



CALIFORNIA CODES (2006)
CIVIL CODE
SECTION 846

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

A "recreational purpose," as used in this section, includes such activities as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleanng, hang gliding, winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby (a) extend any assurance that the premises are safe for such purpose, or (b) constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by any act of such person to whom permission has been granted except as provided in this section.

This section does not limit the liability which otherwise exists (a) for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or (b) for injury suffered in any case where permission to enter for the above purpose was granted for a consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received from others for the same purpose; or (c) to any persons who are expressly invited rather than merely permitted to come upon the premises by the landowner.

Nothing in this section creates a duty of care or ground of liability for injury to person or property.



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Public access wins in court: more protection for landowners

California legal decision clarifies rights of those who permit recreational access.

By Marcia Grimm, California Coast & Ocean

The California Supreme Court made a 1993 decision for advocates of greater public access that address private property owners who permit public recreational use of their lands. In *Ornelas v. Randolph*, a rule of law that may have inhibited public use of private lands was clarified to provide greater protection of landowners from liability to those who may be injured on their properties.

The case broadened the application of California's 'recreation use' statute, Civil Code Section 846, with respect to the type of property affected. Enacted by the legislature in 1963 to encourage private landowners to allow the general public to use their lands for recreation, Section 846 provides those owners with immunity from potential liability to recreational users except under certain conditions.

There is no immunity (1) if the landowner willfully or maliciously fails to guard or warn potential users about dangerous conditions on the land; (2) if permission to enter the property is granted for consideration; or (3) where the injured party is expressly invited, rather than merely permitted, to enter the property.

In keeping with the legislative intent, the immunity applies only where the injured party entered the property for a recreational purpose -- it would not prevent a liability claim brought against a landowner by, a contractor, employee, or invited guest who is injured on the property.

While the language of the statute seems fairly clear, courts have applied additional limits to its application by holding repeatedly that the land in question must be "suitable" for recreational use. Most notably, they have been unwilling to grant immunity against injuries that occur on construction sites. The *Ornelas* case was brought on behalf of an 8 year old child injured when playing around farm equipment and, following the construction cases, the lower court declined to grant immunity. This time, though, the State Supreme Court firmly decided that no such exception exists. The statute does not distinguish between developed and undeveloped property or between urban and rural land, and there is no requirement that the site be in a natural condition. What matters is the use actually made by the person entering: if it is for a recreational purpose (and the statute otherwise applies), the owner is immune from liability regardless of the condition of the site.

This decision should be helpful both to private landowners and to public access proponents by eliminating uncertainties about whether any particular property is or is not suitable for recreation. Owners need not fear liability to recreational users or arguably "unsuitable" lands, and may thus be more receptive to public access that the users themselves find desirable and appropriate.

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