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Par for the course: Legal issues in golf

Golf may seem peaceable, but from errant shots to exclusionary policies, players can find themselves in unexpected legal sand traps. Like the game itself, resolving legal issues in golf requires just the right touch at just the right angle.

By Clifford L. Klein

When lawyers and judges have a rare day off, they may be found hitting balls out on the local golf course. It's a great way to set aside stress, soak up sun and spend time with friends and colleagues. But while they are hefting their golf bags across the greens, legal professionals could also be hefting some weighty legal issues.

The list of potential legal issues arising from a simple game of golf is long. From being hit by a stray ball to excluding certain people from private clubs to swinging patent-infringing irons, it's a wonder attorneys have any time at all to devote to playing golf.

Though far from exhaustive, here are some of the more interesting legal issues that could become traps for unsuspecting players. Such issues may drive a wedge between colleagues, but they could also be ironed out through thoughtful negotiation. Like the game itself, resolving legal issues in golf requires just the right touch at just the right angle.

Assumption of risk

"If every ball behaved as the golfer wished, there would be little 'sport' in the sport of golf. That shots go awry is a risk that all golfers, even the professionals, assume when they play." (*Dilger v. Moyles* (1997) 54 Cal.App.4th 1452)

Whenever a bystander is hit by a golf ball, far more than their pride might be hurt. A little ball hurtling through the air at high speed can



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cause great bodily harm. Who is at fault? Are misplayed balls an aberration or an assumed risk?

In the 1992 case of *Knight v. Jewitt* (3 Cal.4th 296), the California Supreme Court distinguished between "primary" and "secondary" assumption of risk in the context of comparative negligence. In the first, the defendant owes no duty to protect the plaintiff from a particular risk of harm even if the plaintiff's conduct was unreasonable. In the second, the defendant owes a duty of care to the plaintiff and is not entirely relieved of liability simply because the plaintiff's conduct in encountering the risk was unreasonable.

Ultimately, however, "the question whether the defendant owed a legal duty to protect the plaintiff from a particular risk of harm does not turn on the reasonableness or unreasonableness of the plaintiff's conduct, but rather on the nature of the activity or sport in which the

defendant is engaged and the relationship of the defendant and the plaintiff to that activity or sport." The court concluded that "a participant in an active sport breaches a legal duty of care to other participants - i.e., engages in conduct that properly may subject him or her to financial liability - only if the participant intentionally injures another player or engages in conduct that is so reckless as to be totally outside the range of the ordinary activity involved in the sport."

In 2007, a threesome at LA's Rancho Park enjoyed a pleasant outing until the defendant inadvertently "pulled" his tee shot, hitting the plaintiff in the temple. At the time, the plaintiff was standing 30 feet in front of the tee, at a 45-degree angle, checking his phone and drinking water.

Both the trial court and the court of appeals found triable issues, but not the California Supreme Court. In *Shin v. Ahn* (2007) 42 Cal. 4th

482, 165 P.3d 581, the state's high court concluded that "the primary assumption of risk doctrine regulates the duty a golfer owes both to playing partners and to other golfers on the course."

The plaintiff, it said, assumed risk when he decided to play golf. He also took a shortcut that put him in front of the defendant, to his left, "even though he knew (1) that he was in front of the tee box, (2) that defendant was preparing to tee off, and (3) that he should stand behind a player who was teeing off." (Shin, supra pg. 483) The court pointed out that when a right-handed golfer "pulls" a shot, the ball invariably goes to the left of the target.

But the analysis doesn't end there. Did the plaintiff see the defendant? Should he have seen him? According to the justices, golfers teeing off tend to be focused only on the ball in front of them. Even so, "[m]aterial questions of fact remain bearing on whether defendant breached his limited duty of care to plaintiff by engaging in conduct that was so reckless as to be totally outside the range of the ordinary activity involved in golf."

Negligent course design

What about injuries caused not by other players, but by the very course upon which they are playing? Can a course be liable for injuries caused by its negligent design? Designing golf courses is both an art and a science; the goal for most designers is to increase both beauty and challenges.

Topographical features can increase the difficulty of reaching

the green but can also increase the risk of injuries. A course with tee boxes or greens spaced too close together can subject players to risk, as can courses with inadequate protection between holes or walkways. Key questions in such cases are whether the risk was foreseeable and whether there was a duty of care.

A golfer could foresee tripping over tree roots on the course (*Wellsfry v. Ocean Colony Partners, LLC* (Ca. Ct. Appeals, April 27, 2023)) because “the inherent risks of playing golf on OCP’s outdoor course included the risks associated with the topographical features of the course – in this case stepping on a small inconspicuous tree root in the grassy area used by golfers to access the tee box for the fourteenth hole.” The golf course had not breached a duty of care to the injured golfer.

In contrast, a public golf course located adjacent to a trail abutting a public street was responsible for injuries to people outside the course from errant golf balls. That the golf course had “a fence and strategically placed trees leads to the reasonably deducible inference that – whether successful or not – it was designed to protect people outside the course from errant golf balls hit by golfers. This clearly indicates that the designer and City were aware of the potential harm that errant golf balls might cause absent safety precautions.” (*Jacobo Garcia v. American Golf Corporation*, B267613, Ca. Ct. Appeals, May 3, 2017)

Discrimination and disability

Golf has, for centuries, been considered a gentleman’s sport. Private clubs were the exclusive domain of White men. Today’s golf looks far different, with players of every skin color vying for coveted titles, but many country clubs continue to restrict their memberships.

Can such clubs bar women and minorities from their ranks? The answer depends on whether they are considered “private” or “business

establishments.” In *Warfield v. Peninsula Golf & Country Club* ((1995) 10 Ct. Appeals 4th 594), the California Supreme Court ruled that a private golf club could be and in this case was actually a business establishment because it operated a restaurant, bar and recreational facilities, and leased its facilities not only for members and their guests but also to others who were nonmembers.

Although the club’s bylaws excluded women from membership, the court found that as a business establishment it was subject to the *Unruh Civil Rights Act*, which prohibits sexual discrimination by business establishments. “All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, or blindness or other physical disability are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.”

Federal law also bars discrimination in certain golf operations. The *Civil Rights Act of 1964* provides that all persons are entitled to “the full and equal enjoyment of ... any place of public accommodation ... without discrimination or segregation on the ground of race....” The prohibition does not, however, apply to “a private club or other establishment not in fact open to the public.”

Private clubs must also comply with the Americans with Disabilities Act when they open their facilities to the general public. The PGA was a “commercial enterprise,” its tournaments places of public accommodation under the ADA, when it denied disabled golfer Casey Martin a cart during a competition. (*PGA Tour v. Martin* (2001) 532 U.S. 661) According to the U.S. Supreme Court, allowing Martin to use a cart, despite the tour’s walking rule, was not a modification that would “fundamentally alter the nature” of the game. “The purpose of the walking rule is... not compromised in the slightest

by allowing Martin to use a cart.”

In a more recent case (*Lurner v. American Golf Corporation* (2023) Ct. App. 4th), an appellate court ruled that the Marbella Golf and Country Club in Orange County had not discriminated against a disabled golfer but had in fact provided reasonable accommodation for his disability by allowing him to drive a cart on restricted areas of the course without discipline or penalty.

Intellectual property

Golf clubs – the kind you swing, not the kind you join – are big business. Serious players will spend thousands of dollars on the latest and greatest set of irons, the perfect putter, iconic wedges. The design of those clubs, and the balls they hit, is both an art and a science. Which is why the industry aggressively defends its IP against patent infringement and knock-offs. In recent years, *lawsuits* have been filed by and against all the big names: Callaway, Titleist, Ping, TaylorMade and others.

On Jan. 31, 2024, TaylorMade filed a 237-page lawsuit against retail giant Costco, alleging that the far more affordable Kirkland Signature Players Irons directly infringed TaylorMade patents on several key aspects of its P790 irons design. (*Taylor Made Golf Company, Inc. v. Costco Wholesale Corp.*, 3:24-cv-00212, (S.D. Cal.) Jan. 31, 2024)

The lawsuit names both Costco and its contracted design partner Southern California Design Corporation for violating TaylorMade patents involving many elements of hollow iron design, including an iron with a “dampening filler material,” an iron with a separate face, welding methods for the face insert, and positioning of internal weighting in a hollow iron. Costco was also accused of misrepresenting the filler material in its clubs. The lawsuit was stayed in March after Costco’s request to compel arbitration was denied and Costco appealed.

In 2018, Costco settled a *lawsuit brought by Acushnet*, the parent company of Titleist, that charged Costco with patent infringement and false advertising related to its Kirkland Signature golf balls. Acushnet claimed the balls infringed on 10 of its patents and that Costco’s guarantee to “meet or exceed the quality standards of the leading national brands” was false advertising, because Titleist balls were demonstrably superior.

A Callaway lawsuit against Acushnet for infringing patents on Callaway golf balls was settled in 2012, with each company getting rights to make products under the other’s patents. Callaway also settled lawsuits against TaylorMade and Wood Arts for infringing patents on its golf clubs, and it was sued for infringing another party’s putter.

Conclusion

Golf is considered a peaceable activity, but legal issues arising out of the game can be downright combative. Whether beamed on the noggin or barred from the course, players often find themselves in legal sand traps they never anticipated. In addition to practicing stance and swing, it might also pay to prepare for legal claims.

Hon. Clifford L. Klein (Ret.) is a neutral with Signature Resolution. He previously served as a probate judge overseeing estates and trusts, guardianships, and probate conservatorships.

