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

Recommended Citation

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 lasalar@stjohns.edu.
# Table of Contents

## Civil Service Law

*Cour. Serv. Law § 210: No private right of action under Taylor Law for damages resulting from public employee strike.*

## Court of Claims Act

*Cour. Cl. Act § 8: Waiver of sovereign immunity does not permit assessment of punitive damages against the state or its political subdivisions.*

## Domestic Relations Law

*Dom. Rel. § 236(B)(5)(d)(10): Marital fault may not be considered in determining an equitable distribution of marital property.*

## Education Law

*Educ. Law §§ 2022, 3602: Rational basis test applied to uphold constitutionality of public school financing scheme.*

## Developments in New York Law

- *Juror conduct drawing upon “common sense and everyday experience” held not improper even though it includes outside observations material to issue in point at trial.*

- *Plaintiff’s failure to use available seatbelt may be considered as evidence of contributory negligence when nonuse allegedly causes the accident.*

- *Tape recording made by criminal suspect prior to suicide attempt and delivered to attorney is privileged.*
INTRODUCTION*

This issue of The Survey examines several recent Court of Appeals decisions of constitutional significance. In Board of Education v. Nyquist, New York’s highest court applied the rational basis standard of judicial review to uphold the constitutionality of the state’s public school financing system, notwithstanding existing disparities in educational facilities among various school districts. In In re Bronx County Grand Jury Investigation (Vanderbilt), the Court extended the privilege against self-incrimination, by holding that a tape recording made by a criminal suspect prior to his attempted suicide, and subsequently delivered to his attorney, was testimonial evidence for purposes of the fifth amendment, and, therefore, fell within the attorney-client privilege. Finally, in Sharapata v. Town of Islip, the Court construed section 8 of the Court of Claims Act as not permitting an award of punitive damages against the state or its political subdivisions, since neither punishment nor deterence, the policies that underlie a punitive award, would be advanced by imposing such a burden on the

* 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, New York Practice (1978) .......................................... S GEL
Weinstein, Korn & Miller, New York Civil Practice (1979) .................... WK&M
The Biannual Survey of New York Practice .............................. The Biannual Survey
The Quarterly Survey of New York Practice .................................... The Quarterly Survey
The Survey of New York Practice .............................................. The Survey

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 and Assembly Ways and Means Committee:
1961 N.Y. Leg. Doc. No. 15 ............................................. FIFTH REP.
1962 N.Y. Leg. Doc. No. 8 ............................................. SIXTH REP.
taxpayer.

People v. Smith, commented upon in this edition of The Survey, reflects the Appellate Division, First Department's view that a criminal verdict is not tainted by juror experimentation, as long as it involves merely an application of common sense and everyday experience. Other appellate division cases discussed include Burns Jackson Miller Summit & Spitzer v. Lindner, wherein the second department held that no express or implied private cause of action exists under New York's Taylor Law. Of particular interest to the practitioner should be the same court's determination, in Curry v. Moser, that evidence of the nonuse of an available seatbelt is admissible to determine the plaintiff's contributory negligence as an alleged proximate cause of the underlying automobile accident.

A supreme court case analyzed in this issue involves another in the series of decisions interpreting New York's recently enacted equitable distribution law. In M.V.R. v. T.V.R., the Supreme Court, New York County, held that as a matter of law marital fault may not be considered in determining an equitable distribution of marital property upon divorce.

It is hoped that The Survey's treatment of these developments in New York law will be of help and interest to members of the New York bar.

CIVIL SERVICE LAW

Civ. Serv. Law § 210: No private right of action under Taylor Law for damages resulting from public employee strike

Sections 200 to 214 of the New York Civil Service Law (the Taylor Law), which govern labor relations in the public sector, ¹