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Arbitrarily speaking! Celebrating a time for growth and renewal



Welcome to *Arbitrarily Speaking!*

Spring has officially arrived. New plant growth is sprouting forth everywhere. It is also a time for growth and renewed enthusiasm in all forms of life, ourselves included.

One of the areas of growth for the Association, its members and its readers will necessarily and increasingly have to focus on, is the vital role that Artificial Intelligence (AI) has assumed in our everyday lives. The power of AI can be harnessed for our mutual benefit.

In this issue *Arbitrarily Speaking!* we also announce the winner of *Steenberg's* highly acclaimed *Steenberg 1682 Chardonnay Cap Classique NV* for a contribution made to the June 2021 e-periodical issue 10.

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ARBITRATION EDUCATION STATION

Since its inception, the Association has promoted the greater use of arbitration as a means of resolving disputes. It is able to appoint competent and experienced arbitrators, as well as other specialists in alternative dispute resolution (ADR). To support these core activities, the Association has a proud history of providing excellent training and tutelage by a team of dedicated specialists.

UNCLE OSWALD'S Q&A FORUM

IS AN APPOINTED ARBITRATOR ENTITLED TO UNILATERALLY DETERMINE A REFERRED DISPUTE AS AN EXPERT?

In this edition, our much-admired retired arbitrator Uncle Oswald advises an acquaintance, Mr Sam Shabangu, who – upon succeeding in receiving an order for the stay of litigation in the high court, with both parties contractually agreeing to refer the matter to arbitration – now suddenly finds that the arbitrator has unilaterally usurped the powers of an expert instead of proceeding like an arbitrator ought to have done.

For more astute advice from Uncle Oswald on your arbitration queries, send your questions to our General Manager, Rochelle Appleton, at rochelle@arbitrators.co.za.

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A CASE IN POINT: RECENT CASE REPORTS

The Supreme Court of Appeal's judgment in the case ***Sasol South Africa (Pty) Ltd v Murray & Roberts Limited*** 2021 JDR 1328 (SCA) is analysed by the editor.

This regular column features interesting and informative case reports and judgments, and we invite you to add to our growing collection of analyses of important cases.

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TOOLS OF THE TRADE

CODE OF ETHICS PRACTICAL APPLICATION: *FORTITUDE* (PART 3 OF 4)

In this, the third of Dr Maritza Breitenbach's four-part series of articles devoted to the discipline of ethics, the author examines the virtue of fortitude and discusses how its appropriate application ought to enable arbitrators to withstand great difficulties and not allow adversity to impede their ability to act without bias, self-interest or fear of criticism.

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WILL A COURT REFUSE TO ENFORCE AN ARBITRATOR'S AWARD IF IT CONSIDERS IT WRONG?

Association Fellow and director, Adv Kiki Bailey SC, considers this vital question in the light of the judgment in ***Kolber and Another v Sourcecom Solutions (Pty) Ltd and Others: Sourcecom Technology Solutions (Pty) Ltd v Kolber and Another***, 2001 (2) SA 1097 (CPD). The case reinforces the legal position that a court will enforce an arbitral award, notwithstanding that it may be wrong, provided that it is a valid award. The fact that the court may disagree with the arbitrator's findings is not in itself a reason for refusing to enforce the award in terms of section 31 (1) of the Act.

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ALL ABOUT THE AOA

In the February edition of ***Arbitrarily Speaking!*** we shared the Association's fee discount policy that was formulated and adopted to offer financial respite to our valued members in these exigent economic times.

Your support remains a source of inspiration for our endeavours and reinforces our resolve to preserve this policy.

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AOA BREAKING NEWS

The Association's new board member, Mr Sharmraj Bauchoo, is introduced to our members and readers.

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FEATURED POEM

Mr Avi-Nash Sukuram presents a self-penned poem *Lions and Gazelles*, which embraces the animal kingdom as an analogy for contest in the arbitral arena.

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+27 11 884 9164



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Association of Arbitrators, 3rd Floor, Block B, Sandown House, Norwich Close, Sandown, Sandton, 2196, South Africa