



The Numbers Game: hot topics in claims against accountants and auditors

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Jamie Smith QC

Call: 1995 Silk: 2015



"He is more than willing to jump into the trenches and get involved in the nitty gritty of a case. He is excellent in cases with complex issues that require a meticulous eye for the detail." – Chambers & Partners

Jamie has a strong practice in professional liability and disciplinary, particularly as regards audit regulation and SDT work. He advised Deloitte in the long-running *Aero* proceedings; which led to a judicial review and the ground-breaking decision regarding publication and third-party rights: *R (Lewin) v. FRC [2018] EWHC 446 (Admin)*. In all that he does, Jamie brings a meticulous eye for detail and a complete commitment to the cause.

In addition to his audit and accountancy discipline work, Jamie regularly acts for solicitors in respect of SRA conduct-related complaints (often as an adjunct to lawyers' liability work). He has long-standing relationships with a number of solicitors' practices and is often approached by COLPs and COFAs to advise on budding regulatory and compliance issues. Jamie is ranked in the directories for his insurance and professional liability work. Before taking Silk, Jamie was in the 'Star' category for professional negligence in Chambers & Partners.

Helen Evans

Call: 2001



Helen practises in the fields of professional negligence, disciplinary, insurance, civil fraud and property-related work. Helen has been listed as a recommended junior for professional liability work for several years in Chambers & Partners and the Legal 500. She is also recommended in the directories for her insurance and disciplinary work.

Recent comments include: *"She provides technically excellent advice and is a real fighter"*, *"the perfect blend of intellect and charm"*, *"She is an extremely skilled tactician and a joy to watch in court."*

Helen has been instructed in a number of claims against financial professionals, including accountants, auditors, insolvency practitioners and IFAs. Such claims have encompassed wide variety of negligent tax, investment and other financial advice about financial products. She acted for the finance director in the recent FRC proceedings arising out Equity Red Star syndicate. Helen also regularly acts for solicitors, barristers, insurance brokers and in disciplinary proceedings. Helen is the co-editor of the chapters on solicitors' and barristers' negligence in Jackson & Powell on Professional Liability.

Anthony Jones

Call: 2011



"An unparalleled ability to digest a significant amount of complex information in a short period of time and develop insightful and compelling legal arguments." – Legal 500

Anthony has a broad practice in commercial law, professional liability, public and human rights law, and international law. Anthony has quickly established a substantial reputation in the field of professional liability, acting both for claimants and professionals, with a particular focus on the liability of lawyers, accountants, and financial professionals.

Anthony has been involved as a junior in a number of the leading cases in recent years, including the *Brown v InnovatorOne* Court of Appeal proceedings and the Supreme Court's recent confirmation of the SAAMCo approach to liability (*BPE Solicitors v Hughes-Holland*). Recent cases include two sets of proceedings before the Court of Appeal arising, respectively, from failed tax schemes and failed investments in Russia, an appeal in the Isle of Man relating to an offshore investment fund in the Cayman Islands, and representing the liquidator of a failed offshore bank in St Vincent and the Grenadines.

Anthony is a co-author of the leading practitioner's text, *Jackson & Powell on Professional Liability* (8th ed).

THE NUMBERS GAME: HOT TOPICS IN CLAIMS AGAINST ACCOUNTANTS AND AUDITORS

Jamie Smith QC, Helen Evans and Anthony Jones

February 2019

Accountants, their duties and recoverable losses

Schematic

1. There are five questions:
 - a. Does a duty (contractual or otherwise) exist between C and D?
 - b. What is the scope of any such duty; what types of loss fall within it?
 - c. Was the recoverable loss factually caused by D's breach of duty?
 - d. Was the recoverable loss caused in law by D's breach of duty?
 - e. Is the loss too remote?

2. Focus on questions (a), (b) and (d).

Duty and scope – questions (a) and (b)

3. Starting point. What is D engaged to do? E.g., an accountant engaged to advise C on how to structure a business sale so as to take advantage of Entrepreneur's Relief.

4. The scope of the duty – starter for 10.
 - a. It is meaningless to refer to a 'duty' without also identifying "*the scope of the duty by reference to the kind of damage from which D must take care to save C harmless*": *Caparo v. Dickman* [1990] 2 AC 605 at 627D per Lord Bridge.
 - b. The answer may be intuitively easy: the accountant at para 3 above is responsible for the unavailability of Entrepreneur's Relief if he/she misadvises on the structuring of the business sale.

5. The scope of the duty – where it gets trickier: auditors.
 - a. An auditor owes the company a duty (a) to advise on whether the financial statements are materially misstated and (b) to report to those charged with governance whether there is the risk of fraudulent operation of the business.
 - b. But the auditor does not advise on trading/investment decisions.

6. Example problem. *Manchester BS v. Grant Thornton* [2018] PNLR 27 (Teare J) and [2019] EWCA Civ 40 (CA). The auditor advises that MBS may present its accounts using the 'Hedge Accounting Policy'. As a result, MBS maintains/takes out interest rate swaps when otherwise it would not have done so. When it becomes apparent that the accounting policy is inappropriate, the swaps are closed out at considerable cost due to the 'Credit Crunch'. Do the swap termination costs fall within GT's duty? Teare J considers 'no'. CA agrees.

7. Analysis. SAAMCo and BPE¹
 - a. Two extremes: the paradigm ‘information’ (e.g., conveyancer) and ‘advice’ (e.g., investment adviser) cases.
 - b. Otherwise: “every case is likely to depend on the range of matters for which D assumed responsibility”: Lord Sumption at [44]. But ultimately each case is to be categorised as either an ‘information’ or advice case: Hamblen LJ in *MBS* at [58].
 - c. Examine:²
 - i. what is the nature of the information/advice given by D;
 - ii. for what purpose is the advice given;
 - iii. does the loss flow from the particular feature of D’s conduct that made it wrongful;
 - iv. can Loss X meaningfully be differentiated from Loss Y as regards the ‘type’ of loss;
 - v. would the loss have occurred even had the incorrectly reported state of affairs represented the true state of affairs?

8. Applying the above to audit cases. Remember always the scope of the statutory audit.
 - a. MBS’ swap losses.
 - b. Loss-making trading of Component X of the business, where the auditor’s negligence directly concerns Component X.
 - c. Loss-making trading of Component Y of the business, where the auditor’s negligence concerns Component X.
 - d. Fraud/defalcations:
 - i. Fraud X where the auditor fails to spot Fraud X³;
 - ii. Fraud Y where the auditor fails to spot Fraud X⁴.
 - e. Share sales/purchases.
 - f. Dividends paid out of capital⁵; out of profits⁶.
 - g. Overpaid tax.
 - h. Overpaid bonuses.

Legal causation – question (d)

9. Galoo and ‘common sense’. In *Galoo* the CA struck out the claim for trading losses on the basis that the audit certificate was merely the ‘occasion’ and not the ‘dominant/effective’ cause in law of the loss. Legal causation required the application of ‘common sense’⁷.

10. Does Galoo still have relevance in the SAAMCo/BPE era? Significant doubt whether, if a prior decision has been taken that Loss X falls within the scope of D’s duty, Loss X is nonetheless irrecoverable due to a lack of legal causation.

¹ *Hughes-Holland v. BPE Solicitors* [2018] AC 599

² *BPE*: Lord Sumption at [38]; *Giambrone* [2015] EWHC 1946 (QB) at para [351] per Foskett J

³ Nick Leeson: see *Barings v. C&L* [2003] EWHC 1319 (Ch) at paras [806]-[825] per Evans-Lombe J.

⁴ *BCCI v. PW* (1999) BCC 351 at paras [56]-[57] per Laddie J.

⁵ *Caparo at 630G per Lord Oliver; Segenhoe v. Atkins* [2002] Lloyd’s Rep PN 435 (Sup. Ct. NSW).

⁶ *Equitable Life v. E&Y* [2003] PNLR 23 at para [88] (Langley J) and [2004] PNLR 16 at para [96] (CA).

⁷ *Galoo v. Bright Graeme Murray* [1994] 1 WLR 1360 at 1374H-1375A per Glidewell LJ.

11. Suggested rationalisation of the outcome of Galoo.

- a. Factual causation: did any relevant agent of the audit company rely on the audit certificate? Was any relevant person in the dark as the truth?
- b. If no factual causation: brings into question arguability of 'whistleblowing duty'. Note Recommendation 45 of the *Kingman Report* (Dec 18): the 'duty to alert'.
- c. If factual causation: apply the scope of duty test to filter recoverable/irrecoverable trading losses.

Contributory negligence, net contribution clauses and contribution claims

Contributory negligence

12. S. 1(1) of the Law Reform (Contributory Negligence) Act 1945: "*where any person suffers damage as the result partly of his own fault and partly of the fault of any other person..... the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage*".

Whose acts can be attributed to a claimant for the purposes of contributory negligence?

13. Frequently used test is whether the person whose acts or omissions are being criticised is someone for whom the company would ordinarily be vicariously liable⁸. Where companies have delegated functions to outsiders, vicarious liability test may not work but the court may get round that by criticising the company for wrongly attempting to abrogate responsibility: *Barings PLC v Coopers & Lybrand* [2003] PNLR 4 at para. 903.

What factors determine the level of contributory negligence deduction?

14. Key issues:

- a. Respective responsibilities of the professional defendant and the person at the claimant who contributed to the loss.
- b. Important to focus on what company directors and professional advisers actually do: *Daniels v Anderson* (1995) 16 ACSR 607. What is the origin of their duties? Who owes the primary duty? Who makes trading decisions and based on what? Is an auditor a watchdog or a bloodhound?

15. The breadth of the duty:

- a. "Information" case (within the meaning of *BPE*⁹) where adviser gives directors a piece of information which they then fit into the jigsaw of a commercial decision based on a number of other factors.
- b. "Advice" type case where adviser takes over and guides company's decision making.

16. Approach the court has already taken to duty of care and causation: no formulaic "*SAAMCo*"/*Platform Home Loans*¹⁰ approach in accountancy claims. However, similar considerations arise. If a court has only been willing to recognise a narrow duty and narrow

⁸ Jackson & Powell on Professional Liability, para. 17-151.

⁹ Footnote 2 above.

¹⁰ *Platform Home Loans v Oyston Shipyards* [2002] 2 AC 190

damages, unlikely make a significant contributory negligence deduction as well: *MBS v Grant Thornton*.¹¹

17. Does fraud make a difference? Conflicting authorities:

- a. *Barings*- court made sweeping criticisms of the claimant bank in the “Nick Leeson” case. Judge made a contributory negligence deduction on a sliding scale from 50 to 80% over time until Barings’ breaches broke the chain of causation entirely.
- b. Canadian case of *Deloitte & Touche v Livent* [2017] SCC 63- Supreme Court declined to allow a deduction which would “*undermine the very purpose of establishing a duty of care*” and therefore be contrary to the public interest. Open to D to punish C’s fraudulent directors by suing them rather than trying to reduce C’s damages;
- c. *AssetCo v Grant Thornton* [2019] EWHC 150- GT’s failings were “very serious, indeed flagrant, breaches of duty and importantly they went to the ‘very thing’ it was responsible for as auditor. Those breaches of duty included a failure to exercise proper scepticism which would have led to the detection of dishonesty and prevention of fraud” . GT's breaches were therefore “of very high relative causal potency in relation to the losses and they [GT] also bear the lion's share of relative blameworthiness”. Deductions to different heads of loss ranged between 25% and 100% (*novus actus interveniens*).

When will a plea of contributory negligence fall flat?

18. Court may conclude that allowing a contributory negligence argument relating to the conduct of directors would unduly deprive the shareholders of a remedy: *British Racing Drivers Club Ltd v Hextall Erskine* [1996] BCC 727. Ds left to fall back on contribution claims.

Net contribution clauses

19. Often found in accountants’ engagement letters¹². Where more than one party is responsible for a loss, these clauses seek to confine D’s liability to a “fair and reasonable” or “just and equitable” amount that a court thinks fit. They may assist in the *Livent/Hextall Erskine* type case. Greatest benefit is probably where a third party who has contributed to a loss is insolvent and a contribution claim would have no practical value.

Contribution claims under the Civil Liability (Contribution) Act 1978

20. To discourage contribution claims that merely cover the same ground as contributory negligence arguments, correct approach is for the court to consider contributory negligence first before turning to any contribution claim: *Daniels v Anderson* (ibid).
21. Despite this, contribution claims of use as follows:
 - a. Where a court may be reluctant to punish shareholders by making a contributory negligence deduction based on the acts of a company’s directors (eg the *Hextall Erskine/Livent* type case).

¹¹ See para. 6 above.

¹² For a clause that was upheld in the construction context, see *West v Finlay* [2014] BLR 324.

- b. Where a company has delegated some of its functions to a third party and unclear whether it would be treated as having impermissibly abrogated its responsibility (so as to give rise to a contributory negligence deduction).
 - c. Where there are concerns over relying on a net contribution clause.
 - d. To bring pressure to bear on a company to settle.
22. If in doubt, unwise to wait to see if the contributory negligence arguments work before issuing a contribution claim. Clear policy of the courts is to encourage contribution claims to be brought as soon as possible: *Aldi Stores v WSP Group PLC* [2008] 1 WLR 848. Risk of strike out on a “wait and see approach”.

Limitations of liability for auditors and accountants

Statutory audit context

23. Following the Companies Act 2006 (“CA 2006”), the historic prohibition¹³ on restrictions of liability for statutory auditors has been relaxed somewhat, but requirements remain.

CA 2006, s 532:

‘(1) This section applies to any provision –

(a) for exempting an auditor of a company (to any extent) from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company occurring in the course of the audit of accounts, or

(b) by which a company directly or indirectly provides an indemnity (to any extent) for an auditor of the company ... against any [such liability] ...

(2) Any such provision is void, except as permitted by –

(a) section 533 (indemnity for costs of successfully defending proceedings), or

(b) sections 534 to 536 (liability limitation agreements).

(3) This section applies to any provision, whether contained in a company’s articles or in any contract with the company or otherwise ...’

What are the conditions for an enforceable liability limitation agreement (“LLA”)?

24. LLA will be enforceable if:¹⁴

- a. Authorised by the members of the company. Authorisation can be by waiver of need for approval, pre-approval of principal terms, approval of LLA after the fact (CA 2006, s 536).
- b. Applies in respect of acts/omissions in the course of accounts for only one specified financial year (CA 2006, s 535(1)).
- c. NB. Immaterial *how* the liability is framed (need not be sum or formula) (CA 2006, s 535(5)).
- d. Does not purport to limit liability to less than *‘such amount as is fair and reasonable in all the circumstances.’*¹⁵ A non-exhaustive list of relevant factors is provided in CA

¹³ Reflected in Companies Act 1985, s310. The historic prohibition still pertains in many jurisdictions: see, e.g. Hong Kong Companies Ordinance, s 415.

¹⁴ CA 2006, s 534.

¹⁵ Because of this reasonableness test, ss 2(2) and 3(2)(a) of the Unfair Contract Terms Act 1977 do not also apply to LLAs: CA 2006, s 534(3)(b)(i).

2006, s 537(1). And matters arising after the loss has been incurred or affecting the possibility of recovering from other persons are *not* to be taken into account.¹⁶

25. No LLAs have been specifically tested in reported cases. Anecdotally, they do not appear particularly popular: market research shortly after the coming into force of the provisions suggested on 17% of surveyed auditors had agreed LLAs with clients.

General accountancy context

26. Outside the audit context, it is worth distinguishing between:
- a. 'Basis clauses' – Clauses which define/narrow the liability basis upon which the service is being provided.
 - b. Limitations on the extent of accepted liability.

What is the basis upon which the accountant is providing the service?

27. Does the evidence demonstrate that the parties have specifically contracted on a basis which negates an asserted duty of care? Consider the clause at issue in *Barclays Bank v Grant Thornton* [2015] 1 CLC 180 (a non-statutory audit case):

*'This report is made solely to the company's director. Our audit work has been undertaken so that we might state to the company's director those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the company and the company's director as a body, for our audit work, for this report, or for the opinion we have formed.'*¹⁷

GT was able to rely upon the basis clause to exclude liability against 3rd party Barclays.

Limitations on liability within the accepted scope

28. Limitations on liability can take different forms:
- a. Market practice is a typically a monetary limit, whether an absolute sum or a formula (e.g. capped at a multiple of fees charged: *University of Keele v Price Waterhouse* [2004] PNLR 43 (CA)).
 - b. Contractual limitation period for bringing claim: *Inframatrix Investments Ltd v Dean Construction Ltd* [2012] EWCA Civ 64 (one year).
 - c. Combination: *Dennard v PricewaterhouseCoopers LLP* [2010] EWHC 812 (Ch).

Exclusions/limitations and 'reasonableness' under Unfair Contract Terms Act 1977 ("UCTA")

29. Potter LJ's guidance in *Overseas Medical Supplies Ltd v Orient Transport Services Ltd* [1999] 2 Lloyd's Rep 273 (CA)¹⁸ remains authoritative and has been recently endorsed in the accountancy context.¹⁹

30. Is reasonableness a matter for summary determination in accountancy context?

¹⁶ CA 2006, s 537(3).

¹⁷ NB. This reflected the standard ICAEW clause.

¹⁸ *Overseas Medical Supplies Ltd v Orient Transport Services Ltd* [1999] 2 Lloyd's Rep 273 (CA), [10] (Potter LJ)

¹⁹ *Halsall v Champion Consulting* [2017] PNLR 32, [294] (HHJ Moulder).

- a. 'Save in a clear case:' *Killick v Pricewaterhouse Coopers* [2001] PNLR 1, [19] (Neuberger J).
- b. But see: *Barclays Bank v Grant Thornton*.

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Disclaimer: *this handout is not to be relied upon as legal advice. The circumstances of each case differ and legal advice specific to the individual case should always be sought.*

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The numbers game: current topics in accountancy claims

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Key topics to be covered:

- Duties and recoverable losses
- Contributory negligence, net contribution clauses and contribution claims
- Limitation of liability

Duties and recoverable losses

Jamie Smith QC

Schematic

- (a) Does a duty exist?
- (b) The scope of the duty
- (c) Factual causation
- (d) Legal causation
- (e) Remoteness

Elements (a) and (b) – duty and scope

- Starting point. What is D engaged to do?
- The scope of the duty.
 - (a) This may be intuitively easy – accountant advising on Entrepreneur’s Relief; but,
 - (b) It may be more difficult – the auditor.
- Why does the audit situation present challenges for us? *MBS v. Grant Thornton* as a recent example.

Elements (a) and (b) – duty and scope (cont)

- SAAMCo + BPE.
 - (a) The ‘information’ and ‘advice’ paradigms.
 - (b) Otherwise “*every case is likely to depend on the range of matters for which D assumed responsibility*”.
- Checklist.
 - (a) The nature of the information/advice given by D.
 - (b) For what purpose is it given?
 - (c) Does the loss flow from the particular feature of D’s conduct that made it wrongful?
 - (d) Can Loss X be differentiated from Loss Y as a discrete ‘type’?
 - (e) The SAAMCo ‘counterfactual’.

Elements (a) and (b) – duty and scope (cont)

- Applying the checklist ...
 - (a) MBS' swap losses.
 - (b) Loss-making trading.
 - (c) Fraud/defalcations.
 - (d) Share sales/purchases.
 - (e) Dividends.
 - (f) Overpaid tax.
 - (g) Overpaid bonuses.

Element (d) – legal causation

- Galoo and 'common sense'. Trading losses and the distinction between:
 - (a) Breaches giving 'occasion' for the loss;
 - (b) The 'dominant/effective' cause.
- Rationalising Galoo in 2019.
 - (a) The prior question: the scope of the duty.
 - (b) *Galoo* and factual causation.

Contributory negligence, “net contribution” clauses and contribution claims

Helen Evans

What lies behind a contributory negligence deduction?

S. 1(1) of the Law Reform (Contributory Negligence) Act 1945 : “*Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant’s share in the responsibility for the damage*”.

- 25% deduction in the recent decision of Teare J in *Manchester Building Society v Grant Thornton* [2018] 1 PLNR 27 (under appeal)
- Save in the most egregious case, the percentage deductions tend to hover around the 25% to 40% mark. Why? What drives those percentages?
- Whose acts can be pinned on a corporate claimant?

What are the key factors?

- What are the respective responsibilities of the client and professional adviser? Who makes a company's trading decisions? Who has first responsibility for looking after assets? Is an auditor a "watchdog" or a "bloodhound"?
- What approach has the court already taken to duty of care? Is this an "information" case with more limited damages or an "advice" case with broader damages?
- No formulaic "SAAMCo" cap in accountants' cases but some of the same thinking prevails. You cannot have double counting of deductions from damages.



The importance of fraud

- *Barings PLC v Coopers & Lybrand* [2003] PNLR 4 (the Nick Leeson fraud): court made contributory negligence deduction on sliding scale from 50 to 80% over time, until Barings' breaches broke the chain of causation entirely.
- *Deloitte & Touche v Livent* [2017] SCC 63: Canadian Supreme Court declined to allow deduction which would "undermine the very purpose of establishing a duty of care" and therefore be contrary to the public interest.
- *AssetCo v Grant Thornton* [2019] EWHC 150- the "very thing" that the auditors had failed to spot. Deductions on different heads of damage between 25% and 100%



Policy considerations



- *British Racing Drivers Club Ltd v Hextall Erskine* [1996] BCC 727: court declined to allow a deduction that would be inconsistent with the statutory scheme for shareholder protection imposed by companies legislation.
- Who is the protection designed for?

Net contribution clauses

- Often found in accountants' engagement letters.
- They seek to confine the accountants' liability to a "fair and reasonable" or "just and equitable" amount bearing in mind the role of anyone else in causing loss.
- Will clause be upheld? *West v Finlay* [2014] BLR 324 (where correct approach was held to be like a contribution claim).
- If upheld, they may assist in *Livent/Hextall Erskine* type case. However, greatest benefit probably where a third party who has contributed to loss is insolvent and contribution claim would have no practical value.

Contribution claims- what's the point?

- Contributory negligence and disputes over net contribution clauses fall to be considered first so there is a risk that a contribution claim will not add anything (other than costs).
- But, they have their uses where:
 - There is likely to be a challenge to any “net contribution clause”;
 - The court may be reluctant to “punish” shareholders for directors’ defaults (eg *Hextall Erskine/Livent*)
 - It would put pressure on a company to settle.
- *Aldi Stores v WSP Group PLC* [2008] 1 WLR 848 and the danger of leaving a contribution claim too late.

Limitations of liability

Anthony Jones

Statutory audit context

Companies Act 2006, s 532

- (1) This section applies to any provision –
for exempting an auditor of a company (to any extent) from any liability that
would otherwise attach to him in connection with any negligence, default,
breach of duty or breach of trust in relation to the company occurring in the
course of the audit of accounts, or
by which a company directly or indirectly provides an indemnity (to any
extent) for an auditor of the company ... against any [such liability] ...*
- (2) Any such provision is void, except as permitted by –
(a) section 533 (indemnity for costs of successfully defending proceedings), or
(b) sections 534 to 536 (liability limitation agreements).*
- (3) This section applies to any provision, whether contained in a company's
articles or in any contract with the company or otherwise ...'*

Statutory audit context

Conditions for LLA

- Authorised by members of company (s 536)
- Applies in respect of single specified financial year (s 535(1))
- Not enforceable to limit liability to less than '*such amount as is fair and reasonable in all the circumstances*'
- Non-exhaustive list of factors to determine reasonableness (s 537(1))

NB: UCTA 1977 reasonableness test does *not* apply

Immaterial *how* the limitation of liability is framed

General accountancy context

'Basis' Clauses

Barclays Bank v Grant Thornton [2015] 1 CLC 180

'This report is made solely to the company's director. Our audit work has been undertaken so that we might state to the company's director those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the company and the company's director as a body, for our audit work, for this report, or for the opinion we have formed.'

NB. Standard ICAEW clause.

General accountancy context

Limitations on liability within scope

- Monetary limits, absolute or via formula: *University of Keele v Price Waterhouse* [2004] PNLR 43 (CA)
- Contractual limitation period: *Inframatrix Investments Ltd v Dean Construction Ltd* [2012] EWCA Civ 64
- Combination: *Dennard v PricewaterhouseCoopers LLP* [2010] EWHC 812 (Ch)

General accountancy context

‘Reasonableness’ in UCTA 1977

Overseas Medical Supplies Ltd v Orient Transport Services [1999] 2 Lloyd’s Rep 273 (CA), Potter LJ

- How condition came into being and used generally
- Five guidelines in UCTA, Sched 2
- How practicable for client to go elsewhere
- Clause to be reviewed as a whole
- ‘Reality of the consent’ of client significant
- Extent of the limit imposed
- Availability of insurance relevant but not decisive
- Presence of absence of term allowing contracting without limit

Halsall v Champion Consulting [2017] PNLR 32



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