulted. The Clampee and his contractor then removed the clamped car together with the Clamper's locks and clamps and instituted action against the Clamper for unlawful interference with the Clampee's car. To requite this kindness, the Clamper counterclaimed for assault and the cost of the clamps and locks alleging that the Clampee's conduct had entitled him to immobilise the Clampee's car and demand a fee. He argued that as the Clampee was aware of the content and meaning of the notices, he must be held to have understood them, and by parking in the ground, automatically consented to abide by such terms.

The court of first instance upheld these defences, and the Clampee's claim was dismissed. The Clampee and his contractor appealed to a full bench of three learned judges in the Court of Appeal. The first judge held that if the Clampee voluntarily accepted the risk that the car might be clamped (and he had clearly done so) he also accepted the risk that it would only be released on payment of a fee. The second judge dissented on the grounds that even if the owner of the car park had imposed a condition that the clamped vehicle would only be released on payment of a fee, he could only do this in order to compensate himself for **damages actually suffered by him**, and since he had not suffered such damage, and because neither he nor the Clamper had any claim for compensation, the remedy of distress was inapplicable. Unfortunately for the Clampee, the third judge held that it was not necessary, in support of the requirements for the remedy of distress, to prove that the claimant has sustained actual damage. If he was wrong about this, said the judge, then the costs of clamping and unclamping the car would constitute such damage.

This unseemly, not to say regrettable dispute was accordingly concluded in favour of the Clampers, and the moral of the story is that drivers in the UK whose cars are clamped, must clam up and pay up or risk being clamped down by the courts.

What can you do if your car is clamped in a private or public garage? I would say that whatever you are doing, nobody other than a duly authorised official with a "lawful excuse" is permitted to tamper with your vehicle, and that you would certainly be able to have such person prosecuted if he did so. You could also bring an action for whatever damages you may have suffered as a result. Towing away and impounding by the police or official authorised by them is, as has been pointed out above, a different story, and one would be ill-advised to challenge any action taken in that regard.

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