

COURT DECISION SAYS:

Trespassers may sue you

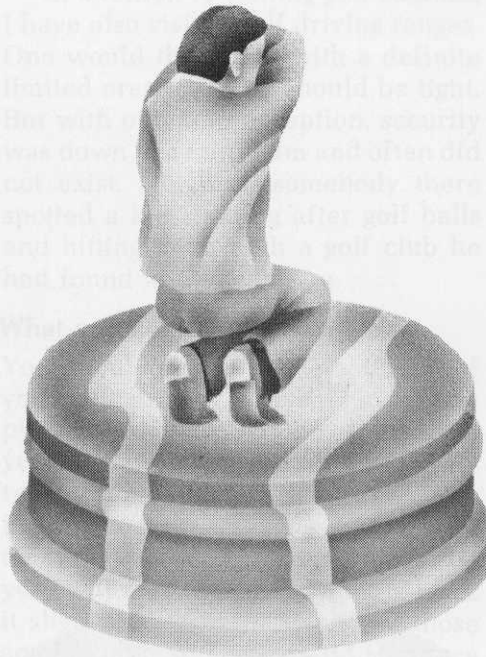
by Harold Gluck, Ph.D.

A very important court decision was passed down last year regarding your liability concerning a trespasser. To set the scene for the meaning of this court decision, we present here some situations that you may have to face in the operation and care of the golf course.

> A strong and high wire fence protects your golfing area, but there is one place where the wire has become loose near the ground. A boy sees some golf balls on the ground, so he climbs under the wire fence. As he picks up the balls he is struck by a golf ball in the eye and severely injured. His parents sue you. Are you liable? Remember, he is a trespasser.

> A woman is looking for a lavatory in a hurry. She sees some golf players entering your premises and follows them. As she enters the clubhouse, she trips and falls, breaking her leg. She sues you. Are you liable? Remember, she is a trespasser.

> You have a special parking area for the cars of people who use the golfing facilities. Three kids get into that area and start to play football. As one runs for the ball, he bangs into a trash receptacle and cuts himself severely. His parents sue you. Are you liable? Remember, he is a trespasser.



> This is the day of the great golf tournament. Tickets are sold and the proceeds go to a charity. A man gets in without a ticket and wanders down to your lake area. He slips, falls into the water, and gashes his head. He sues you. Are you liable? Remember he is a trespasser.

> And now for this final one. Two kids have been watching your golf cars, wondering if they could run one of them. During the evening, they sneak into the area, get into one and start it. It hits a tree and one boy is severely injured. His parents sue you.

Are you liable? Again, remember, he is a trespasser.

The decision

Before you try to answer these and get a headache, let us look at the decision of the court: *If a trespasser is injured on your property, "responsible foreseeability" may now measure your liability.* This was decided by the New York State Court of Appeals, the highest court in the Empire state on June 17, 1976, in the case of Joseph Scurti, as Administrator of the Goods, Chattels & Credits of John J. Scurti, deceased appellant versus City of New York, New York Connecting Railroad Co., Long Island Railroad Co., et. al, respondents. The implication of this case will be felt in all of the sister states.

The court concluded that the "liability of landowners to one injured on their property should be governed not by the ancient and antiquated distinction between trespasser, licensees, and invitees, decisive under the common law, but rather by the standards applicable to negligence cases generally, i.e., the standard of reasonable care under the circumstances whereby foreseeability shall be a measure of liability."

In the Scurti case, a 14-year-old boy entered a railroad yard through a hole in a fence of an adjoining playground maintained by the city. He climbed to the top of a freight car on a mainliner track and was electrocuted

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by a high-voltage wire.

In reviewing the common law of the past, "at a time when landowners were a dominant class and ownership was considered akin to a sacred right," the court said, "the fact that the plaintiff was a trespasser was of the utmost importance. This attitude was reflected in the law which, in its practical application, valued the rights and privileges of ownership over the lives and limbs of trespassers. . . . Thus, the landowners were held to owe no duty to trespasser other than the obligation to refrain from willfully or wantonly injuring him."

Later, as the general theory of liability developed in response to a heightened awareness of the value of human life, new reasons were found to justify the landowner's immunity, according to the New York Court. It was held, for instance, that there was little likelihood that one would enter another's property without permission and thus trespassing was not predictable. It was also argued that a landowner should be entitled to develop his property in the most profitable way, and any requirement that he alter the condition of his property or curtail his activities in order to protect intruders would create unreasonable burdens, inhibiting enjoyment or profitable use of the land. Finally, it was argued that one who enters without permission, knowing that the property was not prepared for him, assumes the risk or is guilty of contributory negligence.

The Court of Appeals felt that this was a "harsh rule with harsh results." It realized that in today's world, with modern industrial complexes, the owner has the right to use his property and develop it for his profit and enjoyment. That often means he must conduct dangerous activities or permit dangerous instruments on the premises. However, under these circumstances, the court reasoned, he must take reasonable measure to prevent injury to those whose presence on the property can be reasonably foreseen. Whether the threat is posed by a dangerous condition or a dangerous activity is of little significance, although it may have some bearing on the effort required to prevent injury.

It is important to note that the elimination of "Immunity" conferred



by prior law should not be an unreasonable burden on the use of the property, since all that is now required is the exercise of rational care under the circumstances. The owner can always show it would have been unduly burdensome to have done more.

But notice very carefully: The decision itself does not limit the situation to a child as a trespasser. It concerns any kind of a trespasser. And that means now you have to worry about the adult trespasser.

The key word in the decision which changes the law is just one word: *foreseeability*. Is there a sort of natural proclivity on the part of children to explore? The answer is yes. The kid will want to get onto that golf course — permission or no permission — to see what it is all about.

In addition to visiting golf courses, I have also visited golf driving ranges. One would think that with a definite limited area, security should be tight. But with only one exception, security was down to a minimum and often did not exist. Not until somebody there spotted a kid running after golf balls and hitting them with a golf club he had found at a vacant tee.

What you can do

You should have a detailed map of your golf area. And also, have some pictures taken. Put them together so you have the map and a pictorial representation of your property. This is your security aim in view of that decision: to control those coming into your golf area. Or if you want to work it slightly differently — control those coming onto your property. Here are some other security tips:

1) You will need a daily check of the condition of your fences. I came across one fence area where it was evident someone had done a bit of burrowing so he could get onto the property. This was fixed immediately, and a watch was placed on the area to see if anyone returned.

2) In such a case, you should report it to your police authorities, whether it be to your local police department, the sheriff's office, or to the state troopers. Keep a record of all the repairs made, and of the notifications made to the police authorities.

3) You probably have a golf shop and a golf pro for instructional pur-

poses on your property. People may wish to make purchases and yet not play that day. Also people may wish to make appointments with the pro for a future date for instruction. Under the law, these people are invitees. Very simple for an observant person to attach himself to such people. You should have somebody always checking, but politely: "Is that person with you?"

4) "How do I get to the clubhouse?" is a question that may be frequently asked. Nature of business should be asked, and then the person should be escorted to the clubhouse.

5) If a guard is used, he should be given special training in regard to what he must be on the alert for. Otherwise it is a waste of money and you get a false sense of security.

6) Spot checks should be made at various — but not predictable — intervals to see if there are trespassers on the property.

7) You should have signs and other types of notices to the effect that trespassers will be dealt with "according to the law." Notice, this doesn't say you will prosecute them. However, you should keep some kind of a record of the people you have ordered off your golf property. If repeated, then the authorities should be called in to handle the matter. Just remember this: You may have a kind heart and want to do nothing about it. But if that trespasser is hurt, that person will not have a reciprocal kind heart. You will be sued.

8) In addition to this new law, you should bear in mind that if the trespasser injures one of the players on the course, you may also have a lawsuit on your hands.

You will live with this decision. Its big effect is that you will have to tighten control of those who come onto the golf property. During the winter, do people with sleds and skis use it without your permission? If so, better start thinking ahead of how to handle this situation.

Finally, check over your liability policy. You may have to increase the face amount of your policy. Have your attorney read the policy carefully. You want to be certain it covers any and every situation — including a lawsuit from a trespasser. □

