

RESOLUTION 09-04-2017

DIGEST

Tort Law: Numbering Subdivisions to Aid in Citation

Renumbers Civil Code section 846 to add subdivision designations.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution renumbers Civil Code section 846 to add subdivision designations. This resolution should be approved in principle because it would ease reading and citation to section 846 of the California Civil Code.

Presently, Civil Code section 846 lacks nomenclature. This resolution provides codification to match the titling scheme found in accompanying sections in chapter 2. As amended, Civil Code section 846 would comply with the code, division, part, title, chapter, section, subsection, and paragraph nomenclature found in chapter 2 of the Civil Code. Adding this logically consistent scheme will reduce confusion and waste in legal disputes involving this section, and its addition will not generate negative results.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 846 to read as follows:

1 § 846

2 (a) An owner of any estate or any other interest in real property, whether possessory or
3 nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any
4 recreational purpose or to give any warning of hazardous conditions, uses of, structures, or
5 activities on those premises to persons entering for a recreational purpose, except as provided in
6 this section.

7 (b) A “recreational purpose,” as used in this section, includes activities such as fishing,
8 hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal
9 riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing,
10 picnicking, nature study, nature contacting, recreational gardening, gleaning, hang gliding,
11 private noncommercial aviation activities, winter sports, and viewing or enjoying historical,
12 archaeological, scenic, natural, or scientific sites.

13 (c) An owner of any estate or any other interest in real property, whether possessory or
14 nonpossessory, who gives permission to another for entry or use for the above purpose upon the
15 premises does not thereby

16 (a)(1) extend any assurance that the premises are safe for that purpose, or

17 (b)(2) constitute the person to whom permission has been granted the legal status of an

18 invitee or licensee to whom a duty of care is owed, or
19 ~~(e)(3)~~ assume responsibility for or incur liability for any injury to person or property
20 caused by any act of the person to whom permission has been granted except as provided in this
21 section.
22 (d) This section does not limit the liability which otherwise exists
23 ~~(a)(1)~~ for willful or malicious failure to guard or warn against a dangerous condition, use,
24 structure or activity; or
25 ~~(b)(2)~~ for injury suffered in any case where permission to enter for the above purpose was
26 granted for a consideration other than the consideration, if any, paid to said landowner by the
27 state, or where consideration has been received from others for the same purpose; or
28 ~~(e)(3)~~ to any persons who are expressly invited rather than merely permitted to come
29 upon the premises by the landowner.
30 (e) Nothing in this section creates a duty of care or ground of liability for injury to
31 person or property.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: As currently framed, the subparagraphs of Civil Code section 846 are unnumbered, such that an effort to cite same would require verbiage like “the third paragraph of Civil Code section 846.”

The Solution: This resolution would attach numbers to all paragraphs in the section to aid in the citation of the specific subdivisions of the section to which a party wishes to refer.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT: K. Martin White, Esq. P.O. Box 1826
Carlsbad, CA 92018; (760) 434-6787

RESPONSIBLE FLOOR DELEGATE: K. Martin White, Esq.