

## INTRODUCTION TO 2026 EDITION

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Recent case law affecting this area of law is discussed within the text:

- In *Al-Saray v. Furr*, 304 Va. 19, 27-29, 910 S.E.2d 320 (2025), the Supreme Court of Virginia summarized the elements of a negligence cause of action in the context of automobile cases. Analyzing the facts in that case, the Court held “[f]rom this evidence, a jury could reasonably infer that [defendant’s] failure to keep a proper lookout and/or her failure to yield ... was a proximate cause of the accident.”

- In *Harless v. Williams*, 84 Va. App. 242, 913 S.E.2d 302 (2025), the Virginia Court of Appeals held that a property owner was not liable in negligence or nuisance for injuries caused when a horse escaped from the property through an opening in a fence caused by a fallen tree.

- In *Cothran v. Jauregui*, \_\_ Va. \_\_, 923 S.E.2d 912 (2025), the Supreme Court of Virginia upheld the dismissal of a medical malpractice action as time-barred, where the evidence supported a finding that there was a substantial interruption in the course of the patient’s examination and treatment.

- In *Doe v. Green*, \_\_ Va. \_\_, 922 S.E.2d 756 (2025), the Supreme Court of Virginia recognized that claims of sexual abuse may give rise to a cause of action for battery. The Court analyzed the various statutes of limitation and accrual provisions – including Va. Code Ann. §§ 8.01-229(6), 8.01-243(D) & 8.01-249 – applicable to such claims, including when the plaintiff was a minor at the time.

- In *Vasterling v. Dirle*, 2026 WL 161895 (4th Cir. 2026), the United States Court of Appeals for the Fourth Circuit reversed a trial court’s finding that a defendant was liable for willful and wanton negligence, where the evidence showed that the driver was not intoxicated and engaged in dangerous, but only negligent, conduct.

- In *Davis v. Gardiner*, 2025 WL 375815 (Va. App. 2025), the Virginia Court of Appeals held that the five-year statute of limitations for damages under the Virginia Business Conspiracy Act accrue upon the first measurable damage.

- In *Appian Corp. v. Pegasystems, Inc.*, \_\_ Va. \_\_, 924 S.E.2d 621, 641 (2026), the Supreme Court of Virginia held that that the

statutory definition of “trade secret” in the Virginia Uniform Trade Secrets Act is “broad,” and extends “far beyond the layperson’s conception of secret formulas.” The Court further held that whether a piece of information constitutes a trade secret under the VUTSA ordinarily presents a question of fact to be determined by the fact finder from the greater weight of the evidence. The Court also held that the plaintiff bears the burden to prove recoverable damages under the VUTSA. The Court noted that the Virginia General Assembly enacted a different damages provision from that contained in the model Uniform Trade Secrets Act, and that “even assuming” the model act shifted a portion of the burden of proof on damages under certain circumstances, the damages provision in the VUSTA maintains the common law principle that damages must be proven by the plaintiff.

- In *Nieto v. Great Bridge Presbyterian Church, Inc.*, 2026 WL 874044 (Va. Ct. App. 2026), the Virginia Court of Appeals affirmed the dismissal of a defamation suit by former Presbyterian pastors against a church based on the church’s post-termination letter alleging financial mismanagement and intimidation, where the letter referenced the Presbyterian Book of Order and ordination vows, ruling the claims were barred because evaluating pastoral fitness and appropriate church financial management standards would require impermissible judicial entanglement in Presbyterian doctrine and governance.

- In *Fajardo v. Stewart*, 2026 WL 136107 (Va. Ct. App. 2026), the Virginia Court of Appeals re-affirmed that negligence cannot be presumed from the mere happening of an accident, and that if the cause of an accident is left to conjecture or speculation, the plaintiff cannot recover.

- In *Ellis v. Jolley*, \_\_ Va. \_\_, 923 S.E.2d 304, 308, 2025 WL 3545900 (2025), the Supreme Court of Virginia held that a city was immune from liability for a collision caused by a city trash truck driver who ran a stop sign, because trash collection is a governmental function. In the same case, the Court re-affirmed that a governmental employee can share in the immunity enjoyed by his employer, but the governmental employee is not automatically immune whenever the county or city is immune. Applying the relevant factors, the Court determined that the city trash truck driver was held not to be immune because he was engaged in ordinary driving at the time of the collision.

- In *Newport News School Board v. Z.M.*, 304 Va. 276, 915 S.E.2d 56 (2025), the Supreme Court of Virginia held that the transporting of children on school buses or other vehicles is held to be a governmental function for which the city school board was immune. The Court also considered the scope of Virginia Code Section 22.1-194, which provides limited waiver of immunity for localities and school boards for accidents caused by drivers of

buses or other school vehicles. The Court held that the statute does not require an actual collision between the school vehicle and another vehicle or object, and the statute does not require any actual damage to the school vehicle. However, the Court held that immunity under the statute is not waived for cases that do not implicate the operation of the vehicle as a means of transportation. The plaintiff was an autistic child who sued a school district and bus driver for alleged degrading acts that were committed while the plaintiff was on a school bus. The Court held that the school bus was merely the “situs” of the events, and that the statute was not implicated because the bus was not “involved in an accident.” The Court also ruled that the statute does not provide any waiver of immunity for the school bus driver, who did not have immunity from the plaintiff’s claim for gross negligence.

- In *Sentra Med. Grp. v. Klena*, \_\_ Va. \_\_, 925 S.E.2d 873, 878-79 (2026), the Supreme Court of Virginia considered whether the corporate agent of an immune governmental entity – in that case, a regional medical center operated by a legislatively created hospital authority – enjoyed derivative immunity. The Court held that factors used to determine whether a government employee enjoys immunity in a suit serves as the “framework” to determining whether a corporate agent of an immune governmental entity enjoys immunity in a case. The Court held that the determination depended upon a totality of the circumstances review, including: the nature and structure of the corporate agent; its relationship with the immune entity; the degree of control the immune entity or other governmental actor exerts over the corporate agent; and whether the corporate agent was necessary or merely convenient to the performance of a governmental function.

- A new statute went into effect in Virginia on July 1, 2025, authorizing more expansive vicarious liability of an employer for personal injury or wrongful death of a “vulnerable victim” caused by acts of an employee. See Va. Code Ann. § 8.01-42.6. In making the determination as to whether vicarious liability should be imposed, the plaintiff bears the burden of proving each of four elements to the factfinder: (1) that the employee was reasonably likely to come into contact with the vulnerable victim and the employee’s tortious conduct proximately caused the victim’s personal injury or wrongful death; (2) that the employer failed to exercise reasonable care to (i) prevent the employee’s intentional harm toward the vulnerable victim or (ii) control the employee, which resulted in an unreasonable risk that the vulnerable victim would suffer personal injury or wrongful death; (3) that the employer knew or had reason to know of the ability to control the employee; and (4) that the employer knew or had reason to know of the necessity and opportunity to exercise such control over the

employee. Notably, these factors are arguably distinct from, and less restrictive than, the traditional “scope of employment” test. Likewise, the term “vulnerable victim” is arguably broad, being defined as “any person who is at a substantial disadvantage relative to an employee due to circumstances, including such person’s physical or mental condition or characteristics.” The statute provides a number of examples of classes of individuals who are deemed “as a matter of law” to qualify as “vulnerable victims.” These include, inter alia, patients of a health care provider, persons under a statutory disability, residents of assisted living facilities, passengers of certain common carriers, and certain business invitees.

- In *Alexander v. Martin Agency*, 2025 WL 2598200 (Va. App. 2025), the Virginia Court of Appeals held that statements that accurately describe accusations made against an individual, without falsely stating or implying that the accusations are true, are not considered false or defamatory merely because the individual denies the underlying conduct.

- In *Brooks-Buck v. Wahlstrom*, \_\_ Va. \_\_, 921 S.E.2d 223, 228 (2025), the Supreme Court of Virginia held that common law legislative immunity only applies to legislators when acting “in the sphere of legitimate legislative activity.” However, the Court held that “the sphere of legitimate legislative activity” is not necessarily tied to official legislative proceedings, but to the “essentials” of the legislative process, which may include communications or acts that are “integral” to the sphere of legitimate legislative activity. In that case, the Court concluded that a school board disciplinary proceeding is a part of the legislative process. The Court also ruled that the statutory immunity afforded to members of local governmental entities under Virginia Code Section 15.2-1405 does not apply to conduct constituting intentional or willful misconduct or gross negligence, and that the school board members in that case were not entitled to immunity under the statute for defamation, which is an intentional tort.

- In *Hale v. Cauzzort*, 2026 WL 739280 (Va. Ct. App. 2026), the Virginia Court of Appeals affirmed a trial court’s decision overruling a demurrer to a defamation action based on Virginia’s Anti-SLAPP law, where the plaintiff’s complaint sufficiently alleged that the defendant made false statements with actual malice.