

SYLLABUS

VIRGINIA REMEDIES

by

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VIRGINIA MOVES TO ONE FORM OF CIVIL ACTION

(As of Jan. 1, 2006)

The “two-sided” Virginia Circuit Court is a thing of the past, except for a few appeals and as cases appear in the history books. Instead of the former “motion for judgment” on the law side and the “bill of complaint” on the equity side there will be but one form of action called a Complaint and it will be served by one form of process called a Summons. This reaches all causes presently at law and all causes presently in equity, and any others not tied to a specific statutory procedure, whatever they may be.

To get this change started, the General Assembly simply added to a few of the definitions in § 8.01-2 of the Code of Civil Procedure. Subsection (10) for example, now provides that a “motion for judgment,” “bill,” “bill of complaint,” or “bill in equity” shall all and each mean a “complaint” in a civil action, as provided in the Rules of the Supreme Court of Virginia. Thus, in thirty words the legislature has said that practically all former forms for initiating major litigation are now encompassed within one term, civil action, and the Supreme Court is directed to make it all happen.

The Supreme Court of Virginia has acted and distributed a text of the new Rules on their website.¹ The major physical aspects of the new text are the abolition of Part Two, the Equity Rules, and the complete rewrite of Part Three, which will probably be called: Practice and Procedure in Civil Actions.² Relevant portions of old Equity Practice in former Part Two have been blended into the new Part Three, so there are some changes.

The unification of forms of action after Jan. 1, 2006 will have less effect on defensive pleading than on aggressive pleading, after everyone gets familiar with the Rules. For the most

¹ One route to the Supreme Court site is through vsb.org, click “links,” click “government,” click “supreme court”.

² All the Rules in this new Part Three have been recast and are numbered 3.1, 3.2, etc., as before. During the first year or so of practice under this new regime, one may be well advised to speak and write about “new Rule 3.1 and 3.23.”

part, old rules have been simply brought along into the new context. The familiar rule that unchanged things remain the same is continued in Rule 3:1.

Defendants may still ask for a bill of particulars to amplify a pleading under new Rule 3:7. Under new Rule 3:7(d) the party who receives an amplified pleading must respond within 21 days. The major media for responsive defenses will remain the answer, plea, demurrer and motion for appropriate relief as listed new Rule 3:8. These are defined as “pleadings” in new Rule 3:18 which also contains some remarks about contributory negligence and pleading the statute of limitations.

Aggressive pleadings (counterclaims, cross-claims and motions to add a party) are not described as responsive pleadings. There are some significant changes in terminology here.

The powers and duties and title of the commissioner in chancery in equitable claims have been continued and are preserved in new Rule 3:23, as amended before its effective date.

There is a bit of a minefield in the new rules about jury trial. No substantive rights have changed, but the jury “on an issue out of chancery” is now called an “advisory jury” by amendment of Code § 8.01-336(E). It has all the same functions and attributes as before.

The same or quite similar measures have been adopted in practically every state of the United States and by the Federal Government during the period of modernization of legal systems which began in Illinois in 1849. As Professor Kent Sinclair of the University of Virginia has pointed out: Not a single state has ever *returned* to separate dockets for law and equity after the simplicity, economy and ease of a unified system had been experienced.³

Main topics of the course include:

CHAPTER 1

REMEDIES AS PART OF THE SYSTEM OF JUSTICE

1. Brief Outline of the Types of Remedies.
2. Ancient Rule of Binding Election.
3. The Concept of the Indivisible Claim.
4. The Choice Between Law and Equity.
5. The Equitable Approach.
6. Negotiated Remedies -- Avoiding Loss by Election.

³ Kent Sinclair, *Law/equity merger would serve bar, bench, public*, VLW, 6/16/03, p. 6.

**CHAPTER 2CM
SWORDS AND SHIELDS**

1. Setoff.
 - a. Liquidated or Unliquidated Claims?
 - b. Mutuality and Same Right.
 - c. Procedure and Substance.
2. Counterclaim.
3. Recoupment.
4. Assignees and Aggressive Pleadings.
5. Crossclaim.
6. Rule 3:10 -- Other Third Party Practice.
7. Aggressive Pleadings and Affirmative Defenses.

CHAPTER 3CM

LAW AND EQUITY ARE SEPARATE, BUT RELATED

1. The Merger of Law and Equity, Briefly.
2. Merger by Increments.
3. Transfers From One Side of the Court to the Other.
4. Despite All of the Above.

CHAPTER 4 CM

JURISDICTION AND VENUE IN EQUITY

1. Original Jurisdiction.
2. When the Chancellor Would Not Act.
3. Potential and Actual Jurisdiction.

CHAPTER 5CM

PARTIES AND MAXIMS

1. Review Virginia Practice Notes on Parties and Standing.
2. Necessary Parties.
3. Adding Parties.
4. Maxims.

CHAPTER 6CM

PLEADINGS IN EQUITY

1. Review.
2. The Bill of Complaint.
3. Tradition in Equity.
4. Amendment of Pleadings -- Law and Equity.
5. Proceedings on Default.

CHAPTER 7

THE BASES FOR DEFENSIVE REMEDIES

1. Accident.
2. Consideration, Lack of.
3. Duress and Undue Influence.
4. Equitable Estoppel.
5. Fraud.
6. Hardship and Unconscionability.
7. Laches.
8. Mistake.

CHAPTER 8CM

COMMISSIONERS IN CHANCERY

1. Tradition in Equity.
2. Appointment.
3. The Commissioner's Relation to the Court.
4. Due Process.
5. The Commissioner's Hearing.
6. The Commissioner's Report.

CHAPTER 9 CM

RECEIVERS

1. General Receivers.

2. When to Appoint Special Receivers.
3. Powers and Duties of Special Receivers.

CHAPTER 10
[Short list of appeals cases in text.]

CHAPTER 11CM

RESCISSION, CANCELLATION & REFORMATION

1. Rescission for Fraud.
2. Rescission for Breach of Contract.
3. Choice of Remedy.
4. Cancellation.
5. Reformation.

CHAPTER 12CM

RESTITUTION & RESTITUTIONARY MEASURES

1. Third Party Practice Reminder.
2. Restitution in Aid of Justice.
3. Indemnity.
4. Surety.
5. Contribution.
6. Subrogation.
7. Guaranty.
8. Excepts from Cos on Remedies --Quasicontract.

CHAPTER 13CM

INJUNCTIONS

1. Jurisdiction.
2. Balancing the Equities.
3. Injunctions Look to the Future.
4. Invalid Injunctions, the Duty to Obey.

CHAPTER 14CM

SPECIFIC PERFORMANCE

1. Damages or Specific Performance?
2. The Court Will Not Make A Contract For A Party.
3. Contracts for Personal Services.
4. Is Land Always Unique?
5. Statutory Actions.
6. Nonspecific Performance.

CHAPTER 15CM

CREDITOR'S BILLS, CONTEMPTS AND OTHER ENFORCEMENTS

1. Introduction.
2. Writ of Assistance.
3. Contempts (Writ of Attachment).
4. Sequestration.
5. § 8.01-427. Persons entitled under decree deemed judgment creditors; execution on decree.
6. § 8.01-466. Clerk to issue fieri facias on judgment for money.
7. Order of Sale.
8. Performance by Proxy.
9. Original Bills in Equity.
10. Opposing a Writ of Execution.
11. Assignments for the Benefit of Creditors.
12. Creditor's Bills.
13. Conveyances which Injure Creditors.

CHAPTER 16CM

TRADITIONAL ANCILLARY REMEDIES

1. Accountings in Equity.
2. Bill of Peace.
4. Setting Up Lost Instruments.
5. Equitable Mortgage (Vendee's Lien).
6. Trusts.

CHAPTER 17CM

LIENS

1. Artisan's Liens and Security Interests.
2. Liens – Attorneys.
3. Mechanic's Liens.

CHAPTER 18CM

INJURIES TO REAL PROPERTY INTERESTS

1. Vindicating an Easement.
2. Vindicating the Title and Regaining Possession.
3. Vindicating the Title.
4. Partition.
5. Wrongful Foreclosure.

CHAPTER 19

CONTRACT REMEDIES

[List of cases in text.]

CHAPTER 20CM

DAMAGES

1. Substitutionary Remedies.
2. Measurement of the Loss.
3. Economic Losses.
4. Consequential Damages.
5. Prohibitions of and Formal Limitations on Damages.
6. Foreseeability.
7. The Duty to Mitigate Damages.
8. Private Remedies and Public Law -- Punitive (Exemplary) Damages.
9. General Burdens of Proof.
10. Duty to Avoid Damages.
11. Damages in Equity.
12. Avoiding Double Compensation.

13. Prejudgment Interest.(frm COSREM)

CHAPTER 21CM

ATTORNEY FEE DISPUTES

1. Fee Awards.

CHAPTER 22CM

BUSINESS TORTS

1. Common Law Injury to Business.
2. Statutory Conspiracy to Injure a Business.
 3. Interference with a Prospective Contract of Employment.
 4. Covenants Not to Compete.
 5. Breach of a Fiduciary Duty -- Corporate Officers and Directors.
 6. Excessive Compensation.
 7. Breach of A Fiduciary Duty -- Attorneys.
 8. Breach of A Fiduciary Duty -- Employees.
 9. Virginia Trade Secrets Act.
 10. Respondeat Superior.
 11. Wrongful Discharge.
 12. Negligence..
 13. Business Invitees.
 14. Defenses to Tort Claims.

Chapter 23

PARTNERS AND PARTNERSHIP REMEDIES

[Paras. Intentionally not numbered.]
Changes to Remedial Structure and Approach.
Aggregates and Entities.
Contract Remedies and Remedies Against Fiduciaries.
Objective/Subjective Theories of Partnership.
Constitution and Statute: Vested Interests.
A New Estate in 1918: Tenancy in Partnership.

Types of Actions.

 Actions Between and Among Partners.

 Actions on the Partnership Account.

 Actions for Indemnification and Other Reimbursements.

 Actions on Wrongful Dissociation.

Remedies on Breakup.

 New Remedies on Dissociation

Breach of A Fiduciary Duty.

 Agency Heritage.

Third Party Remedies

 Charging Orders

 Successor Liability.

 Contracts.

 Torts.

Practice Aspects.