

# Virginia Practice - Law 334

Summer, 2019

## Syllabus

### Professors:

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### 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.

There is no specific book 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 II of the Code of Virginia

A convenient link for the Virginia Rules and Statutes is:

<http://www.courts.state.va.us/courtadmin/librarv/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) to 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/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 professors 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.

## Daily Syllabus and Reading Assignments

### 1. Monday, Monday May 20, 2019 - 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,  
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  
Interlocutory Appeals: 8.01-670.1  
Alternative Dispute Resolution: 8.01-581.01, 581.02, 581.09, 581.010  
Rules 5A:5, 5:7, 5:7B, 5:40  
***Baker v. Elmendorf, 271 Va. 474***  
DeNovo Appeals...void upon appeal

#### 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)

#### 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)  
***Galumbeckv. Lopez, 283 Va. 500 (2012)***  
*Brandon v Cox* 284 Va. 251

## **2. Wednesday, May 22, 2019 – Venue & Service**

### **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&WRailway Co. v. Williams*, 239 Va. 390

*Virginia Electric and Power Co. v. Dungee*, 258 Va. 235

*Faison v. Hudson*, 243 Va. 413

### **General:**

8.01-275.1, 286.1, 293-295, 325, 326, 290

Rules 3:2 and 3:5

*May 27 No Class Memorial Day*

## **3. Wednesday, May 29, 2019- Service of Process**

### **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 defects

### **Long arm jurisdiction:**

8.01-328.1

8.01-328-329

*Kolbe v. Chromodern Chair*, 211 Va. 736

*Krantz v. Airline Pilots Association* 245 VA. 202

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

*Forrer v Brown* 221 Va. 1098

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**Miscellaneous:**

8.01-286.1, 288, 275.1, 277, 277.1 325-327, 314  
20-99.1:1 Rule3:5(e)

***O 'Cornell v Bean 263 Va. 176 Gilpin v. Joyce, 257 Va. 579***

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***

**PARTIES & 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. Strang*, 2017 LEXIS 5 (February 16,2017)

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

***Kepe 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***

*Richmond V. Volk* 2015 Va. LEXIS 59

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

**4. Monday, June 3, 2019 - Parties and Claims (cont.)**

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***

***Gemco-Ware, Inc. v. Rongene Mold, 234 Va. 54***

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

8.01-25,26

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**

#### **5. Wednesday, June 5, 2019 - Statutes of Limitations (cont.)**

***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

#### **General rules of pleading:**

Rules 1:4, 5, 8,9,10 and 13; Rules 3: 2 and 3:18; 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 Corp.* 805 S.E.2d 240 (Va. 2017)**

#### **6. Monday, June 10, 2019 - Pleadings and Motions - (cont)**

##### **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**

## **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., All* 422 S.E.2d 770 (1992)

*Tomlin v. McKenzie*, 251 Va. 478

*Coutlakis v. CSX Transportation*, 2017 Va. LEXIS 26 (March 26, 2017)

## **7. Wednesday, June 12, 2019 - Pleadings and Motions (con't.)**

### **Summary Judgment**

Rule 3:20; 8.01-420; Rule 4:7

*Gay v. Norfolk & Western*, 253 Va. 212

*New Rules 2019*

### **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) 798 SE 2d 187

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

## **8. Monday, June 17, 2019 - 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**

***Horme v. Milgrim*, 226 Va. 133**

***Shaheen v. Mathews County*, 265 Va. 462**

***Food Lion, Inc. v. Melton*, 250 Va. 144**

***Crane v. Jones* 214 Va. 581**

***Condominium Associates v. 1<sup>st</sup> Owners Assoc.* 281 Va. 561**

***Temple v Mary Washington Hospital* 762 SE 2d 751**

### **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)**

***Stanfleldv. Peregov* 245 va. 339**

***Niese v City of Alexandria* 264 Va. 230**

***Linhart v Law son* 261 Va. 30**

***Commonwealth v. Peterson*, 286 Va. 349**

***McBride v. Bennett* 288 Va. 450**

## **9. Wednesday, June 19, 2019 - Immunity (con't)**

### **Charitable Immunity**

Va Code 8.01-38

***University of Virginia Health Services v Morris* 215 Va. 319**

***Ola v. YMCA of South Hampton* 270 Va. 550**

***Bahatia V. Mehak* 262 Va. 544**

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

### **SPECIAL 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**



**10. Monday, June 24, 2019 - 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 *Simon v. Forer*, 265 Va. 483 *Laws*

*v Mcllroy* 285 Va. 594 *Temple v Mary Washington Hospital* 288 Va.

134 *Javier v Arminio* 272 Va. 353

**11. Wednesday, June 26, 2019 - Finality and Re-litigation,**

Rules 1:1; 1:13; 3:19(d) (2); 8.01-335

**Finality**

*Super Fresh v. Ruffin*, 263 Va. 555

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

*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*, 795 S.E. 2d 887 (2017)

**Collateral Estoppel**

*Sneadv. 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

### **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

### **Motions in Limine**

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

***Heinrich Schepers GmbH & Co., KG v. Whitaker*, 280 Va. 507**

## **12. Wednesday, July 1, 2019 - 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)

## **13. Wednesday, July 3, 2019 – OTHER ISSUES AND CAUSES OF ACTION**

**Intentional infliction of emotional distress Medical Malpractice**

8.01-581.1 etseq

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

*Osborne*, 2017 LEXIS 3 (February 2,2017) 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***, 790 S.E. 2d 447 (2016) Toraish v. Lee, Virginia Supreme Court, (April 13,2017) ***Dorman v. State Indus.***, 292 Va. 111 (2016) ***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

**14. Monday, July 8, 2018 - Review**