Courts Tell Legal Hazards for Club and Player

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THE light-hearted golfer has legal hazards lurking all around him.

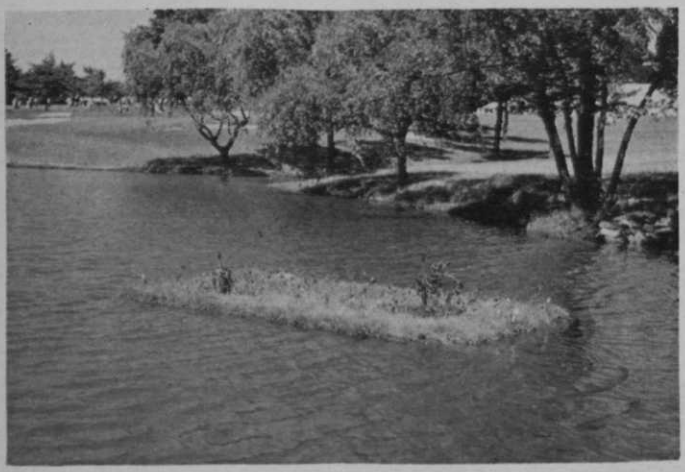
Like most suits to recover for personal injuries this type of action is based on negligence. Such negligence may consist of either an imprudent affirmative act, or a failure to observe a precaution dictated by prudence and common sense—that is to say, errors of commission or omission.

As in other types of injury actions, the doing of an act by a golfer which a reasonably prudent person would not do, or the failure to do something which a reasonably prudent person would do, may result in liability for damages. An English court put it this way: "In playing games as in other transactions of life, a person must abstain from doing what a reasonable person would not do, and if a jury come to a conclusion that a person had done something which a reasonable person in the circumstances would not have done, and if injury had resulted therefrom, that person is liable in an action for negligence."

"In the playing of games as in other transactions of life, many accidents might happen for which no one could be held responsible, and the person who sustained the injury had then to bear the brunt of it. But where it could be proved that the accident was due to the negligence of a person who was sued as defendant, there is no reason why that person should be excused merely because the transaction in which the accident had taken place was recreation rather than work."

One of the earliest cases came before the courts of Scotland in 1906. The defendant, with a clear fairway ahead of him, hit a ball which sliced and struck the plaintiff who was playing another hole. The court found there was no liability because the plaintiff was not in the general direction of the defendant's shot when it was made, and a golfer, under such circumstances, cannot be held responsible for a slice and its consequent damages.

A further legal doctrine was applied called assumption of risk. This doctrine is explained in a later case which arose in Pennsylvania in 1931. In that case the plaintiff was on the sixth green lining up a putt when he was struck by a ball driven by the defendant from the seventh tee. The ball had hooked, traveling 100 feet ahead and 120 feet to the left. No warning was given until after the ball was hit. The defendant claimed that under the circumstances he was not obliged to give the customary warning of "fore" because no one was on the seventh fairway which was the only fairway with which he was concerned, being in the course of playing the seventh hole. The court agreed with him and found in his favor because the injured person was not in the line of his ball, or anywhere where he could reasonably believe that someone was in danger of being hit.



This floating island in lake at 3rd hole at Canterbury CC, Cleveland, with its flowers in bloom provided a bit of beauty trimming that visitors commented would look well at waterholes on their home course.

Player Takes Risk

The court said: "It is well known that not every shot played by a golfer goes to the point where he intends it to go. If such were the case, every player would be perfect and the whole pleasure of the sport would be lost. It is common knowledge, at least among players, that many bad shots must result although every stroke is delivered with the best possible intentions and without any negligence." The plaintiff in the case had been playing for some 20 years and "must therefore be held to be familiar with all the risks of the game. He must have known that many bad shots carry the ball to the right or the left of an intended line of play and that if others were playing to the right or left, they would of course be endangered by such bad shots. This risk a golf player must accept." Thus, as a general rule, the conclusion may be drawn that in the absence of negligence, "persons engaged in playing a game take all the risks which may arise in its pursuit."

However, it must be borne in mind that those cases involved the important element that the person injured was not in a position where it was a reasonably prudent precaution to warn him that a ball was about to be hit. This fact distinguishes those cases from others in which golfers have been adjudged negligent and held liable.

In 1931 a case came before the courts of North Carolina in which it appeared that the plaintiff was playing in a twosome ahead of the defendant who was one of a threesome. The plaintiff, who admitted being a poor golfer, testified that from the fifth to the 16th hole where the accident occurred, the defendant was continually driving into him. At the sixteenth hole the plaintiff drove 15 feet to a rough and the defendant without waiting for the plaintiff to take his second shot, and without calling "fore," drove his ball immediately, hitting the plaintiff and causing him serious injury. The defendant disputed this version and claimed that there had been a merger of the twosome and threesome into a fivesome and moreover that he had yelled "fore" before driving.

The judge commented: "Defendant claimed a merger and the game was proceeding 'strictly according to honors.' This is explained to mean that 'the man who makes the lowest score is the man who has the honor of making the first play at the next hole.' It does not appear who the 'honor man' was at the sixteenth hole, but it is clear that the plaintiff had the 'honor' of having his kneecap broken by a ball driven by defendant, and it is obvious that thereafter all 'honors' ceased." The court allowed the plaintiff to recover damages following the general rule that a golfer when making a shot must give a timely and adequate warning to any person in the general direction of his shot. His failure to do so may be found to be negligence on his part creating liability for the consequent damages inflicted.

Club Found Negligent

It is interesting to note that in this case the operator of the golf course was also sued for negligence. The club had the usual rule that succeeding players allow preceeding players 2 strokes before driving off. The club was supposed to have rangers to enforce this rule but the evidence was that no rangers were present, or if they were they had not enforced the rule in this case. The court accordingly found the club to be negligent and therefore liable for the plaintiff's injuries, saying that a golf club must "exercise ordinary care in promulgating reasonable rules for the protection of persons who lawfully use the course and to exercise ordinary care in seeing that the rules so promulgated for the protection of players are enforced." This duty the golf club had not fulfilled in this case.

Another case in which a recovery was permitted came before the New York courts in 1932. The plaintiff was a caddie, 11 years of age and was caddying for a twosome behind the defendant, who was one of a threesome. The caddie had taken a position near the edge of the fairway and was waiting for his twosome to drive. The twosome was on the tee waiting for the defendant's threesome to precede them in driving off. The defendant was the last of his threesome to drive. It was claimed by the caddie that the defendant drove his ball without yelling "fore" or any other warning, and that he drove it before the second player's ball which the caddie was watching, had come to rest. The caddie heard "fore" just as the second ball came to rest, and as he turned he was struck in his eye by the defendant's ball which had sliced and was actually in flight before the warning was given.

The court in its opinion said: "It must be conceded that, although golf may not be deemed a hazardous game, a driven golf ball is a very dangerous missile and that its flight and direction cannot always be controlled by the player. That uncertainty is a part of the game. The ball when struck is liable to go down the fairway or fly off to the right or left at almost any angle. It was this element that made the plaintiff's position standing on the fifth fairway and within easy range of the defendant's ball dangerous. . . . the question is whether, under the circumstances, he (defendant) should not have first advised him, (plaintiff) of his intention to drive by giving the recognized warning of the game by calling "fore," or have ordered him out of range. He did neither and gave no warning until the

ball was in flight toward the plaintiff. My conclusion is that the jury was justified in finding that the defendant violated his duty to the plaintiff in that he did not use the care of a reasonably careful and prudent man."

Caddies' Exposure to Injury

It is interesting to note that had the plaintiff been the defendant's caddie instead of someone else's, this decision would not have applied. The court explains it this way: "Although the question is not before us, my view is that if the plaintiff had been caddying for the defendant there would be no liability, for the reason that then it would have been the plaintiff's duty to watch the defendant drive, to watch his ball in its flight and to mark it when it came to rest. Defendant would have been justified in assuming that the plaintiff was doing that for which he was being paid and therefore there would have been no occasion to warn him."

The liability to caddies is dependent on negligence. Because the person injured is a caddie does not mean that no liability can ever attach to the one responsible. A caddie does not assume any and all risks attendant on being on a golf course. He only assumes the risks in which there is no negligence involved. For example, he would not be required to assume the risk of injury caused by a club recklessly thrown by a player in a fit of rage over a missed putt, or a ball being driven wildly after a missed drive. On the other hand, a caddie must be diligent for his own safety, and to that end must exercise reasonable care commensurate with his years.

In 1922 a case was litigated in New Jersey in which the plaintiff was a 13 year old boy caddying for a player who had holed out on the third green and walked to the fourth tee. The caddie started to walk to the fourth fairway when he was struck by the defendant's drive from the fourth tee. The defendant, who was playing immediately ahead of the plaintiff's twosome, had not called "fore" until just before the plaintiff was struck. The caddie was permitted to recover for his injuries because the defendant had failed to give adequate warning.

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One of the Many Newspaper-sponsored Golf Events of 1946

Newspaper-sponsored golf events this year have had record participation and galleries. This view was taken at St. Louis (Mo.) Globe-Democrat 11th annual hole-in-one tournament. Since event was started only 2 aces have been made; one after 3,844 shots, the second after 4,540 shots. Since the second ace was made 5,776 strokes have been played without making an ace. This year's men's winner got 18½ in. from the cup. The women's winner was 34¼ in. away from the cup.

mat, 4 ft. by 4 ft., made of the same material as heavy duty tire casing so as to give a player plenty of room to pivot, and either street or cork shoes can be used. This square rubber standing mat is interchangeable for wear and long life.

The Mozels are a golf-minded family. Joe was Pacific Northwest P.G.A. champion for 1946. His sister, Mary Mozel, who for 10 years as a low handicap amateur player won numerous events, including the Women's Pacific Northwest Amateur Championship, turned professional, June 1st, 1945. She is now assistant manager and professional at Lloyd's, and is at present on a two months' golf tour playing in various open championships. Their nephew, Donald Mozel, 17 years old, was crowned Junior Champion of the Oregon Golf Association for 1946, and represents Oregon in the National Junior Championship at Spokane.

Golf Hazards

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In Missouri a case was presented where the plaintiff, a caddie 12 years old, was caddying for a Mr. B. Mr. H. was Mr. B.'s guest. H drove 120 yards and B drove 150 yards and to the left. H and his caddie stopped at their ball and B and the plaintiff walked on. When still 25 feet from their ball, the plaintiff was struck by H's second shot. The warning "fore" had been given just as the ball was about to strike the plaintiff. The higher court not only found H liable for failure to warn the caddie before he took his second shot, but also indicated that B might be held liable for his failure to warn the caddie of the danger, although it granted a new trial to B on other grounds.

Driven golf balls are not the only source of danger. All of us who play golf have attempted at one time or another to show our partner how to execute a proper shot. This form of gratuitous instruction gave rise to a lawsuit in England. A Mr. C went out to play golf with Miss O. Mr. C's sister, Miss C went along, and in an excess of zeal carried Miss O's clubs around the course. At one of the holes, Miss O drove first and sent the ball sailing down the fairway. Mr. C did not do so

well, whereupon Miss O said: "This is the way to do it," and swung her club at an imaginary ball, the club head striking Miss C at the end of the follow through. Miss C sued Miss O and was allowed to recover for her injuries, the judge saying: "A person who went on a golf course, just as a person who crossed the street, took certain risks inherent to the place where he was. A ball might be driven without negligence and strike a spectator or player. A club might break without any fault on the part of the person using it, and someone might be injured by the flying head. But if negligence could never be brought home to anybody, an injured person could not recover."

An interesting incident occurred during the trial of that case demonstrating how unintelligible the vernacular of the game is to those who do not play it. The plaintiff testified that the defendant had not "addressed" the imaginary ball before she hit it. The plaintiff's counsel, who was not a golfer himself and was evidently confused by this testimony asked whether the defendant "spoke to an imaginary ball." The judge, apparently a golfer, explained: "You do not speak to the ball before you drive. You speak to it after you drive. You are thinking of 'addressing' a jury, which is one thing; 'addressing' a ball is another."

Injuries Out of Bounds

There are a few decided cases which deal with injuries received by persons outside a golf course, arising from balls which come over the boundary fences. One such case arose in England when a ball driven from the thirteenth tee of the St. Augustine links, which hole parallelled the roadway, came over the fence and struck the windshield of a passing taxi, shattering the glass and injuring the taxi driver. The links as well as the golfer who drove the

ball were held responsible, the former's liability being predicated on the legal theory of nuisance in "setting out this course and maintaining it, and particularly the thirteenth hole, in proximity to the road without giving warning to people."

A similar case arose in Scotland when a ball from the St. Andrews course came over the wall and struck a child traversing a footpath adjacent to the first hole. It was held that the complaint stated a good cause of action.

More recently in New York City a case arose involving injuries received by a passenger in an automobile being driven along a road adjoining the Hillcrest golf course on Long Island. A ball came over a 6 foot fence and broke the windshield causing injuries to a passenger. Both the club and the player who hit the slice were held responsible.

In New Jersey a case arose where a prospective member of a club who was invited to inspect the club's course, was struck by a ball hit by an unknown player. He sued both the person who invited him and the club, but did not recover.

There are potential hazards awaiting every golfer. Care, intelligence, consideration for the next fellow and adherence to the rules of the game, will obviate much of the danger, but being human, we sometimes forget the niceties of the game in our determination to bring our scores down to respectable levels.

A more practical solution and one which even a few of the cases suggest is golf insurance. For a relatively small premium a golfer can insure himself for damages which he may be required to pay arising from his negligence while playing golf. For an additional premium such policies can be extended to cover an entire family.

To the golfer's credit be it said that there are relatively few instances of injury and even fewer instances of litigation arising out of the game. As one judge remarked, this is "indicative of almost universal compliance with the rules . . . and evidences the care, courtesy and sportsmanship on the part of those who play the game, all of which have contributed so largely to its popularity." Every golfer owes it to his fellow golfers to do his share in keeping up the good record.