

# VIRGINIA REMEDIES

SYLLABUS – SPRING 2023

MEETING TIMES: Tuesday and Thursday 8:10PM – 9:35PM

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Office Hours: By Appointment

(please email in advance for an appointment)

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## COURSE DESCRIPTION:

This course is an important course for students who wish to practice in Virginia or who may take the Virginia Bar Exam. The course emphasizes Virginia statutory law, common law, and rules of the Virginia Supreme Court that affect legal remedies available to a litigant.

Although this is not a Bar Review course, the student who reads the assigned materials, prepares for class, and actively participates in class discussions and debates will certainly be ahead of their peers when it becomes time to study for the bar exam.

There is no specific book for this class. We will learn from reading and discussing long-standing case law, recent decisions and statutes affecting legal remedies in Virginia. The course will also focus on equitable remedies and the interplay between law and equity.

This course will touch on a variety of legal subjects, including contracts, torts, property rights, family law, decedent's estates, mechanics liens, legal and medical malpractice, etc. We will review these subjects with an emphasis on the economics of litigation. Indeed, it has been said that the practitioner who does not counsel the litigant on a "cost-benefit analysis" is guilty of legal malpractice.

This course is not a substitute for Virginia Practice, but a logical adjunct. The following is a non-exclusive list of specific academic goals for this course:

1. Broadly learn and become familiar with legal and procedural statutes, rules, and common law that directly affect litigation in Virginia.
2. To comprehend the difference between legal and equitable remedies and determine which remedy may be available depending on the factual setting the practitioner is faced with.
3. To be able to understand and comprehend the legal reasoning and policies behind important Virginia case law.
4. To keep abreast of recent case law and statutory and rule changes and amendments.
5. To learn the practicalities of applying Virginia Law to real life legal experiences.

6. To appreciate the economics and pit falls of improvident litigation.
7. To integrate disparate legal disciplines and policies to bring to bear the correct legal remedy depending on the peculiar facts that a practitioner is confronted with.

CLASS FORMAT:

This class will be taught in person subject to school policy. The class will be interactive as successful learning is dependent upon preparation and class participation. Students will be pre-assigned cases to discuss in class. However, the amount of time and preparation each student puts into class will affect learning outcomes.

Students will earn credit for class participation pursuant to academic rules established by the Dean's office. We will follow the syllabus and assignments as closely as possible.

FINAL EXAM:

The Final Exam will consist of Twenty-Five (25) short answer essay questions and will be "closed book."

STUDENT RESPONSIBILITIES:

Students are required to attend classes and to be timely. If a student knows that he or she cannot attend class, it is the student's responsibility to notify the professor beforehand by email. Students shall read required materials in advance for each class, and shall be prepared to discuss the legal theory, rule, or case in that day's reading assignments, pursuant to the syllabus.

## Tentative Course Outline

### I. REMEDIES AS PART OF THE SYSTEM OF JUSTICE

#### A. Brief Outline of the Types of Remedies

1. **Substitution.**

Money as compensation for other losses. Used as to:

- (1) Actual loss of goods, value, or expectation.
- (2) Dignitary losses to reputation, peace of mind, liberty and marital rights as a result of intentional wrongs.
- (3) Pain and suffering awards for the unintended consequences of negligent acts.

2. **Punitive.**

Money payments in addition to compensation. There are different theories supporting some of these payments: Punishment of defendant for aggravated misconduct – conduct at least as bad as “reckless and wanton;” and deterrence of others from similarly aggravated misconducts; the less socially desirable is the conduct, the higher should be the disincentives. E.g., bounty to plaintiff for being a private attorney general (typically a statute allows double or treble the compensatory damages.)

3. **Nominal.**

Trivial amount of money awarded is a sign that fact of plaintiff’s injury is legally cognizable, although not compensable.

4. **Restitution.**

Money which was produced by defendant’s misuse of plaintiff’s resources, given to plaintiff because defendant has less right to it.

5. **Declarative.**

Before losses have happened, but after an opposing set of views have ripened, one may bring suit for a declaratory judgment or a bill to quiet title. These actions, alone, do not result in awards or orders.

6. **Coercive.**

Civil contempt of court may present a recalcitrant loser with a set of increasing penalties designed to secure acquiescence in the court’s view of things.

7. **Specific.**

Remedies which respond *in kind* to a deprivation. Such responses include specific performance, injunction, detinue, and ejectment.

**8. Ancillary.**

Classic ancillary remedies are receiverships, references to commissioners in chancer, constructive trusts, lines, and writs of possession. These are major things the chancellor can do to help a case along, non result in a final order or decision. Modern statutory tools, such as prejudgment attachment, should be included in this list.

**B. Ancient Rule of Binding Election.**

1. *Standard Products Co., Inc. v. Wooldridge & Co., Ltd.*, 214 Va. 476, 201 S.E.2d 801 (1974).

**C. The Concept of the Indivisible Claim.**

1. *Jones v. Morris Plan Bank of Portsmouth*, 168 Va. 284, 191 S.E. 608 (1937).
2. *Flora, Flora & Montague, Inc. v. Saunders*, 235 Va. 306, 367 S.E.2d 493 (1988).

**D. The Choice Between Law and Equity.**

1. *Worrie [Worrie II] v. Boze*, 198 Va. 533, 95 S.E.2d 192 (1956).
2. *Standardsville Volunteer Fire Co., Inc. v. Berry*, 229 Va. 578, 331 S.E.2d 466 (1985).

**E. The Equitable Approach.**

1. *Bond v. Crawford*, 193 Va. 437, 69 S.E.2d 470 (1952).

**F. Res Judicata.**

1. *Davis v. Marshall Homes*, 265 Va. 159, 576 S.E.2d 504 (2003).
2. Va. Supreme Court Rule 1:6

**II. SWORDS AND SHIELDS**

**A. Setoff.**

1. Liquidated or Unliquidated Claims?
  - a) *Dexter Portland Cement Co. v. Acme Supply Co., Inc.*, 147 Va. 758, 133 S.E. 788 (1926). Reheard June 24, 1926.
2. Mutuality and Same Right
  - a) *Broadus v. Gresham*, 181 Va. 725, 26 S.E.2d 33 (1943).
3. Procedure and Substance.
  - a) *Phelps Dodge Industries, Inc. v. Piedmont Electric Supply Corp.*, 523 F. Supp. 201 (1981).

**B. Counterclaim.**

1. Va. Supreme Court Rule 3:9
2. *Piland Corp. v. League Constr. Co.*, 238 Va. 187, 380 S.E.2d 652 (1989)

**C. Recoupment.**

1. Elements at Common Law
  - a) *City of Richmond v. Chesapeake & Potomac Telephone Co.*, 205 Va. 919, 140 S.E.2d 683 (1965).
2. Equitable Recoupment
  - a) *Reid v. Reid*, 12 Va. App. 1218, 409 S.E.2d 155 (1991).

3. Statutory Recoupment.
  - a) Va. Code § 8.01-422. Pleading Equitable Defenses in Unified Actions.

**D. Assignees and Aggressive Pleadings**

1. *First National Bank of Louisville v. Master Auto Service Corp.*, 693 F.2d 308 (4th Cir. 1982).

**E. Crossclaim and Non-suit**

1. Va. Supreme Court Rule 3:10. Cross-Claim
2. Dependency on Basic Claim.
  - a) *Ilyff v. Richards*, 221 Va. 644, 272 S.E.2d 645 (1980).
3. Va. Code § 8.01-380. Dismissal of Action by Nonsuit.

**III. LAW AND EQUITY ARE SEPARATE, BUT RELATED**

**A. The Merger of Law and Equity, Briefly.**

1. The English Experience
2. Experiences in the United States.
3. *Wright v. Castles*, 232 Va. 218, 349 S.E.2d 125 (1986).

**B. Merger by Increments.**

1. Equity Does Law
  - a) *Dobie v. Sears Roebuck Co.*, 164 Va. 464, 180 S.E. 289 (1935).
2. Law Does Equity
  - a) Va. Code. § 8.01-422, Supreme Court. Rule 1:4(k)
3. The changes of January 1, 2006, Unification of Practice. Va. Code Section 8.01 - 272.

**IV. JURISDICTION AND VENUE IN EQUITY**

**A. Original Jurisdiction**

1. U.S. Const. Art. III, Section 2.
2. Va. Act of 1700 established a court with chancery power.
3. Va. Code § 17.1-513. Jurisdiction of circuit courts.
4. Applicability of the Common Law.
  - a) Va. Code § 1-200. The Common Law
  - b) Va. Code § 1-201. Acts of Parliament.

**B. Acts of Parliament**

1. *Shirley v. Shirley*, 259 Va. 513 (2000).

**C. When the Circuit Court Should Deny Equitable Relief**

1. *Ewing v. Dutrow*, 128 Va. 416 (1920).

**D. Potential and Actual Jurisdiction.**

1. *Iron City Savings Bank v. Isaacsen*, 158 Va. 609, 164 S.E. 520 (1932).

**V. PARTIES AND EQUITABLE MAXIMS**

- A. Review Virginia Practice Notes on Parties and Standing.**
- B. Necessary Parties.**
  - 1. Virtual Representation.
  - 2. *NationsBank of Virginia, N.A. v. Estate of Ann L. Grandy*, 248 Va. 557, 450 S.E.2d 140 (1994).
- C. Adding Parties.**
  - 1. Va. Supreme Court Rule 3:14. New Parties.
  - 2. Va. Supreme Court Rule 3:15. Substitution of Parties.
- D. Maxims.**
  - 1. Equity Will Treat as Done that Which Ought to be Done.
    - a) *Pleasants v. Pleasants*, 221 Va. 1017, 277 S.E.2d 170 (1981).
  - 2. One Must Come Into Equity With Clean Hands.
    - a) *Bond v. Crawford*, 193 Va. 437, 69 S.E.2d 470 (1952).
  - 3. Equity Aids Only the Vigilant.
    - a) *Puckett v. Jessee*, 195 Va. 919, 81 S.E.2d 425 (1954).
  - 4. He Who Seeks Equity Must Do Equity.
    - a) *High Knob, Inc. v. Allen*, 205 Va. 503, 138 S.E.2d 49 (1964).
  - 5. Executed Contracts and Damages
    - a) *Stearns v. Beckham*, 72 Va. (31 Gratt.) 379 (1879) (On rehrn'g)

## **VI. PLEADINGS IN EQUITY**

- A. The Complaint Will Contain Equitable Claims.**
- B. Tradition In Equity will Continue.**
  - 1. Va. Supreme Court Rule 3:1. Matters Not Covered by These Rules.
  - 2. *Chappell v. Smith*, 208 Va. 272 (1967).
  - 3. *Mathieson Alkali v. Virginia Banner Coal Corp.*, 140 Va. 89, 124 S.E. 470 (1924).  
(Professor will provide an abbreviated version)
- C. Amendments of Pleadings – Legal and Equitable Claims**
  - 1. *Powell v. Sears, Roebuck & Company and Roper, Inc.*, 231 Va. 464, 344 S.E.2d 916 (1986)
  - 2. *Johnson v. Buzzard Island Shooting Club, Inc.*, 232 Va. 32, 348 S.E.2d 220 (1986).
- D. Proceedings on Default**
  - 1. Va. Supreme Court Rule 3:19. Judgment by Default in Unified Practice.
  - 2. *Chappell v. Smith*, 208 Va. 272, 156 S.E.2d 572 (1967).

## **VII. THE BASE FOR DEFENSIVE REMEDIES**

- A. Accident.**
  - 1. *Byrne v. Edmonds*, 64 Va. (23 Gratt.) 200 (1873). (Professor will provide abbreviated version of this case)
- B. Consideration, Lack of.**

1. The "Peppercorn Rule"
  2. Unilateral Contracts
    - a) *Bond v. Crawford*, 193 Va. 437, 69 S.E.2d 470 (1952).
  3. Family Settlements
    - a) *Weade v. Weade*, 153 Va. 540, 150 S.E. 238 (1929).
- C. Duress and Undue Influence.**
1. Undue Influence
    - a) *Cook v. Hayden*, 183 Va. 203, 31 S.E.2d 625 (1944).
  2. Emotional Distress
    - a) *Norfolk Division of Social Services v. Unknown Father*, 2 Va. App. 420, 345 S.E.2d 533 (1986).
  3. Economic Suasion.
    - a) *Bond v. Crawford*, 193 Va. 437, 69 S.E.2d 470 (1952).
- D. Equitable Estoppel.**
1. The Need for a Misrepresentation
    - a) *Heath v. Valentine*, 177 Va. 731, 15 S.E.2d 98 (1941).
  2. Estoppels by Conduct.
    - a) *Emrich v. Emrich*, 9 Va. App. 288, 387 S.E.2d 274 (1989).
  3. Parties and Mutuality
    - a) *Brown v. Lawson Transportation Corp.*, 7 Va. App. 679, 377 S.E.2d 136 (1989).
  4. Change of Position.
    - a) *Lataif v. Commercial Indus. Constr., Inc.*, 223 Va. 59, 286 S.E.2d 159 (1982).
    - b) *Webb v. Webb*, 16 Va. App. 486, 431 S.E.2d 55 (1993).
  5. Note on Promissory Estoppel.
    - a) *Virginia School of the Arts, Inc. v. Eichelbaum*, 254 Va. 373, 377 S.E.2d 510 (1997).
- E. Fraud.**
1. Actual and Constructive Fraud. Distinguished
    - a) *Trust Company of Norfolk v. Fletcher*, 152 Va. 868, 148 S.E. 785 (1929).
- F. Hardship and Unconscionability**
1. Seller's Remorse
    - a) *Beckett v. Kornegay*, 150 Va. 636, 143 S.E. 296 (1928).
- G. Unconscionability – Willful Ignorance.**
1. *Pillow v. Pillow*, 13 Va. App. 271, 410 S.E.2d 407 (1991).
- H. Laches.**
1. Nature of the Equitable Defense
    - a) *Taylor v. Taylor*, 14 Va. App. 642, 418 S.E.2d 900 (1992).
  2. Laches and the Law.

a) *U.S. v. Lomas Mortgage, USA, Inc.*, 742 F. Supp. 936 (W.D. Va. 1990).

**I. Mistake of Fact.**

1. Effect of After-Discovered Facts.

a) *Seaboard Ice Co., Inc. v. Lee*, 199 Va. 243, 99 S.E.2d 721 (1957).

2. The Mistake Must be Mutual.

a) *Fox-Sadler Co., Inc. v. Earl E. Norris Roofing Co.*, 229 Va. 106, 327 S.E. 2d 95 (1985).

**J. Mistake of Law.**

1. *Pillow v. Pillow*, 13 Va. App. 271, 410 S.E.2d 407 (1991).

**VIII. COMMISSIONERS IN CHANCERY**

**A. Tradition in Equity**

1. *Raiford v. Raiford*, 193 Va. 221, 68 S.E.2d 888 (1952).

**B. Appointment**

1. Va. Code § 8.01-6-8. How Accounts Referred.

2. Va. Supreme Court Rule 2:18. Proceedings Before a Commissioner in Chancery

3. Va. Code § 8.01-611. Notice of Time and Place of Taking Account.

4. Timing of the Reference

a) *Mathieson Alkali v. Virginia Banner Coal Co.*, 140 Va. 89, 124 S.E. 470 (1924).  
(abbreviated version will be provided)

b) *Raiford v. Raiford*, 193 Va. 221, 68 S.E.2d 888 (1952).

**C. The Commissioner's Relation to the Court.**

1. *French v. Pobst, Special Commissioner*, 203 Va. 704, 127 S.E.2d 137 (1962).

**D. Due Process**

1. *Sadler v. Whitehurst*, 83 Va. 46, 1 S.E. 410 (1887).

**E. The Commissioner's Hearing**

1. Va. Code § 8.01-614. His Power to Adjourn His Proceedings.

2. Va. Code § 8.01-612. Commissioner May Summon witnesses.

**F. The Commissioner's Report.**

1. Va. Supreme Court Rule 2:18 Proceedings Before a Commissioner in Chancery

2. Fact Finding Powers of Commissioner

3. *Raiford v. Raiford*, 193 Va. 221, 68 S.E.2d 888 (1952).

4. *Brown v. Brown*, 11 Va. App. 231, 397 S.E.2d 545 (1990).

**IX. RECEIVERS**

**A. General Receivers**

1. Va. Code § 8.01-582, §13.1-910: Appointment of General Receivers; Their Duties; Audit of Funds

**B. When to Appoint Special Receivers, Section 8.01 – 591.**

1. Insolvent's Estates.
    - a) *Smith v. Butcher*, 69 Va. (28 Gratt.) 144 (1877).
    - b) *Shannon v. Hanks*, 88 Va. 338, 13 S.E. 437 (1891).
  2. The Special Case of Corporations
    - a) *Bethlehem Steel Corp. v. Williams Industries, Inc.*, 245 Va. 38, 425 S.E.2d 484 (1993).
- C. Powers and Duties of Special Receivers.**
1. Sale of Jointly-Owned Assets.
    - a) *Marefield Meadows, Inc. v. Regula Lorenz*, 245 Va. 255, 427 S.E.2d 363 (1993).

## **X. RESCISSION, CANCELATION, & REFORMATION**

- A. Recession for Fraud**
1. Fraud on a Party
    - a) *Linhart v. Foreman's Adm'r*, 77 Va. 540 (1883).
- B. Use of a Trust**
1. *Sweeny v. Patton*, 134 Va. 117, 113 S.E. 715 (1922).
- C. Choice of Remedy**
1. *Tennant v. Dunlop*, 97 Va. 234, 33 S.E. 620 (1899).
- D. Cancellation.**
1. Errors of Law
    - a) *Brown (1<sup>st</sup> Adm'r) v. Rice's Adm'r.*, 67 Va. (26 Gratt.) 467 (1875).
- E. Cancellation and Restoration**
1. *Home Building & Conveyance Co. v. London*, 98 Va. 152, 35 S.E. 362 (1900).
- F. Reformation**
1. Two Reasons
    - a) *Ward v. Ward*, 239 Va. 1, 387 S.E.2d 460 (1990).
    - b) *Friendly Ice Cream, et al. v. Beckner*, 268 Va. 23, 597 S.E.2d 34 (2004).

## **XI. RESTITUTION & RESTITUTIONARY MEASURES**

- A. Third Party Practice Reminder**
1. Va. Code § 8.01-281. Pleading in Alternative; Separate Trial on Motion of Party
- B. Restitution in Aid of Justice**
1. Traditional Restitution – Breach of Fiduciary Duty
    - a) *Bell v. Routh Robbins Real Estate Corp.*, 206 Va. 853, 147 S.E.2d 277 (1966).
- C. Balancing the Equities: Inadvertences ex aequo et bono.**
- D. Statutory Types of Restitution.**
1. Bad Check Law: Va. Code § 6.1-118.1
  2. Consumer Finance and Usury: Va. Code § 6.1-249

3. Judgments Reopened After Service by Publication: Va. Code § 8.01-576.
  4. The Unfair Insurance Practices Act: Va. Code § 38.2-218.
  5. Motor Vehicle Case: Va. Code § 46.2-395
  6. Consumer Protection: § 59.1-200 et seq.
  7. Buyers Rights on Buyer's Breach Under U.C.C.: Va. Code § 8.2-718.
  8. Va. Residential Prop. Disclosure Act: Va. Code § 55-517 et seq.
- E. Domestic Relations Cases are not "Pure" Equity.**
1. *Reid v. Reid*, 14 Va. App. 505, 419 S.E.2d 398 (1992 en Banc).
  2. *Reid v. Reid*, 245 Va. 409, 429 S.E.2d 208 (1993) [REID II]
- F. Indemnity.**
1. Statutory Indemnity: Va. Code § 8.01-32; Va. Code § 8.01-488.
  2. Indemnity Defined and Surety Distinguished.
    - a) *First Virginia Bank-Colonial v. Baker*, 225 Va. 72 (1983).
- G. Who Sues Whom?**
1. *Appalachian Power Co. v. Earline Virginia Sanders*, 232 Va. 189 (1986)
- H. Surety**
1. Va. Code § 1-205. Bond with Surety.
- I. Contribution**
1. Va. Code § 8.01-34. When Contribution Among Wrongdoers Enforced.
  2. Causes of Action and Rights of Action
    - a) *Shiflet v. Eller*, 228 Va. 115, 319 S.E.2d 750 (1984).
  3. Contribution Among Tenants in Common.
    - a) *Jenkins v. Jenkins*, 211 Va. 797, 180 S.E.2d 516 (1971).
- J. Subrogation**
1. By federal Law:
    - a) Medicare Secondary Act – 42 U.S.C. § 1395y(b) [ § 1862(b) of the Social Security Act], and 42 C.F.R. Part 411.37.
    - b) *Coventry Health Care of Missouri, Inc. v. Nevils*, 137 S. Ct. 1190 (2017).
  2. By surety.
    - a) *Webb v. USF&G*, 165 Va. 388, 182 S.E. 557 (1935).
  3. Relations Between Subrogees and Third Party
    - a) *Ball v. C.D.W. Enterprises, Inc.*, 13 Va. App. 470 (1992).
- K. Guaranty.**
1. *Phoenix Ins. v. Lester Bros.*, 203 Va. 802, 127 S.E.2d 432 (1962).
- L. Quasicontract**
1. Common Law Courts Apply Equitable Principles
  2. The Contract Implied in Law
    - a) *Raven Red Ash Coal Co. v. Ball*, 185 Va. 534, 39 S.E.2d 231 (1946).
  3. Waive the Tort and Sue in Assumpsit

4. The “Common Counts” in Assumpsit
  - a) The Action for Money Had and Received
  - b) The Action for Money Laid Out and Expended.
  - c) The Action for Goods Sold and Delivered
  - d) The Action for Goods Had and Received
  - e) The Action for Use and Occupancy of Land.

## **XII. INJUNCTIONS**

### **A. Jurisdiction.**

1. Va. Code § 8.01-620. General Jurisdiction of Circuit Court to Award Injunctions
2. The province of the Law Courts
  - a) *Moorman v. Lynchburg*, 113 Va. 90, 73 S.E. 987 (1912).

### **B. Balancing the Equities.**

1. Ancient Lights – The English test Adopted.
  - a) *Berkeley v. Smith*, 68 Va. (27 Gratt.) 892 (1876).
2. The Federal Test Adopted (When to Issue an Injunction).
  - a) *Ible v. Commonwealth*, 11 Va. Cir. 130 (Richmond Cir. Ct. 1987).
3. Federal Test Qualified
  - a) *Winter v. Natural Resources Defense Council*, 555 U.S. 7 (2008).
  - b) *Real Truth About Obama v. FEC*, 575 F. 3d 342 (2009).
4. Forced Sales
  - a) *Akers v. Mathieson Alkali Works*, 151 Va. 1, 144 S.E. 492 (1928).
  - b) *Large v. Clinchfield Coal Co.*, 239 Va. 144, 387 S.E.2d 783 (1990).
5. There is a Limit
  - a) *McClellan v. Ashley*, 200 Va. 38, 104 S.E. 2d 55 (1958).

### **C. Injunctions Look to the Future**

1. *Coalter v. Hunter*, 25 Va. (4 Rand.) 58 (1826).

### **D. Invalid Injunctions, the Duty to Obey**

1. *Local 333B, United Marine Div. v. Commonwealth*, 193 Va. 773, 71 S.E.2d 159 (1952).

## **XIII. SPECIFIC PERFORMANCE**

### **A. Damages or Specific Performance?**

1. On the Superiority of the Equitable Remedy
  - a) *Rose v. Nicholas*, 2 Va. Ch. Dec. 268 (1794).
2. Equity Overrides Efficiency?
  - a) *Firebaugh v. Hanback*, 247 Va. 519, 443 S.E.2d 134 (1994).

### **B. Contracts for Personal Services**

1. Contracts For A Course of Conduct.
  - a) *Southern Ry v. Franklin & Peterson R. R.*, 96 Va. 693, 32 S.E.485 (1899).

2. Uncertainty of Value May Be A Factor.
  - a) *Dominick v. Vassar*, 235 Va. 295, 367 S.E.2d 487 (1988).
3. Contracts To Make A Will.
  - a) *Adams v. Snodgrass*, 175 Va. 1, 7 S.E.2d 147 (1940).

**C. Statutory Actions**

1. U.C.C.
  - a) §8.2-306. Output, Requirements and Exclusive Dealings. §8.2-716. Buyer's Right To Specific Performance Or Detinue.
2. Marketing Agreements.
  - a) §13.1-329. Marketing Contracts; Enforcement; Inducing Breach.
  - b) Nonspecific Performance - *Chesapeake Builders, Inc. v. Lee*, 254 Va. 294, 492 S.E.2d 141 (1997).

**XIV. CREDITOR'S BILLS, CONTEMPTS AND OTHER ENFORCEMENTS**

**A. Introduction.**

**B. Writ of Assistance**

1. Va. Supreme Court Rule 3:1. Matters Not Covered by These Rules.
2. Modern Methods of Assistance.
  - a) *McClure Grocery Co. Inc. v. Watson*, 148 Va. 601, 139 S.E. 288(1927).
  - b) *El-Amin v. Adams*, Record No. 0282-94-2 (Va. Ct. App. May 16, 1995).

**C. Contempts (Writ of Attachment).**

1. Lile, Writ of Attachment; Process of Contempt. Va. Code. Ann. §19.2-11: Procedure in Contempt Cases.
2. Civil or Criminal?
  - a) *Local 333B, United Marine Div. v. Commonwealth*, 193 Va. 773, 71 S.E.2d 159 (1952).
3. Contempt in Support of Commissioners and Receivers. *Camden v. Virginia Safe Deposit & Trust Co.*, 115 Va. 20, 78 S.E. 596 (1913).
4. How the Pressure Works.
  - a) *Bettius & Sanderson, P.C. v. National Union Fire Insurance Company of Pittsburgh, PA.*, 839 F.2d 1009 (4th Cir. 1988).
5. A Command is Needed.
  - a) *French v. Pobst*, 203 Va. 704, 127 S.E.2d 137 (1962).
6. Invalid Orders.
  - a) *Local 333B, United Marine Div. v. Commonwealth*, 193 Va. 773, 71 S.E.2d 159 (1952).
7. Punishment for Criminal Contempts. Va. Code §18.2-456.

**D. Sequestration.**

1. Va. Code §8.01-426.
2. Supreme Court Rule 2:19.

- E.     **§8.01-427. Persons entitled under decree deemed judgment creditors; execution on decree.**
- F.     **§8.01-466. Clerk to issue fieri facias on judgment for money.**
- G.     **Order of Sale.**
  - 1.     Lile: What is a judicial sale?
    - a)     VA Code § 8.01-462. Jurisdiction of equity to enforce lien of judgment; when it may decree sale.
  - 2.     Lile: By Whom Made.
    - a)     Va. Code § 8.01-96. Decree for sale; how made; bond of commissioner.
  - 3.     Tailored Decrees.
    - a)     *Stimpson v. Bishop*, 82 Va. 190 (1886).
  - 4.     Upset Bids.
    - a)     *Moore v. Triplett*, 96 Va. 603 (1899).
  - 5.     The Proceeds of Sale.
    - a)     *Tyler v. Toms*, 75 Va. 116 (1880).
- H.     **Performance by Proxy.**
  - 1.     Va. Code § 8.01-110. Appointment of Special Commissioner to Execute Deed, etc.; Effect of Deed.
- I.     **Assignments for the Benefit of Creditors.**
  - 1.     Va. Code § 55-156. Recordation; Notice of Sale; Preferences Prohibited.
  - 2.     Typical Case.
    - a)     *Federal Land Bank of Baltimore v. McCann*, 174 Va. 30, 4 S.E.2d 742 (1939).
- J.     **Creditor's Bills.**
  - 1.     Lile §423. Creditors' Bills, Proper Plaintiffs.
  - 2.     Lile §424. The General Creditors' Bill.
  - 3.     Va. Code § 8.01-463. Enforcement of Lien When Judgment Does Not Exceed Twenty Dollars.
  - 4.     Lis Pendens.
  - 5.     The General Creditor's Suit is Sur Generis. *Clark v. George*, 161. Va. 104, 170 S.E. 713 (1933).
- K.     **Conveyances Which Injure Creditors**
  - 1.     Va. Code § 55-80 – Fraudulent Conveyance
    - a)     Badges of Fraud: *Armstrong v. U.S.*, 7 F. Supp. 2d 758 (W.D. Va. 1998).
  - 2.     Va. Code § 55-81 – Voluntary Conveyance
    - a)     *Abbott v. Willey*, 253 Va. 88 (1997).
    - b)     *Colonial Investment Co. v. Cherrydale Cement Block Co.*, 194 Va. 454 (1952)
  - 3.     Statutes

## **XV. TRADITIONAL ANCILLARY REMEDIES**

- A.     **Accountings.**

1. Current Authority.
  2. Va. Code § 8.01-31. Accounting in Equity.
- B. Traditional Basis.**
1. *Shield v. Brown*, 166 Va. 596, 186 S.E. 33 (1936).
- C. Accounting at Law Necessity.**
1. *Pereira v. Moon*, 146 Va. 225, 135 S.E. 672 (1926).
- D. Fiduciaries.**
1. *Simmons v. Simmons*, 74 Va. (33 Gratt.) 451 (1880).
  2. *Greenwood Assoc. Inc. v. Crestar Bank*, 248 Va. 265, 448 S.E. 2d 399 (1994).
- E. Bill of Peace.**
1. *Randolph's Adm'x v. Kinney*, 24 Va. (3 Rand.) 394 (1825).
- F. Setting Up Lost Instruments.**
1. Statute on Lost Evidence.
    - a) Va. Code § 8.01-32. Action on Lost Evidences of Debt; Indemnifying Bond.
  2. Proving the Loss.
    - a) *Bickers v. Pinnell*, 199 Va. 444, 100 S.E.2d 20 (1957).
- G. Constructive Remedial Trusts – Quick Visit**
1. *Cooper v. Cooper*, 249 Va. 511, 457 S.E.2d 88 (1995).

## XVI. LIENS

- A. Artisan's Liens and Security Interests.**
1. Example.
    - a) Va. Code § 43-33. Lien of Mechanic for Repairs.
  2. Secured Transactions and Liens.
    - a) *Checkered Flag Motor Car Co. v. Grulke*, 209 Va. 427, 164 S.E.2d 660 (1968).
- B. Liens -- Attorneys:**
1. Common Law Lien - Regulatory Interpretation. LEO # 1544, (1993); Rule 1-16. Ending Representation.
  2. Statutory Lien on the Cause of Action. Va. Code § 54.1-3932. Lien for Fees.
  3. Statutory Liens -- Perfecting Them.
    - a) *Fary v. Aquino*, 218 Va. 889, 241 S.E.2d 799 (1978).
  4. Statutory Liens Limitation.
    - a) *Stevens v. Sparks*, 205 Va. 128, 135 S.E.2d 140 (1964).
  5. Contract Based Liens.
    - a) *Univ. of Richmond v. Stone*, 148 Va. 686, 139 S.E. 257 (1927).
- C. Mechanic's Liens.**
1. Coverage.

- a) Va. Code § 43-3. Lien for Work Done and Materials Furnished; Waiver of Right to File or Enforce Lien.

**D. Strict Construction and Liberal Enforcement.**

- 1. *American Standard Homes Corp. v. Reinecke*, 245 Va. 113, 425 S.E.2d 515 (1993).

**E. Remedy Against an Unlawful Lien.**

- 1. *Rosser v. Cole*, 237 Va. 572, 379 S.E.2d 323 (1989).

**F. Medical Liens**

- 1. Medicare/Medicaid
- 2. Anti-subrogation state. Va. Code § 38.2-3405

## **XVII. INJURIES TO REAL PROPERTY INTERESTS**

**A. Vindicating an Easement.**

- 1. Necessary Parties.
  - a) *Fairfax County Park Authority v. Atkisson*, 248 Va. 142, 445 S.E.2d 101 (1994).
- 2. Necessary Proofs.
  - a) *Dillingham v. Hall*, 235 Va. 1, 365 S.E.2d 738 (1988).
- 3. Negative Easements.
  - a) *Prospect Development v. Bershader*, 258 Va. 75, 515 S.E.2d 291 (1999).
  - b) *U.S. v. Blackman*, 270 Va. 68, 613 S.E.2d 442 (2005).

**B. Vindicating the Title and Regaining Possession.**

- 1. Ejectment Comes to Virginia.
  - a) *Suttle v. R.F. & P. R. R.*, 76 Va. 284 (1882).
- 2. Modern Statutes:
  - a) Va. Code § 8.01-13 L Action of Ejectment Retained; When and by Whom Brought.
  - b) Va. Code § 8.01-132. What Interest and Right Plaintiff Must Have.
- 3. Defendant may Have Two Bites: Equitable Defenses.
  - a) *Withrow's Ex'x v. Porter*, 131 Va. 623, 109 S.E. 441 (1921).

**C. Vindicating the Title.**

- 1. Va. Code § 55-153. Removal of Cloud; Nature of Plaintiff's Title.
- 2. Ancillary Remedies are Available.
  - a) *Bath Hardwood Lumber Co. v. Back Creek Mountain Corp.*, 140 Va. 280, 125 S.E. 213 (1924).

**D. Partition.**

- 1. Compelling Partition.
  - a) Va. Code § 8.01-81. Who May Compel Partition of Land; Jurisdiction; Validation of Certain Partitions of Mineral Rights.

**E. Partition Plus.**

- 1. *Leonard v. Boswell*, 197 Va. 713, 90 S.E.2d 872 (1956).

## XVIII. DAMAGES

### A. Substitutionary Remedies.

1. The Goal in Tort Cases between Individuals.
  - a) *Naccash v. Burger*, 223 Va. 406, 290 S.E.2d 825 (1982).
2. The Goal in Contract Cases.
  - a) *Kamlar Corp. v. Haley*, 224 Va. 699, 299 S.E.2d 514 (1983).
3. Emotional Distress.
  - a) *Naccash v. Burger*, 223 Va. 406, 290 S.E.2d 825 (1982).

### B. Measurement of the Loss.

1. Direct Damage -- Five Kinds in a Construction Contract.
  - a) *Chesapeake & Potomac Telephone Co. v. Sisson & Ryan, Inc.*, 234 Va. 492, 362 S.E.2d 723 (1987).
2. U.C.C. Positions.
  - a) Va. Code § 8.2-708. Seller's Damages for Nonacceptance or Repudiation. §8.2-709. Action for the Price.
3. Executory Contract for Sale.
  - a) *Montauk Ice Cream Co. v. Daigger Co.*, 141 Va. 686, 126 S.E. 681 (1925).
4. Direct Damage -- Breach of Warranty.
  - a) *Wharton v. Savin Corp.*, 232 Va. 375, 350 S.E.2d 635 (1986).
5. Direct Damage -- Lost Volume Sellers.
  - a) *Famous Knitwear Corp. v. Drug Fair, Inc.*, 493 F.2d 251 (4th Cir. 1974).
6. Trade Secrets and Breach of Confidence.
  - a) *American Sales Corp. v. Adventure Travel, Inc.*, 862 F. Supp. 1476 (E.D. Va. 1994).
7. Direct Damages -- Proof of Market Price.
  - a) Va. Code § 8.2-723. Proof of Market Price; Time and Place.
  - b) *Williams v. Snider*, 190 Va. 226, 56 S.E.2d 63 (1949).
8. Lost Profits.
  - a) *Cancun Adventure Tours, Inc. v. Underwater Designer Co.*, 862 F.2d 1044 (4th Cir. 1988).
9. The "Track Record Rule." Loss of Profits.
  - a) Va. Code § 8.01-52

### C. Economic Losses.

1. Definitions.
  - a) *Sensenbrenner v. Rust, Orling & Neale, Architects, Inc.*, 236 Va. 419, 374 S.E.2d 55 (1988).
  - b) "As is" contracts, fraud, economic damages.

### D. Consequential Damages.

1. Va. Code § 8.2-710. Seller's Incidental Damages

2. Va. Code § 8.2-715. Buyer's Incidental and Consequential Damages.
  3. Reprise to *Hadley v. Baxendale*.
    - a) *Washington & Old Dominion Ry. v. Westinghouse Electric & Mfg. Co.*, 120 Va. 620, 91 S.F. 646 (on reh'ng 1917).
- E. Prohibitions of and Formal Limitations on Damages.**
1. Contractual Prohibitions.
    - a) *Envirotech Corp. v. Halco Eng'g, Inc.*, 234 Va. 583, 364 S.E.2d 215 (1988).
  2. Legislative, Restraints.
    - a) *Matthews v. Ford Motor Co.*, 479 F.2d 399 (4th Cir. 1973).
  3. Liquidated Damages and Penalties.
    - a) *Taylor v. Sanders*, 233 Va. 73, 353 S.E.2d 745 (1987).
  4. Va. Code § 8.2-718: Liquidation or Limitation of Damages; Deposits.
- F. Foreseeability.**
1. In Contract Cases.
    - a) *Richmond Medical Supply Co., v. Clifton*, 235 Va. 584, 369 S.E.2d 407 (1988).
  2. Foreseeability in Tort Cases (Proximate Cause).
    - a) *Tulloch v. Hoops*, 206 Va. 665, 145 S.E.2d 152 (1965).
    - b) Va. Code § 8.2-715. Buyer's Incidental and Consequential Damages.
- G. The Duty to Mitigate Damages.**
1. *Cancun Adventure Tours, Inc. v. Underwater Designer Co.*, 862 F.2d 1044 (4th Cir. 1988). [Facts above.]
- H. Private Remedies and Public Law -- Punitive (Exemplary) Damages.**
1. Punitive Damages at Common Law.
  2. *Bowers v. Westoaco Corporation*, 244 Va. 139, 419 S.E.2d 661 (1992).
  3. *O'Connell v. Bean*, 263 Va. 176, 556 S.E.2d 741 (2002).
  4. Punitive Damages in a Criminal Law Statute.
    - a) *Greenspan v. Osheroff*, 232 Va. 388, 351 S.E.2d 28 (1986).
  5. Statutory Damages (Tort).
  6. *Town & Country Properties, Inc. v. Riggins*, 249 Va. 387, 457 S.E. 2d 356 (1995).
    - a) Va. Code § 38.2-1916.2. Penalties; Injunctive Relief; Restitution.
  7. Independent Tort in the Contract Case. [Worrie II from Ch. 1.]
  8. The Cap.
    - a) Va. Code § 8.01-38.1. Limitation on Recovery of Punitive Damages.
- I. General Burdens of Proof.**
1. Standard of Proof.
    - a) *Barnes v. Graham Virginia Quarries, Inc.*, 204 Va. 414, 132 S.E.2d 395 (1963).
  2. Multiple Causation.
    - a) *Sachs v. Hoffman*, 224 Va. 545, 299 S.E.2d 694 (1983).
  3. Shifting Burdens.

- a) *Stohlman v. S&B Ltd. P'ship*, 249 Va. 251 (1995).
- J. Duty to Avoid Damages.**
  - 1. Contributory Negligence.
    - a) *Cody v. Norton Coal Co.*, 110 Va. 363, 66 S.E. 33 (1909).
  - 2. Contracting Away.
    - a) *Chesapeake & Potomac Telephone Co. v. Sisson & Ryan, Inc.*, 234 Va. 492, 362 S.E.2d 723 (1987).
- K. Avoiding Double Compensation.**
  - 1. *Tazewell Oil Co. v. United Virginia Bank/Crestar Bank*, 243 Va. 94, 413 S.E.2d 611 (1992).
- L. Prejudgment Interest.**
  - 1. Va. Code § 21-1 1(a).

## **XIX. ATTORNEY FEE DISPUTES**

- A. Fee Awards.**
  - 1. Statutory Sources.
    - a) *Lambert v. Sea Oats Condo. Ass'n, Inc.* 293 Va. 245, 798 S.E.2d 177 (2017)
  - 2. Fee Awards -- The American Rule.
    - a) *City of Virginia Beach v. Aetna Casualty & Surety Co.*, 426 F. Supp. 821 (E.D. Va. 1976).
  - 3. Exceptions:
    - a) *Prospect Development Co. v. Bershader*, 258 Va. 75, 515 S.E.2d 291 (1999).
  - 4. Fee Awards -- Elements of Common Law Claim.
    - a) *Wood v. Carwile*, 231 Va. 320, 343 S.E.2d 346 (1986).
  - 5. Fee Awards -- Elements and Limits.
    - a) *Tazewell Oil Co. v. United Virginia Bank/Crestar Bank*, 243 Va. 94, 413 S.E.2d 611 (1992).
    - b) *Conway v. American National Bank*, 146 Va. 357, 131 S.E. 803 (1926).
  - 6. Fee Awards r- Proportionality.
    - a) *Grand Piano Co. v. Lewis*, 179 Va. 281, 19 S.E.2d 86 (1942).
  - 7. Fee Awards --Need for Proof.
    - a) *Wilson v. Wilson*, 18 Va. App. 193, 442 S.E.2d 694 (1994).
  - 8. Fee Awards -- The "Common Fund" Rule.
    - a) *duPont v. Shackelford*, 235 Va. 588, 369 S.E.2d 673 (1988).
  - 9. Fee Awards -- Standards and Burdens in Public Law Cases.
    - a) *Greenwald Cassell Assoc., Inc. v. Guffey*, 19 Va. App. 179, 450 S.E.2d 181 (1994).
  - 10. Collection Activities -- Intervention.
    - a) *Parten Paint & Drywall, Co. v. Wells/Ashburn Venture*, 29 Va. Cir. 117 (Loudoun Cir. Ct. 1992).

11. Know Who Your Client Is.
  - a) *Holland v. Whitley*, 158 Va. 115, 163 S.E. 349 (1932).
    - (1) Statutory Liens -- Know Whether or Not You Are a Party.
      - (a) *McEwen Lumber Co. v. Lipscomb Bros. Lumber Co.*, 234 Va. 243, 360 S.E.2d 845 (1987).
    - (2) Interruption of Representation.
      - (a) *Heinzman v. Fine, Fine, Legum & Fine*, 217 Va. 958, 234 S.E.2d 282 (1977).
12. By Contract or Statute
  - a) *Chawla v. BurgerBusters, Inc.*, 255 Va. 616 (1998)
13. Sanctions
  - a) Va. Code § 8.01-271

## XX. BUSINESS TORTS

### A. Common Law Injury to Business.

1. Welcome to VA: *Worrie [Worrie II] v. Boze*, 198 Va. 533, 95 S.E.2d 192 (1956).
2. Adoption:
  - a) *Chaves v. Johnson*, 230 Va. 112, 335 S.E.2d 97 (1985).
3. Extension:
  - a) *Commercial Business Sys., Inc. v. Bellsouth Servs. Inc.*, 249 Va. 39, 453 S.E.2d 261 (1995).
4. Distinctions.
  - a) *Haigh v. Matsushita Electric Corp.*, 676 F. Supp. 1332 (E.D. Va. 1987).
5. Defenses.
  - a) *Jae-Woo Cha v. Korean Presbyterian Church*, 262 Va. 604 (2001).

### B. Statutory Conspiracy to Injure a Business.

1. Elements of the Statutory Tort.
  - a) *Tazewell Oil Co., v. United Virginia Bank/Crestar Bank*, 243 Va. 94, 413 S.E.2d 611 (1992).
2. Type of Malice Required.
  - a) *Commercial Business Sys., Inc. v. Bellsouth Servs. Inc.*, 249 Va. 39, 453 S.E.2d 261 (1995).
3. Damages.
  - a) *Commercial Business Sys., Inc. v. Bellsouth Servs. Inc.*, 249 Va. 39, 453 S.E.2d 261 (1995). [Facts above.]
4. Intracorporate Immunity Doctrine. .
  - a) *Selman v. American Sports Underwriters, Inc.*, 697 F. Supp. 225 (W.D.Va. 1988).

### C. Interference with a Prospective Contract of Employment.

1. *Haigh v. Matsushita Electric Corp.*, 676 F. Supp. 1332 (E.D. Va. 1987).

- D. Covenants Not to Compete.**
1. Covenants Strictly Construed.
    - a) *Clinch Valley Physicians, Inc. v. Garcia*, 243 Va. 286, 414 S.E.2d 599 (1992).
  2. Tests for Enforcement of a Covenant.
    - a) *Home Paramount Pest Control Comp. v. Shaffer*, 282 Va. 412, 718 S.E. 2d 762 (2011) (reversing *Paramount Termite Control Co. v. Rector*, 238 Va. 171, 380 S.E. 2d 922 (1989)).
  3. Proving and Connecting the Claim to Damage.
    - a) *Saks Fifth Ave., Inc. v. James, Ltd.*, 272 Va. 177, 630 S.E.2d 304 (2006).
- E. Breach of a Fiduciary Duty—Corporate Officers and Directors.**
1. *Giannotti v. Hamway*, 239 Va. 14, 387 S.E.2d 725 (1990).
- F. Corporate Dissolution**
1. *Giannotti v. Hamway*, 239 Va. 14, 387 S.E.2d 725 (1990).
  2. Related Party Transactions. .
    - a) *Giannotti v. Hamway*, 239 Va. 14, 387 S.E.2d 725 (1990).
  3. Inadequate Dividends.
    - a) *Giannotti v. Hamway*, 239 Va. 14, 387 S.E.2d 725 (1990).
  4. Remedies
    - a) *Giannotti v. Hamway*, 239 Va. 14, 387 S.E.2d 725 (1990).
  5. A Final Word on *Gianotti*.
- G. Breach of a Fiduciary Duty – Attorneys**
1. *Pickus v. Virginia State Bar*, 232 Va. 5, 348 S.E. 2d 202 (1986).
- H. Virginia Trade Secrets Act**
1. *Avtec Systems, Inc. v. Peiffer*, 805 F. Supp. 1312 (1992).
- I. Respondent Superior**
1. *Majorana v. Crown Central Petroleum Corp.*, 260 Va. 521 (2000).
- J. Wrongful Discharge**
1. *Doss v. Jamco, Inc.*, 254 Va. 362 (1997); *Mitchem v. Counts*, 259 Va. 179 (2000).
- K. Negligence Dudas and Skate America**
1. Negligent Hiring or Retention
    - a) *Simmons v. Baltimore Orioles, Inc.*, 712 F. Supp 79 (W.D. Va. 1989)
- L. Business Invitees**
1. *Thompson ex rel. Thompson v. Skate America, Inc.*, 261 Va. 121, 540 S.E. 2d 123 (2001).
  2. *Taboada v. Daly Seven*, 272 Va. 213, 636 S.E. 2d 889 (2006) (Opinion on Sanctions).
  3. *Yuzefovsky v. St. John’s Wood Apartments*, 261 Va. 97 (2001) (threat to tenants from assaultive behavior of persons on adjacent sidewalks was not sufficiently “imminent” to raise a duty to warn).
- M. Defamation**

1. *Government Micro Resources, Inc. v. Jackson*, 271 Va. 29, 624 SE 2d 63 (2006).