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FROM THE EDITOR'S PEN:

'Let's be touched by the better angels of our nature.'

Welcome to **Arbitrarily Speaking!**



Ever-increasing load shedding and a winter with less power. A frustrated and desperate citizenry.

In this issue of **Arbitrarily Speaking!** we revisit the idea of the *'better angels of our nature'*, by pulling together in these dark days, sharing our skills and insights, and helping to shape the society we all want to live in.

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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.



The Association currently has 221 students enrolled across five modules of study.

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UNCLE OSWALD'S Q&A FORUM

UNCLE OSWALD CONSIDERS THE PRESCRIPTION ACT 68 OF 1969 AND IMPORTANT JUDICIAL PRONOUNCEMENTS ON SOME OF ITS PROVISIONS

The usually smooth talking and quick thinking Uncle Oswald on this occasion has to undertake some considerable research into the Prescription Act 68 of 1969, and the case law applicable thereto, with the objective of assisting Fearless Frikkie in overcoming a challenge from local farmer, Piet Wildeboer, who avers that Frikkie's intended claims against him have become prescribed.

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 *ctd.*

COURT REFUSES TO ENFORCE AN ADJUDICATOR'S DECISION DUE TO A BREACH OF NATURAL JUSTICE

Construction expert, Jonathan Cope, a director of MCMS Ltd, a leading specialist in all areas of dispute resolution and avoidance. In it the author discusses the Scottish case of *Van Oord UK Ltd v Dragados UK Ltd*, in which Lord Braid's carefully reasoned judgment dissects a scenario in which an adjudicator reached his decision on a basis not canvassed with the parties.

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TOOLS OF THE TRADE

THE RELEVANT CONSIDERATIONS AND GUIDING PRINCIPLES INFORMING AN ARBITRATOR'S DISCRETION UNDER SECTION 20 OF THE ARBITRATION ACT

First time contributor, and Fellow of the Association, Adv Mias Mostert, considers and surveys, in a helpful and practical article, the relevant considerations and guiding principles that ought to guide arbitrators on how to approach an application for statement on a question of law for the opinion of the court, as contemplated in section 20(1) of the Arbitration Act 42 of 1965.

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SIDESTEPPING ARBITRATION AGREEMENTS

In this article, Association director and Fellow, Alastair Hay, explores the circumstances under which a court of law usually will allow a party to escape from his/ her/its commitment to have all disputes under an agreement resolved by arbitration. In the course thereof, Alastair surveys the leading case law on the subject and also indicates what the bases were that formed the essence of the court's judgments in each instance.

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A CASE IN POINT: RECENT CASE REPORTS

The Greater Tzaneen Municipality v Sipiwe Engineering and Technologies CC – 23 February 2023, an unreported full bench appeal under case numbers: 27859/2018 and 32340/2018 in the High Court of South Africa, Gauteng Division, Johannesburg.

The judgment in this full bench appeal in the Gauteng Division, Johannesburg is carefully analysed and discussed by Association Fellow and director, Adv Kiki Bailey SC, under the caption '*Irregularity of Awards given by Default*'.

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 2021 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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