STATUTE OF LIMITATIONS

As statute of limitations is the time in which a person who desires to bring a claim for damages must file the suit, or it is forever barred. For example, in a simple automobile claim for personal injury, the date by which a claim must be brought is two years from the date of the accident.

It isn't always that simple. Take the case of Chalifoux v. Radiology Associates of Richmond, Inc., decided by the Virginia Supreme Court just last year. In a medical malpractice case, the statute is two years, but doesn't start to run until the person knows, or should have known, that the doctor committed malpractice. In the event the malpractice was "ongoing," then it is the last day treatment was rendered. In Chalifoux case, the plaintiff (the injured party) had headaches over the course of nearly three years. Her doctor, and neurologist had sent her several times to the same radiologist, who performed a brain scan, and found no abnormalities. There was an abnormality, the cause of the patient's headaches, and she sought to sue on the grounds of malpractice. The lower court threw the case out, saying that the radiologist treatment was "episodic" and not "ongoing" malpractice, but the Supreme Court of Virginia reversed, finding that the radiologists continuing misinterpretation of the radiographs, old and new, was a continuing course of treatment that tolled the statute of limitations.

SO WHEN DOES YOUR INSURANCE COVER ANOTHER DRIVER

Insurance coverage is a funny thing in Virginia. Generally, any company offering insurance for liability in Virginia is governed by the statutes that provide what that insurance means. It does much matter what the contract for insurance says. If they offer it in Virginia, then, statutes will govern what is covered, and what is not.

Take the case of GEICO v. United Services Automobile Association. In that case, decided just last summer, a car, owned and insured by Mother, was usually driven by Daughter. Daughter often lent the car to others including Male Friend (probably Boyfriend). Daughter and Male friend had an argument, and Male Friend took the car and drove to another town. After thirty minutes of waiting, Daughter called police to report the vehicle as stolen. Of course, Male Friend had an accident. The Court found that Mother's policy was not responsible for Male Friend's accident, because, even though he often used the car with permission (which would have made Mother's insurance responsible), that was not the case in the particular instance.

PARKS AND RECS, AND LAWSUITS

Generally, a park, owned and operated by a City, County or the Commonwealth, is immune from civil suits for personal injury damages unless the injured party can show "gross negligence." Gross negligence, very generally (trust me, it gets complicated), is best described as "an utter disregard of prudence amounting to a complete neglect of the safety of another." Take the case of Volpe v. City of Lexington, decided just last summer. The decedent was a swimmer in a lake that had a "low head dam." The park knew from the when the park was planned that a low head dam caused unusual currents that could hold a person under and drown them in high water situations. Nonetheless, the City did not post any warning, or take any steps to warn against this risk. The Court determined that the decedent's family could proceed against the City on gross negligence grounds, find the knowledge of the unusual risk, and the failure to take any steps could convince a jury that the park was not entitled to immunity. The decedent's family also sought punitive damages, based on "willful and wanton" negligence. The Court found that no such suit could continue since there was no evidence that the City engaged in a "spirit of mischief, criminal indifference, or conscious disregard for the rights of others." We lawyers debate if there is really a difference between these standards all the time.