

THE ADVOCATE

MUNDY
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& ASSOCIATES, L.L.C.

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SHOULD I STAY OR SHOULD I GO?

If I leave, there will be trouble; if I stay, it will be double.
—The Clash, 1980

In difficult economic times, spouses considering separation and divorce are confronted with a wide range of challenging financial issues. Among them is whether it is financially feasible to maintain two households.

In Virginia, a spouse may seek a divorce when husband and wife have lived separate and apart, without any cohabitation or interruption, for a period of one year or more. For spouses with no children under 18 years of age who have resolved their issues by written agreement, the required separation period is six months.

If a separating couple is financially unable or unwilling to maintain two residences, they may ask how they can claim to have lived separate and apart if they have continued to occupy the marital home.

In 2002, the Court of Appeals of Virginia addressed this issue in the case of *Bchara v. Bchara*. The trial court granted the parties a divorce on the ground that they had lived separate and apart for more than a year even though they lived under the same roof. The Court of Appeals agreed, but limited its holding to the facts of the *Bchara* case. Subsequently, attorneys handling similar cases have sought either to align with or distinguish their clients' cases from the *Bchara* case.

The *Bchara* criteria for living separate and apart in the same residence included the following:

- At least one spouse had the intent to separate permanently or indefinitely.
- The spouses occupied separate bedrooms.
- There was no romantic or sexual intimacy (in fact, the wife had discovered a videotape showing the husband involved in an adulterous affair).
- They stopped attending family functions as husband and wife.
- They stopped attending church together.
- They stopped depositing money into their joint checking account.

Other cases suggest that the following factors may also be considered:

- A spouse stops wearing his or her wedding ring.

- Each spouse shops for his or her own food and prepares his or her own meals.
- The spouses do not eat meals together, or as a family.
- Each is responsible for caring for his or her own space within the home, such as a bedroom.
- Each does his or her own laundry.
- Each has his or her own separate checking accounts.
- They do not socialize together inside or outside of the home.
- There is no gift-giving between spouses for special occasions.
- The spouses interact as parents only where strictly necessary from the children's perspective or for their well-being.
- They make known to friends and relatives that they are separated but are still residing in the home for financial or similar reasons.
- They utilize separate entrances to the residence, if feasible.

Even if spouses believe they can meet the *Bchara* requirements for living separate and apart in the marital residence, they should ask themselves if this option is a wise idea. There are many things to consider besides legal issues. For instance, spouses should consider how their decisions will affect their children. Counseling for the spouses, and perhaps for the family, may be helpful in these circumstances.

As the soured economy continues to exert financial pressures on separating couples, more will probably consider the legal option of living under the same roof. If a couple decides that this is the best option for them and their family, they should attempt to establish as many of the *Bchara* factors as possible. If the *Bchara* criteria cannot be established, it will be difficult for them to obtain their divorces on the ground of continuous, uninterrupted physical separation.

If you have any questions about these or similar issues, please contact us at info@mundryrogers.com or 540-982-2900.

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SPECIALIZING IN:

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Theme-park injuries

Parents and kids love the excitement of the rides, the food, and the noise of theme parks.

As parks add attractions to compete for thrills and uniqueness, visitors suffer 7,000 injuries every year. Inflatable-slide rides collapse and injure toddlers. Slow kiddie-ride cars derail and harm youngsters. High-acceleration roller coasters and free-fall drop towers subject adult riders to back and neck harm.

Injuries may come from a combination of inappropriate rider behavior, inadequate operator training, poor maintenance, ride malfunctions, and design defects.

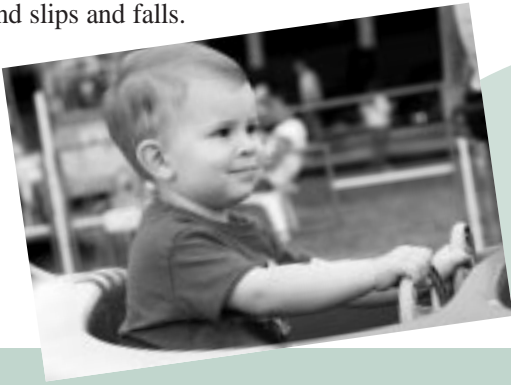
Park guests are also potentially subject to injuries resulting from personal assaults, negligent security, and slips and falls.



A derailed kiddie ride

At the 2008 Wisconsin State Fair, a kiddie ride malfunctioned, injuring a five-year-old girl. The accident happened when the girl's car derailed and crashed into a fence, leaving her with a bruised knee and injuries to her neck, back, and elbow. The girl was treated at a local hospital; her injuries were not serious.

If you have been injured at an amusement park, please contact legal counsel.



NEGLIGENCE

Under the law, negligence is inattention that causes a person harm.

Negligence can take two forms: *action*, such as a mason carelessly dropping a heavy brick off a scaffold; or *failure to act*, when a business owner disregards repairing a broken step on a stairway in a dimly lit corridor.

A crushed foot

As directed, an auto-repair patron moved his car to a numbered parking spot. As he left his car, a dealership employee driving another vehicle failed to see him and ran over his foot. His crushed foot developed into a complex injury, damaging the peroneal nerve and causing constant pain, color and temperature changes, and loss of hair on his foot.

A former highly paid stockbroker, the injured man attempted to work for more than a year, but medications and burning pain forced him to stop. His attorney then sued the dealership, alleging its employee negligently failed to keep a proper lookout. The parties reached a significant settlement prior to trial.



When insurers won't pay MEDICAL BILLS

According to the law, insurance companies have a good-faith responsibility to deal fairly with customers.

This means coverage providers and their agents must actively seek ways to pay all fair benefits promised to policyholders, not to disallow them.

Sometimes, when policyholders need them most, insurers redefine their obligations and services to avoid paying promised benefits. Common tactics include denying claims or dragging them out so long that insureds simply get tired of fighting and give up.



Her insurer said "No"

A 32-year-old doctoral student suffered career-ending brain injuries in a head-on collision with a negligent driver. When the other driver's insurance failed to cover all her medical expenses, she filed an underinsured-motorist claim with her own auto insurance plan, which entitled her to \$1.5 million in benefits. Her insurer refused to pay for several years, claiming she had no head injury. Her attorney sued the insurer and its agent, alleging bad faith, breach of contract, and violations of a state unfair trade practices statute. A jury awarded her significant compensatory and punitive damages, plus attorney fees and prejudgment interest.

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FACTS ABOUT MEDICAL MALPRACTICE



You may have heard a number of myths about doctors, medical malpractice, and the civil justice system.

HERE ARE THE FACTS:

FACT 1

Medical negligence is a SERIOUS national problem: Up to 195,000 patients die each year from preventable medical errors in hospitals.

FACT 2

According to the American Medical Association, the number of doctors has INCREASED in every state over the last several years: Some claim the number of physicians is decreasing due to malpractice liability insurance premiums. It's simply not the case.

FACT 3

Malpractice claims are NOT driving up doctors' insurance premiums: Premiums rise and fall with the state of the economy. Inflation and other insurance-industry forces drove up doctors' insurance premiums more than lawsuits. In fact, insurers raise rates even when their casualty payouts decrease.

FACT 4

Malpractice claims do NOT drive health-care costs up: Malpractice costs amount to less than two percent of overall health-care spending and have remained so for years.

FACT 5

Caps on claims awards do NOT lower doctors' malpractice insurance premiums: Insurance premiums in states with caps are nearly ten percent higher than in states without caps.

FACT 6

Insurance reform does NOT lower medical malpractice insurance rates: Premiums in California rose 450 percent between the passage of a cap law in 1975 and meaningful insurance reform in 1988.

FACT 7

High premiums are the direct RESULT of bad insurance-industry conduct: A coalition of public-interest organizations found that malpractice premiums increase when investment values decrease.

FACT 8

The insurance industry makes annual windfall PROFITS: Insurers earned an estimated \$65 billion in 2007.

Personal injury issues

Our practice can help referral clients obtain justice after personal injuries.

When innocent persons suffer serious injury from property owners' negligence, attorneys familiar with premises liability can help victims obtain compensation for medical bills, lost wages, pain and suffering, and other damages.

An experienced lawyer can evaluate an incident, communicate with property owners, negotiate with insurers, locate experts to testify on a plaintiff's behalf, if necessary, and present the case at trial.

An elevator attack

An apartment-building tenant entering an elevator was shot by a mugger four times. He sustained one wound to his head. When he sued, his attorney claimed the building's owner was aware that locks on doors were constantly broken. Although the owner claimed broken locks were irrelevant since the assailant followed the plaintiff into the building, the parties settled on the trial's third day.

PREMISES LIABILITY

Employees injured through the negligence of business owners who fail to protect them from physical harm can call on attorneys for help.

Businesses have a legal duty to provide sensibly safe passage for employees and all others who enter their grounds.

Jewelry employee injury

A woman who managed jewelry sales and repaired watches fractured her wrist and patella when she tripped over a steel cart while entering a darkened stockroom. A light sensor had malfunctioned, leaving her in unsafe darkness. She required several pin insertion and removal surgeries and lost strength in her hand. As a result, she had difficulty working on computers, attaching clasps to necklaces, and repairing jewelry and timepieces.

Her attorney sued the shop's owner, alleging failure to maintain or repair the light, which had not worked properly for several years. A jury found her partially responsible, but awarded her significant damages.

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Nursing home NEGLIGENCE

Residential care for elderly nursing home residents may not be delivered as pledged.

Should a safety or injury issue arise, it may be hard to determine causes of problems. Staffs are reticent to talk, and the elderly may be unwilling or unable to explain what happened.

Responsible adults who suspect that nursing home care is insufficient or has resulted in an injury should get medical care for the loved one, notify residence management of concerns, and seek legal counsel. Attorneys familiar with nursing homes can help elderly loved ones receive a high level of care, or determine the bases of injuries and hold the responsible parties accountable.

GANGRENE

A 75-year-old nursing home resident died after developing painful gangrene and undergoing an above-the-knee amputation. Her daughter sued the facility, alleging negligence for staff reductions and failure to provide adequate treatment. A jury awarded a significant amount for pain and suffering.



Stop-sign accidents

According to Insurance Institute for Highway Safety 1999-2000 research estimates, nearly 700,000 vehicle accidents occurred at stop signs. About a third involved personal injuries.

Drivers who failed to stop at stop signs or who stopped at stop signs but failed to see oncoming traffic accounted for approximately 70 percent of all automobile accidents.

Broadsided After being broadsided by another vehicle that ran a stop sign, a driver suffered multiple serious injuries that required her being placed in a drug-induced coma for several months, followed by six months of rehabilitation and physical therapy. Unable to ever work again, she enlisted the services of an attorney who filed suit against the responsible driver. A jury awarded significant damages.

PRODUCT LIABILITY

Refrigerator-ejected ice cubes

Consumers injured by products with serious defects in design, manufacture, or improper or incomplete explanation of dangers or proper use can hold marketers accountable.

When their new refrigerator-freezer's icemaker began randomly ejecting ice cubes, purchasers complained to a retailer, who attempted repairs.

Several days later, their adult daughter slipped on an ejected ice cube and suffered a serious fall, leading to painful herniated disk replacement surgery and future physical therapy for recurrence of pain.

The couple sued the manufacturer and retailer for defective design and failure to repair a dangerous problem. The parties settled.

