



ESCL MASTER THESIS PRIZE 2013 JURY REPORT

The ESCL consists of 17 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 associated societies. Because of the great appreciation for education and research an annual Master Thesis Prize is created. This is the second year this prize is awarded. No less than 17 (edited) theses were submitted.

The jury is chaired by the President of the ESCL who will appoint two other members of the jury. The President of the ESCL is Professor Dr. Hugues Perinet-Marquet. He 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, Oxford Brookes University*) as jury members.

In assessing the scientific quality of the thesis the jury will evaluate 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.

The first prize will be awarded with € 2.500,- and the second prize will be awarded with € 1.000,-.

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

The jury has come to a first and second prize based on a written assessment of the theses and a brief consultation.



FIRST PRIZE

MATTHEW COCKLIN

“International approaches to the legal analysis of concurrent delay. Is there a solution for England & Wales?”,

Submitted in part fulfilment of an MSc degree in Construction Law & Dispute Resolution, King’s College London

IN GENERAL

The jury regarded this as a very well-executed thesis with a clear and useful purpose and evidence of extensive research, which was well presented, with intelligent analysis.

ASSESSMENT BY CRITERION

Originality of the topic

The high relevance of the subject-matter and the comparative approach makes the topic very original.

Approach/quality of analysis

The author examines the English law on concurrent delay very well. This is followed by an analysis of the subject-matter in several other jurisdictions. Regarding each jurisdiction the author concludes whether English law can “learn” from the other jurisdiction. This approach leads to many interesting comparative insights.

The conclusion section is particularly strong. Here the author discusses the ideas which have been explained in the previous chapters and develops further ideas.

The thesis achieves a good overall standard, although the breadth of scope means that analysis of each system is necessarily limited.

Approach/quality of presentation

The presentation of the thesis is generally of a high standard. The English language and legal terms are used appropriately. The author also cites the relevant references of case law and legal literature.

Interest to construction law and construction professions

The subject-matter of the thesis is very relevant for construction professionals worldwide. The comparative approach offers significant insights. The conclusions are



capable of encouraging students (and professionals) elsewhere to reflect upon the position in their own jurisdictions and perhaps to initiate further research.

SECOND PRIZE

THOMAS STEHLE

“Rights of compensation caused by delayed award in the light of the case law ruling of the German Federal Court (BGH)”

Zusatzqualifikation im Privaten Baurecht Philipps-Universität Marburg

IN GENERAL

The thesis is well-executed, with a critical assessment of a hot topic in German construction, that is likely to be also of interest to those engaged in working with the EU procurement regime in any jurisdiction.

ASSESSMENT BY CRITERION

Originality of the topic

This is a description of the legal situation regarding a “delayed award” of construction works by public authorities in Germany. This issue is highly relevant, according to the Jury, because the award of public contracts is very often delayed due to legal battles between the contracting authority and the competitors who are not chosen for the award. Moreover, the high relevance of the issue results from the fact of relative recent case law of the German Federal Court of 2009.

Approach/quality of analysis

The student displays a sound understanding of the issue. The thesis is rather theoretical: logical arguments are described in detail.

The structure is more than sufficient. The author tackles the issue from different perspectives. He describes – and critically reflects – the case law and the different opinions in the relevant literature. The thesis contains a good effort at extrapolating from the judicial findings.

Approach/quality of presentation

The referencing to the relevant case law and to the literature is very good. The presentation is thorough and consistent. At times the thesis is difficult to read because the text tends to be very theoretical and because the author does not always explain the content of the clauses /sections cited.



Interest to construction law and construction professions

The content of the thesis is highly relevant for construction lawyers and professionals because awards of public contracts are often delayed, and there are often disputes regarding the consequences of such delays.

Because the issue derives from public procurement law it is likely to be of interest to those engaged in working with the EU regime in other domestic jurisdictions, at least from a comparative point of view, even if the German approach is not necessarily adopted elsewhere.

Prof. Dr. Hugues Perinet-Marquet (Chairman), Prof. Dr. Benoît Kohl and Prof. Dr. Anthony P. Lavers

1st October 2013