

Golf Manners Taught by Law

Legal Cases Cited As Reminders that Knowledge and Observance of Golf's Etiquette Can Avoid Costly Law Suits

By RENZO DEE BOWERS

CORNELIUS TOOHEY, a boy 13 years old, brought suit in the Essex county, New Jersey, Circuit Court against Franklin Webster to obtain damages for being hit by a ball in his right eye while acting as a caddy at the South Orange Field Club. The jury returned a verdict for Toohey, and the defendant appealed to the Court of Errors and Appeals. The judge of the court explained: "The course was cramped for space, and the holes were unusually close together; this was particularly true of the third and fourth holes. Both run in the same general direction. The third was 159 yards from the third tee. The third putting green was almost opposite a midway bunker on the fairway of the fourth hole and the bunker is only about 8 feet from the nearest edge of the third green so players after holing out on the third green have to walk back almost in the line of fire of the fourth hole."

At the time of the accident, the defendant was playing in a three-some on the fourth hole, and the plaintiff, Toohey, was caddying for a player who was engaged in a two-some on the third green. The defendant sliced his drive so the ball landed in the rough decidedly to the left, so far, in fact, that he was obliged to play practically over the third green, or very near thereto, in order to aim for the fourth green. As he was about to make his second shot the players on the third green had just holed out.

The caddy took his player's putter and handed him a driver for the fourth hole. As this player started for the fourth tee, plaintiff started for the above-mentioned bunker opposite the third green. He was somewhere near the edge of the third green and he heard the word "Fore" and was instantly hit in the right eye by the ball from defendant's second shot.

The defendant's counsel made his argument for reversal of the judgment by this court upon three points, viz: That the defendant was not negligent; that the plaintiff was guilty of contributory negligence; and that the plaintiff assumed

the risk of being struck by a golf ball.

It is to be observed that in this case counsel for the defendant adopted the practice universally adopted and applied by successful lawyers who find themselves so often engaged in attempting to pry themselves loose from the intricacies of a hard-pressed case, by approaching it in the easiest manner possible.

In the first place, he had his client deny that he had ever been negligent in batting the golf ball in the direction of the caddy's person, without first yelling "fore," or some other suitable warning, that might put the boy on guard as to his physical safety; in the second place, he made the point that the plaintiff was himself guilty of some act of contributory negligence which in itself assisted in bringing on the injury to his eye; and in the last place, he alleged and argued for his client, that the boy, by being a caddy and playing the game, assumed the risk of getting hurt and having an injury to his eyes or some other portion of his anatomy.

His lawyer knew, as all other good lawyers understand, and know, that if he could make any one of these defenses stand up in court, he could prevail in the case, and his client would go free of the charges of damages.

Ample Warning Is Required

But the state supreme court found, just as the lower court had found, that the caddy was free of negligence and that, on the contrary, the plaintiff had himself been guilty of the grossest negligence he could ever perpetrate against a caddy or another player, in that he had struck a ball in the player's or caddy's direction, without first yelling a player's warning so that the victim might protect himself and thus escape the injury.

In first determining whether the defendant was negligent, we must first bear in mind the cramped layout of the course and what the defendant was endeavoring to do. He was shooting for the fourth hole, and the third green was between him and the fourth. The plaintiff was not

more than 4 or 5 feet to the left of a direct line from defendant's position to the fourth green. Plaintiff was in the line of defendant's play. With knowledge that people were out in front of him defendant attempted a shot in the direction of the fourth hole, intending to loft his ball over the bunker on the fourth fairway and over the heads of all the people who might be between him and the bunker. Instead, the ball carried low and curved. Prior to addressing the ball the defendant should have called his warning to the plaintiff; but, instead, he waited to call "Fore," just before making his shot, and then, just as he struck the ball, when he saw the direction the plaintiff was going, he called "Fore," again, very loudly, but it was then too late. He had then hit the lad in the eye.

Caddy Not Negligent

The court had next to consider whether the boy was guilty of contributory negligence. In disposing of this point, it was only necessary to note that he was only 13 years old, and at the time was rightfully on the golf course. The defendant was not on the fourth tee, but was in the rough, and in the rear of the plaintiff at a distance of 35 to 75 yards.

Under such circumstances the boy had a right to expect that the defendant would not drive a ball so close to the direction in which plaintiff was proceeding without giving him fair warning before delivering the shot.

Then the court had to consider whether plaintiff assumed the risk of being injured by being struck by a golf ball. Since it was found that defendant failed to give a timely warning to the plaintiff, it could not be seriously contended that the mere act of caddying created an assumption by the boy of the risk of being hurt. This question was for the jury to determine, and they have now determined it in favor of the lad, and that is that. So, the issues are all decided in the boy's favor.

James A. Walsh and the defendant Frederick Machlin, golfers familiar with the rules, were partners on the Brook CC in Orange, Conn. Walsh sued Machlin for making a stroke without first calling "Fore," or giving some other form of adequate warning, and hitting Machlin in an eye. But the court found from the testimony that it was not necessary to give a warning, since Machlin was already aware that the shot was to be made, and that a warning to Machlin would have

been merely superfluous. Therefore, the court merely affirmed a judgment in favor of Machlin.

The Missouri Court of Appeals has ruled that it is professional negligence to injure a caddy with a golf ball without giving a clear warning of the intention to strike the ball, so evidence of the lack of warning may be presented to the jury trying the case; meaning that the verdict of the jury upon the question of whether or not the defendant did or not issue the warning was final and conclusive.

What Is the Danger Zone?

Where a player had hit a caddy, and the evidence showed that the angle between the intended flight of an errant golf ball which struck the plaintiff and that of actual flight, was about 32 degrees, the contention that plaintiff was not within the range of probable danger was not logical or reasonable.

"To hold that a golf player was negligent merely because the ball did not travel in a straight line as intended by him would be imposing on him a greater duty of care than the Creator endowed him faculties to carry out," the court declared.

Where a golf course was constructed and maintained so one hole ran parallel to a busy highway, and players frequently without negligence accidentally sliced a ball onto the highway and the directors of the golf club knew this, the condition was adjudged a public nuisance rendering the club liable for a personal injury resulting when a golfer sliced a ball which struck and broke a windshield of an automobile traveling the highway, injuring the driver.

Where an invitee on a golf course was accidentally injured by a golf ball driven by an unidentified player, it was held that the golf course owner or proprietor was not liable simply because he did not warn the invitee of the dangers common to all golf courses and did not warn the unidentified player not to drive the golf ball, when the accident was an unusual and chance accident, since it would be assumed that the ordinary person thoroughly understood the possibility of such incidents.

An Illinois court once said in a golf case before it that there was considerable force to the contention that the plaintiff was guilty of contributory negligence, since he had admitted that he had not been paying much attention or any care for his own safety when the ball was hit from a

neighboring hole which was very close to the fairway on which the plaintiff was playing.

The New York state court once remarked in a case before it: "The facts that golfers were playing in a seven-some was not of itself an act of negligence, although as the numbers of players increase, the ordinary reasonable man takes extra pains in discerning the whereabouts of his players and their respective caddies, for the greater the numbers of persons on the course, the greater the risk of injuring someone."

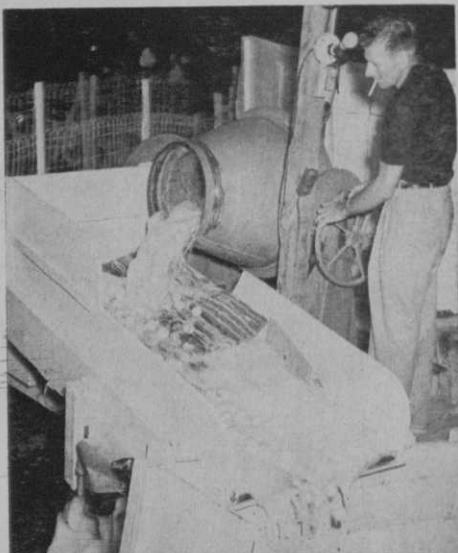
Range Ball Washer Made from Concrete Mixer

A concrete mixer can be converted into an efficient range ball washer, which when operated by two boys can clean 20,000 golf balls in a half hour, according to "Dutch" Wheaton, manager of the Lincolnwood Golf Driving Range on Chicago's north side.

At least two prominent mail order houses distribute this type of concrete mixer in three price classes; \$60, \$120 and \$360. Wheaton completely lined the interior of a \$360 model with scrubbing brushes closely fitted together and rigged up a sump pump to recover the cleaning solution after each batch of balls is washed.

Biggest feature of the entire operation is the fact that handling of balls is reduced to a minimum through a production line arrangement worked out by Wheaton.

One boy starts the washing cycle by dumping approximately 1500 balls into the mixer, turns on the sump pump to



Washing solution is reclaimed by draining off balls thru screened ramp into sump pump tank.

fill the mixer with cleaning solution consisting of 1 pint of bleach and two cups of detergent to 30 gals. of water, starts the mixer revolving and, five minutes later, dumps the load of washed balls onto a ramp with a screened bottom.

The balls roll off to a collecting bin while the cleaning solution sinks down through the screened bottom of the ramp into a container next to the sump pump, ready to be pumped back into the mixer for the next batch of balls.

The second boy, after hosing the cleaned balls to remove excess suds still adhering to them, removes them through a sliding hatch and takes them to a storage bin in the range building where they are immediately available for dispensing to range patrons.

In the meantime, the first boy has already started another washing cycle with a new 1500-ball batch.

Wheaton estimates the entire layout can be set up for under \$500, depending on the size of mixer used. He also estimates that the Lincolnwood daily ball washing operation, which involves as many as 65,000 range balls on peak days, requires less than one-third the time it formerly took and with a significant reduction in the amount of hand labor required.

For further information you may write to Wheaton at the Lincolnwood Golf Driving Range, Lincoln and Touhy Avenues, Lincolnwood, Ill.



Sump pump feeds cleaning solution into brush lined mixer after quick loading thru open end.