

Law 334-001 | Virginia Practice | Spring 2025 | 3 credits

Professor(s): Mark D. Cummings

Tues. & Thurs. 8:10 – 9:35 pm EST | **Final Exam:** Tues., May 6, 6:00 pm EST

Reading(s): 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:

1. All references to statutes are to the Code of Virginia
2. All references to rules are to Volume 11 of the Code of Virginia
3. A convenient link for the Virginia Rules and Statutes is:
<http://www.courts.state.va.us/courtadmin/library/va.html>

Communication(s): mcummings@sherandcummings.com | (703) 525-1200

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 via email or phone. The professor will make every effort to assist every student in this class.

COURSE DESCRIPTION

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.

COURSE OBJECTIVES

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

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

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GRADING & PARTICIPATION

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 CONDUCT

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.

COVID REGULATIONS

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.

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 manor and type of instruction by which the class will be operated.

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COURSE SCHEDULE & ASSIGNMENTS

Class One

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

Class Two

- Interlocutory Appeals: 8.01-670.2; 8.01-675.5
- 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, 620, 624-626, 629-631
- Rules 3:1, 3:21 and 3:22
- Standardsville 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)

Class Three

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

Class Four

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

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- 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
- Carter v. Wake Forrest Univ. Baptist Hospital, Va. Ct. of App. (March 7, 2023)

Class Five

- 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, 324
Evans v. Evans, 300 Va. 134 (2021)
- 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)

Class Six

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
- 8.01-6; 8.01-6.1; 8.01-6.2; 8.01-15, 15.1; 8.01-229
- Ricketts v. Strange, 293 Va. 101 (2017)
- Keepe v. Shell Oil, 220 Va. 587
- Powers v. Cherin, 249 Va. 33
- 8.01-6, 6.1, 6.2 and 6.3
- Idoux v. Hilov 279 Va. 548
- Swann v. Marks, 252 Va. 181 (1996)
- Jacobsen v. Southern Biscuit, 198 Va. 813
- Lopez-Roserio v Habib, 291 Va. 293 (2016)
- Edwards v. Omni International Services, Inc., (Virginia Supreme Court, decided May 26, 2022; Record No. 201329)

Class Seven

- 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)

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- 8.01-25, 26

Class Eight

- 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
- Conger v. Barrett, 280 Va. 627
- Newman v. Walker, 270 Va. 291

Class Nine

- Caudill v. Wise Rambler, 210 Va. 11 (1969)
- 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)

Class Ten

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
- Graham v. Community Management Corporation, 294 Va. 222 (2017)

Class Eleven

Commencing and responding to the action

- Rules 3:3-3:8; 3:9, 3:10, 3:12, 3:14, 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

Class Twelve

Default

- Rule 3:19; 8.01-428; 8.01-15.2; Rule 7B:9
- Landcraft v. Kincaid, 220 Va. 865

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- Charles v. Precision Tune, 243 Va. 313
- Media General v. Smith, 260 Va. 287

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)

Class Thirteen

- Service of Process and Statutes of Limitations Workshop (Charts)

Class Fourteen

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)

Class Fifteen

- 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

Class Sixteen

- 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

Class Seventeen

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
- Stanfield v. Peregov 245 va. 339
- Commonwealth v. Peterson, 286 Va. 349
- McBride v. Bennett 288 Va. 450
- Est. of Patterson v. City of Danville, (Virginia Supreme Court, decided July 7, 2022; Record no. 210509)

Law 334-001 | Virginia Practice | Spring 2025 | 3 credits

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- Jolley v. Ellis, (Ct. of App. Virginia, Record No. 0870-23-1, decided October 1, 2024

Class Eighteen

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)

Class Nineteen

- 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

Class Twenty

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

Class Twenty-One

Finality

- Super Fresh v. Ruffin, 263 Va. 555
- Rutter v. Oakwood Living Centers, 282 Va. 4 (2011)
- Kosko v. Ramser, et. al., 299 Va. 684 (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

Law 334-001 | Virginia Practice | Spring 2025 | 3 credits

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Tues. & Thurs. 8:10 – 9:35 pm EST | **Final Exam:** Tues., May 6, 6:00 pm EST

- 8.01-623
- Blunt v. Lentz, 241 Va. 547

Class Twenty-Two

Jury Trials

- Rule 3:21, 3:22; 1:23
- 8.01-336, 358-363
- Batson v. Kentucky, 476 U.S. 79 (majority opinion only, as it relates to jury selection)
- Coleman v. Hogan 254 Va. 64
- Bethea v. Commonwealth, 297 Va. 730 (2019)
- 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)

Class Twenty-Three

- 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

Class Twenty-Four

Infliction of emotional distress

- Womack v. Eldridge, 215 Va. 338
- Russo v. White, 241 Va. 23
- 8.01-42.1; 8.01-42.3
- Northern Virginia Kitchen, Bath & Basement, Inc. et. al. v. Ellis, (Virginia Supreme Court, Decided April 15, 2021; Record no. 200335)

When claim for breach of contract may allow tort recovery

- Kamlar Corporation v. Haley, 224 Va. 699

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- 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

Class Twenty-Five

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)