

is surface compaction. Additionally, STC may be effectively used when performed on a spot treatment basis. A regular program of STC with small diameter tines on high, dry areas susceptible to runoff and localized dry spots or on highly compacted traffic zones should improve water infiltration. By limiting STC to a spot treatment program, the potential for cultivation pan formation is isolated to known areas.

To counteract the development of a cultivation pan, it is best to cultivate when the soil is more dry and to vary the depth of cultivation, if possible. There must be sufficient soil water to

allow tines to penetrate, of course. Also, small diameter tines should help limit the formation of cultivation pan, yet allow some loosening of the soil to improve water infiltration. Because no soil is removed with STC, the gain in improved water infiltration will be short-lived, and repeat treatment will likely be necessary.

STC can be an effective cultivation method when used in combination with HTC. The spring and fall seasons allow HTC to be used, while midseason cultivation can be accomplished with small diameter STC. On sites where soil compaction is not a severe problem, STC is not recommended. It is useful

to review your overall management objectives and goals to determine which equipment and program are best for use in a particular situation.

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Liability on the Golf Course

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THE PAGES of this publication are normally devoted to responding to the numerous challenges that agronomic conditions pose to managers and superintendents of golf courses and clubs. However, in an increasingly litigious society, managers and superintendents are now becoming aware of the many ways in which their operations may invite litigation.

Liability on the golf course can conveniently be divided into three principal subjects. First, there is liability for injuries to employees, which generally involves the law of workers' compensation. Second, there is liability for injuries to golfers and others, which implicates the law of tort liability for personal injuries. Finally, of increasing prominence is the law governing liability for chemical damage to the course, which can best be described as tort liability for property damage.

Liability to Employees: The Law of Workers' Compensation

Anyone who suffers an injury is ordinarily entitled to recover damages for the injury if it was caused by the negligent conduct of another. Negligent conduct is that which falls below what we expect people to do in a given circumstance, such as to obey traffic



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signals to avoid automobile accidents. An individual injured because of someone else's negligence is entitled to recover full damages from them: all lost wages, future lost earnings, medical expenses, and pain and suffering. This is part of the law of tort, which is discussed more fully below.

An employee who is injured on the job as a result of the negligence of his employer or a fellow employee is

ordinarily not allowed to sue them for damages. In other words, the employer and fellow employees are immune from damages under the law of tort. Instead, the employee is limited to recovering benefits provided by state statutes. These benefits are called workers' or workmen's compensation benefits. Typically, all medical expenses are paid by the compensation insurer, and an employee who misses work receives additional weekly benefits that approximate a fraction of his average weekly wage, usually either $\frac{2}{3}$ or $\frac{3}{4}$. He does not receive any damages for pain and suffering.

In return, the employee is not required to show that his injury was caused by the negligence of another. He is entitled to workers' compensation benefits simply by showing he was injured on the job, regardless of whether the accident was anyone's fault.

It is possible to have both legal remedies (tort and workers' compensation) apply to an accidental injury. For example, a grounds crew member may be seriously injured by the equipment he was operating. Because the injury occurred on the job, he would be entitled to workers' compensation benefits. However, he could not recover general damages from his employer, the club, or from any fellow employees



An accident waiting to happen.

because of the tort immunity provided by workers' compensation laws.

On the other hand, if the equipment was defective, it is possible that the injured worker might recover damages from the manufacturer of the equipment. If he were able to show that the equipment was defective by reason of poor design or manufacture and that this defect was a cause of the accident, then he could recover damages from the manufacturer under tort law. This kind of tort is called **product liability**. It is discussed in more detail below in the context of chemical damage to the golf course.

Every employer is required by law to carry workers' compensation insurance in order to enjoy immunity from tort. If the workers' compensation insurer paid any medical bills in the above example and/or furnished weekly benefits, it would be entitled to intervene in

the tort action and to be reimbursed in preference and priority out of any proceeds recovered by the worker against the third party equipment manufacturer.

Liability to Non-Employees: The Law of Tort

Golfers and others on the course who are not employees of the club or course are not entitled to workers' compensation if they are injured. They are allowed to sue for damages if they can show that their injury was caused by the negligence of another. Theoretically, therefore, a golfer who hits a shot that injures another golfer may be liable for the injury and all damages associated with it.

Fortunately, the courts have generally recognized that hitting an errant golf shot does not constitute civil negligence

because an occasional bad shot is an inherent part of the game [e.g., *Baker v. Thibodeaux*, 477 So. 2d 245 (La. App. 4th Cir. 1985)]. However, one court has held that an adult golfer was liable for striking a nine-year-old child in the eye, blinding him, even though the child had consented to allow the adult golfer to play through but had remained only slightly out of the way. The court theorized that the adult was negligent in not making the child move to a safer place out of the zone of danger [*Outlaw v. Bituminous Insurance Co.*, 357 So. 2d 1350 (La. App. 1st Cir. 1978)]. Interestingly, some courts have suggested that the golfer who fails to yell "fore" after observing his ball approaching another golfer may well find himself on the wrong end of a lawsuit for his negligence in failing to warn a fellow competitor, not for hitting the poor shot in the first place.

Injuries caused by a member of the maintenance crew, rather than another golfer, fall under the same rule. In fact, under the tort law of most states, an employer is automatically liable in damages for any negligence of an employee who injures a non-employee if the conduct in question arises during the course and scope of the employment. Thus, any golfer injured on the course by a member of the grounds crew or other employees of the club may recover damages from the club if he can show that the employee was guilty of negligence that caused the injury.

At the same time, the law also recognizes that, with respect to certain activities, people assume the risk of being injured because of dangers associated with the activity. For example, baseball spectators are generally not allowed to recover for injuries when struck by a foul ball because that is part of the risk they assume in attending a baseball game.

So it is with golf. Errant shots occur even among the best golfers in the world. No one would play the game if he were liable for any injury he might cause because his ball went in an unexpected direction.

In legal terms, the **assumption of risk** is a complete defense to an action for damages because of negligence. Simply put, every golfer is considered to have assumed the risk of being injured by a poorly executed golf shot when he steps onto the course. At the same time, assumption of the risk does not apply to all situations: One may assume the risk that other golfers may strike errant shots, but that does not mean he assumes the risk that other golfers may fail to warn of the shot or fail to wait until the group ahead is past the intended landing area.

By way of further illustration, one may assume the risk of being struck by a golf ball on the course, but he does not assume the risk of being struck by a limb falling from a tree being trimmed by the maintenance crew. If the crew is negligent in not warning golfers that they are trimming overhead, they — and the club that employs them — may be liable in damages for any injury they cause.

Tort liability for injuries caused by a defect in property is generally called **premises liability**. Simply put, anyone who owns or controls property has a duty to keep the property free of hidden dangers that may injure those who come on the property. It is difficult to generalize very much in this area, as the rules vary substantially from state to

state. The rule that applies in a given situation depends on the kind of defective condition that is involved, whether the person injured was lawfully on the premises, and other factors. In some states, liability is strict; the injured person need only prove that the defective condition existed without showing that it was caused by the owner's negligence. In fact, the owner may not even have been aware of the condition. That will not exonerate him if strict liability applies.

Golf clubs and courses face a special problem in this area because the footwear worn by golfers, while ideal for the golf course, can be dangerous on other surfaces. Simply put, spiked shoes provide little traction on concrete and may cause slips and falls. On carpets and rugs, spiked shoes may produce tears and may cause trips and falls. Either situation raises potential liability for the premises owner [e.g., *Beauchamp v. Los Gatos Golf Course*, 273 Cal. App. 2d 20, 77 Cal. Rptr. 914 (1969)].

There are frequent references in the cases on premises liability to what is called an **attractive nuisance**. This term refers to a dangerous condition that has an appearance that is inviting and may lure passersby to danger. The term originated in swimming pool cases where the owner of a back yard swimming pool failed to erect a fence or other barrier to prevent curious children from being lured to the pool and exposed to the danger of drowning.

Obviously, an analogy can be made to the ponds that exist on many golf courses. While it is not practical to fence in water hazards, clubs should have rules preventing any swimming in the water hazards by the members or their children and further should post warning signs against trespassing at any point on the course's boundary where it is suspected that children or other intruders gain entry. Such measures may prevent a tragic accident. Even if they do not, they may exonerate the course or club from civil liability in the event of a suit by showing that all reasonable steps are taken to prevent the accident.

The rules on premises liability have obvious consequences for golf course operators. Two common problems involve joggers and golf carts.

Some courses permit joggers, some tolerate them, and some outlaw them altogether. One case in particular illustrates the potential problems that can result when someone jogs along the golf course.

In 1981, a club in New Orleans had a rule that allowed members to jog on the golf course, but only after dark so they would not interfere with the golfers. One member of the club, who lived next to the course, liked to take advantage of this. One night he fell into an open drain while jogging. Although he was aware of the drain because of his familiarity with the course, he usually identified it by tall grass that surrounded it, forming a natural barrier of sorts. For some reason, the tall grass had been cut, and the jogger failed to recognize the drain hole.

Although there were few objective medical findings to speak of, the jogger filed suit against the club and its insurer. Despite the fact that he unquestionably knew about the hole (he had even complained to club personnel prior to the accident that it had no cover), a jury found in his favor and awarded him \$830,000. On appeal, the award was reduced to \$693,500 for reasons not relevant here [*Fritscher v. Chateau Golf & Country Club*, 453 So. 2d 964 (La. App. 5th Cir. 1984)].

In its ruling, the Court of Appeal affirmed the trial court's refusal to allow the assumption of the risk defense urged by the club, finding that the jogger's familiarity with the hazard did not even justify submitting the issue to the jury! The moral of this story: Any work on the golf course that is hazardous when left unattended should be prominently marked and roped off or barricaded if at all possible. The plastic mesh or netting that is available in bright colors is ideally suited for this purpose.

Similar horror stories exist with respect to accidents involving golf carts on the course. In fact, the great bulk of litigation against golf courses and clubs for personal injuries arises from accidents involving golf carts [see generally *Annot., Liability for Injury Incurred in Operation of Power Golf Cart*, 66 A.L.R. 4th 622 (1988)]. Essentially, golf course owners and operators can be liable for injuries to a patron or member arising from the operation of a golf cart if improper maintenance of the cart, a cart path, or any other condition caused or contributed to the accident [e.g., *Ryan v. Mill River Country Club*, 8 Conn. App. 1, 510 A.2d 462 (1986), steep slope unreasonably dangerous in absence of guardrails or warning signs; *Goodwin v. Woodbridge Country Club*, 170 Conn. 191, 365 A.2d 1158 (1976), golfer recovers for injuries caused by improperly maintained golf cart]. In some jurisdictions, a golf cart



High-voltage hazards should be secured.

has even been held to be a “dangerous instrumentality,” and a club or course renting a cart is liable for its misuse by anyone operating it with the consent of the owner [e.g., *Meister v. Fisher*, 462 So. 2d 1061 (Fla. 1985)]. This effectively makes the club or course the liability insurer of each cart renter! A club or course also has a duty to warn its golf cart passengers of any dangerous condition they are likely to encounter, and it may be liable for injuries sustained as a result of its failure to warn [e.g., *McRoy v. Riverlake Country Club*, 426 S.W.2d 299 (Tex. Civ. App. 1968), tree stump].

These and other cases make it clear that a course operator has an obligation to maintain its cart paths free of defects and to mark all potentially dangerous conditions with prominent warning signs. Moreover, a club operator who

rents golf carts has an obligation to make certain that each one is properly maintained and functions in a way that does not endanger the occupants. This includes a duty to provide proper instructions to renters in the safe manner of operating a cart.

Liability for Chemical Damage

Every superintendent’s nightmare is to apply a chemical that causes unanticipated damage to the golf course. Anyone who has been a golf course superintendent for very long has had a problem with chemical damage to his course at one time or another. If he is lucky, the damage is neither great nor permanent. If he is not, he is often not around long enough to find out how the damage occurred.

As noted above, there is a branch of tort law called **product liability**. Anyone who makes a product is liable for any damage caused by a defect in that product when the product is used in a normal or foreseeable manner [*Restatement of Torts (2d) S402A*]. A defect is any flaw in design or manufacture that renders the product unreasonably dangerous when in normal or foreseeable use. The danger might be associated with a personal injury, as with the example of the worker injured by defective equipment. The damage might also be property damage, such as the destruction of golf course turf caused by a defective chemical product.

As a practical matter, it is important to understand that the mere fact that a chemical is associated with damage does not mean that the manufacturer of the chemical is liable. A course operator



Protection must be provided for the crew too.

who experiences damage to his course from the application of a chemical bears the burden to prove that the chemical caused the damage. It will likely be the chemical company's first line of defense to show that the damage that occurred was not caused by its product but rather was a result of other environmental stresses or misapplication.

This invites a comment about problems of proof. Just because something is true does not mean it is self-proving in a court of law. The rules of evidence determine how claims are to be proven. Ordinarily, witnesses are only allowed to testify about what they have seen or experienced personally. They are not allowed to offer opinions. An exception to this is the **expert witness rule**. The rules allow an individual who is an

expert in a particular field by virtue of this education and/or experience to offer expert opinions about a subject if doing so will help explain matters pertinent to the case [*Fed. R. Evid. 701-03*].

In order to prove the cause of turf-grass damage, expert opinion is often necessary. A superintendent himself may be qualified to offer that testimony, depending on his own education, training, and work experience. Often, the club's attorneys may want to bring in a well-recognized expert in the field to evaluate conditions and to offer his own independent opinion.

It is important not to neglect this aspect of the case. It is reasonably certain that the chemical company will have an expert who can be expected to testify that, based on his inspection of

the problem, some local condition, other cause, or product misuse was responsible for killing the greens. Thus, it is vital that the club have an expert who can show that the chemical caused the damage.

In addition, the club must show that it used the product in its normal or foreseeable manner. This is called **label compliance**, and it is the second line of defense for the chemical company, which may claim that the club misused or misapplied the product. Simply put, the club must show that the product was used in accordance with the directions that came with it, which in most cases is required to be on the label of the container holding the product.

This is simply a question of fact. To avoid application problems, only the superintendent or his assistant should mix or dilute chemicals. Leaving the mixing to an inexperienced worker invites problems. A log should be kept showing what was done — how the chemical was mixed or diluted. Another worker should witness the mixing or dilution, and both the mixer and the witness should date and sign the log. This provides persuasive evidence as to what was done in applying the chemical. In the event of problems, the log is a convenient record identifying individuals who will provide testimony regarding the application of the chemical. It is also important that the container, with a small amount of the chemical sufficient for later testing, be kept until it is certain that no damage occurred from application.

This kind of record has another important purpose. It documents what the superintendent has done — and can exonerate him when an irate Green Committee Chairman wants to know why he poisoned the greens.

Obviously, this essay can provide only an overview of the various legal issues that may confront golf course operations. The particular facts of each situation are critical. It is important, therefore, not to assume that a given situation will be controlled by the various rules discussed here. Additionally, the rules vary from state to state. For that reason, specific questions should be directed to an attorney in the club's jurisdiction.

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