



BAR/BALIE

BRIEF/NUUS

THE PERIODIC NEWSLETTER OF THE CAPE BAR

RESPONSES TO AGONY ADVOCATE

"While reading the column "agony advocate" in the Bar Brief, my emotions ranged from appalled to fascinated to violated.

Fascinated that an individual who surely must be a professional in the legal sphere, could bring themselves to pen a column of this nature, in this manner.

Finally, I was simply left feeling violated. As violated as all the many times that I've had to face sexual harassment and smiled and grinned so as not to be labelled, all the many times, when I've changed my appropriate dress /skirt to trousers because of the possible sexual connotation that might be read into my attire, all the many times when I've had to ignore innuendo in a conversation because to address it right there, would make the perpetrator uncomfortable and heaven knows one shouldn't make people feel uncomfortable.

My attempts to look at the column objectively and rationalize what I think, is abhorrent behaviour, leads me to believe that this was an attempt to highlight an important issue by using satire. Bad satire.

The column leaves one reeling with resentment. Not towards the perpetrators of sexual harassment, but towards the unknown author. It makes light of a serious issue in a manner that appears disrespectful towards the victims of sexual harassment.

The column appears to mock the victims of sexual harassment rather than the perpetrators. No amount of "funny" can make up for the lack of insight demonstrated." - Anonymous

"I found the Agony Advocate piece in the last Bar Brief very offensive as did attorneys and clients who spotted it when they were waiting at our reception area. Trivialising the issues faced by women at the Bar isn't funny so if it was meant to be a joke then this doesn't save it from being offensive, it actually makes it worse as it made people think that the Bar considers these issues something to laugh about. There is nothing wrong with humour or light-hearted teasing but this was a step too far." (Anonymous)

"Agony Advocate was entertaining and well-written. South Africans have always been quick to find humour in serious situations, perhaps as a coping mechanism. Just think of the endless load-shedding memes. While the issues raised in Agony Advocate are sadly not fictional, and while they are serious, I think there is no harm in taking a few minutes to have a chuckle about life at the bar. It might in fact serve as an effective way, through humour, of raising awareness of important issues. After all, South Africans seem to respond well to humour. Paula Gabriel

"I read the Agony Advocate with shock and dismay. Being at the Bar for just over 5 years and given the overt sexism and racism, I

first missed that it was an attempt at satire and/or parody. It was indeed a poor attempt. After realising the purpose of the column, my shock was not allayed as it was apparent that the author comes from a privileged position. The column seemed to resemble a preppy school mag where pupils attempt to address concerns but are too afraid to address it concretely and overtly. Racism and sexism are serious problems at the Cape Bar and need to be addressed vigorously.

Unfortunately it also seems that at the Cape Bar addressing sexism takes priority over racism. In my years at the Bar I have heard white counsel on several occasions and quite unapologetically referring to their opposing black colleagues as "monkeys". I have also heard an older counsel refer to black judges and "J"s as they "are not real judges". The "Desperate to fit in Dorothy" piece did nothing to dispel the privileged position of the author who clearly does not experience this kind of racism.

Instead of another poor attempt at satire, perhaps make a more concerted effort. Perhaps publish a survey of sexual harassment incidents, racism and discrimination and open the discussion on concrete ways in which this could be addressed. Regards Agonised Advocate"

"I became aware of this edition of *Agony Advocate* (I'd never heard of the *Bar Brief* before) one day when I was doing some research in the library and heard the librarian Unathi dissolve into fits of laughter. When I enquired as to the source of her mirth she handed me a copy of the *Bar Brief* in question. I read the column and found it very sharp, undeniably satirical and very funny. At the same time I immediately felt an impending sense of dread knowing that humour, in any form, used in conjunction with such serious and topical issues as sexual harassment and gender (in)equality at the bar would not enjoy a happy reception in our fractious society. Personally, I think this is a pity. The uncanny ability of satire to bring truth into perspective poignantly is well documented. Its power often lies in its ability to reach the previously unenlightened and bring home to them the point of view of the 'others' (whatever form such otherness may assume). Ultimately, humour of this nature serves a purpose and does not amount to a mere crude joke made at someone else's expense. Nor does it in my opinion seek to belittle its subject matter: at heart it seeks to lend perspective through humour to the unassuming (a conceit similar to the pet owner hiding medicine in a treat to make it more palatable). Humour, banter and badinage are among the best traditions of the bar and contribute significantly to the richness of the institution - it should be celebrated not sanitised."

- Ruan Kotze

THE ANNUAL CAPE BAR QUIZ 2019

By Ruan Kotze

On 19 September 2019 the Junior Bar Committee hosted the third annual Cape Bar Quiz, welcoming 96 contestants competing in 13 teams to the latest installment of this distinguished and hotly contested competition.

Prior to the event, most bookies had the odds set firmly in favour of a repeat victory for last year's winning team, *Norfolk and Chance* (a competition mainstay comprised mainly of Maddison, the Fitzgerald Jnr's and the deadly Vaughan/Prairie combo).

The evening got off to a very bumpy start with the quizmaster (or mistress in this case?) arriving about 90 minutes late only to discover that she had brought the incorrect microphone and a screen that was about the size of an A3 page.

The resultant delay gave the teams a lot of time to get a head start on their refreshments and complain about their table allocations. The pupil team *Amicus Curious*, who were seated at the bar counter, objected to their inferior seating allocation and proceeded to erect a ramshackle structure directly behind what is perhaps the most glamorous of the regular teams: competing this year under the rather dubious name of *Quizzie Rascals*.

The latter team were incensed and demanded to know why they had been 'disrespected' with a table at the back of the room, next to the unsightly pupil structure no less. The *Quizzie Rascals* quickly had a team of waiters collect their table and deposit it on more valuable real estate.

In the meantime, the Quizmistress had confessed under cross-examination to not having attended the venue beforehand to conduct the contractually agreed sound check. As the venue's sound system was now determined to be beyond our reach we had to improvise with the one speaker we had, and with teams squinting their eyes to read the questions and cupping their hands behind their ears to hear the Quizmistress, the 2019 Quiz finally kicked off.

It was, as expected, a hotly contested competition with several teams (other than *MacRobert de Niro* and the *Denny Cranes*) making a strong play for the leader board right out of the starting blocks. Some turbulence was encountered, however, when the Quizmistress, bless her, tried to incorporate some legal questions. No, the first female judge in South Africa was not Justice Mokgoro but Mrs Justice van den Heever of course! Objections poured in and the TMO had to be called upon to assist the ref on more than one occasion.

As the finish line approached *Norfolk and Chance*, *The Smartinis*, *The Ricequizzies* and *The Big Subpoenas* were neck and neck, it was anyone's race. When the final scores were tallied, however, it was the dark horse that claimed a surprise victory: team *Amicus Curious* (comprised wholly

of pupils) had scuppered the senior teams' hopes of victory and claimed first place from their derelict lodgings at the back of the room. Congratulations to the victors, and to them the spoils!

The Junior Bar Committee would like to thank all the teams who participated with such enthusiasm and gusto as well as our generous sponsors: Duminy SC for the *Andante* olive oil, Stelzner SC and Pierre Rabie for the *Giant Periwinkle* wines and *Lexis Nexis* for the gift vouchers. We look forward to welcoming teams to next year's competition.

SCOTTISH CHAMBERS

"I entered the Scottish model with a degree of scepticism. Change is often hard to grapple with, but I can honestly say that this change was needed. The top three benefits for new members are low overheads, the ability to learn from colleagues and newfound friendships. When members think back to their first few years of practice the reality of practice hits home very quickly. Overheads are high, practical experience is minimal and practice can be isolated. The Scottish model enables new members, like me, to ease into practice by diminishing some of these realities. We spend lots of time bouncing ideas off each other and sharing court experiences. There is always a fellow Scot who grabs the opportunity to have a quick cup of coffee or a glass of wine after work! Once I embraced the change and the scepticism dissipated, I found what I now call "my chambers." I believe the housing committee will find it hard to make us move out!"
Renee Graham

"An office overlooking Danger Beach in St. James was what I wanted. The Bar council had in 2018 said members could give up chambers when they turned 65 and still remain members. The idea was to open up office space to the expanding bar.

My request to practice from home was turned down. I blame civil lawyers (not the verb kind) for this decision. I suspect my defending the indefensible, and sometimes successfully, conjured up visions of me practicing out of the boot of my car in cash notes. I sound bitter. I was. The choice I was given was to hire 'hokkie' 13 in G3 of the Scottish chambers at the Cape Bar, or become a "kort broek advokaat".

I took no. 13 and that has turned out brilliantly. I am really enjoying the whole experience.

I drive into work far less, don't waste up to 2 hours a day in traffic and don't feel like I am not using a valuable asset I am paying far too much for when I stay home to work;

The young, intelligent and hungry advocates who I get to share a space with in G3 make me want to do exactly what they are doing - practicing law.

I get to keep on spending time with my buddies at the bar; only now they pay for the coffee.

Surprisingly my practice has swelled, I thought it would taper.

My instructing attorneys have not shunned me, in fact the opposite. Consulting rooms are always available and there are no lift delays. My problem is disabusing those attorneys of the notion that my savings must be passed on to them and their clients.

All possible aids are present and user friendly. I have access to a copier, internet, telephone etc.; in fact all I had before but at a 10th of the price.

I can buy a small new car each year or go visit my daughter and her family in Sydney's northern beaches for a month with the money I am saving (OK, maybe not the latter).

The desk space is a bit cramped and people talking next to you on the phone are a bit irritating. However that is not really a problem as the 24 seater room is mostly more empty than full.

I am the first to take one of the 5 spaces made available to over 65's in Scottish chambers. There is going to be a rush on the few seats remaining. I have experienced G3 for a month now and have not for a moment regretted giving up my privileged 7th floor view of Table Mountain in a suite with a pampered existence that I had for 30 years.

Scottish chambers are here to stay and I foresee a bright future for the concept."

Overheard in the third division

We spend all of our time in our writing lives in search of perfect sentences. We work hard to write simply, freshly and honestly. To fearlessly represent our clients' lives with skilled favour. To withstand the feels for cracks by clients, counsel and judges. To master the written word.

But not in our spoken lives at the Bar, it seems.

There, most prominently in the windowless, colourless, wooded-cabin of room 16, where no fresh air can labour, we continue to speak with a range of ancient idioms. They are handed down from the mouths of the most learned of friends without any generational adornment. They are as sacrosanct as they are stolid.

Of these spoken words, the firm favourite is the adverb *indeed*. It has universal appeal. Classic. It's a bit pretentious, which is appropriate because we are standing in front of the

person assumed to be all-knowing dressed in a gown and bib. But it's also versatile, because it can be used to great effect on a judge regardless of whether they agree with you. By simply changing the tone and emphasis on the two short syllables you can indicate delight or disdain.

And you can build with it – in the same way a child might become creative with the colourful add-ons in a duplo set. The best add-on is to compound *indeed* with *so*. *Indeed so*. To indeed-so your sentence is to – in the words of Gordon Ramsay – “elevate” the idiom. To indeed so a sentence, is to explain to the court that the conclusive conclusion has been reached and that there is no turning back. Not without an embarrassing public U-turn.

So powerful is this trope, it needn't a verb to complete its statement. The killer punch is of course to *add* a verb and stab the air with *it is indeed so*. This is especially effective when spoken with a slight emphasis on *indeed*, and an upward inclination in tone. When this is coupled with a gentle nod of approval from the judge, the room swirls with such intimacy that embodied in this moment is a tacit invitation to lunch.

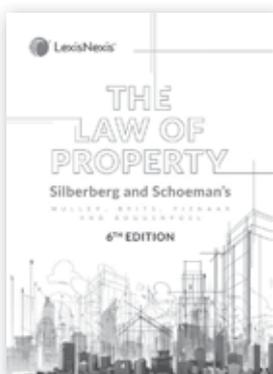
This brings me to *quite*. *Quite* doesn't have the versatility or the classic feel of *indeed*, which is why only senior counsel seem to use it. It's also more pompous, which is again, why only senior counsel use it. So the less said about *quite* the better. If you're going to use *quite*, then don't denude the adverb, use it in a sentence with other words. *Quite, quite so*.

Then there is the exquisite word *exactly*. A word that serves as much to emphasise as it does to cast doubt. A judge who makes point in favour of counsel is gently praised when counsel replies *exactly*, preferably with a downward inclination in tone. Or if the judge hesitantly puts a proposition to counsel which is adverse to counsel's argument, and to which counsel can think of no ready answer, the triumphant *exactly!* can utterly confuse the judge, especially if it is followed by a quick confused repetition of counsel's previous argument.

Then lastly, something must be said of the epic battle between *As it pleases the court* and *May it please the court*. Obviously, the latter is to be preferred but surprisingly the former is more popular. It's hard to understand. *As it pleases the court* has a drunken metrical pattern – two light stresses followed by a heavy stress makes it anapaestic; and it stumbles. But not the mighty *May it please the court*. The line is trochaic – a heavy stress followed by a light stress, which makes it more forceful and formal. Indeed, *May it please the court, M'lady* is graceful if not a little bit sexy – bearing in mind one's wearing a bib and gown.

As one's practice grows, and one's writing gets better, one's address in motion court will remain motionless. So *choose your words wisely* – is what I overheard in court room 16 the other day.

**Get ready
for 2020 with
these must
have legal
new releases**



Silberberg & Schoeman's: The Law of Property, 6th Edition

Authors: Muller, Brits, Pienaar and Boggenpoel

Release Month: December 2019

The Essential Property Law Reference

Completely updated to address changes to legislation, this edition includes the various types of property ownership, protection and loss of ownership, reference and commentary on legislation that has come into effect since the 5th Edition, as well as recent case law, expert commentary across the wide ranging field of property law and more.

Expert Commentary | One-stop Reference | Updated 2019



Litigation Skills for South African Lawyers

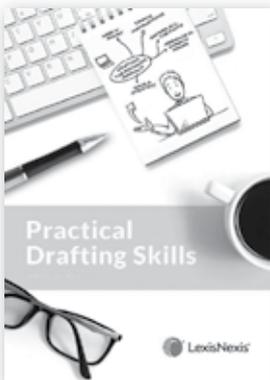
Author: CG Marnewick

Release Month: December 2019

Everything you need to know about litigation skills

Marnewick's Litigation Skills covers every stage of the litigation process. From pre-litigation to litigation alternatives all the way to trial and appeal stages, this title helps you master the techniques and skills needed to be a litigator. The new edition has been updated to cover the Legal Practice Act 28 of 2014, relevant Codes of Conduct and updates to the appeals process and research methodology. This bestseller is essential reading for both civil and criminal litigators.

Pleadings | Drafting | Know-how | Ethics



Practical Drafting Skills

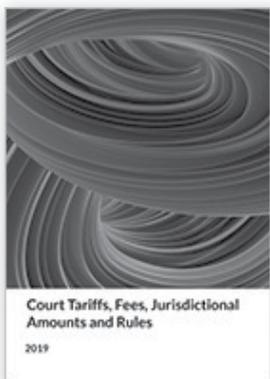
Author: Ismail Hussain SC

Release Month: November 2019

Write clear, compelling pleadings without depending on precedents

Legal students and professionals often rely on a copy and paste approach to drafting documents. Sadly, this can result in sub-standard pleadings that do not accurately communicate the issues and reflect poorly on their expertise. This is the ideal guide to help enhance drafting skills, turn instructions into a cause of action or defence, and draft effective pleadings that are clearly understood and effectively serve clients.

Skills Transfer | Tested | Plain Language | Analytical Thinking | Results



Court Tariffs, Fees, Jurisdictional Amounts and Rules 2019

Author: LexisNexis Editorial Staff

Release Month: October 2019

Quick access to relevant information when preparing bills and attending taxations

As a legal practitioner, taxing master or judicial officer it is vital to keep abreast of updated costs and tariffs relating to litigation in the superior and lower courts. This affordable publication will give you quick access to relevant information when preparing bills of costs and attending taxations, to ensure costs remain reasonable and governed by the existing legal system.

Affordable | Easy-to-use | Current



Legal Aspects of Financing Corporates

Authors: Tracy Gutuza and Hogan Lovells

Release Month: July 2019

Get to grips with the legal and transactional issues of financing corporates

This title aims to simplify the structured finance process and explain the legal implications as well as the tax considerations. It will be of great use to postgraduate students in commercial law, corporate advisors, lawyers, inhouse counsel, financial institutions and SARS.

Easy to Understand | Practical Guide

BAR DINNER 2019

At this year's Bar dinner there was sundowners, merriment, faux gambling, and many, speeches.



Congratulations to those honoured at the dinner and to the functions committee for their ingenuity and hard work.

NEW MEMBERS

Surname:
Badantswana



Name:
Munei

Surname:
Catin



Name:
Clarence

Surname:
De Beer



Name:
Mitchell

Surname:
Fehr



Name:
Ceï

Surname:
Haffejee



Name:
Zia-Ul-Haq

NEW MEMBERS

Surname:
Jere

Name:
Vitima



Surname:
Oosthuizen

Name:
Anneretha



Surname:
Matshaka

Name:
Ruth



Surname:
Perumalsamy

Name:
Kessler



Surname:
McCarthy

Name:
Jacki



Surname:
Price

Name:
Alistar



Surname:
Mentoor

Name:
Etienne



Surname:
Ravat

Name:
Rustin



Surname:
Msuseni

Name:
Thembile



Surname:
Robbertze

Name:
Jandr 



NEW MEMBERS

Surname:
Robertson

Name:
Dugald



Surname:
Shefer-Prahm

Name:
Orit



Surname:
Sing

Name:
Zelek



Surname:
Sundelson

Name:
Stacey



Surname:
Thiart

Name:
Adri



Surname:
Toefy

Name:
Achmat



Surname:
Van Rooyen

Name:
Erika



Surname:
Van Staden

Name:
Michael



Surname:
Wainwright

Name:
Patrick



Surname:
Whitcomb

Name:
David

