



## Practical Workshop (18 July 2017) QUESTIONS

1. Can an arbitrator order absolution from the instance?
2. Is it useful to incorporate the use of the High Court Rules as a procedural guideline in arbitrations? What are the pros and what are the cons of doing so?
3. When is it useful to exclude the provisions of section 20 of the Arbitration Act 42 of 1965?
4. How does an arbitrator regulate his / her collapse fee?
5. Who is liable for the costs of the arbitrator?
6. What do you do in an *ad hoc* arbitration if a party does not pay?
7. Does an arbitrator have the right to withhold an award pending payment of his / her fees?
8. Is hearsay evidence admissible in arbitrations?
  - 8.1. Discuss the three **what's and a why** that are essential to a good arbitration process: i.e. what is your case (Pleading).
  - 8.2. What documents are relevant (discovery?)
  - 8.3. Why should your case succeed (evidence and argument?)
  - 8.4. What is the answer (the award?)
9. How do you enforce an arbitration cost award?
10. What is the maximum time allowed for an arbitration to be finalised?
11. If the time-period has lapsed does it become invalid
12. Is a term in an arbitration agreement that states only that an arbitrator shall be appointed enough to be able to enforce it?
13. Does an agreement to arbitrate have to be in writing?
14. Does an agreement to make an arbitration award subject to an appeal have to be in writing
15. Does an arbitration agreement have to be in writing?
  - 15.1. Can an arbitrator recuse himself at the request of a party, absent consent of the other party?
16. When can or should an arbitrator recuse himself / herself?
17. What are the requirements for an appointment of an arbitrator to be set aside and how does one go about this?

18. Discuss the arbitrator's key duties to the parties:
  - 18.1. Duty to take care;
  - 18.2. Duty to proceed diligently;
  - 18.3. Duty to act impartially;
  - 18.4. Duty to act fairly.
19. What types of matters are not subject to arbitration?
20. What does one do when the party's cannot agree on the appointment of an arbitrator?
21. What powers does an arbitrator have?
22. Can an arbitrator issue a subpoena and what is the position if a subpoena is ignored?
23. Is it necessary to give the parties written notice of arbitration hearing?
24. What are the powers of the arbitrator if a party does not appear?
25. Is it necessary to record the proceedings?
26. When is an arbitration award deemed to have been delivered?
27. Can an arbitrator correct a mistake that he / she has made in an award?

**28. Case Study**

A losing party in an arbitration wants to have the award overturned (they want the decision to be reviewed).

They require from the arbitrator *"In terms of Rule 53(1)(b) a record of the proceedings to be reviewed and set aside must be filed with the Registrar of the Court."*

The arbitration was without legal representation and no official voice recording was made due to the low amounts in dispute. The arbitrator made a private recording for his own reference with the knowledge of the parties. The award was fully reasoned.

- What is required from the arbitrator?
- Is he obliged to hand over the recording and any notes?
- Is he required to have a transcription made of the voice recording?
- And, if the losing party does not want to pay the approximate R6 000 to R8 000 for the transcription?

The relevant parts of Rule 53 read as follows:

(1) Save where any law otherwise provides, all proceedings to bring under review the decision or proceedings of any inferior court and of any tribunal, board or officer performing judicial, quasi-judicial or administrative functions shall be by way of notice of motion ...

*(b) calling upon the magistrate, presiding officer, chairman or officer, as the case may be, to despatch, within fifteen days after receipt of the notice of motion, to the registrar the record of such proceedings sought to be corrected or set aside, together with such reasons as he is by law required or desires to give or make, and to notify the applicant that he has done so. ...*

(3) The registrar shall make available to the applicant the record despatched to him as aforesaid upon such terms as the registrar thinks appropriate to ensure its safety, and the applicant shall thereupon cause copies of such portions of the record as may be necessary for the purposes of the review to be made and shall furnish the registrar with two copies and each of the other parties with one copy thereof, in each case certified by the applicant as true copies. The costs of transcription, if any, shall be borne by the applicant and shall be costs in the cause.