# GOLF COURSE LIABILITY—A "FORE!" WARNING

TABLE OF CONTENTS



## I. INTRODUCTION

The extent of liability between golfers, golf course operators, and spectators for injuries caused during the course of play has been limited or extended using a variety of legal theories. This Note is not intended to be an exhaustive survey of every situation that may lead to the imposition of liability. Rather, the primary focus of this Note is on the legal theories adopted by different courts in different situations and the circumstances used to impose or negate liability.

## II. ASSUMPTION OF RISK DOCTRINE

Although the majority of jurisdictions recognize some level of recovery for injuries resulting from the negligent acts of third parties on a golf course, other jurisdictions have completely barred recovery under the assumption of risk doctrine.[1] In *Grisim v. Tapemark Charity Pro-Am Golf Tournament*,[2] the plaintiff, a spectator at a charity golf event, was struck and injured by the

1. The assumption of risk doctrine is an affirmative defense in a negligence suit. The general elements of the assumption of risk defense are:
(1) the plaintiff has knowledge of a possibly dangerous condition,
(2) he is aware of the nature and extent of the danger, and
(3) he voluntarily exposes himself to the danger.
RESTATEMENT (SECOND) OF TORTS § 496A (1964).

2. Grisim v. Tapemark Charity Pro-Am Golf Tournament, 415 N.W.2d 874 (Minn. 1987).

defendant's golf ball.[3] The plaintiff sued the individual golfer, the country club, and the tournament sponsor.[4] The Minnesota Supreme Court denied the plaintiff's claim against the individual golfer on two theories.[5]

First, the court determined the plaintiff had chosen to sit beneath a tree rather than in the designated spectator area.[6] In so doing, she had assumed the risks inherent in a golf tournament, including the possibility of being hit by a golf ball.[7] Second, under tournament conditions, the golfer had not breached a separate duty to the plaintiff by failing to give warning of the approaching golf ball.[8] The court found it was reasonable for the golfer to have assumed spectators, such as the plaintiff, sitting very close to the playing area would be observing the golfers.[9] Therefore, the golfer had no duty to give a warning and the assumption of risk doctrine barred any recovery by the plaintiff against the golfer.[10]

In *Thompson v. McNeill*,[11] the Ohio Supreme Court stated that among participants in sporting events, "only injuries caused by intentional conduct, or in some instances reckless misconduct, may give rise to a cause of action."[12] Liability may not be imposed for injuries resulting from negligent conduct.[13]

---

3. *Id.* at 875.

4. *Id.* The trial court granted summary judgment for the defendants. *Id.* The Minnesota Court of Appeals reversed. *Id.* The only issue before the Minnesota Supreme Court was the golfer's duty of care to the plaintiff. *Id.*

5. *Id.*

6. *Id.* The plaintiff sat under a tree to the left of the green rather than in the bleachers behind the green because the bleachers were too crowded to find a seat. *Id.*

7. *Id.*

8. *Id.* at 876. In Hollinbeck v. Downey, 113 N.W.2d 9 (Minn. 1962), the court stated if the defendant "knew, or in the exercise of ordinary care should have known, that plaintiff was in a zone of danger and was unaware of [his] intention to hit, [he] should have given [plaintiff] a warning." *Id.* at 12-13. The *Grisim* court distinguished this case from the *Downey* decision because as a matter of law the defendant could not have known whether the plaintiff was aware he was teeing off. Grisim v. Tapemark Charity Pro-Am Golf Tournament, 415 N.W.2d 874, 876 (Minn. 1987).

9. Grisim v. Tapemark Charity Pro-Am Golf Tournament, 415 N.W.2d at 876. The court stated:

> *Downey* is more appropriate in the context of regular play or practice, where golfers should be obligated to warn their preoccupied fellow golfers, than in the context of a tournament involving spectators who are there to observe play and have assumed the risks of straying too close to the playing area.

*Id.*

10. *Id.*

11. Thompson v. McNeill, 559 N.E.2d 705 (Ohio 1990).

12. *Id.* at 706.

13. *Id.*

In *Thompson*, the plaintiff was injured when a member of her foursome "shanked"[14] a shot, hitting her with the ball.[15] The court declined to impose liability on the defendant because

> [s]hanking the ball is a foreseeable and not uncommon occurrence in the game of golf. The same is true of hooking,[16] slicing,[17] pushing,[18] or pulling[19] a golf shot. [The court stressed] that "it is well known that not every shot played by a golfer goes to the point where he intends it to go. . . . It is common knowledge, at least among players, that many bad shots must result although every stroke is delivered with the best possible intention and without any negligence whatsoever."[20]

The assumption of risk doctrine has also been applied in a case in which a golf spectator was injured after tripping on a hidden rock on the golf course. In *Thompson v. Sunset Country Club*,[21] the appellate court affirmed the trial court's decision setting aside a jury verdict for the plaintiff.[22] In *Sunset Country Club*, the plaintiff tripped over a rock while viewing a golf tournament on the defendant's golf course.[23] The plaintiff asserted "the defendant knew or should have known that the rock was there and constituted a danger to the [spectators]."[24] The court noted the burden was on the plaintiff to show the defendant had subjected her to a danger not reasonably incidental to the game of golf and the defendant knew or should have known of the danger in the exercise of ordinary care.[25] In analyzing the danger of the hidden rock, the court concluded a rocky slope was not an unusual thing

---

14. "[S]hank[ing] is the result of hitting the ball while the face of the club is open, sending the ball in a straight line far to the right of the intended line of flight." Cook v. Johnston, 688 P.2d 215, 216 (Ariz. Ct. App. 1984).

15. Thompson v. McNeill, 559 N.E.2d at 706.

16. "Hooking" a shot causes the golf ball to spin rapidly in a counterclockwise direction thereby curving the shot violently from right to left.

17. "Slicing" a shot causes the golf ball to spin rapidly in a clockwise direction thereby curving the shot violently from left to right.

18. "Pushing" a shot causes the golf ball to travel on a generally straight path but to the right of the intended target.

19. "Pulling" a shot causes the golf ball to travel on a generally straight path but to the left of the intended target.

20. Thompson v. McNeill, 559 N.E.2d 705, 709 (Ohio 1990) (quoting Benjamin v. Nernberg, 157 A. 10, 11 (Pa. Super. Ct. 1931)).

21. Thompson v. Sunset Country Club, 227 S.W.2d 523 (Mo. Ct. App. 1950).

22. *Id.* at 526.

23. *Id.* at 524. The plaintiff was watching a group of famous golfers and was told by one of the defendant's employees to follow other spectators down a hill to cross a small ravine. *Id.* The plaintiff was walking down the grassy hill when she kicked a hidden rock and fell, breaking her ankle. *Id.* at 524-25. Evidence showed the rock was six inches in diameter and was embedded in the ground at a height sufficient for the plaintiff to kick it when walking. *Id.* at 526.

24. *Id.* at 524.

25. *Id.* at 525.

to encounter while on a golf course because the game is typically played on irregular terrain that is sometimes intentionally left in a rough state.[26] Also, because the evidence did not show the defendant had any knowledge of the protruding rock, the defendant was not negligent in failing to warn the plaintiff.[27]

In addition to not finding any negligence by the defendant, the court denied the plaintiff's claim because she assumed the risk associated being a with golf spectator.[28] The court noted:

> [A golf course operator] is not liable, in the absence of some breach of the duty of due care, for injury to a player or person lawfully on the course from a golf ball driven by another player on the course, or for injuries due to other accidents, mishaps, or misadventures, or, [for injuries resulting] from the common hazards or perils incident to the game.[29]

The plaintiff knew enough about the game to be familiar with the physical characteristics of a golf course.[30] By following the golfers around the course, she assumed all the risks ordinarily associated with watching golf and walking around the course.[31]

In *Barrett v. Fritz,*[32] the defendant teed off on the seventeenth hole and hit the plaintiff who was standing on the eighteenth tee.[33] The defendant lost sight of the ball and did not yell "fore" to warn the plaintiff.[34] The defendant asserted the assumption of risk doctrine barred the plaintiff's action.[35] The Illinois appellate court recognized the validity of the assumption of risk doctrine but declined to extend it to golf injury cases.[36]

> The doctrine of assumption of risk, if applicable to an injury sustained by a golfer, would presuppose that the plaintiff was participating in activities which exposed him or her to the risk of the injury complained of; that the dangers involved were the dangers which ordinarily accompany the activities contemplated in participating in the game of golf; that the plaintiff knew, or by the exercise of ordinary care should have known, this danger existed and realized the possibility of injury from playing the

---

26. *Id.*
27. *Id.* at 526.
28. *Id.* at 525.
29. *Id.* at 526.
30. *Id.* at 525.
31. *Id.*
32. Barrett v. Fritz, 240 N.E.2d 366 (Ill. App. Ct. 1968), *aff'd*, 248 N.E.2d 111 (Ill. 1969).
33. *Id.* at 367. The plaintiff was struck on her head and knocked unconscious causing brain injuries and requiring several major operations. *Id.*
34. *Id.*
35. *Id.* at 366.
36. *Id.* at 368-69.

> game of golf on the day in question, and that some one or more of these dangers were the cause of plaintiff's injuries.[37]

Despite noting the soundness of the doctrine in golfer injury actions, the court rejected the expansion of the assumption of risk doctrine.[38] The court indicated the doctrine could be applied only to master-servant cases and cases involving contractual relationships between a plaintiff and defendant.[39]

## III. ZONE OF DANGER DEFINING EXTENT OF DUTY

Several jurisdictions have defined the extent of duty owed to other golfers and spectators by the "zone of danger" created when a golfer prepares to hit a shot.[40] "'[T]here is generally no duty to warn persons not in the intended line of flight on another tee or fairway of an intention to strike the ball.'"[41] A golfer has a duty, however, to warn any person within the foreseeable zone of danger of his intention to strike the ball.[42]

> The complementary general principle is that one who is outside the zone of danger or who is aware of the impending shot is not entitled to any such warning, and that if such a person is hit by a golf ball, the driver of the ball will not be liable for failing to give any warning before he makes the shot.[43]

The most notable problem in following these general principles is defining the zone of danger. Courts have not agreed on the exact parameters of the zone of danger, resulting in widespread variance in the standard of care required by individual golfers.

In *Knittle v. Miller*,[44] the court adopted a narrow view of the parameters of the zone of danger. In *Knittle*, the plaintiff, a spectator at a golf tournament, was injured when the defendant's golf ball struck her in the left eye.[45] The plaintiff asserted the defendant had breached a duty to give "'timely and adequate warning' that she was in danger of being struck by an

---

37. *Id.* at 368.

38. *Id.* at 368-69.

39. *Id.* at 368. The relationship between a caddie and golfer constitutes a master-servant relationship. *Id.* Despite that relationship, the assumption of risk doctrine has not been uniformly applied by the courts in caddie-golfer cases. *See, e.g.*, Pouliot v. Black, 170 N.E.2d 709, 710 (Mass. 1960) (holding a caddie shagging golf balls at driving range knew of danger and assumed the risk of being hit by balls); Povanda v. Powers, 272 N.Y.S. 619, 623-24 (Sup. Ct. 1934) (holding caddie had not assumed risk of injury that resulted from defendant's negligence).

40. *See supra* text accompanying notes 44-66.

41. Richardson v. Muscato, 576 N.Y.S.2d 721, 722 (App. Div. 1991) (quoting Noe v. Park Country Club, 495 N.Y.S.2d 846, 846 (App. Div. 1985)).

42. Knittle v. Miller, 709 P.2d 32, 34 (Colo. Ct. App. 1985).

43. *Id.* (citations omitted).

44. Knittle v. Miller, 709 P.2d 32 (Colo. Ct. App. 1985).

45. *Id.* at 34.

errant golf ball."[46] The appellate court disagreed, holding the plaintiff was not within the zone of danger because she "was not in or near the intended line of flight of the golf ball."[47] The court narrowly defined the zone of danger as the golf ball's intended line of flight.[48] The defendant had not breached his duty to adequately warn the plaintiff because he yelled "fore" as soon as he saw the ball veer off its intended path.[49] Had the court defined a wider zone of danger to include the plaintiff, the defendant would have been required to give adequate warning before attempting the shot.

Most courts have not adopted this narrow definition of the zone of danger. "[C]ourts agree that a golfer's duty extends beyond the intended path of the ball and encompasses a wider zone of danger based on the facts and circumstances in each individual case."[50] In *Bartlett v. Chebuhar,*[51] the plaintiff contended the defendant was negligent in hitting the ball and failing to warn the plaintiff who was reasonably within the zone of danger of being hit by the ball.[52] The district court granted the defendant's motion for summary judgment.[53] The Iowa Supreme Court reversed, holding the district court erred in defining the zone of danger as the "defendant's line of sight or intended flight of the ball."[54] Ultimately, the court remanded the case to the district court to adopt a less restrictive definition of the area reasonably within the defendant's zone of danger when he took his shot.[55]

Different circumstances can exist that may effectively widen the zone of danger in a particular situation.[56] In *Cook v. Johnston,*[57] the defendant had

---

46. *Id.* The defendant and members of his foursome yelled "fore" loudly after realizing the golf ball was veering from its intended line. *Id.*

47. *Id.* The court noted, "Even if [the defendant] had given the warning before he made the shot, there was no indication from plaintiff that she could have heard or would have heeded the warning, since she was not in or near the line of the defendant's intended shot." *Id.* at 35.

48. *Id.* at 34. The court's use of a narrow definition of the zone of danger was most likely a result of its implied acceptance of the assumption of risk doctrine. "[G]olfers and golfing spectators know many shots go astray from the intended line of flight, and that such fact is a risk all such persons must accept." *Id.* (citing Allen v. Pinewood Country Club, 292 So. 2d 786, 788 (La. Ct. App. 1974)).

49. *Id.*

50. Bartlett v. Chebuhar, 479 N.W.2d 321, 322-23 (Iowa 1992) (citing Cook v. Johnston, 688 P.2d 215, 217 (Ariz. Ct. App. 1984)).

51. Bartlett v. Chebuhar, 479 N.W.2d 321 (Iowa 1992).

52. *Id.* at 322. When preparing to take his shot, the defendant saw there were people at an angle to his right, but he did not see any individuals on his intended path to the number nine green. *Id.* The defendant realized his shot was heading towards the plaintiff and he yelled "fore" after striking the ball. *Id.* The ball hit an embankment, bounced up, and hit the plaintiff in the eye. *Id.*

53. *Id.* at 321. The district court concluded the plaintiff was not in the intended path of the defendant's shot, so the defendant owed no duty as a matter of law to warn the plaintiff prior to the shot. *Id.* at 322.

54. *Id.*

55. *Id.* at 322-23.

56. In Boozer v. Arizona Country Club, 434 P.2d 630 (Ariz. 1967), the court indicated a dividing line existed at a point between zero and ninety degrees beyond which a finding of

played golf for many years and was known for his tendency to "shank"[58] the ball.[59] The plaintiff was never warned of the defendant's tendency to shank the ball.[60] While on the ninth hole, the plaintiff proceeded up the right side of the fairway approximately thirty yards in front and to the right of the defendant, but clearly within the defendant's view.[61] The defendant hit his ball, immediately saw he had shanked the shot, and yelled "fore."[62] The plaintiff turned his head toward the defendant and the ball struck his eye, causing severe injury.[63]

The trial court determined the defendant did not owe a duty to warn because the plaintiff was not within the zone of danger.[64] On appeal, the plaintiff argued the defendant's history of shanking the ball effectively widened the zone of danger such that the defendant had a duty to warn him of his tendency to shank the ball before hitting the shot.[65] The appellate court agreed and reversed the lower court's granting of judgment notwithstanding the verdict and reinstated the jury verdict for the plaintiff.[66]

## IV. INJURY TO NONPLAYING SPECTATORS

### A. *Spectator Status as Business Invitee*

The duty owed to nonplaying spectators depends upon their legal status while on golf course property. A spectator's status as a business invitee or trespasser will govern the extent of duty owed and the negligent party's resultant liability. Although a spectator may have the status of a business invitee, the courts have not applied a uniform standard of care in all circumstances.

#### 1. *Traditional View of Duty to Spectator Invitee*

Generally, the owner of a business premises has a duty to an invitee to exercise ordinary care in the use and maintenance of his property.[67] More specifically, the owner has a duty to "discover defects or dangerous conditions

---

negligence might be precluded. *Id.* at 633. For example, the court suggested the zone of danger might include someone standing at a point fifty degrees from the intended line of flight when, foreseeably, the ball might go in that direction. *Id.*

57. Cook v. Johnston, 688 P.2d 215 (Ariz. Ct. App. 1984).
58. *See infra* note 13.
59. Cook v. Johnston, 688 P.2d at 216.
60. *Id.*
61. *Id.*
62. *Id.*
63. *Id.*
64. *Id.* at 217.
65. *Id.*
66. *Id.*
67. Chapman v. Foggy, 375 N.E.2d 865, 868 (Ill. App. Ct. 1978).

existing on the premises . . . and to either correct them or give sufficient warning to [the invitee] to enable [the invitee] to avoid the harm."[68] "To establish a case of negligence, plaintiff must demonstrate that a duty was owed to [plaintiff] by defendants; that there was a breach of that duty; and that an injury approximately resulted from that breach."[69]

In *Duffy v. Midlothian Country Club*,[70] the plaintiff was a nonplaying spectator at a professional golf tournament.[71] The plaintiff purchased an entrance ticket and walked to a concession stand located directly between the first and eighteenth fairway.[72] She was struck in her right eye by an errant shot, causing the loss of all sight in that eye.[73] The plaintiff did not hear anyone shout "fore" or any other warning before being hit.[74] The plaintiff asserted "she was a business invitee to whom defendants owned [sic] a duty as owners and operators of the golf course or tournament."[75] The defendants allegedly breached this duty when they failed to warn her of the dangerous location of the concession stand.[76] The appellate court found a genuine issue of material fact existed regarding the location of the concession stand and whether it was a dangerous condition.[77] Testimony from a member of the golf course indicated it was not possible to see a ball approaching in the concession area, and "the concession stand was placed in an area where balls had been hit daily in the past."[78] Thus, the court held summary judgment was inappropriate because a jury could decide it was foreseeable golf balls could hit spectators if the concession stand was placed between the two fairways.[79]

The court in *Rockwell v. Hillcrest Country Club* [80] also followed the traditional view of the duty owed to an invitee.[81] In *Rockwell,* the plaintiffs, golf tournament spectators, were injured when a suspension bridge covering a river on the golf course collapsed, dropping the plaintiffs and 80 to 100 other individuals into the river.[82] As in *Duffy,* the plaintiffs claimed status as business invitees, alleging the defendant was obligated to warn them of the bridge's maximum capacity of only twenty-five persons.[83] The court, in

68. *Id.*; *see also* RESTATEMENT (SECOND) OF TORTS § 343 (1964).
69. Duffy v. Midlothian Country Club, 415 N.E.2d 1099, 1103 (Ill. App. Ct. 1980).
70. Duffy v. Midlothian Country Club, 415 N.E.2d 1099 (Ill. App. Ct. 1980).
71. *Id.* at 1099.
72. *Id.* at 1101.
73. *Id.*
74. *Id.*
75. *Id.* at 1103.
76. *Id.*
77. *Id.*
78. *Id.*
79. *Id.* at 1104.
80. Rockwell v. Hillcrest Country Club, 181 N.W.2d 290 (Mich. Ct. App. 1970).
81. *Id.* at 293.
82. *Id.* at 292.
83. *Id.* at 293.

analyzing the duty owed to the spectators, noted "'the obligation of reasonable care is a full one, applicable in all respects, and extending to everything that threatens the invitee with an unreasonable risk of harm.'"[84] No forewarning was given to spectators crossing the bridge during the tournament.[85] Under these circumstances, the defendant had a duty to warn its invitees, including the plaintiffs, of the bridge's twenty-five person maximum capacity.[86]

### 2. *Modified View of Duty to Spectator Invitee*

Several courts have abandoned the distinction regarding business invitees and licensees and have adopted a single modified standard of care. In *Baker v. Mid Maine Medical Center*,[87] the plaintiff attended a golfing exhibition featuring a well-known golf professional.[88] While standing approximately thirty feet outside the fifth fairway, the plaintiff heard someone shout "fore" and was immediately struck in his chest by a golf ball, causing severe injury.[89] The plaintiff asserted the defendant had negligently failed to take adequate precautions to prevent spectators from being struck by golf balls while viewing the exhibition.[90]

The defendants did not dispute that the plaintiff was a business invitee.[91] The court noted, however, the plaintiff was a business invitee in a descriptive sense only.[92] In analyzing the plaintiff's status as a business invitee, the court abandoned its distinction between invitees and licensees and instead adopted a unitary standard imposing a duty of reasonable care in

---

84. *Id.* (quoting WILLIAM L. PROSSER, PROSSER ON TORTS § 61 (3d ed. 1964)).

85. *Id.*

86. *Id.* Ultimately, the appellate court affirmed the original jury verdict for the plaintiffs. *Id.* at 297.

87. Baker v. Mid Maine Medical Ctr., 499 A.2d 464 (Me. 1985).

88. *Id.* at 466. The golfing exhibition was conducted so "[o]n any one hole, four individuals paid money for the privilege of playing along with [the professional]. No one other than these individuals played on the golf course during the exhibition." *Id.*

89. *Id.*

90. *Id.* The plaintiff asserted the following theory of negligence:

> Because he was interested primarily in watching what [the professional] did on the golf course, the plaintiff did not know when the other golfers playing along with [the professional] intended to play their shots. Other spectators who attended the exhibition also stated that they did not pay attention to the accompanying golfers. As an experienced golfer, the plaintiff knew that if he saw a person ready to hit a golf ball, he would watch him for his own protection. However, no one warned him when golfers were about to play their shots. He contended that if he had been so warned, he would have had more time to avoid being struck by a ball traveling in his direction.

*Id.*

91. *Id.* at 467.

92. *Id.* at 467 n.2.

all circumstances to persons lawfully on the premises.[93] "The defendants were required therefore to use ordinary care to ensure that the premises were reasonably safe for the plaintiff, guarding him against all reasonably foreseeable dangers . . . ."[94] The court stated:

> The game of golf presents a known hazard—balls hit by golfers—that do not always travel in the intended direction, and which are capable of causing severe personal injury. Spectators at golfing exhibitions are therefore clearly subjected to known risks . . . . The crucial issue then becomes whether the defendants had reason to expect harm to the plaintiff from this obvious risk in circumstances where the plaintiff's attention would be distracted from such risk causing him to forget, or fail to protect himself against it.[95]

### B. *Failure to Warn of Dangerous Condition*

Golfers and golf course operators have been found negligent for failing to warn of dangerous conditions on the golf course. In *Young v. Gregg*,[96] the Iowa Supreme Court held a golf course operator liable when a tournament golfer was struck and injured by a golf ball hit by the defendant, a nontournament golfer.[97] The plaintiff was struck while traveling across the first fairway back to the clubhouse after completing a "shotgun start"[98] tournament.[99] The plaintiff did not expect anyone would be playing the first hole, because he assumed the golf course would be closed to the public until the tournament was completed.[100]

The golf course operator asserted the plaintiff's claim rested on premises liability, which required the plaintiff to show the defendant knew, or reasonably should have known, there was a situation on the premises that involved an unreasonable risk of injury to the plaintiff.[101] The court disagreed, noting:

---

93. *Id.* (citing Poulin v. Colby College, 402 A.2d 846 (Me. 1979)).
94. *Id.* at 467.
95. *Id.*
96. Young v. Gregg, 480 N.W.2d 75 (Iowa 1992).
97. *Id.* at 78. The golf ball struck the plaintiff in the center of the left lens of his glasses injuring his eye and eye socket. *Id.* The force of the defendant's shot knocked the plaintiff out of his cart. *Id.* The golf ball landed in the plaintiff's hands, and the plaintiff believed the ball was his eye. *Id.*
98. A "shotgun start" tournament begins with a group of players on the tee of each hole on the golf course. *Id.* at 77. A shotgun is fired to signal the start of the tournament. *Id.* Players not starting on the first or tenth hole must travel back to the clubhouse to turn in their scorecards after finishing the round. *Id.*
99. *Id.* at 77-78.
100. *Id.* at 77.
101. *Id.* at 78.

> [The defendant's] position would be a correct statement of the standard for purposes of premises liability where some inanimate object on the premises or some defect in the condition of the premises causes the injury. . . . However, [the plaintiff's] claim involves negligence predicated on the act of a third party while on the premises. In such cases the standard is different.[102]

The court indicated the appropriate standard in third party negligence cases:

> "A possessor of land who holds it open to the public for entry for his business purposes is subject to liability to members of the public while they are upon the land for such a purpose, for physical harm caused by the accidental, negligent, or intentionally harmful acts of third persons or animals, and by the failure of the possessor to exercise reasonable care to:
>
> (a) discover that such acts are being done or are likely to be done, or
>
> (b) *give a warning adequate to enable visitors to avoid the harm* , or otherwise to protect them against it."[103]

The plaintiff pleaded he was an "invitee" of the golf course because he had paid a twenty-dollar entry fee to play in the tournament.[104] Despite this pleading, the court held the appropriate standard was contained in section 344 of the Restatement.[105] Under section 344, the plaintiff was not required to prove the golf course operators "knew or should have known that there was a condition on the premises that presented a risk of harm to the [p]laintiff."[106] Instead, the court found the plaintiff's pleading sufficient because he alleged that the defendant was negligent in allowing a nontournament golfer to begin play before the tournament was completed and in failing to warn tournament players the golf course would be open to nontournament players before the tournament was completed.[107] Clearly, the plaintiff's pleadings satisfied the standard of section 344.[108]

---

102. *Id.* at 78-79 (citing RESTATEMENT (SECOND) OF TORTS § 343 (1964)).

103. *Id.* at 79 (quoting RESTATEMENT (SECOND) OF TORTS § 344 (1964) (emphasis added)).

104. *Id.*

105. *Id.* "Although the term 'invitee' is specifically used in section 343, the use of the term in the pleadings does not automatically trigger its application. Rather, . . . the term was used . . . to show [the plaintiff] was on the premises for the owner's business purposes in accordance with section 344." *Id.*

106. *Id.* The court concluded the pleading requirement was only necessary under section 343, which was not applicable in that case. *Id.*

107. *Id.*

108. *Id.*

In *Panoz v. Gulf & Bay Corp.*,[109] the plaintiff sued a golf course operator when a bench tipped over backwards, injuring the plaintiff.[110] The plaintiff claimed the golf course was liable for failing to warn the plaintiff of the dangerous position of the bench.[111]

The court analyzed the duty owed to the plaintiff, stating:

> In our view an operator of a public golf course . . . is not to be considered an insurer of the physical safety of the patrons using the course facilities nor is he required to maintain the course or the facilities in such condition that no accident could possibly happen to a patron, but he does have a legal duty to maintain the course and facilities in a reasonably safe condition commensurate with the attendant facts and circumstances such as an ordinarily prudent person would generally exercise.[112]

There was no evidence of a hidden defect in the bench's construction or design.[113] The bench had been placed, however, on uneven ground and when the plaintiff attempted to sit down, the bench tipped over.[114] There was no evidence the defendant or its employees knew of any potential danger from the bench, thereby creating a duty to warn the plaintiff.[115] Also, because the plaintiff had ample opportunity to observe the bench, he was obligated to exercise reasonable care to provide for his own safety.[116]

## V. INJURY TO PARTICIPATING GOLFERS

### A. *Golfers Not in One's Foursome*

Courts analyze differently the duty owed among participating golfers depending in part on whether the injured golfer was a member of the golfer's own foursome. The extent and timeliness of adequate forewarning necessary to discharge one's duty varies accordingly. A golfer has a duty to give timely warning to other persons within the foreseeable ambit of danger, but there is generally no duty to warn persons on another tee or fairway and not in the intended line of flight before striking the ball.[117]

---

109. Panoz v. Gulf & Bay Corp., 208 So. 2d 297 (Fla. Dist. Ct. App.), *cert. denied*, 218 So. 2d 166 (Fla. 1968).
110. *Id.* at 298.
111. *Id.* at 299.
112. *Id.* at 301 (citations omitted).
113. *Id.* at 300-01.
114. *Id.* at 298.
115. *Id.* at 301.
116. *Id.*
117. *See* Richardson v. Muscato, 576 N.Y.S.2d 721, 722 (App. Div. 1991) (citations omitted).

In *Hathaway v. Tascosa Country Club,*[118] the defendant hit a golf ball from the practice range and struck the plaintiff who was riding in a cart on a hole adjacent to the practice range.[119] The defendant yelled "fore" just before impact, but the plaintiff was unable to avoid being struck.[120] The plaintiff claimed the proper standard was ordinary negligence and the defendant owed a duty of ordinary care to other golfers on the course.[121] The Texas court, in analyzing this matter of first impression, disagreed, and likened the duty owed between golfers to the duty owed between participants in any competitive contact sport.[122] "While the genteel game of golf can hardly be described as a 'competitive contact sport,' we believe the reckless and intentional standard is every bit as appropriate to conduct on the links as it is to conduct on the polo field."[123] "[F]or a plaintiff to prevail in a cause of action against a fellow golfer, the defendant must have acted recklessly or intentionally."[124] Because the record offered no evidence that the defendant had acted recklessly or intentionally in hitting his golf ball outside the driving range, the defendant had breached no duty to the plaintiff.[125]

### 1. *Duty to Warn Before Hitting Shot*

In *Cavin v. Kasser,*[126] the plaintiff, while waiting on the second hole, was struck by the defendant's ball coming from the third hole.[127] The defendant contended he had no duty to give a warning before teeing off, and he had given adequate warning once it became apparent his shot was leaving its intended course.[128] The court agreed, noting the defendant's duty to warn attached only when it became apparent his shot was errant and the plaintiff was in danger of being hit.[129] Thus, the court concluded, as a matter of law,

---

118. Hathaway v. Tascosa Country Club, 846 S.W.2d 614 (Tex. Ct. App. 1993).

119. *Id.* at 615. The defendant had been hitting from the left side of the practice range because he was a chronic slicer. *Id.* The defendant uncharacteristically hooked a ball off the heel of the club causing it to veer left towards the plaintiff. *Id.*

120. *Id.* The ball struck the plaintiff in the head causing permanent vision loss in his left eye. *Id.*

121. *Id.* at 616.

122. *Id.* The *Hathaway* court adopted the standard set out in Connell v. Payne, 814 S.W.2d 486 (Tex. Ct. App. 1991), regarding the duty owed between participants in a polo match. *Id.* at 487. In *Connell,* the court rejected the ordinary negligence standard and held a plaintiff participating in a competitive contact sport must show the defendant acted intentionally or recklessly to sustain a cause of action for injuries. *Id.* at 489.

123. Hathaway v. Tascosa Country Club, 846 S.W.2d 614, 616 (Tex. Ct. App. 1993).

124. *Id.* at 617.

125. *Id.* The plaintiff admitted he recognized the dangerous possibility of being hit by golf balls driven from the practice tee and acknowledged it was a good idea to look out for errant shots from the driving range. *Id.* at 615.

126. Cavin v. Kasser, 820 S.W.2d 647 (Mo. Ct. App. 1991).

127. *Id.* at 648.

128. *Id.* at 648-49.

129. *Id.* at 650.

the defendant had no duty to warn the plaintiff before striking the ball and gave adequate warning to the plaintiff as soon as the ball went off course.[130]

2. *Timely Warning Required After Hitting Shot*

In *Cavin*, the plaintiff also contended the timeliness of the defendant's warning was inadequate to satisfy his duty.[131] Again the court disagreed, stating, "It appears to be an accepted rule of golf that, [even] if no duty to warn exists prior to the striking of a ball, one does exist when it becomes apparent the ball is errant."[132]

In *Hoffman v. Polsky*,[133] the court affirmed a directed verdict for the defendant, whose shot had struck and injured the plaintiff who was playing on an adjacent hole.[134] The court determined the defendant did not have an absolute duty to warn everyone within the area of his play before making his shot.[135] The court concluded, "One about to strike a golf ball must exercise ordinary care to warn those within the range of intended flight of the ball or general direction of the drive, and the existence of such a duty to warn must be determined from the facts of each case."[136] Thus, *Hoffman* seems to stand for the general proposition a golfer has a duty to give a timely warning only to persons within the foreseeable zone of danger.[137]

In *Jenks v. McGranghan*,[138] the defendant teed off while the plaintiff was on another tee 150 yards away and approximately 25 yards to the right of the intended line of flight.[139] At the time the defendant was preparing to drive, the plaintiff was standing behind a protective fence guarding players on the ninth tee from shots approaching the eighth green.[140] The court stated, "Although there is no fixed rule regarding the distance and angle which are considered within the ambit of foreseeable danger, if the distance and angle are great enough, [a golfer is] not within the danger zone . . . ."[141] "A golfer cannot be expected to break his concentration while addressing the ball the instant before he hits to look up and see if someone has just stepped into the danger zone, if indeed it had been the danger zone."[142] Under the

130. *Id.* at 651.
131. *Id.*
132. *Id.*
133. Hoffman v. Polsky, 386 S.W.2d 376 (Mo. 1965).
134. *Id.* at 376.
135. *Id.* at 378.
136. *Id.*
137. Cavin v. Kasser, 820 S.W.2d 647, 650 (Mo. Ct. App. 1991).
138. Jenks v. McGranghan, 285 N.E.2d 876 (N.Y. 1972).
139. *Id.* at 878.
140. *Id.* at 877.
141. *Id.* at 878.
142. *Id.* at 878-89.

circumstances, the court determined timely warning did not require the defendant to yell "fore" before hitting.[143]

### B. *Golfers Within One's Foursome*

A clear distinction seems to exist between the duty owed to other golfers on the course and to those in one's own group.[144] In *Allen v. Pinewood Country Club,*[145] the court determined a different standard applied to members of the same foursome.[146] In *Allen,* the plaintiff was struck and injured by a golf ball hit by a member of his own foursome.[147] The court stated:

> [The] plaintiff had the right to assume a member of his own party would not drive while plaintiff was standing in full view near the intended line of flight with plaintiff's back turned toward the impending play. . . . Plaintiff could reasonably anticipate that under the circumstances, he would receive a warning and be allowed sufficient time to step out of defendant's line of flight.[148]

In *Oakes v. Chapman,*[149] the plaintiff and the defendant were members of the same foursome, but had never played with each other.[150] On the sixteenth hole, the plaintiff was standing about forty-five feet from the defendant.[151] The defendant hit the ball, which took off on a ninety-degree angle from its intended line of flight, striking the plaintiff in the eye.[152] The plaintiff's eye had to be removed after the accident.[153] The trial court instructed the jury that, as a matter of law, the defendant was not liable if the plaintiff knew the defendant was about to hit the ball.[154] The plaintiff contended this was error, but the appellate court disagreed.[155] "[I]n golf, the person about to hit the ball is not required to give a warning to persons who know his intention, nor is he required to warn persons in a position that is not, reasonably, in a state of danger."[156] Because the plaintiff knew the

---

143. *Id.* at 879.
144. *See* Baker v. Thibodaux, 470 So. 2d 245, 247 (La. Ct. App. 1985).
145. Allen v. Pinewood Country Club, 292 So. 2d 786 (La. Ct. App. 1974).
146. *Id.* at 789.
147. *Id.* at 787.
148. *Id.* at 790.
149. Oakes v. Chapman, 322 P.2d 241 (Cal. Ct. App. 1958).
150. *Id.* at 242.
151. *Id.*
152. *Id.* No one in the foursome actually saw the ball in flight because it happened too fast. *Id.*
153. *Id.*
154. *Id.* at 244-45.
155. *Id.* at 245.
156. *Id.*

defendant was about to hit the ball and was watching him at all relevant times, any warning by the defendant that he was about to hit the ball would have been superfluous.[157] "The shot was purely a 'freak' shot. . . . Neither party knew, or had reason to believe, that the ball would go 90 degrees off course."[158] Under those circumstances, the appellate court found no evidence of negligence on the part of the defendant.[159]

## VI. CONCLUSION

The game of golf is a world-wide sport enjoyed daily by millions of people. The shear numbers of people and their proximity to each other on a golf course will inevitably lead to negligence and injury. Whether liability is imposed for failing to give adequate forewarning is, however, wholly dependent on the jurisdiction where the golf course is located and the jurisdiction's forewarning requirement. Certainly, all golfers should be required to shout a warning to anyone foreseeably within the path of the ball after it has been struck. To not do so would be negligence and liability should be imposed. Simply put: When in doubt—shout!

In certain jurisdictions, however, the question remains as to the warning required before attempting a shot. A golfer should be able to know the standard of care owed to other golfers or spectators whether he or she is golfing in Iowa, Minnesota, Ohio, or any other place where people play golf. To do so, this Note suggests as the most rational approach the adoption of a unitary standard of care requiring a golfer to give warning *prior to hitting a shot* only to individuals located directly within the golf ball's intended line of flight. This narrow standard eliminates the unrealistic need to analyze each golfer's tendency to hook, slice, or shank the ball in order to determine a zone of danger, and a corresponding degree of care that "would be as variable as the length of the foot of each individual."[160]

*Jay E. Pietig*

---

157. *Id.* at 244-45. A factually similar situation arose in Walsh v. Machlin, 23 A.2d 156 (Conn. 1941), in which the court also determined any warning by the defendant would have been superfluous. *Id.* at 157. When the defendant made his shot, he knew the plaintiff was about 35 or 40 feet to the right of the intended line of flight of the defendant's ball. *Id.* at 156-57. When the defendant hit the ball, there was no one within the intended line of flight or within a reasonably anticipated range of danger. *Id.* at 157. The plaintiff knew the shot was about to be played and was in a position where he should have been reasonably safe. *Id.* The court held the defendant could not have reasonably anticipated injury would result from his shot and was under no duty to warn the plaintiff he was about to strike the ball because "the plaintiff knew it and oral or audible warning would have been superfluous." *Id.*

158. Oakes v. Chapman, 322 P.2d 241, 245 (Cal. Ct. App. 1958). A witness testified he had never seen such a shot in 29 years of golfing. *Id.* at 244.

159. *Id.* at 245.

160. Vaughan v. Menlove, 132 Eng. Rep. 490, 492 (P.C. 1837).