

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 installment of *The Survey* two recent legislative enactments which have a substantial impact on most attorneys' practices

* 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 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 |
| Estate, Powers and Trusts Law (McKinney) | EPTL |
| WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE (1974) | 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. 80 | FOURTH REP. |
| 1961 FINAL REPORT OF THE ADVISORY COMMITTEE ON PRACTICE AND PROCEDURE | FINAL REP. |

are considered. With respect to class actions, the New York Legislature adopted chapter 207 of the Laws of 1975 creating a new article nine of the *CPLR*. Effective September 1, 1975, the new article establishes a simplified procedure for class actions, similar in many respects, but even less restrictive than, the federal statute. In the area of tort liability, the legislature has responded to the increasing demand for liberalization of the harsh rule of contributory negligence by adopting a pure comparative negligence rule.

Also treated in this issue's *Survey* are recent case law developments. Among the most significant are a number of cases dealing with tort liability. In *Victorson v. Bock Laundry Machine Co.*, the Court of Appeals took long-awaited action in the area of strict products liability by ruling that a nonpurchaser's action based thereon is governed by the tort statute of limitations and time of accrual. To this extent, *Victorson* represents a clear departure from the Court's previous position and expressly overrules its holding in *Mendel v. Pittsburgh Plate Glass Co.* wherein an action in strict products liability was held to be governed by the contract statute of limitations running from the date of sale of the defective product. In *Holodook v. Spencer*, treated in the *Developments in New York Practice* section, the Court of Appeals held that a parent's negligent supervision of his child is not a tort for which either an infant plaintiff or third parties seeking contribution under *Dole v. Dow Chemical Co.* may recover damages.

Departing from its prior restrictive approach towards standing in zoning cases, the Court of Appeals, in *Douglaston Civic Association v. Galvin*, extended standing to challenge a zoning ordinance to a local civic association which owned no property in the affected area. In *Feinstein v. Attorney-General*, the Court limited the permissible scope of the appellate division's review of proposed legal services plans under section 495 of the Judiciary Law. Also considered is a decision of the Supreme Court, Kings County, *Wechter v. Wechter*, wherein a family court order of protection was deemed a sufficient predicate for a conversion divorce pursuant to DRL 170 (5). Due to limitations of space many other important cases cannot be included. It is hoped that *The Survey* nonetheless accomplishes its basic purpose, *viz.*, to key the practitioner to significant developments in the procedural law of New York.

Also valuable are the two joint reports of the Senate Finance and Assembly Ways and Means Committees:

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