



## ESCL MASTER THESIS PRIZE 2020

### 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 importance of education and research to the aims of the European Society, an annual Master Thesis Prize was introduced in 2012. The competition is open to graduates of European universities who have produced a postgraduate thesis in the general area of construction law. This is the ninth year this prize has been awarded.

The Prizes are awarded after evaluation of the entries by a Jury. The ESCL President chairs the Jury and appoints two or more other Jury members. The current President of the ESCL is *Adriana Spassova (Chair of the Bulgarian Society of Construction Law)*. She appointed *Professor Dr Benoît Kohl (Professor, University of Liège and University of Paris II - Counsel, Stibbe Brussels)*, *Professor Dr Anthony P. Lavers (Counsel, White & Case LLP, London - Visiting Professor of Law, King's College London)*, *Professor Dr Hubert Stöckli (Professor, 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

**Nicola Ibbotson**

*Title: "Do design competitions comply with the law and does the law provide a framework for finding value?"*

University: King's College London

Study program: Construction Law and Dispute Resolution MSc.

### IN GENERAL

The topic is of considerable interest to the architectural profession and to owners seeking to assess value for an appointment. The candidate has taken an intelligent approach drawing on a range of sources from different jurisdictions. The conclusions drawn offer a useful basis for further reflection and research.

### ASSESSMENT BY CRITERION

#### *Originality of the topic*

The thesis scores highly on originality. The candidate has delivered a thesis on a very interesting and little-researched topic. The thesis is especially of interest to the architectural profession and to owners seeking to assess value for an appointment.

#### *Quality of analysis approach*

The thesis contains a high level of legal analysis deriving from successful research and the candidate has taken a very interesting approach to research this subject. The case law is used well to support the points made by the candidate.

#### *Quality of presentation approach*

The thesis is well-written and clearly explained. It contains useful references, which are obviously the product of careful research. The conclusions that are drawn by the candidate offer a useful basis for further reflection and research.



*Interest to construction law and construction professions*

The topic is of great interest to designers and their clients. The candidate demonstrates in the five examples given that subjective discretion may not by necessarily used in a permissible way, as part of expert evaluation, but may be consciously 'structured'.

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

Because of the connection made with the Public Contracts Regulations, this thesis is of EU-wide relevance. The conclusions that the candidate draws seem of interest in both domestic and international contexts.



## TWO SECOND PRIZES

### **June-Beom Kim**

*Title: "Is it time for English law to consider disruption analysis for site-overheads claims? The contrast of Costain v Haswell and Walter Lilly v Mackay"*

University: King's College London

Study program: MSc Construction Law and Dispute Resolution

### IN GENERAL

Disruption analysis for site overhead claims is an interesting well-developed topic. The candidate has analysed the subject deeply and the conclusions drawn are supported by reference to recent case law. While this paper appears to focus on English law, it offers a useful analysis of the problem regarding compensation of site-overheads. The candidate does not shy away from establishing a clear answer to the 'causation in fact' requirement.

### ASSESSMENT BY CRITERION

#### *Originality of the topic*

The topic of this thesis is a well-defined topic. The issue has been much considered, though the solution the candidate puts forward has not.

#### *Quality of analysis approach*

The candidate shows a high quality of analysis and a reasonable standard of discussion.

#### *Quality of presentation approach*

The candidate has presented the thesis well. The candidate makes justified statements, gives a good summary of the positions and draws clear conclusions.



## *Interest to construction law and construction professions*

Although the issue is not new, it remains significant and of interest to the construction law community internationally. The summary of case law, the discussion on the practice and trends/pitfalls related to the assessment of site overheads in delay- and disruption claims makes this thesis interesting to read.

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

Although the thesis is chiefly on English law, it is given relevance to other jurisdictions.

### **Gabriel Armanet**

*Title: "Delivering the Olympic Games: Will Paris 2024 be less well organised and equipped in procurement than London 2012?"*

University: King's College London

Study program: MSc Construction Law and Dispute Resolution

## **IN GENERAL**

The subject of this thesis excels in originality. It is a real comparison between two European legal systems and shows a good quality of analysis. It is a challenging task to compare the London Games project which has documented success with the Paris Games project which is still in the making.

## **ASSESSMENT BY CRITERION**

### *Originality of the topic*

The thesis scores highly on this criterion; It is a timely piece of work.

### *Quality of analysis approach*

The candidate uses an orderly and convincing methodology. The thesis is well structured, clear and the candidate draws carefully considered conclusions.



*Quality of presentation approach*

The thesis is of high quality, well referenced and the topic is clearly explained.

*Interest to construction law and construction professions*

This subject is of great interest to students and practitioners of European Construction Law, especially as 2024 approaches.

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

The thesis gives a useful comparison of English and French procurement law, following the EC Directives.

**Adriana Spassova (Chair)**

**Anthony Lavers**

**Benoît Kohl**

**Hubert Stöckli**

**Hugues Périnet-Marquet**

Date: 2 September 2020