



## NEWSLETTER

MAY 2009

**The Society's Annual Dinner  
Middle Temple Hall  
Wednesday, 13 May 2009**

Members – if you have not already booked  
your place at the Annual Dinner,  
there is still time to do so!

*Book online, or see the booking form  
attached to this newsletter*

### Programme of Events

Unless marked otherwise, the following meetings are free to members and guests.

Location maps are now always available on the website.

***All are welcome but for those meetings where the organiser's telephone or email is given,  
it would be helpful if you could please let them know of your intention to attend.***

Tuesday,  
5 May

*Presentation of the winning Hudson Prize Essay*

Sarah Pengelly will present her prize winning entry entitled  
"The Exclusivity Provisions of the NHS LIFT Contract and  
the EU Procurement Regulations"

Chairman: Professor Anthony Lavers

Venue: National Liberal Club, Whitehall Place, London SW1

6.15pm

All attendees are then warmly invited to stay behind after the lecture for drinks.

- Wednesday,  
13 May      *The Society's AGM & Annual Dinner*  
Venue:      Middle Temple Hall, Middle Temple Lane, London EC4Y      6.30pm  
*This event is strictly for SCL members only.*  
*Ticket price £80 per member – see booking form attached.*
- Tuesday,  
26 May      “Amendments to the Construction Act”  
Speaker:      Justin Mort of Keating Chambers  
Chairman:      Martin Green  
Venue:      Lecture Theatre 118, The Northern Terrace, Civic Quarter,  
Leeds LS1 3HE      6.15pm  
Organiser:      [jhawkswell@thkp.co.uk](mailto:jhawkswell@thkp.co.uk)
- Tuesday,  
2 June      “International Process Plant Contracts: the IChemE forms”  
Speaker:      Gordon Bateman  
Chairman:      Paul Buckingham  
Venue:      National Liberal Club, Whitehall Place, London SW1      6.15pm
- Wednesday,  
3 June      *A joint event between SCL, CIArb and 3PB*  
“Litigation v ADR - a heavyweight contest over four rounds ”  
Speakers:      Four barristers from 3 Paper Buildings  
Venue:      The Rose Bowl, Southampton SO30      6.00pm  
Organiser:      [kathryn.gore@bllaw.co.uk](mailto:kathryn.gore@bllaw.co.uk)
- Wednesday,  
10 June      “The ADR Debate”  
Speakers:      Stuart Kennedy – litigation, Peter Aeberli - Arbitration,  
Tony Bingham - Adjudication & Graeme Sampson – Mediation  
Chairman:      HHJ Grant  
Venue:      Clarke Willmott, 138 Edmund Street, Birmingham B3      6 for 6.15pm  
Organiser:      [selvaratnam@mail.com](mailto:selvaratnam@mail.com)
- Tuesday,  
16 June      “Constructing Construction Contracts: principles, policies and practices  
ten years after ICS and West Bromwich”  
Speaker:      Nicholas Baatz QC  
Chairman:      Jocelyn Taylor  
Venue:      DLA Piper LLP, 1 St Paul's Place, Sheffield S1      6.15pm  
Organiser:      [Jocelyn.Taylor@nelsonslaw.co.uk](mailto:Jocelyn.Taylor@nelsonslaw.co.uk)
- Wednesday,  
17 June      “25 years of deciding disputes ... and lessons?”  
Speaker:      Tony Bingham  
Venue:      TLT Solicitors, One Redcliff Street, Bristol BS1 6TP      6.15pm  
Chairman:      Simon Goss  
Organiser:      [simon.goss@tltsolicitors.com](mailto:simon.goss@tltsolicitors.com)
- Tuesday,  
23 June      “25 Years of Deciding Disputes...Lessons?”  
Speaker:      Tony Bingham  
Chairman:      David Rintoul  
Venue:      The Town Hall, Blagrove Street, Reading, RG1 1QH      6 for 6:15pm  
Organiser:      [mamas.stavrou@brewerconsulting.co.uk](mailto:mamas.stavrou@brewerconsulting.co.uk)
- Thursday,  
25 June      “Complex Disruption Claims”  
Speakers:      Wendy McLaughlin and Michael Stokes  
Chairman:      Nerys Jefford QC  
Venue:      Jury's Inn Hotel, Midsummer Boulevard, Central Milton Keynes,  
Buckinghamshire MK9 2HP      6.15pm  
Organiser:      [michael@michael-gerard.co.uk](mailto:michael@michael-gerard.co.uk)



Below this you will see a 'Member Menu' block with several links:

- My membership – gives you the status of your membership and your membership number
- Update member profile – this is where you keep your personal information and preferences up to date. Please review it thoroughly, make any changes you wish, and save the form.
- Search for members – here you can find out how to contact other members who have agreed to be in the online database (which is only available to members)
- Member discounts / Junior members
- My bookings – if you book for an event such as the AGM, you can review your bookings here and make changes as needed
- Help – a page with further information about how to use the site, including how to use the 'My account' section

Among the most obvious changes elsewhere on the website are:

- The papers section has been completely redesigned. One of your privileges as a member is to be able to download published papers from the website. The link to the file is displayed on the page for each paper, provided you are logged in.
- There is now a full search engine which you can use to find anything you need on the website. The search box is in the top right hand side of the screen.
- You can subscribe to receive 'Web updates' if you would like to be informed when new content is added to the site. This subscription is quite different from the monthly SCL members newsletter.
- The online shop has been completely redesigned.

If you have any questions at all, please do not hesitate to contact our webmaster, Edward Peters, at [webmaster@scl.org.uk](mailto:webmaster@scl.org.uk)

## Papers

Four new papers can be found on the website, one of which has also been printed. With this Newsletter, members will receive a copy of **Sarah Pengelly's** paper, to be presented in London on 5th May, which won the prize in the Hudson Prize essay competition 2008, "**The Exclusivity Provisions of the NHS LIFT Contract and the EU Procurement Regulations**" (paper number 155).

Under the innovative LIFT programme for funding new National Health Service primary care facilities, the Special Purpose Vehicle companies established to assemble and deliver new schemes in each local area (Liftcos) are guaranteed a period of exclusivity under their contracts with the NHS and other local bodies. How does this exclusivity fit with the European requirements for open, transparent and competitive procedures for the tendering and awarding of contracts in the public sector? Sarah Pengelly considers the issues and suggests that aspects of the LIFT structures cannot easily be reconciled with European public procurement rules.

**Trevor Thomas'** commended entry in the Hudson Prize essay competition, "**The enforceability of agreements to negotiate in major construction projects**" (paper number D100) is also now on the website.

Trevor Thomas looks at interim arrangements - to meet, discuss and work towards agreeing a final construction contract - 'agreements to negotiate', and considers whether they are legally enforceable. The paper explores some of the main arguments for and against the enforceability of such agreements; principally whether they are akin to agreements to agree and consequently unenforceable due to a lack of contractual certainty and whether the consideration provided under an agreement to negotiate is illusory. Trevor Thomas contrasts the view of the English and Australian courts. He concludes that, where the parties to a major construction project wish to establish an agreement to negotiate, careful thought must be given to whether the agreement is intended to be enforceable.

Also to be found on the website, following his exceptionally popular talk, is **James Bremen's** paper "**English Law Concepts in the Gulf Cooperation Council Countries**" (paper number D98).

The paper seeks to provide a guide to the application of established English law concepts in the Gulf Cooperation Council countries (GCC) jurisdictions and to highlight important similarities and differences. James Bremen considers the law that might apply to a construction contract in the GCC countries, the types of legal regime and the differences between common law and civil law systems. He then goes on to look at the significance of the freedom of contract doctrine in English law, before considering in more detail the application of a number of particular principles.

The fourth paper to be found on the website is **Hamish Lal's** paper, "**Liquidated Damages**", which he presented to a meeting in Preston in October (paper number D99).

The paper looks at the extent to which English law allows parties to a contract to specify their own remedies in damages in the event of breach. It examines the so-called 'rule against penalties', that penalty clauses remedies are *not* allowed but liquidated damages clauses *are*. Hamish Lal explains that he seeks to address some of the many myths that abound in the context of liquidated damages. Part A considers whether the 'compensatory model' really is at play or if there is another test for the enforceability of liquidated damages that really determines the cases. Part B examines the fact that a sum of money payable otherwise than on a breach of contract cannot be a penalty, and Part C considers whether liquidated damages are always 'an exclusive remedy'.

## Legal Resources

Looking for authorities in Australia, Canada or Singapore? Members will doubtless be familiar with the British and Irish Legal Information Institute (BAILII) website [www.bailii.org](http://www.bailii.org), the central internet location from which it is possible to search - for free - case law and other legal materials from England & Wales, Scotland and Ireland. A number of similar sites are accessible via BAILII, and in particular the Commonwealth Legal Information Institute (CommonLII) provides a similar service for core legal information from Commonwealth and common law countries at [www.commonlii.org](http://www.commonlii.org).

Some European material is available via BAILII. Also for EU/EC legislation and the Official Journal, as well as case law from the ECJ (Court of Justice of the European Communities), go to [www.eur-lex.europa.eu](http://www.eur-lex.europa.eu); for the European Convention texts and Court of Human Rights case law, go to [www.echr.coe.int](http://www.echr.coe.int).

Confused by the abbreviations used for law reports? Try going to [www.legalabbrevs.cardiff.ac.uk](http://www.legalabbrevs.cardiff.ac.uk). You can search, by title or abbreviation, English language legal publications from the British Isles, Commonwealth and United States, including those covering international and comparative law. This includes law reports and law periodicals, and some legislative publications and major textbooks.

## Construction Industry Council

The CIC website contains various Government consultation documents on subjects such as "Carbon Emissions Reduction Target" and the "Community Energy Saving Programme (CESP)". Members who wish to participate should visit the CIC website at [www.cic.org.uk/home/index.shtml](http://www.cic.org.uk/home/index.shtml)

## **New Members**

Finally, we are pleased to welcome the new members who joined the Society in April:

Victoria Hurst, London  
Manish Patel, Pinner  
Richard Swan, London  
Mike Murphy, London  
Stephen Daniels, Glasgow  
Howard Cornes, Manchester  
Andrew Oddie, London  
Sekai Nyambo, London  
Jason Farnell, Wokingham  
Anton van Langelaar, Taipei, Taiwan  
Steven Fortune, Singapore  
Ian Robinson, London  
David Doyle, Ultimo, Australia  
C.K. Law, Hong Kong  
Justin Michaelson, London  
Guy Higginbottom, Solihull, West Midlands  
Francis Tiernan, Melbourne, Australia  
Kavita Balasubramanian, Wickede Ruhr, Germany  
Duncan Hugh-Phillips, East Sussex  
Jonathan Kay Hoyle, Sydney, Australia  
David Thorne, London  
Alan Stone, London  
Caroline Lee, London  
Andrew Tee, Esher, Surrey  
Greg Marshall, West Midlands