

Hosel rockets: When sport becomes tort | Michael Cochrane

By **Michael Cochrane**

Law360 Canada (February 27, 2025, 11:24 AM EST) -- The United Kingdom's St. Augustine's Links describes itself as Kent's most welcoming golf course. I'm not sure Mr. Castle felt that way as he drove his taxi alongside the 13th hole in 1922, especially when an errant golf ball smashed through his windshield, blinding him in one eye. Was the ball one of the then popular \$12 a dozen "C" Colonel's advertised as "leaves the club with a click and a delightful feeling"? We know not. What we do know is that, while the course felt bad, they explained those types of errant shots happened all the time, especially — ahem — on the 13th hole. Castle sued.



Michael Cochrane

On August 2, 1902, Louisa De Agramonte was out for a stroll in the City of Mount Vernon, New York. The Italian Society was holding a celebration in a local park with some 3,000 citizens turning out for fireworks. It had been a pleasant evening, that is until poor Louisa was struck in the face by a missile, a piece of misfired pipe from the fireworks. The organizers and the City threw up their hands, the fireworks display was completely legal and authorized by the city. They had a permit after all! Louisa sued.

Thirty years later, in 1933, Ms. Gleason was out on a date, taking a drive with a gentleman friend. As they motored along the New York turnpike beside the Hillcrest Golf Club, a golf ball suddenly smashed through the windshield, shattering the glass and injuring her eye. Again, the club was apologetic but, after all, golf balls, even when struck by experienced golfers, sometimes have a mind of their own! She sued.

The Victoria Golf Club in Victoria, B.C. claims to be the oldest 18-hole golf course in Canada and the second oldest in its original location. Notwithstanding that longevity, in 1923 it decided to change the layout of the course to avoid golfers having to tee off — on two holes no less — over the increasingly busy Beach Drive.

And yet, 100 years later Evelyn Mohr was enjoying a drive along that very same Beach Drive, minding her own business, windows down and the wind in her hair. Little did she know that Kane Wyatt was about to tee off and drive a ball into her face, leaving her with injuries to her eye, cheek, forehead, cuts to her face, a concussion and neck problems, among other complaints. She sued the club and also Mr. Wyatt for his allegedly negligent swing.

An injury to the head and especially the eyes is the most frequent consequence of errant golf balls. "Global rupture" and "complications from blunt ocular trauma without rupture" are terms that induce more than a little stomach churning not to mention wincing. Golf balls, just like that piece of pipe that hit poor Louisa, are veritable missiles travelling at over 200 kilometres an hour. Injuries are serious and often permanent.

But is there liability to these innocent passersby?

There is a distinction to be made between a private and a public nuisance. Golf balls landing on private property adjacent to a golf course or a driving range are creating a private nuisance. People using roadways or public property adjacent to them are experiencing a public nuisance if there are incoming golf balls.

Private nuisance draws in a number of considerations, including frequency of the errant balls. A few here or there may not be a nuisance, especially if the homeowner knew what they were getting into buying a home on a course. But no one consents to hundreds of golf balls coming into their yard. That is a nuisance. The duty of the course to its neighbours includes some context. It is not just what activity is going on, it's what activity is going on given your neighbours. Numerous cases have resulted in injunctions and directions to change the course design, erect fences and compensate neighbours.

Public nuisance is different. One ball or 100 balls, the course has a duty to ensure that people passing by are not endangered by errant golf shots perhaps facilitated by the course setup. Certainly the more the errant balls the more likely a court is going to find that the course has been set up in such a way as to create the danger to the public.

And what of Mr. Wyatt and his allegedly negligent golf swing? If he had hit another golfer on the course during regular play there would not be liability. Golfers accept the risk of such possibilities when they come onto a course. Not so for the innocent public passing by. They have not accepted any risk and the club and golfer have a duty to take reasonable steps to not endanger them.

Where does that leave the blinded taxi driver, Mr. Castle, Louisa and the missile strike while out for an evening stroll, the unfortunate Ms. Gleason injured on her date, and Ms. Mohr hoping to enjoy a breeze from the beach while driving and ending up with a long list of painful injuries? Compensated for their injuries of course.

That's what happens when sport becomes tort.

This is the fifth part of a series: Part one: Hosel rockets: Dispatches from the pettifogging lawyer. Part two: Hosel rockets: The case of nuisance and Benny the Cat. Part three: Hosel rockets: Time to drop the glove(s)? Part four: Hosel rockets: What are the odds?

Michael Cochrane is a Toronto lawyer and the author of Olympic Lyon: The Untold Story of the First Gold Medal for Golf about Canadian George Lyon's victory at the 1904 Summer Olympics. He is a member of the Golf Journalists Association of Canada, the Golf Historical Society of Canada and an avid golfer. See his other writings at michaelcochrane.ca.

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