

# Negligence Is Chief Legal Hazard to Golf Clubs

By RENZO DEE BOWERS

There's something disturbing in the mere suggestion that social organizations in which golf is paramount should ever find themselves gripped in the tentacles of the law. Their very nature—that of promoting good fellowship and brotherly love—would seem sufficient of itself to exempt them from embroilment in things so mundane as common lawsuits in which they could be smeared by charges of wrongdoing.

Freedom from such contamination was in fact vouchsafed the ancient game and those who cherished and supported it, during the slow centuries while it was crawling toward maturity. The law let it alone. Its participants and backers were strangers to the courts. Its simple, harmless doings aroused legal problems in no quarter. But it is questionable whether that characteristic was a good sign or a quality calling for apologies. The truth is that it escaped legal embroglios simply because its activities were not sufficiently important to merit the law's attention.

But golf has now reached maturity. It has expanded.

In addition to sport, recreation, and social opportunities it affords, it has become business. In some aspects it is big business. It has grown to be important.

Along with this upsurge in importance have come corresponding obligations and liabilities, legal duties and responsibilities which have brought players, as well as owners and operators of courses, under scrutiny of the courts in the same degree, and to be measured by the same yardstick, as are all other interests in which the actions of human beings result in clashes. Within the past 25 years more litigation has arisen out of the game of golf and its incidents than occurred during all the previous years of its history, and the instances of litigation are definitely on the climb numerically.

Seldom indeed are country clubs or

other owners or operators of golf courses movants in this litigation. It is nearly always a case of some individual's haling one of them into court. And, as a preliminary to the bad news about to be divulged, here is an item of warning that should be posted at some nook in every clubhouse, for the edification of officers and employees only: "Nine lawsuits out of every ten arise from charges that the club was negligent in performing, or failing to perform, some duty it owed to the person suing. Beware! Be careful!" Negligence is the nemesis of the golf club when its conduct is being considered from the judicial angle. Without proof of its presence, those who sue owners of golf premises for damages on account of injurious occurrences will go away empty-handed.

## What Is Negligence?

Accusations of negligence in and around clubhouses may be, and often have been, levelled at golf clubs by litigants seeking financial solace for personal injuries or loss of property. Circumstances and accidents out of which claims of the kind may arise are unpredictable. But here's a comforting thought. A club is never liable to any person for damages or compensation unless it owed that person a duty and failed to perform it with the degree of care and attention required by law. A club found to have been remiss in this respect will be mulcted in such amount as a jury may award, and the liability may arise in favor of a member, a guest, or other person rightfully on the premises.

For instance, a member puts valuable belongings—money, jewelry, wearing apparel, or what-not—in his locker and goes out on the course for a round or so of exhilarating swings. Maybe some other activity engages his attention. He may return in an hour, maybe not for days. When he next goes to his locker, his

belongings are not there, or are damaged or destroyed. After his first shock of bewilderment, he looks around for somebody on whom he can pin the blame. He finally casts a menacing eye on the management and demands compensation, as if it were the culprit liable for his loss. Is it?

When country club, athletic association, or social organization furnishes storage facilities, such as lockers, iron safes, or vaults as part of the consideration for membership dues, or for a fixed charge, it becomes what the law designates technically a bailee for hire with respect to stored objects. It may make reasonable rules for the use of its facilities, and users must comply with the rules. In the eyes of the law, its obligations are similar to those of a bank furnishing safety-deposit boxes, or a hotel with safe or vault for keeping guests' valuables. The legal rules can be pretty stringent upon such a bailee. When one is suing it proves that his things were put in locker, safe, or vault, and were wrongfully taken out and lost, or were stolen, or destroyed by fire before he called for them, the courts put the burden upon the house to show that the loss did not occur through any lack of diligence in protecting them, or other fault on its part. It is then in a ticklish spot and will have to do some talk explaining to wriggle out of liability.

For example: The Los Angeles Athletic club kept a fire-proof safe in its office for the deposit of valuable objects by its members. Upon one occasion a member left there a package containing in excess of \$1,250 in money, for which the attendant gave a receipt without knowing what the package contained. When the member called for a return of the package, it could not be found. It was never returned to him, and the manner of its disappearance was unknown. A court gave him a judgment against the club for the full amount of his loss. It adopted this gauge by which liability of associations under similar circumstances is measured: "Members leaving valuable articles or goods with such clubs expect that measures will be taken that will ordinarily secure the property from burglars outside and thieves within, and also that they will employ fit men, both in ability and integrity, for the discharge of their duties. An omission of these measures will be deemed culpable negligence and render the negligent club liable for any loss."

#### **Club's Car Parking Liability**

Country clubs or other owners of golf premises face a comparatively new legal menace from another direction, in which the ubiquitous automobile is the apple of

discord. The question has only recently begun to be bruited around as to whether a club is financially liable for the damage or theft of cars parked on its grounds. This presents a problem that is likely to bob up with increasing frequency, now that it has started rolling.

This much may be said of a comforting nature: No payment can be exacted of a club, whether sued by a member or an outsider, if the car was merely parked at the clubhouse and not taken in charge by the club itself. The only duty it owes to the owner in that situation is to be sure that its officers and employee do no affirmative act to facilitate theft or damage of the machine. The real problem arises where the club assumes control, as by maintaining a parking lot or storage place and keeping an attendant to issue tickets evidencing that it has taken charge. Practices of this kind saddle the club with a special responsibility. As in the case of personal articles which a member puts in his locker, the club becomes a bailee of the parked car and of the owner's goods locked in it, and if theft or damage of the vehicle or goods results from the club's failure to use ordinary care to keep them safely, the owner may force it to stand the loss.

An object lesson is to be found in a thing of the kind that happened to the Hollywood Athletic club not long ago. A member drove his car into the club's parking lot, and delivered it to the employee in charge, leaving the keys in the car. In preparation for meeting trouble before it arrived, the club had a rule requiring members parking their cars to sign a printed slip stating: "In accepting the parking of automobiles by members, the club is not to be held responsible in case of loss through fire, theft, or injury to a car or its contents, the club using due caution in the protection of automobiles left in its care."

This member signed the slip and went on about his affairs. Returning within an hour, he found that the parking lot had been left without an attendant, and that his automobile had disappeared. It had been stolen. Efforts through normal channels to locate it failed. A private investigator located it in Texas where it was recovered in a damaged condition. The member then sued the club for his outlay. And the result? A verdict against the club for these items: \$254 damage to the car; \$200 for lost use of the vehicle in the meantime; \$440 expenses in conducting the investigation. The court decided that the club had negligently failed to keep the car safely after taking control of the machine, and that its negligence facilitated the theft.

You see? Negligence again to plague the club. It rises up in court as a sure joy-killer whenever officers or employees have failed to use due care and diligence in safekeeping the property or guarding the personal safety of others to whom they owed a duty.

This matter of guarding the personal safety of members or guests in the clubhouse or its vicinity is one as to which the law lays definite duties upon officers and employees. There is nothing unreasonable in its requirements, but they must be intelligently observed if the club is to go free of damage judgments.

### **Safety Important at Club**

The primary rule of the courts in this regard is that the club owes a legal duty to be diligent in exercising reasonable care to keep its premises and furnishings in a safe condition for their proper use by its members and guests. The law does not go beyond that. It does not hold the club to be an insurer against accidents. The organization will be penalized in damages when, and only when, it has carelessly permitted some item of equipment or portion of its premises to become unreasonably unsafe, and a member, patron, or visitor has been accidentally injured in consequence.

For instance, the Progress CC in New York was sued by a member for damages on account of injuries received by him when he slipped and fell on the floor while taking a shower. He based his claim of negligence on the fact that the attendant had removed the mat from its usual place on the floor to clean it, and that the member slipped and fell because of excess water that gathered on the bare tile. The club went free of liability because the evidence did not show that the shower room was improperly constructed or drained, or that it was so maintained that the amount of water on the floor was increased by any act of the club or its servants. Moreover, the member himself could see that the mat had been removed from its accustomed place, but he used the shower notwithstanding. Doing that with open eyes was enough of itself to cook his goose in his lawsuit.

A Milwaukee club member tried a squeeze play on a claim of having been injured by a fall on the floor of the club's steam room. The technical evidence he relied upon to prove the club's negligence purported to show that a tile floor with a less-smooth surface, or at least a rubber mat, should have been used, or that the floor itself should have had a pitch of 5/20ths of an inch to the foot instead of 8/20ths. The judge tossed the case out of court because the claim of negligence on

such a showing was considered trifling.

### **Rugs and Stairs Are Dangers**

Loose rugs, slick floors, dangerous nosings on stair treads, rickety chairs, or other neglected appointments of the clubhouse or its furnishings, if they cause personal injuries, are practically sure to land the club in a damage suit. The danger menace may also exist outside in the immediate vicinity of the house.

An Illinois club found this out. One morning about 100 caddies gathered at its clubhouse for prospective employment during the day. One boy, Curly, drew a number in the high brackets. After waiting around till near noon, with prospects of employment growing slimmer, he decided to go home. Now the club had public roads to its grounds, and it also had a private driveway which it was not supposed to let the public use. Some drivers did use it anyhow, of which fact the club had notice.

On this day when Curly started home, he set out down the private road. At places it was hedged in by bushes which hid bends in the road ahead. Suddenly, as Curly was plodding along, an automobile zoomed around a bend at excessive speed and laid him out before he could jump aside. His injuries were serious and rendered him permanently disabled. Thereupon a claim was made in his behalf under the Workman's Compensation Law on the ground that at the time of the accident he was in the employ of the club and was still in the line of his duties while leaving its grounds, and that the club was liable for the damages he suffered.

The Commission sustained Curly's claim and saddled the club with liability for the accident. And what a saddle it was!—\$7 a week for 235 weeks, and \$132 a year thereafter during Curly's entire life. It was a stiff sentence for a bit of inattention, and the Illinois court sustained the award.

But the law is a fickle dame in the eyes of a layman, and her ways are not always the ways of constancy. Sometimes she even appears to act capriciously. That is why so many people are kept guessing as to what she will do next.

In proof of this, consider an occurrence on the grounds of the Omaha CC. The club's flagpole became damaged, and an employe took it down to make repairs. In preparing for the work, he laid the pole across a driveway near the clubhouse.

Jim Steenbock, a caddie, had been hanging around for some time waiting for his employer to come out and go onto the course. Weary of waiting, he sat

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dollar-spot, there is evidence that the new fungicides, will also control pink patch and copper spot, and where they have been used in regular preventative applications for dollar-spot control they have shown a marked tendency to reduce the damage caused by large brownpatch.

## NEGLIGENCE

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down on the ground near one end of the flagpole that lay across the driveway, and leaned back against the pole.

Shortly a limousine purred up the driveway, the owner sitting beside his chauffeur. Viewing the surroundings for a place to park, and clothed in the aloof dignity of his profession, the chauffeur inattentively failed to observe the flagpole until the car was almost upon it. Then he attempted to swerve around it, but hit it instead with one wheel. In a peculiar quirk of inexplicable fate, the blow caused an upward flip of the end of the pole against which Jim Steenbock was sitting, and it struck him in the back and on the head inflicting grievous injuries.

Jim sued the country club for his damages, claiming he had been injured because of the negligence of its employe in laying the flagpole across the driveway. But he was out of luck. The Nebraska court ruled that the ill-considered act of the workman was not the direct cause of the injuries. The chauffeur's negligent driving was responsible for the accident.

One more account of an episode from real life will complete the present picture of what the law may have in store for golf clubs or owners when things go amiss around clubhouses or their environs.

The Mohawk CC was promoting a social affair at night for its members and their friends. Goldie Cummings had arrived and was gayly participating in the festivities. Goldie was not a member, and she had never before been on the premises. How she came to be on hand was a mystery to some, who raised wondering eyes. What they did not know was that she was a friend of a friend of an assistant manager, and hadn't really barged in.

As a part of its plans in entertaining, the club had erected a tent some 20 or 30 feet from the clubhouse, and a hedge row was in between. Guy ropes, fastened to stakes, held the tent up. The outside scene was in darkness, but within clubhouse and tent 200-watt bulbs made them brilliantly aglow.

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At one stage of the evening's merry-making, Goldie was out around the hedge that separated clubhouse and tent. Just why she was at that darkened spot at the time is irrelevant to the present revelations. But she was there. And she had a companion. The two finally decided to go into the tent, and undertook to do so. But being a stranger to the surroundings, the young woman was unaware of the long guy ropes running from the tent, and the failure of the club to light the premises prevented her from seeing them. In the darkness, she tripped over one of the ropes, stumbled forward without being able to regain her balance, and sprawled to the ground, sustaining breaks and bruises that took many weeks in healing. For those injuries, the Illinois court required the club to pay her \$500.

## WHAT MAKES COURSE GREAT

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year by many clubs as each successive green committee and/or greenkeeper strives by trial and error to maintain satisfactory turf under soil and/or drainage and aeration conditions, which permit practically no chance of real success until

the underlying physical conditions of the soil and drainage are corrected.

I am very familiar with one or two such cases. The first 9 holes at Sea Island and the 18 holes at the Jekyll Island club, near Brunswick, Ga., were designed originally by Walter Travis and constructed under his supervision in 1927 just before he died.

Of course he belonged to the old school of designers and the use of power mowing equipment was then just beginning to come into widespread use. He used to sit out on the course during the construction work and explain over and over again to the workmen that the bunkers and trap banks should look just like the curves of a beautiful woman, with appropriate hand gestures to illustrate the point. When he was through, he had a series of perfect steep-sloped haydoodle-like mounds all over the courses, which could be maintained only with a hand scythe or, the southern version of this implement, the "swing blade."

Fortunately, at Sea Island, Colt and Allison were called in the next year to build the second 9 holes and they completely re-designed all of the greens and traps in the first 9 along more modern lines. However, at the Jekyll club

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