

**Ten Hazards to Avoid on a Golf Course**

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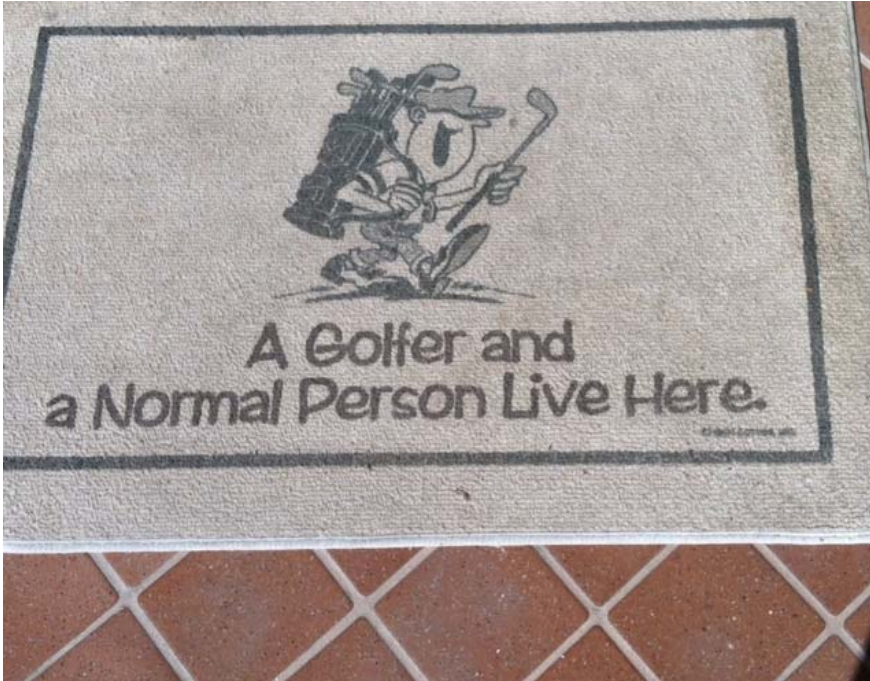
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### Who is a golfer?



[Doormat at speaker's home]

According to the U.S. Census and the American Golf Foundation, in 2012:

- A golfer is anyone who has played an 18 hole round in the last 12 months
- 29,000,000 golfers in the U.S.--77.5% male and 22.5% female
- 12% are ages 30-39
- 22% are ages 40-49
- 24% are ages 50-59
- 18% are ages 60-69
- 19% are 70+
- 70%+ have high net worth, own securities, and dine out once a week or more

Additional factoid: Every U.S. President from 1900 to the present was/is a golfer except three.

## **What are the hazards?**

### **1. Golfer struck by golf ball**

These cases typically involve a player on the course being struck by a golf ball hit by another golfer. Liability issues generally involve comparative fault questions between the two golfers, e.g. duty to warn, assumption of risk and foreseeability, but, can also involve the design of the course. See No. 3, below.

A. Chronic shanker had a duty to warn other players of his tendency, *Cook v Johnston*, 688 P. 2d. 215 (Ariz. App. 1984), but, a player who shanked his lost ball that he later found, did not have a duty to warn. *Anand v Kapoor*, 942 N.E. 2d. 295 (N.Y. 2011). “A person who chooses to participate in a sport or recreational activity consents to certain risks that ‘are inherent in and arise out of the nature of the sport generally and flow from such participation.’”

B. U.S.G.A Rules of Golf (2012)  
“Section I-Etiquette; Behavior on the Course  
Safety

If a player plays a ball in a direction where there is a danger of hitting someone, he should immediately shout a warning. The traditional word of warning in such situations is “fore”.

### **2. Golf carts and other golf equipment**

This litigation involves golf cart passengers and non-passengers suing cart drivers; drivers, passengers and visitors suing golf clubs; and clubs suing cart manufacturers.

A. Player who moved parked cart and was injured sued golfer who originally parked cart with wheels turned in. Defense verdict affirmed on grounds of contributory negligence. *Fears v MacNamara*, 574 So. 2d. 729 (Ala. 1990)

B. Cart turned sharply on cart path throwing passenger out. Cart then continued and overturned injuring the driver. Passenger sued driver and both sued golf club for alleged failure to maintain safe cart conditions. At trial, evidence showed that path was uneven, no guard rails on downgrade, no warning signs, two prior similar accidents in

same area and club failed to take remedial action. Verdict for passenger against the driver and club, but awarded damages to the passenger against the driver only. *Ryan v Mill River C.C.*, 510 A. 2d. 462 (Conn. App. 1986).

- C. Golfer getting his club out of his bag on back of cart struck from behind by another cart. Driver of second cart testified that his metal spiked shoe slipped off brake pedal from which the rubber cover had been removed and his foot hit accelerator. Cart manufacturer's representative testified that brake pedal was designed with rubber cover to prevent driver's foot from slipping off the brake pedal. Verdict against club for faulty maintenance. *Fort Lauderdale G.C. v Winnemore*, 189 So. 2d. 222 (Fla. App. 1966).
- D. In golf cart case that didn't even involve golfers, the speaker represented resort whose executive and two contractors were seated in the cart, driving on resort grounds when the passenger side of cart struck low wall and one of the contractors, whose right knee was protruding out of the cart, was injured. Contractor sued resort. Jury returned plaintiff verdict, but reduced award for passenger's comparative fault in having his knee protruding from cart.
- E. Cart manufacturers: Manufacturers have been exonerated in accidents in which the injured golfer, not the cart was at fault. *Lash v Noland*, 321 S. 2d. 104 (Fl. App. 1975) and *Warshaw v Rockresorts, Inc.* 562 P. 2d. 428 (Hawaii 1977) (golfer failed to set brake on parked cart); *Cavers v Pulsman Motor Sales, Inc.*, 157 Cal. Rptr. 142 (Cal. App. 1979) and *DiMura v City of Albany*, 657 N.Y.S. 2d. 854 (App. Div. 1997) (Carts overturned). *Trevino v Yamaha Corp. USA*, 882 F. 2d. 182 (8 Cir. 1989) (cart modified as utility vehicle, verdict against injured Club employee). Plaintiff verdict: *Blevins v Cushman Motors*, 551 S.W. 2d. 602 (Mo. 1977) (Design defect: width of wheelbase); *Seaside Resorts, Inc. v Club Car, Inc.*, 416 S.E. 2d. 655 (S.C. App.1992) (Verdict for club where faulty wiring in cart caused fire at club).
- F. Other golf related products. Dog chewed cover off ball in plaintiff's yard. Eight year old boy removed rubber bands inside ball. Paste in center of ball squirted in his eye. Ruling for manufacturer-unforeseeable misuse, *Kempes v Dunlop Tire & Rubber Corp.*, 548 N.E. 2d. 644 (Ill. App. 1989).

### 3. Course design and/or maintenance

Can the golf course itself be at fault for golfer injuries? In these cases, the injured golfer or guest claims that the overall design or some part of the course or faulty maintenance caused an injury.

- A. Design of holes: parallel (side by side) holes usually separated by trees, shrubs, rough, etc.: Golfer in rough on one hole struck by ball hit by tee shot on a parallel hole. Case dismissed.

“Any golfer in the rough of a hole which runs parallel to another [hole], should as a matter of law, know the dangers of approaching golfers. To be surprised that approaching drivers hook or slice is akin to being surprised that not everyone shoots par.” *Lincke v Long Beach C.C.*, 702 N.E.2d. 738 (Ind. App. 1998).

- B. Yardage Marker: Golf course not liable for golfer injury due to shot ricocheting off yardage marker and hitting him. *American Golf Corporation v Superior Court*, 93 Cal. Rptr. 2d. 683 (Cal. App. 2000).
- C. Proximity of driving range to tee area: Golfer on range hit by tee shot from nearby 1<sup>st</sup> tee, stated cause of action for negligence based on foreseeability even in absence of prior similar accidents. *Boozer v Arizona Country Club*, 434 P. 2d. 630 (Ariz. 1967), reh. den. 1968.
- D. Uneven ground: The speaker represented a golf club where experienced golfer guest fractured ankle when she stepped into depression on fairway containing a partially visible drainage grate. Contributory fault defense was based on Arizona’s “Open and Obvious” doctrine: the owner of premises is not liable to a person lawfully on the property if the alleged dangerous condition is open and obvious. *McMurtry v Weatherford Hotel, Inc.*, 293 P. 3d. 520 (Ariz. App. 2013), *Daughtery v Montgomery Ward*, 428 P. 2d. 419 (Ariz. 1967). Case was settled.

#### 4. Staying Alive on the Course

Sudden cardiac arrest--the leading cause of death on golf courses. Three issues for golf courses: Equipment, training, liability.

- A. Equipment: Automated external defibrillator (“AED”).  
Portable, lightweight, small.
- B. Golf staff must be trained in its use. There should be

emergency phones on the course to call the clubhouse.  
Immediate care is critical.

- C. Many states have “Good Samaritan” laws providing civil liability immunity while using an AED in an emergency.
- D. Does a golf course have a legal duty to have an AED and trained personnel?
  - i. No. *Verdugo v Target Corp.*, (Cal. 6/23/14)-No California statutory or common law duty on businesses to provide AEDs.
  - ii. Yes. *Stone v Frontier Airlines, Inc.*, 256 F. Supp. 2d. (D. Mass. 2002)-Wrongful death complaint allowed against airline for death of passenger where plane did not have an AED.
  - iii. No cases involving golf courses.

#### 5. Injuries to spectators at tournaments

Charity and PGA Tour tournaments are a major part of golf club schedules and income. When injuries to spectators occur, there are complex liability issues involving the professional players, the golf club where the event is held, the sponsoring charity or organization, and even professional golf associations. The terms of the club’s contract with the sponsoring organization can determine liability between them.

- A. Club Liable: Spectator near green at pro tournament hit by PGA golfer’s shot. Judge dismissed PGA. Jury found in favor of golfer and against Club and golf association, reduced because of spectator’s negligence. *Duffy v Midlothian Country Club, Western Golf Association and Dow Finsterwald*, 481 N.E. 2d. 1037 (Ill. App. 1985).
- B. Club and Sponsor Potential Liability: Injured spectator alleged no ropes, barricades or signs indicating spectator area and no marshals. Court stated it was a jury question whether club and sponsor had provided safe spectator area and whether spectator assumed risk. *Grisim v Tapemark Charity Pro-Am Golf Tournament, Southview C.C. and Koechler*, 394 N.W. 2d. 261 (Minn. App. 1986). In a Maine case, court rejected club’s argument that buying a ticket to tournament constituted assumption of risk. It also ruled that Club had retained sole responsibility for crowd control, but the sponsor had an

obligation to ensure that club adequately supervised spectators because it controlled admissions, collected the money and retained the profit. *Baker v Mid Maine Medical Center and Waterville C.C.*, 499 A. 2d. 464 (Me. 1985).

## 6. Lightning Strikes

Lightning strikes are a well known golf course hazard. Famed golfer Lee Trevino was struck by lightning in 1975. A spectator was struck by lightning at the 1991 U.S. Open. In July 2014, lightning struck and hospitalized a golfer on a course on Catalina Island, California. At the same time, a lightning strike killed a person and injured three others at Venice Beach in Southern California. Golfers who have been injured by lightning on a course have sued clubs for failing to provide sufficient protection.

- A. In a New Jersey case, the court held that a player's lawsuit against the club due to a lightning strike was a jury question where the starter sent the players out in a drizzle, it began raining and one of them, holding an umbrella, was struck by lightning as they crossed a fairway trying to get back to the clubhouse. The club monitored the weather on the Weather Channel, was in communication with a weather station, posted signs with an evacuation plan, club personnel would drive on the course and evacuate golfers and posted a USGA lightning warning. The club did not have lightning shelters on the course, did not have lightning detection equipment and did not have an effective evacuation plan. The club's Act of God defense was overruled. *Maussner v Atlantic City C.C., Inc.*, 691 A. 2d. 826 (N.J. App. 1997)
- B. *Hames v State of Tennessee*, 808 S.W. 2d 41 (Tenn. 1991) affirmed dismissal of action alleging lightning injury against club.

“...lightning is such a highly unpredictable occurrence of nature, that it is not reasonable to require one to anticipate when and where it will strike...We also think the risks and danger associated with playing golf in a lightning storm are rather obvious to most adults.”

### C. U.S.G.A Rules of Golf (2012)

“Rule 6-8 Discontinuance of Play; Resumption of Play

a. Discontinuance permitted

The player must not discontinue play unless...

(ii) he believes there is a danger from lightning;

#### Appendix I

#### 4. Suspension of Play Due to a Dangerous Situation

(Note to Rule 6-8b)

“As there have been many deaths and injuries due to lightning on golf courses, all clubs and sponsors of golf competitions are urged to take precautions for the protection of persons against lightning.”

### 7. Drinking Water

Golf clubs have potential exposure if impure drinking water exists on the course. Some courses provide water tanks and drinking cups. The latter should be tamper proof, emptied, sanitized and refilled at least once per day.

In July, 2002, 83 teenage golfers were playing in a junior tournament on a course that was then owned by an Arizona charitable organization. A 15 year old golfer, Nils Beeman, died a few days after drinking contaminated water on the course. Beeman's parents sued the owners of the course. The case was settled by the course's insurers for \$3,000,000.

Better practice: Clubs should provide golfers with sealed bottles of water in ice chests on the golf carts,

### 8. Golf Course Security

Scope of the problem: the interior of the average home is 2,000 to 4,000 square feet and many homes have security systems. The average golf course covers approximately 75-150 acres with trees, shrubs, flowers: topography that can conceal criminals. Three security threats face a golf club: (1) crimes against golfers, (2) theft of personal property including clubs and cars and (3) vandalism to the course itself.

A. Crimes against golfers. In October, 1983, while President Reagan was playing golf on the 16<sup>th</sup> hole of the Augusta National Golf Club



(home of the venerable Masters Tournament) when an armed man took the President's aide hostage. At the time, the President was guarded by the Secret Service and was unharmed.

- B. Crimes against property: Millions of dollars in golf clubs and bags are stolen annually from golf courses. Fortunately, clubs can take preventive measures: have attendants stay close to "bag drops", storage areas for members can be increased, and maintain liaison with local police.
- C. Vandalism: Usually after dark. Increased lighting is of limited value. The speaker's custom made Ping clubs were stolen out of their bag in the club's bag room that was broken into after dark.
- D. Defenses:
  - i. Under Arizona several liability law, ARS 12-2506.B comparative fault is apportioned among all parties *and non-parties at fault* (including criminals in these types of cases.)
  - ii. All crime is not preventable. As one of our security experts, a former FBI special agent and hotel security expert, testified in an action the speaker defended that was brought by a guest against a hotel for an assault by a criminal disguised as a bellman: "All crime is not preventable. President Reagan was shot in broad daylight walking out of a prominent Washington hotel. If that can happen to the President while surrounded by armed Secret Service agents, can a hotel provide better security?"

## 9. Serving Alcohol

Serving alcohol at the clubhouse restaurant or bar or on the course subjects the Club/Course to exposure under so-called Dram Shop laws. About half the states have such laws.

- A. Arizona's statute (A.R.S. Sec. 4-301) provides, in pertinent part, that a seller of liquor is liable for damage, injury or death proximately resulting from the sale of liquor to and its consumption by a person who was "obviously intoxicated" which is defined as "inebriated to such an extent that a person's physical faculties are substantially impaired and the impairment is shown by significantly uncoordinated physical action or significant physical dysfunction that would have been obvious to a reasonable person."

- B. Under Dram Shop Acts the victim of the intoxicated person may be the intoxicated person him/herself or a third person. *McMurtry v Weatherford Hotel, Inc.*, 293 P. 3d. 520 (Ariz. App. 2013).

## 10. Natural Hazards

Rattlesnakes on golf courses in the Southwest and alligators and snakes on courses in the Southeast are unavoidable natural hazards. And, they are not just curiosities for visitors—natives know that they are potentially deadly.

- A. In 2012 a huge alligator appeared in the water near the Ocean Course on Kiawah Island near Beaufort, S.C. where a PGA Tour event featuring Tiger Woods was being played.
- B. In 2009, a golfer on the Ocean Creek Golf Club on Fripp Island, also near Beaufort, was attacked by a 10 foot alligator when he reached for his ball which was near but not in a pond. The alligator tore off the golfer's right arm. In the ensuing litigation, the golfer alleged that the course had failed to warn golfers of the presence of alligators. The case was subsequently settled.
- C. Course owners and operators cannot control wild animals or know every location where they may be. Warning signs are recommended in areas where they have been seen, e.g. rattlesnake danger in desert areas and deep grass of Arizona courses, alligator danger near bodies of water in Southeastern courses. Assumption of risk and contributory fault are obvious defenses.

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