



ESCL MASTER THESIS PRIZE 2019

JURY REPORT

The ESCL consists of 18 national construction law societies. One of the tasks of the ESCL is to promote knowledge of international construction law. Once a year, in that context, a conference is organized by one of the member societies. Because of the great appreciation for education and research an annual Master Thesis Prize has been created. This is the eighth year this prize has been awarded.

The jury is chaired by the President of the ESCL who appoints two or more other members of the jury. The current President of the ESCL is *Professor Dr Monika Chao-Duivis (Director of the Dutch Institute of Construction Law and professor at Delft Technical University)*. She appointed *Professor Dr Benoît Kohl (Professor, University of Liège and University of Paris II - Counsel, Stibbe Brussels)* and *Professor Dr Anthony P. Lavers (Counsel, White & Case LLP, London - Visiting Professor of Law, King's College London)*, *Professor Dr Hubert Stöckli (Institute for Swiss and International Construction Law, University of Fribourg)* and *Professor Dr M. Hugues Périnet-Marquet (Professor, University of Paris II)* as jury members.

In assessing the academic quality of the thesis, the jury evaluates the following aspects of the thesis: originality of the topic, approach/quality of analysis, approach/quality of presentation, interest to construction law and construction professions and connection with either European law or with the law of more than one European country.

The first prize awarded is EUR 2.500,- and the second prize awarded is EUR 1.000,-.

The winners are invited to submit a (modified) version of the thesis for publication to the editorial board of the International Construction Law Review to be considered for publication.

The jury has come to a decision on the first and second prizes, based on a written assessment of the theses and a conference call discussion.



FIRST PRIZE

Sacha Beer Stephansen

Title: "Knock-for-knock in onshore construction contracts - A study of a different liability regime and the implementation thereof"

University: University of Copenhagen

Study program: Master of Laws

IN GENERAL

The candidate shows an intellectual courage in taking on the challenge of a specialised industry combined with the limitations in published literature and non-standard procurement practices. She deserves credit for seeking originality at the expense of greater difficulty. The rigorous methodology is well-explained and the analysis is clear throughout. Furthermore, the contents of the thesis could also be of interest beyond the jurisdictions dealt with in the research.

ASSESSMENT BY CRITERION

Originality of the topic

The candidate has delivered an interesting analysis on an original topic. She also chosen to address the on-shore rather than off-shore context, achieving greater originality.

Quality of analysis approach

The analysis is facilitated by a rigorous methodology clearly explained and followed throughout. The analysis embraces both common law and civil law material convincingly. The sources are used well to ensure that the discussion is properly supported and the conclusion follows logically from the analysis in the preceding chapters.



Quality of presentation approach

The thesis is well-written and thoroughly referenced. The style is clear and the conclusion in particular is illuminating. The structure is well-conceived, which assists the reader, despite the complexity of some of the material.

Interest to construction law and construction professions

The topic is of great interest to construction law and the thesis could be influential in promoting change in insurance in the construction world. The limited amount of work published increases the value of this research as a useful contribution to the material available to the industry and to the legal profession which serves it.

Connection with either European law or with the law of more than one European country

The oil and gas industry in Europe, while not confined to the UK and Scandinavia, has important connections with those jurisdictions. The thesis should be of value not only for readers in England and Wales, Norway and Denmark but in those studying other common law and especially civil law systems.



SECOND PRIZE

Louise Hall

Title: "Security of Payment for Subcontractors – Lessons for England from around the world"

University: King's College London

Study Program: Construction Law & Dispute Resolution

IN GENERAL

The topic is clearly highly relevant for construction law. The concepts developed in this paper could be tested and implemented in other jurisdictions, demonstrating its wider relevance. The thesis is well-structured and clearly written.

ASSESSMENT BY CRITERION

Originality of the topic

The subject of security of payment has already been extensively researched in literature, partly because of the constant problems of cash-flow for sub-contractors and partly because of legislation, in both British and in other common law jurisdictions. The added value of the thesis can be found in the examination of possible solutions from other countries, which offers opportunity for original perspectives on the subject. The candidate accordingly deserves credit for this approach.

Quality of analysis approach

The candidate achieves a good level of discussion of case law and English legislation, using commentaries and other published material. The thesis uses a comparative approach to elaborate recommendations on how to improve the situation of subcontractors in England. In particular, the application of lessons from other jurisdictions offers valuable insights for English law.



Quality of presentation approach

The candidate has produced a well-written and well-structured thesis, explaining the research methods with clarity. The conclusions are particularly well set out.

Interest to construction law and construction professions

Because of the constant and widespread problems surrounding the payment of subcontractors, its interest to construction law is undisputable. The subject matter is of interest to sub-contractors and main contractors in particular. The prospect of potential improvement from solutions adopted in other jurisdictions would be attractive to those who are critical of the UK arrangements.

Connection with either European law or with the law of more than one European country

The methodology adopted involves the application of the position in other countries to the UK. In particular, the comparisons with France are an important connection to European law. The comparisons drawn with Japan, as another civil law jurisdiction based on German law, will be of some additional interest in continental Europe.

Monika Chao-Duivis (Chair)

Anthony Lavers

Benoît Kohl

Hubert Stöckli

Hugues Périnet-Marquet

Date: 24 October 2019