

# The Quarterly Survey of New York Practice Table of Contents

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# NOTICE

The December installment of the *Survey*, which was held over due to page limitations, appears herein in addition to the regular installment.

## II

### THE QUARTERLY SURVEY OF NEW YORK PRACTICE

#### TABLE OF CONTENTS

ARTICLE 2 — LIMITATIONS OF TIME	
<i>CPLR 203(a): Flanagan rule applied to radiation injuries</i> .....	532
<i>CPLR 217: Petitioner must commence proceeding for writ of prohibition within a time "reasonably necessary to protect his rights"</i> .....	534
ARTICLE 3 — JURISDICTION AND SERVICE, APPEARANCE AND CHOICE OF COURT	
<i>CPLR 302(a)(1): Attorney cannot predicate jurisdiction in action against client on attorney's legal services in state for client</i> .....	536
<i>CPLR 302(a)(1): Jurisdiction predicated on combination of elements individually insufficient to support jurisdiction</i> .....	537
<i>CPLR 302(a)(1): "Bootstrap" jurisdiction not permitted in enforcement of foreign divorce decrees</i> .....	538
ARTICLE 6 — JOINDER OF CLAIMS, CONSOLIDATION AND SEVERANCE	
<i>CPLR 603: Law of the case limits the power to sever claims</i> .....	539
ARTICLE 11 — POOR PERSONS	
<i>CPLR 1102: Departments divided as to responsibility for indigents' publication costs</i> .....	539
ARTICLE 21 — PAPERS	
<i>CPLR 2104: Oral settlement reached at informal conference in judge's chambers held not made in open court</i> .....	541
ARTICLE 30 — REMEDIES AND PLEADING	
<i>CPLR 3015(a): Where plaintiff alleges performance of contractual conditions precedent, requirement that defendant deny such performance with particularity is not applicable</i> .....	543
<i>CPLR 3016(c): Specificity of pleading requirement applied to counterclaim in divorce action</i> .....	544
ARTICLE 31 — DISCLOSURE	
<i>CPLR 3120: Discovery and inspection available against the state as nonparty witness</i> .....	545
<i>CPLR 3124: Statute does not mandate immediate ruling on dispute at examination before trial</i> .....	546
ARTICLE 32 — ACCELERATED JUDGMENT	
<i>Collateral Estoppel: Court of Appeals affirms that prior judgment establishing freedom from negligence does not establish freedom from contributory negligence</i> .....	547
ARTICLE 71 — RECOVERY OF CHATTEL	
<i>CPLR 7102: Due Process protects all types of property</i> .....	547

ARTICLE 75 — ARBITRATION

*CPLR 7501: Separability of the arbitration provision — time to reconcile New York and federal approaches* ..... 549

*CPLR 7501: Broad arbitration clause compels submission of question of recovery of consequential damages to arbitrator notwithstanding damage limitation clause* ..... 564

*CPLR 7501: Right to jury trial on issue of existence of arbitration agreement ..* ..... 566

*CPLR 7503: First Department recommends time limitation for proceeding with arbitration* ..... 566

*CPLR 7503(c): Requirement that application for stay of arbitration be made within ten days of notice of intention to arbitrate held inapplicable where respondent concealed material fact in order to create coverage under insurance policy* ..... 567

*CPLR 7511(a): Date of actual delivery of arbitration award must be stated in pleading ninety-day statute of limitations* ..... 568

*CPLR 7511(b)(1)(ii): Arbitration award affirmed, where challenged arbitrator had prior attorney-client relationship with one party, when opposing party knowingly waived its objection* ..... 569

COURT OF CLAIMS ACT

*Ct. Cl. Act § 10: Statutes of limitations or conditions precedent?* ..... 569

GENERAL MUNICIPAL LAW

*GML 50-a to 50-i: Notice of claim not required in contract action* ..... 570

*GML 50-e: Infant permitted to file late notice of claim where infancy may have been important factor in failure to timely file* ..... 571

INSURANCE LAW

*Ins. Law: Insurer not liable in excess judgment suit where refusal to defend or settle is based on good faith belief that policy had been cancelled* ..... 573

*Ins. Law § 59-a: Unauthorized act in New York by agent of foreign insurer held sufficient basis for personal jurisdiction* ..... 578

*Introduction\**

In this issue, the *Survey* highlights the conflict between federal and state law as to the separability of an arbitration provision from the

\* The following abbreviations will be used uniformly throughout the *Survey*:

New York Civil Practice Law and Rules .....CPLR

New York Civil Practice Act .....CPA

New York Rules of Civil Practice .....RCP

New York City Civil Court Act .....CGA

Uniform District Court Act .....UDCA

Uniform City Court Act .....UCCA

Real Property Actions and Proceedings Law .....RPAPL

Domestic Relations Law .....DRL

WEINSTEIN, KORN AND MILLER, NEW YORK CIVIL PRACTICE (1972) .....WK&M

*The Biannual Survey of New York Practice* ..... *The Biannual Survey*

*The Quarterly Survey of New York Practice* ..... *The Quarterly 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. 80 .....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

underlying contract and urges that New York conform to the federal approach by adopting the separability rule. The uncertainty of New York law on this matter is illustrated by *Housekeeper v. Lourie*, a recent First Department decision. Adoption of the federal rule would be in keeping with New York's traditional position of encouraging arbitration.

Other cases of special significance include *LeVine v. Isoserve, Inc.*, wherein the *Flanagan* rule was applied to radiation injuries; *In re Dolgin Eldert Corp.*, where the Court of Appeals held that an oral settlement reached at an informal conference in chambers does not satisfy the open court exception of CPLR 2104; *Murray v. City of New York*, in which the Court permitted an infant to file a late notice of claim where his infancy may have been an important factor in the failure to timely file; *Gordon v. Nationwide Mutual Insurance Co.*, in which the Court held that an insurer is not liable in an excess judgment suit where the refusal to defend or settle is based on a good faith belief that the policy had been cancelled; and *Ford v. Unity Hospital*, which holds that an unauthorized act in New York by an agent of a foreign insurer is a sufficient basis for personal jurisdiction.

Additionally, the *Survey* continues to cover two subjects of special interest: indigents' rights and replevin. Under article 11, the division of authority on the public's responsibility for indigents' publication costs in matrimonial actions is summarized. Under article 71, several cases which clarify the requirements of due process as to replevin are reported.

The *Survey* sets forth in each installment those cases which are deemed to make the most significant contribution to New York's procedural law. Due to limitations of space, however, many other less important, but, nevertheless, significant cases cannot be included. While few cases are exhaustively discussed, it is hoped that the *Survey* accomplishes its basic purpose, viz., to key the practitioner to significant developments in the procedural law of New York.

## ARTICLE 2 — LIMITATIONS OF TIME

*CPLR 203(a): Flanagan rule applied to radiation injuries.*

In *LeVine v. Isoserve, Inc.*,<sup>1</sup> the Supreme Court, Albany County, applied the malpractice discovery rule enunciated in *Flanagan v.*

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### Means Committees:

- |   |            |
|---|------------|
| 1961 N.Y. LEG. DOC. NO. 15 .....                                  | FIFTH REP. |
| 1962 N.Y. LEG. DOC. NO. 8 .....                                   | SIXTH REP. |
| 170 Misc. 2d 747, 334 N.Y.S.2d 796 (Sup. Ct. Albany County 1972). |            |