

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 67, *the Survey* analyzes several

* *The Survey* uses the following abbreviations:

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|---|-------------------|
| 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 |
| David 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> |

recent developments in New York law. In *Rockefeller v. Moront*, the Appellate Division, Third Department held that a suture, negligently placed in a patient's body during a hernia operation, causing the patient's sterility, was a "foreign object" within the meaning of CPLR 214-a. The statute of limitations was thus tolled until the plaintiff had discovered the source of his injury. Drawing a curious semantical distinction, the court held that the exception to the foreign object rule for "fixation devices" did not apply to the suture—clearly a fixation device in the normal context—because the suture had not been intentionally placed in the injurious location.

The New York Legislature, with the enactment of Article 87 of the CPLR, joined a growing trend among states by allocating a portion of civil punitive damage awards to the State. The new statute, which is likely to be challenged on constitutional grounds, allows the State to collect twenty percent of the punitive damages awarded in any civil action.

In *Robert O. v. Russell K.*, the Court of Appeals once again ruled on the right of an unwed father to notice of his child's adoption. In *Robert O.*, the court held that a father who was unaware of his child's existence until ten months after an adoption was completed had no right to notice of, or to consent to, that adoption. Failing to recognize any rights based solely on the biological link between father and child, the court held that a father must take some affirmative step manifesting his willingness to be a parent. Any rights, moreover, are lost if such steps are not taken early in the adoption proceedings—even if the father is unaware that these proceedings are taking place.

Lastly, in *People v. Duffy*, the Court of Appeals held that a defendant may be convicted of second degree manslaughter for recklessly causing another to commit suicide. The court held in that case, in which the defendant had handed a rifle and ammunition to a drunken, suicidal teenager, that Penal Law section 125.15(3), intentionally aiding or assisting a suicide, was not the exclusive means for prosecuting conduct that contributes to another's suicide.

The members of Volume 67 hope that this review of recent New York caselaw and legislative developments will be of interest to both bench and bar.