

Virginia Practice - Law 334-002

Fall, 2021

Syllabus

Professor Mark D. Cummings

Goals and Learning Outcomes

Virginia Practice is an important subject for anyone who wishes to practice law in Virginia. It is not a bar review course, nor is it meant to be. However, a student who reads all the assigned materials, prepares for class, and actively participates in class discussions and debates, will certainly be ahead of his/her peers when it becomes time to study for the bar. The Virginia Practice class is limited to civil cases in Virginia. This class, as opposed to the Virginia Remedies class, concentrates on law cases and relevant rules and statutes. The latter focuses on the equity side of the law and its relevant statutes and rules. Both are very important classes, as Virginia still recognizes the distinction between law and equity.

Virginia procedure is similar to the federal rules in many ways. However, in many instances Virginia procedure is quite unique and varies greatly in many areas. Case law is rich in history and tradition, and in many instances does not represent the “majority rule” followed by many other states.

The following is a non-exclusive list of specific outcomes for this course:

1. Broadly learn and know the rules and statutes of Virginia, and associated case law, concentrating on law cases.
2. To learn and know the Virginia court system, its jurisdictional limits, and the appellate process contained within the court system.
3. To learn, know and apply the rules of Virginia civil procedure.
4. To be able to understand and comprehend the legal reasoning behind Virginia case law.
5. To keep abreast of recent case law and/or statutory and rule changes and amendments.
6. To learn the practicalities of applying Virginia law to real life legal experiences.
7. To be able to differentiate Virginia law from federal law and laws in other states.
8. To be able to decide if practicing law in Virginia is right for the future course of the student.

Class Materials

There is no specific textbook for this class. We will learn from reading and discussing long-standing case law and recent decisions from Virginia courts affecting the law. Important sources to assist each student in this pursuit are as follows:

All references to statutes are to the Code of Virginia

All references to rules are to Volume 11 of the Code of Virginia

A convenient link for the Virginia Rules and Statutes is:

<http://www.courts.state.va.us/courtadmin/library/va.html>

Class Format

This class is interactive and successful learning is dependent upon preparation and class participation. This is not a “lecture” course. The amount of time and preparation each student puts into this class will affect the learning outcomes for all of your student colleagues. We will follow the syllabus and assignments as closely as possible.

Final Exam

The final exam will consist of twenty (20) short answer essay questions and will be “closed book.”

Student Responsibilities

Students are required to attend classes and to be timely at all times. If a student knows that he/she cannot attend a class or that he/she will be late for class, or must leave class early; it is the responsibility of that student to contact the professor beforehand by phone or email.

Students shall read all of the cases, statutes and assignments in advance, for each day, and shall be prepared to be called upon to discuss the rules and/or a case in that day’s reading assignments, per the syllabus. All class communication from the professor outside of class will be made through the students’ school email addresses. Students should check their emails regularly.

Prohibited Class Activities

Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device such as an audio recording device, laptop, phone or camera. Any exceptions to this policy must be expressly permitted in writing by the professor.

During class sessions, no student shall access any outside resources unrelated to class topics or issues. Any access to or participation in social media, websites, emails, texts or other electronic communications during class is strictly prohibited. This includes any intra-class communications as well as external communications. If a student has an urgent or emergent situation, he/she may excuse him/herself from the classroom to make/answer such a communication.

Office Hours

There are no formal in-person office hours. Any student who wishes to discuss any matter with the professor should contact the professor personally at mcummings@shercummingsandellis.com or by phone (703) 850 – 5703. The professor will make every effort to assist every student in this class.

Covid Health & Safety Requirements

Please note that this class will follow University health and safety protocols. Any student who has a covid or other health related issue should immediately contact the administration for assistance and advice.

Covid Instructional Contingency Plan

In the event that the administration requires this class to transition to a remote format, the professor will inform the students as to the manner and type of instruction by which the class will be operated.

Daily Syllabus and Reading Assignments

Tuesday, August 24, 2021 - Court System in Virginia, Law and Equity,

Introduction and overview of class

Court System in Virginia

GDC Jurisdiction: 16.1-77, 77.2, 79, 80, 81, 97.1,
Appeals from GDC: 106-109, 114.1,
Rule 7B:12 (effective January 12, 2021)
Small Claims Court: 122.1-122.7,
Criminal and Traffic Jurisdiction of GDC: 123.1, 126, 127,
J&DR Jurisdiction: 241, 244
Circuit Court Jurisdiction: 17.1-513

Thursday, August 26, 2021– Court System in Virginia, Law and Equity, (Con't.)

Interlocutory Appeals: 8.01-670.1
Rules 5A:5, 5:7, 5:7B, 5:40
Baker v. Elmendorf, 271 Va. 474

Law and Equity

8.01-38.1, 336, 607, 609, 610, 615, 620, 624-626, 629-631
Rules 3:1, 3:21 and 3:22
Stanardsville Volunteer Fire v. Berry, 229 Va. 578
Advanced Marine Enterprises v. PRC, Inc., 256 Va. 106
Nelms v. Nelms, 236 Va. 281 (only as to issue of jury trial)

Tuesday, August 31, 2021 - Venue

Venue

8.01-257 through 267, and 276
16.1-76
Rules 7B:3 and 7B:11
Big Seam Coal Corp. v. Railroad Co, 196 Va. 590
N&W Railway Co. v. Williams, 239 Va. 390
Virginia Electric and Power Co. v. Dungee, 258 Va. 235
Faison v. Hudson, 243 Va. 413

Thursday, September 2, 2020 - Service of Process

General:

8.01-275.1, 286.1, 293-295, 325, 326, 290
Rules 3:2 and 3:5

Service on individuals:

8.01-296, 297, 9
Washburn v. Angle Hardware, 144 Va. 508
Washington v Anderson 236 Va. 316

Service on business entities:

8.01-299, 301, 304-306
13.1-637 and 836
Khatchi v. Landmark Restaurant Associates, 237 Va. 139

8.01-288 - Effect of receipt of service with legal defect(s)

Long arm jurisdiction:

8.01-328.1
8.01-328-329
Basile v American Filter, 231 Va. 34
Witt v. Reynolds, 240 Va. 452
Mercer, Adm. V. MacKinnon, Virginia Supreme Court February 21, 2019
Krantz v. Airline Pilots Association 245 VA. 202

Tuesday, September 7, 2021 – Service of Process (con't.)

Non-resident motorists:

8.01-307-313

Dennis v. Jones, 240 Va. 12

Publication and out-of-state service:

8.01-316-318, 320, 322

Mitchell v. Mitchell, 227 Va. 31

Miscellaneous:

8.01-286.1, 288, 275.1, 277, 277.1 325-327, 314

20-99.1:1 Rule 3:5(e)

O'Connell v Bean 263 Va. 176

Tort Claims Act:

8.01-195.3, 195.4, 195.6, 255, 300, 15.2-209 (See changes as of July 2016)

Halberstam v. Commonwealth, 251 Va. 248

Municipalities:

15.2-209, 300 (See Changes as of July 2016)

Miles v. City of Richmond, 236 Va. 341

Thursday, September 9, 2021 - Parties and Claims

Parties and Claims

8.01-272, 443, 5, 7, 30, 36, 281

Rule 3:12-3:14, 3:16;3:17, 1:8, 1:9

8.01-15, 15.1; 8.01-229

Ricketts v. Strange, 293 Va. 101 (2017)

Addison v. Jurgelsky, 281 Va. 205 (2011)

Keepe v. Shell Oil, 220 Va. 587

Nash v. Blessing, 247 Va. 95

Powers v. Cherin, 249 Va. 33

8.01-6, 6.1, 6.2 and 6.3

Idoux v. Hilov 279 Va. 548

Bartee v Vitocruz 288 Va. 106

Swann v. Marks, 252 Va. 181 (1996)

Rockwell v. Allman, 211 Va. 560

Jacobsen v. Southern Biscuit, 198 Va. 813

Lopez-Roserio v Habib, 291 Va. 293 (2016)

Hampton v. Meyer, (Virginia Supreme Court-decided August 27, 2020, record No. 191194)

Tuesday, September 14, 2021 – Parties and Claims (con’t.)

8.01-2, 8, 9, 678; 53.1-221-223; Rule 3:5(c)
Herndon v. St. Mary’s Hospital, 266 Va. 472
Cook v. Radford Community Hospital, 260 Va. 443
Tucker v. Wimer, 42 Va. App. 42
8.01-34, 35.1, 442, 443; 11-10, 11-11 and 11-13
Fairfax Hospital v. Nevitt, 249 Va. 591 (1995)
Pierce v. Martin, 230 Va. 94
Massie v Firmstone 134 Va. 450 (1922)
Erie Insurance Company v. McKinley Chiropractic, P. C., 294 Va. 138 (2017)
8.01-25, 26

Thursday, September 16, 2021 - Statutes of Limitations

8.01-228, 229; 230; 249
Various statutes of limitation: 8.01-243; 243.2, 244 (wrongful death), 246 (contract), 247, 247.1, (defamation), 248 (catch-all), 251
16.1-94.1
8.01-50, 52; 235
8.01-231, 247
Housing Authority V. Laburnum 195 Va. 827 (1954)
Stone v. Ethan Allen 232 Va. 365 (1986)

8.01-250 (statute of repose)

Murphy v. Holland, 237 Va. 212
Jordan v. Shands, 255 Va. 492
Pigot v. Moran, 231 Va. 76
Guth v. Hamlet Associates, 230 Va. 64
Conger v. Barrett, 280 Va. 627
Newman v. Walker, 270 Va. 291

Tuesday, September 21, 2021– Statutes of Limitations (con’t.)

Caudill v. Wise Rambler, 210 Va. 11 (1969)
Luddeke v. Amana Refrigeration, 239 Va. 203
MacClellan v. Throckmorton, 235 Va. 341
Nunnaly v. Artis, 254 Va. 247
St. George v. Pariser, 253 Va. 329
Justice v. Natvig, 238 Va. 178

Landini v. Bil-Jax 2015 Va. Unpub. LEXIS 1 (January 30, 2015)

Thursday, September 23, 2021 - Pleadings and Motions

General rules of pleading:

Rules 1:4, 5, 8, 9, 10 and 13; Rules 3: 2 and 3:18; Rule 3:25; Rule 7B:3
8.01- 268,269,364, 383, 383.1, 273, 275, 281, 377, 38.1, 35
Powell v. Sears, Roebuck, 231 Va. 464
Shipe v. Hunter 280 Va. 480
Johnson v Buzzard Island 232 Va. 32
Graham v. Community Management Corporation, 294 Va. 222 (2017)

Tuesday, September 28, 2021 – Pleadings and Motions (con't)

Commencing and responding to the action

Rules 3:3-3:8; 3:9, 3:10, 3:12, 8.01-273; 16.1-69.25:1; Rule 7B2; 8.3A-308
Monahan v. Obici 271 Va. 621
Perk v. Vector Resources, 253 Va. 310
CaterCorp v. Catering Concepts, 246 Va. 22

Declaratory Judgments

Rule 8.01-184
8.01-274; Rule 3:11; Rule 7B:8 and 7B:9
Green v. Goodman-Gable-Gould, 268 Va. 102

Thursday, September 30, 2021 – Pleadings and Motions (con't)

Default

Rule 3:19; 8.01-428; 8.01-15.2; Rule 7B:9
Landcraft v. Kincaid, 220 Va. 865
Charles v. Precision Tune, 243 Va. 313
Media General v. Smith, 260 Va. 287
State Farm v. Remley, 270 Va. 209

Plea in Bar and Demurrer

Va. Code 8.01-273, 8.01-336, Rule 3:8
Fun v. Virginia Military Inst., 422 S.E.2d 770 (1992)
Tomlin v. McKenzie, 251 Va. 478
Coutlakis v. CSX Transportation, 293 Va. 212 (2017)

Tuesday, October 5, 2021 – Pleadings and Motions (con't.)

Summary Judgment

Rule 3:20; 8.01-420; Rule 4:7
Gay v. Norfolk & Western, 253 Va. 212

Sanctions

8.01-271.1
Ford Motor Company v. Benitez, 273 Va. 242
Kambis v. Considine, 778 S.E.2d 117
Ragland v. Soggin, 291 Va. 282 (2016)
Westlake Legal Group v. Flynn, (Virginia Supreme Court, April 13, 2017)
The Robert and Bertha Robinson Family, LLC. v. Allen, 295 Va. 130 (2018)

Thursday, October 7, 2021 – Class workshop

Service of Process and Statutes of Limitation Charts

Tuesday, October 12, 2021 – No Class

Thursday, October 14, 2021 –Counterclaims, Cross-claims, and Third Party Claims

Rule 1:4
Rule 3:9, 10, 12, 13, 14, 16
Rule 7B:1, 7B:10
8.01-364
Nottingham v. Weld, 237 Va. 416
Valley Landscape v. Rolland, 218 Va. 257

Miscellaneous

8.01-28 and 279; Rules 1:10 and 1:13

Tuesday, October 19, 2021- Discovery

Rule 4:0-4:15 of the Rules of Court
8.01-401.1, 401.3, 413.01, 399
Rakes v Fulcher 210 Va. 542
Horne v. Milgrim, 226 Va. 133 1
Shaheen v. Mathews County, 265 Va. 462 2
Food Lion, Inc. v. Melton, 250 Va. 144 3
Crane v. Jones 274 Va. 581

Thursday, October 21, 2021 – Immunity

Sovereign Immunity

Va Code 8.01-195.1 *et seq.* (See changes July 1, 2016)
James v Jane 221 Va. 43
Pike v. Hagaman, 292 Va. 209 (2016)
Messina V. Burden 228 Va. 301
Lee v. Bourgeois 252 Va. 328
Stanfield v. Peregov 245 va. 339
Niese v City of Alexandria 264 Va. 230
Commonwealth v. Peterson, 286 Va. 349
McBride v. Bennett 288 Va. 450

Tuesday, October 26, 2021 – Immunity (con't)

Charitable Immunity

Va Code 8.01-38
University of Virginia Health Services v Morris 275 Va. 319
Ola v. YMCA of South Hampton 270 Va. 550 (2005)
Elliott, Adm. V. Carter, 791 S.E. 2d 730 (2016)

Thursday, October 28, 2021 – Miscellaneous Causes of Action

Unlawful Detainer: 8.01-124-126, 128, 129
Ejectment: 8.01-132,133,135,149,160,161,166,261(3)
Partition: 8.01-81, 83, 84, 261(3) and 262(5)
Detinue: 8.01-114-117, 119, 121, 262(5) and 534
Attachment: 8.01-533-553, 566-568
Lis pendens: 8.01-268-269
Confession of Judgments: 8.01-431-433, 435, 438

Injunctions: 8.01-620-631
Wrongful Death: 8.01-50-56

Dillon's Rule

City of Virginia Beach v. Hay, 258 Va. 217

Tuesday, November 2, 2021– Finality and Re-litigation, Nonsuit

Nonsuit

8.01-380

Conner v. Rose, 252 Va. 57
Brake v. Payne, 268 Va. 92
Ford Motor Company v. Jones, 266 Va. 404
Wells v. Lorcom House, 237 Va. 247
Newton v. Raines, 220 Va. 947
Temple v Mary Washington Hospital 288 Va. 134
Berry v. F& S Financial Marketing 271 Va. 329

Thursday, November 4, 2021 – Finality and Re-litigation

Finality

Super Fresh v. Ruffin, 263 Va. 555
Rutter v. Oakwood Living Centers, 282 Va. 4 (2011)
Kosko v. Ramser, et. al., Supreme Court of Virginia (May 20, 2021)
JSR Mech., Inc. v. Aireco Supply, Inc., 291 Va. 377 (2016)

Res Judicata

Rule 1:6

Reed v. Liverman, 250 Va. 97
State Water Control Board v. Smithfield Foods, 261 Va. 209 (2001)
Funny Guy, LLC v. Lucego, LLC, 293 Va. 135 (2017)

Collateral Estoppel

Snead v. Bendigo, 240 Va. 399
Norfolk and Western v. Bailey Lumber, 221 Va. 638
Glasco v. Ballard, 249 Va. 61

Bill of Review

8.01-428

Rule 1:1

8.01-623

Blunt v. Lentz, 241 Va. 547

Tuesday, November 9, 2021 – Juries

Jury Trials

Rule 3:21, 3:22; 1:23

8.01-336, 358-363

Dairy Queen v. Wood, 369 U.S. 469

Batson v. Kentucky, 476 U.S. 79 (majority opinion only, as it relates to jury selection)

Coleman v. Hogan 254 Va. 64

Trial motions: 8.01-378, 384, 430, 383, 383.1

United Leasing Corp. v. Lehner Family Bus. Trust, 279 Va. 510

Rule 2-606 (amendment effective July 1, 2018)

Thursday, November 11, 2021 – Enforcement of Judgments

8.01-382 (interest on verdicts)

8.01-446, 447, 450 (docketing judgments)

8.01-454-57 (satisfaction of judgments)

17.1-601 (costs of trial)

8.01-426, 427 (judgments and decrees)

8.01-506-510 (debtor's interrogatories)

8.01-511,511.1,512.4,513,514, 516.1 (garnishments)

8.01-458-460, 251 (judgments as liens)

8.01-466,474,478-482,484,501,511,16.1-98,16.1-99 (writs of fieri facias)

8.01-462 (enforcement against realty)

8.01-477,546.2,365 (objections to execution of judgment)

8.01-492 (judicial sale)

8.01-526-532 (bonds)

8.01-251, 16.1-94.1 – (time limits on judgments)

Appeals

Appeals to the Virginia Supreme Court - Rules 5:1-33
Appeals to the Court of Appeals of Virginia - 5A:5-22
(Just review the rules briefly; we will focus on certain appellate requirements in class)
17.1-405 thru 412.
8.01-670-672, 675.3, 676.1- 680
Smith v. Commonwealth, 281 Va. 464 (2011)
CW V. Riner 268 Va. 296 (2004) (focus on discussion of preservation of double hearsay objection)
Galumbeck v. Lopez, 283 Va. 500 (2012)
Brandon v Cox 284 Va. 251

Tuesday, November 16, 2021– Special Issues in Virginia

Infliction of emotional distress

Womack v. Eldridge, 215 Va. 338
Russo v. White, 241 Va. 23

When claim for breach of contract may allow tort recovery

Kamlar Corporation v. Haley, 224 Va. 699
Richmond Metropolitan Authority v. McDevitt Street Bovis, 256 Va. 553
Kaltman v. All American Pest Control, 281 Va. 483 (2011)
Modern Oil Corp. v. Cannady, 2015 Va. Unpub. LEXIS 16

Thursday, November 18, 2021 – Special Causes of Action – Medical Malpractice -Expert Testimony

Medical Malpractice

8.01-581.1 et seq
Chalifoux v. Radiology Associates, 281 Va. 690 (2011)
Mayr v. Osborne, 293 Va. 74 (2017)
8.01-399 Communications with physicians
8.01-20.1 Need expert before you serve

Expert Testimony

McMunn v Tatum, 237 Va. 558
Hyundai v Duncan, 289 Va. 147
Holiday Motors Corp. v. Walters, 292 Va. 461 (2016)
Toraish v. Lee, 293 Va. 262 (2017)

Tuesday, November 23, 2021 – Class Wrap-up

Review for Exam