Harper Adams University

NEGLIGENT VALUATION CASEBOOK

Key cases from the 19th to 21st centuries

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‘There is hardly any professional man who does not from time to time do that which the courts would castigate as negligent.’

Jackson and Powell on Professional Negligence
Preface to 1st edition, 1997

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The law is complex and ever changing and the case summaries herein are intended as guidance and reference only. No responsibility is taken for any inaccuracies and fulfilment of legal obligations remains the reader's responsibility.

Due to the nature of the subject matter, this collection of case notes will be updated periodically, thus observations, queries, corrections and suggestions for improvements to future editions are most welcome. Please send any such comments to the author :

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Court Key

CA	Court of Appeal
CC	County Court
CCC	Central Criminal Court (Old Bailey, Crown Court)
Ch	High Court, Chancery Division
Comm.	Commercial Court (specialist court in QBD)
CP	Court of Common Pleas (pre-1875)
EC	Exchequer Court (pre-1875)
HCI	High Court of Ireland
HL	House of Lords
NIQB	Northern Ireland Queen's Bench Division
NYCA	New York Court of Appeals
ORC	Official Referee's Court (became the TCC in October 1998)
PC	Privy Council
QBD	High Court, Queen's Bench Division
SC	Supreme Court
TCC	Technology and Construction Court (specialist court in QBD)

Case List Under Topic

For ease of updating, the cases are included in alphabetical order. To understand a particular issue, see the following topic based listing (in date order) and read the relevant entries.

An alphabetical index follows.

Is a duty of care owed?

Cann v Willson (1888) Ch
Heaven v Pender (1883) CA
Derry v Peek (1889) HL
Le Lievre v Gould [1893] CA
Macpherson v Buick Motor Co. (1916) NYCA
Donaghue v Stevenson [1932] HL
Candler v Crane Christmas & Co. [1951] CA
Hedley Byrne v Heller [1963] HL

To whom is a duty of care owed?

Often there will be a contractual relationship between valuer and claimant, giving rise to a clear duty of care (although there may be other issues, such as scope). Where there is no contract, there may still be a duty of care held for the purposes of tortious liability in negligence.

Ultramares Corp. v Touche (1931) NYCA
Yianni v Edwin Evans & Sons [1981] QBD
Harris v Wyre Forest District Council [1989] HL
Smith v Eric S Bush [1989] HL
Caparo Industries v Dickman [1990] HL
Freemont (Denbigh) Ltd v Knight Frank LLP [2014] Ch
Titan Europe plc v Colliers International plc [2014] Comm.

What standard of care is required?

Bolam v Friern Barnet Hospital Management Committee [1957] QBD

Has there been a breach of the duty of care?

Shacklock v Chas. Osenton, Lockwood and Co. [1964) QBD

Status of industry codes of practice / guidance
PK Finans International (UK) Ltd v Andrew Downs & Co Ltd [1992] QBD

Taking appropriate time
Perry v Sidney Phillips & Co. [1976] QBD

Visiting the property / gathering sufficient information
Singer and Friedlander v John D Wood & Co. [1977] QBD
Watts v Morrow [1991] ORC
Webb Resolutions v E.Surv [2012] TCC

Establishing the property
Platform Funding Ltd v *Bank of Scotland (formerly Halifax plc)* [2008] CA

Keeping adequate records
Watts v Morrow [1991] ORC
Francis v Barclays Bank plc [2004] Ch

Awareness of the market
Baxter v F W Gapp & Co. Ltd [1939] CA
Bell Hotels v Motion (1952) QBD
Francis v Barclays Bank plc [2004] Ch
Montlake and others v Lambert Smith Hampton Group Ltd [2004] QBD
Bank of Ireland v Patterson [2014] NIQBD

Taking into account previous price of property, if very recent
Singer and Friedlander v John D Wood & Co. [1977] QBD

Reacting to findings during progress of work
Roberts v J Hampson & Co. [1988] QBD
Hubbard v Bank of Scotland (t/a Birmingham Midshires) [2014] CA

Level of thoroughness required
Fryer v Bunney [1982] ORC
Gibbs v Arnold, Son & Hockley [1989] QBD

Understanding and keeping up to date with principles of law affecting valuation
Jenkins v Betham (1855) CP
West Midland Baptist (Trust) Association v Birmingham Corp. [1968] HL
Weedon v Hindwood, Clarke and Esplin [1975] QBD
Corisand Investments v Druce & Co. [1978] QBD

Referring the case to senior colleagues if property is outside one's area of expertise
Kenney v Hall, Pain and Foster [1976] QBD

Keeping up to date with professional knowledge
Edward Wong Finance Co. Ltd v Johnson Stokes & Master [1984] CA
Izzard v Field Palmer [1999] CA

Ensuring property inspection is of sufficient detail, not merely superficial
Lloyd v Butler [1990] QBD.

Ensuring advice is sufficient
Padden v Bevan Ashford Solicitors [2011] CA

Setting out scope of survey/advice
Brownrigg v Leacey (2013) HCI
Hubbard v Bank of Scotland (t/a Birmingham Midshires) [2014] CA

What margin of error is acceptable?

These cases consider the range of 'reasonable' values and the relationship between the final valuation figure and methodology.

Singer and Friedlander v John D Wood & Co. [1977] QBD
Mount Banking Corporation Ltd v Brian Cooper & Co. [1992] QBD
Axa Equity and Law Home Loans Ltd v Goldsack & Freeman [1994] QBD
Craneheath Securities v York Montague [1996] CA
Legal & General … v HPC Professional Services [1997] QBD
Lewisham Investment Partnership Ltd v Morgan [1997] Ch
Lion Nathan v C-C Bottlers Ltd [1997] PC
Merivale Moore plc v Strutt and Parker [1999] CA
Goldstein v Levy Gee [2003] Ch
Preferred Mortgages Ltd v Countrywide Surveyors Ltd [2005] Ch
Dennard v PricewaterhouseCoopers LLP [2010] CA
K/S Lincoln v CB Richard Ellis Hotels Ltd [2010] TCC
Paratus AMC Ltd and Countrywide Surveyors [2011] Ch
Blemain Finance Ltd v E.Surv Ltd [2012] TCC
Capita Alternative Fund Services (Guernsey) v Drivers Jonas [2012] CA
Webb Resolutions v E.Surv [2012] TCC
Mortgage Title Resolutions Ltd v J & E Shepherd (2013) QBD
Redstone Mortgages v Countrywide Surveyors (2013) Ch

What losses will be recoverable?

These notes are on the **tort** of negligence and the aim of tortious damages is, at its simplest, to put the claimant in the position he/she would have been in if the tort had not occurred, i.e. *looking backward*, to restore the claimant to their pre-incident position, subject to losses being reasonably foreseeable and not too remote.

Note that many of the cases can be/are also brought in **contract**, where the aim is to put the claimant in the position he/she would have been if the contact had been performed, i.e. *looking forward* with a consideration of the loss of bargain or 'expectation measure', subject to the question of remoteness, per ***Hadley v Baxendale* (1854) EC**.

Hadley v Baxendale (1854) EC

Phillips v Ward [1956] CA
Banque Bruxelles Lambert SA v Eagle Star Insurance Co Ltd [1995] CA
Mortgage Express v Bowerman [1996] CA
South Australia Asset Management Corp. v York Montague [1996] HL
Nykredit Mortgage Bank plc v Edward Erdman Group Ltd (no. 2) [1998] HL
Platform Home Loans v Oyston Shipways Ltd [2000] HL
Earl of Malmesbury v Strutt & Parker [2008] QBD
Scullion v Bank of Scotland (t/a Colley's) [2011] CA
Platform Funding v Anderson & Associates (2012) QBD
John Grimes Partnership Ltd v Gubbins [2013] CA
E.Surv Ltd v *Goldsmith Williams Solicitors* [2014] Ch

Who is liable?

Under normal principles of vicarious liability, when an employee of a firm is negligent, the firm will be liable. Professional indemnity insurance is, consequently, required by law - see the requirements of professional bodies such as the RICS. However, the individual employee is, nonetheless, negligent and can be sued directly in certain circumstances, although the 2014 ***Matthews*** case has modified the perceived scope of ***Merrett v Babb****.*

Williams v Natural Life Health Foods [1998] HL
Bradford and Bingley plc v Martin Hayes [2001] Ch
Merrett v Babb [2001] CA
Matthews v Ashdown Lyon [2014] CC
Russell v (1) Walker & Co. (2) Robert Chisnall and others (2014) CC

The expert witness role

The nature of expert wintess work will not be covered here and there is guidance through, among other sources, the RICS, Civil Procedure Rules and the Society of Expert Witnesses. It is instructive, however, to draw on a number of judgments critical of a common mistake made by experts in the context of valuation cases.

Abbey National Mortgages plc v Key Surveyors Nationwide Ltd [1996] CA
Arab Bank plc v John D Wood [1998] QBD
Samsung v Metcalffe Hamilton and Company [1998]
Arthur J S Hall & Co. v Simons [2002] HL
Phillips v Symes (No 2) [2004] Ch
Meadow v General Medical Council [2006) CA
Co-operative Group Limited v John Allen Associates [2010] TCC
Jones v Kaney [2011] SC
Aurora Leasing Ltd v Colliers International (Belfast) Ltd [2013] NIQB

Crime

Of course, if the valuation is wilfully inaccurate, the consequence is a criminal trial rather than civil action, with the potential for imprisonment rather than compensatory damages.

R v Rathie (2011) CCC

Cases - Alphabetical Order

Abbey National Mortgages plc v Key Surveyors Nationwide Ltd [1996] CA
Arab Bank plc v John D Wood [1998] QBD
Arthur J S Hall & Co. v Simons [2002] HL
Aurora Leasing Ltd v Colliers International (Belfast) Ltd [2013] NIQB
Axa Equity and Law Home Loans Ltd v Goldsack & Freeman [1994] QBD

Bank of Ireland v Patterson [2014] NIQBD
Banque Bruxelles Lambert SA v Eagle Star Insurance Co Ltd [1995] CA
Baxter v F W Gapp & Co. Ltd [1939] CA
Bell Hotels v Motion (1952) QBD
Blemain Finance Ltd v E.Surv Ltd [2012] TCC
Bolam v Friern Barnet Hospital Management Committee [1957] QBD
Bradford and Bingley plc v Martin Hayes [2001] Ch
Brownrigg v Leacey (2013) HCI

Candler v Crane Christmas & Co. [1951] CA
Cann v Willson (1888) Ch
Caparo Industries v Dickman [1990] HL
Capita Alternative Fund Services (Guernsey) v Drivers Jonas [2012] CA
Co-operative Group Limited v John Allen Associates [2010] TCC
Corisand Investments v Druce & Co. [1978] QBD
Craneheath Securities v York Montague [1996] CA

Dennard v PricewaterhouseCoopers LLP [2010] CA
Derry v Peek (1889) HL
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E.Surv Ltd v *Goldsmith Williams Solicitors* [2014] Ch
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Edward Wong Finance Co. Ltd v Johnson Stokes & Master [1984] CA

Francis v Barclays Bank plc [2004] Ch
Freemont (Denbigh) Ltd v Knight Frank LLP [2014] Ch
Fryer v Bunney [1982] ORC

Gibbs v Arnold, Son & Hockley [1989] QBD
Goldstein v Levy Gee [2003] Ch

Hadley v Baxendale (1854) EC
Harris v Wyre Forest District Council [1989] HL
Heaven v Pender (1883) CA
Hedley Byrne v Heller [1963] HL
Hubbard v Bank of Scotland (t/a Birmingham Midshires) [2014] CA

Izzard v Field Palmer [1999] CA

Jenkins v Betham (1855) CP
John Grimes Partnership Ltd v Gubbins [2013] CA
Jones v Kaney [2011] SC

Kenney v Hall, Pain and Foster [1976] QBD
K/S Lincoln v CB Richard Ellis Hotels Ltd [2010] TCC

Legal & General Mortgage Services td v HPC Professional Services [1997] QBD
Lewisham Investment Partnership Ltd v Morgan [1997] Ch
Le Lievre v Gould [1893] CA
Lion Nathan v C-C Bottlers Ltd [1997] PC
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Merrett v Babb [2001] CA
Montlake and others v Lambert Smith Hampton Group Ltd [2004] QBD
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Nykredit Mortgage Bank plc v Edward Erdman Group Ltd (no. 2) [1998] HL

Padden v Bevan Ashford Solicitors [2011] CA
Paratus AMC Ltd and Countrywide Surveyors [2011] Ch
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Phillips v Ward [1956] CA
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PK Finans International (UK) Ltd v Andrew Downs & Co Ltd [1992] QBD

Platform Funding v Anderson & Associates (2012) QBD
Platform Funding v Bank of Scotland (formerly Halifax plc) [2008] CA
Platform Home Loans v Oyston Shipways Ltd [2000] HL
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R v Rathie (2011) CCC
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Webb Resolutions v E.Surv [2012] TCC
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West Midland Baptist (Trust) Assoc. v Birmingham Corporation [1968] HL
Williams v Natural Life Health Foods [1998] HL

Yianni v Edwin Evans & Sons [1981] QBD

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Hedley Byrne v Heller [1963] HL
Shacklock v Chas. Osenton, Lockwood and Co. [1964) QBD
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Izzard v Field Palmer [1999] CA
Merivale Moore plc v Strutt and Parker [1999] CA

Platform Home Loans v Oyston Shipways Ltd [2000] HL
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Padden v Bevan Ashford Solicitors [2011] CA
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E.Surv Ltd v *Goldsmith Williams Solicitors* [2014] Ch
Freemont (Denbigh) Ltd v Knight Frank LLP [2014] Ch
Hubbard v Bank of Scotland (t/a Birmingham Midshires) [2014] CA
Matthews v Ashdown Lyon [2014] CC
Russell v (1) Walker & Co. (2) Robert Chisnall and others (2014) CC
Titan Europe plc v Colliers International plc [2014] Comm.

Legislation

Civil Liability (Contribution) Act 1978

Fire Precautions Act 1971

Land Compensation Act 1961

Unfair Contract Terms Act 1977

Introduction

This collation of cases is by no means comprehensive. It should, however, introduce the reader to the evolution and current position on negligence with regard to the work of valuers. More detail, albeit without the latest cases, is to be found in John Murdoch's *Negligence in Valuations and Surveys*[1] and *Liability of the Negligent Surveyor* by Ben Maltz and Victor H Vegoda.[2]

The background story of some cases has been given, to provide context for the practitioner. In other instances, just the key point of law to emerge or be illustrated by the case is covered. For those who are not conversant with the general framework of the law of negligence, there are many good introductory law books aimed at property professionals such as *Real Estate Management Law*[3] and *Law and the Built Environment*[4] to which useful reference may be made. The key point sub-headings and 'Case List Under Topic' should also aid comprehension of the law but recourse to one of the above books, or similar, is recommended for those new to the subject.

These notes are available online and the author fully intends to update the electronic version at least annually.

> Note : given the ease of online searches, full legal citations have not been provided but if anyone wants further details of any particular case, please let me know. For those looking to the full report, ensure, of course, that the final court of hearing is referred to.

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1 2nd edition, (2008), RICS Books.
2 (2001), Estates Gazette.
3 Card, Richard, Murdoch, John and Murdoch, Sandi (2011) 7th ed., Oxford University Press.
4 Chynoweth, Paul, Adshead, Julie and Mason, Jim (2010) Wiley Press.

A

***Abbey National Mortgages plc v Key Surveyors Nationwide Ltd* [1996] CA**
Expert witness

Sir Thomas Bingham : ‘For whatever reason, and whether consciously or unconsciously, the fact is that expert witnesses instructed on behalf of parties to litigation often tend, if called as witnesses at all, to espouse the cause of those instructing them to a greater or lesser extent, on occasion becoming more partisan than the parties.’

Such bias is contrary to the rules of the court, as explained in RICS guidance, that the duty of the expert witness is *to the court* not to the engaging party.

***Arab Bank plc v John D Wood* [1998] QBD**
Expert Witness

Mr Justice Wright : ‘The court has not been assisted by the tendency which I detected in all the expert witnesses who gave evidence before me to take upon their own shoulders the mantle of advocacy and themselves to seek to persuade the court to a desired result rather than to offer dispassionate and disinterested assistance and advice to the court to enable it to arrive at a fair and balanced view of the conflicting contentions of the parties.’

This case was taken to the Court of Appeal in 1999.

***Arthur J S Hall & Co. v Simons* [2002] HL**
Expert witness

In this case, barristers lost their immunity from action in professional negligence (which had formerly been reinforced in ***Rondel v Worsley* [1967]**. For further discussion of barristers’ position, see ***Moy v Pettman Smith* [2005] HL**. See ***Jones v Kaney* [2011] SC** for the position regarding expert witnesses.

***Aurora Leasing Ltd v Colliers Leasing (Belfast) Ltd* [2013] NIQB**
Expert witness

In this case, negligent valuation by surveyors and valuers was alleged. The expert evidence came from estate agents. There was a brief note as to the difference in roles between surveyors and valuers and estate agents. Per Mr Justice Weatherup : ‘Chartered Surveyors have professional qualifications that are not required of Estate Agents. As members of the Royal Institute [*sic*] of Chartered Surveyors they apply what they call ‘Red Book’ valuations based on professional valuation guidelines and procedures and apply due diligence to the process. Due diligence concerns the manner of instructions, the detailed inspection, the structural condition, the title, covenants and planning permissions and the evidence of comparables. The Chartered Surveyor is not in business as a selling agent and brings objectivity to the exercise whereas the Estate Agent may be too subjective, being too close to the seller, the market and the volume of business. The financial institutions look to Chartered Surveyors to provide valuations for lending purposes.'

This professional distinction between surveyors and estate agents was considered in the use of estate agents as experts regarding surveyors and valuers. Lady Justice Butler-Sloss's judgment in ***Samsung v Metcalffe Hamilton and Company*** **[1998]** was drawn on, where a defendant surveyors' appeal from a finding of negligent survey was allowed on the ground that the expert evidence was from a structural engineer : '… a court should be slow to find a professionally qualified man guilty of a breach of his duty of care and skill towards a client (or third party) without evidence from those within the same profession as to the standard expected on the facts of the case and the failure of the professionally qualified man to measure up to that standard.'

In this case, it was held that, in fact, estate agents *were* appropriate experts, drawing on ***Co-operative Group Limited v John Allen Associates*** **[2010] TCC** where, due to the expertise held, a geotechnical engineer was able to act as an expert witness in the context of civil and structural engineering standards.

Axa Equity and Law Home Loans Ltd v Goldsack & Freeman **[1994] QBD**

<u>Margin of error</u>

A bracket of roughly plus or minus 5% was fixed with regard to residential property. A leasehold flat at 9 Lewes Crescent, Brighton had been valued, in 1988, at £155,000. Although the plaintiff claimed a correct valuation would have been £120,000 it was held that the bracket was £140,000-£160,000. Although the valuation was towards the top end, it was within the bracket. The valuer was RICS qualified as a building surveyor rather than valuer but had consulted local estate agents.

B

***Bank of Ireland v Patterson* [2014 NIQBD**
<u>Awareness of the market including local conditions, planning, etc.</u>

This case involved a development site of around one acre on the Moira Road, Lisburn, Co. Down. Proposals were for 7 townhouses, 2 semis, 16 x 2 bedroom flats and 2 x 1 bedroom flats. The valuation contested was for a purchase price for the land of £2.7m, against which bank valuation a third party borrowed £1.5m. When the third party defaulted on the loan the Bank sued the valuer on property which was now worth significantly less than the valuation of £2.7m.

A margin of +/- 15% was allowed, given the nature of the property but a true value of £2.08m meant that £2.7m was still so far from the value as to be deemed negligent. It was found that the valuer failed to carry out a detailed residual appraisal and failed to find and analyse appropriate comparables.

Weatherup J noted, with regard to the valuer's level of detail: 'Past, current and future trends in the market may bear on present values and cannot be disregarded. The irrational nature of the market cannot be disregarded. The currently uneconomic proposed development of the site cannot be disregarded. Variables such as the location of the site cannot be disregarded. I conclude that the defendant''s valuation lacked reasonable care.'

***Banque Bruxelles Lambert SA v Eagle Star Insurance Co Ltd* [1995] CA**
<u>Margin of error</u>

This judgment drew together six cases and is known as ***BBL***.

It was held that where a transaction is entered into on the back of an inaccurate valuation and the property market then falls, the valuer is liable for losses attributable to a fall in the market as such losses are foreseeable, the negligence is the 'effective cause of the loss' and 'the market fall cannot realistically be seen as a new intervening cause.'

The court considered :

'successful transaction reasoning' : had the valuer given the correct value, the transaction would still have taken place but with a concomitantly smaller loan. Thus there would have been a loss, but a smaller one. And …

'no transaction reasoning' - had valuer given the correct value the transaction would not have taken place, thus the *entire* loss is due to the negligent valuation. The court used this latter ruling but it has been commented that this is too simplistic as monies would have been likely to be applied elsewhere so there would not have been an absolute loss.

This approach has been overruled by the SAAMCO decision (***South Australia Asset Management Corp. v York Montague*** **[1996] HL** - see below) and is included in this collation as being important to following the thread of reasoning on liability for losses over recent decades.

Baxter v F W Gapp & Co. Ltd **[1939] CA**

Awareness of the market including local conditions, planning, etc.

Lack of local knowledge led a surveyor to ignore available comparables when valuing Garden Lodge, Maidenhead, Berkshire. This lack knowledge of the local market was held to be negligent.

This issue is now covered by *Red Book* Valuation Practice Statement 1, clause 9, Minimum terms of engagement, which incorporates International Valuation Standards 101, Scope of Work. In any court action, failure to comply with *Red Book* provisions is a highly persuasive, though not conclusive, indication of negligence and is also, of course, a matter of RICS disciplinary procedure.

Bell Hotels v Motion **(1952) QBD**

Awareness of the market including local conditions, planning, etc.

Valuers were asked to value the Bell Hotel, the last free house in Melton Mowbray, and to comment on whether breweries would be interested in acquiring it. They valued it at £16,000 and indicated their view that it would not be worth approaching breweries. It was sold by private treaty for £17,750 and the purchaser sold it within a week to a brewery for £25,000. It was found that reasonable care and skill had not been displayed by the valuer as, clearly, there was a ready market of which they had been unaware, or otherwise ignored.

Blemain Finance Ltd v E.Surv Ltd **[2012] TCC**

Margin of error

The subject property was a top end residential property: Heath House, 3, Paddock Way, Portsmouth Road, Putney, first purchased in 2004 for £1.92m. It was valued by E.surv in 2007 for £3.4m. It was found that £2.7m was the correct valuation. It was found that inappropriate comparables had been used, not least because of the fact that some of the comparables were not close enough in value to the subject property.

The case involved the same legal teams and expert witnesses as ***Webb Resolutions***, (below) before the same judge. Mr Justice Coulson therefore chose to treat ***Webb*** as the principal judgment. A margin of +/- 10% was held to be appropriate.

Bolam v Friern Barnet Hospital Management Committee [1957] QBD
<u>Standard of care</u>

This medical negligence case, involving electric shock treatment of a mental health patient, established the standard of reasonable care expected of those exercising a particular skill, i.e. a profession or trade in any area, not just medicine.

The important judgment of Mr Justice McNair was such that it is not enough to show that another expert would have given a different answer. The question is whether the defendant did something which *no other competent professional would do*.

Bradford v Bingley plc v Martin Hayes [2001] Ch
<u>Who is liable?</u>

See ***Russell, Mavis v (1) Walker & Co. (2) Robert Chisnall and others*** **(2014) CC**.

Brownrigg v Leacey (2013) HCI
<u>Setting out scope of survey/advice</u>

Frank Brownrigg owned a 120 acre farm in Ferns, Co. Wexford. He owned two other farms near Enniscorthy: 46 acres at Clonhaston, Enniscorthy and 28 acres at Ballyorell, Enniscorthy. From 1996 to July 2006 he also rented lands (73 acres) adjacent to the home farm, from Coolbawn Farm which belonged to Thomas Dunbar, who died in 2006. Coolbawn comprised 237 acres and was advertised for sale in May 2007, to be sold at public auction in June 2007.

Mr Brownrigg intended to sell the land at Clonhaston to finance the purchase and sought valuations of that plot from Aidan Leacy and Ben Kavanagh. Mr Leacy valued the plot at between €10 and €11 million and Mr Kavanagh provided a valuation of €6.9 million. Mr Brownrigg forwarded the valuations to his bank in support of a bank loan of €7.7 million to finance the purchase, contingent on the sale of his own plot. He then successfully bid €5.9 million at auction for the land and paid a 10% deposit. When his own plot was put up for sale the highest offer he received was €1 million which was insufficient to allow completion of the purchase of the adjacent Coolbawn lands and he forfeited his deposit of €590,000.

Mr Brownrigg brought an action in negligence on the basis that he had relied on the valuations in obtaining a bank loan and bidding for the new land. Mr Kavanagh did not defend the proceedings but Mr Leacy claimed that the letter he had provided was a ‘thinking of selling’ letter rather than a valuation, simply an expression of opinion made in good faith.

The Mr Justice Hedigan set out a useful five stage analysis for a claim of negligent valuation :

1. Was Mr Leacy aware that Mr Brownrigg would rely on the letter as a valuation?

Held: Mr Leacy was aware of the importance attached to the valuation as Mr Brownrigg had pursued him for it in multiple phone calls and ultimately drove over to collect the letter.

2. Was the letter intended to be a valuation?
Held: If the letter was not intended to be a valuation this should have been clearly stated. No such statement had been included.

3. If it was a valuation, was it prepared negligently?
Held: The valuation was negligent as it did not comply with *Red Book* standards and no warning of uncertainty had been provided. Whilst valuation is an imprecise art, the valuation was far outside the permissible margin of error (***Singer & Friedlander Ltd v John D Wood & Co*** **[1977]** cited); nor did it contain any advice regarding the risks inherent in taking into account residential zoning.

4. Did Mr Brownrigg rely upon the letter?
Held: Mr Brownrigg bid a purchase price for the adjacent lands that was below the lower of the two valuations. It was clear that Mr Brownrigg relied on the valuations to his detriment and the valuations of both auctioneers were relied upon equally.

5. Was there contributory negligence by Mr Brownrigg?
Held: Mr Brownrigg was an experienced and knowledgeable farmer and it was his decision to purchase the adjacent lands before selling his own plot. He was unlucky in the timing of the turn of the market but was found to be 50% responsible for the loss. He was therefore awarded damages equating to 50% of the deposit forfeited by him. Mr Leacy and Mr Kavanagh were held jointly and severally liable for that 50%.

C

Candler v Crane Christmas & Co. [1951] CA
<u>Duty of care owed</u>

This case followed ***Le Lievre v Gould*** in disallowing liability for negligent misstatements in the absence of fraud. Crane Christmas & Co. were accountants who provided incorrect financial statements regarding a Cornish tin mine in which Mr Candler sought to invest. The importance of the case lies in Lord Denning's dissenting judgment. He reasoned, among other things, that the courts were too tied to privity of contract in not allowing liability to a third party. He also reasoned that where there is the close relationship of the adviser knowing that the advice is being relied upon then justice demands liability when that advice is incorrect through lack of care.

Cann & Sons v Willson (1888) Ch
<u>Duty of care owed</u>

A duty of care was held to be owed by the valuer (Willson) in respect of a mortgage valuation. This followed the reasoning of ***Heaven v Pender*** **(1883)** which went some way in establishing the modern principles of negligence, i.e. a common duty of care. Per Mr Justice Chitty : 'It seems to me that the defendants knowingly placed themselves in that position and, in point of law, incurred a duty towards him to use reasonable care in the preparation of the document called a valuation.' This case was overruled by ***Le Lievre v Gould*** **[1893] CA** and the reasoning not reinstated until ***Hedley Byrne v Heller*** **[1963]**.

Caparo Industries v Dickman and others [1990] HL
<u>To whom duty of care is owed</u>

A leading firm of chartered accountants, Touche Ross & Co., performed their statutory function as auditors, under a contract with Fidelity plc. This information was relied upon by an existing shareholder, Caparo Industries, in their decision to make a takeover bid. Published accounts are, of course, in the public domain so, potentially, could be relied upon by anyone, known or unknown to the accountants or subject company.

An action was brought against Steven and Robert Dickman, as directors of Caparo, for fraud and against Touche Ross, as accountants, for negligence.

The accountants were held *not* to owe a duty of care to anyone who might rely on their statements unless :

(a) they had actual knowledge of the person likely to rely on it, *and*

(b) they had actual knowledge of the purpose of that reliance, *and*

(c) the imposition of duty would be ‘fair, just and reasonable’ in the circumstances

This involved actual knowledge and not just a foresight of probabilities such that information in the public domain *might* be used.

This important case essentially limited the ***Donaghue v Stevenson*** neighbour test on policy grounds with regard to professional negligence cases. It diverted from the leading US* judgment in ***Ultramares Corp. v Touche*** **(1931)** in the New York Court of Appeals. In that case, accountants who prepared and certified a balance sheet were held to owe no duty to banks and other lenders who advanced money in reliance on the accounts. In claims for damages for economic loss resulting from negligent misstatements, there was seen to be the potential for possibly ruinous losses by a large class of claimants. Foreseeability of reliance by itself was not an adequate limiting factor. Chief Justice Benjamin Cardozo voiced the concern of the courts to avoid : 'liability in an indeterminate amount for an indeterminate time to an indeterminate class'.

* Clearly only of persuasive influence in the UK but widely referred to and considered at length in ***Caparo***.

Capita Alternative Fund Services (Guernsey) v Drivers Jonas **[2012] CA**
<u>Margin of error</u>

A factory outlet shopping centre (FOC) development was proposed for Chatham Historic Dockside, based around a Grade II listed structure, the Boiler Shop. It was valued by Drivers Jonas at £62.85m in April 2001 and this price was paid. The centre struggled to get full occupancy and in 2010 was valued at just £7m. Due to the complexity of a commercial valuation the judge took a ‘component’ approach. Rather than ascertaining an acceptable margin of error applicable to the whole property, as would be typical in residential cases, the elements were evaluated separately.

The valuation was made up of the capitalised <u>value of rent</u> and the <u>reversion value</u> of the FOC lease after seven years. There is no ‘rack rent’ for an FOC. Instead the rent is a mix of a base rent (<u>guaranteed rent</u>) and turnover rent (<u>top-up</u>), an additional element of rent on each sub-lease, which relates to turnover.

Mr Justice Eder, in the High Court, allowed a 1% margin (+/- the correct value) on the valuation of the <u>guaranteed</u> rent component as the rents were fixed and the yield percentage to be applied was agreed by the parties’ experts. There was, therefore, little scope for reasonable argument on this figure.

The judge accepted that valuing the <u>top-up</u> priority return was more difficult as it depended on forecasting turnover. He therefore determined that a 10% margin should apply to this component figure.

Finally, the judge agreed that valuing the <u>reversion</u> was exceptionally difficult, as it depended on forecasting the FOC’s turnover seven years from the date of the valuation, at a time when the FOC had not started to operate. He thus allowed a 20% margin of error for this component.

Damages of £18.05m were awarded by Justice Eder at first instance, being the overpayment for the long lease for which a true valuation was estimated at £44.8. An overall margin, combining the components, of +/- 15% was given.

There was also a finding of negligence in the failure to obtain a CACI* report - a standard commercial report providing demographic and market information to support, for example, predicted consumer numbers.

The matter was appealed such that (a) the High Court had insufficient evidence to come to a 'correct' valuation, and (b) the tax relief available to investors (capital allowances for investment in an Enterprise Zone) was not taken into account in ascertaining the true cost of investment, i.e. the asking price *minus* tax allowances.

The Court of Appeal upheld the general reasoning of the High Court and said the judge was entitled to come to a conclusion as to value 'doing the best he could as to the precise figure'. The tax matter was allowed on appeal and damages were reduced to £11.86m.

* CACI are a firm of consultants, originally the California Analysis Center Incorporated, later the Consolidated Analysis Center Incorporated and simply CACI since the 1970s, see www.caci.co.uk.

Co-operative Group Limited v John Allen Associates **[2010] TCC**
Expert witness

See ***Aurora Leasing Ltd v Colliers International (Belfast) Ltd*** **[2013] NIQB**.

Corisand Investments v Druce & Co. **[1978] QBD**
Keeping to to date with the law

Among other matters discussed in this case involving the valuation of the Raglan Hall Hotel in Muswell Hill, London, it was held to be negligent to fail to take account of relatively recent new legislation (the Fire Precautions Act 1971). Compliance with this act would have involved significant expenditure, thus affecting value.

Craneheath Securities v York Montague **[1996] CA**
Margin of error

This case involved the valuation of a restaurant at The Manor House, Kingsdown, near Deal, Kent. No negligence was found and Lord Justice Balcombe noted that : 'Valuation is not a science, it is an art, and the instinctive 'feel' for the market of an experienced valuer is not something which can be ignored..'.

D

***Dennard v PricewaterhouseCoopers LLP* [2010] CA**
<u>Margin of error</u>

Although this case went to the Court of Appeal on contractual issues, the negligent valuation reasoning was that of Mr Justice Vos in the High Court. This case involved the valuation of equity shares in a portfolio of eleven care home PFI* schemes. The dispute turned on the calculation of the appropriate refinancing uplift and discount rate to apply to each PFI project in the portfolio. Mr Justice Vos took a 'component' approach in determining the appropriate range of discount rates for each PFI scheme in the portfolio. From this he calculated the correct value and appropriate range of values for each PFI scheme, and appropriate value increase, and range of increase, for the refinancing uplift on the portfolio as a whole. He then arrived at a portfolio correct value of £8.8 million and an appropriate portfolio value range of £5.6 million to £11.8 million.

* PFI - Private Finance Initiative schemes are a means of obtaining private investment for public infrastructure projects such as hospitals and schools.

***Derry v Peek* (1889) HL**
<u>Duty of care</u>

In a case involving the sale of shares on the basis of an inaccurate prospectus, the House of Lords held that there is no general duty of care owed for false misstatements in the absence of actual fraud. Mere lack of care will not establish liability. See ***Le Lievre v Gould* [1893] CA**.

***Donaghue v Stevenson* [1932] HL**
<u>Duty of care</u>

The case established the framework of the modern law of negligence, particularly with regard to whom a duty might be owed to. It drew on earlier British cases such as ***Heaven v Pender*** and also Justice Benjamin Cardozo's famous judgment in the US case of ***Macpherson v Buick Motor Co.* (1916)** in the New York Court of Appeals in establishing liability by manufacturers to ultimate consumers in the absence of contractual relationships. Lord Atkin's espousal of the neighbour test is the key feature of the judgment, i.e. that a duty of care is owed to '… persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.'

E

***E.Surv Ltd* v *Goldsmith Williams Solicitors* [2014] Ch**

<u>Quantification of damages</u>

E.Surv were found negligent with regard to an over-valuation on the 7 bedroom detached Quarnford Lodge, near Buxton. The surveyor was found to have been ‘careless’ in having been unduly influenced by the borrower’s assertion that the property was worth £850,000. He thus valued it at £725,000 with the borrower seeking a £580,000 mortgage. The surveyor brought a claim of contributory negligence against the solicitors on the basis that they should have been alerted to the likely over-valuation given that the borrower had acquired the property six months previously for £390,000.

Per Mr Justice Davies : This ‘raises the question as to whether or not what is known as the *Bowerman* duty [the duty on a solicitor to report to his lender client matters relevant to the valuation of the property offered as security for a loan*] is ousted by the terms of the Lenders Handbook issued by the Council of Mortgage Lenders [and in the Solicitors’ Practice Rules 1990, Rules 6(3)(c)]. …

‘It follows in my judgment that a solicitor must perform his express obligations under the Lenders Handbook by undertaking a Land Registry search and by reading the office copies so obtained as well as by reading a copy of the valuation report provided to him. If in the process of so doing he discovers information from the office copies about the recent purchase price which has a material bearing on the valuation of the property, then he is under an obligation to the lender to disclose it.

‘It follows that I am satisfied that the *Bowerman* duty arose in this case.

‘Whether or not it applies in other cases will, in my judgment, depend upon the source of the information in question. If the source is not one which the solicitor is required to obtain or to consider under his express obligations, then I can see the force of the argument that he cannot be obliged to consider whether or not it has a material bearing on the valuation so as to give rise to a *Bowerman* duty.’

A contribution of £100,000 was required from the solicitors under the Civil Liability (Contribution) Act 1978, being 50% of the £200,000 awarded against the surveyor to the borrower.

* From ***Mortgage Express v Bowerman* [1996] CA**.

***Earl of Malmesbury v Strutt & Parker* [2008] QBD**

Contributory negligence

The claimant won damages in relation to Strutt and Parker's negligence with regard to negotiating leases of land near Bournemouth Airport for car parking. Their damages were, however, reduced by 80% due to unreasonable behaviour in the pre-court mediation process.

Edward Wong Finance Co. Ltd v Johnson Stokes & Master **[1984] CA**

Keeping up to date with professional knowledge

A solicitor followed 'Hong Kong style' mortgage transaction procedures which allowed for malpractice in that there was a gap between monies being handed over and the security of executed documents.

Although this practice was virtually universal in Hong Kong, it was held to be negligent in that any competent lawyer would know about the exposure and should, as occasionally happened in the (then) colony, use 'English style' procedures.

F

Francis v Barclays Bank plc [2004] Ch

<u>Keeping adequate records</u>

The claimant, Mrs Francis, and her husband were the sole shareholders in a family company, Cresta Management Services Ltd. Barclays Bank had agreed to provide loan facilities to the company on the basis of certain securities, including the Redwood Nursery Site. Potton, Bedfordshire, owned by the company (and the claimant's matrimonial home). The company subsequently went into liquidation owing money to the bank. A firm of surveyors, Messrs Kirkby and Diamond, were appointed as receivers.

An agreement for the sale of the property was entered into between the bank and BD Ltd. Under the agreement, provision was made for a price payable on completion, and for a further sum to be paid in the event that, within ten years of the date of the agreement, the property was disposed of with the benefit of planning permission, or planning permission was implemented by BD Ltd or its successor in title (common terms of sale known as clawback provisions).

Following the sale, the receivers resigned. Over a year later, one of the shareholders of BD Ltd approached the receivers offering to make an immediate payment of £25,000 to the bank in consideration for the bank's agreement to a variation of the clawback provisions which would, *inter alia*, cap the further sum payable to the bank at £75,000. The bank instructed the receivers to investigate the offer and report back. The offer was recommended and the variation executed.

A few months later a draft of the local plan was published which included the property in an area allocated for possible residential development. BD Ltd then applied for permission to develop the land, sold the property and paid monies due to the bank under the variation. Subsequently, a revised planning application was approved.

The bank issued a claim seeking damages for negligent breach of duty in respect of the advice given by the receivers in connection with the variation. The essence of the claim was that had the real prospect of planning permission being obtained been made apparent to the bank, the bank would not have agreed to the variation and was likely to have realised a greater sum than it had received under the terms of the variation. The receivers denied any breach of duty.

It was held that the receivers had been in negligent breach of the duty which they owed to the bank. Although the receivers had made enquiries, they had failed to make appropriate enquiries of the relevant council department in relation to the likelihood of a change in the planning position. Accordingly, the claimant was entitled to relief as against the bank and the bank was entitled to a sum as against the receivers.

An important feature against the surveyor receiver was the lack of record keeping, files notes, notes of telephone conversations, etc.

Freemont (Denbigh) Ltd v Knight Frank LLP **[2014] Ch**

Exclusion of liability

A valuation for land in Denbigh, north Wales on the site of what was, until 1995, the North Wales Hospital, was given by KF at £17m with outline planning permission and £18.7m with detailed planning consent. FD brought a claim for losses due to the overvaluation. Five preliminary issues were before the court:

(i) in relation to KF's valuation of the property and the preparation of the report, whether a contract of retainer had come into existence between the parties;

(ii) if the answer to (i) was yes, what were the terms of the contract of retainer;

(iii) whether KF had owed FD a common law duty of care to exercise reasonable skill and care in the valuation of the property and the preparation and provision of the report;

(iv) whether, in the light of answers to (i) to (iii) and/or the content of the report, FD was precluded from relying on the report; and

(v) whether the heads of loss as pleaded in the particulars of claim, including loss of profit and loss of a chance, were capable of falling within the scope of any obligation or duty held to be owed by KF to FD, or whether they were too remote/unforeseeable to be recoverable from KF.

The court ruled:

1. For a long time in their relationship, the intention had been for the retainer. Such a contract had been formed in July 2006.

2. On the evidence, the critical term of the contract had been that KF would provide a valuation of the development land for the purpose of enabling FD to obtain the financing. It had not been a term that the report was to be provided for FD to rely upon in the future when forming its plans for the development land.

3. KF had owed FD a duty of care in tort, in addition to a contractual duty of care. However, that duty extended only to the provision of a report for secured lending purposes. In other words, KF was to take care to produce a report which gave a fair value for the development land so that FD was able to obtain financing. It would have been remarkable for the duty of care owed by KF in tort to be more extensive than its contractual duty of care. There was no warrant for any extension of the duty, and so the common law duty was to the same extent as the contractual duty of care.

4. FD was not precluded from relying on the report for the purposes for which it had been provided. However, if it had relied upon the report in the months or years ahead for other purposes for which it had not been provided, there could be no claim against KF.

5. The heads of loss claimed, including loss of profit on a subsequent sale, were not capable of falling within the scope of the duties that had been owed by KF to FD.

In short, the statements made in the course of dealing, despite the lack of a specific exemption clause/disclaimer, meant that no duty of care was owed by the valuer to the borrower. It must be stressed that this is a *commercial* case where borrowers are deemed to need less protection and to be dealing on a more equal basis with their professional advisers than in consumer / residential cases.

***Fryer v Bunney* [1982] ORC**

Level of thoroughness

A surveyor was found to be negligent in not discovering considerable damp due to insufficient use of a Protimeter throughout the residential property, 5 Cherry Way, Daw's Hill, Essex. Although the survey report indicated that a meter had been used, there were no records of any readings for parts of the house. It was shown that had sufficiently extensive readings been taken then the damp would have been shown.

A range of expert witnesses, including a plumber, a chartered engineer and two chartered surveyors, provided very detailed information on the construction and materials of the property to help establish what was reasonably discoverable through a competent, but not atypical, survey.

Newey J was sympathetic to the defendant surveyor, despite his finding of negligence : 'I am quite sure he did not deliberately decide to skimp his work. I am quite sure he did not say to himself that day: 'Well, I will save myself 10 minutes, a quarter of an hour or half an hour by not checking with the Protimeter the inside walls.' I am sure he did not do that. I think this is one of those cases of a man doing a job of a standard type perhaps too frequently.'

G

Gibbs v Arnold, Son & Hockley [1989] QBD

<u>Level of thoroughness required</u>

A thorough (according to standard good practice) survey was carried out on 1 Hyam Road, Norwich, an end of terrace mid-Victorian property. It was noted in the survey report that, among other things, the chimney needed repair work. However, more serious problems, which could not have been seen from a 'head and shoulders' inspection of the attic, later materialised. The surveyors were found *not* to be negligent. The problems were not visible from head and shoulders inspection and there was nothing to alert any reasonably competent surveyor to carry out a more detailed inspection.

Stephen, J concluded in the defendant surveyor's favour : '… I should say that I formed an extremely high opinion of Mr Hockley, Mr Bramall and Mr Hammond as professional men of very considerable knowledge, ability, thoroughness and integrity. Mr Hammond's inspection and report were done with great care. The firm appears to me to be a credit to the surveyors' profession and I trust that no slur has been or will be cast upon its good name by this unfortunate and ill-advised young couple bringing this action.'

Goldstein v Levy Gee [2003] Ch

<u>Marging of error</u>

Mr Justice Lewison : Liability must be established, in valuation cases, by an analysis of result rather than method.

There was some concern as to whether Lord Hoffman in ***SAAMCO* [1996] HL** and ***Lion Nathan v C-C Bottlers Ltd* [1997] PC** indicated otherwise, but these cases were distinguished in ***Goldstein*** and, later, by Justice Coulson in ***K/S Lincoln v CB Richard Ellis Hotels Ltd* [2010] TCC,** as being concerned, at the point where this analysis was raised, with the quantification of damages rather than establishment of liability. ***Singer and Friedlander v John D Wood & Co.* [1977] QBD** reasoning was cited and contrary arguments (that a result within the margin reached by an incorrect method is culpable, as seen in ***Mount Banking Corporation Ltd v Brian Cooper & Co.* [1992] QBD**) were quashed.

H

***Hadley v Baxendale* (1954) EC**

Quantification of damages

Hadley is a key case in contract law which set out that damages would be awarded for (a) losses reasonably foreseeably stemming from a breach of contract, and (b) additional losses arising from any special circumstances *known* to the defendant.

The case involved suing the carrier for the delay in transporting a broken mill shaft from City Steam-Mills in Gloucester to the repairers in Greenwich. The delay caused loss of profit due to not being able to operate whilst the broken shaft was gone. The carrier indicated that they had no idea that the mill would have to be closed down entirely.

See ***John Grimes Partnership Ltd v Gubbins* [2013] CA**.

***Harris v Wyre Forest District Council* [1989] HL**

To whom duty of care is owed

Mr and Mrs Harris applied to Wyre Forest District Council for a mortgage to buy 74 George Street, Kidderminster, a Victorian terraced property, for £9,000. They were offered a mortgage of £8,505, the Council employing its own in-house valuer, Mr Lee, to undertake the mortgage survey. Mr and Mrs Harris were not entitled to see the valuer's report but assumed that the Council must be satisfied with the property to a value of £8,505, the only conditions attaching to the mortgage being to obtain an electrical report and to repair some mortar work.

Three years later it was discovered that the house was unsafe due to settlement and instability. The purchasers obtained a quotation for £13,000 to repair the property with another builder refusing to tender at all due to the perceived danger of the job.

The Court held that the valuer owed a duty of care to the prospective purchasers and that, per the Unfair Contract Terms Act 1977, it was not reasonable to allow this liability to be removed by getting a disclaimer signed. Their Lordships echoed their assertions in ***Smith v Eric Bush*** that, at the lower end of the market, the surveyor would be aware that purchasers/borrowers would be unlikely to obtain their own, privately commissioned survey and would place a higher reliance on the mortgage valuation.

***Harris v Wyre Forest District Council* [1989]** was heard at the same time as the case ***Smith v Eric Bush* [1989].**

***Heaven v Pender* (1883) CA**
Duty of care

This case was drawn on (particularly the *obiter* statements of Viscount Esher, William Brett, MR), in the case which is generally deemed to established the modern law of negligence: ***Donaghue v Stevenson* [1932] HL**.

The defendant dock owner, supplied and erected a staging round a ship under a contract with the ship owner. The plaintiff was a workman employed by a ship painter who had been engaged by the ship owner. In order to carry out his work, P used the staging when one of the ropes, supplied by D, being unfit for use, broke and P fell into the dock and was injured.

It was held that D was under an obligation to P to take reasonable care that at the time he supplied the ropes and staging they were in a fit state to be used, and for the neglect of such duty was liable to P for the injury he had sustained. Whenever one person is by circumstances placed in such a position with regard to another, that every one of ordinary sense would recognise that if he did not use ordinary care and skill in his own conduct with regard to those circumstances he would cause danger of injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger.

This case extended general negligence principles in that, before, there had been the sense that a duty was only owed with regard to intrinsically dangerous items, e.g. the supply of a gun.

See ***Cann & Sons v Willson* (1888) Ch**.

***Hedley Byrne & Co. v Heller & Partners Ltd* [1963] HL**
Duty of care

This case effectively overruled ***Candler v Crane Christmas***, taking the reasoning of Lord Denning's dissenting judgment in that case.

In this case, Hedley Byrne asked their bank for a credit check on a prospective customer. Their bank asked the customer's bank, Heller, who gave an inaccurately positive statement as to their credit worthiness. As a result of Heller's inaccurate statement, Hedley Byrne allowed a line of credit to the customer which was defaulted upon, resulting in a loss of £17,000. It was held that there should be liability for negligent misstatement resulting in purely financial loss where there is a 'sufficiently proximate' relationship between the parties, i.e. when it is clearly understood that the statement is being relied upon.

There was, in fact, no liability in the case due to a disclaimer (which would later have been likely to be ineffective under the Unfair Contract Terms Act 1977) so the reasoning on liability is *obiter* but has been followed.

***Hubbard v Bank of Scotland (t/a Birmingham Midshires)* [2014] CA**
Setting out scope of survey/advice

Ms Hubbard purchased the detached Ashton House, Pattingham Road, Perton Ridge, Wolverhampton at a disused quarry site, part of the house having been built on rock base and part on softer land fill. The mortgage valuation (of £690,000) prepared by Birmingham Midshires (BM) clearly stated that it had been prepared following a visual inspection only and that it was open to the claimant to obtain a more detailed inspection and structural report.

During BM's inspection the claimant highlighted two cracks but the valuer informed her that these were old and that they were nothing to worry about. The cracks were noted in the report but as no movement was identified they did not specifically recommend that a full structural survey be carried out, other than their standard note.

The property subsided resulting in six figure remedial works. Ms Hubbard alleged that BM :

(a) failed to identify that there was ongoing subsidence
(b) failed to specifically recommend further expert investigation of the cracks
(c) failed to reduce the value of the property to reflect the cracks.

The trial judge ruled in favour of BM based on the clearly stated limitations of a valuation report.

The decision was upheld by the Court of Appeal, which ruled that BM would not be liable unless they knew, or ought to have known (as reasonably competent surveyors), that they should have recommended a full structural survey. BM reasonably concluded that the cracks were historic and were not ongoing and, on the facts, were not unreasonable or negligent in failing to recommend that a full report be carried out.

I

***Izzard v Field Palmer* [1999] CA**

Keeping up to date with professional knowledge

It has generally been assumed that if a professional acts in accordance with the standard practice of most members of his / her profession then it will be unlikely that a court would find a lack of reasonable care. This case indicates otherwise.

A mortgage valuation was carried out on a maisonette at 37 Samson Close, Gosport. The property was a two storey maisonette within a four storey building on the Rowner Estate, built in the 1960s by the Ministry of Defence using concrete panels and timber cladding. The expert witness said that ‘any competent valuer’ would have indicated the potential structural problems of such a property. It was found as a point of fact that :

(a) there *were* structural problems

(b) most valuers, at the time, would *not* have been aware of the problems - a very skilled valuer, fully conversant with the available technical literature, might have indicated the problems but that *most* valuers would not have done.

The Court of Appeal held that the valuer was negligent in not being up to date, even though most other valuers would also have given a similar report.

J

Jenkins v Betham (1855) CP

Keeping to to date with the law

It was held that someone holding themselves out as competent to value ecclesiastical property should be aware of the difference (in the valuation of dilapidations) between tenants and incumbents (clerical office holders). Whilst not expected to be wholly expert of the details of the law, in the way of a solicitor, they should certainly know of the general position and the significance of the difference.

John Grimes Partnership Ltd v Gubbins [2013] CA

Quantification of damages

Walter Gubbins engaged John Grimes Partnership Ltd, a geological and engineering consultant, to design and complete a road and drainage system for a housing development in East Taphouse, Cornwall by March 2007.

The works remained incomplete at the end of March 2007. Mr Gubbins engaged another consultant in April 2008 who re-designed the road and quickly gained local authority approval.

In the interim, JGP sued Mr Gubbins for unpaid fees of £2,893 and Mr Gubbins counterclaimed for £20,000 regarding defective, unfinished works and the breach of the expressly agreed deadline, claiming that as a result there had been a reduction in the market value of the private residential units, a reduction in the offer from a Housing Association for the affordable units and an increase in building costs.

At first instance, Mr Gubbins succeeded. JGP appealed on the basis that its responsibilities under the contract did not include a duty to protect Mr Gubbins against losses due to a fall in the market value of property (per SAAMCO).

Dismissing the appeal, the Court of Appeal held that the general position is that a contracting party will be liable for all losses arising naturally, according to the normal course of things, from the breach of contract and all losses which may reasonably be supposed to have been in the contemplation of the parties at the time they made the contract, as a probable result of the breach.

On the basis of the particular facts, the Court of Appeal held that JGP knew that Mr Gubbins intended to use the land for development and knew that there was a risk that there could be a fall in the market value of the property if the works were delayed. Accordingly, JGP *was* liable to Mr Gubbins for the losses suffered even though such losses were not within JGP's control and far exceeded the £15,000 fee payable to JGP under the contract. This essentially applies the traditional ***Hadley v Baxendale*** **(1854)** measure.

Note that this case related to breach of contract rather than negligence.

***Jones v Kaney* [2012]SC**

Expert witness

The nature of expert witness work will not be covered here and there is guidance through, among other sources, the RICS, Civil Procedure Rules and the Society of Expert Witnesses. It is instructive, however, to draw on a couple of judgments critical of a common mistake made by experts in the context of valuation cases :

Various parties to the court process : advocates, judges, witnesses of fact and expert witnesses have, until relatively recent times, enjoyed immunity from civil action for evidence given in court, or given preliminary to court proceedings, whether that action be for defamation or in negligence.[5]

The banner of immunity was lifted with regard to solicitors and barristers in 2002 (***Arthur J S Hall & Co. v Simons* [2002] HL**) and in 2011 that immunity was removed from the expert witness with the majority decision in ***Jones v Kaney***. Note that there is still immunity regarding defamation, and the loss of immunity in ***Jones v Kaney*** relates only to expert witnesses *not* to witnesses of fact.

The case involved a psychologist's report on post-traumatic stress disorder following a road traffic accident. The defendant signed a joint statement which she admitted to not agreeing with, and which was contrary to her initial report, but which she felt pressured to sign.

Fundamentally, there can be no real concern about the loss of immunity from suit on the part of experts who seek to carry out their duties with the standard of care and skill expected both legally and morally. The possibility of the disgruntled client taking action will, hopefully, make experts very carefully consider and be able to support their position. Concern has been voiced about whether resiling from a previously stated position on a technical point leaves one open to action. Resiling should still be possible without fear of reprisal where that resilation can be justified. And insurance and, more doubtfully, contractual provisions should be in place to protect against action. The concerns about a chilling effect on the supply of expert witnesses coming forward have not been borne out.

Despite a history spanning several centuries and unease about the way the decision was reached, the abolition of expert witness immunity was felt more deeply in the pages of academic and professional commentary than in any noticeable changes in practice.

[5] There are exceptions to immunity, such as perjury, contempt of court, professional misconduct (*Meadow v General Medical Council* [2006) CA) and liability for wasted costs (*Phillips v Symes (No 2)* [2004] Ch).

K

Kenny v Hall, Pain and Foster [1976] QBD

<u>Referring the case to senior colleagues if property is outside one's area of expertise</u>

An employee of the defendant firm significantly over-valued Culverlands House in Shedfield, Hampshire. The claimant (a chartered surveyor but in geodesy, with no particular knowledge of the residential property market) purchased another property on the basis of the high valuation, with the aid of a bridging loan. When the first property failed to sell at anywhere near the original high valuation, he sued in negligence. It was held that the employee had little knowledge of the local property market (particularly at a volatile time with rampant gazumping) and had expressly been told to refer valuations back to the office, which he failed to do. He did not exercise reasonable care and skill and the firm were vicariously liable.

K/S Lincoln v CB Goldsmith Ellis Hotels Ltd [2010] TCC

<u>Margin of error</u>

This case related to the valuation of four hotels on behalf of Danish investment companies. Mr Justice Coulson's key points can be summarised as :

(a) A professional valuer is in a different position to other professionals, as his clients are unlikely to understand or consider the methodology behind his valuation. They are just interested in the final value. The position is different for other professionals, such as architects and lawyers, who may be judged by reference to a number of other factors. In the light of this, it is 'only a matter of common sense' that a valuer's performance should be judged by value and not by the method by which he reached it.

[It might be noted, of course, that there are many trades and professions where clients do not understand or consider methodology and are simply concerned with the result.]

(b) In all but exceptional cases, where the valuation figure is within the established margin of error or bracket, no loss would have been suffered and therefore there could not be a finding of negligence.

(c) Where a valuer made a number of methodological errors but the breaches cancelled each other out mathematically such that the final figure fell within the acceptable bracket, despite the breaches and the fact that the correct result was down to sheer luck, the valuer would not be liable in negligence.

On the facts, the defendant's valuations fell within a permissible margin of error of +/-10% and therefore negligence could not be established, even though there had been evident lack of skill and care in methodology.

The judge also provided a useful summary of margins :

(a) For a standard residential property : +/- 5%;

(b) For a valuation of a one-off property : +/- 10%;

(c) If there are exceptional features of the property in question : +/- 15%, or even higher in an appropriate case.

L

***Le Lievre v Gould* [1893] CA**

Duty of care

The decision in ***Cann v Willson* (1888) Ch** was overruled on the reasoning of ***Derry v Peek* (1889) HL** in a case involving inaccurate building surveys on property in Ilfracombe. Per ***Derry v Peek*,** there is no liability for false misstatement in the absence of fraud. Cases such as ***Heaven v Pender* (1883) CA** were distinguished as the position was deemed to be different when the defendant has responsibility for some 'instrument' which could cause damage if there was lack of care, such as a horse or a gun. Such cases *did* give rise to a duty of care, whereas negligent misstatement resulting in financial damage did not.

***Legal & General Mortgage Services v HPC Professional Services* [1997] QBD**

Margin of error

Mr Justice Langan : 'As soon as it is shown that the impugned valuation falls outside the bracket . . . the Plaintiff will by that stage have discharged an evidential burden. It will be for the Defendant to show that, notwithstanding that the valuation is outside the range within which careful and competent valuers may reasonably differ, he nonetheless exercised the degree of care and skill which was appropriate in the circumstances.'

***Lewisham Investment Partnership Ltd v Morgan* [1997] Ch**

Margin of error

Mr Justice Neuberger : 'If I were to conclude that the Defendant was negligent in respect of one or more of the specific allegations, it would still be necessary to consider whether his valuation fell within the permissible bracket because, if it did, then the Defendant would still escape liability.'

***Lion Nathan v C-C Bottlers Ltd* [1997] PC**

Margin of error

See ***Goldstein v Levy Gee* [2003] Ch.**

***Lloyd v Butler* [1990] QBD**.

Ensuring property inspection is of sufficient detail, not merely superficial

Mr Justice Henry : A mortgage valuation is not the same as a structural survey. 'It is taken on the basis of an inspection which on average should not take longer than 20-30 minutes. It is effectively a walking inspection by someone with a knowledgeable eye, experienced in practice, who knows where to look … to detect either trouble or the potential form of trouble. He does not necessarily have to follow up every trail to discover whether there is trouble or the extent of any such trouble. But where such an inspection can reasonably show a potential trouble or the risk of potential trouble, it seems to me that it is necessary … to alert the purchaser to that risk, because the purchaser will be relying on that form.'

M

***Macpherson v Buick Motor Co.* (1916) NYCA**

Duty of care

This US case established a duty of care in negligence beyond contractual relationships, effectively removing the privity of contract constraint in consumer contracts and was drawn on in ***Donaghue v Stevenson* [1932] HL**.

***Matthews v Ashdown Lyons* and *Maldoom* (2014) CC (Central London)**

Who is liable?

Merrett v Babb (see below) left employed professionals potentially exposed to personal liability claims regarding work they undertake on behalf of their employer.

Ashdown Lyons, surveyors, were instructed to survey a Clapham townhouse which the claimant purchased for £750,000 in July 2008. Ashdown Lyons went into administration in 2009 and problems with the company's professional indemnity insurance soon transpired. In July 2011, the claimant started professional negligence proceedings against Mr Maldoom, the Ashdown Lyons employee who had carried out the survey. Relying on ***Merrett v Babb***, it was alleged that Mr Maldoom owed the claimant a personal duty of care.

Mr Maldoom was found not to be personally liable and the claim was dismissed. The court recognised that ***Merrett v Babb*** was decided with particular public policy considerations in mind, i.e. to afford a remedy to purchasers of modest means, buying modest residential properties, where it was foreseeable that those purchasers would not reasonably be paying for or arranging a survey or valuation of their own in connection with the purchase. This was not the situation in ***Matthews*** :

1. The property was worth £750,000, so not a low value.
2. By instructing Ashdown Lyons directly, the claimant here had specifically engaged a surveyor for his own benefit (in contrast to the ***Merrett v Babb*** scenario) and thus had a contractual relationship.
3. The claimant would not be without remedy if the survey or valuation happened to be negligently performed. That remedies in contract and negligence were less valuable to him (because of Ashdown Lyons' insolvency and insurance issues) were merely normal commercial risks that any client had to expect to assume. Those factors were an insufficient policy justification for imposing a personal duty of care upon Mr Maldoom.

It was also important that the former employer was a limited company, with a separate legal personality, rather than an unincorporated business (as in ***Merrett***). This meant that the main authority to apply was the House of Lords decision in ***Williams v Natural Life Health Foods* [1998] HL**. On an objective analysis, there was nothing that Mr Maldoom had done to assume a personal responsibility to indemnify the claimant against the risk of loss in purchasing the property. Even if there had been, the claimant would still have needed to reasonably rely on that assumption in order to crystallise the personal duty of care.

***Merivale Moore plc v Strutt and Parker* [1999] CA**

<u>Margin of error</u>

Lord Justice Buxton : 'A valuation that falls outside the permissible margin of error calls into question the valuer's competence and the care with which he carried out his task *…* But not only if, but only if, the valuation falls outside that permissible margin does that enquiry arise. That is what I take to have been the view of Lord Justice Balcombe, with whom the remainder of the members of this court agreed, in ***Craneheath Securities v York Montague* [1996]** at page 132C, when he said 'It would not be enough for Craneheath to show that there have been errors at some stage of the valuation unless they can also show that the final valuation was wrong'.'

***Merrett v Babb* [2001] CA**

<u>Who is liable?</u>

A chartered surveyor, John Babb, negligently (failing to notice settlement cracks) carried out a mortgage valuation for the Bradford and Bingley Building Society, upon a residential property, 18 Trelawney Road, Falmouth, Cornwall upon which Miss Diana Merrett (and her mother, Mrs Scheppel) relied. Babb valued the property at £47,500. By the time Miss M sued, Babb's employer, Clive Walker Associates, had gone bankrupt so she sued Babb direct. In theory, firms should have professional indemnity insurance (PII) which should be continued, in accordance with RICS requirements, after cessation of practice. However, if insurance is not in place this case leaves individual professionals, certainly surveyors and probably others such as solicitors, open to personal liability.

***Montlake and others v Lambert Smith Hampton Group Ltd* [2004] QBD**

<u>Awareness of planning permission.</u>

A firm of surveyors were found liable for grossly undervaluing the Wasps rugby ground in Sudbury, West London. They had failed to make proper planning enquiries and, thus, appreciate the possibility of obtaining residential planning permission.

The ground comprised : 8 acres acquired freehold in 1928, 0.91 acre on long lease from Wembley Council since 1965 and 4.4 acres on 125 year lease from Brent Council since 1995.

LSH valued the property at £832,500 on a DRC basis (depreciated replacement cost) - this value was used on the transfer by the claimant to Loftus Road plc.

In July 1996, DTZ valued the ground at £5.7m using *Red Book* guidance : '…where there is no recognisable market for the land under its existing use, then it would be appropriate to have regard to the prevailing uses surrounding the property and assuming, if reasonable to do so, that consent would be granted for such use.'

Loftus Road plc subsequently sold the ground, with outline residential planning permission, for £8.9m.

***Mortgage Express v Bowerman* [1996] CA**
Quantification of damages

See ***E.surv Ltd v Goldsmith Williams Solicitors* [2014] Ch.**

***Mortgage Title Resolutions Ltd v J & E Shepherd* (2013) QBD**
Margin of error

See ***Redstone Mortgages v Countrywide Surveyors* (2013) Ch**.

***Mount Banking Corporation Ltd v Brian Cooper & Co.* [1992] QBD**
Margin of error

See ***Goldstein v Levy Gee* [2003] Ch**.

N

***Nykredit Mortgage Bank plc v Edward Erdman Group Ltd (no. 2)* [1998] HL**
Quantification of damages

Lord Nicholls : '… a defendant valuer is not liable for all the consequences which flow from the lender entering into the transaction. He is not even liable for all the foreseeable consequences. He is not liable for consequences which would have arisen even if the advice had been correct. He is not liable for these because they are the consequences of risks the lender would have taken upon himself if the valuation advice had been sound.'

But see the position, in certain circumstances, in ***John Grimes Partnership v Gubbins* [2013] CA**.

P

***Padden v Bevan Ashford Solicitors* [2011] CA**
<u>Ensuring advice is sufficient</u>

A wife signed over her house, pension and various other finances as she was told by her husband that raising sufficient money would allow him, a financial consultant, to pay back clients and keep out of prison. A solicitor told her not to sign but did not explore or explain the matter further. Had the paperwork been examined by a competent solicitor they would have seen that raising the money would be unlikely to keep husband out of jail, given the extent of his criminal activities. The court found the solicitor negligent in that if the reality of the situation had been properly explained to the wife she may well have made a different decision.

***Paratus AMC Ltd and Countrywide Surveyors* [2011] Ch**
<u>Marging of error</u>

Mr Justice Keyser : a margin of 8% was found to be appropriate on residential property with no unusual features but with some limitation on comparables and in a rising market. The property was Flat 9, Fulford Place, Hospital Fields Road, York being a first floor, two bedroomed flat.

***Perry v Sidney Phillips & Co.* [1976] QBD**
<u>Taking appropriate time</u>

A survey and valuation of Kyre Bank Cottage, Kyre, near Tenbury Wells, Worcestershire failed to highlight a leaking roof, a defective septic tank and 'many other' defects such that considerable remedial monies were required to be expended, even though the prospective purchaser had raised queries on damp and the septic tank at the point of instruction. The survey, indicating that the property was sound and that the asking price of £27,000 was appropriate, was simply incorrect. The judge found that 'overwork and lack of time' meant that Mr Phillips, the senior partner who did the survey, did not reach a 'satisfactory' standard in his work.

This case was later heard at the Court of Appeal on the assessment of damages.

***Philips v Ward* [1956] CA**
<u>Quantification of damages</u>

In 1952, the claimant purchased Holmhurst Manor Farm, Burwash Common in Sussex, an Elizabethan farm dating from 1610 consisting of a house, two cottages and 137 acres land, for £25,000 on the basis of a negligent valuation. The surveyor failed to report timbers badly affected by death-watch beetle and worm such as to need a new roof and timbers. The market value of the property in its actual condition was £21,000.

After moving into the house it was found that an additional expenditure of £7,000 was required to put the property into the condition in which it had been described in the report. The plaintiff claimed, among other heads of claim, the cost of repairs. The official referee awarded £4,000, namely the difference between the value of the property as it should have been described and its value as described. Per Lord Justice Denning: 'I take it to be clear law that the proper measure of damage is the amount of money which will put Mr Philips into as good a position as if the surveying contract had been properly fulfilled …'.

***PK Finans International (UK) Ltd v Andrew Downs & Co Ltd* [1992] QBD**

Status of industry guidance / codes of practice

Per Ogden, J : At the request of Mr William Hancock, a director of Scotlane Ltd, Mr Appleton of the defendant company provided a valuation dated 14 October 1985 of a large Victorian building on the outskirts of Hitchin, Hertfordshire. Scotlane bought the property and converted it into a nursing home, Foxholes Nursing Home and, later, Ambleside Nursing Home. In November 1985 Mr Hancock sought a loan of £1m from the plaintiffs on the security of the property. Following agreement between Mr Hancock and the plaintiff's marketing officer, Mr Appleton provided a valuation dated 7 January 1986 on the same terms as that originally provided. It was clear that before January 1986 Mr Appleton had received two documents from Mr Hancock: a planning consent for use of the property as a nursing home and a 'Schedule'. The 'Schedule' detailed the change of use to a residential nursing home and conversion of a garage and stable-block to additional accommodation, community hall and 30 units of warden-assisted flats and bungalows. In his valuation Mr Appleton stated that he had made verbal planning inquiries but had not undertaken any official searches and for the purpose of his valuation he had assumed that consents were in existence for the additional nursing home facilities in the stable-block and that consent had also been given for the sheltered housing. There was, in fact, no such planning consent for sheltered housing. The plaintiff's contention was that Mr Appleton was negligent in not verifying the planning register or stating in his report that the existence and terms of the consents needed to be verified.

Judgment was given for the defendants. Mr Appleton was not negligent in failing to state in his report that there was a need for verification of the planning consents. The valuation, being provided for a financial institution, did not have to warn of the need for verification, contrary to the Royal Institution of Chartered Surveyors Guidance Notes. The RICS Guidance makes it plain that it is not necessary in all cases. The Guidance notes are not to be regarded as a statute. Mere failure to comply with the guidance notes does not necessarily constitute negligence. The omission by Mr Appleton to state the source of his information regarding the 30 units of sheltered accommodation did not amount to negligence and had no causative effect. On the plaintiff's concession that they were negligent in not sending the valuation to their solicitors, had the defendants been found negligent, contributory negligence by the plaintiff would have been assessed at 80%. The defendants' contention that the plaintiff's failure to send the valuation to their solicitors constituted a *novus actus* was rejected

***Platform Funding v Anderson & Associates* (2012) QBD**
<u>Quantification of damages</u>

The claim arose out of a large fraud involving a new development on the south bank of the River Thames at Hill, House, Thamesmead, London. A Mr Barrie bought all 84 flats in the development and then made contributions to the purchase on behalf of the purchaser in each case (without the lender's knowledge) in order to inflate the reported price. The transactions were subject to a separate criminal fraud trial with seven defendants (including Mr Barrie, two of his brothers, a solicitor and an accountant) which reached a pre-trial compromise. The property in this case was valued by the defendant at £275,000, the lender advanced £247,495 and Mr Barrie contributed £41,600 to 'top up' the purchase price, and to cover solicitors' fees and stamp duty.

Mr Barrie controlled the information available to valuers regarding comparables, and refused disclosure of information regarding incentives.

A claim was brought against the defendant surveyors, three other surveyors who had valued flats in the development, and the conveyancing solicitors. All but the claim against the defendant were settled before trial.

The valuer did not appear at the trial. The judge held that the valuer had not considered whether there were incentives, did not seek out either new build or second-hand comparables, and did not make enquiries about selling conditions in this or neighbouring developments. The valuer was found to be in breach of duty, i.e. having carried out the valuation without reasonable care and skill. However, the judge also found that, even if these steps had been taken, the valuer would not have discovered that his valuation was too high. Clearly, any further enquiries made of those selling/marketing the property (who were involved in the fraud) would only produce evidence which supported the stated asking price. However, the judge also held that the valuer would not have found comparable second-hand sales by an internet search or with local estate agents.

[This is somewhat surprising given that the property had been at £199,950 three weeks earlier, by reference to the second-hand sales prices of three comparables.]

The judge found that the defendant valuer would not have had access to that information and that, in any event, the lower second-hand comparables could not stand on their own as evidence of the property's value (in accordance with principles set out in the *Red Book*). Thus the valuation was not negligent.

The causation defence relied on in this claim is likely to aid valuers only in limited circumstances. In most over-valuation cases where a valuer fails to verify a stated purchase price, comparables will be available which will cast doubt on the over-stated price. In this atypical case, the fraud was so extensive such that all comparables had been affected.

***Platform Funding Ltd* v *Bank of Scotland (formerly Halifax plc)* [2008] CA**
<u>Establishing the right property</u>

This concerned a valuation of one of a cluster of partly built residential properties in Baker's Yard, Gosberton, Linconshire, none of which displayed a house number. The valuer did not realise that the borrower had deliberately taken him to inspect the wrong house. The mistake came to light when the borrower defaulted and the lender repossessed the property. The parties asked the Court of Appeal to decide who should suffer the loss resulting from the fraud.

The lender claimed that the valuer was under an unqualified obligation to inspect the property to which his instructions related and that he was in breach of contract because he had failed to do so.

The valuer accepted that he was under a duty to exercise 'reasonable' (as opposed to absolute) care and skill when valuing property. He argued that he had the same duty in respect of the steps that he taken to locate the property, especially since it had been identified solely by its address.

The Court of Appeal upheld the lender's claim. It was unfortunate that the valuer would have to bear the loss, but the lender was equally blameless and was less well placed to avoid the consequences of the mortgage fraud.

***Platform Home Loans v Oyston Shipways Ltd* [2000] HL**
<u>Quantification of damages</u>

There was a finding of negligent valuation but with 20% contributory negligence. Should this contribution be calculated on the true loss (£612,000 rounded), some of which was due to market fluctuation, or the SAAMCO capped loss (£500,000)?

Held : The reduction should be calculated with reference to the full loss. If the reduced figures exceeded the capped loss, then the cap would still provide the limit. If the reduced figure was lower than the capped loss then the arithmetically reduced loss would apply. In this case a 20% reduction of full loss was £489,000 (rounded). This was the final agree figure, being less than the capped loss of £500,000 (but, obviously, significantly more than if the 20% reduction had been applied to the capped loss in the first place).

***Preferred Mortgages Ltd v Countrywide Surveyors Ltd* [2005] Ch**
<u>Margin of error</u>

A converted chapel, The Old Methodist Chapel, Walpole Cross Keys, near King's Lynn, Norfolk, was a 'unique' property giving rise to a margin of tolerance of 15%. The valuer's methodology was appropriate and within the margin so no negligence was established.

R

R v Rathie (2011) CCC
Fraud

Of course, if the valuation is wilfully inaccurate the consequence is a criminal trial rather than civil action, with the potential for imprisonment rather than compensatory damages.

Mary-Jane Rathie, a chartered surveyor with Ashdown Lyons, received £900,000 in cash, a £143,000 Bentley Continental and a £49,000 Range Rover Sport in return for fraudulent over-valuations leading to the Bank of Scotland providing £10m in mortgages on five prime London properties in Cheyne Walk, Cadogan Square, Chester Mews, Canary Wharf and Belvedere House, Pimlico.

Rathie was found guilty of five counts of fraud and of concealing criminal property and was jailed for six years.

Mr Justice Timothy Pontius said : 'It's nothing short of a tragedy for a woman of your intelligence, qualifications and many years of exemplary hard work to appear in the dock convicted of crimes of very serious dishonesty … they reflect an abuse of professional integrity and also a shocking level of greed.'

Mrs Rathie's husband was a Metropolitan Police officer but was cleared of any involvement. The fraudster who paid her and organised the mortgage scam, Maria Michaela, was sentenced to nine years imprisonment in Harrow Crown Court in 2012.

Redstone Mortgages v Countrywide Surveyors (2013) Ch, unreported
Margin of error

This case involved the re-mortgage valuation of an end of terrace located on Manor Way, Cardiff, a service road parallel to the A370, the busiest commuter road into the city. The borrower applied to Beacon Homeloans for a self-certified loan of £180,000 representing a loan of 90% of the £200,000 value of the property. The mortgage was subsequently acquired by Redstone. When the borrower defaulted on the mortgage, the property was repossessed and sold for £135,000, resulting in a loss of around £52,000. It was Redstone's case that the property was worth £150,000 at the date of valuation. Countrywide argued that it was worth £185,000, and so was within an acceptable margin of 10%. Redstone issued a claim against Countrywide for £50,000 (being the SAAMCO capped loss, i.e. that damages do not reflect fall in the market).

The judge concluded that the valuation of £200,000, overstated the value of the property by £25,000 (some 14%). He noted that the most striking feature of this property was its position on an exceptionally busy road. It was a matter of common sense that the primary comparables should be properties on the same road. Of the 27 comparable properties referred to, just five fulfilled this criteria which, when analysed, led to the conclusion that the correct value as at 18th April 2007 was £175,000. Although the original valuation was therefore outside the accepted 10% margin of error, Countrywide argued that this did not necessarily mean that the valuation was negligent. The judge did not agree.

The judge criticised Countrywide's approach to the valuation. The surveyor had referred to Countrywide's own database when selecting comparables and had, in fact, himself valued a number of the comparables. Much more care should have been taken to find and use comparables from other sources.

The surveyor's initial view had been that the property was worth ‘nearer £190,000 than £200,000’ but he had increased his valuation on the basis that it was an acceptable (and expected) practice to value at the agreed sale price provided it was within 5% of his valuation assessment. This, according to the valuer, had become standard industry practice to enable lenders to proceed with applications where, otherwise, the valuation would have been too low to support the advance. In this case, the valuer was aware that the LTV (loan to value) ratio was 90%, as those details formed part of the initial instructions to Countrywide. The judge concluded that the valuer's role is to value a property for the purposes of an intended transaction, not to frame his valuation so as to *facilitate* the transaction.

The judge also criticised the surveyor's attempts to justify his original valuation by referring in his witness statement to nine properties he had not referred to in his original valuation, noting that the analysis of further comparables was a matter for the experts, not the original surveyor.

Countrywide's valuation was held to be negligent. They then sought to rely on the partial defences of contributory negligence and failure to mitigate, Countrywide argued that the lender failed to make proper underwriting checks and irresponsibly took the self-certification mortgage application at face value, such that lending £180,000 in these circumstances warranted a deduction of 90% to damages awarded. This argument failed as there were independent verifications of the borrower’s credit worthiness.

Many of the valuer defences and settlements since the 2007 property market collapse have been based on surveyors' allegations of lenders' imprudent underwriting and failure to mitigate, particularly in the context of self-certification mortgages and high LTV ratios. The *Redstone* judgment is a clear indication that, even in 90% LTV cases and in cases where lenders failed to verify self-certification application information, the state of the market at the time of the mortgage, and the common practice of the lending industry, can afford lenders a welcome shield against such allegations (see also ***Mortgage Title Resolutions Ltd v J & E Shepherd*** **(2013) QBD**, unreported) on this issue). It has been suggested that this reasoning amounts to bad practice, affording a defence for the banks, merely because it was common practice in boom time. However, the decision was welcomed by lenders and assisted with the resolution of many outstanding claims.

Apart from the impact of the decision in terms of contributory negligence defences, this case also provides important lessons for surveyors as to how the courts are likely to assess the negligence, or otherwise, of a valuer's methodology. Surveyors conducting mortgage valuations should be stringent and discerning in the selection of their comparables thinking about location and any other salient features, and to steer away from reliance on comparables within their own database.

Legal representatives of lenders and valuers need to ensure that their expert evidence is limited to the strictly relevant. This judgment and the changes to case management and cost recovery in civil litigation following Lord Jackson's costs review,* demonstrate the courts' willingness to disregard excessive and incomparable evidence, and potentially disallow costs as a result.

* Jackson, Rupert M (2010) *Review of Civil Litigation Costs : Final Report*, London: The Stationery Office.

Roberts v J Hampson & Co. **[1988] QBD**
<u>Reacting to findings during progress of work</u>

The survey was of a modest bungalow, Delfryn at Eglwysbach in the Conwy Valley of north Wales, with a purchase price and valuation of £19,000. A surveyor indicated that there was limited dampness in external walls and some dry rot in skirting boards. In ascertaining what was 'reasonable' care in carrying out professional duties it was held that although extensive lengths might not be required at first instance, once a surveyor has grounds for suspicion of greater problems then he must 'follow the trail' until he is satisfied as to the extent of the problem. Per Kennedy J: 'If a surveyor misses a defect because its signs are hidden, that is a risk that his client must accept. But, if there is specific ground for suspicion and the trail of suspicion leads behind furniture or under carpets, the surveyor must take reasonable steps to follow the trail until he has all the information which it is reasonable for him to have before making his valuation.'

Liability was ascertained as the discrepancy in the value of the property, deemed to be £4,500 (the correct value at the time of purchase being deemed to be £15,500) plus £1,500 for 'disturbance and disruption.'

See also ***Hubbard v Bank of Scotland (t/a Birmingham Midshires)*** **[2014] CA**.

Russell, Mavis v (1) Walker & Co. (2) Robert Chisnall and others **(2014) CC (Southend)**
<u>Who is liable?</u>

This case follows the reasoning in ***Matthews v Ashdown Lyons*** **and** ***Maldoom*** **(2014) CC** dismissing a ***Merrett v Babb*** personal liability claim against an individual valuer.

Although this and the ***Ashdown Lyons*** case have been met with considerable relief in the residential valuers' world it is important to note that ***Merrett*** was distinguished in both cases, rather than overruled.

Mrs Mavis Russell sued in professional negligence in respect of a Homebuyer's Report that had been undertaken by Mr Chisnall, an employee of Walker & Co. Ltd, based in Essex. Between issuing proceedings and service, Walker & Co had become insolvent and carried no professional indemnity insurance. Mrs Russell then decided to target Mr Chisnall. Pointing to the principles in ***Merrett v Babb***, she alleged that Mr Chisnall, personally, owed her a duty of care.

District Judge Molineaux dismissed the claim and ruled in Mr Chisnall's favour, primarily because :

1. There was no evidence of dealings between Mrs Russell and Mr Chisnall, to indicate Mr Chisnall's personal financial responsibility for the loss. On the contrary, Mrs Russell's engagement in the first instance was of the employer company, her payment was to the company and her understanding was always that the report would be produced by, and on behalf, of the company.

2. That the contract of engagement was with a limited company (as opposed to a firm or a sole principal) was highly significant. This meant that Mrs Russell had all the rights she could possibly need against the employer company as the main defendant and there was simply no justification, for public policy reasons or otherwise, to resort to imposing liability upon the individual surveyor in line with ***Merrett v Babb***.

3. On the facts, ***Williams v Natural Life Health Foods*** **[1998] HL** and ***Bradford and Bingley plc v Martin Hayes*** **[2001] Ch** were operative.

On instructions from the RICS, lawyers at Browne Jacobson have been advising on a number of similar personal liability claims. Nik Carle, the Browne Jacobson Partner who acted for Mr Chisnall and the RICS commented :

'This is another measured and sensible decision in support of employed professional advisers. Mr Chisnall found himself uninsured in respect of Mrs Russell's claim and was naturally very anxious about the prospect of this litigation proceeding against him personally. Encouragingly, the courts seem prepared to keep the wings of ***Merrett v Babb*** firmly clipped for now, particularly where the employer business happens to be a limited company.'

S

Scullion v Bank of Scotland (t/a Colley's) [2011] CA
Quantification of damages

Colley's were found liable in the High Court to the tune of £72,234 for the negligent valuation of a buy-to-let flat on Portsmouth Road, Cobham, Surrey. During the purchasing process the valuer's report was provided to the claimant's mortgagee giving capital and rental valuations on the flat. The claimant was incorrectly advised by the solicitors that he was obliged to complete. Completion took place in October 2002. The company entrusted to let the flat failed to find a tenant. Local letting agents informed the claimant that the suggested £2,000 per month rent was unachievable, and in April 2003 a tenant was found at £1,050 per month. In May 2006, the flat was sold for £270,000, leaving a mortgage account balance of £61,932.15. The claimant successfully sued, contending that the firm had negligently overvalued the flat and its rental value.

The defendant appealed. Two issues arose, *inter alia* : (i) whether the report had been causative of the claimant's loss; and (ii) whether the defendant owed the claimant a duty of care in tort as well as in contract to prepare the valuation with appropriate skill and care. The court gave consideration to the cases of ***Smith v Eric S Bush (a firm)*** and ***Harris v Wyre Forest* [1989]**.

The appeal was allowed. It was established law that, in order to succeed, the claimant had to show that the report had played a 'real and substantial' part in inducing him to enter into the relevant transaction. In order to establish that it was foreseeable that the claimant would rely on the report, it was necessary to establish foreseeability of damage, a sufficient degree of proximity between the claimant and defendant, and that it would be fair, just and reasonable to impose on the defendant a duty of care to him. It would be wrong to extend the decisions in ***Smith v Eric S Bush (a firm)*** and ***Harris v Wyre Forest* [1989]** to cover cases where the perceived policy basis for those decisions did not appear to exist. In the circumstances, it was not sufficiently foreseeable to the defendant that the claimant would have relied on the report, rather than obtaining his own advice (unlike the position with low value owner occupier purchasers). The case was distinguished from one which involved an ordinary domestic householder purchasing his home, i.e. it was a business arrangement, albeit regarding residential property.

Shacklock v Chas. Osenton, Lockwood and Co. [1964) QBD
Breach of duty of care

There has to be some quantifiable basis on which to hang a negligence action. Mr Justice Mocatta : in a residential valuation where the claimant saw a house in the same village go for a higher price and felt that her valuer *must*, therefore, have got it wrong - 'I do not think that [the defendant's] valuation can be faulted legally so as to show that he was professionally negligent … merely by going through these items and criticising them meticulously and suggesting that they are on the high side.' The judge found for the defendant valuer and the appeal to the Court of Appeal was dismissed, swiftly but sympathetically, by Lord Denning.

***Singer and Friedlander v John D Wood & Co.* [1977] QBD**

Visiting the property / gathering sufficient information

Taking into account previous price of property, if very recent

The surveyors, John D Wood, were sued by merchant bank, Singer and Friedlander, for £600,000 regarding a £2m valuation of the 130 acre Manor Farm in Gloucestershire, sold to developers with planning permission on 39 acres. The bank claimed the loss on their lending due to there being a £600,000 over-valuation. It was indicated that a driver in the situation was that banks would not lend more than 75% of the valuation. When the borrower went into liquidation Singer lost their £1.5m loan against undeveloped farmland said to be worth no more than £600,000.

Basis of negligence claims :

(a) The purchase by Lyon Homes of the land in April 1972 for £620,000 makes a valuation less than a year later of £2m clearly doubtful.

(b) A valuation by another firm in March 1972 of £865,000 and November 1972 of £1.5m also cast considerable doubt on the figure.

(c) The valuer relied too much on information received from Lyon Homes. ,

Information which the valuer should access might include, but is not limited to, the following. In this case, this 'harvest of information' was inadequately gathered.

(a) The kind of development of the land to be undertaken.

(b) The existence, if any, of planning permission. And if permission be for the building of houses, the situation and acreage of part of the land excluded from planning permission because, for example, of a tree preservation order, the need for schools and the lay-out of roads and other things. Furthermore, the number of houses permitted or likely to be permitted to be built.

(c) The history of the land, including use, changes in ownership, the most recent buying prices, planning applications and permissions, implementation of existing planning permissions and the reason for the failure of planning permissions not implemented.

(d) The position of the land in relation to surrounding countryside, villages and towns and places of employment; the quality of access and the attractiveness or otherwise of its situation.

(e) The provision of services : gas, electricity, sewage, drainage and water.

(f) The presence of any unusual difficulties confronting development which will tend to impact value. A visit to the site should always be done.

(g) The demand in the immediate localities for houses of the kind likely to be built. This will involve, inevitably, acquiring knowledge of other building developments recently finished or still in progress including the rate of disposal, density and sale prices.

(h) Consultation with senior planning officers and knowledge of local planning policy is almost always regarded as vital.

(i) Whether ascertaining from the client if there have been other previous valuations of the land should be undertaken is probably questionable because a valuer's mind should not be exposed to the possibilities of affectation by the opinions of others.

(j) If the valuer is unfamiliar with the locality particular care will be needed in collecting as much relevant local knowledge as possible, possibly consulting valuers who work regularly in the area.

(k) The availability of a labour force which can carry out the prospective development.

Mr Justice Watkins : ‘Valuation is an art, not a science. Pinpoint accuracy in the result is not, therefore, to be expected by he who requests a valuation. …

‘If a valuation is sought at times when the property market is plainly showing signs of deep depression or of unusual buoyancy or volatility, the valuer's task is made more difficult than usual. But it is not, in such unusual circumstances, an impossible one. …

‘The valuation of land by trained, competent and careful professional men is a task which rarely, if ever, admits of precise conclusion. Often beyond certain well-founded facts so many imponderables confront the valuer that he is obliged to proceed on the basis of assumptions. Therefore, he cannot be faulted for achieving a result which does not admit of some degree of error. Thus, two able and experienced men, each confronted with the same task, might come to different conclusions without any one being justified in saying that either of them has lacked competence and reasonable care, still less integrity, in doing his work. …

‘The permissible margin of error is said . . . to be generally 10% either side of a figure which can be said to be the right figure . . . in exceptional circumstances, the permissible margin . . . could be extended to about 15%, or a little more, either way…’

***Smith v Eric S Bush* [1989] HL**

<u>To whom duty of care is owed</u>

Eric S Bush (a firm) valued a property at 242 Silver Road, Norwich for mortgage purposes on behalf of the lender. The prospective purchaser, Jean Smith, was willing to pay £17,500 with a £3,500 mortgage. The valuer put in a figure of £16,500 on the house with no essential repairs being deemed necessary.

The valuer noted that two chimney breasts had been removed on the first floor but did not check whether, consequently, there was adequate support above. Good practice would have dictated that he simply put his head through the loft trap door to check. Eighteen months later one of the flues collapsed causing extensive damage to the property although no personal injury.

The valuer sought to rely on a disclaimer against any liability to the purchaser, his contract being with the building society. This failed as the onus was on the valuer, under the Unfair Contract Terms Act 1977, to establish the reasonableness of terms - which he failed to do. The Court emphasised that this was a property at the lower end of the market (per ***Yianni v Edwin Evans*** above) and purchasers were unlikely to instruct their own surveyors to inspect the property. The court also stressed the importance of the facts in each case and indicated that it might be different if the property was of a greater value or the prospective purchaser was a surveyor or lawyer who would have an understanding of such matters.

Smith v Eric Bush was heard at the same time as ***Harris v Wyre Forest District Council*** **[1989] HL.**

South Australia Asset Management Corp. v York Montague **[1996] HL**
Quantification of damages

Two of the ***BBL*** cases appealed and were heard under the ***SAAMCO*** name, (although also reported as ***BBL*** [1997]).

It overruled ***BBL*** in holding there should be *no* liability for the element of losses due to a fall in the market. The reasoning was that the scope of the valuer's duty was limited to the valuation, not to the entire investment activity.

So, if the basic loss exceeds the difference between the true and the negligent valuation at the time of valuation, then the loss is limited to that difference. The element of loss attributable to market fluctuation is disregarded.

An often quoted mountaineer/doctor analogy was given by Lord Hoffman :

Doctor asked about mountaineer's knee and, incorrectly, said the knee was fit.
Mountaineer climbs and falls through reasons completely unconnected with knee.

BBL reasoning - doctor is liable as if he had correctly said knee was unfit, climb would not have taken place, injury would not have occurred and the fall was a foreseeable result of climb.

SAAMCO reasoning - doctor not liable because if the advice the doctor gave had been correct and knee was fit, the injury would have still occurred.

Lord Hoffman also distinguished between :

(a) a duty to provide information for the purpose of enabling someone else to decide upon a course of action *and*

(b) a duty to advise someone as to what course of action he should take.

In the latter case, the adviser, if the advice is negligent, may be liable for all the foreseeable consequences of following that course of action.

In the former case, the damages would not exceed the difference between the valuer's negligent valuation and what it should have been.

Further reasoning for why there will not be liability for the full extent of apparently foreseeable losses was explained in : ***Platform Home Loans v Oyston Shipways Ltd*** **[2000] HL**.

T

***Titan Europe plc v Colliers International plc* [2014] Comm.**

<u>To whom duty of care is owed</u>

The claimant, Titan Europe plc, was an issuer of the securities, known as commercial mortgage backed securities. The defendant, Colliers, was part of a global real estate services organisation whose expertise included the valuation of commercial properties. C claimed that it relied upon an over valuation given by Colliers in December 2005 of a commercial property in Nuremberg, Germany. Although the property was security for a loan, the loan had not been made by Titan but by Credit Suisse and transferred to Titan as part of a securitisation in respect of which Credit Suisse was arranger and lead-manager. The securities were issued by Titan in June 2006 to a value of just short of €1 billion, and the subscription by investors in the securities funded the acquisition of the loans by Titan from Credit Suisse. The market for such securities dried up in the wake of the 2007-8 financial crisis. The tenant of the property became insolvent in 2009. The property was in the process of being sold for about €22.5m, which was far below the valuation. Titan brought a claim for professional negligence against Colliers, an English company which went into liquidation in 2012. The case was concerned therefore with only one of the loans that was securitised, namely the loan secured on the Nuremburg property, and concerned specifically with the allegedly negligent valuation of that property by Colliers. Titan sought judgment for €58.4m, being the difference between the Colliers' valuation of the property at €135m and what Titan submitted was its true market value at €76.6m.

There were two main issue:

1. Colliers' contention that Titan, as issuer of the securities, was the wrong claimant on the basis that it had not suffered any loss. Colliers contended that it was the holders of the securities who sustained the loss, and who relied directly or indirectly on the valuation, and who could have sued the allegedly negligent valuer, but had not done so.

2. Whether or not the valuation of the property had been negligent. At the time of valuation there were approximately ten years unexpired on the lease, so that an acquirer of the property would acquire a sure income stream for ten years (subject to contractual adjustments) on the assumption that the tenant was good to pay it for that period. Colliers disputed the allegation of negligence.

The claim was allowed.

1. A securitisation was neither a conventional loan, nor a conventional issue of securities in which investors looked to the issuer to repay the debt. In complex structured financial transactions, the developing case law showed that the courts were reluctant to accept 'no loss' arguments. The distribution of loss could be difficult to pin down, and depended on when investments were acquired, market

movements, and the performance of the rest of the transaction. The important points were that (a) where the contractual structure allocated the bringing of a type of claim to a particular party, that party brought the claim, complying with any conditions for doing so, and (b) that the proceeds were dealt with according to the contractual requirements. Provided that happened, all parties will get what they bargained for.

2. On the facts, Colliers' valuation of the property had been negligent. A reasonably competent valuer would have concluded that there was a real risk that the tenant might leave, and Colliers had not given sufficient weight to the attendant problems which the building would then pose. The true value of the property as at December 2005 had been €103m. Colliers had therefore 'negligently' overvalued the property by €32m and that was the figure that Colliers was required to pay to Titan, together with interest and costs.

Note the helpful overview of valuation issues in the judgment at paras 127 to 147.

Also see discussion of the different methodologies used by the expert witnesses: both ‘term and reversion’ and ‘yield and covenant’.

U

***Ultramares Corp. v Touche* (1931) NYCA**

To whom duty of care is owed

This American case held that a claimant, relying on published accounts of a company in which it invested on the basis of those accounts, had a cause of action if the accounts had been prepared fraudulently, but if they were ‘simply’ negligent, then the claimant had no privity in either contract or in relationship.

Chief Justice Cardozo* consciously constrained the development of the law, noting that : ‘The assault on the citadel of privity is proceeding these days apace …’. He railed against extending liability to professional work, in the absence of fraud, famously gave rise to his famous pronouncement that : ‘If liability for negligence exists, a thoughtless slip or blunder, the failure to detect a theft or forgery beneath the cover of deceptive entries, may expose accountants to a liability in *an indeterminate amount for an indeterminate time to an indeterminate class*.’ [author’s italicisation for emphasis]

Drawn on in ***Caparo Industries v Dickman and others* [1990] HL**.

* See also ***MacPherson v Buick Motors* (1916)** for another example of the evidence of the influence of Benjamin Cardozo (1870-1938) on the development of the English / British law of negligence.

W

Watts v Morrow [1991] ORC
<u>Keeping adequate records</u>

This case involved the survey and valuation of Nutford Farm House, Blandford in Dorset, a substantial property with a ¾ acre garden and a 3 acre paddock. When a surveyor dictated his report on site rather than taking detailed notes and writing a full report back at the office, Mr Justice Bowsher felt that it resulted in a report which was '… strong on immediate detail but excessively, and I regret to have to say negligently, weak on reflective thought …'. It also left the defendant without notes to produce in the discovery process.

The case went to the Court of Appeal on the measure of damages.

Webb Resolutions v E.Surv [2012] TCC
<u>Margin of error</u>

This case involved two valuations of residential properties: Apartment 1207, Masshouse Plaza, Birmingham and 13 Foxdene Road, Seasalter, Whitstable, Kent. The case was being looked to, however, regarding an additional 40 cases Webb had outstanding with E.Surv and another 200 cases Webb had with other valuers.

On residential valuations the cap on damages followed *SAAMCO* i.e. the difference between negligent valuation and true value *at the time of valuation*, with no reflection (i.e. no liability) for actual losses suffered as a result of property market fluctuations.

Mr Justice Coulson highlighted the following problems with the valuation :

1. Electronic valuation forms were criticised in themselves for not allowing sufficient detail, but regardless of the limited scope for commentary they should be filled in correctly. If there was no place for comment then a box should not be ticked inaccurately.

2. The property was not inspected (contrary to RICS guidance and the valuation form).

3. Developers incentives were not taken into account (again, note RICS guidance).

4. The comparables used were based on asking prices rather than transaction prices.

5. The valuer started at the asking price and sought to justify it.

A 5% bracket was agreed as appropriate on standard residential property.

This judgment was dealt with at the same time as ***Blemain Finance Ltd v E.Surv Ltd* [2012] TCC** and was treated as the lead judgment.

***Weedon v Hindwood, Clarke and Esplin* [1975] QBD**

Keeping to to date with the law

The claimant's land (rough commercial land - variously a second hand car business, re-claimed building materials business and two dilapidated cottages in Bexleyheath) had a valuation for compulsory purchase purposes of £20,550 agreed in 1962 with the district valuer. This was on the basis of open market value, with no provision for disturbance, following the rules in section 5 of the Land Compensation Act 1961, which reproduced the code of compensation for compulsory purchase.

The claimant died in 1964 and in 1968 the Council sought to review the position with his executors. Between the original valuation and the later valuation an important case was heard in the Court of Appeal : ***West Midland Baptist (Trust) Association (Inc.) v Birmingham Corporation* [1968]** (the decision later being ratified in the House of Lords). Although this case was *obiter* on the rule in question - that valuation regarding reinstatement (in the absence of a ready market) should be updated rather than proceed on the notice to treat value - it should still have been considered. It was held that either the valuer knew of the new ruling and did not apply it, possibly due to being unduly pressed by the district valuer, *or* (despite protestations to the contrary) he did not know about the case. Whichever was true position, he was negligent.

***West Midland Baptist (Trust) Assoc… v Birmingham Corporation* [1967] CA**

Keeping to to date with the law

See ***Weedon v Hindwood, Clarke and Esplin* [1975] QBD**.

***Williams v Natural Life health Foods* [1998] HL**

Who is liable?

See ***Matthews v Ashdown Lyons* and *Maldoom* (2014) CC** and ***Russell, Mavis v (1) Walker & Co (2) Robert Chisnall and others* (2014) CC**.

Y

Yianni v Edwin Evans & Sons [1981] QBD
<u>To whom duty of care is owed</u>

Often there will be a contractual relationship between valuer and claimant, giving rise to a clear duty of care (although there may be other issues, such as scope). Where there is no contact, there may still be a duty of care held for the purposes of tortious liability in negligence.

Surveyors acting for a building society negligently failed to note subsidence which resulted in estimated repairs of £18,000 being required on a £15,000 terraced house at 1 Seymour Road, Hornsey, North London. The surveyors, whose report supported a £12,000 mortgage, admitted negligence but asserted that they owned no duty of care to the purchasers. The court held that as the surveyors would or should be aware that reliance would be placed on their valuation *and* the property was at the lower end of the market where prospective purchasers were unlikely to commission a private survey, then they were liable to the purchasers.

NEGLIGENT VALUERS CASEBOOK

Carrie de Silva

The **NEGLIGENT VALUERS CASEBOOK** is a collection of case summaries primarily to accompany lectures and seminars. For information on forthcoming seminars or to book a CPD event at another location contact Carrie de Silva.

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- permitted claimants - to whom do valuers owe a duty of care?
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