

Council of the Shire of Sutherland v Heyman [1985] HCA 41

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Facts

- Faulty footings on a home caused damage
- The building had been approved by the council
- But they had never inspected the footings, and if they had, they would not have approved the construction

Issue

- Does the council owe a DOC to owners of a house to ensure it is built to specifications?

Held

- No breach by the council
- Mason J said statutory authorities were not immune from common law liability but usually a public authority which is *not* under a statutory obligation to do something, will not be held liable for their failure to do so
- But an authority may place itself in the position that it attracts a duty of care
- Gibbs insisted a failure to act is not negligent unless there is a positive duty to act
- Brennan said a statutory power is not the same as a statutory duty
- The statute must impose a duty and confer a private right for damages
- Deane referred to proximity; there must be reasonable foreseeability. But this does not automatically apply. The approach in Australia is to reduce the burden on authorities. Deane included the facts indicated an absence of physical, circumstantial or causal proximity. The council had no statutory duty.
- Omissions are only negligent when you were under a duty to act.

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