

## The Survey of New York Practice Table of Contents

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# THE SURVEY OF NEW YORK PRACTICE

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### INTRODUCTION\*

In this first issue of Volume 62, *The Survey* examines various

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\* The following abbreviations will be used uniformly through *The Survey*:

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

developments in New York law, including three Court of Appeals decisions. In *A.G. Ship Maintenance Corp. v. Lezak*, the court addressed the issue of frivolous litigation practices and held that courts cannot impose sanctions for such conduct unless authorized by a statute or court rule.

In *Morell v. Balasubramanian*, a unanimous Court of Appeals rejected the claim that a malpractice action against state-employed physicians was essentially a claim against the state which had to be pursued in the Court of Claims. The court held that the employees of the state were the real parties in interest and therefore the supreme court may properly hear the case.

In *Addesso v. Shemtob*, the court held that under CPLR 3211(e), the defendants' failure to raise the defense of lack of personal jurisdiction in an earlier 3211(a) motion effected a waiver of the right to use that defense in their answer to an amended complaint.

The Appellate Division, Second Department, in *Schanback v. Schanback*, held that the use of CPLR 4317(b), which enables a court to order a "compulsory reference," was not appropriate to determine the economic issues in a matrimonial action since such an action did not entail an "examination of a long account" as characterized by the court.

Finally, in *People v. Washington*, the Appellate Division, First Department, held that section 270.35 of the CPL, which provides for the discharge of a juror, grants broad discretion to a trial judge to discharge an allegedly ill juror without direct proof of the illness or adjournment for an investigation. The court rejected the narrower Fourth Department's approach, which requires a credible basis on the record for such a discharge, in favor of the more liberal approach used in the Second and Third Departments.

The members of Volume 62 hope that the analyses of the topics contained in *The Survey* will be of value to the New York bench and bar.

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Estates, Powers and Trusts Law (McKinney) .....	EPTL
General Business Law (McKinney) .....	GBL
General Municipal Law (McKinney) .....	GML
General Obligations Law (McKinney) .....	GOL
D. Siegel, New York Practice (1978 & Supp. 1987) .....	SIEGEL
Weinstein, Korn & Miller, New York Civil Practice (1982) .....	WK&M
<i>The Survey of New York Practice</i> .....	<i>The Survey</i>