

VIRGINIA PRACTICE SYLLABUS

Fall 2009

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REQUIRED TEXT:

Costello, "VIRGINIA PRACTICE: STUDENT STUDY GUIDE AND MATERIALS" (2009) from Copy Center.

OPTIONAL TEXTS:

Virginia Rules of Supreme Court, Vol .11 of Michie's Code, softbound with current supplement, has been notified to the Book Store as an optional purchase. These materials are also available online.

GENERAL SOURCES FOR COURSEWORK:

Costello, Virginia Remedies (2005) (3rd Ed.)
Costello, Virginia Criminal Law and Procedure (2008) (4th Ed.)
Hogue, Origins of the Common Law, (1985 Reprint)
Koffler and Reppy, Handbook of Common Law Pleading (1969)
Maitland, Equity and Forms of Action at Common Law (1984 Reprint)
Bryson, The Abolition of the Forms of Action in Virginia, 17 U. Rich. L. Rev. 273 (1983)
Lile, Lile's Equity Pleading and Practice, with Forms (1952)
Phelps, Handbook of Virginia Rules of Equity Practice and Procedure (1961)
Sinclair and Middleditch, Virginia Civil Procedure (2003) (4th Ed.)
Bryson, Bryson on Virginia Civil Procedure (2005) (4th Ed.)
Friend and Sinclair, Friend's Virginia Pleading and Practice (2006) (2nd Ed.)

INITIAL ASSIGNMENT:

Assignment for 1st Class: One half of Chap. 1 in the Materials. Note that Statute and Rule reading assignments are at the head of each chapter.

COURSE CONTENTS

Chapter 1 - Organization of Courts
Chapter 2 - Pretrial Conduct of Actions
Chapter 3 - Process
Chapter 3A - Discovery
Chapter 4 – Trial
Chapter 5 - Post Judgment Activities
Chapter 6 – Equity
Chapter 7 - Criminal Practice
Chapter 8 - Remedies and Extraordinary Writs
Chapter 9 - Appeals

Attendance: The Academic Regulations will be followed. (20% cuts.)

Goals: The principal objective is to convey a grasp of the whole of Virginia Practice from discovering where the courthouses are to the final act in a case, whether appealed or not. Another goal of the course is to make the student intimately familiar with the principal procedural provisions of the Code of Virginia and all of the Rules of Court. Attention will be paid to the changes to Part 2 and 3 of the Rules of Court.

The Exam: the exam will be "closed book." The exam will test your ability to analyze a procedural problem and make the preliminary conclusions a good lawyer will make before picking up the statutes and rules to get the right section numbers for a brief. Answer according to the law in Roanoke on the day of the exam. The exam will consist of 30 short essays. **DO NOT MEMORIZE SECTION NUMBERS OR CASE NAMES.**

Chapter 1 - ORGANIZATION OF COURTS

References for this Outline:

Scan Titles 16.1 and 17.1 of the Virginia Code. Scan Rules of Court, Parts 1-8.

Read §§ 17.1-300; 19.2-317(C); and 2.2-4026; § 19.2-327.1; § 16.1-77; § 16.1-88.03; § 8.01-270; 17.1-300 thru 313; 8.01-670; 17.1- 405 thru 412; 17.1-513.

New S.Ct. Rule 2A:4 and new Part Three; Rules 5:7B and 5A:5

2 Sessions

TOPICS

Organization of Courts
 Courts of Record
 Courts not of Record
Certification of Cases
Appellate Jurisdiction of VSC
Appellate Jurisdiction of CAV
Appellate Jurisdiction of Circuit Courts
Beginning a Suit
 Electronic Filing
Law and Equity

Chapter 2 - INITIATION AND PRETRIAL CONDUCT OF CIVIL ACTIONS IN COURTS OF RECORD

Read:

Va. Code §§ 17.1-606; 16.1-88.03; 55-246.1; 1-13.3; 1-13.3:1; 1.13-13; 1-13.27. Va. Code §§ 8.01-9; 8.01-271.1, 276, 228-30, 235, 236, 241-244, 250, 267.1 and 635; Va. Code § 19.2-8; Cos § 52.8; Va. Code § 8.2-725; Va. Code §§ 8.01- 6.1, 246, 248, 249, 290, 277, 272, 281; Va. Code § 59.1-196 and 19.2 -243; §§ 8.01- 275, 264, 278, 273, 421, 422, 274, 275, 331, 332, 5, 443, 7, 16, 17, 364, 19, 380, 229E, 195 - 195.4, 255 and 267.1-8.

S. Ct. Rules [After 1/1/06 look for disappearance of all rules from Part 2 and total changes in Part 3.] 1:4,3:1, 3:3, 1:4, 1:9, 1:2, 3:16f, 1:8, 3:7 thru 15, 2-20 and 2-21, 1:18 through 20.

8 Sessions

TOPICS

Complaint
Indigents and Unbundling
Sanctions
Law of the Case
Alternative Pleading
Law and Equity
Standing, Class Actions
Misnomer, Misjoinder of Parties and Cases
Responsive Pleading
Estoppels
Periods of Limitation

Amendments to Pleadings
Bill of Particulars
Demurrers and MSJ
Grounds of Defense
Aggressive Pleading
Interpleader and Intervention
Docketing and UPSO
Suits v. Commonwealth

Chapter 3 - PROCESS, as Such

Read:

Va. Code § 293, 296 and 325, then §§ 8.01-287 thru 327.2, 328.1, 329, 247, 331, 335, 277; 268-69; § 50-73.103(B); §§ 8.01-275.1 and 533-37.1; §§ 8.01-407 and 413.

Va. Code §§ 13.1-619 and 766; and 16.1-77, 123.1 and 241; §§ 8.1-201 & 206.

New S.Ct. Rules 3:1 THRU 3:5(A) - (E) and 3.6, 1:12, 4:13.

3-4 Sessions

TOPICS

Jurisdiction and Notice
Initial Process
The Complaint and Summons
Manner of Service on Persons and Proof
Actual Notice
Service of Corporations and other Entities
Longarm
Other Entities
Service by Publication
Timely Service
Personal Service Outside the Commonwealth
Docketing
Lis Pendens and Attachments
Misc. Torts

Chapter 3A - DISCOVERY

Read:

Va. Code § 8.01-405, 407, 420, 420.6, 423 and 384.2; §§16.1-89; 19.2-267; 9.1-121; 2.2-

3801

Rules of S. Ct. Part FOUR; 1-18 (APP); 1:12; 3A:11 and 12; 4.9; (as amended or recast by new Rules 4:0, 4:5, 4:7 and 4:8); 5:10; 7A:12.

1977 Rules of Court: 4.2; 4.3 and 3.4(g); 4.1; [Former Disc. Rules] DR 7-102(A)(1)(3) and (4); 7-103 and 7-108.

2.5 sessions

These Rules provide the exclusive formal methods for various discovery activities in civil cases in Circuit Court. New Rule 4:0.

TOPICS

No Discovery at Common Law
Part IV, Rules of Court
Five Methods
Contact with Represented Parties
Goals of Discovery - Evidence
Procedures
Scope of Discovery
Attorney Work Product and Other Privileges
Attorney Subpoenas
Getting Started
Who May Take Depositions
Perpetuating Testimony
Ordering Depositions
Producing the Deposition
 Depo. By Written Quest.
Written Interrogatories
Production of Dox and Entry on Land
Physical or Mental Exams
Request for Admission
Sanctions
Reciprocal Discovery in Crim. Cases
UPSO and Unif . For. Depo. Act.

Chapter 4 - THE TRIAL

References:

Va. Code §§ 8.01- 257 thru 267; 276; 336-41.2; 352-63; 374-84.2; 445, 379.2, 380; 576.1-3; 229(E); 19.2-262.1, 265 and 307.

S.Ct. Rules 1:18 w/App. and 1:19; 4:13; 1:11; 3:18; NEW 3:19 and 3.5; 3A13 and 14; 3A:16 and 1:15(c); 3A:17; 3:1, 2:19 and 5A-6.

RPC 1.1, 1.3 and 1.4; 2.2 and 2.10; [CPR 7-101; 5-107; 7-107]

Scan §§ 8.01-576.4 - 576.12.

4 sessions

TOPICS

Situs of Trial - Venue

Rules 1:18, 1:19 and 4:15 and Pretrial Conferences

Changes of Venue

Jury Trials and Instructions

Postponement and Continuances

Opening Statements

Variance

MTSE

MSJ

Nonsuits

Closing Argument

Verdicts

Judgments and Decrees

Endorsement of Orders

Default Judgments.

Chapter 5 - POST JUDGMENT ACTIVITIES AT THE TRIAL LEVEL

References:

Va. Code: §§ 8.01- 426-30; 8.01- 501 to 532 (incl. 8.01-511.1) 442-465.4 and 470; §§ 14.1-121, 123, 178.1 and 179; §§ 17.1-266-275.5; §§ 600-605; § 16.1-69.48:1 and § 17.1-275.

Rules 3A:15, 4:9, 5:11, 3:2, 5A:6, 5:9, 5:13, 1:1.

3 Sessions

TOPICS

Setting Aside a Verdict

Remittitur and Additur

Judgments and Decrees - Then What?

Against Multiple Defendants

Costs
Debtors Interrogatories
Garnishment in Execution
Execution (Bonds and Penalties)
Writ of Possession
Resistance to Execution
Judicial Sales
Bonds
Time Limits on Enforcement of Jt.
Confessing Jt.
MFNT
MTSAV
C/I Motions
 Rule 428
Bill of Review
Notice of Appeal
Rules 1:1 and 5:9, Losses of Juris.

Chapter 6 - EQUITY

References:

Va. Code §§ 8.01-2,68 and 69; 270; 290; 364; 31; 422; 282-84; Rules of S.Ct., All of Part 2;
 Rule 3:8.

Sessions 1½

TOPICS

Distinctions
Law and Equity in Practice after 1/1/06
Unified Practice
Commissioners
MSJ
Interpleader
Equitable Remedies and Defenses
Recap on TBJ

Chapter 7 - CRIMINAL PROCESS

References:

Va. Code § 19.2-239, 244, 74, 226, 230; Code § 18.2-11; Code § 19.2-231, 80, 263.1, 19.2-398
 thru 401, 251 and 265.4; Code § 8.01-402, 405 and 407; Code § 19.2-183 and 186; Va.

Code § 16.1-123, 129, 132 and 136; Code § 17.1-405 thru 412 and 313.
S. Ct. Rules Part 3A, include 3A:17.1 and 5:7B; Rule 5:22.

Costello, Va. Cr. L. & Pro. 2d ed. & Supps., as needed

2.5 sessions

TOPICS

Sources of Juris.
Process (arrest, etc.)
Preliminary Hearing
Grand Jury
Warrant and Summons
Pleading and Pretrial Activities
Discovery
Scheduling
The Plea
Joint Trials
Severance of Charges
TBJ
Trials of Misdemeanors
Opening Statement
MTSE
Instructions
Closing Argument
Sentencing
MTSAV
Appeals
 By Comm
Capital Cases
Extraord. Writs

Chapter 8 – “OF REMEDIES AND EXTRAORDINARY WRITS”

References:

Va. Code §§ 8:01-114 thru 123; 8.01-534; 487.1; 96; 184-191; 620-59; 270; 272; 5; 191; 428 and 429; §17.1-266 thru 271; § 8.01-654 and §§ 19.2-321.1 and 19.2-321.2; §§ 19.2-327.1-13.

Rules 5:7A and B: 5A:5

1.5 sessions

TOPICS

Detinue
Extraordinary Writ
Quo Warranto
Mandamus
Prohibition
Habeas Corpus
 Motion for Delayed Appeal
Coram Vobis
Declaratory Judgments
Writ of Actual Innocence
 Motion for Analysis
 Scientific Evidence
 Non-Biological Evidence

Chapter 9 – THE APPELLATE PROCESS

References:

Va. Code §§ 8.01- 449, 626 and 669 thru 685; 626; §§ 17.1-308 thru 313, 402, 405 thru 412; §§ 17.1-604; 19.2-317-27.

S. Ct. Rules 1:1; 1:7; 5:1 to 42; 5A-1 to 36; 7A:2

Sessions: As remain

TOPICS

Workloads
Kinds of Appeals
General Conditions for Appeal
 Final Orders
 Aggrieved Persons
Chancery and Law
Contemporaneous Objection Rules
Time Limits
Transcript
Appeals of Right
Petitions for Appeal
 AEs and QPs
Brief in Opposition
Appeal Bonds
Denial of Appeal

Jurisdiction Review - 3 cts

Record on Appeal

Perfecting the Appeal

Summary Disposition

Grant of the Petition

 Opening Brief

Standards of Review

Final Phases

Criminal Appeals

Capital Cases