



NEWSLETTER : NOVEMBER 2017

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,
7 November “Contribution claims: sharing the pain after IMI v Delta”
Speakers: Ben Patten QC & Sian Mirchandani
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)

Friday,
17 November “Tall tales: An introduction to high rise engineering and why it is special”
SCL Astra Breakfast Seminar
Speaker: Bill Price
Venue: Simmons & Simmons, City Point, 1 Ropemaker Street,
London EC2Y 9SS 8.15 for 8.45am
Organisers: ladams@atkinchambers.com, rebecca.shorter@whitecase.com &
swilliams@keatingchambers.com

Tuesday,
5 December “Kaleidoscope: all change in domestic and international standard forms”
Speakers: Ellis Baker and Professor Anthony Lavers
Chairman: Rachel Ansell QC
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,
6 February “Design co-ordination”
Speakers: Stuart Macdougald-Denton, Matthew Cousins
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)

Friday, "SCL Annual Lunch"
9 February Speaker: Steph McGovern, BBC TV personality
Venue: Grosvenor House, A JW Marriott Hotel, Park Lane,
London W1K 7TN 12 noon for 1.00pm

Cost £99 per person (including VAT). Block bookings by firms will be limited to 3 tables each. All places will be allocated on a first paid, first served basis. Each table will seat 10 people.

Birmingham

Wednesday "An Introduction to Building with Concrete - and the things that can go
8 November, wrong with it"
Speaker: Professor Peter Robery
Chairman: Michael O'Shea
Venue: Anthony Collins LLP, 134 Edmund Street,
Birmingham B3 2ES 5.30 for 6 pm
Organisers: Ian.Yule@shoosmiths.co.uk & michael.o'shea@gowlingwlg.com

For further enquiries please contact Grace.Sparkes@shoosmiths.co.uk

Wednesday, ""Who is my neighbour?" The circumstances in which a professional can assume
10 January responsibility in tort without any contractual responsibility"
Speaker: David Sears QC, Crown Office Chambers
Chairman: Michael O'Shea
Venue: Mills & Reeve, 78-84 Colmore Row,
Birmingham, B3 2AB 5.30 for 6 pm
Organisers: Ian.Yule@shoosmiths.co.uk & michael.o'shea@gowlingwlg.com

For further enquiries please contact Grace.Sparkes@shoosmiths.co.uk

Ireland

Thursday, ""Who is my neighbour?" The circumstances in which a professional can assume
30 November responsibility in tort without any contractual responsibility"
Speakers: David Sears QC, Crown Office Chambers & Stephen Proctor,
McCannFitzgerald
Chairman: Mark Sanfey S.C, Law Library, Dublin
Venue: McCannFitzgerald, Riverside One, 37 - 42 Sir John Rogerson's
Quay, Grand Canal Dock, Dublin 2 6.00pm
Organiser: adhussey@lawlibrary.ie

Friday, "SCL Lunch in Dublin"
1 December Speaker: Jim O'Callaghan SC TD
Venue: Guinness Storehouse, The Arrol Suite, St James's Gate,
Dublin 8 12 noon for 1.00pm
Organiser: adhussey@lawlibrary.ie

Please note: Cost €100 per person (including Irish VAT). Blockbookings by firms will be limited to 2 tables each. All places will be allocated on a first paid, first served basis. Each table will seat 10 people. Bookings can only be made online and this event must be paid for in euros, via Paypal.

Thursday,
18 January “Expert determination in construction law”
Joint SCL Dublin/ Belfast lecture
Speakers: John Madden, Madden Mediation & Arbitration, Dublin & Michael
Humphreys Q.C, Bar Library, Dublin.
Chairman: John Tackaberry QC, 39 Essex Chambers,
Venue: Royal Institute of Architects, 8 Merrion Square, Dublin 2 6.00pm
Organiser: adhussey@lawlibrary.ie

Friday,
16 February “Construction 2020: (How well has it worked & what might follow?)”
SCL/SCL Astra Dublin Conference
Speakers: China Irwin (Lalive, Geneva), Dermot Flanagan SC, Karim J Nassif
(LPA-CGR Avocats, Dubai), Deirdre Ní Fhloinn Barrister, Bruno
Herbots (Herbots, Dublin), Andrew Singer (Bar Library, Belfast),
Rashda Rana S.C, Dr David-John Gibbs (HKA, London), Katie Lee
(Hardwicke Chambers, London) and Martin Cooney (Smyth & Son)
Venue: Royal Marine Hotel, Dun Laoghaire, Dublin 9.30am
Organiser: adhussey@lawlibrary.ie

Cost: €100 per person and includes a light breakfast and lunch.

Leeds

Tuesday,
21 November “Payment & Pay Less Notices: A Smashing and Grabbing Update”
Speakers: Richard Liddell & Thomas Ogden of 4 New Square
Venue: Leeds Beckett University, Lecture Theatre D, The Rose Bowl
Building, Portland Way, Leeds LS1 3HB 6.15pm
Organiser: jhawkswell@hklegal.co.uk

Friday,
9 March “The Society of Construction Law Annual Conference 2018”
Venue: The Royal Armouries, Leeds LS10 1LT 8.15 for 9.00am
Organiser: jhawkswell@hklegal.co.uk

Manchester

Monday,
4 December “Gamekeeper turned Poacher or vice versa” – followed by Mulled Wine and Mince
Pies
Speaker: Sir Robert Akenhead
Venue: Manchester Hall, 36 Bridge Street, Manchester M3 3BT
17:30 – 18:00 Tea/coffee before the talk
18:00 – 19:00 Akenhead talk
19:00 – 21:00 Mulled wine and mince pies
Organisers: f.askham@nabarro.com & LOsborne@ridge.co.uk

Cost £15 per head and bookings can be made online.

North East

Thursday,
16 November “Design Risk: where do the dangers lie?” / “Design Risk: a structural engineer's
perspective”
Speakers: Steven Walker QC & Colin Riches
Chairman: Simon Lewis
Venue: Ramside Hall Hotel, Fountains Room, Carrville,
County Durham DH1 1TD 5.00pm
Organisers: michael.foster@drivertrett.com & simon.lewis@bonddickinson.com

Oxford

Thursday, 14 December “Gamekeeper turning Poacher - the life of an ex-judge in the arbitral trenches”
Speaker: Sir Robert Akenhead
Chairman: Richard Wade
Venue: Said Business School, Park End Street,
Oxford OX1 1HP 5.30 for 6pm
Organiser: richard.wade@bllaw.co.uk

Scotland

Thursday, 2 November “Bias and fraud in arbitration and adjudication” and “Global Claims”
Speakers: Vincent Moran QC and Tom Owen of Keating Chambers
Venue: Teacher Building, 14 St Enoch’s Square,
Glasgow G1 4DB 5.30pm for 6pm
Organisers: louise.shiels@brodies.com & lhc@cdr.uk.com

Friday, 3 November “SCL Lunch in Scotland”
Speaker: Jamie Andrew, amputee mountaineer
Venue: The Supper Club, 29 Royal Exchange Square,
Glasgow G1 3AJ 12noon for 12.30pm
Organisers: louise.shiels@brodies.com & lhc@cdr.uk.com

Sheffield/Derby/Nottingham

Monday, 6 November “Gamekeeper turned Poacher or vice versa”
Speaker: Sir Robert Akenhead
Chairman: Andrew Essam
Venue: DLA Piper UK LLP, 1 St Pauls Place,
Sheffield S1 2JX 6 for 6.15pm
Organiser: andrew@constructioncontractresolutions.co.uk

Tuesday, 12 December “Who is my neighbour?” The circumstances in which a professional can assume responsibility in tort without any contractual responsibility”
Speaker: David Sears QC, Crown Office Chambers
Chairman: Jocelyn Taylor
Venue: Hallmark Hotel, Midland Road, Derby DE1 2SQ 6 for 6.15pm
Organiser: jocelyn1taylor@btinternet.com

South West

Friday, 10 November “The SCL Lunch In Bristol”
Speaker: Geoff Holt, Yachtsman, Disability Business & Sports Ambassador
Venue: Bristol Marriott Royal Hotel, College Green,
Bristol BS1 5TA 12 for 1.00pm
Organiser: jonathan.spencer@simmons-simmons.com

Cost £75 per head. All places will be allocated on a first paid, first served basis.

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)

ESCL Annual Conference 2017

University of Fribourg, Switzerland

2nd – 4th November 2017 - For more details please go to www.escl.org

SCLHK One Day International Conference 2017

Harbour Grand Hong Kong, North Point, Hong Kong

3rd November 2017

For more details go to <https://www.scl.hk/meetings.php>

SCL Chile Conference

University of the Andes (Chile), Avenida Monseñor Álvaro del Portillo 12.455, Las Condes, Santiago.

9th and 10th November 2017

For more details go to <http://congreso.uandes.cl/#programa>

SCL India - 7th International SCL Conference

India International Centre, 40 Max Mueller Marg, New Delhi - 110003, India

10th – 12th November 2017

For more details please go to www.scl2017.com

SCL North America - 8th International Society of Construction Law Conference

Palmer House Hotel, 17 East Monroe Street, Chicago, Illinois, 60603, USA

September 2018

Call for Speakers

The Society of Construction Law North America is honored to invite you to participate in the 8th International Society of Construction Law Conference from September 26-28, 2018 at the Palmer Hotel in Chicago, Illinois, USA. If you are interested, submit an abstract of approximately 100 to 200 words describing your proposed topic and a short bio of yourself and any panel members that will be presenting with you using the link to our website here:

<https://www.scl-na.org/node/add/speaker> Abstracts are due no later than December 8th, 2017.

From the Chairman

Dear SCL Members,

A rich programme of SCL seminars and talks is advertised above. There is an interesting and welcome mix of technical and legal topics. The geographical spread of events is particularly gratifying – please continue to support those taking place outside London. In particular, a flurry of activity is planned in Ireland. May I draw your attention in particular to the SCL/SCL Astra conference in Dun Laoghaire on 16 February next year – an inaugural major event that effects a welcome shift of focus away from London; please book early to avoid disappointment! Sir Robert Akenhead’s speaking tour is proving popular: his next outing is in Sheffield on 6 November; please support this event too.

Ian Yule, SCL’s Regional Co-Ordinator for West Midlands, writes, “SCL West Midlands held its second Annual Great Debate at the offices of KPMG in Birmingham on 10 October. The motion was “Is the Construction Act fit for purpose?” Riaz Hussain QC and Stephen Walker QC of Atkin Chambers argued in favour, and against, respectively. His Honour Judge Grant chaired and controlled the vigorous comments and questions from the floor. The vote was taken in two parts. The result was a satisfying draw – the Act is apparently fit for purpose in relation to payment, but not in relation to adjudication. The discussions continued over drinks and canapés afterwards”.

Our social calendar is also busy. The current booking status is as follows:

- Scottish lunch in Glasgow, 3 November: only 7 places left at the time of writing;
- Bristol lunch, 10 November: around 70 bookings so far, and there are places left;
- Dublin lunch, 1 December: around 200, some places left. Those who are in Dublin the previous evening may like to attend the talk at McCannFitzgerald with David Sears Q.C. and Stephen Proctor advertised above.
- SCL Grosvenor House lunch, 9 February 2018: around 977 have booked already, but this is a huge venue and we can accommodate another 300 with ease.

Our current membership is nearing 2,900.

Christopher Ennis – Chairman

Chris@tqef.uk.com

Papers

Published on the web this month is *Exclusions from Immunity: Gross Negligence and Wilful Misconduct* by **James Pickavance and James Bowling**, following the talk in London in September (D207). The paper analyses the terms ‘gross negligence’ and ‘wilful misconduct’ which continue to be used regularly as carve-outs from exclusion or limitation clauses in construction contracts. However, parties are reluctant, or unable, to define the terms in those contracts and they are left to the courts to grapple with. The paper examines the relevant authorities and the development of the treatment of both gross negligence and wilful misconduct, noting that the terms appear to apply a high bar to a successful attempt to disapply an exclusion clause. The paper assesses the specific problems likely to arise in practice, of causation, multiple breaches, delay, vicarious liability and termination. Concluding that the two terms are here to stay, the authors use the relevant authorities and apply business common sense to suggest working definitions of gross negligence and wilful misconduct which could be a starting-point for contracts or used as guidance and criteria to assess whether an action or inaction falls within the auspices of these terms.

2018 International Arbitration Survey: The Evolution of International Arbitration

The reports from the Queen Mary annual international arbitration survey provides useful insight for students and practitioners into aspects of international arbitration. This year the focus is on evolution and development of international arbitration. Members are asked to contribute to this year’s survey, run by the Centre for Commercial Law Studies at Queen Mary University of London. The questionnaire takes about 20 minutes to complete and is available both in digital and in PDF format. <http://www.arbitration.qmul.ac.uk/research/2018/>

SCL Hudson Prize Competition 2017

Entries are now invited for the 2017 Competition from all entrants with an interest in construction law and an idea which they wish to share. The judging panel places emphasis on originality of thought and approach. The length of essay is a maximum of 5000 words. (While footnoting or other methods of referencing sources does not count towards this total and is encouraged, some recent entrants appear to have tried to avoid the word limit by loading footnotes with matters of substance, sometimes running to several paragraphs, in a disproportionate and inappropriate way. This is almost always counter-productive).

Eligible subjects can be drawn from any part of construction law widely defined, including (but not restricted to) construction and engineering contracts, contract administration, claims, arbitration, adjudication and dispute resolution, construction litigation, the law of torts, company law, property law, procurement, professional negligence, taxation (although this must be related to construction) and any other aspect of law or procedure relevant to the construction industry. **First prize is £2,500 and Second prize is £1,250.** Entrants can also be Highly Commended or Commended. The award of prizes or commendations, or the decision not to award them, is in the absolute discretion of the Society through its judging panel. All who are awarded prizes or commendations receive a year's free membership of the Society. The Society may decide, at its discretion, to publish the successful papers, in hard copy and/or electronic format.

Past winners have included members of almost all the disciplines relating to construction law including barristers (including pupils), solicitors (including a trainee), quantity surveyors, engineers, academics, architects, and several hybrids qualified in more than one discipline.

Further information and entry details can be found on the website www.scl.org.uk or obtained from Jill Ward admin@scl.org.uk. The closing date for essay submission is Tuesday 2nd January 2018. Any queries can be referred to the panel via Jill Ward in the first instance.

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 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 Astra Northern Ireland

The SCL is keen to explore the possibility of forming a committee to represent the interests of Astra members in Northern Ireland. If you are interested in joining a SCL Astra Committee for Northern Ireland or if you have ideas for a social event, site visit or seminar in the region, please contact Sarah McGuinness (Sarah.McGuinness@Graham.co.uk) to discuss.

SCL Astra / SoCLA Mentoring Programme

SCL Astra is excited to announce an initiative between the United Kingdom and Australia offering international mentoring for professionals moving between the two jurisdictions. We welcome expressions of interest from members of SCL Astra or the SoCLA Young Constructors who are looking to relocate jurisdictions and would like to be mentored by a practitioner in the new jurisdiction. We also welcome expressions of interest from SCL members who would be willing to act as mentors (though we ask that they have at least five years' post-graduate experience). Further details of the programme can be found at www.scl.org.uk

RIBA Adjudication Panel

The RIBA is currently seeking expressions of interest from suitably qualified individuals who wish to apply to join the RIBA panel of Adjudicators. If you would like more information or if you would like to express your interest, please email carys.rowlands@riba.org

The Construction Industry Council Users Guide to Adjudication

The Construction Industry Council has recently published a new 'Users' Guide to Adjudication', which replaces the Construction Umbrella Bodies Adjudication Task Group "Users' Guide to Adjudication" produced in April 2003. The updated guide provides a general introduction to adjudication and takes readers through the essential steps in the adjudication and decision making process. Although many SCL members will already have a level of knowledge of the adjudication process beyond that set out in the guide, it will be useful to refer clients, trainees, etc., to the updated guide as an explanation of the adjudication process. The Guide is available to download from the CIC website (www.cic.org.uk)

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.

NBS 2017 National Construction Contracts and Law Survey

In past years SCL members have contributed to the Bi-annual NBS National Construction Contracts and Law Survey. The results of past surveys, found online, offer a valuable source of data on usage of contract forms, procurement methods and project types. NBS would be grateful if members assisted again by completing the survey at: <http://surveys.ribaenterprises.com/wh/s.asp?k=150089688417>

New Members

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

James Badger, Manchester
Andre Farrell, South Africa
Robert Laslett, Folkestone
Thomas Pinter, Germany
Nicola Thompson, London
Sennan Al-Rehani, Reading
Richard Black, London
Matthew Friedlander, London
John Hunter, Glasgow
Dan Ryde, Alcester
Marc Wilkins, London

James Banda, Zambia
Andrew Garrett, Dover
Seán Mac Labhraí, London
Paul Redi, Glasgow
Rahhal Yousef, Norway
Seyaad Arif, London
Julia Court, London
David Good, London
Matthew Irvine, London
T N Siddiqui, Saudi Arabia
Ashley Yarwood, London

Laura Bowler, London
James Grinstead, London
Jack Mason, London
Jamie Ritchie, Ireland
Andrew Wilshaw, Nuneaton
Kyle Bell, Crowborough
Ciaran Fegan, Hillsborough
Richard Hill, London
D Jędrzejczyk, Poland
Lizzy Stewart, London

Alan Brady, Ireland
Stephen Kobylanski, UAE
Brian Muirhead, Japan
Alexander Studholme, London
Mahmoud Abu-Jaber, Wakefield
Geoff Bewsey, London
Vincent Fogarty, London
Steven Holman, Japan
Sarah McGuinness, Antrim
Helen Stuart, London