

CPLR 302(b): Court Retains Personal Jurisdiction Over Non-Resident Defendants in Matrimonial Actions

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statute of limitations began to run, when the damage to the buildings occurred, rather than upon the completion of the defendants' services.⁵¹

To hold as did the *Sosnow* majority, that a cause of action accrues, and the statute of limitations begins to run, no later than the termination of the parties' professional relationship, penalizes the layman for his lack of expertise. The dissent offers the more realistic alternative of focusing upon the time at which actual damage or injury occurs. Until that point, the lay client should be entitled to rely upon the competence of the professional.

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

CPLR 302(b): Court retains personal jurisdiction over non-resident defendants in matrimonial actions.

Effective June 7, 1974, the Legislature has renumbered the previous subdivision (b) of CPLR 302 to become subdivision (c), and has inserted a new subdivision (b).⁵² This new subdivision allows the court to maintain personal jurisdiction, in matrimonial actions or family court proceedings involving support or alimony, over non-resident or non-domiciliary defendants.⁵³ In order to exercise personal jurisdiction in such situations, the following conditions must be satisfied: (1) the party who is seeking support must be a domiciliary or resident of New York when the request is made; and (2) New York must have been the parties' matrimonial domicile before their separation, or the plaintiff must have been abandoned by the defendant in New York, or the defendant's obligation to pay support or alimony must have accrued under either the law of New York or an agreement executed in New York.⁵⁴

⁵¹ The dissenters relied in part upon *Schmidt v. Merchants Dispatch Transp. Co.*, 270 N.Y. 287, 300, 200 N.E. 824, 827 (1936), wherein Judge Lehman observed:

It is only the *injury* to person or property arising from negligence which constitutes an invasion of a personal right, protected by law, and, therefore, an actionable wrong. . . . Through lack of care a person may set in motion forces which touch the person or property of another only after a long interval of time . . . and then only through new, fortuitous conditions. There can be no doubt that a cause of action accrues only when the forces wrongfully put in motion produce injury.

In 1962, the Law Revision Commission recommended legislation that would have postponed the time of accrual for a malpractice action until the discovery by the plaintiff of the facts constituting the malpractice. *See* N.Y. SESS. LAWS [1962] 3392-93 (McKinney); 1 WK&M ¶ 214.21. Prior to this, a committee of the Association of the Bar of the City of New York had suggested the adoption of a discovery accrual rule for medical malpractice actions. *See* 13 RECORD OF N.Y.C.B.A. 465-66 (1958). In neither instance did the Legislature adopt the recommendations.

⁵² N.Y. SESS. LAWS [1974], ch. 859, § 1 (McKinney).

⁵³ *Id.*

⁵⁴ *Id.*