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Virginia Law Affecting Churches - Restated

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I. INTRODUCTION

Twenty-five years ago, the late William T. Muse, then Dean of the University of Richmond School of Law, observed that although there was considerable law in Virginia relating to churches this law was widely scattered throughout the statutes and the cases. To

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remedy this state of affairs, Dean Muse wrote a concise but complete summary of these laws.¹ In the quarter-century that has elapsed since Dean Muse's article was published, Virginia has adopted a new constitution, many church-related statutes have been enacted and a number of church-related cases have been decided, some of which have refined established principles and others of which have created or recognized new principles. The natural consequence of the foregoing activity has been to re-establish the need that prompted Dean Muse to write in the first instance. Accordingly, the following is offered to the profession, in memory of the scholar and friend who authored the original, as a contemporary restatement of Virginia laws affecting churches.

II. DEFINITIONS

Church

The word "church" carries various meanings depending upon the circumstances in which it is used. In a purely physical sense, "church" may refer only to the church building or house of worship. In other contexts it may refer to "the great body of persons holding the Christian belief, or . . . to those adhering to one of the several denominations . . . at large or in a definite territory; and it may mean the collective membership of persons constituting the congregation of a single permanent place of worship."² As used in section 57-7 of the Virginia Code, "church," "religious society" and "religious congregation" are used as alternate terms which "apply to the local congregation, and not to the church at large in its denominational sense."³

Congregational Church

In a congregational church "[e]ach congregation is an independent sovereign body, subject to no higher ecclesiastical authority, and each is the final judge of the true faith, doctrine and practice of the church."⁴ Interrelation or cooperation of congregational churches "does not destroy or even impair [their] independence."⁵

Hierarchical Church

Churches "that are subject to control by super-congregational bodies" are hierarchical churches. The Episcopal and Presbyterian churches are examples of this type.

Member Of A Church

"To constitute [one] a member of any church, two points at least are essential, without meaning to say that others are not so, a profession of its faith and a submission to its government." 7

Minister

A "minister," as referred to in section 20-23 of the Code of Virginia, "is the head of a religious congregation, society or order. He is set apart as [their] leader. He is the person elected or selected in accordance with the ritual, bylaws or discipline of the order." 8

Proprietary Right

"A proprietary right [of a hierarchical church in local church property] is a right customarily associated with ownership, title, and possession. It is an interest or a right of one who exercises dominion over a thing or property, of one who manages and controls." 9 It is a contract right. 10

III. Separation of Church and State

Virginia became the birthplace of religious freedom in America when the historic Virginia Declaration of Rights, drafted by George Mason, was unanimously adopted by "the representatives of the good People of Virginia, assembled in full and free Convention" on June 12, 1776. The principles first enunciated in section 16 of the Virginia Declaration of Rights formed the basis for Vir-

6. Id. Hierarchical churches were found in Finley v. Brent, 87 Va. (12 Hans.) 103, 12 S.E. 228 (1890); Norfolk Presbytery v. Bollinger, 214 Va. 500, 201 S.E.2d 752 (1974); and Green v. Lewis, 221 Va. 547, 272 S.E.2d 181 (1980).
12. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practise Christian for-
ginia's Statute for Religious Freedom, which was drafted by Thomas Jefferson and adopted on December 16, 1785. These principles also are embedded in the Constitution of Virginia, as well as that of the United States. This constitutional guarantee has been before the Virginia Supreme Court on a number of occasions and has served as the basis for (1) reversing that part of the sentence imposed on certain juvenile defendants that they "attend Sunday school and church each Sunday hereafter for a period of one year, and present satisfactory evidence of such attendance at the conclusion of each month to the probation officer;" (2) reversing that part of a custody decree that required "that the children be reared in the Jewish faith and that they attend a Jewish Sunday school and a service in the synagogue each week;" (3) holding it error to allow a witness to be questioned concerning his religious opinions; (4) holding void "a restriction imposed by the terms of a bequest, requiring as the condition of its enjoyment, that the legatee should be a member of any religious sect or denomination, as directly violative of this policy;" and (5) for declaring unconstitutional that part of Item 210 of the Appropriation Act of 1954 that "purports to authorize payments for tuition, institutional fees and other designated expenses of eligible children who attend sectarian schools."

On the other side of the ledger, the Virginia Supreme Court has bearance, love, and charity towards each other.

Id. at 32.

14. See id. at §57-2 for a more recent reaffirmation.
15. VA. CONST. art. I, § 16.
16. As this article is focusing on Virginia law, any discussion of federal law is beyond its scope. However, the practitioner cannot afford to ignore federal considerations when dealing with constitutional issues because they can be a source of alternative remedies as well as a different forum in which to raise them. See, e.g., Barrett v. Commonwealth, No. 82-6047, slip op. at 11 (4th Cir. Sept. 20, 1982) (striking down that portion of VA. CODE ANN. § 8.01-217 (Cum. Supp. 1982) that denies to inmates of correctional facilities the legal right to change their names because, as applied to a prisoner who wished to adopt a Muslim name in conformance with his religious beliefs, "the statute offends against the free exercise of religion guaranteed by the first amendment").

concluded that legislation authorizing tuition “loans” to students in sectarian institutions did not violate the constitutional guarantee of religious freedom, and it has consistently upheld the Sunday Closing Law against challenges that the law violates the religious freedom of those who wish to engage in prohibited labor on Sunday.

In a case raising considerations parallel to religious freedom, the Virginia Supreme Court has held that, although it is proper to ask jurors in capital cases if they hold religious scruples about the death penalty, it would invade the privacy of a potential juror if he were required to answer the following questions: “(1) ‘What is your religious preference?’ (2) ‘Do you attend a local church?’ (3) ‘Would you classify yourself as a regular or occasional attender?’” In a federal case wherein three secular day care centers sought a declaratory judgment invalidating a provision of Virginia law exempting child care centers “operated or conducted under the auspices of a religious institution” from state licensing requirements, the District Court declined to consider the possible application of the constitutional guarantee of religious freedom on the ground that the plaintiffs failed to establish their standing to raise the issue due to their failure to show that they had received, or would receive, any injury from this law. The Virginia Supreme

23. Miller v. Ayres, 213 Va. 251, 191 S.E.2d 261 (1972). The court also held that this legislation did not violate article IV, § 16 (no appropriations to religious bodies), or article X, § 8 (taxes to be levied only for expenses of government). However, as the “loans” authorized by this legislation were really conditional gifts or grants, it was unconstitutional as violative of article VIII, § 10 (no appropriations to nonpublic schools), and article VIII, § 11 (aid to nonpublic higher education). Current statutes dealing with state aid to private education are: VA. CODE ANN. §§ 23-38.11 to .19 [Tuition Assistance Grant Act] (Repl. Vol. 1980); VA. CODE ANN. §§ 23-38.30 to .44 [Virginia Education Loan Authority] (Repl. Vol. 1980); and VA. CODE ANN. §§ 23-38.45 to .53 [College Scholarship Assistance Act] (Repl. Vol. 1980). VA. CODE ANN. §§ 15.1-24 and -25 (Repl. Vol. 1981) are the statutory provisions relating to gifts by cities, counties and towns to local charitable organizations. The former contains a provision that the Y.M.C.A. and the Y.W.C.A. are not prohibited “sectarian” societies, and the latter can be read as authorizing gifts to sectarian groups providing housing for those over age sixty, conducting a hospital, providing firefighting, lifesaving or rescue services, or engaged in commemorating historical events.

25. The most recent case is Malibu Auto Parts, Inc. v. Commonwealth, 218 Va. 467, 237 S.E.2d 782 (1977). Other cases are collected at note 187, infra.
28. Forest Hills Early Learning Center, Inc. v. Lukhard, 480 F. Supp. 636 (E.D. Va. 1979). When this same matter was brought back before the court by the same plaintiffs in Forest Hills Early Learning Center, Inc. v. Lukhard, 487 F. Supp. 1378 (E.D. Va. 1980), it was dismissed as res judicata. This dismissal was vacated (without opinion) on appeal in Forest
Court recognized the presence of constitutional questions concerning the free exercise of religion on the appeal of a church from a conviction of violating a town ordinance that local license decals be displayed on motor vehicles, but it declined to discuss these questions. Instead, the court reversed the church's conviction on the ground that the trial court erred in not allowing the accused, on procedural grounds, to litigate the issue whether the town ordinance was a regulatory measure or a revenue measure.29

IV. PROPERTY

A. Acquisition and Ownership of Property

Although the Constitution of Virginia reflects a historic and continuing determination to prevent the establishment of any religion in the Commonwealth, and to maintain the separation of church and state, the Constitution nevertheless provides that “[t]he General Assembly . . . may secure the title to church property to an extent to be limited by law.”30 The importance of such legislative assurance can hardly be overstated due to a one hundred and fifty year old rule established by the Virginia Supreme Court that, unless expressly validated by statute, a trust for indefinite beneficiaries is void if the named trustee is an individual or an unincorporated body.31 Thus, for example, in a case where a testator left a bequest to be used for building a church, it was struck down because the statute at that time only authorized “conveyances” for such purposes.32 Because of this background, particular attention is paid to the language of the statutes in the following material.

1. Validity of Transfers for Religious Purposes

Although today it might generally be thought that transfers for religious purposes may be freely made for the intended beneficiary, purposes, etc., a careful reading of section 57-7 of the Virginia Code,33 the statute validating transfers for religious purposes, and the decisions of the Virginia Supreme Court thereunder, clearly

demonstrates that this is not the case. Section 57-7 specifically authorizes conveyances of land for the use or benefit of any church as a place of public worship, a burial place or a residence for a minister, and as a residence for a bishop or clergyman who is an officer of a church or church diocese and employed under its authority and about its business, even though not in special charge of a congregation. In addition land that is adjacent to or near by the land on which the church is situated may be conveyed as a location for a parish house, a house for the meeting of societies or committees of the church or others for the transaction of business connected with the church or as a place of residence for the sexton of the church. The statute goes on to provide that if a church or church diocese has (or is capable of securing the appointment of) trustees, no gift, grant or bequest to or for its benefit shall fail for insufficient description of the beneficiaries in, or the objects of, any trust annexed thereto. Instead, such gift, grant or bequest passes to the trustees of the church or church diocese for religious and benevolent uses as determined by the trustees with the approval of the governing authority of the church or church diocese. The statute concludes by providing that any devise for the use or benefit of any church wherein no specific use or purpose is specified shall be valid.

One must remember that the word “church” as used throughout

34. Anderson v. Richardson, 200 Va. 1, 104 S.E.2d 5 (1958) (alleged lack of local trustees was not significant because proper trustees could be appointed at any time pursuant to Va. Code Ann. § 57-8 (Repl. Vo. 1981)).
35. Id. Where property is used for church purposes (minister's residence) at the time of the conveyance, cessation of use for any enumerated church purpose does not create any interest or standing in grantor's heirs; it is a matter of concern only to the Commonwealth.
37. In a case where testatrix created a testamentary trust that provided for the income to be paid to or expended for the benefit of a church to “be used exclusively for one or more of such purposes as are exempt from inheritance or transfer taxes under the laws of the United States and the State of Virginia,” the trial court held that the statute required that this trust be administered by the church's trustees instead of those appointed in the will. In reversing this decision, the Supreme Court stated that any interest in [personal] property, legal or equitable, that may be given or bequeathed is covered ... [by the language summarized in the text, and thus nothing prevents a] ... settlor from creating a trust for the benefit of a church or religious congregation and specifically providing the manner in which the trust corpus is to be administered.
38. In Owens v. Bank of Glade Spring, 195 Va. 1138, 81 S.E.2d 565 (1954), this statute was quoted by the court in denying the contention that a church could not take as beneficiary of a residuary trust because the use and purpose of the trust was not shown in the will.
section 57-7 is restricted to a local congregation;\textsuperscript{39} therefore, trusts for hierarchical churches continue to be invalid in Virginia.\textsuperscript{40} Moreover, it logically follows that, if Virginia will not recognize an express trust for a hierarchical church, neither will it recognize an implied trust for such a church.\textsuperscript{41} A hierarchical church, however, can acquire a contract or proprietary right\textsuperscript{42} in church property held by trustees of a local congregation which will be recognized in Virginia's courts in resolving property disputes between the church general and the church local.\textsuperscript{43}

It must also be kept in mind that section 57-7 relates only to transfers in which the trustee is an individual or an unincorporated body. Trusts for religious purposes in which the trustee is a corporation\textsuperscript{44} historically have been upheld as a matter of common law.\textsuperscript{45} Thus, a bequest "to the Missionary Society of the Methodist Episcopal Church Incorporated by an act of the Legislature of the State of New York Passed April 9[\textsuperscript{46}] 1839" was held valid without reference to any statute.


40. In declaring that a testamentary trust to named persons "for the benefit of the New Jerusalem Church (Swedenborgian) as they shall deem best" was void for uncertainty of beneficiaries, the court emphasized this by asking if the trust was "for the benefit of all of the members of that Church, wheresoever they may be, in this and other countries, or . . . [was] limited to those in the United States, or to such as live in this State where the textatrix had her domicile, or to those in the State of New York where the trustees reside?" \textit{Fifield v. Van Wyck}, 94 Va. 557, 558, 567, 27 S.E. 446, 447, 449 (1897).

41. \textit{See} Norfolk Presbytery v. Bollinger, 214 Va. 500, 201 S.E.2d 752 (1974). An implied trust in this context was defined as the concept "that those who unite themselves with a hierarchical church . . . take title to local church property subject to an implied trust for the general church." \textit{Id.} at 504, 201 S.E.2d at 755.

42. \textit{See supra} text accompanying notes 9-10.


44. Churches may not incorporate in Virginia. \textit{See note 150 infra} and accompanying text.


46. Missionary Soc'y of M.E. Church v. Calvert, 73 Va. (32 Gratt.) 357 (1879). Further language in this will that "all My Executors shall Pay to the Missionary Society a Buve stated shall Be Paid to the India Mission By that said society of New York" was held to be precatory and not to create a trust for the India Mission. \textit{Id.} at 360. A bequest "to the secretary of the board of foreign missions of the Presbyterian Church in the United States and known as 'Southern Presbyterian Church'" was held to be a valid bequest to "The Trustees of the General Assembly of the Presbyterian Church in the United States," a North Carolina corporation, for the use and benefit of its executive committee of foreign missions in \textit{Trustees v. Guthrie}, 86 Va. (11 Hans.) 125, 10 S.E. 318 (1889). The validity of a bequest to the same entity was upheld in \textit{Guthrie v. Guthrie}, 1 Va. 717, 10 S.E. 327 (1889).
2. Religious Purposes versus Charitable Purposes

Although the general American rule treats trusts for religious purposes as merely one form of charitable trust\(^{47}\) and thus applies the general rules concerning the validity of charitable trusts thereto,\(^{48}\) the Virginia General Assembly “in validating charitable trusts, made a marked distinction between trusts for religious purposes and trusts for literary or educational purposes . . . which has continued down to the present time.”\(^{49}\) Thus, although the validity of trusts for religious purposes is addressed by section 57-7, examined above, the validity of trusts for educational, literary or other charitable purposes is dealt with by section 55-26.1 of the Code.\(^{50}\) Accordingly, as section 57-7 is construed as validating only transfers to a “church” in the local sense, it has been held that a bequest to a named person in trust for “the Methodist Church South for missionary work where he thinks it will do the greatest good” fails under section 57-7 and cannot be saved by reference to section 55-26.1, the general charitable statute.\(^{51}\)

Notwithstanding this line of demarcation that has been drawn between trusts for charitable purposes and trusts for religious purposes, there is one sentence in the general charitable statute, section 55-26.1, that makes reference to transfers that might be said to have a “religious” flavor, aspect or motivation. This sentence provides that “[n]othing in this section shall be so construed as to give validity to any devise or bequest to or for the use of any unincorporated theological seminary.”\(^{52}\) This language has been construed by a federal court as impliedly validating transfers to an \textit{incorporated} theological seminary, the court stating that “[w]e cannot say that [the seminarian purposes of this institution] are not educational or charitable or that they are too uncertain to comply with Virginia law.”\(^{53}\) And, in an early Virginia case, decided at a time when the statute validating indefinite transfers for

\(^{47}\) RESTATEMENT (SECOND) OF TRUSTS § 371 (1959).

\(^{48}\) Id. §§ 348 et seq.


\(^{51}\) See Moore v. Perkins, 169 Va. 175, 192 S.E. 806 (1937).


\(^{53}\) Williams v. Protestant Episcopal Theological Sem., 198 F.2d 595, 597 (D.C. Cir. 1952), cert. denied 344 U.S. 864 (1952), rehearing denied, 344 U.S. 894 (1952). The gift was a bequest in trust for “the Protestant Episcopal Theological Seminary in Virginia,” a Virginia corporation, with the income from one-half to be used for scholarships and the income from the other one-half to be used for current expenses of the seminary. 198 F.2d at 595.
charitable purposes contained the following parenthetical—"other than for the use of a theological seminary"—the Virginia Supreme Court held that the quoted language was intended to prevent a theological seminary from receiving a bequest for indefinite purposes, but was not intended to prevent an incorporated theological seminary from receiving bequests for definite purposes, i.e., the general purposes for which it was incorporated.

Moving from the "seminary" sentence in section 55-26.1 to more general considerations thereunder, in a case involving a residuary gift in trust "unto that society or organization of the Virginia Conference, Methodist Episcopal Church, South, having as its principle object the relief of superannuated ministers, of the Virginia Conference," the trial court determined that (1) the disposition was not a "religious charity"; (2) it was a valid charitable disposition; and (3) the organization to receive and administer the gift was the Conference Board of Finance of the Virginia Conference of the Methodist Episcopal Church, South. On appeal, the Virginia Supreme Court held that as the Conference Board of Finance is "an unincorporated association elected by other unincorporated bodies. . . . we are of opinion that it is not a competent trustee to receive, invest and distribute the property here in question." However, following familiar principles of trust law, the court further concluded that naming an incompetent trustee in an otherwise valid testamentary charitable trust would not render the trust void. It therefore remanded the case back to the trial court with instructions to appoint suitable trustees (on motion of the local Commonwealth's attorney) to carry out the purpose of the trust. In another case, involving a residuary gift to "the Trustees of the Presbyterian Home for Old Ladies situated in Richmond, Virginia," where there was no such institution, the gift again was sustained as non-religious and the intended beneficiary was held to

55. Roy's Ex'rs v. Rowzie, 66 Va. (25 Gratt.) 599 (1874) (holding that a bequest "to the Baptist Theological Seminary in South Carolina" was a valid bequest to "Southern Baptist Theological Seminary," a South Carolina corporation). See also Protestant Episcopal Education Soc'y v. Churchman's Reps., 80 Va. (5 Hans.) 718 (1885), where the court made several references to the general statute dealing with charities in upholding a bequest to a corporation in the following language: "(T)he trustees of the Protestant Educational Society of Virginia - the said bequest to be used exclusively for educating poor young men for the Episcopal ministry, upon the basis of evangelical principles now established." Id. at 719.
be the Richmond Home for Ladies, Inc., which provided a home for "indigent and infirm women of respectable character, especially such as are connected with the Methodist Episcopal Church, South, and the Presbyterian Church of the United States...." 58

The fact that the Home's charter did not specifically authorize it to receive and administer bequests was "no impediment in the way of sustaining the validity of the gift; for the bequest [was] in furtherance of the express purposes of the corporation, and ample power was conferred upon it to administer the trust...." 59

The problem case in this area, Adams v. Cowan, 60 involved a residuary gift "to the relief of the poor, whether in my kindred or not, and through proper channels of the Presbyterian Church." 61 In this case the court stated that "[i]t is conceded by all the parties in interest that ... [this gift] is void for uncertainty. That this is so seems perfectly manifest, hence we will make no further mention of it." 62 This language borders on the inexplicable because relief of the poor is a textbook illustration of a general charitable purpose as defined in the earlier case of Fitzgerald v. Doggett's Executor, 64 under which a general charitable trust does not fail even if the named trustee is incompetent; the court merely appoints a competent trustee. Moreover, Fitzgerald was decided only three years prior to Adams. In the absence of any discussion of these points in Adams, and also because it does not appear from the report of the case that any representative of the Presbyterian Church or the Attorney General's Office was a party thereto, either at trial or on appeal, the precedent value of Adams pales, and it should not be regarded as having any significance today.

The lesson to be learned from the foregoing cases appears to be that although a trust may seem to be "religious" at first blush because of references to religious institutions or persons connected therewith, it is the "purpose" of the trust that determines whether it will pass muster under the specific statute dealing with transfers for a religious purpose (section 55-7) or the broader statute dealing with charitable purposes generally (section 55-26.1). And it would

58. Id.
59. Id. at 719, 56 S.E. at 733.
60. 160 Va. 1, 168 S.E. 750 (1933).
61. Id. at 7, 168 S.E. at 752.
62. Id. at 4, 168 S.E. at 751-52.
63. RESTATEMENT (SECOND) OF TRUSTS § 369.
64. 155 Va. 112, 155 S.E. 129 (1930).
appear that, except in those instances where the purpose of the transfer is the "direct" advancement of religion, the new controlling statute should be the latter.

3. Books and Furniture

In addition to the statute dealing with the validity of transfers for religious purposes, Virginia also has a statute, section 57-10,\(^6\) dealing with books and furniture given to, or acquired by, a church or church diocese for use (1) in ceremonies of public worship on its land, or (2) at the residence of its clergyman. Section 57-10 provides that the title to such books and furniture shall be vested in the trustees of the local congregation, to be held by them upon the same trusts as they hold the land.

4. Maximum Property Holdings

That part of the Virginia Constitution providing that the General Assembly may secure the title to church property "to an extent to be limited by law"\(^6\) is the constitutional basis for section 57-12,\(^7\) the statute stating the maximum quantity of real estate and personal estate that church trustees may hold. The general rule of section 57-12 provides that the maximum quantity of land that can be held on behalf of a local congregation is four acres in a city or town and two hundred and fifty acres in any county.\(^8\) However, any city or town council, by ordinance, may increase the permissible holdings of a local congregation within its jurisdiction up to fifty acres if the land is used exclusively for certain purposes enumerated in the statute.\(^9\) Land that is located in a county at the time of its acquisition by the church but which subsequently becomes city or town land due to annexation, incorporation, etc., continues to be "county" land for purposes of the limitations in

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\(^7\) Va. Const. art. IV, § 14(20).
\(^9\) The following clause is also found in the statute: "and, provided further, that the trustees of a church diocese may take or hold not more than two hundred fifty acres in any one county at any one time. . . ." Id. It is unclear whether this language is a mere redundancy, or whether it restricts the holdings of a church diocese in any county to a total of two hundred fifty acres regardless of the number of local congregations the diocese may have in that county.

\(^9\) These purposes are: "a church building, chapel, cemetery, offices exclusively used for administrative purposes of the church, a Sunday-school building and playgrounds therefor, and parking lots for the convenience of those attending any of the foregoing, and a church manse, parsonage or a rectory." Id.
section 57-12. This section also provides that when a merger or consolidation of local congregations causes these limitations to be exceeded, the "new" congregation shall have three years within which to dispose of its excess land.

The maximum amount of money, securities and other personal property that may be held on behalf of a local congregation is five million dollars. However, in determining the value of its personal property for purposes of this limitation, no accounting is required of the church's books and furniture that are used (1) in ceremonies of public worship on its land, or (2) at the residence of its clergyman.

On occasion, a gift that might appear to fail in whole or in part because of section 57-12 can be saved by proper construction of the donative language. Thus, in *Owens v. Bank of Glade Spring* where the testator left one-half of his residuary estate (which contained more real estate than the church could hold) to a church and directed that it "be placed in a trust fund and only the interest used," the court held that by the quoted language the testator "necessarily directed that so much of that share as consisted of real estate be converted into cash to constitute a part of the trust fund." Even though a gift to a church cannot be saved by the constructional route, the Virginia Supreme Court has evidenced a willingness to save such gifts by the application of established equitable principles when a proper occasion arises. For example, in *St. Stephen's Episcopal Church v. Morris,* a case decided before churches were permitted to receive devises of real estate, the validity of a gift of a portion of the testator's residuary estate (which contained real estate) was upheld on two grounds. First, the court noted that "[t]he disposition made of the estate necessarily involves an equitable conversion of the real estate left into money, otherwise the purposes of the testator could not be effectuated."

71. Id. at 1149, 81 S.E.2d at 572.
72. 115 Va. 225, 78 S.E. 622 (1913).
73. Id. at 228, 78 S.E. at 623. Equitable conversion is defined as:

> [t]he exchange of property from real to personal or from personal to real, which takes place under some circumstances in the consideration of the law, such as, to give effect to directions in a will or settlement, or to stipulations in a contract, although no such change has actually taken place, and by which exchange the property so dealt with becomes invested with the properties and attributes of that into which it is supposed to have been converted.

Secondly, even if the principles of equitable conversion were not applicable, where, as in the instant case, the majority of the estate was personal property, the court expressed a willingness to save the gift by applying the doctrine of marshalling of assets.\textsuperscript{74} It would seem that the equitable principles laid down in this case would be most appropriate to apply, if the facts will allow, in a case where a devise or bequest would put a church beyond one of the permissible limitations of section 57-12, but not the other.

This willingness of the court to save gifts to churches by the application of equitable principles, when applicable, clearly does not extend to allowing the limitations of section 57-12 to be exceeded either directly or indirectly by the use of separate trusts for the same congregation. When this latter issue came before the court, it responded that

\begin{quote}
[t]he limitations prescribed by section 57-12 include economic wealth in the form of personal estate under whatever guise it is maintained so long as the church is the sole beneficiary of the income therefrom, and the $100,000 [now $5,000,000] limitation must be taken to include the corpus of trust funds in the hands of trustees other than the church trustees and all other personal estate of the church, exclusive of books and furniture.\textsuperscript{75}
\end{quote}

Accordingly, the court held void that portion of the testatrix' bequest to named trustees for the benefit of a church which, when added to the church's other countable personal property, exceeded the statutory limitation.\textsuperscript{76}

5. Property Rights Upon Church Division

Notwithstanding the constitutional mandate of absolute religious freedom in Virginia, "there is no constitutional prohibition against the resolution of church property disputes by civil courts,

\textsuperscript{74} 115 Va. at 228, 78 S.E. at 623. The court explained the concept as follows:

A court of equity, in furtherance of the purposes of the testator, would discharge the interest of the church, under the will, from that portion of the estate which it could take without objection, and devote the real estate, or its proceeds (to the non-church uses directed by the testator) which was not an illegal interest and violated no law.

\textit{Id.}


\textsuperscript{76} The total bequest was in excess of $375,000; the limitation of § 57-12 at that time was $100,000; and it was stipulated that the church had $13,300 in intangible personal property at the time of testatrix' death. The bequest was upheld as to $86,700. \textit{Id.} at 144, 67 S.E.2d at 888.
provided that the decision does not depend on inquiry into questions of faith or doctrine.\textsuperscript{77} The governing statute before the court when there is division within a church, section 57-9,\textsuperscript{78} provides that when a division or split occurs with a hierarchical church, the local congregation’s “communicants, pewholders, and pewowners,” by a majority vote of those over the age of eighteen years, shall determine to which branch of the hierarchical church they shall belong. Thus the statute is consistent with the prior decision of the Virginia Supreme Court in a case arising from the Methodist Episcopal Church’s agreement to a plan of separation that resulted in one branch continuing under that name and the other branch being known as the Methodist Episcopal Church, South.\textsuperscript{79}

Of course this “majority rule” approach cannot authorize the majority in a local congregation of a hierarchical church to change the terms of a conveyance to the church. Such action would impair the obligation of contract and thus be unconstitutional under the constitutions of both Virginia and the United States.\textsuperscript{80} Accordingly, where the conveyance was “for the use and benefit of the religious congregation of the Methodist Protestant Church at Heathsville,”\textsuperscript{81} and a majority of its members later withdrew therefrom and affiliated with the Methodist Episcopal Church, South, the court held that the minority would retain the church property, emphasizing that “[t]hese Christians [the majority] could change their religious faith, had the right to go to any denomination to which their belief or choice led, and . . . could take with them all property which belonged to them; but they were without power to change the character of the trust in question.”\textsuperscript{82}

If a local congregation of a hierarchical church decides to become an independent body, it is likewise clear that any proprietary


\textsuperscript{79} Brooke v. Shacklett, 54 Va. (13 Gratt.) 301 (1856).

\textsuperscript{80} Finley v. Brent, 87 Va. (12 Hans.) 103, 12 S.E. 228 (1890).

\textsuperscript{81} Id. at 106.

\textsuperscript{82} Id. See also Hoskinson v. Pusey, 73 Va. (32 Gratt.) 428 (1879). So also, in Boxwell v. Affleck, 79 Va. (4 Hans.) 402, 407 (1884), when the general conferences of the Methodist Episcopal Church and the Methodist Episcopal Church, South created a joint commission to adjust controversies between the two bodies, an award by this commission of certain property to the Methodist Episcopal Church, South was struck down by the court on the ground that neither the commission, nor the general conferences from which it derived its power, had any authority to determine the ownership of property which had been devised “to the trustees of the Methodist Episcopal Church at Berryville.” Id.
right of the church general in local church property cannot be eliminated by the unilateral action of the local congregation. In determining whether or not a hierarchical church has any proprietary interest in local church property, the Virginia Supreme Court has indicated that it would look "to our own statutes, to the language of the deed conveying the property, to the constitution of the general church, and to the dealings between the parties."

When division occurs within a congregational church, section 57-9 provides that a majority of its members who are entitled to vote by its constitution or, in the absence of a written constitution, by its ordinary practice or custom, may determine the ownership and control of all property held in trust for the congregation. "But the majority cannot, by reason of a change of views on religious subjects, divert the use of the property to the support of new and conflicting doctrines." However, in determining whether or not there is a diversion of the church's property "to the support of new and conflicting doctrines," a court may be entering an area of decision that more recently has been recognized as constitutionally impermissible, i.e., a decision that "depend[s] on inquiry into questions of faith or doctrine." Of course the threshold determination of whether or note the decision depends upon such an inquiry would itself seem to some persons to involve an intrusion into the prohibited area. This problem may be illustrated by a case in which complainants alleged that the congregation was divided "primarily over points of doctrine and articles of faith, and secondarily over its rules of practice and government. . . ." However, in disposing of the matter, the court concluded that "there is little as to the differences between the two factions over points of doctrine and articles of faith, and that little is difficult to comprehend."

83. See supra text accompanying notes 9-10.
85. Green, 221 Va. at 555, 272 S.E.2d at 185-86. In this latter connection (dealings between the parties) the court, though assuming the truth of an allegation that there was no formal dedication ceremony of the local church, "conclude[d] that 100 years of continuous services in the church by the pastors supplied Lee Chapel by the A.M.E. Zion Church constitutes an adequate dedication of the property for its intended spiritual and ecclesiastical purposes." Id. at 554, 272 S.E.2d at 185.
87. Norfolk Presbytery, 214 Va. at 503, 201 S.E.2d at 755.
88. This is popularly described as a "catch 22" problem.
90. Id. at 257, 132 S.E. at 480.
cordingly, the court went on to rule that in the absence of a reconcili-ation between the two factions, the church property would belong to the majority of the congregation, determined “as it existed when the division occurred.”

Following a division in either a hierarchical church or in a congregational church, and the proper determination of property rights, section 57-9 provides that such determination shall be reported to the circuit court having jurisdiction over the property. Upon the court’s approval of this determination of property rights, and the entry thereof in the court’s chancery order book, the Code states that the determination “shall be conclusive as to the title to and control of any property held in trust for such congregation, and be respected and enforced accordingly in all of the courts of this State.”

B. Authority of Trustees and Ecclesiastical Officers

1. Appointment and Removal of Church Trustees

The circuit court of the city or county wherein a church’s land, or the greater portion thereof, is located is given the authority by section 57-8 to appoint, remove and replace the church trustees upon the ex parte application of the proper authorities of the church or church diocese, if it seems proper to the court to take such action in order to effect and promote the purpose and object of the original transfer of the land in question. In a summary proceeding under the statute, the court’s

jurisdiction is special and limited to the appointment and removal of the trustees. It does not extend to the regulation of the conduct of the trustees in the administration of the trust under the instrument creating it. When the trustees are appointed, where none exist, or if they exist, when they are removed and others appointed to succeed them, the power of the court under the statute is exhausted. What it does beyond this is in excess of power, without authority and void.

91. Id. at 262, 132 S.E. at 482.
94. “It is not necessary under the Virginia statutes that a trustee appointed by the court to take title to the property of a church be a member of its congregation.” Hawthorne v. Austin Organ Co., 71 F.2d 945, 951 (4th Cir. 1934) (dictum), cert. denied, 293 U.S. 623 (1934).
95. Wade v. Hancock, 76 Va. (1 Hans.) 620, 625 (1882). The power to direct how the trusts shall be administered is vested in the court “in the exercise of its general jurisdiction
After their appointment,

the trustees of a church merely hold the legal title to the real estate conveyed, devised or dedicated for the use and benefit of the religious congregation, at whose instance they have been appointed, and have no power of their own volition, and in their capacity as trustees, to either alien or encumber such real estate. 96

2. Suits by and Against Trustees

Section 57-1197 provides that trustees of a church or church diocese may sue in their own names98 to recover any realty or personality they hold in trust, or damages for injury thereto, and that they may be sued in relation to the same. Applying this statute in an action brought to determine whether or not a judgment against a certain church's trustees was a lien on church property, the court found it to be "very plain that this section has no reference to suits of the character we are considering, but relates only to suits by or against the trustees personally touching the property, the legal title to which is vested in them." 99 Section 57-11 also provides a

as a court of equity, and can be invoked only in the mode appropriate to that forum." 96. Globe Furniture Co. v. Trustees of Jerusalem Baptist Church, 103 Va. 559, 561, 49 S.E. 657, 658 (1905).


98. The suit will continue in the name of the original trustees by or against whom it was instituted, even though any of them die or others are appointed. 96.

99. Globe Furniture Co. v. Trustees of Jerusalem Baptist Church, 103 Va. at 561, 49 S.E. at 658. Accord, Hawthorne v. Austin Organ Co., 71 F.2d at 949 (where the court stated that "[t]he scope of this section seems to be limited to suits attacking the property or the legal title vested in the trustees."). In Allen v. Paul, 65 Va. (24 Gratt.) 332 (1874), the trustees of Church A successfully brought unlawful detainer proceedings against the trustees of Church B to recover church property leased to the predecessors of the present trustees of Church B who now claimed to own the property on several theories. In Hardy v. Wiley, 87 Va. (12 Hans.) 125, 12 S.E. 233 (1890), realty was conveyed to trustees in trust to build thereon "a house or place for religious worship and for Sabbath school purposes . . . and for such other religious purposes as . . . [shall be deemed] necessary and appropriate to further the cause of Christ and the interests of said church in the community." Id. at 126, 12 S.E. at 233. A church immediately was constructed thereon and so used continuously for thirty years, at which time the building having deteriorated and the congregation having grown, it was decided to sell the same and apply the proceeds towards the erection of a parsonage to be used in connection with a new church house. In a suit brought by original grantor's assignee it was held that, as the original church was built in accordance with the trust and as there was no reverter clause or covenant to rebuild in the original deed, the church trustees would be permitted to make the desired disposition of the property if they proceeded in the mode prescribed by statute for the conveyance of church property. In Brown v. Virginia Advent Christian Conference, 194 Va. 909, 76 S.E.2d 240 (1953), where trustees failed to obtain the required court approval before razing a church building, plaintiffs' tort action for compensatory and punitive damages against trustees and others was dismissed due to plaintiffs' fail-
remedy in those instances where a church or church diocese has abandoned real estate or personal property which previously had been encumbered by its trustees who are no longer living. In such a case, the beneficiary of the debt secured by the encumbrance may proceed by suit in equity against the members of the church or church diocese as parties unknown, by order of publication, in order to subject the property in question to his lien.

3. Suits Concerning Proper Use of Church Property

Section 57-13\textsuperscript{100} authorizes any member of a church or church diocese to bring suit on its behalf, against its trustees, in order to compel proper application or use of its real estate or personal property. This suit may be brought in the plaintiff member’s own name without joining any other member as a party defendant, and it will proceed as any other suit in equity even if the plaintiff dies before it reaches final determination. The statute is consistent with the decision reached prior to its passage in a case where, after a division occurred in a church, it was alleged that the trustees were excluding the members of one faction from the church building. To this charge the court responded that “those who are really members of that congregation are entitled to the use of the building under the provisions of the deed. And if they are improperly excluded by the trustees, they may be restored to the enjoyment of their rights and privileges on a bill in chancery filed for the purpose, . . . and in that proceeding also the trustees may be removed, if such removal be proper, and others appointed to take their places.”\textsuperscript{101}

4. Conveyances and Encumbrances of Church Land

Section 57-14\textsuperscript{102} authorizes a member of a church or church diocese to bring a suit in equity on its behalf, for the sale or encumbrance of its lands, against its trustees, in the circuit court in which the land or the major portion of the land is located. If the court finds that the requested action is desired by the governing authority\textsuperscript{103} of the church or church diocese, and that the rights of

\textsuperscript{101} Wade v. Hancock, 76 Va. (1 Hans.) 620, 627 (1882).
\textsuperscript{103} It is necessary for the court to look at the organizational structure of the church in
others will not be violated thereby, it is lawful for the court to order the requested action and to make such disposition of any proceeds as the governing body may desire.

Of greater importance is section 57-15\textsuperscript{104} which authorizes the trustees of a church or church diocese to proceed by \textit{ex parte} petition in the circuit court in which the land, or the major portion thereof, is located, not only for the sale or encumbrance of such lands, but also to "extend encumbrances, improve, exchange the land, or a part thereof, or settle boundaries between adjoining property by agreement."\textsuperscript{105} If the court finds that the requested action is desired by the governing authority\textsuperscript{106} of the church or church diocese, it shall order the requested action and the proper investment of any proceeds.\textsuperscript{107}

Section 57-15.1\textsuperscript{108} authorizes the court entering an order for the encumbrance of church property pursuant to section 57-14 or section 57-15 to provide in such order that the note evidencing the debt to be secured thereby may be signed without personal liability by the fiscal officer of the church or church diocese and that it thereby becomes solely the church's obligation. In addition, the court in such a case, as well as in the case of a conveyance, may appoint a special commissioner to make the encumbrance or conveyance in question. If this practice is followed, the instrument is recorded in the name of the church or church diocese, not in the order to determine its governing authority. \textit{See} Green v. Lewis, 221 Va. 547, 553, 272 S.E.2d 181,184 (1980); Norfolk Presbytery v. Bollinger, 214 Va. 500, 502, 201 S.E.2d 752, 755 (1974).


\textsuperscript{105} This statute further provides that "[w]hen any such religious congregation has become extinct or has ceased to occupy such property as a place of worship, so that it may be regarded as abandoned property," the petition may be filed by a trustee or a member, as well as, in the case of a hierarchical church, by the appropriate entity thereof. \textit{Id.} Any proceeds that result are to be disposed of "in accordance with the laws of the denomination and the printed acts of the church or denomination issued by its authority, embodied in book or pamphlet form, shall be taken and regarded as the law and acts of such denomination or religious body." \textit{Id.}

\textsuperscript{106} See note 103, supra.

\textsuperscript{107} In Cain v. Rea, 159 Va. 446, 452, 166 S.E. 478, 480 (1932), the court held that "voluntary liens or encumbrances can be placed upon church property only by a strict compliance with the statutes; but, in our opinion, the sections referred to have no application to a [mechanic's] lien which comes into being by operation of law." The legitimacy of a mechanic's lien against church property was impliedly recognized in Trustees of Franklin Street Church v. Davis, 85 Va. 193, 7 S.E. 245 (1888). In Globe Furniture Co. v. Trustees of Jerusalem Baptist Church, 103 Va. 559, 561, 49 S.E. 657, 658 (1905) it was held that a default judgment against church trustees personally is not a lien on church property.

name of the special commissioner.

Although it is clear that church trustees, as such, have no power to convey church property without court authorization, this does not mean that the court will refuse to apply general principles of equity in appropriate cases, even though such application will result in recognizing a de facto transfer. Indeed, it might be said that equitable principles are particularly appropriate in resolving property disputes between two religious societies. Thus, in a case where trustees to whom land was conveyed for the benefit of Church A, in the absence of any such local church and without court approval, sold the badly deteriorated property to Church B (which improved the property at considerable expense) under an arrangement that permitted members of Church A to use the property one Sunday per month (which they did for thirteen years), an action brought on behalf of Church A fifteen years after the initial conveyance to declare the deed void was held to be barred by the equitable doctrine of laches. 109

5. Property Held by Ecclesiastical Officers

In those instances where the laws, rules or ecclesiastical policy of any church or religious sect, society or denomination commits the authority to administer its affairs to its duly elected or appointed bishop, minister or other ecclesiastical officer, section 57-16 110 authorizes such person to receive property for any of such church’s authorized purposes not forbidden by law, and “to hold, improve, mortgage, sell or convey the same in accordance with such laws, rules and ecclesiastical polity, and in accordance with the laws of Virginia.” 111 This section also provides (1) for automatic transfer of title to the church’s property to such person’s duly elected or appointed successor, (2) that no transfers to the church shall fail on the grounds of indefiniteness but shall instead be saved for its religious and benevolent uses, and (3) that the limitations on property holdings of churches 112 shall be applicable to each of its parishes or congregations. This statute evidences an intent for the general

109. Puckett v. Jessee, 195 Va. 919, 81 S.E.2d 425 (1954). In Linn v. Carson, 73 Va. (32 Gratt.) 170 (1879), the court held that “trustees of a church building, for the use of a congregation of members of the Methodist Church, making advances for repairing the building have a lien, under the discipline of the church, on the building for such advances, which may be enforced in equity.” Id. at 170 (Reporter’s Note).


111. Id.

112. See supra text accompanying notes 66-76.
rules applicable to churches that provide for title to their property to be vested in trustees for their benefit, also to be applicable, mutatis mutandis, to churches that provide for title to their property to be vested in one central figure for their benefit. 113

C. Miscellaneous Property Matters

After a church has maintained the undisputed possession of property for which there is no deed of record for a period of twenty-five years, it may acquire a deed thereto by following the procedure established in section 57-17. 114

As a part of the disestablishment of the Protestant Episcopal Church in Virginia in 1802, the General Assembly confiscated the glebe lands held by the Church. At the present time, any remaining glebe lands, or the proceeds thereof, are held by the governing authority of the county in which the land is located for such non-religious uses as the local electorate may determine115 or, in the absence of such a determination, for the benefit of the poor.116 In 1806, the General Assembly shifted the control of non-religious charitable trusts, then being exercised by local vestries, to the local overseers of the poor, in trust, to be applied as originally directed by the donors. At the present time, this trusteeship is held by the governing body of the county, city or town in which the charity was intended by the donor to be exercised.117

The laws relating to cemeteries provide that (1) authorization by county ordinance shall not be required for interment of the dead in a churchyard;118 (2) church trustees may hold property in trust for

113. See, e.g., Maguire v. Loyd, 193 Va. 138, 143, 67 S.E.2d 885, 889 (1951), aff'd on rehearing, 194 Va. 266, 72 S.E.2d 631 (1952) (First Church of Christ, Scientist, of Lynchburg, Virginia, "is not the type of church mentioned" in this section).
115. VA. CODE ANN. § 57-3 (1981). All lands or proceeds appropriated for education shall vest in the local school board to be managed according to the wishes of the donor; the income therefrom shall be applied in the same manner as the school board's appropriation from the Literary Fund. VA. CODE ANN. § 22.1-107 (Repl. Vol. 1980).
116. The statute also allows the "Glebe Fund" in Essex, Middlesex and Lancaster counties to be used for improvements to the courthouse and related facilities. The following cases involve the disposition of glebe lands: Seldon v. Overseers of Poor of Loudoun, 38 Va. (11 Leigh) 127 (1840); Cheatham v. Burfoot, 36 Va. (9 Leigh) 580 (1838); Overseers of Poor of Henrico v. Hart, 30 Va. (3 Leigh) 1 (1831); Young v. Pollock, 16 Va. (2 Munf.) 517 (1811); Clauthon v. MacNaughton, 16 Va. (2 Munf.) 513 (1811); Turpin v. Locket, 10 Va. (6 Call) 113 (1804).
118. Id. § 57-28(1).
its cemetery;\textsuperscript{119} (3) there is no monetary limit on what may be given towards the original cost of a cemetery, burial lot, monument or vault,\textsuperscript{120} but the maximum possible gift for the maintenance of a cemetery is thirty thousand dollars, and no more than ten thousand dollars can be held at any time for the maintenance of a single lot, including its improvements.\textsuperscript{121} The provisions dealing with endowment trusts for perpetual care do not apply to a cemetery owned and operated by a church,\textsuperscript{122} nor do the provisions dealing with condemnation of abandoned graveyards apply to those owned by churches.\textsuperscript{123}

V. Contracts

A. Capacity of the Church to Contract

The contractual capacity of the local church has been the subject of numerous and conflicting dicta in the Virginia cases. Two primary reasons for this confusion are (1) the different organizational structures of the churches in the cases that have come before the courts, and (2) the interplay of the laws of agency and trusts in these cases. In an attempt to frame the ultimate issues more clearly, this section will seek first to deal with the contractual authority and liability of those who purport to act on behalf of a church and then to deal with the church proper and its members.

The distinction between agents and trustees and the general rules concerning their liability on contracts has been stated by the Virginia Supreme Court as follows:

A trustee is not an agent. An agent represents and acts for his principal, who may be either a natural or artificial person. A trustee may be defined generally as a person in whom some estate, interest, or power in or affecting property is vested for the benefit of another. When an agent contracts in the name of his principal, the principal contracts and is bound, but the agent is not. When a trustee contracts as such, unless he is bound no one is bound, for he has no principal. The trust estate cannot promise; the contract is therefore the personal undertaking of the trustee. As a trustee holds the estate, although only with the power and for the purpose of managing

\textsuperscript{119} Id. § 57-32.
\textsuperscript{120} Id. § 57-34.
\textsuperscript{121} Id. § 57-33.
\textsuperscript{122} Id. § 57-35.2:1.
\textsuperscript{123} Id. § 57-38.
it, he is personally bound by the contracts he makes as trustee, even when designating himself as such. 124

It is clear that this statement originally was framed in reference to trustees generally, and not to church trustees specifically, because it speaks of the trustee holding the trust estate "with the power and for the purpose of managing it." As noted earlier, 125 church trustees have no such power or authority; they merely hold title to the church's property subject to the will and control of the governing authority of the church. Nevertheless, that portion of the statement concerning the personal liability of the trustee on the contracts that he signs, even though he is acting rightfully, is believed by many persons to be an accurate statement insofar as church trustees are concerned. This belief is supported by the language of the statute dealing with the court order for the encumbering of church property, which states that the court, upon entering such an order "may provide that any instrument evidencing a debt secured by a deed of trust or mortgage made in behalf of [a church] may be signed without personal liability of the treasurer or other fiscal officer of such church and thereupon become the obligation solely of the church named therein." 126 This language provides the basis for the rhetorical question - Why was it necessary for the General Assembly to grant unto the courts the power to eliminate any personal liability of one contracting on behalf of a church, and to provide for the sole liability of the latter, unless the existing common law provided to the contrary, i.e., that one contracting on behalf of a church was liable, even though acting rightfully, and the church was not? 127

The first case to attempt any exploration of the contractual capacity and liability of a church and its representatives was Forsberg v. Zehm. 128 In this case a music committee appointed by the governing body of the local congregation (the board of stewards) of a hierarchical church entered into an employment contract with

125. See supra text accompanying note 96; see also supra note 103.
127. Of course general principles of trust law permit contracts made by a trustee and any third party to provide for the nonliability of the trustee. However, while the parties may expressly exclude the trustee's liability, they cannot by their own actions bind the trust estate. See Catlett, 157 Va. at 37, 161 S.E. at 48.
128. 150 Va. 756, 143 S.E. 284 (1928).
Zehm, an organist/choir director.\textsuperscript{129} When the board of stewards terminated his employment contract approximately seventeen months later, under circumstances that Zehm believed amounted to a breach of contract,\textsuperscript{130} he brought an action at law against them to recover damages. The board of stewards demurred on the ground “that Zehm contracted, through the music committee as agents, with a known principal, the Ghent Methodist Episcopal Church, South, named in the instrument, and therefore the agents are not liable to suit, and no one is so liable except the disclosed principal . . . .”\textsuperscript{131} In affirming the trial court’s action in overruling the demurrer, the Virginia Supreme Court held that the board’s proposition was not tenable. Instead, the court stated:

In the instant case there was no community of interest for business purposes between the members of the church. The board of stewards was from necessity the recognized instrumentality for handling the current funds, and, if they saw fit, for making contracts in reference to the use and disbursement of the funds. The music committee was an agent for the board, and it is manifest that they were so considered from the minutes put in evidence and from the testimony of its members. Zehm looked to the board for the payment of his salary. The music committee acted under the authority of the board\textsuperscript{132} . . . and we are of opinion, therefore, that the members of the board are jointly and severally liable to Zehm.\textsuperscript{133}

In dictum, the \textit{Forsberg} court went on to enunciate the contractual capacity of a church as follows: “There must be competent parties to a contract. However it may be in other States, in Virginia a church or its congregation cannot contract, certainly not unless perhaps by reason of a specially held meeting and through a special committee appointed by the members attending such meeting.”\textsuperscript{134}

This \textit{Forsberg} dictum was brought back before the court four years later in \textit{Cain v. Rea},\textsuperscript{135} a case in which an architect was seek-

\textsuperscript{129} The agreement was “between Ghent Methodist Episcopal Church South by its music committee, party of the first part, and Harry J. Zehm . . . .” \textit{Id.} at 760, 143 S.E. at 285.

\textsuperscript{130} The case contains a lengthy discussion of a “satisfactory performance” clause in the contract of a church organist/choir director.

\textsuperscript{131} \textit{Forsberg}, 150 Va. at 764, 143 S.E. at 286.

\textsuperscript{132} \textit{Id.} at 766, 143 S.E. at 287.

\textsuperscript{133} \textit{Id.} at 768, 143 S.E. at 287.

\textsuperscript{134} \textit{Id.} at 766, 143 S.E. at 287.

\textsuperscript{135} 159 Va. 446, 166 S.E. 478 (1932).
ing to enforce a mechanic’s lien on a church building for the balance due for his labor in designing and supervising its construction. The church in Cain was congregational in form of government, and the architect’s contract had been approved in a congregational meeting prior to its execution by the church trustees. The court disagreed with the defendants’ contention concerning the lack of a church’s contractual capacity, which was based upon the Forsberg dictum, and stated that “[i]n so far as [that] language impliedly conflicts with the views expressed in this opinion it is disapproved.” However, it does not appear that the Forsberg dictum conflicts at all with the holding in Cain. The Forsberg dictum allows for the possibility of a church contracting “by reason of a specially held meeting” and the contract in Cain was approved by the congregation in such a meeting. In holding that the architect “entered into a valid contract of employment with the congregation of the church, and that . . . he is entitled to file a mechanic’s lien upon the church property,” the court overruled the further contention that the conveyancing/encumbering statutes prohibited a church congregation from making a contract affecting its property without court approval. In answer to this contention, the court found that the statutes provide a convenient method for the sale or mortgaging of church property. They are barriers over which neither trustees nor individual members can step in order to destroy the corpus. They do not prohibit a church, in a congregational meeting, duly called in conformity with the rules of the church, from entering into a contract with a laborer or materialman to perform labor or furnish material.

In Hawthorne v. Austin Organ Co., the plaintiffs brought an action in federal court seeking a personal recovery from trustees who executed certain promissory notes on behalf of their church. The church was congregational in form of government, and the

136. Id. at 459, 166 S.E. at 483.
137. Forsberg, 150 Va. at 766, 143 S.E. at 287.
138. Cain, 159 Va. at 459, 166 S.E. at 483.
140. Cain, 159 Va. at 452-53, 166 S.E. at 480.
141. 71 F.2d 945 (4th Cir. 1934), cert. denied, 293 U.S. 623 (1934). This case discusses the other Virginia cases reported in this section, but it does not come to all of the same conclusions.
contract and notes were authorized in a congregational meeting before they were executed by the trustees, who signed them in their own names as trustees of the church. Upon the trial, the District Court held that the trustees were personally liable on these notes based upon the general rule that a trustee is always liable on his contracts, even though acting rightfully, unless the contract provides to the contrary. But, on appeal, it was held that "[t]he general rule, however, has been modified, so far as negotiable instruments are concerned, by Section 20 of the Negotiable Instruments Law" which provided that one who signs a negotiable instrument in which his representative capacity is disclosed is not liable thereon if, in fact, he is authorized to sign. In other cases brought against church trustees individually, it has been held that (1) the personal liability of trustees who assumed a mortgage and their rights, if any, against the church property could not be determined where only two of the five trustees were made parties to the suit; (2) a trustee who accepted a draft without the approval of the congregation or the other trustees was the only person liable thereon; and, (3) trustees who secured a trial court determination that they had no authority to execute a note on their church's behalf were personally liable thereon.

No case has been found where individuals were sought to be held liable in their capacity as members of a church. However, in dictum in Catlett v. Hawthorne, the court quotes with approval from a legal encyclopedia as follows:

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143. Hawthorne, 71 F.2d at 946.
144. Section 20 of the Negotiable Instruments Law has been replaced by Va. Code Ann. § 8.3-403 (Repl. Vol. 1965). According to the Virginia Comment to this section, "Subsection 8.3-403(2) by necessary implication accords with" this aspect of Hawthorne. Another common law matter now regulated by commercial statute arose in Trust Co. of Norfolk v. Snyder, 148 Va. 381, 138 S.E. 477 (1927), which involved a church treasurer making unauthorized loans at the bank, depositing the proceeds in the church's account, and then writing unauthorized checks on these funds for his own benefit. Upon discovery of the fraud the bank unilaterally set off the amounts of these loans against funds of the church in its possession. It was held to be a jury question whether the loss should be borne (1) by the bank for dealing with the treasurer or (2) by the church for failure to examine its bank statements within a reasonable time. This matter is now dealt with by Va. Code Ann. § 8.4-406 (Cum. Supp. 1982).
Members of an unincorporated church organization, who are actually instrumental in incurring liabilities for it, or who either authorize or ratify its transactions or those made in its name, are personally liable therefor, while those who in no way participate in such transactions are exempt from liability. Thus it has been held that the members composing a building committee of an unincorporated church organization in charge of the work of constructing a church are individually liable for material furnished them for building, although it is charged to the organization and the seller was informed that the material would be paid for out of the proceeds of church fairs, voluntary subscriptions, and donations. 149

B. Consequences of Church Status as An Unincorporated Association

A further expression of the repugnancy towards the establishment of any religion in Virginia is found in the provision of the Virginia Constitution that "[t]he General Assembly shall not grant a charter of incorporation to any church or religious denomination. . . ." 150 Accordingly, the local church is treated as an unincorporated association and, as in the case of other such associations, it may sue 151 and be sued in the name by which it is commonly known, and judgments and executions against it will bind its real and personal property in like manner as if it were incorporated. 152 In a proceeding against a church, service of process may be made upon any officer, trustee, director, staff member or other agent 153 and, perhaps, by order of publication in some

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149. Id. at 377, 161 S.E. at 48, quoting 23 R.C.L. 432. See also Lackey v. Price, 142 Va. 789, 128 S.E. 268 (1929).

150. VA. CONST. art. IV § 14(20). After making an historical review of the subject, the Virginia Supreme Court concluded that "it is perfectly clear that it never occurred to the legislature of Virginia that to incorporate church agencies essential to the accomplishment of church work, was the same thing as the incorporation of the churches respectively in whose interests such corporate agencies have been created and still exist." Trustees v. Guthrie, 86 Va. (11 Hans.) 125, 138, 10 S.E. 318, 322 (1889).

151. In Perkins v. Seigfried's Adm'r, 97 Va. 444, 34 S.E. 64 (1899), an individual plaintiff filed a petition in a pending suit for the settlement of a decedent's estate seeking to recover a debt owed to his church by the decedent's estate. Plaintiff alleged "that he was a member of the Presbyterian Church of Charlottesville and that he sued on behalf of himself and the other four hundred members of that church, who were too numerous to admit of their all suing at law." Id. at 450-51, 34 S.E. at 66. These allegations not being denied, it was held that "this proceeding, in the form in which it was brought, was proper." Id. at 451, 34 S.E. at 66.


instances.\textsuperscript{154}

It is also clear that churches have access to the courts for the resolution of disputes that involve purely internal matters, as well as the previously discussed proceedings dealing with the ownership of property upon church division.\textsuperscript{155} Thus, in \textit{Carr v. Union Church of Hopewell},\textsuperscript{156} the Virginia Supreme Court upheld the trial court's jurisdiction to entertain a declaratory judgment proceeding brought by the church against the members of its banking committee (1) to require them to turn certain funds over to the building committee, and (2) to require them to recognize their replacement on the banking committee by other persons. The court concluded that the matters before it "involved only civil and property rights. Ecclesiastical beliefs, matters of church doctrine and polity and the like were entirely absent."\textsuperscript{157} When an intra-church dispute does involve ecclesiastical matters, then, in addition to the state constitutional matters previously noted,\textsuperscript{158} federal constitutional questions also arise. Thus in a recent federal case wherein plaintiffs alleged that, after a dispute arose concerning the authenticity of their glossalalia (speaking in tongues), they were expelled from the church in a meeting containing many procedural defects, the court found itself compelled by the First Amendment to avoid adjudicating the issue of whether the plaintiffs' expulsion was in accordance with the procedure prescribed by the Church of God of Prophecy. This is the proper conclusion even though such adjudication may involve more procedural incidents of church governance rather than more clearly identifiable doctrinal disputations. It is clear . . . that both proce-

\textsuperscript{154} VA. CODE ANN. § 8.01-316(3) (Cum. Supp. 1982).

\textsuperscript{155} In Baber v. Caldwell, 207 Va. 694, 152 S.E.2d 23 (1967), an action characterized by the court as "intracongregational strife," the complainants "brought suit to establish their right to control the activities of the [Congregational] Church and the use of its property."

\textit{Id.} at 695, 152 S.E.2d at 24. The court held that

\textit{Id.} at 700, 152 S.E.2d at 28.

\textsuperscript{156} 186 Va. 411, 42 S.E.2d 840 (1947).

\textsuperscript{157} \textit{Id.} at 417, 42 S.E.2d at 843.

\textsuperscript{158} \textit{See supra} text accompanying notes 87-91.
dural-governance questions and doctrinal disputes are constitution­ally removed from the court's review. 159

VI. LIABILITY IN TORT

In Rohr v. Richmond, 160 a state circuit court case brought against a city and the trustees of a city church to recover for dam­ages suffered by plaintiff due to a defective cellar-cap constructed by the church on city property, the jury found the trustees primar­ily liable. The trial judge set the jury verdict aside and ordered a new trial because "it has been shown that the trustees of the First Baptist Church were not charged with the duty the declaration seeks to impose upon them." 161 In the course of its opinion, the trial judge also observed, regarding the church lawyer's argument that churches enjoyed immunity from tort claims, that "[w]hile it has been so held in many jurisdictions, it would seem from recent decisions that the doctrine of total immunity from liability of religious societies for tort has, upon reason and authority, been re­jected." 162 However, when this dictum was later relied on by a plaintiff in a tort action brought directly against a church it was construed "to mean that, like charitable institutions generally, a church does not enjoy 'total immunity . . . in tort,' its immunity being limited to torts committed against beneficiaries of its bounty." 163 Accordingly, concluding that the plaintiff in this case was a beneficiary of the church's bounty, 164 the trial court's dismis­sal of plaintiff's action was affirmed.

In an intra-church matter wherein plaintiffs sought preliminary injunctive relief and two and one-half million dollars in punitive


160. 20 Va. L. Reg. 260 (1914).

161. Id. at 266.

162. Id. at 262.

163. Egerton v. R. E. Lee Memorial Church, 395 F.2d 381, 383 (4th Cir. 1968).

164. The primary facts upon which this determination was made were as follows:
While not maintained as a tourist attraction, the local tourist center in Lexington in its tourist guidebook has identified the Church sanctuary, and particularly its stained glass windows, one of which was installed upside down, as a place of local historic interest and significance. The plaintiff, a citizen of North Carolina, while visiting in Lexington, entered the defendant's sanctuary during daylight hours for the purpose of viewing the sanctuary and its stained glass windows. The sanctuary was unlighted save for the sunlight refracted through the stained glass windows. While so visiting, the plaintiff fell into an open stairway, receiving the injuries for which recovery is sought in this action.

Id. at 382.
damages based upon their alleged improper expulsion from the church and arrest for criminal trespass after ignoring a notice not to return to the church, the gravamen of plaintiffs' claim was that they had been deprived of constitutionally protected rights in contravention of the Civil Rights Act of 1871. However, the court held that the plaintiffs were not deprived of any rights cognizable under the first, fifth or fourteenth amendments and that, even if they had been, the required element of "state action" was lacking.

In Ward v. Conner, plaintiff brought an action against thirty-three persons (including his parents), alleging that their actions in attempting to "de-program" him of his religious beliefs in the Unification Church amounted to a conspiracy to deprive him of his civil rights, statutory conspiracy, assault, battery, false imprisonment, invasion of privacy, intentional infliction of emotional distress and grand larceny. On a motion to dismiss, the District Court held that the complaint failed to state a cause of action under either the federal civil rights conspiracy statute or the Virginia business conspiracy statute, and that Virginia law did not recognize either a common law action for invasion of privacy or the tort theory of grand larceny. The first of these rulings subsequently was reversed on appeal, the court stating that "we think it reasonable to conclude that religious discrimination, being akin to invidious racial bias, falls within the ambit of § 1985(c), and that the plaintiff and other members of the Unification Church constitute a class which is entitled to invoke the statutory remedy."  

VII. Marriage

In addition to the provision for the appointment of lay persons in every city and county in the state to perform the ceremony of marriage, Virginia law also authorizes the circuit courts to license a minister of any religious denomination to perform mar-

riages, upon proof of (1) his ordination\(^{172}\) and his being in regular communion\(^{173}\) with his denomination, or (2) his possession of a local minister's license and that he is serving as a regularly appointed pastor in his denomination.\(^{174}\) This statute was brought before the Virginia Supreme Court in \textit{Cramer v. Commonwealth}\(^{175}\) after defendants' authority to celebrate marriages was rescinded following a show cause order and hearing in the circuit court. The defendants in this matter were all "ordained" ministers of the Universal Life Church, Inc., a California non-profit corporation. The court noted, among other things, that

Universal has no traditional doctrine. Its only dogma is that each person believe that which is right and that each person shall judge for himself what is right. Universal ministers are ordained (either by the home office or by any other minister) without question of their faith for a free-will offering. . . .\(^{176}\)

The court concluded that "we cannot fit the Universal Life Church, Inc., within any definition of church, religious society or organization, found in any dictionary or in any decided case."\(^{177}\) This observation was stated by the court to be of no importance to its decision, however, because of the court's recognition of defendants' right of religious freedom. Instead, the court affirmed the revocation of defendants' licenses on the ground that the word "minister", as used in section 20-23, was to be narrowly defined and that

in Universal every living person is not only eligible for membership, but eligible for immediate ordination into the ministry, with all the benefits of that profession. We do not believe that the General Assembly ever intended to qualify, for licensing to marry, a minister whose title and status could be so casually and cavalierly acquired.\(^{178}\)

\(^{172}\) "Neither the word 'ordination' nor 'communion' is used here in an ecclesiastical sense for the legislature was not concerned with the religious aspect of the marriage ceremony." \textit{Cramer v. Commonwealth}, 214 Va. 561, 565, 202 S.E.2d 911, 914 (1974).

\(^{173}\) \textit{Id.} at 565, 202 S.E.2d at 914.


\(^{176}\) \textit{Id.} at 562, 202 S.E.2d at 912.

\(^{177}\) \textit{Id.} at 566, 202 S.E.2d at 915.

\(^{178}\) \textit{Id.} at 567, 202 S.E.2d at 915. The court rejected the Commonwealth's request for a more narrow construction of "minister" to include only those who are so employed on a full time basis, noting that "it is a matter of common knowledge that there are many ministers
The Virginia statutes relating to marriage further provide (1) for the appointment of one member of a religious society that has no ordained minister to solemnize the marriages of its members;\textsuperscript{179} (2) that the person officiating at any marriage ceremony must certify the same to the official who issued the marriage license within five days of the marriage;\textsuperscript{180} (3) that any minister who fails to so certify is subject to a fine of twenty-five dollars;\textsuperscript{181} (4) that person authorized to solemnize marriages may charge a fee not to exceed twenty dollars therefor;\textsuperscript{182} (5) that one who performs the ceremony of marriage knowing that he lacks the authority is subject to confinement in jail not exceeding one year and a fine not exceeding five hundred dollars;\textsuperscript{183} and (6) that one who knowingly solemnizes a marriage where one of the parties is legally incompetent (except when the female party is over forty-five) is subject to confinement in jail not exceeding ninety days and a fine not exceeding one hundred dollars.\textsuperscript{184}

\section*{VIII. Sunday Laws}

The most litigated issues under this heading are the validity and applicability of the Sunday Closing Law,\textsuperscript{185} which makes it a misdemeanor to engage in work, labor or business except (1) in certain circumstances enumerated in the statute, or (2) in counties or cities which by referenda have determined that this law is not necessary.\textsuperscript{186} Although it is obvious that Sunday laws were originally motivated by religious considerations

\begin{quote}
[t]he forerunner of the present Sunday law, with clearly secular purposes, was adopted in Virginia in 1779 . . . \\
[T]he law is well settled in Virginia that a Sunday law enacted
\end{quote}

in Virginia who serve their congregations with complete fidelity and efficiency while holding outside employment and deriving the major portion of their income from such employment." Id. at 564, 202 S.E.2d at 913.

\textsuperscript{180} Id. §32.1-267 (Repl. Vol. 1979).
\textsuperscript{181} Id. § 20-24 (Cum. Supp. 1982).
\textsuperscript{182} Id. § 20-27 (Repl. Vol. 1975).
\textsuperscript{183} Id. § 20-28.
\textsuperscript{184} Id. §§ 20-46(3),(7) (Cum. Supp. 1982).
\textsuperscript{185} Id. § 18.2-341 (Repl. Vol. 1982). VA. CODE ANN. § 18.2-343 (Repl. Vol. 1982) exempts from the operation of the Sunday Closing Law one who (1) conscientiously believes that the seventh day of the week ought to be observed as a Sabbath, (2) actually refrains from all secular business and labor on that day, and (3) does not compel an employee not of his belief to do secular work or business on a Sunday.
under the police powers of the State for the purpose of providing a day of rest for persons, to prevent the physical and moral debasement which comes from uninterrupted labor does not infringe upon the constitutional guarantee of religious freedom. 187

Other statutes dealing with a day of rest are found in that part of the Virginia Code dealing with the protection of employees. These statutes provide (1) that, in addition to all other time off from work, every employee shall be allowed at least twenty-four consecutive hours of rest in each calendar week, unless an emergency arises; 188 (2) that non-managerial employees may select Sunday as that day of rest; 189 (3) that those non-managerial employees who observe Saturday as a Sabbath may select it as their day of rest; 190 (4) that, except for those engaged in the sale of food, ice and beverages, the choices described in (2) and (3), above, are not available to those persons working in the "permissible" businesses described in the Sunday Closing Law; 191 and, (5) that any employer who in any way penalizes an employee for exercising these rights is guilty of a misdemeanor and must also pay the employee triple wages for any hours worked on his chosen day of rest. 192 Other Sunday laws prohibit, with some exceptions, (1) taking oysters (except by hand) or loading them on a vessel on Sunday; 193 (2) taking clams on Sunday; 194 (3) taking crabs for commercial purpose on Sunday; 195 and (4) hunting on Sunday. 196

Within the judicial system, it is provided that (1) when the time limitation for beginning or taking any step in a legal proceeding


189. Id. § 40.1-28.2.

190. Id. § 40.1-28.3.

191. Id. § 40.1-28.5.

192. Id. § 40.1-28.4.


195. Id. § 28.1-172.

196. Id. § 29-143 (Repl. Vol. 1979). This section also declares Sunday to be "a rest day for all species of wild bird and wild animal life."
ends on Sunday, it is extended to the next working day; courts and other legal proceedings are not to be held on Sunday; and (3) no civil process is to be served on Sunday except in cases of escapees or where expressly authorized by law. However, attachment of property in civil cases may be issued and executed on Sunday.

IX. MISCELLANEOUS CHURCH-RELATED MATTERS

Special rules applicable to the clergy provide (1) that ministers of the gospel are privileged from arrest under civil process while engaged in performing religious services in a place where a congregation is assembled, and while going to and returning from that place; (2) that ministers of the gospel licensed to preach according to the rules of their sect (who were totally exempt from jury service until July 1, 1980) may be exempted from jury service during a particular term of court only upon the court finding that such service would cause a particular occupational inconvenience; (3) that communications between ministers of religion and persons they counsel or advise generally are privileged from disclosure in any civil action; (4) that the laws dealing with the licensing of those engaged in the behavioral science professions are not applicable to clergymen whose activities are within the scope of the performance of their ministerial duties (a) if no charge is made therefor, or (b) under the auspices of a church to whom the clergyman remains accountable; and (5) a minister who knowingly makes a false written statement in connection with certifying a marriage is guilty of a Class 3 misdemeanor.

Church-related criminal and traffic offenses are (1) burning or destroying a meeting house; (2) willfully and maliciously breaking any window or door of a house of worship, injuring or defacing

200. Id. § 8.01-542.
201. Id. § 8.01-327.2(6).
203. Id. § 8.01-400.
204. Id. § 54-944(c) (Repl. Vol. 1982).
205. Id. § 18.2-207 (Repl. Vol. 1982).
206. Id. § 18.2-79.
the same, or destroying or carrying away any furniture there­
from;207 (3) trespass at night upon church property;208 (4) carrying
a dangerous weapon to a place of worship while a religious meet­ing
is being held, without good and sufficient reason;209 (5) handling
poisonous or dangerous snakes in such manner as to endanger the
life or health of any person;210 (6) willfully, or while intoxicated,
disrupting a meeting at a place of religious worship (which cannot
be merely the utterance or display of any words);211 (7) operation
of a motor vehicle upon any driveway or premises of a church reck­
lessly or at a speed or in a manner so as to endanger the life, limb
or property of any person;212 and (8) engaging in an unauthorized
race between two or more motor vehicles upon the driveway or
premises of a church.213

Health-related statutes provide (1) that a parent or custodian of
a minor child who knowingly fails to secure prompt and adequate
medical attention for a child injured by a member of the household
solely because the child is being furnished Christian Science treat­
ment by a duly accredited Christian Science practitioner is not
guilty of what, otherwise, would be a Class 1 misdemeanor;214 (2)
that a parent or custodian of a minor child who obtains treatment
for the child solely by spiritual means through prayer in accor­
dance with the tenets and practices of a "recognized church or reli­
gious denomination” shall not, for that reason alone, be considered
guilty of the Class 5 felony of neglecting to provide for a child’s
health so as to cause the life or health of such child to be seriously
injured;215 (3) that the laws dealing with licensing those who care
for or treat mentally ill or retarded persons do not authorize or
require the licensing of those who do so by the practice of the reli­
gious tenets of any church in the ministration to the sick and suf­
fering by mental or spiritual means without the use of any drug or
material remedy;216 and (4) that the laws dealing with licensing

207. Id. § 18.2-138.
208. Id. § 18.2-128.
209. Id. § 18.2-283.
210. Id. § 18.2-313.
211. Id. § 18.2-415. A predecessor of this statute was held applicable to one who, by blow­
ing a tin horn, disturbed sleeping campers at a religious retreat after all religious services
had been completed for the day. Commonwealth v. Jennings, 44 Va. (3 Gratt.) 806 (1846).
214. Id. § 18.2-314 (Repl. Vol. 1982).
215. Id. § 18.2-371.1.
those engaged in the practice of medicine and the healing arts do not prohibit or require the licensing of the practice of the religious tenets of any church in the ministration to the sick and suffering by mental or spiritual means without the use of any drug or material remedy.\(^{217}\)

Laws that provide exemptions or other special treatment to religious organizations are as follows: (1) organizations operated exclusively for religious purposes are among those organizations permitted to conduct raffles, bingo and instant bingo games;\(^{218}\) (2) a reasonable number of signs of six square feet or less denoting the name and location of a church, and directions for reaching the same, are excepted from the statutes regulating outdoor advertising;\(^{219}\) (3) the state laws governing restaurants are not applicable to (a) churches which hold occasional dinners and bazaars of one or two days duration at which food is offered for sale to the public, and (b) churches which serve meals to their members as a regular part of their religious observances;\(^{220}\) (4) religious organizations may limit the sale, rental or occupancy of dwellings they own for non-commercial purposes to members of their own religion without being in violation of Virginia's Fair Housing Law;\(^{221}\) (5) the insurance laws of Virginia do not apply to intra-church mutual aid societies created prior to 1935 to provide members with casualty insurance;\(^{222}\) (6) the annual fee for registration of a bus used exclusively for transportation to and from Sunday school or church for the purpose of divine worship is twenty dollars or, if its empty weight exceeds four thousand pounds, twenty-five dollars;\(^{223}\) (7) the Solicitations of Contributions Act does not apply to any church or convention or association of churches, primarily operated for non-secular purposes, none of whose net income inures to the direct benefit of any individual;\(^{224}\) (8) a commercial advertisement that any person is not welcome, or is objectionable, or is not acceptable, because of his religion, at any place to which the public is admitted is a public nuisance and may be abated by injunctive relief except in the case of (a) private establishments, (b) educational institu-

\(^{217}\) Id. § 54-276.2 (Repl. Vol. 1982).
\(^{218}\) Id. §§ 18.2-334.2, -340.1 to .14 (Repl. Vol. 1982).
\(^{219}\) Id. § 33.1-355(18) (Repl. Vol. 1976).
\(^{221}\) Id. § 36-92 (Repl. Vol. 1976).
\(^{222}\) Id. § 38.1-42.1 (Repl. Vol. 1981).
\(^{223}\) Id. § 46.1-149(10) (Cum. Supp. 1982).
\(^{224}\) Id. § 57-48(2) (Repl. Vol. 1981).
tions or camps where admission is based on religious belief or affiliation, and (c) gatherings held under the auspices of any religious group or sect;\footnote{Id. § 57-2.1.} (9) the power to make gifts for religious purposes is one of the general powers conferred upon all stock and non-stock corporations;\footnote{Id. §§ 13.1-2.1(m), -204.1(m) (Repl. Vol. 1978).} (10) ministers, as well as all employees of churches, conventions or associations of churches (or religious organizations they control or provide the primary support for) are not "employees" for purposes of the Virginia Unemployment Compensation Act unless their employment unit elects to be covered thereby;\footnote{Id. §§ 60-1-14(d), -100 (Repl. Vol. 1982).} and (11) child-care centers operated by religious institutions are exempt from state law licensing provisions provided that certain statements and disclosure are made to the public and certain documentary evidence is provided to the state.\footnote{Id. § 63.1-196.3 (Repl. Vol. 1980). This exemption was challenged in Forest Hills Early Learning Center v. Lukhard, 480 F. Supp. 636 (E.D. Va. 1979).}

X. Conclusion

The foregoing represents all of the Virginia statutes and cases relating to churches that were found during the research for this article, except those relating to tax matters. An article discussing the tax laws affecting churches in Virginia, which will focus on federal as well as state law, will soon follow.