

The following summary of Virginia court cases addressing charitable immunity was prepared by Williamson & Lavecchia, L.C. For more information about Williamson & Lavecchia, L.C., please visit the [Williamson & Lavecchia, L.C. website](#) or [click here](#) to contact us.

Memorandum

FROM: Tony Agudelo

DATE: September 27, 1999

RE: Charitable immunity case law

Breakdown of all charitable immunity cases which have any potential relevance..

Facts in *italics* appear to be those focused on by the court in rendering its decision.

Straley v. Urbanna Chamber of Commerce, 243 Va. 32 (1992): (not beneficiary)

Background - plaintiff a spectator at Urbanna Oyster Festival Parade. Struck in eye by piece of candy thrown.

Charity issue: (TC found charity and beneficiary. S Ct does not address charity issue because of ruling on beneficiary status)

- a nonstock, nonprofit Virginia corp
- organized for the pure charitable purpose of promoting the Town of Urbanna and providing a means to stimulate economic growth in area
- Bylaws say organized for purposes of advancing the commercial and civic interests of the Town.
- Members pay annual dues.
- No part of income or assets to inure to benefit of any individual.
- Exempt from federal and state income taxes.
- Executive Board members serve without pay.
- Principal source of revenue is the oyster festival.
 - food and craft vendors pay a fee
- all excess revenues used to help fund next year's festivals or contributed to fire department, rescue squads, library, and a number of charitable causes.

Beneficiary issue:

- *resident of Norfolk*
- was 10th time plaintiff at festival.
- *plaintiff received no pecuniary benefit from the funds generated.*
- relationship between plaintiff and Δ too attenuated and indirect.
- not a beneficiary - instead a mere invitee to whom Δ owed a duty of care.

Thrasher v. Winand, 239 Va. 338 (1990). (not beneficiary).

Background - auto collision. Festival had barricade some streets.

Issue - whether at the time of his injury, he was accepting the benefits of the charitable activities of the defendant.

Beneficiary issue:

- *plaintiff a resident of town near Buchanan.*
- plaintiff a member of group called “Purgatory” (owners of 4-wheel drive trucks)
- Mountain Magic a corp organized by citizens of town of Buchanan.
- non-stock, non-profit corp.
- purpose to organize and promote an annual spring festival, to engage in other community activities, and to donate net earnings to local charities.
- charity status unchallenged here.
- vendors at festival required to divide profits with Mountain Magic.
- vendors raised money for their own purposes.
- Purgatory a food vendor at festival. Plaintiff worked at the booth.
- Purgatory not a beneficiary. Plaintiff not a vicarious beneficiary.
- Mere membership in a class eligible to receive future benefits, conditioned upon circumstances which might never occur, is too remote and speculative to be considered.
- *beneficiaries were only those to whom the board donated the proceeds of its fund-raising activities.*

Purcell v. Mary Washington Hospital, 217 Va. 776 (1977): (not charity)

Charity issue:

- purpose is to conduct and run a general hospital and to run a training school and home for trained nurses, and to issue to graduate nurses diplomas of proficiency.
- discontinued nursing school in 1929
- makes facilities available, without charge, to nursing programs taught by area community college.
- original charter provides for \$100-\$500 in capital stock.
- no dividends with stock
- for many years corp filed an annual report as a nonstock corp with SCC
- court order chartering hospital states hospital purely benevolent and charitable, and no fee required.
- *nothing in charter limits, restricts or requires the hospital to conduct its affairs as a religious, benevolent, charitable or eleemosynary institution.*
- members of the association must pay annual dues.
- no board members of corporate officers receive a salary or other remuneration.
- exempt from federal and state taxation
- exempt from local property taxes on real and personal property.
- hospital charges those who are not “medically indigent.” Medically indigent patients have their bills charged off to the endowment fund or medically indigent fund.
- *hospital pursues an aggressive and vigorous program to collect patient accounts.*

- 3 employees in accounting dept devote all time to collection.
- if account not paid in 3 to 5 months, turned over to attorney or collection agency.
- suits often instituted and other legal steps against debtors.
- hospital had profit the year when alleged negligence occurred
- hospital showed profit 20/21 years. Profit stays in operating fund to be used in day-to-day operations, equipment, building, and other necessities.
- test is “whether or not maintained for gain, profit, or advantage. Look at articles of incorp and manner in which conducted.”
- a private corporation
- stock could be issued (although not actually done)
- if stock issued, and corp voluntarily dissolved thereafter, each shareholder would receive pro rata share of assets.
- no proscription in charter or general law prohibiting salaries or other benefits paid by corp to its members, officers and directors.

The Memorial Hospital, Inc. v. Oakes, 200 Va. 878 (1959). (charity)

Background - same hospital as in Walker v. Memorial Hosp.

Charity issue:

- admitted as a paying patient.
- no compensation paid to officers and directors.
- no individual, firm, or corp receives any returns from its operations.
- non-profit corp
- no real estate taxes or federal and state income taxes.
- goal not to make money but to break even after depreciation.
- liberal about debt collections
- charter says corp formed solely for benevolent purposes.
- presumption that operating a charitable institution in accordance with charter purposes.
- no stockholders
- those who are able to pay are expected to pay, but those unable to pay are not pressed for payment and their accounts are charged off.
- had deficit for current year.
- net loss after depreciation from 1952-1955.
- charitable as a matter of law.

Danville Community Hospital v. Thompson, 186 Va. 746 (1947). (not charity)

Background - child burned at hospital.

Charity issue:

- stock company
- charter does not say charitable objectives.
- each share of stock entitled holder to 30 days per year of hospital service without cost.

- earnings of corp to be reinvested into the corp.
- no profits, operated at a loss
- *charges all patients*
- *collects debts if it can*
- failure to make money or collect from some customers does not convert a private corp into a charitable institution.
- test for charity is whether or not maintained for gain, profit, or advantage. Look at articles of incorp and manner in which corp is conducted.

Weston's Administratrix v. Hospital of St. Vincent, 131 Va. 587 (1921). (charity & beneficiary)

Background - newborn died in hospital from burns.

Charity issue:

- *conducts hospital solely for philanthropic and benevolent purposes*
- *not conducted for profit*
- *has no stockholders, pays no dividends.*
- *all income used for support of hospital.*
- *hospital is not self-sustaining*
- *operated by Sisters of Charity of the Roman Catholic Church who receive no compensation for their services.*
- *receives income from pay patients and donations.*

Beneficiary issue:

- paying patient.
- *even paying patients receive benefits of the building, equipment, management, care and nursing, sanitation, ad comfort provided by hospital.*
- paying and non-paying patients receive the benefits of the charitable hospital.

Hospital of St. Vincent v. Thompson, 116 Va. 101 (1914). (charity, but not beneficiary)

Background - plaintiff injured on hospital premises while accompanying sick friend to the hospital.

Charity issue:

- simply because hospital receives compensation from patients who are able to pay does not render it any less charitable in the eyes of the law.
- not really an issue in the case.

Beneficiary issue:

- *under facts, plaintiff was a stranger, and not a beneficiary of the charity.*

Zervos v. YMCA, 37 Va. Cir. 325 (Chesterfield, 1995). (not beneficiary)

Beneficiary issue:

- *plaintiff himself not a member of YMCA*
- plaintiff received day care services because stepfather a member of YMCA
- *actual benefits of participation in after school program flowed to child's parents*
parents got discount, convenience of location

- *relationship too attenuated and indirect to classify as beneficiary.*

Gaines v. YMCA, 32 Va. Cir. 346 (Richmond, 1994) (beneficiary).

Background - plaintiff injured while playing basketball on premises of Δ.

Beneficiary issue:

- *plaintiff a member of D*
- *plaintiff participated in basketball league conducted by D*
- *revenues generated by league generally exceed direct expenses.*
- *additional money generated by league used to finance other programs or indirect costs.*
- *no part of revenues are profit because YMCA a charitable institution.*
- *basketball an excellent means of maintaining physical fitness.*
- *basketball helps people develop and enrich their lives mentally and physically, spiritually and socially.*
- *basketball develops self-confidence, self-respect and worth as individuals.*
- *develops mental and physical well-being.*
- *develops capacities for leadership.*
- *all of these are part of YMCA's charitable benefits.*
- *recipients of pecuniary benefits are not the only beneficiaries of charities.*

Roberts v. Wesley Foundation, 27 Va. Cir. 121 (Williamsburg, 1992). (charity & beneficiary).

Background - plaintiff slipped and fell on ice while attempting to enter Δs' building for a lunch. Two defendants = Wesley and PAA.

Charity issue -

- *Wesley's charter states organized for charitable, benevolent, and literary purposes.*
- *Wesley a non-profit organization.*
- *Wesley privately owned.*
- *Wesley's Board of Trustees are not salaried.*
- *no individual, partnership, or corporation receives any return from the operations of Wesley.*
- *donations to Wesley are tax deductible.*
- *income primarily derived from donations of Church members.*
- *Wesley occasionally offers building space to community to use for a charge depending upon what the organization can pay.*
- *PAA established for purpose of promoting and assuring the highest level of service attainable for certain elderly persons.*
- *PAA charter says non-profit. No capital stock required or issued.*
- *all PAA property irrevocably dedicated to charitable purposes.*
- *no surplus of funds over last several years.*
- *required to direct any surplus funds to other charitable purposes.*

- upon liquidation or dissolution, required to distribute assets to successor corp organized for similar eleemosynary purposes.

- Director is the only person on Board who receives remuneration for services.

- PAA exempt from federal income tax.

- donations to PAA are tax deductible.

- both PAA and Wesley are liberal in debt collections.

Beneficiary issue:

- plaintiff a long time participant in activities sponsored by PAA.

- Wesley donated space to PAA, as it charged reduce rate.

- without Wesley, PAA could not put on any activities in the area.

- PAA provided meals to plaintiff (2x/week for 10 years); provided info and activities for those who participated in lunch programs; PAA provided a meeting place where individuals could come together to socialize.

- cost to PAA of delivering a meal was \$4.87, and they asked for donations of \$2.25 per meal. Liberal in debt collection.

Langston v. American Red Cross, 18 Va. Cir. 451 (Virginia Beach, 1990). (beneficiary)

Background - plaintiff hurt while attending a CPR class at Δ's facility.

Beneficiary issue:

- cpr instruction could prove very helpful in dealing with cardiopulmonary emergency.

Morgan v. Marymount University, 18 Va. Cir. 428 (Arlington, 1990). (not charity)

Background - child injured at elementary school run by Δ.

Charity issue:

- private, non-profit educational corporation

- charges tuition

- surplus revenues in 9 of 10 years

- charter provided no indicia of charitable nature of organization

- several financial aid programs for students.

- have turned over nonpayments to collection agencies.

- when students don't pay, **D** does not allow re-enrollment for future semesters

- sets tuition at a level to break even.

- merely calling itself charitable will not be sufficient to make an institution charitable if its actions do not manifest a primarily charitable purpose, even though it may in fact provide some charitable services.

Stayton v. American Legion, 18 Va. Cir. 387 (Henrico, 1990) (beneficiary).

Background - plaintiff slipped and fell while working in an amusement booth at Δ's carnival.

Beneficiary issue:

- plaintiff a member of legion and a volunteer worker at carnival.

- *plaintiff was free to enjoy all the benefits associated with the carnival as well as the benefits associated with the American Legion generally.*

Boan v. Peninsula YMCA, 18 Va. Cir. 145 (Newport News, 1989) (charity & beneficiary).

Background - plaintiff #1 a non-member visitor who had paid \$4 to use defendant's premises to play basketball. Plaintiff #2 a non-member, paying guest in summer camp injured when fell from tree.

Charity & Beneficiary issues - the court does not lay out any factors. Merely states its conclusion.

Johnson v. Church Schools, Case No. LL-932-W (Richmond, 1988). (not charity)

Background - student brought suit against her school, St. Catherine's.

Charity issue:

- looks at four relevant factors: whether charter limits to charitable purpose; extent of charges for its services; whether generates a profit; whether pursues aggressive debt collection.

- *articles of incorp do not specify a charitable purpose.*

- *charges its students tuition and fees*

- *tuition and fees competitive with other schools in area, many of which aren't charities*

- *8 of 16 years generated profit*

- *articles of incorp state corp has power to purchase, receive and acquire and hold and dispose lands, tenements, rents issues and profits. This bears on intent to profit.*

- *school policy prevents students with delinquent accounts from taking exams and obtaining transcripts.*

- *school has employed services of professional debt collection agency to collect delinquent student accounts.*

Krupnik v. Glaydin School, 3 Va. Cir. 338 (Loudon, 1985). (charity & beneficiary)

Background - plaintiff sued school where she was a student for injuries caused by school's negligence.

Charity issue:

- *non-stock*

- *non-profit*

- *organized for charitable and educational purposes.*

- *filed tax returns for organizations exempt from income tax for year of accident and two prior years.*

- *endeavored to break even, but generally lost money except for year of accident.*

- *income from tax deductible donations, government agencies, tuition, sale of cattle.*

- *no salaries paid to officers or directors, and no assets transferred to them.*

- *upon dissolution, assets must be distributed to charities.*

- *no students have been sued for non-payment of tuition.*

Beneficiary issue:

- father paid tuition of \$200 of tuition cost of \$25,000

Costello v. University of Richmond, Case No. LG-1720 (Richmond, 1985). (not charity)

Background - plaintiff fell in University Commons.

Charity issue:

- nothing in charter or bylaws limits or restricts the manner in which the University conducts affairs to benevolent, charitable, or eleemosynary.

- University charges for its services

- 79% of educational and general expense paid for by tuition.

- has handsome profit (2-3 million per year)

- excess revenue every year since 1895.

- aggressive debt collection as exclude students from registering for subsequent semester, exempting student from graduation, withholding transcripts, removing students from classes, turning over accounts to collection agencies or attorneys for collection.

Taylor v. American National Red Cross, 8 Va. Cir. 108 (Norfolk, 1984).(Beneficiary)

Background - Claimed negligence in attending to and withdrawing her blood.

Beneficiary issue:

- blood and blood products made available to all of the hospitals in Tidewater Region, free of charge to all patients who need to be transfused and without any replacement requirement.

- plaintiff and her family were eligible to receive any needed blood and blood products because she was member of general public and a blood donor. Also, Red Cross blood service facilities in other regions.

- even if region not serviced by Red Cross, as blood donor she and family could get blood without charge as would be replaced by Tidewater Red Cross.

- plaintiff and her family had opportunity to receive blood whenever and wherever.

Egerton v. R.E. Lee Memorial Church, 395 F.2d 381 (4th Cir. 1968) (charity and beneficiary).

Background - plaintiff injured while in church.

Charity issue:

- an unincorporated religious society or association

- non-profit

- dependent for support on contributions of its members.

- sanctuary is open to public at reasonable hours.

- identified as a place of local historic interest and significance.

Beneficiary issue:

- when visit church to admire religious adornments and fixtures, visitor is partaking in a feature of **D**'s spiritual function and service, and therefore a beneficiary of its bounty.

Bodenheimer v. Confederate Memorial Ass'n, 68 F.2d 507 (4th Cir. 1934). (charity)

Background - plaintiff fell on defective walk on defendant property.

Charity issue:

- *defendant incorporated to erect and maintain a Confederate Memorial Institute.*

To collect, arrange and preserve statutes, portraits, photographs, and historical data

- *all of its property had been given to it to accomplish the purposes for which it was incorporated.*

- *charged admission fees.*

- *admission fees not sufficient to pay necessary expenses of keeping open.*

- *never had any profit*

- *under charter, if profit, required to use to obtain additional historical data.*

- *non-stock corporation*

- *sole purpose is to make available for historians, students and the general public valuable confederate documents, paintings and the like.*

- *only paid employees are a hostess, superintendent of buildings and grounds, and assistant to superintendent.*

- *association has always been dependent upon voluntary contributions and services of its members and friends*

Ettlinger v. Trustees of Randolph-Macon College, 31 F.2d 869 (4th Cir. 1929). (charity)

Background - Plaintiff a student at Δ college. Jumped out of building which was on fire, and sustained injuries.

Charity issue:

- *non-stock corp*

- *purpose of carrying on education.*

- *property from charitable gifts and bequests*

- *charges for tuition*

- *tuition covers only a part of the costs of carrying on work.*

- *but for the charitable gifts, it would not exist to serve the plaintiff.*

Davidson v. Colonial Williamsburg Foundation, 817 F. Supp. 611 (E.D. Va. 1993). (not charity)

Background - visitor to Colonial Williamsburg fell and was injured on Foundation property.

Charity issue:

- *says courts consider: whether charter limits to charitable or eleemosynary purposes; not for profit charter limitation; whether goal is to break even; whether earned a profit; whether any profit or surplus must be used for charitable or eleemosynary purposes; whether depends on contributions and donations for its existence; whether provides services free of charge to those who can't pay; whether directors and officers receive compensation.*

- only 8% of operating income came from donations and gifts. Not dependent on contributions for continued existence.

- principal purpose to preserve, restore, reconstruct, and maintain historical structures, objects, location, and art and to promote and encourage historical, interpretive, research and educational activities.

- articles of incorp did not limit expenditures to charitable or educational purposes.

- articles of incorp did not say not-profit.

- Board of trustees receive no compensation, but other officers are compensated.

- salaries of board chairman, president, and vice presidents are substantial.

- visitors must buy tickets, and the price is not determined by visitor's ability to pay.

- exempt from federal income tax for its charitable and educational activities.

- Foundation has acquired and developed diverse and extensive landholdings and commercial operations.

- Foundation owns many product marks, operates a mail order catalog business, runs gift shops

- pays substantial real estate and personal property taxes.

- its wholly-owned for-profit subsidiary manages certain undertakings. Some individuals of subsidiary that are on Board, are also on Board for Foundation.

- many employees of foundation also perform services for subsidiary.

- financial statements of subsidiary and foundation are prepared on consolidated basis.

- goal is to hold expense growth rate slower than revenue growth rate.

- for four of prior five years it had operating surplus, maintained substantial cash reserves, and a hefty endowment.

- foundation can underwrite any losses the subsidiary sustains.

Radosevic v. Virginia Intermont College, 633 F. Supp. 1084 (W.D. Va. 1986). (not charity)

Background - college student sued school for injuries when roof blew off due to storm.

Charity issue:

- fact that exempt from state and federal taxation is not dispositive as unlikely standards used by taxing authorities and interchangeable with courts' standards for immunity. Public policy behind tax exemptions and tort liability are inherently dissimilar.

- purpose to instruct youth

- corp has power to take, receive, own, hold, administer, distribute and dispose of property

- corp can sell, mortgage, or hypothecate property and administer the proceeds in any way not inconsistent with purpose of corp.

- non-stock, non-profit private institution

- Members of Board of Trustees do not receive compensation for their services.

- officers of college receive salaries.

- *nothing in charter restricts to religious, benevolent, charitable or eleemosynary affairs.*

- receives contributions from charitable sources to help maintain and operate the college and help defray educational costs to students.

- large portion of student loans and scholarships come from charitable sources.

- *all students pay tuition*

- *college has filed numerous suits to collect student debts.*

- *profit in 9 of last 15 years.*

- college unable to operate and provide the level of services and education in absence of charitable donations.

- *tuition set to achieve a buffer of revenue over anticipated expenses.*

- *has liability insurance coverage.*

OTHER RELEVANT MATTERS:

Because the status of charitable immunity and the theories upon which it is based vary greatly from jurisdiction to jurisdiction, cases from other jurisdictions are not instructive or persuasive. Moore v. Warren, 250 Va. 421 (1995).

Whether hospitals can afford to procure liability insurance is of no concern regarding substantive rights such as charitable immunity. Hill v. Leigh Memorial Hospital, Inc., 204 Va. 501 (1963).

In 1974, the Virginia General Assembly eliminated the doctrine of charitable immunity for most hospitals. § 8.01-38 allows only those hospitals which render exclusively charitable medical services free of charge to patients to invoke the doctrine of charitable immunity.

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