

July 2012

The Survey of New York Practice Table of Contents

St. John's Law Review

Follow this and additional works at: <http://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

St. John's Law Review (2012) "The Survey of New York Practice Table of Contents," *St. John's Law Review*: Vol. 53: Iss. 3, Article 6.
Available at: <http://scholarship.law.stjohns.edu/lawreview/vol53/iss3/6>

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 administrator of St. John's Law Scholarship Repository. For more information, please contact cerjanm@stjohns.edu.

THE SURVEY OF NEW YORK PRACTICE

TABLE OF CONTENTS

CONSTRUCTIVE TRUSTS: A NEW BASIS FOR TRACING EQUITIES

Bernard E. Gegan 593

ARTICLE 3—JURISDICTION AND SERVICE, APPEARANCE AND CHOICE OF COURT

CPLR 302 (a) (3) (ii): Out-of-state conversion deemed sufficient predicate for asserting in personam jurisdiction over nonresident defendant 603

CPLR 303: Commencement of federal action in New York does not result in designation of attorney as agent for service of process in state court action 611

ARTICLE 9—CLASS ACTIONS

CPLR 901: Class action denied in products liability case where common questions of design defect and misleading advertising held not to predominate over individual questions of causation and reliance 616

ARTICLE 45—EVIDENCE

CPLR 4544: Provision of residential lease inadmissible for failing to comply with statutory size specifications notwithstanding its legibility 624

ARTICLE 75—ARBITRATION

CPLR 7503 (b): Clearly implied condition precedent to arbitration insufficient to invoke threshold judicial resolution. 628

CRIMINAL PROCEDURE LAW

CPL § 310.50 (2): Jury's noncompliance with trial court's instructions does not, per se, require resubmission of verdict 636

Sandoval held inapplicable to nonjury trials 642

INSURANCE LAW

Ins. Law § 167 (3): 1976 amendment applicable only to Dole claims arising from accidents occurring on or after effective date 646

JUDICIARY LAW

Judiciary Law § 90 (4): Conviction of any federal felony compels automatic disbarment 653

INTRODUCTION*

In this issue of *The Survey*, a variety of recent decisions are treated with a view toward increasing awareness of noteworthy developments in New York law. Among the significant Court of Appeals decisions reviewed are *Mandels v. Liberty Mutual Insurance Co.* and *In re Thies*. In *Mandels*, the Court held that a recent amendment to the Insurance Law, which was intended to overrule *State Farm Mutual Automobile Insurance Co. v. Westlake*, does not apply in third-party actions involving accidents occurring before the amendment's effective date. Presented with a question concerning professional disciplinary procedures, the *Thies* Court held that an attorney convicted of a federal felony may be disbarred automatically even where the felony has no New York counterpart.

Several significant decisions of the lower New York courts are also examined. Of particular interest is *Fantis Foods, Inc. v. Standard Importing Co.*, in which the Appellate Division, First Department, extended the application of CPLR 302(a)(3)(ii) longarm juris-

* 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
New York Code of Rules and Regulations	NYCRR
New York Rules of Civil Practice	RCP
New York City Civil Court Act (McKinney)	CCA
Uniform District Court Act (McKinney)	UDCA
Uniform Justice Court Act (McKinney)	UJCA
Uniform City Court Act (McKinney)	UCCA
Real Property Actions and Proceedings Law (McKinney)	RPAPL
Domestic Relations Law (McKinney)	DRL
Estates, Powers and Trusts Laws (McKinney)	EPTL
WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE (1978)	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 and Assembly Ways and Means Committee:

1961 N.Y. LEG. DOC. NO. 15	FIFTH REP.
1962 N.Y. LEG. DOC. NO. 8	SIXTH REP.

diction to include commercial torts. Also noteworthy is *Rosenfeld v. A.H. Robbins Co.*, in which the first department indicated that New York's revised class action statute could not be used in a suit based on defective product design.

Finally, the *Review* is honored to present an incisive analysis by Professor Bernard E. Gegan of the Court of Appeals' recent decision in *Simonds v. Simonds*.