

# VIRGINIA DOMESTIC RELATIONS

## Spring 2009 Syllabus

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Assigned text: *Virginia Family Law: Theory, Practice & Forms*, Swisher, Diehl & Cottrell (Thomson / West, 2007 Ed.)

Optional text: *Virginia Family and Juvenile Laws and Rules Annotated*, 2005 or most recent Ed. (Lexis-Nexis)

Office Hours: Mon 2-3 or by appointment

Examination: Three hour, closed book examination based upon all of the reading and the class discussion. Only the provided sections of Virginia and federal family laws may be used during the examination. It will be about one-third multiple choice, one-third brief essays, and one-third extended essay.

Grading: Your examination results constitute 90% of your grade. Class participation is the remainder.

### Course Plan:

The textbook is a straightforward treatise on the domestic relations law of Virginia. The assigned cases are available online. Please come to class with the textbook material outlined. With regard to the assigned cases and statutes, outlining them in detail would be too great a burden for 75 minute class session. Read and briefly note the cases, therefore, only with an eye to articulating which precise question(s) they take up relevant to the identified topic for the class, and how they answer the question(s). It would be best if you would insert these question(s) and answer(s) from the cases and statutes within your outline of the textbook.

During almost every class meeting, I will also lecture briefly about the domestic relations laws of other U.S. states and the District of Columbia, as they compare with Virginia law on the particular subject matter under consideration. We will have an opportunity for normative and comparative discussions.

I will call on several students at random during each class.

Family law is attracting tremendous attention in the United States today (and in the world). It is changing at a surprising pace. It takes up questions about the human person, individually, in the small society that is the family, and in the larger society. Of course, it is necessary to make one's way through a great number of statutes and cases to begin to understand one state or one country's

“approach” regarding the family. But the landscape does emerge after careful work of this kind. I am looking forward to exploring this material with you.

**Wed Jan 7**

**Marriage, Annulment and Affirmation**

**Reading: Chapters 1 & 2**

*Boddie v. Conn.*, 401 U.S. 371 (1971)

*Zablocki v. Redhail*, 434 U.S. 374 (1978)

*Hager v. Hager*, 3 Va. App. 415 (1986)

*Kleinfield v. Veruki*, 7 Va. App. 183 (1988)

*Kelderhaus v. Kelderhaus*, 21 Va. App. 721 (1996)

**1950 Code of Virginia, as amended:**

VA ST s 20-13

VA ST s 20-14

VA ST s 20-23

VA ST s 20-25

VA ST s 20-31

VA ST s 20-38.1

VA ST s 20-39

VA ST s 20-40

VA ST s 20-43

VA ST s 20-45.1

VA ST s 20-45.2

VA ST s 20-45.3

VA ST s 20-48

VA ST s 20-49

VA ST s 20-89.1

VA ST s 20-96

VA ST s 20-97

**Mon Jan 12**

**Juvenile & Domestic Relations District Court**

**Reading: Chapters 9-2(b), 10-2(b), 15-13 (b, c & e)**

*Cox v. Cox*, 16 Va. App. 146 (1993)

*Crabtree v. Crabtree*, 17 Va. App. 81 (1993)

*Romine v. Romine*, 22 Va. App. 760 (1996)

*Calfee v. Calfee*, 29 Va. App. 88 (1999)

*Mahoney v. Mahoney*, 34 Va. App. 63 (2000)

*Sharma v. Sharma*, 46 Va. App. 584 (2005)

**1950 Code of Virginia, as amended:**

VA ST s 16.1-136

VA ST s 16.1-227

VA ST s 16.1-241

VA ST s 16.1-242.1

VA ST s 16.1-244

VA ST s 16.1-245

VA ST s 16.1-245.1

VA ST s 16.1-278.15

VA ST s 16.1-278.19

VA ST s 16.1-296

VA ST s 16.1-296.2

VA ST s 16.1-297

VA ST s 16.1-298

VA ST s 16.1-302

VA ST s 16.1-302.1

VA ST s 16.1-303

VA ST s 16.1-305

VA ST s 16.1-309.1

VA ST s 20-79

## **Wed Jan 14 – Class Cancelled for Travel and Presentation**

## **Mon Jan 19 – Martin Luther King Holiday**

### **Wed Jan 21**

#### **Paternity & Legitimacy**

##### **Reading: Chapter 13**

*Stanley v. IL*, 405 US 645 (1972)

*Michael H. v. Gerald D.*, 491 U.S. 110 (1989)

*Hur v. Va. DSS*, 13 Va. App. 54 (1991)

*Comm. v. Flanery*, 22 Va. App. 293 (1996)

##### **1950 Code of Virginia, as amended:**

[VA ST s 20-31.1](#)

[VA ST s 20-49.1](#)

[VA ST s 20-49.2](#)

[VA ST s 20-49.3](#)

[VA ST s 20-49.4](#)

[VA ST s 20-49.5](#)

[VA ST s 20-49.6](#)

[VA ST s 20-49.7](#)

[VA ST s 20-49.8](#)

[VA ST s 20-49.10](#)

## Mon Jan 26—Class Cancelled for Travel & Presentation

### Wed Jan 28

#### Abuse & Neglect, Foster Care & Adoption

**Reading: Chapters 5-8 (b), & 14-1 & 14-4 through 14-18**

*Lehr v. Robertson*, 463 U.S. 248 (1983)

*Davenport v. Little-Bowser*, 269 Va. 546 (2005)

*S.G. v. Pr. Wm. Cnty DSS*, [25 Va. App. 356](#) (1997)

*Fredericksburg DSS v. Brown*, [33 Va. App. 313](#) (2000)

*FE v. GFM*, [35 Va. App. 648](#) (2001)

*Ferguson v. Grubb*, 39 Va. App. 549 (2003)

*Gray v. Bourne*, 46 Va. App. 11 (2005)

*Richmond DSS v. Crawley*, 47 Va. App. 572 (2006)

#### **1950 Code of Virginia, as amended:**

VA ST s 16.1-278

VA ST s 16.1-278.1

VA ST s 16.1-278.2

VA ST s 16.1-278.3

VA ST s 16.1-281

VA ST s 16.1-282

(optional) VA ST s 16.1-282.1

**Mon Feb 2**

**Termination Of Parental Rights**

**Reading: Chapters 14-2 (b), & 14-3**

*Barkey v. Comm.*, [2 Va. App. 662](#) (1986)

*Ferguson v. Stafford DSS*, [14 Va. App. 333](#) (1992)

*Willis v. Gamez*, [20 Va. App. 75](#) (1995)

*Lecky v. Reed*, [20 Va. App. 306](#) (1995)

*Hawks v. Dinwiddie DSS*, [25 Va. App. 247](#) (1997)

*Richmond DSS v. L.P.*, 35 Va. App. 573 (2001)

*Toms v. Hanover DSS*, 46 Va. App. 257 (2005)

**1950 Code of Virginia, as amended:**

[VA ST s 16.1-281](#)

[VA ST s 16.1-283](#)

**Wed Feb 4**

**Custody-- Jurisdiction**

**Reading: Chapters 15-4 thru 15-6**

*Oehl v. Oehl*, [221 Va. 618](#) (1980)

*Middleton v. Middleton*, [227 Va. 82](#) (1984)

*Johnson v. Johnson*, [26 Va. App. 135](#) (1997)

*Scott v. Rutherford*, [30 Va. App. 176](#) (1999)

*Miller-Jenkins v. Miller-Jenkins*, 2006 WL 3407834, Va. App., 11/28/06  
(NO. 2654-04-4)

**1950 Code of Virginia, as amended**

[VA ST s 20-124.1](#)

**UCCJEA**

VA ST s 20-146.1 through 20-146-38

[VA ST s 18.2-47](#)

[VA ST s 18.2-49.1](#)

[VA ST s 18.2-50](#)

**Mon Feb 9**

**Custody -- Best Interests**

**Reading: Chapters 15-1 thru 15-3, 15-7 thru 15-13**

*Brown v. Brown*, [218 Va. 196](#) (1977)

*Doe v. Doe*, [222 Va. 736](#) (1981)

*Roe v. Roe*, [228 Va. 722](#) (1985)

*Ford v. Ford*, [14 Va. App. 551](#) (1992)

*Piatt v. Piatt*, [27 Va. App. 426](#) (1998)

*Vissicchio v. Vissicchio*, [27 Va. App. 240](#) (1998)

*Roberts v. Roberts*, 41 Va. App. 513 (2003)

*Surles v. Mayer*, 48 Va. App. 146 (2006)

**1950 Code of Virginia, as amended:**

[VA ST s 20-124.1](#)

[VA ST s 20-124.2](#)

[VA ST s 20-124.2:1](#)

[VA ST s 20-124.3](#)

[VA ST s 20-124.3:1](#)

[VA ST s 20-124.4](#)

[VA ST s 20-124.5](#)

[VA ST s 20-124.6](#)

**Wed Feb 11**

**Custody -- Third Parties / Visitation**

*Troxel v. Granville*, [530 U.S. 57](#) (2000)

*Lawrence v. Texas*, 539 U.S. 558 (2003)

*Bottoms v. Bottoms*, [249 Va. 410](#) (1999)

*Williams v. Williams*, [256 Va. 19](#) (1998)

*Brown v. Burch*, [30 Va.App. 670](#) (1999)

*Griffin v. Griffin*, 41 Va.App. 77 (2003)

*Albert v. Ramirez*, 45 Va. App. 799 (2005)

*Tencer v. Denise*, 46 Va. App. 372 (2005)

**1950 Code of Virginia, as amended:**

[VA ST s 31-1](#)

[VA ST s 31-8](#)

[VA ST s 31-15](#)

[VA ST s 31-16](#)

[VA ST s 31-17](#)

[VA ST s 31-18](#)

VA ST s 20-124.1

**Mon Feb 16**

**Divorce Procedure & Jurisdiction**

**Reading: Chapter 6 EXCEPT sub-§ 6-2(g)**

*Williams v. NC*, 317 U.S. 287 (1942) (Majority only)

*Williams v. NC*, 325 U.S. 229 (1945) (Majority only)

*Kulko v. CA*, 436 U.S. 84 (1978)

*Toomey v. Toomey*, 251 Va. 168 (1996)

*Hiles v. Hiles*, 164 Va. 131 (1942)

*State-Planters Bank. v. Comm.*, 174 Va. 289 (1940)

*Howe v. Howe*, 179 Va. 111 (1942)

*Adoteye v. Adoteye*, 32 Va. App. 221 (2000)

*Blackson v. Blackson*, 40 Va. App. 507 (2003)

**1950 Code of Virginia, as amended:**

VA ST s 8.01-328.1

VA ST s 20-96

VA ST s 20-97

VA ST s 20-99

VA ST s 20-99.1:1

VA ST s 20-99.2

**Wed Feb 18**

## **Pre-Marital, Marital & Property Settlement Agreements**

**Reading: Chapter 3, 3-5 through 3-7 & 9-14**

*Batleman v. Rubin*, 199 Va. 156 (1957)

*Barnes v. Barnes*, 231 Va. 39 (1986)

*Derby v. Derby*, 8 Va. App. 19 (1989)

*Drewry v. Drewry*, 8 Va. App. 460 (1989)

*Webb v. Webb*, 16 Va. App. 486 (1993)

*Hering v. Hering*, 33 Va. App. 368 (2000)

*Shenk v. Shenk*, 39 Va. App. 161 (2002)

*Hardesty v. Hardesty*, 40 Va. App. 663 (2003)

*Smith v. Smith*, 41 Va. App. 742 (2003)

*Newman v. Newman*, 42 Va. App. 557 (2004)

*Rutledge v. Rutledge*, 45 Va. App. 56 (2005)

*Vilseck v. Vilseck*, 45 Va. App. 581 (2005)

*Gaffney v. Gaffney*, 45 Va. App. 655 (2005)

**1950 Code of Virginia, as amended:**

VA ST s 20-147

VA ST s 20-148

VA ST s 20-149

VA ST s 20-150

VA ST s 20-151

VA ST s 20-152

VA ST s 20-153

VA ST s 20-154

VA ST s 20-155

**OPTIONAL READING:**

*Pillow v. Pillow*, 13 Va. App. 271 (1991)

*Carpenter v. Carpenter*, 19 Va. App. 147 (1994) FAILURE TO DISCLOSE

*Fleming v. Fleming*, 32 Va. App. 822 (2000) BANKRUPTCY

*Allsbury v. Allsbury*, 33 Va. App. 385 (2000)

*Ellett v. Ellett*, 35 Va. App. 97 (2001) EXTRINSIC FRAUD

*Bazzle v. Bazzle*, 37 Va. App. 737 (2002) MERGER

*King v. King*, 40 Va. App. 200 (2003)

*Hale v. Hale*, 42 Va. App. 27 (2003)

INTERPRETATION OF "PLAN" IN CONTRACT

**Mon Feb 23**

**AND**

**Wed Feb 25**

**Grounds For Divorce & Defenses**

**Reading: Chapters 7 & 8**

*Hooker v. Hooker*, 215 Va. 415 (1975)

*Dooley v. Dooley*, 222 Va. 240 (1981)

*Coe v. Coe*, 225 Va. 616 (1983)

*Petachenko v. Petachenko*, 232 Va. 296 (1986)

*D'Auria v. D'Auria*, 1 Va. App. 455 (1986)

*Dexter v. Dexter*, 7 Va. App. 36 (1988)

*Davis v. Davis*, 8 Va. App. 12 (1990)

*Hollis v. Hollis*, 16 Va. App. 74 (1993)

*Hughes v. Hughes*, 33 Va. App. 141 (2000), [Aff'd *en banc*, 35 Va. App. 376 (2001)]

*Jacobsen v. Jacobsen*, 41 Va. App. 582 (2003)

*Bchara v. Bchara*, 38 Va. App. 302 (2002) as to grounds only

**1950 Code of Virginia, as amended:**

VA ST s 20-91

VA ST s 20-93

VA ST s 20-94

VA ST s 20-95

VA ST s 20-99.1:1

VA ST s 20-102

**Mon March 2**

**Property Division**

**PLEASE READ THE CASES AS TO THE EQUITABLE DISTRIBUTION  
ISSUES ONLY:**

**ED Class 1: Introduction to Property Division**

**Reading: Chapters 11-1, 11-2, & 11-3**

*Smoot v. Smoot*, 233 Va. 435 (1987)

*Bowers v. Bowers.*, 4 Va. App. 610 (1987)

*Booth v. Booth*, 7 Va. App. 22 (1988)

*Reid v. Reid*, 7 Va. App. 553 (1989)

*Roane v. Roane*, 12 Va. App. 989 (1991)

for general principles behind Equitable Distribution

**1950 Code of Virginia, as amended:**

VA ST s 8.01-328.1(9)

VA ST s 20-107.3

**March 4  
AND  
Mon March 16  
(Spring Recess March 9-15)**

**ED Classes 2 & 3: Procedure and Classification**

**Reading: Chapters 11-4 through 11-21**

*Toomey v. Toomey*, 251 Va. 168 (1996)

*Utsch v. Utsch*, 266 Va. 124 (2003)

*Theismann v. Theismann*, 22 Va. App. 557 (1996)

*Rahbaran v. Rahbaran*, 26 Va. App. 195 (1997)

*Hart v. Hart*, 27 Va. App. 46 (1998)

*Martin v. Martin*, 27 Va. App. 745 (1998)

*Smith v. Smith*, 38 Va. App. 113 (2002)

*Cirrito v. Cirrito*, 44 Va. App. 287 (2004)

*Cabaniss v. Cabaniss*, 46 Va. App. 595 (2005)

*Robinson v. Robinson*, 46 Va. App. 652 (2005)

*Keeling v. Keeling*, 47 Va. App. 484 (2006)

*Robbins v. Robbins*, 48 Va. App. 466 (2006)

## **Wed March 18**

### **ED Class 4: Valuation and Division**

#### **Reading: Chapters 11-22 through 11-31**

#### **PROFESSIONAL PRACTICE VALUATION**

*Howell v. Howell*, 31 Va. App. 332 (2000)

#### **PENSION**

*Zipf v. Zipf*, 8 Va. App. 387 (1989) for section V only

*Broom v. Broom*, 15 Va. App. 497 (1992)

*Moran v. Moran*, 29 Va. App. 408 (1999)

*McLellan v. McLellan*, 33 Va. App. 376 (2000)

#### **FACTORS**

*O'Loughlin v. O'Loughlin*, 20 Va. App. 522 (1995)

*Barker v. Barker*, 27 Va. App. 519 (1998)

*Thomas v. Thomas*, 40 Va. App. 639 (2003)

*Watts v. Watts*, 40 Va. App. 685 (2003)

*Ranney v. Ranney*, 45 Va. App. 17 (2005) 3

#### **1950 Code of Virginia, as amended:**

VA ST s 8.01-419.1

VA ST s 20-107.3

**Mon March 23**

**Spousal Support**

**Reading: Chapters 9-1, 9-2, 9-4 thru 9-13, 9-19(a), (c) & (d)**

*Srinivasan v. Srinivasan*, 10 Va. App. 728 (1990)

*Stubblebine v. Stubblebine*, 22 Va. App. 703 (1996)

*Frazer v. Frazer*, 23 Va. App. 358 (1996)

*Moreno v. Moreno*, 24 Va. App. 190 (1997)

*McCombs v. McCombs*, 26 Va. App. 432 (1998)

*Wright v. Wright*, 38 Va. App. 394 (2002)

*Torian v. Torian*, 38 Va. App. 167 (2002) as to defined duration award only

*Congdon v. Congdon*, 40 Va. App. 255 (2003)

*Miller v. Cox*, 44 Va. App. 674 (2005)

**1950 Code of Virginia, as amended:**

VA ST s 20-107.1

VA ST s 20-109

VA ST s 20-110

**Wed March 25**

**Child Support Class 1: Obligation to Support**

**Reading: Chapters 10-1 thru 10-3,  
10-14 thru 10-18, 10-32 thru 10-33**

*Kelley v. Kelley*, 248 Va. 295 (1994)

*Riggins v. O'Brien*, 263 Va. 444 (2002)

*Conway v. Conway*, 10 Va. App. 653 (1990)

*Franklin v. Comm.* 27 Va. App. 136 (1998)

*Comm. v. Chamberlain*, 31 Va. App. 533 (2000)

*Germek v. Germek*, 34 Va. App. 1 (2000)

*Goldin v. Goldin*, 34 Va. App. 95 (2000)

*Russell v. Russell*, 35 Va. App. 360 (2001)

*Slawski v. Comm.*, 29 Va. App. 721 (1999)

*Cirrito v. Cirrito*, 44 Va. App. 287 (2004) PART VI ONLY

*Mullin v. Mullin*, 45 Va. App. 289 (2005)

**Mon March 30**

**Child Support Class 2: Guidelines**

*Richardson v. Richardson*, 12 Va. App. 18 (1991)

*Carmon v. Comm. ex rel Jones*, 21 Va. App. 749 (1996)

*Niemiec v. Comm.*, 27 Va. App. 446 (1998)

*Princiotto v. Gorrell*, 42 Va. App. 253 (2004)

*Jones v. Davis*, 43 Va. App. 9 (2004)

**1950 Code of Virginia, as amended:**

VA ST s 8.01-328.1(A)(8)

VA ST s 16.1-241(A)(3)

VA ST s 16.1-241(E)

VA ST s 16.1-241(P)

VA ST s 20-61

Skim UIFS VA ST s 20-88.32 et seq.

VA ST s 20-107.2

VA ST s 20-108.1

VA ST s 20-108.2

VA ST s 20-124.2(C)

**Wed April 1**

**Child Support Class 3: Guidelines Cont'd**

**Reading: Chapter 10-5 thru 10-13**

*Watkinson v. Henley*, 13 Va. App. 151 (1991)

*Baumgartner v. Moore*, 14 Va. App. 696 (1992)

*Auman v. Auman*, 21 Va. App. 275 (1995)

*Frazer v. Frazer*, 23 Va. App. 358 (1996)

**1950 Code of Virginia, as amended:**

VA ST s 20-108.1

VA ST s 20-108.2

**Mon April 6**

**AND**

**Wed April 8**

**Modification of Orders**

**Reading: Chapters 9-15, 10-22 thru 10-24, 15-9 & 15-10**

*Thomasson v. Thomasson*, 225 Va. 394 (1983)

(including footnotes)

*White v. White*, 257 Va. 139 (1999)

*Reece v. Reece*, 22 Va.App. 368 (1996)

*Mansfield v. Taylor*, 24 Va. App. 108 (1997)

*Parish v. Spaulding*, 26 Va. App. 566 (1998), *aff'd*, 257 Va. 357 (1999)

*Pellegrin v. Pellegrin*, 31 Va. App. 753 (2000)

*Fleming v. Fleming*, 32 Va. App. 822 (2000)

*Stockdale v. Stockdale*, 33 Va. App. 179 (2000)

*Hatloy v. Hatloy*, 41 Va. App. 667 (2003)

*Sullivan v. Knick*, 38 Va. App. 773 (2002)

*the hearing on remand was also reviewed at* 42 Va. App. 794 (2004)

*Barrs v. Barrs*, 45 Va. App. 500 (2005)

**1950 Code of Virginia, as amended:**

VA ST s 20-108

VA ST s 20-109.1

VA ST s 20-112

VA ST s 20-121.1

# Mon April 13

## Unique Family Law Issues

### Reading: Chapter 5

*Counts v. Counts*, 221 Va. 156 (1980)

*Naccash v. Burger*, 223 Va. 406 (1982)

*Modaber v. Kelley*, 232 Va. 60 (1986)

*Kalafut v. Gruver*, 239 Va. 278 (1990)

*Pavlick v. Pavlick*, 254 Va. 176 (1997)

*Gray v. Inova Health Care Services*, 257 Va. 597 (1999)

*Thompson v. Skate America, Inc.*, 261 Va. 121 (2001)

*Martin v. Zihel*, 269 Va. 35 (2005)

### 1950 Code of Virginia, as amended:

VA ST s 8.01-43

VA ST s 8.01-44

VA ST s 8.01-220

VA ST s 8.01-220.1

VA ST s 8.01-220.2

VA ST s 8.01-398

VA ST s 19.2-271.1

VA ST s 19.2-271.2

VA ST s 20-88

VA ST s 55-37

VA ST s 55-47.01

VA ST s 64.1-19.2

**Wed April 15**

**AND**

**Mon April 20**

**Implementation Of Orders (QDRO's, etc.) Enforcement Of  
Decrees**

**and *Pendente Lite* Relief**

**Reading: Chapter 11-32-34, 38 & 40**

**Chapters 9-16, 9-17, 9-20, 10-25 through 10-31**

*Leisge v. Leisge*, 224 Va. 303 (1982)

*Chattin v. Chattin*, 245 Va. 302 (1993)

*Dugan v. Childers*, 261 Va. 3 (2001)

*Pinkard v. Pinkard*, 12 Va. App. 848 (1991)

*Powell v. Ward*, 15 Va. App. 553 (1993)

*Wilson v. Wilson*, 18 Va. App. 193 (1994)

*Wilderman v. Wilderman*, 25 Va. App. 500 (1997)

*Hoy v. Hoy*, 29 Va. App. 115 (1999)

*Williams v. Williams*, 32 Va. App. 72 (2000)

*Rutledge v. Rutledge*, 45 Va. App. 56 (2005)

**1950 Code of Virginia, as amended:**

VA ST s 20-107.3K

VA ST s 16.1-278.17

VA ST s 16.1-278.15

VA ST s 20-78.1

VA ST s 20-78.2

VA ST s 20-79.1

VA ST s 20-79.2

VA ST s 20-79.3

VA ST s 20-103

VA ST s 20-113

VA ST s 20-114

VA ST s 20-115

VA ST s 63.2-1937

26 USC 414(p)

**Wed April 22 (observe a Monday Schedule) (means no change for our class)**

**Review Session**