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Welcome to *Arbitrarily Speaking!*

We lament the fact that this e-periodical was not published regularly in the past year. The gift of a new year just around the corner brings fresh hope.

In this issue of *Arbitrarily Speaking!* we announce the winner of the great annual prize for the best yearly contribution(s) received. The winner has a choice of selecting one of two *Mont Blanc*™ fountain pens, viz., either a UNICEF 2017 *Meisterstück Le Grande Platinum* (with a blue sapphire stone) or a *Bonheur Fountain Pen*.



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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.

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UNCLE OSWALD'S Q&A FORUM

UNCLE OSWALD EXTOLS THE VIRTUES OF ON-DEMAND GUARANTEES

At his best Uncle Oswald is no less than brilliant. In this contribution, he explains to his old friend Fearless Frikkie how on-demand guarantees function in practice.

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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TOOLS OF THE TRADE

COMMENTS ON THE JURISDICTION OF ARBITRATORS

Adv Johan Moorcroft investigates a variety of circumstances in which the jurisdiction of arbitrators can become a conundrum, and he offers profitable suggestions as to how the issue can best be managed in a variety of different circumstances.

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TIMING – LEX COMMISSORIA CANCELLATION

In this article, seasoned attorney, Tom McDonald Pr. Eng., considers the timing of a cancellation invoked in terms of a *lex commissoria* clause and the affect which the issue of an intervening negative payment certificate (i.e., money certified as being due to employer) has on a vested right to cancel.

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TOOLS OF THE TRADE

DEALING WITH DEFAULTING LOSERS IN ADJUDICATION

An article dealing with this subject-matter by Association Fellow and director, Chris Binnington Pr. Eng., that appeared in one of our earliest issues, is republished in this issue. The renewed interest in it arises from Chris’s address to the attendees at the gala dinner held at the Hilton Hotel in Sandton after the JBCC’s 25th annual conference. In his address to the attendees at this dinner, Chris proposed that JBCC should consider amending their suite of contracts to give effect to the mechanism described in the article.

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A CASE IN POINT: RECENT CASE REPORTS

Canton Trading 17 (Pty) Ltd t/a Cube Architects v Fanti Bekker Hattingh NO 2022 (4) SA 420 (SCA)

The Supreme Court of Appeal’s judgment in this case is analysed and discussed by Association Fellow and director, Adv Kiki Bailey SC, under the caption ‘*Is it the Court or the Arbitrator who decides the validity of an arbitration agreement?*’.

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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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 re-inforces our resolve to preserve this policy.

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