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## FROM THE EDITOR'S PEN:

### Hope is in the air

#### Welcome to *Arbitrarily Speaking!*



The Xhosa proverb that says, 'Hope does not disappoint' (Gerd de Ley, *The Book of African Proverbs*, Hatherleigh Press (2019), USA, at p. 9), is reminiscent of Alexander Pope's now famous saying in his *An Essay on Man* (1732): 'Hope springs eternal in the human breast'. Both these sayings convey an integral facet of the human condition: That is, to keep on hoping against all odds. Whether or not the R791.2 bn earmarked for infrastructure development in the finance minister's budget speech on 24 February 2021 will ultimately be used to stimulate structural reform in the economy remains to be seen. As matters now stand, there appears to be a *clear intent* to do so. Hope, therefore, justifiably remains alive.

In this issue of *Arbitrarily Speaking!* the great prizes that can be won for, respectively, the best *overall* written contribution to this e-periodical during 2021, as well as for the best contribution to *each* of the six bi-monthly issues thereof, are announced.

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## UNCLE OSWALD'S Q&A FORUM

### The arbitration defence: s 6(1) of the Arbitration Act and the common law

In this edition, Uncle Oswald, our revered arbitrator, allays a troubled contractor's fears about his right to invoke the arbitration defence in legal proceedings instituted against him in a court of law, i.e., despite the troubled contractor, after serving a notice of opposition, having taken a further step by filing an answering affidavit. In doing so, Uncle Oswald cites a wealth of judicial precedent justifying the invocation of this defence, which is deeply anchored in this country's common law.

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](mailto:rochelle@arbitrators.co.za).

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# ARBITRATION EDUCATION STATION

## Specialisation in Construction Law Course

The Association's **Specialisation in Construction Law Course** is a one-year distance learning course for those members who are interested in gaining a better understanding of construction law in South Africa. The course is specifically directed at the interests of practitioners in the construction industry. Adv Pierre Rossouw SC, the Association's Chairperson, briefly explains what the qualifications for enrolment are, how the course is structured, what the course's syllabus is comprised of, as well as who the tutors are that you will encounter on this flagship course.

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## Mediation and mediation training

The Association of Arbitrators (Southern Africa) has concluded an exclusive Southern African partnership with the Society of Mediators in London to present a series of *Zoom*-based mediation courses. These mediation courses afford the Association's members with the unique – and not to be missed – opportunity to be trained in the art of mediation by internationally renowned mediators and mediation trainers, namely, Jonathan Dingle, Andrea Barnes and Zoey White.

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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.



## TOOLS OF THE TRADE

### Interesting points concerning adjudications: the recent judgment in *Confact Core Construction CC V JLK Construction (Pty) Ltd*

In her incisive analysis of the above-captioned judgment, Adv Kiki Bailey SC provides our readers with three vital conclusions to be drawn from it. Her analysis thereof is an essential contribution to the ever-growing body of knowledge about adjudications in this country.

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### Should adjudication determinations and arbitration awards in the fields of building, construction and engineering law be published?

Where there is construction there is conflict and where there is conflict, alternative dispute resolution (**ADR**) is often the preferred recourse. Dr Tanya Hendry reflects on how the preference for ADR affects the development of South Africa's law of contract relative to the construction industry. The author suggests, what could be considered by some cognoscenti to be, a rather controversial solution for what she perceives as the root cause(s) of the supposed lack of development in this field of law.

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### The role of an expert witness and the evaluation of expert evidence

In this article, our editor provides our readers with a practical outline of the legal principles that inform the role of an expert witness in litigious proceedings, as well as the proper approach to be adopted in evaluating such a witness's evidence.

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## A CASE IN POINT: RECENT CASE REPORTS

*To support or not to support?* Mr Alastair Hay poses this question in his erudite analysis of *Dias v Petropulos and another* [2020] 3 All SA 358 (SCA), which extensively deals with the position in our law concerning the right of lateral support between contiguous properties

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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## AOA BREAKING NEWS

The Association's vice-chairperson, Adv Tjaart van der Walt SC, synoptically surveys a range of topics under this rubric. The interesting topics surveyed include, among others, the state of health of the Association's finances; its state-of-the-art video-conferencing facility, which is now fully operative and also available to members for hire at competitive rates; the envisaged expansion and transformation of the *George Quail* library into a well-equipped research centre bearing the same name; and the Association's collaborative venture with the Society of Mediators in London to provide specialised mediation training to our members. The last topic surveyed by him comprises a *list* of all the lectures, workshops and webinars; the *dates* on, and the times at, which each will be presented during the course of 2021; as well as the arbitrator(s) who will be responsible for the presentation of each lecture, workshop or webinar, as the case may be. The presenters are all vastly experienced in the field covered by the topic(s) of their respective presentations.

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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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