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## CPLR 302 (a)(1): May Be Applicable to Non-Commercial Transactions of Business

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limitations in conversion actions, since in many such actions there is necessarily present an affirmative act of concealment on the defendant's part which would give rise to equitable estoppel. It must be pointed out, however, that the plaintiff must not be guilty of negligence in failing to discover his cause of action, since this will vitiate the plea of equitable estoppel.

#### ARTICLE 3 — JURISDICTION AND SERVICE, APPEARANCE AND CHOICE OF COURT

*CPLR 302(a)(1): May be applicable to non-commercial transactions of business.*

There seems to be a conflict as to whether CPLR 302(a)(1) is applicable to non-commercial as well as to commercial transactions of business. In *Willis v. Willis*,<sup>6</sup> the supreme court, New York County, held that a separation agreement entered into in New York was not a "transaction of business" within the meaning of CPLR 302(a)(1). The court said that this section encompassed only "commercial" transactions.<sup>7</sup>

However, the supreme court, Nassau County, in *Todd v. Todd*,<sup>8</sup> while holding service under CPLR 308 invalid, nevertheless noted that there "may well be a basis for maintaining the action in New York, for the separation agreement was apparently entered into in New York. . . ."<sup>9</sup>

To resolve this conflict, a clarification by the Court of Appeals is needed. In view of the recent amendment to CPLR 302(a)(3) expanding jurisdiction in the area of tortious activity, it would appear that the legislature intended CPLR 302 to approach the constitutional limit. Therefore, it would seem most likely that the Court of Appeals will eventually construe "transaction of business" to include both commercial and non-commercial transactions. By so doing, the New York courts will be given as broad a jurisdiction as is possible under the present terms of CPLR 302(a)(1).

*CPLR 308(3): Court warns plaintiffs about "sewer service."*

In *Todd v. Todd*,<sup>10</sup> the supreme court has warned plaintiffs to exercise care in their choice of process servers. In that case, the court vacated substituted service and dismissed the complaint for lack of jurisdiction, since it was conclusively demonstrated that

<sup>6</sup> 42 Misc. 2d 473, 248 N.Y.S.2d 260 (Sup. Ct. N.Y. County 1964).

<sup>7</sup> *Id.* at 475, 248 N.Y.S.2d at 262.

<sup>8</sup> 51 Misc. 2d 94, 272 N.Y.S.2d 455 (Sup. Ct. Nassau County 1966).

<sup>9</sup> *Id.* at 96, 272 N.Y.S.2d at 456.

<sup>10</sup> 51 Misc. 2d 94, 272 N.Y.S.2d 455 (Sup. Ct. Nassau County 1966).