

The Biannual Survey of New York Practice: Part V-- Table of Contents

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THE BIENNIAL SURVEY OF NEW YORK PRACTICE: PART V

TABLE OF CONTENTS

	PAGE
Article 2— Limitations of Time	
CPLR 204(a): Leave to sue MVAIC—Statute of limitations tolled while leave to sue is secured.	126
CPLR 205(a): Failure to choose jury and proceed to trial held equivalent to neglect to prosecute.	127
CPLR 213(9): Fraud statute of limitations runs from discovery where fraud is extraneous to original tort.	127
Running of six-month extension to statute of limitations after prior termination of same cause.	128
CPLR 213(2): MVAIC uninsured motorist endorsement makes six-year contract statute of limitations applicable.	128
General Municipal Law Section 50-e: Statutory or judicial stay of an action as extending the statute of limitations and its applicability to the Public Authorities Law.	129
General Municipal Law Section 50-e: Amending notice of claim subsequent to expiration of filing period.	130
General Municipal Law Section 50-e: New period for filing notice of claim allowed in fraud action extraneous to the original tort.	130
Article 3— Jurisdiction and Service, Appearance and Choice of Court	
CPLR 301: "Doing business" in New York.	131
CPLR 301: Subsidiary deemed agent for service of process.	132
CPLR 302(a)(1): New York contract unnecessary for "transaction of business."	133
CPLR 302(a)(2): Tortious act distinguished from resultant injury.	134
CPLR 302(a)(3): Ownership, use or possession of real property.	138
CPLR 305(b): Amendment.	138
CPLR 308(3): Substituted service.	139
CPLR 308(4): Court ordered service.	140
CPLR 314(1): Expanding in rem bases.	142
CPLR 320(c): Amendment.	142
CPLR 325: Alternate bases for removal.	143
Article 5— Venue	
CPLR 503(c): Residence of a foreign corporation.	143
Article 10— Parties Generally	
CPLR 1001(a): Motion to dismiss for nonjoinder of an "indispensible" party.	144
CPLR 1007: Vouching-in notice— third-party practice.	145

Article 12— Infants and Incompetents

- CPLR 1201: Guardian *ad litem* appointed for unadjudicated-incompetent plaintiff. 146
 CPLR 1207: Settlement of action or claim by infant or incompetent. 147

Article 20— Mistakes, Defects, Irregularities and Extensions of Time

- CPLR 2003: Irregularity in judicial sale. 147

Article 22— Stays, Motions, Orders and Mandates

- CPLR 2214(b): Improper notice of motion constitutes jurisdictional defect. 148
 CPLR 2221: Motion made to two justices sitting in same court. 148

Article 26— Property Paid Into Court

- CPLR 2606: Obtaining order for payment out of court. 149

Article 30— Remedies and Pleadings

- CPLR 3011: Counterclaim not permitted in plaintiff's reply. 150
 CPLR 3012: Cross-claim valid if delay not prejudicial. 151
 CPLR 3012(b): Defendant must demand complaint where lack of complaint disenables court from determining cause of action. 151
 CPLR 3014: Motion to compel plaintiff to separately state and number causes of action to be granted if complaint incomprehensible. 152
 CPLR 3015(d): Failure to itemize special damages does not render complaint insufficient. 152
 CPLR 3017: Fiduciary relationship not necessary for an accounting? 153
 CPLR 3024(b): Motion to strike unavailable where material in complaint is relevant at trial. 153

Article 31— Disclosure

- CPLR 3101(c) and (d): "Material prepared for litigation" and "attorney's work product." 154
 CPLR 3103: Non-resident defendant entitled to reimbursement for EBT expenses. 159
 CPLR 3103: Inapplicable to CPLR 3123 in advance of trial. 160
 CPLR 3121(a): Physical condition need not be placed "at issue" by pleadings in order to examine hospital records. 161
 CPLR 3122: Five-day limitation inapplicable where CPLR 3120 notice is defective. 162
 CPLR 3123: "Statement of readiness" rule inapplicable to a notice to admit. 162

Article 32— Accelerated Judgment

- CPLR 3211(a)(7): Importance of proper pleadings. 162
 CPLR 3212(a): Motion for summary judgment where third-party defendant not joined in the action. 163
 CPLR 3212(g): Effective means of striking denials. 164

	PAGE
CPLR 3216: First department holds 45-day demand inapplicable to motions based on general delay.	165
Article 34— Calendar Practice; Trial Preferences	
CPLR 3402: Alleged conflict between court rules and the CPLR.	166
Article 41— Trial by a Jury	
CPLR 4103: Liberally construed.	166
CPLR 4111: Used to specifically provide a means of interpreting a jury verdict.	167
Article 42— Trial by the Court	
CPLR 4213: Properly utilized when essential fact absent from record on appeal.	167
Article 52— Enforcement of Money Judgments	
CPLR 5201: Debt, a property subject to enforcement.	168
CPLR 5222: Restraining notices—income execution.	169
CPLR 5225: Special proceedings involving substantial disputes.	170
CPLR 5234: Distribution of proceeds of personal property—priorities.	171
Article 55— Appeals Generally	
CPLR 5520(a): Extension of time granted to cure inadvertent filing and service omissions of notice of appeal.	172
Article 61— Arrest	
CPLR 6111: Full hearing required to prove extrinsic facts relied upon to procure civil arrest.	172
Article 75— Arbitration	
CPLR 7503(c): Mislabelling of notice of intention to arbitrate held not fatal: non-compliance with time and service requirements for stay held fatal.	173
Article 78— Proceedings Against Body or Officer	
Petition to compel mayor to fill judicial vacancies denied.	174
Article 78 appropriate remedy to annul administrative penalty previously served.	174
Motor Vehicle Accident Indemnification Corporation	
MVAIC endorsement reducing award to insured to extent of workmen's compensation benefits held valid.	175
MVAIC entitled to recover from insured person's action arising from the same accident as prior arbitration award—but intervention under CPLR 1013 denied.	176

THE BIANNUAL SURVEY OF NEW YORK PRACTICE: PART V

*Prepared by the St. John's Law Review Staff Under the
Direction of DAVID D. SIEGEL †*

Introduction

The Biannual Survey,* an established feature of the *St. John's Law Review*, is now in its fifth installment. Since the last installment, several cases of significant procedural impact have been decided. Especially noteworthy are the Court of Appeals cases involving CPLR 302, *Singer v. Walker* and *Feathers v. McLucas*. In both cases, the Court limited the effect of the long-arm statute with respect to what constitutes a tortious act within the meaning of the statute. In the *Singer* case, however, the Court broadened the application of what constitutes a transaction of business cogniz-

† B.A., Brooklyn College; LL.B., St. John's University School of Law; Associate Professor of Law, St. John's University School of Law; Assistant Counsel, Joint Legislative Committee on Court Reorganization; Draftsman, New York City Civil Court Act, Uniform District Court Act and Uniform City Court Act; CPLR Coordinator, Commission on Estates for Revision of Surrogate's Court Act; Consultant on Practice and Procedure, New York State Judicial Conference; Member, New York Bar.

* 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 City Court ActUCCA
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.
1958 N.Y. LEG. DOC. NO. 13SECOND REP.
1959 N.Y. LEG. DOC. NO. 17THIRD REP.
1960 N.Y. LEG. DOC. NO. 20FOURTH 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. 15FIFTH REP.
1962 N.Y. LEG. DOC. NO. 8SIXTH REP.

able under the statute. Particularly noteworthy cases have also arisen under Article 31 and Article 32 of the CPLR.

The cases discussed herein 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. Few cases treated in the *Survey* are exhaustively discussed. It is hoped, however, 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 key 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 2—LIMITATIONS OF TIME

CPLR 204(a): Leave to sue MVAIC—statute of limitations tolled while leave to sue is secured.

The victim of a hit-and-run automobile accident must, upon notice to MVAIC, apply to the supreme court for an order permitting an action against MVAIC.¹ In *Creswell v. Doe*,² plaintiff petitioned the supreme court for leave to sue MVAIC. Leave was not granted until a time equal to the period of limitations for both wrongful death and personal injuries had elapsed.³ The court, however, permitted the application of CPLR 204(a), which provides that the statute of limitations will be tolled for the duration of a court-imposed stay or a statutory prohibition. Thus, the statute of limitations was tolled from the time of the accident until leave to sue MVAIC was obtained.

The fact that *leave* to sue was granted 127 days after the wrongful death statute of limitations had expired, even when considered in conjunction with CPLR 2219, which gives a court sixty days to file a decision on a motion, indicates that the *motion* was made after the wrongful death statute had expired. Since suit against MVAIC is statutorily prohibited until leave to sue is granted, the court's construction of CPLR 204(a) suggests that the entire period of time, from the accident to the granting of leave to sue, is excluded from the statute of limitations. This may allow the incongruous result that a hit-and-run victim may wait an inordinate length of time before requesting leave to sue.

This result seems to be intended by the court, since the dissent advised a strict application of the wrongful death statute of lim-

¹ N.Y. INS. LAW § 618(a).

² 22 App. Div. 2d 942, 255 N.Y.S.2d 946 (2d Dep't 1964).

³ N.Y. DECED. EST. LAW § 130; CPLR 214(5).