

§ 8.01-261. **Category A or preferred venue.** — In the actions listed in this section, the forums enumerated shall be deemed preferred places of venue and may be referred to as “Category A” in this title. Venue laid in any other forum shall be subject to objection; however, if more than one preferred place of venue applies, any such place shall be a proper forum. The following forums are designated as places of preferred venue for the action specified:

1. In actions for review of, appeal from, or enforcement of state administrative regulations, decisions, or other orders:

a. If the moving or aggrieved party is other than the Commonwealth or an agency thereof, then the county or city wherein such party:

- (1) Resides;
- (2) Regularly or systematically conducts affairs or business activity; or
- (3) Wherein such party's property affected by the administrative action is located.

b. If the moving or aggrieved party is the Commonwealth or an agency thereof, then the county or city wherein the respondent or a party defendant:

- (1) Resides;
- (2) Regularly or systematically conducts affairs or business activity; or
- (3) Has any property affected by the administrative action.

c. If subdivisions 1 a and 1 b do not apply, then the county or city wherein the alleged violation of the administrative regulation, decision, or other order occurred.

2. Except as provided in subdivision 1 of this section, where the action is against one or more officers of the Commonwealth in an official capacity, the county or city where any such person has his official office.

3. The county or city wherein the subject land, or a part thereof, is situated in the following actions:

- a. To recover or partition land;
- b. To subject land to a debt;
- c. To sell, lease, or encumber the land of persons under disabilities;
- d. [Repealed.]
- e. To sell wastelands;
- f. To establish boundaries;
- g. For unlawful entry or detainer;
- h. For ejectment; or
- i. To remove clouds on title.

4. [Reserved.]

5. In actions for writs of mandamus, prohibition, or certiorari, except such as may be issued by the Supreme Court, the county or city wherein is the record or proceeding to which the writ relates.

6. In actions on bonds required for public contract, the county or city in which the public project, or any part thereof, is situated.

7. In actions to impeach or establish a will, the county or city wherein the will was probated, or, if not probated at the time of the action, where the will may be properly offered for probate.

8., 9. [Repealed.]

10. In actions on any contract between a transportation district and a component government, any county or city any part of which is within such transportation district.

11. In attachments,

a. With reference to the principal defendant and those liable with or to him, venue shall be determined as if the principal defendant were the sole defendant; or

b. In the county or city in which the principal defendant has estate or has debts owing to him.

12. [Repealed.]

13. a. In any action for the collection of state, county, or municipal taxes, any one of the following counties or cities shall be deemed preferred places of venue:

- (1) Wherein the taxpayer resides;
- (2) Wherein the taxpayer owns real or personal property;
- (3) Wherein the taxpayer has a registered office, or regularly or systematically conducts business; or
- (4) In case of withdrawal from the Commonwealth by a delinquent taxpayer, wherein venue was proper at the time the taxes in question were assessed or at the time of such withdrawal.

b. In any action for the correction of an erroneous assessment of state taxes and tax refunds, any one of the following counties or cities shall be deemed preferred places of venue:

- (1) Wherein the taxpayer resides;
- (2) Wherein the taxpayer has a registered office or regularly or systematically conducts business;
- (3) Wherein the taxpayer's real or personal property involved in such a proceeding is located; or
- (4) The Circuit Court of the City of Richmond.

14. In proceedings by writ of quo warranto:

- a. The city or county wherein any of the defendants reside;
- b. If the defendant is a corporation, the city or county where its registered office is or where its mayor, rector, president, or other chief officer resides; or
- c. If there is no officer or none of the defendants reside in the Commonwealth, venue shall be in the City of Richmond.

15. In proceedings to award an injunction:

- a. To any judgment or judicial proceeding of a circuit court, venue shall be in the court in the county or city in which the judgment was rendered or such proceeding is pending;
- b. To any judgment or judicial proceeding of a district court, venue shall be in the circuit court of the county or city in which the judgment was rendered or such proceeding is pending; or
- c. To any other act or proceeding, venue shall be in the circuit court of the county or city in which the act is to be done, or being done, or is apprehended to be done or the proceeding is pending.

16. [Repealed.]

17. In disbarment or suspension proceedings against any attorney-at-law, in the county or city where the defendant:

- a. Resides;
- b. Has his principal office or place of practice when the proceeding is commenced;
- c. Resided or had such principal office or place of practice when any misconduct complained of occurred; or
- d. Has any pending case as to which any misconduct took place.

18. In actions under the Virginia Tort Claims Act, Article 18.1 (§ 8.01-195.1 et seq.) of Chapter 3 of this title:

- a. The county or city where the claimant resides;
- b. The county or city where the act or omission complained of occurred; or
- c. If the claimant resides outside the Commonwealth and the act or omission complained of occurred outside the Commonwealth, the City of Richmond.

19. In suits for annulment, affirmance, or divorce, the county or city in which the parties last cohabited, or at the option of the plaintiff, in the county or city in which the defendant resides, if a resident of this Commonwealth, and in cases in which an order of publication may be issued against the defendant under § 8.01-316, venue may also be in the county or city in which the plaintiff resides.

20. In distress actions, in the county or city when the premises yielding the rent, or some part thereof, may be or where goods liable to distress may be found. (1977, c. 617; 1978, c. 334; 1979, c. 331; 1985, c. 433; 1987, c. 567; 1988, c. 766; 1989, c. 556; 1990, c. 831; 1993, c. 841.)

REVISERS' NOTE

Category A lists certain actions and denominates specific forums as the proper venue for those actions (subject to §§ 8.01-264 and 8.01-265). Under former Virginia statutes and case law, in the situations listed in Category A, venue was generally exclusive or mandatory, and timely objection to venue improperly laid would result in dismissal of the action. Also, if no timely objection were brought and such an action proceeded to judgment, such judgment was void and subject to collateral attack. Thus, mandatory venue related more to jurisdiction than to venue.

To further clarify the distinction between venue and jurisdiction, Category A uses the term "preferred" venue to refer to those situations in which venue had heretofore generally been denominated as "mandatory" or "exclusive." "Preferred" venue is not jurisdictional since, under §§ 8.01-258 and 8.01-264, dismissal is not available as a remedy for improper venue and a judgment rendered cannot be voided or collaterally attacked on such grounds. Instead, upon timely objection, the action shall be transferred to a "preferred" forum under this section, and, if no timely objection is made, the venue defect is waived.

Subsection 1 is § 9-6.14:5 of the Administrative Process Act of 1975. In general, this subsection has eliminated the necessity for citizens being forced to go to Richmond in order to challenge administrative actions or to protect their rights against adverse administrative decisions.

Subsection 2 changes the venue in former §§ 8-38 (9), 8-40 and 8-752 and establishes venue as the county or city where any defendant public officer has his official office. This provision comports with subsection 1.

Subsection 3 collects in a single provision those "local actions" where the situs of realty has traditionally been considered the principal place of venue.

With the exception of subsection 8, subsections 5 through 10 designate preferred venue in certain actions where venue was previously mandatory. Subsection 8 also consolidates venue references of former §§ 64.1-24, 64.1-30 and 64.1-34 (probate of a will is not included; for venue, see § 64.1-75).

Subsection 11 restates the concept of former § 8-522. The language of former § 8-522 pertaining to the principal defendant "and those jointly liable with him" has been changed to "those liable with or to him." This change is

made to clarify the concept that potential defendants are not only those primarily liable with the principal debtor but also those who are potentially liable to the principal debtor.

Subsection 12 changes former § 8-703 which required that proceedings involving partition of personal property be brought in the "jurisdiction wherein the property, or the greater part thereof, is located." To avoid having to determine where the greatest share of the property is to be found, the subsection permits venue where any part of the personal property in question is located. This is the same venue criterion applied to the recovery of personal property; see subsection 5 of § 8.01-262.

Because the property to be partitioned may be distinct and separately located from the evidence of that property, (e.g., stock certificate as evidence of corporate ownership), paragraph (b) permits the latter as an additional venue site.

So that the party seeking to partition personal property will be insured of a forum in which to proceed, if venue cannot lie pursuant to paragraphs a and b, paragraph c permits venue where the plaintiff resides.

Subsection 13 amends the provisions of Title 58 concerning the venue of suits for collection of State taxes (see §§ 58.1-3940 through 58.1-3960) and of those relating to the correction of erroneous assessments and tax refunds. (See §§ 58.1-1821, 58.1-1833, and 58.1-3984.) The amendments generally base venue on the location of the taxpayer instead of on the location of the tax assessment.

As to the collection of State taxes, the venue provisions of former § 58-1015 are altered by the deletion of the forum where the taxes were assessed or payable; this provision is replaced with paragraph a which locates venue in the county or city where the delinquent taxpayer is located (or owns property) at the time of the action to collect the taxes. Only if the taxpayer has left the Commonwealth does the time of assessment become pertinent as to venue.

In actions to correct erroneous assessments and tax refunds, the former venue provisions of § 58.1-1825 have been changed; paragraph b makes no reference to the court in which the officer who made the assessment gave bond or makes no distinction as to venue between domestic and foreign corporations. Also, § 58.1-3984 as to venue is amended by the deletion as a proper forum of the county or city wherein the assessment was made.

As to mandatory nature of former venue statute (former § 20-98), see *Colley v. Colley*, 204 Va. 225, 129 S.E.2d 630 (1963).

Filing in wrong venue renders court without jurisdiction. — Where petitioner filed a bill in the county where she was residing, defendant resided in another county, and the last place of cohabitation of the parties was in neither of these two counties, the trial court was without jurisdiction to grant a divorce. *White v. White*, 181 Va. 162, 24 S.E.2d 448 (1943).

Where the defendant in a divorce suit is a resident of the State, the jurisdiction of a local court over him must arise from one of two facts: residence within the court's jurisdiction, or that the parties last cohabited together within such jurisdiction. *Richardson v. Richardson*, 8 Va. L. Reg. (n.s.) 257 (1922).

Certain facts are jurisdictional and do not merely concern venue. — The jurisdiction of the courts of Virginia to grant divorces being special statutory and limited jurisdiction, the fact that the plaintiff had been domiciled (now resident also) in Virginia for at least one year (now six months) next preceding the commencement of the suit for divorce, that plaintiff was domiciled in Virginia at the time of bringing the suit, that defendant was not a resident of Virginia, and that the plaintiff was a resident of the city or county in which the suit was instituted were jurisdictional, and did not concern merely venue. *Chandler v. Chandler*, 132 Va. 418, 112 S.E. 856 (1922).

Bill must show venue, which cannot be waived. — As the jurisdiction of divorce suits is a special statutory and limited one, it would seem that such jurisdiction must be exercised in conformity to the statute bestowing it. In such cases the question of venue becomes jurisdictional; with the result that not only is no plea in abatement necessary to raise the question of venue, but the bill is demurrable unless it shows on its face that the suit is instituted in its proper statutory venue. It follows that the objection cannot be waived, and the court will mero motu dismiss the bill when defective in this respect. *Blankenship v. Blankenship*, 125 Va. 595, 100 S.E. 538 (1919).

Whether or not the complainant followed the venue fixed by statute was a question of fact, which the verdict of the jury answered in the affirmative upon ample evidence to support it, and that verdict is conclu-

sive. *Towson v. Towson*, 126 Va. 640, 102 S.E. 48 (1920).

Domicile and cohabitation are distinctly different concepts and should not be equated or confused. Domicile is not determined solely by the location where people reside, while cohabitation is. Cohabitation does not require an intent to remain somewhere indefinitely, while domicile does. *Rock v. Rock*, 7 Va. App. 198, 372 S.E.2d 211 (1988).

The word "cohabit" means having dwelt together under the same roof with more or less permanency, and does not signify the having of sexual intercourse as it does in some other statutes. *Colley v. Colley*, 204 Va. 225, 129 S.E.2d 630 (1963).

"Cohabitation" has reference to a continuing condition. — Cohabitation, in its proper meaning in the law of divorce, has reference to a continuing condition and not to an act — the permanent or public living or dwelling together in the marital relation. The fact that plaintiff in a divorce suit had been compelled by the cruelty of her husband to flee to another city, where she was on several occasions visited by him, occupying same bed and room with him through fear and against her volition, did not establish such city as the "last place of cohabitation" for the purpose of giving the city's courts jurisdiction. *Rock v. Rock*, 7 Va. App. 198, 372 S.E.2d 211 (1988).

Where husband and wife cohabited in both a city and a county, the court held that they last cohabited in the city in which they were intending to live for the winter, and in which they were in fact living when husband took his clothes and left. *Rock v. Rock*, 7 Va. App. 198, 372 S.E.2d 211 (1988).

Amending decree to show true last place of marital cohabitation. — Where there was ample unrefuted "record evidence" that the last place of marital cohabitation, as properly defined in the context of the divorce venue statute, between parties who were divorced in 1966 was in the City of Alexandria, the trial court had the inherent power to allow an appropriate amendment to the bill of complaint to disregard the erroneous conclusion of law contained in the commissioner's report, stating that the parties last cohabited in Danville, and to amend its final decree of divorce nunc pro tunc, in order to make the record "speak the truth." *Netzer v. Reynolds*, 231 Va. 444, 345 S.E.2d 291 (1986).

§ 8.01-262. Category B or permissible venue. — In any actions to which this chapter applies except those actions enumerated in Category A where preferred venue is specified, one or more of the following counties or cities shall be permissible forums, such forums being sometimes referred to as "Category B" in this title:

1. Wherein the defendant resides or has his principal place of employment

or, if the defendant is a corporation, wherein its mayor, rector, president or other chief officer resides;

2. Wherein the defendant has a registered office, has appointed an agent to receive process, or such agent has been appointed by operation of the law; or, in case of withdrawal from this Commonwealth by such defendant, wherein venue herein was proper at the time of such withdrawal;

3. Wherein the defendant regularly conducts affairs or business activity, or in the case of withdrawal from this Commonwealth by such defendant, wherein venue herein was proper at the time of such withdrawal;

4. Wherein the cause of action, or any part thereof, arose;

5. In actions to recover or partition personal property, whether tangible or intangible, the county or city:

(a) Wherein such property is physically located; or

(b) Wherein the evidence of such property is located;

(c) And if subdivisions 5 (a) and 5 (b) do not apply, wherein the plaintiff resides.

6. In actions against a fiduciary as defined in § 8.01-2 appointed under court authority, the county or city wherein such fiduciary qualified;

7. In actions for improper message transmission or misdelivery wherein the message was transmitted or delivered or wherein the message was accepted for delivery or was misdelivered;

8. In actions arising based on delivery of goods, wherein the goods were received;

9. If there is no other forum available in subdivisions 1 through 8 of this category, then the county or city where the defendant has property or debts owing to him subject to seizure by any civil process; or

10. Wherein any of the plaintiffs reside if (i) all of the defendants are unknown or are nonresidents of the Commonwealth or if (ii) there is no other forum available under any other provisions of § 8.01-261 or this section. (1977, c. 617; 1978, c. 414; 1979, c. 331; 1985, c. 213; 1999, c. 73.)

REVISERS' NOTE

Category B, permissible venue, is applicable to most actions — specifically to those actions for which no preferred forum is designated in Category A, § 8.01-261, and which are not excluded by § 8.01-259. The provision that “one or more” of the forums listed in subsections 1 through 9 are permissible, gives the plaintiff the choice of the forums enumerated. Subsection 10 is a last resort provision, giving the plaintiff a forum where no forum is available under any other provision of §§ 8.01-260 to 8.01-262.

Together with § 8.01-263, subsection 1 incorporates former § 8-38 (1) (i.e., the residence of any defendant) and adds the defendant's place of employment. Section 16.1-76 provides for venue at the defendant's place of employment in actions in general district courts, and subsection 1 provides the same venue for all courts.

Subsection 2 incorporates the substance of former § 8-38 (2) and (6) and extends these provisions to all defendants, i.e., it provides plaintiffs with at least one forum against partnerships, unincorporated associations, and individuals, as well as corporations, which are

engaged in activities requiring registration or appointment of agents for service of process.

The provision for “principal office” in former § 8-38 (2) is deleted as redundant because it is covered in § 8.01-262 (3); similarly, the provision for venue where a corporation's “mayor, rector, president or other chief officer resides” was deleted since subsection 1 of § 8.01-262 and subsections 3 and 10 of § 8.01-262, combine to provide at least one forum for the plaintiff against resident or nonresident defendants generally.

While subsection 3 has no statutory antecedent, it establishes a logical forum when considered in the context of fairness and convenience of the parties.

Subsection 4 incorporates former § 8-39. With the adoption of statewide service of process, § 8.01-292, venue based on where the cause of action arose will no longer be subject to a potential process limitation. Cf. former § 8-47.

Subsection 5 reflects common-law practice in that the most convenient forum for such actions

shown. *Ramsay v. Harrison*, 119 Va. 682, 89 S.E. 977 (1916).

Mere belief that fair trial cannot be had is insufficient. — Under this section it is error to change venue in a civil proceeding because of the mere belief of a party or his witnesses that he cannot have a fair trial in the jurisdiction where the case is pending. There must be proof that a fair trial cannot be had. *MacPherson v. Green*, 197 Va. 27, 87 S.E.2d 785 (1955).

A case filed in a court which lacks subject matter jurisdiction over the controversy cannot be transferred to the proper court. *Atkins v. Schmutz Mfg. Co.*, 435 F.2d 527 (4th Cir. 1970), cert. denied, 402 U.S. 932, 91 S. Ct. 1526, 28 L. Ed. 2d 867 (1971).

Laying venue in wrong court. — Although this section permits some transfers of cases, from one court to another, a plaintiff who lays

venue in the wrong court will have his case dismissed and not transferred. *Atkins v. Schmutz Mfg. Co.*, 435 F.2d 527 (4th Cir. 1970), cert. denied, 402 U.S. 932, 91 S. Ct. 1526, 28 L. Ed. 2d 867 (1971).

Prejudice held insufficient for transfer. — In an action against a railroad for a personal injury, the fact that a prejudice exists against the company in the city in which the action is pending because the company had removed its shops from the city and abandoned the city as a terminal, in violation of a contract with the city, is not sufficient to justify a change of venue of the action, especially when the witnesses by whom the feeling against the company is shown express the opinion that a perfectly fair and impartial jury to try the case can be gotten in the city. *Atlantic & D. Ry. v. Reiger*, 95 Va. 418, 28 S.E. 590 (1897).

§ 8.01-266. Costs. — In any action which is transferred or retained for trial pursuant to this chapter, the court in which the action is initially brought may award an amount necessary to compensate a party for such inconvenience, expense, and delay as he may have been caused by the commencement of the suit in a forum to which an objection, pursuant to § 8.01-264, is sustained or by the bringing of a frivolous motion to transfer. In addition, the court may award those attorney's fees deemed just and reasonable which are occasioned by such commencement of a suit or by such motion to transfer. The awarding of such costs by the transferor court shall not preclude the assessment of costs by the clerk of the transferee court. (1977, c. 617; 1994, c. 32.)

REVISERS' NOTE

Section 8.01-266 provides sanctions as a remedy for improper venue. By providing that the court "shall award" reasonable actual costs, the section makes the imposition of such costs mandatory (i.e., the court has discretion to transfer, but not as to the imposition of costs). Additionally, the court is granted discretion to award attorney's fees. The costs to be imposed

are only those which have been actually incurred up to the point in time of the granting of transfer or denial of such a motion. If transfer of the action is granted, costs should include those fees of the transferor court necessary to implement the order. Thereafter costs are to be awarded in accordance with chapter 3 of Title 14.1.

Law Review. — For survey of Virginia law on practice and pleading for the year 1976-77, see 63 Va. L. Rev. 1459 (1977).

§ 8.01-267. Discretion of judge. — Both the decision of the court transferring or refusing to transfer an action under § 8.01-265 and the decision of the court as to amount of costs awarded under § 8.01-266 shall be within the sound discretion of the trial judge. However, nothing herein shall affect the right to assign as error a court's decision concerning venue. (1977, c. 617.)

REVISERS' NOTE

Section 8.01-267 provides that certain discretionary decisions of the trial judge may be

appealable only for abuse of such discretion: (1) whether to transfer a case for reasons of forum