

# 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 fourth issue of Volume 59, *The Survey* examines a va-

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\* The following abbreviations will be used uniformly throughout *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 Laws (McKinney) . . . . . DRL  
Estates, Powers and Trusts Law (McKinney) . . . . . EPTL  
General Municipal Law (McKinney) . . . . . GML

riety of issues of recent importance in New York law. Among the cases considered is *Sheldon v. Kimberly-Clark Corp.* In *Sheldon*, the Appellate Division, Second Department, reaffirmed the fiduciary shield doctrine, which provides that personal jurisdiction cannot be exercised over a nonresident corporate officer even when the action involves tortious acts that the nonresident officer performed in New York. The Appellate Division dismissed the plaintiff's complaint because it "alleged only bare conclusory allegations." However, in dictum, the court noted that the fiduciary shield doctrine would have prevented jurisdiction over the nondomiciliary corporate defendants even if the minimum contacts requirements of CPLR 302(a)(3) were satisfied.

In *Broida v. Bancroft*, the Appellate Division, First Department, held that jurisdiction over an action involving the internal affairs of a foreign corporation would be entertained unless contrary to the forum non conveniens principles of CPLR 327. The *Broida* decision limited the use of the internal affairs rule, which enables courts to dismiss an action involving a foreign corporation when the internal affairs of the corporation are at issue, by relegating the internal affairs rule to only one factor in the determination of a forum non conveniens issue.

*The Survey* also examines the Court of Appeals decision in *5303 Realty Corp. v. O & Y Equity Corp.*, in which CPLR 6501 was strictly construed. The Court held that a notice of pendency would not be issued in an action for the specific performance of a

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. 20 .....	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 and Assembly Ways and Means Committee:

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

contract for the sale of real property. The Court noted that an action must be directly related to realty for the filing of a notice of pendency to be proper. Reasoning that the ownership of corporate stock and the ownership of real property are mutually exclusive, the Court held that such a direct relationship did not exist.

In *1303 Webster Avenue Realty Corp. v. Great American Surplus Lines Insurance Co.*, the Court of Appeals restricted the use by insurance companies of the shortened limitation periods available under section 3404(e) of the Insurance Law. The Court held that the general six-year limitation period will be used if the insurance policy fails to provide for the shortened period available under section 3404(e).

Finally, *The Survey* addresses the Court of Appeals recent interpretation of section 3407 of the Insurance Law in *Igara v. New York Property Insurance Underwriting Association*. Stressing the plain language of the statute and the pre-enactment judicial construction of proof of loss provisions in general insurance contracts, the Court held that the failure of an insured to file a written proof of loss is an absolute bar to a successful lawsuit on the policy, notwithstanding the insurer's failure to inform the insured of the 60-day time limit.

The members of Volume 59 hope that the discussion and analysis of the cases contained in *The Survey* will be of interest and value to the New York bench and bar.

#### CIVIL PRACTICE LAW AND RULES

*CPLR 302(a): Fiduciary shield doctrine prevents the exercise of long-arm jurisdiction over non-resident corporate officer acting in corporate capacity*

Section 302(a) of the CPLR authorizes a court to exercise in personam jurisdiction over nondomiciliaries when prescribed "minimum contacts"<sup>1</sup> with the state are established.<sup>2</sup> The scope of the

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<sup>1</sup> See *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). In *International Shoe*, the Supreme Court established a jurisdictional test based on "minimum contacts" with the state, "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Id.* (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). The Supreme Court has since further refined the "minimum contacts" standard. See, e.g., *Rush v. Savchuk*, 444 U.S. 320, 332 (1980) (forum state's interests in providing forum to its residents and regulating insurance industry are not substitutes for requisite contacts with forum state); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) ("foreseeability that is critical to due process analysis . . . is that the defendant's conduct and con-