

# 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

St. John's Law Review (1981) "The Survey of New York Practice Table of Contents," *St. John's Law Review*: Vol. 55 : No. 4 , Article 5.  
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol55/iss4/5>

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](mailto:lasalar@stjohns.edu).

# THE SURVEY OF NEW YORK PRACTICE

## TABLE OF CONTENTS

### ARTICLE 78—PROCEEDING AGAINST BODY OR OFFICER

*Conditional agency determination improperly brought under article 78 will be converted into suit for injunctive relief under Public Health Law* . . . . . 775

### COURT OF CLAIMS ACT

*Late claims filed against the state under section 10(6) of the Court of Claims Act may only be amended by leave of court* . . . . . 783

### CRIMINAL PROCEDURE LAW

*CPL § 270.25: Prosecutor's use of peremptory challenges for sole purpose of excluding blacks from jury violates criminal defendant's right to trial by an impartial jury* . . . . . 789

### REAL PROPERTY LAW

*Real Prop. Law § 235-b: Implied warranty of habitability held applicable to cooperative housing* . . . . . 800

### DEVELOPMENTS IN NEW YORK LAW

*District Attorney's office automatically disqualified when attorney in office had counseled defendant previously in same case* . . . . . 806

*Evidence of post-accident design modification held admissible in strict products liability manufacturing defect action* . . . . . 813

No cause of action may be maintained for negligent supervision by an unemancipated sibling . . . . . 820

INTRODUCTION\*

In this final edition of Volume 55, *The Survey* discusses a variety of significant developments in New York law. Sanctioning the conversion of a CPLR article 78 proceeding into a suit for injunctive relief under the Public Health Law, the Court of Appeals, in *Hamptons' Hospital v. Moore*, nevertheless held that governmental agencies may not be estopped from reversing their conditional decisions. Additionally, the rights of a criminal defendant are analyzed in *People v. Shinkle* and *People v. Thompson*. The *Shinkle* Court held that the prior participation in a defendant's case by an attorney in the prosecutor's office automatically disqualifies the entire District Attorney's office from prosecuting the defendant's case. The analysis of *Shinkle* includes a discussion of ethical considerations and their potential effect on future prosecutions. In

\* 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) . . . . . SIEGEL
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.

*Thompson*, the Court held that a prosecutor's use of peremptory challenges for the sole purpose of excluding blacks had the effect of denying the defendant the right to an impartial jury.

In the area of products liability, the Court's decision in *Caprara v. Chrysler Corporation* held that evidence of post-accident manufacturing changes is admissible in a strict products liability action, thus distinguishing such an action from one in negligence where evidence of such changes has been held inadmissible. The vitality of the doctrine of intrafamily immunity is explored in *Smith v. Sapienza*, where the Court held that no cause of action lies for the negligent supervision of a child by an unemancipated sibling. The decision appears to reaffirm many of the policy considerations in the Court's landmark decision in *Holodook v. Spencer*. It is hoped that *The Survey's* analysis of these and other significant New York decisions will serve the purpose of keeping the practitioner informed of recent developments in New York law.

#### ARTICLE 78—PROCEEDING AGAINST BODY OR OFFICER

*Conditional agency determination improperly brought under article 78 will be converted into suit for injunctive relief under Public Health Law*

CPLR article 78, which provides for judicial review of administrative action, was designed to eliminate technical distinctions among the writs of certiorari, prohibition, mandamus to review, and mandamus to compel by incorporating these writs into a uniform proceeding.<sup>1</sup> Distinctions among the writs persist, however,

---

<sup>1</sup> CPLR 7801 (1981); see 5 N.Y. JUR. 2d *Article 78 and Related Proceedings* § 2 (1980); SIEGEL § 557, at 774; WK&M ¶ 7801.02. See generally Gabrielli & Nonna, *Judicial Review of Administrative Action in New York: An Overview and Survey*, 52 ST. JOHN'S L. REV. 361 (1978). Article 78 abolishes the common-law writs of mandamus to review, mandamus to compel, prohibition, and certiorari and integrates them into one simple proceeding. See Weintraub, *Statutory Procedures Governing Judicial Review of Administrative Action: From State Writs to Article 78 of the Civil Practice Law and Rules*, 38 ST. JOHN'S L. REV. 86, 119 (1963). These writs originated under English common law and were carried over to the American system. See Weintraub, *English Origins of Judicial Review by Prerogative Writ: Certiorari and Mandamus*, 9 N.Y.L.F. 478 (1963). Certiorari applies to the review of an administrative determination resulting from a hearing required by law. See *Long Island R.R. v. Hylan*, 240 N.Y. 199, 203-04, 148 N.E. 189, 190 (1925); *Board of Educ. v. Parsons*, 61 Misc. 2d 838, 839, 306 N.Y.S.2d 833, 836 (Sup. Ct. Wayne County 1969); *Gelces v. State Liquor Auth.*, 154 Misc. 517, 517, 278 N.Y.S. 328, 329 (Sup. Ct. Albany County 1935). The requirement of a hearing may be implied from a statute, see *Hecht v. Monaghan*, 307 N.Y. 461, 468, 121 N.E.2d 421, 424 (1954), or derived from an administrative rule, see *Adler v. Lang*, 21 App. Div. 2d 107, 111, 248 N.Y.S.2d 549, 553-54 (1st Dep't 1964). The hearing