

# 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 final edition of Volume 53, *The Survey* comments on a variety of recent decisions that mark significant developments in several areas of New York practice. Exploring the permissible scope of New York's long-arm jurisdiction, the Court of Appeals in *Sybron Corp. v. Wetzel* invoked an expansive interpretation of CPLR 302(a)(3)(ii) in a commercial context. The *Sybron* Court upheld jurisdiction to award injunctive relief against a nondomiciliary defendant, even though the "injury" in New York was only anticipated. In another of the nine Court of Appeals decisions discussed, the use of the marital res after the death of a spouse as a predicate for in rem jurisdiction was examined in *Carr v. Carr*. The *Carr* Court held that absent minimum contacts by the nonresident second wife of the deceased husband, New York courts lack jurisdiction to declare a New York domiciliary the lawful spouse.

Also noteworthy is *Nolechek v. Gesuale*, a decision that pres-

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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
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.

ents a novel development in the law of contribution and tort liability. In *Nolechek*, the Court found that a parent owes a duty not to expose third parties to liability for a child's injuries resulting in part from the parent's negligent entrustment of a dangerous instrument to a child. Significantly, a breach of this duty was held to support a claim for contribution against the parent. In the area of criminal procedure, the Court's decision in *People v. Settles* further delineates the right to counsel. The *Settles* Court held that once an indictment is returned, an unrepresented defendant's right to counsel indelibly attaches, thus precluding a waiver of that right in the absence of an attorney.

It is hoped that these and other cases examined in *The Survey* will serve to further the goal of informing the practitioner of noteworthy trends in New York practice.

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

*CPLR 302 (a)(3)(i): Small percentage of defendant's total income may constitute "substantial revenue" to satisfy minimum contacts*

CPLR 302(a)(3)(i) permits a court to exercise personal jurisdiction over a nonresident defendant who commits an out-of-state tortious act that causes injury within the state.<sup>1</sup> Apparently designed to meet the constitutional mandate of "minimum contacts" between the nonresident and forum,<sup>2</sup> an additional provision of CPLR

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<sup>1</sup> CPLR 302(a)(3)(i) (1972).

<sup>2</sup> *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). In *International Shoe*, the Supreme Court enunciated the standards by which jurisdiction over a nonresident could be obtained. The traditional jurisdictional predicate of physical presence within the state, see *Pennoyer v. Neff*, 95 U.S. 714, 722 (1877), was broadened to include nonresidents who had "certain minimum contacts with [the state] such that the maintenance of the suit [would] not offend 'traditional notions of fair play and substantial justice.'" 326 U.S. at 316 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). In *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957), the Court expanded further the criteria for obtaining personal jurisdiction by permitting suit against a nonresident that had solicited one insurance contract and then mailed it into the state, based on the "substantial connection [of the contract] with that State." *Id.* at 223. Shortly thereafter, however, the Court cautioned against interpreting the holdings of *International Shoe* and *McGee* as signaling the abolition of all limitations on a state court's power to exercise personal jurisdiction over a nonresident. See *Hanson v. Denckla*, 357 U.S. 235, 251 (1958). The Court emphasized the necessity of purposeful activities on the part of the nonresident by which he "invok[es] the benefits and protections of [the] laws" of the state seeking to assert jurisdiction. *Id.* at 253. Although CPLR 302 does not reach as far as is permissible under the federal Constitution, it does "[represent] . . . a healthy attempt to exploit some of that potential." CPLR 302, commentary at 60 (McKinney 1972). For instance, one jurisdictional predicate under the statute is a nonresident's commis-