Owners Not Liable for Accidents Which They Can't Control

By WILLIAM JABINE

So many great golfers owe their success to the fact that their contact with the game began at an early age that any suggestion that boys are in the way on the course or around the clubhouse runs directly contrary to golfing tradition. Yet, boys being what they are, all too often cause troublesome situations that inevitably find their way into the courts, as two recent cases, one from Louisiana, and the other from Iowa, eloquently prove.

Legal Side OF GOLF

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The plaintiff in the Louisiana case, which was taken to the Third District Court of Appeals of that state, was the father of a 15-year old boy who was visiting a friend who was employed at a 9-hole Par 3 in Alexandria. The boy was injured while fooling with a home-made pistol fashioned from pieces of a three-quarter inch pipe. The weapon had been brought to the golf course several days before by one of the course's three employees, a 14-year old boy whose job it was to collect green fees and rent golf clubs.

The Court describes the accident as follows: "The pistol remained on the premises for several days. At times, various boys of the same approximate age fired the pistol by stuffing it with gun powder or match heads and then putting a lighted match to a touch hole in the top of the pipe forming the barrel. Sometimes the gun would be placed on the ground when fired. At other times it was held in the hand. On the day of the accident in question, the plaintiff's son fired the gun twice by holding it in his hand: the first time without harm, and the second time it exploded.

Only Boys Were Involved

"No persons connected with the course, other than the young boys involved, knew about the gun or that it was being fired. The gun was, in fact, kept hidden in or about the clubhouse at the golf center."

As a result of the explosion, the plaintiff's son lost a finger and was otherwise injured. The father brought an action against the golf course corporation and the insurance company which had insured it. The plaintiff charged negligence, saying the gun shouldn't have been on the premises. He contended that the incidents surrounding the use of the gun were inseparable from the employment of the boy who had brought it to the course.

Contributory Negligence

The defendants argued that the incidents surrounding the accident were beyond the scope of their youthful employee's employment, and that therefore no liability attached to them. They also charged the injured boy with contributory negligence.

The trial court rendered judgment for the defendants and the plaintiff took the case to the Court of Appeals.

The Court of Appeals affirmed the ruling of the trial court. It said in part: ". . . we cannot agree with the plaintiff's contention that the employees' acts with regard to the home-made pistol were inseparable from their employment merely because they were on the employer's premises and were available to perform the duties of their employment. It goes without saying that the young lads had not been employed for any purpose remotely connected with the discharge of home-made firearms.

"They were employed to be present at the small clubhouse to receive green fees and to hand out golf clubs, simple tasks within the realm of their age and abilities, and which, in our opinion, would not reasonably require close supervision." (Golmon v. Fidelity and Casualty Co. of New York, Inc. 146 So. 2d 461.)

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Accident on Range

The Iowa case had its genesis in a visit to a driving range made by two young boys 14 and 12 years of age who were accompanied by the 11-year old sister of one of them. As they had done on previous occasions, the boys paid 75 cents apiece for a basket of balls and a club and proceeded to the driving area.

This area consisted of a long cement platform about 3½ feet wide, divided into stalls about 8 to 9½ feet in length. At the south end of each stall was a feeder box

(*Continued on page* 86)

Owners Not Liable

(*Continued from page* 69)

for the golf balls. These boxes, about 11 inches high and 8 inches wide, also served as dividers between the stalls. One of the boys, Eddie, took the stall south of the stall occupied by the other boy, Wayne, and proceeded to drive several balls.

Meanwhile, Wayne managed to spill his basket of balls while pouring them into the feeder box and began picking them up. Although the testimony was not entirely clear as to how the accident happened, Wayne was hit in the face by Eddie's club. As a result Wayne lost several teeth and sustained other injuries. His father brought an action against the owners of the driving range to recover damages for the injuries plus medical expenses.

He charged the owners of the range with negligence because they had failed to provide: (a) proper supervision; (b) proper shields, guards or barriers between the areas used by patrons; (c) an area for the boy which was safe from clubs swung by other minors; (d) to give proper warning of the danger of being hit by golf clubs. It was further charged that the defendants were negligent in putting a dangerous instrument in the hands of a minor.

Directed Verdict

After the plaintiff's evidence had been presented, the trial court granted a motion for a directed verdict in favor of the owners of the driving range. The plaintiff thereupon appealed to the Supreme Court of Iowa.

The Supreme Court affirmed the ruling of the trial court. After a recital of the duty owed to a business invitee and a review of cases dealing with injuries caused by third parties, the Supreme Court concluded: "The facts establish beyond question that if Wayne had remained in his driving stall, Eddie's club could not have touched him unless Eddie moved off the rubber mat onto the cement in the north part of the stall. If Eddie had remained on the mat, Wayne could have been injured only as a result of his moving over in front of Eddie's stall. Wayne was injured as a result of a sudden isolated act which could not have been anticipated. To hold otherwise would impose liability on hindsight rather than faulty or defective foresight." (Foust v. Kinley, 117 N.W. 2nd 843.)