

An Accident on the Golf Course— Who's Liable?

By Dr. Harold Gluck

As a golf course superintendent, you are in charge of the course, whether it be 9, 18 holes, or more. Your main task is to keep it in top condition. And you have a staff of efficient workers to see that this is done. But, in the back of your mind you do have one perpetual thought and worry which can be best expressed this way:

"I don't want an accident to take place on the golf course." For a lawsuit can take place. Now let us take a look at some situations that could result in an injury on the golf course.

We start with the golfer who is legally present. He has paid his fee and it is a bright morning. Not many are on the golf course. As he goes from hole no. 7 to hole no. 8, he suddenly trips. A rake was left on the ground and the golfer just didn't see it. What happened to him? He broke his right leg! A hundred other golfers could fall and almost no injury. But this one broke his leg.

Would the owner of the golf course be liable in a suit for damages?

Now we go to our second situation. A salesman for a firm that specializes in supplies for golf courses comes to see you. You give him an order. He takes a short cut across the golf course to the parking field. He trips on the rake and his foot is injured.

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In our third situation, a representative of an esoteric religious sect insists on seeing you. Your assistant tells him you are too busy and that he should leave the golf course at once. This he does. But he returns later. His idea is to solicit donations from the golfers. He is now legally a trespasser. He goes across the golf course and trips on that rake and his foot is injured.

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Our final case concerns a 12 year old boy. He should be at home in the

evening. But he is out walking. And he passes the golf course. And what does he see? There near the fence is a golf buggy! It should be in the shed with the rest of them. But somehow it was left behind. So he climbs the fence and gets onto the golf course. He heads for that buggy. He starts it and for five minutes he has the time of his life. Then something happens! It gets out of control. And heads for a tree into which it smashes. He is severely injured. Bear in mind that the boy is legally a trespasser.

Would the owner of the golf course be liable in a suit for damages?

In the light of two decisions made by New York's highest court the answer in each of the four situations would seem to be a resounding "yes." These decisions may influence liability laws in other states. Most states, however, continue to use classification of guests, in determining obligation.

Continues on page 28

References:

1. Case of Roulmaldo Martinex. Court of Appeals. State of New York. June 12, 1974.
2. Case of Joseph Scurti. Court of Appeals. State of New York. June 17, 1976.
3. Case of O'Connor v. G. & R. Packing Co. Appellate Division. State of New York. April 8, 1980.



A motorcyclist "turfed" the green in the photo above. Could you be liable if he had injured himself? If you passively allow sledders to use the hills on your course in winter, such as at right, you should check your insurance policy. Tracks in the trap at far right would indicate a child on a bicycle has been playing.



Who's Liable? from page 22

These cases were decided solely on the basis of foreseeability, meaning that the only factor the judges considered was whether the situations causing the accidents being litigated could have been foreseen as dangerous. Furthermore, past distinctions among the types of injured parties—whether invitees, guests or trespassers—were called antiquated in both decisions. This all leads to the point that anyone injured on the golf course can now sue you more easily.

Let's take a closer look at what was ruled in both of these top cases. And keep in mind the four situations presented to you, the basic question always being: "Was the danger foreseeable?"

In the first case of Roulmaldo Martinez, the court said: "Since the injury resulted from an artificial, dangerous condition on the defendant's property, the decisive issue was the foreseeability of the injury. Under the facts of this case, the duty owed to the plaintiff could be correlated to the risk of harm reasonably perceived, regardless of status, whether that of

trespasser, licensee or invitee in the traditional sense. "Notice that the court made no distinction between a trespasser and the two other classifications.

In the second case, Scurti, the court reinforced the previous decision: "... the liability of landowners to one injured on their property should be governed not by the ancient and antiquated distinction between trespasser, licensee and invitees but rather by the standard applicable to negligence cases generally, i.e. the standard of reasonable care under the circumstances whereby foreseeability shall be a measure of liability."

And in the latest case on the matter, O'Connor, "the finding that the infant was a trespasser, plaintiffs reason, does not preclude recovery in the present action in light of the abolition in 1976 of the distinction among trespassers, licensees and invitees as the determining factor in defining a landowner's duty of care. A single standard of reasonable care under the circumstances was adopted, with foreseeability as the touchstone for liability." Under these circumstances, how can you protect

the office the child goes with you. You can send an employee out to look for it. Or the child says, "I am looking for my father." "What is his name?" is your answer. Then check out the list of names on the playing schedule for the day.

Do not allow anyone trespassing on the golf course grounds to continue on by him/herself.

It is my personal opinion that a warning alone has no effect. You notify the parent by phone or registered letter. You also notify the police department of what happened. You are not a bit hard-hearted. Just remember the big verdict that can be handed down in a case of lawsuit.

What goes for a child also goes for an adult you may find wandering over the golf course. Out goes said individual. But how did they get in the first place? I have surveyed various golf courses and the methods taken to protect the golf course are almost nil. You may have to consider the use of a private security guard to make the rounds.

What has been left, lost, or accidentally dropped on a golf course can create a hazard resulting in an injury to a player who has been legally on the golf course. That means you need a check up before the course opens, when it is closed, and even while players are on it.

Can a kid climb over your fence? Or under it? You may have to consider an electronic warning system.

Go over the fences. They may need repair. Can a kid climb over the fence? Or under it? You may have to consider an electronic warning system that will notify the office in case the security of a fence is breached.

One setup to protect yourself is as follows: All people who have business with you should meet you in your office. The business is then normally transacted there. That keeps them off the golf course. And thus reduces the chances of an injury.

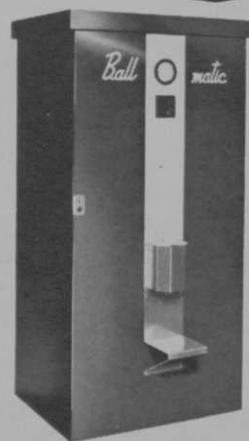
Now is the time to go over the liability policy the golf course owner or manager has. Have your lawyer read it carefully and tell you if you need: a) A larger liability coverage. b) A more comprehensive coverage for every type of accident. **GB**

The basic question is was the danger foreseeable? Being a trespasser may not be significant.

yourself from liability? In a lawsuit, the test of foreseeability would probably be something like this: What could you have reasonably expected to happen, so that you could prevent the accident? That means that you should thoroughly go over the golf course for conditions that could result in accidents. Then you can take the steps necessary to eliminate any hazards that exist.

Start with the sad, but true fact of life: A golf course somehow becomes attractive to a lot of kids. They may even look for "lost" golf balls to play with or to resell. I regret to tell you that in most of the golf courses I visited, it was easy for the trespasser to get onto it.

Post a 'No Trespassing' sign in your parking lot as well as around the outside, and even the inside of the golf course. Do not allow any child you pick up on the golf course to continue by himself. Regardless of the excuse given: "We kicked our football over the fence. I am looking for it." Back to



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