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Article 7

The Quarterly Survey of New York Practice Table of Contents

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NOTICE

Due to the lateness of this issue, and in order to maintain the *Survey's* position as a work of current import, the March and the May installments of this section have been combined and are contained herein.

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THE QUARTERLY SURVEY OF NEW YORK PRACTICE

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*Introduction**

Certain procedural provisions generate problems which consistently elude resolution due to either the absence of appellate guidance or the presence of factual situations which are sui generis. Illustrative of this phenomenon are the following issues presented in cases discussed herein: when has a defendant transacted "business" under CPLR 302(a)(1) or CCA 404; what constitutes "substantial revenue" under

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

New York Civil Practice Law and RulesCPLR
 New York Civil Practice ActCPA
 New York Rules of Civil PracticeRCP
 New York City Civil Court ActCCA
 Uniform District Court ActUDCA
 Uniform Justice Court ActUJCA
 Uniform City Court ActUCCA
 Real Property Actions and Proceedings LawRPAPL
 Domestic Relations LawDRL

WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE (1969)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. 13SECOND REP.
 1959 N.Y. LEG. DOC. NO. 17THIRD REP.
 1960 N.Y. LEG. DOC. NO. 80FOURTH REP.
 1961 FINAL REPORT OF THE ADVISORY COMMITTEE
 ON PRACTICE AND PROCEDUREFINAL REP.

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.

CPLR 302(a)(3)(ii); what instruments qualify for expeditious treatment under CPLR 3213; and, when is the last day on which an application to stay arbitration may be received by a party demanding arbitration?

Additionally, a number of recent decisions have created uncertainty in areas which appeared to be settled. Particularly important are the cases dealing with the relation back doctrine of CPLR 203(e), the definition of timely commencement under CPLR 205(a), and the personal delivery requirement of CPLR 308(1).

Lastly, special mention should be made of *Murphy v. St. Charles Hospital* and *In re Einstoss* which are discussed under CPLR sections 214(6) and 320 respectively. In *Murphy* the Second Department moved one step closer to a rule of discovery in medical malpractice cases. In *Einstoss* the Court of Appeals broadened the concept of a limited appearance and opened the door for a reevaluation of the liability of a nonresident defendant vis-à-vis his codefendants and the original plaintiff.

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.

The Table of Contents is designed to direct the reader to those specific areas of procedural law which may be of importance to him. The various sections of the CPLR which are specifically treated in the cases are listed under their respective titles.

ARTICLE 2—LIMITATIONS OF TIME

CPLR 203(e): Wrongful death claim deemed not to relate back to cause of action for personal injuries.

To overcome the harsh effects of *Harriss v. Tams*,¹ the Advisory Committee² recommended passage of CPLR 203(e). This section provides that a claim asserted in an amended pleading relates back, for

¹ 258 N.Y. 229, 179 N.E. 476 (1932) (statute of limitations is tolled only as to those claims originally inserted).

² See SECOND REP. 50-51. In drafting the CPLR, the Advisory Committee intended to afford the courts the "widest possible discretion" when ruling on motions to amend or supplement pleadings. FIRST REP. 78. In fact, both CPLR 203(e) and CPLR 3025(b) were designed to permit even greater freedom than the federal rule, FED. R. CIV. P. 15(a), (c), after which they were patterned. See 1 WK&M ¶ 203.30.