

SPECIAL DUTY CATEGORIES

MENTAL HARM

ISSUE	RULE AND APPLICATION
1. Classification and CLA applicability	The CLA applies to claims for mental harm resulting from negligence, subject to s 3B exclusions (ss 27–28). Mental harm means impairment of a person's mental condition (s 27). Determine whether the claim concerns pure mental harm (psychiatric injury without consequential physical injury) or consequential mental harm (psychiatric injury resulting from another personal injury). Here, P's alleged harm is [pure/consequential] because [facts]. Part 3 therefore applies.
2. Recognised psychiatric illness — s 31	P cannot recover for pure mental harm unless it constitutes a recognised psychiatric illness (s 31). Ordinary grief, distress or emotional upset is insufficient without the requisite psychiatric illness. Here, [diagnosis/evidence] [does/does not] establish a recognised psychiatric illness. Accordingly, this requirement is [satisfied/not satisfied/uncertain pending medical evidence].
3. Duty of care — s 32	D does not owe P a duty to take care not to cause mental harm unless D ought to have foreseen that a person of normal fortitude might, in the circumstances, suffer a recognised psychiatric illness if reasonable care were not taken (s 32(1)). Foreseeability is assessed contextually, considering the factors in s 32(2) for pure mental harm and s 32(3) for consequential mental harm. Here, [identify the critical event and alleged risk]. A psychiatric illness was [reasonably foreseeable/not reasonably foreseeable] because [facts]. Accordingly, the statutory duty threshold is [satisfied/not satisfied/contestable].

4. Sudden shock and relevant circumstances — s 32	For pure mental harm, consider whether P suffered harm through sudden shock, witnessed the victim being killed, injured or put in peril at the scene, the relationship between P and the victim, and any pre-existing relationship between P and D (s 32(2)(a)–(d)). These are relevant considerations, not independent mandatory preconditions (<i>Tame v New South Wales</i> (2002) 211 CLR 317; <i>Wicks v State Rail Authority of New South Wales</i> (2010) 241 CLR 60). Here, [apply each materially relevant circumstance]. Although [factor supports foreseeability], [counterargument]. These circumstances [support/weaken] the conclusion that psychiatric illness was reasonably foreseeable.
5. Pure mental harm arising from shock — s 30	If P claims pure mental harm arising wholly or partly from mental or nervous shock connected with another person being killed, injured or put in peril by D's act or omission, s 30 applies. P must have either witnessed the victim being killed, injured or put in peril at the scene, or be a statutorily defined close family member (s 30(1), (2), (5)). Here, P [satisfies/does not satisfy] the applicable limb because [facts]. If the victim was contributorily negligent, P's damages are reduced proportionately (s 30(3)). No damages are available if recovery by or through the victim for the relevant act or omission would be barred by applicable law (s 30(4)).
6. Consequential mental harm — ss 32(3), 33	Where P's psychiatric injury follows a physical injury, s 32(3) requires consideration of the personal injury suffered by P when assessing duty. Section 30's restrictions on pure mental harm do not automatically apply to consequential mental harm. However, a damages award for economic loss arising from consequential mental harm requires a recognised psychiatric illness (s 33). Here, P's psychiatric injury [followed/did not follow] another personal injury. Section 33 [applies/does not apply] to the claimed economic loss because [facts].
7. Breach — s 5B	If D owed a duty, breach requires failure to take reasonable precautions against a foreseeable risk that was not insignificant, considering probability, seriousness, burden of precautions and social utility (CLA s 5B). Here, D

	should have [precaution] because [facts]. D may argue [counterargument]. Accordingly, breach is [likely/unlikely].
8. Causation and scope of liability — s 5D	P must establish that D's breach was a necessary condition of the psychiatric injury and that extending liability to the harm is appropriate (s 5D(1)). Here, [medical evidence and factual sequence] [establishes/does not establish] that the breach caused P's recognised psychiatric illness. The injury [does/does not] fall within the scope of the risk that made D's conduct negligent because [facts]. Causation and scope are [established/contestable/not established].
9. Conclusion	P's claim is [likely to succeed/arguable/unlikely to succeed]. The decisive issue is [recognised psychiatric illness/duty and foreseeability/s 30 restriction/breach/causation], because [brief factual reason].

CASES

Authority	Use
<i>Tame v New South Wales (2002)</i>	Reasonable foreseeability is central to duty. Normal fortitude, sudden shock and direct perception are not independent universal preconditions to common-law liability. Apply the statutory language of s 32.
<i>Annetts v Australian Stations Pty Ltd (2002)</i>	A duty may arise despite the absence of direct perception or a sudden shock where the relationship and circumstances make psychiatric injury reasonably foreseeable. Particularly relevant to assurances, reliance and an established relationship.

<i>Jaensch v Coffey (1984)</i>	The relationship between P and the victim, proximity to the event and the circumstances in which P learned of the injury inform foreseeability.
<i>Mount Isa Mines Ltd v Pusey (1970)</i>	Psychiatric illness following exposure to a traumatic event may be compensable where the relevant duty and causation requirements are established. Distinguish recognised illness from ordinary grief.
<i>Wicks v State Rail Authority of New South Wales (2010)</i>	Sudden shock and the circumstances of witnessing an event are relevant, but not invariably decisive. Section 30's eligibility requirements and s 32's duty inquiry are distinct.
<i>Gifford v Strang Patrick Stevedoring Pty Ltd (2003)</i>	A parent may recover for recognised psychiatric illness following the death of adult children, subject to the applicable duty and statutory requirements.

PRE-NATAL HARM

ISSUE	RULE AND APPLICATION
1. CLA applicability	The Civil Liability Act 2002 (NSW) (CLA) applies, subject to s 3B exclusions (s 5A). Personal injury includes prenatal injury (s 5). Accordingly, the CLA governs P's claim, subject to any relevant statutory qualification.
2. Child's claim — prenatal injury	A child born alive may claim for personal injury caused by D's negligence before birth (Watt v Rama). Here, D's [act/omission] allegedly caused [prenatal injury]. Unlike wrongful life, P alleges negligently caused injury rather than damage arising from being born. The claim is potentially actionable, subject to duty, breach and causation.
3. Duty of care	D must have owed P a duty to take reasonable care to avoid the relevant prenatal injury. Here, [D's role, conduct and knowledge] [supports/undermines] a duty because [facts]. If D provided medical care affecting the pregnancy, the relationship may support a duty; however, the duty's scope must be established on the facts. Accordingly, duty is [likely/contestable/unlikely].
4. Breach — s 5B	D breached its duty if the risk was foreseeable, not insignificant, and a reasonable person would have taken precautions, considering the probability and seriousness of harm, burden of precautions and social utility (CLA s 5B). Here, reasonable care required [precaution] because [facts]. D may argue the risk was unlikely or the precaution unreasonable. However, [counterargument]. Breach is [likely/unlikely].
5. Causation — s 5D	P must establish that the breach was a necessary condition of the injury and that liability should extend to that harm (CLA s 5D(1)). Here, [medical evidence] [supports/undermines] the conclusion that appropriate care would have prevented or reduced [injury]. If the condition was pre-existing, distinguish causing the condition from negligently failing to

	diagnose or treat it. Causation is [established/contestable/not established].
6. Wrongful-life claim	A child cannot recover merely because negligent advice or diagnosis resulted in their birth with a disability, where the alternative was non-existence (<i>Harriton v Stephens</i> ; <i>Waller v James</i>). If P's claim requires comparing life with disability against non-existence, it is likely barred. Conversely, if D's negligence independently caused or aggravated prenatal injury, the claim is distinguishable because P alleges actionable personal injury, not that birth itself was harmful.
7. Parent's wrongful-birth claim	If D's negligence resulted in an unintended pregnancy or birth, CLA Pt 11 may apply (s 70). Section 71 restricts recovery of ordinary child-rearing costs and earnings lost while rearing the child. Although <i>Cattanach v Melchior</i> permitted recovery of child-rearing costs at common law, the NSW statutory restrictions govern claims within their scope. Here, P claims [pregnancy/childbirth expenses, ordinary upbringing costs or disability-related expenses]. Recoverability depends on the nature of the loss and applicable restrictions; disability-related expenses should not automatically be equated with ordinary upbringing costs.
8. Damages	If liability is established, P may recover proven loss caused by the negligence, subject to applicable statutory restrictions. Distinguish the child's personal-injury damages from the parent's losses arising from the birth. Here, [identified loss] is [recoverable/irrecoverable/contestable] because [reason].
9. Conclusion	P's claim is [likely to succeed/arguable/unlikely to succeed]. The decisive issue is [duty/breach/causation/wrongful-life bar/CLA Pt 11], because [strongest supporting fact and counterargument].

PUBLIC AUTHORITIES

Issue	Rule and application
1. CLA applicability	The Civil Liability Act 2002 (NSW) (CLA) applies to the claim, subject to the exclusions in s 3B (CLA s 40). [Authority] is likely a public authority because it is [constituted by or under an Act / falls within another limb of the definition] (CLA s 41). Accordingly, CLA Part 5 must be considered.
2. Duty of care	Established duty: [Defendant] owes [plaintiff] a duty to take reasonable care to avoid reasonably foreseeable harm of the relevant kind, subject to any statutory modification (Crimmins v Stevedoring Industry Finance Committee (1999) 200 CLR 1 (Crimmins)). Novel duty or omission: The mere existence of a statutory power does not impose a duty to exercise it (Sutherland Shire Council v Heyman (1985) 157 CLR 424 (Heyman); CLA s 46). Whether a duty arises depends on the relationship and salient features, including foreseeability, the authority's control over the risk, knowledge, plaintiff vulnerability and policy considerations (Crimmins; Pyrenees Shire Council v Day (1998) 192 CLR 330 (Pyrenees)). Here, [harm] was reasonably foreseeable because [facts]. [Authority] [did/did not] control the risk and [knew/ought to have known] of the specific danger to [plaintiff/identifiable class]. [Plaintiff] was [vulnerable/able to protect their interests] because [facts]. Unlike Pyrenees, where the authority knew of a specific danger, [distinguishing facts]. Although a duty is supported by [factors], it is weakened by [counterarguments, including limited control, lack of knowledge or competing policy functions]. Therefore, [defendant] [likely does/does not] owe [plaintiff] a duty to take reasonable care to avoid [specific harm].
3. CLA s 42 — public authority considerations	In determining whether [authority] breached its duty, the court must consider the resources reasonably available to it, its general allocation of resources, the broad range of its activities and its compliance with applicable procedures and standards (CLA s 42(a)–(d)). General resource-allocation decisions cannot be challenged (s 42(b)); procedural compliance is evidence of proper exercise, not automatic immunity (s 42(d)). Here, [resource constraints/competing

	functions/procedural compliance] [supports/undermines] the reasonableness of [authority's conduct], but does not itself determine liability.
4. CLA s 43 — breach of statutory duty	If liability is based on breach of statutory duty, the applicable statutory standard must be considered under CLA s 43. Section 43 does not govern an ordinary common-law negligence claim merely because the defendant is a public authority. Here, the claim is based on [common-law negligence/breach of statutory duty]; therefore, s 43 [does not apply/applies, requiring consideration of its statutory threshold].
5. CLA s 43A — special statutory power	If liability is based on the exercise or non-exercise of a special statutory power, [authority] is liable only if its conduct was so unreasonable that no authority possessing that power could properly consider it reasonable (CLA s 43A(1)–(3)). The power must be one ordinary persons do not possess (s 43A(2)). Here, the relevant power is [identify statutory provision]. It [does/does not] qualify because [reason]. If s 43A applies, [authority's conduct] [is/is not] likely to meet the stringent threshold because [facts].
6. CLA s 44 — regulatory functions	[Authority] is not liable for failing to exercise or consider exercising a function to prohibit or regulate an activity if [plaintiff] could not have compelled the authority to exercise that function through proceedings (CLA s 44(1)–(2)). Here, the alleged wrong is [failure to regulate/prohibit an activity or affirmative conduct]. Section 44 [may apply/is unlikely to apply] because [explain whether the claim concerns a qualifying regulatory omission].
7. CLA s 45 — roads authorities	A roads authority is protected from liability for failing to carry out or consider roadwork unless it had actual knowledge of the particular risk that materialised (CLA s 45(1), (3)). This protection does not itself establish a duty (s 45(2)). Here, s 45 [applies/does not apply] because [authority status and roadwork requirements]. The authority [did/did not] have actual knowledge of the particular risk because [facts].

8. Breach	[Defendant] breaches its duty if it fails to take reasonable precautions against a foreseeable risk that was not insignificant, having regard to the probability and likely seriousness of harm, the burden of precautions and the social utility of the activity (CLA s 5B(1)–(2)). Here, [risk] was foreseeable and [not insignificant] because [facts]. A reasonable authority would [precaution] given [probability/seriousness], notwithstanding [burden, resources or competing functions]. Conversely, [defendant] may argue [counterargument]. Subject to CLA s 42 and, if applicable, s 43A, breach is [likely/unlikely].
9. Causation and scope of liability	[Defendant] is liable only if the breach was a necessary condition of the harm and it is appropriate for liability to extend to that harm (CLA s 5D(1)). Factual causation is assessed under s 5D(1)(a); scope of liability under s 5D(1)(b) and (4). Here, but for [breach], [plaintiff's harm] [would/would not] have occurred because [facts]. The harm [does/does not] fall within the scope of the risk that made the conduct negligent because [reason]. Accordingly, causation and scope are [established/contestable/not established].
10. Conclusion	Accordingly, [plaintiff's] claim against [authority] is [likely to succeed/arguable/unlikely to succeed] because [decisive issue]. The principal obstacle is [duty/breach/statutory protection/causation].

CASES

CASE	PRINCIPLE → EXAM ANALOGY
<i>Stuart v Kirkland-Veenstra</i> (2009)	Police had a statutory power to apprehend a person but no duty to exercise it. → D: “Like <i>Stuart</i> , D merely possessed a discretionary statutory power; power alone does not establish a common law duty.”
<i>Graham Barclay Oysters v Ryan</i> (2002)	Government/council had powers to regulate oyster contamination, but no duty to individual consumers. Foreseeability + vulnerability + statutory powers were insufficient without sufficient control/relationship. → D: broad regulatory responsibility ≠ private duty.

<i>Pyrenees Shire Council</i>	Council had actual knowledge of a specific dangerous defect and had exercised its statutory powers in relation to it. → P: stronger than <i>Graham Barclay</i> : identified risk + knowledge + control + specific relationship.
<i>Crimmins v Stevedoring Industry Finance Committee (1999)</i>	Statutory authority's control over an identifiable risk/class can support a duty. → P: use where D had substantial regulatory/control responsibility over the specific risk.
<i>Sullivan v Moody (2001)</i>	Duty must be coherent with statutory functions and competing obligations. → D: imposing liability would place D in conflict with statutory responsibilities.
<i>Brodie v Singleton Shire Council (2001)</i>	Demonstrates that roads authorities can be liable for dangerous road conditions; NSW subsequently provides specific protection through s 45. → Trigger: road defect → immediately check s 45.
<i>Woolcock Investments</i>	Vulnerability means inability reasonably to protect one's own interests; suffering financial loss alone is insufficient.