

CPLR 302(a)(1): Entering State To Receive Medical Treatment Deemed a Transaction of Business

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

St. John's Law Review (1969) "CPLR 302(a)(1): Entering State To Receive Medical Treatment Deemed a Transaction of Business," *St. John's Law Review*: Vol. 43 : No. 3 , Article 12.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol43/iss3/12>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

any objection to personal jurisdiction by the execution of two stipulations.

CPLR 302(a) (1): Entering state to receive medical treatment deemed a transaction of business.

Under CPLR 302(a)(1), a nondomiciliary who transacts business in New York subjects himself to personal jurisdiction as to causes of action arising out of that transaction.¹³ As 302(a)(1) is continuously applied to novel fact situations, light is shed on its outer limits.

In *Cohen v. Haberkorn*,¹⁴ the appellate division, second department, recently held that a nondomiciliary who enters the state to receive medical treatment "transacts business" under 302(a)(1) and thus becomes amenable to personal jurisdiction in an action by the physician to recover the value of his services.

CPLR 308(1): Court of Appeals rules on redelivery problem.

The Court of Appeals has recently addressed itself to the problem of whether a summons, originally delivered to an improper person, is valid if through eventual redelivery it comes into the possession of the party to be served. In *McDonald v. Ames Supply Co.*,¹⁵ the summons, seeking to secure jurisdiction over defendant, a foreign corporation, was delivered to a building receptionist who was not an employee of the defendant. The receptionist subsequently delivered the summons to a proper party, but the service was held invalid. (Had the receptionist been an employee of the defendant, service would probably still have failed since CPLR 311 provides that service upon a foreign corporation be made by delivering the summons to "an officer, director, managing or general agent, or cashier or assistant cashier.")

The Court stated that generally, original personal delivery to the wrong person constitutes improper service even though the summons is shortly received by the correct person.¹⁶ It pointed out that any other rule would undermine the statutory procedure for setting aside a defectively served summons, since the motion to set aside is itself evidentiary of eventual receipt of the summons.

¹³ See generally 7B MCKINNEY'S CPLR 302, supp. commentary 104 (1968).

¹⁴ 30 App. Div. 2d 530, 291 N.Y.S.2d 119 (2d Dep't 1968).

¹⁵ 22 N.Y.2d 111, N.E.2d, 291 N.Y.S.2d 328 (1968).

¹⁶ See, e.g., *Clark v. Fifty Seventh Madison Corp.*, 13 App. Div. 2d 693, 213 N.Y.S.2d 849 (2d Dep't) *appeal dismissed*, 10 N.Y.2d 808, 178 N.E.2d 225, 221 N.Y.S.2d 509 (1961); *Commissioners of State Ins. Fund v. Singer Sewing Mach. Co.*, 281 App. Div. 867, 119 N.Y.S.2d 802 (1st Dep't 1953).