

## 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 first issue of Volume 68, *the Survey* discusses recent developments in New York law. In *People v. Brown*, the Court of Appeals adopted the present sense impression exception to the rule against hearsay, reasoning that the contemporaneous nature of the declarant's statements eliminated the likelihood of deliberate fabrication or memory loss. Notwithstanding the speaker's

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\* *The Survey* uses the following abbreviations:

New York Civil Practice Law and Rules (McKinney) .....	CPLR
New York Civil Practice Act .....	CPA
New York Criminal Procedure Law (McKinney) .....	CPL
New York Code of Criminal Procedure .....	CCP
Real Property Actions and Proceedings Law (McKinney) .....	RPAPL
Domestic Relations Law (McKinney) .....	DRL
Estates, Powers and Trusts Law (McKinney) .....	EPTL
General Business Law (McKinney) .....	GBL
General Municipal Law (McKinney) .....	GML
General Obligations Law (McKinney) .....	GOL
D. Siegel, <i>New York Practice</i> (1991) .....	SIEGEL
Weinstein, Korn & Miller, <i>New York Civil Practice</i> (1989) .....	WK&M
<i>The Survey of New York Practice</i> .....	<i>The Survey</i>

anonymity, the court applied the exception, finding that "sufficient corroboration" provided the indicia of reliability necessary to ensure the declarant's veracity.

In *People v. Esquivel*, the New York Supreme Court, New York County, held that in a surety hearing held pursuant to Criminal Procedure Law section 520.30, a criminal defendant has the burden of proving, by a preponderance of the evidence, that the collateral posted to indemnify a bail bond obligor is not the fruit of criminal or unlawful conduct. In formulating its decision, the court examined the function of bail and the unique situation of criminal defendants. In addition, the court held that it is authorized to disapprove the bail bond if any aspect of the transaction, including provisions for indemnification of the obligor in case of forfeiture, contravenes public policy.

Finally, in *Didner v. Keene Corp. (In re New York City Asbestos Litigation)*, the Court of Appeals, in interpreting GOL section 15-108, unanimously adopted an aggregate approach in crediting settlements to verdicts assessed against nonsettling defendants. The court found this method to be consonant with the legislative aims of encouraging settlements and limiting nonsettling defendants' liability to their equitable share.

The members of Volume 68 hope that *the Survey's* treatment of these developments in New York law will be of interest and value to both bench and bar.