

## The Survey of New York Practice Table of Contents

St. John's Law Review

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

### CIVIL PRACTICE LAW AND RULES

*CPLR 214(5): Cause of action for injuries suffered due to defective prosthetic or contraceptive device accrues upon the date of the injury-producing malfunction. . . .*  
..... 635

### CRIMINAL PROCEDURE LAW

*CPL § 170.30: The power to dismiss criminal charges for want of prosecution does not inhere in the judiciary . . .*  
..... 642

### CRIMINAL PROCEDURE LAW

*CPL § 220.10: The People may not withdraw consent to a negotiated plea subsequent to modification of a material term by the Appellate Division . . . . .* 650

### CRIMINAL PROCEDURE LAW

*CPL § 400.21: The defendant has the burden of proving the unconstitutionality of a predicate conviction asserted by the People. . . . .* 658

### DOMESTIC RELATIONS LAW

*DRL § 236(B): A professional degree or license is not marital property subject to apportionment during divorce proceedings . . . . .* 668

### WORKERS' COMPENSATION LAW

*Work. Comp. Law § 29(1): Balancing the equities in the apportionment of workers' compensation litigation costs—New York adopts the total benefit doctrine . . . .*  
..... 676

INTRODUCTION\*

In this third issue of Volume 58, *The Survey* examines a variety of legal issues prevalent in New York law. Among the Court of Appeals' decisions addressed are three cases in which various sections of the Criminal Procedure Law have been interpreted. In *People v. Douglass*, the Court held that the inherent power of the judiciary to control its calendar does not authorize a court to dismiss pending criminal charges for want of prosecution. The broad expanse of section 170.30 of the CPL, the Court reasoned, necessarily precludes such an exercise of the judiciary's inherent authority. Section 220.10 of the CPL, which allows a prosecutor to withdraw consent to a plea bargain when a trial judge has modified a sentence in contravention of the original agreed-upon bargain, was held in *People v. Thompson* to be inapplicable to a material modification made by the Appellate Division. Finally, in *People v. Harris*, the Court construed section 400.21 of the CPL to place the burden of proving the unconstitutionality of a predicate conviction on the defendant.

\* 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 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	FIFTH REP.
	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.

In the area of civil litigation, the Court of Appeals, in *Martin v. Edwards Labs*, determined that under CPLR 214(5), the statute of limitations for personal injury actions involving the malfunctioning of prosthetic or contraceptive devices accrues at the time of actual injury. In so holding, the Court rejected the argument that accrual should commence at the time of the plaintiff's discovery of the injury. In *Kelly v. State Insurance Fund*, the Court, balancing the equities in the apportionment of workers' compensation litigation costs, held that an employer or compensation carrier's contribution toward an employee's cost of effectuating a recovery against a third party should be assessed in accordance with the total benefit inuring to the employee.

In the only Appellate Division case discussed in this issue, the Second Department, in *Conner v. Conner*, concluded that a professional degree received by a spouse during the life of a marriage is not marital property as defined by section 236(B) of the DRL. In turn, the court reasoned, such degree is not subject to apportionment during a divorce proceeding.

It is our hope that the discussion 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 214(5): Cause of action for injuries suffered due to defective prosthetic or contraceptive device accrues upon the date of the injury-producing malfunction*

Section 214 of the CPLR provides that a personal injury action must be commenced within three years.<sup>1</sup> In applying this gen-

---

<sup>1</sup> CPLR 214(5) (McKinney Supp. 1983-1984). Prior to the enactment of the CPLR, the Civil Procedure Act contained a 3-year statute of limitations if the injury resulted from negligence and a 6-year statute for all other personal injury actions. See *Blessington v. McCrory Stores Corp.*, 198 Misc. 291, 301, 95 N.Y.S.2d 414, 423-24 (Sup. Ct. Queens County 1950), *aff'd*, 279 App. Div. 807, 110 N.Y.S.2d 456 (2d Dep't 1952), *aff'd*, 305 N.Y. 140, 111 N.E.2d 421 (1953). Compare CPA § 49(6) (repealed 1963) with *id.* § 48(3) (repealed 1963). Consolidation of the sections was motivated by a desire to avoid uncertainty. See *Izquierdo v. Cities Service Oil Co.*, 244 F. Supp. 758, 761 (S.D.N.Y. 1965); SECOND REP., 71, 533-37 1 WK&M ¶ 214.12.

In general, statutes of limitation are designed to ensure fairness to defendants. See *Developments in the Law — Statute of Limitations*, 63 HARV. L. REV. 1177, 1178 (1950). Delineating specific limitation periods protects defendants from difficulties arising from stale claims such as lost evidence, faded memories, and unavailable witnesses. *Id.* at 1185; see, e.g., *Meyer v. Frank*, 550 F.2d 726, 730 (2d Cir.), *cert. denied*, 434 U.S. 830 (1977); Lee v.