The Quarterly Survey of New York Practice Table of Contents

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# Table of Contents

## Article 1 — Short Title, Applicability and Definitions

CPLR 103(c): Proceeding commenced in improper form will not be dismissed on that ground alone. 125

## Article 2 — Limitations of Time

CPLR 202: Where cause of action accrues to non-domiciliary outside the state, New York borrowing statute applies. 126

CPLR 204(a): Statute of limitations no bar where stipulation with municipality forced plaintiff to delay commencement of action. 127

## Article 3 — Jurisdiction and Service, Appearance and Choice of Court

CPLR 302(a)(2): Applicable where defendant is New York domiciliary when cause of action arises, but is non-domiciliary at time the action is commenced. 129

CPLR 308: Immunity from service of process extended to arbitration proceedings. 130

CPLR 308(3): Validity of service unaffected by defendant’s failure to find affixed process. 130

CPLR 314(1): Limitation on service without the state. 131

CPLR 325(a): Lack of jurisdiction no bar to removal. 132

## Article 4 — Special Proceedings

CPLR 403(c) and (d): Care required to fulfill court’s specifications as to service of an order to show cause. 133
Article 5 — Venue
CPLR 503(c): Corporation's office as filed with Secretary of State recognized proper for venue purposes. 135

Article 6 — Joinder of Claims, Consolidation and Severance
CPLR 602: Consolidation of actions pending in different inferior courts refused by the supreme court. 135

Article 12 — Infants and Incompetents
CPLR 1201: Plaintiff must establish defendant's inability to defend and nonfeasibility of instituting proceedings for the appointment of a committee before a guardian ad litem will be appointed. 137

Article 20 — Mistakes, Defects, Irregularities and Extensions of Time
CPLR 2001: Action commenced solely in name of deceased person constitutes mere irregularity, subject to correction. 138

Article 30 — Remedies and Pleadings
CPLR 3012(b): Action dismissed for failure to serve a complaint. 139
CPLR 3016(c): Bill of particulars not a satisfactory alternative for insufficient complaint. 141
CPLR 3026: Pleading saved where cause of action can be culled from complaint. 142

Article 31 — Disclosure
CPLR 3101: Court sanctions disclosure under CPLR 3111 of an item apparently protected by CPLR 3101(d). 143
CPLR 3108 and 3109: Availability of written questions where non-party witness cannot be served with subpoena within state. 144
CPLR 3121: Apparent conflict between Rules of the Appellate Division, Second Department and CPLR 3121. 145
CPLR 3121(a): Movant need not prove his case on the merits in order to obtain physical examination of his adversary. 146
Article 32 — Accelerated Judgment

CPLR 3211(a)(4): Dismissal denied where pending action was instituted subsequent to the action sought to be dismissed. 146

CPLR 3213: Defects in moving papers. 147

Collateral Estoppel: Unavailable to party where issue in subsequent suit was similar but not identical to that previously determined. 148

Article 41 — Trial by a Jury

CPLR 4102: Motion to frame issues for jury trial abolished. 151

Article 44 — Trial Motions

CPLR 4402: Inadvertent reference to insurance in action involving automobile registered in New York not sufficient ground upon which to declare a mistrial. 152

Article 52 — Enforcement of Money Judgments

CPLR 5201: Future income of a spendthrift trust held attachable. 153

CPLR 5201: Fund beyond judgment creditor's execution. 156

CPLR 5231: Personal Property Law Section 49-b limits income execution. 157

CPLR 5231(b): Drawing accounts subject to income execution. 159

Article 75 — Arbitration

CPLR 7510: One-year statute of limitations runs from date arbitrators render final determination and not from date of original award. 160

Article 78 — Proceeding Against Body or Officer

CPLR 7801: Supreme court issues order in nature of mandamus directing justice court to set a trial date. 162

Domestic Relations Law

Dom. Rel. Law §243: Motion for sequestration subsequent to separation action in which defendant has appeared held "a motion in the action." 163
THE QUARTERLY SURVEY OF NEW YORK PRACTICE

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Introduction

Commencing with the present issue, the Survey will be published as a quarterly. In the opinion of the Editorial Board, this will enhance its value to the practitioner since current cases of procedural significance will more speedily be brought to his attention. Moreover, the important CPLR amendments will be reported and discussed extensively in the October issue following their enactment by the Judicial Conference or the State Legislature.

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*The views expressed herein are those of the authors only and do not necessarily reflect the opinions of the Director.

**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

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.

Also valuable are the two joint reports of the Senate Finance and Assembly Ways and Means Committees:

Since the last installment of the Survey, the appellate division, third department, has held that no jurisdictional "gap" exists in CPLR 302—a discussion of the controversy surrounding this problem is found under Article 3 of the Survey. The reader is also directed to a treatment of the doctrine of collateral estoppel listed under Article 32. Under Article 52, the reader will note that there have been significant developments affecting the income execution device.

The cases discussed in the Survey are those deemed to be of the most importance in the procedural area. Many other cases would be included, but limitations of space prevent the treatment of those less important but nevertheless significant cases. Although 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 articles.

ARTICLE 1—SHORT TITLE, APPLICABILITY AND DEFINITIONS

CPLR 103(c): Proceeding commenced in improper form will not be dismissed on that ground alone.

The petitioner, in Mandis v. Gorski,1 initially brought an Article 78 proceeding to declare invalid a city ordinance which gave the city council power to allow variances in the heights of certain buildings. However, Article 78 proceedings are not available to attack an ordinance since an exercise of a legislative function may not be attacked through an Article 78 proceeding.2

Rather than dismiss the action merely for proceeding in the wrong form, the court availed itself of CPLR 103(c) which states that "if a court has obtained jurisdiction over the parties, a civil judicial proceeding shall not be dismissed solely because it is not brought in the proper form. . . ." 3

This section, in addition, provides authorization for the court to make an order directing the action to proceed in the proper form without dismissing it.4 Thus, in the instant case, the court ordered the action to continue as if brought in the form of a declaratory judgment.

3 CPLR 103(c).