

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 third issue of Volume 60, *The Survey* examines a variety of issues of recent importance in New York law. Among the cases analyzed is *Rosado v. Proctor & Schwartz, Inc.* In *Rosado*, the Court of Appeals rejected the contention that manufacturers of products, in a strict products liability action, have a right to indemnification from the purchaser of the product. The court held that the strict products liability action gave the manufacturer of a defective product no indemnification right against the purchaser where the purchaser agreed to install necessary safety devices, and the purchaser's employee became injured due to the failure to install such devices.

In *Fe Bland v. Two Trees Management Co.*, the Court of Appeals examined transfer fees, or "flip taxes" on the sale of cooperative housing units. The *Fe Bland* court held that the imposition of a valid transfer fee required cooperative shareholder approval, and any such flip tax must be proportioned to share ownership. As a result of this case, the New York legislature amended the relevant

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

Extremely valuable in understanding the CPLR are the five reports of the Advisory Committee on Practice and Procedure. They are contained in the following legislative documents and will be cited as follows:

1957 N.Y. Leg. Doc. No. 6(b)	FIRST REP.
1958 N.Y. Leg. Doc. No. 13	SECOND REP.
1959 N.Y. Leg. Doc. No. 17	THIRD REP.
1960 N.Y. Leg. Doc. No. 120	FOURTH REP.
1961 Final Report of the Advisory Committee on Practice and Procedure	FINAL REP.

Also valuable are the two joint reports of the Senate Finance Assembly Ways and Means Committee:

1961 N.Y. Leg. Doc. No. 15	FIFTH REP.
1962 N.Y. Leg. Doc. No. 8	SIXTH REP.

section of the BCL, thereby allowing transfer fees that are not proportioned to share ownership.

In *Duffy v. Horton Memorial Hospital*, the Court of Appeals interpreted CPLR 203(e). It had been unclear, prior to *Duffy*, whether section 203(e) permitted a plaintiff to assert an otherwise time-barred claim against a third-party defendant with an amended complaint. The *Duffy* court allowed amendment of the complaint because it was served prior to the running of the statute of limitations, and because the service gave the third party defendant notice of the plaintiff's claim.

A recent interpretation of CPLR 302(b) is also included in this issue of *The Survey*. *McCasland v. McCasland*, a recent Appellate Division, Third Department case, has shed light upon long arm jurisdiction in matrimonial actions involving foreign divorces and nonresidents. The Appellate Division held that because CPLR 302(b) provided the sole source of jurisdiction in equitable distribution actions for New York property after a foreign divorce, personal jurisdiction over the nonresident spouse could not be obtained in New York under other jurisdictional bases.

The Survey also examines a recent Court of Appeals' interpretation of CPL 200.40(1). Section 200.40 allows two or more defendants to be jointly charged in a single indictment; it also permits the court to use separate proceedings for the defendant if justice requires. In *People v. Cruz* and *People v. Brims*, two cases consolidated on appeal, the Court of Appeals held that confessions are "interlocking," so as to defeat a motion for severance, if the confessions are substantially similar as to their content, regardless of their comparative reliability.

Finally, *The Survey* addresses the Second Department's analysis of section 265.02 of the Penal Law. In *People v. Rodriguez*, the Appellate Division rejected the contention that the "home or place of business" exception for felony firearm possession must be pleaded by the People. The Appellate Division held that the prosecution need not prove every element of the crime, namely that possession occurred outside the home or place of business, unless the defendant first produces evidence to the contrary.

The members of Volume 60 hope that the New York bench and bar find the cases analyzed in *The Survey* to be of interest and value.