

The Survey of New York Practice Table of Contents

Editorial Board

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THE SURVEY OF NEW YORK PRACTICE

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INTRODUCTION

In this second issue of Volume 70, *The Survey* analyzes recent developments in New York law. In *Anne R. v. Francis C.*, the Family Court, Queens County, held that post-death DNA tests on a decedent's frozen blood samples were admissible where the decedent's blood was drawn prior to his death. The court noted that the petitioner in *Anne R.* had established standing to bring the paternity action by proving the decedent had openly acknowledged the child as his own. In this case, where the decedent's blood was drawn prior to death, the order of blood genetic testing was reasonable. The writer asserts that statutory classifications that do not allow illegitimate children to prove paternity are violative of the Equal Protection Clause of the Fourteenth Amendment and illegitimate children should be

able to utilize posthumous DNA testing.

In *Siemens Credit Corp. v. Marvik Colour, Inc.*, the United States District Court for the Southern District of New York adopted a novel approach granting a creditor who failed to comply with the notice and reasonableness requirements of section 9-504(3) of the New York Commercial Code a right to a deficiency judgment. The *Siemens Credit* court combined the varying approaches utilized by the departments of the New York Appellate Division. The court applied a combination of the rebuttable presumption and set-off rules and held that a creditor's noncompliance does not absolutely bar a deficiency judgment. The writer proposes an amendment to the New York Commercial Code codifying the approach adopted in *Siemens Credit*.

In *People v. Sanders*, the New York Court of Appeals held that in order to admit evidence under the coconspirator exception to the hearsay rule, the prosecution must either produce or demonstrate the unavailability of the declarant. Subsequent to the *Sanders* decision, the United States Supreme Court in *United States v. Inadi* held that the unavailability requirement did not apply to the coconspirator exception, reasoning that such statements derive their indicia of reliability from the context in which they were made. Since the Supreme Court's ruling in *Inadi*, lower courts in New York have struggled over the applicability of the *Sanders* rule. In addition, the lower courts are now struggling with whether the unavailability rule should be applied to other hearsay exceptions.

Finally, in *People v. Letterlough*, the New York Court of Appeals held that requiring a defendant convicted of driving while intoxicated to affix a "CONVICTED DWI" sign on any vehicle he drove failed to meet the primary purposes of probation. The court held that making a "CONVICTED DWI" sign a condition of defendant's probation was both punitive and deterrent and not reasonably related to the primary purpose of probation, namely rehabilitation. The writer contends that the *Letterlough* court's interpretation of probation under Penal Law section 65.10 restricts trial judges' ability to use creative sentencing as a method of probation.

The members of Volume 70 hope that this review of New York case law and legislative developments will be of interest to both the bench and the bar.