

---

---

OUT OF THE ROUGH: HOW THE PGA TOUR CAN BE HELD  
ACCOUNTABLE FOR FAN SAFETY

RANDY GERLACH\*

*Golf is a sport that can trace its roots back to the 1400s and is famed for its rules. In the legal system, however, it is the “baseball rule” that governs over golf-related injuries. This rule, originally applied to professional baseball, limits the liability for sporting venues as long as they offer some protected seats. As golf has risen in popularity, so have the number of fans at PGA Tour events. Coupled with less accurate players, and balls traveling faster than ever, injuries to fans have become increasingly common. Despite states moving away from assumption of risk tort schemes, the baseball rule has remained, serving as a narrow doctrine that lowers the burden of care required by stadiums and sporting venues. Conversely, businesses in the United States operate under the concept of premises liability—specifically, a business inviter-invitee relationship. This requires a business owner to undertake reasonable care or keep the premises reasonably safe. This Note argues that professional baseball and professional golf are too different for the baseball rule to be applied properly to golf. With no central playing field in golf, for instance, the golf playing surface is nearly endless. Instead, the PGA Tour should be held to the business inviter duty of care. Protecting fans will not only grow the game of golf but improve the experience for everyone.*

TABLE OF CONTENTS

I.	INTRODUCTION .....	230
II.	BACKGROUND.....	231
	A. <i>The Baseball Rule</i> .....	232
	1. <i>The Beginnings of the Baseball Rule</i> .....	232
	2. <i>The Baseball Rule Today</i> .....	233
	B. <i>The Baseball Rule in Other Sports</i> .....	237
	C. <i>The Rise of Golf-Related Injuries</i> .....	238
	D. <i>Premises Liability</i> .....	241
	1. <i>The History and Evolution of the Law</i> .....	241
	2. <i>Premises Liability and Businesses</i> .....	243

---

\* J.D. Candidate, 2021, University of Illinois College of Law; B.S., Florida State University. Thank you to the editors, members, and staff of the *University of Illinois Law Review* for all of your work on this Note. Tessa, thank you for believing in me even when I didn't believe in myself. I couldn't have done this without you. To my sisters and family, thank you for your never-ending support. Finally, to my parents, I will never be able to thank you enough for all the sacrifices you've made for me and for your constant love and encouragement.

III. ANALYSIS .....	245
A. <i>The Baseball Rule in Other Sports</i> .....	246
B. <i>The Game of Golf</i> .....	247
C. <i>The Reasonableness Standard and the Business Inviter Duty</i> .....	252
IV. RECOMMENDATION .....	255
A. <i>Benefits of the Business Inviter Duty of Care</i> .....	255
B. <i>Counterarguments and Potential Drawbacks</i> .....	258
V. CONCLUSION.....	259

## I. INTRODUCTION

“I’ve hit an old person, all the way down to a 1-year old . . . I hit a kid in the head . . . [h]e was bloody. It was bad.”<sup>1</sup> At first glance, this sounds like a quote from a boxer or a mixed martial arts fighter. This is actually a quote from former world number one golfer Jason Day.<sup>2</sup> Golf isn’t known for being a bloody or violent sport, but stories like this have become increasingly common when discussing PGA Tour (“Tour”) events.<sup>3</sup> Adding insult to injury, these fans are often left on their own, unable to recover damages from the Tour due to the “baseball rule”<sup>4</sup>—a rule that limits the liability of sporting venues if they simply provide some protected seats.<sup>5</sup>

While the history of golf is much disputed,<sup>6</sup> the game as we know it today developed in Scotland in the 1400s.<sup>7</sup> It wasn’t until 1764 that the first eighteen-hole course was created, the famed Old Course at St. Andrews.<sup>8</sup> Beginning as an activity for “[g]entlemen,”<sup>9</sup> the sport has soared in popularity and become one of the most played sports in the world.<sup>10</sup> An increased interest in the game has led to an increase in spectators at PGA tournaments.<sup>11</sup> Unfortunately, the increased

1. Brian Wacker, *Fore! Beware the Wayward Golf Ball*, GOLF DIG.: GOLFWORLD (Oct. 10, 2017), <https://www.golfdigest.com/story/fore-beware-the-wayward-golf-ball-pros-hitting-spectators> [https://perma.cc/9KQ4-3PKV].

2. *Id.*

3. See Pat Ralph, *What Happens After ‘Fore’? Injured Fans Face Legal Hurdles in Golf-Ball Lawsuits*, GOLF (Oct. 9, 2018), <https://www.golf.com/travel/news/tournaments/spectators-legal-hit-golf-ball/> [https://perma.cc/X9KM-TPBH]; Wacker, *supra* note 1 (“‘Everyone thinks we’re going to hit it straight all the time,’ Perez said. ‘We don’t.’”).

4. Ralph, *supra* note 3.

5. *Friedman v. Hous. Sports Ass’n*, 731 S.W.2d 572, 574 (Tex. App. 1987).

6. Fergus Bisset, *What is the Oldest Golf Club in the World?*, GOLF MONTHLY (Feb. 17, 2015, 1:25 PM), <https://www.golf-monthly.co.uk/features/the-game/what-is-the-oldest-golf-club-in-the-world-66398> [https://perma.cc/93H6-WBXS].

7. *History of Golf in St. Andrews*, OLD COURSE HOTEL, <https://www.oldcoursehotel.co.uk/golf/golf-in-st-andrews/history-of-golf-in-st-andrews> (last visited Nov. 6, 2020) [https://perma.cc/WF4Q-TGY Y].

8. *Id.*

9. Bisset, *supra* note 6.

10. Benjamin Elisha Sawe, *The Most Popular Sports in the World*, WORLD ATLAS (Apr. 5, 2018), <https://www.worldatlas.com/articles/what-are-the-most-popular-sports-in-the-world.html> [https://perma.cc/LV47-PEZU].

11. John Davis, *Waste Management Phoenix Open Attendance Numbers Will No Longer Be Announced*, AZ CENT. (Jan. 30, 2019, 12:36 PM), <https://www.azcentral.com/story/sports/golf/phenix-open/2019/>

popularity has led to a rise in the number of tragedies.<sup>12</sup> With more spectators,<sup>13</sup> and with balls going farther and faster than ever,<sup>14</sup> it is time for courts to move away from the baseball rule when it comes to analyzing golf course injuries.

This Note argues that courts should no longer apply the baseball rule to professional golf because the two games are too different for the rule to function correctly. Part II of this Note discusses the history of the baseball rule and compares how courts have applied the rule to baseball and other professional sporting venues. It will also discuss some of the recent golf-related injuries and how a change in golf course strategy,<sup>15</sup> along with new technology<sup>16</sup> and course setup,<sup>17</sup> have led to an increased number of injuries at PGA Tour events.

Part III looks at the significant differences between golf and other sports that make the baseball rule impossible to apply. It then discusses why injuries at tournaments have become such an issue. Finally, it analyzes the reasonable duty of care that venues owe spectators under both the baseball rule and the typical business inviter-invitee relationship. Part IV recommends that the business inviter-invitee duty of care should be applied to golf in order to better and more efficiently protect fans.

## II. BACKGROUND

In the beginning of the 20th century, courts consistently sided with plaintiffs who were injured at sporting events.<sup>18</sup> That changed when the baseball rule was introduced in the middle of the century.<sup>19</sup> Cases became one-sided and sporting venues were consistently found not liable.<sup>20</sup> This Part will discuss the shift in how courts have looked at injuries to fans, different variations of the baseball rule, and how courts have applied the baseball rule to different sports. Additionally, this Part will review the history of premises liability and how courts have applied the duty of care in the business inviter-invitee relationship. It will conclude with a look at recent injuries at PGA Tour events and why there has been a rise in the number of serious injuries reported.

---

01/30/waste-management-phoenix-open-attendance-numbers-no-longer-announced/2723260002/ [https://perma.cc/RR5A-Z8UP].

12. See Wacker, *supra* note 1.

13. See Davis, *supra* note 11; Sawe, *supra* note 10.

14. Brian Costa, *In Golf's 'Bomb and Gouge' Era, the Fairway Is an Afterthought*, WALL ST. J.: SPORTS (May 18, 2018, 7:00 AM), <https://www.wsj.com/articles/in-golfs-bomb-and-gouge-era-the-fairway-is-an-afterthought-1526641200> [https://perma.cc/HVL3-3THF].

15. *Id.*

16. Josh Sens, *Circuit Act: Callaway's New Hotshot Club Designer Is a Supercomputer*, GOLF (May 31, 2019), <https://www.golf.com/gear/drivers/callaway-supercomputer-epic-flash-driver/> [https://perma.cc/8K3U-9JKY].

17. U.S. GOLF ASS'N & R&A, DISTANCE INSIGHTS REP. 66-67 (2020), <https://www.usga.org/content/dam/usga/pdf/2020/distance-insights/DIPR-FINAL-2020-usga.pdf> [https://perma.cc/7WUS-8LWS] [hereinafter USGA & R&A].

18. See Leigh Augustine, *Who Is Responsible When Spectators Are Injured While Attending Professional Sporting Events?*, 5 U. DENVER SPORTS & ENT. L.J. 39, 41 (2008).

19. *Id.* at 42-43.

20. *Id.*

### A. *The Baseball Rule*

“The duty imposed by law is performed when screened seats are provided for as many as may be reasonably expected to call for them on any ordinary occasion.”<sup>21</sup> While varying slightly in each jurisdiction, the essence of the baseball rule remains the same.<sup>22</sup> The baseball rule has allowed sporting venues to provide a limited number of protected seats and remain protected from claims by injured fans.<sup>23</sup>

#### 1. *The Beginnings of the Baseball Rule*

Unlike today, earlier courts routinely held for fans rather than stadiums.<sup>24</sup> Courts used to apply rules similar to those applied in typical business inviter-invitee relationships.<sup>25</sup> This forced sporting venues to provide a reasonable duty of care and warn invitees of dangers that weren’t obvious.<sup>26</sup> One of the earliest cases involving the baseball rule was *Crane v. Kansas City Baseball Exhibition Co.* in 1913.<sup>27</sup> In this case, the stadium offered general admission seating both behind netting and without netting.<sup>28</sup> The plaintiff sat in the exposed seating and was injured by a foul ball.<sup>29</sup> He claimed that the stadium was negligent to not screen the entire stadium.<sup>30</sup> The court held for the stadium, stating “[b]aseball is our national game . . . and dangers incident thereto are common knowledge.”<sup>31</sup> It added that stadiums are “not insurers of the safety of spectators” but are “bound to exercise reasonable care” to protect patrons from injury.<sup>32</sup> The stadium met this duty when it offered screened seats in the stands and allowed the plaintiff “the opportunity of occupying one.”<sup>33</sup>

In another early application of the rule, the court in *Wells v. Minneapolis Baseball & Athletics Association* denied recovery for a woman who was hit with a ball that broke her collarbone.<sup>34</sup> She argued the stadium was negligent because it provided some screening but failed to provide enough to protect fans from the

---

21. *Quinn v. Recreation Park Ass'n*, 46 P.2d 144, 146 (Cal. 1935).

22. *Moulas v. PBC Prods.*, 570 N.W.2d 739, 744 (Wis. Ct. App. 1997); *Crane v. Kan. City Baseball & Exhibition Co.*, 153 S.W. 1076, 1077–78 (Mo. Ct. App. 1913).

23. *Quinn*, 46 P.2d at 146.

24. Augustine, *supra* note 18, at 41.

25. *Id.* at 41–42.

26. *Id.* at 41.

27. *Crane*, 153 S.W. at 1077–78.

28. *Id.* at 1077.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Wells v. Minneapolis Baseball & Athletic Ass'n*, 142 N.W. 706, 707 (Minn. 1913).

dangers of the game.<sup>35</sup> The court acknowledged that not everyone has the sufficient knowledge of the sport of baseball to understand the risk of batted balls.<sup>36</sup> Nonetheless, it held that “management cannot be held negligent when it provides a choice between a screened-in and an open seat, the screen being reasonably sufficient as to extent and substance.”<sup>37</sup> Perhaps just as consequential as the end result in this case, the court acknowledged the higher duty typically owed when a business holds itself open to members of the public.<sup>38</sup> It then, however, proceeded to lower the duty owed by a stadium after it discussed the dangers that may arise from a baseball game.<sup>39</sup> This limited duty is applicable because despite the risks of the game, these risks are not so high and so certain to occur as to require screening around all the seats.<sup>40</sup>

Finally, in 1935, the California court in *Quinn v. Recreation Park Association* ruled against a fourteen-year-old, essentially, because she was “interested in professional baseball.”<sup>41</sup> The court laid out the basic structure of the baseball rule, explaining that the duty was met by the stadium when they offered enough protected seats as could be “reasonably expected” to be needed.<sup>42</sup> Additionally, the court acknowledged that many fans prefer to sit in unprotected seats so they can have a better view and, therefore, the stadium should not be obligated to screen the entire field.<sup>43</sup> But the court never discussed what a reasonable number of protected seats should be or the possibility that the protected seats may be taken.<sup>44</sup> Instead, the court relied solely on the fact that the plaintiff was a fan of baseball and therefore had “full knowledge . . . of the risks she was assuming.”<sup>45</sup> The reliance on assumption of risk, a doctrine many states have abolished or use only as a helpful guide,<sup>46</sup> means a fan’s knowledge needs to be analyzed every time to determine if he or she is able to know and assume the risks.<sup>47</sup>

## 2. *The Baseball Rule Today*

Originally the baseball rule functioned as a bright-line rule, establishing a reasonable standard of care for baseball stadiums.<sup>48</sup> The rule focused on weighing the competing interests of providing enough seats in a safe environment for

---

35. *Id.*

36. *Id.* at 708 (“But we do not think that all who attend baseball games would, or should, enter such a stipulation. Only those who have been struck with a baseball realize its hardness, swiftness, and dangerous force.”).

37. *Id.*

38. *Id.* at 707–08.

39. *Id.* at 708.

40. *Id.*

41. *Quinn v. Recreation Park Ass’n*, 46 P.2d 144, 146 (Cal. 1935).

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.* at 147.

46. RICHARD E. KAYE, 1 *COMPARATIVE NEGLIGENCE LAW & PRACTICE* § 4.30 (Matthew Bender ed. 2020).

47. *See id.*

48. Nathaniel Grow & Zachary Fligel, *The Faulty Law and Economics of the “Baseball Rule”*, 60 WM. & MARY L. REV. 59, 81 (2018).

fans who want to be protected from dangers and having seats available for fans who want unobstructed views.<sup>49</sup> Today, it has become a narrow doctrine that lowers the burden of care required by professional stadiums to provide safety for fans.<sup>50</sup>

While the doctrine of assumption of risk has fallen out of favor in many states,<sup>51</sup> the baseball rule has survived, evolving in states that no longer recognize the assumption of risk doctrine.<sup>52</sup> This “limited” duty given to stadiums has continued based on the view that not all fans want to sit behind screens.<sup>53</sup> Some jurisdictions, however, have recognized the need to increase that duty while still not equating it to a typical duty of care.<sup>54</sup> “Aside from shifts in tort law, advances in the game and the business of baseball have also been significant factors contributing to court modification of the traditional baseball rule.”<sup>55</sup> But even with this shift, courts are still giving incredible discretion to stadiums and routinely holding for defendants.<sup>56</sup>

In *Neinstein v. L.A. Dodgers*, for instance, the court held for the Los Angeles Dodgers because the plaintiff “impliedly consented” to the dangers of being hit with a ball by choosing to sit in an unprotected area.<sup>57</sup> The California court explained the theory of comparative negligence, and the state’s adoption of the doctrine, but then proceeded to claim the doctrine did not apply in the current case.<sup>58</sup> “It is neither negligent nor blameworthy to attend a ball game . . . . In short[,] the doctrine of comparative fault is not applicable under these circumstances . . . .”<sup>59</sup> Thus, the court held the plaintiff did nothing negligent and yet still affirmed the defendant’s motion for summary judgment.<sup>60</sup> The two reasons behind the decision were: (1) the fear that netting the entire field would possibly change the game of baseball; and (2) the potential cost of holding the stadium liable which could lead to higher ticket prices.<sup>61</sup> The court worried that “plac[ing] all spectator areas behind a protective screen” would “reduc[e] the quality of everyone’s view, and since players are often able to reach into the spectator area[,] . . . chang[e] the very nature of the game itself.”<sup>62</sup> Additionally, if the field was not screened, ticket costs would rise “to cover the cost of compensating injured persons” and people “might be ‘priced out’ of enjoying the great American

---

49. *Id.*

50. *Id.*

51. Matthew J. Ludden, *Take Me Out to the Ball Game . . . but Bring a Helmet: Reforming the “Baseball Rule” in Light of Recent Fan Injuries at Baseball Stadiums*, 24 MARQ. SPORTS L. REV. 123, 128 (2013).

52. *Id.* at 129.

53. *Edward C. v. City of Albuquerque*, 241 P.3d 1086, 1093 (N.M. 2010) (citing *Wells v. Minneapolis Baseball & Athletic Ass’n*, 142 N.W. 706, 707–08 (Minn. 1913)).

54. *Id.*

55. *Id.* at 1094.

56. *See generally* *Neinstein v. L.A. Dodgers*, 229 Cal. Rptr. 612 (Cal. Ct. App. 1986); *Friedman v. Hous. Sports Ass’n*, 731 S.W.2d 572 (Tex. Ct. App. 1987).

57. *Neinstein*, 229 Cal. Rptr. at 616.

58. *Id.* at 614–16.

59. *Id.* at 616.

60. *Id.* at 616.

61. *Id.* at 614.

62. *Id.*

pastime.”<sup>63</sup> With these fears in mind, courts routinely further the idea that stadiums should not be liable when risks are inherent to the game.<sup>64</sup>

Doubling down on this theory, the court in *Benejam v. Detroit Tigers* undertook an extensive analysis of cases in other jurisdictions before deciding that “an owner of a baseball field is not an insurer of the safety of its spectators.”<sup>65</sup> The court overturned a jury’s decision in favor of a minor who was hit by a bat while seated down the third base line.<sup>66</sup> The court stressed the value of unprotected seats, repeatedly mentioning that these are more coveted and allow access to the game in an “intimate” way.<sup>67</sup> The plaintiffs argued business invitee principles should be applied rather than a special baseball rule.<sup>68</sup> This would require the stadium to provide “reasonably safe premises.”<sup>69</sup> Worried about the “unreasonable” precautions this doctrine would require, the court declined to apply the inviter-invitee duty of care.<sup>70</sup> Moreover, the court commented that a possible increase in litigation could “signal the demise or substantial alteration of the game of baseball . . . .”<sup>71</sup>

Despite the move away from assumption of risk, when analyzing spectator injuries, courts still fall into the pattern of relying on the doctrine.<sup>72</sup> Although not legally binding,<sup>73</sup> this has allowed courts to justify siding with stadiums despite no wrongdoing by the injured plaintiffs.<sup>74</sup> But not all courts have followed the masses and chosen to adopt the baseball rule.<sup>75</sup>

The court in *Rountree v. Boise Baseball LLC* went against the majority and declined to adopt the baseball rule.<sup>76</sup> Plaintiff was a season-ticket holder of the minor league baseball team, the Boise Hawks.<sup>77</sup> He was at the game with his grandchildren when they went to the Executive Club after getting food.<sup>78</sup> When Rountree heard the “roar of the crowd[,]” he turned around and was hit in the face by the ball, causing him to lose his eye.<sup>79</sup> On appeal, the court was asked to

---

63. *Id.*

64. See Augustine, *supra* note 18, at 42–43.

65. *Benejam v. Detroit Tigers*, 635 N.W.2d 219, 222 (Mich. Ct. App. 2001) (quoting *Akins v. Glen Falls City Sch. Dist.*, 424 N.E.2d 531, 532 (1981)).

66. *Id.* at 220.

67. See *id.* at 222 (“Also, there is inherent value in having most seats unprotected by a screen because baseball patrons generally want to be involved with the game in an intimate way and are even hoping that they will come in contact with some projectile from the field . . . .”).

68. *Id.* at 223.

69. *Id.*

70. *Id.*

71. *Id.*

72. Grow & Flagel, *supra* note 48, at 107–08.

73. See *id.* (“[E]ven though courts routinely say that the plaintiff has assumed the risk of his or her injury by electing to sit in an unprotected area of the stadium, this is not actually the case as a strict legal matter.”).

74. *Id.* at 106.

75. *Benejam*, 635 N.W. at 221 (explaining the “overwhelming, if not universal” support for the limited duty baseball rule approach).

76. *Rountree v. Boise Baseball LLC*, 296 P.3d 373, 376 (Idaho 2013).

77. *Id.* at 375.

78. *Id.*

79. *Id.*

adopt the baseball rule in Idaho.<sup>80</sup> The court discussed the rule's lowered duty to stadium owners which lessens the protections offered to fans.<sup>81</sup> It acknowledged the number of jurisdictions that recognize the rule but stated "a 'nose count' of how many jurisdictions endorse a particular rule . . . will not compel this [c]ourt to act similarly."<sup>82</sup> The court focused on the number of injuries at baseball games compared to situations where other limited duty rules have been created, adding there were "no compelling public policy" reasons to adopt the rule in Idaho.<sup>83</sup>

Like Idaho, other states have started to reject the rule as it has become the subject of more criticism.<sup>84</sup> As fan injuries have become increasingly common<sup>85</sup> and covered more in the news,<sup>86</sup> what is considered to be a reasonable amount of protection has become a controversial issue.<sup>87</sup> Despite repeated contentions from courts that field length nets are not suitable options and would change the nature of the game,<sup>88</sup> professional baseball teams have disagreed.<sup>89</sup> In July 2019, the White Sox became the first team in Major League Baseball ("MLB") to install nets running the entire length of the field.<sup>90</sup> But they are not the only team that decided to take a stand.<sup>91</sup> In December 2019, MLB commissioner, Rob Manfred, announced that all thirty teams would be extending the netting in the 2020 season.<sup>92</sup> Manfred added "[t]here was no rule passed or anything like that" but that the teams agreed to do it for the safety of their fans.<sup>93</sup> While courts have expanded the baseball rule into other sports, MLB teams have determined fan safety is more important than inconveniencing fans' view with a net.<sup>94</sup>

---

80. *Id.*

81. *Id.* at 377.

82. *Id.* at 378 (quoting *Winn v. Frasher*, 777 P.2d 722, 724 (Idaho 1989)).

83. *Id.* at 378–79.

84. *See Payne v. Off. of the Comm'r of Baseball*, No. 15-CV-03229-YGR, 2016 U.S. Dist. LEXIS 159575, at \*19 n.6 (N.D. Cal. Nov. 16, 2016).

85. Grow & Flagel, *supra* note 48, at 62–63.

86. *Fan Hit in the Head by Baseball During Dodgers' Game*, NBC L.A. (June 23, 2019, 1:21 PM), <https://www.nbclosangeles.com/news/local/fan-hit-by-baseball-during-dodgers-game/149052> [<https://perma.cc/2R94-DFFE>]; Mark Gonzales & Tim Bannon, *2-Year-Old Girl Hit by Albert Almora Jr.'s Foul Ball in Houston Suffered a Skull Fracture, According to Family Attorney*, CHI. TRIB. (June 26, 2019, 5:49 PM), <https://www.chicagotribune.com/sports/cubs/ct-cubs-albert-almora-girl-hit-20190626-uexh4vmrhrhptky7patv2kbwse-story.html> [<https://perma.cc/VJB2-HWCH>].

87. *Payne*, 2016 U.S. Dist. LEXIS 159575, at \*19 n.6.

88. *See* Grow & Flagel, *supra* note 48, at 65–66.

89. *White Sox First Team to Employ Extended Netting*, ESPN (July 22, 2019), [https://www.espn.com/mlb/story/\\_/id/27240576/white-sox-first-team-employ-extended-netting](https://www.espn.com/mlb/story/_/id/27240576/white-sox-first-team-employ-extended-netting) [<https://perma.cc/6GZM-RU2Z>].

90. *Id.*

91. Jabari Young & Elly Cosgrove, *Baseball Commissioner Says All 30 MLB Teams Will Expand Protective Netting for 2020 Season*, CNBC: SPORTS (Dec. 11, 2019, 4:00 PM), <https://www.cnbc.com/2019/12/11/baseball-commissioner-says-all-30-mlb-teams-to-expand-protective-netting.html> [<https://perma.cc/C532-Q44G>].

92. *Id.*

93. *Id.*

94. *White Sox First Team to Employ Extended Netting*, *supra* note 89.



B. *The Baseball Rule in Other Sports*

Although it is termed the baseball rule, courts have not confined the rule to the sport of baseball.<sup>95</sup> The rule has been applied in hockey, golf, and even auto-racing cases.<sup>96</sup> Regardless of the sport and of changes in tort laws, courts have continued to bar spectators from recovering from stadiums and other venues.<sup>97</sup>

In the 1936 case *Shanney v. Boston Madison Square Garden Corporation*,<sup>98</sup> a spectator was hit in the head by a hockey puck that flew off the ice and into the stands.<sup>99</sup> The court looked at the nature of the game of hockey and the fact that the fan was unfamiliar with the sport as reasons why the risk of being hit wasn't "obvious."<sup>100</sup> "She had a right to rely to some extent on the expectation that the defendant would not direct her to a seat in a place of danger."<sup>101</sup> The court added that cases should be decided based on their facts and not based on "names of various games."<sup>102</sup>

In *Schwilm v. Pennsylvania Sports*,<sup>103</sup> the court held that the plaintiff was not a regular attendant at hockey games and thus should have been able to rely on the protections offered by the arena.<sup>104</sup> The court compared this to sitting in a baseball stadium and acknowledged that "we are also not unmindful of the fact that our appellate courts have held that spectators at baseball games assume the risk."<sup>105</sup> With the rise in popularity of professional sports, courts began to favor defendants and protect sporting venues.<sup>106</sup>

In *Thurman v. Ice Palace*,<sup>107</sup> the plaintiff was permitted to go to trial to determine if the rink was negligent for not protecting her from pucks flying off the ice.<sup>108</sup> As in *Shanney*, the court relied on the plaintiff's inexperience with the game of hockey to determine whether she could appreciate and assume the risks of her seat.<sup>109</sup> The court emphasized the differences between hockey and baseball when explaining why she wouldn't have known a puck would leave the ice.<sup>110</sup>

---

95. See generally *Shanney v. Bos. Madison Square Garden Corp.*, 5 N.E.2d 1, 1 (Mass. 1936) (extending baseball rule to injuries at hockey games); *Moulas v. PBC Prods.*, 570 N.W.2d 739, 745 (Wis. Ct. App. 1997).

96. *Grisim v. TapeMark Charity Pro-Am Golf Tournament*, 415 N.W.2d 874, 875–76 (Minn. 1987); James E. Winslow, *Spectator Risks at Sporting Events*, 2 (July 1, 2003) (Master's Paper, Univ. N.C. at Chapel Hill), available at [https://cdr.lib.unc.edu/concern/masters\\_papers/t148fm72m](https://cdr.lib.unc.edu/concern/masters_papers/t148fm72m) [<https://perma.cc/RH3G-MX8F>].

97. *Nemarnik v. L.A. Kings Hockey Club*, 127 Cal. Rptr. 2d 10, 17 (Cal. Ct. App. 2002).

98. *Shanney*, 5 N.E.2d at 1.

99. *Id.*

100. *Id.* at 2.

101. *Id.*

102. *Id.*

103. 84 Pa. D. & C. 603 (C.P. 1952).

104. *Id.* at 605.

105. *Id.*

106. See Augustine, *supra* note 18, at 42–43.

107. 97 P.2d 999 (Cal. Ct. App. 1939).

108. *Id.* at 1000.

109. *Id.* at 1001; *Shanney v. Bos. Madison Square Garden Corp.*, 5 N.E.2d 1, 2 (Mass. 1936).

110. *Thurman*, 97 P.2d at 1001 ("Indeed, the puck is ordinarily batted along the surface of the ice, but in a baseball game the ball is ordinarily batted into the air rather than along the surface of the playing field.").

For these reasons, despite the baseball rule being uniformly applied in baseball cases, the court found it was “inapplicable to ice hockey games.”<sup>111</sup>

Plaintiff Holly Nemarnik was severely injured when she was hit in the face by a puck while attending a Los Angeles Kings game in 1999.<sup>112</sup> During pregame warmups a large crowd formed around the rink, preventing her from seeing and avoiding the puck when it flew into the stands.<sup>113</sup> Despite the plaintiff not conceding the venue had a duty to keep the puck on the ice, the court found there was no causation between the crowd and her inability to dodge the puck.<sup>114</sup> It then moved forward with an analysis of whether the venue had a duty to stop pucks from flying off the ice and determined flying pucks were an “integral” part of the game.<sup>115</sup> The court added that forcing National Hockey League (“NHL”) teams to increase protective netting or raise ticket prices were both unacceptable options.<sup>116</sup> Just months after this case was decided, the NHL required all teams to install more protective netting, a response to the tragic death of Brittanie Cecil who was hit in the head at a Columbus Blue Jackets game.<sup>117</sup>

### C. *The Rise of Golf-Related Injuries*

Injuries at golf tournaments have garnered a lot of media attention in the last few years.<sup>118</sup> Some are not serious and may even be comical,<sup>119</sup> but many of these incidents result in serious harm to the spectator.<sup>120</sup> These injuries may be attributed to the new style of golf that is rewarded today and changes in course structure.<sup>121</sup> Additionally, new technology and equipment, along with improved athleticism, has led to faster ball speeds and increased chances of serious injury when someone is hit.<sup>122</sup>

Corine Remande was on the sixth hole at the 2018 Ryder Cup as Brooks Koepka stepped to the tee.<sup>123</sup> Like many golfers, his shot sliced right and headed towards the crowd.<sup>124</sup> Tragically, the ball hit Remande in the head, resulting in a

---

111. *Id.*

112. *Nemarnik v. L.A. Kings Hockey Club*, 127 Cal. Rptr. 2d 10, 11–12 (Cal. Ct. App. 2002).

113. *Id.* at 12.

114. *Id.* at 16.

115. *Id.*

116. *Id.* at 17.

117. Joe Lapointe, *N.H.L. Arenas to Add Netting to Protect the Fans from Pucks*, N.Y. TIMES: HOCKEY (June 21, 2002), <https://www.nytimes.com/2002/06/21/sports/hockey-nhl-arenas-to-add-netting-to-protect-the-fans-from-pucks.html> [<https://perma.cc/K9KP-KYAS>].

118. *See generally* Ralph, *supra* note 3; Wacker, *supra* note 1.

119. Kyle Porter, *Sergio Garcia Knocks the Diamond Out of a Woman's Ring*, CBS SPORTS (Aug. 3, 2014, 12:37 PM), <https://www.cbssports.com/golf/news/sergio-garcia-knocks-the-diamond-out-of-a-womans-ring/> [<https://perma.cc/WE39-4AUA>].

120. Ralph, *supra* note 3.

121. USGA & R&A, *supra* note 17, at 66–67; Costa, *supra* note 14.

122. USGA & R&A, *supra* note 17, at 35–36; Sens, *supra* note 16.

123. Ralph, *supra* note 3.

124. *Id.*

fractured eye socket and permanent vision loss.<sup>125</sup> Something similar happened to Koepka nearly a year earlier at the PGA Championship.<sup>126</sup> He sent his ball sailing to the right, only to find his ball in the fairway after getting a lucky bounce off a spectator's head.<sup>127</sup> It was a fortunate break for Koepka who went on to finish the round one shot off the lead.<sup>128</sup>

Anyone who has played golf before understands how hard it can be to hit the ball where you want it to go. As one court noted, the game would not be very fun if you could always control where it was going.<sup>129</sup> But many fans do not realize that professionals also struggle to keep the ball in the fairway.<sup>130</sup> Even the world's best driver,<sup>131</sup> Rory McIlroy, said “[y]ou stand up with a driver and you hit it as hard as you can and you hope it's going to go in the fairway.”<sup>132</sup> Fans often assume professionals hit the ball perfectly every time, forgetting that just like they make mistakes at work, a professional golfer may mishit one ball and send it into the crowd.

This is especially prevalent today where an emphasis is put on driving *distance* rather than accuracy.<sup>133</sup> Being accurate off the tee and hitting fairways used to be one of the keys to winning tournaments; today, the biggest advantage is distance.<sup>134</sup> Unlike amateurs who just want to find the fairway when they hit driver, professionals prefer to miss it: “[l]ong and wide off the tee . . . beat[s] short and straight . . .”<sup>135</sup> This strategy is paying off for today's younger players.<sup>136</sup> But it can be dangerous when there are more fans on the course than ever before.<sup>137</sup> Rough, water, trees, and bunkers are all hazards put in place by golf course architects to shape the way a player plays the hole.<sup>138</sup> These hazards are intended to affect golfers both physically and psychologically.<sup>139</sup> Good architects include hazards not just to punish a bad shot but to encourage players as they continue through their round.<sup>140</sup> Despite these hazards, players have a new strategy today: hit it over the hazard and worry about the rough when you get up there.<sup>141</sup> When asked about the “bomb and gauge” style of play, Tony Finau—

---

125. Sean Zak, *Woman Struck by Brooks Koepka Tee Shot Loses Vision in Eye, Plans to Sue Ryder Cup Organizers*, GOLF (Oct. 2, 2018), <https://www.golf.com/travel/2018/10/02/ryder-cup-woman-struck-tee-shot-loses-vision/> [https://perma.cc/KJ7E-W3B4].

126. Wacker, *supra* note 1.

127. *Id.*

128. *Id.*

129. *See Shin v. Ahn*, 165 P.3d 581, 590 (Cal. 2007).

130. Wacker, *supra* note 1.

131. *SG: Off-the-Tee 2019*, PGA TOUR, <https://www.pgatour.com/content/pgatour/stats/stat.02567.y2019.html> (last visited Nov. 6, 2020) [https://perma.cc/LNY3-MT6J].

132. Costa, *supra* note 14.

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. Davis, *supra* note 11.

138. Jason Way, *Golf Course Architecture 101: Part 6: Schools of Design*, FRIED EGG (Nov. 8, 2018), <https://thefriedegg.com/golf-course-architecture-schools-design/> [https://perma.cc/4LWN-NTEJ].

139. TOM DOAK, *THE ANATOMY OF A GOLF COURSE*, 56–57 (1992).

140. *Id.* at 57.

141. Costa, *supra* note 14.

who only hits 52% of fairways—said “I would rather hit a pitching wedge out of the rough than a 6-iron from the fairway.”<sup>142</sup> The method is clearly very successful.<sup>143</sup> It is the typical strategy of every player in the top five of the Official World Golf Rankings<sup>144</sup> and is the second biggest correlating factor to money list ranking.<sup>145</sup>

Golf itself believes it has a problem with increased distance and the change in style of play.<sup>146</sup> The two governing bodies of the game, The United States Golf Association and The Royal and Ancient released a 102-page *Distance Insights Report* about the “past, present and future impacts of hitting distance in golf.”<sup>147</sup> Since 2013, the average drive on Tour has increased a yard per year and eight yards total for the top drivers on tour.<sup>148</sup> It was found that while distance was increasing, the driving accuracy of the top drivers in the world “decreased significantly.”<sup>149</sup> This decrease was the most pronounced in golfers who ranked in the top five percent of Tour players.<sup>150</sup> This shows a change in what types of players become the best in the world.<sup>151</sup>

While the report doesn’t pinpoint one specific reason for the increased distance, it is generally believed to be a combination of changes in equipment, the players, and course conditions.<sup>152</sup> Equipment changes such as larger club heads and lighter, stronger metals work to increase the “spring like effect” when the ball is hit.<sup>153</sup> Changes in golf ball technology such as the move from a wound core to a solid core, allowing for a “stiffer” ball, have also contributed to this increased distance.<sup>154</sup> An increased emphasis on strength training, flexibility, and overall fitness combined with new swing principles has led to faster club head speeds from today’s players.<sup>155</sup> The belief that golfers are athletes has led to the

---

142. *Id.*

143. Every player in the top five averages over 300 yards in driving distance, but nobody hits more than 62% of their fairways. *Stats: SG: Driving Accuracy Percentage 2019*, PGA, <https://www.pgatour.com/content/pgatour/stats/stat.102.y2019.html> (last visited Nov. 6, 2020) [<https://perma.cc/L42R-QKLR>]; *Driving Accuracy Percentage*, PGA TOUR, <https://www.pgatour.com/content/pgatour/stats/stat.101.y2019.html> (last visited Nov. 6, 2020) [<https://perma.cc/GGZ4-5TLX>]. The biggest win for the “bomb and gauge” style of play came in September when Bryson DeChambeau won the U.S. Open while hitting the fewest fairways of any champion in the 120-year history of the event. Nick Pietruszkiewicz, *How Bryson DeChambeau Went to Great Lengths to Win the U.S. Open*, ESPN (Sept. 20, 2020), [https://www.espn.com/golf/story/\\_/id/29932142/how-bryson-dechambeau-went-great-lengths-win-us-open](https://www.espn.com/golf/story/_/id/29932142/how-bryson-dechambeau-went-great-lengths-win-us-open) [<https://perma.cc/JA6H-KYCV>].

144. *Week 46*, OFFICIAL WORLD GOLF RANKING (Nov. 17, 2019), <http://dps.endavigital.net/owgr/doc/content/archive/2019/owgr46f2019.pdf> [<https://perma.cc/6C9N-66KE>].

145. USGA & R&A, *supra* note 17, at 63.

146. Ryan Lavner, *USGA/R&A Distance Report: Ever-Increasing Length ‘Detrimental to the Game’*, GOLF CHANNEL (Feb. 4, 2020, 11:00 AM), <https://www.golfchannel.com/news/usgara-distance-report-ever-increasing-length-detrimental-game> [<https://perma.cc/PY6W-34AZ>].

147. *See* USGA & R&A, *supra* note 17, at 6.

148. *Id.* at 12.

149. *Id.* at 60.

150. *Id.* at 63.

151. *Id.*

152. *Id.* at 19.

153. *Id.* at 26–32.

154. *Id.* at 34–35.

155. *Id.* at 35–36.

desire to train more athletically and a rise in “golf fitness” programs.<sup>156</sup> Today, there are four fitness vans at every Tour stop to provide easy access for players to work out.<sup>157</sup>

This increase in distance has led to the lengthening and reconstructing of golf courses.<sup>158</sup> As holes have been lengthened or redesigned, it has led to common areas where an increased number of shots land.<sup>159</sup> Increased awareness of environmental impacts and a need to lower operating costs has led to less watering of courses, allowing the ground to harden, resulting in further roll on a shot.<sup>160</sup> This has also led to a significant decrease in fairway width, as these holes have been redesigned and lawn mowing practices have changed.<sup>161</sup>

Regardless of the reason, there has been a change in course distance, a narrowing of fairways, and an increased number of fans on the course.<sup>162</sup> The “bomb and gauge” style of play, combined with longer holes and smaller fairways, has increased danger to fans standing anywhere near a fairway.

#### D. Premises Liability

##### 1. The History and Evolution of the Law

Described as “a mixture of a property law . . . with the . . . law of negligence[.]” premises liability can be traced back to England and the age of feudalism.<sup>163</sup> The basis in the law is rooted in the belief of the importance of free exploration of land.<sup>164</sup> Just as all claims for negligence require that a duty be owed by one party to another,<sup>165</sup> premises liability is characterized by the duty owed by a possessor of land to an entrant on the land.<sup>166</sup>

Under common law, the duty owed by the land owner varied depending on who the entrant was and what they were doing on the land.<sup>167</sup> A higher duty was

---

156. See James Graham, Bill Stieg & Peter Yang, *Get Ripped Like Rory*, MEN'S HEALTH (June 25, 2015), <https://www.menshealth.com/fitness/a19544579/get-ripped-like-rory-mcilroy-0/> [https://perma.cc/2H99-BHL3]; Mark Van Deusen, *Scott Stallings Talks WHOOP, His Career and Life on the PGA Tour*, WHOOP (Sept. 27, 2017), <https://www.whoop.com/the-locker/scott-stallings-career-pga-tour-whoop/> [https://perma.cc/G2A3-V3D9]; Bill Pennington, *Bryson DeChambeau's Latest Physics Experiment? Himself*, N.Y. TIMES (June 24, 2020), <https://www.nytimes.com/2020/06/24/sports/golf/bryson-dechambeau-weight.html> [https://perma.cc/2CJP-WL36].

157. *Tradition & Technology* 31, TITLEIST, <http://media.titleist.com/images/titleist/files/US/traditionandtechnology-2019.pdf> (last visited Nov. 6, 2020) [https://perma.cc/E896-JXRS].

158. USGA & R&A, *supra* note 17, at 63–64.

159. *Id.* at 64.

160. *Id.* at 39–40.

161. *Id.* at 66–67.

162. See *id.*; Davis, *supra* note 11.

163. *Crotty v. Reading Indus., Inc.*, 345 A.2d 259, 262 (Pa. Super. Ct. 1975).

164. 4 BUS. TORTS § 41.01(2) (2020).

165. 1 ILL. TORT LAW § 16.02(1) (2020).

166. See, e.g., *Crotty*, 345 A.2d at 262.

167. Vitauts M. Gulbis, Annotation, *Modern Status of Rules Conditioning Landowner's Liability Upon Status of Injured Party as Invitee, Licensee, or Trespasser*, 22 A.L.R.4th 294 § 2 (1983) (explaining the different level of duty of care owed to invitees, licensees, and trespassers).

owed to a invitee—someone “who enter[s] or remain[s] on land upon an invitation which carries with it an implied representation, assurance, or understanding that reasonable care has been used to prepare the premises, and make them safe for their reception.”<sup>168</sup> This is compared to a licensee, who is simply given consent to enter or be on the land.<sup>169</sup>

Many jurisdictions today have done away with these classifications and now simply require that an owner or occupier of land be “held to a duty of reasonable care under all circumstances.”<sup>170</sup> In these jurisdictions, the emphasis is placed on the foreseeability of the harm and the efforts taken by the occupier of the land.<sup>171</sup> In *Smith v. Arbaugh’s Restaurant, Inc.*,<sup>172</sup> the court did away with classifications while explaining that society changes and “judicial creations” need to change along with it.<sup>173</sup> Instead it chose to look at what was “reasonable care under all circumstances.”<sup>174</sup> This would allow juries to look at all the facts in a case, then balance the community values and severity of the harm against the cost and foreseeability of the injury.<sup>175</sup>

Conversely, some jurisdictions have maintained different classifications.<sup>176</sup> These jurisdictions typically remove the differences between invitees and licensees and differ on the duty owed to a trespasser.<sup>177</sup> The rationale behind leaving this distinction is that it is unfair to require a possessor of land to offer the same level of care to someone who is trespassing on the land as to one who is invited or permitted to be on the land.<sup>178</sup>

The basis for premises liability comes from the expectation that the possessor of land has exercised due care in making the land safe for visitors.<sup>179</sup> Today, a possessor of land is liable for harm to an invitee if the possessor “knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees.”<sup>180</sup> The possessor can also be found liable if he or she “should expect that [the invitee] will not discover or realize the danger, or will fail to protect themselves against it” and if the possessor “fails to exercise reasonable care to protect them against the danger.”<sup>181</sup>

---

168. RESTATEMENT (SECOND) OF TORTS § 332 cmt. a (AM. L. INST. 1965).

169. *Id.* § 330.

170. Gulbis, *supra* note 167.

171. *Id.*

172. 469 F.2d 97, 105 (D.C. Cir. 1972).

173. *Id.*

174. *Id.*

175. *Id.*

176. Gulbis, *supra* note 167.

177. *See id.*; *Wood v. Camp*, 284 So. 2d 691, 693–94 (Fla. 1973) (explaining why it would be unreasonable to require an owner to provide reasonable care to a trespasser on his land).

178. *See Wood*, 284 So. 2d at 693–94 (explaining why it would be unreasonable to require an owner to provide reasonable care to a trespasser on his land).

179. GLEN WEISSEBERGER & BARBARA B. MCFARLAND, *THE LAW OF PREMISES LIAB.* § 4.01 (4th ed. 2010).

180. RESTATEMENT (SECOND) OF TORTS § 343 (AM. L. INST. 1965).

181. *Id.*

## 2. Premises Liability and Businesses

Based on the nature of the law, businesses are common parties in premises liability cases.<sup>182</sup> This has led some jurisdictions to create two types of invitees: business invitees and public invitees.<sup>183</sup> Public invitees are those “invited to enter or remain on land as a member of the public for a purpose for which the land is held open to the public.”<sup>184</sup> A business invitee is a type of invitee who enters the premises “for a purpose connected with the business of the possessor.”<sup>185</sup> As invitees, they are owed the highest duty of protection regardless of whether the state has classifications or not.<sup>186</sup>

The Restatement (Second) of Torts then further classifies business invitees into “patrons” and “business visitors.”<sup>187</sup> Patrons are what people think of as customers, people who enter land held open to the public with the intent of purchasing or looking at goods.<sup>188</sup> A business visitor enters private land to conduct business, such as a delivery driver who enters to deliver goods to the owner.<sup>189</sup> This distinction is important because, under certain circumstances, a possessor may owe a greater duty to the patron than the business visitor.<sup>190</sup>

A business owner must undertake reasonable care to keep the premises reasonably safe or to warn invitees about dangerous conditions that they cannot reasonably discover themselves.<sup>191</sup> This duty is often qualified in states by stating that a business is not the insurer of the customer and, if risks are obvious to the customer, it is no longer the duty of business to ensure the customer’s safety.<sup>192</sup> Moreover, a business must know about a danger before an incident in order to be held liable for the resulting injury.<sup>193</sup>

Courts have held that this may be actual or constructive knowledge of the condition resulting in the harm to the invitee.<sup>194</sup> Even if a defendant does not know specifically of the condition in the defendant’s case, a “pattern of conduct,”

---

182. See, e.g., *Holly v. Walmart Real Est. Bus. Tr.*, 262 F. Supp. 3d 532, 535 (N.D. Ohio 2017); *Ann M. v. Pac. Plaza Shopping Ctr.*, 863 P.2d 207, 212–13 (Cal. 1993); *Hoffner v. Lanctoe*, 821 N.W.2d 88, 92 (Mich. 2012).

183. RESTATEMENT (SECOND) OF TORTS § 332 (AM. L. INST. 1965); see *Lively v. Libbey Mem’l Physical Med. Ctr.*, 841 S.W.2d 609, 612 (Ark. 1992); *Freeman v. Freeman*, 67 So. 3d 902, 907–08 (Ala. Civ. App. 2011); *Christmas v. Kindred Nursing Ctrs. Ltd. P’ship*, 952 N.E.2d 872, 879 (Ind. Ct. App. 2011).

184. RESTATEMENT (SECOND) OF TORTS § 332 (AM. L. INST. 1965).

185. *Id.* § 332 cmt. a.

186. *Id.*

187. *Id.* § 332 cmt. e.

188. *Id.*

189. *Id.*

190. *Id.*

191. 4 BUS. TORTS § 41.01(4) (2020).

192. *Paschal v. Rite Aid Pharmacy, Inc.*, 480 N.E.2d 474, 475 (Ohio 1985); 1 ILL. TORT LAW § 16.02(6) (2020).

193. *Baptiste v. Better Val-U Supermarket*, 811 A.2d 687, 691 (Conn. 2002) (quoting *Bonczkiewicz v. Merberg Wrecking Corp.*, 172 A.2d 917 (Conn. 1961)).

194. See *DiPietro v. Farmington Sports Arena*, 49 A.3d 951, 957 (Conn. 2012); *Blair v. W. Town Mall*, 130 S.W.3d 761, 769 (Tenn. 2004).

“reoccurring incident,” or “continuing condition” is enough to show that the defendant should have been aware of the condition.<sup>195</sup> Additionally, constructive knowledge can be found if the business owner would have discovered the condition if he or she had conducted reasonable care.<sup>196</sup> Constructive notice of a condition may also “arise from the existence of industry standards or government regulations.”<sup>197</sup>

The court in *DiPietro v. Farmington Sports Arena*<sup>198</sup> faced the issue of whether the defendants had knowledge that the carpet, installed on an indoor soccer field, was hazardous to play on.<sup>199</sup> The plaintiff, a young girl, severely injured her ankle while playing on the field.<sup>200</sup> The defendant had no actual knowledge of the issue but the court had to determine whether there was enough to show constructive knowledge of the hazard.<sup>201</sup> While the expert witness for the plaintiff had relevant scientific data showing the likelihood of the injury, the court did not believe it was enough to show constructive notice and eventually held for the defendant.<sup>202</sup> It determined that without visual signs of damage, prior indications of danger, or industry and government standards, there was no reason for the business to conduct the detailed scientific tests the expert conducted.<sup>203</sup>

Although knowledge of the danger is required to hold the business liable, if the hazard is obvious to an invitee, the business is generally no longer considered liable for the harm.<sup>204</sup> Termed the “open and obvious doctrine,” courts have interpreted this to mean different things.<sup>205</sup> Some states have held that a risk that is open and obvious is not a *per se* bar to liability, stating, “a defendant who owns, occupies or controls land has a duty to exercise reasonable care.”<sup>206</sup> Thus, a business can still be found to have violated their duty if the risk is open and obvious to a customer.<sup>207</sup>

An exception to the open and obvious doctrine is a distraction that causes the invitee to miss the hazard.<sup>208</sup> This exception requires that the business foresee an injury to an invitee who is exercising care but who may reasonably be distracted.<sup>209</sup> In *Whittleman v. Olin Corporation*,<sup>210</sup> the court held that the distraction exception did not apply when an electrician suffered severe injuries from

---

195. *Blair*, 130 S.W.3d at 769.

196. *DiPietro*, 49 A.3d at 957.

197. *Id.* at 958.

198. *Id.* at 951.

199. *Id.*

200. *See id.*

201. *Id.* at 957.

202. *Id.* at 959.

203. *Id.* at 960.

204. *Armstrong v. Best Buy Co.*, 788 N.E.2d 1088, 1089 (Ohio 2003); RESTATEMENT (SECOND) OF TORTS § 343A(1) (AM. L. INST. 1965).

205. *See Lederman v. Pac. Indus.*, 119 F.3d 551, 553 (7th Cir. 1997); *Klen v. Asahi Pool, Inc.*, 643 N.E.2d 1360, 1363–64 (Ill. App. Ct. 1994).

206. *Jackson v. TLC Assocs.*, 706 N.E.2d 460, 463 (Ill. 1998).

207. *See id.*

208. *Lucasey v. Plattner*, 28 N.E.3d 1046, 1055 (Ill. App. Ct. 2015).

209. *Id.* (citing *Ward v. K Mart Corp.*, 554 N.E.2d 223, 232 (Ill. 1990)).

210. 832 N.E.2d 932 (Ill. App. Ct. 2005).



touching a live electrical line while “distracted” by the work he was performing.<sup>211</sup> The court added a foreseeable distraction is one that the inviter can “take reasonable steps to prevent” and isn’t “solely within the plaintiff’s own creation.”<sup>212</sup> It later emphasized that the law could not hold a possessor strictly liable for a distraction only in the “mind of his invitee.”<sup>213</sup> Conversely, the court in *Courtney v. Allied Filter Engineering, Inc.* found that it was foreseeable that the plaintiff would be distracted while unloading a truck.<sup>214</sup> Plaintiff failed to notice there was a gap between the dock plate and the back of the truck, and was injured when he fell.<sup>215</sup>

The duty owed by a business to a business invitee extends beyond the conditions of the premises; it also includes activities conducted on the premises.<sup>216</sup> This requires the possessor of land to offer an invitee “protection against the risk of harm from activities of which the invitee knows or has reason to know, where it may reasonably be expected that he will fail to protect himself notwithstanding such knowledge.”<sup>217</sup> As with conditions, the open and obvious doctrine and the exception for distractions also apply to activities.<sup>218</sup>

A business has a duty to protect its patrons from harms that may occur on the premises.<sup>219</sup> This duty is designed to ensure that invitees are reasonably safe when entering the land.<sup>220</sup>

### III. ANALYSIS

Given the changes in the game of golf,<sup>221</sup> and the horrific injuries that have resulted from on-course incidents,<sup>222</sup> it is time for courts to emphasize spectator safety at golf tournaments. Just as in baseball, the game of golf is much different today from how it was when courts initially began applying the baseball rule.<sup>223</sup> With increased crowds,<sup>224</sup> smaller fairways, faster ball speeds, and less emphasis on accuracy, spectators are more at risk today than ever.<sup>225</sup> This Part looks at the

---

211. *See id.*

212. *Id.* at 936.

213. *Id.*

214. *See Courtney v. Allied Filter Eng'g, Inc.*, 536 N.E.2d 952, 957 (Ill. App. Ct. 1989).

215. *Id.* at 954.

216. WEISSEBERGER & MCFARLAND, *supra* note 179, § 4.06.

217. RESTATEMENT (SECOND) OF TORTS § 341A cmt. a. (AM. L. INST. 1965).

218. *Id.* § 341A; 1 ILL. TORT LAW § 16.02(7) (2020).

219. *See discussion supra* Section II.D.1.

220. *See Crotty v. Reading Indus., Inc.*, 345 A.2d 259, 262–63 (Pa. Super. Ct. 1975).

221. *See Daniel Wilco, How Driving Distance Has Changed Over the Past 40 Years on the PGA Tour*, PGA (July 3, 2018), <https://www.pga.com/archive/how-driving-distance-has-changed-over-past-40-years-pga-tour> [https://perma.cc/LDW7-PNN6].

222. *See Wacker, supra* note 1.

223. *See Wilco, supra* note 221. *See generally* Grow & Flagel, *supra* note 48, at 97 (discussing the change in baseball games since the establishment of the baseball rule).

224. Davis, *supra* note 11.

225. *See USGA & R&A, supra* note 17, at 66–67; Costa, *supra* note 14.

game of golf, how the differences between golf and other sports have led to difficulty applying the baseball rule, and why the reasonableness standard of the business inviter duty is a better way to promote fan safety at tournaments.

### A. *The Baseball Rule in Other Sports*

The baseball rule has been applied to different sports with different results.<sup>226</sup> Hockey originally provided unique challenges to courts in terms of injured spectators.<sup>227</sup> Unlike baseball, hockey was not as well-known at the time and was still a growing sport in America.<sup>228</sup> Thus, courts gave fans the benefit of the doubt that they did not know enough about the sport to assume the risks associated with watching.<sup>229</sup> While initially willing to take this lack of knowledge into account, in recent cases, courts have increasingly relied on assumption of risk.<sup>230</sup> Although some courts have analyzed the differences between games,<sup>231</sup> other courts have uniformly applied the baseball rule to professional sports in general.<sup>232</sup> Despite the shift in tort law away from assumption of risk, assumption of risk is the easiest way for courts to apply the baseball rule without analyzing the facts of the actual case.<sup>233</sup>

The nature of the games varies wildly between hockey and baseball but the venues of both are quite similar. In fact, many NHL games are played in professional baseball stadiums today.<sup>234</sup> Unlike hockey, baseball stadiums do not have uniform dimensions; however, they, as well as football and basketball stadiums, generally have the same basic structure.<sup>235</sup> Stadiums consist of a playing surface surrounded by stands of various heights and capacities.<sup>236</sup> Golf is completely different. There is no central playing field and the possible places to play from are endless.<sup>237</sup> Therefore, the same standard cannot be applied to golf because critical variables differ.

---

226. See generally *Shanney v. Bos. Madison Square Garden Corp.*, 5 N.E.2d 1, 2 (Mass. 1936); *Moulas v. PBC Prods.*, 570 N.W.2d 739, 744 (Wis. Ct. App. 1997).

227. See *Shanney*, 5 N.E.2d at 2; cf. *Wells v. Minneapolis Baseball & Athletic Ass'n*, 142 N.W. 706, 708 (Minn. 1913) (reasoning that spectators who are not acquainted with baseball would not be aware of the dangers).

228. See *Augustine*, *supra* note 18, at 43 n.23.

229. *Shanney*, 5 N.E.2d 1; *Wells*, 142 N.W. at 708.

230. See *supra* text accompanying notes 76, 84.

231. *Thurman v. Ice Palace*, 97 P.2d 999, 1001 (Cal. Ct. App. 1939).

232. See, e.g., *Nemarnik v. L.A. Kings Hockey Club*, 127 Cal. Rptr. 2d 10, 18 (Cal. Ct. App. 2002).

233. David Horton, Comment, *Rethinking Assumption of Risk and Sports Spectators*, 51 UCLA L. REV. 339, 349–51 (2003).

234. Cal Friedman, *Florida Panthers: When Will the Stadium Series Make its Way Down South?*, FANSIDED: THE RAT TRICK, <https://theratrick.com/2019/07/06/florida-panthers-when-will-stadium-series-make-way-south/> (last visited Nov. 6, 2020) [<https://perma.cc/F68U-WQ93>].

235. *Rule 2 Dimensions of Rink*, NHL, <http://www.nhl.com/ice/page.htm?id=24935> (last visited Nov. 6, 2020) [<https://perma.cc/F52B-RDBR>]; see Sam Belden, *25 North American Stadiums That Should Be on Every Sports Fan's Bucket List*, BUS. INSIDER (Sept. 16, 2017, 11:44 AM), <https://www.businessinsider.com/25-north-american-stadiums-that-should-be-on-every-fans-bucket-list-2017-9> [<https://perma.cc/6CT9-HR36>].

236. See, e.g., Belden, *supra* note 235.

237. See Stephen Hennessey, *Pine Valley Golf Club Like You've Never Seen It: Exclusive Drone Footage of All 18 Holes*, GOLF DIG.: GOLF WORLD (Jan. 14, 2019), <https://www.golfdigest.com/story/pine-valley-golf-club-like-youve-never-seen-it-exclusive-drone-footage-of-all-18-holes> [<https://perma.cc/LX28-7AXZ>].

*B. The Game of Golf*

Despite their vastly different games and venues, courts have relied on assumption of risk and the baseball rule for golf-related injuries.<sup>238</sup> The preeminent case involving golf and the baseball rule is *Grisim v. TapeMark Charity Pro-Am Golf Tournament*.<sup>239</sup> Grisim was a spectator at a pro-am golf tournament when she decided to sit under a tree near the green of the par-three, eighteenth hole.<sup>240</sup> A hooked tee shot veered left and struck Grisim in the eye.<sup>241</sup> Tragically, as a result of the injury, the eye had to be removed.<sup>242</sup> She filed a negligence claim against the tournament, golf course, and the golfer who hit the shot.<sup>243</sup> The Minnesota Supreme Court reinstated the order for summary judgment for the defendant on the grounds of the baseball rule that had been adopted in *Wells*.<sup>244</sup> The court determined “the reasoning of [*Wells*] applies equally here.”<sup>245</sup> It added that the only duty owed to the plaintiff was to provide a safe area from which she could view the golfers.<sup>246</sup> The court then declined to review the Appellate Court’s analysis of the safe seating that was available.<sup>247</sup>

Grisim was aware of the bleachers behind the green but they were “very crowded.”<sup>248</sup> Thus, she chose to sit under a tree “30 to 50 feet from the edge of the green.”<sup>249</sup> The Appellate Court believed the issue of whether adequate safe seating was provided was for the jury to decide and remanded the case for trial.<sup>250</sup> Despite multiple organizations setting standards for crowd control, there were no marshals or barricades present, both customary for controlling crowds at tournaments.<sup>251</sup> Golf is unique in that fans are not required to sit in stands but are allowed to sit almost anywhere on the fairways and around greens.<sup>252</sup>

Unlike in baseball and hockey, there is no netting protecting fans from wayward balls. Therefore, an issue arises when trying to apply the key aspect of the baseball rule: are there enough protected seats available to spectators who could reasonably want them?<sup>253</sup> Due to the nature of the game, it would be impossible to simply net the fairways or the greens and call the seats “protected.” While

238. *Grisim v. TapeMark Charity Pro-Am Golf Tournament*, 415 N.W.2d 874, 875 (Minn. 1987).

239. *See id.*

240. *Id.*

241. *Id.*

242. *Id.*

243. *Id.*

244. *Id.* at 875–76.

245. *Id.* at 875.

246. *Id.*

247. *Id.*

248. *Grisim v. TapeMark Charity Pro-Am Golf Tournament*, 394 N.W.2d 261, 263 (Minn. Ct. App. 1986), *rev'd en banc*, 415 N.W.2d 874 (Minn. 1987).

249. *Id.*

250. *Id.* at 265.

251. *Id.* at 264.

252. *See generally* Stephen Hennessey, *Tour Championship 2018: Thousands of Fans Walked Right Behind Tiger Woods on Sunday, Creating an Unbelievable Scene at East Lake*, GOLF DIGEST (Sept. 23, 2018), <https://www.golfdigest.com/story/tour-championship-2018-thousands-of-fans-walked-right-behind-tiger-woods-on-sunday-creating-an-unbelievable-scene-at-east-lake> [<https://perma.cc/T2JF-EJ6K>].

253. *See Quinn v. Recreation Park Ass'n*, 46 P.2d 144, 146 (Cal. 1935).

grandstands seating is available, these seats are often sold at extremely high prices or are part of corporate tents and thus, never open to the public.<sup>254</sup> Moreover, the grandstand seats that are “first come, first serve” may be more dangerous. They are not in safer locations<sup>255</sup> and because they are so full, the spectators sitting in them, have less room to avoid a ball that is coming towards them.

A look at some of the seating options at the 2019 U.S. Open, at Pebble Beach, shows grandstands in multiple picturesque locations around the course.<sup>256</sup> But when looking at the location of the stands on the seventh and eighth greens, two of the most famous places on the course, one cannot help but be reminded of *Grisim*.<sup>257</sup> The stands on both holes, a par three and four respectively, are located just left of the greens.<sup>258</sup> *Grisim* was standing “30 to 50 feet” left of the green and was considered to be “assuming the risk” of injury.<sup>259</sup> At one of the biggest golf tournaments in the world, the “safe” seats—the seats required for a venue to meet its duty to spectators—are in an identical place to where *Grisim* was seated.<sup>260</sup> Moreover, the seventh hole is subjected to some of the “most volatile swings in weather at Pebble Beach.”<sup>261</sup> The extreme weather and changing winds add to the difficulty, making the stands to the left even riskier for spectators.<sup>262</sup> It cannot be possible for the court to conclude that these seats are in a safe area and therefore be included in a count of the number of seats available for fans to safely watch the event.

To any fan of tournament golf, large white hospitality tents behind the greens are a familiar sight.<sup>263</sup> Unable to rely on the “safety” of the open aired greenside grandstands, hospitality tents seem similar to the protected seats behind home plate. But this conclusion would be inconsistent with the underlying

---

254. Hospitality tent prices for the 2020 U.S. Open range from \$10,120 a day to \$375,000 for the week. *2020 U.S. Open Corporate Hospitality Packages—At a Glance*, USGA, <https://1oz2uk4bz0h11z8qkb2ob6vv-wpengine.netdna-ssl.com/wp-content/uploads/2019/12/2020-At-A-Glance-With-Inventory.pdf> (last visited Nov. 6, 2020) [<https://perma.cc/JM66-US5Y>].

255. *See Your Guide to the Grandstands at the U.S. Open*, PEBBLE BEACH (June 12, 2019), <https://www.pebblebeach.com/insidepebblebeach/your-guide-to-the-grandstands-at-the-u-s-open/> [<https://perma.cc/ZMB6-ULJZ>].

256. *See id.*

257. *Grisim v. TapeMark Pro-Am Golf Tournament*, 394 N.W.2d 261, 263 (Minn. Ct. App. 1986) (noting her location “30 to 50 feet” to the left of the green); *see Your Guide to the Grandstands at the U.S. Open*, *supra* note 255.

258. *See Your Guide to the Grandstands at the U.S. Open*, *supra* note 255.

259. *Grisim*, 394 N.W.2d at 263–64.

260. *See Grisim v. TapeMark Charity Pro-Am Golf Tournament*, 415 N.W.2d 874, 875 (Minn. 1987); Ryan Herrington, *U.S. Open 2019: Here's the Prize Money Payout for Each Golfer at Pebble Beach*, GOLF DIG. (June 16, 2019), <https://www.golfdigest.com/story/us-open-2019-heres-the-prize-money-payout-for-each-golfer-at-pebble-beach> [<https://perma.cc/9HY8-LTJ4>].

261. *Your Guide to the Grandstands at the U.S. Open*, *supra* note 255.

262. *See* John Branch, *The Best Short Story of the 2019 U.S. Open? The No. 7 Hole at Pebble Beach*, N.Y. TIMES (June 12, 2019), <https://www.nytimes.com/2019/06/12/sports/us-open-pebble-beach-seventh-7th-hole.html> [<https://perma.cc/JS2L-MU7Z>].

263. *See Hospitality*, PGA TOUR, <https://www.pgatour.com/tournaments/tour-championship/hospitality.html> (last visited Nov. 6, 2020) [<https://perma.cc/XSA9-BFWG>].

reasoning in these cases.<sup>264</sup> Not only are hospitality tents expensive, they are also not necessarily risk-free areas to watch from.<sup>265</sup> Both professionals and amateurs have ventured into greenside hospitality tents after hitting a bad shot.<sup>266</sup>

These tents are extremely cost prohibitive, a major concern of courts when holding for professional stadiums.<sup>267</sup> Major hospitality tents can cost over \$350,000 for the week<sup>268</sup> and are often purchased by corporations for employees and clients, not open to the general public.<sup>269</sup> Additionally, an individual ticket to the Champions Pavilion on the first fairway at the 2021 U.S. Open at Torrey Pines would cost \$1,050.<sup>270</sup> Thus, for fans of “meager means,” these “safe” seating options are out of reach and they are effectively priced out of attending a golf event.<sup>271</sup> Using the court’s analysis in *Neinstein*, neither changing the fabric of the game nor pricing people out are acceptable alternatives.<sup>272</sup>

Although there are a lot of protected areas available off the fairways, in remote common areas and in merchandise tents, not all of these locations offer views of the course.<sup>273</sup> The court in *Maisonave v. Newark Bears Professional Baseball Club* held in favor of a man who was hit by a foul ball while standing in the mezzanine waiting for a food cart.<sup>274</sup> While the case’s holding was eventually superseded by the New Jersey Baseball Spectator Safety Act of 2006,<sup>275</sup> the court’s analysis provides valuable insight into how to conduct a fact-specific reasonable-duty analysis.<sup>276</sup> Unlike in baseball, golf tournaments do not have action happening in one central area. While the action at Wrigley Field takes

---

264. See *Neinstein v. L.A. Dodgers*, 229 Cal. Rptr. 612, 614 (Cal. Ct. App. 1986) (“[I]ncrease the price of tickets to cover the cost of compensating injured persons with the attendant result that persons of meager means might be ‘priced out’ of enjoying the great American pastime.”).

265. See Ryan Reiterman, *My 2014 Moment: Mickelson’s Hospitality Shots*, GOLF CHANNEL (Dec. 31, 2014, 8:00AM), <https://www.golfchannel.com/article/golf-central-blog/my-2014-moment-mickelsons-hospitality-shots> [<https://perma.cc/5K9G-2R3D>] (discussing Phil Mickelson’s shots from the hospitality tent after hitting bad second shots into the tent *two days in a row*).

266. See Jessica Marksbury, *Watch: Tony Romo Nearly Holes Shot from Hospitality Tent*, GOLF: NEWS (Feb. 9, 2019), <https://www.golf.com/news/2019/02/09/watch-tony-romo-nearly-holes-shot-from-hospitality-tent/> [<https://perma.cc/MN4L-TYDM>]; Reiterman, *supra* note 265.

267. *2020 U.S. Open Corporate Hospitality Packages – At a Glance*, *supra* note 254.

268. *Id.*

269. *See id.*

270. *2020 U.S. Open—Champions Pavilion Tickets*, U.S. OPEN, <https://tix.axs.com/tVtGMwAAAAC-MSb2uAAAAADj%2fv%2f%2f%2fwD%2f%2f%2f%2f%2fBnVzb3BlbgD%2f%2f%2f%2f%2f%2f%2f%2f%2f%2fw%3d%3d/shop/flex/quantity?locale=en-US&skin=usopen> (last visited Nov. 6, 2020) [<https://perma.cc/BU7C-B2X7>].

271. *Neinstein v. L.A. Dodgers*, 229 Cal. Rptr. 612, 614 (Cal. Ct. App. 1986) (“[O]r continue the status quo and increase the price of tickets to cover the cost of compensating injured persons with the attendant result that persons of meager means might be ‘priced out’ of enjoying the great American pastime.”).

272. *Id.*

273. Food and merchandise tents are often located away in main areas away from holes. See *The Players*, PGA TOUR, <https://www.pgatour.com/content/dam/the-players/plan-your-visit/2020/2020players-coursemap-030420.png> (last visited Nov. 6, 2020) [<https://perma.cc/6F2R-S6YL>].

274. *Maisonave v. Newark Bears Pro. Baseball Club*, 881 A.2d 700, 702 (N.J. 2005).

275. See 2005 N.J. Laws 362.

276. See *Maisonave*, 881 A.2d at 707–09.

place in 2.39 acres,<sup>277</sup> Erin Hills, host of the 2017 U.S. Open, covers over 650 acres!<sup>278</sup>

The court observed that away from the game, especially in concourses and mezzanines, a “commercial sports facility is no different than any other commercial establishment.”<sup>279</sup> Golf tournaments are as much about the merchandise, activities, and food as they are about the action on the course.<sup>280</sup> This reasoning is perhaps even more telling of a golf tournament than a baseball game. It is unfair to force people to stand in isolated pockets of the course without a view or to stay inside and watch on television. Having people pay yet not be able to see any golf is a worse result than the courts’ fear of pricing people out of attending.<sup>281</sup>

To golf fans, the obvious counter is that the area immediately behind every tee box provides a safe alternative for fans to watch from.<sup>282</sup> Unlike remote areas, this would provide a view of the action and prevent the possibility of being hit by a golf ball.<sup>283</sup> The view from here would be similar to one from behind home plate—and since professional golfers do not hit the ball backwards—there would be no nets interfering with the view.<sup>284</sup> Whether from the stands surrounding the tee box, or a lawn chair a few feet away, these are some of the best spots to watch golf.<sup>285</sup> In an unusual sight for golf, grandstands on the first tee are often the most exciting and energetic places to watch, as well as being one of the safest.<sup>286</sup> Whether it’s grandstands on the first tee,<sup>287</sup> sixteenth,<sup>288</sup> or lawn chairs on the twelfth, seats around the tee box are often some of the most coveted.<sup>289</sup> The problem with these seats is that they are very limited and they restrict how much golf a fan is actually able to watch.<sup>290</sup>

277. Cork Gaines, *Chart: MLB Ballpark Sizes Show the Immense Difference Between Fenway Park and Coors Field*, BUS. INSIDER (Mar. 26, 2014, 1:05 PM), <https://www.businessinsider.com/chart-major-league-baseball-ballpark-sizes-2014-3> [<https://perma.cc/D44Q-5MM9>].

278. ERIN HILLS, JUST THE FACTS, [https://erinhills.com/wp-content/uploads/2016/02/EH\\_PressKit\\_2020.pdf](https://erinhills.com/wp-content/uploads/2016/02/EH_PressKit_2020.pdf) (last visited Nov. 6, 2020) [<https://perma.cc/GN2V-CVY9>].

279. *Maisonave*, 881 A.2d at 709.

280. See *Spectator Activities*, PGA TOUR: CIMB CLASSIC (Oct. 2, 2017), <https://www.pgatour.com/tournaments/cimb-classic/news/2017/10/02/spectator-activities.html> [<https://perma.cc/GU5N-3R5Z>].

281. See *Neinstein v. L.A. Dodgers*, 229 Cal. Rptr. 612, 614 (Cal. Ct. App. 1986).

282. See Adam Schupak, *At the Masters’ 12th Hole, Shots Are Left Twisting in the Wind*, N.Y. TIMES (Apr. 4, 2018), <https://www.nytimes.com/2018/04/04/sports/golf/augusta-national-12th-hole.html> [<https://perma.cc/KMR7-73HL>].

283. Ralph, *supra* note 3.

284. See *Your Guide to the Grandstands at the U.S. Open*, *supra* note 255.

285. See generally Schupak, *supra* note 282 (showing the view from seats surrounding the tee box).

286. See Kyle Porter (@KylePorterCBS), TWITTER (Sept. 30, 2016, 7:13 AM), [https://twitter.com/KylePorterCBS/status/781829427055497216?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Cwterm%5E781829427055497216&ref\\_url=https%3A%2F%2Fwww.golfdigest.com%2Fstory%2Fthe-ryder-cup-first-tee-is-absolutely-rocking](https://twitter.com/KylePorterCBS/status/781829427055497216?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Cwterm%5E781829427055497216&ref_url=https%3A%2F%2Fwww.golfdigest.com%2Fstory%2Fthe-ryder-cup-first-tee-is-absolutely-rocking) [<https://perma.cc/T89J-PK8A>].

287. *Id.*

288. Dan Kilbridge, *If the 16th Hole at Phoenix Open Sounds Like a Lot of Excess, It’s Because It Is*, ARIZ. REPUBLIC (Feb. 2, 2019, 6:14 PM), <https://www.azcentral.com/story/sports/golf/phoenix-open/2019/02/02/if-16th-hole-phoenix-open-sounds-like-lot-excess/2758720002/> [<https://perma.cc/CNQ5-Z4SK>].

289. See Schupak, *supra* note 282.

290. Kilbridge, *supra* note 288.

While the seats around a tee box may be the safest, they are also limited and offer reduced views of golf.<sup>291</sup> Grandstand seats around the first tee fill up extremely quickly, especially during major tournaments and when marquee players are starting their rounds.<sup>292</sup> Fans often begin lining up hours before play even starts for the day.<sup>293</sup> These cannot be the only “reasonable number” of protected seats that courts discuss when deciding if the venue’s duty has been met.<sup>294</sup> It cannot be reasonably expected that the only people who wish to have protected seats are the ones willing to get to the course hours before the sun rises. Grandstands add to the seating capacity at a tee box, however, at a majority of holes, there are not any.<sup>295</sup> At these holes, the only places to stand or sit are the areas immediately around the ropes. The only people with a view here are the ones in the front row of the crowd.<sup>296</sup> It is again unreasonable to expect people to run to a single spot and sit there all day to watch the same shot over and over again.<sup>297</sup> This limits the amount golf spectators get to see, effectively decreasing the number of shots a fan sees live to less than 2% of a golfer’s total round.<sup>298</sup> That would be similar to courts requiring netting in only one section of the stands, but the fans in those seats only get a view of third base. One can assume courts would find it less acceptable to require fans to miss most of the game than to enable them to watch it all through a net.

Concerns over pricing fans out or fundamentally altering the game are legitimate issues courts should consider when deciding cases about professional sports.<sup>299</sup> Unlike in baseball, that is effectively what courts are doing by not requiring more protections for spectators.<sup>300</sup> The protected seats available to golf fans are so limited that courts are left with changing the entire act of attending a golf tournament. If courts were to apply the baseball rule, they should conduct an analysis like the court in *Shanney*.<sup>301</sup> While golf is much more popular today

---

291. *See id.*

292. Mike Lopresti, *Here’s What It Was Like to Be at the Legendary Ryder Cup First Tee on Friday*, RYDER CUP (Sept. 28, 2018, 7:00 AM), <https://www.rydercup.com/news-media/heres-what-it-was-like-to-be-at-the-legendary-ryder-cup-first-tee-on-friday> [https://perma.cc/4X7J-BK4S].

293. *Id.*

294. *Quinn v. Recreation Park Ass’n*, 46 P.2d 144, 146 (Cal. 1935).

295. *Your Guide to the Grandstands at the U.S. Open*, *supra* note 255.

296. *See generally* Bill Pennington, *How Do You Know Tiger Woods Is Coming? Listen for the Roar*, N.Y. TIMES (Apr. 13, 2019), <https://www.nytimes.com/2019/04/13/sports/tiger-woods-cheers-masters.html> [https://perma.cc/CN9L-G2FD] (showing the crowds against the ropes and the obstructed views of patrons not in the first few rows).

297. *See, e.g.,* Keely Levins, *Masters 2019: At Augusta National, the Rows of Chairs Are Like Cities unto Themselves*, GOLF DIG. (Apr. 13, 2019), <https://www.golfdigest.com/story/masters-2019-at-augusta-national-the-rows-of-chairs-are-like-cities-unto-themselves> [https://perma.cc/8H2P-42RN] (“It’s a bit late to be able to get a perfect view, there are concessions to be made. A duo contemplates their options: ‘We can see the pin but not the approach, or we go over there, and see the approach but probably not the pin.’”).

298. This was calculated using average par of seventy-two strokes and fans only being able to see the single tee shot (as is the case with most par fours).

299. *Neinstein v. L.A. Dodgers, Inc.*, 229 Cal. Rptr. 612, 614 (Cal. Ct. App. 1986).

300. *Id.* (explaining that allowing the plaintiff to recover would lead to higher ticket prices which, in turn, would lead to fans being “priced out,” an outcome the court viewed as not “acceptable.”).

301. *Shanney v. Bos. Madison Square Garden Corp.*, 5 N.E.2d 1, 2 (Mass. 1936).

than hockey was at that time,<sup>302</sup> it is also much different from baseball and thus analyzed differently. Unfortunately, courts began to move away from this type of analysis and simply treat all professional sports the same.<sup>303</sup> Because the game of golf is so different from other professional sports, the same legal principles cannot effectively be applied. A better standard to apply in golf related injuries is the stricter duty required for a business invitee.<sup>304</sup>

### C. *The Reasonableness Standard and the Business Inviter Duty*

By continuing to apply the baseball rule and holding in favor of professional sports teams and venues, courts have allowed them to provide a lower duty of care than nearly all other business.<sup>305</sup> While it has not been applied to Tour events, some courts have elected to apply the typical business invitee duty to other professional sports.<sup>306</sup> Applying this duty to golf would allow fans to recover damages if it was found the Tour failed to take measures to reasonably ensure fan safety.<sup>307</sup>

The first step in the analysis would be to determine if the fans were invitees.<sup>308</sup> While the classification system no longer exists in most states, this would be an easy case, as fans are clearly invitees under the Restatement definition.<sup>309</sup> Fans would be considered business invitees and further classified as patrons,<sup>310</sup> since they are on the premises for the same purpose that it is being held open to the public.<sup>311</sup> As business invitees, they are owed the highest duty; therefore, the Tour must undertake reasonable care to protect them from dangerous activities and conditions.<sup>312</sup> Moreover, fans would need to be warned of any dangerous activities or conditions that exist on the premises.<sup>313</sup> This would generally be dangerous activities related to flying golf balls, but dangerous conditions may also arise while on the course due to weather or other conditions.<sup>314</sup>

A court would then need to determine if reasonable care was taken by the Tour to eliminate the risk to fans.<sup>315</sup> Similar to the court in *Rountree*, this analysis

302. *Sawe*, *supra* note 10.

303. *Nemarnik v. L.A. Kings Hockey Club*, 127 Cal. Rptr. 2d 10, 18 (Cal. Ct. App. 2002).

304. *Ludden*, *supra* note 51, at 124.

305. *Id.*

306. *Rountree v. Boise Baseball LLC*, 296 P.3d 373, 377–78 (Idaho 2013).

307. *See* RESTATEMENT (SECOND) OF TORTS § 343 (AM. L. INST. 1965) (applying the requirements for premises liability as laid out in the Restatement).

308. *Crotty v. Reading Indus., Inc.*, 345 A.2d 259, 262–63 (Pa. Super. Ct. 1975).

309. *See supra* Section II.D.2; RESTATEMENT (SECOND) OF TORTS § 332 (AM. L. INST. 1965).

310. Not to be confused with the term used to describe fans at The Masters Tournament each year. Ted Johnson, *The Masters: 10 Things They Don't Tell You About Augusta National on TV*, BLEACHER REP. (Apr. 4, 2011), <https://bleacherreport.com/articles/654298-the-masters-ten-things-they-dont-tell-you-about-augusta-national-on-tv> [<https://perma.cc/BT5E-ZMMS>].

311. 4 BUS. TORTS § 41.01(4).

312. *Id.*

313. RESTATEMENT (SECOND) OF TORTS § 343 cmt. b.

314. *See Alexis Stevens & Steve Hummer, Six Injured During Lightning Storm at East Lake Golf Club*, ATLANTA J.CONST. (Aug. 25, 2019), <https://www.ajc.com/news/crime-law/breaking-injured-during-lightning-storm-east-lake-golf-club/UhFlieex7Sj3ormLV4SC5H/> [<https://perma.cc/E3J8-TCYK>].

315. *Crotty v. Reading Indus., Inc.*, 345 A.2d 259, 263 (Pa. Super. Ct. 1975).



would be more typical to the analysis done in a premises liability case.<sup>316</sup> This is where one of the main differences with the baseball rule would apply. Instead of only being unreasonable for not providing *any* protected areas for fans, the Tour would be liable for not providing *enough* protected areas.<sup>317</sup> Because of this change, the Tour would no longer be able to escape liability simply because there are a few places fans can safely watch from. Instead, they will need to be proactive. It would ensure there are areas where fans will be both safe and able to see the golf they paid to see. In *Crane*, the court conducted a similar analysis.<sup>318</sup> It looked to see if the stadium acted reasonably in providing seating, however, it used reasonableness as it is termed in the baseball rule.<sup>319</sup> This allowed the stadium to pass the test easily because there were seats behind nets.<sup>320</sup> Under the regular business invitee test, reasonableness would have to be considered in terms of foreseeability of the harm and actions actually taken by the stadium to provide an adequate number of seats.<sup>321</sup>

A court would then determine if the Tour was aware of the dangerous conditions that existed on the premises.<sup>322</sup> This analysis would look at whether there was actual or constructive knowledge of the risk to fans.<sup>323</sup> It could be argued that the Tour would not have actual knowledge of the risk based on the total number of golf shots in a tournament and the number of times a fan is hit with a ball.<sup>324</sup> While this may be a valid argument, the Tour would likely have constructive knowledge of the danger. Similar to *Blair*, this would be considered a “pattern of conduct” or “reoccurring incident.”<sup>325</sup> Thus, unless protection was added after the previous incidents, these would serve as notice to the Tour that there is a dangerous condition on the course.

A key part of the analysis would be determining whether a dangerous condition or activity is open and obvious. Like businesses, the Tour is not an insurer of fans’ safety.<sup>326</sup> Therefore, if the hazard is open and obvious, it should generally be up to the fans to protect themselves. Liability would then turn on whether the risk of being hit with a golf ball is an obvious risk of being at a golf tournament. While this may vary state to state, courts have held that activities like diving into a lake without knowing the depth,<sup>327</sup> diving into a pool,<sup>328</sup> or jumping on a trampoline are obvious hazards of which the invitee should be aware.<sup>329</sup>

---

316. *Rountree v. Boise Baseball LLC*, 296 P.3d 373, 377–78 (Idaho 2013).

317. *Crane v. Kan. City Baseball & Exhibition Co.*, 153 S.W. 1076, 1077 (Mo. Ct. App. 1913) (declining to consider whether plaintiffs actually had a protected seat available).

318. *See id.* at 1078.

319. *Id.*

320. *Id.*

321. *Jackson v. TLC Assocs.*, 706 N.E.2d 460, 463 (Ill. 1998).

322. *Crotty v. Reading Indus., Inc.*, 345 A.2d 259, 263 (Pa. Super. Ct. 1975).

323. *See DiPietro v. Farmington Sports Arena, LLC*, 49 A.3d 951, 957 (Conn. 2012).

324. *See Blair v. W. Town Mall*, 130 S.W.3d 761, 765 (Tenn. 2004).

325. *Id.* at 769.

326. *Paschal v. Rite Aid Pharmacy, Inc.*, 480 N.E.2d 474, 475 (Ohio 1985) (“A shopkeeper is not, however, an insurer of the customer’s safety.”).

327. *Bujnowski v. Birchland, Inc.*, 37 N.E.2d 385, 397 (Ill. App. Ct. 2015).

328. *Lederman v. Pac. Indus.*, 119 F.3d 551, 555 (7th Cir. 1997).

329. *Sollami v. Eaton*, 772 N.E.2d 215, 224–25 (Ill. 2002).

Following these examples, it is likely that the risk from a golf ball is an obvious danger at a golf tournament. For many fans at the tournament this may be something they are aware of when they buy a ticket. New fans, however, may have no idea that a ball could end up hitting them as they stand to the side of the fairway.

Adaptations of the baseball rule have struggled when taking into account an individual fan's knowledge and experience with the game. Applying the business invitee duty eliminates that problem. Regardless of the fan's knowledge of the sport, the duty applies equally to everyone.<sup>330</sup> This would favor the Tour by reducing its liability. The exception to the open and obvious doctrine, however, would come into play in most circumstances.<sup>331</sup>

If the possessor of land can anticipate that harm may still occur to an invitee despite their knowledge of the risk, they still have a duty to protect the invitee.<sup>332</sup> Thus, even if a condition is obvious to fans, the Tour still owes a duty to protect them if they reasonably believe the fans could be injured despite their awareness of the risk. This is the exception that will most likely come into play in golf ball-related injuries. Despite their awareness of the risk, fans are still being hit.<sup>333</sup> This common occurrence is enough to show that the Tour should understand that fans are not capable of protecting themselves. Thus, the duty is on the Tour to provide for their protection. Just like when the *Courtney* court held that a distraction was the reason for the invitee being injured, an analysis here would lead to a similar result.<sup>334</sup>

Fans may be able to protect themselves if they have a clear view of the ball and nothing happening around them. But with trees and an increased number of people attending events, there are endless distractions.<sup>335</sup> These distractions are not "solely within the plaintiff's own creation" as the *Whittleman* court stated.<sup>336</sup> Based purely on the number of incidents, these are common distractions at Tour events all over the country.<sup>337</sup> It is reasonable that fans may be distracted with food, drinks, and games located in tents nearby; thus, the Tour owes these fans a duty to protect them. Requiring reasonable safety for fans could be as simple as posting warnings in tents and greenside grandstands reminding fans of possible dangers.<sup>338</sup> Additionally, signs posted near fairways and greens reminding fans to be careful of incoming golf balls may be enough to satisfy the Tour's duty.

---

330. RESTATEMENT (SECOND) OF TORTS § 343A cmt. e.

331. *Id.* § 343A cmt. f.

332. *Id.*

333. See generally Wacker, *supra* note 1.

334. *Courtney v. Allied Filter Eng'g, Inc.*, 536 N.E.2d 952, 957 (1989).

335. See Fred Albers, *Insider: Trees Tell the Story This Week at Firestone South*, PGA TOUR (Aug. 1, 2012), <https://www.pgatour.com/news/2012/08/01/insider-bridgestone.html> [<https://perma.cc/673D-GCPV>]; Davis, *supra* note 11.

336. *Whittleman v. Olin Corp.*, 832 N.E.2d 932, 936 (Ill. App. Ct. 2005).

337. For more on the rise of golf ball related injuries, see *supra* Section II.C.

338. RESTATEMENT (SECOND) OF TORTS § 343A cmt. f.

## IV. RECOMMENDATION

Unlike baseball and hockey, there is no quick fix to spectator safety in golf because nets cannot be installed on fairways.<sup>339</sup> Therefore, the answer to protecting spectators at golf tournaments needs to be more nuanced. As the previous Part argues, the baseball rule cannot simply be copied into golf just because they both involve balls.<sup>340</sup> The games are fundamentally different and cannot be treated the same in the court room. Because of these differences, this Part will recommend that courts hold the Tour to the same level of care that a normal business owes to those it invites onto its premises.

A. *Benefits of the Business Inviter Duty of Care*

The essence of the baseball rule simply requires that stadiums provide enough protected seats to those who could reasonably want them.<sup>341</sup> Due to the nature of the game, and unlike baseball, golf tournaments are unable to do that without fundamentally changing the game or the experience of the fan. Because of these vast differences, it doesn't make sense to try to force the baseball rule to work in golf cases. Unless fans have the ability to pay thousands of dollars for tents or to get to the course extremely early to camp in a spot all day, applying the baseball rule to golf forces spectators to assume the risk of being hit.<sup>342</sup> Similar to the calls for a reasonable care standard in baseball,<sup>343</sup> adopting the business inviter duty would be a more efficient and responsible standard to hold the Tour to when operating tournaments.

"Nothing about the game of baseball distinguishes it from other businesses in a way that justifies preferential treatment for stadium owners and operators . . . ."<sup>344</sup> As shown by the *Maisonave* court, the duty owed in a typical business invitee relationship can be effectively applied to baseball.<sup>345</sup> Promisingly, it can work even better in golf. This would allow courts to simply run a negligence analysis as they do with all other premises liability cases.<sup>346</sup> Courts would look at the relationship with the injured party, if reasonable care was taken to prevent the risk, and if their action or inaction was a cause of the injury.<sup>347</sup> Analyzing cases this way allows cases to be decided based on their unique facts rather than on sweeping doctrines that attempt to cover all future cases.

If a fan is talking to a friend while standing just off the fairway when hit by a golfer's shot, instead of being barred from recovery, a court would undergo a

---

339. See Young & Cosgrove, *supra* note 91.

340. See *infra* Section III.C.

341. Crane v. Kan. City Baseball & Exhibition Co., 153 S.W. 1076, 1077 (Mo. Ct. App. 1913).

342. See Lopresti, *supra* note 292; 2020 U.S. Open – Champions Pavilion Tickets, *supra* note 270.

343. Horton, *supra* note 233, at 367; Ludden, *supra* note 51, at 135.

344. *Maisonave v. Newark Bears Prof'l Baseball Club, Inc.*, 881 A.2d 700, 708–09 (N.J. 2005).

345. *Id.* at 704.

346. See, e.g., Lederman v. Pac. Indus., 119 F.3d 551, 553 (7th Cir. 1997); DiPietro v. Farmington Sports Arena, LLC, 49 A.3d 951, 959 (Conn. 2012); Armstrong v. Best Buy Co., 788 N.E.2d 1088, 1089 (Ohio 2003); Klen v. Asahi Pool, Inc., 643 N.E.2d 1360, 1365 (Ill. App. Ct. 1994).

347. 1 ILL. TORT LAW § 16.02(6–7) (MB 2020).

typical business inviter analysis.<sup>348</sup> The court would start by looking at the relationship of the fan and the Tour. It would move on to look at whether the fan knew of possible injuries and what warnings, if any, were posted. If the precautions taken by the Tour are considered to be reasonable, then the case can be dismissed. The business inviter duty provides an efficient way to analyze the incident and come to the correct conclusion.

The reasonableness standard would not only allow for efficient court proceedings, it would allow the Tour to efficiently provide safety. Currently, there is no incentive to invest in safety at Tour events.<sup>349</sup> Being liable for insufficient precautions creates an incentive for the Tour to find the most efficient precautions possible. The Tour, like most corporations today, has begun collecting and using data for everything.<sup>350</sup> With millions of data points collected already, the Tour has the ability to determine where the highest risk areas of the course are.<sup>351</sup> This knowledge will allow the Tour to provide protection to fans in the most dangerous areas. It will also allow the Tour to tailor the protection to the needs in a specific area of the course. Using the data collected, the Tour can better predict on what side of a par three players will miss.<sup>352</sup> The Tour can then use that knowledge to determine the safest place to put a grandstand. Additionally, that information can be used to determine where most drives end up on longer par fours and fives.<sup>353</sup> This would allow the Tour to ensure shops, food stands, and other tents are not located in these areas, lowering the number of distractions.

Even simple methods such as strategically placed warning signs can be enough to limit the liability the Tour faces.<sup>354</sup> Signs placed off the fairway in these landing zones can remind fans to stay alert for incoming balls. Experimenting with the data and other safety precautions, the Tour may discover that a certain spot on a hole, while riskier, provides an unparalleled view. Here, the Tour can install warnings before fans enter the stands or area. The signs can explain the elevated risks associated with sitting or standing in that location. Since businesses are not insurers of safety,<sup>355</sup> these reasonable precautions and reminders are likely enough to limit the Tour's liability.<sup>356</sup> The adaptability of the standard allows for the Tour to determine what the biggest risk to fans is and how to best protect fans from these risks.

---

348. *Id.*

349. Horton, *supra* note 233, at 345.

350. Neil Greenberg, *PGA Tour is Embracing Artificial Intelligence, and It Could Change How You Watch Golf*, WASH. POST (July 1, 2018, 5:30 AM), <https://www.washingtonpost.com/news/fancy-stats/wp/2018/07/01/the-pga-tour-is-embracing-artificial-intelligence-it-could-change-how-you-watch-golf/> [<https://perma.cc/5DMB-RXL3>].

351. *Id.* (“The amount of data collected by the PGA Tour is staggering. Alex Turnbull, director of the tour’s broadcasting production team, estimates there are 174 million shot attributes in the tour’s database . . .”).

352. *See Turn Data into Information, Information into Knowledge, & Knowledge into Entertainment*, SHOTLINK, <http://www.shotlink.com/about/history> (last visited Nov. 6, 2020) [<https://perma.cc/DQ5N-L7BN>].

353. *See id.*

354. RESTATEMENT (SECOND) OF TORTS § 343A cmt. f.

355. *Paschal v. Rite Aid Pharmacy, Inc.*, 480 N.E.2d 474, 475 (Ohio 1985).

356. RESTATEMENT (SECOND) OF TORTS § 343A cmt. f.

The flexibility of the reasonableness standard in the business inviter duty allows for the law to be adaptable. Just as premises liability laws have changed through time, the protections that are considered reasonable also evolve.<sup>357</sup> As the game of golf changes, the dangers associated with it change as well.<sup>358</sup> The standard set by the baseball rule created a bright-line rule that cannot be adapted to changes in sports or means of safety.<sup>359</sup> A reasonable standard would allow for the protections required to change based on new technology, risks, and protections. If the reasonable standard of care changes, so will court decisions and, ultimately, so will the protections offered by the Tour.

As the Honorable Learned Hand's famous equation goes, "liability depends upon whether B [burden] is less than L [injury] multiplied by P [probability] . . ."<sup>360</sup> Thus, once the burden is higher than the likelihood and magnitude of the harm,<sup>361</sup> it is no longer reasonable to expect the Tour to undertake the burden. If the costs of offering fewer grandstands or strategically placed tents becomes too great, the Tour can stop since it would no longer be considered reasonable. A key part of this duty to invitees is that the Tour would not be required to go above and beyond to protect spectators. If ticket sales become heavily affected because of new safety measures, the Tour is able change the protections it offers. Just as the burden changes, the harms faced by spectators change as well. As the game of golf changes, so do the risks and probabilities of those risks, requiring the Tour to change along with it. This adaptable formula will continue to be run until the burden of protecting spectators is lower than the likelihood and magnitude of the harm they face.<sup>362</sup> Once this balance has been reached, the courts will be there to hold the Tour accountable, ensuring this higher level of safety is provided at every tournament.

A unique advantage the Tour has in implementing safety standards is that nearly all professional tournaments are set up and run by the Tour.<sup>363</sup> Baseball and other professional sports are able to govern the product on the field, but the operational side is separately run by the stadiums.<sup>364</sup> Therefore, once the standard has been set as to what are reasonable safety precautions, the Tour can uniformly apply this to every tournament on the schedule. Unlike baseball which originally allowed professional teams to choose how far nets were extended,<sup>365</sup> the Tour would have control over all safety measures. While some courses have

---

357. *Smith v. Arbaugh's Rest., Inc.*, 469 F.2d 97, 105 (D.C. Cir. 1972).

358. *See Edward C. v. City of Albuquerque*, 241 P.3d 1086, 1094 (N.M. 2010) (explaining changes in the baseball rule).

359. *Grow & Flagel*, *supra* note 48, at 81.

360. *United States v. Carroll Towing Co.*, 159 F.2d 169, 173 (2d Cir. 1947).

361. *See id.*

362. *See id.*

363. *See generally Tournament Schedule*, PGA TOUR, <https://www.pgatour.com/tournaments/schedule.html> (last visited Nov. 6, 2020) [<https://perma.cc/FZF4-D2BS>].

364. *See generally* Charlotte Jensen-Murphy, *A Day in the Life of Stadium Management*, FACILITY EXEC. (Nov. 18, 2016) <https://facilityexecutive.com/2016/11/a-day-in-the-life-of-stadium-management/> [<https://perma.cc/BDM6-B6VC>] (explaining ways stadium managers can improve operations and guest experiences).

365. *White Sox First Team to Employ Extended Netting*, *supra* note 89.

holes on cliffs that are exposed to high winds,<sup>366</sup> others are hidden in trees<sup>367</sup> or located in neighborhoods.<sup>368</sup> Because every course provides unique challenges, the Tour can change certain precautions each week based on the weather, setup of the course, and expected attendance. The ability to provide uniform precautions tournament-wide while also having the flexibility to adapt to certain situations, would help provide the most efficient and necessary safety precautions each week.

The flexibility provided by the business inviter duty would allow the Tour to adapt to changing conditions in safety and risk. This will make the law adaptable to future changes in golf and avoid an archaic doctrine that has become out of touch with modern society.

### B. *Counterarguments and Potential Drawbacks*

As with any solution, there are potential drawbacks to the business inviter duty. Three of the biggest concerns this duty of care may lead to include: an increase in litigation, uncertainty in courts, and a rise in ticket prices.<sup>369</sup> One of the most common counterarguments to a reasonable care proposal is that it will increase litigation and further strain a packed court system.<sup>370</sup> Admittedly, in the short-term, litigation likely will increase simply because it is a new system and injured fans now have a chance at recovery. But the fear of packed courts may be overblown since the cost and time of litigation will always be a prohibiting factor.<sup>371</sup> Additionally, the number of cases will begin to drop after courts establish a precedent as to what reasonable safety measures are. Courts will also become more comfortable analyzing the facts in cases and dismissing claims that have no merit.

Some may also view the adaptability of what is reasonable as a downside, because it leads to uncertainty in how cases will be handled. The reasonableness standard does provide less certainty than the baseball rule; however, as courts establish precedent the question of what is reasonable will be answered. Just as courts today have established levels of reasonable care in other businesses, once a certain bar is set, the Tour will know what precautions are reasonable.

Another potential drawback is that it will increase liability, which will cost the Tour money, and in turn raise ticket prices.<sup>372</sup> Again, this may be true initially as courts and the Tour determine what level of care is required. Once established, it will be just as efficient as the baseball rule because the Tour will act according

---

366. See *Cypress Point Club*, GOLF DIG. (Jan. 3, 2019), <https://www.golfdigest.com/story/cypress-point-club> [<https://perma.cc/EFA4-DNBQ>].

367. See *Muirfield Village Golf Club*, GOLF DIG. (Jan. 3, 2019), <https://www.golfdigest.com/story/muirfield-village-golf-club> [<https://perma.cc/Y3V2-FBXJ>].

368. *The Story of Bay Hill*, BAY HILL: HIST. OF BAY HILL, <https://www.bayhill.com/about-bay-hill/history> (last visited Nov. 6, 2020) [<https://perma.cc/82X6-EMC2>].

369. Horton, *supra* note 233, at 374; Ludden, *supra* note 51, at 137.

370. Horton, *supra* note 233, at 374.

371. *The Cost of Taking Your Personal Injury Case to Court*, ALL L., <https://www.alllaw.com/articles/nolo/personal-injury/cost-case-court.html> (last visited Nov. 6, 2020) [<https://perma.cc/XD9Q-JYGN>].

372. Ludden, *supra* note 51, at 137.

to what courts have determined to be reasonable. The duty does not require that a business protect a customer from *all* possible injuries.<sup>373</sup> Because of this, the Tour does not need go above what is reasonable to protect fans. Thus, the fear that the Tour will be opened up to massive liability is likely exaggerated.

For example, if a fan is hit with a ball while sitting in the grandstands to the right of a par three where winds from the ocean always push the ball to the right, the Tour may be liable for not providing adequate protection. But it would be different if the fan had been drinking all day and decided to lay in the grass near the green to sleep it off. Now, the Tour is not going to be liable because of the fan's disregard for his own safety.

Additionally, the Tour would know the precautions it needs to take at each tournament to meet the standard of care. It would not waste money on unreasonable or inadequate protections, therefore saving money in the end. An increase in costs may cause ticket prices to increase, but costs may instead be offset by the rise in sponsorship revenue,<sup>374</sup> television deals,<sup>375</sup> and increased ticket sales.<sup>376</sup> Moreover, as discussed above, if ticket sales become an issue because of the costs of the precautions, those precautions would no longer be reasonable and the negligence formula would need to be adjusted. Ultimately, the advantages of adopting the business inviter duty outweigh the possible drawbacks.

## V. CONCLUSION

The baseball rule developed through case law and as a response to tragic injuries to spectators.<sup>377</sup> This limited duty rule only requires stadiums to provide an option of protected seats to fans.<sup>378</sup> But this rule's application has not been confined to baseball.<sup>379</sup> Courts have used this standard in hockey and golf when fans have been injured.<sup>380</sup> Golf has no fenced-in fields, rinks, or stands surrounding the field; golf has an open field that gives free reign to players. Because golf is so unique and the playing surface is so different from every other sport, the baseball rule has to be stretched in order to be applied.<sup>381</sup> Unlike baseball and

---

373. See *Paschal v. Rite Aid Pharmacy, Inc.*, 480 N.E.2d 474, 475–76 (Ohio 1985).

374. *PGA Tour Signs 10-Year Renewal Through '27 With FedEx To Title Sponsor FedExCup*, SPORTS BUS. DAILY (May 9, 2017), <https://www.sportsbusinessdaily.com/Daily/Issues/2017/05/09/Marketing-and-Sponsorship/FedEx.aspx> [https://perma.cc/GQE8-QLVR].

375. Sam Carp, *Report: PGA Tour to Make 'US\$700m Per Year' From New US TV Deals*, SPORTSPRO (Dec. 17, 2019), <https://www.sportspromedia.com/news/pga-tour-tv-rights-cbs-nbc-golf-channel-usa-extension> [https://perma.cc/2YQY-FWFM] (“[U]p from the annual US\$400 million it earns from its current broadcast contracts.”).

376. *PGA Championship Sees Record Ticket Sales, Limited Tickets Still Available*, PGA (Feb. 17, 2019), <https://www.pga.com/archive/pga-championship-sees-record-ticket-sales-limited-tickets-still-available> [https://perma.cc/8HML-TKZD].

377. See generally *Quinn v. Recreation Park Ass'n*, 46 P.2d 144, 146 (Cal. 1935); *Wells v. Minneapolis Baseball & Athletic Ass'n*, 142 N.W. 706, 708 (Minn. 1913).

378. *Quinn*, 46 P.2d at 146.

379. *Nemarnik v. L.A. Kings Hockey Club*, 127 Cal. Rptr. 2d 10, 11 (Cal. Ct. App. 2002).

380. *Id.*; *Grisim v. TapeMark Charity Pro-Am Golf Tournament*, 415 N.W.2d 874, 875 (Minn. 1987).

381. See *Grisim v. TapeMark Charity Pro-Am Golf Tournament*, 394 N.W.2d 261, 265 (Minn. Ct. App. 1986), *rev'd en banc*, 415 N.W.2d 874 (Minn. 1987).

hockey, it does not work to just determine if protected seats are available as there are limited numbers of seats and no nets.

As the game of golf has changed and evolved, the sport has become much more dangerous to fans who attend tournaments.<sup>382</sup> As the number of injuries has increased,<sup>383</sup> the duty of care the Tour owes to spectators must also increase. Today, golf tournaments do not provide an adequate number of areas where fans are safe but can also see the game.<sup>384</sup> Moreover, many of the seats considered "safe" are just as, if not more, dangerous than the rest of course.<sup>385</sup> While some safe areas are available, these areas are generally well off the course and offer no, or limited, views of the play.<sup>386</sup> It is simply unfair to tell fans that they must choose between watching golf or being safe.

With increased risks to fans and the poor applicability of the baseball rule, courts need to apply the same reasonableness standard applied to conventional businesses. This heightened duty owed by businesses to their invitees will increase protection to fans, while also remaining efficient and providing clarity to the Tour regarding safety precautions.<sup>387</sup> Because it knows of the hazard, this duty will require that the Tour take reasonable measures to ensure the safety of fans who have paid to attend the tournament.<sup>388</sup> What is considered to be reasonable can change over time; because of that, the Tour will need to stay up to date with safety measures. Moreover, the costs of the safety precautions would not be prohibitive since that would change the negligence formula making the precaution unreasonable. With time, and as courts create precedent, this duty of care will increase efficiency yet still allow for further evolution in the law.

The baseball rule rose to prominence along with professional sports.<sup>389</sup> As golf, its athletes, and its equipment has progressed, it is time for the law to progress as well.<sup>390</sup> Requiring the PGA Tour to take reasonable steps to protect fans will not only grow the game of golf but improve the experience for everyone.

---

382. See USGA & R&A, *supra* note 17, at 19.

383. See Wacker, *supra* note 1.

384. See *supra* Section III.B.

385. See *supra* Section III.B.

386. See *supra* Section III.B.

387. See *supra* Section III.B.

388. See RESTATEMENT (SECOND) OF TORTS § 332 cmt. a. (AM. L. INST. 1965).

389. Augustine, *supra* note 18, at 42–43.

390. USGA & R&A, *supra* note 17, at 19.