



NEWSLETTER : JUNE 2018

Programme

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

Location maps are now available on the website.

To register for an event, please go to the SCL website (www.scl.org.uk) (under the tab “Participate” – “Meeting and events”) and where online booking is not available please contact the organiser directly.

London

Tuesday,
5 June “Challenging a payment notice in the absence of a pay less notice”
Speaker: Justin Mort QC
Chairman: Mrs Justice Jefford DBE
Venue: National Liberal Club, Whitehall Place, London SW1 6.30pm
Organisers: rchampion@championpearce.com, jonathan.cope@mcms.co.uk,
karen.gough@39essex.com, hlal@akingump.com &
rebecca.shorter@whitecase.com

(Please note that bookings must be made online for this event, and SCL will not take bookings by email)

Tuesday,
3 July “Privacy in arbitration - how far should we lift the curtain on what happens?”
A joint meeting of the SCL and the Society of Construction Arbitrators
Speaker: Lord Dyson
Chairman: Lord Justice Coulson
Venue: National Liberal Club, Whitehall Place, London SW1 6.30pm
Organisers: rchampion@championpearce.com, jonathan.cope@mcms.co.uk,
karen.gough@39essex.com, hlal@akingump.com &
rebecca.shorter@whitecase.com

(Please note that bookings must be made online for this event, and SCL will not take bookings by email)

Thursday,
19 July “Joint Organisations' Boat Trip”
Venue: Festival Pier, River Thames, London 6.30pm
Organisers: ladams@atkinchambers.com, rebecca.shorter@whitecase.com &
swilliams@keatingchambers.com

SCL Astra, RICS Matrics London & CIOB Novus present the joint organisations' Boat Trip on the River Thames. You must be a member of one of the organisations to sign up. Numbers are limited, and places will be allocated to members and their guests on a first to pay basis. Cost £45 including VAT.

Thursday,
9 August “SCL Networking Evening”
Venue: The Oyster Shed, The Observation Deck, Angel Lane,
London EC4R 3AB 5.00pm

Please note: The cost of the event is £12.50 plus £2.50 VAT = £15.00 per head, which will cover a light buffet.

Cardiff

- Wednesday,
20 June “Smash and Grab Adjudications – Dead or Alive?”
The South West and Wales Region of the Adjudication Society Joint Event
Speaker: Dennis Baldwin, Peter Gracia and Rachel Gwilliam
Chairman: Andrew Kearney
Venue: Blake Morgan LLP, One Central Square,
Cardiff CF10 1FS 5.30 for 6.00pm
Organiser: Rachel.Gwilliam@blakemorgan.co.uk
- Wednesday,
4 July “NEC 4 – What's New – Evolution Without Revolution?”
Speaker: Lindy Patterson QC
Chairman: Rachel Gwilliam
Venue: Blake Morgan, One Central Square,
Cardiff CF10 1FS 5.30 for 6.00pm
Organiser: Rachel.Gwilliam@blakemorgan.co.uk

Ireland

- Thursday,
13 June “Mega Projects - The Top Ten Legal Issues in International Construction”
Joint SCL/Irish Chapter of the European Court of Arbitration Event
Speaker: Hamish Lal
Chairman: Mr Justice David Barniville
Venue: Sutherland School of Law, University College Dublin, Belfield,
Dublin 4, Ireland 6.00pm
Organiser: adhussey@lawlibrary.ie
- Thursday,
27 September “Mediation vs Conciliation: which is better and why do they fail?”
Speakers: Rosemary Jackson QC & Orla Fitzgerald, Architect & Conciliator
Chairman: Eamonn Conlon, A & L Goodbody
Venue: A & L Goodbody, North Wall Quay N Wall Quay, North Wall, Dublin 1,
D01 H104 6.00pm
Organiser: adhussey@lawlibrary.ie
- Thursday,
4 October “SCL Advocacy Course - Dublin”
Venue: William Fry, 2 Grand Canal Square, Grand Canal Dock,
Dublin 2, Ireland 10.00am
Organiser: adhussey@lawlibrary.ie
- Friday,
30 November “SCL Lunch in Dublin”
Speaker: Charles Brower
Venue: Guinness Storehouse, The Arrol Suite, St James's Gate,
Dublin 8 12 noon for 1.00pm
Organiser: adhussey@lawlibrary.ie

Leeds

- Tuesday,
12 June “Contractor insolvency in a post-Carillion landscape”
Speakers: Jonathan Lewis and Helen Dennis, 4 Pump Court
Chairman: Andrew Essam
Venue: Leeds Beckett University, Lecture Theatre B, The Rose
Bowl Building, Portland Way off Portland Crescent,
Leeds LS1 3HB 6.15pm
Organiser: jhawkswell@hklegal.co.uk

Friday,
7 September “The SCL Lunch in the North of England”
Speaker: Andrew Parker FRCS Consultant & ENT Surgeon
Venue: Leeds Marriott Hotel, 4 Trevelyan Square, Boar Lane,
Leeds LS1 6ET 12.15 for 1.00pm
Organiser: jhawkswell@hklegal.co.uk

Cost £75 per person. Block bookings by firms will be limited to 2 tables each. All places will be allocated on a first paid, first served basis.

Manchester

Friday,
13 July “The SCL Manchester Summer Lunch”
Speaker: Edwina Currie
Venue: The Lowry Hotel, 50 Dearmans Place, Chapel Wharf, Salford, Manchester
M3 5LH 12.30 for 1.00pm
Organisers: fraser.askham@cms-cmno.com & LOsborne@ridge.co.uk

Cost £75 per person. Block bookings by firms will be limited to 2 tables each. All places will be allocated on a first paid, first served basis.

Scotland

Friday,
9 November “The SCL Lunch in Scotland”
Venue: The Supper Club, 29 Royal Exchange Square,
Glasgow G1 3AJ 12 noon for 1pm
Organisers: louise.shiels@brodies.com & lhc@cdr.uk.com

Sheffield/Derby/Nottingham

Tuesday,
11 September “Construction/ADR update”
Speaker: Kim Franklin, Crown Office Chambers
Chairman: Jocelyn Taylor
Venue: Hallmark Hotel, Midland Road, Derby DE1 2SG 6.00pm
Organiser: jocelyn1taylor@btinternet.com

South West

Tuesday,
19 June “NEC 4 – What's New – Evolution Without Revolution?”
Speaker: Lindy Patterson QC, 39 Essex Chambers
Chairman: Andrew Langmaid
Venue: Bristol Hotel, George White Room, Prince Street,
Bristol BS1 4QF 5.30 for 6.00pm
Organiser: andrew.langmaid@satisconsulting.co.uk

(Please note that bookings must be made online for this event, and SCL will not take bookings by email)

Friday
19 October “The SCL Lunch in Bristol”
Venue: Bristol Marriott Royal Hotel, College Green
Bristol BS1 5TA 12 noon for 1.00pm
Organiser: Jonathan.Spencer@simmons-simmons.com

8th International Society of Construction Law Conference

“Construction Law: Local Issues- Global Perspectives.”

September 26th -28th 2018, Chicago, IL- The Palmer House

The conference program is finalised and registration is now open. Please click below to register for the conference. www.scl-na.org

Further events are listed at www.scl.org.uk

We are keen to receive suggestions for speakers and topics both for the London and the Regional programmes. If you have any suggestions please send your ideas to: Keith Kirkwood (keithkirkwood@benningtongreen.co.uk); Ronan Champion (rchampion@championpearce.com); Jonathan Cope (jonathan.cope@mcms.co.uk) or Hamish Lal (hlal@akingump.com)

From the Chairman

Dear SCL Members,

This is my last message as your SCL Chairman, because my two-year term of office expires on 18 June. It has been a great pleasure and a privilege to serve in this rôle, and I thank all of you, all members but particularly members of Council and our Regional Representatives, for all the support and courtesy extended to me during my tenure.

At the Annual Dinner on 2 May we bade farewell to Sir Rupert Jackson, our President for the last 6 years. His many entertaining speeches and patronage of the Society have been hugely appreciated. A very warm welcome to our new President, The Right Honourable Lord Justice Coulson. Welcome also to our new Council members (see next item below), and thanks to outgoing member Peter Phillippo for his contributions to our administrative work during his presence on Council.

Those of you who attended the Annual Dinner will be aware that one of Sir Rupert’s last functions as President was to award the President’s Medal to distinguished member Frances Paterson MBE, herself Chairman of SCL in 1995-6, and for many years the formidable and dedicated driving force behind publication of the SCL’s academic papers. She has now relinquished this key SCL function to Jo Howard, whom we welcome and wish every success in this rôle.

Looking at the events calendar please may I draw your attention particularly to the talk at Leeds Beckett University on 12 June, “Contractor insolvency in a post-Carillion landscape”. Highly topical, and highly recommended.

On the social side, numbers of reservations against total capacity are currently as follows:

Date	Event	Numbers	Capacity
Friday, 13 July 2018	The SCL Manchester Summer Lunch	227	280
Thursday, 19 July 2018	Joint Organisations' Boat Trip	74	260
Thursday, 9 August 2018	SCL Networking Evening	61	120
Friday, 7 September 2018	The SCL Lunch in the North of England	101	270

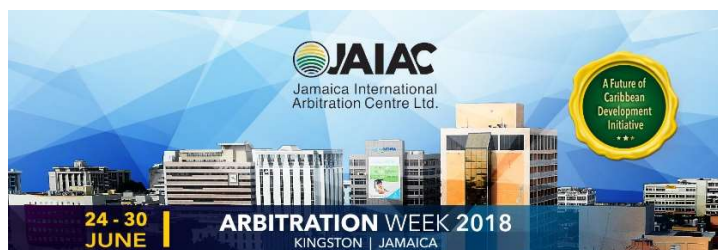
With this last message I wish all members a great summer. Our new Chairman will be announced after the next Council meeting on 18 June.

Christopher Ennis – Chairman
Chris@tqef.uk.com

SCL Council Results

Those elected to serve as members of council were Lauren Adams, Paul Battrick, Shy Jackson, Hamish Lal, Claire Packman, Jonathan Pawlowski and Christopher Sunderland. The election result was announced by SCL Chairman Christopher Ennis at the Annual Dinner on 2nd May. Congratulations were given to the winners and thanks were given to all who put their names forward for election.

SCL is pleased to support the following international event



**To include the Maurice Stoppie Lecture/
NYC 60TH Anniversary Conference: “Arbitration on the Move”**

For further details and registration go to <http://www.jaiac.org/>

Hudson Prize Presentations

The presentation of the SCL Hudson Prize winning papers for 2017 took place at the National Liberal Club on 8 May. The first presentation was the Joint Second Prize winner, Ryan Turner, entitled ‘Hanging By a Thread’ on fitness for purpose obligations after the Supreme Court’s decision in MT Hojgaard. Ryan is a graduate of King’s College, London and is currently a pupil barrister at Keating Chambers. This was followed by the other Joint Second Prize winner, Ralph Goodchild, whose paper was entitled ‘Proven by Computer?’ ‘on the potential for the use of system dynamics in disruption claims. Ralph is a graduate of Cambridge University and is an Associate at White & Case. The final presentation of the evening was by the winner of First Prize, Matthew Bell, Senior Lecturer in Law at the University of Melbourne. The subject of his paper was the use of construction regulation in the aftermath of the Grenfell Tower disaster, basing his theme on the question, attributed to a fireman attending the dreadful scene: ‘How is that even possible?’ Matthew, who had previously won Second Prize in the competition on two occasions, travelled from Melbourne to give the presentation and received particularly sustained applause from the large audience. After the speakers had taken questions from members and guests, Professor Anthony Lavers, Chairman of the Judging Panel, congratulated them and thanked his fellow judges for their efforts in adjudicating the entries. The closing date for the 2018 SCL Hudson Prize is 3 January 2019

Meeting of University Liaison Committee with Representatives of the Universities. 2 May 2018

A meeting was held in the Queen’s Room at the Middle Temple on 2 May between the members of Council’s University Liaison Committee and representatives of 16 universities from throughout the UK, including Cambridge, Cardiff, Glasgow Caledonian, Imperial College London, King’s College London, Leeds Beckett, Loughborough, Oxford Brookes, Robert Gordon, Central Lancashire, Bath, Reading, Salford, Westminster, Wolverhampton and West of England. The Committee gave a presentation on different aspects of SCL’s work in relation to the teaching of construction law. Professor Anthony Lavers, the Committee’s Chair, introduced the objectives and operation of SCL and its relationships with the European Society of Construction Law and sibling SCLs around the world. Lauren Adams spoke on the work of SCL Astra and the Regions, Shy Jackson on SCL Papers and other Web-Page resources, including the list of construction law courses, Peter Phillippo on grants for the purchase of text-books and other teaching resources, including guidance on procedure, and Dr Hamish Lal on SCL- funded prizes and visits by Committee members to the universities, for example, for prize-giving ceremonies. Professor Lavers emphasised SCL’s desire to engage with the universities to assist in the teaching of construction law and invited views in the Forum which followed. Anyone wishing to know more about the grant procedure please contact Jill Ward at admin@scl.org.uk or Frances Whitehead at frances.whitehead@scl.org.uk.

Government publishes consultations on the 2011 amendments to the Housing Grants, Construction and Regeneration Act 1996 and on retention practices

As many of you will be aware, at the end of October 2017 the Government published a consultation on the 2011 amendments to the Housing Grants, Construction and Regeneration Act 1996, as well as a consultation on retention practices. These consultations are obviously relevant to the work of many of our members, and we would encourage as many of you as possible to respond. Although many of the questions are directed at parties to construction contracts, the consultation document makes it clear that the consultation is also relevant to lawyers and adjudicators.”

General Data Protection Regulations (GDPR)

As many of our members will know, the GDPR comes into effect on 25 May 2018 and are aimed at improving data protection for individuals. The SCL takes data protection seriously and we refer you to the SCL Privacy Policy which can be found at <https://www.scl.org.uk/privacy-policy>.

In order to ensure that we can still keep in touch with members and let you have information about the SCL including details of events and published papers, we require members’ consent for SCL to process their data. We would therefore be grateful if you would log on to your account and confirm agreement to being contacted. To do this, visit your Profile page (Profile tab on your user account page), tick the 'Data consent' box in the 'Region, mailing & data preferences' section near the bottom of the form, and save the form."

If you prefer to provide confirmation by post, please fill in the details below and post it to SCL. If you fail to do so we may not be able to contact you.

Data Consent – In confirm that the SCL can manage my data and contact me in accordance with the SCL Privacy Policy

Name (please print): _____ Signature: _____

Address: _____ Date: _____

Papers

Printed and online is **Ryan Turner’s** joint second prize winning entry in the Hudson essay competition 2017. **Hanging by a Slender Thread: Design Obligations in Construction Contracts Following *MT Højgaard v E.ON* (210)** was presented in London on 8th May. The paper considers the extent to which *MT Højgaard v E.ON* can be said to have changed or clarified the law regarding the interpretation of contracts, especially in relation to the issue of contracts of ‘double obligation’. The author suggests that, despite initial industry concerns, the judgment is best understood as an application of conventional principles to the specific facts of the case. The paper goes on to comment on the varying treatment of ‘design life’ by the courts when assessing the allocation of risk of design failure between contractors and employers. The paper concludes with thoughts on how the risks illustrated by the case may be controlled.

Online is **Kort Egan’s** Highly Commended Hudson entry, **Episode 2018: The Defective Premises Act Strikes Back** (D210). Kort Egan looks at the rarely invoked provisions of the Defective Premises Act 1972 and argues that these might provide a route to improved standards and recovery for wronged purchasers of dwellings. Section 1(1) of the Act states that a person ‘taking on work for or in connection with’ the provision of a dwelling owes a duty to the person who orders the dwelling or any person who acquires an interest in the dwelling. By analysing the policy behind the Defective Premises Act 1972 and the relevant case law, the author questions whether building control services provided by local authorities would be captured by this wording. He suggests that the ability to pursue claims against local authorities or other building control bodies could help prevent the mistakes highlighted by the Hackitt interim report.

ESCL THESIS PRIZE 2018

Did you finish your thesis with a construction law relevant topic and got it graded in the period from the 1st of June 2017 on to the 30th of May 2018? Then you might be eligible for the ESCL Thesis Prize!

In 2012 the European Society of Construction Law (ESCL) created the annually awarded ESCL Thesis Prize for theses on construction law written during a master level's study. In the past six years the ESCL Thesis Prize has been awarded to a number of high-quality theses written by participants of different nationalities and has developed into a prestigious international master thesis prize.

Which theses can be submitted?

The jury will consider only theses that concern construction law. This is a wide field of law, it includes for example the following topics:

- Architecture/civil engineering
- Construction and engineering contracts
- Professional liability of architects or engineers
- Contract administration - Procurement law
- Law on transfer of property
- PFI - Arbitration/mediation/dispute resolution/avoidance/litigation
- Tort law

Everyone who has written a thesis on one of these topics or another topic in the field of construction law is kindly invited to submit an entry for the ESCL Thesis Prize. (The regulations of the prize contain further requirements for admission and can be downloaded from the ESCL website: www.escl.org).

The Prize

The ESCL Thesis Prize consists of two prizes: a 1st prize and a 2nd prize. The 1st prize will be awarded with € 2.500,- and the 2nd prize with € 1.000,-. The awarding ceremony will take place during the annual conference of the ESCL on October 26 2018 in Bucharest, Romania. The winners may also be invited to submit a (modified) version of the thesis for publication to the editorial board of the International Construction Law Review.

Background information about the ESCL

The European Society of Construction Law is an European organisation that consists of 20 national construction law societies. The Society promotes the education, study and research in the field of construction law. Particular initiatives of the ESCL are, amongst other things:

- The organisation of an annual conference, where papers on a specific construction law topic are presented.
- The publication (in 2015) of the book *Studies in European Construction Law*, that contains accounts of the law of thirteen major European jurisdictions in relation to a range of construction matters.
- The ESCL Summer School on 'Comparative European construction and procurement law', July 2, 2018- July 7, 2018.

For more information about the ESCL in general or the ESCL Thesis Prize in particular (i.e. the Thesis Prize Regulations), please visit www.escl.org.

SCL Astra London committee (formerly Junior SCL)

The SCL Astra London committee are looking for non-lawyer committee members. We are looking for two committee members to diversify the committee to represent the membership fully. If you are interested in applying for one of these roles, Please email swilliams@keatingchambers.com; Rebecca.shorter@whitecase.com or ladams@atkinchambers.com.

ESCL Book - Studies in European Construction Law

Editors: **Monika Chao-Duivis, Giovanni Iudica, Benoît Kohl, Anthony Lavers, Hugues Périnet-Marquet, Hubert Stöckli & Panagiotis Verveniotis**

International projects and other cross-border activity have become a common part of the European construction scene. As well as opportunities, this phenomenon brings challenges and risks. It has become vital for those working outside their own national boundaries to have some appreciation of the legal environment in which they are operating, not as a substitute for specialist legal advice, but as a basis for understanding.

This book, prepared under the auspices of the European Society of Construction Law, contains accounts of the law of twelve major European jurisdictions in relation to a range of construction matters. Some are general, such as standard form contracts and sub-contracting, and the respective obligations of employer and contractor. Others are specific aspects of contractual performance: the duty to warn, payment, subsoil conditions, delay and disruption and liquidated damages. Issues of liability and dispute resolution are also considered.

The work offers students and practitioners the opportunity to make comparisons between different approaches to common construction law issues in the jurisdictions represented. These are: Belgium, Denmark, France, Germany, Greece, Italy, The Netherlands, Romania, Slovak Republic, Sweden, Switzerland, United Kingdom. 766 pages.

£75 (excluding shipping) UK: £5 / overseas £10

Order via Society of Construction Law UK, 234 Ashby Road, Hinckley, Leicestershire LE10 1SW
<http://www.scl.org.uk/resources/shop/escl-book> E: admin@scl.org.uk T: 07730 474074

SCL Australia Brooking Prize, 2018: entries now invited

The Society offers the Brooking Prize annually for the best essay submitted in the field of construction law.

It is named after The Hon Robert Brooking AO QC in recognition of his Honour's pioneering contribution to the study and practice of construction law in Australia. Papers are now invited for the 2018 Brooking Prize. The Society is delighted to announce the following prize offering for 2018:

Brooking Prize – A\$5,000

Brooking Student Prize – A\$1,500

High Commendation – A\$1,000 (General), A\$500 (Student)

Commendation – A\$500 (General), A\$250 (Student)

All entrants awarded a prize or commendation will, in addition, be granted complimentary membership of the Society for one year. Entries must be submitted in Microsoft Word or .pdf format and received by 4.00pm Sydney time on Wednesday 13 June 2018. Further information can be found in the Rules.

<https://www.scl.org.au/what-we-do/brooking-prize>

SCL Astra 'Opting In' to receive communications

If you wish to receive communications regarding Astra events, you will need to opt in to receive them. The option to become an Astra member is in addition to all the other SCL benefits our membership offers. To become an Astra Member, you need to meet at least one of the following criteria:

1. Up to 10 years post-qualification
2. Recently moved to a new field within the construction legal industry
3. Young at heart

<https://www.scl.org.uk/participate/astra/register>

SCL Astra (formerly Junior SCL)

Two important qualities are required to succeed in the construction legal market (apart from avoiding hard hat hair):

1. Knowledge / an understanding of the wonderful world of construction law
2. A wide and varied network of contacts to assist in generating business and satisfying client demands

With that in mind, SCL Astra (formerly Junior SCL) was developed to provide tailored opportunities to develop these qualities for existing SCL members who fall within one of the following categories:

- Up to 10 years post-qualification
- Recently moved to a new field within the construction legal industry
- Young at heart

We organise a range of activities for our members, including social events, site visits, seminars and our bi-annual conference (planned for mid-2016). We adopt the mantra that there are no stupid questions and foster an environment of learning and development. We also maintain strong links with RICS Matrics and CIOB Novus which permits the sharing of insights into various aspects of the construction industry. There is no additional cost to be part of SCL Astra – once you are an SCL member and meet one of the above criteria; we welcome you to our ranks!

If you are interested in registering as an Astra member, please sign up on the Astra page of the SCL website. Otherwise, watch out for upcoming Astra events in the SCL newsletter and on the website.

SCL Astra Twitter handle (@SCLAstra). Finally, if you are interested in being part of the Astra committee in your region, we would love to hear from you. Please email swilliams@keatingchambers.com; Rebecca.shorter@whitecase.com or ladams@atkinchambers.com.

SCL, Social Media, E-mail and Keeping You Informed

As the Society grows both here and around the world and as Social Media, in all its forms, becomes increasingly important the SCL Council is pleased to announce that the SCL now has a presence on Twitter, LinkedIn and Facebook where you can find information, news and event. The SCL will continue to send you e-mails, but, you can now keep up to date with the SCL through Social Media as well.

We hope you will find these of use:

LinkedIn group 'Society of Construction Law UK'

Facebook page 'Society of Construction Law UK'

Twitter name '@SCL_UK' SCL Astra Twitter handle (@SCLAstra)

We always welcome feedback and comments, now including via tweets and postings on how we can improve the service the SCL provides to its members. Contact details for all Council members can be found on the SCL's website. We would also take this opportunity to remind all members to update their online details and preferences to ensure you only receive the information you want from the SCL.

New Members

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

Justin Axten, London
Hamish Clark, London
Alastair Ferguson, London
Karim Ghaly, London
Suman Babu Kaki, India
Matthew Pendlebury, London
Gemson Santiago, UAE
Jonathan Youl, London

Guntej Bhushan, London
Richard Edwin, London
Natasha Fortune, London
Rachel Henderson, London
Kevin Magill, Canada
Stewart Robertshaw, Surrey
Peter Scurlock, Birmingham

Chris Bryden, London
Peter English, Leicester
Patrick Fox, France
Steven Jackson, London
Karumathil Krishnaprasad, Bahrain
Richard Sage, London
Satvinder Singh, Malaysia