

# **Virginia Practice - Law 334-001**

**Fall, 2021**

## **Syllabus**

**Professor Michael L. Davis**

### **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 [mdavis4@gmu.edu](mailto:mdavis4@gmu.edu) or by phone (703) 993-8039. 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

### Monday, August 23, 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

### Wednesday, August 25, 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)

## **Monday, August 30, 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

## **Wednesday, September 1, 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

## **Monday, September 6, 2021 – Labor Day (No Class)**

**Wednesday, September 8, 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

**Monday, September 13, 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)

### **Wednesday, September 15, 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

### **Monday, September 20, 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

**Wednesday, September 22, 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)

**Monday, September 27, 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)



## **Wednesday, September 29, 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

## **Monday, October 4, 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)

**Wednesday, October 6, 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)

**Monday, October 11, 2021 – Mid-semester Break (No class)**

**Tuesday, October 12, 2021 – Class workshop**

Service of Process and Statutes of Limitation Charts

**Wednesday, October 13, 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

## **Monday, October 18, 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

## **Wednesday, October 20, 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

## **Monday, October 25, 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)

## **Wednesday, October 26, 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

**Monday, November 1, 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

**Wednesday, November 3, 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

### **Monday, November 8, 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)

### **Wednesday, November 10, 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

## **Monday, November 15, 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

## **Wednesday, November 17, 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)

**Monday, November 22, 2021 – Class Wrap-up**

Review for Exam