

## The Quarterly Survey of New York Practice Table of Contents

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# THE QUARTERLY SURVEY OF NEW YORK PRACTICE

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*Introduction\**

The lower courts are consistently reluctant to interpret the CPLR provisions governing jurisdiction in a liberal fashion without some indication of prior approval from the Court of Appeals, and several decisions reported under Article 3 in this issue of the *Survey* are illustrative of this phenomenon. In interpreting other CPLR provisions, however, the lower courts are by no means as conservative. Cases reported under Articles 2, 34, 52 and 65 reveal novel and liberal solutions to difficult questions confronting the courts. Particularly welcome is the result achieved in the supreme court's construction of CPLR

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\* 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 .....CCA  
 Uniform District Court Act .....UDCA  
 Uniform City Court Act .....UCCA  
 Real Property Actions and Proceedings Law .....RPAPL  
 Domestic Relations Law .....DRL  
 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. 20 .....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 Committees:  
 1961 N.Y. LEG. DOC. No. 15 .....FIFTH REP.  
 1962 N.Y. LEG. DOC. No. 8 .....SIXTH REP.

5231(b); an effort has been made to afford a judgment debtor notice of his New York obligation even though he resides and is employed without the state.

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(a): Cause of action for breach of contract accrues when plaintiff is harmed and not when the breach occurs.*

CPLR 203(a) declares that a statute of limitations begins to run from the time a cause of action accrues, and a cause of action for breach of contract generally accrues at the moment the contract is breached.<sup>1</sup> Situations arise, however, when the cause of action does not accrue simultaneously with the breach; and in such cases the court must determine when the six year statute of limitations<sup>2</sup> began to run. *Lewis v. Lewis*,<sup>3</sup> a recent civil court case, provides an excellent illustration of this type of situation.

The plaintiff, decedent's ex-wife, and decedent had entered into a separation agreement in 1952 providing, *inter alia*, that decedent should maintain an existing life insurance policy, in which plaintiff was named as the sole beneficiary, so long as plaintiff did not remarry. Plaintiff and decedent were subsequently divorced. But, in 1956, without plaintiff's knowledge, decedent cancelled the policy in violation of the agreement. Knowledge of this breach first came to plaintiff in 1968, shortly after the decedent's death, at which time she commenced an action to recover damages in an amount equivalent to the proceeds she would have received under the policy. The defendant, executrix of decedent's estate, contended that the statute of limitations barred the action since it had begun to run in 1956 when the policy was cancelled.

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<sup>1</sup> See 1 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 203.01 (1968).

<sup>2</sup> CPLR 213.

<sup>3</sup> 59 Misc. 2d 525, 299 N.Y.S.2d 755 (N.Y.C. Civ. Ct. N.Y. County 1969).