

Virginia Practice - Law 334-002

Fall Semester, 2023

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. 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 22, 2023 - 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: 16.1-106-109, 114.1,
Rule 7B:12 (effective January 12, 2021)
Small Claims Court: 16.1-122.1-122.7,
Criminal and Traffic Jurisdiction of GDC: 16.1-123.1, 126, 127,
J&DR Jurisdiction: 16.1-241, 244
Circuit Court Jurisdiction: 17.1-513

Thursday, August 24, 2023– Court System in Virginia, Law and Equity, (Con't.)

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 (Va. 2006)

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

Standardsville Volunteer Fire v. Berry, 229 Va. 578 (Va. 1985)

Advanced Marine Enterprises v. PRC, Inc., 256 Va. 106 (Va. 1998)

Nelms v. Nelms, 236 Va. 281 (Va. 1988) (only as to issue of jury trial)

Tuesday, August 29, 2023 - 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 (Va. 1955)

N&W Railway Co. v. Williams, 239 Va. 390 (Va. 1990)

Virginia Electric and Power Co. v. Dungee, 258 Va. 235 (Va. 1999)

Faison v. Hudson, 243 Va. 413 (Va. 1992)

Thursday, August 31, 2023 - Service of Process

General:

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

Service on individuals:

8.01-296, 297, 298
Washburn v. Angle Hardware Co., 144 Va. 508 (Va. 1926)
Washington v. Anderson, 236 Va. 316 (Va. 1988)

Service on business entities:

8.01-299, 301, 304-306
13.1-637, 836
Khatchi v. Landmark Restaurant Assoc., 237 Va. 139 (Va. 1989)

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 (Va. 1986)
Witt v. Reynolds, 240 Va. 452 (Va. 1990)
Mercer, Adm. v. MacKinnon, Virginia Supreme Court February 21, 2019
Krantz v. Airline Pilots Assoc., 245 Va. 202 (Va. 1993)
Estate of Carter v. Wake Forest University Medical Center et al. (Va. Ct. App. 2023)

Tuesday, September 5, 2023 – Labor Day (No Class)

Thursday, September 7, 2023 – Service of Process (con't.)

Non-resident motorists:

8.01-307-313
Dennis v. Jones, 240 Va. 12 (Va. 1990)

Publication and out-of-state service:

8.01-316-318, 320, 322, 324
Evans v. Evans, 300 Va. 134 (Va. 2021)

Miscellaneous:

8.01-275.1, 277, 277.1, 286.1, 288, 314, 325-327
20-99.1:1
Rule 3:5(e)

O'Connell v Bean, 263 Va. 176 (Va. 2002)

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 (Va. 1996)

Municipalities:

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

Miles v. City of Richmond, 236 Va. 341 (Va. 1988)

Tuesday, September 12, 2023 – 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 (Va. 2003)

Cook v. Radford Community Hospital, 260 Va. 443 (Va. 2000)

Tucker v. Wimer, 42 Va. App. 42 (Va. Ct. App. 2003)

8.01-34, 35.1, 442, 443; 11-10, 11-11, 11-13

Fairfax Hospital v. Nevitt, 249 Va. 591 (Va. 1995)

Pierce v. Martin, 230 Va. 94 (Va. 1985)

Massie v Firmstone, 134 Va. 450 (Va. 1922)

Erie Insurance Company v. McKinley Chiropractic, P. C., 294 Va. 138 (Va. 2017)

8.01-25, 26

Thursday, September 14, 2023 - Parties and Claims

Parties and Claims

8.01-5, 7, 30, 36, 272, 443, 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 (Va. 2017)

Keepe v. Shell Oil, 220 Va. 587 (Va. 1979)

Nash v. Blessing, 247 Va. 95 (Va. 1994)

Powers v. Cherin, 249 Va. 33 (Va. 1995)

8.01-6, 6.1, 6.2, 6.3

Idoux v. Helou, 279 Va. 548 (Va. 2010)

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

Rockwell v. Allman, 211 Va. 560 (Va. 1971)

Jacobson v. Southern Biscuit Co., 198 Va. 813 (Va. 1957)

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

Edwards v. Omni Int'l Servs., Inc., VA Supreme Court, Record No. 201329 (May 26, 2023)

Tuesday, September 19, 2023 - 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 Corp., 195 Va. 827 (Va. 1954)

Stone v. Ethan Allen, Inc., 232 Va. 365 (Va. 1986)

8.01-250 (statute of repose)

Murphy v. Holland, 237 Va. 212 (Va. 1989)

Jordan v. Shands, 255 Va. 492 (Va. 1988)

Pigott v. Moran, 231 Va. 76 (Va. 1986)

Guth v. Hamlet Associates, 230 Va. 64 (Va. 1985)

Conger v. Barrett, 280 Va. 627 (Va. 2010)

Newman v. Walker, 270 Va. 291 (Va. 2005)

Thursday, September 21, 2023– Statutes of Limitations (con't.)

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

Luddeke v. Amana Refrigeration, 239 Va. 203 (Va. 1990)

MacClellan v. Throckmorton, 235 Va. 341 (Va. 1988)

Nunnally v. Artis, 254 Va. 247 (Va. 1997)

St. George v. Pariser, 253 Va. 329 (Va. 2007)

Justice v. Natvig, 238 Va. 178 (Va. 1989)

Landini v. Bil-Jax, Va. Unpub. LEXIS 1, Record No. 140591 (January 30, 2015)

Tuesday, September 26, 2023 - Pleadings and Motions

General rules of pleading:

Rules 1:4, 5, 8, 9, 10, 13; Rules 3:2; 3:18; Rule 3:25; Rule 7B:3

8.01-35, 38.1, 268, 269, 273, 275, 281, 364, 377, 383, 383.1

Powell v. Sears, Roebuck & Co., 231 Va. 464 (Va. 1986)

Shipe v. Hunter, 280 Va. 480 (Va. 2010)

Johnson v Buzzard Island Shooting Club, Inc., 232 Va. 32 (Va. 1986)

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

Thursday, September 28, 2023 – Pleadings and Motions (con't)

Commencing and responding to the action

Rules 3:3-3:10, 3:12, 3:14; 8.01-273; 16.1-69.25:1; Rule 7B2; 8.3A-308
Monahan v. Obici Medical Management Servs., Inc., 271 Va. 621 (Va. 2006)
Perk v. Vector Resources Group, 253 Va. 310 (Va. 1997)
CaterCorp, Inc. v. Catering Concepts, Inc., 246 Va. 22 (Va. 1993)

Declaratory Judgments

Rule 8.01-184
8.01-274; Rule 3:11; Rule 7B:8 and 7B:9
Green v. Goodman-Gable-Gould Co., Inc., 268 Va. 102 (Va. 2004)

Tuesday, October 3, 2023 – Pleadings and Motions (con't)

Default

Rule 3:19; 8.01-428; 8.01-15.2; Rule 7B:9
Landcraft Co., Inc. v. Kincaid, 220 Va. 865 (Va. 1980)
Charles v. Precision Tune, Inc., 243 Va. 313 (Va. 1992)
Media General, Inc. v. Smith, 260 Va. 287 (Va. 2000)
State Farm v. Remley, 270 Va. 209 (Va. 2005)

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 (Va. 1993)
Tomlin v. McKenzie, 251 Va. 478 (Va. 1996)
Coutlakis v. CSX Transportation, 293 Va. 212 (Va. 2017)

Thursday, October 5, 2023 – 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 (Va. 2007)
Kambis v. Considine, 778 S.E.2d 117 (Va. 2015)
Ragland v. Soggin, 291 Va. 282 (Va. 2016)

Westlake Legal Group v. Flynn, (Virginia Supreme Court, April 13, 2017)
The Robert and Bertha Robinson Family, LLC. v. Allen, 295 Va. 130 (Va. 2018)

Tuesday, October 10, 2023 – No class

University observing **MONDAY** schedule

Thursday, October 12, 2023 – 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 (Va. 1989)

Valley Landscape v. Rolland, 218 Va. 257 (Va. 1977)

Miscellaneous

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

Tuesday, October 17, 2023 – 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 (Va. 1970)

Horne v. Milgrim, 226 Va. 133 1 (Va. 1983)

Shaheen v. Mathews County, 265 Va. 462 2 (Va. 2003)

Food Lion, Inc. v. Melton, 250 Va. 144 3 (Va. 1995)

Crane v. Jones 274 Va. 581 (Va. 2007)

Thursday, October 19, 2023- Immunity

Sovereign Immunity

Va Code 8.01-195.1 *et seq.* (See changes July 1, 2016)

James v Jane 221 Va. 43 (Va. 1980)

Pike v. Hagaman, 292 Va. 209 (Va. 2016)

Messina V. Burden 228 Va. 301 (Va. 1984)

Stanfield v. Peregov 245 Va. 339 (Va. 1993)

Commonwealth v. Peterson, 286 Va. 349 (Va. 2013)

McBride v. Bennett 288 Va. 450 (Va. 2014)

Est. of Patterson v. City of Danville, (Virginia Supreme Court, decided July 7, 2023;
Record no. 210509)

Tuesday, October 24, 2023 – Immunity (con’t) – Professor Cummings Out (Davis Covers)

Charitable Immunity

Va Code 8.01-38

University of Virginia Health Services v Morris 275 Va. 319 (Va. 2008)

Ola v. YMCA of South Hampton 270 Va. 550 (Va. 2005)

Elliott, Adm. V. Carter, 791 S.E. 2d 730 (Va. 2016)

Thursday, October 26, 2023 – 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 (Va. 1999)

Tuesday, October 31, 2023 – Finality and Re-litigation, Nonsuit – No Class

Nonsuit

8.01-380

Conner v. Rose, 252 Va. 57 (Va. 1996)

Brake v. Payne, 268 Va. 92 (Va. 2004)

Ford Motor Company v. Jones, 266 Va. 404 (Va. 2003)

Wells v. Lorcom House, 237 Va. 247 (Va. 1989)

Newton v. Raines, 220 Va. 947 (Va. 1980)

Temple v Mary Washington Hospital 288 Va. 134 (Va. 2014)

Berry v. F& S Financial Marketing 271 Va. 329 (Va. 2006)

Thursday, November 2, 2023– Finality and Re-litigation,

Finality

Super Fresh v. Ruffin, 263 Va. 555 (Va. 2002)

Rutter v. Oakwood Living Centers, 282 Va. 4 (Va. 2011)

Kosko v. Ramser, et. al., Supreme Court of Virginia (May 20, 2021)

JSR Mech., Inc. v. Aireco Supply, Inc., 291 Va. 377 (Va. 2016)

Cosco v. Ramser, 299 Va. 684 (Va. 2021)

Res Judicata

Rule 1:6

Reed v. Liverman, 250 Va. 97 (Va. 1995)

State Water Control Board v. Smithfield Foods, 261 Va. 209 (Va. 2001)

Funny Guy, LLC v. Lucego, LLC, 293 Va. 135 (Va. 2017)

Collateral Estoppel

Snead v. Bendigo, 240 Va. 399 (Va. 1990)

Norfolk and Western v. Bailey Lumber, 221 Va. 638 (Va. 1980)

Glasco v. Ballard, 249 Va. 61 (Va. 1995)

Bill of Review

8.01-428

Rule 1:1

8.01-623

Blunt v. Lentz, 241 Va. 547 Va. 1991)

Tuesday, November 7, 2023 – Juries

Jury Trials

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

8.01-336, 358-363

Batson v. Kentucky, 476 U.S. 79 (Va. 1986)(majority opinion only, as it relates to jury selection)

Coleman v. Hogan 254 Va. 64 (Va. 1997) (19)

Bethea v. Commonwealth 297 Va. 730 (2019) (Justice Powell's Dissent)

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

United Leasing Corp. v. Lehner Family Bus. Trust, 279 Va. 510 (Va. 2010)

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

Thursday, November 9, 2023 – 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 (Va. 2011)
CW V. Riner 268 Va. 296 (Va. 2004) (focus on discussion of preservation of double hearsay objection)
Galumbeck v. Lopez, 283 Va. 500 (Va. 2012)
Brandon v Cox 284 Va. 251 (Va. 2012)

Tuesday, November 14, 2023 –Special Issues in Virginia

Infliction of emotional distress

Womack v. Eldridge, 215 Va. 338 (Va. 1974)
Russo v. White, 241 Va. 23 (Va. 1991)
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 (Va. 1983)

Richmond Metropolitan Authority v. McDevitt Street Bovis, 256 Va. 553 (Va. 1998)

Kaltman v. All American Pest Control, 281 Va. 483 (Va. 2011)

Modern Oil Corp. v. Cannady, 2015 Va. Unpub. LEXIS 16

Thursday, November 16, 2023– Special Causes of Action – Medical Malpractice -Expert Testimony

Medical Malpractice

8.01-581.1 et seq

Chalifoux v. Radiology Associates, 281 Va. 690 (Va. 2011)

Mayr v. Osborne, 293 Va. 74 (Va. 2017)

8.01-399 Communications with physicians

8.01-20.1 Need expert before you serve

Expert Testimony

McMunn v Tatum, 237 Va. 558 (Va. 1989)

Hyundai v Duncan, 289 Va. 147 (Va. 2015)

Holiday Motors Corp. v. Walters, 292 Va. 461 (Va. 2016)

Toraish v. Lee, 293 Va. 262 (Va. 2017)

Tuesday, November 21, 2023 – Class Wrap-up

Review for Exam