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## Technology heralds a whole new approach!

### FROM THE EDITOR'S PEN: Welcome to *Arbitrarily Speaking!*



This fourth issue of our e-periodical coincides with the fourth month of national lockdown measures in response to the COVID-19 pandemic. We have traded our notion of 'normal' for a new reality: uncertainty. And as with all novel things, none of us truly knows what lies ahead, nor can we say without a doubt which direction we should follow. Living life in a time of crisis begs the question: *Quo vadis? (Where are we marching?)*

In pursuit of the answer to this pressing question, we can take comfort in a universal human truth: uncertainty breeds opportunity. As we navigate our way through the many lockdown levels and regulations, we are all forced to think differently about many facets of our lives. We are required to adapt in order to overcome the challenges we face in our personal lives, and we are reminded to pivot and often pirouette our professional lives to leverage career solutions in a dire economic climate.

Navigating these challenges is also made possible by embracing the opportunity that technology offers and promises us. The many software platforms at our disposal not only save time and money, they also provide a much needed, albeit virtual, connection in a time when social distancing hinders our basic need for human interaction.

On that note, we invite you to browse this latest issue of *Arbitrarily Speaking!* to engage with us and share your thoughts. This e-periodical is your news platform and we'd be delighted to share your valuable contributions. Click [here](#) to reach out to us.

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## UNCLE OSWALD'S Q&A FORUM

It may be mid-winter, yet our learned retired arbitrator remains high-spirited and warm as he keeps abreast of ADR case law in his suntrap of a study. Uncle Oswald, content as only the wise are, is drinking in the sunshine and enjoying a steaming cup of Earl Grey, ready to answer your pressing questions. Many years ago, when he did his articles with Hugo de Groot, Voet and Partners, he had the same ADR issues that you are faced with now.

Send your questions to our General Manager, Rochelle Appleton, at [rochelle@arbitrators.co.za](mailto:rochelle@arbitrators.co.za). She will gladly share your questions with Uncle Oswald and ensure you receive his sage advice on your arbitration queries.

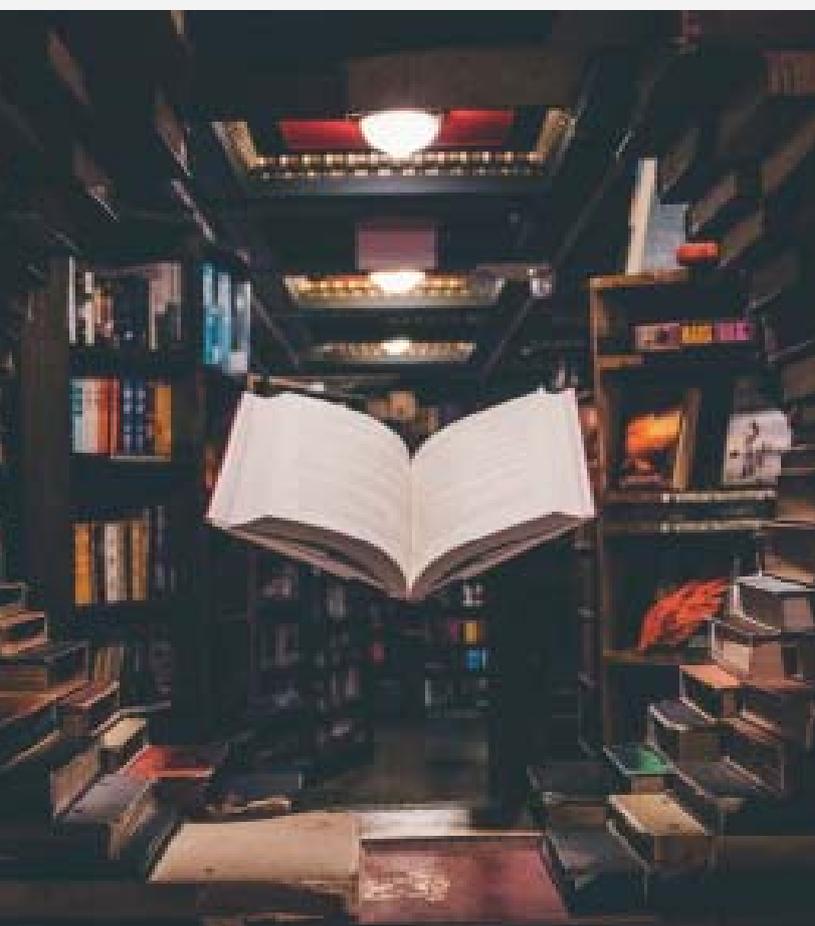
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# TOOLS OF THE TRADE

## Logical reasoning application: Constructing an argument

Mastering the art of argumentation requires a combination of skills and techniques based on two principles: critical thinking and logical reasoning. In this article, Ms Maritza Breitenbach builds on her article in our May 2020 e-periodical, 'The Elements of Logical Reasoning', by delving deeper into the prerequisite knowledge of fundamental truths to avoid committing crimes of logic and to achieve the desired outcome of an argument: consensus.

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## Dealing with defaulting losers in adjudications

What to do when a losing party turns to review instead of honouring the immediate payment due following an adjudication decision? Chris Binnington, a director of the Association of Arbitrators Southern Africa (NPC) and a Life Fellow of the Association of Arbitrators, suggests a small yet significant contractual amendment to hinder the onset of arbitration proceedings in lieu of payment.

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## Adjudication

The lack of knowledge on how to properly present a case can derail the desired outcome. In this article, Chris Binnington provides adjudication parties with essential guidance on how to properly prepare submissions and strengthen their arguments by 'lead[ing] the adjudicator by the nose in the clearest possible way!'

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## The changing face of public procurement

In February 2020, the Public Procurement Bill was published for comment by 30 June 2020. The stated aim of the Bill is to take the current fragmented law governing public procurement and combine it into one regulatory statute. Mr Alastair Hay, senior partner at Cox Yeats Attorneys, unpacks key features of the Bill in relation to Section 217 of the Constitution regarding procurement and the allowance for preferences to be accorded to historically disadvantaged persons. He also highlights the proposed fundamental shift of control from statutory law to government executive discretion, increasing uncertainty and the potential increase in the cost of State procurement.

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# ARBITRATION EDUCATION STATION

We offer a wide range of correspondence courses to new and existing members. By registering with the Association, you'll become an associate member and join a like-minded group of professionals who consider arbitration a positive alternative procedure for settling disputes. With each issue, we will recommend a new course module to our readers.

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# A CASE IN POINT: RECENT CASE REPORTS

## Erratum

*In the last e-periodical (May 2020) of Arbitrarily Speaking, the Zamani case was twice erroneously referred to as a judgment of the Supreme Court of Appeal (SCA). It was in fact a judgment of the High Court of South Africa (Gauteng Local Division, Johannesburg).*

This regular column features interesting and informative case reports and judgments. We invite you to add to our growing collection of case reports but, for now, we're pleased to share with you the Capic case analysis.

## Capic case analysis – Judgment of the Federal Court of Australia

*Capic v Ford Motor Company of Australia Limited (Adjournment) [2020] FCA 486*

### The background

Although this case was heard by the Federal Court of Australia in April 2020, it has specific relevance in these extraordinary times. The respondent requested an adjournment based on, inter alia, the realistic limits of technology. In its judgment, the court provided interesting and useful insights for application in arbitration.

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## ALL ABOUT THE AOA

We're a team of devoted specialists who believe in the absolute value of arbitration.

We take great pleasure in introducing you to our board members in our e-periodicals. In this edition, we invite you to become better acquainted with Messrs Mark Hamilton and Jonathan Mitchell.

Life membership has been awarded to a number of our esteemed colleagues and we're excited to welcome new Fellows to the Association of Arbitrators (Southern Africa) NPC.

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## IN MEMORIAM

A fond farewell to a doyen of the construction industry.

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