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
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.

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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
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
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

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
Visiting the property / gathering sufficient information  
*Watts v Morrow* [1991] CA  
*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] CA  
*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

Taking into account previous price of property, if very recent  

Reacting to findings during progress of work  
*Hubbard v Bank of Scotland (t/a Birmingham Midshires)* [2014] CA

Level of thoroughness required  
*Gibbs v Arnold, Son & Hockley* [1989] QBD

Understanding and keeping up to date with principles of law affecting valuation  
*Jenkins v Bentham and Bentham* (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 contract 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
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.

The expert witness role

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 number of judgments critical of a common mistake made by experts in the context of valuation cases.

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
Alphabetical Case List

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

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
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
Donaghue v Stevenson [1932] HL

E.Surv Ltd v Goldsmith Williams Solicitors [2014] Ch
Earl of Malmesbury v Strutt & Parker [2008] QBD
Edward Wong Finance Co. Ltd v Johnson Stokes & Master [1984] CA

Francis v Barclays Bank plc [2004] Ch

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 Bentham and Bentham (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
Lloyd v Butler [1990] QBD.

Macpherson v Buick Motor Co. (1916) NYCA
Matthews v Ashdown Lyon [2014] CC
Meadow v General Medical Council [2006] CA
Merivale Moore plc v Strutt and Parker [1999] CA
Merrett v Babb [2001] CA
Montlake and others v Lambert Smith Hampton Group Ltd [2004] QBD
Mortgage Express v Bowerman [1996] CA
Mortgage Title Resolutions Ltd v J & E Shepherd (2013) QBD
Mount Banking Corporation Ltd v Brian Cooper & Co. [1992] QBD

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
Perry v Sidney Phillips & Co. [1976] QBD
Phillips v Ward [1956] CA
Phillips v Symes (No 2) [2004] Ch
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
Preferred Mortgages Ltd v Countrywide Surveyors Ltd [2005] Ch

R v Rathie (2011) CCC
Redstone Mortgages v Countrywide Surveyors (2013) Ch
Roberts v J Hampton & Co. [1988] QBD
Russell v (1) Walker & Co. (2) Robert Chisnall and others (2014) CC

Samsung v Metcalfe Hamilton and Company [1998]
Scullion v Bank of Scotland (t/a Colley’s) [2011] CA
Shacklock v Chas Osenton, Lockwood and Co. [1964] QBD
Singer and Friedlander v John D Wood & Co. [1977] QBD
South Australia Asset Management Corp. v York Montague [1996] HL

Ultramares Corp. v Touche (1931) NYCA

Watts v Morrow [1991] CA
Webb Resolutions v E.Surv [2012] TCC
Weedon v Hindwood, Clarke and Esplin [1975] QBD
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
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 headings and order of the cases in this booklet 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.

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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.

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² (2001), Estates Gazette.
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.’

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.

See Jones v Kaney [2011] SC.

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 Metcalfe 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*
A bracket of roughly plus or minus 5% was fixed with regard to residential property.
Banque Bruxelles Lambert SA v Eagle Star Insurance Co Ltd [1995] CA

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 incorporate 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**

The subject property was a top end residential property in Portsmouth Road, Putney. 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**

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.

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**

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

**Brownrigg v Leacey (2013) HCI**

Setting out scope of survey/advice

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 Mr 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.

He 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%.
Candler v Crane Christmas & Co. [1951] CA
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
A duty of care was held to be owed by 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
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 replaced 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 persuasive influence in the UK but widely referred to and considered at length in *Caparo*.

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**Capita Alternative Fund Services (Guernsey) v Drivers Jonas [2012] CA**

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 value of rent and the reversion value 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 (*guaranteed rent*) and turnover rent (*top-up*), an additional element of rent on each sub-lease, which relates to turnover.

Mr Justice Eder, in the High Court, allowed a 1% margin (plus or minus the correct value) on the valuation of the *guaranteed 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 *top-up* 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 *reversion* 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.

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

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

**Corisand Investments v Druce & Co. [1978] QBD**

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**

Lord Justice Balcombe: ‘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.’
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 in public infrastructure projects such as hospitals and schools.

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.

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.Surv Ltd v Goldsmith Williams Solicitors [2014] Ch
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.’

* From Mortgage Express v Bowerman [1996] CA.

Earl of Malmesbury v Strutt & Parker [2008] QBD
The claimant won damages in relation to Strutt and Parker’s negligence with regard to negotiating leases of land to 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.
Francis v Barclays Bank plc [2004] Ch

Keeping adequate records

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, 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 inquiries, they had failed to make appropriate inquiries of the relevant council department in relation to the likelihood of a change in the property’s allocation for planning purposes. Accordingly, the claimant was entitled to relief as against the bank and the bank was entitled to a sum as against the receivers.

A important count against the surveyor receiver was the lack of record keeping, files notes, notes of telephone conversations, etc.
**Gibbs v Arnold, Son & Hockley [1989] QBD**

**Level of thoroughness required**

A thorough (according to standard good practice) survey was carried out on a property and it was noted that 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.

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

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* [1997] 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.
**Hadley v Baxendale (1954) EC**

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

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

Mr and Mrs Harris applied to Wyre Forest District Council for a mortgage to buy a property in George Street, Kidderminster 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. They 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 UCTA 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*.

**Heaven v Pender (1883) CA**

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

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

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.
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 difficult to find a lack of reasonable care. This following case indicate otherwise.

A mortgage valuation was carried out on a maisonette built in the 1960s 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 Bentham and Bentham (1855) CP**

Understanding and keeping up to date with principles of law affecting valuation

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**

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
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**

Referring the case to senior colleagues if property is outside one’s area of expertise

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**

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 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.
**Le Lievre v Gould [1893] CA**
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**
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**
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**
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.’
Macpherson v Buick Motor Co. (1916) NYCA

See Donaghue v Stevenson [1932] HL.

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

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 of 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 individual 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 crystalise the personal duty of care.
**Merivale Moore plc v Strutt and Parker [1999] CA**

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**

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**

Awareness of planning permission.

A firm of surveyors were found liable for grossly undervaluing the Wasps rugby ground in Wembley. 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, 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
See E.surv Ltd v Goldsmith Williams Solicitors [2014] Ch.

Mortgage Title Resolutions Ltd v J & E Shepherd (2013) QBD

Mount Banking Corporation Ltd v Brian Cooper & Co. [1992] QBD
See Goldstein v Levy Gee [2003] Ch.
Nykredit Mortgage Bank plc v Edward Erdman Group Ltd (no. 2) [1998] HL

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.
**Padden v Bevan Ashford Solicitors [2011] CA**

Ensuring advice is sufficient

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 explained to the wife she may well have made a different decision.

**Paratus AMC Ltd and Countrywide Surveyors [2011] Ch**

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.

**Perry v Sidney Phillips & Co. [1976] QBD**

Taking appropriate time

A survey and valuation of a cottage near Tenbury Wells 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**

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. 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.

**Held:** 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**

The claim arose out of a large fraud involving a new development at 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
Establishing the right property
This concerned a valuation of one of a cluster of partly built residential properties in Baker’s Yard, Gosberton, Lincolnshire, 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**

There was a finding of 20% contributory negligence. Should this 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**

A converted chapel 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 v Rathie (2011) CCC
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
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 18 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.


Roberts v J Hampton & Co. [1988] QBD
Reacting to findings during progress of work
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.

Liability was ascertained as the discrepancy in the value of the property 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)
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. 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.’
Scullion v Bank of Scotland (t/a Colley's) [2011] CA

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 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

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 £2,000,000 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 £1,500,000 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 £2,000,000 clearly doubtful.

(b) A valuation by another firm in March 1972 of £865,000 and November 1972 of £1,500,000 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…’


Eric S Bush (a firm) valued a property in Silver Road, Norwich for mortgage purposes. 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

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 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*. 
Ultramares Corp. v Touche (1931) NYCA

See Caparo Industries v Dickman and others [1990] HL.
**Watts v Morrow [1991] CA**

*Keeping adequate records*

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**

This case involved two valuations of residential properties in Birmingham and Whitstable. 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 (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.
Weedon v Hindwood, Clarke and Esplin [1975] QBD

Understanding and keeping up to date with principles of law affecting valuation

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) Association (Inc.) v Birmingham Corporation [1967] CA

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

Williams v Natural Life health Foods [1998] HL

Yianni v Edwin Evans & Sons [1981] QBD

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

Areas covered by these cases include:

- negligence
- permitted claimants - to whom do valuers owe a duty of care?
- reasonable care - what is expected of a valuer?
- margin of error
- measure of damages
- expert witnesses

... and more.

Due to the nature of the subject matter, the notes will be updated periodically, thus comments, queries, corrections and suggestions for improvements to future editions are most welcome. Please send any such matters to the author at the address below or by email to cdesilva@harper-adams.ac.uk.

These notes are included in the cost of Seminars. Copies can be purchased separately for £10. Orders, accompanied by a cheque made payable to Harper Adams University, to be sent to Mrs Janice Manning at the address below.