

# Table of Contents

---

	Page
IN MEMORIAM.....	V
PREFACE TO THE SIXTH EDITION.....	VII
<b>CHAPTER 1. INTRODUCTION.....</b>	<b>1</b>
§ 1. Purpose of This Book.....	1
§ 2. The CPLR.....	3
§ 3. Other Procedural Tools.....	4
§ 4. One Form of Action.....	6
§ 5. Administration of the Courts.....	8
§ 6. Liberal Construction.....	9
§ 7. Forms.....	12
<b>CHAPTER 2. THE COURTS AND THEIR JURISDICTION.....</b>	<b>15</b>
A. The Court System.....	15
§ 8. Kinds of Jurisdiction.....	15
§ 9. Court System; Geography.....	17
§ 10. Court of Appeals.....	20
§ 11. Appellate Division.....	21
§ 12. Supreme Court.....	23
§ 12A. Commercial Division of Supreme Court.....	25
§ 13. Appellate Term.....	27
§ 14. County Courts.....	27
§ 15. Surrogate's Court.....	29
§ 16. Family Court.....	30
§ 17. Court of Claims.....	31
§ 18. New York City Criminal Court.....	33
§ 19. New York City Civil Court.....	33
§ 20. District Courts.....	35
§ 21. City Courts.....	36
§ 22. Town and Village Courts.....	37
§ 23. Aggregating or Reducing Claims.....	38
B. Transfers Between Courts.....	40
§ 24. Mistake in Choice of Court.....	40
§ 25. Transfer Up for More Relief.....	41
§ 26. Transfer Down on Consent.....	42
§ 27. Transfer Down Without Consent.....	43
C. Forum Non Conveniens.....	46
§ 28. Forum Non Conveniens.....	46
§ 29. Forum Non Conveniens and Corporations.....	51
D. Other Restrictions on Jurisdiction.....	53
§ 30. Unlicensed Plaintiff Corporation.....	53
§ 31. Interference with Interstate Commerce.....	54

E.	Conditions Precedent to Suit .....	55
§ 32.	Conditions Precedent to Suit; Notice of Claim; Leave to Serve Late Notice .....	55
<b>CHAPTER 3. THE STATUTE OF LIMITATIONS.....</b>		<b>65</b>
A.	Introductory .....	65
§ 33.	Statute of Limitations, Generally .....	65
§ 34.	Theory; “Suspension of Remedy” Reckoning.....	67
B.	The Applicable Periods.....	68
§ 35.	The Various Time Periods .....	68
§ 36.	Equity Actions; Laches .....	75
§ 37.	Multiple Theories .....	77
C.	Altering the Period .....	80
§ 38.	Statutory Alterations.....	80
§ 39.	Agreements to Shorten or Lengthen the Period .....	82
D.	Accrual .....	83
§ 40.	“Accrual” of the Claim .....	83
§ 41.	Accrual in Warranty Cases .....	86
§ 42.	Accrual in Malpractice Cases.....	88
§ 43.	“Discovery” Accruals .....	95
§ 44.	Wrongful Death Cases.....	96
E.	Interposition .....	97
§ 45.	“Interposition” of the Claim; “United in Interest” .....	98
§ 46.	Provisional Remedy as Interposition.....	100
§ 47.	Delivery to Sheriff or Clerk .....	101
§ 48.	Counterclaims .....	101
§ 49.	Claim in Amended Pleading .....	103
F.	Extensions and Tolls .....	107
§ 50.	Extensions and Tolls, Generally .....	107
§ 51.	Toll Where Action Stayed.....	108
§ 52.	Termination of Prior Action .....	109
§ 53.	Defendant’s Absence.....	116
§ 54.	Disabilities as Tolls .....	117
§ 55.	Tolling for Death.....	120
§ 56.	Estopping Defendant from Pleading Limitation .....	121
G.	Foreign Claims .....	123
§ 57.	Foreign Claims; the “Borrowing” Statute .....	123
<b>CHAPTER 4. PERSONAL JURISDICTION.....</b>		<b>127</b>
A.	Introductory .....	127
§ 58.	Personal Jurisdiction, Introduction.....	127
B.	The Summons .....	128
§ 59.	Summons Service in New York as Jurisdictional Basis.....	129
§ 60.	Issuance of Summons; Accompanying Papers .....	130
§ 61.	Form of Summons Served with Complaint .....	134
§ 62.	Form of Summons Served with 305(b) Default Notice.....	135
§ 63.	Commencement of Action; When and by Whom Summons Served.....	136
§ 63A.	Commencement of Actions by Electronic Filing (“E-Filing”) .....	150
§ 64.	Amendment of the Summons.....	156

§ 65.	Amending Summons to Change Parties; Supplemental Summons .....	158
C.	The Methods of Service .....	161
§ 66.	Personal Delivery of Summons Under CPLR 308(1).....	161
§ 67.	Enticement into Jurisdiction .....	165
§ 68.	Sovereign Immunity and Immunity from Service.....	166
§ 69.	Whom to Serve in Behalf of Various Defendants .....	168
§ 70.	Service on a Corporation .....	174
§ 71.	“Sewer Service”; the Amendment of CPLR 308.....	178
§ 72.	Deliver-and-Mail Service Under CPLR 308(2) .....	179
§ 73.	Service on Rule 318 Agent Under CPLR 308(3) .....	182
§ 74.	Affix-and-Mail Service Under CPLR 308(4).....	183
§ 75.	Court-Ordered Service Under CPLR 308(5) .....	186
§ 76.	Service in Matrimonial Actions .....	191
§ 76A.	Personal Service by Mail.....	193
§ 76B.	Curing Technical Defects in Service.....	195
D.	Getting into the Courthouse .....	196
§ 77.	General Filing Requirements; Federal Practice Compared.....	196
§ 77A.	The Individual Assignment System (IAS).....	198
§ 77B.	Getting a Judge Assigned: Request for Judicial Intervention (RJI) .....	200
§ 77C.	Form of Request for Judicial Intervention (RJI) .....	202
§ 77D.	The Preliminary Conference .....	204
§ 78.	Getting an Index Number .....	208
§ 79.	Proof of Service .....	208
E.	The Jurisdictional Bases.....	211
§ 80.	Basis for Jurisdiction; CPLR 301.....	211
§ 81.	Domicile as Basis .....	212
§ 82.	The Corporate “Presence” Doctrine .....	213
§ 83.	Comparing Corporate “Doing Business” Tests .....	220
§ 84.	“Longarm” Jurisdiction, Background.....	222
§ 85.	Longarm Jurisdiction Under CPLR 302, Generally.....	224
§ 86.	“Transacts Any Business” Under CPLR 302(a)(1).....	225
§ 86A.	“Contracts Anywhere” Under CPLR 302(a)(1).....	239
§ 87.	“Tortious Act” Under CPLR 302(a)(2) .....	243
§ 88.	Without/Injury Within New York Under CPLR 302(a)(3) .....	245
§ 89.	Real Property Longarm Cases Under CPLR 302(a)(4).....	254
§ 90.	Longarm Jurisdiction for Support and Other Relief Under CPLR 302(b).....	255
§ 91.	The Restricted Appearance Under CPLR 302(c) .....	257
§ 92.	Jurisdiction Versus the Merits .....	257
§ 93.	Burden of Proving Jurisdiction.....	258
§ 94.	Overlap of Longarm Bases .....	260
§ 95.	Agency as Jurisdictional Basis .....	261
§ 96.	Attorney as Agent Under CPLR 303 .....	265
§ 97.	The Nonresident Motorist Statute .....	266
§ 98.	Jurisdiction by Written Agreement.....	269
§ 99.	Continuing Jurisdiction.....	270
F.	Service Outside New York .....	272
§ 100.	Service Outside New York Under CPLR 313.....	272

G.	Rem Jurisdiction .....	275
§ 101.	Rem Jurisdiction, Generally .....	275
§ 102.	Rem Jurisdiction of Marital Status .....	277
§ 103.	In Rem Jurisdiction Under CPLR 314(2) .....	279
§ 104.	Quasi in Rem Jurisdiction.....	281
§ 105.	The Doctrine of Seider v. Roth.....	287
§ 106.	Sequestration in Matrimonial Actions .....	292
§ 107.	Service by Publication .....	293
H.	Vacating Defaults .....	295
§ 108.	Vacating Default Judgment .....	295
<b>CHAPTER 5. APPEARANCE .....</b>		<b>299</b>
§ 109.	Appearance, Generally .....	299
§ 110.	How and When to Appear .....	300
§ 111.	Making and Preserving a Jurisdictional Objection .....	301
§ 112.	Informal Appearance.....	304
§ 113.	Appearance in “Rem” Actions; “Limited” Appearance .....	305
§ 114.	Adding Claims in Various Appearance Situations .....	307
§ 115.	Representation by Attorney .....	308
<b>CHAPTER 6. VENUE.....</b>		<b>313</b>
A.	Introductory .....	313
§ 116.	Venue, Generally .....	313
§ 117.	Agreement to Fix Venue.....	315
B.	Venue in Particular Actions .....	316
§ 118.	Venue in Transitory Actions .....	317
§ 119.	Venue for Corporations and Other Private Creatures .....	318
§ 120.	Venue for Governmental Entities.....	319
§ 121.	Venue in Local Actions .....	320
§ 122.	Special Venue Requirements in Consumer Credit Cases .....	321
C.	Change of Venue.....	322
§ 123.	Change of Venue from Improper to Proper County; “Demand” Procedure.....	322
§ 124.	Discretionary Grounds for Change of Venue .....	324
§ 125.	Effecting the Change of Venue .....	326
<b>CHAPTER 7. PARTIES .....</b>		<b>327</b>
A.	Joinder of Claims and Actions .....	327
§ 126.	Joinder of Claims .....	327
§ 127.	Consolidation, Joint Trial, Severance, and Separate Trial, Defined.....	328
§ 128.	Consolidation and Joint Trial .....	329
§ 129.	Severance and Separate Trial.....	333
§ 130.	Bifurcated Trial .....	334
B.	Necessary Joinder of Parties .....	336
§ 131.	Necessary Joinder of Parties, Background .....	336
§ 132.	Necessary Joinder of Parties, CPLR Approach.....	337
§ 133.	Avoiding Dismissal for Nonjoinder.....	338
C.	Permissive Joinder of Parties.....	342
§ 134.	Permissive Joinder of Parties .....	342

§ 135.	Joinder in the Alternative .....	344
D.	Proper Parties .....	345
§ 136.	Standing to Sue .....	345
§ 137.	“Real Party in Interest” .....	349
E.	Procedure for Joinder Problems .....	351
§ 138.	Motion to Add or Drop Parties; Procedure .....	351
F.	Class Actions .....	354
§ 139.	Class Actions, Background .....	354
§ 140.	Prerequisites to Class Action; the Old Law Reviewed .....	358
§ 141.	Prerequisites to Class Action; Present Law .....	359
§ 142.	Order Allowing Class Action .....	364
§ 143.	Notice of Class Action .....	367
§ 144.	Opting Out .....	369
§ 145.	“Fluid Recovery” .....	374
§ 146.	Defendant’s Side as Class .....	374
§ 147.	Pervasive Court Discretion in Class Action; Settlement and Judgment .....	375
G.	Interpleader .....	378
§ 148.	Interpleader, Generally .....	378
§ 149.	Liberal Use; Discharge of Stakeholder .....	379
§ 150.	Mode of Trial .....	381
§ 151.	Discretionary Tools .....	381
§ 152.	The Stakeholder’s Jurisdictional Dilemma .....	382
§ 153.	Rem Jurisdiction as Interpleader Basis .....	384
§ 154.	Interpleader in the Federal Courts .....	385
H.	Impleader .....	386
§ 155.	Third-Party Practice, or “Impleader,” Generally .....	386
§ 156.	Basic Procedure for Impleader .....	389
§ 157.	Indemnification as Impleader Basis; Other Bases .....	391
§ 158.	Effect if Impleader Complaint Negates Main Claim .....	394
§ 159.	Impleader as Premature Suit .....	395
§ 160.	Impleader in Insurance Situations .....	396
§ 161.	Discretionary Powers of Dismissal, Severance, and Like Steps .....	396
§ 162.	Statute of Limitations on Impleader Claims .....	397
§ 163.	Rights of Third-Party Defendant .....	398
§ 164.	Additional Claims Among the Parties .....	400
§ 165.	Enforcement of Third-Party Judgment .....	401
§ 166.	Successive Impleaders .....	402
§ 167.	Impleader in Various Courts and Proceedings .....	402
§ 168.	Vouching-In .....	403
§ 168A.	“Joint” Tort Liability Adjustment; Background .....	404
§ 168B.	“Joint” Tort Liability Adjustment; The 50%-or-Less Tortfeasor .....	406
§ 168C.	“Joint” Tort Liability Adjustment; Provisos and Exceptions .....	408
§ 168D.	“Joint” Tort Liability Adjustment; Burdens of Proof .....	418
§ 168E.	The Comparative Negligence Rule of CPLR Article 14–A .....	420
I.	Contribution .....	422
§ 169.	Contribution, Introductory .....	423
§ 170.	The Picture Before <i>Dole v. Dow Chemical Co.</i> .....	424
§ 171.	The Arrival of <i>Dole</i> .....	425

§ 172.	Contribution Under CPLR Article 14.....	427
§ 173.	Methods of Seeking Contribution .....	430
§ 174.	The Old Contribution Rules Contrasted; Judgment Limited to Excess .....	431
§ 175.	Some Problem Areas in Contribution.....	432
§ 176.	Effect of Settlement with Fewer than All Tortfeasors .....	437
§ 177.	Discretionary Tools in Handling Contribution Claims; Sequence of Trial .....	445
J.	Intervention .....	446
§ 178.	Intervention, Generally .....	446
§ 179.	Intervention of Right Under Special Statutes .....	447
§ 180.	Intervention of Right Where Representation Inadequate .....	448
§ 181.	Intervention of Right in Property Cases .....	451
§ 182.	Permissive Intervention .....	452
§ 183.	Procedure for Intervention .....	453
K.	Substitution .....	454
§ 184.	Substitution of Parties .....	454
§ 185.	Abatement of Claims .....	456
§ 186.	Procedure for Substitution .....	457
§ 187.	Public Body or Officer as Party.....	459
§ 188.	Unknown Parties .....	460
§ 189.	The Unincorporated Association.....	461
L.	Poor Persons .....	462
§ 190.	Poor Person Status .....	462
§ 191.	Procedure to Secure Poor Person Status.....	463
§ 192.	What Poor Person Designation Accomplishes .....	464
M.	Infants and Incompetents .....	466
§ 193.	Representation of Infant .....	466
§ 194.	Representation of Incapacitated Person .....	467
§ 195.	Representation Distinguished from Service .....	468
§ 196.	Guardian Ad Litem Distinguished from Other Guardianships.....	469
§ 197.	Procedure for Appointment of Guardian Ad Litem .....	469
§ 198.	Qualifications, Rights, and Authority of Guardian Ad Litem .....	471
§ 199.	Risks if No Proper Representative Present .....	471
§ 200.	Settlement of Infant's or Incapacitated Person's Claim.....	472
<b>CHAPTER 8. PAPERS.....</b>		<b>475</b>
§ 201.	Form of Papers.....	475
§ 202.	Service of Papers; Method and Time Computation .....	480
§ 203.	Service on All Parties .....	488
§ 204.	Stipulations .....	489
§ 205.	Affidavits and Affirmations .....	495
§ 206.	Undertakings .....	497
<b>CHAPTER 9. PLEADINGS .....</b>		<b>499</b>
A.	Basic Rules of Pleading.....	499
§ 207.	Pleadings, Background.....	499
§ 208.	The Basic Pleading Requirement .....	500
§ 209.	Theory of the Pleadings Rule Abolished .....	503

---

§ 210.	Some Forms.....	505
§ 211.	Pleading in the Federal and Lower Courts Compared.....	507
§ 212.	Separate Statement and Numbering .....	509
§ 213.	Statements Deemed Repeated; Writings .....	511
§ 214.	Various Techniques of Pleading.....	512
B.	Specific Items.....	514
§ 215.	Pleading Certain Specific Matters; CPLR 3015.....	514
§ 216.	Particularity in Specific Actions; CPLR 3016 .....	517
C.	Demand for Relief.....	521
§ 217.	Demand for Relief; “Wherefore” Clause .....	521
D.	Election of Remedies .....	524
§ 218.	Election of Remedies; Separate Actions .....	525
§ 219.	Election of Remedies; Within an Action.....	528
E.	Splitting .....	530
§ 220.	Splitting.....	530
F.	The Answer .....	531
§ 221.	The Answer; Denials .....	531
§ 222.	Marked Pleadings .....	534
§ 223.	Affirmative Defenses .....	534
G.	Counterclaims.....	540
§ 224.	Counterclaims, Generally .....	540
§ 225.	Counterclaims; Parties with Several Capacities .....	543
§ 226.	Counterclaim Against Assignee-Plaintiff.....	544
H.	Cross-Claims.....	546
§ 227.	Cross-Claims .....	546
§ 228.	Form of Answer.....	548
I.	The Reply .....	550
§ 229.	The Reply; Further Pleadings.....	550
J.	Corrective Motions .....	552
§ 230.	Motions to Correct Pleadings; CPLR 3024.....	552
K.	Service of Pleadings .....	554
§ 231.	Service of Pleadings; Responding Time.....	554
§ 231A.	Leave Time for Trouble .....	559
L.	Verification .....	565
§ 232.	Verification of Pleadings, Generally.....	566
§ 233.	Who May Verify .....	568
§ 234.	Form of Verification.....	569
§ 235.	Remedy for Defective Verification .....	571
M.	Amendment of Pleadings .....	572
§ 236.	Amendment as of Course .....	572
§ 237.	Amendment by Leave .....	574
N.	Bill of Particulars .....	580
§ 238.	Bill of Particulars, Generally .....	580
§ 239.	Procedure for Bill of Particulars .....	585
§ 240.	Amending and Supplementing the Bill.....	586
§ 241.	Remedies in Connection with Bill of Particulars.....	587
§ 242.	Variances.....	590

<b>CHAPTER 10. MOTION PRACTICE .....</b>	<b>593</b>
§ 243. Motion Practice, Generally.....	593
§ 244. Ex Parte Motions .....	597
§ 245. Where Motion Made (Venue of Motions).....	600
§ 246. The Motion Papers.....	603
§ 247. Motion Notice Requirements .....	607
§ 248. Order to Show Cause.....	612
§ 249. Cross-Motion .....	616
§ 250. Deciding the Motion; Drawing and Entering the Order .....	619
§ 251. Trial of Issue of Fact Arising on Motion.....	627
§ 252. Some Forms.....	627
§ 253. Motion Affecting Prior Order .....	630
§ 254. Motion to Reargue or Renew.....	632
§ 255. Stay .....	637
<b>CHAPTER 11. ACCELERATED JUDGMENT .....</b>	<b>639</b>
A. Introductory .....	639
§ 256. Accelerated Judgment; CPLR Article 32.....	639
B. Motion to Dismiss.....	640
§ 257. The Motion to Dismiss, CPLR 3211 Generally .....	640
§ 258. The Dismissal Grounds: CPLR 3211(a).....	642
§ 259. Defense Based on “Documentary Evidence”; Paragraph 1 .....	644
§ 260. Subject Matter Jurisdiction; Paragraph 2 .....	645
§ 261. Lack of Capacity to Sue; Paragraph 3.....	645
§ 262. Other Action Pending; Paragraph 4.....	646
§ 263. Affirmative Defenses Usable on Dismissal Motion; Paragraph 5 .....	649
§ 264. Non-Interposable Counterclaim; Paragraph 6 .....	651
§ 265. Failure to State a Cause of Action; Paragraph 7.....	652
§ 266. Lack of Personal Jurisdiction; Paragraph 8.....	655
§ 267. Lack of Rem Jurisdiction; Paragraph 9.....	656
§ 268. Dismissal for Indispensable Party; Paragraph 10.....	657
§ 269. Motion to Dismiss Defense.....	657
§ 270. Treating 3211 Motion as Summary Judgment.....	659
§ 271. Immediate Trial of Fact Issue Under CPLR 3211 .....	661
§ 272. Time for 3211 Motion .....	662
§ 273. Single Motion Rule .....	663
§ 274. Option to Plead Instead of Move; Waiver.....	665
§ 275. Leave to Replead.....	667
§ 276. Res Judicata Effect of CPLR 3211 Disposition .....	668
§ 277. Motion Under CPLR 3211 Extends Responding Time .....	669
C. Summary Judgment.....	670
§ 278. Summary Judgment, Generally.....	670
§ 279. Time to Move for Summary Judgment.....	672
§ 280. Actions in Which Summary Judgment Available.....	679
§ 281. Proof on Summary Judgment Motion .....	682
§ 282. Searching the Record.....	686
§ 283. Summary Judgment Under 3212 Based on 3211 Ground .....	687
§ 284. Immediate Trial of Fact Issue Under CPLR 3212.....	688
§ 285. Partial Summary Judgment; Effect of Counterclaim.....	689



§ 286.	Salvaging Something from Abortive Motion.....	691
§ 287.	Res Judicata Effect of Summary Judgment Motion.....	692
D.	Summary Judgment in Lieu of Complaint .....	693
§ 288.	Summary Judgment Motion in Lieu of Complaint; CPLR 3213 .....	693
§ 289.	Money Instrument as Basis for CPLR 3213 Motion.....	694
§ 290.	Judgment as Basis for CPLR 3213 Motion .....	695
§ 291.	Procedure Under CPLR 3213.....	697
§ 292.	Effect of Denial; Conversion.....	698
E.	Default Judgment.....	700
§ 293.	Taking Default Judgment .....	700
§ 294.	Time for Default Application .....	704
§ 295.	Papers on Default Application .....	706
§ 296.	Notice of Default Application.....	709
F.	Voluntary Discontinuance .....	713
§ 297.	Voluntary Discontinuance, Methods .....	713
§ 298.	Effect of Discontinuance.....	716
G.	Confession of Judgment .....	717
§ 299.	Confession of Judgment, Generally .....	717
§ 300.	Affidavit for Confession of Judgment .....	718
§ 301.	Filing, Enforcement, and Effect of Confessed Judgment .....	720
§ 302.	Vacating Confessed Judgment.....	721
H.	Tenders and Offers .....	722
§ 303.	Tenders and Offers; CPLR 3219–3221 .....	722
I.	Action on Submitted Facts.....	723
§ 304.	Action on Submitted Facts .....	723
§ 305.	Disposition of Submission .....	724
<b>CHAPTER 12. PROVISIONAL REMEDIES.....</b>		<b>727</b>
A.	Introductory .....	727
§ 306.	Provisional Remedies, Generally .....	727
§ 307.	Provisional Remedies; Constitutional Requirements.....	730
B.	Arrest .....	736
C.	Attachment .....	736
§ 313.	Attachment, Generally .....	736
§ 314.	Grounds for Attachment.....	737
§ 315.	Attachment; Status of Constitutionality .....	739
§ 316.	Applying for the Attachment .....	741
§ 317.	Attachment Discretionary .....	745
§ 318.	The Various Time Periods Concerning Attachment.....	746
§ 319.	Summons Service Within 60 Days .....	747
§ 320.	Levy of the Attachment .....	748
§ 321.	“Perfecting” the Levy.....	751
§ 322.	Examples of Interplay of Attachment Requirements.....	753
§ 323.	What Property Attachable?.....	754
§ 324.	Disclosure to Aid Attachment .....	757
§ 325.	Defendant’s Remedies: Vacatur; Discharge; Annulment; Action on Undertaking.....	758
§ 326.	Disposition of Property; Disputes; Priorities .....	761

D.	Injunction.....	762
§ 327.	Preliminary Injunction, Grounds .....	763
§ 328.	Required Showing; Discretion.....	765
§ 329.	Applying for the Injunction.....	768
§ 330.	Temporary Restraining Order .....	771
§ 331.	Vacating or Modifying Injunction or TRO.....	775
E.	Receivership.....	776
§ 332.	Temporary Receivership.....	776
§ 333.	Applying for the Receivership.....	778
F.	Notice of Pendency .....	779
§ 334.	Notice of Pendency, Generally .....	779
§ 335.	Procedure for Filing.....	781
§ 336.	Cancellation of Notice.....	783
G.	Seizure of Chattel.....	785
§ 337.	Replevin Action, Generally .....	785
§ 338.	Constitutionality of Preliminary Seizure.....	787
§ 339.	Applying for the Seizure.....	788
§ 340.	The Seizure and Subsequent Proceedings .....	791
§ 341.	Commencing the Action .....	793
§ 342.	Judgment in Replevin Action.....	795
<b>CHAPTER 13. DISCLOSURE .....</b>		<b>797</b>
A.	Generally.....	797
§ 343.	Disclosure; Introduction .....	797
§ 344.	Disclosure Criteria; CPLR 3101(a).....	799
§ 345.	Disclosure from Parties and Nonparties .....	805
B.	Excluded Matters .....	810
§ 346.	Privileged Matter.....	810
§ 347.	Attorney’s Work Product.....	812
§ 348.	Materials Prepared for Litigation.....	814
§ 348A.	Identification of Experts; Statement of Expected Testimony .....	823
§ 349.	Revelation of Names of Witnesses .....	829
C.	Devices and Methods in Perspective .....	831
§ 350.	The Disclosure Devices; Priority of Use .....	831
§ 351.	Method of Bringing on Disclosure; Stipulation or Notice .....	833
§ 352.	Instances Where Order Initially Required.....	835
§ 352A.	Requirement to Supplement Prior Responses .....	839
D.	Protection Against Abuse.....	842
§ 353.	Protective Order; CPLR 3103 .....	842
E.	The Devices Individually .....	846
§ 354.	Deposition on Oral Questions: The “EBT” .....	847
§ 355.	Place of Deposition.....	848
§ 356.	Taking the Deposition .....	850
§ 357.	Executing the Deposition .....	855
§ 358.	Use of Deposition .....	857
§ 359.	Deposition on Written Questions.....	861
§ 360.	Commission or Letters Rogatory .....	863
§ 361.	Interrogatories .....	864
§ 362.	Discovery and Inspection .....	868

§ 363.	Physical and Mental Examinations.....	880
§ 364.	Notice to Admit.....	885
§ 365.	Demand for Address.....	889
F.	Compelling Disclosure.....	890
§ 366.	Order Compelling Disclosure; Rulings.....	890
§ 367.	Sanctions for Nondisclosure.....	892
<b>CHAPTER 14. PRETRIAL INCIDENTS.....</b>		<b>901</b>
A.	Calendar Practice.....	901
§ 368.	Calendar Practice, Introductory.....	901
§ 369.	Note of Issue.....	903
§ 370.	Statement of Readiness.....	905
§ 371.	Form of Note of Issue and Statement of Readiness.....	908
B.	Preferences.....	911
§ 372.	The “General” Preference.....	911
§ 373.	The “Special” Preference.....	913
C.	Pretrial Conference.....	917
§ 374.	Pretrial Conferences.....	917
D.	Laxness Dismissals.....	919
§ 375.	Dismissal for Want of Prosecution; CPLR 3216.....	919
§ 376.	Dismissal of Abandoned Cases; CPLR 3404.....	926
E.	Mode of Trial.....	930
§ 377.	Triability by Jury.....	931
§ 378.	Demand and Waiver of Trial by Jury.....	935
§ 379.	Triability by Referee.....	940
§ 380.	Triability by the Court.....	946
§ 381.	Advisory Jury.....	948
F.	Subpoenas and Oaths.....	949
§ 382.	Subpoenas; Issuance.....	949
§ 383.	Service of Subpoena.....	953
§ 384.	Motion to Quash Subpoena.....	956
§ 385.	Disobedience of Subpoena.....	957
§ 386.	Form of Subpoena.....	958
§ 387.	Notice to Produce.....	960
§ 388.	Oaths and Affirmations.....	960
<b>CHAPTER 15. THE TRIAL.....</b>		<b>965</b>
A.	Introductory.....	965
§ 389.	The Trial, Introductory.....	965
B.	Selecting a Jury.....	967
§ 390.	Impaneling a Jury.....	967
§ 391.	Alternate Jurors.....	969
§ 392.	Challenges to Jurors.....	970
C.	The Trial Proper.....	974
§ 393.	Sequence of Trial.....	974
§ 394.	Separate Trial of Issues; Bifurcation.....	976
§ 395.	Right to Open and Close.....	977
§ 396.	Objections and Rulings.....	979
§ 397.	Summation.....	981

§ 398. The Charge .....	983
D. The Verdict .....	987
§ 399. Kinds of Verdict .....	987
§ 400. Delivery of the Verdict.....	990
§ 401. Defective Verdicts; Impeachment.....	993
E. Trial Motions .....	995
§ 402. Motion for Judgment During Trial.....	995
§ 403. Motion for Mistrial.....	999
§ 404. Motion to Conform the Pleadings to the Proof.....	1000
§ 405. Post-Trial Motion for Judgment .....	1003
§ 406. Motion for New Trial on the “Weight of the Evidence” .....	1006
§ 407. Additur and Remittitur .....	1007
§ 408. Motions for “Judgment,” Compared .....	1010
<b>CHAPTER 16. THE JUDGMENT .....</b>	<b>1013</b>
A. Contents of Judgment .....	1013
§ 409. Content of Judgment .....	1013
§ 410. Interlocutory Judgment.....	1015
B. Interest.....	1016
§ 411. Allowance of Interest.....	1017
§ 412. Rate of Interest .....	1025
C. Fees, Costs, and Disbursements.....	1028
§ 413. Fees, Costs, and Disbursements, Generally .....	1028
§ 414. Costs .....	1029
§ 414A. “Frivolity” Sanctions.....	1031
§ 415. Disbursements .....	1040
§ 416. Taxation of Costs and Disbursements.....	1041
§ 417. Form of Judgment.....	1042
D. Recording the Judgment.....	1043
§ 418. Entry of Judgment.....	1043
§ 419. The Judgment-Roll .....	1046
§ 420. Correcting the Judgment; Nunc Pro Tunc Changes.....	1046
§ 421. Docketing the Judgment .....	1049
§ 422. Transcribing Judgments Between Courts and Counties.....	1051
§ 423. Changes Affecting Judgments and Dockets.....	1053
E. Recording Satisfaction .....	1054
§ 424. Satisfaction-Piece.....	1055
§ 425. Entry of Satisfaction.....	1056
F. Vacating Judgments and Orders.....	1058
§ 426. Motion to Vacate Judgment or Order, Generally .....	1058
§ 427. Excusable Default.....	1060
§ 428. Newly Discovered Evidence .....	1062
§ 429. Fraud or Misconduct.....	1063
§ 430. Lack of Jurisdiction .....	1064
§ 431. Reversal of Underlying Judgment .....	1066
§ 432. Conditioning the Vacatur.....	1068
§ 433. Restitution.....	1069
G. Renewal of Judgment.....	1069
§ 434. Renewal of New York Judgment .....	1070

§ 435.	Registration of Full Faith and Credit Judgment.....	1072
H.	Declaratory Judgment .....	1075
§ 436.	Declaratory Judgment, Generally .....	1076
§ 437.	Uses of Declaratory Judgment.....	1078
§ 438.	Procedure in Declaratory Action; Limitations of Time .....	1082
§ 439.	Trial by Jury in Declaratory Action .....	1084
§ 440.	Judgment in Declaratory Action.....	1085
§ 441.	Need for Follow-Up Relief .....	1086
<b>CHAPTER 17. RES JUDICATA.....</b>		<b>1089</b>
A.	Introductory .....	1089
§ 442.	Res Judicata, Introductory.....	1089
§ 443.	Members of the Res Judicata Family .....	1091
B.	General Requisites .....	1094
§ 444.	Necessity of Final Judgment.....	1094
§ 445.	Res Judicata for Order .....	1096
§ 446.	Necessity for Disposition on “Merits” .....	1096
§ 447.	Preclusion for “Might Have Been Litigated” Items .....	1098
C.	Comparison with Other Doctrines .....	1100
§ 448.	Law of the Case.....	1100
§ 449.	Relation to Stare Decisis .....	1102
§ 450.	“Merger” and “Bar” .....	1103
D.	Res Judicata in Particular Situations.....	1105
§ 451.	Application to Default and Consent Judgments.....	1105
§ 452.	Application to Counterclaims.....	1106
§ 453.	Civil Use of Criminal Findings .....	1108
§ 454.	Res Judicata in Representative and Class Situations .....	1109
§ 455.	Res Judicata for Jurisdictional Issues .....	1109
§ 456.	Res Judicata for Administrative and Arbitral Decisions .....	1112
E.	Collateral Estoppel.....	1118
§ 457.	Collateral Estoppel, Introductory .....	1118
F.	Identity of Parties.....	1119
§ 458.	Identity of Estopped Party .....	1119
§ 459.	Different Capacities.....	1122
§ 460.	Identity of Estopping Party; “Mutuality” of Estoppel .....	1122
§ 461.	“Privity” .....	1123
G.	Identifying the Issue .....	1127
§ 462.	Identity of Issue Test.....	1127
§ 463.	Law and Fact, Ultimate and Evidentiary .....	1129
§ 464.	Underlying Facts Bind, Litigated or Not .....	1131
§ 465.	Gratuitous Findings .....	1132
H.	Multiparty Situations .....	1134
§ 466.	Multiparty Situations; a Perspective .....	1134
§ 467.	The Full and Fair Opportunity Test; Factors to Consider.....	1136
§ 468.	Multiparty Vehicle Tort Examples .....	1142
I.	Different Courts.....	1148
§ 469.	Effect When Different Courts Involved.....	1148
§ 470.	Nonjury Determinations; Court of Claims Problems .....	1152
§ 471.	Recognition of Domestic Judgments; Full Faith and Credit.....	1153

§ 472.	Recognition of Foreign-Country Judgments; “Comity” .....	1156
J.	Procedural Incidents .....	1159
§ 473.	Evidentiary Sources to Establish Matters Estopped .....	1160
§ 474.	Estoppel Only for Given Issue .....	1160
§ 475.	Raising the Issue; Burden of Proof .....	1161
<b>CHAPTER 18. ENFORCEMENT OF JUDGMENTS.....</b>		<b>1163</b>
Introductory.....		1163
§ 476.	Enforcement of Judgments, Generally .....	1163
PART I. ENFORCEMENT OF NON-MONEY JUDGMENTS		
A.	Judgments Involving a Chattel or Realty .....	1165
§ 477.	Judgment Awarding Possession of Chattel.....	1165
§ 478.	Judgment Awarding Possession of Realty .....	1166
§ 479.	Judgment Directing Sale of Realty.....	1167
§ 480.	Judgment Directing Conveyance of Realty .....	1168
B.	Enforcement by Contempt .....	1168
§ 481.	Enforcement by Contempt; Grounds .....	1168
§ 482.	Criminal and Civil Contempt Distinguished; Punishment.....	1172
§ 483.	Constitutionality of Contempt Procedure .....	1175
§ 484.	Procedure to Punish for Contempt .....	1177
PART II. ENFORCEMENT OF MONEY JUDGMENTS		
A.	In General .....	1181
§ 485.	Enforcement of Money Judgments, Introductory .....	1181
B.	Property Subject to Enforcement .....	1183
§ 486.	Property Applicable to the Judgment, Introductory .....	1184
§ 487.	Examples of Leivable Property Rights .....	1185
§ 488.	Creditor Stands in Debtor’s Shoes.....	1190
§ 489.	Contingent Intangibles.....	1192
§ 490.	Exemptions.....	1197
§ 491.	Proper Garnishee .....	1202
C.	Devices in Perspective.....	1206
§ 492.	The Enforcement Devices, Introductory.....	1206
§ 493.	Courts in Which Enforcement Devices Available .....	1207
D.	Property Executions .....	1211
§ 494.	The Executions, Generally .....	1211
§ 495.	Property Execution, Issuance, and Contents.....	1211
§ 496.	Levy on Personal Property .....	1214
§ 497.	Property “Capable of Delivery” .....	1218
§ 498.	Selling the Personal Property .....	1220
§ 499.	Levy on Real Property .....	1221
§ 500.	Selling the Real Property .....	1222
§ 501.	Sheriff’s Return.....	1225
E.	Income Execution .....	1225
§ 502.	Income Execution, Contents and Service .....	1226
§ 503.	Income Execution; Computing the 10% .....	1229
§ 504.	Priorities Among Income Executions .....	1233
§ 505.	Employer’s Obligations on Income Execution.....	1234
§ 506.	Sheriff’s Obligation on Income Execution .....	1235

§ 507.	Modifying the Income Execution .....	1236
§ 507A.	Special Income Execution for Support .....	1236
F.	The “Supplementary Proceedings” .....	1238
§ 508.	Restraining Notice .....	1238
§ 509.	Disclosure in Aid of Enforcement .....	1242
§ 510.	Delivery Order or Judgment .....	1247
§ 511.	Installment Payment Order .....	1252
§ 512.	Receivership .....	1254
§ 513.	Arrest .....	1256
G.	Incidental Matters .....	1257
§ 514.	Death of Judgment Debtor .....	1257
§ 515.	Protecting the Garnishee .....	1259
§ 516.	Prejudgment Enforcement .....	1260
H.	Priorities and Liens .....	1261
§ 517.	Priorities and Liens on Real Property .....	1261
§ 518.	Rights in Personal Property, Introductory .....	1264
§ 519.	Rights in Personal Property; Judgment Creditor Versus Transferee .....	1265
§ 520.	Rights in Personal Property; Judgment Creditors Among Themselves .....	1267
§ 521.	Proceeding to Determine Adverse Claims .....	1270
I.	Protection Against Abuse .....	1272
§ 522.	Protective Order .....	1272
J.	Contempt as Back-Up Device .....	1275
§ 523.	Contempt Enforcement of Certain Devices .....	1275
<b>CHAPTER 19. APPEALS .....</b>		<b>1279</b>
A.	Introductory .....	1279
§ 524.	Appeals, Introductory .....	1279
§ 525.	“Aggrieved” Party .....	1283
B.	Appealability .....	1285
§ 526.	Appeals to Appellate Division .....	1285
§ 527.	Appeals to Court of Appeals as of Right .....	1291
§ 528.	Appeals to Court of Appeals by Permission .....	1298
§ 528A.	Certification to Court of Appeals by Other Courts .....	1300
C.	Reviewability .....	1302
§ 529.	Reviewability in Particular Courts .....	1303
§ 530.	Scope of Review from Final Judgment .....	1306
D.	Taking the Appeal .....	1313
§ 531.	Taking an Appeal; How .....	1313
§ 532.	Subsequent Orders .....	1315
§ 533.	Time to Appeal or Move for Leave .....	1319
§ 534.	Omissions, Defects, and Time Extensions .....	1322
§ 535.	Injunctions and Stays .....	1324
E.	Perfecting the Appeal .....	1328
§ 536.	“Perfecting” the Appeal, Introductory .....	1328
§ 537.	The Transcript .....	1332
§ 538.	The Record .....	1334
§ 539.	The Briefs and Appendices .....	1337

§ 540.	Calendar Practice and the Argument.....	1340
F.	Incidental Appellate Practice .....	1341
§ 541.	Motions in Appellate Courts .....	1341
§ 542.	Dismissal of Appeal for Want of Prosecution.....	1342
G.	Concluding the Appeal.....	1344
§ 543.	Disposition of Appeal.....	1344
§ 544.	Reargument.....	1347
§ 545.	Remittitur.....	1348
<b>CHAPTER 20.</b>	<b>SPECIAL PROCEEDINGS .....</b>	<b>1351</b>
§ 546.	Special Proceedings, Introductory .....	1351
	<b>PART I. THE SPECIAL PROCEEDING, IN GENERAL</b>	
§ 547.	The “Special Proceeding,” Described .....	1352
§ 548.	Statute of Limitations in Special Proceedings.....	1354
§ 549.	Venue in Special Proceedings .....	1355
§ 550.	Procedure in Special Proceedings .....	1357
§ 551.	Parties to Special Proceedings .....	1357
§ 552.	Pleadings in Special Proceedings.....	1358
§ 553.	Bringing the Proceeding.....	1359
§ 554.	Motions in Special Proceedings .....	1364
§ 555.	Disclosure in Special Proceedings .....	1365
§ 556.	Hearing and Disposition of Special Proceeding.....	1366
	<b>PART II. THE ARTICLE 78 PROCEEDING</b>	
A.	Introductory .....	1368
§ 557.	Article 78 Proceeding, Introductory .....	1368
B.	Scope of the Proceeding.....	1370
§ 558.	Mandamus.....	1371
§ 559.	Prohibition.....	1375
§ 560.	Certiorari.....	1378
§ 561.	Mandamus-Certiorari Borderline.....	1380
§ 562.	Judicial Review of Penalty or Discipline.....	1384
§ 563.	Overstepping Outer Borders of Article 78 .....	1385
C.	Procedural Basics .....	1386
§ 564.	Parties in Article 78 Proceeding .....	1387
§ 565.	Venue of Article 78 Proceeding.....	1388
§ 566.	Statute of Limitations in Article 78 Proceeding .....	1390
D.	Mechanics .....	1395
§ 567.	Bringing the Proceeding.....	1395
§ 568.	Hearing and Determination; Transfer to Appellate Division.....	1399
§ 569.	Trial of Issue of Fact in Article 78 Proceeding.....	1401
§ 570.	Judgment and Enforcement in Article 78 Proceeding.....	1402
	TABLE OF CASES .....	1407
	TABLE OF STATUTES AND CPLR CITATIONS.....	1451
	TABLE OF COURT RULES.....	1473
	INDEX.....	1477