

LIST OF TOPICS COVERED:

1. Statutory Authority
2. Duty of Care, Breach, Causation and Remoteness
3. Defences
4. Vicarious Liability
5. NDD
6. Nuisance
7. Pure Economic Loss
8. Mental Harm
9. Proportional Liability
10. Wrongful Birth
11. Pre Birth
12. Death
13. Trespass
14. Intentional Torts and Defences

Statutory Authority Response

- The issue is whether the statutory authority is
- [Name of Statutory Authority] is a statutory authority per s 41 CLA.
- P will seek to raise negligence because the [SA failed to... acted...facts]. All of the elements of negligence must be proven.
 - Describe the omission or act.

Applying the salient features of **Graham Barclays; Crimmins**:

1. Would a reasonable public authority **reasonably foresee** that its acts or omissions, including a failure to exercise its statutory powers, might result in an injury to the plaintiff or his or her interests? [Application].
2. Was the authority in a position to **control** the situation which brought about the harm? In **Crimmins**, the authority exerted control over Mr Crimmins over the allocation of work and owed a duty of care. [Application]
3. Was the injured person **vulnerable**? In **Crimmins**, Mr Crimmins was found to be vulnerable as a casual worker with little or no bargaining power. Similarly, [Application].
4. Did the authority **know or ought it to have known of an existing risk of harm** to a specific class of persons who included the plaintiff? [Application]
5. Would the imposition of a duty of care impose liability with respect to the defendant's **core policy making** or quasi-legislative functions? If no, then yes there is a DOC [Application]
6. Is there a **policy reason** which denies a duty of care? [Application].

Commented [JK1]: e.g. it was reasonably foreseeable that giving info on the wrong place to dig would cause such damage

Commented [JK2]: e.g. In this case, City Water had the power to protect them against such incidents & the regulation of water matters

Apply s 42.

Conclusion after applying Graham Barclays and s42. - Court is likely to find a duty of care & its breach. (s 42 is relevant to breach).

Causation – s5D [Causation].

Defence

Then consider S 43 or s 45.

Note: If 'omission' go to s 44 then s 42.

If 'positive act', go straight to s 42.

- Under s 44 CLA, as this is an omission, P will need to satisfy the high threshold to establish that [statutory authority] would have been forced to act under their

Commented [JK3]: Omission

statute in proceedings initiated by P. Because P cannot satisfy this threshold ..., P does not have standing to sue.

- (if you have time, or if facts are analogous; consider the dog mauling situation in **Meyers v Commissioner for Social Housing [2019] ACTCA 19** and draw links. The outcome of the case was that the Council did not owe a duty of care and not liable).

Commented [JK4]: These are defences and these come AFTER the common law test

s42 CLA, Liability of Public Authority

- Under s 42(a), it is (un)likely that the [act of the public authority] is limited by resources.
- Under s 42(b), the allocation of resources is not open to challenge. (can't be questioned). (should skip this).
- Under s 42(c), the ability to perform a function is determined with reference to OTHER ACTIVITIES required of the authority. [application]
- Under s 42(d), Authority may rely on COMPLIANCE with procedures/standards and exercise of other functions as evidence of its proper exercise of activities. [application].
- Under CLA S 43A, the failure to exercise a special statutory power does not give rise to liability unless it was so unreasonable that no public authority having the special statutory power could consider the conduct to be reasonable.
 - Under s 43A(2)(a)(b), A special statutory power is conferred by statute and is of a kind that people are not authorised to exercise the power without a specific statutory authority.
 - Examples of special statutory power include; the placing of signs to warn motorists of water - **Rickard v Allianz Australia Insurance Ltd [2009] NSWCA**, signage warning of roadwork - **Curtis v Harden Shire Council [2014] NSWCA**
 - Things that are not a special statutory power; property right is not a SSP → the court held that the erection of screens on bridges by the RTA to prevent individuals from throwing rocks onto cars travelling below was not a 'special statutory power' as the ownership of the bridge would be sufficient to empower the RTA to erect screens and is a property right not a special statutory power.
 - Under s 43A(3), an act or omission is so unreasonable that no authority with that power could consider it to be a reasonable exercise of that power. [Application].

Commented [JK5]: Example;

It is unlikely that the providing of the correct information is hindered by the lack of financial & other resources.

Commented [JK6]: E.g. advising diggers of where the correct place to dig is would come under the authority's broad range of activities particularly if it is specific to water pipes

Commented [JK7]: D can argue that it complied by the general procedures & gave Cable Co the information on records as part of its proper exercise of its functions

Commented [JK8]: For Special Statutory Power

Commented [JK9R8]: S 44 and s 43 can both be arguable

Examples of 'so unreasonable' → [Allianz Australia Insurance Ltd v RTA of NSW \[2010\] NSWCA](#), where the placing of signage warning

