**Virginia Supreme Court 2016 Update**

**February GMAIC Meeting**

1. **Civil Law**
   1. *Egan v. Butler*, 772 S.E.2d 765 (Va. 2015).
      1. Facts: Butler was a diesel mechanic and Egan was his supervisor. After three months of work, Egan fired Butler for unsatisfactory job performance. That same day, Egan filed a complaint for misdemeanor assault and battery, claiming that Butler had pushed and then cut/stabbed Egan. This assault and battery charge was dismissed with prejudice. Butler filed a complaint against Egan and the employer alleging malicious prosecution and defamation.
      2. Holding: To find an employer liable for punitive damages based on the actions of their employees, a plaintiff must show (1) the employer authorized or ratified an employee’s wrongful conduct; or (2) the employee who committed the wrongful act is in a *sufficiently high position* in the corporate structure. The court also held that record of past job performance can be admitted as relevant evidence.
   2. *McKellar v. Northrop Grumman Shipbuilding*, Record No. 140999 (Va. Oct. 29, 2015).
      1. Facts: McKellar worked at Northrop Grumman for 42 years as a structural welder. On April 1, 2010, McKellar notified that he would be retiring May 1, 2010. On April 15, 2010, McKellar was injured on the job. After he retired, the pain continued and an orthopedic surgeon determined that he was totally disabled.
      2. Holding: For total disability cases, courts use the loss of earning capacity test as opposed to the economic loss test.
   3. *Pendleton v. Newsome*, Record No. 141116 (Va. June 4, 2015).
      1. Facts: A first grade student died as a result of a severe allergic reaction to a peanut provided by her classmate. The child’s death gained widespread publicity, and reports included statements made by the defendants (school officials). The mother claims that the statements were malicious and intended to divert public attention from the failure of the school staff by insinuating and implying that the mother had failed to inform the school, provide a medical plan, and provide the required medication. School files a demurrer, which is granted by the trial court.
      2. Holding: To maintain an action for defamation, a plaintiff must show that a reasonable reader could infer a defamatory meaning from the statements based on circumstances and context.
   4. *Collett v. Cordovana*, Record No. 141297 (Va. June 4, 2015).
      1. Facts: Collett owns property in Norfolk. Collett alleges that her two neighbors were responsible for directing massive quantities of water run-off and pollutants from their property to Collett’s property, which caused ongoing damage financially and emotionally. Collett alleges that Cordovanas’ property was altered by dumping gravel, which raised it approximately four inches and now water flows onto Collett’s property. Holding: Under common law, a landowner is allowed to fight off water to the best of his or her abilities. In a complaint, the plaintiff must allege specific facts to show that the defendant acted “wantonly, unnecessarily, or carelessly.”
   5. *Butler v. Fairfax County School Board*, Record No. 150150 (Va. Dec. 17, 2015).
      1. Facts: Butler was convicted of a felony drug offense in 1992. In 2000, she was licensed to teach by the Virginia Board of Education, and in 2006, she applied to the Fairfax County School Board for a teaching position. She truthfully disclosed her conviction, and she was then hired as a special education teacher. In 2012, the Assistant Superintendent was informed of her prior conviction and subsequently determined that Butler was ineligible for employment pursuant to a Virginia Code section that prohibits a school board from hiring an applicant for employment who has been previously convicted of a felony.
      2. Holding: Virginia Code § 22.1-296.1, which on its face makes ineligible for school employment any teach convicted of a prior felony, must be read according to the plain meaning of the text.
   6. *Richmond v. Volk*, Record No. 150192 (Va. Jan. 28, 2016).
      1. Facts: Plaintiff’s vehicle was hit by a woman Katherine Craft, who was driving Jeannie Cornett’s vehicle with permission.  Parties exchanged information, including that the car’s owner had a State Farm policy.  Plaintiff timely files suit, but messes up the names, suing Katherine Cornett – a non-existent person.  When serving process, Plaintiff issues the summons in the name of Katherine Cornett aka Katherine Craft, this time mistakenly sending the process server to the address of the car owner, instead of the car driver.  Katherine Craft, now married and named Katherine Volk enters a special appearance.  Plaintiff non-suits and refiles, this time properly serving Volk.  Volk files a special plea of the statute of limitations, saying the original complaint did not toll the statute of limitations and Plaintiff had not amended her original complaint to name the proper party, so the relation back doctrine could not apply.
      2. Holding: As long as a plaintiff properly identifies the party as the person committing the alleged act, misnaming the party when serving process is not a fatal error.
2. **Domestic Law**
   1. *Lee v. Spoden***, 776 S.E. 2d 798, 2015 LEXIS 33 (September 17, 2015)**
      1. Facts**:** Lee and Spoden divorce, and Spoden surrenders her shares of his business for becoming a salaried SHC employee and for receiving the net proceeds of his business’s property in Florida when it sold. She later sued her husband and company. **for breach of contract and fiduciary duty. She filed a show cause order enforcing the divorce decree. Lee prevailed at his contempt hearing and sold the Florida property. The contempt order was not admitted as evidence at trial.**
      2. Holding: **There are two types of claim preclusion (a bar, meaning a defendant wins in prior litigation; and merger, when a plaintiff wins) as well as the two types of issue preclusion (direct estoppel and collateral estoppel). Also, when weighing the admissibility of the evidence (the contempt order), the question is whether the evidence is whether the evidence was *substantially* outweighed by the danger of *unfair* prejudice.**
   2. *Wooten v. Bank of America*, **N.A., 777 S.E.2d 848 (September 17, 2015)**
      1. Facts: Husband bought property and then married Wooten three years later. He then borrowed money and executed a Deed of Trust to secure the loan. Wooten did not sign the documents or Deed of Trust. Husband then conveyed the property to himself and his wife as tenants by the entirety and recorded the deed. When they got divorced, payments on the mortgage stopped. **The final divorce decree noted the property foreclosure and ordered proceeds or shortage to be divided after sale and payment of debts and Wooten’s counsel signed the decree “seen”.**
      2. Holding: Because there was no language in the divorce decree that placed Wooten in a direct debtor-creditor relationship with her husband’s lender, the lender had no cause of action based upon judicial estoppel. Additionally, the divorce decree as “seen” did not bind her.
3. **Criminal Law**
   1. *Walker v. Commonwealth*, 770 S.E.2d 197; 2015 Va Lexis 41, April 16, 2015
      1. Facts: Defendant specializes in the sale of cocaine. His friend calls him and wants to purchase cocaine. At the friend’s suggestion they meet outside a local supermarket where Defendant sells him a gram at a discounted price. Five days later the friend calls Defendant again and they arrange another sale at a different location suggested by Defendant. Defendant gives him another discount. Five days after that the friend calls again and the two meet again at a location picked by the friend. Defendant charges friend full price for the gram of cocaine this time. Five days later the friend contacts Defendant again and they complete a fourth transaction at a fourth different location during which Defendant charges friend full price for the cocaine. All drugs deals occurred within the same small town, within a half mile of each other. Defendant is subsequently indicted for four counts of Distribution of Cocaine.
      2. Holding: Virginia Supreme Court Rule 3A:6 requires that crimes be part of a common scheme or plan in order for cases to be tried at the same time, and in this case, the deals all constituted separate crimes.
   2. *Williams v. Commonwealth*, 771 S.E.2d 675 (2015).
      1. Facts: Defendant met with a detective on O’King Street in Prince William County. At the meeting the detective asks the defendant to help him buy heroin. The defendant tells him she can help him, gets in his car and instructs him to drive to Fremont Street where the detective gives the defendant buy money and she buys heroin for the detective from someone on the street. Both go back to O’King Street where defendant is arrested for Distribution of Heroin. At trial, the Commonwealth proves only these facts and the defendant is convicted and sentenced.
      2. Holding: Court of Appeals erred in inferring that trial court had taken judicial notice that the situs of the offense was located within its territorial jurisdiction, because the trial court’s failure to indicate that it was taking judicial notice deprived defendant of opportunity to object to trial court’s action or dispute the accuracy of any “facts” noticed prior to the trial court’s ruling.
   3. *Ricks v. Commonwealth*, 778 S.E.2d 332; 2015 Va. LEXIS 166, November 12, 2015 and *Chilton v. Commonwealth*, 2014 Va. App. LEXIS 379 (Va. Ct. App., Nov. 18, 2014
      1. Facts: Ricks gets drunk and angry with a neighbor. He comes home and tells his girlfriend that he wants to kill the neighbor. Girlfriend tells him to get in bed and sleep it off. Ricks is angered by this, hits his girlfriend a belt and puts his hands around her throat on three separate occasions. He is charged with malicious wounding by strangulation in violation of Virginia Code §18.2-51.6.
      2. Holding: In a case of first impression, the Court held, “bodily injury” within the scope of “§18.2-51.6 is any bodily injury whatsoever and includes an act of damage or harm or hurt that relates to the body. There did not need to be a breaking of the skin, breaking of the bones or other “more significant” injury to justify a conviction under this statute.
   4. *Fuentes v. Clarke* (Record No. 141890, 10/29/2015)
      1. Facts: Counsel advises lawful permanent resident prior to entry of a plea of guilty that her conviction will likely result in deportation unless there is an exemption available to her. Counsel further informs Client that because Counsel is not an immigration attorney Client should consult an immigration attorney before entering her plea. Counsel does not inform her of the immigration laws as they apply to her and does not know the nuances of immigration law. Client enters plea of guilty and is subsequently placed into deportation proceedings. Client files Habeas Petition.
      2. Holding: A lawful permanent resident was advised prior to entering a guilty plea to larceny, that her conviction would “likely” result in deportation, unless defendant found an exemption within the immigration system. Attorney further advised that he was not an immigration lawyer and that defendant should consult one. SCOVA found that defendant received effective assistance of counsel under these circumstances.
   5. *Com. v. Swann*, 290 Va. 194, 201, 776 S.E.2d 265, 270 (2015).
      1. Facts: Defendant is charged with multiple crimes. During trial, the detective testifies, over Defendant’s objection, as to the contents of an anonymous tip which led to his arrest. The tipster told the Detective that the defendant had told him he couldn’t go out with him because he had done something bad. The Commonwealth offered the tip to establish why the Detective centered his investigation on defendant and why he took the actions he took.
      2. Holding: The Court of Appeals ruled for the defendant and held that the admission of the anonymous tip violated defendant’s confrontation clause guarantee. The evidence admitted at trial constituted inadmissible double hearsay and that the error was not harmless as the Court could not determine that the admission of the statement did not affect the jury’s determination of defendant’s guilt.
   6. *Velasquez-Lopez v. Clarke*, 290 Va. 443, 449, 778 S.E.2d 504, 508 (2015)
      1. Facts: Velasquez-Lopez did not speak English. He was given counsel and a court-appointed interpreter. He was given additional time with his counsel and interpreter, but afterwards he pled guilty to all counts. He then sent a hand-written letter to the court claiming that his attorney did not do his job.
      2. Holding: The court held that “[c]ounsel performs in a professionally unreasonable manner *only* by failing to follow the defendant's *express instructions* with respect to an appeal.” A defendant who explicitly tells his attorney not to file an appeal plainly cannot later complain that, by following his instructions, his counsel performed deficiently.
   7. *Bowman v. Com.*, 290 Va. 492, 498-99, 777 S.E.2d 851, 856 (2015)
      1. Facts: A homeowner entered into a verbal agreement with Bowman to build a swimming pool. They agree to a price and an initial advance. Bowman received the advance, but the estimated completion date came and went without any work taking place. Bowman claimed that he needed more time due to health problems and his workload.
      2. Holding: The Supreme Court held that a request for a return of the advance must be unequivocal in order to trigger the construction fraud statute. The homeowner failed to prove that he had unequivocally requested the return of the advance.
   8. *Evans v. Com.*, 290 Va. 277, 283, 776 S.E.2d 760, 762 (2015)
      1. Facts: Police officers smelled a strong odor of burnt marijuana. Concerned for the safety of the child, the officer approaches the front door of the home and knocks. Evan’s mother answers the door and as she does so the unmistakable odor of marijuana erupts from inside the home. The officer immediately asks her whether anyone is using marijuana and tells her he smells it. Michelle denies anyone is using marijuana. After denying it several times, she admits that her son was smoking a blunt and she and her son give written consent to search the house. While there, the officers find cocaine, morphine, loaded handguns, ammunition, and cash.
      2. Holding: The court held that probable cause and exigent circumstances authorized the warrantless entry by the officers into the apartment. After the initial sweep, the officers received consent to fully search the home. The Supreme Court did not address the consent aspect of the search, as it found that exigent circumstances allowed the search and they did not need to address that issue.