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Torts

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Torts

Torts; negligence—landowner's immunity

Civil Code §847 (new).

AB 200 (McAlister); 1985 STAT. Ch 1541

Support: Department of Food and Agriculture; Department of Parks and Recreation; California Forest Protection Association; California Chamber of Commerce; California Farm Bureau Federation

Existing law places legal responsibility on any person whose lack of ordinary care or skill in the management of property results in injury to another.¹ Under prior common law, whether the owner or occupier of property owed a duty of care to a person injured on the premises by unreasonably dangerous conditions depended upon the status of the injured person as either a trespasser, licensee, or invitee.² Under existing case law, however, the proper test is whether the owner acted as a reasonable person in view of the probability of injury to others.³

Chapter 1541 limits the owner's duty of care by providing that an owner,⁴ including a public entity,⁵ is not liable to any person for any injury or death that occurs on the property during the commission⁶ of any specified felony.⁷ This immunity applies only when the in-

1. CAL. CIVIL CODE §1714.

2. See generally 2 F. HARPER & F. JAMES, THE LAW OF TORTS §27.1 (1956). The owner or occupier owed no duty to a trespasser other than to refrain from intentionally injuring the trespasser. A licensee, or social guest, was owed the additional duty of being warned of concealed dangers which the owner or occupier actually knew about. The owner or occupier owed to invitees, or business visitors, a further duty to discover unreasonably dangerous conditions on the premises and either remedy the defect or warn the invitee of the danger. *Id.*

3. *Rowland v. Christian*, 69 Cal. 2d 108, 119, 70 Cal. Rptr. 97, 104, 443 P.2d 561, 568 (1968) (abolishment of the wholesale immunities of the common law classifications). The plaintiff's status, although not determinative, may have some bearing on liability in light of the facts giving rise to such status. *Id.* See also CAL. GOV'T CODE §§835- 835.4 (liability of public entities for injury caused by dangerous condition of their property).

4. CAL. CIVIL CODE §847(a) (defining owner as the owner of any estate or other interest in real property, whether possessory or nonpossessory).

5. CAL. GOV'T CODE §811.2 (definition of public entity).

6. The limitation on liability conferred by Chapter 1541 arises at the moment the injured or deceased person commences the felony and extends to the moment the person is no longer on the property. CAL. CIVIL CODE §847(c).

7. *Id.* §847(b). The specified crimes include murder or voluntary manslaughter; mayhem; rape; sodomy by force, violence, duress, menace, or threat of great bodily harm; lewd acts

jured or deceased person's conduct is in furtherance of the commission of the felony⁸ and proximately causes the injury or death.⁹ Chapter 1541 does not limit the owner's liability that otherwise exists for willful, wanton, or criminal conduct, or for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.¹⁰

on a child under the age of 14 years; any felony punishable by death or imprisonment in the state prison for life; any other felony in which the defendant inflicts great bodily injury on any person other than an accomplice; any felony in which the defendant uses a firearm; attempted murder; assault with intent to commit rape or robbery; assault with a deadly weapon or instrument against a police officer; assault by a life prisoner on a non-inmate; assault with a deadly weapon by an inmate; arson; exploding a destructive device or any explosive with intent to injure or murder or cause great bodily injury; burglary; robbery; kidnapping; taking of a hostage by an inmate of a state prison; any felony in which the defendant personally used a dangerous or deadly weapon; selling, furnishing, administering or providing heroin, cocaine, or phenacyclidine (PCP) to a minor; grand theft; and any attempt to commit one of these specified crimes other than assault. *Id.*

8. The limitation on liability arises only upon the charge of any specified felony and a subsequent conviction of that felony or a lesser included felony or misdemeanor arising from the original charge. During the pendency of the criminal action, any civil action will be abated and the statute of limitations on the civil action will be tolled. *Id.* §847(e).

9. *Id.* §847(d).

10. *Id.* §847(f).

Torts; real estate brokers

Civil Code §§2079, 2079.1, 2079.2, 2079.3, 2079.4, 2079.5 (new);

Insurance Code §11589.5 (new).

SB 453 (Robbins); 1985 STAT. Ch 223

Support: California Association of Realtors; Department of Real Estate; Department of Insurance

Under existing law, a real estate broker¹ who fails to disclose known facts that materially affect the value of the property offered for sale is liable for fraud.² In *Easton v. Strassburger*,³ the court held that a real estate broker who represents the seller has a duty to disclose defects that are reasonably discoverable upon inspection of residential property offered for sale.⁴ The legislative intent of Chapter 223

1. CAL. BUS. & PROF. CODE §10015 (definition of real estate broker).

2. *Easton v. Strassburger*, 152 Cal. App. 3d 90, 103, 199 Cal. Rptr. 383, 390 (1984); *Cooper v. Jevne*, 56 Cal. App. 3d 860, 866, 128 Cal. Rptr. 724, 727 (1976); *Lungsh v. Savage*, 213 Cal. App. 2d 729, 735-36, 29 Cal. Rptr. 201, 204-05 (1963). See CAL. ADMIN. CODE tit. 10, §2785(a)(3) (broker has a duty to disclose known facts).

3. 152 Cal. App. 3d 90, 199 Cal. Rptr. 383 (1984).

4. *Id.* at 102, 199 Cal. Rptr. at 390. The court stated that a real estate broker's duty

is to codify and clarify the *Easton* holding by defining the duty of care that a real estate broker owes to a prospective purchaser of residential property.⁵ Chapter 223 provides that, if a real estate broker has a written contract with the seller, or is cooperating with the seller's broker, the broker has a duty to conduct a reasonably competent and diligent *visual*⁶ inspection⁷ of the residential property offered for sale⁸ and to disclose to the prospective purchaser all facts materially affecting the value or desirability of the property revealed by the investigation.⁹ Chapter 223 states that the standard of care owed by a broker is the degree of care that a reasonably prudent real estate licensee would exercise, and is measured by the degree of knowledge required to obtain a license.¹⁰

Chapter 223 provides that buyers must exercise reasonable care to protect themselves,¹¹ and specifies that a buyer's duty encompasses facts that are known to or within the diligent attention and observation of the buyer.¹² Chapter 223 further states that insurers¹³ may not exclude from a professional liability policy¹⁴ coverage based on a breach of the duty stated above.¹⁵

of due care "includes the affirmative duty to conduct a reasonably diligent inspection of the residential property listed for sale and to disclose to prospective purchasers all facts materially affecting the value or desirability of the property that such an investigation would reveal." *Id.*

5. 1985 Cal. Stat. c. 223, §4, at _____.

6. *Id.* *Easton* did not elaborate on the extent of inspection required, but did indicate that "something more than a casual visual inspection" was required. *Easton*, at 105, 199 Cal. Rptr. at 392. See generally NATIONAL ASSN. OF REALTORS, *Interpretations of the Code of Ethics*, art. 9 (7th ed. 1978) (realtor has an affirmative duty to conduct a reasonably competent and diligent *investigation*).

7. CAL. CIV. CODE §2079.3. Chapter 223 excludes from the inspection areas that are reasonably and normally inaccessible and, for planned unit developments or condominiums, limits the inspection to the particular unit if the broker complies with the disclosure requirements of Civil Code §1360. *Id.*

8. *Id.* §2079. Residential property is one to four dwelling units including a manufactured home. Chapter 223 applies to leases with options to purchase, ground leases, and sales contracts of the residential property. *Id.* §2079.1.

9. *Id.* §2079. Chapter 223 fixes the statute of limitations at two years from the date of recordation, occupancy, or close of escrow, whichever comes first. *Id.* §2079.4.

10. CAL. CIV. CODE §2079.2 (knowledge obtained through education, experience, and the license examination).

11. *Id.* §2079.5. *Accord* *Easton v. Strassburger*, 152 Cal. App. 3d 90, 103, 199 Cal. Rptr. 383, 391 (1984).

12. CAL. CIV. CODE §2079.5. Such a standard is equivalent to the standard buyers are held to in real estate fraud cases. *Cooper v. Jevne*, 56 Cal. App. 3d 860, 866, 128 Cal. Rptr. 724, 727 (1976). *Easton* declined to apply a standard that incorporated facts that are known to or within the attention of the buyer in a negligence case, stating such a standard might "... diminish the broker's incentive to conduct a reasonably competent and diligent inspection which the law seeks to encourage. Furthermore, the general principles of comparative negligence provide adequate protection to a broker who neglects to explicitly disclose manifest defects." *Easton*, at 103, 199 Cal. Rptr. at 391.

13. CAL. INS. CODE §23 (definition of insurer).

14. *Id.* (definition of professional liability insurance).

15. *Id.* The insurer need not cover dishonest, fraudulent, criminal, or malicious acts. *Id.*

Torts; emergency response liability

Government Code §§53150, 53151, 53152, 53153, 53154, 53155, 53156, 53157, 53158 (new).

SB 735 (Royce); 1985 STAT. Ch 337

Support: Department of Finance; Department of Forestry; Department of Boating and Waterways; Office of Traffic Safety; Department of Parks and Recreation

Under existing law, any person who negligently or unlawfully sets or attends a fire that escapes onto public property is liable for the costs incurred in fighting the fire and providing rescue or emergency medical services.¹ Existing law further provides that a person whose negligence causes the release of hazardous substances is liable for the expenses of an emergency response resulting from the incident.² Chapter 337 provides that a person who, as a result of being under the influence of an alcoholic beverage or a drug,³ negligently operates a motor vehicle, boat, vessel, or civil aircraft and proximately causes any incident resulting in an appropriate emergency response is liable for the expense⁴ of those services.⁵ Chapter 337 specifies that liability

1. CAL. HEALTH & SAFETY CODE §13009. The person is liable to the federal, state, county, or public agency involved. *Id.* See *id.* §13009.1 (burden of proof and additional liability for costs of investigation). See also *id.* §§13007, 13008 (liability to property owner for escape of fire).

2. *Id.* §13009.6. Liability attaches if an evacuation occurs, or if hazardous substances or fire spread beyond the place of origin. The person is responsible for expenses of a public agency necessary to protect the public from a threat to health and safety. *Id.*

3. CAL. GOV'T CODE §53153. Individuals are under the influence when their physical or mental abilities are impaired to a degree that they no longer have the ability to operate the vehicle with the caution characteristic of a sober person of ordinary prudence under similar circumstances. The presumptions of blood-alcohol content described in Vehicle Code §§23152, 23155 also apply. *Id.*

4. *Id.* §53156(a). Chapter 337 defines the expense of an emergency response as reasonable costs incurred in making an appropriate emergency response, including the costs of providing police, firefighting, rescue, and emergency medical services at the scene of the incident. The definition includes only those costs directly arising because of the response to the particular incident. *Id.* See generally *People v. So. Cal. Edison Co.*, 56 Cal. App. 3d 593, 606, 128 Cal. Rptr. 697, 705 (1976) (expenses for fire suppression costs must be reasonably incurred and expended in suppression of the fire).

5. CAL. GOV'T CODE §§53150, 53151, 53152. Chapter 337 states that a person whose intentionally wrongful conduct proximately causes an incident resulting in an emergency response is liable. *Id.* This language was apparently added to prevent attachment of liability for incidents arising from accidental use or overdose of prescription medicine. Telephone conversation with Mr. Dave Gilliard, Senior Consultant to Senator Edward Royce, August 26, 1985 (notes on file at *Pacific Law Journal*). See also CAL. GOV'T CODE §53156(c) (definition of intentionally wrongful conduct). See generally *County of Ventura v. So. Cal. Edison Co.*, 85 Cal. App. 2d 529, 536-37, 193 P.2d 512, 517 (1948) (statute imposing liability for fire suppression costs is valid because liability is linked to the fault of the person charged).

is not to exceed \$500 for a particular incident,⁶ and is collectible in the same manner as a contractual obligation.⁷ Chapter 337 provides that the legislature does not intend to occupy the field of recovery or otherwise limit the remedies available to recover expenses of an emergency response that arise under the circumstances described in Chapter 337.⁸ Finally, under Chapter 337, evidence obtained against the defendant during any civil proceedings to recover emergency response costs cannot be used in any criminal proceeding arising out of the same incident.⁹

6. CAL. GOV'T CODE §53155.

7. *Id.* §53154. This liability is not insurable. *Id.* See generally *People v. Wilson*, 240 Cal. App. 2d 574, 578, 49 Cal. Rptr. 792, 795 (1966) (contractual obligation created by statute gives rise to a two-year statute of limitations in action for recovery of fire suppression costs).

8. CAL. GOV'T CODE §53158.

9. *Id.* §53157.

