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“YEAR IN REVIEW” MONTHLY OUTLINES

“YEAR IN REVIEW” OUTLINES OF THE ISSUES DISCUSSED IN THE DIGEST IN 2016 ORGANIZED BY COURT AND LINKED TO THE DECISIONS

JANUARY 2016 --- SEPTEMBER 2016

EACH OF THE NINE MONTHLY OUTLINES BELOW GROUPS THE 2016 DECISIONS BY ISSUING COURT. EACH OUTLINE ENTRY IS LINKED TO THE DECISION ITSELF (CLICK ON THE CASE NAME. HOLD DOWN THE CONTROL KEY [CTL] TO OPEN CASE IN NEW TAB.)

THE OUTLINES ARE DESIGNED TO ALLOW THE READER TO QUICKLY SURVEY THE DECISIONS ISSUED BY A PARTICULAR COURT IN ANY MONTH IN 2016. USE THE ENTRIES IN THE TABLE OF CONTENTS TO GO DIRECTLY TO THE DESIRED MONTH AND COURT (CLICK ON THE ENTRY). USE THE PAGE “NUMBER BOX” AT THE TOP OF THE SCREEN TO RETURN TO THE TABLE OF CONTENTS (TYPE “2” IN THE PAGE “NUMBER BOX” BEFORE THE SLASH AND CLICK ON THE BODY OF THE DOCUMENT).

WITHIN EACH SECTION DEVOTED TO A PARTICULAR COURT, THE OUTLINE ENTRIES ARE ORGANIZED BY TOPIC, ALLOWING THE READER TO QUICKLY FIND HIS OR HER AREAS OF INTEREST.

EACH OUTLINE ENTRY IS A CONCISE DESCRIPTION OF THE ISSUE ADDRESSED BY THE DECISION TO WHICH THE ENTRY IS LINKED.

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[JANUARY 2016](#)

[FIRST DEPARTMENT](#)

ATTORNEYS.

PLENARY ACTION UNDER JUDICIARY LAW 487 ALLEGING ATTORNEYS ENGAGED IN DECEITFUL AND COLLUSIVE CONDUCT DURING A PRIOR CONTRACT ACTION PROPERLY SURVIVED MOTION TO DISMISS.
[Melcher v Greenberg Traurig LLP, 2016 NY Slip Op 00274, 1st Dept. 1-19-16](#)

CIVIL PROCEDURE.

ALTHOUGH VACATUR OF A DEFAULT JUDGMENT WAS NOT AVAILABLE UNDER CPLR 5015, VACATUR WAS AVAILABLE UNDER CPLR 317.
[Marte v 102-06 43 Ave., LLC, 2016 NY Slip Op 00061, 1st Dept 1-7-16](#)

LONG-ARM JURISDICTION DID NOT REACH AN AUDITING FIRM IN THE UK AND CONVERSION CAUSES OF ACTION FAILED BECAUSE THE CONVERTED FUNDS WERE NOT IDENTIFIABLE AFTER THEY HAD BEEN INVESTED.
[McBride v KPMG Intl., 2016 NY Slip Op 00306, 1st Dept 1-19-16](#)

CONVERSION, REPLEVIN AND UNJUST ENRICHMENT CAUSES OF ACTION TIME-BARRED, CRITERIA EXPLAINED.
[Swain v Brown, 2016 NY Slip Op 00574, 1st Dept 1-28-16](#)

CONTRACT LAW.

ASSIGNMENT TO PLAINTIFF OF "ALL RIGHT, TITLE AND INTEREST" TO \$626 MILLION IN RESIDENTIAL MORTGAGE-BACKED SECURITIES DID NOT SPECIFICALLY MENTION FRAUD CLAIMS; THE RIGHT TO SUE MORGAN STANLEY FOR FRAUD, THEREFORE, WAS NOT ASSIGNED TO PLAINTIFF.
[Dexia SA/NV v Stanley, 2016 NY Slip Op 00122, 1st Dept 1-12-16](#)

CORPORATION LAW.

SHAREHOLDERS' DERIVATIVE ACTION AGAINST MORGAN STANLEY ARISING FROM THE LOSS OF \$6.2 BILLION FROM HIGH RISK TRADING DISMISSED; PLAINTIFFS FAILED TO DEMONSTRATE PRE-SUIT DEMAND WOULD BE FUTILE.
[Wandel v Dimon, 2016 NY Slip Op 00252, 1st Dept 1-14-16](#)

CRIMINAL LAW.

JUDGE FAILED TO MAKE IT CLEAR THAT ACQUITTAL ON THE TOP COUNT (ATTEMPTED MURDER) BASED ON SELF-DEFENSE REQUIRED ACQUITTAL ON ANY LESSER COUNT STEMMING FROM THE SAME CONDUCT; NEW TRIAL ORDERED.

[**People v Colasuonno, 2016 NY Slip Op 00021, 1st Dept 1-5-16**](#)

THE PEOPLE'S STATEMENTS OF READINESS FOR TRIAL WERE DEEMED ILLUSORY; CASE DISMISSED ON SPEEDY TRIAL GROUNDS.

[**People v Rodriguez, 2016 NY Slip Op 00423, 1st Dept 1-21-16**](#)

JUDGE PROPERLY REFUSED TO DISQUALIFY A JUROR WHO SAID SHE COULD NOT CONTINUE DELIBERATING BECAUSE SHE COULD NOT SEPARATE HER EMOTIONS FROM THE CASE.

[**People v Spencer, 2016 NY Slip Op 00447, 1st Dept 1-26-16**](#)

THE SEXUAL ASSAULT REFORM ACT (SARA), WHICH PROHIBITS CERTAIN SEX OFFENDERS FROM RESIDING OR TRAVELING WITHIN 1000 FEET OF A SCHOOL, DOES NOT IMPOSE PUNISHMENT AND THEREFORE DOES NOT VIOLATE THE EX POST FACTO CLAUSE.

[**Matter of Williams v Department of Corr. & Community Supervision, 2016 NY Slip Op 00135, 1st Dept 1-12-16**](#)

STATEMENT SHOULD NOT HAVE BEEN ADMITTED AS A PROMPT OUTCRY, CONVICTION REVERSED.

[**People v Ortiz, 2016 NY Slip Op 00593, 1st Dept 1-28-16**](#)

DEFENSE COUNSEL'S FAILURE TO MOVE TO REOPEN SUPPRESSION HEARING BASED ON NEW EVIDENCE LEARNED AT TRIAL CONSTITUTED INEFFECTIVE ASSISTANCE.

[**People v Kindell, 2016 NY Slip Op 00027, 1st Dept 1-7-16**](#)

FAMILY LAW.

DESPITE THE HUSBAND'S EXTRAORDINARY WEALTH, THE WIFE'S OVERREACHING CAUSE OF ACTION SEEKING TO SET ASIDE THE PRENUPTIAL AGREEMENT SHOULD NOT HAVE SURVIVED SUMMARY JUDGMENT.

[**Gottlieb v Gottlieb, 2016 NY Slip Op 00613, 1st Dept 1-28-16**](#)

SUPPRESSION OF JUVENILE'S PROVIDING FALSE NAME AND DATE OF BIRTH TO POLICE OFFICER PROPERLY DENIED; JUVENILE DELINQUENCY ADJUDICATION BASED UPON THE FALSE PEDIGREE INFORMATION PROPER.

[**Matter of Christy C., 2016 NY Slip Op 00095, 1st Dept 1-12-16**](#)

FRAUD.

PLAINTIFF'S INABILITY TO SHOW ACTUAL OUT-OF-POCKET LOSS REQUIRED DISMISSAL OF THE FRAUDULENT-INDUCEMENT CAUSE OF ACTION.

[**Connaughton v Chipotle Mexican Grill, Inc., 2016 NY Slip Op 00273, 1st Dept 1-19-16**](#)

INSURANCE LAW.

HERE DISCLAIMERS WERE UNNECESSARY BECAUSE THE ACTIVITY WHICH LED TO INJURY WAS NOT WITHIN THE OVERALL SCOPE OF THE POLICY-COVERAGE; HAD THE DISCLAIMERS BEEN BASED UPON AN EXCLUSION FROM COVERAGE, AS OPPOSED TO THE OVERALL SCOPE OF THE COVERAGE, THEY WOULD HAVE BEEN INVALID AS UNTIMELY.

[**Black Bull Contr., LLC v Indian Harbor Ins. Co., 2016 NY Slip Op 00002, 1st Dept 1-5-16**](#)

LABOR LAW-CONSTRUCTION LAW.

THE FACT THAT A (NON-DEFECTIVE) A-FRAME LADDER FELL OVER WHILE PLAINTIFF HELD ON TO IT AFTER PLAINTIFF WAS JOLTED WITH ELECTRICITY JUSTIFIED SUMMARY JUDGMENT ON PLAINTIFF'S LABOR LAW 240 (1) CAUSE OF ACTION.

[**Nazario v 222 Broadway, LLC, 2016 NY Slip Op 00251, 1st Dept 1-14-16**](#)

ALLEGATION PLAINTIFF WAS TOLD NOT TO WORK ON THE DAY HE FELL FROM A SCAFFOLD PRECLUDED SUMMARY JUDGMENT IN PLAINTIFF'S FAVOR; THE DEFINITION OF EMPLOYEE INCLUDES PERMISSION TO WORK.

[**Aslam v Neighborhood Partnership Hous. Dev. Fund Co., Inc., 2016 NY Slip Op 00316, 2nd Dept 1-20-16**](#)

LANDLORD-TENANT.

MOTION TO VACATE THE EXECUTED WARRANT OF EVICTION PROPERLY GRANTED.

[**Matter of Lafayette Boynton Hsg. Corp. v Pickett, 2016 NY Slip Op 00253, 1st Dept 1-14-16**](#)

NEGLIGENCE, EDUCATION-SCHOOL LAW.

DEFENDANT, WHICH OPERATED A STUDY-ABROAD PROGRAM, OWED A DUTY OF CARE TO INJURED STUDENT; BECAUSE DEFENDANT PRESENTED NO AFFIRMATIVE PROOF ON CAUSATION IN SUPPORT OF ITS SUMMARY JUDGMENT MOTION, THE BURDEN OF PROOF ON THAT ISSUE NEVER SHIFTED TO PLAINTIFF.

[**Katz v United Synagogue of Conservative Judaism, 2016 NY Slip Op 00094, 1st Dept 1-12-16**](#)

NEGLIGENCE, MEDICAL MALPRACTICE.

JURY CONFUSION, STEMMING FROM THE WORDING OF THE SPECIAL VERDICT SHEET, MANDATED A NEW TRIAL.

[**Srikishun v Edye, 2016 NY Slip Op 00315, 1st Dept 1-19-16**](#)

NEGLIGENCE, MUNICIPAL LAW.

THEORIES OF LIABILITY NOT FAIRLY IMPLIED FROM THE NOTICE OF CLAIM CAN NOT BE INCLUDED IN SUPPLEMENTAL BILL OF PARTICULARS.

[**Lewis v New York City Hous. Auth., 2016 NY Slip Op 00040, 1st Dept 1-7-16**](#)

SECOND DEPARTMENT

ATTORNEYS.

MALPRACTICE COMPLAINT SHOULD HAVE BEEN DISMISSED, ANALYTICAL CRITERIA EXPLAINED.

Janker v Silver, Forrester & Lesser, P.C., 2016 NY Slip Op 00481, 2nd Dept 1-27-16

CONTRACT LAW.

LOST PROFITS PROPERLY AWARDED FOR WRONGFUL TERMINATION OF SUBCONTRACT; CRITERIA EXPLAINED.

Inspectronic Corp. v Gottlieb Skanska, Inc., 2016 NY Slip Op 00155, 2nd Dept 1-13-16

ALTHOUGH THE ORAL CONTRACT CALLED FOR THE MATURATION OF A LOAN AFTER 15 YEARS, THE STATUTE OF FRAUDS DID NOT APPLY BECAUSE IT WAS POSSIBLE TO PERFORM THE CONTRACT WITHIN A YEAR.

JNG Constr., Ltd. v Roussopoulos, 2016 NY Slip Op 00156, 2nd Dept 1-13-16

CRIMINAL LAW.

YOUTHFUL OFFENDER ADJUDICATION PROPERLY USED TO DETERMINE SEX OFFENDER REGISTRATION ACT (SORA) RISK LEVEL.

People v Francis, 2016 NY Slip Op 00488, 2nd Dept 1-27-16

DEFAMATION, PRIVILEGE.

HOSPITAL DEFENDANTS ENTITLED TO MEDICAL-PEER-REVIEW AND COMMON-INTEREST QUALIFIED PRIVILEGE RE: COMMENTS MADE IN CONNECTION WITH THE TERMINATION OF PLAINTIFF-PHYSICIAN'S HOSPITAL PRIVILEGES.

Colantonio v Mercy Med. Ctr., 2016 NY Slip Op 00147, 2nd Dept 1-13-16

FAMILY LAW.

GOOD CAUSE FOR A FIVE-YEAR EXTENSION OF AN ORDER OF PROTECTION WAS DEMONSTRATED, CRITERIA EXPLAINED.

Matter of Molloy v Molloy, 2016 NY Slip Op 00366, 2nd Dept 1-20-16

AGREEMENT WHICH WAS PART OF A FOREIGN ISLAMIC DIVORCE DECREE PROPERLY ENFORCED UNDER THE DOCTRINE OF COMITY.

Badawi v Alesawy, 2016 NY Slip Op 00317, 2nd Dept 1-20-16

FRAUD.

FRAUD CAUSES OF ACTION DID NOT MEET PLEADING REQUIREMENTS.
[Doukas v Ballard, 2016 NY Slip Op 00474, 2nd Dept 1-27-16](#)

LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF'S LEANING TO THE SIDE OF A NON-DEFECTIVE LADDER WAS THE SOLE PROXIMATE CAUSE OF INJURY.
[Scofield v Avante Contr. Corp., 2016 NY Slip Op 00493, 2nd Dept 1-27-16](#)

LANDLORD-TENANT.

RENTAL PERMIT REQUIRED BY TOWN CODE WAS A CONDITION PRECEDENT TO THE LEASE; CODE PROVISION CREATED A PRIVATE RIGHT OF ACTION TO SEEK RESCISSION OF THE LEASE AND RETURN OF RENT PAID.
[Ader v Guzman, 2016 NY Slip Op 00137, 2nd Dept 1-13-16](#)

FORECLOSURE.

BANK DID NOT NEGOTIATE IN GOOD FAITH IN THE CPLR 3408 MANDATORY FORECLOSURE SETTLEMENT CONFERENCE, CERTAIN SANCTIONS PROPERLY IMPOSED.
[LaSalle Bank, N.A. v Dono, 2016 NY Slip Op 00340, 2nd Dept 1-20-16](#)

MUNICIPAL LAW.

UNDER THE CITY CHARTER, THE MAYOR DID NOT HAVE THE POWER TO ABOLISH A CIVIL SERVICE POSITION; ONLY THE BODY EMPOWERED TO CREATE THE POSITION CAN ABOLISH IT.
[Matter of Moser v Tawil, 2016 NY Slip Op 00501, 2nd Dept 1-27-16](#)

COUNTY CHARTER CONTROLLED WHERE THERE WAS A CONFLICT BETWEEN THE CHARTER AND AN ADMINISTRATIVE CODE PROVISION RE: ARBITRATION OF POLICE DISCIPLINARY MATTERS.
[Carver v County of Nassau, 2016 NY Slip Op 00466, 2nd Dept 1-27-16](#)

NEGLIGENCE.

GOLFER ASSUMED THE RISK OF SLIPPING ON A WET RAILROAD TIE WHICH LINED A PATH ON THE GOLF COURSE.
[Bryant v Town of Brookhaven, 2016 NY Slip Op 00323, 2nd Dept 1-20-16](#)

ANALYTICAL CRITERIA FOR DETERMINING LIABILITY IN A REAR-END COLLISION CASE CLEARLY EXPLAINED.
[Binkowitz v Kolb, 2016 NY Slip Op 00462, 2nd Dept 1-27-16](#)

NEGLIGENCE, LANDLORD-TENANT.

DEFENDANT DID NOT DEMONSTRATE NON-PARTY SUBLESSEE WAS RESPONSIBLE FOR MAINTAINING THE PREMISES; DEFENDANT'S SUMMARY JUDGMENT MOTION IN THIS SLIP AND FALL CASE SHOULD HAVE BEEN DENIED.

[**Iturrino v Brisbane S. Setauket, LLC, 2016 NY Slip Op 00480, 2nd Dept 1-27-16**](#)

NEGLIGENCE, MEDICAL MALPRACTICE.

THE ELEMENTS OF A LACK-OF-INFORMED-CONSENT CAUSE OF ACTION WERE NOT ACCURATELY STATED IN THE JURY INSTRUCTIONS AND VERDICT SHEET; MOTION TO SET ASIDE THE VERDICT SHOULD HAVE BEEN GRANTED.

[**Figueroa-Burgos v Bieniewicz, 2016 NY Slip Op 00329, 2nd Dept 1-20-16**](#)

REQUESTS FOR RECORDS OF SURGICAL PROCEDURES PERFORMED ON NON-PARTIES AND RECORDS OF COMPLAINTS AGAINST DEFENDANT SURGEON SHOULD NOT HAVE BEEN DENIED.

[**Gabriels v Vassar Bros. Hosp., 2016 NY Slip Op 00478, 2nd Dept 1-27-16**](#)

REAL PROPERTY.

EASEMENT APPURTENANT PASSES TO SUBSEQUENT OWNERS EVEN IF NOT SPECIFICALLY MENTIONED IN THE DEED.

[**Reilly v Achitoff, 2016 NY Slip Op 00491, 2nd Dept 1-27-16**](#)

TRUSTS AND ESTATES, REAL PROPERTY.

DEVISE OF REAL PROPERTY HAD NOT ADEEMED, DESPITE DEED PURPORTING TO TRANSFER PROPERTY PRIOR TO DEATH.

[**Matter of Hill, 2016 NY Slip Op 00499, 2nd Dept 1-27-16**](#)

ZONING.

PLAINTIFFS HAD STANDING TO BRING A COMMON-LAW ACTION TO ENJOIN ZONING VIOLATIONS BY VIRTUE OF THE CLOSE PROXIMITY OF PLAINTIFFS' AND DEFENDANTS' PROPERTIES.

[**Gershon v Cunninghaml, 2016 NY Slip Op 00332, 2nd Dept 1-20-16**](#)

EXCEPTION TO FINALITY RULE WHERE IT IS CLEAR FURTHER ADMINISTRATIVE PROCEEDINGS WOULD BE FUTILE; DEVELOPER DID NOT HAVE A PROPERTY INTEREST IN A SITE PLAN APPROVAL WHICH WOULD SUPPORT A VIOLATION-OF-DUE-PROCESS CAUSE OF ACTION.

[**East End Resources, LLC v Town of Southold Planning Bd., 2016 NY Slip Op 00476, 2nd Dept 1-27-16**](#)

THIRD DEPARTMENT

CRIMINAL LAW.

PEOPLE SHOULD HAVE INSTRUCTED THE GRAND JURY ON THE AGENCY DEFENSE IN THIS CRIMINAL SALE OF MARIJUANA CASE, INDICTMENT PROPERLY DISMISSED.

[**People v Gallo, 2016 NY Slip Op 00064, 3rd Dept 1-7-16**](#)

COCAINE-POSSESSION OFFENSES CHARGED IN THE SUPERIOR COURT INFORMATION (SCI) WERE NOT LESSER INCLUDED OFFENSES OF THE COCAINE-POSSESSION OFFENSE CHARGED IN THE FELONY COMPLAINTS; SCI IS JURISDICTIONALLY DEFECTIVE.

[**People v Seals, 2016 NY Slip Op 00065, 3rd Dept 1-7-16**](#)

COUNTY COURT ABUSED ITS DISCRETION WHEN IT DENIED DEFENDANT'S APPLICATION FOR JUDICIAL DIVERSION TO A DRUG TREATMENT PROGRAM.

[**People v Cora, 2016 NY Slip Op 00066, 3rd Dept 1-7-15**](#)

CRIMINAL LAW, EVIDENCE.

WHERE THE EVIDENCE OF GUILT WAS NOT OVERWHELMING, COUNTY COURT'S ERROR IN ALLOWING EVIDENCE AT TRIAL WHICH THE COURT HAD PREVIOUSLY PRECLUDED REQUIRED REVERSAL AND A NEW TRIAL.

[**People v Myrick, 2016 NY Slip Op 00217, 3rd Dept 1-14-16**](#)

WHERE A WITNESS STATES SHE DOES NOT RECALL MAKING A STATEMENT, IT IS NECESSARY TO CALL SOMEONE WHO HEARD THE WITNESS MAKE THE STATEMENT TO LAY A FOUNDATION FOR ITS ADMISSION AS A PRIOR INCONSISTENT STATEMENT.

[**People v Maxam, 2016 NY Slip Op 00391, 3rd Dept 1-21-16**](#)

EVIDENCE OF AN UNRELATED DRUG SALE WAS NOT ADMISSIBLE TO SHOW DEFENDANT'S MOTIVE, CONVICTION REVERSED.

[**People v Magee, 2016 NY Slip Op 00399, 3rd Dept 1-21-16**](#)

CRIMINAL LAW, PAROLE.

DENIAL OF PAROLE WAS IRRATIONAL; PETITIONER'S PRISON RECORD WAS EXCEPTIONAL UNTIL HIS MEDICATION FOR TREATMENT OF SCHIZOPHRENIA WAS STOPPED.

[**Matter of Hawthorne v Stanford, 2016 NY Slip Op 00083, 3rd Dept 1-7-16**](#)

ENVIRONMENTAL LAW, REAL PROPERTY.

ACTION SEEKING RESCISSION OF A CONSERVATION EASEMENT RESTRICTING DEVELOPMENT ON UPSTATE LAND WITHIN THE NEW YORK CITY WATERSHED PROPERLY DISMISSED; UNIQUE LAW RE: MODIFICATION OR EXTINGUISHMENT OF A CONSERVATION EASEMENT EXPLAINED.

[**Argyle Farm & Props., LLC v Watershed Agric. Council of the N.Y. City Watersheds, Inc., 2016 NY Slip Op 00559, 3rd Dept 1-28-16**](#)

FAMILY LAW.

GRANDMOTHER DID NOT DEMONSTRATE EXTRAORDINARY CIRCUMSTANCES JUSTIFYING AWARD OF CUSTODY OF GRANDCHILD TO HER, ANALYTICAL PRINCIPLES EXPLAINED.

[**Matter of Elizabeth SS. v Gracealee SS., 2016 NY Slip Op 00068, 3rd Dept 1-7-16**](#)

FINAL ORDERS OF PROTECTION ISSUED ON THE COURT'S OWN MOTION WITHOUT FOLLOWING THE PROCEDURE REQUIRED BY FAMILY COURT ACT 154-c VACATED.

[**Matter of Daniel W. v Kimberly W., 2016 NY Slip Op 00070, 3rd Dept 1-7-16**](#)

DOCTRINE OF EQUITABLE ESTOPPEL DID NOT APPLY TO PETITIONER'S REQUEST FOR AN ORDER OF FILIATION, CRITERIA EXPLAINED.

[**Matter of Patrick A. v Rochelle B., 2016 NY Slip Op 00079, 3rd Dept 1-7-16**](#)

FORECLOSURE.

FORECLOSURE OF A REVERSE MORTGAGE CAN BE BASED UPON HOMEOWNER'S FAILURE TO MAKE HAZARD INSURANCE PAYMENTS.

[**Onewest Bank, FSB v Smith, 2016 NY Slip Op 00092, 3rd Dept 1-7-16**](#)

FREEDOM OF INFORMATION LAW (FOIL), TRADE SECRETS.

TRADE SECRET EXEMPTION DOES NOT REQUIRE PROOF DISCLOSURE WOULD RESULT IN COMPETITIVE INJURY.

[**Matter of Verizon N.Y., Inc. v New York State Pub. Serv. Commn. 2016 NY Slip Op 00239, 3rd Dept 1-14-16**](#)

HUMAN RIGHTS LAW, CONSTITUTIONAL LAW.

PETITIONERS, WHO HELD CATERED EVENTS, INCLUDING WEDDINGS, AT THEIR FARM, COMMITTED AN UNLAWFUL DISCRIMINATORY PRACTICE WHEN THEY REFUSED TO ALLOW RESPONDENTS' SAME-SEX MARRIAGE AT THE FARM.

[**Matter of Gifford v McCarthy, 2016 NY Slip Op 00230, 3rd Dept 1-14-16**](#)

LABOR LAW-CONSTRUCTION LAW.

STACKED SCAFFOLDING FRAMES WHICH TOPPLED ONTO PLAINTIFF DID NOT CONSTITUTE AN ELEVATION RISK, LABOR LAW 240 (1) CAUSE OF ACTION PROPERLY DISMISSED; LABOR LAW 241 (6) CAUSE OF ACTION, BASED UPON CODE PROVISION REQUIRING SAFE, STABLE STORAGE OF BUILDING MATERIALS, PROPERLY SURVIVED.

[**Hebbard v United Health Servs. Hosps., Inc., 2016 NY Slip Op 00248, 3rd Dept 1-14-16**](#)

LANDLORD-TENANT

LANDLORD ACCEPTED TENANT'S SURRENDER OF THE PREMISES BY OPERATION OF LAW, CRITERIA EXPLAINED.

[**Fragomeni v Aim Servs., Inc., 2016 NY Slip Op 00563, 3rd Dept 1-28-16**](#)

MENTAL HYGIENE LAW.

SEX OFFENDER CAN NOT BE KEPT IN PRISON AFTER SERVING HIS MAXIMUM SENTENCE ON THE GROUND SUITABLE HOUSING HAD NOT YET BEEN FOUND.

[**People ex rel. Green v Superintendent of Sullivan Corr. Facility, 2016 NY Slip Op 00417, 3rd Dept 1-21-16**](#)

NEGLIGENCE.

CAUSES OF ACTION ALLEGING PROMOTERS OF A MUSIC FESTIVAL NEGLIGENTLY FAILED TO CURTAIL THE USE OF DRUGS AT THE FESTIVAL AND NEGLIGENTLY FAILED TO PROVIDE ADEQUATE EMERGENCY MEDICAL FACILITIES AT THE FESTIVAL PROPERLY SURVIVED MOTIONS TO DISMISS.

[**Bynum v Keber, 2016 NY Slip Op 00093, 3rd Dept 1-7-16**](#)

QUESTION OF FACT WHETHER HOTEL DEFENDANTS WERE VICARIOUSLY LIABLE FOR THE NEGLIGENCE OF A SNOWMOBILE TOUR GUIDE UNDER AN APPARENT AGENCY THEORY.

[**Taylor v The Point at Saranac Lake, Inc., 2016 NY Slip Op 00247, 3rd Dept 1-14**](#)

QUESTION OF FACT WHETHER DEFENDANT-CONTRACTOR LAUNCHED AN INSTRUMENT OF HARM AND WHETHER THERE WAS AN INTERVENING, SUPERSEDING CAUSE OF THE INJURY, CRITERIA FOR BOTH EXPLAINED.

[**Dunham v Ketco, Inc., 2016 NY Slip Op 00082, 3rd Dept 1-7-16**](#)

NEGLIGENCE, LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF COMPELLED TO SUBMIT TO EXAMINATION BY DEFENDANT'S VOCATIONAL REHABILITATION EXPERT.

[**Hayes v Bette & Cring, LLC, 2016 NY Slip Op 00090, 3rd Dept 1-7-16**](#)

NEGLIGENCE, MUNICIPAL LAW.

SUIT ALLEGING TOWN AND COUNTY NEGLIGENTLY ISSUED PERMITS FOR A FESTIVAL WITHOUT MAKING SURE EMERGENCY MEDICAL SERVICES WERE ADEQUATE DISMISSED ON GOVERNMENTAL-IMMUNITY GROUNDS.

[**Bynum v Camp Bisco, LLC, 2016 NY Slip Op 00091, 3rd Dept 1-7-16**](#)

REAL PROPERTY.

THE INSTALLATION OF LIGHT FIXTURES ON A PARTY WALL EXCEEDED ANY EASEMENT THAT MIGHT ARISE FROM THE EXISTENCE OF A PARTY WALL.

[**Stamp v 301 Franklin St. Café, Inc., 2016 NY Slip Op 00410, 3rd Dept. 1-21-16**](#)

TRUSTS AND ESTATES.

STATUTORY DOCTRINE OF EQUITABLE DEVIATION ALLOWED CHURCHES TO DEVIATE FROM THE TERMS OF CHARITABLE TRUSTS TO SEEK A LARGER RETURN ON INVESTMENTS.

[**Matter of Chamberlin, 2016 NY Slip Op 00087, 3rd Dept 1-7-16**](#)

UNEMPLOYMENT INSURANCE.

INTERPRETER WAS AN EMPLOYEE, NOT AN INDEPENDENT CONTRACTOR.

[**Matter of Soo Tsui \(Commissioner of Labor\), 2016 NY Slip Op 00229, 3rd Dept 1-14-16**](#)

PART-TIME AEROBICS INSTRUCTOR WAS AN EMPLOYEE.

[**Matter of Raynor \(Commissioner of Labor\) 2016 NY Slip Op 00558, 3rd Dept 1-28-16**](#)

CONSULTANT HIRED TO EVALUATE TEACHERS WAS AN EMPLOYEE.

[**Matter of Strauss \(Commissioner of Labor\), 2016 NY Slip Op 00561, 3rd Dept 1-28-16**](#)

UNEMPLOYMENT INSURANCE, LABOR LAW.

UNEMPLOYMENT INSURANCE EXPERIENCE RATINGS PROPERLY TRANSFERRED TO NEW BUSINESS ENTITIES DOING THE SAME WORK, EMPLOYING SOME OF THE SAME PEOPLE, AND OPERATING FROM THE SAME ADDRESS.

[**Matter of Prod. Processing Inc. \(Commissioner of Labor\), 2016 NY Slip Op 00565, 3rd Dept 1-28-16**](#)

WORKERS' COMPENSATION LAW.

CLAIMANT PROPERLY COMPENSATED FOR WORK-RELATED STRESS.

[**Matter of Haynes \(Catholic Charities\), 2016 NY Slip Op 00560, 3rd Dept 1-28-16**](#)

FEBRUARY 2016

COURT OF APPEALS

ARBITRATION, INSURANCE LAW.

DELEGATION CLAUSES, PLACING THE DETERMINATION OF ARBITRABILITY IN THE ARBITRATOR, NOT THE COURT, ENFORCEABLE UNDER FEDERAL ARBITRATION ACT.

Matter of Monarch Consulting, Inc. v National Union Fire Ins. Co. of Pittsburgh, PA, 2016 NY Slip Op 01209, CtApp 2-18-16

CRIMINAL LAW.

FOR PURPOSES OF THE TEN-YEAR LOOK-BACK PERIOD FOR SECOND VIOLENT FELONY OFFENDER STATUS, THE DATE OF THE ORIGINAL SENTENCE TO PROBATION, NOT THE DATE OF THE SUBSEQUENT SENTENCE FOR VIOLATION OF PROBATION, CONTROLS.

People v Thompson, 2016 NY Slip Op 00997, CtApp 2-11-16

TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT RELIEVED DEFENSE COUNSEL ON CONFLICT OF INTEREST GROUNDS BECAUSE A POTENTIAL WITNESS HAD BEEN REPRESENTED BY ANOTHER ATTORNEY IN THE SAME LARGE CRIMINAL DEFENDER ORGANIZATION.

People v Watson, 2016 NY Slip Op 00998, CtApp 2-11-16

MECHANISMS FOR SEEKING DEFERRAL OF MANDATORY SURCHARGE EXPLAINED.

People v Jones, 2016 NY Slip Op 01208, CtApp 2-18-16

THERE WAS AN INEXCUSABLE 28-HOUR DELAY BETWEEN DEFENDANT'S ARREST AND ARRAIGNMENT, BUT THE DELAY DID NOT RENDER THE CONFESSION INVOLUNTARILY GIVEN.

People v Jin Cheng Lin, 2016 NY Slip Op 01205, CtApp 2-18-16

AN ADEQUATE WAIVER OF APPELLATE RIGHTS AT SENTENCING DOES NOT REMEDY AN INADEQUATE WAIVER AT THE TIME OF THE PLEA.

People v Leach, 2016 NY Slip Op 01253, CtApp 2-23-16

PLAIN VIEW EXCEPTION TO THE WARRANT REQUIREMENT DID NOT APPLY, SUPPRESSION SHOULD HAVE BEEN GRANTED.

People v Sanders, 2016 NY Slip Op 01255, CtApp 2-23-16

CRIMINAL LAW, APPEALS.

APPELLATE DIVISION PROPERLY DECIDED APPEAL ON GROUNDS WHICH WERE NOT EXPLICITLY STATED BY THE TRIAL COURT BUT WHICH WERE IMPLICIT IN THE TRIAL COURT'S RULING.

People v Nicholson, 2016 NY Slip Op 01206, CtApp 2-18-16

CRIMINAL LAW, ATTORNEYS.

DEFENSE COUNSEL NOT INEFFECTIVE; EVIDENCE OF CHILD'S MULTIPLE DISCLOSURES OF SEX ABUSE WAS NOT BOLSTERING; DEFENSE COUNSEL ARTICULATED LEGITIMATE REASONS FOR NOT CALLING A MEDICAL EXPERT.

People v Gross, 2016 NY Slip Op 01204, CtApp 2-18-16

WHETHER TO TESTIFY BEFORE A GRAND JURY IS A STRATEGIC DECISION TO BE MADE BY DEFENSE COUNSEL, NOT DEFENDANT.

People v Hogan, 2016 NY Slip Op 01207, CtApp 2-18-16

INSURANCE LAW.

BASED ON THE UNAMBIGUOUS LANGUAGE OF THE POLICY, THE TERM "OCCURRENCE" REFERRED TO EACH TIME A MEMBER OF THE CLASS WAS INJURED, NOT TO A SINGLE INJURY TO THE CLASS AS A WHOLE; THEREFORE THE DEDUCTIBLE WAS TRIGGERED SEPARATELY FOR EACH INJURED CLASS MEMBER.

[**Selective Ins. Co. of Am. v County of Rensselaer, 2016 NY Slip Op 01001, CtApp 2-11-16**](#)

MALICIOUS PROSECUTION, FALSE ARREST.

QUESTIONS OF FACT HAD BEEN RAISED IN PLAINTIFF'S MALICIOUS PROSECUTION AND FALSE ARREST ACTIONS AGAINST POLICE OFFICERS, DEFENSE SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED.

[**De Lourdes Torres v Jones, 2016 NY Slip Op 01254, CtApp 2-23-16**](#)

NEGLIGENCE.

FACT THAT SIDEWALK DEFECT OVER WHICH PLAINTIFF TRIPPED WAS NOT IN FRONT OF DEFENDANT'S PROPERTY. STANDING ALONE, DOES NOT ENTITLE DEFENDANT TO SUMMARY JUDGMENT.

[**Sangaray v West Riv. Assoc., LLC, 2016 NY Slip Op 01002, CtApp 2-11-16**](#)

TOXIC TORTS.

PLAINTIFF'S EXPERTS DID NOT DEMONSTRATE THEIR OPINIONS ON THE CAUSE OF PLAINTIFF'S *IN UTERO* INJURIES WERE ARRIVED AT USING A GENERALLY ACCEPTED METHODOLOGY; PLAINTIFF ALLEGED *IN UTERO* INJURY FROM GASOLINE FUMES IN CAR MANUFACTURED BY DEFENDANT BMW.

[**Sean R. v BMW of N. Am., LLC, 2016 NY Slip Op 01000, CtApp 2-11-16**](#)

ZONING.

DEVELOPER DID NOT HAVE A VESTED RIGHT IN A CONDITIONAL FINAL SITE APPROVAL IN LIGHT OF A CONFLICTING REZONING LAW IN EFFECT PRIOR TO THE CONDITIONAL APPROVAL.

[**Matter of Exeter Bldg. Corp. v Town of Newburgh, 2016 NY Slip Op 00999, CtApp 2-11-16**](#)

FIRST DEPARTMENT

APPEALS.

APPEAL OF ACTION SEEKING TO ENJOIN CONSTRUCTION OF A BUILDING DISMISSED; PLAINTIFFS DID NOT APPLY FOR AN INJUNCTION PENDING APPEAL AND CONSTRUCTION HAD CONTINUED TO THE POINT IT COULD NOT BE UNDONE WITHOUT CAUSING UNDUE HARM.

[**Caraballo v Art Students League of N.Y., 2016 NY Slip Op 00883, 1st Dept 2-9-11**](#)

CIVIL PROCEDURE, PRIVILEGE.

COMMON INTEREST PRIVILEGE MAY APPLY TO SUBPOENAED DOCUMENTS.

[**Matter of San Diego Gas & Elec. Co. v Morgan Stanley Senior Funding, Inc., 2016 NY Slip Op 01238, 1st Dept 2-18-16**](#)

CONTRACT LAW.

ACTION TO RESCIND A PURCHASE CONTRACT CONSTITUTED AN ANTICIPATORY BREACH OF THE CONTRACT WHICH RELIEVED SELLERS OF ANY FURTHER OBLIGATIONS AND ENTITLED SELLERS TO RETAIN THE DEPOSIT.

[**Princes Point LLC v Muss Dev. L.L.C., 2016 NY Slip Op 00783, 1st Dept 2-4-16**](#)

CONTRACT LAW, FRAUD.

EQUITABLE ACTION SEEKING RESCISSION BASED UPON FRAUD NEED NOT ALLEGE PECUNIARY LOSS.

[**Board of Mgrs. of the Soundings Condominium v Foerster, 2016 NY Slip Op 01273, 1st Dept 2-23-16**](#)

CONTRACT LAW, LANDLORD-TENANT.

NO QUESTION OF FACT RAISED ABOUT AN ALLEGED ORAL WAIVER OF A LEASE PROVISION, CRITERIA EXLAINED.

[**Paramount Leasehold, L.P. v 43rd St. Deli, Inc., 2016 NY Slip Op 01258, 1st Dept 2-23-16**](#)

COOPERATIVES.

BOARD OF RESIDENTIAL COOPERATIVE CORPORATION UNREASONABLY WITHHELD CONSENT TO TRANSFER SHARES AND PROPRIETARY LEASE TO TWO SONS OF THE DECEASED APARTMENT RESIDENTS.

[**Estate of Del Terzo v 33 Fifth Ave. Owners Corp., 2016 NY Slip Op 01039, 1st Dept 2-11-16**](#)

CORPORATION LAW.

ANALYTICAL FRAMEWORK FOR DE FACTO MERGER OF NONPROFIT CORPORATIONS FASHIONED BY THE COURT.

[**Ring v Elizabeth Found. for the Arts, 2016 NY Slip Op 01127, 1st Dept 2-16-16**](#)

NEW YORK COURTS DO NOT HAVE THE POWER TO DISSOLVE A FOREIGN CORPORATION.
[Matter of Raharney Capital, LLC v Capital Stack LLC, 2016 NY Slip Op 01425, 2nd Dept 2-25-16](#)

CRIMINAL LAW.

RIGHT TO TESTIFY BEFORE A GRAND JURY IS NOT A RIGHT RESERVED TO A DEFENDANT, IT IS A STRATEGIC DECISION TO BE MADE BY COUNSEL.

[People v Cintron, 2016 NY Slip Op 00618, 1st Dept 2-2-16](#)

SENTENCING YOUTHFUL OFFENDER TO CONSECUTIVE TERMS EXCEEDING FOUR YEARS WAS INCONSISTENT WITH THE CONCEPT OF YOUTHFUL OFFENDER TREATMENT.[People v Christopher P., 2016 NY Slip Op 00904, 1st Dept 2-9-11](#)

DEFENDANT ENTITLED TO TEN DAYS NOTICE OF SORA JUDGE'S INTENT TO, SUA SPONTE, DEPART FROM THE BOARD OF EXAMINER'S RISK ASSESSMENT.

[People v Segura, 2016 NY Slip Op 01041, 1st Dept 2-11-16](#)

WAIVER OF APPEAL ENCOMPASSES APPELLATE DIVISION'S INTEREST-OF-JUSTICE JURISDICTION, INCLUDING THE POWER TO REVIEW THE HARSHNESS OF AN AGREED SENTENCE.

[People v Jenkins, 2016 NY Slip Op 01056, 1st Dept 2-11-16](#)

JUSTICES DISAGREE WHETHER STOLEN PROPERTY AND ASSAULT AND ROBBERY OFFENSES SHOULD HAVE BEEN SEVERED AS NOT SIMILAR IN LAW.

[People v Davis, 2016 NY Slip Op 01257, 1st Dept 2-23-16](#)

THE PEOPLE DID NOT ACT WITH DUE DILIGENCE TO SEEK A DNA TEST, DEFENDANT'S MOTION TO DISMISS BASED ON A SPEEDY TRIAL VIOLATION PROPERLY GRANTED.

[People v Gonzalez, 2016 NY Slip Op 01388, 1st Dept 2-25-16](#)

FAMILY LAW.

PROCEDURES MANDATED BY THE CHILD SUPPORT STANDARD ACTS NOT FOLLOWED; SUPREME COURT'S ORDER MODIFIED.

[Michael J.D. v Carolina E.P., 2016 NY Slip Op 01252, 1st Dept 2-18-16](#)

INSURANCE LAW

COVERAGE AT ISSUE WAS THE SUBJECT OF A POLICY EXCLUSION (WHICH WAS THEN ADDED BACK IN BY AN ENDORSEMENT); BECAUSE THE COVERAGE WAS NOT OUTSIDE THE SCOPE OF THE POLICY A TIMELY DISCLAIMER WAS REQUIRED.

[City of New York v Granite State Ins. Co., 2016 NY Slip Op 01124, 1st Dept 2-16-16](#)

LABOR LAW-CONSTRUCTION LAW.

INSTALLATION OF TEMPORARY FLAG HOLDERS NOT A PROTECTED ACTIVITY UNDER LABOR LAW 240 (1).
[Lannon v 356 W. 44th St. Rest., Inc., 2016 NY Slip Op 01129, 1st Dept 2-16-16](#)

PLAINTIFF ENTITLED TO SUMMARY JUDGMENT ON LABOR LAW 240 (1) CLAIM EVEN WHEN NOT FREE FROM NEGLIGENCE.

[Somereve v Plaza Constr. Corp., 2016 NY Slip Op 01236, 1st Dept 2-18-16](#)

LANDLORD-TENANT, MUNICIPAL LAW.

LANDLORD'S FAILURE TO PROCURE TOWN RENTAL PERMIT IS NOT A DEFENSE TO THE LANDLORD'S ACTION TO COLLECT RENT.

[1424 Millstone Rd., LLC v James B. Fairchild, LLC, 2016 NY Slip Op 01250, 1st Dept 2-18-16](#)

MENTAL HYGIENE LAW.

HEARSAY EVIDENCE OF CHARGES OF WHICH SEX OFFENDER WAS ACQUITTED AND CHARGES WHICH WERE DISMISSED SHOULD NOT HAVE BEEN CONSIDERED, NEW TRIAL ORDERED.

[Matter of State of New York v David S., 2016 NY Slip Op 00777, 1st Dept 2-4-16](#)

NEGLIGENCE.

PLAINTIFF'S EXPERT DID NOT RAISE A QUESTION OF FACT ABOUT WHETHER THE INJURY WAS CAUSED BY THE CAR ACCIDENT, AS OPPOSED TO A DEGENERATIVE DISEASE; TWO-JUSTICE DISSENT.

[Franklin v Gareyua, 2016 NY Slip Op 00886, 1st Dept 2-9-16](#)

DEFENDANTS DID NOT DEMONSTRATE LACK OF NOTICE OF DANGEROUS CONDITION, SUMMARY JUDGMENT PROPERLY DENIED.

[Singh v Citibank, N.A., 2016 NY Slip Op 01120, 1st Dept 2-16-16](#)

DEFENDANTS DEMONSTRATED SIDEWALK DEFECT WAS TRIVIAL.

[Garcia v 549 Inwood Assoc., LLC, 2016 NY Slip Op 01249, 1st Dept 2-18-16](#)

NEGLIGENCE, MUNICIPAL LAW.

APPLICATION FOR LATE NOTICE OF CLAIM SHOULD HAVE BEEN GRANTED, DESPITE ABSENCE OF REASONABLE EXCUSE AND NOTICE BY OTHER MEANS; PURPOSE OF NOTICE OF CLAIM REQUIREMENT EXPLAINED.

[Matter of Richardson v New York City Hous. Auth., 2016 NY Slip Op 00909, 1st Dept 2-9-16](#)

NEGLIGENCE, MUNICIPAL LAW, VEHICLE AND TRAFFIC LAW.

CITY IS LIABLE FOR ACCIDENT WHICH OCCURRED WHEN AN UNLICENSED CAR-WASH ATTENDANT WAS DRIVING A POLICE VAN.

[Guevara v Ortega, 2016 NY Slip Op 01106, 1st Dept 2-16-16](#)

SECOND DEPARTMENT

ANIMAL LAW.

DOG-BITE STRICT LIABILITY LAW SUCCINCTLY EXPLAINED, DOG-OWNER'S CROSS MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED.

[**Bueno v Seecharan, 2016 NY Slip Op 00706, 2nd Dept 2-3-16**](#)

ATTORNEYS.

IN A FEE DISPUTE, PLAINTIFF-ATTORNEY'S FAILURE TO NOTIFY CLIENT OF THE CLIENT'S RIGHT TO ARBITRATE REQUIRED DISMISSAL OF THE COMPLAINT.

[**Pascazi Law Offs., PLLC v Pioneer Natural Pools, Inc., 2016 NY Slip Op 01160, 2nd Dept 2-17-16**](#)

CIVIL PROCEDURE.

CRITERIA FOR A MOTION TO RENEW IS FLEXIBLE; HERE MOTION SHOULD HAVE BEEN GRANTED EVEN THOUGH MOVANT SHOULD HAVE BEEN AWARE OF THE "NEW" EVIDENCE.

[**Citimortgage, Inc. v Espinal, 2016 NY Slip Op 01148, 2nd Dept 2-17-16**](#)

COURT SHOULD NOT HAVE REJECTED NEGOTIATED STIPULATION SETTling THE ACTION WITH ONE PLAINTIFF AND PROCEEDING TO TRIAL WITH THE OTHER PLAINTIFF.

[**Astudillo v MV Transp., Inc., 2016 NY Slip Op 00915, 2nd Dept 2-10-16**](#)

CIVIL PROCEDURE, CONTRACT LAW

STATUTE OF LIMITATIONS DEFENSE MAY BE RAISED FOR THE FIRST TIME IN AN ANSWER TO AN AMENDED COMPLAINT; RELATION-BACK DOCTRINE NOT APPLICABLE TO ORAL-CONTRACT ACTION WHERE ORIGINAL ACTION WAS BASED SOLELY ON A WRITTEN CONTRACT.

[**Moezinia v Ashkenazi, 2016 NY Slip Op 01300, 2nd Dept 2-24-16**](#)

CIVIL PROCEDURE, CORPORATION LAW.

DEFENDANT'S MOTION TO CHANGE VENUE SHOULD HAVE BEEN GRANTED, CRITERIA EXPLAINED.

[**Matoszko v Kielmanowicz, 2016 NY Slip Op 00942, 2nd Dept 2-10-16**](#)

CIVIL PROCEDURE, TRUSTS AND ESTATES.

COMPLAINT NAMING DECEDENT, RATHER THAN DECEDENT'S REPRESENTATIVE, AS A DEFENDANT WAS A NULLITY; THE DEFECT COULD NOT BE REMEDIED BY AMENDING THE COMPLAINT.

[**Krysa v Estate of Qyra, 2016 NY Slip Op 00940, 2nd Dept 2-10-16**](#)

CONTRACT LAW.

QUESTIONS OF FACT WHETHER THERE WAS A MEETING OF THE MINDS AND WHETHER WRITINGS, INCLUDING AN EMAIL, SATISFIED THE STATUTE OF FRAUDS.

[**Agosta v Fast Sys. Corp., 2016 NY Slip Op 00699, 2nd Dept 2-3-16**](#)

CONVERSION.

CONVERSION THEORY DOES NOT APPLY TO REAL ESTATE OR INTANGIBLE PROPERTY.

[**C & B Enters. USA, LLC v Koegel, 2016 NY Slip Op 01281, 2nd Dept 2-24-16**](#)

CRIMINAL LAW.

DISCHARGE OF SWORN JUROR WITHOUT CONDUCTING AN APPROPRIATE INQUIRY AND WITHOUT SEEKING INPUT FROM COUNSEL WAS AN ABUSE OF DISCRETION, NEW TRIAL ORDERED.

[**People v Owens, 2016 NY Slip Op 00993, 2nd Dept 2-10-16**](#)

A TRIAL JUDGE DOES NOT HAVE THE AUTHORITY TO CONDUCT A WEIGHT OF THE EVIDENCE ANALYSIS, ONLY THE APPELLATE DIVISION HAS THAT POWER.

[**People v Dobson, 2016 NY Slip Op 01198, 2nd Dept 2-17-16**](#)

DEFAMATION, APPEALS.

DEFAMATION CRITERIA FOR A PUBLIC FIGURE DESCRIBED; APPELLATE REVIEW POWERS IN PUBLIC FIGURE DEFAMATION ACTIONS EXPLAINED.

[**Eastwood v Hoefer, 2016 NY Slip Op 00674, 2nd Dept 2-3-16**](#)

EMINENT DOMAIN, LANDLORD-TENANT.

QUESTION OF FACT WHETHER TENANT ENTITLED TO COMPENSATION FOR TRADE FIXTURES ON PROPERTY TO WHICH VILLAGE ACQUIRED TITLE BY EMINENT DOMAIN.

[**Matter of Village of Spring Val., N.Y.. \(Sport Club Intl., Inc.\), 2016 NY Slip Op 00985, 2nd Dept 2-10-16**](#)

ENVIRONMENTAL LAW.

1987 NEGATIVE DECLARATION DID NOT EXPIRE AND REMAINS VALID WITH RESPECT TO A PRELIMINARY PLAT APPLICATION; HOWEVER, BECAUSE OF CHANGES MADE TO THE PROJECT, THE PLANNING BOARD HAS THE POWER TO AMEND OR RESCIND THE NEGATIVE DECLARATION.

[**Leonard v Planning Bd. of Town of Union Vale, 2016 NY Slip Op 01156, 2nd Dept 2-17-16**](#)

FAMILY LAW.

DSS FAILED TO DEMONSTRATE DILIGENT EFFORTS TO STRENGTHEN PARENTAL RELATIONSHIP, TERMINATION OF FATHER'S PARENTAL RIGHTS REVERSED.

[**Matter of Gabriel B. S.-P. \(Anonymous\) \(Franklin S. \(Anonymous\)\), 2016 NY Slip Op 00645, 2nd Dept 2-3-16**](#)

FAMILY COURT SHOULD HAVE GRANTED AN ADJOURNMENT IN CONTEMPLATION OF DISMISSAL AS THE LEAST RESTRICTIVE ALTERNATIVE, RATHER THAN IMPOSING A PERIOD OF PROBATION; PETITION DISMISSED.

[**Matter of Nigel H., 2016 NY Slip Op 01326, 2nd Dept 2-24-16**](#)

FRAUD, CONTRACT LAW.

FRAUD CAUSE OF ACTION STEMMING FROM THE SIGNING OF A DOCUMENT WITHOUT READING IT DISMISSED AS TIME-BARRED; RELEVANT STATUTES OF LIMITATIONS AND BURDENS OF PROOF EXPLAINED.

[**Cannariato v Cannariato, 2016 NY Slip Op 00650, 2nd Dept 2-3-16**](#)

FRAUD, REAL ESTATE.

AIDING AND ABETTING FRAUD CAUSE OF ACTION AGAINST TITLE INSURANCE COMPANY PROPERLY DISMISSED, THE ALLEGATIONS WERE CONCLUSORY WITH NO SUPPORTING DETAIL.

[**Matter of Woodson \(Clarke\), 2016 NY Slip Op 00698, 2nd Dept 2-3-16**](#)

INSURANCE LAW, CONTRACT LAW.

CAUSE OF ACTION FOR BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING NOT DUPLICATIVE OF BREACH OF CONTRACT CAUSE OF ACTION.

[**Gutierrez v Government Empls. Ins. Co., 2016 NY Slip Op 01292, 2nd Dept 2-24-16**](#)

LABOR LAW-CONSTRUCTION LAW.

DEFENDANT FAILED TO AFFIRMATIVELY ADDRESS ALL THEORIES OF RECOVERY ALLEGED IN THE COMPLAINT; DEFENDANT'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED.

[**Korostynskyy v 416 Kings Highway, LLC, 2016 NY Slip Op 00939, 2nd Dept 2-10-16**](#)

SUBTLE DIFFERENCE BETWEEN AMOUNT OF SUPERVISORY CONTROL NECESSARY TO SUPPORT A LABOR LAW 240(1) CAUSE OF ACTION AND THE AMOUNT OF SUPERVISORY CONTROL NECESSARY TO SUPPORT A LABOR LAW 200/COMMON LAW NEGLIGENCE CAUSE OF ACTION.

[**Sanchez v Metro Bldrs. Corp., 2016 NY Slip Op 00957, 2nd Dept 2-10-16**](#)

LABOR LAW-CONSTRUCTION LAW, CIVIL PROCEDURE.

LEVEL OF SUPERVISORY CONTROL NEEDED TO SUPPORT A LABOR LAW 200 CAUSE OF ACTION AND THE CRITERIA FOR SETTING ASIDE A VERDICT AS AGAINST THE WEIGHT OF THE EVIDENCE EXPLAINED.

[**Hernandez v Pappco Holding Co., Ltd., 2016 NY Slip Op 01295, 2nd Dept 2-24-16**](#)

LIMITED LIABILITY COMPANY LAW, CONTRACT LAW.

LIABILITY OF MEMBERS OF A LIMITED LIABILITY COMPANY, PRECLUSION OF FRAUD AND NEGLIGENT MISREPRESENTATION CAUSES ACTION WHICH DUPLICATE BREACH OF CONTRACT ALLEGATIONS, AND CRITERIA FOR A RICO MAIL FRAUD CAUSE OF ACTION DISCUSSED IN SOME DEPTH.

[**Board of Mgrs. of Beacon Tower Condominium v 85 Adams St., LLC, 2016 NY Slip Op 00692, 2nd Dept 2-3-16**](#)

MORTGAGES, DEBTOR-CREDITOR.

HOLDER OF SECOND MORTGAGE COULD PROPERLY SUE ONLY ON THE UNDERLYING DEBT WITHOUT BRINGING FORECLOSURE PROCEEDINGS.

[**Wells Fargo Bank, N.A. v Goans, 2016 NY Slip Op 00710, 2nd Dept 2-3-16**](#)

NEGLIGENCE.

FAILURE TO ADDRESS EVERY ELEMENT OF THE THEORIES OF RECOVERY ALLEGED IN THE COMPLAINT, I.E., COMMON-LAW NEGLIGENCE AND RES IPSA LOQUITUR, REQUIRED DENIAL OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT.

[**Assil v Camba, Inc., 2016 NY Slip Op 00914, 2nd Dept 2-10-16**](#)

DEFENDANT FAILED TO AFFIRMATIVELY ADDRESS EVERY THEORY OF LIABILITY RAISED BY THE COMPLAINT, SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED IN THIS SLIP AND FALL CASE.

[**Davis v Sutton, 2016 NY Slip Op 00923, 2nd Dept 2-10-16**](#)

DEFENDANTS' FAILURE TO DEMONSTRATE AREA WHERE PLAINTIFF FELL WAS ADEQUATELY ILLUMINATED, AND FAILURE TO AFFIRMATIVELY DEMONSTRATE DEFENDANTS DID NOT CREATE OR HAVE ACTUAL OR CONSTRUCTIVE NOTICE OF THE DANGEROUS CONDITION, REQUIRED DENIAL OF DEFENSE MOTION FOR SUMMARY JUDGMENT.

[**Steed v MVA Enters., LLC, 2016 NY Slip Op 00960, 2nd Dept 2-10-16**](#)

AFFIDAVITS IDENTIFYING THE CAUSE OF PLAINTIFF'S FALL, SUBMITTED IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, SHOULD NOT HAVE BEEN REJECTED ON CREDIBILITY GROUNDS; IN THE CONTEXT OF SUMMARY JUDGMENT, THE COURT'S FUNCTION DOES NOT INCLUDE THE ASSESSMENT OF CREDIBILITY.

[**McRae v Venuto, 2016 NY Slip Op 00944, 2nd Dept 2-10-16**](#)

NEGLIGENCE, CONTRACT LAW.

SNOW-REMOVAL COMPANY NOT LIABLE TO PLAINTIFF BECAUSE PLAINTIFF WAS NOT A PARTY TO THE SNOW-REMOVAL CONTRACT; NO NEED FOR DEFENDANT TO ADDRESS ESPINAL EXCEPTIONS IN ITS SUMMARY JUDGMENT MOTION IF THE EXCEPTIONS ARE NOT PLED BY THE PLAINTIFF.

[**Bryan v CLK-HP 225 Rabro, LLC, 2016 NY Slip Op 01280, 2nd Dept 2-24-16**](#)

NEGLIGENCE, EDUCATION-SCHOOL LAW.

INFANT PLAINTIFF ASSUMED RISK OF INJURY PLAYING BASKETBALL.

[**Altigracia v Harrison Cent. Sch. Dist., 2016 NY Slip Op 01141, 2nd Dept 2-17-16**](#)

NEGLIGENT SUPERVISION ACTION AGAINST DAY CARE PROVIDER PROPERLY DISMISSED.

[**Lopez v D & D Day Care, Inc., 2016 NY Slip Op 01298, 2nd Dept 2-24-16**](#)

NEGLIGENCE, EMPLOYMENT LAW (RESPONDEAT SUPERIOR).

QUESTION OF FACT WHETHER EMPLOYEE WAS ACTING WITHIN THE SCOPE OF HIS EMPLOYMENT WHEN THE CAR ACCIDENT OCCURRED.

[**Brandford v Singh, 2016 NY Slip Op 00920, 2nd Dept 2-10-16**](#)

NEGLIGENCE, MEDICAL MALPRACTICE.

EXPERT AFFIDAVITS, SUBMITTED SOLELY ON THE ISSUE OF PROXIMATE CAUSE OF PLAINTIFF'S INJURIES, SHOULD HAVE BEEN ACCEPTED BY THE COURT, EVEN THOUGH THE EXPERTS WERE NOT QUALIFIED TO ASSESS WHETHER THE DEFENDANT CHIROPRACTOR DEVIATED FROM THE APPROPRIATE STANDARD OF CARE.

[**Bongiovanni v Cavagnuolo, 2016 NY Slip Op 00638, 2nd Dept 2-3-16**](#)

FAILURE TO DEMONSTRATE SCARRING WAS DISCUSSED PRIOR TO THE SIGNING OF THE CONSENT FORM, AND FAILURE TO DEMONSTRATE PLAINTIFF WOULD HAVE GONE THROUGH WITH THE SURGERY DESPITE FULL DISCLOSURE ABOUT SCARRING, REQUIRED DENIAL OF PHYSICIAN'S MOTION FOR SUMMARY JUDGMENT.

[**Schussheim v Barazani, 2016 NY Slip Op 00958, 2nd Dept 2-10-16**](#)

NEGLIGENCE, MUNICIPAL LAW.

FAILURE TO ADDRESS THE CREATION-OF-THE-DEFECT THEORY OF RECOVERY REQUIRED DENIAL OF DEFENDANT-VILLAGE'S SUMMARY JUDGMENT MOTION.

[**McManus v Klein, 2016 NY Slip Op 00704, 2nd Dept 2-3-16**](#)

NEGLIGENCE, MUNICIPAL LAW, CIVIL PROCEDURE.

SECOND SUMMARY JUDGMENT MOTION PROPERLY ENTERTAINED; ABSENCE OF SPECIAL RELATIONSHIP REQUIRED DISMISSAL OF NEGLIGENCE ACTION AGAINST POLICE.

[**Graham v City of New York, 2016 NY Slip Op 00932, 2nd Dept 2-10-16**](#)

NEGLIGENCE, VEHICLE AND TRAFFIC LAW, MUNICIPAL LAW.

QUESTION OF FACT WHETHER DRIVER OF CITY TRUCK EXERCISED REASONABLE CARE DURING AN EMERGENCY STOP IN THE LEFT LANE OF A HIGHWAY.

[**Pinilla v City of New York, 2016 NY Slip Op 00953, 2nd Dept 2-10-16**](#)

REAL ESTATE.

BROKER NOT ENTITLED TO COMMISSION, MOTION TO SET ASIDE PLAINTIFF'S VERDICT SHOULD HAVE BEEN GRANTED.

[**Douglas Elliman, LLC v Silver, 2016 NY Slip Op 00675, 2nd Dept 2-3-16**](#)

TRUSTS AND ESTATES.

PROBATE PETITION PROPERLY DISMISSED; WITNESSES DID NOT READ ATTESTATION CLAUSE, EVIDENCE SOME WILL PAGES MISSING AT TIME OF EXECUTION.

[**Matter of Costello, 2016 NY Slip Op 01322, 2nd Dept 2-24-16**](#)

THIRD DEPARTMENT

CRIMINAL LAW.

DEFENDANT ENTITLED TO BE HEARD ON APPLICATION FOR RESENTENCING UNDER DRUG LAW REFORM ACT, DENIAL OF APPLICATION ON THE PAPERS REVERSED.

[People v Davis, 2016 NY Slip Op 01006, 3rd Dept 2-11-16](#)

JUDGE IMPOSED RESTITUTION AT SENTENCING WHICH WAS NOT PART OF THE PLEA AGREEMENT, SENTENCE VACATED.

[People v Brasmeister, 2016 NY Slip Op 01019, 3rd Dept 2-11-16](#)

CRIMINAL LAW, ATTORNEYS.

PROSECUTOR'S REFUSAL TO PROVIDE A RACE-NEUTRAL REASON FOR STRIKING A JUROR REQUIRED REVERSAL.

[People v Jones, 2016 NY Slip Op 01212, 3rd Dept 2-18-16](#)

CRIMINAL LAW, CIVIL COMMITMENT.

A DIAGNOSIS OF ANTISOCIAL PERSONALITY DISORDER WITH NARCISSISTIC AND PARANOID FEATURES IS SUFFICIENT TO SUPPORT CIVIL COMMITMENT IN A SECURE FACILITY PURSUANT TO CPL 330.20.

[Matter of John Z. \(Commissioner of Mental Health\), 2016 NY Slip Op 01234, 3rd Dept 2-18-16](#)

DEFAMATION, CIVIL RIGHTS LAW.

MINOR INACCURACIES WILL NOT PREVENT CHARACTERIZATION OF AN ARTICLE ABOUT A JUDICIAL PROCEEDING AS FAIR AND TRUE.

[Bouchard v Daily Gazette Co., 2016 NY Slip Op 01364, 3rd Dept 2-25-16](#)

FAMILY LAW, APPEALS.

FAMILY COURT APPLIED THE WRONG LAW RE: EXTRAORDINARY CIRCUMSTANCES JUSTIFYING THE AWARD OF CUSTODY TO A NONPARENT; EXTRAORDINARY CIRCUMSTANCES FINDING IS APPEALABLE EVEN THOUGH CUSTODY WAS AWARDED TO MOTHER.

[Matter of Brown v Comer, 2016 NY Slip Op 01218, 3rd Dept 2-18-16](#)

INSURANCE LAW.

QUESTION OF FACT WHETHER A SPECIAL RELATIONSHIP EXISTED WHICH WOULD SUPPORT THE INSURANCE MALPRACTICE ACTION.

[Finch v Steve Cardell Agency, 2016 NY Slip Op 01231, 3rd Dept 2-18-16](#)

GENERAL CONTRACTOR'S FAILURE TO TIMELY NOTIFY INSURER OF UNDERLYING LAWSUIT BY INJURED WORKER ENTITLED INSURER TO DISCLAIM COVERAGE WITHOUT A SHOWING OF PREJUDICE.
[Kraemer Bldg. Corp. v Scottsdale Ins. Co., 2016 NY Slip Op 01233, 3rd Dept 2-18-16](#)

MUNICIPAL LAW, UNIONS.

POLICE DISCIPLINE PROPERLY CONTROLLED BY COLLECTIVE BARGAINING AGREEMENT, DESPITE STATUTORY PROVISION PLACING DISCIPLINE IN THE HANDS OF THE COMMISSIONER.
[Matter of City of Schenectady v New York State Pub. Empl. Relations Bd., 2016 NY Slip Op 00729, 3rd Dept 2-4-16](#)

NEGLIGENCE, EDUCATION-SCHOOL LAW

NON-SECURE JUVENILE DETENTION FACILITY DID NOT OWE A DUTY OF CARE TO PLAINTIFF WHO WAS STRUCK BY A CAR DRIVEN BY A FORMER RESIDENT OF THE FACILITY.
[Mayorga v Berkshire Farm Ctr. & Servs. for Youth, 2016 NY Slip Op 01375, 3rd Dept 2-25-16](#)

UNEMPLOYMENT INSURANCE.

MUSIC TEACHERS ARE EMPLOYEES, NOT INDEPENDENT CONTRACTORS.
[Matter of Eray Inc. \(Commissioner of Labor\), 2016 NY Slip Op 01024, 3rd Dept 2-11-16](#)

OIL-SPILL DAMAGES INVESTIGATOR WAS AN EMPLOYEE ENTITLED TO UNEMPLOYMENT BENEFITS.
[Matter of Zaharuk \(Guidepost Solutions LLC--Commissioner of Labor\), 2016 NY Slip Op 01028, 3rd Dept 2-11-16](#)

FITNESS INSTRUCTOR NOT AN EMPLOYEE.
[Matter of Cohen \(Classic Riverdale, Inc.--Commissioner of Labor\), 2016 NY Slip Op 01222, 3rd Dept 2-18-16](#)

FOURTH DEPARTMENT

APPEALS.

ORDER ENTERED ON CONSENT IS NOT APPEALABLE; ONLY REMEDY IS MOTION TO VACATE.

Matter of Annabella B.C. (Sandra L.C.), 2016 NY Slip Op 01064, 4th Dept 2-11-16

ATTORNEYS, LEGAL MALPRACTICE.

LAW FIRM'S SUMMARY JUDGMENT MOTION SHOULD HAVE BEEN GRANTED, CRITERIA FOR LEGAL MALPRACTICE WHERE AN ACTION HAS BEEN SETTLED EXPLAINED.

Chamberlain, D'Amanda, Oppenheimer & Greenfield, LLP v Wilson, 2016 NY Slip Op 00841, 4th Dept 2-5-16

CIVIL PROCEDURE

MOTIONS TO SET ASIDE THE DEFENSE VERDICT AS AGAINST THE WEIGHT OF THE EVIDENCE SHOULD NOT HAVE BEEN GRANTED, CRITERIA EXPLAINED.

McMillian v Burden, 2016 NY Slip Op 00851, 4th Dept 2-5-16

CIVIL PROCEDURE, FORECLOSURE.

COURT SHOULD HAVE ALLOWED SUBSTITUTION OF AN AFFIDAVIT OF MERIT PURSUANT TO CPLR 2001; SUA SPONTE DISMISSAL OF COMPLAINT NOT WARRANTED.

Wells Fargo Bank, N.A. v Watanabe, 2016 NY Slip Op 01096, 4th Dept 2-11-16

CRIMINAL LAW.

JURY INSTRUCTIONS ALLOWED CONSIDERATION OF A THEORY NOT ALLEGED IN THE INDICTMENT OR BILL OF PARTICULARS, CONVICTIONS REVERSED.

People v Graves, 2016 NY Slip Op 00853, 4th Dept 2-5-16

ANONYMOUS 911 CALL COUPLED WITH POLICE OFFICER'S OBSERVATIONS PROVIDED REASONABLE SUSPICION JUSTIFYING DETENTION OF THE DEFENDANT.

People v Williams, 2016 NY Slip Op 00789, 4th Dept 2-5-16

STATEMENTS MADE AFTER ILLEGAL ARREST NOT SUPPRESSIBLE IF SUFFICIENTLY ATTENUATED.

People v Buchanan, 2016 NY Slip Op 00800, 4th Dept 2-5-16

SECOND FELONY DRUG OFFENDER SENTENCE: COURT ABUSED ITS DISCRETION BY PROMISING TO OBTAIN TRANSCRIPTS TO ALLOW DEFENDANT TO CHALLENGE THE PRIOR CONVICTION AND THEN DECIDING NOT TO ORDER THE TRANSCRIPTS.

People v Farmer, 2016 NY Slip Op 01095, 4th Dept 2-11-16

OFFICER DID NOT HAVE GROUNDS TO PROCEED TO A LEVEL TWO INQUIRY, ASKING DEFENDANT IF HE HAD ANY WEAPONS OR DRUGS; SEIZURE WHEN DEFENDANT WALKED AWAY WAS ILLEGAL.

People v Hightower, 2016 NY Slip Op 01083, 4th Dept 2-11-16

AIR FRESHENERS HANGING FROM REAR-VIEW MIRROR PROVIDED PROBABLE CAUSE JUSTIFYING VEHICLE STOP.

[**Matter of Deveines v New York State Dept. of Motor Vehs. Appeals Bd., 2016 NY Slip Op 01074, 4th Dept 2-11-16**](#)

CRIMINAL LAW, APPEALS.

THE RECORD DID NOT SUPPORT A FINDING THAT DEFENDANT, WHO WAS MENTALLY ILL, UNDERSTOOD THE APPEAL WAIVER; DEFENDANT SHOULD HAVE BEEN ACCORDED YOUTHFUL OFFENDER STATUS.

[**People v Thomas R.O., 2016 NY Slip Op 01086, 4th Dept 2-11-16**](#)

CRIMINAL LAW, ATTORNEYS.

UNNECESSARILY ALLOWING THE JURY TO KNOW DEFENDANT WAS A REGISTERED SEX OFFENDER WAS NOT JUSTIFIED BY ANY REASONABLE DEFENSE STRATEGY, DEFENDANT DID NOT RECEIVE EFFECTIVE ASSISTANCE OF COUNSEL, CONVICTION REVERSED.

[**People v Stefanovich, 2016 NY Slip Op 01070, 4th Dept 2-11-16**](#)

POLICE HAD NO REASON TO DETAIN DEFENDANT-PASSENGER AFTER TRAFFIC TICKET ISSUED TO DRIVER, STATEMENTS SHOULD HAVE BEEN SUPPRESSED; PROSECUTORIAL MISCONDUCT REQUIRED A NEW TRIAL AS WELL.

[**People v Porter, 2016 NY Slip Op 00852, 4th Dept 2-5-16**](#)

DEFAMATION, PRIVILEGE.

DEPARTMENT OF HEALTH ENTITLED TO QUALIFIED PRIVILEGE FOR PRESS RELEASE ABOUT TATOO-RELATED INFECTIONS, PLAINTIFF UNABLE TO DEMONSTRATE MALICE.

[**Tattoos By Design, Inc. v Kowalski, 2016 NY Slip Op 01091, 4th Dept 2-11-16**](#)

EDUCATION-SCHOOL LAW.

COLLEGE'S DETERMINATION WAS NOT ARBITRARY AND CAPRICIOUS; AGENCY'S RATIONAL RULING MUST BE UPHELD EVEN IF THE REVIEWING COURT WOULD HAVE DECIDED DIFFERENTLY.

[**Matter of Brockport Student Govt. v State Univ. of N.Y. at Brockport, 2016 NY Slip Op 01099, 4th Dept 2-11-16**](#)

EMPLOYMENT LAW, HUMAN RIGHTS LAW, CIVIL PROCEDURE, MUNICIPAL LAW.

POLICE OFFICER'S CAUSES OF ACTION FOR DISABILITY DISCRIMINATION SHOULD HAVE SURVIVED THE MOTION TO DISMISS.

[**Regan v City of Geneva, 2016 NY Slip Op 01101, 4th Dept 2-11-16**](#)

ENVIRONMENTAL LAW.

PETITIONERS DID NOT HAVE STANDING TO SEEK ANNULMENT OF A NEGATIVE DECLARATION UNDER THE STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA); PETITIONERS DID NOT ALLEGE "ENVIRONMENTAL INJURY."

[**Matter of Turner v County of Erie, 2016 NY Slip Op 00806, 4th Dept 2-5-16**](#)

FAMILY LAW.

MOTHER DEMONSTRATED CHANGE IN CIRCUMSTANCES RELATED TO EXCESSIVE PUNISHMENT BY HUSBAND; FAMILY COURT REVERSED, CUSTODY AWARDED TO MOTHER.

[Matter of DeJesus v Gonzalez, 2016 NY Slip Op 01059, 4th Dept 2-11-16](#)

FAMILY LAW, FIREARMS PERMIT.

FAMILY COURT DID NOT HAVE AUTHORITY TO REVOKE FIREARMS PERMIT AS PART OF AN ORDER OF PROTECTION.

[Matter of Schoenl v Schoenl, 2016 NY Slip Op 01060, 4th Dept 2-11-16](#)

MALICIOUS PROSECUTION, ABUSE OF PROCESS.

MALICIOUS PROSECUTION AND ABUSE OF PROCESS CAUSES OF ACTION NOT SUFFICIENTLY PLED.

[Reszka v Collins, 2016 NY Slip Op 00807, 4th Dept 2-5-16](#)

MEDICAID, TRUSTS AND ESTATES.

TRUST WHICH ALLOWED PETITIONER'S CHILDREN TO DISTRIBUTE PRINCIPAL TO PETITIONER RENDERED PETITIONER INELIGIBLE FOR MEDICAID, DESPITE CHILDREN'S REFUSAL TO MAKE A DISTRIBUTION.

[Matter of Flannery v Zucker, 2016 NY Slip Op 01075, 4th Dept 2-11-16](#)

NEGLIGENCE.

QUESTION OF FACT WHETHER SKIER ASSUMED THE RISK OF STRIKING A SNOWMAKING MACHINE.

[Dailey v Labrador Dev. Corp., 2016 NY Slip Op 01072, 4th Dept 2-11-16](#)

NEGLIGENCE, LANDLORD-TENANT.

DEFENDANT-LANDLORD SHOULD NOT HAVE BEEN GRANTED SUMMARY JUDGMENT IN THIS LEAD-PAINT-INJURY CASE, DEFENDANT FAILED TO AFFIRMATIVELY DEMONSTRATE, INTER ALIA, LACK OF ACTUAL OR CONSTRUCTIVE NOTICE.

[Rodrigues v Lesser, 2016 NY Slip Op 00836, 4th Dept 2-5-16](#)

VEHICLE AND TRAFFIC LAW.

SUBSTANTIAL EVIDENCE DID NOT SUPPORT REVOCATION OF PETITIONER'S DRIVER'S LICENSE FOR REFUSING TO SUBMIT TO A CHEMICAL BLOOD-ALCOHOL TEST; TROOPER DID NOT HAVE REASONABLE GROUNDS TO BELIEVE PETITIONER OPERATED HIS MOTORCYCLE UNDER THE INFLUENCE.

[Matter of DeMichele v Department of Motor Vehs. of N.Y. State, 2016 NY Slip Op 00652, 2nd Dept 2-3-16](#)

MARCH 2016

COURT OF APPEALS

ADMINISTRATIVE LAW.

NYS OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION DID NOT EXCEED ITS AUTHORITY WHEN IT PROHIBITED SMOKING IN SOME SMALL PARKS WITHIN NEW YORK CITY AND ON A SMALL PERCENTAGE OF THE 330,000-ACRE PARK SYSTEM.

Matter of NYC C.L.A.S.H., Inc. v New York State Off. of Parks, Recreation & Historic Preserv., 2016 NY Slip Op 02479, CtApp 3-31-16

CRIMINAL LAW.

EXIGENT CIRCUMSTANCES JUSTIFIED WARRANTLESS SEARCH OF A BACKPACK.

Matter of Kenneth S., 2016 NY Slip Op 02123, CtApp 3-24-16

CRIMINAL LAW, APPEALS, ATTORNEYS.

PROCEDURE USED TO EXCUSE PROSPECTIVE JURORS ON HARDSHIP GROUNDS WAS NOT A MODE OF PROCEEDINGS ERROR; FAILURE TO OBJECT TO PROSECUTOR'S APPEAL TO GENDER BIAS DID NOT CONSTITUTE INEFFECTIVE ASSISTANCE.

People v King, 2016 NY Slip Op 02278, CtApp 3-29-16

CRIMINAL LAW, ATTORNEYS.

FAILURE TO MOVE TO SUPPRESS WEAPON CONSTITUTED INEFFECTIVE ASSISTANCE.

People v Bilal, 2016 NY Slip Op 02475, CtApp 3-31-16

DEFENSE COUNSEL'S DECISION TO FOREGO A REQUEST TO REOPEN THE SUPPRESSION HEARING BASED UPON TRIAL TESTIMONY WAS SUPPORTED BY A SOUND STRATEGIC REASON, COUNSEL WAS THEREFORE NOT INEFFECTIVE.

People v Gray, 2016 NY Slip Op 02476, CtApp3-31-16

CRIMINAL LAW, EVIDENCE.

REDACTED STATEMENT OF CO-DEFENDANT IMPLICATED DEFENDANT IN VIOLATION OF BRUTON RULE, CONVICTION REVERSED.

People v Cedeno, 2016 NY Slip Op 02281, CtApp 3-29-16

Similar issue and result--- **People v Johnson, 2016 NY Slip Op 02282, CtApp 3-29-16**

PEOPLE DID NOT DELIBERATELY CALL WITNESS FOR THE SOLE PURPOSE OF ELICITING THE ASSERTION OF THE PRIVILEGE AGAINST SELF-INCRIMINATION; PEOPLE'S OWN WITNESS PROPERLY IMPEACHED WITH PRIOR STATEMENT; EXPERT TESTIMONY ON EFFECT OF EVENT STRESS ON IDENTIFICATION PROPERLY PRECLUDED.

People v Berry, 2016 NY Slip Op 02283, CtApp 3-29-16

CRIMINAL LAW, EVIDENCE, APPEALS.

IT WAS AN ABUSE OF DISCRETION, AS A MATTER OF LAW, TO EXCLUDE EVIDENCE OF THIRD-PARTY CULPABILITY IN THE FORM OF STATEMENTS AGAINST PENAL INTEREST.

[**People v DiPippo, 2016 NY Slip Op 02279, CtApp 3-29-16**](#)

ENVIRONMENTAL LAW.

TOWN'S ISSUANCE OF A POSITIVE DECLARATION WITH THE REQUIREMENT THAT THE LANDOWNER SUBMIT A DRAFT ENVIRONMENTAL IMPACT STATEMENT DID NOT RAISE A JUSTICIABLE CONTROVERSY WHICH COULD BE REVIEWED BY A COURT.

[**Matter of Ranco Sand & Stone Corp. v Vecchio, 2016 NY Slip Op 02477, CtApp 3-31-16**](#)

FRAUD, ATTORNEYS, TRUSTS AND ESTATES.

FIDUCIARY EXCEPTION TO THE USUAL BURDEN OF PROOF IN A CONSTRUCTIVE FRAUD ACTION DID NOT APPLY, FIDUCIARIES WERE NOT PARTIES TO THE RELEVANT DOCUMENTS AND DID NOT STAND TO BENEFIT FROM THE PROVISIONS OF THE DOCUMENTS.

[**Matter of Aoki v Aoki, 2016 NY Slip Op 02474, CtApp 3-31-16**](#)

INSURANCE LAW.

OFFICE-BASED SURGERY CENTERS, UNLIKE HOSPITALS AND AMBULATORY SURGERY CENTERS, ARE NOT ENTITLED TO REIMBURSEMENT FOR FACILITY FEES UNDER THE NO-FAULT LAW.

[**Government Empls. Ins. Co. v Avanguard Med. Group, PLLC, 2016 NY Slip Op 02473, CtApp 3-31-16**](#)

PHYSICIAN-PATIENT CONFIDENTIALITY, BREACH OF; INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

BREACH OF PHYSICIAN-PATIENT CONFIDENTIALITY CAUSE OF ACTION ALLOWED TO PROCEED AGAINST HOSPITAL AND TREATING PHYSICIAN, PLAINTIFFS' DECEDENT'S TREATMENT AND DEATH IN THE EMERGENCY ROOM WERE FILMED WITHOUT CONSENT; ALLEGATIONS OF OUTRAGEOUS CONDUCT NOT SUFFICIENT TO SUPPORT INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS CAUSE OF ACTION.

[**Chanko v American Broadcasting Cos. Inc., 2016 NY Slip Op 02478, CtApp 3-31-16**](#)

ZONING.

PROPERTY DEVELOPMENT BASED UPON AN INVALID PERMIT DOES NOT GIVE RISE TO A VESTED RIGHT IN THE DEVELOPED PROPERTY.

[**Matter of Perlbind Holdings, LLC v Srinivasan, 2016 NY Slip Op 02122, CtApp 3-24-16**](#)

FIRST DEPARTMENT

CIVIL PROCEDURE.

FAILURE TO COMPLY WITH NOTICE PROVISION OF NYC ADMINISTRATIVE CODE DID NOT TOLL STATUTE OF LIMITATIONS RE: AN ACTION SEEKING TO RECOVER THE COST OF BUILDING MODIFICATIONS REQUIRED BY THE CODE AFTER DEFENDANTS' CONSTRUCTION OF A TALLER NEIGHBORING BUILDING.

West Chelsea Bldg. LLC v Guttman, 2016 NY Slip Op 02548, 1st Dept 3-31-16

CIVIL PROCEDURE, FRAUD.

SIX-YEAR STATUTE OF LIMITATIONS APPLIES TO BREACH OF FIDUCIARY DUTY CLAIMS WHICH SOUND IN FRAUD.

Cusimano v Schnurr, 2016 NY Slip Op 01758, 1st Dept 3-15-16

CIVIL PROCEDURE, INSURANCE LAW.

OMISSIONS FROM COMPLAINT SUPPLIED BY AFFIDAVIT IN OPPOSITION TO MOTION TO DISMISS, COMPLAINT SHOULD NOT HAVE BEEN DISMISSED.

High Definition MRI, P.C. v Travelers Cos., Inc., 2016 NY Slip Op 02027, 1st Dept 3-22-16

CONTRACT LAW.

ALTHOUGH BREACH OF CONTRACT CAUSES OF ACTION WERE PRECLUDED BY THE STATUTE OF FRAUDS, RELATED PROMISSORY ESTOPPEL AND UNJUST ENRICHMENT CAUSES OF ACTION SHOULD HAVE SURVIVED MOTION TO DISMISS.

Castellotti v Free, 2016 NY Slip Op 01625, 1st Dept 3-8-16

CONTRACT LAW, UCC

COMPLAINTS ALLEGING THE DELIVERY OF FUEL OIL MIXED WITH WASTE OIL SHOULD NOT HAVE BEEN DISMISSED, THE COMPLAINTS STATED BREACH OF CONTRACT AND BREACH OF WARRANTY CAUSES OF ACTION.

BMW Group, LLC v Castle Oil Corp., 2016 NY Slip Op 01790, 1st Dept 3-15-16

CORPORATION LAW.

PLAINTIFF MINORITY SHAREHOLDER ALLOWED TO REPLEAD DIRECT CLAIMS UNDER CAYMAN ISLANDS LAW AGAINST THE CORPORATION STEMMING FROM DISPROPORTIONATE PAYMENT OF DIVIDENDS AND BREACH OF FIDUCIARY DUTY BETWEEN DIRECTORS AND PLAINTIFF.

Davis v Scottish Re Group Ltd., 2016 NY Slip Op 01756, 1st Dept 3-10-16

DERIVATIVE SUIT AGAINST JP MORGAN CHASE STEMMING FROM SUBPRIME MORTGAGE-BACKED SECURITIES DISMISSED.

Asbestos Workers Phila. Pension Fund v Bell, 2016 NY Slip Op 02510, 1st Department 3-31-16

CRIMINAL LAW

CONNECTICUT SEXUAL ASSAULT STATUTE IS BROADER IN ITS REACH THAN NEW YORK COUNTERPARTS AND THEREFORE CANNOT SERVE AS A PREDICATE FELONY IN NEW YORK.

[People v Davis, 2016 NY Slip Op 01623, 1st Dept 3-8-16](#)

UNDER THE FACTS, PRE-TRIAL REQUEST TO PROCEED PRO SE PROPERLY DENIED.

[People v Franklin, 2016 NY Slip Op 01781, 1st Dept 3-15-16](#)

CRIMINAL LAW, APPEALS.

SIGNED, WRITTEN WAIVER OF APPEAL DID NOT REMEDY THE INADEQUATE ORAL COLLOQUY.

[People v Harris, 2016 NY Slip Op 01741, 1st Dept 3-10-16](#)

APPEAL WAIVER INVALID, FLAWED ON-THE-RECORD EXPLANATION OF WAIVED RIGHTS NOT REMEDIED BY SIGNED WRITTEN WAIVER.

[People v Bryant, 2016 NY Slip Op 01427, 1st Dept 3-1-16](#)

CRIMINAL LAW, EVIDENCE.

RIGHT TO CONFRONT WITNESSES VIOLATED BY INTRODUCTION OF GRAND JURY TESTIMONY AS PAST RECOLLECTION RECORDED; ERROR WAS HARMLESS HOWEVER.

[People v Rahman, 2016 NY Slip Op 01750, 1st Dept 3-10-16](#)

EDUCATION-SCHOOL LAW, CONTRACT LAW.

TACIT MISREPRESENTATION BY STUDENT DURING ADMISSIONS PROCESS ENTITLED LAW SCHOOL TO REFUSE TO AWARD LL.M. DEGREE AFTER STUDENT HAD COMPLETED COURSE REQUIREMENTS.

[Matter of Salvador v Touro Coll., 2016 NY Slip Op 01924, 1st Dept 3-17-16](#)

EMPLOYMENT LAW, CORRECTIONS LAW, MUNICIPAL LAW.

POLICE DEPARTMENT CAN REFUSE EMPLOYMENT IN A CIVILIAN POSITION BASED SOLELY UPON THE APPLICANT'S CRIMINAL RECORD WITHOUT APPLYING THE HIRING CRITERIA GENERALLY REQUIRED BY THE CORRECTIONS LAW.

[Matter of Belgrave v City of New York, 2016 NY Slip Op 01548, 1st Dept 3-3-16](#)

FAMILY LAW.

PRENUPTIAL AGREEMENT INTERPRETED TO WAIVE TEMPORARY MAINTENANCE DESPITE ABSENCE OF THE PRECISE TERM.

[Anonymous v Anonymous, 2016 NY Slip Op 02016, 1st Dept 3-22-16](#)

FAMILY LAW, APPEALS.

JUVENILE DELINQUENCY ADJUDICATION AGAINST THE WEIGHT OF THE EVIDENCE; ANALYTICAL CRITERIA EXPLAINED.

[Matter of Shannel P., 2016 NY Slip Op 01853, 2nd Dept 3-16-16](#)

FAMILY LAW, DEBTOR-CREDITOR, CIVIL PROCEDURE.

WIFE SHOULD HAVE BEEN ALLOWED TO INTERVENE IN AN ACTION SEEKING THE TURNOVER OF PERSONAL PROPERTY TO ENFORCE A JUDGMENT AGAINST HUSBAND; HER SEPARATE PROPERTY, AS OPPOSED TO MARITAL PROPERTY, COULD NOT BE REACHED BY A JUDGMENT CREDITOR.

[**Pensmore Invs., LLC v Gruppo, Levey & Co., 2016 NY Slip Op 01789, 1st Dept 3-15-16**](#)

FRAUD, EXECUTIVE LAW, CIVIL PROCEDURE.

STATUTORY FRAUD CAUSE OF ACTION REINSTATED AGAINST DONALD TRUMP ET AL.

[**Matter of People of the State of N.Y. by Eric T. Schneiderman v Trump Entrepreneur Initiative LLC, 2016 NY Slip Op 01430, 1st Dept 3-1-16**](#)

FRAUD, SECURITIES, CIVIL PROCEDURE.

FRAUD CAUSES OF ACTION AGAINST DEUTSCHE BANK STEMMING FROM THE COLLAPSE OF MORTGAGE-BACKED SECURITIES DISMISSED AS UNTIMELY, ACCUSATIONS AGAINST DEUTSCHE BANK WERE WELL-KNOWN MORE THAN TWO YEARS BEFORE THE SUIT WAS BROUGHT.

[**Aozora Bank, Ltd. v Deutsche Bank Sec. Inc., 2016 NY Slip Op 02511, 1st Dept 3-31-16**](#)

INSURANCE LAW, CONTRACT LAW, UCC.

BAILEE CANNOT, PURSUANT TO THE UCC, CONTRACT AWAY LIABILITY FOR LACK OF CARE IN STORING GOODS, PURPORTED WAIVER OF SUBROGATION UNENFORCEABLE.

[**XL Specialty Ins. Co. v Christie's Fine Art Stor. Servs., Inc., 2016 NY Slip Op 01901, 1st Dept 3-17-16**](#)

LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF NEED NOT SHOW LADDER WHICH FELL WAS DEFECTIVE TO BE ENTITLED TO SUMMARY JUDGMENT ON LABOR LAW 240 (1) CAUSE OF ACTION.

[**Ocana v Quasar Realty Partners L.P., 2016 NY Slip Op 01902, 1st Dept 3-17-16**](#)

THE INDUSTRIAL CODE REQUIRED A GUARD ON THE SAW WHICH INJURED PLAINTIFF; DEFENDANT WAS NOT ENTITLED TO SUMMARY JUDGMENT BASED ON THE ALLEGATION THERE WAS NO PLACE TO INSTALL A GUARD ON THE SAW.

[**Kelmendi v 157 Hudson St., LLC, 2016 NY Slip Op 01903, 1st Dept 3-17-16**](#)

12 TO 18 INCH FALL SUPPORTED SUMMARY JUDGMENT IN FAVOR OF PLAINTIFF UNDER LABOR LAW 240 (1).

[**Brown v 44 St. Dev., LLC, 2016 NY Slip Op 02527, 1st Dept 3-31-16**](#)

MALICIOUS PROSECUTION, MUNICIPAL LAW.

ABSENCE OF ANY MENTION OF DEFENDANT DISCARDING A WEAPON IN THE PAPERWORK RELATING TO DEFENDANT'S ARREST, AND THE DIFFERING VERSIONS OF EVENTS PRIOR TO DEFENDANT'S ARREST, RAISED A QUESTION OF FACT WHETHER THERE WAS PROBABLE CAUSE TO ARREST DEFENDANT FOR POSSESSION OF A WEAPON.

[**Mendez v City of New York, 2016 NY Slip Op 01586, 1st Dept 3-8-16**](#)

MENTAL HYGIENE LAW.

ANTISOCIAL PERSONALITY DISORDER WITH PSYCHOPATHY SUFFICIENT TO DEMONSTRATE PROBABLE CAUSE, SEX OFFENDER CIVIL MANAGEMENT PETITION SHOULD NOT HAVE BEEN DISMISSED.

[**Matter of State of New York v Jerome A., 2016 NY Slip Op 01788, 1st Dept 3-15-16**](#)

NEGLIGENCE.

NO OBLIGATION TO CONTINUOUSLY MOP UP TRACKED IN WATER.

[**Gunzburg v Quality Bldg. Servs. Corp., 2016 NY Slip Op 01438, 1st Dept 3-1-16**](#)

RIDER ASSUMED THE RISK OF BEING THROWN FROM A HORSE.

[**Blumenthal v Bronx Equestrian Ctr., Inc., 2016 NY Slip Op 01545, 1st Dept 3-3-16**](#)

DEFENDANT'S FAILURE TO DEMONSTRATE WHEN AREA WHERE PLAINTIFF FELL WAS LAST INSPECTED OR CLEANED REQUIRED DENIAL OF DEFENSE SUMMARY JUDGMENT MOTION.

[**Graham v YMCA of Greater N.Y., 2016 NY Slip Op 01777, 1st Dept 3-15-16**](#)

VERDICT FINDING PLAINTIFF WAS NEGLIGENT BUT HER NEGLIGENCE WAS NOT THE PROXIMATE CAUSE OF HER INJURY WAS INCONSISTENT AND AGAINST THE WEIGHT OF THE EVIDENCE.

[**McKenzie v New York City Tr. Auth., 2016 NY Slip Op 01918, 1st Dept 3-17-16**](#)

NEGLIGENCE, CONTRACT LAW.

FINANCIAL ADVISOR IS NOT A PROFESSIONAL WHO CAN BE HELD LIABLE IN TORT BASED UPON A CONTRACTUAL RELATIONSHIP.

[**Starr v Fuoco Group LLP, 2016 NY Slip Op 02143, 1st Dept 3-24-16**](#)

NEGLIGENCE, CONTRACT LAW, ARCHITECTURAL MALPRACTICE.

ARCHITECT MAY BE LIABLE FOR BOTH BREACH OF CONTRACT AND NEGLIGENCE.

[**Dormitory Auth. of the State of N.Y. v Samson Constr. Co., 2016 NY Slip Op 01546, 1st Dept 3-3-16**](#)

NEGLIGENCE, EVIDENCE.

HEARSAY OFFERED IN OPPOSITION TO SUMMARY JUDGMENT PROPERLY CONSIDERED.

[**Uncyk v Cedarhurst Prop. Mgt., LLC, 2016 NY Slip Op 02037, 1st Dept 3-22-16**](#)

NEGLIGENCE, MEDICAL MALPRACTICE, EVIDENCE.

EXPERT EVIDENCE IMPROPERLY PRECLUDED, NEW TRIAL BEFORE A DIFFERENT JUDGE ORDERED.

[**Dedona v DiRaimo, 2016 NY Slip Op 01779, 1st Dept 3-15-16**](#)

PARTNERSHIP LAW.

SUIT ALLEGING BREACH OF FIDUCIARY DUTY IN CONNECTION WITH THE SALE OF AN ASSET OWNED NEARLY ENTIRELY BY BANKRUPT LEHMAN BROTHERS DISMISSED.

[**Cambridge Capital Real Estate Invs., LLC v Archstone Enter. LP, 2016 NY Slip Op 02017, 1st Dept 3-22-16**](#)

SECOND DEPARTMENT

ACCOUNT STATED, DEBTOR-CREDITOR.

PLAINTIFF ENTITLED TO SUMMARY JUDGMENT UNDER AN ACCOUNT STATED THEORY IN AN ACTION TO COLLECT A CREDIT CARD DEBT.

[Cach, LLC v Aspir, 2016 NY Slip Op 02046, 2nd Dept 3-23-16](#)

ATTORNEYS, DEFAMATION.

STATEMENTS MADE BY ATTORNEY IN AFFIDAVIT SUBMITTED TO THE COURT WERE ABSOLUTELY PRIVILEGED, DEFAMATION ACTION PROPERLY DISMISSED.

[Brady v Gaudelli, 2016 NY Slip Op 01793, 2nd Dept 3-16-16](#)

CIVIL PROCEDURE.

MOTION TO RENEW BASED UPON LAW OFFICE FAILURE PROPERLY GRANTED; CRITERIA FOR GRANTING A MOTION TO RENEW IS FLEXIBLE.

[Castor v Cuevas, 2016 NY Slip Op 01456, 2nd Dept 3-2-16](#)

WAIVED DEFENSE CAN BE INTERPOSED IN AN ANSWER AMENDED BY LEAVE OF COURT.

[Dixon v Chang, 2016 NY Slip Op 01797, 2nd Dept 3-16-16](#)

CIVIL PROCEDURE, DEBTOR-CREDITOR.

CRITERIA FOR AN ORDER OF ATTACHMENT EXPLAINED.

[Hume v 1 Prospect Park ALF, LLC, 2016 NY Slip Op 02055, 2nd Dept 3-23-16](#)

CIVIL PROCEDURE, TRUSTS AND ESTATES, APPEALS.

DEFENDANT'S DEATH PRIOR TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT DIVESTED THE COURT OF JURISDICTION, COURT SHOULD NOT HAVE DECIDED MOTION AND ORDER APPEALED FROM WAS A NULLITY.

[Aurora Bank FSB v Albright, 2016 NY Slip Op 02307, 2nd Dept 3-30-16](#)

CRIMINAL LAW.

ATTEMPTED CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE FOURTH DEGREE IS NOT A LESSER-INCLUDED OFFENSE OF CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE FOURTH DEGREE; SUPERIOR COURT INFORMATION JURISDICTIONALLY DEFECTIVE.

[People v Chacko, 2016 NY Slip Op 01689, 2nd Dept 3-9-16](#)

JUROR SHOULD HAVE BEEN EXCUSED FOR CAUSE, CONVICTION REVERSED.

[People v Malloy, 2016 NY Slip Op 02380, 2nd Dept 3-30-16](#)

CRIMINAL LAW, APPEALS.

DEPORTATION OF DEFENDANT DID NOT RENDER APPEAL OF SORA RISK ASSESSMENT ACADEMIC; UPWARD DEPARTURE BASED UPON THE EXTREME VIOLENCE OF THE CRIME PROPER.

[**People v Shim, 2016 NY Slip Op 01818, 2nd Dept 3-16-16**](#)

DEFAMATION, CIVIL PROCEDURE.

COMMUNICATION BETWEEN SPOUSES DOES NOT CONSTITUTE PUBLICATION IN A DEFAMATION ACTION; MOTION TO SET ASIDE PLAINTIFF'S VERDICT SHOULD HAVE BEEN GRANTED.

[**Gaccione v Scarpinato, 2016 NY Slip Op 01640, 2nd Dept 3-9-16**](#)

ENVIRONMENTAL LAW.

PETITIONER ORGANIZATION DID NOT HAVE STANDING TO CHALLENGE CONSTRUCTION OF ASPHALT PLANT NEAR A STATE PARK.

[**Matter of Stewart Park & Reserve Coalition, Inc. v Town of New Windsor Zoning Bd. of Appeals, 2016 NY Slip Op 01685, 2nd Dept 3-9-16**](#)

ENVIRONMENTAL LAW, NAVIGATION LAW, INSURANCE LAW.

LANDSCAPER AND ITS INSURER STRICTLY LIABLE FOR OIL DISCHARGE ON PLAINTIFFS' PROPERTY; OIL LINE SEVERED DURING SPRINKLER REPAIR.

[**Bennett v State Farm Fire & Cas. Co., 2016 NY Slip Op 01452, 2nd Dept 3-2-16**](#)

EMINENT DOMAIN, MUNICIPAL LAW.

EXTENSION OF TIME TO FILE NOTICE OF APPEARANCE RE: A CLAIM FOR DAMAGES FOR THE ACQUISITION OF REAL PROPERTY BY THE VILLAGE PROPERLY GRANTED, CRITERIA EXPLAINED.

[**Matter of Village of Haverstraw v Ray Riv. Co., Inc., 2016 NY Slip Op 01500, 2nd Dept 3-2-16**](#)

FAMILY LAW.

MOTHER FAILED TO FIRST USE LESS DRASTIC CHILD-SUPPORT ENFORCEMENT MECHANISMS, MOTION TO HOLD FATHER IN CIVIL CONTEMPT PROPERLY DENIED.

[**Rhodes v Rhodes, 2016 NY Slip Op 01657, 2nd Dept 3-9-16**](#)

FAMILY COURT SHOULD HAVE GRANTED MOTION FOR FINDINGS TO ENABLE CHILD TO PETITION FOR SPECIAL IMMIGRANT JUVENILE STATUS (SIJS).

[**Matter of Fatima J. A. J. \(Ana A. J. S. -- Carlos E. A. F.\), 2016 NY Slip Op 01673, 2nd Dept 3-9-16**](#)

FREEDOM OF INFORMATION LAW (FOIL).

REQUEST FOR THE NAME OF THE MOHEL WHO PERFORMED CIRCUMCISION ON AN INFANT WHO BECAME INFECTED WITH HERPES SIMPLEX VIRUS PROPERLY DENIED.

[Matter of Berger v New York City Dept. of Health & Mental Hygiene, 2016 NY Slip Op 01667, 2nd Dept 3-9-16](#)

FORECLOSURE, CIVIL PROCEDURE.

SUA SPONTE DISMISSAL FOR LACK OF STANDING REVERSED, LACK OF STANDING DEFENSE WAS WAIVED AND IS NOT A JURISDICTIONAL DEFECT.

[Consumer Solutions, LLC v Charles, 2016 NY Slip Op 01794, 2nd Dept 3-16-16](#)

ONCE PLAINTIFF RELEASED THE MORTGAGE UPON PAYMENT OF LESS THAN THE VALUE OF THE NOTE, PLAINTIFF COULD PROCEED AGAINST THE NOTE AND GUARANTY BY AMENDING THE FORECLOSURE COMPLAINT.

[TD Bank, N.A. v 250 Jackson Ave., LLC, 2016 NY Slip Op 01828, 2nd Dept 3-16-16](#)

INSURANCE LAW.

QUESTION OF FACT WHETHER INSURED'S 17-MONTH DELAY IN NOTIFYING INSURER OF THE OCCURRENCE WAS BASED UPON A GOOD FAITH BELIEF OF NONLIABILITY.

[Aspen Ins. UK Ltd. v Nieto, 2016 NY Slip Op 01449, 2nd Dept 3-2-16](#)

BECAUSE PLAINTIFF RECOVERED FROM THE OTHER DRIVER AN AMOUNT EQUAL TO THE LIMIT OF PLAINTIFF'S SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS (SUM) COVERAGE, PLAINTIFF WAS NOT ENTITLED TO ANY FURTHER RECOVERY.

[Nafash v Allstate Ins. Co., 2016 NY Slip Op 02061, 2nd Dept 3-23-16](#)

INSURANCE LAW, CONTRACT LAW.

PRINCIPLES OF CONTRACT INTERPRETATION APPLIED TO DETERMINE THE DEDUCTIBLE AMOUNT; SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED TO THE INSURER.

[Castle Oil Corp. v ACE Am. Ins. Co., 2016 NY Slip Op 01632, 2nd Dept 3-9-16](#)

SUPPLEMENTAL UNINSURED/UNDERINSURED MOTORIST PROVISIONS WERE UNAMBIGUOUS, RECOVERY LIMITED TO THE DIFFERENCE BETWEEN THE AMOUNT RECOVERED UNDER THE TORTFEASOR'S POLICY AND \$50,000, HERE THE DIFFERENCE WAS ZERO.

[Matter of Ameriprise Auto & Home Ins. Co. v Savio, 2016 NY Slip Op 02358, 2nd Dept 3-30-16](#)

INSURANCE LAW, CONTRACT LAW, ATTORNEYS' FEES.

ATTORNEYS' FEES NOT AVAILABLE TO INSURED WHO BRINGS AFFIRMATIVE ACTION TO SETTLE RIGHTS UNDER A POLICY; CAUSE OF ACTION FOR BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING NOT DUPLICATIVE OF CAUSE OF ACTION FOR BREACH OF CONTRACT.

[Doody v Liberty Mut. Group, Inc., 2016 NY Slip Op 01798, 2nd Dept 3-16-16](#)

INSURANCE LAW, LANDLORD-TENANT

LESSOR ENTITLED TO SUMMARY JUDGMENT DECLARING LESSEE'S INSURANCE CARRIER WAS OBLIGATED TO DEFEND LESSOR IN SLIP AND FALL CASE.

[**Cumberland Farms, Inc. v Tower Group, Inc., 2016 NY Slip Op 02048, 2nd Dept 3-23-16**](#)

LIMITED LIABILITY COMPANY LAW.

LIMITED LIABILITY COMPANY WHICH DID NOT COMPLY WITH STATUTORY PUBLICATION REQUIREMENT CANNOT BRING A COURT ACTION.

[**Small Step Day Care, LLC v Broadway Bushwick Bldrs., L.P., 2016 NY Slip Op 02071, 2nd Dept 3-23-16**](#)

NEGLIGENCE.

CAR CRASHING THROUGH SUPERMARKET DOORS WAS AN UNFORESEEABLE INTERVENING ACT; SUMMARY JUDGMENT PROPERLY GRANTED TO SUPERMARKET AND LANDOWNER.

[**Dawkins v Mastrangelo, 2016 NY Slip Op 01459, 2nd Dept 3-2-16**](#)

GENERAL AWARENESS OF A RECURRENT CONDITION DOES NOT AMOUNT TO CONSTRUCTIVE NOTICE OF THE PARTICULAR CONDITION WHICH CAUSED THE ACCIDENT.

[**Gurley v Rochdale Vil., Inc., 2016 NY Slip Op 01467, 2nd Dept 3-2-16**](#)

DEFENDANTS FAILED TO DEMONSTRATE SIDEWALK DEFECT WAS TRIVIAL AS A MATTER OF LAW, SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED.

[**Padarat v New York City Tr. Auth., 2016 NY Slip Op 02064, 2nd Dept 3-23-16**](#)

FAILURE TO DEMONSTRATE WHEN AREA WAS LAST CLEANED OR INSPECTED REQUIRED DENIAL OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE.

[**Ansari v MB Hamptons, LLC, 2016 NY Slip Op 02305, 2nd Dept 3-30-16**](#)

NEGLIGENCE, EVIDENCE.

ACCIDENT DIAGRAM IN POLICE REPORT WAS NOT BASED ON OFFICER'S FIRST-HAND KNOWLEDGE; REPORT SHOULD NOT HAVE BEEN ADMITTED IN EVIDENCE; NEW TRIAL ORDERED.

[**Wynn v Motor Veh. Acc. Indem. Corp., 2016 NY Slip Op 01484, 2nd Dept 3-2-16**](#)

CRITERIA FOR SPOILIATION OF EVIDENCE NOT MET.

[**Doviyak v Finkelstein & Partners, LLP, 2016 NY Slip Op 01636, 2nd Dept 3-9-16**](#)

NEGLIGENCE, MEDICAL MALPRACTICE.

QUESTION OF FACT WHETHER DEFENDANT DOCTOR CONDUCTED AN ADEQUATE SUICIDE ASSESSMENT.

[**Gallen v County of Rockland, 2016 NY Slip Op 01803, 2nd Dept 3-16-16**](#)

HOSPITAL NOT LIABLE FOR INJURIES CAUSED BY MENTALLY ILL PATIENT FOUR DAYS AFTER DISCHARGE.

[**Stephen v City of New York, 2016 NY Slip Op 01827, 2nd Dept 3-16-16**](#)

SURGICAL PROCEDURES WERE DEEMED DISCRETE EVENTS WHICH DID NOT ANTICIPATE FURTHER TREATMENT, CONTINUOUS TREATMENT DOCTRINE DID NOT APPLY TO EXTEND THE STATUTE OF LIMITATIONS.

[**Nisanov v Khulpateea, 2016 NY Slip Op 02062, 2nd Dept 3-23-16**](#)

WHERE DEFENDANT DOCTOR, IN A MOTION FOR SUMMARY JUDGMENT, DOES NOT ADDRESS THE ALLEGATIONS OF PROXIMATE CAUSE IN THE MEDICAL MALPRACTICE COMPLAINT, THE PLAINTIFF NEED NOT ADDRESS PROXIMATE CAUSE IN OPPOSITION TO THE MOTION.

[**Uchitel v Fleischer, 2016 NY Slip Op 02075, 2nd Dept 3-23-16**](#)

NEGLIGENCE, MUNICIPAL LAW.

FIREFIGHTER'S GENERAL MUNICIPAL LAW CAUSE OF ACTION FOR INJURIES INCURRED WHILE FIGHTING A FIRE CANNOT BE BASED UPON AN ALLEGED OSHA VIOLATION ON THE PART OF THE PROPERTY OWNER.

[**Gallagher v 109-02 Dev., LLC, 2016 NY Slip Op 02051, 2nd Dept 3-23-16**](#)

NEGLIGENCE, MUNICIPAL LAW, VEHICLE AND TRAFFIC LAW.

QUESTION OF FACT WHETHER OFFICER DEMONSTRATED RECKLESS DISREGARD FOR THE SAFETY OF OTHERS IN HIGH-SPEED PURSUIT.

[**Foster v Suffolk County Police Dept., 2016 NY Slip Op 01639, 2nd Dept 3-9-16**](#)

NEGLIGENCE, PHARMACIST MALPRACTICE.

PHARMACIST'S DUTY OF CARE CLEARLY ARTICULATED AFTER IN-DEPTH ANALYSIS; SUMMARY JUDGMENT DISMISSING THE NEGLIGENCE/WRONGFUL DEATH CAUSES OF ACTION AGAINST THE PHARMACIST AND PHARMACY SHOULD HAVE BEEN GRANTED.

[**Abrams v Bute, 2016 NY Slip Op 01627, 2nd Dept 3-9-16**](#)

PRODUCTS LIABILITY.

QUESTIONS OF FACT WHETHER AUTOMOBILE LIFT WAS INTENDED TO BE USED WITHOUT A PROTECTIVE DEVICE AND WHETHER WARNINGS WERE ADEQUATE.

[**Singh v Gemini Auto Lifts, Inc., 2016 NY Slip Op 01826, 2nd Dept 3-16-16**](#)

REAL PROPERTY.

USE OF PLAINTIFF'S LAND WAS PERMISSIVE, NOT HOSTILE; EASEMENT BY PRESCRIPTION WAS NOT CREATED.

[**Colin Realty Co., LLC v Manhasset Pizza, LLC, 2016 NY Slip Op 01633, 2nd Dept 3-9-16**](#)

RIGHT TO PARTITION IS NOT ABSOLUTE AND IS SUBJECT TO THE EQUITIES BETWEEN THE PARTIES.

[**Guo v Guo, 2016 NY Slip Op 01806, 2nd Dept 3-16-16**](#)

REAL PROPERTY TAX LAW.

ALLEGED ZONING VIOLATION DID NOT AUTOMATICALLY WARRANT REMOVAL OF TAX-EXEMPT STATUS; TOWN'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED.

[**Community Humanitarian Assn., Inc. v Town of Ramapo, 2016 NY Slip Op 01458, 2nd Dept 3-2-16**](#)

PURCHASE PRICE OF GOLF COURSE NOT PROPER VALUATION FOR TAX PURPOSES, PURCHASE PRICE REFLECTED POTENTIAL VALUE OF THE LAND AS DEVELOPED.

[**Matter of Hampshire Recreation, LLC v Board of Assessors, 2016 NY Slip Op 01847, 2nd Dept 3-16-16**](#)

TRUSTS AND ESTATES.

QUESTION OF FACT RAISED WHETHER DECEDENT REVOKED A LOST WILL.

[**Matter of Marotta, 2016 NY Slip Op 01491, 2nd Dept 3-2-16**](#)

LETTERS TESTAMENTARY PROPERLY REVOKED WITHOUT A HEARING.

[**Matter of Kaufman, 2016 NY Slip Op 01849, 2nd Dept 3-16-16**](#)

ZONING.

NO RATIONAL BASIS FOR GRANTING USE VARIANCE TO CONSTRUCT CAR WASH; PARTY SEEKING VARIANCE IS ENTITLED TO REASONABLE RETURN BUT NOT THE MOST PROFITABLE RETURN.

[**Matter of DeFeo v Zoning Bd. of Appeals of Town of Bedford, 2016 NY Slip Op 02082, 2nd Dept 3-23-16**](#)

THIRD DEPARTMENT

CONTRACT LAW, FRAUD, CIVIL PROCEDURE.

FRAUD CAUSE OF ACTION PROPERLY DISMISSED BECAUSE (1) IT WAS DUPLICATIVE OF THE BREACH OF CONTRACT CAUSE OF ACTION AND (2) PLAINTIFF, AS A SOPHISTICATED BUSINESS ENTITY, COULD NOT ARGUE IT RELIED ON ORAL REPRESENTATIONS WHICH CONTRADICTED THE WRITTEN CONTRACT; STRICT REQUIREMENTS FOR ATTACHMENT NOT MET.

[**Northeast United Corp. v Lewis, 2016 NY Slip Op 01713, 3rd Dept 3-10-16**](#)

CONTRACT LAW, JOINT VENTURES.

LIABILITY UNDER CONTRACT CAN ARISE IN THE ABSENCE OF PRIVITY WHERE A PARTY IS A JOINT VENTURER OR PARTNER WITH A SIGNATORY TO THE CONTRACT.

[**Alper Rest., Inc. v Catamount Dev. Corp., 2016 NY Slip Op 02509, 3rd Dept 3-31-16**](#)

CRIMINAL LAW.

PEOPLE DEMONSTRATED, IN A *RODRIGUEZ* HEARING, THE IDENTIFICATION OF DEFENDANT WAS CONFIRMATORY, *WADE* HEARING NOT NECESSARY.

[**People v Smith, 2016 NY Slip Op 01521, 3rd Dept 3-3-16**](#)

IN PLEADING GUILTY TO A LESSER CRIME, DEFENDANT ADMITTED AN ACTION WHICH NEGATED AN ELEMENT OF THE CRIME TO WHICH HE PLED, MOTION TO WITHDRAW PLEA SHOULD HAVE BEEN GRANTED.

[**People v Banks, 2016 NY Slip Op 02127, 3rd Dept 3-24-16**](#)

CRIMINAL LAW, EVIDENCE.

EVIDENCE OF PRIOR UNCHARGED BAD ACTS SHOULD NOT HAVE BEEN ADMITTED, ERROR HARMLESS HOWEVER.

[**People v Scaringe, 2016 NY Slip Op 01871, 3rd Dept 3-16-16**](#)

CRIMINAL LAW, JUDGES.

TRIAL JUDGE GAVE TOO MUCH ADVICE TO THE PROSECUTOR ON THE ADMISSION AND USE OF EVIDENCE, NEW TRIAL ORDERED.

[**People v Kocsis, 2016 NY Slip Op 02480, 3rd Dept 3-31-16**](#)

DISCIPLINARY HEARINGS (INMATES)

HEARING OFFICER FAILED TO CONSIDER MEDICAL EVIDENCE SUPPORTING PETITIONER'S CLAIM HE WAS UNABLE TO PROVIDE A URINE SAMPLE, DETERMINATION EXPUNGED.

[**Matter of Katsanos v Prack, 2016 NY Slip Op 01531, 3rd Dept 3-3-16**](#)

NO EFFORT WAS MADE TO DETERMINE WHY PETITIONER'S WITNESS WOULD NOT TESTIFY, DETERMINATION ANNULLED.

[**Matter of Tevault v Prack, 2016 NY Slip Op 01533, 3rd Dept 3-3-16**](#)

DENIAL OF PETITIONER'S REQUEST FOR TWO CORRECTIONAL-STAFF WITNESSES WAS ERROR, DETERMINATION ANNULLED.

[**Matter of Williams v Annucci, 2016 NY Slip Op 01535, 3rd Dept 3-3-16**](#)

HEARING OFFICER DID NOT ADDRESS PETITIONER'S MENTAL HEALTH STATUS, DETERMINATION ANNULLED.

[**Matter of Howard v Prack, 2016 NY Slip Op 01538, 3rd Dept 3-3-16**](#)

EMPLOYMENT LAW, HUMAN RIGHTS LAW.

ALLEGATIONS BY THREE FORMER EMPLOYEES DID NOT MAKE OUT A PRIMA FACIE CASE OF A HOSTILE WORK ENVIRONMENT DUE TO SEXUAL HARASSMENT.

[**Pawson v Ross, 2016 NY Slip Op 02502, 3rd Dept 3-31-16**](#)

FAMILY LAW.

MOTHER ENTITLED TO HEARING ON HER PRO SE PETITION TO MODIFY A CUSTODY AWARD; FATHER SHOULD NOT HAVE BEEN GIVEN COMPLETE CONTROL OVER MOTHER'S VISITATION; ATTORNEY SHOULD HAVE BEEN APPOINTED FOR THE CHILDREN.

[**Matter of Harrell v Fox, 2016 NY Slip Op 01534, 3rd Dept 3-3-16**](#)

MUNICIPAL LAW, EMPLOYMENT LAW.

PUBLIC EMPLOYEE FAILED TO DEMONSTRATE ELIMINATION OF POSITION WAS DONE IN BAD FAITH; NEGLIGENT VIOLATION OF OPEN MEETINGS LAW DID NOT INVALIDATE TOWN'S ACTIONS.

[**Matter of Cutler v Town of Mamakating, 2016 NY Slip Op 01543, 3rd Dept 3-3-16**](#)

NEGLIGENCE.

SIDEWALK DEFECT TOO TRIVIAL TO BE ACTIONABLE.

[**Chirumbolo v 78 Exch. St., LLC, 2016 NY Slip Op 01537, 3rd Dept 3-3-16**](#)

NEGLIGENCE, CONTRACT LAW.

QUESTION OF FACT WHETHER SNOW-REMOVAL CONTRACTOR CREATED THE ICE CONDITION WHERE PLAINTIFF FELL.

[**Hannigan v Staples, Inc., 2016 NY Slip Op 02506, 3rd Dept 3-31-16**](#)

NEGLIGENCE, MUNICIPAL LAW, CONTRACT LAW.

QUESTION OF FACT WHETHER GOVERNMENTAL OR PROPRIETARY ACTS WERE INVOLVED IN CONNECTION WITH A BURST WATER MAIN; QUESTION OF FACT WHETHER ROAD-WORK CONTRACTOR LIABLE IN TORT FOR LAUNCHING AN INSTRUMENT OF HARM.

[**Billera v Merritt Constr., Inc., 2016 NY Slip Op 02503, 3rd Dept 3-31-16**](#)

REAL PROPERTY.

1899 DEED COVENANT TO PROVIDE FREE ELECTRIC POWER TO DEFENDANT'S PREMISES RAN WITH THE LAND; HOWEVER THE IMPLIED DURATIONAL LIMITS ON THE COVENANT HAVE BEEN SURPASSED RENDERING IT UNENFORCEABLE.

[Niagara Mohawk Power Corp. v Allied Healthcare Prods., Inc., 2016 NY Slip Op 02504, 3rd Dept 3-31-16](#)

RETIREMENT AND SOCIAL SECURITY LAW.

INJURY DURING HURRICANE SANDY RESCUE OPERATIONS DID NOT RESULT FROM AN ACCIDENT WITHIN THE MEANING OF THE RETIREMENT AND SOCIAL SECURITY LAW.

[Matter of Kelly v DiNapoli, 2016 NY Slip Op 02132, 3rd Dept 3-24-16](#)

TRUSTS AND ESTATES.

PETITION SEEKING DISCOVERY BASED UPON THE ALLEGATION RESPONDENT HELD ASSETS OF THE ESTATE PROPERLY DENIED, PETITIONERS DID NOT MEET THEIR INITIAL BURDEN.

[Dwyer v Valachovic, 2016 NY Slip Op 01542, 3rd Dept 3-3-16](#)

UNEMPLOYMENT INSURANCE.

PROMOTIONAL SALES MODEL WAS AN EMPLOYEE.

[Matter of Waggoner \(Preston Leasing Corp.--Commissioner of Labor\), 2016 NY Slip Op 01707, 3rd Dept 3-10-16](#)

CRISIS COUNSELOR WAS AN EMPLOYEE.

[Matter of Torres \(Crisis Care Network, Inc.--Commissioner of Labor\), 2016 NY Slip Op 01710, 3rd Dept 3-10-16](#)

PART-TIME BOOKKEEPER WAS AN EMPLOYEE.

[Matter of Stewart \(American Inst. for Stuttering--Commissioner of Labor\), 2016 NY Slip Op 01720, 3rd Dept 3-10-16](#)

CLAIMANT DID NOT PROVOKE HER DISCHARGE AND IS THEREFORE ENTITLED TO BENEFITS.

[Matter of Rosseychuk \(City of New York--Commissioner of Labor\), 2016 NY Slip Op 01885, 3rd Dept 3-17-16](#)

NEWSPAPER CARRIER WAS AN EMPLOYEE ENTITLED TO BENEFITS.

[Matter of Rosenfelder \(Community First Holdings, Inc.--Commissioner of Labor\), 2016 NY Slip Op 01888, 3rd Dept 3-17-16](#)

WORKERS' COMPENSATION LAW.

CARRIER'S INABILITY TO CONDUCT AN INDEPENDENT MEDICAL EXAMINATION OF CLAIMANT WARRANTED SUSPENSION OF COMPENSATION PAYMENTS.

[**Matter of Duncan v John Wiley & Sons, Inc., 2016 NY Slip Op 01881, 3rd Dept 3-17-16**](#)

STATUTORY PRESUMPTION THAT UNWITNESSED ACCIDENT AROSE FROM EMPLOYMENT DID NOT CREATE A PRESUMPTION THE ACCIDENT HAD HAPPENED, DENIAL OF CLAIM AFFIRMED.

[**Matter of Siennikov v Professional Grade Constr., Inc., 2016 NY Slip Op 01889, 3rd Dept 3-17-16**](#)

FOURTH DEPARTMENT

CIVIL PROCEDURE.

PLAINTIFF SHOULD HAVE BEEN ALLOWED TO AMEND THE AD DAMNUM CLAUSE OF THE COMPLAINT.
[Putrelo Constr. Co. v Town of Marcy, 2016 NY Slip Op 01949, 4th Dept 3-18-16](#)

CIVIL PROCEDURE, EVIDENCE.

UNSWORN, UNCERTIFIED MEDICAL DOCUMENTS PROPERLY CONSIDERED FOR SUMMARY JUDGMENT MOTION; CREDIBILITY OF AFFIANTS SHOULD NOT BE WEIGHED IN DECIDING SUMMARY JUDGMENT MOTION.
[Cook v Peterson, 2016 NY Slip Op 01950, 4th Dept 3-18-16](#)

CRIMINAL LAW.

GRAND LARCENY CONVICTION REDUCED TO PETIT LARCENY, PROOF OF VALUE OF STOLEN PROPERTY INSUFFICIENT.
[People v Slack, 2016 NY Slip Op 01930, 4th Dept 3-18-16](#)

JURY SHOULD HAVE BEEN INSTRUCTED ON THE DEADLY-FORCE JUSTIFICATION DEFENSE, NEW TRIAL ORDERED.
[People v James, 2016 NY Slip Op 01946, 4th Dept 3-18-16](#)

THE JUDGE REMOVED ELEMENTS OF THE CHARGED OFFENSES FROM THE JURY'S CONSIDERATION, NEW TRIAL ORDERED.
[People v O'Dell, 2016 NY Slip Op 02262, 4th Dept 3-25-16](#)

DEFENDANT'S STARING AT THE POLICE FROM ACROSS THE ROAD DID NOT JUSTIFY THE INITIAL APPROACH BY THE POLICE, MOTION TO SUPPRESS SHOULD HAVE BEEN GRANTED AND INDICTMENT FOR POSSESSION OF A WEAPON SHOULD HAVE BEEN DISMISSED.
[People v Savage, 2016 NY Slip Op 02184, 4th Dept 3-25-16](#)

FORCIBLE DETENTION AMOUNTED TO ARREST WITHOUT PROBABLE CAUSE, GUILTY PLEA VACATED, INDICTMENT DISMISSED.
[People v Finch, 2016 NY Slip Op 02191, 4th Dept 3-25-16](#)

SEARCH WARRANT WAS NOT BASED UPON PROBABLE CAUSE TO BELIEVE THE EVIDENCE SOUGHT WOULD BE AT THE SEARCHED LOCATION, MOTION TO SUPPRESS WAS PROPERLY GRANTED AND INDICTMENT WAS PROPERLY DISMISSED.
[People v Moxley, 2016 NY Slip Op 02192, 4th Dept 3-25-16](#)

MIDTRIAL ORAL MOTION TO SUPPRESS, MADE AFTER THE PEOPLE BELATEDLY PROVIDED THE SEARCH WARRANT APPLICATION, REQUIRED A HEARING; COURT'S SUA SPONTE DENIAL OF THE MOTION WAS IMPROPER.
[People v Samuel, 2016 NY Slip Op 02222, 4th Dept 3-25-16](#)

CRIMINAL LAW, APPEALS.

THE SOLE REMEDY WHEN A CONVICTION IS DEEMED AGAINST THE WEIGHT OF THE EVIDENCE IS DISMISSAL OF THE INDICTMENT, REDUCTION TO A LESSER INCLUDED OFFENSE IS NOT AVAILABLE.
[People v Cooney, 2016 NY Slip Op 02203, 4th Dept 3-25-16](#)

SEIZURE OF COCAINE WAS NOT SUFFICIENTLY ATTENUATED FROM ILLEGAL DETENTION, SUPPRESSION SHOULD HAVE BEEN GRANTED; RULING THAT DETENTION WAS ILLEGAL WAS NOT ADVERSE TO THE DEFENDANT AND THEREFORE COULD NOT BE RECONSIDERED ON APPEAL.

[People v King, 2016 NY Slip Op 02264, 4th Dept 3-25-16](#)

CRIMINAL LAW, EVIDENCE.

JURY SHOULD NOT HAVE BEEN INSTRUCTED ON CONSTRUCTIVE POSSESSION, NEW TRIAL ORDERED.

[People v Diallo, 2016 NY Slip Op 02213, 4th Dept 3-25-16](#)

EDUCATION-SCHOOL LAW, MUNICIPAL LAW.

SPECIAL NEEDS STUDENT SHOULD HAVE BEEN ALLOWED TO AMEND HER NOTICE OF CLAIM TO REFLECT ALLEGATIONS OF AN ASSAULT AND RAPE SHE MADE IN HER DEPOSITION, ALLEGATIONS WHICH DIFFERED DRAMATICALLY FROM THOSE MADE IN THE ORIGINAL NOTICE OF CLAIM.

[Doe v Rochester City School Dist., 2016 NY Slip Op 02275, 4th Dept 3-25-16](#)

ENVIRONMENTAL LAW

EXPRESSION OF OPPOSITION TO A PROPOSED DEVELOPMENT PROJECT DID NOT CREATE A CONFLICT OF INTEREST PRECLUDING VILLAGE OFFICIALS FROM PARTICIPATING IN A SEQRA REVIEW; PLANNING BOARD DID NOT HAVE AUTHORITY TO RESCIND A NEGATIVE DECLARATION AFTER PERMITS WERE ISSUED.

[Matter of Pittsford Canalside Props., LLC v Village of Pittsford, 2016 NY Slip Op 01929, 4th Dept 3-18-16](#)

FAMILY LAW.

DENIAL OF MOTHER'S REQUEST FOR A LINCOLN HEARING WAS AN ABUSE OF DISCRETION.

[Matter of Noble v Brown, 2016 NY Slip Op 02238, 4th Dept 3-25-16](#)

FAMILY LAW, APPEALS.

INTENT TO HARASS NOT DEMONSTRATED; EXPIRATION OF ORDER OF PROTECTION DID NOT MOOT APPEAL.

[Matter of Shephard v Ray, 2016 NY Slip Op 02239, 4th Dept 3-25-16](#)

FAMILY LAW, ATTORNEYS.

INADEQUATE INQUIRY PRECEDING FATHER'S WAIVER OF HIS RIGHT TO COUNSEL REQUIRED REVERSAL.

[Matter of Soldato v Caringi, 2016 NY Slip Op 02265, 4th Dept 3-25-16](#)

FAMILY LAW, ATTORNEYS, APPEALS.

INADEQUATE WAIVER OF RIGHT TO COUNSEL REQUIRED REVERSAL; PRESERVATION OF THIS ISSUE NOT NECESSARY.

[Matter of Girard v Neville, 2016 NY Slip Op 01947, 4th Dept 3-18-16](#)

NEGLIGENCE, CIVIL PROCEDURE.

PLAINTIFF'S ALLEGATION OF A NEW INJURY IN A SUPPLEMENTAL BILL OF PARTICULARS SUBMITTED IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN CONSIDERED BY THE MOTION COURT.

[Stamps v Pudetti, 2016 NY Slip Op 02272, 4th Dept 3-25-16](#)

NEGLIGENCE, EVIDENCE.

STRIKING OF PLEADINGS TOO SEVERE A SANCTION FOR SPOILIATION OF EVIDENCE.

[Mahiques v County of Niagara, 2016 NY Slip Op 02190, 4th Dept 3-25-16](#)

PRODUCTS LIABILITY.

EXPERT AFFIDAVIT RAISED QUESTION OF FACT WHETHER NAIL GUN WAS DEFECTIVELY DESIGNED.

[Terwilliger v Max Co., Ltd., 2016 NY Slip Op 02226, 4th Dept 3-25-16](#)

APRIL 2016

COURT OF APPEALS

CRIMINAL LAW, APPEALS.

THE DEFENSE HAD SEVERAL OPPORTUNITIES TO DISCOVER THE JUDGE'S SENTENCE-PROMISE MISTAKE, THEREFORE THE PRESERVATION REQUIREMENT APPLIED TO DEFENDANT'S CHALLENGE TO THE VALIDITY OF HIS GUILTY PLEA.

[People v Williams, 2016 NY Slip Op 02551, CtApp 4-5-16](#)

THE TRIAL JUDGE'S FAILURE TO ACT ON DEFENSE COUNSEL'S OBJECTION TO T-SHIRTS REMEMBERING THE MURDER VICTIM WAS ERROR; UNDER THE FACTS, THE ERROR WAS HARMLESS.

[People v Nelson, 2016 NY Slip Op 02554, CtApp 4-5-16](#)

CRIMINAL LAW, EVIDENCE.

DEFENDANT'S CHALLENGES TO THE HARVESTING FOR USE AT TRIAL OF RECORDINGS OF PHONE CALLS MADE BY INMATES DURING PRE-TRIAL INCARCERATION REJECTED; THE PRACTICE HOWEVER WAS NOT CONDONED AND THE PREJUDICE TO DEFENDANTS WHO CANNOT MAKE BAIL WAS EXPRESSLY NOTED.

[People v Johnson, 2016 NY Slip Op 02552, CtApp 4-5-16](#)

COURT PROPERLY EXCLUDED SPECULATIVE EVIDENCE OF THIRD-PARTY CULPABILITY; THERE IS NO HEIGHTENED STANDARD FOR ADMISSIBILITY OF THIRD-PARTY CULPABILITY EVIDENCE; RATHER THE USUAL PROBATIVE VS PREJUDICIAL BALANCING TEST APPLIES.

[People v Powell, 2016 NY Slip Op 02555, CtApp 4-5-16](#)

FATHER DEEMED TO HAVE CONSENTED ON BEHALF OF HIS INFANT SON TO THE RECORDING OF THREATS MADE AGAINST HIS SON BY DEFENDANT; ABSENT THE VICARIOUS CONSENT, THE RECORDING WOULD HAVE CONSTITUTED ILLEGAL EAVESDROPPING AND WOULD NOT HAVE BEEN ADMISSIBLE IN COURT.

[People v Badalamenti, 2016 NY Slip Op 02556, CtApp 4-5-16](#)

DNA TEST RESULTS DEEMED TESTIMONIAL HEARSAY TRIGGERING DEFENDANT'S RIGHT TO CONFRONT THE ANALYST(S) WITH FIRST-HAND KNOWLEDGE OF CRUCIAL STAGES OF THE ANALYSIS.

[People v John, 2016 NY Slip Op 03208, CtApp 4-28-16](#)

EDUCATION-SCHOOL LAW.

TEACHER WITH TENURE WHO RESIGNED AND WAS THEN REHIRED WAS NOT REHIRED WITH TENURE; THE TEACHER FAILED TO COMPLY WITH THE REGULATION REQUIRING A WRITTEN WITHDRAWAL OF THE RESIGNATION SUBJECT TO THE APPROVAL OF THE CHANCELLOR.

[Matter of Springer v Board of Educ. of the City Sch. Dist. of the City of N.Y., 2016 NY Slip Op 02553, CtApp 4-5-16](#)

NEGLIGENCE, MUNICIPAL LAW, LANDLORD-TENANT.

LANDLORD OWED NO STATUTORY DUTY TO ABATE LEAD IN AN APARTMENT WHERE THE CHILD SPENT 50 HOURS PER WEEK IN THE CARE OF HER GRANDMOTHER, LAW REQUIRING LEAD PAINT ABATEMENT APPLIES ONLY TO APARTMENTS WHERE A CHILD RESIDES.

[**Yaniveth R. v LTD Realty Co., 2016 NY Slip Op 02550, CtApp 4-5-16**](#)

FIRST DEPARTMENT

ARBITRATION, CONTRACT LAW.

ARBITRABLE CLAIMS WHICH ARE INEXTRICABLY TIED TO CLAIMS ALREADY IN COURT SHOULD BE LITIGATED IN COURT.

[Garthon Bus. Inc. v Stein, 2016 NY Slip Op 03102, 1st Dept 4-26-16](#)

CIVIL PROCEDURE, EMPLOYMENT LAW, CLASS ACTIONS.

CLASS ACTION SUIT AGAINST EMPLOYER ALLEGING EMPLOYEES WERE ROUTINELY UNDERPAID ALLOWED TO GO FORWARD.

[Weinstein v Jenny Craig Operations, Inc., 2016 NY Slip Op 02932, 1st Dept 4-19-16](#)

CIVIL PROCEDURE, EVIDENCE.

MOVING PARTY CANNOT RELY ON GAPS IN OPPOSING PARTY'S PROOF IN MOTIONS AND CROSS-MOTIONS FOR SUMMARY JUDGMENT; WITNESS-CREDIBILITY SHOULD NOT BE TAKEN INTO ACCOUNT AT THE SUMMARY JUDGMENT STAGE.

[Belgium v Mateo Prods., Inc., 2016 NY Slip Op 02730, 1st Dept, 4-12-16](#)

DESTRUCTION (SPOILIATION) OF EVIDENCE WARRANTED STRIKING THE PLEADINGS.

[Chan v Cheung, 2016 NY Slip Op 02731, 1st Dept 4-12-16](#)

CONTRACT LAW.

REFORMATION OF CONTRACT TO CORRECT THE NAMING OF THE WRONG PARTY TO BE INDEMNIFIED, A MUTUAL MISTAKE, SHOULD HAVE BEEN ALLOWED.

[313-315 W. 125th St. L.L.C. v Arch Specialty Ins. Co., 2016 NY Slip Op 03105, 1st Dept 4-26-16](#)

CRIMINAL LAW.

JUDICIAL DIVERSION PROGRAM AVAILABLE TO DEFENDANTS CHARGED WITH BOTH QUALIFYING OFFENSES AND OFFENSES WHICH ARE NEITHER QUALIFYING NOR DISQUALIFYING.

[People v Smith, 2016 NY Slip Op 02596, 1st Dept 4-5-16](#)

FAILURE TO INFORM JURY OF EFFECT OF ACQUITTAL ON THE TOP COUNT BASED ON THE JUSTIFICATION DEFENSE REQUIRED REVERSAL IN THE INTEREST OF JUSTICE.

[People v Rowley, 2016 NY Slip Op 03084, 1st Dept 4-21-16](#)

CRIMINAL LAW, APPEALS.

CHALLENGE TO THE JURY INSTRUCTION ON CAUSATION OF DEATH IS SUBJECT TO THE PRESERVATION REQUIREMENT; DEFENDANT'S FAILURE TO OBJECT PRECLUDES REVIEW; STRONG DISSENT ARGUED THE JURY INSTRUCTION IS REVIEWABLE BECAUSE IT RELIEVED THE PEOPLE OF THEIR BURDEN OF PROOF.

[People v Castillo, 2016 NY Slip Op 02709, 1st Dept 4-7-16](#)

CRIMINAL LAW, ATTORNEYS.

DEFENDANT SHOULD HAVE BEEN PRESENT WHEN DEFENSE COUNSEL, DURING THE TRIAL, REQUESTED TO BE RELIEVED FROM REPRESENTING DEFENDANT, NEW TRIAL ORDERED.

[People v Moya, 2016 NY Slip Op 03241, 1st Dept 4-28-16](#)

CRIMINAL LAW, EVIDENCE.

ADMISSION OF PREJUDICIAL EVIDENCE UNRELATED TO THE CHARGED OFFENSES WAS REVERSIBLE ERROR.

[People v Singleton, 2016 NY Slip Op 02945, 1st Dept 4-19-16](#)

FORECLOSURE.

FORECLOSURE COULD PROCEED DESPITE ERRONEOUS SATISFACTION OF MORTGAGE.

[Wells Fargo Bank N.A. v E & G Dev. Corp., 2016 NY Slip Op 02988, 2nd Dept 4-20-16](#)

INSURANCE LAW.

ORDINANCE OR LAW ENDORSEMENT DID NOT REQUIRE INSURER TO PAY FOR REMEDIATION OF CODE VIOLATIONS NOT RELATED TO THE COVERED DAMAGE.

[St. George Tower v Insurance Co. of Greater N.Y., 2016 NY Slip Op 03100, 1st Dept 4-21-16](#)

LABOR LAW-CONSTRUCTION LAW.

LADDER WAS NOT DEFECTIVE, FALL NOT COVERED BY LABOR LAW 240.

[Almodovar v Port Auth. of N.Y. & N.J., 2016 NY Slip Op 03075, 1st Dept 4-21-16](#)

LABOR LAW-CONSTRUCTION LAW, LANDLORD-TENANT, MUNICIPAL LAW.

OUT-OF-POSSESSION LANDLORD CAN BE LIABLE UNDER LABOR LAW 240 AND 241. The First [Siguencia v City of New York, 2016 NY Slip Op 03108, 1st Dept 4-26-16](#)

LANDLORD-TENANT, MUNICIPAL LAW.

NEW YORK CITY HOUSING AUTHORITY ACTED ARBITRARILY AND CAPRICIOUSLY WHEN IT DENIED PETITIONER SUCCESSION RIGHTS TO HIS MOTHER'S APARTMENT.

[Matter of Aponte v Olatoye, 2016 NY Slip Op 02708, 1st Dept 4-7-16](#)

MALICIOUS PROSECUTION, CIVIL PROCEDURE, MUNICIPAL LAW.

TRIAL COURT SHOULD NOT HAVE SET ASIDE VERDICT IN MALICIOUS PROSECUTION ACTION.
[Cardoza v City of New York, 2016 NY Slip Op 02766, 1st Dept 4-12-16](#)

NEGLIGENCE.

QUESTION OF FACT WHETHER EMERGENCY DEFENSE APPLIED TO A REAR-END COLLISION.
[Maisonet v Roman, 2016 NY Slip Op 02725, 1st Dept 4-7-16](#)

FACT THAT OBJECT OVER WHICH PLAINTIFF TRIPPED AND FELL WAS OPEN AND OBVIOUS DID NOT RELIEVE DEFENDANT OF LIABILITY AS A MATTER OF LAW.
[Johnson-Glover v Fu Jun Hao Inc., 2016 NY Slip Op 02748, 1st Dept 4-12-16](#)

PLAINTIFF ASSUMED THE RISK OF INJURY CAUSED BY AN OPEN AND OBVIOUS DEFECT IN AN OUTSIDE BASKETBALL COURT.
[Wallace v City of New York, 2016 NY Slip Op 02763, 1st Dept 4-12-16](#)

EVIDENCE SUFFICIENT TO DEMONSTRATE BUS DRIVER SHOULD HAVE SEEN DECEDENT. The [Oates v New York City Tr. Auth., 2016 NY Slip Op 02729, 1st Dept 4-12-16](#)

PEDESTRIAN IN A CROSSWALK STRUCK FROM BEHIND IS NOT COMPARATIVELY NEGLIGENT AS A MATTER OF LAW.
[Quintavalle v Perez, 2016 NY Slip Op 03126, 1st Dept 4-26-16](#)

NEGLIGENCE, LANDLORD-TENANT, MUNICIPAL LAW (NYC).

VERTICAL LADDER FIRE ESCAPE, THROUGH WHICH PLAINTIFF FELL AND WAS RENDERED PARAPLEGIC, VIOLATED MUNICIPAL DWELLINGS LAW 53.
[Klupchak v First E. Vil. Assoc., 2016 NY Slip Op 03276, 1st Dept 4-28-16](#)

WORKERS' COMPENSATION LAW.

AMENDMENT TO WORKERS' COMPENSATION LAW WHICH IMPOSED LIABILITY UPON INSURERS FOR REOPENED CASES PREVIOUSLY COVERED BY THE SPECIAL FUND IS UNCONSTITUTIONAL.
[American Economy Ins. Co. v State of New York, 2016 NY Slip Op 02924, 1st Dept 4-14-16](#)

SECOND DEPARTMENT

ATTORNEYS.

DEFENDANTS WAIVED ANY OBJECTION TO PLAINTIFF'S ATTORNEY BY PARTICIPATING IN THE LITIGATION FOR MORE THAN TWO YEARS AND EIGHT MONTHS WITH KNOWLEDGE OF THE ALLEGED CONFLICT OF INTEREST.

[Ike & Sam's Group, LLC v Brach, 2016 NY Slip Op 02620, 2nd Dept 4-6-16](#)

BAILMENT, CONTRACT LAW.

DEFENDANTS LIABLE UNDER A GRATUITOUS BAILMENT THEORY FOR DESTROYED GOODS; PROPER WAY TO CALCULATE DAMAGES FOR THE DESTROYED GOODS UNDER A CONTRACT THEORY EXPLAINED.

[Reed v Cornell Univ., 2016 NY Slip Op 02797, 2nd Dept 4-13-16](#)

CIVIL PROCEDURE, CONTRACT LAW, LIEN LAW.

UNLICENSED CONTRACTOR CAN NOT RECOVER UNDER HOME IMPROVEMENT CONTRACT OR IN QUANTUM MERUIT.

[Holistic Homes, LLC v Greenfield, 2016 NY Slip Op 02619, 2nd Dept 4-6-16](#)

CONTRACT LAW, CIVIL PROCEDURE, LIEN LAW, EVIDENCE.

PLAINTIFF-CONTRACTOR'S FAILURE TO PROVE THE VALUE OF THE WORK PRECLUDED RECOVERY UNDER THE LIEN LAW AND UNDER A QUANTUM MERUIT THEORY; CRITERIA FOR AMENDMENT OF A COMPLAINT TO CONFORM TO TRIAL PROOF DESCRIBED.

[DiSario v Rynston, 2016 NY Slip Op 02611, 2nd Dept 4-6-16](#)

CORPORATION LAW, CIVIL PROCEDURE, DEBTOR-CREDITOR.

CORPORATE VEIL PIERCED TO ENFORCE JUDGMENTS.

[Matter of Agai v Diontech Consulting, Inc., 2016 NY Slip Op 02646, 2nd Dept 4-6-16](#)

CRIMINAL LAW.

TRIAL JUDGE'S FAILURE TO WARN DEFENDANT OF THE CONSEQUENCES OF DISRUPTIVE BEHAVIOR BEFORE REMOVING DEFENDANT FROM THE COURTROOM WAS REVERSIBLE ERROR.

[People v Burton, 2016 NY Slip Op 02847, 2nd Dept 4-13-16](#)

PEOPLE DID NOT MEET THEIR BURDEN OF DEMONSTRATING A LACK OF UNDUE SUGGESTIVENESS IN THE PHOTO ARRAY AND LINE UP IDENTIFICATION PROCEDURES.

[People v McDonald, 2016 NY Slip Op 03017, 2nd Dept 4-20-16](#)

FOR CAUSE JUROR CHALLENGE SHOULD HAVE BEEN GRANTED, CONVICTION REVERSED.

[People v Valdez, 2016 NY Slip Op 03203, 2nd Dept 4-27-16](#)

CRIMINAL LAW, APPEALS.

DEFENSE WAIVED ANY OBJECTION TO A PROHIBITED CONVERSATION BETWEEN A COURT OFFICER AND JURORS BY ASKING THAT DELIBERATIONS CONTINUE DESPITE THE CONVERSATION; THE CONVERSATION DID NOT CONSTITUTE A MODE OF PROCEEDINGS ERROR.

[People v Armstrong, 2016 NY Slip Op 02843, 2nd Dept 4-13-16](#)

CRIMINAL LAW, EVIDENCE.

DETECTIVE SHOULD NOT HAVE BEEN ALLOWED TO TESTIFY AS AN EXPERT ABOUT THE ROLES PLAYED BY THE PEOPLE OVERHEARD IN RECORDED PHONE CALLS IN THIS DRUG CONSPIRACY CASE, ERROR DEEMED HARMLESS HOWEVER.

[People v Melendez, 2016 NY Slip Op 02667, 2nd Dept 4-6-16](#)

IF THE SORA COURT'S RELIANCE ON THE VICTIM'S GRAND JURY TESTIMONY, WHICH WAS NOT DISCLOSED TO THE DEFENDANT, WAS ERROR, UNDER THE FACTS, IT WAS HARMLESS ERROR.

[People v Wells, 2016 NY Slip Op 02978, 2nd Dept 4-20-16](#)

DEFENDANT RAISED SUBSTANTIVE FACTUAL DISPUTES ABOUT THE EFFICACY AND LEGALITY OF METHODS USED BY THE POLICE TO IDENTIFY HIS IP ADDRESS AND THE CONTENTS OF HIS COMPUTER, SUPPRESSION HEARING WAS REQUIRED.

[People v Worrell, 2016 NY Slip Op 03206, 2nd Dept 4-27-16](#)

DEBTOR-CREDITOR, ACCOUNT STATED.

CITIBANK NOT ENTITLED TO SUMMARY JUDGMENT UNDER AN ACCOUNT STATED THEORY TO COLLECT A CREDIT CARD DEBT.

[Citibank \(South Dakota\), N.A. v Abraham, 2016 NY Slip Op 03133, 2nd Dept 4-27-16](#)

DEBTOR-CREDITOR, BANKRUPTCY, CIVIL PROCEDURE.

ACKNOWLEDGING DEBT IN BANKRUPTCY PLAN RENEWED THE STATUTE OF LIMITATIONS WHICH STARTED TO RUN UPON GRANT OF DISCHARGE IN BANKRUPTCY.

[PSP-NC, LLC v Raudkivi, 2016 NY Slip Op 02632, 2nd Dept 4-6-16](#)

DEFAMATION.

E-MAILS CONSTITUTED NONACTIONABLE OPINION AND POSTED FLYERS PROTECTED BY COMMON INTEREST PRIVILEGE.

[Galanova v Safir, 2016 NY Slip Op 02617, 2nd Dept 4-6-16](#)

ENVIRONMENTAL LAW.

ORGANIZATION HAD STANDING TO CONTEST HARDSHIP WAIVER GRANTED TO MINE IN CORE PRESERVATION AREA.

[**Matter of Long Is. Pine Barrens Socy., Inc. v Central Pine Barrens Joint Planning & Policy Commn., 2016 NY Slip Op 02997**](#)

ENVIRONMENTAL LAW, ZONING.

VILLAGE BOARD OF TRUSTEES DID NOT FAIL TO STRICTLY COMPLY WITH THE STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA).

[**Matter of Village of Kiryas Joel, N.Y. v Village of Woodbury, N.Y., 2016 NY Slip Op 03005, 2nd Dept 4-20-16**](#)

FAMILY LAW.

SAME-SEX SPOUSE OF BIOLOGICAL MOTHER HAD STANDING TO SEEK VISITATION WITH CHILDREN CONCEIVED BY ARTIFICIAL INSEMINATION; CALIFORNIA MARRIAGE RECOGNIZED UNDER PRINCIPLES OF COMITY.

[**Matter of S. v Farah M., 2016 NY Slip Op 02676, 2nd Dept 4-6-16**](#)

AWARDING WIFE A DISTRIBUTIVE SHARE OF HUSBAND'S MEDICAL PRACTICE AND DETERMINING HUSBAND'S MAINTENANCE OBLIGATION BASED UPON INCOME FROM THE PRACTICE DID NOT CONSTITUTE DOUBLE-COUNTING.

[**Palydowycz v Palydowycz, 2016 NY Slip Op 02793, 2nd Dept 4-13-16**](#)

FAMILY LAW, IMMIGRATION LAW.

FAMILY COURT SHOULD HAVE GRANTED MOTHER'S APPLICATION FOR FINDINGS ALLOWING HER CHILDREN TO APPLY FOR SPECIAL IMMIGRANT JUVENILE STATUS.

[**Matter of Marlene G. H. \(Pedro H. P.\), 2016 NY Slip Op 02817, 2nd Dept 4-13-16**](#)

FORECLOSURE, EVIDENCE, CIVIL PROCEDURE.

THE FLAWS IN PLAINTIFF'S PROOF OF STANDING TO BRING THE FORECLOSURE ACTION DID NOT ENTITLE DEFENDANT TO SUMMARY JUDGMENT ON THE CROSS MOTION; SUMMARY JUDGMENT CANNOT BE GRANTED TO A MOVING PARTY BASED UPON FLAWS IN THE OPPOSING PAPERS.

[**Aurora Loan Servs., LLC v Mercius, 2016 NY Slip Op 02599, 2nd Dept 4-6-16**](#)

FRAUD, CONTRACT LAW.

PARTY WHO SIGNS A DOCUMENT WITHOUT READING IT IS CONCLUSIVELY BOUND BY ITS TERMS.

[**Stortini v Pollis, 2016 NY Slip Op 02984, 2nd Dept 4-20-16**](#)

INSURANCE LAW.

FAILURE TO DISCLAIM BASED UPON AN EXCLUSION DOES NOT GIVE RISE TO COVERAGE WHICH DOES NOT EXIST.

[**Provencal, LLC v Tower Ins. Co. of N.Y., 2016 NY Slip Op 02644, 2nd Dept 4-6-16**](#)

INSURED'S EXCUSES FOR DELAY IN NOTIFYING INSURANCE BROKERS OF PENDING ACTION NOT SUPPORTED BY SUFFICIENT EVIDENCE, SUMMARY JUDGMENT IN FAVOR OF DEFENDANT BROKERS PROPERLY GRANTED.

[**Rockland Exposition, Inc. v Marshall & Sterling Enters., Inc., 2016 NY Slip Op 03157, 2nd Dept 4-27-16**](#)

LABOR LAW-CONSTRUCTION LAW.

OPENINGS THROUGH WHICH A WORKER'S BODY COULD NOT COMPLETELY FALL NOT ACTIONABLE UNDER LABOR LAW 240(1) OR 241(6).

[**Vitale v Astoria Energy II, LLC, 2016 NY Slip Op 02986, 2nd Dept 4-20-16**](#)

NEGLIGENCE.

SIDEWALK RISE OF A LITTLE OVER AN INCH WAS A NON-ACTIONABLE TRIVIAL DEFECT.

[**Chee v DiPaolo, 2016 NY Slip Op 02777, 2nd Dept 4-13-16**](#)

DEPRESSED DRAIN NEAR CONDOMINIUM ENTRANCE WAS A NON-ACTIONABLE TRIVIAL DEFECT.

[**Maldonado v 2121 Shore Condominium, 2016 NY Slip Op 02780, 2nd Dept 4-13-16**](#)

WAY ON A ONE-WAY STREET WHEN HE WAS STRUCK DID NOT ENTITLE DEFENDANT TO SUMMARY JUDGMENT, THERE CAN BE MORE THAN ONE PROXIMATE CAUSE OF AN ACCIDENT.

[**Nunez v Olympic Fence & Railing Co., Inc., 2016 NY Slip Op 02791, 2nd Dept 4-13-16**](#)

DEFENDANTS FAILED TO DEMONSTRATE WHEN SLIP AND FALL AREA LAST CLEANED OR INSPECTED, SUMMARY JUDGMENT PROPERLY DENIED.

[**James v Orion Condo-350 W. 42nd St., LLC, 2016 NY Slip Op 02964, 2nd Dept 4-20-16**](#)

NEGLIGENCE, EVIDENCE.

STATEMENT IN HOSPITAL RECORD ATTRIBUTED TO PLAINTIFF WAS ADMISSIBLE AS PART OF A BUSINESS RECORD AND AS A PARTY ADMISSION, STATEMENT SHOULD NOT HAVE BEEN EXCLUDED FROM TRIAL.

[**Berkovits v Chaaya, 2016 NY Slip Op 03131, 2nd Dept 4-27-16**](#)

DEFENSE VERDICT SHOULD HAVE BEEN SET ASIDE, THE JURY FOUND DEFENDANT NEGLIGENT AND THERE WAS NO REASONABLE VIEW OF THE EVIDENCE IN WHICH DEFENDANT'S NEGLIGENCE WAS NOT A PROXIMATE CAUSE OF THE ACCIDENT.

[**Cruz v Jeffrey, 2016 NY Slip Op 03134, 2nd Dept 4-27-16**](#)

NEGLIGENCE, MEDICAL MALPRACTICE, EVIDENCE.

RADIOLOGIST WAS NOT QUALIFIED TO EXPRESS AN OPINION ON THE PROXIMATE CAUSE OF THE DEFORMITY WHICH WAS ALLEGED TO HAVE RESULTED FROM A FAILURE TO DIAGNOSE A FRACTURE.

[**Martinez v Quintana, 2016 NY Slip Op 02782, 2nd Dept 4-13-16**](#)

NEGLIGENCE, MUNICIPAL LAW.

BECAUSE THE MUNICIPALITY, PROPERTY OWNER, LISTING BROKER, LISTING AGENT AND SNOW REMOVAL CONTRACTOR HAD NOT TAKEN ANY ACTION TO REMOVE SNOW FROM THE SIDEWALK AT THE TIME PLAINTIFF FELL, NO ONE OWED A DUTY TO THE PLAINTIFF.

[**Rodriguez v County of Westchester, 2016 NY Slip Op 02635, 2nd Dept 4-6-16**](#)

VILLAGE DID NOT DEMONSTRATE IT DID NOT CREATE THE CONDITION WHICH LED TO PLAINTIFF'S TRIP AND FALL, SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED.

[**Kelley v Incorporated Vil. of Hempstead, 2016 NY Slip Op 02966, 2nd Dept 4-20-15**](#)

POLICE OFFICER'S GENERAL MUNICIPAL LAW 205-E CAUSE OF ACTION SHOULD NOT HAVE BEEN DISMISSED, CRITERIA FOR SUMMARY JUDGMENT NOT MET BY POINTING TO GAPS IN OTHER PARTY'S PROOF.

[**Vaughn v Veolia Transp., Inc., 2016 NY Slip Op 02985, 2nd Dept 4-20-16**](#)

CODE PROVISION DID NOT SPECIFICALLY IMPOSE TORT LIABILITY ON ABUTTING LANDOWNERS FOR BREACH OF THE DUTY TO MAINTAIN THE SIDEWALK, LANDOWNER'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED.

[**Kilfoyle v Town of N. Hempstead, 2016 NY Slip Op 03141, 2nd Dept 4-27-16**](#)

MOTION TO AMEND NOTICE OF CLAIM TO ADD NEW THEORY OF LIABILITY SHOULD NOT HAVE BEEN GRANTED.

[**Robinson v City of New York, 2016 NY Slip Op 03156, 2nd Dept 4-27-16**](#)

NEGLIGENCE, MUNICIPAL LAW, GOVERNMENTAL IMMUNITY.

THE CITY (NYC) HAD ENTERED A SPECIAL RELATIONSHIP WITH DEFENDANT PROPERTY OWNERS CONCERNING THE REPAIR OF A DEFECTIVE SIDEWALK, DEFENDANTS WERE ENTITLED TO CONTRIBUTION FROM THE CITY IN THIS SLIP AND FALL CASE.

[**Stanciu v Bilello, 2016 NY Slip Op 02802, 2nd Dept 4-13-16**](#)

NEGLIGENCE, MUNICIPAL LAW, MEDICAL MALPRACTICE.

LATE NOTICE OF CLAIM PROPERLY ALLOWED DESPITE ABSENCE OF EXCUSE.

[**Matter of Benjamin v Nassau Health Care Corp., 2016 NY Slip Op 02989, 2nd Dept 4-20-16**](#)

PISTOL PERMITS, MENTAL HYGIENE LAW.

DETERIORATING MENTAL CONDITION AND DEPLORABLE LIVING CONDITIONS JUSTIFIED REVOCATION OF PISTOL PERMIT.

[**Matter of Warmouth v Zuckerman, 2016 NY Slip Op 02659, 2nd Dept 4-6-16**](#)

REAL PROPERTY, MUNICIPAL LAW, HIGHWAY LAW.

HIGHWAY LAW ALLOWING AN UNUSED PUBLIC EASEMENT TO BE DECLARED ABANDONED DOES NOT APPLY WHERE THE MUNICIPALITY OWNS A FEE INTEREST IN THE ROADBED.

[**No-Dent Props., Inc. v Commissioner of Town of Hempstead Dept. of Hwys., 2016 NY Slip Op 02625, 2nd Dept 4-6-16**](#)

TRUSTS AND ESTATES.

BENEFICIARIES OF ESTATE DID NOT HAVE STANDING TO BRING AN ACTION TO PRESERVE AN ESTATE ASSET, ONLY THE PERSONAL REPRESENTATIVE OF THE ESTATE HAS THAT POWER.

[**Stallsworth v Stallsworth, 2016 NY Slip Op 03161, 2nd Dept 4-27-16**](#)

ZONING.

EXTENSIONS OF NONCONFORMING USE SHOULD NOT HAVE BEEN ALLOWED.

[**Matter of Martinos v Board of Zoning Appeals of Town of Brookhaven, 2016 NY Slip Op 02828, 2nd Dept 4-13-16**](#)

THIRD DEPARTMENT

ARBITRATION, GENERAL BUSINESS LAW, CONTRACT LAW.

CONSTRUCTION CONTRACT PROVISION MAKING LITIGATION THE SOLE METHOD FOR RESOLVING A DISPUTE RENDERED VOID BY GENERAL BUSINESS LAW.

[Matter of Capital Siding & Constr., LLC \(Alltek Energy Sys., Inc.\), 2016 NY Slip Op 02878, 3rd Dept 4-14-16](#)

ATTORNEYS.

DISQUALIFICATION OF ATTORNEY APPROPRIATE TO AVOID THE APPEARANCE OF IMPROPRIETY.

[McCutchen v 3 Princesses & AP Trust Dated Feb. 3, 2004, 2016 NY Slip Op 02703, 3rd Dept 4-7-16](#)

BANKRUPTCY.

APPELLANT COULD NOT PURSUE COUNTERCLAIMS AND CROSS-CLAIMS WHICH WERE NOT LISTED AS ASSETS IN APPELLANT'S BANKRUPTCY PETITION; THE CAUSES OF ACTION REMAIN VESTED IN THE BANKRUPTCY ESTATE.

[Central Natl. Bank, Canajoharie v Scotty's Auto Sales, Inc., 2016 NY Slip Op 02876, 3rd Dept 4-14-16](#)

CIVIL PROCEDURE, EVIDENCE, CONTRACT LAW.

MOTION TO AMEND PLEADINGS BASED ON TRIAL EVIDENCE OF MUTUAL MISTAKE PROPERLY GRANTED, CRITERIA EXPLAINED.

[Lakshmi Grocery & Gas, Inc. v GRJH, Inc., 2016 NY Slip Op 02891, 3rd Dept 4-14-16](#)

CRIMINAL LAW.

EXCLUSIONARY LANGUAGE IN HARASSMENT STATUTE NEED NOT BE PLED AND NEGATED IN THE CHARGING DOCUMENT; THE EXCLUSIONS ARE PROVISOS WHICH CAN BE RAISED AS DEFENSES.

[Matter of Rogers v Phillips, 2016 NY Slip Op 02687, 3rd Dept 4-7-16](#)

CRIMINAL LAW, PAROLE.

PRISONER CONVICTED OF A CRIME COMMITTED WHEN HE WAS SIXTEEN AND SUBJECT TO A LIFE SENTENCE IS CONSTITUTIONALLY ENTITLED TO A PAROLE HEARING WHICH TAKES HIS YOUTH AT THE TIME OF THE OFFENSE INTO ACCOUNT.

[Matter of Hawkins v New York State Dept. of Corr. & Community Supervision, 2016 NY Slip Op 03236, 3rd Dept 4-28-16](#)

FAMILY LAW, ATTORNEYS.

ATTORNEY WHO HAD PREVIOUSLY PROSECUTED MOTHER FOR ENDANGERING THE WELFARE OF A CHILD SHOULD NOT HAVE BEEN APPOINTED TO REPRESENT MOTHER'S CHILDREN IN A CUSTODY MATTER; IN THE ABSENCE OF EVIDENCE MOTHER WAS PREJUDICED BY CONFIDENTIAL INFORMATION MOTION TO VACATE CUSTODY STIPULATION ON CONFLICT OF INTEREST GROUNDS PROPERLY DENIED.

[**Matter of Tina X. v John X., 2016 NY Slip Op 02874, 3rd Dept 4-14-16**](#)

MEDICAID, TRUSTS AND ESTATES, DEBTOR-CREDITOR.

MORTGAGE HAD PRIORITY OVER COUNTY'S CLAIM FOR REIMBURSEMENT OF MEDICAID BENEFITS.

[**Matter of Shambo, 2016 NY Slip Op 02699, 3rd Dept 4-7-16**](#)

REAL PROPERTY.

DEFENDANT DEMONSTRATED WATER WAS NOT DIVERTED ONTO PLAINTIFF'S PROPERTY IN BAD FAITH.

[**Silverman v Doell, 2016 NY Slip Op 03054, 3rd Dept 4-21-16**](#)

UNEMPLOYMENT INSURANCE.

CO-WORKERS' EGREGIOUS AND LEWD BEHAVIOR, TOGETHER WITH THE EMPLOYER'S INADEQUATE RESPONSE, CONSTITUTED GOOD CAUSE FOR LEAVING EMPLOYMENT.

[**Matter of Labbate \(Robert Green Auto & Truck, Inc.--Commissioner of Labor\), 2016 NY Slip Op 02898, 3rd Dept 4-14-16**](#)

PARALEGAL IN SMALL LAW OFFICE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS.

[**Matter of Kristensen \(Law Offs. of David C. Birdoff--Commissioner of Labor\), 2016 NY Slip Op 03035, 3rd Dept 4-21-16**](#)

RADIATION THERAPIST WAS AN EMPLOYEE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS, DESPITE INDEPENDENT-CONTRACTOR DESIGNATION IN THE AGREEMENT.

[**Matter of Ryan \(La Cruz Radiation Consultants, Inc.--Commissioner of Labor\), 2016 NY Slip Op 03038, 3rd Dept 4-21-16**](#)

NURSE WAS AN EMPLOYEE OF COMPANY WHICH DOES HEALTH SCREENING OF EMPLOYEES OF CORPORATE CLIENTS.

[**Matter of Armbruster \(Summit Health, Inc. -- Commissioner of Labor\), 2016 NY Slip Op 03231, 3rd Dept 4-28-16**](#)

SECURITY CONSULTANT WAS EMPLOYEE OF OFF-TRACK BETTING FACILITY DESPITE INDEPENDENT CONTRACTOR DESIGNATION IN AGREEMENT.

[**Matter of Dwyer \(Nassau Regional Off-Track Corp. -- Commissioner of Labor\), 2016 NY Slip Op 03232, 3rd Dept 4-28-16**](#)

MECHANIC WAS AN EMPLOYEE OF USED CAR SELLER.

Matter of DeVaul (Guardi -- Commissioner of Labor), 2016 NY Slip Op 03233, 3rd Dept 4-28-16

WORKERS' COMPENSATION LAW.

HEART ATTACK DEEMED WORK-RELATED.

Matter of Kilcullen v AfFCO/Avports Mgt. LLC, 2016 NY Slip Op 03033, 3rd Dept 4-21-16

FOURTH DEPARTMENT

CRIMINAL LAW.

REVERSIBLE ERROR TO READ BACK TO THE JURY THE PROSECUTOR'S SUMMATION BUT NOT THE DEFENSE SUMMATION.

People v Rivers, 2016 NY Slip Op 03327, 4th Dept 4-29-16

FAILURE TO PLACE ON THE RECORD THE REASONS FOR REQUIRING DEFENDANT TO WEAR A STUNBELT DURING TRIAL, AND FAILURE TO APPRISE DEFENSE COUNSEL OF THE CONTENTS OF A JURY NOTE, REQUIRED REVERSAL.

People v Gomez, 2016 NY Slip Op 03358, 4th Dept 4-29-16

HOLDING SORA HEARING IN DEFENDANT'S ABSENCE VIOLATED DUE PROCESS.

People v Encarnacion, 2016 NY Slip Op 03369, 4th Dept 4-29-16

CRIMINAL LAW, ATTORNEYS.

CODEFENDANT, WHO TESTIFIED AGAINST DEFENDANT, AND DEFENDANT REPRESENTED BY MEMBERS OF THE SAME FIRM; IN THIS SITUATION AN INQUIRY TO ENSURE DEFENDANT IS AWARE OF ALL THE FACTS AND CONSENTS IS REQUIRED; MOTION TO VACATE CONVICTION SHOULD NOT HAVE BEEN DENIED WITHOUT A HEARING.

People v Jackson, 2016 NY Slip Op 03317, 4th Dept 4-29-16

ENVIRONMENTAL LAW, ZONING.

STATE WATER RESOURCES LAW DID NOT PREEMPT ZONING BOARD'S REQUIRING TOWN APPROVAL BEFORE WATER CAN BE EXTRACTED FOR COMMERCIAL PURPOSES.

Matter of Smoke v Planning Bd. of Town of Greig, 2016 NY Slip Op 03322, 4th Dept 4-29-16

EVIDENCE.

IMPROPER IMPEACHMENT REQUIRED NEW TRIAL.

Dunn v Garrett, 2016 NY Slip Op 03283, 4th Dept 4-29-16

LANDLORD-TENANT, LIEN LAW.

PROPERTY OWNER (LANDLORD) LIABLE FOR PAYMENT FOR ELECTRICAL WORK REQUIRED BY THE LEASE AND CONTRACTED FOR BY THE LESSEE.

Ferrara v Peaches Café LLC, 2016 NY Slip Op 03286, 4th Dept 4-29-16

NEGLIGENCE, CONTRACT LAW, MUNICIPAL LAW.

DISABLED POLICE OFFICER SUFFICIENTLY ALLEGED BREACHES OF A DUTY OF CARE BY THE CITY AND BY HEALTH CARE MANAGERS WHICH CONTRACTED WITH THE CITY TO MANAGE PLAINTIFF'S HEALTH CARE.

[Vassenelli v City of Syracuse, 2016 NY Slip Op 03344, 4th Dept 4-29-16](#)

NEGLIGENCE, EVIDENCE.

CAUSE OF FALL SUFFICIENTLY DEMONSTRATED WITH CIRCUMSTANTIAL EVIDENCE, DEFENSE MOTION FOR SUMMARY JUDGMENT PROPERLY DENIED.

[Rinallo v St. Casimir Parish & Catholic Diocese of Buffalo, 2016 NY Slip Op 03323, 4th Dept 4-29-16](#)

MAY 2016

COURT OF APPEALS

CIVIL PROCEDURE, CORPORATION LAW.

COURT PROPERLY REFUSED TO APPROVE CLASS ACTION SETTLEMENT WHICH DID NOT GIVE OUT OF STATE SHAREHOLDERS THE RIGHT TO OPT OUT.

[Jiannaras v Alfant, 2016 NY Slip Op 03548, CtApp 5-5-16](#)

CORPORATION LAW.

STANDARD FOR REVIEW OF GOING-PRIVATE MERGERS ANNOUNCED; SHAREHOLDER CLASS ACTION CHALLENGING THE GOING-PRIVATE MERGER DISMISSED.

[Matter of Kenneth Cole Prods., Inc, 2016 NY Slip Op 03545, CtApp 5-5-16](#)

CRIMINAL LAW.

DENIAL OF MOTION TO WITHDRAW PLEA WITHOUT A HEARING WAS NOT AN ABUSE OF DISCRETION.

[People v Manor, 2016 NY Slip Op 03414, CtApp 5-3-16](#)

PEOPLE NEED NOT PROVE DEFENDANT KNEW THE KNIFE DEFENDANT POSSESSED MET THE STATUTORY DEFINITION OF A GRAVITY KNIFE.

[People v Parrilla, 2016 NY Slip Op 03417, CtApp 5-3-16](#)

COUNTY COURT PROPERLY RELIED ON THE RESULTS OF A HEARING BEFORE A JUDICIAL HEARING OFFICER TO DETERMINE AMOUNT OF RESTITUTION.

[People v Connolly, 2016 NY Slip Op 03651, CtApp 5-10-16](#)

CRIMINAL LAW, APPEALS.

PROBABLE CAUSE TO ARREST SUPPORTED BY THE RECORD.

[People v Joseph, 2016 NY Slip Op 03416, CtApp 5-3-16](#)

CRIMINAL LAW, APPEALS, IMMIGRATION.

APPEALS AS OF RIGHT MAY NOT BE DISMISSED BASED UPON THE DEPORTATION OF APPELLANT; PERMISSIVE APPEALS, HOWEVER, ARE SUBJECT TO DISCRETIONARY DISMISSAL ON THAT GROUND.

[People v Harrison, 2016 NY Slip Op 03547, CtApp 5-5-16](#)

CRIMINAL LAW, ATTORNEYS.

DEFENSE COUNSEL NOT INEFFECTIVE FOR FAILING TO SHOW PSYCHIATRIC EXPERT PHOTOS OF VICTIM'S WOUNDS AND FAILING TO INFORM EXPERT OF THE PEOPLE'S REVENGE THEORY.

[People v Henderson, 2016 NY Slip Op 03649, CtApp 5-10-16](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

LEVEL THREE ASSESSMENT FOR INFLICTION OF SERIOUS INJURY PROPER EVEN THOUGH THERE WAS NO SEX OFFENSE COMMITTED DURING THE UNLAWFUL IMPRISONMENT OF A CHILD.

[People v Howard, 2016 NY Slip Op 03415, CtApp 5-3-16](#)

DEALER ACT [FRANCHISED MOTOR VEHICLE DEALER ACT, VEHICLE AND TRAFFIC LAW 460 ET SEQ].

FAILURE TO TAKE INTO ACCOUNT CONSUMER BRAND PREFERENCE IN EVALUATING A CAR DEALER'S PERFORMANCE VIOLATES THE DEALER ACT; UNILATERAL CHANGE TO THE GEOGRAPHIC AREA USED TO EVALUATE A CAR DEALER'S PERFORMANCE DOES NOT VIOLATE THE DEALER ACT.

[Beck Chevrolet Co., Inc. v General Motors LLC, 2016 NY Slip Op 03412, CtApp 5-3-16](#)

EMPLOYMENT LAW (PUBLIC EMPLOYEES).

NYS RACING AND WAGERING BOARD HAD THE DISCRETION TO UNILATERALLY REDUCE PER DIEM WAGES OF SEASONAL EMPLOYEES BY 25 PERCENT.

[Matter of Kent v Lefkowitz, 2016 NY Slip Op 03650, CtApp 5-10-16](#)

ENVIRONMENTAL LAW, WATER LAW.

WHETHER ADIRONDACK WATERWAY IS NAVIGABLE IN FACT, AND THEREFORE AVAILABLE FOR PUBLIC USE, COULD NOT BE DETERMINED AS A MATTER OF LAW.

[Friends of Thayer Lake LLC v Brown, 2016 NY Slip Op 03647, CtApp 5-10-16](#)

FORECLOSURE, REAL PROPERTY LAW, MORTGAGES, CONDOMINIUMS.

CONSOLIDATED MORTGAGES CONSIDERED FIRST MORTGAGE OF RECORD WITH PRIORITY OVER CONDOMINIUM COMMON CHARGES LIEN.

[Plotch v Citibank, N.A., 2016 NY Slip Op 03648, CtApp 5-10-16](#)

INSURANCE LAW.

ANTISUBROGATION RULE DOES NOT APPLY TO A PARTY NOT COVERED BY THE RELEVANT POLICY.

[Millennium Holdings LLC v Glidden Co., 2016 NY Slip Op 03543, CtApp 5-5-16](#)

INSURANCE LAW, CONTRACT LAW.

BASED UPON THE POLICY LANGUAGE, AN ALL SUMS ALLOCATION AND VERTICAL EXHAUSTION APPLY TO EXCESS INSURANCE POLICIES IN THIS ASBESTOS INJURY ACTION.

[Matter of Viking Pump, Inc., 2016 NY Slip Op 03413, CtApp 5-3-16](#)

JUDGES

JUDGES NOT ENTITLED TO DAMAGES BASED UPON INADEQUATE COMPENSATION.

[Larabee v Governor of the State of N.Y., 2016 NY Slip Op 03646, CtApp 5-10-16](#)

NEGLIGENCE.

STORM IN PROGRESS RULE APPLIED AS A MATTER OF LAW.

[Sherman v New York State Thruway Auth., 2016 NY Slip Op 03546, CtApp 5-5-16](#)

PRODUCTS LIABILITY, CORPORATION LAW.

PARENT CORPORATION NOT LIABLE, UNDER A STRICT PRODUCTS LIABILITY THEORY, FOR ASBESTOS-CONTAINING PRODUCTS MANUFACTURED AND DISTRIBUTED BY A WHOLLY OWNED SUBSIDIARY.

[Finerty v Abex Corp., 2016 NY Slip Op 03411, CtApp 5-3-16](#)

REAL PROPERTY TAX LAW.

PETITIONER NEED NOT CHALLENGE THE REAL PROPERTY TAX ASSESSMENT EVERY YEAR TO BE ENTITLED TO BUSINESS INVESTMENT EXEMPTION REFUNDS FOR THOSE YEARS.

[Matter of Highbridge Broadway, LLC v Assessor of the City of Schenectady, 2016 NY Slip Op 03544, CtApp 5-5-16](#)

FIRST DEPARTMENT

CIVIL PROCEDURE, CONTRACT LAW, REAL ESTATE.

ERROR TO IMPOSE PRE-JUDGMENT INTEREST AT THE STATUTORY RATE WHEN CONTRACT PROVIDED THAT THE INTEREST-BEARING DOWNPAYMENT WAS THE EXCLUSIVE REMEDY FOR BREACH.

[**Ithilien Realty Corp. v 176 Ludlow, LLC, 2016 NY Slip Op 04002, 1st Dept 5-24-16**](#)

CONTRACT LAW.

DOCTRINE OF DEFINITENESS WAS PROPERLY NOT APPLIED; DOLLAR-AMOUNT OF THE FEE AT ISSUE COULD BE DETERMINED BY INDUSTRY PRACTICE.

[**Cowen & Co., LLC v. Fiserv, Inc., 2016 N.Y. Slip Op. 03840, 1st Dept 5-17-16**](#)

CONTRACT LAW, CORPORATION LAW.

PURCHASER OF UNSOLD SHARES IN A COOPERATIVE BOUND BY A STIPULATION TO WHICH PURCHASER WAS NOT A PARTY; STIPULATION RESTRICTED THE NUMBER OF BOARD MEMBERS WHO COULD BE ELECTED BY HOLDERS OF UNSOLD SHARES.

[**Matter of Tiemann Place Realty, LLC v 55 Tiemann Owners Corp., 2016 NY Slip Op 04007, 1st Dept 5-24-16**](#)

CORPORATION LAW, CIVIL PROCEDURE.

SHAREHOLDERS' DERIVATIVE ACTION IS EQUITABLE IN NATURE, MOTION TO STRIKE DEMAND FOR A JURY TRIAL SHOULD HAVE BEEN GRANTED.

[**Moyal v Sleppin, 2016 NY Slip Op 04107, 1st Dept 5-26-16**](#)

CONTRACT LAW, EMPLOYMENT LAW.

QUESTION OF FACT WHETHER PLAINTIFF EMPLOYEE WAS TERMINATED (NOT A VIOLATION OF THE AT-WILL CONTRACT) OR WHETHER DEFENDANT EMPLOYER VIOLATED THE NO ORAL MODIFICATION CLAUSE.

[**Gootee v. Global Credit Servs., LLC, 2016 N.Y. Slip Op. 03984, 1st Dept 5-19-16**](#)

CRIMINAL LAW.

FAILURE TO PRODUCE DEFENDANT FOR A PROBATION INTERVIEW FOR THE PRESENTENCE REPORT REQUIRED RESENTENCING.

[**People v Harleston, 2016 NY Slip Op 03428, 1st Dept 5-3-16**](#)

PENAL LAW PROVIDES A STATUTORY BASIS FOR PROSECUTING PHYSICIANS WHO PROVIDE AID IN DYING TO TERMINALLY ILL PATIENTS; THE STATUTES DO NOT VIOLATE THE NEW YORK CONSTITUTION.

[**Myers v Schneiderman, 2016 NY Slip Op 03457, 1st Dept 5-3-16**](#)

POLICE DID NOT NOTICE SIGNS OF INTOXICATION UNTIL AFTER DEFENDANT WAS STOPPED AND SEIZED, MOTION TO SUPPRESS SHOULD HAVE BEEN GRANTED.

[**People v Coronado, 2016 NY Slip Op 03601, 1st Dept 5-5-16**](#)

REVERSIBLE ERROR TO RECONSIDER THE VERDICT.

[**People v Agola, 2016 NY Slip Op 04004, 1st Dept 5-24-16**](#)

DISABLED, ILL DEFENDANT SHOULD HAVE BEEN ALLOWED TO APPEAR REMOTELY BY VIDEO AT TRIAL.

[**People v Krieg, 2016 NY Slip Op 04134, 1st Dept 5-31-16**](#)

CRIMINAL LAW, APPEALS.

COMBINED RACIAL-GENDER BIAS IS A PROPER SUBJECT OF A BATSON CHALLENGE TO THE REMOVAL OF A JUROR; APPELLATE DIVISION HAS INTEREST OF JUSTICE JURISDICTION TO REVIEW BATSON ERRORS.

[**People v Watson, 2016 NY Slip Op 03688, 1st Dept 5-10-16**](#)

CRIMINAL LAW, EVIDENCE.

DENIAL, WITHOUT A HEARING, OF DEFENSE MOTION TO PRESENT EXPERT TESTIMONY ON THE SCIENCE OF FALSE CONFESSIONS WAS AN ABUSE OF DISCRETION.

[**People v. Evans, 2016 N.Y. Slip Op. 03988, 1st Dept 5-19-16**](#)

EDUCATION-SCHOOL LAW.

DENIAL OF TEACHER'S APPEAL OF UNSATISFACTORY RATING ANNULLED.

[**Matter of Taylor v City of New York, 2016 NY Slip Op 03454, 1st Dept 5-3-16**](#)

EMPLOYMENT LAW, ASSAULT.

BAR AND SECURITY COMPANY COULD BE LIABLE FOR AN ASSAULT BY A SECURITY GUARD UNDER THE DOCTRINE OF RESPONDEAT SUPERIOR.

[**Jones v Hiro Cocktail Lounge, 2016 NY Slip Op 04110, 1st Dept 5-26-16**](#)

FRAUD, CORPORATION LAW.

PLAINTIFF, A SOPHISTICATED INVESTOR, DID NOT STATE A CAUSE OF ACTION FOR FRAUD ON THE PART OF THE COMPANY IN WHICH PLAINTIFF INVESTED AND PURCHASED A CONTROLLING INTEREST, PLAINTIFF HAD THE MEANS TO DISCOVER THE TRUTH BEHIND ANY ALLEGED FALSE CLAIMS.

[**MP Cool Invs. Ltd. v Forkosh, 2016 NY Slip Op 04159, 1st Dept 5-31-16**](#)

FREEDOM OF INFORMATION LAW (FOIL).

RECORDS OF THE USE OF VANS BY THE NYPD WHICH SCAN BUILDINGS AND VEHICLES FOR EXPLOSIVES AND DRUGS EXEMPT FROM DISCLOSURE; RECORDS RELATING TO THE HEALTH AND SAFETY EFFECTS OF THE SCANNING ARE NOT EXEMPT.

[**Matter of Grabell v New York City Police Dept., 2016 NY Slip Op 03685, CtApp 5-10-16**](#)

FREEDOM OF INFORMATION LAW (FOIL), APPEALS.

REQUEST FOR DOCUMENTS ABOUT AN UNSOLVED 1987 HOMICIDE SHOULD HAVE BEEN DENIED; APPEAL FROM A NONFINAL ORDER ALLOWED.

[**Matter of Loevy & Loevy v New York City Police Dept., 2016 NY Slip Op 04099, 1st Dept 5-26-16**](#)

INSURANCE LAW.

UNDER OHIO LAW, CLAIMS ASSERTED IN DEMAND FOR ARBITRATION FELL WITHIN THE SCOPE OF EXCLUSIONS FOR KNOWLEDGE OF FALSITY OF STATEMENTS BY THE INSURED AND BREACH OF CONTRACT BY THE INSURED.

[**Allied World Natl. Assur. Co. v Great Divide Ins. Co., 2016 NY Slip Op 03603, 1st Dept 5-5-16**](#)

INSURER'S DUTY TO DEFEND MUST BE DETERMINED SOLELY UPON THE INFORMATION WITHIN THE COMPLAINT, MATTERS OUTSIDE THE COMPLAINT MUST BE RAISED IN A SUMMARY JUDGMENT MOTION OR AT TRIAL.

[**Axis Surplus Ins. Co. v GTJ Co., Inc., 2016 NY Slip Op 04106, 1st Dept 5-26-16**](#)

LABOR-LAW-CONSTRUCTION LAW.

FALL FROM LADDER WHILE SETTING UP AUDIOVISUAL EQUIPMENT NOT COVERED BY LABOR LAW § 240(1).

[**Royce v. DIG EH Hotels, LLC, 2016 N.Y. Slip Op. 03985, 1st Dept 5-19-16**](#)

REMOVING A CRATE FROM A FLATBED TRUCK WAS AN ELEVATION-RELATED RISK COVERED BY LABOR LAW 240(1).

[**Grant v Solomon R. Guggenheim Museum, 2016 NY Slip Op 04003, 1st Dept 5-24-16**](#)

FIXING A LEAKY ROOF NOT ROUTINE MAINTENANCE, PLAINTIFF'S LABOR LAW 240(1) CAUSE OF ACTION PROPERLY SURVIVED MOTION TO DISMISS.

[**Kolenovic v 56th Realty, LLC, 2016 NY Slip Op 04005, 1st Dept 5-24-16**](#)

ALTHOUGH THE STATE IS THE TITLE OWNER OF PIER 40 ON THE HUDSON RIVER, THE HUDSON RIVER PARK ACT TRANSFERRED LABOR LAW ABSOLUTE LIABILITY TO THE HUDSON RIVER PARK TRUST.

[**Costa v State of New York, 2016 NY Slip Op 04119, 1st Dept 5-26-16**](#)

LANDLORD-TENANT, CONTRACT LAW.

QUESTIONS OF FACT WHETHER TENANT ENTITLED TO RESCIND LEASE BECAUSE CERTIFICATE OF OCCUPANCY PROHIBITED USE OF THE PROPERTY FOR COMMERCIAL PURPOSES.

[**Jack Kelly Partners LLC v Zegelstein, 2016 NY Slip Op 03820, 1st Dept 5-12-16**](#)

NEGLIGENCE.

CONFLICTING EVIDENCE OF EXISTENCE OF PUDDLE CREATED A CREDIBILITY ISSUE IN THIS SLIP AND FALL CASE WHICH COULD NOT BE RESOLVED WITHOUT TRIAL.

[Mendoza v Fordham-Bedford Hous. Corp., 2016 NY Slip Op 03997, 1st Dept 5-24-16](#)

RELEASE APPLICABLE TO INSTITUTION DID NOT APPLY TO A PRIVATE ATTENDING PHYSICIAN AT THE INSTITUTION.

[Linn v New York Downtown Hosp., 2016 NY Slip Op 03992, 1st Dept 5-24-16](#)

SECOND DEPARTMENT

ANIMAL LAW, DOG-BITE.

DOG-BITE COMPLAINT PROPERLY DISMISSED.

[Iovenov v Schwartz, 2016 NY Slip Op 04023, 2nd Dept 5-25-16](#)

ARBITRATION.

AFTER MAKING A FINAL AWARD, THE RABBINICAL COURT EXCEEDED ITS AUTHORITY BY MAKING A SECOND AWARD BASED ON NEW EVIDENCE.

[Matter of Pinkesz v Wertzberger, 2016 NY Slip Op 04060, 2nd Dept 5-25-16](#)

ARBITRATION, IMMUNITY.

RABBINICAL COURT IMMUNE FROM SUIT UNDER DOCTRINE OF ARBITRAL IMMUNITY.

[Pinkesz Mut. Holdings, LLC v Pinkesz, 2016 NY Slip Op 04034, 2nd Dept 5-25-16](#)

CIVIL PROCEDURE, APPEALS.

BURDENS OF PROOF FOR MOTION TO CHANGE VENUE EXPLAINED; CRITERIA FOR RAISING AN ISSUE FOR THE FIRST TIME ON APPEAL EXPLAINED.

[Pinos v Clinton Cafe & Deli, Inc., 2016 NY Slip Op 04035, 2nd Dept 5-25-16](#)

CIVIL PROCEDURE, CONTRACT LAW, REAL ESTATE.

ERROR TO IMPOSE PRE-JUDGMENT INTEREST AT THE STATUTORY RATE WHEN CONTRACT PROVIDED THAT THE INTEREST-BEARING DOWNPAYMENT WAS THE EXCLUSIVE REMEDY FOR BREACH.

[Ithilien Realty Corp. v 176 Ludlow, LLC, 2016 NY Slip Op 04002, 1st Dept 5-24-16](#)

CIVIL PROCEDURE, EVIDENCE.

EVIDENCE SUBMITTED IN SUPPORT OF MOTION TO DISMISS DID NOT CONSTITUTE DOCUMENTARY EVIDENCE WITHIN THE MEANING OF CPLR 3211(a)(1).

[Anderson v Armentano, 2016 NY Slip Op 03690, 2nd Dept 5-11-16](#)

PLAINTIFF'S SISTER WRONGLY IMPEACHED BY QUESTIONS ABOUT HER CRIMINAL HISTORY AND BAD ACTS, TRIAL JUDGE SHOULD HAVE SET ASIDE THE VERDICT.

[Morency v Horizon Transp. Servs., Inc., 2016 NY Slip Op 04029, 2nd Dept 5-25-16](#)

CIVIL PROCEDURE, FORECLOSURE.

TAKING TIMELY STEPS TO PROCEED TO JUDGMENT AFTER DEFAULT IN FORECLOSURE ACTION SUFFICIENT TO AVOID DISMISSAL OF COMPLAINT AS ABANDONED.

[HSBC Bank USA, N.A. v Traore, 2016 NY Slip Op 04022, 2nd Dept 5-25-16](#)

CONTRACT LAW.

ASSUMPTION OF RISK DOCTRINE NO LONGER APPLIES TO ANY ACTIONS OTHER THAN THOSE STEMMING FROM ATHLETIC AND RECREATIONAL ACTIVITIES.

[**Ballow v Lincoln Fin. Corp., 2016 NY Slip Op 04009, 2nd Dept 5-25-16**](#)

CONTRACT LAW, LABOR LAW-CONSTRUCTION LAW.

FAILURE TO STRICTLY COMPLY WITH CONDITION-PRECEDENT NOTICE PROVISIONS IN THE CONSTRUCTION CONTRACT PRECLUDED RECOVERY FOR DELAY DAMAGES.

[**Schindler El. Corp. v. Tully Constr. Co., Inc., 2016 N.Y. Slip Op. 03868, 2nd Dept 5-18-16**](#)

CORPORATION LAW.

LIABILITY SHOULD NOT HAVE BEEN FOUND ON THE PART OF THE CORPORATE PRINCIPALS WHO COMMITTED OPPRESSIVE ACTS AGAINST PLAINTIFF SHAREHOLDER.

[**Qadan v Tehseldar, 2016 NY Slip Op 04036, 2nd Dept 5-25-16**](#)

CRIMINAL LAW.

MANIFEST NECESSITY JUSTIFIED DECLARATION OF A MISTRIAL, SECOND TRIAL NOT PRECLUDED.

[**Matter of Whyte v Nassau County Dist. Attorney's Off., 2016 NY Slip Op 03517, 2nd Dept 5-4-16**](#)

FAILURE TO PROVIDE RACE-NEUTRAL REASON FOR CHALLENGE TO BLACK JUROR REQUIRED REVERSAL.

[**People v Jones, 2016 NY Slip Op 03758, 2nd Dept 5-11-16**](#)

SIDEWALK WAS NOT USED AS A DANGEROUS INSTRUMENT IN THIS ASSAULT CASE.

[**People v. McElroy, 2016 N.Y. Slip Op. 03897, 2nd Dept 5-18-16**](#)

INDICTMENT DISMISSED ON SPEEDY TRIAL GROUNDS, DEFENDANT DID NOT CONSENT TO DELAY FOR DNA TEST RESULTS.

[**People v Cox, 2016 NY Slip Op 04070, 2nd Dept 5-25-16**](#)

CRIMINAL LAW, EVIDENCE.

PROVIDING AN UNREDACTED STATEMENT TO THE JURY BY MISTAKE DEPRIVED DEFENDANT OF A FAIR TRIAL AND REQUIRED REVERSAL.

[**People v Reid, 2016 NY Slip Op 03535, 2nd Dept 5-4-16**](#)

EVIDENCE SUPPORTED JURY INSTRUCTION ON THE JUSTIFICATION DEFENSE, NEW TRIAL ORDERED.

[**People v Singh, 2016 NY Slip Op 03537, 2nd Dept 5-4-16**](#)

33-HOUR DELAY IN ARRAIGNMENT, UNDER THE FACTS, DID NOT RENDER STATEMENT INVOLUNTARILY MADE.

[**People v. Johnson, 2016 N.Y. Slip Op. 03896, 2nd Dept 5-18-16**](#)

EMINENT DOMAIN.

CLAIMANTS DID NOT DEMONSTRATE THE FEASIBILITY OF USE OF THE CONDEMNED LAND FOR HIGH-RISE RESIDENTIAL AS THE HIGHEST AND BEST USE.

[**Matter of Queens W. Dev. Corp. v Nixbot Realty Assoc., 2016 NY Slip Op 03746, 2nd Dept 5-11-16**](#)

EMPLOYMENT LAW, LABOR LAW.

COMPLAINT STATED A CAUSE OF ACTION UNDER THE WHISTLEBLOWER STATUTE.

[**Fough v August Aichhorn Ctr. for Adolescent Residential Care, Inc., 2016 NY Slip Op 03469, 2nd Dept 5-4-16**](#)

FAMILY LAW.

VISITATION PROPERLY GRANTED TO GRANDMOTHER DESPITE ANIMOSITY BETWEEN GRANDMOTHER AND FATHER.

[**Matter of Seddio v Artura, 2016 NY Slip Op 04063, 2nd Dept 5-26-16**](#)

FAMILY LAW, CONTRACT LAW, DAMAGES.

LIQUIDATED DAMAGES CLAUSE IN SEPARATION AGREEMENT CONSTITUTED AN UNENFORCEABLE PENALTY.

[**Fitzpatrick v Fitzpatrick, 2016 NY Slip Op 04018, 2nd Dept 5-25-16**](#)

FAMILY LAW, IMMIGRATION LAW.

FAMILY COURT SHOULD HAVE GRANTED PETITION FOR GUARDIANSHIP AND MADE FINDINGS ALLOWING CHILD TO PETITION FOR SPECIAL IMMIGRANT JUVENILE STATUS.

[**Matter of Axel S.D.C. v Elena A.C., 2016 NY Slip Op 04046, 2nd Dept 5-25-16**](#)

FREEDOM OF INFORMATION LAW (FOIL).

REQUEST FOR STATEMENTS OF NON-TESTIFYING WITNESSES IN A CRIMINAL MATTER PROPERLY DENIED.

[**Matter of Brown v DiFiore, 2016 NY Slip Op 04045, 2nd Dept 5-25-16**](#)

INSURANCE LAW.

NO-FAULT CARRIER DID NOT DEMONSTRATE LETTERS TO DEFENDANT SCHEDULING AN EXAMINATION UNDER OATH WERE TIMELY AND PROPERLY MAILED, CARRIER'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN DENIED.

[**Progressive Cas. Ins. Co. v Metro Psychological Servs., P.C., 2016 NY Slip Op 03485, 2nd Dept 5-4-16**](#)

INSURER NOT OBLIGATED TO SATISFY JUDGMENT AGAINST ITS INSURED; INJURED PARTY FAILED TO TIMELY NOTIFY INSURER OF THE FIRE WHICH CAUSED THE DAMAGE.

[**Mt. Hawley Ins. Co. v. Seville Electronics Trading Corp., 2016 N.Y. Slip Op. 03862, 2nd Dept 5-18-16**](#)

LABOR LAW-CONSTRUCTION LAW, CONTRACT LAW, FRAUD.

QUESTION OF FACT WHETHER GENERAL RELEASE PROCURED BY FRAUD OR IN UNFAIR CIRCUMSTANCES.

[**Pacheco v 32-42 55th St. Realty, LLC, 2016 NY Slip Op 03727, 2nd Dept 5-11-16**](#)

PLAINTIFF'S ACT OF CLIMBING A FENCE SHOULD NOT HAVE BEEN DEEMED THE SOLE PROXIMATE CAUSE OF HIS INJURY AS A MATTER OF LAW, QUESTION OF FACT WHETHER DEFENDANT NEGLIGENT FOR LOCKING PLAINTIFF INSIDE WORK SITE.

[**Niewojt v Nikko Constr. Corp., 2016 NY Slip Op 04030, 2nd Dept 5-25-16**](#)

PLAINTIFF DID NOT KNOW SOURCE OF FALLING WOOD WHICH STRUCK HIM, THEREFORE PLAINTIFF COULD NOT DEMONSTRATE, AS MATTER OF LAW, A VIOLATION OF LABOR LAW 240(1).

[**Pazmino v 41-50 78th St. Corp., 2016 NY Slip Op 04032, 2nd Dept 5-25-16**](#)

MUNICIPAL LAW, GOVERNMENTAL IMMUNITY.

TOWN BOARD MEMBERS AND TOWN OFFICIAL IMMUNE FROM SUIT UNDER 42 USC 1983.

[**24 Franklin Ave. R.E. Corp. v Cannella, 2016 NY Slip Op 03499, 2nd Dept 5-4-16**](#)

MUNICIPAL LAW, GOVERNMENTAL IMMUNITY, CIVIL RIGHTS.

DEFENSE MOTION TO SET ASIDE THE VERDICT SHOULD HAVE BEEN GRANTED; POLICE DID NOT USE EXCESSIVE FORCE AND WERE ENTITLED TO BOTH QUALIFIED AND GOVERNMENT FUNCTION IMMUNITY.

[**Davila v. City of New York, 2016 N.Y. Slip Op. 03846, 2nd Dept 5-18-16**](#)

NEGLIGENCE.

PLAINTIFF ENTITLED TO SUMMARY JUDGMENT IN REAR-END COLLISION CASE.

[**Melendez v McCrowell, 2016 NY Slip Op 04028, 2nd Dept 5-25-16**](#)

NEGLIGENCE, CIVIL PROCEDURE, EDUCATION-SCHOOL LAW, MUNICIPAL LAW.

INFANCY DOES NOT TOLL 90-DAY PERIOD FOR FILING A NOTICE OF CLAIM, MOTION FOR LEAVE FILE A LATE NOTICE SHOULD NOT HAVE BEEN GRANTED.

[**Horn v Bellmore Union Free Sch. Dist., 2016 NY Slip Op 04021, 2nd Dept 5-25-16**](#)

NEGLIGENCE, CONTRACT LAW, CIVIL PROCEDURE.

DEFENDANT, WHICH INSTALLED CHRISTMAS DISPLAYS AT A MALL, DID NOT OWE A DUTY TO PLAINTIFF STEMMING FROM ITS CONTRACT WITH THE MALL; SINCE PLAINTIFF ALLEGED ONLY ONE ESPINAL

EXCEPTION TO SUPPORT LIABILITY STEMMING FROM THE CONTRACT, DEFENDANT NEED ONLY ADDRESS THAT ONE EXCEPTION IN ITS MOTION FOR SUMMARY JUDGMENT.

[**Parrinello v Walt Whitman Mall, LLC, 2016 NY Slip Op 03481, 2nd Dept 3-4-16**](#)

NEGLIGENCE, EDUCATION-SCHOOL LAW.

PLAINTIFF ASSUMED THE RISK OF STEPPING IN A HOLE ON THE PLAYING FIELD.

[**Tinto v Yonkers Bd. of Educ., 2016 NY Slip Op 03496, 2nd Dept 5-4-16**](#)

STUDENT ASSUMED THE RISK OF BEING STRUCK BY A BASEBALL.

[**Kaminer v Jericho Union Free Sch. Dist., 2016 NY Slip Op 04024, 2nd Dept 5-25-16**](#)

NEGLIGENCE, MUNICIPAL LAW.

VILLAGE FAILED TO ESTABLISH PRIMA FACIE ENTITLEMENT TO SUMMARY JUDGMENT WHERE INJURY CAUSED BY TREE FALLING IN ROADWAY.

[**Connolly v Incorporated Vil. of Lloyd Harbor, 2016 NY Slip Op 03463, 2nd Dept, 5-4-16**](#)

QUESTION OF FACT WHETHER ABUTTING PROPERTY OWNER VIOLATED THE NYC ADMINISTRATIVE CODE AND THEREBY OWED A DUTY TO PLAINTIFF WHO ALLEGEDLY FELL OVER A CABLE ON THE SIDEWALK.

[**Metzker v City of New York, 2016 NY Slip Op 03724, 2nd Dept 5-11-16**](#)

ABUTTING PROPERTY OWNER NOT LIABLE FOR CONDITION OF CITY OWNED TREE WELL WITHIN SIDEWALK.

[**Gibbons v City of New York, 2016 NY Slip Op 04019, 2nd Dept 5-25-16**](#)

PARTNERSHIP LAW.

WHEN DETERMINING THE VALUE OF A PARTNERSHIP SHARE UPON DISSOLUTION, A MINORITY DISCOUNT CAN PROPERLY BE APPLIED TO A PARTNER WHO WRONGFULLY DISSOLVED THE PARTNERSHIP AND WHO DID NOT EXERCISE CONTROL OVER THE PARTNERSHIP AS A GOING CONCERN.

[**Congel v. Malfitano, 2016 N.Y. Slip Op. 03845, 2nd Dept 5-18-16**](#)

ZONING.

PETITIONERS DID NOT HAVE STANDING TO CONTEST APPROVAL OF CONSTRUCTION PROJECT, CLOSE PROXIMITY IS NOT ENOUGH.

[**Matter of CPD NY Energy Corp. v. Town of Poughkeepsie Planning Bd., 2016 N.Y. Slip Op. 03877, 2nd Dept 5-18-16**](#)

THIRD DEPARTMENT

APPEALS, EVIDENCE.

ORDER LIMITING TRIAL EVIDENCE WAS APPEALABLE.

[**Calabrese Bakeries, Inc. v Rockland Bakery, Inc., 2016 NY Slip Op 03772, 3rd Dept 5-12-16**](#)

ARBITRATION, EMPLOYMENT LAW.

WHERE THE COLLECTIVE BARGAINING AGREEMENT (CBA) IS AMBIGUOUS ABOUT ITS APPLICABILITY TO AN ACTION AGAINST A COVERED PUBLIC EMPLOYEE, WHETHER THE CBA GOVERNS MUST BE DETERMINED BY THE ARBITRATOR.

[**Matter of Woods v State Univ. of N.Y., 2016 NY Slip Op 04084, 3rd Dept 5-26-16**](#)

CIVIL PROCEDURE.

COURT OF CLAIMS LACKS JURISDICTION WHERE MONEY DAMAGES ARE MERELY INCIDENTAL TO THE CLAIM.

[**Jackson v. State of New York, 2016 N.Y. Slip Op. 03938, 3rd Dept 5-19-16**](#)

CIVIL PROCEDURE, TRUSTS AND ESTATES.

EXECUTOR-STATUS (PRIOR TO DEATH) AND FAMILIAL RELATIONSHIP DO NOT CREATE A FIDUCIARY RELATIONSHIP, EQUITABLE ESTOPPEL SHOULD NOT HAVE BEEN INVOKED TO SAVE A TIME-BARRED CLAIM.

[**Picard v Fish, 2016 NY Slip Op 04086, 3rd Dept 5-26-16**](#)

CRIMINAL LAW.

FAILURE TO READ JURY NOTE VERBATIM WAS A MODE OF PROCEEDINGS ERROR REQUIRING REVERSAL.

[**People v Victor, 2016 NY Slip Op 03551, 3rd Dept 5-5-16**](#)

FAILURE TO INSTRUCT SPECTATORS TO REMOVE OR COVER UP T-SHIRTS MEMORIALIZING THE MURDER VICTIM WAS HARMLESS ERROR.

[**People v Jones, 2016 NY Slip Op 03770, 3rd Dept 5-12-16**](#)

CRIMINAL LAW, EVIDENCE.

AMOUNT OF HEROIN ALLEGED TO HAVE BEEN SOLD NOT PROVEN, STATUTORY SALE AND RELATED CONSPIRACY COUNTS DISMISSED.

[**People v Wright, 2016 NY Slip Op 03550, 3rd Dept 5-5-15**](#)

DISCIPLINARY HEARINGS (INMATES).

HEARING OFFICER IMPROPERLY LIMITED THE NUMBER OF WITNESS PETITIONER COULD CALL, NEW HEARING REQUIRED.

[Matter of Payton v Annucci, 2016 NY Slip Op 03791, 3rd Dept 5-12-16](#)

EDUCATION-SCHOOL LAW, TAX LAW, CONSTITUTIONAL LAW.

EDUCATION LAW STATUTE REQUIRING A 60% MAJORITY TO AUTHORIZE A PROPERTY TAX INCREASE OVER THE STATUTORY CAP (TO FUND SCHOOL DISTRICTS) IS CONSTITUTIONAL.

[New York State United Teachers v State of New York, 2016 NY Slip Op 03572, 3rd Dept 5-5-16](#)

MUNICIPAL LAW, EMPLOYMENT LAW.

MAYOR DID NOT HAVE THE AUTHORITY TO IGNORE DETERMINATION MADE BY AN APPOINTED HEARING OFFICER, PETITIONER FIREFIGHTER ENTITLED TO GENERAL MUNICIPAL LAW BENEFITS.

[Matter of McKay v Village of Endicott, 2016 NY Slip Op 04085, 3rd Dept 5-26-16](#)

NEGLIGENCE.

PLAINTIFF'S STATEMENT COUPLED WITH HER AFFIDAVIT RAISED A QUESTION OF FACT ABOUT THE CAUSE OF HER FALL.

[Costello v Pizzeria Uno of Albany, Inc., 2016 NY Slip Op 04087, 3rd Dept 5-26-16](#)

NEGLIGENCE, TOXIC TORTS, CIVIL PROCEDURE.

DEFENDANT BUILDING OWNER NOT ENTITLED TO SUMMARY JUDGMENT IN TOXIC TORT (MOLD EXPOSURE) ACTION ON STATUTE OF LIMITATIONS GROUNDS.

[Malone v Court W. Developers, Inc., 2016 NY Slip Op 03571, 3rd Dept 5-5-16](#)

PISTOL PERMITS, FAMILY LAW.

PISTOL PERMIT PROPERLY REVOKED BY FAMILY COURT.

The Third Department determined Family Court properly revoked petitioner's pistol permit: "Here, the [Matter of Schmitt v Connolly, 2016 NY Slip Op 03775, 3rd Dept 5-12-16](#)

REAL PROPERTY.

DISPUTED BOUNDARY PROVEN THROUGH DOCTRINE OF PRACTICAL LOCATION.

Lounsbury v Yeomans, 2016 NY Slip Op 03798, 3rd Dept 5-12-16

UNEMPLOYMENT INSURANCE.

CLASSICAL FLAUTIST NOT AN EMPLOYEE.

Matter of Greene (Syracuse Socy. for New Music, Inc.--Commissioner of Labor), 2016 NY Slip Op 03567, 3rd Dept 5-5-16

TUTORS WERE EMPLOYEES OF TUTORING CENTER.

Matter of Ritch (Island Tutoring Ctr., Inc.--Commissioner of Labor), 2016 NY Slip Op 03569, 3rd Dept 5-5-16

POSSESSION OF MARIJUANA CONSTITUTED DISQUALIFYING MISCONDUCT.

Matter of Hall (Commissioner of Labor), 2016 NY Slip Op 03797, 3rd Dept 5-12-16

WORKERS' COMPENSATION LAW.

STATUTE REQUIRING TIMELY NOTICE OF THE ACCIDENT DID NOT REQUIRE NOTICE OF ALL THE INJURIES STEMMING FROM THE ACCIDENT.

Matter of Logan v New York City Health & Hosp. Corp., 2016 NY Slip Op 03776, 3rd Dept 5-12-16

INJURY IN FALL IN EMPLOYER'S PARKING LOT AROSE FROM EMPLOYMENT.

Matter of Swartz v. Absolut Ctr. for Nursing & Rehab, 2016 N.Y. Slip Op. 03937, 3rd Dept 5-19-16

FOURTH DEPARTMENT

CRIMINAL LAW.

DEFENDANT'S MOTION TO VACATE HIS CONVICTION BY GUILTY PLEA SHOULD NOT HAVE BEEN DENIED WITHOUT A HEARING, DEFENDANT SUFFICIENTLY ALLEGED HIS COUNSEL PROVIDED WRONG INFORMATION ABOUT THE POSSIBILITY OF DEPORTATION.

[**People v Bennett, 2016 NY Slip Op 03608, 4th Dept 5-6-16**](#)

CRIMINAL LAW, ATTORNEYS.

COURT FAILED TO MAKE A MINIMAL INQUIRY INTO DEFENDANT'S COMPLAINT ABOUT A CONFLICT OF INTEREST WITH DEFENSE COUNSEL, CONVICTION REVERSED.

[**People v Tucker, 2016 NY Slip Op 03637, 4th Dept 5-6-16**](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA)

EVIDENCE SUPPORTING UPWARD DEPARTURE WAS SPECULATIVE AND DID NOT RISE TO THE LEVEL CLEAR AND CONVINCING.

[**People v Baldwin, 2016 NY Slip Op 03609, 4th Dept 5-6-16**](#)

FAMILY LAW.

FAMILY COURT ABUSED ITS DISCRETION BY REFUSING TO ALLOW MOTHER TO APPEAR BY TELEPHONE FROM FLORIDA.

[**Matter of Thomas B. \(Calla B.\), 2016 NY Slip Op 03640, 4th Dept, 5-6-16**](#)

JUNE 2016

COURT OF APPEALS

CIVIL PROCEDURE.

ONCE JUDGMENT WAS ENTERED, SUPREME COURT DID NOT HAVE JURISDICTION TO ENTERTAIN A MOTION FOR STATUTORY INTEREST.

[**CRP/Extell Parcel I, L.P. v Cuomo, 2016 NY Slip Op 04251, CtApp 6-2-16**](#)

ARTICLE 78 PROCEEDING AGAINST A SURROGATE'S COURT JUDGE MUST BE COMMENCED IN SUPREME COURT, NOT THE APPELLATE DIVISION.

[**Matter of Tonawanda Seneca Nation v Noonan, 2016 NY Slip Op 04974, CtApp 6-23-16**](#)

CIVIL PROCEDURE, PRIVILEGE, ATTORNEYS.

APPELLATE DIVISION WRONGLY EXTENDED COMMON INTEREST ATTORNEY CLIENT PRIVILEGE TO MERGER NEGOTIATIONS WHEN THERE WAS NO PENDING LITIGATION.

[**Ambac Assur. Corp. v Countrywide Home Loans, Inc., 2016 NY Slip Op 04439, CtApp 6-9-16**](#)

CRIMINAL LAW.

DEFENDANT MAY WAIVE RIGHT TO BE PRESENT FOR SENTENCING ON A FELONY.

[**People v Rossborough, 2016 NY Slip Op 04250, CtApp 6-2-16**](#)

DEFENSE COUNSEL'S REMARK ("THAT SHOULD BE FINE") IN RESPONSE TO THE COURT'S INDICATION THAT COURT CONGESTION REQUIRED A LONGER ADJOURNMENT THAN DEFENSE COUNSEL REQUESTED WAS NOT EXPRESS CONSENT TO THE LONGER ADJOURNMENT, INDICTMENT DISMISSED ON SPEEDY TRIAL GROUNDS.

[**People v Barden, 2016 NY Slip Op 04659, CtApp 6-14-16**](#)

CRIMINAL LAW, APPEALS.

FAILURE TO RESPOND TO JURY NOTES AFTER COUNSEL HAD BEEN MADE AWARE OF THE CONTENTS OF THE NOTES AND THE JUDGE'S PROPOSED RESPONSES WAS NOT A MODE OF PROCEEDINGS ERROR, PRESERVATION REQUIRED.

[**People v Mack, 2016 NY Slip Op 04321, CtApp 6-7-16**](#)

PRE-SENTENCE INCARCERATION, AS PART OF A PLEA AGREEMENT, DID NOT RENDER THE SUBSEQUENT SENTENCE ILLEGAL, THEREFORE OBJECTION TO SENTENCE WAS SUBJECT TO THE PRESERVATION REQUIREMENT; CRITERIA FOR OUTLET HEARING EXPLAINED.

[**People v Reynolds, 2016 NY Slip Op 04323, CtApp 6-7-16**](#)

SHACKLES, QUESTIONS ABOUT A PENDING INDICTMENT, AND FAILURE TO INFORM THE GRAND JURY OF A WITNESS REQUESTED BY THE DEFENDANT WERE NOT MODE OF PROCEEDINGS ERRORS AND WERE NOT PRESERVED FOR APPEAL.

[**People v Griggs, 2016 NY Slip Op 04655, CtApp 6-14-16**](#)

COURT'S FAILURE TO ORDER READBACK OF CROSS-EXAMINATION IN ADDITION TO DIRECT WAS NOT A MODE OF PROCEEDINGS ERROR, PRESERVATION REQUIRED.

[People v Morris, 2016 NY Slip Op 04327, CtApp 6-7-16](#)

AFFIDAVIT OF ERRORS MUST BE FILED AS A PREREQUISITE FOR TAKING AN APPEAL FROM A CONVICTION IN A LOCAL COURT WHERE THERE WAS NO STENOGRAPHER, TRANSCRIPT OF ELECTRONIC RECORDING IS NOT A SUBSTITUTE FOR AN AFFIDAVIT OF ERRORS.

[People v Smith, 2016 NY Slip Op 04973, CtApp 6-23-16](#)

CRIMINAL LAW, ATTORNEYS.

FAILURE TO MOVE TO SUPPRESS EVIDENCE AND FAILURE TO CHALLENGE A FRISK DID NOT CONSTITUTE INEFFECTIVE ASSISTANCE OF COUNSEL.

[People v Carver, 2016 NY Slip Op 04322, CtApp 6-7-16](#)

CRIMINAL LAW, ATTORNEYS, EVIDENCE.

MOTION TO VACATE CONVICTION PROPERLY DENIED WITHOUT A HEARING; DEFENDANT DID NOT PRESENT SUFFICIENT EVIDENCE OF ACTUAL OR POTENTIAL CONFLICT OF INTEREST ON THE PART OF DEFENSE COUNSEL.

[People v Wright, 2016 NY Slip Op 04440, CtApp 6-9-16](#)

CRIMINAL LAW, EVIDENCE.

EVIDENCE OF A SIMILAR UNCHARGED CRIME AGAINST THE SAME VICTIM PROPERLY ADMITTED.

[People v Frankline, 2016 NY Slip Op 04441, CtApp 6-9-16](#)

EVIDENCE INSUFFICIENT TO DEMONSTRATE DEFENDANT COULD CONTROL WHETHER CHILDREN ENTERED OR REMAINED IN AN APARTMENT WHERE DRUGS WERE FOUND.

[People v Berry, 2016 NY Slip Op 04656, CtApp 6-14-16](#)

DARDEN HEARING NOT NECESSARY WHERE POLICE OBSERVATIONS SUFFICIENT TO PROVIDE PROBABLE CAUSE FOR THE SEARCH OF DEFENDANT'S APARTMENT.

[People v Crooks, 2016 NY Slip Op 04975, CtApp 6-23-16](#)

CRITERIA FOR ALLOWING EXPERT EVIDENCE ON THE RELIABILITY OF EYEWITNESS IDENTIFICATION CLARIFIED; EXCLUDING THE PROFFERED EVIDENCE HERE WAS NOT AN ABUSE OF DISCRETION.

[People v McCullough, 2016 NY Slip Op 05060, CtApp 6-28-16](#)

POLICE OFFICERS MAY BE CROSS-EXAMINED BASED ON ALLEGATIONS MADE IN A PENDING CIVIL SUIT, CRITERIA EXPLAINED.

[People v Smith, 2016 NY Slip Op 05061, CtApp 6-28-16](#)

CRIMINAL LAW, EVIDENCE, SEX OFFENDER REGISTRATION ACT (SORA)

SORA COURT PROPERLY REJECTED DOWNWARD DEPARTURE BECAUSE CONVICTION FOR ENDANGERING THE WELFARE OF A CHILD DID NOT INVOLVE A SEXUAL OFFENSE.

[People v Sincerbeaux, 2016 NY Slip Op 05062, CtApp 6-28-16](#)

CRIMINAL LAW, EXECUTIVE LAW.

SPECIAL PROSECUTOR HAS AUTHORITY TO BRING CRIMINAL ACTIONS IN LOCAL COURTS PURSUANT TO THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS ACT.

[People v Davidson, 2016 NY Slip Op 04326, CtApp 6-7-16](#)

FAMILY LAW.

FAMILY COURT PROPERLY IMPOSED THREE CONSECUTIVE SIX-MONTH JAIL TERMS UPON FATHER WHO WILFULLY FAILED TO PAY CHILD SUPPORT.

[**Matter of Columbia County Support Collection Unit v Risley, 2016 NY Slip Op 04325, CtApp 6-7-16**](#)

INSURANCE LAW.

HEALTH INSURANCE CARRIER WHICH ERRONEOUSLY PAID INJURED PARTY'S NO-FAULT BENEFITS CAN NOT RECOVER FROM THE NO-FAULT CARRIER.

[**Aetna Health Plans v Hanover Ins. Co., 2016 NY Slip Op 04658, CtApp 6-14-16**](#)

MUNICIPAL LAW, MEDICAL MALPRACTICE.

MEDICAL RECORDS DOCUMENTING THE MEDICAL CARE DID NOT DEMONSTRATE THE HOSPITAL HAD TIMELY NOTICE OF THE NATURE OF THE MEDICAL MALPRACTICE CLAIM; MOTION FOR LEAVE TO FILE A LATE NOTICE OF CLAIM PROPERLY DENIED.

[**Wally G. v New York City Health & Hosps. Corp. \(Metropolitan Hosp.\), 2016 NY Slip Op 04443, CtApp 6-9-16**](#)

NEGLIGENCE (DUTY OF CARE), FRAUD.

LABORATORY WHICH TESTS URINE FOR THE PRESENCE OF DRUGS DID NOT OWE A DUTY TO A TESTEE TO FOLLOW REGULATIONS NOT RELATED TO THE SCIENTIFIC TESTING PROCEDURE; FRAUD CAUSE OF ACTION CANNOT BE BASED ON THE RELIANCE OF A THIRD-PARTY, AS OPPOSED TO THE PLAINTIFF, UPON A MISREPRESENTATION.

[**Pasternack v Laboratory Corp. of Am. Holdings, 2016 NY Slip Op 05179, CtApp 6-30-16**](#)

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NEGLIGENCE, MEDICAL MALPRACTICE, EVIDENCE.

EVIDENCE OF PRIOR BAD ACTS BY DEFENDANT PHYSICIAN SHOULD NOT HAVE BEEN ADMITTED IN THIS MEDICAL MALPRACTICE ACTION, PLAINTIFF'S VERDICT REVERSED.

[**Mazella v Beals, 2016 NY Slip Op 05182, CtApp 6-30-16**](#)

PRODUCTS LIABILITY.

MANUFACTURER'S DUTY TO WARN EXTENDS TO JOINT USE OF ITS PRODUCT AND A PRODUCT MANUFACTURED BY A THIRD PARTY.

[**Matter of New York City Asbestos Litig., 2016 NY Slip Op 05063, CtApp 6-28-16**](#)

REAL PROPERTY TAX LAW, EDUCATION-SCHOOL LAW, CIVIL PROCEDURE.

TAX CERTIORARI PROCEEDING DISMISSED FOR FAILURE TO TIMELY NOTIFY THE SCHOOL DISTRICT CANNOT BE RECOMMENCED PURSUANT TO CPLR 305 (a).

[Matter of Westchester Joint Water Works v Assessor of City of Rye, 2016 NY Slip Op 04438, CtApp 6-9-16](#)

SECURITIES, FRAUD.

LIFETIME BAN ON PARTICIPATION IN THE SECURITIES INDUSTRY AND DISGORGEMENT OF WRONGFULLY OBTAINED PROFITS ARE AVAILABLE REMEDIES UNDER ANTI-FRAUD STATUTES.

[People v Greenberg, 2016 NY Slip Op 04253, CtApp 6-2-16](#)

FIRST DEPARTMENT

ATTORNEYS.

RECOVERY OF ATTORNEY'S FEES UNDER QUANTUM MERUIT THEORY IN ABSENCE OF A RETAINER AGREEMENT PROPER; PROVISION IN RETAINER AGREEMENT FOR RECOVERY OF ATTORNEY'S FEES FOR COLLECTION OF FEES FROM THE CLIENT VOID BECAUSE THERE WAS NO RECIPROCAL PROVISION SHOULD THE CLIENT PREVAIL.

[Ferst v Abraham, 2016 NY Slip Op 05034, 1st Dept 6-23-16](#)

ATTORNEYS, PRIVILEGE.

COMMUNICATIONS BETWEEN ATTORNEYS IN A LAW FIRM AND THE FIRM'S IN HOUSE COUNSEL CONCERNING ETHICAL ISSUES IN A FORMER CLIENT'S CASE PROTECTED FROM DISCLOSURE IN THE FORMER CLIENT'S MALPRACTICE ACTION.

[Stock v Schnader Harrison Segal & Lewis LLP, 2016 NY Slip Op 05247, 1st Dept 6-30-16](#)

CIVIL PROCEDURE.

OPENING STATEMENT ALLEGING EXCESSIVE FORCE WAS FATALLY INCONSISTENT WITH NEGLIGENCE CLAIMS, NEGLIGENCE CLAIMS PROPERLY DISMISSED ON THAT GROUND.

[Vaynshelbaum v City of New York, 2016 NY Slip Op 04302, 1st Dept 6-2-16](#)

CRIMINAL LAW.

BROADER FLORIDA STATUTE COULD NOT PROVIDE THE BASIS FOR SECOND FELONY OFFENDER STATUS.

[People v Catmon, 2016 NY Slip Op 05228, 1st Dept 6-30-16](#)

CRIMINAL LAW, APPEALS.

SEX OFFENDER CERTIFICATION IS PART OF THE JUDGMENT OF CONVICTION AND MUST BE CHALLENGED ON APPEAL FROM THE JUDGMENT, NOT IN A SORA RISK-LEVEL PROCEEDING.

[People v Miguel, 2016 NY Slip Op 04666, 1st Dept 6-9-16](#)

CRIMINAL LAW, EVIDENCE.

ADMISSION OF THE RESULTS OF A MACHINE GENERATED BLOOD TEST WITHOUT THE TESTIMONY OF THE OPERATOR OF THE MACHINE DID NOT VIOLATE THE CONFRONTATION CLAUSE.

[People v Alcivar, 2016 NY Slip Op 04329, 1st Dept 6-7-16](#)

DISMISSAL OF COMPLAINT TOO SEVERE A SANCTION FOR SPOILIATION OF EVIDENCE, RELEVANT LAW CLEARLY EXPLAINED.

[Arbor Realty Funding, LLC v Herrick, Feinstein LLP, 2016 NY Slip Op 05065, 1st Dept 6-28-16](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

EVIDENCE OF PHYSICAL INJURY INSUFFICIENT FOR ROBBERY SECOND DEGREE; ISSUE PRESERVED DESPITE GENERAL MOTION FOR TRIAL ORDER OF DISMISSAL.

[People v Rios, 2016 NY Slip Op 04891, 1st Dept 6-21-16](#)

ARGUMENT THAT DNA EXPERT RELIED ON DATA GATHERED BY NONTESTIFYING ANALYSTS, THEREBY VIOLATING DEFENDANT'S RIGHT OF CONFRONTATION, NOT PRESERVED FOR APPELLATE REVIEW.

[People v Daly, 2016 NY Slip Op 05048, 1st Dept 6-23-16](#)

CRIMINAL LAW, EVIDENCE, ATTORNEYS.

IMPROPER TESTIMONY BY AN ADA ABOUT GRAND JURY PROCEDURE AND THE JUSTIFICATION DEFENSE, COUPLED WITH IMPROPER REFERENCES TO FACTS NOT IN EVIDENCE DURING THE PROSECUTOR'S SUMMATION, REQUIRED REVERSAL.

[People v Melendez, 2016 NY Slip Op 04328, 1st Dept 6-7-16](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

FEDERAL CONVICTION FOR FAILING TO REGISTER AS A SEX OFFENDER WAS NOT A QUALIFYING OFFENSE FOR A SORA RISK ANALYSIS; THEREFORE DEFENDANT WAS NOT ENTITLED TO A 15 POINT REDUCTION BECAUSE HE WAS SUBJECT TO POST-RELEASE SUPERVISION FOR THE FEDERAL OFFENSE.

[People v Reid, 2016 NY Slip Op 04366, 1st Dept 6-7-16](#)

EMPLOYMENT LAW.

ARCHDIOCESE NOT LIABLE FOR ACTIONS OF NURSING HOME FOR WHICH PLAINTIFF WORKED UNDER THE SINGLE-EMPLOYER DOCTRINE, SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED.

[Batilo v Mary Manning Walsh Nursing Home Co., Inc., 2016 NY Slip Op 05096, 1st Dept 6-28-16](#)

EMPLOYMENT LAW, MUNICIPAL LAW.

PRE-ANSWER MOTION TO DISMISS PETITION ALLEGING WRONGFUL TERMINATION OF A PROBATIONARY CORRECTIONS OFFICER SHOULD NOT HAVE BEEN GRANTED.

[Matter of Castro v Schriro, 2016 NY Slip Op 05105, 1st Dept 6-28-16](#)

FREEDOM OF INFORMATION LAW (FOIL).

GLOMAR RESPONSE, NEITHER CONFIRMING NOR DENYING THE EXISTENCE OF DOCUMENTS, APPROPRIATE UNDER THE FACTS.

[Matter of Abdur-Rashid v New York City Police Dept., 2016 NY Slip Op 04318, 1st Dept 6-2-16](#)

INSURANCE LAW.

AN EXAMINATION UNDER OATH (EUO) CAN BE REQUESTED BY THE NO-FAULT INSURER BEFORE THE INSURER RECEIVES A CLAIM FORM FROM THE MEDICAL PROVIDER.

[Mapfre Ins. Co. of N.Y. v Manoo, 2016 NY Slip Op 04446, 1st Dept 6-9-16](#)

LABOR LAW-CONSTRUCTION LAW.

HOMEOWNER'S EXEMPTION FROM LABOR LAW LIABILITY APPLIED, DESPITE PRESENCE OF THREE FAMILIES IN THE HOME.

[**Del Carnen Diaz v Boheciamp, 2016 NY Slip Op 04305, 1st Dept 6-2-16**](#)

BUILDING OWNER LIABLE UNDER LABOR LAW 240(1) FOR INJURY CAUSED BY FALLING ELEVATOR.

[**McCrea v Arnlie Realty Co. LLC, 2016 NY Slip Op 04330, 1st Dept 6-7-16**](#)

ON THE LABOR LAW 240 (1) CAUSE OF ACTION.

[**Hill v City of New York, 2016 NY Slip Op 05019, 1st Dept 6-23-16**](#)

LANDLORD-TENANT, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW.

TENANT ENTITLED TO TREBLE DAMAGES BECAUSE LANDLORD WRONGFULLY ATTEMPTED TO EJECT TENANT FROM THE LEASED PREMISES.

[**Hood v Koziej, 2016 NY Slip Op 04889, 1st Dept 6-21-16**](#)

MUNICIPAL LAW.

NYC LOCAL LAW REQUIRING DISCLOSURE ABOUT THE SELECTION PROCESS FOR CONSTRUCTION OF AFFORDABLE HOUSING IS NOT PREEMPTED BY STATE LAW AND IS NOT UNCONSTITUTIONAL.

[**New York State Assn. for Affordable Hous. v Council of the City of N.Y., 2016 NY Slip Op 04320, 1st Dept 6-2-16**](#)

MUNICIPAL LAW, CRIMINAL LAW, HUMAN RIGHTS LAW.

NYC LOCAL LAW PROHIBITING BIASED-BASED PROFILING ("STOP AND FRISK") NOT PREEMPTED BY STATE CRIMINAL PROCEDURE LAW.

[**Patrolmen's Benevolent Assn. of the City of New York, Inc. v City of New York, 2016 NY Slip Op 05057, 1st Dept 6-23-16**](#)

NEGLIGENCE.

TRUCK RENTAL COMPANY, PURSUANT TO THE GRAVES AMENDMENT, DEMONSTRATED IT WAS NOT LIABLE FOR THE DEATH CAUSE BY ITS TRUCK, TRUCK PROPERLY MAINTAINED.

[**Reifsnyder v Penske Truck Leasing Corp., 2016 NY Slip Op 05022, 1st Dept 6-23-16**](#)

FAILURE TO SHOW WHEN SLIP AND FALL AREA WAS LAST INSPECTED OR CLEANED PRECLUDED SUMMARY JUDGMENT.

[**Sada v August Wilson Theater, 2016 NY Slip Op 05024, 1st Dept 6-23-16**](#)

NEGLIGENCE, EVIDENCE.

DEFENDANT'S RELIANCE ON A POLICE REPORT IN SUMMARY JUDGMENT PROCEEDINGS WAIVED ANY OBJECTION TO DEFENDANT'S ADMISSION INCLUDED IN THE REPORT ON HEARSAY OR AUTHENTICATION GROUNDS.

[**Cruz v Skeritt, 2016 NY Slip Op 04883, 1st Dept 6-21-16**](#)

CONCLUSORY EXPERT AFFIDAVIT ALLEGING INADEQUATE SALTING INSUFFICIENT TO DEFEAT DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE.
[Rivas v New York City Hous. Auth., 2016 NY Slip Op 05033, 1st Dept 8-23-16](#)

REAL PROPERTY LAW, FORECLOSURE.

DEED PROVIDED AS SECURITY FOR A DEBT CONSTITUTES A MORTGAGE TRIGGERING THE NEED FOR FORECLOSURE PROCEEDINGS UPON DEFAULT.
[Patmos Fifth Real Estate Inc. v Mazl Bldg., LLC, 2016 NY Slip Op 04804, 1st Dept 6-16-16](#)

SOCIAL SERVICES LAW, APPEALS.

EXCEPTION TO THE MOOTNESS DOCTRINE APPLIED; NOTICES OF MANDATORY MEETINGS REGARDING WORK-REQUIREMENTS UNDER THE FAMILY ASSISTANCE PROGRAM DID NOT VIOLATE THE SOCIAL SERVICES LAW.
[Matter of Puerto v Doar, 2016 NY Slip Op 04463, 1st Dept 6-9-16](#)

SECOND DEPARTMENT

ARBITRATION.

COURT'S LIMITED POWER TO REVIEW AN ARBITRATION AWARD SUCCINCTLY STATED.
[Matter of T & C Home Design, LLC v Stylecraft Corp., 2016 NY Slip Op 04228, 2nd Dept 6-1-16](#)

ARBITRATION, JUDICIARY LAW.

ARBITRATION HEARING HELD ON A SUNDAY VIOLATED THE JUDICIARY LAW, AWARD VACATED.
[Matter of Leifer v Gross, 2016 NY Slip Op 04715, 2nd Dept 6-15-16](#)

BATTERY (INTENTIONAL TORT)

BATTERY CAUSE OF ACTION STEMMING FROM KICKBALL GAME SURVIVED SUMMARY JUDGMENT, ASSUMPTION OF RISK DOCTRINE DID NOT PRECLUDE ACTION AS A MATTER OF LAW.
[Dimisa v Oceanside Union Free Sch. Dist., 2016 NY Slip Op 04172, 2nd Dept 6-1-16](#)

CIVIL PROCEDURE.

FRIVOLOUS DEMAND FOR PUNITIVE DAMAGES IN PROPERTY-INJURY CASE WARRANTED AWARD PURSUANT TO CPLR 8303-a.
[Baxter v Javier, 2016 NY Slip Op 04165, 2nd Dept 6-1-16](#)

COUNTERCLAIM ARISING OUT OF THE SAME TRANSACTION AS THAT ASSERTED BY THE PLAINTIFF IN THE COMPLAINT IS VALID EVEN THOUGH THE COUNTERCLAIM WOULD BE TIME-BARRED IF BROUGHT AS AN INDEPENDENT ACTION, RECOVERY ON THE COUNTERCLAIM AVAILABLE ONLY UP TO THE AMOUNT DEMANDED BY PLAINTIFF (RECOUPMENT).
[Balanoff v Doscher, 2016 NY Slip Op 04896, 2nd Dept 6-22-16](#)

PLAINTIFF NEED NOT SHOW BOTH A JUSTIFIABLE EXCUSE AND A MERITORIOUS CAUSE OF ACTION TO AVOID DISMISSAL FOR NEGLECT TO PROCEED.
[Bell v United Parcel Serv., Inc., 2016 NY Slip Op 05110, 2nd Dept 6-29-16](#)

UNTIMELY MOTION TO INTERVENE SHOULD NOT HAVE BEEN GRANTED.
[Castle Peak 2012-1 Loan Trust v Sattar, 2016 NY Slip Op 05111, 2nd Dept 6-29-16](#)

CIVIL PROCEDURE, APPEALS.

QUESTION OF FACT WHETHER FIDUCIARY TOLLING RULE EXTENDED STATUTE OF LIMITATIONS; ISSUE CAN BE ADDRESSED ON APPEAL EVEN THOUGH NOT RAISED BELOW.
[Franklin v Hafftk, 2016 NY Slip Op 04692, 2nd Dept 6-15-16](#)

CIVIL PROCEDURE, EVIDENCE.

MOTION TO RENEW IN WHICH DOCUMENT PREVIOUSLY REJECTED WAS RESUBMITTED IN ADMISSIBLE FORM SHOULD HAVE BEEN GRANTED.
[Defina v Daniel, 2016 NY Slip Op 04381, 2nd Dept 6-8-16](#)

CIVIL PROCEDURE, RELIGION.

SUPREME COURT LACKED SUBJECT MATTER JURISDICTION, CASE WOULD HAVE REQUIRED APPLICATION OF RELIGIOUS PRINCIPLES.

[Hafif v Rabbinical Council of Syrian & Near E. Jewish Communities in Am., 2016 NY Slip Op 04909, 2nd Dept 6-22-16](#)

CRIMINAL LAW.

EVIDENCE OF PHYSICAL INJURY NOT SUFFICIENT TO SUPPORT ROBBERY IN THE SECOND DEGREE.

[People v Stokes, 2016 NY Slip Op 04245, 2nd Dept 6-1-16](#)

UNDULY HARSH AND SEVERE SENTENCE FOR SALE OF A CONTROLLED SUBSTANCE REDUCED.

[People v Kordish, 2016 NY Slip Op 04733, 2nd Dept 6-15-16](#)

CRIMINAL LAW, ATTORNEYS.

ROBBERY CONVICTION UNSUPPORTED BY PROOF OF INTENT TO PERMANENTLY, AS OPPOSED TO TEMPORARILY, DEPRIVE OWNER OF PROPERTY; HEARING NECESSARY TO ASSESS DEFENDANT'S SPEEDY TRIAL ARGUMENTS; PROSECUTOR'S SUMMATION DEPRIVED DEFENDANT OF A FAIR TRIAL.

[People v Cantoni, 2016 NY Slip Op 04232, 2nd Dept 6-1-16](#)

DEFENSE COUNSEL'S ELICITATION OF DAMAGING EVIDENCE, LACK OF PREPARATION, AND FAILURE TO OBJECT TO PROSECUTORIAL MISCONDUCT DEPRIVED DEFENDANT OF EFFECTIVE ASSISTANCE OF COUNSEL.

[People v McCray, 2016 NY Slip Op 04240, 2nd Dept 6-1-16](#)

DEFENDANT DEPRIVED OF HIS RIGHT TO COUNSEL WHEN DEFENSE ATTORNEY INDICATED THERE WAS NO BASIS FOR DEFENDANT'S REQUEST TO WITHDRAW HIS PLEA.

[People v Ferguson, 2016 NY Slip Op 04728, 2nd Dept 6-15-16](#)

DEFENDANT'S REQUEST TO REPRESENT HIMSELF SHOULD HAVE BEEN HONORED, CRITERIA EXPLAINED.

[People v Paulin, 2016 NY Slip Op 04735, 2nd Dept 6-15-16](#)

CRIMINAL LAW, ATTORNEYS, EVIDENCE.

PROSECUTOR'S QUESTIONING DEFENDANT ABOUT AN ADMISSION ALLEGEDLY MADE TO HIS ATTORNEY REQUIRED REVERSAL IN THE INTEREST OF JUSTICE.

[People v Loiseau, 2016 NY Slip Op 05172, 2nd Dept 6-29-16](#)

CRIMINAL LAW, EVIDENCE.

DETECTIVE ENTERED FENCED BACKYARD WITHOUT A WARRANT, SUPPRESSION SHOULD HAVE BEEN GRANTED.

[People v Avinger, 2016 NY Slip Op 04426, 2nd Dept 6-8-16](#)

PEOPLE DID NOT DEMONSTRATE DEFENDANT UNDERSTOOD HIS *MIRANDA* RIGHTS, STATEMENT SHOULD HAVE BEEN SUPPRESSED.

[People v Cleverin, 2016 NY Slip Op 04955, 2nd Dept 6-22-16](#)

CRIMINAL LAW, HABEAS CORPUS.

WRIT OF HABEAS CORPUS SUSTAINED, BAIL GRANTED.

[People ex rel. Brackley v Warden, Brooklyn Detention Complex, 2016 NY Slip Op 04247, 2nd Dept 6-1-16](#)

EMPLOYMENT LAW, LABOR LAW.

PLAINTIFF ENTITLED TO WHISTLEBLOWER PROTECTION UNDER LABOR LAW 741.
[**Galbraith v Westchester County Health Care Corp., 2016 NY Slip Op 04176, 2nd Dept 6-1-16**](#)

EMPLOYMENT LAW, HUMAN RIGHTS LAW.

COMPLAINT ADEQUATELY ALLEGED CAUSES OF ACTION FOR AGE DISCRIMINATION AND A HOSTILE WORK ENVIRONMENT.
[**Godino v Premier Salons, Ltd., 2016 NY Slip Op 05118, 2nd Dept 6-29-16**](#)

EMPLOYMENT LAW, LABOR LAW, PUBLIC HEALTH LAW.

PLAINTIFF PHARMACIST ADEQUATELY PLED RETALIATION THEORY UNDER LABOR LAW 741 (WHISTLEBLOWER STATUTE), CRITERIA EXPLAINED.
[**Von Maack v Wyckoff Hgts. Med. Ctr., 2016 NY Slip Op 04932, 2nd Dept 6-22-16**](#)

FAMILY LAW.

FAILURE TO COMPLY WITH ALL THE NOTICE REQUIREMENTS FOR JUDICIAL SURRENDER OF PARENTAL RIGHTS WAS NOT A GROUND FOR VACATION OF THE JUDICIAL SURRENDER.
[**Matter of Naquan L.G. \(Carolyn C.\), 2016 NY Slip Op 04218, 2nd Dept 6-1-16**](#)

FAMILY COURT SHOULD NOT HAVE DENIED FATHER VISITATION BASED UPON FATHER'S BEHAVIOR WHEN MOTHER TESTIFIED; FUTURE VISITATION SHOULD NOT HAVE BEEN CONDITIONED UPON DRUG SCREENINGS AND A MENTAL HEALTH EVALUATION.
[**Matter of Gonzalez v Ross, 2016 NY Slip Op 04413, 2nd Dept 6-8-16**](#)

JUDGE WAS BIASED AGAINST MOTHER WHO SOUGHT TO PREVENT THE IMMUNIZATION OF HER CHILDREN FOR RELIGIOUS REASONS.
[**Matter of Baby Girl Z. \(Yaroslava Z.\), 2016 NY Slip Op 04425, 2nd Dept 6-8-16**](#)

HUSBAND ENTITLED TO ONLY FIVE PERCENT OF WIFE'S ENHANCED EARNING CAPACITY FROM WIFE'S MASTER'S DEGREE OBTAINED DURING MARRIAGE.
[**Taylor v Taylor, 2016 NY Slip Op 04705, 2nd Dept 6-15-16**](#)

FAMILY LAW, ATTORNEYS.

MOTHER'S DUE PROCESS RIGHTS VIOLATED, MOTHER INSTRUCTED NOT TO CONSULT WITH ATTORNEY DURING RECESSES, WHICH WERE EXTENSIVE.
[**Matter of Turner v Valdespino, 2016 NY Slip Op 04724, 2nd Dept 6-15-16**](#)

FAMILY LAW, IMMIGRATION LAW.

FAMILY COURT SHOULD HAVE MADE NEGLECT FINDING ALLOWING JUVENILE TO PETITION FOR SPECIAL IMMIGRANT JUVENILE STATUS (SJIS).
[**Matter of Ena S.Y. \(Martha R.Y.--Antonio S.\), 2016 NY Slip Op 04229, 2nd Dept 6-1-16**](#)

FREEDOM OF INFORMATION LAW (FOIL).

TOWN DID NOT DEMONSTRATE PREPAYMENT BEFORE RETRIEVING PAPER DOCUMENTS WAS JUSTIFIED.

Matter of Ripp v Town of Oyster Bay, 2016 NY Slip Op 04226, 2nd Dept 6-1-16

INSURANCE LAW.

DUPLICATE COVERAGE PROHIBITION IN SUPPLEMENTAL UNINSURED UNDERINSURED MOTORIST (SUM) ENDORSEMENT NOT VIOLATED WHERE OVERALL DAMAGES EXCEED AMOUNT WHICH CAN BE RECOVERED FROM SEVERAL TORTFEASORS.

Matter of Government Empls. Ins. Co. v Sherlock, 2016 NY Slip Op 04414, 2nd Dept 6-8-16

POLICY EXCLUSION WAS AMBIGUOUS, INSURER HAD A DUTY TO DEFEND.

Boro Park Land Co., LLC v Princeton Excess Surplus Lines Ins. Co., 2016 NY Slip Op 04684, 2nd Dept 6-15-16

LABOR LAW-CONSTRUCTION LAW.

ABSENCE OF SAFETY RAIL ON SCAFFOLDING ENTITLED PLAINTIFF TO SUMMARY JUDGMENT ON LABOR LAW 240(1) CAUSE OF ACTION.

Viera v WFJ Realty Corp., 2016 NY Slip Op 04202, 2nd Dept 6-1-16

HOMEOWNER EXERCISED CONTROL OVER PLAINTIFF'S WORK, NOT ENTITLED TO HOMEOWNER'S EXCEPTION TO LIABILITY UNDER LABOR LAW 240 (1) AND 241 (6).

Ramirez v I.G.C. Wall Sys., Inc., 2016 NY Slip Op 04927, 2nd Dept 6-22-16

RENOVATION OF PROPERTY FOR COMMERCIAL PURPOSES DISQUALIFIES HOMEOWNER FROM HOMEOWNERS' EXEMPTION FROM LIABILITY UNDER LABOR LAW 240(1) AND 241(6); QUESTION OF FACT HERE ABOUT INTENTION OF HOMEOWNER AT TIME OF INJURY.

Batzin v Ferrone, 2016 NY Slip Op 05108, 2nd Dept 6-29-16

MENTAL HYGIENE LAW, EVIDENCE.

FRYE HEARING REQUIRED TO DETERMINE WHETHER "OTHER UNSPECIFIED PARAPHILIC" DISORDER IS A DIAGNOSIS WHICH IS GENERALLY ACCEPTED IN THE PSYCHIATRIC AND PSYCHOLOGICAL COMMUNITIES.

Matter of State of New York v Hilton C., 2016 NY Slip Op 05158, 2nd Dept 6-29-16

MUNICIPAL LAW.

NYC LOCAL LAW REQUIRING DISCLOSURE ABOUT THE SELECTION PROCESS FOR CONSTRUCTION OF AFFORDABLE HOUSING IS NOT PREEMPTED BY STATE LAW AND IS NOT UNCONSTITUTIONAL.

New York State Assn. for Affordable Hous. v Council of the City of N.Y., 2016 NY Slip Op 04320, 1st Dept 6-2-16

NEGLIGENCE.

QUESTIONS OF FACT RAISED ABOUT CAUSE OF FALL AND CONSTRUCTIVE NOTICE OF CONDITION.

[**Giordano v Giordano, 2016 NY Slip Op 04177, 2nd Dept 6-1-16**](#)

QUESTION OF FACT WHETHER STAIRS AND HANDRAIL CONSTITUTED A DANGEROUS CONDITION.

[**Rigatti v Geba, 2016 NY Slip Op 04193, 2nd Dept 6-1-16**](#)

NO DUTY OF CARE OWED TO PLAINTIFF WHO ACTED AS A VOLUNTEER WHEN HE CLIMBED A LADDER.

[**Barnes v Sam Burt Houses, Inc., 2016 NY Slip Op 04897, 2nd Dept 6-22-16**](#)

U-HAUL DID NOT DEMONSTRATE IT WAS FREE FROM NEGLIGENCE IN MAINTAINING ITS TRUCK IN THIS VEHICLE-ACCIDENT CASE, MOTION TO DISMISS PROPERLY DENIED.

[**Anglero v Hanif, 2016 NY Slip Op 04682, 2nd Dept 6-15-16**](#)

NEGLIGENCE, CONTRACT LAW.

CONTRACTOR WHICH REPAIRED EXTERIOR STAIRS DID NOT OWE A DUTY OF CARE TO PLAINTIFF IN THIS SLIP AND FALL CASE.

[**Barone v Nickerson, 2016 NY Slip Op 05107, 2nd Dept 6-29-16**](#)

NEGLIGENCE, EVIDENCE, CIVIL PROCEDURE.

PLAINTIFF SUBMITTED POLICE REPORT IN SUPPORT OF SUMMARY JUDGMENT MOTION, REPORT CREATED A QUESTION OF FACT, PLAINTIFF WAIVED ANY OBJECTION TO ITS ADMISSIBILITY BY SUBMITTING IT.

[**Orcel v Haber, 2016 NY Slip Op 04700, 2nd Dept 6-15-16**](#)

NEGLIGENCE, LANDLORD-TENANT.

OUT-OF-POSSESSION LANDLORD DID NOT DEMONSTRATE IT DID NOT CREATE THE DANGEROUS CONDITION, SUMMARY JUDGMENT PROPERLY DENIED.

[**Gowen v Gabrielle Realty Holdings, LLC, 2016 NY Slip Op 04695, 2nd Dept 6-15-16**](#)

OUT-OF-POSSESSION LANDLORD NOT LIABLE FOR FALL ON A WET FLOOR IN THE LEASED PREMISES.

[**Mendoza v Manila Bar & Rest. Corp., 2016 NY Slip Op 04698, 2nd Dept 6-15-16**](#)

NEGLIGENCE, MEDICAL MALPRACTICE.

QUESTION OF FACT RAISED UNDER DOCTRINE OF RES IPSA LOQUITUR, PLAINTIFF CONTRACTED HEPATITIS C AFTER COLONOSCOPY.

[**Gonzalez v Arya, 2016 NY Slip Op 04693, 2nd Dept 6-15-16**](#)

PHYSICIAN'S DUTY EXTENDS ONLY TO THE TASK ASSIGNED, HERE THE INTERPRETATION OF MRI FILM.

[**Meade v Yland, 2016 NY Slip Op 04697, 2nd Dept 6-15-16**](#)

QUESTION OF FACT WHETHER HOSPITAL VICARIOUSLY LIABLE FOR ACTIONS OF NON-EMPLOYEE ANESTHESIOLOGIST UNDER DOCTRINE OF APPARENT AUTHORITY.

[**Keesler v Small, 2016 NY Slip Op 04912, 2nd Dept 6-22-16**](#)

NEGLIGENCE, MUNICIPAL LAW.

TOWN DID NOT ADDRESS ALL THEORIES OF LIABILITY RAISED BY THE PLEADINGS IN THIS SLIP AND FALL CASE, MOTION FOR SUMMARY JUDGMENT PROPERLY DENIED ON THAT GROUND.

[**Breest v Long Is. R.R., 2016 NY Slip Op 04376, 2nd Dept 6-8-16**](#)

NOTICE OF CLAIM SUFFICIENT TO ALERT DEFENDANT TO WRONGFUL DEATH THEORY, CRITERIA FOR AN ADEQUATE NOTICE OF CLAIM EXPLAINED.

[Se Dae Yang v New York City Health & Hosps. Corp., 2016 NY Slip Op 04929, 2nd Dept 6-22-16](#)

VILLAGE CODE DID NOT SPECIFICALLY MAKE ABUTTING PROPERTY OWNERS LIABLE IN TORT FOR FAILING TO MAINTAIN A SIDEWALK; SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED TO PLAINTIFF.

[Obee v Ricotta, 2016 NY Slip Op 05129, 2nd Dept 6-29-16](#)

PARTNERSHIP LAW.

COMPLAINT STATED A CAUSE OF ACTION FOR AIDING AND ABETTING BREACH OF A FIDUCIARY DUTY.

[Smallberg v Raich Ende Malter & Co., LLP, 2016 NY Slip Op 04704, 2nd Dept 6-15-16](#)

REAL PROPERTY.

QUESTION OF FACT WHETHER WATER RUNOFF CONSTITUTED TRESPASS AND NUISANCE.\The [Biaglow v Elite Prop. Holdings, LLC, 2016 NY Slip Op 04373, 2nd Dept 6-8-16](#)

TRUSTS AND ESTATES, TAX LAW.

LIFE ESTATES IN A CONDOMINIUM AND COOPERATIVE APARTMENT DID NOT DIMINISH VALUE OF THE PROPERTIES FOR ESTATE TAX PURPOSES.

[Matter of Cleary, 2016 NY Slip Op 04410, 2nd Dept 6-8-16](#)

WORKERS' COMPENSATION LAW.

QUESTION OF FACT WHETHER PLAINTIFF WAS A SPECIAL EMPLOYEE OF DEFENDANT, THEREBY PRECLUDING A NEGLIGENCE ACTION.

[Bostick v Penske Truck Leasing Co., L.P., 2016 NY Slip Op 04899, 2nd Dept 6-22-16](#)

THIRD DEPARTMENT

CIVIL PROCEDURE, EXECUTIVE LAW.

POLICY MEMORANDUM FROM NEW YORK STATE HEALTH INSURANCE PROGRAM AMOUNTED TO A RULE OR REGULATION WHICH MUST BE FILED WITH THE DEPARTMENT OF STATE; BECAUSE IT WAS NEVER THE FILED FOUR-MONTH STATUTE OF LIMITATIONS TO

[Matter of Plainview-Old Bethpage Congress of Teachers v New York State Health Ins. Plan, 2016 NY Slip Op 04473, 3rd Dept 6-9-16](#)

CORPORATION LAW, LIMITED LIABILITY COMPANY LAW.

CRITERIA FOR DERIVATIVE VERSUS DIRECT CLAIM AGAINST A LIMITED LIABILITY COMPANY EXPLAINED.

[Maldonado v DiBre, 2016 NY Slip Op 04999, 3rd Dept 6-23-16](#)

CRIMINAL LAW.

FOR CAUSE CHALLENGE TO JUROR SHOULD HAVE BEEN GRANTED.

[People v Cuevas, 2016 NY Slip Op 04468, 3rd Dept 6-9-16](#)

CRIMINAL LAW, ATTORNEYS.

PROSECUTOR'S SUMMATION SHIFTED THE BURDEN OF PROOF, CONVICTION REVERSED IN THE INTEREST OF JUSTICE.

[People v Rupnarine, 2016 NY Slip Op 04257, 3rd Dept 6-2-16](#)

MOTION TO VACATE CONVICTION ON INEFFECTIVE ASSISTANCE GROUNDS SHOULD NOT HAVE BEEN DENIED WITHOUT A HEARING.

[People v Sposito, 2016 NY Slip Op 04467, 3rd Dept 6-9-16](#)

PERMITTING NONRESPONSIVE ANSWERS FROM WITNESSES AND NOT ADDRESSING THE PEOPLE'S FAILURE TO PRESENT THE CONFIDENTIAL INFORMANT AS A WITNESS CONSTITUTED INEFFECTIVE ASSISTANCE.

[People v Smith, 2016 NY Slip Op 04745, 3rd Dept 6-16-16](#)

CRIMINAL LAW, ATTORNEYS, EVIDENCE.

PRECLUSION OF DEFENDANT'S MEDICAL RECORDS AND IMPROPER CROSS-EXAMINATION AND SUMMATION REQUIRED REVERSAL.

[People v O'Brien, 2016 NY Slip Op 04471. 3rd Dept 6-9-16](#)

CRIMINAL LAW, EVIDENCE.

CONSPIRACY TO SELL A CONTROLLED SUBSTANCE NOT PROVEN; PROOF REQUIREMENTS FOR SALE OF A CONTROLLED SUBSTANCE BASED PRIMARILY ON INTERCEPTED PHONE CONVERSATIONS AND TEXT MESSAGES EXPLAINED.

[People v Cochran, 2016 NY Slip Op 04255, 3rd Dept 6-2-16](#)

EMPLOYMENT LAW.

DISLOYAL OR FAITHLESS PERFORMANCE OF EMPLOYMENT DUTIES (FAITHLESS SERVANT DOCTRINE) ENTITLED EMPLOYER TO THE RETURN OF COMPENSATION PAID TO THE EMPLOYEE DURING THE PERIOD OF THE THEFT.

[City of Binghamton v Whalen, 2016 NY Slip Op 04289, 3rd Dept 6-2-16](#)

EMPLOYMENT LAW, LABOR LAW.

COMMISSIONER OF LABOR PROPERLY ISSUED A WAGE ORDER INCREASING THE MINIMUM WAGE FOR CERTAIN FAST FOOD WORKERS TO \$15 AN HOUR.

[Matter of National Rest. Assn. v Commissioner of Labor, 2016 NY Slip Op 04498, 3rd Dept 6-9-16](#)

FAMILY LAW.

DISMISSAL WITHOUT A HEARING OF PETITION TO MODIFY CUSTODY ARRANGEMENT WAS ERROR.

[Matter of Engelhart v Bowman, 2016 NY Slip Op 04294, 3rd Dept 6-2-16](#)

UNCLE SHOULD HAVE BEEN ALLOWED TO INTERVENE IN NEGLECT PROCEEDINGS.

[Matter of Demetria FF. \(Tracy GG.\), 2016 NY Slip Op 04499, 3rd Dept 6-9-16](#)

MUNICIPAL LAW, IMMUNITY.

COUNTY IMMUNE FROM SUIT BASED UPON DESIGN OF STORM DRAINAGE SYSTEM, PLAINTIFFS DID NOT RAISE A QUESTION OF FACT ALLEGING NEGLIGENT MAINTENANCE OF THE SYSTEM.

[Watt v County of Albany, 2016 NY Slip Op 04281, 3rd Dept 6-2-16](#)

MUNICIPAL LAW, REAL PROPERTY, CONTRACT LAW.

CITY'S ALLEGED VIOLATION OF AN EASEMENT SOUNDS IN CONTRACT, NOT TORT, NOTICE OF CLAIM NOT REQUIRED.

[Strauss v City of Glens Falls, 2016 NY Slip Op 04750, 3rd Dept 6-16-16](#)

MUNICIPAL LAW, TAX LAW.

PETITIONER'S EMPIRE ZONE CERTIFICATION SHOULD NOT HAVE BEEN REVOKED. The Third [Matter of PG Erie Props., LLC v Department of Economic Dev., 2016 NY Slip Op 04284, 3rd Dept 6-2-16](#)

PETITIONER'S EMPIRE ZONE CERTIFICATION PROPERLY REVOKED.

[Matter of Dermody, Burke & Brown, CPAs, LLC v Department of Economic Dev., 2016 NY Slip Op 04286, 3rd Dept 6-2-16](#)

NEGLIGENCE, COURT OF CLAIMS.

IN LIGHT OF DEFENDANT'S INVESTIGATION INTO THE FIRE WHICH CAUSED CLAIMANT'S DECEDENT'S DEATH, THE NOTICE OF CLAIM WAS SUFFICIENT.

[**Davila v State of New York, 2016 NY Slip Op 04752, 3rd Dept 6-16-16**](#)

NEGLIGENCE, MUNICIPAL LAW, CIVIL PROCEDURE.

QUESTION OF FACT WHETHER TOWN CREATED THE DANGEROUS CONDITION IN THIS TRIP AND FALL CASE, PRE-DISCOVERY SUMMARY JUDGMENT IN FAVOR OF DEFENDANT TOWN PREMATURE.

[**Greener v Town of Hurley, 2016 NY Slip Op 04291, 3rd Dept 6-2-16**](#)

SOCIAL SERVICES LAW.

JUSTICE CENTER DID NOT HAVE THE STATUTORY AUTHORITY TO MAKE A NEGLECT FINDING AGAINST A FACILITY FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES.

[**Matter of Anonymous v Molik, 2016 NY Slip Op 04288, 3rd Dept 6-2-16**](#)

UNEMPLOYMENT INSURANCE.

LONG HAUL TRUCKERS NOT EMPLOYEES.

[**Matter of Bogart \(Lavalle Transp., Inc.--Commissioner of Labor\), 2016 NY Slip Op 04264, 3rd Dept 6-2-16**](#)

INTERPRETER WAS AN EMPLOYEE.

[**Matter of Bin Yuan \(Legal Interpreting Servs., Inc.--Commissioner of Labor\), 2016 NY Slip Op 05200, 3rd Dept 6-30-16**](#)

WORKERS' COMPENSATION LAW, EVIDENCE.

LINK BETWEEN HEART ATTACK AND WORK NOT ESTABLISHED BY SUBSTANTIAL EVIDENCE.

[**Matter of Hartigan v Albany County Sheriff's Dept., 2016 NY Slip Op 04280, 3rd Dept 6-2-16**](#)

FOURTH DEPARTMENT

CRIMINAL LAW.

PEOPLE'S FAILURE TO OBTAIN AN ACCUSATORY INSTRUMENT AFTER THE COURT REDUCED THE FELONY TO A MISDEMEANOR REQUIRED VACATION OF THE PLEA AND DISMISSAL OF THE INDICTMENT.

[People v Haigler, 2016 NY Slip Op 04584, 4th Dept 6-10-16](#)

ONLY ONE FINE SHOULD HAVE BEEN IMPOSED WHERE TWO CONVICTIONS AROSE FROM THE SAME ACT.

[People v Regatuso, 2016 NY Slip Op 04836, 4th Dept 6-17-16](#)

CRIMINAL LAW, APPEALS.

PROSECUTOR'S INCORRECT STATEMENT ABOUT THE LENGTH OF POST-RELEASE SUPERVISION WAS NOT PRESERVED FOR APPEAL BY OBJECTION.

[People v Chant, 2016 NY Slip Op 04544, 4th Dept 6-10-16](#)

CRIMINAL LAW, EVIDENCE.

DEFENDANT ENTITLED TO A WADE HEARING TO DETERMINE THE RELIABILITY, AS OPPOSED TO SUGGESTIVENESS, OF AN IDENTIFICATION.

[People v Reeves, 2016 NY Slip Op 04502, 4th Dept 6-10-16](#)

ALTHOUGH EVIDENCE OF PRIOR THREATS AGAINST THE VICTIM MAY BE ADMISSIBLE UNDER MOLINEUX, SUCH EVIDENCE MUST BE IN ADMISSIBLE FORM, HERE THE HEARSAY EVIDENCE OF PRIOR THREATS SHOULD NOT HAVE BEEN ADMITTED FOR THE TRUTH OF THE MATTERS ASSERTED.

[People v Meadow, 2016 NY Slip Op 04505, 4th Dept 6-10-16](#)

RODRIGUEZ HEARING NECESSARY TO DETERMINE WHETHER SINGLE PHOTO IDENTIFICATION WAS CONFIRMATORY.

[People v Hoffman, 2016 NY Slip Op 04508, 4th Dept 6-10-16](#)

FAILURE TO PRESERVE SURVEILLANCE VIDEOS TRIGGERED NEED FOR ADVERSE INFERENCE JURY INSTRUCTION.

[People v Butler, 2016 NY Slip Op 04512, 4th Dept 6-10-16](#)

GUNPOINT DETENTION NOT JUSTIFIED, SEIZED EVIDENCE SHOULD HAVE BEEN SUPPRESSED.

[People v Elliott, 2016 NY Slip Op 04838, 4th Dept 6-17-16](#)

NO JUSTIFICATION FOR A STRIP SEARCH, EVIDENCE SHOULD HAVE BEEN SUPPRESSED.

[People v Tisdale, 2016 NY Slip Op 04842, 4th Dept 6-17-16](#)

ENVIRONMENTAL LAW.

TOWN DID NOT TAKE THE REQUISITE HARD LOOK AT THE ENVIRONMENTAL IMPACT OF THE CONSTRUCTION OF A WALMART STORE, NEGATIVE DECLARATION ANNULLED.

[Matter of Wellsville Citizens for Responsible Dev., Inc. v Wal-Mart Stores, Inc., 2016 NY Slip Op 04847, 4th Dept 6-17-16](#)

LABOR LAW-CONSTRUCTION LAW.

INVESTIGATING A MALFUNCTION CONSTITUTES COVERED REPAIR UNDER LABOR LAW 240(1).
[Cullen v AT&T, Inc., 2016 NY Slip Op 04503, 4th Dept 6-10-16](#)

NEGLIGENCE, CIVIL PROCEDURE, EVIDENCE.

STRIKING ANSWER TOO SEVERE A SANCTION FOR FAILING TO PRESERVE SURVEILLANCE TAPES IN THIS SLIP AND FALL CASE.
[Sarach v M&T Bank Corp., 2016 NY Slip Op 04820, 4th Dept 6-17-16](#)

NEGLIGENCE, MEDICAL MALPRACTICE.

QUESTION OF FACT WHETHER CONTINUOUS TREATMENT DOCTRINE TOLLED THE STATUTE OF LIMITATIONS, CRITERIA EXPLAINED.
[Lohnas v Luzi, 2016 NY Slip Op 04819, 4th Dept 6-17-16](#)

TAX LAW, INDIAN LAW.

TAX ON CIGARETTE SALES TO NON-INDIANS UPHELD.
[White v Schneiderman, 2016 NY Slip Op 04533, 4th Dept 6-18-16](#)

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MENTAL HYGIENE LAW, EVIDENCE.

PROOF OF MENTAL ABNORMALITIES SUFFICIENT TO JUSTIFY CIVIL COMMITMENT OF SEX OFFENDERS CLARIFIED.

[Matter of State of New York v Dennis K., 2016 NY Slip Op 05330, CtApp 7-5-16](#)

FIRST DEPARTMENT

BANKING LAW, UNIFORM COMMERCIAL CODE.

INTERMEDIARY BANK OWES NO DUTY TO BENEFICIARY OF AN ELECTRONIC FUNDS TRANSFER WHICH WAS BLOCKED BY A GOVERNMENT ORDER.

[**Receivers of Sabena SA v Deutsche Bank A.G., 2016 NY Slip Op 05546, 1st Dept 7-14-16**](#)

CIVIL PROCEDURE.

ISSUE WHICH WAS NOT RAISED IN THE PRIOR FEDERAL ACTION BUT WHICH CONSTITUTED A COMPLUSORY COUNTERCLAIM UNDER FEDERAL LAW BARRED IN SUBSEQUENT STATE ACTION UNDER DOCTRINE OF RES JUDICATA.

[**Paramount Pictures Corp. v Allianz Risk Transfer AG, 2016 NY Slip Op 05618, 1st Dept 7-21-16**](#)

CIVIL RIGHTS LAW, PRIVILEGE, CONSTITUTIONAL LAW, CRIMINAL LAW.

PORTIONS OF A REPORTER'S VIDEOTAPED INTERVIEW WITH DEFENDANT NOT PROTECTED BY SHIELD LAW BECAUSE OF RELEVANCE TO A MURDER PROSECUTION.

[**People v Bonie, 2016 NY Slip Op 05331, 1st Dept 7-5-16**](#)

CRIMINAL LAW, APPEALS.

REQUIREMENT THAT NON-CITIZEN DEFENDANT BE INFORMED OF POSSIBILITY OF DEPORTATION APPLIES RETROACTIVELY TO DEFENDANT WHO ABSCONDED BEFORE APPEAL PERFECTED.

[**People v Tejada, 2016 NY Slip Op 05541, 1st Dept 7-14-16**](#)

CRIMINAL LAW, EVIDENCE.

5 1/2 YEAR DELAY BEFORE INDICTMENT ADEQUATELY EXPLAINED; HEARSAY EVIDENCE OF THIRD-PARTY CULPABILITY PROPERLY EXCLUDED AS UNRELIABLE.

[**People v Fleming, 2016 NY Slip Op 05334, 1st Dept 7-5-16**](#)

ACTUAL INNOCENCE IS A GROUND FOR VACATION OF A CONVICTION PURSUANT TO CPL 440.10; PROOF HERE INSUFFICIENT TO WARRANT A HEARING; HEARING REQUIRED ON WHETHER PROSECUTOR WITHHELD BRADY MATERIAL.

[**People v Jimenez, 2016 NY Slip Op 05620, 1st Dept 7-21-16**](#)

EMINENT DOMAIN, MUNICIPAL LAW.

THREE-YEAR TIME LIMIT FOR STARTING EMINENT DOMAIN PROCEEDINGS AFTER A COURT CHALLENGE STARTS TO RUN WHEN THE COURT OF APPEALS DISMISSES THE APPEAL FROM THE APPELLATE DIVISION DECISION.

[**Matter of City of New York v 2305-07 Third Ave., LLC, 2016 NY Slip Op 05352, 1st Dept 7-5-16**](#)

LABOR LAW-CONSTRUCTION LAW.

QUESTION OF FACT WHETHER ACCIDENT WAS GRAVITY-RELATED, MOTORIZED WHEELBARROW SLID DOWN HILL.

[**Ankers v Horizon Group, LLC, 2016 NY Slip Op 05342, 1st Dept 7-5-16**](#)

MUNICIPAL LAW, EMPLOYMENT LAW.

NO NOTICE OF CLAIM REQUIRED FOR RETALIATORY TERMINATION CLAIM PURSUANT TO CIVIL SERVICES LAW 75-b.

[**Castro v City of New York, 2016 NY Slip Op 05615, 1st Dept 7-21-16**](#)

MUNICIPAL LAW, LANDLORD-TENANT.

HOUSING AUTHORITY VIOLATED ITS OWN RULES AND EFFECTIVELY PREVENTED PETITIONER FROM MEETING THE PREREQUISITES FOR A HEARING ON HER REMAINING FAMILY MEMBER GRIEVANCE.

[**Matter of Figueroa v New York City Hous. Auth., 2016 NY Slip Op 05619, 1st Dept 7-21-16**](#)

MUNICIPAL LAW, NEGLIGENCE.

PETITIONER SHOULD HAVE BEEN ALLOWED TO FILE A LATE NOTICE OF CLAIM IN RESPONSE TO THE CITY'S RAISING AN AFFIRMATIVE DEFENSE IN A RELATED FEDERAL ACTION.

[**Matter of Corwin v City of New York, 2016 NY Slip Op 05663, 1st Dept 7-28-16**](#)

NEGLIGENCE.

QUESTION OF FACT WHETHER SKIER ACTED RECKLESSLY, THEREBY RENDERING THE ASSUMPTION OF RISK DOCTRINE INAPPLICABLE.

[**Horowitz v Chen, 2016 NY Slip Op 05335, 1st Dept 7-5-16**](#)

BAR AT ENTRANCE TO A SHOPPING-CART CORRAL WAS A TRIVIAL DEFECT.

[**Myles v Spring Val. Marketplace, LLC, 2016 NY Slip Op 05351, 1st Dept 7-5-16**](#)

QUESTION OF FACT WHETHER PARKED TRUCK WAS A PROXIMATE CAUSE OF A BICYCLIST'S INJURIES.

[**Santana v MTA Bus Co., 2016 NY Slip Op 05450, 1st Dept 7-7-16**](#)

IN A REAR-END COLLISION, INNOCENT PLAINTIFF ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFF'S LACK OF FAULT, BUT CONFLICTING FACTS PRECLUDED SUMMARY JUDGMENT AGAINST ONE OR BOTH DEFENDANTS.

[**Oluwatayo v Dulinayan, 2016 NY Slip Op 05455, 1st Dept 7-7-16**](#)

SECOND DEPARTMENT

APPEALS, CONTRACT LAW.

REVIEW CRITERIA FOR A SMALL CLAIMS RULING EXPLAINED; SMALL CLAIMS FINDING THAT A CONTRACT WAS UNENFORCEABLE AS UNCONSCIONABLE UPHELD.

[Tranquility Salon & Day Spa, Inc. v Caira, 2016 NY Slip Op 05637, 2nd Dept 7-27-16](#)

CIVIL PROCEDURE.

PROPER VENUE FOR CONSOLIDATED ACTIONS STARTED IN DIFFERENT COUNTIES IS THE COUNTY WHERE THE FIRST ACTION WAS STARTED.

[Oboku v New York City Tr. Auth., 2016 NY Slip Op 05635, 2nd Dept 7-27-16](#)

CIVIL PROCEDURE, NEGLIGENCE.

WHERE LIABILITY IS CONCEDED BY STIPULATION, PREJUDGMENT INTEREST RUNS FROM THE SUBSEQUENT DAMAGES VERDICT.

[Mahoney v Brockbank, 2016 NY Slip Op 05630, 2nd Dept 7-27-16](#)

CONTRACT LAW.

BOTH BREACH OF CONTRACT AND QUANTUM MERUIT WERE PLED, QUANTUM MERUIT CAUSE OF ACTION SHOULD HAVE GONE TO THE JURY.

[Thompson v Horowitz, 2016 NY Slip Op 05561, 2nd Dept 7-20-16](#)

CRIMINAL LAW.

RELIANCE ON A JURISDICTIONAL THEORY AT TRIAL WHICH DIFFERED FROM THE JURISDICTION CRITERIA ALLEGED IN THE INDICTMENT DEPRIVED DEFENDANT OF FAIR NOTICE OF THE CHARGES AGAINST HIM, NEW TRIAL ORDERED.

[People v Wilson, 2016 NY Slip Op 05660, 2nd Dept 7-27-16](#)

CRIMINAL LAW, ATTORNEYS.

PROSECUTORIAL MISCONDUCT WARRANTED REVERSAL IN THE INTEREST OF JUSTICE.

[People v Redd, 2016 NY Slip Op 05392, 2nd Dept 7-6-16](#)

DEFENDANT NOT INFORMED OF DEPORTATION CONSEQUENCES OF HIS PLEA, MOTION TO VACATE CONVICTION FOR INEFFECTIVE ASSISTANCE SHOULD HAVE BEEN GRANTED.

CRIMINAL LAW, EVIDENCE.

PEOPLE REBUTTED PRESUMPTION UNPRESERVED PHOTO ARRAY WAS UNDULY SUGGESTIVE.

[People v Busano, 2016 NY Slip Op 05385, 2nd Dept 7-6-16](#)

SHOWUP IDENTIFICATION WAS NOT UNDULY SUGGESTIVE AND SHOULD NOT HAVE BEEN SUPPRESSED.

[People v Huerta, 2016 NY Slip Op 05508, 2nd Dept 7-13-16](#)

POLICE OFFICER'S TESTIMONY INCREDIBLE AND UNSUPPORTED BY ANY EVIDENCE, CONVICTION REVERSED AS AGAINST THE WEIGHT OF THE EVIDENCE.

[People v Oneill, 2016 NY Slip Op 05510, 2nd Dept 7-13-16](#)

SEPARATE COUNTS FOR A CONTINUING OFFENSE RENDERED INDICTMENT MULTIPLICITOUS.

[People v Young, 2016 NY Slip Op 05395, 2nd Dept 7-6-16](#)

DEBTOR-CREDITOR, CIVIL PROCEDURE, LIMITED LIABILITY COMPANY LAW.

MEMBERSHIP IN LIMITED LIABILITY COMPANY CAN BE REACHED BY A JUDGMENT CREDITOR; CHARGING ORDER, RATHER THAN ASSIGNMENT OF THE MEMBERSHIP INTEREST TO THE CREDITOR, IS AN APPROPRIATE REMEDY.

[Matter of Sirotkin v Jordan, LLC, 2016 NY Slip Op 05576, 2nd Dept 7-20-16](#)

EDUCATION-SCHOOL LAW.

STATUTE ALLOWING PROPERTY OWNERS TO CHOOSE SCHOOL DISTRICTS DOES NOT APPLY TO CONDOMINIUMS WHICH LIE ON THE BORDER BETWEEN TWO DISTRICTS.

[Palm v Tuckahoe Union Free School Dist., 2016 NY Slip Op 05558. 2nd Dept 7-20-16](#)

EMINENT DOMAIN, MUNICIPAL LAW.

CLAIM FOR A DE FACTO TAKING ACCRUES WHEN THE TAKING IS FIRST APPARENT, NOT WHEN IT IS FIRST DISCOVERED BY THE CLAIMANT.

[Matter of South Richmond Bluebelt, Phase 3. 594 Assoc., Inc. \(City of New York\), 2016 NY Slip Op 05577, 2nd Dept 9-20-16](#)

FAMILY LAW.

NON-RELATIVE ALLEGED EXTRAORDINARY CIRCUMSTANCES REQUIRING A HEARING ON HER CUSTODY PETITION.

[Matter of Cade v Roberts, 2016 NY Slip Op 05495, 2nd Dept 7-13-16](#)

HEARING SHOULD HAVE BEEN HELD TO DETERMINE WHETHER INTIMATE RELATIONSHIP PROVIDED FAMILY COURT WITH JURISDICTION OVER PETITION SEEKING ORDER OF PROTECTION.

Matter of Singh v DiFrancisco, 2016 NY Slip Op 05504, 2nd Dept 7-13-16

FAMILY COURT DID NOT HAVE THE POWER TO ORDER THE FINGERPRINTING OF PETITIONER IN A GUARDIANSHIP PROCEEDING.

Matter of Silvia N. P. L. v Jorge M. N. P., 2016 NY Slip Op 05567, 2nd Dept 7-20-16

FAMILY LAW, APPEALS.

CRITERIA FOR REVIEW OF A CUSTODY DETERMINATION CONCISELY EXPLAINED.

Matter of Schultheis v Schultheis, 2016 NY Slip Op 05648, 2nd Dept 7-27-16

FAMILY LAW, EVIDENCE.

SUPPORT MAGISTRATE SHOULD NOT HAVE CONSIDERED MOTHER'S POST-HEARING SUBMISSION OF AFFIDAVITS AND EXHIBITS, FATHER DEPRIVED OF ABILITY TO CROSS-EXAMINE AND OBJECT TO EXHIBITS.

Matter of Hezi v Hezi, 2016 NY Slip Op 05498, 2nd Dept 7-13-16

FAMILY LAW, EVIDENCE, CRIMINAL LAW. APPEALS.

WEIGHT OF THE EVIDENCE REVIEW RESULTED IN REVERSAL IN THIS JUVENILE DELINQUENCY PROCEEDING, TESTIMONY OF POLICE OFFICERS REJECTED.

Matter of Trevor S., 2016 NY Slip Op 05574, 2nd Dept 7-20-16

FAMILY LAW, IMMIGRATION LAW.

FAMILY COURT SHOULD HAVE GRANTED A PETITION SEEKING AN ORDER FOR FINDINGS REQUIRED FOR SPECIAL IMMIGRANT RESIDENT STATUS.

Matter of Carlos A.M. v Maria T.M., 2016 NY Slip Op 05374, 2nd Dept 7-6-16

WHEN CHILD TURNED 21 WHILE GUARDIANSHIP AND SPECIAL IMMIGRANT JUVENILE STATUS PROCEEDINGS WERE PENDING, FAMILY COURT LOST JURISDICTION.

Matter of Maria C.R. v Rafael G., 2016 NY Slip Op 05503, 7-13-16

FREEDOM OF INFORMATION LAW (FOIL), MUNICIPAL LAW.

DISCLOSURE OF TOWN EMAIL LIST PROPERLY ORDERED.

Matter of Livson v Town of Greenburgh, 2016 NY Slip Op 05570, 2nd Dept 7-20-16

INSURANCE LAW, CONTRACT LAW.

INSURER FAILED TO GIVE ADEQUATE NOTICE OF A CHANGE IN THE COVERAGE OF THE UNDERLYING AUTO LIABILITY POLICY REQUIRED BY ITS UMBRELLA POLICY, UMBRELLA POLICY REFORMED TO RESTORE THE RESULTING GAP IN COVERAGE.

Gotkin v Allstate Ins. Co., 2016 NY Slip Op 05359, 2nd Dept 7-6-16

LABOR LAW-CONSTRUCTION LAW.

SAFETY CONSULTANT DID NOT EXERCISE SUFFICIENT CONTROL OVER WORKSITE TO BE LIABLE UNDER LABOR LAW 240(1), 241(6) OR 200--CRITERIA EXPLAINED.

[Marquez v L & M Dev. Partners, Inc., 2016 NY Slip Op 05631, 2nd Dept 7-27-16](#)

LABOR LAW-CONSTRUCTION LAW, CONDOMINIUMS, REAL PROPERTY LAW.

CONDOMINIUM BOARD OF MANAGERS, NOT INDIVIDUAL CONDOMINIUM OWNERS, IS LIABLE FOR INJURY IN A COMMON AREA.

[Jerdonek v 41 W. 72 LLC, 2016 NY Slip Op 05666, 1st Dept 7-28-16](#)

NEGLIGENCE, CONTRACT LAW.

SNOW REMOVAL CONTRACTOR NOT LIABLE FOR SLIP AND FALL ON ICE, NO EVIDENCE CONTRACTOR CREATED OR EXACERBATED ICY CONDITION; FAILURE TO APPLY SALT NOT ENOUGH.

[Santos v Deanco Servs., Inc., 2016 NY Slip Op 05489, 2nd Dept 7-13-16](#)

NEGLIGENCE, EDUCATION-SCHOOL LAW.

SCHOOL NOT LIABLE FOR OFF-CAMPUS ASSAULT.

[Diaz v Brentwood Union Free Sch. Dist., 2016 NY Slip Op 05485, 2nd Dept 7-13-16](#)

SCHOOL NOT LIABLE FOR INJURY TO STUDENT DURING RECESS.

[Perez v Comsewogue School Dist., 2016 NY Slip Op 05488, 2nd Dept 7-13-16](#)

NEGLIGENCE, GOVERNMENTAL IMMUNITY, PUBLIC UTILITIES.

PROVIDING ELECTRICITY IS A PROPRIETARY FUNCTION; LAWSUIT ALLEGING NEGLIGENT FAILURE TO CUT OFF POWER DURING HURRICANE SANDY ALLOWED TO PROCEED.

[Heeran v Long Is. Power Auth. \(LIPA\), 2016 NY Slip Op 05486, 2nd Dept 7-13-16](#)

NEGLIGENCE, GOVERNMENTAL IMMUNITY, MUNICIPAL LAW.

NO SPECIAL RELATIONSHIP WITH PLAINTIFF'S DECEDENT, CITY IMMUNE FROM SUIT.

[Holloway v City of New York, 2016 NY Slip Op 05627, 2nd Dept 7-27-16](#)

NEGLIGENCE, MEDICAL MALPRACTICE.

ERROR IN JUDGMENT JURY CHARGE SHOULD NOT HAVE BEEN GIVEN, NEW TRIAL REQUIRED.

[Lacqua v Silich, 2016 NY Slip Op 05628, 2nd Dept 7-27-16](#)

PISTOL PERMITS.

FAILURE TO DISCLOSE DETAILS OF ARRESTS JUSTIFIED DENIAL OF PISTOL PERMIT.

[Matter of Praino v Forman, 2016 NY Slip Op 05572, 2nd Dept 7-20-16](#)

THIRD DEPARTMENT

CONTRACT LAW.

ALLEGED ORAL MODIFICATION OF A CONTRACT WHICH REQUIRED WRITTEN NOTICE UNENFORCEABLE.
[J. Triple S., Inc. v Aero Star Petroleum, Inc., 2016 NY Slip Op 05414, 3rd Dept 7-7-16](#)

CRIMINAL LAW.

GENERAL CONSTRUCTION LAW EXTENDS THE SIX-MONTH SPEEDY TRIAL DEADLINE IF THE LAST DAY FALLS ON A SATURDAY, SUNDAY OR A HOLIDAY.
[People v Mandela, 2016 NY Slip Op 05401, 3rd Dept 7-7-16](#)

DEFICIENT INQUIRY INTO WAIVER OF INSANITY DEFENSE.
[People v Green, 2016 NY Slip Op 05515, 3rd Dept 7-14-16](#)

OKLAHOMA FIREARM STATUTE DOES NOT HAVE AN OPERABILITY ELEMENT AND CANNOT THEREFORE SERVE AS A PREDICATE FELONY IN NEW YORK.
[People v Gibson, 2016 NY Slip Op 05668, 3rd Dept 7-28-16](#)

PROTECTIVE SWEEP WHICH UNCOVERED METH LAB NOT JUSTIFIED; MIRANDIZED STATEMENTS NOT SUFFICIENTLY ATTENUATED FROM IMPROPER QUESTIONING; SUPPRESSION SHOULD HAVE BEEN GRANTED.
[People v Harris, 2016 NY Slip Op 05670, 3rd Dept 7-28-16](#)

CRIMINAL LAW, ATTORNEYS.

DEFENSE COUNSEL'S FAILURE TO OBJECT TO THE PROSECUTOR'S MISCHARACTERIZATION OF DNA EVIDENCE, STANDING ALONE. WARRANTED REVERSAL FOR INEFFECTIVE ASSISTANCE.
[People v Ramsaran, 2016 NY Slip Op 05520, 3rd Dept 7-14-16](#)

CRIMINAL LAW, APPEALS.

FAILURE TO CONTEST PROSECUTOR'S RACE-NEUTRAL REASONS FOR STRIKING JURORS RENDERED THE ISSUE UNPRESERVED FOR APPEAL.
[People v Acevedo, 2016 NY Slip Op 05517, 3rd Dept 7-14-16](#)

CRIMINAL LAW, EVIDENCE.

EVIDENCE COLLECTED AFTER REQUEST FOR COUNSEL SHOULD HAVE BEEN SUPPRESSED, NEW TRIAL ORDERED.
[People v Green, 2016 NY Slip Op 05399, 3rd Dept 7-7-16](#)

NO JUSTIFICATION FOR FORCIBLE DETENTION, CONVICTION FOR ASSAULT OF ARRESTING OFFICER REVERSED.
[People v Tucker, 2016 NY Slip Op 05400, 3rd Dept 7-7-16](#)

EVIDENCE OF PRIOR SIMILAR CRIME SHOULD NOT HAVE BEEN ADMITTED, CONVICTION REVERSED.
[People v Ward, 2016 NY Slip Op 05518, 3rd Dept 7-14-16](#)

SEARCH OF CLOSED CONTAINER AFTER DEFENDANT HAD BEEN ARRESTED AND HANDCUFFED NOT JUSTIFIED BY EXIGENT CIRCUMSTANCES, CONVICTION REVERSED.

People v Ortiz, 2016 NY Slip Op 05521, 3rd Dept 7-14-16

TESTIMONY OF DNA EXPERT, WHICH WAS BASED ON DATA COLLECTED BY NON-TESTIFYING WITNESSES, DID NOT VIOLATE DEFENDANT'S RIGHT OF CONFRONTATION; ILLEGAL STOP DID NOT REQUIRE SUPPRESSION OF STATEMENT, SUFFICIENT ATTENUATION.

People v Stahl, 2016 NY Slip Op 05597, 3rd Dept 7-21-16

DISCIPLINARY HEARINGS (INMATES).

AUTHORIZATION TO OPEN PETITIONER'S MAIL WAS INVALID.

Matter of Ramos v Annucci, 2016 NY Slip Op 05601, 3rd Dept 7-21-16

REFUSAL TO TESTIFY IN PETITIONER'S HEARING, NEW HEARING ORDERED.

Matter of Peterson v Annucci, 2016 NY Slip Op 05681, 3rd Dept 7-28-16

FAMILY LAW.

FATHER'S MOTION TO DISMISS MOTHER'S PETITION FOR CUSTODY MODIFICATION SHOULD NOT HAVE BEEN GRANTED, FURTHER INQUIRY REQUIRED.

Matter of Mary BB. v George CC., 2016 NY Slip Op 05406, 3rd Dept 7-7-16

SEVERE ABUSE PETITION AGAINST MOTHER SHOULD NOT HAVE BEEN DISMISSED.

Matter of Mason F. (Katlin G.--Louis F.), 2016 NY Slip Op 05408, 3rd Dept 7-7-16

MOTHER'S PRO SE PETITION FOR CUSTODY MODIFICATION SHOULD NOT HAVE BEEN DISMISSED SUA SPONTE BY FAMILY COURT WITHOUT A HEARING.

Matter of Miller v Bush, 2016 NY Slip Op 05413, 3rd Dept 7-7-16

FAMILY LAW, EVIDENCE.

HEARSAY EVIDENCE OF CHILD'S STATEMENT NOT CORROBORATED, CUSTODY MODIFICATION PETITION SHOULD NOT HAVE BEEN GRANTED.

Matter of Leighann W. v Thomas X., 2016 NY Slip Op 05522, 3rd Dept 7-14-16

FREEDOM OF INFORMATION LAW (FOIL)

COURT MAY NOT PROHIBIT DISCLOSURE ON A GROUND NOT RAISED IN OPPOSITION TO DISCLOSURE.

Matter of Rose v Albany County Dist. Attorney's Off., 2016 NY Slip Op 05536, 3rd Dept 7-14-16

DOCUMENTS WHICH REFLECT INFORMATION IN TAX RETURNS ARE EXEMPT FROM DISCLOSURE UNDER THE TAX LAW.

Matter of Moody's Corp. & Subsidiaries v New York State Dept. of Taxation & Fin., 2016 NY Slip Op 05612, 3rd Dept 7-21-16

INTENTIONAL TORT (ASSAULT).

MOTION TO DISMISS PUNITIVE DAMAGES CLAIM PROPERLY DENIED.

[George v Albert, 2016 NY Slip Op 05613, 3rd Dept 7-21-16](#)

NEGLIGENCE, EDUCATION-SCHOOL LAW.

SCHOOL NOT LIABLE FOR STUDENT'S FALL ON SNOW-COVERED, ICY PLAYGROUND, STUDENTS TOLD TO STAY OFF PLAYGROUND.

[Elbadwi v Saugerties Cent. Sch. Dist., 2016 NY Slip Op 05421, 3rd Dept 7-7-16](#)

NEGLIGENT SUPERVISION CAUSE OF ACTION STEMMING FROM HARASSMENT AND BULLYING BY FELLOW STUDENTS SHOULD NOT HAVE BEEN DISMISSED.

[Motta v Eldred Cent. Sch. Dist., 2016 NY Slip Op 05424, 3rd Dept 7-7-16](#)

NEGLIGENCE, MEDICAL MALPRACTICE.

COMPARATIVE NEGLIGENCE JURY INSTRUCTION SHOULD NOT HAVE BEEN GIVEN BECAUSE PLAINTIFF'S ALLEGED NEGLIGENCE OCCURRED PRIOR TO THE ALLEGED MEDICAL MALPRACTICE.

[Vallone v Saratoga Hosp., 2016 NY Slip Op 05526, 3rd Dept 7-14-16](#)

RETIREMENT AND SOCIAL SECURITY LAW.

FIREFIGHTER'S INJURY FROM TOXIC FUMES UNRELATED TO A FIRE CONSTITUTED AN ACCIDENT ENTITLING FIREFIGHTER TO DISABILITY BENEFITS.

[Matter of Sica v DiNapoli. 2016 NY Slip Op 05420, 3rd Dept 7-7-16](#)

UNEMPLOYMENT INSURANCE.

OWNER OF SEASONAL BUSINESS WAS NOT TOTALLY UNEMPLOYED AND THEREFORE WAS NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS.

[Matter of Pasinski \(Commissioner of Labor\), 2016 NY Slip Op 05606, 3rd Dept 7-21-16](#)

LICENSED CREATIVE ARTS THERAPIST WAS AN EMPLOYEE ENTITLED TO BENEFITS.

[Matter of Kliman \(Genesee Region Home Care Assn., Inc. -- Commissioner of Labor\), 2016 NY Slip Op 05680, 3rd Dept 7-28-16](#)

ZONING.

USE OF SINGLE FAMILY RESIDENCE FOR WEDDINGS, RECEPTIONS AND OTHER EVENTS VIOLATED THE ZONING ORDINANCE WHICH ALLOWED "ACCESSORY USE"

Matter of Lavender v Zoning Bd. of Appeals of The Town of Bolton, 2016 NY Slip Op 05599, 3rd Dept 7-21-16

FOURTH DEPARTMENT

ARBITRATION, MUNICIPAL LAW, EMPLOYMENT LAW.

ARBITRATOR EXCEEDED HIS POWERS BY REFUSING TO REVIEW THE ENTIRE RECORD OF THE PROCEEDINGS, AWARD PROPERLY VACATED.

[Matter of O'Flynn \(Monroe County Deputy Sheriffs' Assn., Inc.\), 2016 NY Slip Op 05261, 4th Dept 7-1-16](#)

CRIMINAL LAW.

GEORGIA BURGLARY STATUTE DOES NOT INCLUDE A KNOWLEDGE ELEMENT WHICH IS INCLUDED IN THE NEW YORK BURGLARY STATUTE; THE GEORGIA STATUTE CANNOT, THEREFORE, SERVE AS A PREDICATE FELONY.

[People v Helms, 2016 NY Slip Op 05463, 4th Dept 7-8-16](#)

DEFENDANT, DESPITE BEING IN CUSTODY AT THE TIME, VALIDLY CONSENTED TO THE SEARCH OF THE PREMISES AND A DUFFEL BAG FOUND IN A CLOSET.

[People v Freeman, 2016 NY Slip Op 05472, 4th Dept 7-8-16](#)

CRIMINAL LAW, EVIDENCE.

COUNTY COURT ERRONEOUSLY DISMISSED THREE INDICTMENT COUNTS AFTER IMPROPERLY WEIGHING THE EVIDENCE PRESENTED IN THE GRAND JURY PROCEEDINGS.

[People v Roth, 2016 NY Slip Op 05257, 4th Dept 7-1-16](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

RISK LEVEL REDUCED FROM THREE TO TWO; DEFENDANT AND VICTIM WERE CLOSE IN AGE AND THE LACK OF CONSENT WAS SOLELY BY VIRTUE OF THE VICTIM'S AGE.

[People v George, 2016 NY Slip Op 05482, 4th Dept 7-8-16](#)

FAMILY LAW, ATTORNEYS.

CHILDREN DID NOT RECEIVE EFFECTIVE ASSISTANCE OF COUNSEL IN NEGLECT PROCEEDINGS.

[Matter of Brian S. \(Scott S.\), 2016 NY Slip Op 05464, 4th Dept 7-8-16](#)

NEGLIGENCE, EMPLOYMENT LAW, MUNICIPAL LAW.

NEGLIGENT RETENTION CAUSE OF ACTION PROPERLY DISMISSED.

[Pater v City of Buffalo, 2016 NY Slip Op 05462, 4th Dept 7-8-16](#)

AUGUST 2016

COURT OF APPEALS

ELECTION LAW.

STATE SENATE CANDIDATE, WHO REGISTERED TO VOTE IN WASHINGTON DC IN 2014, DID NOT MEET NEW YORK'S FIVE-YEAR CONTINUOUS RESIDENCY REQUIREMENT, THIRD DEPARTMENT REVERSED.

Matter of Glickman v Laffin, 2016 NY Slip Op 05842, CtApp 8-23-16

FAMILY LAW.

PARTNER IN AN UNMARRIED COUPLE WITH NO BIOLOGICAL OR ADOPTIVE RELATIONSHIP WITH A CHILD HAS STANDING AS A PARENT TO SEEK CUSTODY/VISITATION.

Matter of Brooke S.B. v Elizabeth A.C.C., 2016 NY Slip Op 05903, CtApp 8-30-16

FIRST DEPARTMENT

ADMINISTRATIVE LAW, EVIDENCE.

FINDING THAT LIQUOR LICENSEE WAS AWARE OF THE PRESENCE OF DRUGS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE; RARE DISCUSSION OF THAT ADMINISTRATIVE PROCEEDING STANDARD OF PROOF.

Matter of Home Run KTV Inc. v New York State Liq. Auth., 2016 NY Slip Op 05834, 1st Dept 8-18-16

ARBITRATION, CONTRACT LAW.

NONSIGNATORY WHICH RECEIVED A DIRECT BENEFIT FROM AN AGREEMENT WITH AN ARBITRATION PROVISION IS SUBJECT TO ARBITRATION.

BGC Notes, LLC v Gordon, 2016 NY Slip Op 05775, 1st Dept 8-11-16

CIVIL PROCEDURE.

LAW OFFICE FAILURE DEEMED A REASONABLE EXCUSE, DEFAULT JUDGMENT VACATED.

Matter of Rivera v New York City Dept. of Sanitation, 2016 NY Slip Op 05837, 1st Dept 8-18-16

CIVIL PROCEDURE, CONTRACT LAW, SECURITIES.

CONTRACT PROVISION WHICH PURPORTED TO EXTEND THE ACCRUAL OF BREACH OF CONTRACT CAUSES OF ACTION STEMMING FROM SALE OF RESIDENTIAL MORTGAGE BACKED SECURITIES DEEMED UNENFORCEABLE AS AGAINST PUBLIC POLICY; ACTION TIME-BARRED.

Deutsche Bank Natl. Trust Co. v Flagstar Capital Mkts. Corp., 2016 NY Slip Op 05780, 1st Dept 8-11-16

CONTRACT LAW.

DOCTRINE OF INDEFINITENESS IMPROPERLY APPLIED TO ORAL CONTRACT; BOTH QUANTUM MERUIT AND BREACH OF CONTRACT PROPERLY PLED WHERE DEFENDANTS DENY EXISTENCE OF CONTRACT.

[Kramer v Greene, 2016 NY Slip Op 05776, 1st Dept 8-11-16](#)

CONTRACT LAW, DEFAMATION.

PUBLICITY AGENT FOR A BROADWAY SHOW BREACHED THE COVENENT OF GOOD FAITH AND FAIR DEALING BY SENDING EMAILS TO AN INVESTOR DESIGNED TO SINK THE PRODUCTION.

[Rebecca Broadway L.P. v Hotton, 2016 NY Slip Op 05839, 1st Dept 8-18-16](#)

CONTRACT LAW, SECURITIES, NEGLIGENCE.

IN THIS ACTION STEMMING FROM DEFECTIVE RESIDENTIAL MORTGAGE BACKED SECURITIES, MORGAN STANLEY'S ALLEGED FAILURE TO NOTIFY PLAINTIFF OF THE DISCOVERY OF DEFECTIVE SECURITIES IS AN INDEPENDENT BREACH OF CONTRACT; GROSS NEGLIGENCE CAUSE OF ACTION SHOULD NOT HAVE BEEN DISMISSED DESPITE SOLE REMEDY CONTRACTUAL PROVISION.

[Morgan Stanley Mtge. Loan Trust 2006-13ARX v Morgan Stanley Mtge. Capital Holdings LLC, 2016 NY Slip Op 05781, 1st Dept 8-11-16](#)

CRIMINAL LAW.

DEFENDANT'S ACTIONS UPON SEEING THE POLICE IN A HOUSING AUTHORITY BUILDING FREQUENTED BY TRESPASSERS JUSTIFIED INITIAL QUESTIONING; REMAND OF PRIOR CONVICTION FOR YOUTHFUL OFFENDER DETERMINATION DID NOT ALTER DATE OF THAT CONVICTION FOR PREDICATE-FELONY PURPOSES.

[People v Perez, 2016 NY Slip Op 05730, 1st Dept 8-4-16](#)

TRIAL JUDGE PRESSURED DEFENDANT INTO PROVIDING A DNA SAMPLE AFTER DEFENSE COUNSEL HAD BEEN RELIEVED, DEFENDANT WAS DEPRIVED OF HIS RIGHT TO COUNSEL AT A CRITICAL STAGE, GUILTY PLEAS VACATED AND INDICTMENT DISMISSED.

[People v Smith, 2016 NY Slip Op 05902, 1st Dept 8-25-16](#)

EMPLOYMENT LAW.

OSTENSIBLE NON EMPLOYER WAS NOT A JOINT EMPLOYER SUBJECT TO EMPLOYMENT DISCRIMINATION LIABILITY; CRITERIA FOR JOINT EMPLOYER STATUS EXPLAINED.

[Brankov v Hazzard, 2016 NY Slip Op 05778, 1st Dept 8-11-16](#)

FAMILY LAW.

PRELIMINARY CONFERENCE (PC) ORDER SETTING TEMPORARY MAINTENANCE WHICH DEVIATED FROM THE PRESUMPTIVE AMOUNT INVALID; UPWARD MODIFICATION PROPER.

[**Anonymous v Anonymous, 2016 NY Slip Op 05736, 1st Dept 8-4-16**](#)

FRAUD, SECURITIES.

FRAUD ALLEGATIONS RELATED TO SALE OF DEFECTIVE RESIDENTIAL MORTGAGE BACKED SECURITIES SUFFICIENT TO WITHSTAND MOTION TO DISMISS.

[**IKB Intl. S.A. v Morgan Stanley, 2016 NY Slip Op 05779, 1st Dept 8-11-16**](#)

MUNICIPAL LAW, APPEALS, IMMUNITY.

WAIVER OF SOVEREIGN IMMUNITY ARGUMENT COULD BE CONSIDERED ON APPEAL EVEN THOUGH NOT RAISED BELOW, CRITERIA EXPLAINED.

[**W&W Steel, LLC v Port Auth. of N.Y. & N.J., 2016 NY Slip Op 05900, 1st Dept 8-25-16**](#)

NEGLIGENCE.

QUESTIONS OF FACT WHETHER ZIP LINE WAS DEFECTIVE AND WHETHER PLAINTIFF KNEW OR SHOULD HAVE KNOWN OF THE RISKS OF USING THE ZIP LINE.

[**Zelkowitz v Country Group, Inc., 2016 NY Slip Op 05732, 1st Dept 8-4-16**](#)

ELEVATED PLATFORM NOT A DANGEROUS CONDITION AS A MATTER OF LAW.

[**Pinkham v West Elm, 2016 NY Slip Op 05899, 1st Dept 8-25-16**](#)

NEGLIGENCE, EVIDENCE.

PLAINTIFF'S FAILURE TO TURN OVER A VIDEOTAPE OF THE EVENT AT WHICH PLAINTIFF WAS INJURED DID NOT WARRANT THE DISMISSAL OF THE COMPLAINT DURING THE JURY TRIAL.

[**Fox v Grand Slam Banquet Hall, 2016 NY Slip Op 05897, 1st Dept 8-25-16**](#)

TRUSTS AND ESTATES, CIVIL PROCEDURE.

MORE THAN A YEAR'S DELAY IN PUBLIC ADMINISTRATOR'S SEEKING SUBSTITUTION FOR DECEASED IN A MEDICAL MALPRACTICE ACTION ADEQUATELY EXPLAINED.

[**Public Adm'r, as Adm'r of the Estate of Ronald Simpson v Levine, 2016 NY Slip Op 05896, 1st Dept 8-25-16**](#)

SECOND DEPARTMENT

ANIMAL LAW.

EVEN IF ANIMAL SHELTER FAILED TO INFORM PLAINTIFF OF THE DOG'S VICIOUS PROPENSITIES, THAT FAILURE WAS NOT THE PROXIMATE CAUSE OF THE DOG BITE; PLAINTIFF HAD AMPLE OPPORTUNITY TO OBSERVE THE VICIOUS PROPENSITIES PRIOR TO THE BITE.

[Tighe v North Shore Animal League Am., 2016 NY Slip Op 05807, 2nd Dept 8-17-16](#)

ATTORNEYS, PRIVILEGE, CIVIL PROCEDURE, EVIDENCE.

CRITERIA FOR ATTORNEY WORK-PRODUCT PRIVILEGE, WILLFUL AND CONTUMACIOUS CONDUCT DURING DISCOVERY, AND SPOILIATION OF EVIDENCE CLEARLY EXPLAINED.

[Cioffi v S.M. Foods, Inc., 2016 NY Slip Op 05741, 2nd Dept 8-10-16](#)

CIVIL PROCEDURE.

PREJUDGMENT INTEREST NEED NOT BE PAID INTO THE COURT PURSUANT TO CPLR 2601 WHEN SUCH A PAYMENT IS MADE TO STOP THE ACCRUAL OF INTEREST.

[Sence v Atoynatan, 2016 NY Slip Op 05804, 2nd Dept 8-17-16](#)

RE-SERVICE AFTER EXPIRATION OF STATUTE OF LIMITATIONS PROPERLY ALLOWED.

[Rivera v Rodriguez, 2016 NY Slip Op 05855, 2nd Dept 8-24-16](#)

CIVIL PROCEDURE, PERSONAL INJURY, LABOR LAW-CONSTRUCTION LAW.

ALTHOUGH PLAINTIFF MADE OUT A PRIMA FACIE CASE ON HIS LABOR LAW CAUSES OF ACTION, THE MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN DISMISSED AS PREMATURE; PLAINTIFF NOT YET DEPOSED.

[Churaman v C&B Elec., Plumbing & Heating, Inc., 2016 NY Slip Op 05703, 2nd Dept 8-3-16](#)

CONTRACT LAW.

DOCTRINE OF MUTUAL MISTAKE APPLIED TO REFORM NOTE AND MORTGAGE.

[Gunther v Vilceus, 2016 NY Slip Op 05847, 2nd Dept 8-24-16](#)

CONTRACT LAW, CIVIL PROCEDURE.

ACTION SEEKING REFORMATION OF NOTE AND MORTGAGE PROPERLY DISMISSED UNDER DOCTRINE OF LACHES.

[Diecidue v Russo, 2016 NY Slip Op 05907, 2nd Dept 8-31-16](#)

CONTRACT LAW, FRAUD.

AGREEMENT TO AGREE UNENFORCEABLE UNDER BREACH OF CONTRACT, BREACH OF COVENANT OF GOOD FAITH, PROMISSORY ESTOPPEL AND FRAUD THEORIES.

[New York Military Academy v NewOpen Group, 2016 NY Slip Op 05706, 2nd Dept 8-3-16](#)

CRIMINAL LAW.

PAT-DOWN SEARCH AFTER VEHICLE STOP OKAY, CRITERIA EXPLAINED.

[**People v Graves, 2016 NY Slip Op 05763, 2nd Dept 8-10-16**](#)

JUDGE FAILED TO GIVE COUNSEL MEANINGFUL NOTICE OF THE CONTENTS OF A JURY NOTE, CONVICTION REVERSED.

[**People v Gough, 2016 NY Slip Op 05873, 2nd Dept 8-24-16**](#)

CRIMINAL LAW, ATTORNEYS.

FAILURE TO PROHIBIT T-SHIRTS MEMORIALIZING THE VICTIM AND THREE UNPRESERVED INSTANCES OF PROSECUTORIAL MISCONDUCT WERE HARMLESS ERRORS INDIVIDUALLY, BUT THE CUMULATIVE EFFECT REQUIRED A NEW TRIAL.

[**People v Holiday, 2016 NY Slip Op 05816, 2nd Dept 8-17-16**](#)

CRIMINAL LAW, EVIDENCE.

JOINDER OF DEFENDANT AND CO-DEFENDANT FOR TRIAL WAS LAWFUL BUT, BECAUSE OF IRRECONCILABLE DEFENSES, JOINDER RESULTED IN DENIAL OF DEFENDANT'S RIGHT TO A FAIR TRIAL.

[**People v Lessane, 2016 NY Slip Op 05765, 2nd Dept 8-10-16**](#)

CRIMINAL LAW, EVIDENCE, ATTORNEYS.

UNDER STATE CONSTITUTIONAL STANDARDS, THE WARRANTLESS SEARCH OF A MESSENGER BAG AT THE TIME OF DEFENDANT'S ARREST WAS NOT JUSTIFIED BY EXIGENT CIRCUMSTANCES, CONVICTIONS REVERSED.

[**People v Anderson, 2016 NY Slip Op 05927, 2nd Dept 8-31-16**](#)

EDUCATION-SCHOOL LAW, CIVIL PROCEDURE.

TEACHER'S PETITION TO REVIEW DEPARTMENT OF EDUCATION'S JOB PERFORMANCE RATING SHOULD NOT HAVE BEEN DISMISSED FOR FAILURE TO STATE A CAUSE OF ACTION, CRITERIA EXPLAINED.

[**Matter of Kunik v New York City Dept. of Educ., 2016 NY Slip Op 05812, 2nd Dept 8-17-16**](#)

EMPLOYMENT LAW.

PROVISIONS OF POLICY MANUAL DID NOT CONSTITUTE ENFORCEABLE OBLIGATIONS.

[**Cohen v National Grid USA, 2016 NY Slip Op 05786, 2nd Dept 8-17-16**](#)

FAMILY LAW.

MOTHER, WHO DEFAULTED, ENTITLED TO DISPOSITIONAL HEARING IN PROCEEDINGS TO TERMINATE HER PARENTAL RIGHTS BASED UPON MENTAL ILLNESS AND PERMANENT NEGLECT.

[**Matter of Isabella R.W. \(Jessica W.\), 2016 NY Slip Op 05715, 2nd Dept 8-3-16**](#)

GRANDMOTHER ENTITLED TO HEARING ON WHETHER SHE HAS STANDING TO PETITION FOR VISITATION.

[**Matter of Weiss v Orange County Dept. of Social Servs., 2016 NY Slip Op 05716, 2nd Dept 8-3-16**](#)

GRANDMOTHER ENTITLED TO HEARING ON HER PETITION FOR CUSTODY, HEARING SHOULD BE HELD IN DISPOSITIONAL PORTION OF PROCEEDINGS TO TERMINATE MOTHER'S PARENTAL RIGHTS.

[**Matter of Weiss v Weiss, 2016 NY Slip Op 05717, 2nd Dept 8-3-16**](#)

BEST INTERESTS OF SIBLINGS TO REMAIN TOGETHER, CUSTODY OF BOTH CHILDREN SHOULD HAVE BEEN AWARDED TO FATHER IN THIS MODIFICATION PROCEEDING.

[Cook v Cook, 2016 NY Slip Op 05743, 2nd Dept 8-10-16](#)

CHILD SUPPORT PROVISIONS OF A STIPULATION OF SETTLEMENT DID NOT COMPLY WITH THE CHILD SUPPORT STANDARDS ACT, PROVISIONS SHOULD HAVE BEEN VACATED.

[Young v Young, 2016 NY Slip Op 05809, 2nd Dept 8-17-16](#)

FAMILY LAW, CONTRACT LAW.

MAINTENANCE PORTION OF POSTNUPTIAL AGREEMENT UNCONSCIONABLE.

[Maddaloni v Maddaloni, 2016 NY Slip Op 05851, 2nd Dept 8-24-16](#)

FAMILY LAW, EVIDENCE.

COURT MUST DETERMINE VALUE OF MARITAL PROPERTY, DESPITE PAUCITY OF SUBMITTED EVIDENCE, BEFORE DISTRIBUTING IT.

[Van Dood v Van Dood, 2016 NY Slip Op 05858, 2nd Dept 8-24-16](#)

FAMILY LAW, IMMIGRATION LAW.

ALTHOUGH MOTHER WAS ENTITLED TO CUSTODY AS SOLE SURVIVING PARENT, HER PETITION FOR CUSTODY SHOULD NOT HAVE BEEN DISMISSED WITHOUT FINDINGS WHICH WOULD ENTITLE HER CHILDREN TO PETITION FOR SPECIAL IMMIGRANT JUVENILE STATUS.

[Matter of Castellanos v Recarte, 2016 NY Slip Op 05755, 2nd Dept 8-10-16](#)

FAMILY LAW, INSURANCE LAW, TRUSTS AND ESTATES.

CONSTRUCTIVE TRUST PROPERLY IMPOSED UPON THE PROCEEDS OF LIFE INSURANCE TO COVER CHILD SUPPORT AND EDUCATION COSTS.

[Mayer v Mayer, 2016 NY Slip Op 05911, 2nd Dept 8-31-16](#)

FORECLOSURE.

REFEREE'S ALLEGED VIOLATION OF A LOCAL COURT RULE DID NOT WARRANT SETTING ASIDE THE FORECLOSURE SALE.

[Clinton Hill Holding 1, LLC v Kathy & Tania, Inc., 2016 NY Slip Op 05844, 2nd Dept 8-24-16](#)

FORECLOSURE, EVIDENCE.

BANK'S PROOF OF STANDING DID NOT MEET THE REQUIREMENTS OF THE BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE. [Deutsche Bank Natl. Trust Co. v Brewton, 2016 NY Slip Op 05906, 2nd Dept 8-31-16](#)

MEDICAL MALPRACTICE, NEGLIGENCE.

DEFENDANTS DID NOT DEMONSTRATE SURGICAL CONSENT FORM COMPLIED WITH THE ACCEPTED STANDARD OF DISCLOSURE, SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED.

[Whitnum v Plastic & Reconstructive Surgery, P.C., 2016 NY Slip Op 05710, 2nd Dept 8-3-16](#)

MUNICIPAL LAW.

USE OF ROADWAY BY PEDESTRIANS AND BICYCLISTS MAY SUFFICE TO SHOW A ROADWAY, NOT USED BY VEHICLES, HAS NOT BEEN ABANDONED WITHIN THE MEANING OF THE HIGHWAY LAW.

[**Dandomar Co., LLC v Town of Pleasant Val. Town Bd., 2016 NY Slip Op 05905, 2nd Dept 8-31-16**](#)

NEGLIGENCE.

DEFENDANTS DID NOT DEMONSTRATE PLACEMENT OF A FLOWER POT NEAR THE BASKETBALL COURT DID NOT UNREASONABLY INCREASE THE INHERENT RISKS OF PLAYING BASKETBALL, SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED.

[**Simone v Doscas, 2016 NY Slip Op 05709, 2nd Dept 8-3-16**](#)

NEGLIGENCE, EMPLOYMENT LAW.

QUESTION OF FACT WHETHER EMPLOYER VICARIOUSLY LIABLE FOR NEGLIGENCE OF AN INDEPENDENT CONTRACTOR.

[**Pesante v Vertical Indus. Dev. Corp., 2016 NY Slip Op 05854, 2nd Dept 8-24-16**](#)

NEGLIGENCE, LANDLORD-TENANT.

LEASE TERMS ALLOWED JURY TO BE INSTRUCTED ON TENANT'S POTENTIAL LIABILITY FOR A SIDEWALK SLIP AND FALL.

[**Paperman v 2281 86th St. Corp., 2016 NY Slip Op 05747, 2nd Dept 8-10-16**](#)

LANDLORD'S RIGHT TO ENTER TO MAKE REPAIRS DOES NOT CREATE A DUTY TO MAKE REPAIRS.

[**Keum Ok Han v Kemp, Pin & Ski, LLC, 2016 NY Slip Op 05908, 2nd Dept 8-31-16**](#)

NEGLIGENCE, MUNICIPAL LAW, IMMUNITY.

INVESTIGATION OF CHILD ABUSE IS A DISCRETIONARY ACT, CITY CAN NOT BE SUED FOR NEGLIGENT INVESTIGATION; NEW YORK DOES NOT RECOGNIZE A CAUSE OF ACTION FOR NEGLIGENT INVESTIGATION.

[**Hines v City of New York, 2016 NY Slip Op 05794, 2nd Dept 8-17-16**](#)

NEGLIGENCE, MUNICIPAL LAW, LANDLORD-TENANT.

LESSEE AND CITY NOT LIABLE FOR HOLE IN SIDEWALK; DEFECT WAS NOT IN THE CURB CUT OR PEDESTRIAN RAMP FOR WHICH THE ABUTTING PROPERTY OWNER WOULD NOT BE RESPONSIBLE.

[**Martin v Rizzatti, 2016 NY Slip Op 05797, 2nd Dept 8-17-16**](#)

REAL PROPERTY.

JUSTIFIABLE RELIANCE ON PLAINTIFF'S INACTION RE A FORGED DEED NOT DEMONSTRATED, CRITERIA FOR EQUITABLE ESTOPPEL THEREFORE NOT MET.

[**Wallace v BSD-M Realty, LLC, 2016 NY Slip Op 05917, 2nd Dept 8-31-16**](#)

REAL PROPERTY TAX LAW.

NON-PROFIT RETREAT ENTITLED TO REAL PROPERTY TAX EXEMPTION FOR ENTIRE PROPERTY, NOT JUST THE DEVELOPED PORTION.

[**Matter of Greentree Found. v Assessor & Bd. of Assessors of County of Nassau, 2016 NY Slip Op 05861, 2nd Dept 8-24-16**](#)

THIRD DEPARTMENT

CRIMINAL LAW, ATTORNEYS, APPEALS.

GRAND-JUROR BIAS ISSUE IS FORFEITED BY A GUILTY PLEA; ERRONEOUS ADVICE RE APPEALABILITY OF THE ISSUE REQUIRED REMITTAL TO GIVE DEFENDANT OPPORTUNITY TO MOVE TO WITHDRAW HIS PLEA.

[People v Clark, 2016 NY Slip Op 05831, 3rd Dept 8-18-16](#)

CRIMINAL LAW, EVIDENCE.

CRIMINAL PROCEDURE LAW 440.30 (1-a) DOES NOT ALLOW A POST-TRIAL CHALLENGE TO DNA EVIDENCE ADMITTED AT TRIAL.

[People v Ramos, 2016 NY Slip Op 05885, 3rd Dept 8-25-16](#)

ELECTION LAW.

DESPITE REGISTERING TO VOTE IN WASHINGTON DC, CANDIDATE FOR STATE SENATE MET NEW YORK'S RESIDENCY REQUIREMENTS **[REVERSED BY COURT OF APPEALS]**.

[Matter of Glickman v Laffin, 2016 NY Slip Op 05841, 3rd Dept 8-18-16](#)

RETIREMENT AND SOCIAL SECURITY LAW.

HEARING OFFICER APPLIED THE WRONG REVIEW STANDARD, NEW HEARING ORDERED.

[Matter of Bodenmiller v DiNapoli, 2016 NY Slip Op 05894, 3rd Dept 8-25-16](#)

POLICE OFFICER'S SLIP AND FALL DURING A BURGLARY INVESTIGATION NOT AN ACCIDENT.

[Matter of Magistro v DiNapoli, 2016 NY Slip Op 05893, 3rd Dept 8-25-16](#)

UNEMPLOYMENT INSURANCE.

EXOTIC DANCERS WERE EMPLOYEES.

[Matter of Greystoke Indus. LLC \(Commissioner of Labor\), 2016 NY Slip Op 05890, 3rd Dept 8-25-16](#)

WORKERS' COMPENSATION LAW.

CLAIMANT DID NOT DEMONSTRATE SUFFICIENT ATTEMPTS TO RETURN TO WORK TO WARRANT BENEFITS; TOTAL INDUSTRIAL DISABILITY CLAIM SENT BACK, JUDGE AND BOARD FAILED TO DISCUSS THE RELEVANT FACTORS IN THE DENIAL OF THAT CLAIM.

[Matter of Walker v Darcon Constr. Co., 2016 NY Slip Op 05888, 3rd Dept 8-25-16](#)

FOURTH DEPARTMENT

CRIMINAL LAW, ATTORNEYS.

JUDGE'S FAILURE TO ADDRESS JURY NOTES BEFORE THE VERDICT NOT REVIEWED IN THE INTEREST OF JUSTICE, DEFENSE COUNEL MAY HAVE HAD A STRATEGIC REASON FOR NOT OBJECTING, CONVICTION AFFIRMED AFTER COURT OF APPEALS REVERSAL.

People v Mack, 2016 NY Slip Op 05825, 4th Dept 8-17-16

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COURT OF APPEALS

INSURANCE LAW, CIVIL PROCEDURE.

QUESTION OF FACT WHETHER LATE NOTICE DEFENSE WAIVED BY FAILURE TO RAISE THE DEFENSE IN DISCLAIMER LETTERS; MOTION TO ADD DEFENSE TO ANSWER PROPERLY GRANTED. [Estee Lauder Inc. v OneBeacon Ins. Group, LLC, 2016 NY Slip Op 06012, CtApp 9-15-16](#)

FIRST DEPARTMENT

CIVIL PROCEDURE, CIVIL RIGHTS LAW, CRIMINAL LAW.

IN THIS CIVIL RIGHTS ACTION, PRIOR APPELLATE RULING THAT THE SEARCH WARRANT WAS INVALID BECAME THE LAW OF THE CASE; TRIAL COURT'S FINDING THE WARRANT VALID AND GRANTING A DIRECTED VERDICT IN FAVOR OF THE POLICE REVERSED. [Delgado v City of New York, 2016 NY Slip Op 06185, 1st Dept 9-27-16](#)

CIVIL RIGHTS LAW.

ALLEGED DEPICTIONS OF PLAINTIFFS IN A VIDEO GAME NOT PROHIBITED BY THE CIVIL RIGHTS LAW. [Gravano v Take-Two Interactive Software, Inc., 2016 NY Slip Op 05942, 1st Dept 9-1-16](#)

CONTRACT LAW.

CERTAIN ASPECTS OF PLAINTIFF'S QUANTUM MERUIT AND UNJUST ENRICHMENT CAUSES OF ACTION PROPERLY SURVIVED A MOTION TO DISMISS, OTHER ASPECTS WERE BARRED BY THE STATUTE OF FRAUDS. [Dorfman v Reffkin, 2016 NY Slip Op 06116, 1st Dept 9-21-16](#)

CRIMINAL LAW.

MOTION TO VACATE CONVICTION PROPERLY DENIED WITHOUT A HEARING DESPITE WITNESS RECATATIONS AND CONFESSION BY ANOTHER PARTY, CRITERIA FOR SHOWING OF ACTUAL INNOCENCE EXPLAINED. [People v Velazquez, 2016 NY Slip Op 05961, 1st Dept 9-8-16](#)

CRIMINAL LAW.

A VERDICT FINDING DEFENDANT GUILTY OF GRAND LARCENY BUT NOT GUILTY OF POSSESSION OF STOLEN PROPERTY WOULD NOT BE REPUGNANT; INSTRUCTING THE JURY OTHERWISE WAS REVERSIBLE ERROR. [People v Simmons, 2016 NY Slip Op 06175, 1st Dept 9-28-16](#)

CRIMINAL LAW.

NO RECORD DEMONSTRATING THE TRIAL JUDGE READ THE NOTES FROM THE JURY TO THE PARTIES VERBATIM PRIOR TO DISCUSSING RESPONSES; THAT WAS A MODE OF PROCEEDINGS ERROR REQUIRING REVERSAL DESPITE LACK OF PRESERVATION. [People v Robinson, 2016 NY Slip Op 06266, 1st Dept 9-29-16](#)

CRIMINAL LAW, EVIDENCE.

NO PROOF DEFENDANT WAS THE PERSON WITH THE SAME NAME. [People v Brown, 2016 NY Slip Op 05940, 1st Dept 9-1-16](#)

DEBTOR-CREDITOR LAW, FRAUD.

CAUSES OF ACTION FOR BOTH CONSTRUCTIVE AND ACTUAL FRAUDULENT CONVEYANCE STATED, ELEMENTS DESCRIBED. [172 Van Duzer Realty Corp. v 878 Educ., LLC, 2016 NY Slip Op 05957, 1st Dept 9-8-16](#)

EDUCATION-SCHOOL LAW, EMPLOYMENT LAW.

TERMINATION OF TENURED TEACHER WAS TOO SEVERE A SANCTION FOR INAPPROPRIATE BEHAVIOR WHICH DID NOT VIOLATE ANY RULE. [Matter of Williams v City of New York, 2016 NY Slip Op 06184, 1st Dept 9-27-16](#)

EDUCATION-SCHOOL LAW, MUNICIPAL LAW.

CERTAIN CAUSES OF ACTION IN COMPLAINTS BROUGHT ALLEGING THE STATE HAS FAILED TO ADEQUATELY FUND NEW YORK CITY PUBLIC SCHOOLS ADEQUATELY PLED; MUNICIPALITY (CITY OF YONKERS), HOWEVER, DID NOT HAVE STANDING TO SUE. [Aristy-Farer v State of New York, 2016 NY Slip Op 05960, 1st Dept 9-8-16](#)

EMPLOYMENT LAW, HUMAN RIGHTS LAW, MUNICIPAL LAW.

EMPLOYMENT DISCRIMINATION CLAIMS UNDER STATE AND CITY HUMAN RIGHTS LAW SHOULD NOT HAVE BEEN DISMISSED AS UNTIMELY. [St. Jean Jeudy v City of New York, 2016 NY Slip Op 06045, 1st Dept 9-15-16](#)

ENVIRONMENTAL LAW.

USE OF PIER 55 FOR REVENUE-GENERATING EVENTS DOES NOT VIOLATE THE PUBLIC TRUST DOCTRINE. [Matter of City Club of N.Y., Inc. v Hudson Riv. Park Trust, Inc., 2016 NY Slip Op 05954, 1st Dept 9-8-16](#)

FRAUD, CORPORATION LAW, SECURITIES.

SOPHISTICATED INVESTOR DID NOT STATE A CAUSE OF ACTION FOR FRAUD. [MP Cool Invs. Ltd. v Forkosh, 2016 NY Slip Op 05944, 1st Dept 9-1-16](#)

INSURANCE LAW, CONTRACT LAW.

UNAMBIGUOUS TERMS OF POLICY REQUIRED A WRITTEN CONTRACT WITH ANY ADDITIONAL INSURED; THE ABSENCE OF A WRITTEN CONTRACT DIRECTLY WITH THE ADDITIONAL INSURED PRECLUDED COVERAGE, DESPITE A WRITTEN AGREEMENT WITH A THIRD PARTY TO PROVIDE COVERAGE FOR THE ADDITIONAL INSURED. [Gilbane Bldg. Co./TDX Constr. Corp. v St. Paul Fire & Mar. Ins. Co., 2016 NY Slip Op 06052, 1st Dept 9-15-16](#)

INSURANCE LAW, CONTRACT LAW, EMPLOYMENT LAW.

QUESTION OF FACT WHETHER THE TERM "INSURANCE" IN A NONCOMPETE AGREEMENT ENCOMPASSES SURETY BONDS. [Frenkel Benefits, LLC v Mallory, 2016 NY Slip Op 06109, 1st Dept 9-21-16](#)

INSURANCE LAW, ENVIRONMENTAL LAW.

INSURER NOT LIABLE FOR POLLUTION DAMAGE DURING PERIODS WHEN POLLUTION INSURANCE WAS PROHIBITED BY LAW. [Keyspan Gas E. Corp. v Munich Reins. Am., Inc., 2016 NY Slip Op 05945, 1st Dept 9-1-16](#)

LABOR LAW-CONSTRUCTION LAW, EVIDENCE.

PLAINTIFF'S ALLEGEDLY INCONSISTENT ACCOUNTS OF THE CAUSE OF HIS FALL CREATED A QUESTION OF FACT. [Albino v 221-223 W. 82 Owners Corp., 2016 NY Slip Op 05953, 1st Dept 9-8-16](#)

MEDICAID.

OFFICE OF MEDICAID INSPECTOR GENERAL COULD NOT SEEK REIMBURSEMENT OF OVERPAYMENTS IN AN AMOUNT HIGHER THAN SPECIFICALLY INDICATED IN ITS WRITTEN NOTICE. [West Midtown Mgt. Group, Inc. v State of New York, 2016 NY Slip Op 06111, 1st Dept 9-21-16](#)

NEGLIGENCE.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IN TRIP AND FALL CASE PROPERLY GRANTED. [Reeves v 1700 First Ave. LLC, 2016 NY Slip Op 06050, 2nd Dept 9-14-16](#)

NEGLIGENCE.

WATER ON LOCKER ROOM FLOOR WAS NOT NECESSARILY INCIDENTAL TO USE OF THE AREA, DEFENSE MOTION FOR SUMMARY JUDGMENT PROPERLY DENIED. [Grossman v TCR, 2016 NY Slip Op 06114, 1st Dept 9-21-16](#)

NEGLIGENCE.

PLAINTIFF FAILED TO SATISFY HIS BURDEN TO PROVE HIS INJURIES WERE CAUSED BY A PARTICULAR TRAIN AND THE OPERATOR OF THE TRAIN WAS NEGLIGENT; GRANT OF MOTION TO SET ASIDE THE PLAINTIFF'S VERDICT AFFIRMED. [Obey v City of New York, 2016 NY Slip Op 06183, 1st Dept 9-27-16](#)

NEGLIGENCE, EVIDENCE.

IN ORDER TO BE ENTITLED TO SUMMARY JUDGMENT FINDING DEFENDANT LIABLE IN AN ACCIDENT CASE, PLAINTIFF MUST DEMONSTRATE FREEDOM FROM COMPARATIVE NEGLIGENCE. [Rodriguez v City of New York, 2016 NY Slip Op 05943, 1st Dept 9-1-16](#)

PROPERTY DAMAGE (NEGLIGENCE), CONTRACT LAW.

QUESTION OF FACT WHETHER PROPERTY MANAGER LAUNCHED AN INSTRUMENT OF HARM WHEN A MINOR LEAK WAS REPAIRED. [Karydas v Ferrara-Ruurds, 2016 NY Slip Op 05941, 1st Dept 9-1-16](#)

REAL PROPERTY.

THEORIES OF LIABILITY FOR DAMAGE TO A PARTY WALL EXPLAINED. [Ehrenberg v Regier, 2016 NY Slip Op 05938, 1st Dept 9-1-16](#)

REAL PROPERTY, CONTRACT LAW.

QUESTION OF FACT WHETHER QUITCLAIM DEED WAS UNCONSCIONABLE; DOCTRINES OF PROCEDURAL AND SUBSTANTIVE UNCONSCIONABILITY DISCUSSED. [Green v 119 W. 138th St. LLC, 2016 NY Slip Op 05955, 1st Dept 9-8-16](#)

SECOND DEPARTMENT

ATTORNEYS, CIVIL PROCEDURE.

AN AGGRIEVED PARTY NEED NOT SHOW PECUNIARY LOSS TO WARRANT AN AWARD OF SANCTIONS OR ATTORNEY'S FEES FOR FRIVOLOUS CONDUCT. [Board of Mgrs. of Foundry at Wash. Park Condominium v Foundry Dev. Co., Inc., 2016 NY Slip Op 06189, 2nd Dept 9-28-16](#)

CIVIL PROCEDURE.

SUPPLEMENTAL BILL OF PARTICULARS PROPERLY SERVED WITHOUT LEAVE OF COURT; UNDER THE CIRCUMSTANCES, SUPPLEMENTAL BILL SHOULD NOT HAVE BEEN STRUCK BASED UPON PLAINTIFF'S FAILURE TO APPEAR AT A DEPOSITION. [Alicino v Rochdale Vil., Inc., 2016 NY Slip Op 05966, 2nd Dept 9-14-16](#)

CIVIL PROCEDURE.

FRIVOLOUS CONDUCT WARRANTED AWARD OF ATTORNEY'S FEES, CRITERIA EXPLAINED. [Hutter v Citibank, N.A., 2016 NY Slip Op 06062, 2nd Dept 9-21-16](#)

CIVIL PROCEDURE, ARBITRATION.

PURPORTED RISK OF WAIVER OF RIGHT TO COMPEL ARBITRATION WAS NOT A REASONABLE EXCUSE FOR A DELAY IN ANSWERING THE COMPLAINT; MOTION TO VACATE DEFAULT SHOULD NOT HAVE BEEN GRANTED. [Duprat v BMW Fin. Servs., NA, LLC, 2016 NY Slip Op 05970, 2nd Dept 9-14-16](#)

CIVIL PROCEDURE, EVIDENCE.

SUMMARY JUDGMENT CANNOT REST ON GAPS IN THE OPPOSING PARTY'S PAPERS; MOVING PARTY MUST ADDRESS EVERY NECESSARY ELEMENT WITH SUBSTANTIVE PROOF. [Katz v Beil, 2016 NY Slip Op 05977, 2nd Dept 9-14-16](#)

CIVIL PROCEDURE, EVIDENCE.

FAILURE TO PRESERVE VIDEO OF UNDERLYING INCIDENT DID NOT WARRANT STRIKING THE ANSWER. [Peters v Hernandez, 2016 NY Slip Op 05983, 2nd Dept 9-14-16](#)

CRIMINAL LAW, ATTORNEYS.

PRO SE DEFENDANT DOES NOT HAVE A CONSTITUTIONAL RIGHT TO STANDBY COUNSEL. [People v Neree, 2016 NY Slip Op 06006, 2nd Dept 9-14-16](#)

DEFAMATION, PRIVILEGE.

NEWS REPORTS CONNECTING PLAINTIFF TO AN ATTEMPTED RAPE ABSOLUTELY PRIVILEGED UNDER CIVIL RIGHTS LAW, REPORTS ACCURATELY REFLECTED INFORMATION PROVIDED BY THE POLICE. [Rodriguez v Daily News, L.P., 2016 NY Slip Op 06071, 2nd Dept 9-21-16](#)

ELECTION LAW.

FAILURE TO INCLUDE YEAR IN THE DATES OF THE SIGNATURES REQUIRED INVALIDATION OF THE DESIGNATING PETITION. [Matter of Avella v Johnson, 2016 NY Slip Op 06141, 2nd Dept 9-26-16](#)

EMINENT DOMAIN.

SUPREME COURT CORRECTLY DETERMINED THE HIGHEST AND BEST USE BASED ON THE ASSUMPTION THE PROPERTY WOULD HAVE BEEN REZONED, RAISING THE VALUE OF THE PROPERTY. [Matter of 730 Equity Corp. v New York State Urban Dev. Corp., 2016 NY Slip Op 06086, 2nd Dept 9-21-16](#)

EMPLOYMENT LAW, CIVIL RIGHTS LAW, CIVIL PROCEDURE.

COURT SHOULD NOT CONSIDER DEFENSES TO AN ACTION ON A MOTION TO DISMISS, WHETHER THE ACTION WOULD SURVIVE A MOTION FOR SUMMARY JUDGMENT IS NOT BEFORE THE COURT. [Kaplan v New York City Dept. of Health & Mental Hygiene, 2016 NY Slip Op 06063, 2nd Dept 9-21-16](#)

FAMILY LAW.

PETITIONER HAS THE RIGHT TO PETITION FOR CUSTODY DESPITE ABSENCE OF BIOLOGICAL OR ADOPTIVE RELATIONSHIP. [Matter of Frank G. v Renee P.-F., 2016 NY Slip Op 05946, 2nd Dept 9-8-16](#)

FAMILY LAW, ATTORNEYS.

APPELLANT WAS NOT APPRISED OF AND DID NOT WAIVE HER RIGHT TO COUNSEL; ORDERS OF PROTECTION REVERSED. [Matter of Osorio v Osorio, 2016 NY Slip Op 06219, 2nd Dept 9-28-16](#)

FAMILY LAW, CONTRACT LAW.

SURROGACY CONTRACT DOES NOT DEPRIVE MOTHER OF HER PARENTAL RIGHTS. [Matter of Giavonna F. P.-G. \(Frank G.--Renee P.-F.\), 2016 NY Slip Op 05948, 2nd Dept 9-8-16](#)

FORECLOSURE, ATTORNEYS.

FALSE INFORMATION IN ATTORNEY AFFIDAVIT JUSTIFIED DENIAL OF MOTION FOR JUDGMENT OF FORECLOSURE BUT NOT DISMISSAL. [Downey Sav. & Loan Assn., F.A. v Trujillo, 2016 NY Slip Op 06058, 2nd Dept 9-21-16](#)

FORECLOSURE, EVIDENCE.

FOUNDATION REQUIREMENTS FOR BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE NOT MET. BANK'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED. [HSBC Mtge. Servs., Inc. v Royal, 2016 NY Slip Op 05973, 2nd Dept 9-14-16](#)

FREEDOM OF INFORMATION LAW (FOIL), PISTOL PERMITS.

SAFE ACT DOES NOT AFFECT APPLICABILITY OF FREEDOM OF INFORMATION LAW EXEMPTIONS TO HOLDERS OF PISTOL PERMITS. [Matter of Inc. v County of Putnam, 2016 NY Slip Op 05999, 2nd Dept 9-14-16](#)

INSURANCE LAW, CONTRACT LAW.

AMENDMENT TO STATUTE CHANGING THE LIMITATIONS PERIOD FOR ACTION ON A PAYMENT BOND DID NOT APPLY RETROACTIVELY, CRITERIA EXPLAINED. [Clean Earth of N. Jersey, Inc. v Northcoast Maintenance Corp., 2016 NY Slip Op 06056, 2nd Dept 9-21-16](#)

LABOR LAW-CONSTRUCTION LAW.

FALLING SHEETROCK DID NOT SUPPORT A LABOR LAW 240(1) CAUSE OF ACTION. [Seales v Trident Structural Corp., 2016 NY Slip Op 06204, 2nd Dept 9-28-16](#)

LANDLORD-TENANT, CONTRACT LAW.

LANDLORD DID NOT HAVE A DUTY TO DISCLOSE LOCAL LAWS RESTRICTING THE USE OF THE PROPERTY. [1357 Tarrytown Rd. Auto, LLC v Granite Props., LLC, 2016 NY Slip Op 05981, 2nd Dept 9-14-16](#)

LANDLORD-TENANT, REAL PROPERTY LAW.

CLOSURE OF TERRACE BREACHED THE IMPLIED WARRANTY OF HABITABILITY. [Goldhirsch v St. George Tower & Grill Owners Corp., 2016 NY Slip Op 06060, 2nd Dept 9-21-16](#)

MUNICIPAL LAW.

FAILURE TO STRICTLY COMPLY WITH SIGNATURE REQUIREMENTS IN THE VILLAGE LAW REQUIRED INVALIDATION OF REFERENDUM PETITION. [Matter of Pilla v Karnsombob, 2016 NY Slip Op 06142, 2nd Dept 9-26-16](#)

MUNICIPAL LAW, CIVIL RIGHTS LAW, CIVIL PROCEDURE, PERSONAL INJURY.

PORTION OF DETECTIVE'S INTERNAL AFFAIRS FILE DISCOVERABLE; DEPOSITION OF ADDITIONAL EMERGENCY MEDICAL TECHNICIANS SHOULD HAVE BEEN ALLOWED. [Cea v Zimmerman, 2016 NY Slip Op 05968, 2nd Dept 9-14-16](#)

MUNICIPAL LAW, EMPLOYMENT LAW.

COUNTY HAD AUTHORITY TO IMPOSE A WAGE FREEZE TO ADDRESS A FINANCIAL CRISIS. [Matter of Carver v Nassau County Interim Fin. Auth., 2016 NY Slip Op 05995, 2nd Dept 9-14-16](#)

MUNICIPAL LAW. ENVIRONMENTAL LAW.

SCRAP METAL SALES OPERATION WAS NOT A TRANSFER STATION WITHIN THE MEANING OF THE COUNTY SOLID WASTE LAW. [Matter of Universal Metal & Ore, Inc. v Westchester County Solid Waste Commn., 2016 NY Slip Op 06091, 2nd Dept 9-21-16](#)

NEGLIGENCE.

QUESTION OF FACT WHETHER POSITION OF TAXI PARTIALLY IN THE ROADWAY WAS PROXIMATE CAUSE OF PASSENGER'S INJURIES WHEN PASSENGER WAS STRUCK BY ANOTHER CAR APPROACHING FROM THE REAR. [O'Connor v Ronnie Cab Corp., 2016 NY Slip Op 05980, 2nd Dept 9-14-16](#)

NEGLIGENCE, EVIDENCE.

COURT SHOULD NOT MAKE CREDIBILITY DETERMINATIONS OR WEIGH THE EVIDENCE AT THE SUMMARY JUDGMENT STAGE, DEFENDANTS' SUMMARY JUDGMENT MOTION SHOULD HAVE BEEN DENIED. [Chimbo v Bolivar, 2016 NY Slip Op 05969, 2nd Dept 9-14-16](#)

NEGLIGENCE, EVIDENCE.

SIZE OF SIDEWALK DEFECT DID NOT DEMONSTRATE DEFENDANTS SHOULD HAVE HAD NOTICE OF IT. [Gallway v Muintir, LLC, 2016 NY Slip Op 05971, 2nd Dept 9-14-16](#)

NEGLIGENCE, EVIDENCE.

CRITERIA FOR SUMMARY JUDGMENT BASED UPON RES IPSA LOQUITUR EXPLAINED, NOT MET HERE. [Giantomaso v T. Weiss Realty Corp., 2016 NY Slip Op 05972, 2nd Dept 9-14-16](#)

NEGLIGENCE, EVIDENCE.

LANDOWNERS NEGATED BOTH POTENTIAL THEORIES OF LIABILITY FOR INJURIES TO WORKER, SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Wejs v Heinbockel, 2016 NY Slip Op 05989, 2nd Dept 9-14-16](#)

NEGLIGENCE, EVIDENCE.

CONSCIOUS PAIN AND SUFFERING CAUSE OF ACTION SHOULD NOT HAVE BEEN DISMISSED, EXPERT OPINION EVIDENCE SHOULD NOT HAVE BEEN ACCORDED ANY PROBATIVE FORCE. [Mazella v Hauser, 2016 NY Slip Op 06066, 2nd Dept 9-21-16](#)

NEGLIGENCE, LABOR LAW-CONSTRUCTION LAW, EMPLOYMENT LAW.

PROPERTY OWNER'S [EMPLOYER'S] COMMON LAW DUTY TO PROVIDE SAFE PLACE TO WORK NOT TRIGGERED BY INJURY WHEN DRAWING UP AN ESTIMATE. [Arcabascio v Bentivegna, 2016 NY Slip Op 06187, 2nd Dept 9-28-16](#)

REAL ESTATE, EVIDENCE.

HOMEOWNERS ASSOCIATION'S EXERCISE OF RIGHT OF FIRST REFUSAL PROPER UNDER THE BUSINESS JUDGMENT RULE. [19 Pond, Inc. v Goldens Bridge Community Assn., Inc., 2016 NY Slip Op 05979, 2nd Dept 9-14-16](#)

TRUSTS AND ESTATES.

SUMMARY JUDGMENT PROPERLY GRANTED IN ACTIONS AGAINST EXECUTOR FOR BREACH OF FIDUCIARY DUTY AND NEGLIGENCE. [Matter of Billmyer, 2016 NY Slip Op 05994, 2nd Dept 9-14-16](#)

ZONING.

ZONING BOARD'S DENIAL OF APPLICATION TO RENEW A VARIANCE PREVIOUSLY ALLOWED WAS NOT ARBITRARY AND CAPRICIOUS. [Matter of Monte Carlo 1, LLC v Weiss, 2016 NY Slip Op 06217, 2nd Dept 9-28-16](#)

THIRD DEPARTMENT

UNEMPLOYMENT INSURANCE, MUNICIPAL LAW.

CITY HOUSING AUTHORITY OUTREACH WORKER WAS AN EMPLOYEE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS. **Matter of Cole (Niagara Falls Hous. Auth.--Commissioner of Labor), 2016 NY Slip Op 06281, 3rd Dept 9-29-16**

FOURTH DEPARTMENT

ANIMAL LAW, CIVIL PROCEDURE.

INFANT CAN BE LIABLE FOR INJURY CAUSED BY A DOG OWNED BY HIS FATHER; PUNITIVE DAMAGES CLAIM PROPERLY SURVIVED MOTION FOR SUMMARY JUDGMENT. [Cruz v Stachowski, 2016 NY Slip Op 06327, 4th Dept 9-30-16](#)

CRIMINAL LAW.

EVIDENCE SEIZED FROM DEFENDANT'S PERSON BEFORE THERE WAS PROBABLE CAUSE TO ARREST SHOULD HAVE BEEN SUPPRESSED; HOWEVER EVIDENCE COLLECTED AFTER THERE WAS PROBABLE CAUSE WAS NOT THE FRUIT OF THE POISONOUS TREE. [People v Ashford, 2016 NY Slip Op 06365, 4th Dept 9-30-16](#)

CRIMINAL LAW, ATTORNEYS.

REVERSIBLE ERROR TO ALLOW DEFENDANT TO SELECT JUROR, A SELECTION WITH WHICH DEFENSE COUNSEL APPARENTLY DISAGREED. [People v McKenzie, 2016 NY Slip Op 06288, 4th Dept 9-30-16](#)

CRIMINAL LAW, EVIDENCE.

NO FOUNDATION FOR RECAN TATION EVIDENCE COULD BE LAID BECAUSE THE ALLEGED VICTIM REFUSED TO TESTIFY; TRIAL COURT SHOULD NOT HAVE ALLOWED VICTIM'S TESTIMONY FROM THE FIRST TRIAL TO BE ADMITTED WITHOUT EXPLORING WHETHER THE TESTIMONY SHOULD BE STRUCK BECAUSE IT WAS CENTRAL TO THE PROSECUTION'S CASE; TRIAL COURT ACTED VINDICTIVELY BY IMPOSING A HARSHER SENTENCE AFTER RETRIAL. [People v Hicks, 2016 NY Slip Op 06334, 4th Dept 9-30-16](#)

DEFAMATION.

SERIOUS-CRIME DEFAMATION CAUSE OF ACTION SHOULD HAVE BEEN DISMISSED. [Crane-Hogan Structural Sys., Inc. v Belding, 2016 NY Slip Op 06376, 4th Dept 9-30-16](#)

FAMILY LAW, ATTORNEYS.

FORCING DEFENDANT MOTHER TO GO TO TRIAL IN A CUSTODY SUIT WITHOUT AN ATTORNEY, AFTER HER ATTORNEY WITHDREW FOR NONPAYMENT ON THE MORNING OF THE TRIAL, REQUIRED REVERSAL. [Zhu v Ye Cheng, 2016 NY Slip Op 06358, 4th Dept 9-30-16](#)

INSURANCE LAW.

ANTISUBROGATION RULE DID NOT PRECLUDE RECOVERY TO THE EXTENT RECOVERY EXCEEDED THE LIMITS OF THE RELEVANT POLICY. [Mitchell v NRG Energy, Inc., 2016 NY Slip Op 06359, 4th Dept 9-30-16](#)

INSURANCE LAW, ATTORNEYS.

INSURED NOT ENTITLED TO ATTORNEY'S FEES IN AN AFFIRMATIVE ACTION TO SETTLE THE INSURED'S RIGHTS UNDER THE POLICY. [Zelasko Constr., Inc. v Merchants Mut. Ins. Co., 2016 NY Slip Op 06328, 4th Dept 9-30-16](#)

MENTAL HYGIENE LAW.

TO JUSTIFY CIVIL CONFINEMENT, THE DISEASE OR DISORDER ATTRIBUTED TO A SEX OFFENDER NEED NOT BE A SEXUAL DISORDER; SEX OFFENDER'S MOTION FOR A DIRECTED VERDICT SHOULD NOT HAVE BEEN GRANTED. [Matter of Suggs v State of New York, 2016 NY Slip Op 06289, 4th Dept 9-30-16](#)

NEGLIGENCE, MEDICAL MALPRACTICE, CIVIL PROCEDURE.

EXPERT'S INABILITY TO QUANTIFY THE EXTENT TO WHICH DEFENDANTS' CONDUCT DIMINISHED PLAINTIFF'S DECEDENT'S CHANCE OF A BETTER OUTCOME DID NOT JUSTIFY GRANTING DEFENDANTS' MOTION FOR A JUDGMENT AS A MATTER OF LAW. [Clune v Moore, 2016 NY Slip Op 06331, 4th Dept 9-30-16](#)