

## The Survey of New York Practice Table of Contents

Editorial Board

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

---

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact [selbyc@stjohns.edu](mailto:selbyc@stjohns.edu).

# THE SURVEY OF NEW YORK PRACTICE

## TABLE OF CONTENTS

### DEVELOPMENTS IN THE LAW

*New York Court of Appeals recognizes that insured's contractual right to notice of cancellation becomes vested upon insured's liquidation* . . . . . 1213

*New York Court of Appeals rules that New York City may tax a non-domiciliary corporation on proceeds received from investment in corporation with business activities in city* . . . . . 1223

### CRIMINAL PROCEDURE LAW

*New York Court of Appeals holds that criminal defendants bringing Rosario claims by way of CPL § 440.10 must demonstrate that People's failure to deliver Rosario materials constituted actual prejudice* . . . . . 1233

### DOMESTIC RELATIONS LAW

*DRL § 117(1)(e): New York Court of Appeals extends preserved right of inheritance under laws of intestacy to issue of adopted-out child* . . . . . 1243

### PENAL LAW

*Penal Law § 70.04(1)(v): New York Court of Appeals holds incarceration resulting from invalid conviction does not toll limitation period for determining recidivist status* . . . . . 1249

### INTRODUCTION\*

In this final issue of Volume 66, *The Survey* reviews several

---

\* *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

noteworthy developments in New York law. In *Digirol v. Superintendent of Insurance*, the New York Court of Appeals held that a policyholder of a foreign insurance company had a right to notice of cancellation which became vested upon the liquidation of the insurer. Finding that publication of notice by the insurer's Missouri receiver did not satisfy the contractual obligation to send notice of cancellation to the policyholder, the *Digirol* court allowed a claim against the insurer's New York ancillary receiver.

The constitutionality of a New York City corporate tax provision imposing a tax on income earned by a corporation through its investment in another company with some presence in the City was upheld in *Allied Signal, Inc. v. Commissioner of Finance*. The Court of Appeals in that case found that the Commerce and Due Process Clauses of the Federal Constitution did not require that a tax be based on the taxpayer's own activity in the taxing forum. Rather, the taxpayer's investment in a company that derived income from activities within the City formed a sufficient nexus to allow a tax on the investment income related to those activities.

In *People v. Jackson*, the Court of Appeals held that a defendant bringing a post-judgment motion to vacate under CPL § 440.10(1)(f) on the grounds that the prosecution failed to turn over "Rosario" material must show that this failure caused him actual prejudice at trial. Noting that if brought on direct appeal this same violation would constitute per se error, entitling the defendant to a new trial, the *Jackson* court reasoned that society's interest in the finality of judgments warranted a higher standard for reversing judgments after all appeals had been exhausted.

Reflecting New York's desire to expand the inheritance rights of certain adopted-out children, in *Matter of Seaman* the Court of Appeals held that the issue of children adopted by stepparents had a right to intestate inheritance from the natural family of the adoptive child. The *Seaman* court found this right to be implied in DRL § 117(1)(e), which granted to children adopted by steppar-

---

|   |            |
|---|------------|
| 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> .....                          | THE SURVEY |

ents the right to intestate inheritance from their natural families.

Finally, in *People v. Dozier*, the Court of Appeals interpreted Penal Law § 70.04, which requires that a convicted felon receive an enhanced sentence if he has been convicted of a separate felony within the prior ten years, but excludes from this ten-year period time spent incarcerated for "any reason." The *Dozier* court held that the ten-year period is not tolled for the period of time the defendant spent incarcerated for a conviction that is later found to be invalid, but not unconstitutional. In so holding, the *Dozier* court extended a line of authority excluding time spent incarcerated for an unconstitutional conviction from the tolling provision.

The members of Volume 66 hope that *The Survey's* review of these recent decisions of the New York Court of Appeals will be of interest and value to the bench and bar.

