

YEAR IN REVIEW

A Compilation of Selected Issues Addressed By Our New York State Appellate Courts in 2018 (January-December), Organized by Court with Links to the Decisions.

Drawn from the Decision-Summaries in the New York Appellate Digest Which Are Posted Weekly on the “Just Released” Page and Compiled and Indexed Monthly at www.NewYorkAppellateDigest.com

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2018

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JANUARY 2018

COURT OF APPEALS

ADMINISTRATIVE LAW, EDUCATION-SCHOOL LAW, EMPLOYMENT LAW.

THREE CASES IN WHICH THE APPELLATE DIVISIONS FOUND THE TERMINATION OF TEACHERS TOO SEVERE A PUNISHMENT REVERSED, APPELLATE DIVISIONS HAD EXCEEDED THEIR AUTHORITY TO REVIEW ADMINISTRATIVE PENALTIES. [Matter of Bolt v New York City Dept. of Educ., 2018 NY Slip Op 00090, Ct App 1-9-18](#)

FIRST DEPARTMENT

APPEALS, FAMILY LAW.

ALTHOUGH THE FINDING MOTHER WAS MENTALLY ILL WAS NOT APPEALABLE AS OF RIGHT, BECAUSE OF THE STIGMA THE COURT DEEMED THE NOTICE OF APPEAL TO BE A REQUEST FOR LEAVE TO APPEAL AND HEARD THE APPEAL. [Matter of Chad Nasir S. \(Charity Simone S.\), 2018 NY Slip Op 00026, First Dept 1-2-18](#)

ATTORNEYS, CONTRACT LAW.

PLAINTIFF'S ACTION FOR BREACH OF CONTRACT, ALLEGING DEFENDANT-ATTORNEYS FAILED TO RETURN THE BALANCE OF THE FEE PAID AT THE CONCLUSION OF THE CASE, PROPERLY SURVIVED A MOTION TO DISMISS. [Dubrow v Herman & Beinin, 2018 NY Slip Op 00478, First Dept 1-25-18](#)

ATTORNEYS, APPEALS, FAMILY LAW.

PLAINTIFF AND HIS ATTORNEY EACH SANCTIONED \$5000 FOR FRIVOLOUS ACTION AND APPEAL. [Sonkin v Sonkin, 2018 NY Slip Op 00011, First Dept 1-2-18](#)

ATTORNEYS, NEGLIGENCE, LEGAL MALPRACTICE.

COMPLAINT ALLEGING LEGAL MALPRACTICE STATED A CAUSE OF ACTION, WHETHER PLAINTIFF WAS AWARE OF THE PROBLEM IN TIME TO AVOID THE CONSEQUENCES, THEREBY PRECLUDING THE MALPRACTICE ACTION, COULD NOT BE DETERMINED ON A MOTION TO DISMISS. [Macquarie Capital \(USA\) Inc. v Morrison & Foerster LLP, 2018 NY Slip Op 00091, First Dept 1-9-18](#)

CIVIL PROCEDURE.

MOTION IN LIMINE CANNOT BE USED TO DETERMINE AN ISSUE OF MATERIAL FACT, THE MOTION WAS ACTUALLY AN UNTIMELY MOTION FOR SUMMARY JUDGMENT AND SHOULD NOT HAVE BEEN GRANTED. [Casalini v Alexander Wolf & Son, 2018 NY Slip Op 00246, First Dept 1-16-18](#)

CIVIL PROCEDURE.

PLAINTIFF MADE A SUFFICIENT SHOWING OF PERSONAL JURISDICTION OVER A NEW JERSEY RADIATION TREATMENT CLINIC TO BE ENTITLED TO DISCOVERY. [Robins v Procure Treatment Ctrs., Inc., 2018 NY Slip Op 00464, First Dept 1-25-18](#)

CIVIL PROCEDURE, APPEALS.

STRIKING THE ANSWER WAS AN APPROPRIATE REMEDY FOR FAILURE TO COMPLY WITH MULTIPLE DISCOVERY ORDERS OVER A PERIOD OF THREE YEARS, PURELY LEGAL ISSUE RAISED FOR THE FIRST TIME ON APPEAL CAN BE CONSIDERED IF THE RECORD IS SUFFICIENT. [Watson v City of New York, 2018 NY Slip Op 00245, First Dept 1-16-18](#)

CONTRACT LAW, CIVIL PROCEDURE.

LIMITED LIABILITY PROVISION PRECLUDED RECOVERY FOR BREACH OF CONTRACT FOR ANY AMOUNT OVER THE LIMITATION, ALTHOUGH THE LIMITATION OF LIABILITY WAS AN AFFIRMATIVE DEFENSE, IT WAS PROPERLY CONSIDERED ON A MOTION TO DISMISS. [Electron Trading, LLC v Morgan Stanley & Co. LLC, 2018 NY Slip Op 00380, First Dept 1-15-18](#)

CRIMINAL LAW.

FURTIVE MOVEMENTS JUSTIFIED POLICE OFFICER'S LIMITED SEARCH OF DEFENDANT'S CAR, USE OF BANK CARD READER ON CARDS IN DEFENDANT'S POSSESSION DID NOT REQUIRE A SEARCH WARRANT. [People v Sankara, 2018 NY Slip Op 00224, First Dept 1-11-18](#)

CRIMINAL LAW.

POLICE OFFICER'S EXPECTATION THAT DEFENDANT WOULD BE ARRESTED DID NOT HAVE ANY BEARING ON WHETHER DEFENDANT WAS IN CUSTODY, MOTION TO SUPPRESS STATEMENT PROPERLY DENIED. [People v Clarke, 2018 NY Slip Op 00472, First Dept 1-25-18](#)

CRIMINAL LAW, ATTORNEYS.

DEFENDANT'S CONVICTION UPHELD DESPITE INVALID WAIVER OF THE RIGHT TO COUNSEL. [People v Rodriguez, 2018 NY Slip Op 00040, First Dept 1-2-18](#)

CRIMINAL LAW, EVIDENCE.

INTENT REQUIREMENT OF ATTEMPTED GRAND LARCENY DOES NOT ATTACH TO THE VALUE OF THE PROPERTY, GRAND LARCENY COUNTS SHOULD NOT HAVE BEEN DISMISSED AND REDUCED BASED ON THE GRAND JURY EVIDENCE WHICH DID NOT INCLUDE EVIDENCE OF THE INTENT TO STEAL PROPERTY OF A CERTAIN VALUE. [People v Deleon, 2018 NY Slip Op 00531, First Dept 1-30-18](#)

CRIMINAL LAW, EVIDENCE, CONSTITUTIONAL LAW.

DEFENDANT SHOULD HAVE BEEN ALLOWED TO PRESENT REVERSE MOLINEUX THIRD PARTY CULPABILITY EVIDENCE, EVIDENCE THAT DEFENDANT DID NOT COMMIT OTHER UNCHARGED ROBBERIES WHICH HAD THE SAME MODUS OPERANDI AS THE CHARGED

ROBBERIES, AS WELL AS AN EXCULPATORY FINGERPRINT CARD, CONVICTION REVERSED. [People v Montgomery, 2018 NY Slip Op 00351, First Dept 1-18-18](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

CERTIFICATION AS A SEX OFFENDER OCCURS UPON CONVICTION AND IS NOT REVIEWABLE IN A SORA RISK ASSESSMENT PROCEEDING. [People v Lema, 2018 NY Slip Op 00005, First Dept 1-2-18](#)

DEFAMATION.

PUBLICATION OF CLAIMANT'S IMAGE IN THE STATE'S PUBLIC SERVICE AD ABOUT THE RIGHTS OF HIV POSITIVE PERSONS CONSTITUTED DEFAMATION PER SE, STATE DID NOT USE THE IMAGE FOR COMMERCIAL PURPOSES THEREFORE THE CIVIL RIGHTS LAW DID NOT APPLY. [Nolan v State of New York, 2018 NY Slip Op 00269, First Dept 1-16-18](#)

DEFAMATION, PRIVILEGE.

DEFENDANT'S STATEMENT TO A NEWSPAPER WAS NOT LIBELOUS BECAUSE IT FELL WITHIN THE JUDICIAL PRIVILEGE, THE STATEMENT WOULD BE UNDERSTOOD TO REFER TO AN ALLEGATION IN A LAWSUIT. [Highland Capital Mgt., L.P. v Stern, 2018 NY Slip Op 00230, First Dept 1-10-18](#)

EMPLOYMENT LAW, HUMAN RIGHTS LAW.

QUESTION OF FACT RAISED ABOUT WHETHER THE PROFFERED REASON FOR PLAINTIFF'S TERMINATION WAS PRETEXTUAL, PLAINTIFF WAS ON MEDICAL LEAVE BECAUSE OF BRAIN TUMORS, EMPLOYER'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Watson v Emblem Health Servs., 2018 NY Slip Op 00123, First Dept 1-9-18](#)

EMPLOYMENT LAW, HUMAN RIGHTS LAW.

PLAINTIFF'S SEXUAL ORIENTATION DISCRIMINATION AND RETALIATION CAUSES OF ACTION AGAINST THE NYPD SHOULD NOT HAVE BEEN DISMISSED, ALTHOUGH PLAINTIFF HAD ROUTINELY PASSED PSYCHOLOGICAL EXAMS IN THE PAST, THE NYPD FOUND HIM PSYCHOLOGICALLY UNFIT. [Harrington v City of New York, 2018 NY Slip Op 00381, First Dept 1-23-18](#)

FALSE ARREST, FALSE IMPRISONMENT, MALICIOUS PROSECUTION, MUNICIPAL LAW.

THERE WAS PROBABLE CAUSE TO ARREST PLAINTIFF FOR CONSTRUCTIVE POSSESSION OF DRUGS, FALSE ARREST, FALSE IMPRISONMENT AND MALICIOUS PROSECUTION CAUSES OF ACTION SHOULD HAVE BEEN DISMISSED. [Phin v City of New York, 2018 NY Slip Op 00333, First Dept 1-18-18](#)

FAMILY LAW.

ALTHOUGH FOSTER MOTHER ENTITLED TO FOSTER CARE BENEFITS AT THE EXCEPTIONAL RATE AFTER THE CHILD WAS DIAGNOSED AS AUTISTIC, SHE WAS NOT ENTITLED TO THE EXCEPTIONAL RATE RETROACTIVELY FOR THE PERIOD OF FOSTER CARE BEFORE THE DIAGNOSIS. [Matter of Pascall v Poole, 2018 NY Slip Op 00099, First Dept 1-9-18](#)

INSURANCE LAW.

INSURER OF A BUS OBLIGATED TO DEFEND AND INDEMNIFY THE BUS COMPANY IN AN ACTION BROUGHT BY A PASSENGER WHO FELL ATTEMPTING TO PICK UP HER LUGGAGE OUTSIDE THE BUS. [Peter Pan Bus Lines, Inc. v Hanover Ins. Co., 2018 NY Slip Op 00467, First Dept 1-25-18](#)

INSURANCE LAW, BANKRUPTCY.

CLAIM AGAINST THE BANKRUPT'S INSURER IS NOT BARRED BY THE INSURED'S DISCHARGE IN BANKRUPTCY. [Calleja v AI 229 W. 42nd St. Prop. Owner, LLC, 2018 NY Slip Op 00338, First Dept 1-18-18](#)

LABOR LAW-CONSTRUCTION LAW, EVIDENCE.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON HIS LABOR LAW 240 (1) CAUSE OF ACTION SHOULD HAVE BEEN GRANTED, THE FACT THAT THERE WERE NO WITNESSES DID NOT RAISE A QUESTION OF FACT. [Serrano v TED Gen. Contr., 2018 NY Slip Op 00113, First Dept 1-9-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

EXPERT EVIDENCE THAT A SAFETY DEVICE WAS NOT NECESSARY IN THIS FALLING OBJECTS CASE DID NOT CREATE A QUESTION OF FACT, PLAINTIFF ENTITLED TO SUMMARY JUDGMENT ON THE LABOR LAW 240 (1) CAUSE OF ACTION. [Gonzalez v Paramount Group, Inc., 2018 NY Slip Op 00029, First Dept 1-2-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLANKS AND CRIBBING COVERING AN OPENING WERE SAFETY DEVICES WITHIN THE MEANING OF LABOR LAW 240 (1), FAILURE TO SECURE THE CRIBBING WAS A PROXIMATE CAUSE OF THE ACCIDENT. [Wiscovitch v Lend Lease \(U.S.\) Constr. LMB Inc., 2018 NY Slip Op 00350, First Dept 1-18-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

QUESTION OF FACT WHETHER PLAINTIFF WAS COMPARATIVELY NEGLIGENT IN THIS LABOR LAW 241 (6) ACTION, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Luciano v New York City Hous. Auth., 2018 NY Slip Op 00473, First Dept 1-25-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF PROPERLY AWARDED SUMMARY JUDGMENT IN THIS LABOR LAW 240(1) ACTION, HEAVY TRANSFORMER SHIFTED DOWNWARD STRIKING PLAINTIFF, NO SAFETY DEVICES PROVIDED.. [Gericitano v Brookfield Props. OLP Co. LLC, 2018 NY Slip Op 00480, First Dept 1-25-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY, LANDLORD-TENANT.

PLAINTIFF SHOULD HAVE BEEN GRANTED SUMMARY JUDGMENT ON HIS LABOR LAW 240 (1) CAUSE OF ACTION, DEFENDANTS GENERAL CONTRACTOR AND LESSEE SHOULD NOT HAVE BEEN GRANTED SUMMARY JUDGMENT, DEFENDANT OUT OF POSSESSION LANDLORD SHOULD HAVE BEEN GRANTED SUMMARY JUDGMENT, CRITERIA EXPLAINED. [Dirschneider v Rolex Realty Co. LLC, 2018 NY Slip Op 00253, First Dept 1-16-18](#)

LANDLORD-TENANT.

QUESTION OF FACT WHETHER THERE HAD BEEN A SURRENDER OF THE LEASED PREMISES BY OPERATION OF LAW, THEREBY LIMITING TENANT'S LIABILITY FOR ABANDONMENT OF THE LEASE WITH TEN YEARS REMAINING. [176 PM, LLC v Heights Stor. Garage, Inc., 2018 NY Slip Op 00223, First Dept 1-11-18](#)

LANDLORD-TENANT.

LANDLORD BROUGHT EJECTMENT CAUSE OF ACTION AGAINST RENT REGULATED TENANT FOR RENTING TO AIRBNB CUSTOMERS, THE EJECTMENT CAUSE OF ACTION SHOULD NOT HAVE BEEN DISMISSED. [Aurora Assoc. LLC v Hennen, 2018 NY Slip Op 00465, First Dept 1-25-18](#)

LANDLORD-TENANT.

UNDER THE MULTIPLE DWELLING LAW, LESSEE WAS NOT ENTITLED TO RENT FROM THE SUBTENANTS FOR THE PERIOD DURING WHICH THERE WAS NO CERTIFICATE OF OCCUPANCY. [Matter of 49 Bleecker, Inc. v Gathien, 2018 NY Slip Op 00476, First Dept 1-25-18](#)

MEDICAL MALPRACTICE, PERSONAL INJURY, CIVIL PROCEDURE.

THE COMPLAINT, STEMMING FROM A FALL OFF A STRETCHER WHILE BEING POSITIONED FOR AN X-RAY, SOUNDED IN MEDICAL MALPRACTICE, NOT NEGLIGENCE, AND WAS

THEREFORE UNTIMELY, PROPOSED NEGLIGENT HIRING CAUSE OF ACTION COULD NOT BE ADDED UNDER THE RELATION BACK DOCTRINE. [Lang-Salgado v Mount Sinai Med. Ctr., Inc., 2018 NY Slip Op 00248, First Dept 1-16-18](#)

MUNICIPAL LAW (NYC), LANDLORD-TENANT, REAL PROPERTY TAX LAW.

APARTMENTS RECEIVING TAX BENEFITS PURSUANT TO RPTL 421-g ARE SUBJECT TO THE LUXURY VACANCY DECONTROL PROVISIONS OF THE NYC RENT STABILIZATION LAW AND WERE PROPERLY DEREGULATED. [Kuzmich v 50 Murray St. Acquisition LLC, 2018 NY Slip Op 00336, First Dept 1-18-18](#)

MUNICIPAL LAW, PERSONAL INJURY.

QUESTION OF FACT WHETHER CITY CREATED THE ROADWAY SINKHOLE BY INADEQUATE REPAIR, COMPLAINT SHOULD NOT HAVE BEEN DISMISSED IN THIS TRAFFIC ACCIDENT CASE. [Bania v City of New York, 2018 NY Slip Op 00470, First Dept 1-25-18](#)

PERSONAL INJURY.

EVIDENCE BUILDING OWNER HAD KNOWLEDGE OF THE ELEVATOR MISLEVELING, EVIDENCE THE ELEVATOR MAY NOT HAVE BEEN PROPERLY MAINTAINED, AND THE APPLICABILITY OF RES IPSA LOQUITUR REQUIRED DENIAL OF DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE. [Dzidowska v Related Cos., LP, 2018 NY Slip Op 00074, First Dept 1-4-18](#)

PERSONAL INJURY.

DEFENDANT DETOXIFICATION FACILITY NOT ENTITLED TO SUMMARY JUDGMENT IN ACTION BASED UPON THE DEATH OF A MAN WHO WAS TREATED, LEFT AND WAS FOUND DEAD A MONTH LATER, DEFENDANTS POINTED TO GAPS IN PLAINTIFF'S PROOF OF CAUSATION BUT DID NOT AFFIRMATIVELY DEMONSTRATE THE ABSENCE OF CAUSATION. [Hairston v Liberty Behavioral Mgt. Corp., 2018 NY Slip Op 00004, First Dept 1-2-18](#)

PERSONAL INJURY.

EXPERT EVIDENCE AND TESTIMONY ABOUT THE COLOR OF THE ICE RAISED ISSUES OF FACT ABOUT THE EXISTENCE OF A HAZARDOUS CONDITION AND NOTICE IN THIS SLIP AND FALL CASE. [Jones v New York City Hous. Auth., 2018 NY Slip Op 00027, First Dept 1-2-18](#)

PERSONAL INJURY.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED IN THIS INTERSECTION COLLISION CASE, THE DRIVER OF THE CAR IN WHICH PLAINTIFF WAS A

PASSENGER DID NOT STOP AT A STOP SIGN, ALLEGATIONS OF DEFENDANT'S COMPARATIVE NEGLIGENCE INSUFFICIENT. [Gonzalez v Bishop, 2018 NY Slip Op 00095, First Dept 1-9-18](#)

PERSONAL INJURY.

EVEN THOUGH PLAINTIFF GAVE CONFLICTING DESCRIPTIONS OF WHERE SHE SLIPPED AND FELL, ONE OF THOSE DESCRIPTIONS WAS SUFFICIENT TO RAISE A QUESTION OF FACT THAT THE FALL OCCURRED IN AN AREA WHICH HAD BEEN EXCAVATED. [Prunella v Empire City Subway Co., 2018 NY Slip Op 00100, First Dept 1-9-18](#)

PERSONAL INJURY.

DEFENDANT DEMONSTRATED IT DID NOT HAVE ACTUAL OR CONSTRUCTIVE NOTICE OF THE FAILURE OF SHRINK WRAP USED TO SECURE BOXES, PLAINTIFF WAS INJURED MOVING THE LOOSE BOXES. [Lynch v C & S Wholesale Grocers, Inc., 2018 NY Slip Op 00110, First Dept 1-9-18](#)

PERSONAL INJURY.

PORTION OF SIDEWALK WHERE PLAINTIFF SLIPPED AND FELL WAS SUBJECT TO A SPECIAL USE BY DEFENDANT PARKING GARAGE, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT PROPERLY DENIED. [Boneventura v 60 W. 57 Realty LLC, 2018 NY Slip Op 00232, First Dept 1-11-18](#)

PERSONAL INJURY.

ABUTTING LANDOWNER DEMONSTRATED IT DID NOT CREATE THE SIGN POST STUMP OVER WHICH PLAINTIFF TRIPPED ON THE PUBLIC SIDEWALK AND DID NOT HAVE NOTICE OF THE CONDITION OF THE SIDEWALK, NO COMPLAINTS OR VIOLATIONS, LANDOWNER'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Schulman v City of New York, 2018 NY Slip Op 00266, First Dept 1-16-18](#)

PERSONAL INJURY.

TOW TRUCK DEFENDANTS FURNISHED THE CONDITION FOR THE REAR-END COLLISION BUT THE TOW TRUCK WAS NOT THE PROXIMATE CAUSE, TOW TRUCK DEFENDANTS MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [McLean v Ripoli, 2018 NY Slip Op 00461, First Dept 1-25-18](#)

PERSONAL INJURY.

DEFENDANT DID NOT DEMONSTRATE WHEN THE AREA OF THE FALL WAS LAST CLEANED OR INSPECTED, SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED IN THIS SLIP AND FALL CASE, POINTING TO GAPS IN PLAINTIFFS' CASE NOT ENOUGH. [Vargas v Riverbay Corp., 2018 NY Slip Op 00520, First Dept 1-30-18](#)

PERSONAL INJURY, CIVIL PROCEDURE.

IN THIS SLIP AND FALL CASE, THE REQUESTED DISCOVERY ABOUT THE DESIGN OF THE REAR STAIRS OF A BUS WAS BURDENSOME, REPRESENTATIVES OF DEFENDANTS ALLOWED TO BE PRESENT WHEN BUS INSPECTED BY PLAINTIFF. [Curran v New York City Tr. Auth., 2018 NY Slip Op 00038, First Dept 1-2-18](#)

PERSONAL INJURY, CONTRACT LAW.

IN THIS SLIP AND FALL CASE, QUESTIONS OF FACT WHETHER BUS COMPANY LIABLE FOR FAILURE TO PROVIDE A SAFE PLACE FOR PASSENGERS TO DISEMBARK AND FAILURE TO NOTIFY PORT AUTHORITY OF NEED FOR REPAIR. [Bruno v Port Auth. of N.Y. & N.J., 2018 NY Slip Op 00069, First Dept 1-4-18](#)

PERSONAL INJURY, CONTRACT LAW.

QUESTIONS OF FACT WHETHER THE OWNER OF A DOMESTIC VIOLENCE SHELTER AND THE SECURITY COMPANY HIRED BY THE SHELTER WERE LIABLE FOR THE SHOOTING OF A CHILD JUST OUTSIDE THE GATE OF THE SHELTER, THE CHILD WAS AN INTENDED BENEFICIARY OF THE CONTRACT BETWEEN THE SHELTER AND THE SECURITY COMPANY. [CB v Howard Sec., 2018 NY Slip Op 00087, First Dept 1-4-18](#)

PERSONAL INJURY, CONTRACT LAW.

QUESTION OF FACT WHETHER OPENING IN FLOOR OF WHICH PLAINTIFF WAS AWARE WAS OPEN AND OBVIOUS IN THIS SLIP AND FALL CASE, AND QUESTION OF FACT WHETHER THE CONTRACTOR WHICH REMOVED A TANK EXPOSING THE OPENING LAUNCHED AN INSTRUMENT OF HARM. [Farrugia v 1440 Broadway Assoc., 2018 NY Slip Op 00347, First Dept 1-18-18](#)

PERSONAL INJURY, EVIDENCE.

DEFENDANT'S STATEMENT IN A POLICE REPORT ACKNOWLEDGING FAILURE TO STOP AT RED LIGHT WAS AN ADMISSION, CONFLICTING STATEMENT MADE LATER PRESENTED ONLY A FEIGNED ISSUE OF FACT, SUMMARY JUDGMENT PROPERLY AWARDED TO PLAINTIFF. [Colon v Vals Ocean Pac. Sea Food, Inc., 2018 NY Slip Op 00097, First Dept 1-9-18](#)

PERSONAL INJURY, LABOR LAW-CONSTRUCTION LAW.

NEGLIGENCE AND LABOR LAW 200 CAUSES OF ACTION IN THIS ELECTROCUTION CASE SHOULD HAVE BEEN DISMISSED, NO CODE VIOLATIONS, DEFENDANTS NEVER NOTIFIED THE TRANSFORMERS IN THE ELEVATOR CONTROL ROOM CONSTITUTED A DANGEROUS CONDITION. [Bradley v HWA 1290 III LLC, 2018 NY Slip Op 00516, First Dept 1-30-18](#)

PERSONAL INJURY, LANDLORD-TENANT.

OUT OF POSSESSION LANDLORDS NOT LIABLE FOR SIDEWALK SLIP AND FALL. [Xiang Fu He v Troon Mgt., Inc., 2018 NY Slip Op 00382, First Dept 1-23-18](#)

PERSONAL INJURY, VEHICLE AND TRAFFIC LAW.

PLAINTIFF PEDESTRIAN ENTITLED TO SUMMARY JUDGMENT IN THIS BUS-PEDESTRIAN ACCIDENT CASE, EVEN IF THE CROSSING LIGHT CHANGED WHILE PLAINTIFF WAS CROSSING HE WAS ENTITLED TO PROCEED. [Torres v Werner Bus Lines, Inc., 2018 NY Slip Op 00483, First Dept 1-25-18](#)

REAL ESTATE, EVIDENCE.

PLAINTIFF ACTED AS A REAL ESTATE BROKER FOR BOTH BUYER AND SELLER, DUAL AGENCY WAS NOT DISCLOSED, PLAINTIFF NOT ENTITLED TO COMMISSION, STATEMENT IN COMPLAINT THAT PLAINTIFF WAS A BROKER WAS A JUDICIAL ADMISSION, PRECLUDING ANY CLAIM PLAINTIFF WAS MERELY A FINDER. [P. Zaccaro, Co., Inc. v DHA Capital, LLC, 2018 NY Slip Op 00458, First Dept 1-25-18](#)

REAL PROPERTY LAW.

ACTIONS FOR TRESPASS AND ENCROACHMENT ALLEGING DAMAGE TO A PARTY WALL PROPERLY SURVIVED SUMMARY JUDGMENT, RESTRICTIVE COVENANT IN 1869 DEED DID NOT BENEFIT ANYONE OTHER THAN THE ORIGINAL GRANTEE. [Mastrobattista v Borges, 2018 NY Slip Op 00039, First Dept 1-2-18](#)

SECOND DEPARTMENT

ATTORNEYS.

ATTORNEY ENTITLED TO FEES PURSUANT TO QUANTUM MERUIT DESPITE FAILURE TO FILE A RETAINER STATEMENT AND THE ABSENCE OF A FEE SHARING AGREEMENT. [Matter of Grossbarth v Dankner, Milstein & Ruffo, P.C., 2018 NY Slip Op 00144, Second Dept 1-10-18](#)

CIVIL PROCEDURE.

DEFENDANT WAS ENTITLED TO A HEARING ON HER MOTION TO DISMISS THE COMPLAINT FOR FAILURE OF PROPER SERVICE. [HSBC Bank USA, N.A. v Archibong, 2018 NY Slip Op 00131, Second Dept 1-10-18](#)

CIVIL PROCEDURE.

INITIAL ATTEMPT TO SERVE DEFENDANT WAS TIMELY BUT DEFECTIVE, EVEN THOUGH THE STATUTE OF LIMITATIONS HAD RUN, SUPREME COURT PROPERLY GRANTED PLAINTIFF AN EXTENSION OF TIME TO EFFECT SERVICE. [Chan v Zoubarev, 2018 NY Slip Op 00402, Second Dept 1-24-18](#)

CIVIL PROCEDURE.

PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION PROPERLY DENIED, BUT COMPLAINT SHOULD NOT HAVE BEEN DISMISSED SUA SPONTE. [Gonzalez v 231 Maujer St., HDFC, 2018 NY Slip Op 00412, Second Dept 1-24-18](#)

CIVIL PROCEDURE, ATTORNEYS, PRIVILEGE.

THE DOCUMENTS SOUGHT IN DISCOVERY WERE PROTECTED BY THE COMMON INTEREST PRIVILEGE, AN EXCEPTION TO THE USUAL RULE RE: WAIVER OF ATTORNEY-CLIENT PRIVILEGE. [Saint Annes Dev. Co. v Russ, 2018 NY Slip Op 00451, Second Dept 1-24-18](#)

CIVIL PROCEDURE, REAL PROPERTY TAX LAW.

SUPREME COURT PROPERLY DENIED PETITIONER'S MOTION TO DISCONTINUE THE PROPERTY TAX CERTIORARI PROCEEDING WITH RESPECT TO ONE OF THE TAX PARCELS BECAUSE THE TOWN'S DEFENSE COULD BE PREJUDICED, HOWEVER SUPREME COURT SHOULD NOT HAVE ORDERED THE MERGER OF TWO TAX PARCELS BECAUSE NEITHER PARTY REQUESTED THAT RELIEF. [Matter of Catherine Commons, LLC v Town of Orangetown, 2018 NY Slip Op 00287, Second Dept 1-17-18](#)

CIVIL PROCEDURE, TRUSTS AND ESTATES.

MOTION TO DISMISS MADE BY DECEASED DEFENDANT'S FORMER ATTORNEY PURPORTEDLY ON DECEDENT'S BEHALF WAS A NULLITY, MOTIONS TO DISMISS MADE BY OTHER DEFENDANTS ARGUING THAT PLAINTIFFS DID NOT TAKE TIMELY STEPS TO SUBSTITUTE A REPRESENTATIVE FOR THE DECEASED DEFENDANT SHOULD HAVE BEEN GRANTED. [Vicari v Kleinwaks, 2018 NY Slip Op 00576, Second Dept 1-31-18](#)

CONTRACT LAW.

THE ABSENCE OF A PRICE FOR INTERNET SERVICE IN THE CONTRACT FOR THE PURCHASE OF SATELLITE TELEVISION SERVICE RENDERED THE CONTRACT AN UNENFORCEABLE AGREEMENT TO AGREE. [Total Telecom Group Corp. v Kendal on Hudson, 2018 NY Slip Op 00189, Second Dept 1-10-18](#)

CONTRACT LAW.

QUESTIONS OF FACT WHETHER PAYMENT WAS PURSUANT TO AN ORAL CONTRACT, THEREBY TAKING THE CONTRACT OUT OF THE STATUTE OF FRAUDS. [Meagher v Doscher, 2018 NY Slip Op 00420, Second Dept 1-24-18](#)

CRIMINAL LAW.

DENIAL OF PAROLE WAS IRRATIONAL, SUPREME COURT REVERSED. [Matter of Coleman v New York State Dept. of Corr. & Community Supervision, 2018 NY Slip Op 00138, Second Dept 1-10-18](#)

CRIMINAL LAW.

YOUTHFUL OFFENDER DETERMINATION MUST BE MADE IN EVERY CASE WHERE DEFENDANT IS ELIGIBLE, CARE REMITTED FOR THAT DETERMINATION. [People v Keizer, 2018 NY Slip Op 00438, Second Dept 1-24-18](#)

CRIMINAL LAW, APPEALS.

WAIVER OF RIGHT TO APPEAL INVALID. [People v Johnson, 2018 NY Slip Op 00567, Second Dept 1-31-18](#)

CRIMINAL LAW, ATTORNEYS.

FAILURE TO REQUEST THAT THE JURY BE CHARGED ON A LESSER INCLUDED OFFENSE AMOUNTED TO INEFFECTIVE ASSISTANCE OF COUNSEL, THE EVIDENCE OF THE CHARGED OFFENSE WAS WEAK, THE LESSER INCLUDED OFFENSE WAS PLAUSIBLE, AND THE SENTENCING DISPARITY WAS ENORMOUS. [People v Orama, 2018 NY Slip Op 00571, Second Dept 1-31-18](#)

CRIMINAL LAW, ATTORNEYS.

DEFENSE COUNSEL, BY TAKING A POSITION ADVERSE TO THAT OF THE DEFENDANT WITH RESPECT TO DEFENDANT'S PRO SE MOTION TO SET ASIDE THE VERDICT, DEPRIVED DEFENDANT OF HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, MATTER REMITTED FOR CONSIDERATION OF THE MOTION. [People v Freire, 2018 NY Slip Op 00564, Second Dept 1-31-18](#)

CRIMINAL LAW, ATTORNEYS, APPEALS.

COUNTY COURT SHOULD NOT HAVE THREATENED DEFENDANT WITH THE MAXIMUM SENTENCE SHOULD SHE GO TO TRIAL, PLEA VACATED, APPELLATE COUNSEL INEFFECTIVE FOR FAILING TO RAISE ISSUE ON APPEAL, APPLICATION FOR WRIT OF CORAM NOBIS GRANTED. [People v Sanabria, 2018 NY Slip Op 00316, Second Dept 1-17-18](#)

CRIMINAL LAW, EVIDENCE.

DEFENDANT'S ATTEMPTED ASSAULT CONVICTION WAS AGAINST THE WEIGHT OF THE EVIDENCE. [People v Serrano, 2018 NY Slip Op 00573, Second Dept 1-31-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

UNDER A WEIGHT OF THE EVIDENCE ANALYSIS, THE SECOND DEPARTMENT DETERMINED DEFENDANT PROVED HE WAS NOT RESPONSIBLE BY REASON OF MENTAL DISEASE OR DEFECT, CONVICTION REVERSED. [People v Hernandez-Beltre, 2018 NY Slip Op 00307, Second Dept 1-17-18](#)

CRIMINAL LAW, EVIDENCE, CONSTITUTIONAL LAW.

ENTIRE JURY PANEL SHOULD NOT HAVE BEEN DISMISSED BASED UPON AN INTERACTION BETWEEN ONE POTENTIAL JUROR AND DEFENDANT'S BROTHER, DNA EVIDENCE SHOULD NOT HAVE BEEN ADMITTED THROUGH A WITNESS THAT HAD NO CONNECTION WITH THE TESTING. [People v Metellus, 2018 NY Slip Op 00312, Second Dept 1-17-18](#)

CRIMINAL LAW, EVIDENCE, LANDLORD-TENANT.

ONCE THE LOCKS ON THE APARTMENT WERE CHANGED PURSUANT TO A LEGAL POSSESSION, DEFENDANT NO LONGER HAD A LEGITIMATE EXPECTATION OF PRIVACY IN HIS BEDROOM, DEFENDANT DID NOT DEMONSTRATE THE LEGAL POSSESSION WAS ILLEGAL, DEFENDANT DID NOT HAVE STANDING TO SEEK SUPPRESSION OF THE FIREARMS FOUND IN HIS BEDROOM. [People v McCullum, 2018 NY Slip Op 00570, Second Dept 1-31-18](#)

ELECTION LAW.

2014 COUNTY COMMITTEE OF THE CONSERVATIVE PARTY DID NOT HAVE THE AUTHORITY TO FILL VACANCIES IN THE 2016 COUNTY COMMITTEE. [Matter of Brocato v Tinari, 2018 NY Slip Op 00286, Second Dept 1-17-18](#)

EDUCATION-SCHOOL LAW, PERSONAL INJURY.

NEGLIGENT SUPERVISION CAUSE OF ACTION AGAINST SCHOOL SHOULD NOT HAVE SURVIVED SCHOOL'S MOTION FOR SUMMARY JUDGMENT, PLAINTIFF KINDERGARTEN STUDENT TRIPPED CARRYING A LUNCH TRAY. [L.R. v City of New York, 2018 NY Slip Op 00132, Second Dept 1-10-18](#)

EMPLOYMENT LAW, HUMAN RIGHTS LAW, ADMINISTRATIVE LAW.

STATE DIVISION OF HUMAN RIGHTS' FINDING THAT PETITIONER WAS NOT SUBJECT TO A HOSTILE WORK ENVIRONMENT AND WAS NOT CONSTRUCTIVELY DISCHARGED BECAUSE OF HER SEX SUPPORTED BY THE RECORD, LIMITED COURT REVIEW POWERS EXPLAINED. [Matter of Leippe v Gerald J. Wilkoff, Inc., 2018 NY Slip Op 00294, Second Dept 1-17-18](#)

ENVIRONMENTAL LAW.

ISSUING A PERMIT FOR THE WITHDRAWAL OF UP TO 1.5 BILLION GALLONS OF RIVER WATER PER DAY TO COOL A POWER PLANT IS NOT A MINISTERIAL, NON-DISCRETIONARY ACT, THEREFORE THE STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) APPLIES TO THE PERMITTING PROCESS. [Matter of Sierra Club v Martens, 2018 NY Slip Op 00153, Second Dept 1-10-18](#)

FAMILY LAW.

PRIMA FACIE CASE OF NEGLECT BASED UPON MOTHER'S MENTAL CONDITION HAD BEEN MADE OUT, THE NEGLECT PETITION SHOULD NOT HAVE BEEN DISMISSED, FACT THAT MOTHER HAD NOT BEEN DIAGNOSED AS SUFFERING FROM A MENTAL ILLNESS WAS NOT DISPOSITIVE. [Matter of Catalina A. \(Evelyn C.\), 2018 NY Slip Op 00135, Second Dept 1-10-18](#)

FAMILY LAW.

PRENUPTIAL AGREEMENT SHOULD HAVE BEEN SET ASIDE AS UNCONSCIONABLE. [Taha v Elzemity, 2018 NY Slip Op 00188, Second Dept 1-10-18](#)

FAMILY LAW.

RECORD DID NOT SUPPORT TERMINATION OF MOTHER'S PARENTAL RIGHTS DESPITE HER VIOLATION OF TERMS OF SUSPENDED JUDGMENT. [Matter of Skyler G. \(Heather G.\), 2018 NY Slip Op 00288, Second Dept 1-17-18](#)

FAMILY LAW, APPEALS, CRIMINAL LAW.

NO INTIMATE RELATIONSHIP, FAMILY COURT DID NOT HAVE JURISDICTION IN THIS FAMILY OFFENSE PROCEEDING, EVEN THOUGH THE ORDER OF PROTECTION HAD EXPIRED APPELLATE REVIEW WAS APPROPRIATE BECAUSE OF THE REPUTATIONAL CONSEQUENCES. [Matter of Royster v Murray, 2018 NY Slip Op 00151, Second Dept 1-10-18](#)

FAMILY LAW, CRIMINAL LAW.

JUVENILE DELINQUENCY PETITION JURISDICTIONALLY DEFECTIVE, PETITION ALLEGING UNLAWFUL POSSESSION OF A WEAPON DISMISSED. [Matter of Ricki I., 2018 NY Slip Op 00291, Second Dept 1-17-18](#)

FAMILY LAW, IMMIGRATION LAW.

FAMILY COURT SHOULD HAVE MADE THE FINDINGS NECESSARY TO ENABLE THE CHILD TO PETITION FOR SPECIAL IMMIGRANT JUVENILE STATUS (SIJS). [Matter of Nelson A. G.-L. \(Maria Y. G. S.\), 2018 NY Slip Op 00289, Second Dept 1-17-18](#)

FORECLOSURE.

BANK DID NOT DEMONSTRATE COMPLIANCE WITH THE NOTICE PROVISIONS OF REAL PROPERTY ACTIONS AND PROCEEDINGS LAW 1304, SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Bank of N.Y. Mellon v Zavolunov, 2018 NY Slip Op 00271, Second Dept 1-17-18](#)

FORECLOSURE.

BANK DID NOT DEMONSTRATE COMPLIANCE WITH THE NOTICE PROVISIONS OF RPAPL 1304 IN THIS FORECLOSURE ACTION, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [U.S. Bank N.A. v Henry, 2018 NY Slip Op 00326, Second Dept 1-17-18](#)

FORECLOSURE, CIVIL PROCEDURE.

AFFIDAVIT OF MERIT DID NOT DEMONSTRATE THE AFFIANT HAD THE AUTHORITY TO ACT ON BEHALF OF THE BANK IN THIS FORECLOSURE ACTION, DEFAULT JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [HSBC Bank USA, N.A.. v Cooper, 2018 NY Slip Op 00280, Second Dept 1-17-18](#)

FORECLOSURE, CIVIL PROCEDURE.

BANK'S MOTION FOR LEAVE TO RENEW AND REARGUE SHOULD NOT HAVE BEEN GRANTED IN THIS FORECLOSURE ACTION, CRITERIA EXPLAINED. [JPMorgan Chase Bank, N.A. v Jeffrey Novis, 2018 NY Slip Op 00281, Second Dept 1-17-18](#)

FORECLOSURE, CIVIL PROCEDURE.

THE DISMISSAL OF THE 2009 FORECLOSURE ACTION DID NOT CONSTITUTE A REVOCATION OF THE ACCELERATION OF THE DEBT, THE STATUTE OF LIMITATIONS TRIGGERED BY THE 2009 ACTION EXPIRED AND THE PROPERTY OWNER IS ENTITLED TO A DISCHARGE OF THE MORTGAGE. [MSMJ Realty, LLC v DLJ Mtge. Capital, Inc., 2018 NY Slip Op 00422, Second Dept 1-24-18](#)

FORECLOSURE, CIVIL PROCEDURE.

MOTION TO VACATE A REFEREE'S DEED PROPERLY DENIED, A SALE PRICE LOWER THAN MARKET VALUE DOES NOT INVALIDATE THE SALE, PURPORTED EVIDENCE OF A CONSPIRACY AMONG THE BIDDERS WAS IMPROPERLY SUBMITTED FOR THE FIRST TIME IN REPLY PAPERS. [Northern Blvd Corona, LLC v Northern Blvd Prop., LLC, 2018 NY Slip Op 00428, Second Dept 1-24-18](#)

FORECLOSURE, CIVIL PROCEDURE.

ALTHOUGH THE JUDGMENT OF FORECLOSURE MISTAKENLY ORDERED THE SALE OF MULTIPLE LOTS, WHICH WAS IMPOSSIBLE BECAUSE A SINGLE BUILDING SPANNED THE THREE LOTS, THE MOTION COURT PROPERLY DEEMED THE PROPERTY TO HAVE BEEN SOLD AS A SINGLE LOT, COURT HAS THE POWER TO CORRECT A MISTAKE, SUA SPONTE, WHERE THERE IS NO PREJUDICE. [Northern Blvd Corona, LLC v Northern Blvd Prop., LLC, 2018 NY Slip Op 00427, Second Dept 1-24-18](#)

FORECLOSURE, CIVIL PROCEDURE.

FILING A 90 DAY NOTICE AND THEN DISCONTINUING THE FORECLOSURE ACTION IN 2014 DID NOT REVOKE THE ELECTION TO ACCELERATE REPRESENTED BY THE FILING OF THE SUMMONS AND COMPLAINT IN 2008, FORECLOSURE ACTION PROPERLY DISMISSED AS UNTIMELY. [Deutsche Bank Natl. Trust Co. v Adrian, 2018 NY Slip Op 00543, Second Dept 1-31-18](#)

FORECLOSURE, EVIDENCE.

BANK DID NOT DEMONSTRATE COMPLIANCE WITH THE NOTICE PROVISIONS OF RPAPL 1304 IN THIS FORECLOSURE PROCEEDING, BANK'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [J.P. Morgan Mtge. Acquisition Corp v Kagan, 2018 NY Slip Op 00416, Second Dept 1-24-18](#)

FORECLOSURE, EVIDENCE, CIVIL PROCEDURE.

BANK'S MOTION FOR LEAVE TO ENTER A DEFAULT JUDGMENT WAS SUPPORTED BY DOCUMENTS VERIFIED OR AFFIRMED BY PERSONS WITHOUT FIRST-HAND KNOWLEDGE, MOTION WAS PROPERLY DENIED BUT COMPLAINT SHOULD NOT HAVE BEEN DISMISSED SUA SPONTE. [First Franklin Fin. Corp. v Alfau, 2018 NY Slip Op 00409, Second Dept 1-24-18](#)

INSURANCE LAW.

AFFIDAVIT BY INSURER'S ATTORNEY INSUFFICIENT TO JUSTIFY A STAY OF ARBITRATION AND A FRAMED ISSUE HEARING. [Matter of Government Employees Ins. Co. v Tucci, 2018 NY Slip Op 00142, Second Dept 1-10-18](#)

INSURANCE LAW, NEGLIGENCE.

INSURANCE BROKER DID NOT PRESENT SUFFICIENT EVIDENCE THE AMOUNT OF UNINSURED MOTORIST COVERED REQUESTED BY THE PLAINTIFF WAS PROCURED, BROKER'S MOTION FOR SUMMARY JUDGMENT IN THIS NEGLIGENCE ACTION SHOULD NOT HAVE BEEN GRANTED. [Giamundo v Cleveland Dunn 2nd, 2018 NY Slip Op 00411, Second Dept 1-24-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

HOMEOWNER'S EXEMPTION TO LABOR LAW 241(6) APPLIED, NO EVIDENCE HOMEOWNERS SUPERVISED PLAINTIFF'S WORK, HOMEOWNERS' MOTION FOR SUMMARY JUDGMENT PROPERLY GRANTED. [Hicks v Aibani, 2018 NY Slip Op 00413, Second Dept 1-24-18](#)

LANDLORD-TENANT.

TENANT'S MOTHER HAD SUCCESSION RIGHTS TO A RENT STABILIZED APARTMENT PURSUANT TO THE RENT STABILIZATION CODE AND PUBLIC HOUSING LAW, NYS DIVISION OF HOUSING AND COMMUNITY RENEWAL HAD MISINTERPRETED THE APPLICABLE CODE PROVISION. [Matter of Jourdain v New York State Div. of Hous. & Community Renewal, 2018 NY Slip Op 00556, Second Dept 1-31-18](#)

LANDLORD-TENANT, CONTRACT LAW, APPEALS.

CLAUSE IN THE COMMERCIAL LEASES WHICH WAIVED THE AVAILABILITY OF DECLARATORY RELIEF WAS VALID AND ENFORCEABLE AND EXTENDED TO PRECLUDE THE AVAILABILITY OF A *YELLOWSTONE* INJUNCTION IN THIS LEASE TERMINATION PROCEEDING, WHETHER WAIVER VIOLATED PUBLIC POLICY, ALTHOUGH NOT RAISED BELOW, PROPERLY CONSIDERED ON APPEAL. [159 MP Corp. v Redbridge Bedford, LLC, 2018 NY Slip Op 00537, Second Dept 1-31-18](#)

MEDICAL MALPRACTICE, PERSONAL INJURY, CONTRACT LAW.

RELEASE WHICH PERTAINED TO MEDICAL CENTER AND ANY JOINT TORTFEASORS DID NOT PRECLUDE A MEDICAL MALPRACTICE ACTION AGAINST SURGEONS WHO WERE NOT EMPLOYEES OF THE MEDICAL CENTER, SUPREME COURT REVERSED. [Hoffmann v Horn, 2018 NY Slip Op 00414, Second Dept 1-24-18](#)

MEDICAL MALPRACTICE, PERSONAL INJURY, EVIDENCE, DAMAGES.

PUNITIVE DAMAGES PROPERLY SENT TO THE JURY IN THIS MEDICAL MALPRACTICE ACTION, DEFENDANT DOCTOR DESTROYED HAND WRITTEN NOTES MADE WHEN SEEING PLAINTIFF'S DECEDENT, A CHILD, WHO DIED BECAUSE OF THE DOCTOR'S FAILURE TO DIAGNOSE DIABETES. [Gomez v Cabatic, 2018 NY Slip Op 00278, Second Dept 1-17-18](#)

MUNICIPAL LAW, EMPLOYMENT LAW, NEGLIGENCE, 42 USC 1983.

OFF DUTY POLICE OFFICER WAS NOT ACTING UNDER COLOR OF LAW WHEN HIS WEAPON DISCHARGED AND KILLED PLAINTIFF'S DECEDENT, 42 USC 1983 CAUSE OF ACTION AGAINST MUNICIPALITY PROPERLY DISMISSED, [Everett v Eastchester Police Dept., 2018 NY Slip Op 00129, Second Dept 1-10-18](#)

MUNICIPAL LAW, INSURANCE LAW, VEHICLE AND TRAFFIC LAW.

VEHICLE AND TRAFFIC LAW 370 DID NOT EXEMPT COUNTY FROM PROVIDING UNINSURED MOTORIST COVERAGE FOR PERSONS DRIVING COUNTY CARS. [Matter of County of Suffolk v Johnson, 2018 NY Slip Op 00552, Second Dept 1-31-18](#)

PERSONAL INJURY.

DEFENDANTS IN THIS SLIP AND FALL CASE FAILED TO DEMONSTRATE WHEN THE STAIRS HAD LAST BEEN INSPECTED, THEREFORE DEFENDANTS DID NOT DEMONSTRATE THE ABSENCE OF CONSTRUCTIVE NOTICE AND SHOULD NOT HAVE BEEN GRANTED SUMMARY JUDGMENT.. [Hanney v White Plains Galleria, LP, 2018 NY Slip Op 00130, Second Dept 1-10-18](#)

PERSONAL INJURY.

DEFENDANTS DEMONSTRATED THEY DID NOT HAVE ACTUAL OR CONSTRUCTIVE NOTICE OF THE CARDBOARD ON THE SIDEWALK WHICH CAUSED PLAINTIFF TO SLIP AND FALL, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT PROPERLY GRANTED. [Mandarano v PND, LLC, 2018 NY Slip Op 00133, Second Dept 1-10-18](#)

PESONAL INJURY, EVIDENCE.

BY SUBMITTING PLAINTIFF'S DEPOSITION TESTIMONY IN SUPPORT OF DEFENDANT'S SUMMARY JUDGMENT MOTION DEFENDANT FAILED TO MAKE OUT A PRIMA FACIE CASE IN THIS SLIP AND FALL CASE, THE MOTION WAS PROPERLY DENIED WITHOUT CONSIDERATION OF THE OPPOSING PAPERS. [Simion v Franklin Ctr. for Rehabilitation & Nursing, Inc., 2018 NY Slip Op 00184, Second Dept 1-10-18](#)

PERSONAL INJURY, EVIDENCE.

EXPERT AFFIDAVIT STATING PLAINTIFF PEDESTRIAN DID NOT LOOK FOR TRAFFIC BEFORE CROSSING WAS SPECULATIVE AND DID NOT RAISE A QUESTION OF FACT, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT PROPERLY GRANTED IN THIS TRAFFIC ACCIDENT CASE. [Yuemei Wu v Automotive Rentals, Inc., 2018 NY Slip Op 00192, Second Dept 1-10-18](#)

PERSONAL INJURY, EVIDENCE, CIVIL PROCEDURE.

THIRD PARTY COMPLAINT PROPERLY DISMISSED AS CAUSING UNDUE DELAY OF THE MAIN ACTION, DISCOVERY OF POST-ACCIDENT REPAIRS OF STAIRWAY PROPERLY ORDERED IN THIS SLIP AND FALL CASE. [Soto v CBS Corp., 2018 NY Slip Op 00185, Second Dept 1-10-18](#)

PERSONAL INJURY, LANDLORD-TENANT.

OUT OF POSSESSION LANDLORD DID NOT DEMONSTRATE A LACK OF ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF A LEAKING WATER HEATER IN THIS SLIP AND FALL CASE, LANDLORD'S MOTION FOR SUMMARY JUDGMENT PROPERLY DENIED. [Irizarry v Felice Realty Corp., 2018 NY Slip Op 00415, Second Dept 1-24-18](#)

PERSONAL INJURY, LANDLORD-TENANT.

ALTHOUGH THE OUT OF POSSESSION LANDLORDS WERE OBLIGATED TO MAKE REPAIRS, THEY DEMONSTRATED THEY DID NOT CREATE THE ALLEGED DANGEROUS CONDITION AND DID NOT HAVE NOTICE OF IT, SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Amster v Kromer, 2018 NY Slip Op 00538, Second Dept 1-31-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

NEITHER THE ABUTTING PROPERTY OWNER NOR THE CITY WERE ENTITLED TO SUMMARY JUDGMENT IN THIS SIDEWALK SLIP AND FALL CASE. [Trela v City of Long Beach, 2018 NY Slip Op 00190, Second Dept 1-10-18](#)

REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL).

ALTHOUGH THE CLADDING AND DRIP EDGE PLAINTIFF INSTALLED ON A PARTY WALL WAS A TRESPASS, SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED ON THE DEFENDANT'S REQUEST FOR AN INJUNCTION DIRECTING THE REMOVAL OF THE CLADDING AND DRIP EDGE. [Kimball v Bay Ridge United Methodist Church, 2018 NY Slip Op 00417, Second Dept 1-24-18](#)

REAL PROPERTY LAW, RELIGIOUN.

DEFENDANT CHURCH DID NOT HAVE ANY INTEREST THE CONTESTED REAL PROPERTY UNDER THE PROVISIONS OF A CORRECTED DEED AND THE CANONS OF THE EPISCOPAL CHURCH. [Episcopal Diocese of Long Is. v St. Matthias Nondenominational Ministries, Inc., 2018 NY Slip Op 00276, Second Dept 1-17-18](#)

REAL PROPERTY TAX, MUNICIPAL LAW, CONSTITUTIONAL LAW (NY).

IN A COMPREHENSIVE AND METICULOUS DECISION, THE SECOND DEPARTMENT, AFTER ANALYZING THE LAYERS OF APPLICABLE CONSTITUTIONAL AND STATUTORY AUTHORITY, DETERMINED NASSAU COUNTY WAS AUTHORIZED TO BASE REAL PROPERTY TAX ASSESSMENTS ON THE INCOME GENERATED BY THE PROPERTY. [Boening v Nassau County Dept. of Assessment, 2018 NY Slip Op 00272, Second Dept 1-17-18](#)

THIRD DEPARTMENT

CIVIL PROCEDURE, COURT OF CLAIMS.

BECAUSE IT WAS POSSIBLE THE STATE WOULD REFUSE TO INDEMNIFY DEFENDANT DOCTORS IN THIS MEDICAL MALPRACTICE ACTION BROUGHT BY A STATE PRISON INMATE, THE SIMILAR ACTION IN SUPREME COURT SHOULD NOT HAVE BEEN DISMISSED, BUT RATHER THE SUPREME COURT ACTION SHOULD BE STAYED PENDING THE OUTCOME IN THE COURT OF CLAIMS. [Rothschild v Braselmann, 2018 NY Slip Op 00054, Third Dept 1-4-18](#)

CRIMINAL LAW, APPEALS.

FEDERAL DRUG CONSPIRACY CONVICTION CANNOT BE USED AS A PREDICATE FELONY FOR SECOND FELONY OFFENDER ADJUDICATION, ILLEGAL SENTENCE NEED NOT BE PRESERVED FOR APPEAL BY OBJECTION. [People v Sumter, 2018 NY Slip Op 00354, Third Dept 1-18-17](#)

CRIMINAL LAW, JUDGES.

JUDGE SHOULD NOT HAVE ALLOWED DEFENDANT TO PLEAD TO A LESSER OFFENSE WITHOUT THE PROSECUTOR'S PERMISSION, HOWEVER NEITHER A WRIT OF PROHIBITION NOR A WRIT OF MANDAMUS WAS WARRANTED. [Matter of Carnright v Williams, 2018 NY Slip Op 00206, Third Dept 1-11-18](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA), APPEALS.

APPEAL OF SORA RISK ASSESSMENT NOT PROPERLY BEFORE THE APPELLATE DIVISION, COUNTY COURT NEVER ISSUED THE REQUIRED ORDER. [People v Scott, 2018 NY Slip Op 00203, Third Dept 1-11-18](#)

DISCIPLINARY HEARINGS (INMATES).

FINDING THAT PETITIONER POSSESSED A WEAPON FOUND IN A CUBE SHARED WITH OTHER INMATES NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, DETERMINATION ANNULLED. [Matter of Carter v Annucci, 2018 NY Slip Op 00501, Third Dept 1-25-18](#)

DISCIPLINARY HEARINGS (INMATES).

HEARING OFFICER DID NOT MAKE AN ADEQUATE INQUIRY TO DETERMINE WHY AN INMATE WITNESS WHO HAD PREVIOUSLY AGREED TO TESTIFY LATER REFUSED, NEW HEARING ORDERED. [Matter of Radcliffe v Annucci, 2018 NY Slip Op 00505, Third Department 1-25-18](#)

EDUCATION-SCHOOL LAW, ADMINISTRATIVE LAW, CONSTITUTIONAL LAW.

PETITIONER COLLEGE STUDENT IS ENTITLED TO A NEW DISCIPLINARY HEARING, THE TESTIMONY AT THE HEARING BY THE COLLEGE'S TITLE IX COORDINATOR INCORRECTLY EXPLAINED THE MANNER IN WHICH CONSENT TO SEX CAN BE COMMUNICATED, DISSENTING JUSTICES ARGUED THE STUDENT WAS DENIED HIS RIGHT TO CROSS-EXAMINE THE REPORTING INDIVIDUAL AND THE DETERMINATION SHOULD BE ANNULLED AND EXPUNGED. [Matter of Jacobson v Blaise, 2018 NY Slip Op 00205, Third Dept 1-11-18](#)

FAMILY LAW.

LEAVING A 16 MONTH OLD CHILD UNATTENDED IN A BATHTUB WITH FOUR INCHES OF WATER CONSTITUTED NEGLECT, FAMILY COURT REVERSED. [Matter of Leah VV. \(Theresa WW.\), 2018 NY Slip Op 00201, Third Dept 1-11-18](#)

FAMILY LAW.

CHILD BORN TO SAME-GENDER MARRIED COUPLE AFTER ARTIFICIAL INSEMINATION IS ENTITLED TO THE PRESUMPTION OF LEGITIMACY, DOCTRINE OF EQUITABLE ESTOPPEL REQUIRED DISMISSAL OF THE SPERM DONOR'S PATERNITY PETITION. [Matter of Christopher YY. v Jessica ZZ., 2018 NY Slip Op 00495, Third Dept 1-25-18](#)

FAMILY LAW, IMMIGRATION LAW.

FAMILY COURT SHOULD HAVE MADE FINDINGS ENABLING THE CHILD TO APPLY FOR SPECIAL IMMIGRANT JUVENILE STATUS (SIJS), STATUTORY PROCESS LEADING TO IMMIGRATION DETERMINATION BY DEPARTMENT OF HOMELAND SECURITY EXPLAINED. [Matter of Jose YY. \(Ericza K.\), 2018 NY Slip Op 00375, Third Dept 1-18-18](#)

FORECLOSURE, CIVIL PROCEDURE.

2008 LETTER INFORMING DEFENDANT SHE WAS IN DEFAULT DID NOT ACCELERATE THE DEBT, THEREFORE THE STATUTE OF LIMITATIONS DID NOT BEGIN TO RUN AND THE CURRENT FORECLOSURE PROCEEDING IS TIMELY. [Bank of Am., Natl. Assn. v Luma, 2018 NY Slip Op 00214, Third Dept 1-11-18](#)

INSURANCE LAW.

ALTHOUGH THE UNINSURED DRIVER ACTED INTENTIONALLY, THE INJURY TO THE MAN WHO WAS TRYING TO STOP THE DRIVER FROM DRIVING WHILE INTOXICATED WAS THE RESULT OF AN ACCIDENT WITHIN THE MEANING OF THE UNINSURED MOTORIST POLICY. [Matter of Progressive Advanced Ins. Co. \(Widdecombe\), 2018 NY Slip Op 00061, Third Dept 1-4-18](#)

MUNICIPAL LAW, CIVIL PROCEDURE.

FACT THAT PRO SE NOTICE OF CLAIM WAS NOT VERIFIED PROPERLY OVERLOOKED, FACTS IN NOTICE SUFFICIENT TO NOTIFY CITY OF MALICIOUS PROSECUTION CLAIM. [Hone v City of Oneonta, 2018 NY Slip Op 00055, Third Dept 1-4-18](#)

PERSONAL INJURY, CONTRACT LAW.

SNOW REMOVAL CONTRACTORS NOT LIABLE FOR PARKING LOT SLIP AND FALL, ESPINAL EXCEPTIONS DID NOT APPLY. [Hutchings v Garrison Lifestyle Pierce Hill, LLC, 2018 NY Slip Op 00057, Third Dept 1-4-18](#)

PERSONAL INJURY, TOXIC TORTS, CIVIL PROCEDURE, EVIDENCE.

PLAINTIFF'S FAILURE TO COMPLY WITH THE COURT'S DEADLINE FOR EXPERT DISCLOSURE IN THIS TOXIC TORTS CASE WARRANTED PRECLUSION OF PLAINTIFF'S EXPERT EVIDENCE AND SUMMARY JUDGMENT IN FAVOR OF DEFENDANT. [Colucci v Stuyvesant Plaza, Inc., 2018 NY Slip Op 00211, Third Dept 1-11-18](#)

UNEMPLOYMENT INSURANCE, LABOR LAW.

CLAIMANT NOT ENTITLED TO PRESUMPTION OF AN EMPLOYER-EMPLOYEE RELATIONSHIP PURSUANT TO LABOR LAW 511 WHICH IS AFFORDED TO PERFORMING ARTISTS, CLAIMANT IS PAID TO PROMOTE CALL-IN RADIO SHOWS BY CALLING DURING THE SHOWS, AN ACTIVITY THAT REQUIRES NO ARTISTIC TALENT. [Matter of Minefee \(United Stas. Radio Networks, Inc.--Commissioner of Labor\), 2018 NY Slip Op 00210, Third Dept 1-11-18](#)

WORKERS' COMPENSATION.

SKIN CARE SPECIALIST WORKING FOR A SKIN CARE COMPANY WITH A DISPLAY IN A BLOOMINGDALE'S STORE WAS AN EMPLOYEE OF THE SKIN CARE COMPANY AND WAS ENTITLED TO BENEFITS, LATE NOTICE EXCUSED, CLAIMANT FELL ON THE WAY TO THE RESTROOM. [Matter of Colamaio-Kohl v Task Essential Corp., 2018 NY Slip Op 00213, Third Dept 1-11-18](#)

WORKERS' COMPENSATION LAW.

CLAIMANT PROVED HE WAS EMPLOYED BY A COMPANY WHICH DID NOT HAVE WORKERS' COMPENSATION INSURANCE AND WHICH REFUSED TO APPEAR AT THE HEARING, GENERAL CONTRACTOR OBLIGATED TO PAY THE WORKERS' COMPENSATION AWARDS. [Matter of Joseph v Atelier Consulting LLC, 2018 NY Slip Op 00218, Third Dept 1-11-18](#)

WORKERS' COMPENSATION LAW.

ALTHOUGH CLAIMANT RETURNED TO WORK AT FULL PAY, SHOULD SHE STOP WORK IN THE FUTURE SHE WAS ENTITLED TO 375 WEEKS OF BENEFITS FOR PERMANENT PARTIAL DISABILITY WHICH RESULTED IN A 70% LOSS OF WAGE-EARNING CAPACITY. [Matter of Oyola v New York City Dept. of Sch. Food & Nutrition Servs., 2018 NY Slip Op 00368, Third Dept 1-18-18](#)

WORKERS' COMPENSATION LAW.

EVEN THOUGH THE INJURED EMPLOYEE WORKED ONLY SPORADICALLY AND AS NEEDED AND WORKED ONLY 16 DAYS IN THE RELEVANT 52 WEEK PERIOD, HIS BENEFITS MUST STILL BE CALCULATED BY MULTIPLYING HIS DAILY WAGE BY 200. [Matter of Bain v New Caps, LLC, 2018 NY Slip Op 00369, Third Dept 1-18-18](#)

WORKERS' COMPENSATION LAW.

THE BOARD'S CONCLUSION, BASED UPON EXPERT TESTIMONY, THAT CLAIMANT'S STROKE WAS CAUSED BY PRE-EXISTING MEDICAL CONDITIONS AND NOT THE WORK CONDITIONS AT THE TIME OF THE STROKE WAS SUPPORTED BY SUBSTANTIAL EVIDENCE AND THEREFORE CANNOT BE DISTURBED ON APPEAL. [Matter of Devis v Mountain States Rosen LLC, 2018 NY Slip Op 00370, Third Dept 1-18-18](#)

ZONING, ENVIRONMENTAL LAW.

PROPERTY OWNER SUFFICIENTLY ALLEGED THE REZONING TO PRECLUDE DEVELOPMENT WAS ARBITRARY AND CAPRICIOUS AND CONSTITUTED REVERSE SPOT ZONING, THOSE CAUSES OF ACTION, ALTHOUGH THEY MAY NOT ULTIMATELY BE SUCCESSFUL, SHOULD NOT HAVE BEEN DISMISSED. [Matter of Wir Assoc., LLC v Town of Mamakating, 2018 NY Slip Op 00059, Third Dept 1-4-18](#)

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COURT OF APPEALS

CIVIL PROCEDURE.

NO SPECIAL RULES APPLY TO DISCOVERY OF FACEBOOK POSTS IN A PERSONAL INJURY ACTION, THE SCOPE OF DISCOVERY SHOULD BE BASED UPON RELEVANCE TO THE ACTION BALANCED AGAINST PRIVACY CONCERNS, [Forman v Henkin, 2018 NY Slip Op 01015, CtApp 2-13-18](#)

CIVIL PROCEDURE.

COMPULSORY COUNTERCLAIM IN FEDERAL ACTION WAS NOT RAISED, FEDERAL CLAIM PRECLUSION RULES PROHIBITED A SUBSEQUENT STATE ACTION BASED UPON THE COUNTERCLAIM. [Paramount Pictures Corp. v Allianz Risk Transfer AG, 2018 NY Slip Op 01150, CtApp 2-20-18](#)

CONTRACT LAW, ARCHITECTURAL MALPRACTICE.

CITY WAS NOT A THIRD PARTY BENEFICIARY OF A CONSTRUCTION CONTRACT BETWEEN THE DORMITORY AUTHORITY OF NYS AND DEFENDANT ARCHITECTS, MALPRACTICE ACTION AGAINST THE ARCHITECTS WAS DUPLICATIVE OF THE BREACH OF CONTRACT ACTION. [Dormitory Auth. of the State of N.Y. v Samson Constr. Co., 2018 NY Slip Op 01115, CtApp 2-15-18](#)

CRIMINAL LAW.

MISDEMEANOR COMPLAINTS ADEQUATELY CHARGED POSSESSION OF A DANGEROUS KNIFE. [People v McCain, 2018 NY Slip Op 01018, CtApp 2-13-18](#)

CRIMINAL LAW, APPEALS.

DEFENDANT WAS ENTITLED TO DISMISSAL OF THE MURDER INDICTMENT ON CONSTITUTIONAL SPEEDY TRIAL GROUNDS, SIX-YEARS BETWEEN ARREST AND GUILTY PLEA, SPEEDY TRIAL IS NOT A MIXED QUESTION OF LAW AND FACT. [People v Wiggins, 2018 NY Slip Op 01111, CtApp 2-15-18](#)

CRIMINAL LAW, ATTORNEYS.

DEFENSE COUNSEL WAS NOT INEFFECTIVE FOR AGREEING TO ANNOTATIONS ON THE VERDICT SHEET WHICH SERVED TO DISTINGUISH COUNTS ALLEGING SIMILAR BEHAVIOR IN THIS AGGRAVATED HARASSMENT CASE, COUNTY COURT REVERSED. [People v O'Kane, 2018 NY Slip Op 00859, CtApp 2-8-18](#)

CRIMINAL LAW, EVIDENCE.

EVIDENCE OF CONSPIRACY NOT SUFFICIENT TO SUPPORT CONVICTION, PRESENCE WHEN CONSPIRACY DISCUSSED BY OTHER GANG MEMBERS NOT ENOUGH. [People v Reyes, 2018 NY Slip Op 01113, CtApp 2-15-18](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

YOUTHFUL OFFENDER ADJUDICATION PROPERLY CONSIDERED IN ASSESSING RISK LEVEL UNDER THE SEX OFFENDER REGISTRATION ACT (SORA). [People v Francis, 2018 NY Slip Op 01017, CtApp 2-13-18](#)

LANDLORD-TENANT, MUNICIPAL LAW.

NYC HOUSING AUTHORITY'S RULES DO NOT ALLOW A SINGLE ADULT AND ADULT CHILD TO RESIDE PERMANENTLY IN A ONE BEDROOM APARTMENT, ADULT CHILD ALLOWED TEMPORARY RESIDENCY TO CARE FOR HIS MOTHER WAS NOT ENTITLED TO REMAINING FAMILY MEMBER STATUS UPON THE DEATH OF HIS MOTHER. [Matter of Aponte v Olatoye, 2018 NY Slip Op 01112, CtApp 2-15-18](#)

MEDICAL MALPRACTICE, CIVIL PROCEDURE, PERSONAL INJURY.

PLAINTIFF RAISED A QUESTION OF FACT ABOUT THE APPLICABILITY OF THE CONTINUOUS TREATMENT DOCTRINE IN THIS MEDICAL MALPRACTICE CASE, DESPITE A 30 MONTH PERIOD BETWEEN VISITS. [Lohnas v Luzzi, 2018 NY Slip Op 01114, CtApp 2-15-18](#)

MUNICIPAL LAW, UTILITIES, IMMUNITY.

COMPLAINTS AGAINST LONG ISLAND ELECTRIC POWER PROVIDERS STATED CAUSES OF ACTION FOR NEGLIGENCE IN FAILING TO SHUT DOWN POWER BEFORE LANDFALL BY HURRICANE SANDY, DEFENDANTS DID NOT DEMONSTRATE THEY WERE ENTITLED TO GOVERNMENTAL IMMUNITY AT THIS PRE-ANSWER STAGE. [Connolly v Long Is. Power Auth., 2018 NY Slip Op 01148, CtApp 2-20-18](#)

RETIREMENT AND SOCIAL SECURITY LAW.

POLICEMAN AND FIREFIGHTER WERE INJURED BY RISKS INHERENT IN THEIR JOBS AND THEREFORE WERE NOT ENTITLED TO ACCIDENTAL DISABILITY RETIREMENT BENEFITS.

[Matter of Kelly v DiNapoli, 2018 NY Slip Op 01016, CtApp 2-13-18](#)

SECURITIES, DEBTOR-CREDITOR, CORPORATION LAW.

INDENTURE TRUSTEE STATED CAUSES OF ACTION FOR FRAUDULENT CONVEYANCES UNDER A VEIL-PIERCING THEORY, COMPLAINT ALLEGED FRAUDULENT REDEMPTIONS SIPHONED OFF ASSETS LEAVING CORPORATE OBLIGORS UNABLE TO PAY NOTEHOLDERS.

[Cortlandt St. Recovery Corp. v Bonderman, 2018 NY Slip Op 01149, CtApp 2-20-18](#)

FIRST DEPARTMENT

CIVIL PROCEDURE, DEBTOR-CREDITOR, CORPORATION LAW.

PLAINTIFF DID NOT DEMONSTRATE ANY BASIS FOR IN PERSONAM OR IN REM JURISDICTION BY THE NEW YORK COURTS, PROCEEDING TO ENFORCE AN ALBANIAN MONEY JUDGMENT PURSUANT TO ARTICLE 53 OF THE CPLR SHOULD HAVE BEEN DISMISSED. [AlbaniaBEG Ambient Sh.p.k. v Enel S.p.A., 2018 NY Slip Op 00928, First Dept 2-8-18](#)

CRIMINAL LAW.

DEFENSE COUNSEL, DURING VOIR DIRE, RELIED ON THE PEOPLE'S REPRESENTATION THAT THE COMPLAINANT WOULD NOT TESTIFY, BEFORE OPENING STATEMENTS DEFENSE COUNSEL WAS INFORMED THE COMPLAINANT WOULD TESTIFY, NEW TRIAL ORDERED. [People v Kyser, 2018 NY Slip Op 01160, First Dept 2-20-18](#)

CRIMINAL LAW.

JURY SHOULD HAVE BEEN INSTRUCTED ON THE JUSTIFICATION DEFENSE, THERE WAS EVIDENCE THE DECEDENT WAS ADVANCING TOWARD DEFENDANT, THROWING PUNCHES AND TRYING TO GRAB THE GUN DEFENDANT WAS HOLDING. [People v Brown, 2018 NY Slip Op 01173, First Dept 2-20-18](#)

CRIMINAL LAW, APPEALS.

FAILURE TO INSTRUCT JURY THAT AN ACQUITTAL ON THE TOP COUNT BASED ON THE JUSTIFICATION DEFENSE PRECLUDED CONSIDERATION OF THE REMAINING CHARGES REQUIRED REVERSAL IN THE INTEREST OF JUSTICE. [People v Marcucci, 2018 NY Slip Op 00634, First Dept 2-1-18](#)

CRIMINAL LAW, ATTORNEYS, IMMIGRATION.

DEFENDANT WAS NOT AFFORDED EFFECTIVE ASSISTANCE OF COUNSEL WHEN HE WAS TOLD ONLY OF POTENTIAL IMMIGRATION CONSEQUENCES OF HIS PLEA, MATTER REMANDED TO ALLOW DEFENDANT TO MAKE A MOTION TO VACATE HIS PLEA. [People v Pequero, 2018 NY Slip Op 00619, First Dept 2-1-18](#)

CRIMINAL LAW, CONSTITUTIONAL LAW.

CLOSURE OF COURTROOM BASED UPON WITNESS'S FEAR WAS PROPER. [People v Sharp, 2018 NY Slip Op 00623, First Dept 2-1-18](#)

CRIMINAL LAW, EVIDENCE.

INTENT REQUIREMENT OF ATTEMPTED GRAND LARCENY DOES NOT ATTACH TO THE VALUE OF THE PROPERTY, GRAND LARCENY COUNTS SHOULD NOT HAVE BEEN DISMISSED AND REDUCED BASED ON THE GRAND JURY EVIDENCE WHICH DID NOT INCLUDE EVIDENCE OF THE INTENT TO STEAL PROPERTY OF A CERTAIN VALUE. [People v Deleon, 2018 NY Slip Op 00531, First Dept 1-30-18](#)

CRIMINAL LAW, EVIDENCE.

EVIDENCE OF SERIOUS PHYSICAL INJURY INSUFFICIENT IN THIS GANG ASSAULT CASE. [People v Garay, 2018 NY Slip Op 01117, First Dept 2-15-18](#)

CRIMINAL LAW, EVIDENCE.

VIOLATION OF PROBATION DETERMINATION CANNOT BE BASED SOLELY ON GRAND JURY MINUTES, WHICH CONSTITUTE HEARSAY, PROBATION REINSTATED. [People v Hubel, 2018 NY Slip Op 01154, First Dept 2-20-18](#)

CRIMINAL LAW, IMMIGRATION.

COURT WAS REQUIRED TO INFORM DEFENDANT OF THE DEPORTATION CONSEQUENCES OF HIS PLEA, DESPITE DEFENDANT'S ERRONEOUS STATEMENT TO THE COURT THAT HE IS A US CITIZEN, DEFENDANT ALLOWED TO MOVE TO VACATE HIS PLEA. [People v Palmer, 2018 NY Slip Op 00638, First Dept 1-2-18](#)

INSURANCE LAW, PERSONAL INJURY.

RESPONDENT FELL USING A WALKER TO GET OFF A BUS, HER INJURY RESULTED FROM USE OR OPERATION OF A MOTOR VEHICLE, NO-FAULT BENEFITS PROPERLY AWARDED. [Matter of New York City Tr. Auth. v Physical Medicine & Rehab of NY PC, 2018 NY Slip Op 01260, First Dept 2-22-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

UNSECURED, DAMAGED LADDER WOBBLED AND PLAINTIFF FELL, PLAINTIFF'S SUMMARY JUDGMENT MOTION ON HIS LABOR LAW 240 (1) CAUSE OF ACTION PROPERLY GRANTED. [Pena v Jane H. Goldman Residuary Trust No. 1, 2018 NY Slip Op 01255, First Dept 2-22-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

LADDER MOVED FOR NO APPARENT REASON, PLAINTIFF ENTITLED TO SUMMARY JUDGMENT ON HIS LABOR LAW 240 (1) ACTION. [Rom v Eurostruct, Inc., 2018 NY Slip Op 01262, First Dept 2-22-18](#)

LABOR LAW-CONSTRUCTION LAW, EVIDENCE.

PROPERTY OWNER LIABLE FOR PLAINTIFF'S FALL FROM A LADDER (UNDER LABOR LAW 240 (1)) WHILE WORKING FOR A TENANT, EVEN IF THE OWNER WAS NOT AWARE THE TENANT HIRED THE PLAINTIFF; WHERE ONLY HEARSAY EVIDENCE IS OFFERED IN OPPOSITION TO SUMMARY JUDGMENT, A QUESTION OF FACT IS NOT RAISED. [Gonzalez v 1225 Ogden Deli Grocery Corp., 2018 NY Slip Op 01280, First Dept 2-27-18](#)

MUNICIPAL LAW, MEDICAL MALPRACTICE, PERSONAL INJURY.

ALTHOUGH DEFENDANT NYC HEALTH AND HOSPITALS CORPORATION (HHC) DID NOT HAVE TIMELY KNOWLEDGE OF THE ACTUAL FACTS CONSTITUTING PETITIONER'S MEDICAL MALPRACTICE CLAIM, THE FAILURE TO PROVIDE THE MEDICAL RECORDS UPON REQUEST JUSTIFIED GRANTING THE PETITION FOR LEAVE TO FILE A LATE NOTICE OF CLAIM. [Matter of Townson v New York City Health & Hosps. Corp., 2018 NY Slip Op 00607, First Dept 2-1-18](#)

INSURANCE LAW.

ALL RISK ARTWORK INSURANCE DID NOT COVER DEFECTIVE TITLE, ALLEGATIONS DID NOT DEMONSTRATE A FIDUCIARY RELATIONSHIP BETWEEN INSURED AND BROKERS. [Dae Assoc., LLC v AXA Art Ins. Corp., 2018 NY Slip Op 01026, First Dept 2-13-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF'S SUMMARY JUDGMENT MOTION PROPERLY GRANTED IN THIS LABOR LAW 240(1) ACTION, PLAINTIFF WAS ATTEMPTING TO EMPTY A 300 POUND BIN INTO A DUMPSTER, FIVE TO SEVEN FOOT HEIGHT DIFFERENTIAL NOT DE MINIMUS. [Miller v 177 Ninth Ave. Condominium, 2018 NY Slip Op 00905, First Dept 2-8-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF'S DECEDENT WAS PROVIDED WITH A SAFETY LINE AND A HARNESS WHICH HE WAS NOT USING WHEN HE FELL THROUGH A SKYLIGHT, FAILURE TO USE THE SAFETY LINE WAS THE SOLE PROXIMATE CAUSE OF THE FALL, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON THE LABOR LAW 240 (1) CAUSE OF ACTION SHOULD HAVE BEEN GRANTED. [Guaman v City of New York, 2018 NY Slip Op 01025, First Dept 2-13-15](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

EVIDENCE OF DEBRIS ON FLOOR WAS SUFFICIENT TO RAISE A QUESTION OF FACT WHETHER DEFENDANTS WERE LIABLE UNDER LABOR LAW 241(6) AND 200, PLAINTIFF STEPPED INTO A HOLE BUT DID NOT KNOW WHETHER THE HOLE WAS OBSCURED BY THE DEBRIS. [Licata v AB Green Gansevoort, LLC, 2018 NY Slip Op 01023, First Dept 2-13-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

8 TO 12 INCH HEIGHT DIFFERENTIAL NOT ACTIONABLE, LABOR LAW 240 (1) CAUSE OF ACTION SHOULD HAVE BEEN DISMISSED. [Sawczyn v New York Univ., 2018 NY Slip Op 01120, First Dept 2-15-18](#)

MEDICAL MALPRACTICE, PERSONAL INJURY.

QUESTION OF FACT WHETHER RESIDENT EXERCISED INDEPENDENT JUDGMENT IN THIS MEDICAL MALPRACTICE CASE, MAKING THE RESIDENT AND HOSPITAL POTENTIALLY LIABLE. [Burnett-Joseph v McGrath, 2018 NY Slip Op 01137, First Dept 2-15-18](#)

PERSONAL INJURY.

DEFENDANT DID NOT DEMONSTRATE WHEN THE AREA OF THE FALL WAS LAST CLEANED OR INSPECTED, SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED IN THIS SLIP AND FALL CASE, POINTING TO GAPS IN PLAINTIFFS' CASE NOT ENOUGH. [Vargas v Riverbay Corp., 2018 NY Slip Op 00520, First Dept 1-30-18](#)

PERSONAL INJURY, CONTRACT LAW.

PLAINTIFF'S NEGLIGENCE ACTION AGAINST A SECURITY COMPANY HIRED BY KMART SHOULD HAVE BEEN DISMISSED, PLAINTIFF WAS INJURED IN A FIGHT WITH A KMART EMPLOYEE, PLAINTIFF WAS NOT A THIRD PARTY BENEFICIARY OF THE CONTRACT BETWEEN KMART AND THE SECURITY COMPANY, PLAINTIFF DID NOT RELY ON THE PERFORMANCE OF THE SECURITY COMPANY'S DUTIES, AND THE SECURITY COMPANY DID NOT FULLY DISPLACE KMART'S DUTY TO PROVIDE SECURITY (ESPINAL FACTORS). [Santiago v K Mart Corp., 2018 NY Slip Op 01296, First Dept 2-27-18](#)

PERSONAL INJURY, LABOR LAW-CONSTRUCTION LAW.

NEGLIGENCE AND LABOR LAW 200 CAUSES OF ACTION IN THIS ELECTROCUTION CASE SHOULD HAVE BEEN DISMISSED, NO CODE VIOLATIONS, DEFENDANTS NEVER NOTIFIED THE TRANSFORMERS IN THE ELEVATOR CONTROL ROOM CONSTITUTED A DANGEROUS CONDITION. [Bradley v HWA 1290 III LLC, 2018 NY Slip Op 00516, First Dept 1-30-18](#)

PERSONAL INJURY, LANDLORD-TENANT.

ELEVATOR MALFUNCTION WAS NOT THE PROXIMATE CAUSE OF PLAINTIFF'S DECEDENT'S DEATH, PLAINTIFF'S DECEDENT HAD SUFFERED CARDIAC ARREST BEFORE SHE WAS TRANSFERRED TO THE ELEVATOR, HOUSING AUTHORITY'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Lebron v New York City Hous. Auth., 2018 NY Slip Op 01116, First Dept 2-15-18](#)

TRUSTS AND ESTATES, CORPORATION LAW.

NOT-FOR-PROFIT CORPORATION LAW PETITION TO DISINTER THE REMAINS OF ARCHBISHOP FULTON SHEEN AND MOVE THEM FROM ST PATRICK'S CATHEDRAL TO PEORIA ILLINOIS SHOULD NOT HAVE BEEN GRANTED WITHOUT A HEARING. [Matter of Cunningham v Trustees of St. Patrick's Cathedral, 2018 NY Slip Op 00815, First Dept 2-6-18](#)

SECOND DEPARTMENT

CIVIL PROCEDURE.

MOTION TO COMPEL ACCEPTANCE OF A LATE ANSWER SHOULD HAVE BEEN GRANTED. [Baldwin Rte. 6, LLC v Bernad Creations, Ltd., 2018 NY Slip Op 01039, Second Dept 2-14-19](#)

CIVIL PROCEDURE.

MATTER ERRONEOUSLY TRANSFERRED TO A COURT WITHOUT SUBJECT MATTER JURISDICTION (CIVIL COURT) CAN BE RETRANSFERRED TO THE CORRECT COURT (SUPREME COURT) AFTER JUDGMENT, THE CIVIL COURT JUDGMENT IS VOID AND CANNOT BE ADOPTED BY THE SUPREME COURT. [Caffrey v North Arrow Abstract & Settlement Servs., Inc., 2018 NY Slip Op 01043, Second Dept 2-14-18](#)

CIVIL PROCEDURE, FORECLOSURE.

OKAY FOR BANK TO SUBMIT RENEWED POWER OF ATTORNEY IN REPLY PAPERS, POWER OF ATTORNEY SUBMITTED WITH MOTION PAPERS HAD APPARENTLY EXPIRED AND DEFENDANTS RAISED THE ISSUE IN ANSWERING PAPERS. [Bank of N.Y. Mellon v Hoshmand, 2018 NY Slip Op 00818, Second Dept 2-7-18](#)

CIVIL PROCEDURE, REAL PROPERTY TAX LAW.

MOTION TO DISCONTINUE THIS REAL PROPERTY TAX ASSESSMENT CHALLENGE PROPERLY DENIED, CRITERIA EXPLAINED; SUA SPONTE MERGER OF PARCELS, RELIEF NOT REQUESTED BY THE PARTIES, WAS AN ABUSE OF DISCRETION. [Matter of Blauvelt Mini-Mall, Inc. v Town of Orangetown, 2018 NY Slip Op 01051, Second Dept 2-14-18](#)

CIVIL PROCEDURE, TRUSTS AND ESTATES.

MOTION TO DISMISS MADE BY DECEASED DEFENDANT'S FORMER ATTORNEY PURPORTEDLY ON DECEDENT'S BEHALF WAS A NULLITY, MOTIONS TO DISMISS MADE BY OTHER DEFENDANTS ARGUING THAT PLAINTIFFS DID NOT TAKE TIMELY STEPS TO SUBSTITUTE A REPRESENTATIVE FOR THE DECEASED DEFENDANT SHOULD HAVE BEEN GRANTED. [Vicari v Kleinwaks, 2018 NY Slip Op 00576, Second Dept 1-31-18](#)

CONTRACT LAW, CIVIL PROCEDURE.

ALLEGATIONS IN COMPLAINT AND AFFIDAVIT SUBMITTED IN RESPONSE TO A MOTION TO DISMISS MUST BE TREATED AS TRUE, PLAINTIFF RAISED A QUESTION OF FACT WHETHER RELEASE PROCURED BY FRAUD. [Sacchetti-Virga v Bonilla, 2018 NY Slip Op 01210, Second Dept 2-21-18](#)

CONTRACT LAW, LIMITED LIABILITY COMPANY LAW, ATTORNEYS.

UNEXECUTED CONTRACT THAT COULD NOT BE COMPLETED WITHIN A LIFETIME NOT ENFORCEABLE, ATTORNEY WHO REPRESENTED THE DEFENDANT LLC SHOULD HAVE BEEN DISQUALIFIED IN THIS ACTION BROUGHT ON BEHALF OF A DECEASED MEMBER. [Deerin v Ocean Rich Foods, LLC, 2018 NY Slip Op 00820, Second Dept 2-7-18](#)

CONTRACT LAW, MEDICAL MALPRACTICE.

COMPLAINT ALLEGING BREACH OF A CONTRACT TO PROVIDE MEDICAL SERVICES PROPERLY DISMISSED FOR FAILURE TO STATE A CAUSE OF ACTION. [Detringo v South Is. Family Med., LLC, 2018 NY Slip Op 00821, Second Dept 2-7-18](#)

CONTRACT LAW, REAL ESTATE.

PLAINTIFF'S SILENCE COUPLED WITH GOING FORWARD TO ENTER THE LEASE CONSTITUTED ACCEPTANCE OF THE REAL ESTATE BROKER'S COUNTEROFFER FOR THE BROKERAGE FEE. [Gator Hillside Vil., LLC v Schuckman Realty, Inc., 2018 NY Slip Op 01178, Second Dept 2-21-18](#)

CRIMINAL LAW.

FOR INMATES WHO COMMITTED CRIMES AS JUVENILES, THEIR YOUTH MUST BE TAKEN INTO CONSIDERATION IN PAROLE DETERMINATIONS. [Matter of Putland v New York State Dept. of Corr. & Community Supervision, 2018 NY Slip Op 00837, Second Dept 2-7-18](#)

CRIMINAL LAW.

JURY SHOULD HAVE BEEN INSTRUCTED IT COULD CONSIDER THE ACTIONS OF COMPLAINANT'S HUSBAND IN DETERMINING WHETHER THE JUSTIFICATION DEFENSE APPLIED IN THIS ASSAULT CASE. [People v Lijo, 2018 NY Slip Op 01081, Second Dept 2-14-18](#)

CRIMINAL LAW, ADMINISTRATIVE LAW.

CHAIRMAN OF THE BOARD OF PAROLE SHOULD NOT HAVE BEEN HELD IN CONTEMPT FOR FAILURE TO HOLD A DE NOVO PAROLE HEARING AS ORDERED BY THE ARTICLE 78 COURT, THE EXECUTIVE LAW DOES NOT CALL FOR A HEARING IN THIS CONTEXT, ONLY AN INTERVIEW. [Matter of Banks v Stanford, 2018 NY Slip Op 00829, Second Dept 2-7-18](#)

CRIMINAL LAW, APPEALS.

WAIVER OF RIGHT TO APPEAL INVALID. [People v Johnson, 2018 NY Slip Op 00567, Second Dept 1-31-18](#)

CRIMINAL LAW, ATTORNEYS.

FAILURE TO REQUEST THAT THE JURY BE CHARGED ON A LESSER INCLUDED OFFENSE AMOUNTED TO INEFFECTIVE ASSISTANCE OF COUNSEL, THE EVIDENCE OF THE CHARGED OFFENSE WAS WEAK, THE LESSER INCLUDED OFFENSE WAS PLAUSIBLE, AND THE SENTENCING DISPARITY WAS ENORMOUS. [People v Orama, 2018 NY Slip Op 00571, Second Dept 1-31-18](#)

CRIMINAL LAW, ATTORNEYS.

PROSECUTOR'S FAILURE TO PROVIDE THE DEFENSE WITH INFORMATION ABOUT FAVORABLE TREATMENT AFFORDED A WITNESS IN EXCHANGE FOR HIS TESTIMONY, AND THE PROSECUTOR'S FAILURE TO CORRECT THE WITNESS'S MISLEADING TESTIMONY, REQUIRED REVERSAL AND A NEW TRIAL. [People v Giuca, 2018 NY Slip Op 00846, Second Dept 2-7-18](#)

CRIMINAL LAW, ATTORNEYS.

DEFENSE COUNSEL, BY TAKING A POSITION ADVERSE TO THAT OF THE DEFENDANT WITH RESPECT TO DEFENDANT'S PRO SE MOTION TO SET ASIDE THE VERDICT, DEPRIVED DEFENDANT OF HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, MATTER REMITTED FOR CONSIDERATION OF THE MOTION. [People v Freire, 2018 NY Slip Op 00564, Second Dept 1-31-18](#)

CRIMINAL LAW, ATTORNEYS.

DEFENDANT DEMONSTRATED HE WOULD NOT HAVE PLED GUILTY HAD HIS COUNSEL TOLD HIM DEPORTATION WAS MANDATORY, CONVICTION REVERSED. [People v Loaiza, 2018 NY Slip Op 01201, Second Dept 2-21-18](#)

CRIMINAL LAW, EVIDENCE.

DEFENDANT'S ATTEMPTED ASSAULT CONVICTION WAS AGAINST THE WEIGHT OF THE EVIDENCE. [People v Serrano, 2018 NY Slip Op 00573, Second Dept 1-31-18](#)

CRIMINAL LAW, EVIDENCE, LANDLORD-TENANT.

ONCE THE LOCKS ON THE APARTMENT WERE CHANGED PURSUANT TO A LEGAL POSSESSION, DEFENDANT NO LONGER HAD A LEGITIMATE EXPECTATION OF PRIVACY IN HIS BEDROOM, DEFENDANT DID NOT DEMONSTRATE THE LEGAL POSSESSION WAS ILLEGAL, DEFENDANT DID NOT HAVE STANDING TO SEEK SUPPRESSION OF THE FIREARMS FOUND IN HIS BEDROOM. [People v McCullum, 2018 NY Slip Op 00570, Second Dept 1-31-18](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

DEFENDANT DID NOT WAIVE HIS RIGHT TO BE PRESENT AT THE SORA HEARING, NEW HEARING ORDERED. [People v Hunt, 2018 NY Slip Op 01087, Second Dept 2-14-18](#)

FAMILY LAW.

NEGLECT STEMMING FROM MOTHER'S MENTAL ILLNESS NOT PROVEN, FAMILY COURT REVERSED. [Matter of Bella S. \(Sarah S.\), 2018 NY Slip Op 01069, Second Dept 2-14-18](#)

FAMILY LAW.

AMBIGUITY IN THE STIPULATION OF SETTLEMENT WAS RESOLVED BY LANGUAGE IN THE QUALIFIED DOMESTIC RELATIONS ORDER (QDRO), THE LANGUAGE IN THE QDRO SHOULD HAVE CONTROLLED THE INTERPRETATION OF THE STIPULATION. [Palaia v Palaia, 2018 NY Slip Op 01076, Second Dept 2-14-18](#)

FAMILY LAW.

NO CAUSAL CONNECTION BETWEEN FATHER'S MENTAL ILLNESS AND ACTUAL OR POTENTIAL HARM TO THE CHILD, NEGLECT FINDING VACATED. [Matter of Geoffrey D. \(Everton D.\), 2018 NY Slip Op 01185, Second Dept 2-21-18](#)

FAMILY LAW.

PATERNITY PETITION SHOULD HAVE BEEN DISMISSED ON EQUITABLE ESTOPPEL GROUNDS IN THIS ARTIFICIAL INSEMINATION CASE. [Matter of Joseph O. v Danielle B., 2018 NY Slip Op 01192, Second Dept 2-21-18](#)

FAMILY LAW, CIVIL PROCEDURE.

SUPREME COURT, SUA SPONTE, SET ASIDE AN IN-COURT STIPULATION OF SETTLEMENT IN A DIVORCE ACTION, NEITHER PARTY REQUESTED THAT RELIEF, STIPULATION REINSTATED. [Estate of Michael Reid v Reid, 2018 NY Slip Op 01044, Second Dept 2-14-18](#)

FAMILY LAW.

LEGAL GUARDIAN'S PETITION TO ADOPT CHILD SHOULD NOT HAVE BEEN DENIED BASED SOLELY UPON THE GUARDIAN'S CRIMINAL HISTORY. [Matter of Isabella \(Charles O.\), 2018 NY Slip Op 01309, Second Dept 2-28-18](#)

FAMILY LAW.

THE AUTOMATIC ORDERS WHICH PRECLUDE TRANSFER OF MARITAL PROPERTY WHILE DIVORCE PROCEEDINGS ARE PENDING CANNOT BE USED AS THE BASIS FOR CIVIL CONTEMPT AFTER THE JUDGMENT OF DIVORCE. [Spencer v Spencer, 2018 NY Slip Op 01348, Second Dept 2-28-18](#)

FAMILY LAW, ATTORNEYS.

FAMILY COURT SHOULD NOT HAVE REFUSED TO ALLOW FATHER TO REPRESENT HIMSELF IN THIS CUSTODY PROCEEDING. [Matter of Aleman v Lansch, 2018 NY Slip Op 01303, Second Dept, 2-28-18](#)

FAMILY LAW, IMMIGRATION LAW.

FAMILY COURT SHOULD HAVE MADE FINDINGS TO ALLOW THE CHILD TO PETITION FOR SPECIAL IMMIGRANT JUVENILE STATUS. [Matter of Dennis X. G. D. V., 2018 NY Slip Op 01073, Second Dept 2-14-18](#)

FAMILY LAW, RELIGION.

INABILITY TO AGREE ON CHILD'S RELIGIOUS TRAINING CONSTITUTED A CHANGE IN CIRCUMSTANCES WARRANTING THE AWARD OF SOLE CUSTODY TO MOTHER. [Matter of Baalla v Baalla, 2018 NY Slip Op 01050, Second Dept 2-14-18](#)

FORECLOSURE, CIVIL PROCEDURE.

FILING A 90 DAY NOTICE AND THEN DISCONTINUING THE FORECLOSURE ACTION IN 2014 DID NOT REVOKE THE ELECTION TO ACCELERATE REPRESENTED BY THE FILING OF THE SUMMONS AND COMPLAINT IN 2008, FORECLOSURE ACTION PROPERLY DISMISSED AS UNTIMELY. [Deutsche Bank Natl. Trust Co. v Adrian, 2018 NY Slip Op 00543, Second Dept 1-31-18](#)

FORECLOSURE, CIVIL PROCEDURE.

FORECLOSURE ACTION SHOULD NOT HAVE BEEN DISMISSED AS UNTIMELY FOR TWO DISTINCT REASONS; THE 2007 COMPLAINT WAS DISMISSED FOR LACK OF STANDING AND THEREFORE DID NOT SERVE TO ACCELERATE THE DEBT; THE SECOND ACTION, BROUGHT BY A SUCCESSOR IN INTEREST, WAS STARTED WITHIN SIX MONTHS OF THE DISMISSAL OF THE INITIAL ACTION AND WAS THEREFORE TIMELY UNDER CPLR 205 [a]. [U.S. Bank N.A. v Gordon, 2018 NY Slip Op 01349, Second Dept 2-28-18](#)

FORECLOSURE, EVIDENCE.

ALTHOUGH THE BANK'S MOTION FOR SUMMARY JUDGMENT WAS NOT OPPOSED, SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED, THE BANK DID NOT DEMONSTRATE STANDING WITH EVIDENCE ADMISSIBLE UNDER THE BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE. [US Bank N.A. v Ballin, 2018 NY Slip Op 01212, Second Dept 2-21-18](#)

FORECLOSURE, EVIDENCE.

EVIDENCE OF STANDING DID NOT MEET THE REQUIREMENTS OF THE BUSINESS RECORDS HEARSAY EXCEPTION, SUPREME COURT SHOULD NOT HAVE DONE INTERNET RESEARCH TO MAKE A SUA SPONTE FINDING THAT THE BANK HAD STANDING. [OneWest Bank, FSB v Berino, 2018 NY Slip Op 01318, Second Dept 2-28-18](#)

FORECLOSURE, EVIDENCE, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW.

BANK DID NOT DEMONSTRATE COMPLIANCE WITH THE NOTICE PROVISIONS OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL), BANK'S MOTION FOR SUMMARY JUDGMENT IN THIS FORECLOSURE ACTION PROPERLY DENIED. [Bank of Am., N.A. v Wheatley, 2018 NY Slip Op 01175, Second Dept 2-21-18](#)

FREEDOM OF INFORMATION LAW (FOIL).

TRAFFIC AND PARKING VIOLATIONS AGENCY IS A HYBRID AGENCY PLAYING BOTH JUDICIAL AND PROSECUTORIAL ROLES, ALTHOUGH DOCUMENTS RELATING TO THE JUDICIAL ROLE ARE EXEMPT FROM FOIL DISCLOSURE, DOCUMENTS RELATING TO THE PROSECUTORIAL ROLE ARE NOT. [Matter of Law Offs. of Cory H. Morris v County of Nassau, 2018 NY Slip Op 00835, Second Dept 2-7-18](#)

LANDLORD-TENANT.

TENANT'S MOTHER HAD SUCCESSION RIGHTS TO A RENT STABILIZED APARTMENT PURSUANT TO THE RENT STABILIZATION CODE AND PUBLIC HOUSING LAW, NYS DIVISION OF HOUSING AND COMMUNITY RENEWAL HAD MISINTERPRETED THE APPLICABLE CODE PROVISION. [Matter of Jourdain v New York State Div. of Hous. & Community Renewal, 2018 NY Slip Op 00556, Second Dept 1-31-18](#)

INTENTIONAL TORTS, CIVIL CONSPIRACY.

CIVIL CONSPIRACY CANNOT BE BROUGHT AS AN INDEPENDENT TORT IN NEW YORK. [McSpedon v Levine, 2018 NY Slip Op 00826, Second Dept 2-7-18](#)

LANDLORD-TENANT, CONTRACT LAW, APPEALS.

CLAUSE IN THE COMMERCIAL LEASES WHICH WAIVED THE AVAILABILITY OF DECLARATORY RELIEF WAS VALID AND ENFORCEABLE AND EXTENDED TO PRECLUDE THE AVAILABILITY OF A *YELLOWSTONE* INJUNCTION IN THIS LEASE TERMINATION PROCEEDING, WHETHER WAIVER VIOLATED PUBLIC POLICY, ALTHOUGH NOT RAISED BELOW, PROPERLY CONSIDERED ON APPEAL. [159 MP Corp. v Redbridge Bedford, LLC, 2018 NY Slip Op 00537, Second Dept 1-31-18](#)

MENTAL HYGIENE LAW.

A DIAGNOSIS OF UNSPECIFIED PARAPHILIC DISORDER IS NOT ACCEPTED IN THE PSYCHIATRIC OR PSYCHOLOGICAL COMMUNITIES, EXPERT EVIDENCE ABOUT THE DISORDER SHOULD NOT HAVE BEEN ADMITTED IN THIS SEX OFFENDER CIVIL COMMITMENT TRIAL. [Matter of State of New York v Hilton C., 2018 NY Slip Op 01071, Second Dept 2-14-18](#)

MENTAL HYGIENE LAW.

A DIAGNOSIS OF PARAPHILIA NOS (NONCONSENT) IS NOT ACCEPTED IN THE PSYCHIATRIC OR PSYCHOLOGICAL COMMUNITIES, EXPERT EVIDENCE ABOUT THE DISORDER SHOULD NOT HAVE BEEN ADMITTED IN THIS SEX OFFENDER CIVIL COMMITMENT TRIAL. [Matter of State of New York v Richard S., 2018 NY Slip Op 01072, Second Dept 2-14-18](#)

MUNICIPAL LAW, INSURANCE LAW, VEHICLE AND TRAFFIC LAW.

VEHICLE AND TRAFFIC LAW 370 DID NOT EXEMPT COUNTY FROM PROVIDING UNINSURED MOTORIST COVERAGE FOR PERSONS DRIVING COUNTY CARS. [Matter of County of Suffolk v Johnson, 2018 NY Slip Op 00552, Second Dept 1-31-18](#)

PERSONAL INJURY.

PLAINTIFF WALKED INTO THE REAR OF A TRACTOR TRAILER WHICH WAS MAKING A RIGHT TURN, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Faulknor v Gina's Trucking, Inc., 2018 NY Slip Op 01045, Second Dept 2-14-18](#)

PERSONAL INJURY.

TENANT ABUTTING SIDEWALK DID NOT DEMONSTRATE THAT IT DID NOT CLEAR ICE AND SNOW FROM THE SIDEWALK AND THAT IT DID NOT EXACERBATE THE DANGEROUS CONDITION, MOTION FOR SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE PROPERLY DENIED. [Hurk-McLeod v Slope Park Assoc., LLC, 2018 NY Slip Op 01047, Second Dept 2-14-18](#)

PERSONAL INJURY.

DEFENDANT DID NOT MAKE A PRIMA FACIE SHOWING THE CRACK OVER WHICH PLAINTIFF TRIPPED WAS TRIVIAL, THEREFORE THE BURDEN NEVER SHIFTED TO PLAINTIFF TO RAISE A QUESTION OF FACT, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT PROPERLY DENIED. [Cortes v Taravella Family Trust, 2018 NY Slip Op 01301, Second Dept 2-28-18](#)

PERSONAL INJURY.

PLAINTIFF COULD NOT IDENTIFY THE CAUSE OF HER STAIRCASE FALL, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT PROPERLY GRANTED. [Morchyk v Acadia 3780-3858 Nostrand Ave., LLC, 2018 NY Slip Op 01302, Second Dept 2-28-18](#)

PERSONAL INJURY.

ALTHOUGH PLAINTIFF VIOLATED THE VEHICLE AND TRAFFIC LAW BY TURNING LEFT INTO PLAINTIFF'S PATH, DEFENDANT RAISED A QUESTION OF FACT ABOUT WHETHER PLAINTIFF WAS SPEEDING. [Shashaty v Gavitt, 2018 NY Slip Op 01347, Second Dept 2-28-18](#)

PERSONAL INJURY, CIVIL PROCEDURE, EVIDENCE.

STORM IN PROGRESS EVIDENCE IN THIS SIDEWALK SLIP AND FALL CASE INSUFFICIENT; EVIDENCE SUBMITTED IN REPLY PAPERS SHOULD NOT HAVE BEEN CONSIDERED; DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Brandimarte v Liat Holding Corp., 2018 NY Slip Op 01042, Second Dept 2-14-18](#)

PERSONAL INJURY, LANDLORD-TENANT.

ALTHOUGH THE OUT OF POSSESSION LANDLORDS WERE OBLIGATED TO MAKE REPAIRS, THEY DEMONSTRATED THEY DID NOT CREATE THE ALLEGED DANGEROUS CONDITION AND DID NOT HAVE NOTICE OF IT, SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Amster v Kromer, 2018 NY Slip Op 00538, Second Dept 1-31-18](#)

SOCIAL SERVICES LAW.

ALTHOUGH THE CHILD SUPPORT INCOME FOR TWO CHILDREN IN COLLEGE WAS COUNTED AS PART OF THE HOUSEHOLD INCOME, THE TWO COLLEGE STUDENTS WERE PROPERLY NOT COUNTED FOR FOOD STAMP ELIGIBILITY, THE DENIAL OF FOOD STAMPS WAS PROPER. [Matter of Leggio v Devine, 2018 NY Slip Op 01312, Second Dept 2-28-18](#)

TRUSTS AND ESTATES, FAMILY LAW.

FLAWED ACKNOWLEDGMENTS IN A PRENUPTIAL AGREEMENT, WHICH DID NOT INCLUDE THE STATEMENT THAT THE PARTIES WERE KNOWN TO THE NOTARIES, CAN BE CURED BY AFFIDAVITS SUBMITTED TO THE COURT BY THE NOTARIES. [Matter of Koegel, 2018 NY Slip Op 00833, Second Dept 2-7-18](#)

WORKERS' COMPENSATION LAW, EDUCATION-SCHOOL LAW. EMPLOYMENT LAW.

EXCLUSIVITY OF A WORKERS' COMPENSATION REMEDY PRECLUDED SUIT AGAINST AN EMPLOYEE OF A PERSON EMPLOYED BY PLAINTIFF'S EMPLOYER, THE NYC DEPARTMENT OF EDUCATION, IN THIS SLIP AND FALL CASE. [Lupton v Pedersen, 2018 NY Slip Op 01048, Second Dept 2-14-18](#)

THIRD DEPARTMENT

CIVIL RIGHTS LAW, ENVIRONMENTAL LAW, DEFAMATION.

ACTION BY YARD WASTE BUSINESS WAS A STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION (SLAPP), DEFAMATION AND RELATED CLAIMS AGAINST NEIGHBOR BASED ON STATEMENTS MADE BY THE NEIGHBOR ABOUT THE OPERATION OF THE YARD WASTE BUSINESS SHOULD HAVE BEEN DISMISSED. [Edwards v Martin, 2018 NY Slip Op 01238, Third Dept 2-22-18](#)

CONTRACT LAW, FRAUD, CIVIL PROCEDURE.

PLAINTIFF ALLEGED CONTINUING BREACHES OF CONTRACT, AIDING AND ABETTING FRAUD, NEGLIGENT MISREPRESENTATION AND AIDING AND ABETTING BREACH OF FIDUCIARY DUTY FOR THE DURATION OF THE DEBT-RIDDEN WORKERS' COMPENSATION TRUST, WHICH WAS TERMINATED 25 DAYS BEFORE THE EXPIRATION OF THE SIX YEAR STATUTE OF LIMITATIONS, THOSE CAUSES OF ACTION SHOULD NOT HAVE BEEN DISMISSED. [Krog Corp. v Vanner Group, Inc., 2018 NY Slip Op 00876, Third Dept 2-8-18](#)

CRIMINAL LAW.

NO NEED TO SPECIFY CRIME TO BE COMMITTED DURING A CHARGED BURGLARY IN THE SUPERIOR COURT INFORMATION; RESTITUTION FOR AN UNCHARGED BURGLARY IMPROPERLY ORDERED.. [People v Suits, 2018 NY Slip Op 01098, Third Dept 2-15-18](#)

CRIMINAL LAW.

DEFENDANT SHOT ANOTHER HUNTER AND WAS CHARGED WITH AND CONVICTED OF (RECKLESS) ASSAULT SECOND, DEFENSE REQUEST FOR A JURY INSTRUCTION ON (NEGLIGENT) ASSAULT THIRD SHOULD HAVE BEEN GRANTED, NEW TRIAL ORDERED. [People v Lavalley, 2018 NY Slip Op 01223, Third Dept 2-22-18](#)

CRIMINAL LAW.

ONCE AN ALCOHOL AND SUBSTANCE ABUSE EVALUATION WAS ORDERED THE CASE SHOULD HAVE BEEN TRANSFERRED TO THE DRUG TREATMENT COURT FOR THE JUDICIAL DIVERSION HEARING, CONVICTION REVERSED. [People v Lee, 2018 NY Slip Op 01216, Third Dept 2-22-18](#)

CRIMINAL LAW, APPEALS.

DEFENDANT'S PLEA ALLOCATION NEGATED AN ESSENTIAL ELEMENT OF THE OFFENSE, PRESERVATION OF THE ERROR NOT REQUIRED, GUILTY PLEA VACATED. [People v Busch-scardino, 2018 NY Slip Op 01218, Third Dept 2-22-18](#)

CRIMINAL LAW, APPEALS.

COUNTY COURT DID NOT MAKE THE STATUTORY FINDINGS REQUIRED FOR DETERMINING DEFENDANT'S APPLICATION FOR YOUTHFUL OFFENDER STATUS IN THIS SEXUAL OFFENSE CASE, WAIVER OF APPEAL DID NOT PRECLUDE CHALLENGE ON APPEAL, SENTENCE VACATED AND MATTER REMITTED. [People v Martz, 2018 NY Slip Op 01222, Third Dept 2-22-18](#)

CRIMINAL LAW, ATTORNEYS.

DEFENSE COUNSEL TOOK A POSITION ADVERSE TO HER CLIENT'S MOTION TO WITHDRAW HIS PLEA, SENTENCE VACATED AND MATTER REMITTED FOR ASSIGNMENT OF A NEW ATTORNEY FOR THE MOTION. [People v Oliver, 2018 NY Slip Op 01221, Third Dept 2-22-18](#)

CRIMINAL LAW, EVIDENCE.

DEFENDANT'S PRESENCE IN A METH LAB DID NOT DEMONSTRATE CONSTRUCTIVE POSSESSION OF THE CONTRABAND, METH-RELATED CONVICTIONS REVERSED. [People v Maricle, 2018 NY Slip Op 01217, Third Dept 2-22-18](#)

INSURANCE LAW.

ACCEPTING THE ALLEGATIONS AS TRUE FOR PURPOSES OF A MOTION TO DISMISS, THE INSURANCE AGENT AND HIS EMPLOYERS OWED PLAINTIFF, THE BENEFICIARY OF DECEDENT'S LIFE INSURANCE POLICY, A DUTY OF CARE WITH RESPECT TO THE ISSUANCE OF THE POLICY, RELATIONSHIP WAS CLOSE TO PRIVACY. [vestal v Pontillo, 2018 NY Slip Op 01236, Third Dept 2-22-18](#)

PERSONAL INJURY.

QUESTIONS OF FACT RAISED ABOUT ADEQUACY OF SNOW REMOVAL AND SALTING, AS WELL AS LIGHTING, IN THIS PARKING LOT SLIP AND FALL CASE, DEFENDANT'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED. [Torgersen v A&f Black Cr. Realty, LLC, 2018 NY Slip Op 01237, Third Dept 2-22-18](#)

UNEMPLOYMENT INSURANCE.

ALTHOUGH THE EMPLOYER HAD CAUSE TO FIRE CLAIMANT FOR TARDINESS AND ABSENCES, CLAIMANT'S ACTIONS DID NOT DISQUALIFY HER FROM RECEIVING UNEMPLOYMENT INSURANCE BENEFITS. [Matter of Jelic \(Ama Research Labs. Inc.--Commissioner of Labor\), 2018 NY Slip Op 00588, Third Dept 2-1-18](#)

UNEMPLOYMENT INSURANCE.

CLAIMANT ENROLLED IN A BARBER TRAINING PROGRAM AFTER HIS REGULAR UNEMPLOYMENT BENEFITS HAD RUN OUT, HE WAS NOT ENTITLED TO ADDITIONAL BENEFITS. [Matter of Simpson \(Commissioner of Labor\), 2018 NY Slip Op 00594, Third Dept 2-1-18](#)

WORKERS' COMPENSATION LAW.

SUBSTANTIAL EVIDENCE DID NOT SUPPORT THE BOARD'S FINDING THAT CLAIMANT'S SHOULDER INJURY WAS AN OCCUPATIONAL DISEASE, AS OPPOSED TO AN ACCIDENTAL INJURY. [Matter of Yonkosky v Town of Hamburg, 2018 NY Slip Op 00586, Third Dept 2-1-18](#)

WORKERS' COMPENSATION LAW.

BACK AND NECK INJURIES PROPERLY RULED AN OCCUPATIONAL DISEASE RESULTING FROM REPETITIVE LIFTING AND CARRYING. [Matter of Garcia v MCI Interiors, Inc., 2018 NY Slip Op 00873, Third Dept 2-8-18](#)

WORKERS' COMPENSATION LAW.

ALTHOUGH DECEDENT, A NEW YORK RESIDENT, WORKED FOR A PENNSYLVANIA COMPANY, NEW YORK HAD JURISDICTION OVER AN INJURY THAT OCCURRED OUTSIDE NEW YORK. [Matter of Galster v Keen Transp., Inc., 2018 NY Slip Op 01105, Second Dept 2-14-18](#)

WORKERS' COMPENSATION LAW, EMPLOYMENT LAW, PERSONAL INJURY.

ALTHOUGH THE PEDESTRIAN-CAR ACCIDENT OCCURRED ON A ROAD OWNED BY DEFENDANT'S AND PLAINTIFF'S EMPLOYER AS DEFENDANT WAS LEAVING WORK, THE DEFENDANT WAS NOT ACTING WITHIN THE SCOPE OF HIS EMPLOYMENT WHEN THE ACCIDENT OCCURRED, PLAINTIFF IS NOT RESTRICTED TO A WORKERS' COMPENSATION LAW REMEDY. [Siegel v Garibaldi, 2018 NY Slip Op 01239, Third Dept 2-22-18](#)

FOURTH DEPARTMENT

ANIMAL LAW.

TWO ATTACKS MINUTES APART CONSTITUTED A SINGLE EVENT IN THIS DOG BITE CASE, DEFENDANTS DEMONSTRATED THEY DID NOT HAVE NOTICE OF THE DOG'S VICIOUS PROPENSITIES, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Russell v Hunt, 2018 NY Slip Op 00750, Fourth Dept 2-2-18](#)

ANIMAL LAW.

DEFENDANTS DEMONSTRATED THEY DID NOT HAVE NOTICE OF THE DOG'S VICIOUS PROPENSITIES, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED IN THIS DOG BITE CASE. [S.K. v Kobee, 2018 NY Slip Op 00770, Fourth Dept 2-2-18](#)

ATTORNEYS, TRUSTS AND ESTATES.

SURROGATE'S COURT, IN AWARDING ATTORNEY'S FEES FOR THE PETITION FOR JUDICIAL SETTLEMENT AND FINAL ACCOUNTING REGARDING A TRUST, DID NOT MAKE THE REQUIRED FINDINGS, MATTER REMITTED. [Matter of JPMorgan Chase Bank, N.A., 2018 NY Slip Op 00775, Fourth Dept 2-2-18](#)

CIVIL PROCEDURE.

MOTION TO RENEW, BASED UPON A CHANGE IN THE LAW, MADE WHEN THE CASE WAS NO LONGER PENDING, WAS UNTIMELY. [Redeye v Progressive Ins. Co., 2018 NY Slip Op 00763, Fourth Dept 2-2-18](#)

CIVIL PROCEDURE.

GOOD CAUSE FOR DELAY IN FILING A DISPOSITIVE MOTION CAN NOT BE RAISED FOR THE FIRST TIME IN REPLY PAPERS, COURT SHOULD NOT HAVE CONSIDERED THE MOTION. [Mitchell v City of Geneva, 2018 NY Slip Op 00740, Fourth Dept 2-2-18](#)

CIVIL PROCEDURE.

DEFENDANT DOCTOR'S MOTION FOR SUMMARY JUDGMENT IN THIS MEDICAL MALPRACTICE ACTION SHOULD NOT HAVE BEEN GRANTED, DEFENDANT RELIED ON PLAINTIFF'S SUBMISSIONS, WHICH SHOULD NOT HAVE BEEN CONSIDERED, A RARE EXPLANATION OF HOW APPELLATE COURTS ANALYZE SUMMARY JUDGMENT MOTIONS. [Palumbo v Bristol-Myers Squibb Co., 2018 NY Slip Op 00749, Fourth Dept 2-2-18](#)

CIVIL PROCEDURE, CONSTITUTIONAL LAW.

OHIO GUN DEALER WHO SOLD GUN USED TO SHOOT PLAINTIFF IN NEW YORK DID NOT HAVE THE REQUISITE MINIMUM CONTACTS WITH NEW YORK, EXERCISING JURISDICTION OVER THE OHIO GUN DEALER, THEREFORE, WOULD VIOLATE DUE PROCESS. [Williams v Beemiller, Inc., 2018 NY Slip Op 00939, Fourth Dept 2-9-18](#)

CIVIL PROCEDURE, CONTRACT LAW.

PLAINTIFF WAS ENTITLED TO A JURY TRIAL ON THE ISSUE OF THE APPROPRIATE DISCOUNT RATE TO BE APPLIED TO A JURY VERDICT IN THIS BREACH OF CONTRACT ACTION. [Village of Herkimer v County of Herkimer, 2018 NY Slip Op 00756, Fourth Dept 2-2-18](#)

CIVIL PROCEDURE, CORPORATION LAW, EVIDENCE.

PLAINTIFF CORPORATION'S FAILURE TO MAKE A REASONABLE EFFORT TO PRODUCE A FORMER EMPLOYEE FOR DEPOSITION BY DEFENDANT WARRANTED PRECLUDING PLAINTIFF FROM PRESENTING TESTIMONY BY THE FORMER EMPLOYEE PURSUANT TO CPLR 3126, HOWEVER PRECLUSION OF SECONDARY AND HEARSAY EVIDENCE RELATING TO THE FORMER EMPLOYEE, WHICH WOULD PRECLUDE PLAINTIFF FROM ASSERTING ITS CLAIM, WAS AN ABUSE OF DISCRETION. [Hypercel Corp. v Stampede Presentation Prods., Inc., 2018 NY Slip Op 00936, Fourth Dept 2-9-18](#)

CIVIL PROCEDURE, TRUSTS AND ESTATES.

DEFENDANTS IN THIS WRONGFUL DEATH CASE WERE ENTITLED TO DISCOVERY OF TAX RETURNS TO DETERMINE WHETHER THE MOTHER AND FATHER WERE MARRIED AT THE TIME OF MOTHER'S DEATH, IF SO, THE STATUTE OF LIMITATIONS HAD PASSED. [Has K'Paw Mu v Lyon, 2018 NY Slip Op 00687, Fourth Dept 2-2-18](#)

CRIMINAL LAW.

INCOMPLETE JURY INSTRUCTION ON THE DEFINITION OF 'BUILDING' REQUIRED A NEW TRIAL IN THIS BURGLARY PROSECUTION. [People v Downey, 2018 NY Slip Op 00758, Fourth Dept 2-2-18](#)

CRIMINAL LAW.

PETITION TO PROHIBIT RETRIAL OF A MANSLAUGHTER COUNT DENIED, ALTHOUGH THE FOURTH DEPARTMENT DISMISSED THE COUNT AFTER DETERMINING THE VERDICT WAS REPUGNANT, THE COURT OF APPEALS, AGREEING THAT THE VERDICT WAS REPUGNANT, HELD THAT THE PEOPLE COULD SEEK A SECOND INDICTMENT. [Matter of DeLee v Brunetti, 2018 NY Slip Op 00742, Fourth Dept 2-2-18](#)

CRIMINAL LAW.

SECOND FELONY OFFENDER STATUS CANNOT BE BASED UPON A PRIOR FEDERAL DRUG CONSPIRACY CONVICTION. [People v Hamn, 2018 NY Slip Op 00961, Fourth Dept 2-9-18](#)

CRIMINAL LAW.

DEFENDANT'S MOTION TO DISMISS THE INDICTMENT ON SPEEDY TRIAL GROUNDS SHOULD NOT HAVE BEEN GRANTED, THE UNAVAILABILITY OF A WITNESS AND THE RELATED ADJOURNMENT SHOULD NOT HAVE BEEN CHARGED TO THE PEOPLE. [People v Barnett, 2018 NY Slip Op 00968, Fourth Dept 2-9-18](#)

CRIMINAL LAW.

SENTENCING COURT IS OBLIGATED TO CONSIDER YOUTHFUL OFFENDER STATUS, DESPITE THE ABSENCE OF ANY MENTION OF IT IN THE PLEA OFFER. [People v Hobbs, 2018 NY Slip Op 00995, Fourth Dept 2-9-18](#)

CRIMINAL LAW, APPEALS.

PERIODS OF POSTRELEASE SUPERVISION MERGE AND CANNOT RUN CONSECUTIVELY, ILLEGAL SENTENCE MUST BE CORRECTED EVEN IF ISSUE NOT RAISED ON APPEAL. [People v Mcmillian, 2018 NY Slip Op 00649, Fourth Dept 2-2-18](#)

CRIMINAL LAW, APPEALS.

ALTHOUGH THERE WAS NO ABUSE OF DISCRETION BY COUNTY COURT, APPELLATE COURT VACATED THE CONVICTION AND ADJUDICATED DEFENDANT A YOUTHFUL OFFENDER IN THE INTEREST OF JUSTICE. [People v Keith B.J., 2018 NY Slip Op 00734, Fourth Dept 2-2-18](#)

CRIMINAL LAW, APPEALS.

SECOND FELONY OFFENDER STATUS CANNOT BE BASED UPON A FELONY DEFINED IN THE CORRECTIONS LAW, AS OPPOSED TO THE PENAL LAW, ILLEGAL SENTENCE MUST BE CORRECTED EVEN WHERE THERE IS A WAIVER OF APPEAL AND THE ISSUE WAS NOT RAISED BELOW OR ON APPEAL. [People v McDonald, 2018 NY Slip Op 00657, Fourth Dept 2-2-18](#)

CRIMINAL LAW, EVIDENCE.

CODEFENDANT WAS SEEN ENTERING A CAR WITH A WEAPON WHICH WAS LATER FOUND ON THE SIDE OF THE ROAD, STATUTORY PRESUMPTION THAT THE WEAPON WAS

POSSESSED BY ALL IN THE CAR DID NOT APPLY, DEFENDANT'S POSSESSION OF A WEAPON CONVICTION REVERSED. [People v Willingham, 2018 NY Slip Op 00733, Fourth Dept 2-2-18](#)

CRIMINAL LAW, EVIDENCE.

NO WARRANT NEEDED FOR CELL SITE LOCATION INFORMATION; THE TERM 'PERSON' IN THE ARSON SECOND STATUTE REFERS TO A LIVING PERSON, BECAUSE THE VICTIMS WERE NOT ALIVE WHEN THE FIRE WAS SET, THE CONVICTION WAS REDUCED TO ARSON THIRD. [People v Taylor, 2018 NY Slip Op 00709, Fourth Dept 2-2-18](#)

CRIMINAL LAW, EVIDENCE.

POSSESSION OF A FORGED INSTRUMENT CONVICTION REVERSED, NO FOUNDATION FOR TWO CATEGORIES OF HEARSAY EVIDENCE. [People v Jones, 2018 NY Slip Op 00710, Fourth Dept 2-2-18](#)

CRIMINAL LAW, EVIDENCE.

MURDER CONVICTION REVERSED AS AGAINST THE WEIGHT OF THE EVIDENCE. [People v Carter, 2018 NY Slip Op 00711, Fourth Dept 2-2-18](#)

CRIMINAL LAW, EVIDENCE.

FRISK OF DEFENDANT WAS NOT JUSTIFIED BY REASONABLE SUSPICION, SEIZED WEAPON SHOULD HAVE BEEN SUPPRESSED. [People v Roberts, 2018 NY Slip Op 00725, Fourth Dept 2-2-18](#)

CRIMINAL LAW, EVIDENCE.

INSUFFICIENT EVIDENCE TO SUPPORT CONVICTION FOR ENDANGERING THE WELFARE OF A CHILD, MOTHER TRANSPORTED DEAD BODY IN A CAR IN WHICH FOUR-YEAR-OLD DAUGHTER WAS RIDING, TWO JUSTICE DISSENT. [People v Chase, 2018 NY Slip Op 00935, Fourth Dept 2-9-18](#)

DEBTOR-CREDITOR, CIVIL PROCEDURE.

DEFENDANT'S MOTION TO VACATE THE DEFAULT JUDGMENT ON THE GROUND THAT THE ISSUING COURT DID NOT HAVE PERSONAL JURISDICTION SHOULD NOT HAVE BEEN DISMISSED EVEN THOUGH THE JUDGMENT HAD BEEN SATISFIED BY A PROPERTY EXECUTION, IF DEFENDANT CAN DEMONSTRATE A LACK OF PERSONAL JURISDICTION, THE JUDGMENT WILL BE A NULLITY. [Cach, LLC v Ryan, 2018 NY Slip Op 00755, Fourth Dept 2-2-18](#)

DEFAMATION, PRIVILEGE.

COMPETENCE ASSESSMENT WRITTEN BY DEFENDANT CONCERNING PLAINTIFF, A DOCTOR WHOSE PATIENT DIED DURING SURGERY, WAS PROTECTED BY THE COMMON INTEREST QUALIFIED PRIVILEGE AND WAS AN EXPRESSION OF PURE OPINION. [Shenoy v Kaleida Health, 2018 NY Slip Op 01008, Fourth Dept 2-9-18](#)

DISCIPLINARY HEARINGS (INMATES).

PETITIONER WAS DENIED HIS RIGHT TO CALL WITNESSES, NEW HEARING ORDERED. [Matter of Adams v Annucci, 2018 NY Slip Op 00695, Fourth Dept 2-2-18](#)

EMPLOYMENT LAW, ACCOUNTANT MALPRACTICE.

SEEKING ATTORNEY'S FEES FOR THE CLASS ACTION PURSUANT TO THE FEDERAL FAIR LABOR STANDARDS ACT (FLSA) CONSTITUTED SEEKING INDEMNIFICATION WHICH IS PROHIBITED BY THE ACT, THE BREACH OF CONTRACT ACTION IS NOT DUPLICATIVE OF THE ACCOUNTANT MALPRACTICE ACTION. [Delphi Healthcare PLLC v Petrella Phillips LLP, 2018 NY Slip Op 01012, Fourth Dept 2-9-18](#)

EMPLOYMENT LAW, CONTRACT LAW.

NON-SOLICITATION AGREEMENT WAS THE PRODUCT OF OVERREACHING AND WILL NOT BE ENFORCED. [Brown & Brown, Inc. v Johnson, 2018 NY Slip Op 00728, Fourth Dept 2-2-18](#)

ENVIRONMENTAL LAW, CIVIL PROCEDURE.

NONPARTY, WHICH WISHED TO PURCHASE PROPERTY FOR USE AS A LAND FILL, PROPERLY ALLOWED TO INTERVENE IN A LAWSUIT BY THE PROPERTY OWNERS SEEKING TO DECLARE INVALID A LOCAL LAW WHICH PROHIBITED EXPANSION OF THE LAND FILL. [Jones v Town of Carroll, 2018 NY Slip Op 01010, Fourth Dept 2-9-18](#)

FAMILY LAW, CIVIL PROCEDURE.

FAMILY COURT SHOULD NOT HAVE REFUSED TO ALLOW A SETTLEMENT OF THIS CHILD SUPPORT PROCEEDING, MOTHER AGREED FATHER'S JAIL SENTENCE SHOULD BE SUSPENDED IN RETURN FOR FATHER'S AGREEMENT TO PAY. [Matter of Soldato v Feketa, 2018 NY Slip Op 00989, Fourth Dept 2-9-18](#)

FAMILY LAW, EVIDENCE.

NEGLECT FINDING NOT SUPPORTED BY THE EVIDENCE. [Matter of Ellie Jo L.H., 2018 NY Slip Op 00934, Fourth Dept 2-9-18](#)

LABOR LAW-CONSTRUCTION LAW.

QUESTIONS OF FACT WHETHER DEFENDANT WAS A GENERAL CONTRACTOR OR AGENT OF THE OWNER, WHETHER DEFENDANT HAD CONTROL OVER THE WORK SITE AND NOTICE OF A DANGEROUS CONDITION, AND WHETHER THE INJURY WAS THE RESULT OF THE ABSENCE OR FAILURE OF A SAFETY DEVICE IN THIS LABOR LAW 240 (1), 241 (6) AND 200 ACTION. [Robinson v Spragues Wash. Sq., LLC, 2018 NY Slip Op 01007, Fourth Dept 2-9-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF TESTIFIED HE DID NOT CHECK THE POSITION OR LOCKING MECHANISM OF THE A-FRAME LADDER HE FELL FROM, PLAINTIFF'S SUMMARY JUDGMENT MOTION IN THIS LABOR LAW 240(1) ACTION SHOULD NOT HAVE BEEN GRANTED, DISSENT DISAGREED. [Bonczar v American Multi-Cinema, Inc., 2018 NY Slip Op 00712, Fourth Dept 2-2-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

THE LABOR LAW 240(1), 241(6) AND 200 CAUSES OF ACTION WERE PROPERLY DISMISSED BECAUSE PLAINTIFF WAS NOT INVOLVED IN THE RELEVANT WORK, HOWEVER THE COMMON LAW NEGLIGENCE CAUSE OF ACTION SHOULD NOT HAVE BEEN DISMISSED BECAUSE IT WAS BASED ON THE CREATION AND NOTICE OF A DANGEROUS CONDITION. [Solecki v Oakwood Cemetery Assn., 2018 NY Slip Op 00692, Fourth Dept 2-2-18](#)

MEDICAL MALPRACTICE, PERSONAL INJURY.

ALTHOUGH THE RESIDENT SEVERED PLAINTIFF'S NERVE DURING SURGERY, THE RESIDENT WAS UNDER THE SUPERVISION OF PLAINTIFF'S SURGEON AND EXERCISED NO INDEPENDENT JUDGMENT, MALPRACTICE ACTION AGAINST THE RESIDENT SHOULD HAVE BEEN DISMISSED. [Blendowski v Wiese, 2018 NY Slip Op 00973, Fourth Dept 2-9-18](#)

MEDICAL MALPRACTICE, PERSONAL INJURY, CIVIL PROCEDURE.

PLAINTIFF'S ASSERTION OF A NEW THEORY OF LIABILITY IN THE PAPERS ANSWERING DEFENDANT HOSPITAL'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN CONSIDERED, SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [DeMartino v Kronhaus, 2018 NY Slip Op 00974, Fourth Dept 2-9-18](#)

MENTAL HYGIENE LAW, MUNICIPAL LAW, ATTORNEYS.

PETITIONER, UPSTATE UNIVERSITY HOSPITAL, SHOULD NOT HAVE BEEN ORDERED TO PAY THE ALLEGED INCAPACITATED PERSON'S (AIP'S) COURT-APPOINTED ATTORNEY'S FEES OR THE COURT EVALUATOR'S FEE IN THIS SUCCESSFUL MENTAL HYGIENE LAW

PROCEEDING FOR THE APPOINTMENT OF A GUARDIAN. [Matter of Buttiglieri \(Ferrel J.B.\), 2018 NY Slip Op 00738, Fourth Dept 2-2-18](#)

MUNICIPAL LAW, PERSONAL INJURY.

IN THIS SLIP AND FALL CASE, PLAINTIFF DID NOT DEMONSTRATE THE ALLEGED DANGEROUS CONDITION WAS CREATED IMMEDIATELY AFTER THE CITY COMPLETED WORK, THE CITY'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Burke v City of Rochester, 2018 NY Slip Op 00769, Fourth Dept 2-2-18](#)

MUNICIPAL LAW, PERSONAL INJURY.

VERBAL NOTICE TO CITY ABOUT POTHOLES, EVEN IF REDUCED TO WRITING, DOES NOT SATISFY THE WRITTEN NOTICE PREREQUISITE FOR CITY LIABILITY, PLAINTIFF ALLEGED A TRAFFIC ACCIDENT WAS CAUSED BY POTHOLES. [Tracy v City of Buffalo, 2018 NY Slip Op 00704, Fourth Dept 2-2-18](#)

MUNICIPAL LAW, PROPERTY DAMAGE.

CITY'S OWN PAPERS RAISED A QUESTION OF FACT WHETHER FLOODING WAS CAUSED BY A FAILURE TO MAINTAIN A STORM DRAINAGE SYSTEM, CITY'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED. [2305 Genesee St., LLC v City of Utica, 2018 NY Slip Op 00745, Fourth Dept 2-2-18](#)

PERSONAL INJURY.

QUESTION OF FACT WHETHER BEGINNING SAILOR ASSUMED THE RISK OF INJURY WHEN TRYING TO RIGHT A CAPSIZED BOAT, DEFENDANTS PROVIDED NO CAPSIZE-RECOVERY TRAINING. [Ulin v Hobart & William Smith Colls., 2018 NY Slip Op 00985, Fourth Dept 2-9-18](#)

PERSONAL INJURY.

PLAINTIFF STRUCK BY A LACROSSE BALL THROWN BY A COACH DURING PRACTICE, THE ACTION WAS NOT PRECLUDED BY EITHER THE SIGNED WAIVER OR THE DOCTRINE OF ASSUMPTION OF THE RISK. [Tauro v Gait, 2018 NY Slip Op 00952, Fourth Dept 2-9-18](#)

PERSONAL INJURY, COURT OF CLAIMS.

TRAFFIC ACCIDENT CASE REMITTED FOR A DETERMINATION WHETHER THE STATE WAS LIABLE UNDER A SECOND IMPACT THEORY, EVEN THOUGH THE STATE WAS NOT RESPONSIBLE FOR CAUSING THE DRIVER TO COLLIDE WITH THE STEEL BEAMS ACROSS THE ENTRANCES TO THE CLOSED BRIDGE, THE STEEL BEAMS WELDED TO THE BRIDGE AT A HEIGHT WHICH ALLOWED A CAR TO PASS UNDER THEM CONSTITUTED A DANGEROUS

CONDITION AS A MATTER OF LAW. [Reames v State of New York, 2018 NY Slip Op 00713, Fourth Dept 2-2-1](#)

PERSONAL INJURY, EVIDENCE.

POLICE REPORT WAS NOT AUTHENTICATED AND WAS NOT SUBMITTED IN ADMISSIBLE FORM, THEREFORE IT COULD NOT BE CONSIDERED ON THE SUMMARY JUDGMENT MOTION IN THIS CAR-BICYCLE ACCIDENT CASE, PLAINTIFF DID NOT ELIMINATE A QUESTION OF FACT ABOUT WHETHER SHE WAS COMPARATIVELY NEGLIGENT IN NOT SEEING WHAT SHOULD HAVE BEEN SEEN. [Chilinski v Maloney, 2018 NY Slip Op 00744, Fourth Dept 2-2-18](#)

PERSONAL INJURY, PRODUCTS LIABILITY.

QUESTIONS OF FACT (1) WHETHER DEFENDANTS WERE CASUAL SELLERS OF THE GAS PUMPS SOLD TO A SCRAP YARD AND THEREFORE OWED NO DUTY OF CARE TO THE INJURED PLAINTIFF AND (2) WHETHER DEFENDANTS OWED PLAINTIFF A DUTY OF CARE BECAUSE THE PRESENCE OF GASOLINE IN THE PUMP WHICH EXPLODED WAS NOT OPEN AND OBVIOUS. [Rosario v Monroe Mech. Servs., Inc., 2018 NY Slip Op 00732, Fourth Dept 2-2-18](#)

PERSONAL INJURY, ANIMAL LAW.

PLAINTIFF COLLIDED WITH DEFENDANTS' BLACK ANGUS BULL IN THE ROADWAY ON A DARK RAINY NIGHT, EVEN ASSUMING DEFENDANTS' NEGLIGENCE PURSUANT TO THE DOCTRINE OF RES IPSA LOQUITUR, PLAINTIFF DID NOT DEMONSTRATE HER FREEDOM FROM COMPARATIVE NEGLIGENCE, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Catalano v Heiden Val. Farms, 2018 NY Slip Op 00759, Fourth Dept 2-2-18](#)

PERSONAL INJURY, CIVIL PROCEDURE, EVIDENCE.

PLAINTIFFS' MOTION TO SET ASIDE THE JURY'S DAMAGES AWARD IN THIS PERSONAL INJURY CASE SHOULD NOT HAVE BEEN GRANTED, THE JURY WAS FREE TO DISREGARD EXPERT OPINION. [Mecca v Buffalo Niagara Convention Ctr. Mgt. Corp., 2018 NY Slip Op 00735, Fourth Dept 2-2-18](#)

REAL PROPERTY ACTIONS AND PROCEEDINGS LAW.

ABUTTING PROPERTY OWNER PROPERLY GRANTED A LICENSE PURSUANT TO REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL) 881 TO ENTER NEIGHBOR'S PROPERTY TO PAINT A FENCE. [Stuck v Hickmott, 2018 NY Slip Op 01013, Fourth Dept 2-9-18](#)

TRUSTS AND ESTATES.

RELEASE SIGNED BY ONE OF THE BENEFICIARIES OF THE WILL, RELEASING THE EXECUTOR FROM LIABILITY STEMMING FROM THE ADMINISTRATION OF THE ESTATE, WAS NOT VALID BECAUSE THE BENEFICIARY WAS NOT FULLY INFORMED ABOUT THE VALUE OF THE SECURITIES IN THE ESTATE, AND THE EFFECTS OF LEAVING A TRUST UNFUNDED, SURROGATE'S COURT IMPROPERLY PLACED THE BURDEN OF DEMONSTRATING THE RELEASE WAS INVALID ON THE BENEFICIARY. [Matter of Alford, 2018 NY Slip Op 00752, Fourth Dept 2-2-18](#)

TRUSTS AND ESTATES.

BECAUSE THERE WAS ONLY ONE ORIGINAL WILL, NOT MULTIPLE ORIGINALS, THE INABILITY TO FIND A WILL UPON DECEDENT'S DEATH DID NOT GIVE RISE TO THE PRESUMPTION OF REVOCATION BY THE DECEDENT. [Matter of Lewis, 2018 NY Slip Op 00941, Fourth Dept 2-9-18](#)

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CIVIL RIGHTS LAW.

IMAGE IN VIDEO GAME NOT RECOGNIZABLE AS PLAINTIFF, CIVIL RIGHTS LAW (RIGHT TO PRIVACY) CAUSES OF ACTION PROPERLY DISMISSED. [Lohan v Take-Two Interactive Software, Inc., 2018 NY Slip Op 02208, CtApp 3-29-18](#)

CONTRACT LAW, EMPLOYMENT LAW, CIVIL PROCEDURE.

DOCUMENTARY EVIDENCE DID NOT UTTERLY REFUTE PLAINTIFF'S CORRESPONDENCE-EVIDENCE THAT AN EMPLOYMENT CONTRACT HAD BEEN ENTERED AND BREACHED BY THE DEFENDANT, DEFENDANT'S MOTION TO DISMISS PROPERLY DENIED. [Kolchins v Evolution Mkts., Inc., 2018 NY Slip Op 02209, CtApp 3-29-18](#)

CRIMINAL LAW.

MAJORITY DEEMED THE DISMISSAL OF THE BB GUN POSSESSION CHARGE PRIOR TO SUBMITTING THE HANDGUN POSSESSION CHARGE TO THE JURY PROPER, STRONG DISSENT ARGUED THE DEFENDANT'S ADMISSION OF POSSESSION OF THE BB GUN TAINTED THE JURY'S CONSIDERATION OF THE MORE SERIOUS CHARGE. [People v Boyd, 2018 NY Slip Op 02120, CtApp 3-27-18](#)

CRIMINAL LAW.

TEN-YEAR, AS OPPOSED TO A FIVE-YEAR, PROBATION SENTENCE FOR A YOUTHFUL OFFENDER SEXUAL ABUSE ADJUDICATION IS SUPPORTED BY THE STATUTORY LANGUAGE. [People v Teri W., 2018 NY Slip Op 02210, CtApp 3-29-18](#)

CRIMINAL LAW, APPEALS.

THERE WAS SUPPORT IN THE RECORD FOR THE LOWER COURTS' FINDING THE ARRESTING OFFICERS COMPLIED WITH THE *DEBOUR* STREET STOP REQUIREMENTS, A MIXED QUESTION OF LAW AND FACT, EXTENSIVE DISSENTING OPINION. [People v Perez, 2018 NY Slip Op 02118, CtApp 3-27-18](#)

CRIMINAL LAW, EVIDENCE.

FRYE HEARING PROPERLY ORDERED, CRITERIA EXPLAINED; DOUBLE HEARSAY ABOUT PRIOR THREAT TO KILL SHOULD NOT HAVE BEEN ADMITTED, ERROR HARMLESS. [People v Brooks, 2018 NY Slip Op 01956, CtApp 3-22-18](#)

CRIMINAL LAW, EVIDENCE.

REVERSING THE APPELLATE DIVISION, THE COURT OF APPEALS HELD THAT THE TRIAL COURT DID NOT ERR IN REFUSING TO INSTRUCT THE JURY ON THE JUSTIFICATION DEFENSE, STRONG TWO-JUDGE DISSENT. [People v Sanchez, 2018 NY Slip Op 01957, CtApp 3-22-18](#)

FREEDOM OF INFORMATION LAW (FOIL).

NEW YORK CITY POLICE DEPARTMENT, IN RESPONSE TO A FREEDOM OF INFORMATION LAW (FOIL) REQUEST, PROPERLY REFUSED TO CONFIRM OR DENY THE EXISTENCE OF SURVEILLANCE RECORDS ON COUNTERTERRORISM GROUNDS. [Matter of Abdur-Rashid v New York City Police Dept., 2018 NY Slip Op 02206, CtApp 3-29-18](#)

INSURANCE LAW.

UNAMBIGUOUS POLICY LANGUAGE REQUIRED A WRITTEN CONTRACT WITH ANY ADDITIONAL INSURED, BECAUSE THERE WAS NO WRITTEN CONTRACT, THERE WAS NO COVERAGE. [Gilbane Bldg. Co./TDX Constr. Corp. v St. Paul Fire & Mar. Ins. Co., 2018 NY Slip Op 02117, CtApp 3-27-18](#)

INSURANCE LAW, ENVIRONMENTAL LAW.

IN THIS LONG TERM (LONG TAIL) ENVIRONMENTAL CONTAMINATION CASE, THE INSURER IS NOT LIABLE TO THE INSURED FOR LOSSES ATTRIBUTABLE TO TIME PERIODS WHEN LIABILITY INSURANCE WAS UNAVAILABLE. [Keyspan Gas E. Corp. v Munich Reins. Am., Inc., 2018 NY Slip Op 02116, CtApp 3-27-18](#)

PARTNERSHIP LAW, ATTORNEYS.

PURPORTED DISSOLUTION OF THE PARTNERSHIP VIOLATED THE PARTNERSHIP AGREEMENT, PLAINTIFFS NOT ENTITLED TO ATTORNEY'S FEES, GOODWILL REDUCTION SUPPORTED BY THE RECORD, MINORITY DISCOUNT APPLIED. [Congel v Malfitano, 2018 NY Slip Op 02119, CtApp 3-27-18](#)

FIRST DEPARTMENT

ADMINISTRATIVE LAW, VEHICLE AND TRAFFIC LAW, EVIDENCE.

APPLYING THE CLEAR AND CONVINCING EVIDENTIARY STANDARD, THE DEPARTMENT OF MOTOR VEHICLES' (DMV'S) SUSPENSION OF PETITIONER BUS DRIVER'S LICENSE BASED UPON STRIKING A PEDESTRIAN WAS NOT SUPPORTED BY EVIDENCE OF THE EXTENT OF THE INJURY OR ANY CONNECTION BETWEEN THE INJURY AND THE PEDESTRIAN'S DEATH A MONTH LATER, DETERMINATION ANNULLED AND LICENSE REINSTATED. [Matter of Seon v New York State Dept. of Motor Vehs., 2018 NY Slip Op 02240, First Dept 3-29-18](#)

CIVIL PROCEDURE, MEDICAL MALPRACTICE, NEGLIGENCE.

NEW YORK COURTS HAVE JURISDICTION OVER A NEW JERSEY RADIOLOGIST IN THIS MISDIAGNOSIS MEDICAL MALPRACTICE ACTION PURSUANT TO TWO PROVISIONS OF CPLR 302(a). [Allen v Institute for Family Health, 2018 NY Slip Op 01998, First Dept 3-22-18](#)

CONTRACT LAW.

THE PROMISE TO REPAY THE LOAN WAS NOT UNCONDITIONAL BUT RATHER THE DEFENDANT'S HAVING AVAILABLE CASH TO REPAY THE LOAN WAS A CONDITION PRECEDENT, BECAUSE PLAINTIFF DID NOT DEMONSTRATE THE DEFENDANT HAD AVAILABLE CASH, ITS MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Related Cos., L.P. v Tesla Wall Sys., LLC, 2018 NY Slip Op 02122, First Dept 3-27-18](#)

CONTRACT LAW.

THE TERMS 'EVENT OF DEFAULT' AND 'DEFAULT,' WHICH APPEARED IN TWO DIFFERENT SECTIONS OF THE CONTRACT, WERE DEEMED TO MEAN THE SAME THING; BECAUSE THE TERMS WERE DEEMED SYNONYMOUS PLAINTIFF DID NOT MEET ALL THE CONDITIONS PRECEDENT FOR STANDING TO SUE, COMPLAINT PROPERLY DISMISSED. [Alden Global Value Recovery Master Fund, L.P. v KeyBank N.A., 2018 NY Slip Op 02241, First Dept 3-29-18](#)

CORPORATION LAW.

ALTHOUGH THE COMPLAINT BY SHAREHOLDERS AGAINST DIRECTORS DID NOT SUFFICIENTLY ALLEGE THE BREACH OF A FIDUCIARY DUTY, IT DID ALLEGE A BREACH OF THE SUFFICIENT INFORMATION DUTY. [Davis v Scottish Re Group Ltd., 2018 NY Slip Op 01867, First Dept 3-20-18](#)

CORPORATION LAW.

UNDER CAYMAN ISLANDS LAW, THE SHAREHOLDER'S DERIVATIVE CAUSES OF ACTION WERE PROPERLY DISMISSED. [Davis v Scottish Re Group Ltd., 2018 NY Slip Op 01889, First Dept 3-20-18](#)

CRIMINAL LAW.

DENIAL OF PAROLE MANIFESTED IRRATIONALITY BORDERING ON IMPROPRIETY. [Matter of Kellogg v New York State Bd. of Parole, 2018 NY Slip Op 01425, First Dept 3-6-18](#)

CRIMINAL LAW.

MOTION FOR RESENTENCING PROPERLY DENIED BECAUSE IT WAS MADE WITHIN THREE YEARS OF DEFENDANT'S PAROLE ELIGIBILITY DATE. [People v Moore, 2018 NY Slip Op 01428, First Dept 3-6-18](#)

CRIMINAL LAW.

TRIAL COURT PROPERLY REFUSED TO DISCHARGE A JUROR AND DECLARE A MISTRIAL AFTER JUROR CONDUCTED ONLINE RESEARCH ABOUT FALSE CONFESSIONS AND SHARED THE INFORMATION WITH OTHER JURORS. [People v Jimenez, 2018 NY Slip Op 02018, First Dept 3-22-18](#)

CRIMINAL LAW.

PLACING DEFENDANT IN HANDCUFFS ELEVATED THE INVESTIGATORY STOP TO AN ILLEGAL ARREST, MOTION TO SUPPRESS SHOULD HAVE BEEN GRANTED. [People v Steinbergin, 2018 NY Slip Op 02123, First Dept 3-27-18](#)

CRIMINAL LAW, ATTORNEYS.

PROSECUTOR'S CLOSING ARGUMENT RENDERED THE ROBBERY INDICTMENT COUNT DUPLICITOUS BY SUGGESTING THE COUNT COULD APPLY TO THE THEFT OF A BICYCLE WHICH WAS NOT CHARGED IN THAT COUNT. [People v Perez, 2018 NY Slip Op 01416, First Dept 3-1-18](#)

CRIMINAL LAW, ATTORNEYS, EVIDENCE.

ALLOWING IN EVIDENCE DEFENDANT'S TEXT THAT HE MAY NEED MONEY FOR AN ATTORNEY WAS (HARMLESS) ERROR BECAUSE IT WAS AN INFRINGEMENT ON THE RIGHT TO COUNSEL. [People v Suero, 2018 NY Slip Op 02269, First Dept 3-29-18](#)

CRIMINAL LAW, MENTAL HYGIENE LAW, ATTORNEYS.

BY CONCEDING DEFENDANT SUFFERED FROM A DANGEROUS MENTAL CONDITION DEFENSE COUNSEL EFFECTIVELY WAIVED AN INITIAL 'TRACK' HEARING PURSUANT TO CPL 330.20, A 'CRITICAL STAGE' OF THE PROCEEDINGS AFTER A NOT RESPONSIBLE BY REASON OF MENTAL DISEASE OR DEFECT PLEA, DEFENSE COUNSEL WAS INEFFECTIVE, CPL 330.20 HEARING ORDERED. [People v Darryl T., 2018 NY Slip Op 02280, First Dept 3-29-18](#)

FAMILY LAW, CIVIL PROCEDURE.

ALTHOUGH FOSTER CARE RECORDS ARE CONFIDENTIAL, A FOSTER CHILD IS ENTITLED TO HER OWN FOSTER CARE RECORDS WITHOUT THE REDACTION OF THE NAMES OF CASEWORKERS AND OTHER PROFESSIONALS. [K.B. v SCO Family of Serv., 2018 NY Slip Op 01400, Second Dept 3-1-18](#)

FORECLOSURE.

COMPLIANCE WITH NOTICE REQUIREMENTS OF REAL PROPERTY ACTIONS AND PROCEEDINGS LAW 1304 NOT DEMONSTRATED, BANK'S MOTION FOR SUMMARY JUDGMENT IN THIS FORECLOSURE ACTION SHOULD NOT HAVE BEEN GRANTED. [Nationstar Mtge., LLC v Cogen, 2018 NY Slip Op 01413, First Dept 3-1-18](#)

INSURANCE LAW.

SUIT SEEKING INDEMNIFICATION FOR A SETTLEMENT PAID TO DEFENDANT'S EMPLOYEE SHOULD NOT HAVE BEEN DISMISSED, RELEVANT LAW EXPLAINED. [Zurich Am. Ins. Co. v Tower Natl. Ins. Co., 2018 NY Slip Op 01401, Second Dept 3-1-18](#)

INSURANCE LAW.

THE LAWSUIT ALLEGED ANTITRUST VIOLATIONS, WHICH ARE EXCLUDED FROM COVERAGE; THE PASSING REFERENCES TO PRODUCT DISPARAGEMENT, WHICH WOULD BE COVERED, DID NOT TRIGGER THE DUTY TO DEFEND.. [Carfax, Inc. v Illinois Natl. Ins. Co., 2018 NY Slip Op 01409, First Dept 3-1-18](#)

INSURANCE LAW.

PROPERTY OWNER, AS AN ADDITIONAL INSURED UNDER THE SECURITY COMPANY'S POLICY, WAS NOT ENTITLED TO COVERAGE FOR A SECURITY GUARD'S SLIP AND FALL ON A RECENTLY MOPPED FLOOR, THE ADDITIONAL INSURED WAS THE SOLE PROXIMATE CAUSE OF THE INJURY. [Hanover Ins. Co. v Philadelphia Indem. Ins. Co., 2018 NY Slip Op 02121, First Dept 3-27-18](#)

LABOR LAW-CONSTRUCTION LAW, LANDLORD-TENANT, PERSONAL INJURY.

PLAINTIFF WAS INJURED IN A WORK AREA ON THE 16TH FLOOR USED FOR RENOVATION WORK ON THE 41ST FLOOR, QUESTION OF FACT WHETHER THE 16TH FLOOR WAS A CONSTRUCTION AREA WITHIN THE MEANING OF LABOR LAW 241 (6), THE COURT NOTED A LESSEE IS AN OWNER WITHIN THE MEANING OF LABOR LAW 241 (6). [Karwowski v 1407 Broadway Real Estate, LLC, 2018 NY Slip Op 01422, First Dept 3-1-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF DID NOT ATTACH HIMSELF TO AN AVAILABLE LIFELINE, QUESTIONS OF FACT PRECLUDED SUMMARY JUDGMENT ON PLAINTIFF'S LABOR LAW 240 (1) CAUSE OF ACTION. [Colon v Metropolitan Transp. Auth., 2018 NY Slip Op 01436, First Dept 3-6-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

CRITERIA FOR DETERMINING WHETHER A PARTY IS A STATUTORY AGENT OF THE OWNER IN LABOR LAW 240 (1) AND 241 (6) ACTIONS EXPLAINED, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON HIS LABOR LAW 240 (1) CAUSE OF ACTION, STEMMING FROM A FALL FROM A LADDER, SHOULD NOT HAVE BEEN DENIED. [Merino v Continental Towers Condominium, 2018 NY Slip Op 01549, First Dept 3-8-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

SUMMARY JUDGMENT PROPERLY GRANTED ON THE LABOR LAW 240 (1) CAUSE OF ACTION BASED UPON A FALL FROM AN UNSECURED LADDER, IT DID NOT MATTER WHETHER PLAINTIFF LOST HIS BALANCE BEFORE OF AFTER THE LADDER WOBBLED. [Plywacz v 85 Broad St. LLC, 2018 NY Slip Op 01883, First Dept 3-20-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF, WHO TRIPPED ON AN EXTENSION CORD AND FELL DOWN A STAIRWELL, WAS ENTITLED TO SUMMARY JUDGMENT ON HIS LABOR LAW 240(1) CAUSE OF ACTION. [Conlon v Carnegie Hall Socy., Inc., 2018 NY Slip Op 02268, First Dept 3-29-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY, EVIDENCE.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON HIS LABOR LAW 240 (1) CAUSE OF ACTION, BASED UPON A FALL FROM A SCAFFOLD, PROPERLY GRANTED, DEFENDANT'S ATTEMPTS TO RELY ON AN ALLEGED HEARSAY STATEMENT BY THE PLAINTIFF TO THE EFFECT THAT HE FELL WHEN CLIMBING UP TO THE SCAFFOLD, REJECTED, NO APPLICABLE EXCEPTION TO THE HEARSAY RULE. [Gomes v Pearson Capital Partners LLC, 2018 NY Slip Op 01560, First Dept 3-8-18](#)

LANDLORD-TENANT.

ALTHOUGH RESPONDENT WAS NOT MARRIED TO THE TENANT OF RECORD, THEIR RELATIONSHIP EXHIBITED THE CARE AND SELF-SACRIFICE OF A FAMILY RELATIONSHIP, HOUSING COURT SHOULD HAVE FOUND THAT RESPONDENT WAS A FAMILY MEMBER ENTITLED TO SUCCESSION RIGHTS IN THE RENT-STABILIZED APARTMENT. [Matter of 530 Second Ave. Co., LLC v Zenker, 2018 NY Slip Op 02143, First Dept 3-27-18](#)

MUNICIPAL LAW, CIVIL RIGHTS LAW (42 USC 1983), NEGLIGENCE, INTENTIONAL TORTS, EMPLOYMENT LAW.

COMPLAINT STATED CAUSES OF ACTION AGAINST A POLICE OFFICER AND/OR THE CITY FOR CIVIL RIGHTS VIOLATIONS, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, AND NEGLIGENT SUPERVISION AND RETENTION, SUPREME COURT REVERSED. [Scollar v City of New York, 2018 NY Slip Op 02032, First Dept 3-22-18](#)

PERSONAL INJURY.

QUESTION OF FACT RAISED BY CIRCUMSTANTIAL EVIDENCE, PLAINTIFF STRUCK ON HER HEAD BY A FALLING OBJECT IN AN ELEVATOR WHEN DEFENDANT WAS WORKING ON AN ADJACENT SHAFT, NO NEED TO PLEAD RES IPSA LOQUITUR TO ASSERT IT, RECORD INSUFFICIENT TO CONSIDER APPLICABILITY OF RES IPSA LOQUITUR. [Ocasio v Dormitory Auth. of the State of N.Y., 2018 NY Slip Op 01424, First Dept 3-6-18](#)

PERSONAL INJURY.

EVEN THOUGH PLAINTIFF BICYCLIST HAD THE RIGHT OF WAY AND DEFENDANT'S TRUCK CROSSED INTO HIS PATH, THERE WAS A QUESTION OF FACT WHETHER PLAINTIFF COULD HAVE AVOIDED THE ACCIDENT. [Bermeo v Time Warner Entertainment Co., L.P., 2018 NY Slip Op 01433, First Dept 3-6-18](#)

PERSONAL INJURY.

CONSTRUCTIVE NOTICE OF RUSTED CONDITION OF STAIRCASE WHICH COLLAPSED DEMONSTRATED WITH PHOTOGRAPHS, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT PROPERLY GRANTED. [Conklin v 500-512 Seventh Ave., LP, LLC, 2018 NY Slip Op 01437, First Dept 3-6-18](#)

PERSONAL INJURY.

EGREGIOUS CIRCUMSTANCES JUSTIFIED SUMMARY JUDGMENT IN FAVOR OF DEFENDANT DRIVER PURSUANT TO THE EMERGENCY DOCTRINE. [Morales v Chuquillanqui, 2018 NY Slip Op 02139, First Dept 3-27-18](#)

PERSONAL INJURY, CIVIL PROCEDURE, EVIDENCE.

DEFENDANT DEMONSTRATED IT DID NOT HAVE NOTICE OF THE WET CONDITION OF THE STAIRS IN THIS SLIP AND FALL CASE, UNSIGNED DEPOSITION CONSTITUTED PLAINTIFF'S ADMISSION, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Luna v CEC Entertainment, Inc., 2018 NY Slip Op 01429, First Dept 3-6-18](#)

TRUSTS AND ESTATES.

DESPITE PROBATE OF WILL IN FLORIDA, DECEDENT WAS A DOMICILIARY OF NEW YORK, ANCILLARY PROCEEDINGS IN NEW YORK INAPPROPRIATE, NONANCILLARY LETTERS GRANTED. [Matter of Assimakopoulos, 2018 NY Slip Op 01440, First Dept 3-6-18](#)

SECOND DEPARTMENT

CIVIL PROCEDURE.

NOTICE OF CROSS MOTION DID NOT INCLUDE THE RELIEF SOUGHT OR THE GROUNDS FOR RELIEF AS REQUIRED BY CPLR 2214 (a), CROSS MOTION PROPERLY DISMISSED. [Abizadeh v Abizadeh, 2018 NY Slip Op 01892, Second Dept 3-21-18](#)

CIVIL PROCEDURE.

NO EVIDENTIARY SHOWING OF MERIT REQUIRED TO AMEND ANSWER, MOTION TO AMEND SHOULD HAVE BEEN GRANTED IN THE ABSENCE OF PREJUDICE. [1259 Lincoln Place Corp. v Bank of N.Y., 2018 NY Slip Op 02177, Second Dept 3-28-18](#)

CONTRACT LAW.

RECOVERY FOR INJURY TO A KITTEN SHIPPED BY AIR LIMITED TO \$50 BY THE TERMS OF THE AIR WAYBILL. [Lentini v Delta Air Lines, Inc., 2018 NY Slip Op 01597, Second Dept 3-14-18](#)

CONTRACT LAW, CIVIL PROCEDURE.

PLAINTIFF, IN THE FACE OF WRITTEN CONTRACTS TO THE CONTRARY, DID NOT DEMONSTRATE AT TRIAL THAT A PARTNERSHIP, AS OPPOSED TO AN INDEPENDENT CONTRACTOR, RELATIONSHIP EXISTED BETWEEN PLAINTIFF AND DEFENDANT, DEFENDANT'S MOTION FOR A JUDGMENT AS A MATTER OF LAW SHOULD HAVE BEEN GRANTED. [Weg v Kaufman, 2018 NY Slip Op 01567, Second Dept 3-7-18](#)

CORPORATION LAW, DEFAMATION, CONTRACT LAW.

DEFAMATION ACTION AGAINST UNINCORPORATED ASSOCIATION SHOULD HAVE BEEN DISMISSED UNDER THE MARTIN RULE, DEFAMATION ACTION AGAINST INDIVIDUAL DEFENDANTS SHOULD NOT HAVE BEEN DISMISSED, BREACH OF CONTRACT ACTION AGAINST THE ASSOCIATION SHOULD NOT HAVE BEEN DISMISSED. [Bidnick v Grand Lodge of Free & Accepted Masons of the State of N.Y., 2018 NY Slip Op 01591, Second Dept 3-14-18](#)

CRIMINAL LAW.

DEFENDANT WAS NOT APPRISED OF THE DEPORTATION CONSEQUENCES OF HIS PLEAS, MATTER REMITTED FOR OPPORTUNITY TO MOVE TO VACATE THE PLEAS. [People v Cole, 2018 NY Slip Op 01612, Second Dept 3-14-18](#)

CRIMINAL LAW.

JURY SHOULD NOT HAVE BEEN INSTRUCTED ON THE AUTOMOBILE PRESUMPTION OF POSSESSION OF A WEAPON, THE WEAPON WAS SEEN IN THE POSSESSION OF A PASSENGER IN THE CAR. [People v Drayton-Archer, 2018 NY Slip Op 01934, Second Dept 3-21-18](#)

CRIMINAL LAW, EVIDENCE.

OFFICER DID NOT HAVE A REASONABLE SUSPICION OF CRIMINAL ACTIVITY WHEN HE ASKED DEFENDANT 'WHAT DO YOU HAVE,' SEIZED WEAPON SHOULD HAVE BEEN SUPPRESSED. [People v White, 2018 NY Slip Op 01492, Second Dept 3-7-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

ALTHOUGH DEFENDANT RECORDED THE CODEFENDANT DOUSING THE HOMELESS MAN WITH LIGHTER FLUID AND SETTING HIM ON FIRE, THE EVIDENCE DID NOT SUPPORT THE CONCLUSION DEFENDANT ACTED AS AN ACCOMPLICE, CONVICTION REVERSED UPON A WEIGHT OF THE EVIDENCE ANALYSIS. [People v Fonerin, 2018 NY Slip Op 01480, Second Dept 3-7-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

UNDER A WEIGHT OF THE EVIDENCE ANALYSIS, DEFENDANT PROVED THE AFFIRMATIVE DEFENSE OF MENTAL DISEASE OR DEFECT, MURDER CONVICTION REVERSED. [People v Spratley, 2018 NY Slip Op 01488, Second Dept 3-7-18](#)

CRIMINAL LAW, EVIDENCE, ATTORNEYS, APPEALS.

DEFENDANT MADE TWO UNEQUIVOCAL REQUESTS FOR COUNSEL, HIS STATEMENT AND A BUCCAL SWAB SHOULD HAVE BEEN SUPPRESSED, ERROR NEED NOT BE PRESERVED FOR APPEAL, ERROR HARMLESS HOWEVER. [People v Bethea, 2018 NY Slip Op 01474, Second Dept 3-7-18](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA), JUDGES.

DEFENDANT'S TESTIMONY AND ARGUMENT IN SUPPORT OF A DOWNWARD DEPARTURE IMPROPERLY CUT OFF, NEW HEARING ORDERED. [People v Williams, 2018 NY Slip Op 01629, Second Dept 3-14-18](#)

EDUCATION-SCHOOL LAW, (NY) CONSTITUTIONAL LAW.

LAWSUITS ALLEGING STATUTES CONCERNING THE HIRING AND FIRING OF TEACHERS HAVE LED TO THE RETENTION OF INEFFECTIVE TEACHERS AND THE CONSEQUENT VIOLATION OF THE RIGHT TO A SOUND BASIC EDUCATION PROPERLY SURVIVED MOTIONS TO DISMISS. [Davids v State of New York, 2018 NY Slip Op 02168, Second Dept 3-28-18](#)

ELECTION LAW.

THE 2014 EXECUTIVE COMMITTEE OF THE SUFFOLK COUNTY COMMITTEE OF THE CONSERVATIVE PARTY DID NOT HAVE THE AUTHORITY TO FILL VACANCIES IN THE 2016 COUNTY COMMITTEE. [Matter of Auerbach v Suffolk County Comm. of the Conservative Party of N.Y. State, 2018 NY Slip Op 01463, Second Dept 3-7-18](#)

EMPLOYMENT LAW, (NYC) HUMAN RIGHTS LAW, CIVIL RIGHTS LAW (18 USC 1983), MUNICIPAL LAW.

PLAINTIFF STATED A CAUSE OF ACTION FOR AGE DISCRIMINATION UNDER THE NYC HUMAN RIGHTS LAW, CAUSE OF ACTION ALLEGING A VIOLATION OF FREE SPEECH RIGHTS UNDER THE STATE CONSTITUTION REQUIRED A NOTICE OF CLAIM, AMENDMENT OF THE COMPLAINT TO ALLEGE A FIRST AMENDMENT RETALIATION CAUSE OF ACTION UNDER 18 USC 1983, WHICH DOES NOT REQUIRE A NOTICE OF CLAIM, SHOULD HAVE BEEN ALLOWED. [Mirro v City of New York, 2018 NY Slip Op 02154, Second Dept 3-28-18](#)

ENVIRONMENTAL LAW, MUNICIPAL LAW, LAND USE.

LOCAL LAWS GOVERNING USE OF AGRICULTURAL LAND DID NOT VIOLATE THE PUBLIC TRUST DOCTRINE. [Long Is. Pine Barrens Socy., Inc. v Suffolk County Legislature, 2018 NY Slip Op 01598, Second Dept 3-14-18](#)

ENVIRONMENTAL LAW, ZONING.

APPLICATIONS FOR A NATURAL RESOURCES SPECIAL PERMIT AND A VARIANCE FOR THE CONSTRUCTION OF RETAINING WALLS IN AN AREA OF PROTECTED BEACH VEGETATION PROPERLY DENIED, DIFFERENCE BETWEEN A NATURAL RESOURCES SPECIAL PERMIT AND A VARIANCE EXPLAINED. [Matter of 278, LLC v Zoning Bd. of Appeals of the Town of E. Hampton, 2018 NY Slip Op 01913, Second Dept 3-21-18](#)

FAMILY LAW.

PLACEMENT OF THE CHILD WITH THE MATERNAL GRANDMOTHER RATHER THAN WITH HER FOSTER HOME WAS NOT SUPPORTED BY THE RECORD. [Matter of Tabitha T. S. M. \(Tracee L. M.--Candace E.\), 2018 NY Slip Op 01468, Second Dept 3-7-18](#)

FAMILY LAW.

SEPARATION AGREEMENT MET THE CRITERIA OF THE ADOPTION STATUTE, PETITION TO ADOPT SHOULD NOT HAVE BEEN DISMISSED FOR LACK OF STANDING. [Matter of Jason \(Sonia O.\), 2018 NY Slip Op 01922, Second Dept 3-21-18](#)

FAMILY LAW.

GRANDPARENTS HAD AUTOMATIC STANDING TO SEEK VISITATION UPON DEATH OF FATHER, VISITATION WAS IN THE BEST INTERESTS OF THE CHILDREN DESPITE THE ANIMOSITY OF MOTHER. [Matter of Mastronardi v Milano-Granito, 2018 NY Slip Op 01923, Second Dept 3-21-18](#)

FORECLOSURE, BANKRUPTCY, CIVIL PROCEDURE.

ALTHOUGH THE STATUTE OF LIMITATIONS FOR THE FORECLOSURE ACTION WAS TOLLED WHEN THE BANKRUPTCY PROCEEDINGS WERE ACTIVE, IT WAS NOT TOLLED WHEN A TEMPORARY RESTRAINING ORDER PROHIBITING SALE OF THE PROPERTY WAS IN EFFECT, FORECLOSURE ACTION WAS THEREFORE TIME-BARRED. [U.S. Bank N.A. v Joseph, 2018 NY Slip Op 02155, Second Dept 3-28-18](#)

FORECLOSURE, BANKRUPTCY, CIVIL PROCEDURE, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW.

PLAINTIFF'S TWICE FILING FOR BANKRUPTCY TOLLED THE STATUTE OF LIMITATIONS FOR OVER FOUR YEARS, FORECLOSURE ACTION WAS THEREFORE TIMELY. [Lubonty v U.S. Bank N.A., 2018 NY Slip Op 02153, Second Dept 3-28-18](#)

FORECLOSURE, CIVIL PROCEDURE.

ALTHOUGH THE FIRST FORECLOSURE ACTION SHOULD NOT HAVE BEEN DISMISSED, DEFENDANT WAS NOT RESPONSIBLE FOR THE ACCRUAL OF INTEREST DURING THE FOUR YEARS UNTIL THE FORECLOSURE ACTION WAS REFILED, DEFENDANT'S MOTION TO AMEND THE ANSWER TO ADD THE DEFENSE OF LACK OF STANDING SHOULD HAVE BEEN GRANTED, NO PREJUDICE. [BAC Home Loans Servicing, L.P. v Jackson, 2018 NY Slip Op 01896, Second Dept 3-21-18](#)

FORECLOSURE, CIVIL PROCEDURE.

DEFENDANT RAISED A QUESTION OF FACT WHETHER THE BANK MADE A REASONABLE EFFORT TO REACH A RESOLUTION AT THE SETTLEMENT CONFERENCE. [Citimortgage, Inc. v Nimkoff, 2018 NY Slip Op 01900, Second Dept 3-21-18](#)

FORECLOSURE, CIVIL PROCEDURE, JUDGES.

HOMEOWNER WAIVED THE DEFENSE OF LACK OF PERSONAL JURISDICTION, JUDGE SHOULD NOT HAVE, SUA SPONTE, DISMISSED THE FORECLOSURE ACTION ON THAT GROUND.. [Wells Fargo Bank, N.A. v Cajas, 2018 NY Slip Op 02159, Second Dept 3-28-18](#)

FORECLOSURE, CIVIL PROCEDURE, TRUSTS AND ESTATES.

FORECLOSURE ACTION SHOULD HAVE BEEN DISMISSED AS TIME-BARRED, ALTHOUGH CPLR 210 (b) TOLLS THE STATUTE OF LIMITATIONS FOR AN ACTION AGAINST AN ESTATE, THE BANK DID NOT DEMONSTRATE DEFENDANT HUSBAND REPRESENTED HIS WIFE'S ESTATE. [U.S. Bank, N.A. v Kess, 2018 NY Slip Op 01498, Second Dept 3-7-18](#)

INSURANCE LAW.

SETTLEMENT WITH INSURER DID NOT RESOLVE THE UNDERLYING WRONGFUL DENIAL OF COVERAGE ALLEGATION AGAINST THE INSURER, THE ACTIONS AGAINST THE INSURANCE BROKERS, ALLEGING FAILURE TO PROCURE THE REQUESTED INSURANCE, SHOULD NOT HAVE BEEN DISMISSED. [Prime Alliance Group, Ltd. v Affiliated FM Ins. Co., 2018 NY Slip Op 01630, Second Dept 3-14-18](#)

INSURANCE LAW.

INSURER WAS ENTITLED TO A FRAMED ISSUE HEARING TO DETERMINE WHETHER A HIT-AND-RUN VEHICLE WAS INVOLVED IN THE ACCIDENT. [Matter of Allstate Ins. Co. v Deleon, 2018 NY Slip Op 01915, Second Dept 3-21-18](#)

INSURANCE LAW, CIVIL PROCEDURE, EDUCATION-SCHOOL LAW.

INSURER'S ACTION FOR A DECLARATORY JUDGMENT THAT IT WAS NOT OBLIGATED TO INDEMNIFY THE DEFENDANT SCHOOL DISTRICT FOR A SETTLEMENT REACHED IN AN UNDERLYING ACTION (WHICH ALLEGED THE SCHOOL DISTRICT DID NOT PROTECT AGAINST ANTI-SEMITIC HARASSMENT) SHOULD NOT HAVE BEEN DISMISSED. [Graphic Arts Mut. Ins. Co. v Pine Bush Cent. Sch. Dist., 2018 NY Slip Op 01565, Second Dept 3-7-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF WAS INJURED WHILE ON THE GROUND CUTTING A TREE; BECAUSE GRAVITY WAS NOT INVOLVED LABOR LAW 240 (1) DID NOT APPLY; BUT BECAUSE CUTTING THE TREE WAS ANCILLARY TO WORK ON A STRUCTURE, LABOR LAW 241 (6) DID APPLY. [De Jesus v Metro-N. Commuter R.R., 2018 NY Slip Op 02150, Second Dept 3-28-18](#)

LABOR LAW-CONSTRUCTION LAW, CIVIL PROCEDURE, IMMUNITY, PERSONAL INJURY.

NEW YORK TRANSIT AUTHORITY WAS NOT ENTITLED TO DISMISSAL OF THE LABOR LAW 200 AND COMMON LAW NEGLIGENCE CAUSES OF ACTION ON COLLATERAL ESTOPPEL, GOVERNMENTAL IMMUNITY OR FACTUAL GROUNDS, RELEVANT LAW SUCCINCTLY EXPLAINED. [Grasso v New York State Thruway Auth., 2018 NY Slip Op 01453, Second Dept 3-7-18](#)

MENTAL HYGIENE LAW, ATTORNEYS.

ATTORNEYS WHO HAD ACCEPTED A RETAINER TO CONTEST THE REMOVAL OF A GUARDIAN WERE NOT REQUIRED TO RETURN THE RETAINER BECAUSE IT WAS PAID FROM THE INCAPACITATED PERSON'S FUNDS, NO PROOF THE ATTORNEYS WERE AWARE OF THE SOURCE OF THE FUNDS, SUPREME COURT REVERSED. [Matter of Domenica P., 2018 NY Slip Op 02151, Second Dept 3-28-18](#)

MUNICIPAL LAW, CONTRACT LAW, LANDLORD-TENANT.

EXTENSION OF A LEASE WITH A MUNICIPALITY WAS RATIFIED BY THE MUNICIPALITY'S ACCEPTANCE OF RENT PAYMENTS. [Giunta v AG Towers, Inc., 2018 NY Slip Op 01905, Second Dept 3-21-18](#)

MUNICIPAL LAW, CORPORATION LAW.

SOLID WASTE AUTHORITY IS SUBJECT TO THE PUBLIC AUTHORITIES LAW, NOT THE GENERAL MUNICIPAL LAW; THE AUTHORITY THEREFORE WAS NOT REQUIRED TO ACCEPT THE LOWEST BID FOR RECYCLING SERVICES. [Matter of AAA Carting & Rubbish Removal, Inc. v Town of Stony Point, N.Y., 2018 NY Slip Op 02203, Second Dept 3-28-18](#)

PERSONAL INJURY.

TRANSIT AUTHORITY'S MOTION FOR SUMMARY JUDGMENT IN THIS BUS PASSENGER'S SUDDEN STOP INJURY CASE PROPERLY DENIED. [Gani v New York City Tr. Auth., 2018 NY Slip Op 01452, Second Dept 3-7-18](#)

PERSONAL INJURY.

ALTHOUGH DEFENDANT PULLED OUT IN FRONT OF PLAINTIFF, PLAINTIFF DID NOT DEMONSTRATE FREEDOM FROM COMPARATIVE FAULT, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Inesta v Florio, 2018 NY Slip Op 01455, Second Dept 3-7-18](#)

PERSONAL INJURY.

QUESTIONS OF FACT WHETHER BAR LIABLE FOR THIRD PARTY ASSAULT UNDER THE DRAM SHOP ACT AND NEGLIGENCE. [Tansey v Coscia, 2018 NY Slip Op 01633, Second Dept 3-14-18](#)

PERSONAL INJURY.

HEIGHT DIFFERENTIAL WAS NOT A DANGEROUS CONDITION AND WAS READILY OBSERVABLE, SLIP AND FALL ACTION PROPERLY DISMISSED. [Costidis v City of New York, 2018 NY Slip Op 01901, Second Dept 3-21-18](#)

PERSONAL INJURY.

PLAINTIFF'S SUBMISSIONS, INCLUDING CERTIFIED CLIMATOLOGICAL DATA AND THE DEPOSITION OF A NONPARTY, RAISED QUESTIONS OF FACT ABOUT THE PRESENCE OF ICE AND THE DEFENDANTS' NOTICE OF IT, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Monje v Guaraca, 2018 NY Slip Op 01911, Second Dept 3-21-18](#)

PERSONAL INJURY.

BOTH PLAINTIFF PASSENGER AND DEFENDANT DRIVER HAD CONSUMED ALCOHOL BEFORE THE ACCIDENT, QUESTION OF FACT WHETHER PLAINTIFF PASSENGER WAS COMPARATIVELY NEGLIGENT, SUMMARY JUDGMENT IN FAVOR OF PLAINTIFF SHOULD NOT HAVE BEEN GRANTED. [Vuksanaj v Abbott, 2018 NY Slip Op 02199, Second Dept 3-28-18](#)

PERSONAL INJURY, CIVIL PROCEDURE.

SUPREME COURT PROPERLY REFUSED TO CONSIDER THEORY OF LIABILITY RAISED FOR THE FIRST TIME IN OPPOSITION TO DEFENDANTS' SUMMARY JUDGMENT MOTION IN THIS SLIP AND FALL CASE. [Mazurek v Schoppmann, 2018 NY Slip Op 01601, Second Dept 3-14-18](#)

PERSONAL INJURY, CONTRACT LAW.

SNOW REMOVAL CONTRACTOR AND PARKING LOT MANAGER NOT LIABLE FOR SLIP AND FALL UNDER ESPINAL. [Castillo v Port Auth. of N.Y. & N.J., 2018 NY Slip Op 01593, Second Dept 3-14-18](#)

PERSONAL INJURY, EMPLOYMENT LAW.

PLAINTIFF'S JOB ENTAILED CLEANING UP GARBAGE, SLIPPING ON A PIECE OF CARDBOARD WAS INHERENT IN HER WORK, PROPERTY OWNER'S MOTION FOR SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE SHOULD HAVE BEEN GRANTED. [Rojas v 1000 42nd St., LLC, 2018 NY Slip Op 02194, Second Dept 3-28-18](#)

PERSONAL INJURY, EVIDENCE.

DEFENDANTS DEMONSTRATED THEY HAD NO NOTICE OF THE FORMATION OF ICE IN THE PARKING LOT WHERE PLAINTIFF FELL, BECAUSE PLAINTIFF DID NOT ALLEGE THE ICE WAS A RECURRING CONDITION DEFENDANTS DID NOT NEED TO PRESENT PROOF THAT IT WAS NOT A RECURRING CONDITION, DEFENDANTS ENTITLED TO SUMMARY JUDGMENT. [Bader v River Edge at Hastings Owners Corp., 2018 NY Slip Op 01588, Second Dept 3-14-18](#)

PERSONAL INJURY, EVIDENCE.

NO SPECIFIC PROOF OF WHEN AREA OF THE SLIP AND FALL WAS LAST INSPECTED, DEFENDANT'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED. [Maria De Los Angeles Baez v Willow Wood Assoc., LP, 2018 NY Slip Op 01589, Second Dept 3-14-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

CITY NOT LIABLE FOR AN INMATE ON INMATE ASSAULT, ATTACK NOT FORESEEABLE. [McAllister v City of New York, 2018 NY Slip Op 01909, Second Dept 3-21-18](#)

THIRD DEPARTMENT

ADMINISTRATIVE LAW, ENVIRONMENTAL LAW.

FORMER COMMISSIONER OF ENVIRONMENTAL CONSERVATION DID NOT HAVE THE AUTHORITY TO REVISIT A PRIOR FINDING THAT A ROAD WITHIN THE ADIRONDACK PARK HAD NOT BEEN ABANDONED AND THEREFORE COULD BE USED BY SNOWMOBILERS. [Matter of Town of N. Elba v New York State Dept. of Envtl. Conservation, 2018 NY Slip Op 01369, Third Dept 3-1-18](#)

CIVIL PROCEDURE, FORECLOSURE.

MORTGAGE COMPANY SHOULD HAVE BEEN ALLOWED TO AMEND ITS COMPLAINT IN THIS FORECLOSURE ACTION TO SEEK EQUITABLE SUBROGATION TO THE WIFE'S INTEREST IN THE SUBJECT PROPERTY; CRITERIA FOR AMENDING A COMPLAINT, RATIFICATION OF THE EXECUTION OF A MORTGAGE, AND EQUITABLE SUBROGATION EXPLAINED. [Green Tree Servicing, LLC v Feller, 2018 NY Slip Op 01973, Third Dept 3-22-18](#)

CRIMINAL LAW.

UNDER THE LAW AT THE TIME OF THE OFFENSE, DEFENDANT COULD NOT BE SENTENCED TO ADDITIONAL INCARCERATION FOR A VIOLATION OF HIS CONDITIONAL DISCHARGE IN THIS DRIVING WHILE INTOXICATED CASE. [People v Arvidson, 2018 NY Slip Op 01682, Third Dept 3-15-18](#)

CRIMINAL LAW, APPEALS.

PLEA COLLOQUY INSUFFICIENT, CONVICTION REVERSED IN THE INTEREST OF JUSTICE. [People v Schmitz, 2018 NY Slip Op 01960, Third Dept 3-22-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

DISTINCTION BETWEEN LEGAL INSUFFICIENCY AND WEIGHT OF THE EVIDENCE EXPLAINED; CRIMINALLY NEGLIGENT HOMICIDE IS NOT A LESSER INCLUDED OFFENSE WITHIN DEPRAVED INDIFFERENCE MURDER. [People v Stahli, 2018 NY Slip Op 01359, Third Dept 3-1-18](#)

CRIMINAL LAW, EVIDENCE, ATTORNEYS.

NO EVIDENCE OF THREATENED USE OF A DANGEROUS INSTRUMENT, ROBBERY FIRST CONVICTION NOT SUPPORTED; COUNTY COURT DID NOT CONDUCT AN ADEQUATE INQUIRY INTO DEFENSE COUNSEL'S REQUEST TO WITHDRAW, CONVICTION REVERSED. [People v Matthews, 2018 NY Slip Op 01499, Second Dept 3-8-18](#)

DISCIPLINARY HEARINGS (INMATES).

EVIDENCE PETITIONER HAD ACCESS TO THE AREA WHERE THE CONTRABAND WAS FOUND WAS NOT SUFFICIENT TO DEMONSTRATE PETITIONER'S POSSESSION OF THE CONTRABAND. [Matter of Perez v Annucci, 2018 NY Slip Op 01521, Third Dept 3-8-18](#)

ELECTION LAW.

QUORUM REQUIREMENT NOT MET, CERTIFICATES OF NOMINATION INVALID. [Matter of Loftus-Doran v Mayer, 2018 NY Slip Op 02284, Third Dept 3-30-18](#)

ELECTION LAW.

ATTEMPT TO CONTEST THE NYS BOARD OF ELECTIONS' FAILURE TO PLUG THE LLC LOOPHOLE, WHICH ALLOWS HIGHER CAMPAIGN CONTRIBUTIONS FOR LLC'S THAN FOR CORPORATIONS AND PARTNERSHIPS, PROPERLY DISMISSED FOR LACK OF STANDING AND LACK OF A JUSTICIABLE CONTROVERSY. [Matter of Brennan Ctr. for Justice At NYU Sch. of Law v New York State Bd. of Elections, 2018 NY Slip Op 02228, Second Dept 3-29-18](#)

FAMILY LAW.

DESPITE MOTHER'S FAILURE TO COMPLY WITH SEVERAL DIRECTIONS BY THE COURT THAT SHE RETURN TO NEW YORK WITH THE CHILDREN, FATHER SHOULD NOT HAVE BEEN AWARDED CUSTODY IN THE ABSENCE OF A FULL HEARING. [Matter of Richard T. v Victoria U., 2018 NY Slip Op 01364, Third Dept 3-1-18](#)

FAMILY LAW, CONTRACT LAW.

WIFE RAISED A QUESTION OF FACT WHETHER PRENUPTIAL AGREEMENT WAS THE PRODUCT OF OVERREACHING. [Carter v Fairchild-Carter, 2018 NY Slip Op 02230, Third Dept 3-29-18](#)

FAMILY LAW, IMMIGRATION LAW.

THIRD DEPARTMENT OFFERS IN DEPTH EXPLANATION OF THE SPECIAL IMMIGRANT JUVENILE STATUS (SIJS) CRITERIA AND, REVERSING FAMILY COURT, FINDS THE CHILD MET THE FIVE CRITERIA. [Matter of Keilyn GG. \(Marlene HH.\), 2018 NY Slip Op 02226, Third Dept 3-29-18](#)

LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF WAS NOT ALTERING OR ERECTING A STRUCTURE WITHIN THE MEANING OF LABOR LAW 240 (1), DEFENDANT PROPERTY OWNER DID NOT EXERCISE SUPERVISORY CONTROL OVER THE METHOD OR MANNER OF PLAINTIFF'S WORK, PLAINTIFF'S LABOR LAW 240 (1) AND 200 CAUSES OF ACTION PROPERLY DISMISSED. [Lopez v 6071 Enters., LLC, 2018 NY Slip Op 01372, Third Dept 3-1-18](#)

PRODUCTS LIABILITY, CIVIL PROCEDURE, APPEALS, PERSONAL INJURY.

QUESTIONS OF FACT PRECLUDED SUMMARY JUDGMENT DISMISSING THE PRODUCTS LIABILITY COMPLAINT AGAINST THE DISTRIBUTOR AND SELLER OF CLOTHES WHICH CAUGHT FIRE AFTER CONTACT WITH A HEATER, THE HEATER DEFENDANTS WERE AGGRIEVED BY THE DISMISSAL UNDER JOINT LIABILITY PRINCIPLES AND THEREFORE COULD APPEAL. [Palmatier v Mr. Heater Corp., 2018 NY Slip Op 01368, Third Dept 3-1-18](#)

UNEMPLOYMENT INSURANCE.

AUTO DAMAGE APPRAISER NOT AN EMPLOYEE, UNEMPLOYMENT INSURANCE APPEAL BOARD REVERSED. [Matter of Courto \(SCA Enters. Inc.--Commissioner of Labor\), 2018 NY Slip Op 01970, Third Dept 3-22-18](#)

UNEMPLOYMENT INSURANCE.

CLAIMANT, WHO DISTRIBUTED BAKED GOODS UNDER A DISTRIBUTION CONTRACT, WAS AN EMPLOYEE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS. [Matter of Cowan \(Bimbo Foods Bakeries Distrib., Inc.--Commissioner of Labor\), 2018 NY Slip Op 02229, Third Dept 3-29-18](#)

UNEMPLOYMENT INSURANCE, EMPLOYMENT LAW.

CLAIMANT PROPERLY DENIED UNEMPLOYMENT BENEFITS DURING FIRST SEVEN WEEKS OF A STRIKE, ALTERNATIVE WORK SITE AVAILABLE. [Matter of Parron \(Commissioner of Labor\), 2018 NY Slip Op 01696, Second Dept 3-15-18](#)

WORKERS' COMPENSATION LAW.

FALL ON SIDEWALK NEAR PLACE OF EMPLOYMENT NOT COMPENSABLE, CRITERIA EXPLAINED. [Matter of Brennan v New York State Dept. of Health, 2018 NY Slip Op 01974, Third Dept 3-22-18](#)

FOURTH DEPARTMENT

CIVIL PROCEDURE.

ATTEMPT TO FILE AND SERVE AN AMENDED SUMMONS AND COMPLAINT WAS UNTIMELY AND THE RELATION BACK DOCTRINE DID NOT APPLY, TWO-JUSTICE DISSENT DISAGREED ON THE RELATION-BACK AND SEVERAL OTHER SUBSTANTIVE PROCEDURAL ISSUES. [Vanyo v Buffalo Police Benevolent Assn., Inc., 2018 NY Slip Op 01827, Fourth Dept 3-16-18](#)

CIVIL PROCEDURE, JUDGES.

SUA SPONTE DISMISSAL OF PETITION WAS AN ABUSE OF DISCRETION, LACK OF STANDING IS NOT A JURISDICTIONAL DEFECT. [Matter of Associated Gen. Contrs. of NYS, LLC v New York State Thruway Auth., 2018 NY Slip Op 02075, Fourth Dept 3-23-18](#)

CONTRACT LAW.

THE STIPULATED SUM CONTRACT FOR SCHOOL CONSTRUCTION DID NOT ALLOW THE SCHOOL DISTRICT ACCESS TO THE PROGRAM MANAGER'S ACTUAL CONSTRUCTION AND ADMINISTRATIVE COSTS. [City of Buffalo City Sch. Dist. v LPCiminelli, Inc., 2018 NY Slip Op 01832, Fourth Dept 3-16-18](#)

COURT OF CLAIMS.

NOTICE OF INTENTION INSUFFICIENTLY SPECIFIC ABOUT THE TIME AND PLACE OF THE ALLEGED SEXUAL HARASSMENT AND EMPLOYMENT DISCRIMINATION, CLAIMS PROPERLY DISMISSED. [Snickles v State of New York, 2018 NY Slip Op 02042, Fourth Dept 3-23-18](#)

COURT OF CLAIMS, IMMUNITY, ANIMAL LAW.

PARK SAFETY IS A PROPRIETARY FUNCTION WHICH DOES NOT TRIGGER GOVERNMENTAL IMMUNITY, PLAINTIFF BITTEN BY A RABID FOX IN A STATE PARK, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON LIABILITY PROPERLY GRANTED. [Agness v State of New York, 2018 NY Slip Op 01747, Fourth Dept 3-16-18](#)

CRIMINAL LAW.

DEFENDANT WAS NOT INCLUDED IN THE SANDOVAL CONFERENCE, NEW TRIAL ORDERED. [People v Cooper, 2018 NY Slip Op 01823, Fourth Dept 3-16-18](#)

CRIMINAL LAW.

UNDULY HARSH AND SEVERE SENTENCE OF PERSISTENT VIOLENT FELONY OFFENDER.
[People v Ray, 2018 NY Slip Op 01796, Fourth Dept 3-16-18](#)

CRIMINAL LAW.

INDICTMENT DID NOT PROVIDE SUFFICIENT NOTICE OF THE TIME PERIODS IN TWO COUNTS, MOTION FOR A TRIAL ORDER OF DISMISSAL OF THOSE TWO COUNTS SHOULD HAVE BEEN GRANTED. [People v Carrigan, 2018 NY Slip Op 01733, Fourth Dept 3-16-18](#)

CRIMINAL LAW.

ALTHOUGH THE PEOPLE STATED THERE WERE NO IDENTIFICATION PROCEDURES REQUIRING NOTICE TO THE DEFENDANT, THE EVIDENCE INDICATES THERE MAY HAVE BEEN IDENTIFICATION PROCEDURES AT THE POLICE STATION BY A POLICE OFFICER, CASE SENT BACK FOR A HEARING. [People v Davis, 2018 NY Slip Op 02051, Fourth Dept 3-23-18](#)

CRIMINAL LAW.

DEFENDANT, WHO HAD SERVED THE FULL FOUR YEARS OF HIS 1 1/3 TO FOUR YEAR SENTENCE FOR DWI, COULD NOT BE SENTENCED TO MORE PRISON TIME FOR A PROBATION VIOLATION. [People v Zirbel, 2018 NY Slip Op 02064, Fourth Dept 3-23-18](#)

CRIMINAL LAW, APPEALS.

PLEA TO A PURPORTEDLY AMENDED COUNT MUST BE VACATED BECAUSE THE COUNT HAD BEEN DISMISSED; WAIVER OF APPEAL INVALID DESPITE THE EXECUTION OF A WRITTEN WAIVER. [People v Wilson, 2018 NY Slip Op 02060, Fourth Dept 3-23-18](#)

CRIMINAL LAW, APPEALS.

MATTER MUST BE SENT BACK FOR RESENTENCING, DESPITE FAILURE TO RAISE THE ISSUE ON APPEAL, BECAUSE THE LENGTH OF PROBATION WAS NOT SPECIFIED. [People v Petrangelo, 2018 NY Slip Op 02074, Fourth Dept 3-23-18](#)

CRIMINAL LAW, APPEALS.

DEFENDANT'S STATEMENTS DURING THE PLEA COLLOQUY DENYING THAT HE SOLD COCAINE AND DESCRIBING THE PROCEEDINGS AS CORRUPT WARRANTED FURTHER INQUIRY BY THE COURT, CONVICTION REVERSED DESPITE FAILURE TO PRESERVE THE ISSUE FOR APPEAL. [People v Daniels, 2018 NY Slip Op 02094, Fourth Dept 3-23-18](#)

CRIMINAL LAW, ATTORNEYS.

JUDGE SHOULD HAVE INQUIRED INTO DEFENDANT'S REQUEST FOR NEW COUNSEL AFTER LEARNING DEFENDANT HAD FILED A GRIEVANCE, NEW TRIAL ORDERED. [People v Hardy, 2018 NY Slip Op 01837, Fourth Dept 3-16-16](#)

CRIMINAL LAW, ATTORNEYS, EVIDENCE.

DEFENDANT SHOULD NOT HAVE BEEN REQUIRED TO PROCEED PRO SE ON THE PEOPLE'S MOTION TO COMPEL A BUCCAL SWAB FOR DNA TESTING. [People v Pressley, 2018 NY Slip Op 02114, Fourth Dept 3-23-18](#)

CRIMINAL LAW, EVIDENCE.

LEGALLY INSUFFICIENT EVIDENCE THAT DEFENDANT WAS THE SHOOTER IN THIS HOME INVASION CASE, FIRST DEGREE MURDER CONVICTION REDUCED TO SECOND DEGREE MURDER. [People v Henry, 2018 NY Slip Op 01833, Fourth Dept 3-16-18](#)

CRIMINAL LAW, EVIDENCE.

DEFENDANT HAD STANDING TO CONTEST THE SEARCH, MATTER REMITTED. [People v Sweat, 2018 NY Slip Op 01786, Fourth Dept 3-16-18](#)

CRIMINAL LAW, EVIDENCE.

HEARING REQUIRED ON DEFENDANT'S MOTION TO VACATE HIS CONVICTION EVEN THOUGH THE ISSUES WERE OR COULD HAVE BEEN RAISED IN A PRIOR MOTION TO VACATE, DEFENDANT RAISED QUESTIONS WHETHER FALSE TESTIMONY WAS GIVEN BY A POLICE OFFICER AND WHETHER EXCULPATORY EVIDENCE WAS WITHHELD FROM THE DEFENSE. [People v Reed, 2018 NY Slip Op 02068, Fourth Dept 3-23-18](#)

CRIMINAL LAW, EVIDENCE.

DEFENDANT ENTITLED TO A HEARING ON HIS MOTION TO WITHDRAW HIS GUILTY PLEA BASED ON THE PEOPLE'S FAILURE TO TURN OVER BRADY MATERIAL, A DEFENDANT DOES NOT WAIVE THE RIGHT TO ASSERT A BRADY VIOLATION BY PLEADING GUILTY (OVERRULING PRECEDENT). [People v Wilson, 2018 NY Slip Op 02106, Fourth Dept 3-23-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

EXPERT EVIDENCE ON CHILD SEXUAL ABUSE ACCOMMODATION SYNDROME (CSAAS) WAS IMPROPERLY ADMITTED TO SHOW THE VICTIM WAS ABUSED, CONVICTIONS REVERSED IN THE INTEREST OF JUSTICE. [People v Ruiz, 2018 NY Slip Op 01722, Fourth Dept 3-16-18](#)

CRIMINAL LAW, EVIDENCE, ATTORNEYS.

TRIAL JUDGE SHOULD HAVE ALLOWED DEFENSE COUNSEL TO REOPEN THE PROOF AFTER A VIDEO PLAYED DURING SUMMATION DEMONSTRATED THE ALLEGED VICTIM HAD NOT TESTIFIED TRUTHFULLY, DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO VIEW THE ENTIRE VIDEO PRIOR TO TRIAL. [People v Owens, 2018 NY Slip Op 01712, Fourth Dept 3-16-18](#)

CRIMINAL LAW, EVIDENCE, ATTORNEYS.

ALLOWING THE JURY TO HEAR INADMISSIBLE EVIDENCE OF DEFENDANT'S ADMISSIONS TO THE COMMISSION OF UNRELATED CRIMES WAS DEEMED A VALID DEFENSE STRATEGY, DEFENSE COUNSEL WAS NOT INEFFECTIVE FOR LETTING THE EVIDENCE COME IN, STRONG TWO-JUSTICE DISSENT. [People v Anderson, 2018 NY Slip Op 02105, Fourth Dept 3-23-18](#)

DEBTOR-CREDITOR.

QUESTIONS OF FACT WHETHER FORGED NOTE AND GUARANTIES WERE RATIFIED. [Adirondack Bank v Midstate Foam & Equip., Inc., 2018 NY Slip Op 01713, Fourth Dept 3-16-18](#)

EDUCATION-SCHOOL LAW, ADMINISTRATIVE LAW, EVIDENCE.

FINDING THAT PETITIONER HAD NONCONSENSUAL SEX WITH ANOTHER COLLEGE STUDENT NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, DETERMINATION ANNULLED AND RECORD EXPUNGED. [Matter of West v State Univ. of N.Y. at Buffalo, 2018 NY Slip Op 01839, Fourth Dept 3-16-18](#)

FAMILY LAW.

FAMILY COURT DID NOT HAVE THE AUTHORITY TO FIND A FOSTER HOME FOR A FAMILY'S PET CAT. [Matter of Ruth H. \(Marie H.\), 2018 NY Slip Op 01840, Fourth Dept 3-16-18](#)

FAMILY LAW.

FATHER'S PETITION TO MODIFY THE VISITATION ORDER, WHICH ALLOWED VISITATION AS MUTUALLY AGREED, SHOULD NOT HAVE BEEN DENIED WITHOUT A HEARING, FATHER ALLEGED THE MUTUALLY AGREED VISITATION HAD BECOME UNTENABLE. [Matter of Kelley v Fifield, 2018 NY Slip Op 02110, Fourth Dept 3-23-18](#)

FAMILY LAW, ATTORNEYS.

COURT DOES NOT HAVE THE POWER TO IMPUTE INCOME TO A PARTY IN FAMILY COURT ACT CUSTODY-VISITATION PROCEEDINGS FOR THE PURPOSE OF DETERMINING THE PARTY'S ELIGIBILITY FOR ASSIGNED COUNSEL, SUPREME COURT REVERSED.. [Carney v Carney, 2018 NY Slip Op 02034, Fourth Dept 3-23-18](#)

FAMILY LAW, CIVIL PROCEDURE.

ALTHOUGH FATHER COULD NOT SEEK MODIFICATION OF A NEW JERSEY SUPPORT ORDER UNDER THE UNIFORM INTERSTATE FAMILY SUPPORT ACT (UIFSA) HE COULD SEEK MODIFICATION UNDER THE FULL FAITH AND CREDIT FOR CHILD SUPPORT ORDERS ACT (FFCCSOA) WHICH PREEMPTS THE UIFSA. [Matter of Reynolds v Evans, 2018 NY Slip Op 02077, Fourth Dept 3-23-18](#)

INSURANCE LAW.

USING THE COURT'S OWN DEFINITION OF SURFACE WATER, THE COURT DETERMINED THE SURFACE WATER DAMAGE EXCLUSION IN THE PROPERTY INSURANCE POLICY DID NOT APPLY, SUPREME COURT REVERSED. [Smith v Safeco Ins. Co. of Am., 2018 NY Slip Op 02055, Fourth Dept 3-23-18](#)

LABOR LAW-CONSTRUCTION LAW, VEHICLE AND TRAFFIC LAW.

DEFENDANT GENERAL CONTRACTOR DID NOT EXERCISE SUPERVISORY CONTROL OVER THE PLAINTIFF OR PLAINTIFF'S CO-WORKER WHO INJURED PLAINTIFF, THE FACT THAT DEFENDANT GENERAL CONTRACTOR SUPPLIED THE EQUIPMENT WHICH INJURED PLAINTIFF DID NOT GIVE RISE TO LIABILITY ON THE GENERAL CONTRACTOR'S PART. [Calvert v Duggan & Duggan Gen. Contr., Inc., 2018 NY Slip Op 01841, Fourth Dept 3-16-18](#)

MEDICAL MALPRACTICE, CIVIL PROCEDURE, EVIDENCE, PERSONAL INJURY.

REPORT RELATED TO CITING DEFENDANT HEALTH SYSTEM FOR FAILURE TO INFORM PLAINTIFF AND HIS FAMILY OF THE UNINTENTIONAL DISCONNECTION OF THE HEART-LUNG MACHINE IS CONFIDENTIAL AND NOT DISCOVERABLE UNDER CPLR ARTICLE 31, EDUCATION LAW 6527 AND PUBLIC HEALTH LAW 2805-m.. [Pasek v Catholic Health Sys., Inc., 2018 NY Slip Op 02069, Fourth Dept 3-23-18](#)

MEDICAL MALPRACTICE, FRAUD, CIVIL PROCEDURE, PERSONAL INJURY.

MEDICAL MALPRACTICE ACTION BASED UPON CANCER MISDIAGNOSIS PRIOR TO THE RELEVANT AMENDMENT OF THE STATUTE OF LIMITATIONS WAS TIME-BARRED, FRAUD-RELATED CAUSES OF ACTION BASED UPON THE MEDICAL MALPRACTICE REJECTED. [Forbes v Caris Life Sciences, Inc., 2018 NY Slip Op 02086, Fourth Dept 3-23-18](#)

MUNICIPAL LAW, EMPLOYMENT LAW, CIVIL SERVICE LAW.

VILLAGE EMPLOYEE'S TERMINATION BECAUSE HE DID NOT HAVE A COMMERCIAL DRIVER'S LICENSE WAS ARBITRARY AND CAPRICIOUS, JOB DESCRIPTION DID NOT EXPLICITLY REQUIRE A COMMERCIAL DRIVER'S LICENSE." [Matter of Jakubowicz v Village of Fredonia, 2018 NY Slip Op 02059, Fourth Dept 3-23-18](#)

PERSONAL INJURY.

REAR-MOST DRIVER IN A CHAIN-REACTION ACCIDENT LIABLE TO PLAINTIFF WHO WAS IN THE LINE OF STOPPED CARS, REAR-MOST DRIVER NOT LIABLE FOR PLAINTIFF'S SUBSEQUENT INJURY WHEN HE WAS STRUCK BY ANOTHER DRIVER AFTER GETTING OUT OF HIS CAR. [Gustke v Nickerson, 2018 NY Slip Op 02087, Fourth Dept 3-23-18](#)

PESONAL INJURY, EDUCATION-SCHOOL LAW.

SCHOOL COULD NOT HAVE FORESEEN ASSAULT ON PLAINTIFF BY A CLASSMATE IN GYM CLASS, THE CLASSMATE'S VIOLENT ACTIONS WHEN HE WAS YOUNGER, THREE YEARS BEFORE, DID NOT PUT THE SCHOOL ON NOTICE THAT THE CLASSMATE POSED A DANGER. [Hale v Holley Cent. Sch. Dist., 2018 NY Slip Op 02033, Fourth Dept 3-23-18](#)

PERSONAL INJURY, MUNICIPAL LAW, VEHICLE AND TRAFFIC LAW.

QUESTION OF FACT WHETHER THE RECKLESS DISREGARD OR NORMAL NEGLIGENCE STANDARD APPLIES IN THIS POLICE CAR TRAFFIC ACCIDENT CASE. [Oddo v City of Buffalo, 2018 NY Slip Op 02041, Fourth Dept 3-23-18](#)

PRODUCTS LIABILITY, NEGLIGENCE.

SOPHISTICATED INTERMEDIARY DOCTRINE DOES NOT APPLY AS A MATTER OF LAW IN THIS SILICA INHALATION FAILURE TO WARN PRODUCTS LIABILITY CASE, QUESTION OF FACT WHETHER DEFENDANT LIABLE FOR FAILURE TO WARN PLAINTIFF EMPLOYEE, DESPITE ANY KNOWLEDGE OF THE DANGER ON THE PART OF PLAINTIFF'S EMPLOYER. [Rickicki v Borden Chem., 2018 NY Slip Op 01829, Fourth Dept 3-16-18](#)

REAL ESTATE, MORTGAGES.

DOWNPAYMENT NOT FORFEITED BASED UPON THE BANK'S REVOCATION OF THE MORTGAGE COMMITMENT, NO SHOWING THE REVOCATION WAS DUE TO DEFENDANT PURCHASER'S BAD FAITH. [Md3 Holdings, LLC v Buerkle, 2018 NY Slip Op 01836, Fourth Dept 3-16-18](#)

REAL PROPERTY LAW, CIVIL PROCEDURE.

NUISANCE AND TRESPASS ACTIONS BASED UPON SURFACE WATER WERE NOT CONTINUING TORTS AND WERE THEREFORE TIME-BARRED, CRITERIA FOR CONTINUING TORTS IN THIS CONTEXT EXPLAINED. [EPK Props., LLC v PFOHL Bros. Landfill Site Steering Comm., 2018 NY Slip Op 02085, Fourth Dept 3-23-18](#)

ZONING, MUNICIPAL LAW, CIVIL PROCEDURE.

ZONING BOARD'S FAILURE TO REFER THE AREA VARIANCE APPLICATION TO THE PLANNING BOARD AS REQUIRED BY THE GENERAL MUNICIPAL LAW WAS A JURISDICTIONAL DEFECT, DETERMINATION GRANTING THE VARIANCE VACATED. [Matter of Fichera v New York State Dept. of Env'tl. Conservation, 2018 NY Slip Op 01843, Fourth Dept 3-16-18](#)

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COURT OF APPEALS

CONTRACT LAW, CIVIL PROCEDURE.

A GENERIC NEW YORK CHOICE OF LAW PROVISION IN A CONTRACT DOES NOT TRANSFORM ALL NEW YORK STATUTORY REQUIREMENTS INTO CONTRACTUAL OBLIGATIONS, HERE THE CONSTRUCTION MANAGEMENT CONTRACT DID NOT MENTION BOND REQUIREMENTS UNDER THE LIEN LAW AND THE CHOICE OF LAW PROVISION COULD NOT BE USED TO READ THE LIEN LAW REQUIREMENT INTO THE CONTRACT. [Skanska USA Bldg. Inc. v Atlantic Yards B2 Owner, LLC, 2018 NY Slip Op 02828, CtApp 4-26-18](#)

CRIMINAL LAW, ATTORNEYS, EVIDENCE.

DEFENDANT'S REQUEST TO QUESTION WITNESSES WITH THE AID OF STANDBY COUNSEL WAS NOT AN UNEQUIVOCAL REQUEST TO REPRESENT HIMSELF REQUIRING A SEARCHING INQUIRY; DEFENDANT'S WISH TO PRESENT PSYCHIATRIC TESTIMONY TO QUESTION THE VOLUNTARINESS OF HIS CONFESSION WAS PROPERLY DENIED BECAUSE CPL 250.10 NOTICE WAS NOT PROVIDED. [People v Silburn, 2018 NY Slip Op 02286, CtApp 4-3-18](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

ALLEGATIONS OF SEX OFFENSES OF WHICH DEFENDANT WAS ACQUITTED AT TRIAL PROPERLY USED IN THE SORA RISK ASSESSMENT CALCULATION. [People v Britton, 2018 NY Slip Op 02830, Ct App, 4-25-18](#)

LABOR LAW-CONSTRUCTION LAW, CIVIL PROCEDURE, EVIDENCE.

INSUFFICIENT EVIDENCE OF HOW THE ACCIDENT OCCURRED IN THIS LABOR LAW 240 (1) ACTION, DISCOVERY MAY AID THE INQUIRY, SUMMARY JUDGMENT AWARD WAS PREMATURE. [Somereve v Plaza Constr. Corp., 2018 NY Slip Op 02288, CtApp 4-3-18](#)

LANDLORD-TENANT.

THE 20% VACANCY INCREASE SHOULD BE INCLUDED WHEN CALCULATING THE LEGAL REGULATED RENT TO DETERMINE WHETHER AN APARTMENT HAS REACHED THE \$2000 THRESHOLD IN THE RENT STABILIZATION LAW. [Altman v 285 W. Fourth LLC, 2018 NY Slip Op 02829, CtApp 4-26-18](#)

PERSONAL INJURY, CIVIL PROCEDURE.

IN A DECISION POTENTIALLY AFFECTING HUNDREDS OF RECENT SUMMARY JUDGMENT RULINGS, THE COURT OF APPEALS HELD THAT A PLAINTIFF NEED NOT DEMONSTRATE FREEDOM FROM COMPARATIVE FAULT TO BE ENTITLED TO PARTIAL SUMMARY JUDGMENT ON LIABILITY IN NEGLIGENCE CASES, COMPARATIVE NEGLIGENCE IS PURELY A DAMAGES ISSUE. [Rodriguez v City of New York, 2018 NY Slip Op 02287, CtApp 4-3-18](#)

FIRST DEPARTMENT

ADMINISTRATIVE LAW, EVIDENCE.

FACTS WHICH LED TO A PROCEEDING THAT WAS ULTIMATELY SEALED AND HEARSAY ARE ADMISSIBLE AT ADMINISTRATIVE HEARINGS, THE NEW YORK CITY HOUSING AUTHORITY DID NOT VIOLATE PETITIONER'S DUE PROCESS RIGHTS IN THIS DRUG ACTIVITY-DELINQUENT RENT ACTION. [Matter of Rosa v New York City Hous. Auth., Straus Houses, 2018 NY Slip Op 02552, First Dept 4-12-18](#)

CIVIL PROCEDURE.

A COURT HAS THE DISCRETION TO GRANT A MOTION TO RENEW THAT IS NOT BASED ON NEWLY DISCOVERED EVIDENCE. [Kaszar v Cho, 2018 NY Slip Op 02555, First Dept 4-12-18](#)

CIVIL PROCEDURE.

PARTIES HAD CONSENTED TO PROCEDURES WHICH DEVIATED FROM THE CPLR, SUMMARY JUDGMENT MOTIONS, ALTHOUGH UNTIMELY UNDER THE CPLR, SHOULD HAVE BEEN DEEMED TIMELY. [Reeps v BMW of N. Am., LLC, 2018 NY Slip Op 02907, First Dept 4-26-18](#)

CIVIL PROCEDURE, FRAUD.

ALTHOUGH THE DEFENDANT DIRECTORS ON THE BOARD OF GEROVA DID NOT RESIDE OR DO BUSINESS IN NEW YORK, OTHER GEROVA DEFENDANTS PARTICIPATED IN THE FRAUDULENT SCHEME IN NEW YORK, THEREBY PROVIDING A SUFFICIENT BASIS FOR LONG-ARM JURISDICTION. [Wimbledon Fin. Master Fund, Ltd. v Weston Capital Mgt. LLC, 2018 NY Slip Op 02903, First Dept 4-26-18](#)

CIVIL PROCEDURE, MUNICIPAL LAW.

PLAINTIFF'S MOTION TO AMEND HER COMPLAINT TO ADD NAMES OF POLICE OFFICERS SUED AS JOHN DOES SHOULD NOT HAVE BEEN GRANTED, THE OFFICERS ARE NOT UNITED IN INTEREST WITH THE CITY DEFENDANT, FAILURE TO NAME THE OFFICERS WAS NOT A MISTAKE, AND PLAINTIFF FAILED TO MAKE A DILIGENT EFFORT TO LEARN THE OFFICERS' NAMES BEFORE THE STATUTE OF LIMITATIONS EXPIRED. [Diaz v City of New York, 2018 NY Slip Op 02419, First Dept 4-5-18](#)

CIVIL PROCEDURE, PHYSICAL INJURY.

PLAINTIFF CAN BE ACCOMPANIED BY A NONLEGAL REPRESENTATIVE TO A DEFENSE PHYSICAL EXAM. [Martinez v Pinard, 2018 NY Slip Op 02402, First Dept 4-5-18](#)

CONDOMINIUMS, CONTRACT LAW.

PLAINTIFF, PURSUANT TO THE CONDOMINIUM DECLARATION AND OFFERING PLAN, WAS THE OWNER OF THE BASEMENT SPACE USED BY DEFENDANTS, PLAINTIFF WAS ENTITLED TO SUMMARY JUDGMENT ON ITS TRESPASS ACTION, BECAUSE THE DECLARATION AND OFFERING PLAN, AND THE REFERENCE TO IT IN THE DEEDS, WERE UNAMBIGUOUS, PAROL AGREEMENTS TRANSFERRING OWNERSHIP OF THE AREA TO DEFENDANTS WERE NOT ENFORCEABLE. [P360 Spaces LLC v Orlando, 2018 NY Slip Op 02749, First Dept 4-27-18](#)

CONTRACT LAW, DEBTOR-CREDITOR.

ABSENCE OF ADMISSIBLE EVIDENCE OF CONSIDERATION RENDERED ANY WRITTEN OR ORAL GUARANTEE UNENFORCEABLE. [Reddy v Mihos, 2018 NY Slip Op 02565, First Dept 4-17-18](#)

CONTRACT LAW, EMPLOYMENT LAW, ATTORNEYS.

THE FACT THAT PLAINTIFF ATTORNEY (1) WAS AN AT-WILL EMPLOYEE AND (2) MAY NOT BE PAID WITHIN ONE YEAR DID NOT RENDER THE ORAL CONTRACT ENTITLING PLAINTIFF TO LEGAL FEES VOID UNDER THE STATUTE OF FRAUDS; BREACH OF IMPLIED CONTRACT AND UNJUST ENRICHMENT CAUSES WERE PROPERLY PLED IN THE ALTERNATIVE. [Goldfarb v Romano, 2018 NY Slip Op 02411, First Dept 4-5-18](#)

CRIMINAL LAW.

SENTENCING JUDGE'S MISINFORMATION ABOUT THE LENGTH OF THE PRISON SENTENCE THE JUVENILE OFFENDER COULD RECEIVE IF SHE FAILED TO MEET THE CONDITIONS IMPOSED BY A PLEA AGREEMENT RENDERED THE PLEA INVOLUNTARY, THE MOTION TO WITHDRAW THE PLEA SHOULD HAVE BEEN GRANTED. [People v Johnson, 2018 NY Slip Op 02566, First Dept 4-17-18](#)

CRIMINAL LAW, ATTORNEYS.

DEFENSE COUNSEL WAS NOT INEFFECTIVE FOR DECLINING THE COURT'S OFFER TO INSTRUCT THE JURY IT COULD DEVIATE FROM THE ACQUIT-FIRST RULE AFTER THE JURY INDICATED IT HAD DEADLOCKED ON THE TOP COUNT. [People v Tineo-Santos, 2018 NY Slip Op 02425, First Dept 4-10-18](#)

CRIMINAL LAW, ATTORNEYS.

DEFENDANT'S REQUEST TO REPLACE OR DISMISS HIS STANDBY COUNSEL PROPERLY DENIED. [People v Findley, 2018 NY Slip Op 02545, First Dept 4-12-18](#)

CRIMINAL LAW, ATTORNEYS.

DEFENSE COUNSEL TOOK A POSITION ADVERSE TO HER CLIENT'S RE THE CLIENT'S PRO SE MOTION TO WITHDRAW HIS PLEA, MATTER REMITTED FOR FURTHER PROCEEDINGS ON THE MOTION WITH NEW COUNSEL. [People v Colson, 2018 NY Slip Op 02885, First Dept 4-26-18](#)

CRIMINAL LAW, EVIDENCE.

DRUG FACTORY JURY INSTRUCTION NOT SUPPORTED BY THE EVIDENCE, NEW TRIAL ORDERED. [People v Johnson, 2018 NY Slip Op 02879, First Dept 4-26-18](#)

CRIMINAL LAW, EVIDENCE, FAMILY LAW.

13-YEAR-OLD APPELLANT'S CONFESSION MADE WITHOUT MOTHER PRESENT WAS ADMISSIBLE, THE INTERROGATOR'S HAVING APPELLANT WRITE A LETTER PURPORTEDLY TO APOLOGIZE TO THE VICTIM DID NOT RENDER THE CONFESSION INVOLUNTARY, STATEMENTS BY THE VICTIM IN MEDICAL RECORDS WERE ADMISSIBLE TO CORROBORATE THE CONFESSION. [Matter of Luis P., 2018 NY Slip Op 02564, First Dept 4-12-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS, ATTORNEYS.

FAILURE TO INSTRUCT THE JURY THAT WITNESSES WERE ACCOMPLICES AS A MATTER OF LAW REQUIRING CORROBORATION OF THEIR TESTIMONY WAS REVERSIBLE ERROR, DEFENSE COUNSEL'S FAILURE TO REQUEST THE INSTRUCTION CONSTITUTED INEFFECTIVE ASSISTANCE, ISSUE REACHED ON APPEAL IN THE INTEREST OF JUSTICE. [People v Douglas, 2018 NY Slip Op 02397, First Dept 4-5-18](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

YOUTHFUL OFFENDER RECORDS PROPERLY CONSIDERED BY THE BOARD AND THE SORA COURT. [People v Simono, 2018 NY Slip Op 02291, First Dept 4-3-18](#)

DEBTOR-CREDITOR, FRAUD, CIVIL PROCEDURE, CONTRACT LAW.

FRAUDULENT CONVEYANCE, TORTIOUS INTERFERENCE WITH CONTRACT, AND DEBTOR-CREDITOR LAW CAUSES OF ACTION INSUFFICIENTLY PLED, COMPLAINT SHOULD HAVE BEEN DISMISSED. [Carlyle, LLC v Quik Park 1633 Garage LLC, 2018 NY Slip Op 02436, First Dept 4-10-18](#)

DEFAMATION.

CHARACTER IN A MOVIE BASED UPON A SHORT STORY WAS IDENTIFIABLE AS PLAINTIFF, THE COMPLAINT STATED CAUSES OF ACTION FOR DEFAMATION AGAINST THE MAKERS OF THE MOVIE. [Cohen v Broad Green Pictures LLC, 2018 NY Slip Op 02757, First Dept 4-24-18](#)

EMPLOYMENT LAW, ARBITRATION.

ARBITRATOR'S DETERMINATION THAT THE ACKNOWLEDGED SEXUAL HARASSMENT DID NOT RISE TO THE LEVEL OF A DISCHARGEABLE OFFENSE VIOLATED PUBLIC POLICY AND WAS IRRATIONAL. [Matter of New York City Tr. Auth. v Phillips, 2018 NY Slip Op 02442, First Dept 4-10-18](#)

EVIDENCE, CIVIL PROCEDURE.

HEARSAY IN ACCIDENT REPORT NOT ADMISSIBLE UNDER THE BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE, DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [76th & Broadway Owner LLC v Consolidated Edison Co. of N.Y. Inc., 2018 NY Slip Op 02409, First Dept 4-5-18](#)

FAMILY LAW, APPEALS.

MOTHER WAS ENTITLED TO A RECOMMENDATION ON INCARCERATION FROM THE SUPPORT MAGISTRATE WITHIN FIVE DAYS OF THE FINDING HUSBAND WAS IN WILLFUL VIOLATION OF THE SUPPORT ORDER, BECAUSE NO RECOMMENDATION WAS MADE, MOTHER WAS EFFECTIVELY DENIED THE ABILITY TO OBJECT OR APPEAL. [Matter of Carmen R. v Luis I., 2018 NY Slip Op 02422, First Dept 4-10-18](#)

FORECLOSURE, CIVIL PROCEDURE.

FAILURE TO CITE STATUTORY BASIS FOR MOTION TO VACATE DEFAULT IN NOTICE OF MOTION NOT FATAL; QUESTION WHETHER DEFENDANT WAS SERVED IN THIS FORECLOSURE ACTION REQUIRED A TRAVERSE HEARING; BECAUSE DEFENDANT DID NOT RESIDE AT THE SUBJECT PROPERTY CPLR 3215(g)(3) NOTICE NOT REQUIRED. [Bank of Am., N.A. v Diaz, 2018 NY Slip Op 02421, First Dept 4-10-18](#)

FRAUD, CONTRACT LAW, ATTORNEYS.

FORUM SELECTION CLAUSE APPLIES TO NONSIGNATORY ATTORNEY BASED UPON ATTORNEY'S RELATIONSHIP WITH THE PARTIES; PARTIES' FAILURE TO CAREFULLY READ THE AGREEMENTS BLAMED ON ATTORNEY'S FRAUDULENT ASSURANCES; FRAUD, FRAUD IN THE INDUCEMENT, BREACH OF FIDUCIARY DUTY AND BREACH OF CONTRACT ALLEGATIONS AGAINST ATTORNEY STATED CAUSES OF ACTION. [Suttongate Holdings Ltd. v Laconm Mgt. N.V., 2018 NY Slip Op 02424, First Dept 4-10-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

USE OF A MAKESHIFT LADDER WHEN AN A-FRAME WAS AVAILABLE OR DESCENDING THE LADDER BACKWARDS WITH SHOES UNTIED DID NOT CONSTITUTE THE SOLE PROXIMATE CAUSE OF THE FALL, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON HIS LABOR LAW 240 (1) CAUSE OF ACTION PROPERLY GRANTED. [Jarzabek v Schafer Mews Hous. Dev. Fund Corp., 2018 NY Slip Op 02295, First Dept 4-3-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF, WHO FELL FROM AN UNSECURED LADDER, WAS ENTITLED TO SUMMARY JUDGMENT ON HIS LABOR LAW 240(1) CLAIM, THERE WAS A QUESTION OF FACT ON THE LABOR LAW 241(6) CAUSE OF ACTION WHICH ALLEGED THE LADDER SLIPPED ON A WET FLOOR. [Tuzzolino v Consolidated Edison Co. of N.Y., 2018 NY Slip Op 02755, First Dept 4-24-18](#)

LABOR LAW-CONSTRUCTION LAW, EMPLOYMENT LAW, PERSONAL INJURY.

QUESTION OF FACT WHETHER PLAINTIFF WAS ACTING WITHIN THE SCOPE OF HIS EMPLOYMENT WHEN HE CLIMBED THE LADDER FROM WHICH HE FELL, THUS PLACING THE INCIDENT OUTSIDE THE PROTECTION OF LABOR LAW 240 (1). [McCue v Cablevision Sys. Corp., 2018 NY Slip Op 02902, First Dept 4-26-18](#)

LANDLORD-TENANT, CORPORATION LAW.

BECAUSE ONLY A CORPORATE ENTITY FORMED BY PLAINTIFF TENANT WAS NAMED ON THE LEASE, PLAINTIFF WAS NOT ENTITLED TO RENT STABILIZATION PROTECTIONS. [Fox v 12 E. 88th LLC, 2018 NY Slip Op 02289, First Dept 4-3-18](#)

MUNICIPAL LAW, LANDLORD-TENANT.

CITY OF NEW YORK PROGRAM TO MOVE HOMELESS INTO APARTMENTS VIOLATES THE URSTADT LAW BY IMPOSING RENT CONTROLS ON BUILDINGS NOT PREVIOUSLY SUBJECT TO CONTROL. [Alston v Starrett City, Inc., 2018 NY Slip Op 02420, First Dept 4-5-18](#)

MUNICIPAL LAW, PERSONAL INJURY, LABOR LAW-CONSTRUCTION LAW.

INCIDENT REPORTS DID NOT PROVIDE THE CITY WITH NOTICE OF THE ESSENTIAL FACTS OF PLAINTIFF'S NEGLIGENCE AND LABOR LAW CLAIMS, PETITION TO FILE A LATE NOTICE OF CLAIM PROPERLY DENIED. [Matter of Wilson v City of New York, 2018 NY Slip Op 02794, Second Dept 4-25-18](#)

PERSONAL INJURY.

DEFENDANTS DEMONSTRATED THEY HAD NO NOTICE OF A JAGGED EDGE ON A DOOR WHICH WAS ALLEGED TO HAVE INJURED PLAINTIFF'S FOOT, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT PROPERLY GRANTED. [Samuels v Lee, 018 NY Slip Op 02716, First Dept 4-19-18](#)

PERSONAL INJURY.

DEFENDANT DID NOT DEMONSTRATE IT DID NOT CREATE OR HAVE NOTICE OF THE WATER ON THE FLOOR WHERE PLAINTIFF FELL, WHETHER PLAINTIFF HAD PRIOR NOTICE OF THE CONDITION IS A COMPARATIVE NEGLIGENCE ISSUE THAT DOES NOT PRECLUDE SUMMARY JUDGMENT. [Socorro v New York Presbyt. Weill Cornell Med. Ctr., 2018 NY Slip Op 02723, First Dept 4-19-18](#)

PERSONAL INJURY.

TESTIMONY THERE HAD BEEN NO COMPLAINTS ABOUT A HOLE ON THE DEFENDANT CEMETERY GROUNDS DID NOT DEMONSTRATE A LACK OF NOTICE IN THIS SLIP AND FALL CASE, DEFENDANT'S SUMMARY JUDGMENT MOTION PROPERLY DENIED. [Savio v St. Raymond Cemetery, 2018 NY Slip Op 02906, First Dept 4-26-18](#)

PERSONAL INJURY.

QUESTION OF FACT WHETHER OWNERS-OCCUPIERS OF A BUILDING UNDER CONSTRUCTION ARE LIABLE FOR A FALLING OBJECT INJURY TO A SIDEWALK PEDESTRIAN. [Kosakowski v 1372 Broadway Assoc., LLC, 2018 NY Slip Op 02753, First Dept 4-24-18](#)

PERSONAL INJURY, CONTRACT LAW.

NEGLIGENCE CAUSES OF ACTION AGAINST THE DISTRIBUTOR AND RETAIL SELLER OF A SULFURIC ACID DRAIN OPENER, AND THE NEGLIGENT DISCHARGE OF A CONTRACTUAL OBLIGATION CAUSE OF ACTION AGAINST THE DISTRIBUTOR, SHOULD NOT HAVE BEEN DISMISSED. [Janiya W.-G. v Smith, 2018 NY Slip Op 02557, First Dept 4-12-18](#)

PERSONAL INJURY, MUNICIPAL LAW, LABOR LAW, EMPLOYMENT LAW.

FIREFIGHTER'S DEATH DURING A TRAINING EXERCISE NOT ACTIONABLE UNDER GENERAL MUNICIPAL LAW 205-a AND LABOR LAW 27-a. [Sears v City of New York, 2018 NY Slip Op 02430, First Dept 4-10-18](#)

PERSONAL INJURY, VEHICLE AND TRAFFIC LAW.

EMERGENCY DOCTRINE DOES NOT USUALLY APPLY IN REAR-END COLLISION CASES, VEHICLE AND TRAFFIC LAW RE FOLLOWING TOO CLOSELY CAN BE VIOLATED EVEN WHEN THERE IS NO COLLISION, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IN THIS SUDDEN-STOP BUS-PASSENGER INJURY CASE SHOULD NOT HAVE BEEN GRANTED.

[Vanderhall v MTA Bus Co., 2018 NY Slip Op 02720, First Dept 4-19-18](#)

SECOND DEPARTMENT

ADMINISTRATIVE LAW.

ONE YEAR SUSPENSION OF PETITIONER'S DRIVER'S LICENSE SHOCKED ONE'S SENSE OF FAIRNESS, SUPREME COURT REVERSED, MATTER REMITTED TO THE COMMISSIONER OF MOTOR VEHICLES FOR IMPOSITION OF A 60 DAY SUSPENSION.. [Matter of Clapp v Fiala, 2018 NY Slip Op 02778, Second Dept 4-25-18](#)

ATTORNEYS, CONTRACT LAW.

MOTION, MADE BY PLAINTIFF'S NEW COUNSEL, TO VACATE A STIPULATION ENTERED INTO BY PRIOR COUNSEL SHOULD NOT HAVE BEEN GRANTED, PRIOR COUNSEL HAD THE APPARENT AUTHORITY TO ENTER THE STIPULATION AND PLAINTIFF CAN NOT LATER ARGUE PRIOR COUNSEL LACKED AUTHORITY. [Chae Shin Oh v Jeannot, 2018 NY Slip Op 02446, Second Dept 4-11-18](#)

ATTORNEYS, FRAUD.

THE EXPENSE OF DEFENDING AN ACTION WHICH STEMMED FROM AN ATTORNEY'S MISREPRESENTATION CAN MEET THE INJURY REQUIREMENT OF A JUDICIARY LAW 487 ACTION. [Betz v Blatt, 2018 NY Slip Op 02444, Second Dept 4-11-18](#)

CIVIL PROCEDURE.

DECLARATORY JUDGMENT DECIDED BY DEFAULT CANNOT SUPPORT THE APPLICATION OF THE DOCTRINE OF COLLATERAL ESTOPPEL, THE ISSUES HAVE NOT BEEN LITIGATED. [Matter of Hereford Ins. Co. v McKoy, 2018 NY Slip Op 02466, Second Dept 4-11-18](#)

CIVIL PROCEDURE.

A PLAINTIFF FACED WITH A MOTION TO DISMISS FOR FAILURE TO STATE A CAUSE OF ACTION NEED NOT SUBMIT ANY EVIDENCE OR AFFIDAVITS IN OPPOSITION BUT RATHER CAN STAND ON THE SUFFICIENCY OF THE COMPLAINT. [Yu Chen v Kupoint \(USA\) Corp., 2018 NY Slip Op 02498, Second Dept 4-11-18](#)

CIVIL PROCEDURE, ATTORNEYS, EVIDENCE.

FAILURE TO TIMELY FILE A CONSENT TO CHANGE ATTORNEY DID NOT JUSTIFY THE DENIAL OF A MOTION BROUGHT BY THE NEW ATTORNEY, DEFENDANT'S MOTION TO VACATE THE DEFAULT JUDGMENT SHOULD HAVE BEEN GRANTED BECAUSE THE PROCESS SERVER WAS UNABLE TO PRODUCE HIS LOG BOOK. [Sperry Assoc. Fed. Credit Union v John, 2018 NY Slip Op 02823, Second Dept 4-25-18](#)

CIVIL PROCEDURE, BANKRUPTCY.

FAILURE TO LIST CAUSE OF ACTION AGAINST DEFENDANT IN A BANKRUPTCY SCHEDULE OF ASSETS MAY PRECLUDE SUIT UNDER THE DOCTRINE OF JUDICIAL ESTOPPEL, MOTION TO AMEND ANSWER TO INCLUDE JUDICIAL ESTOPPEL DEFENSE PROPERLY GRANTED. [Moran Enters., Inc. v Hurst, 2018 NY Slip Op 02321, Second Dept 4-4-18](#)

CIVIL PROCEDURE, CONTRACT LAW.

CONTRACTUAL AGREEMENT TO A ONE YEAR STATUTE OF LIMITATIONS FOR A BREACH OF CONTRACT ACTION SHOULD NOT HAVE BEEN ENFORCED, PLAINTIFF HAD NO CONTROL OVER WHEN THE DEFENDANT COULD TAKE AN ACTION WHICH BREACHED THE CONTRACT, HERE THE ALLEGED BREACH BY DEFENDANT DIDN'T TAKE PLACE UNTIL AFTER THE LIMITATIONS PERIOD.. [D&S Restoration, Inc. v Wenger Constr. Co., Inc., 2018 NY Slip Op 02768, Second Dept 4-25-18](#)

CIVIL PROCEDURE, EVIDENCE.

AFFIDAVIT ALLEGING DEFENDANT MOVED ITS OFFICE AND FAILED TO INFORM THE SECRETARY OF STATE (AND THEREFORE DID NOT RECEIVE THE SUMMONS) WAS DEEMED INSUFFICIENT TO ALLOW IT TO DEFEND AN ACTION PURSUANT TO CPLR 317, SUPREME COURT REVERSED. [Moran v Grand Slam Ventures, LLC, 2018 NY Slip Op 02776, Second Dept 4-25-18](#)

CIVIL PROCEDURE, PERSONAL INJURY.

PURPORTED SUPPLEMENTAL BILLS OF PARTICULARS ALLEGING NEW INJURIES WERE ACTUALLY AMENDED BILLS OF PARTICULARS WHICH WERE PROPERLY STRUCK. [Kirk v Nahon, 2018 NY Slip Op 02604, Second Dept 4-18-18](#)

CIVIL PROCEDURE, PERSONAL INJURY, EVIDENCE.

BECAUSE PLAINTIFF WAS UNABLE TO SHOW THE DOCUMENTS SOUGHT FROM THE DEFENDANTS EVER EXISTED HE WAS NOT ENTITLED TO STRIKE THE ANSWER FOR SPOILIATION OF EVIDENCE, HOWEVER PLAINTIFF WAS ENTITLED TO AN ORDER PRECLUDING THE DEFENDANTS FROM INTRODUCING ANY SUCH DOCUMENTS AT TRIAL. [Watson v 518 Pa. Hous. Dev. Fund Corp., 2018 NY Slip Op 02666, Second Dept 4-18-18](#)

CONTRACT LAW, REAL ESTATE, CIVIL PROCEDURE, EVIDENCE.

CONTRACT WAS ENFORCEABLE DESPITE PARTIES' EXPECTATION A MORE FORMAL CONTRACT WOULD BE EXECUTED LATER; PLAINTIFF'S MOTION TO CONFORM THE COMPLAINT TO THE PROOF AT TRIAL SHOULD HAVE BEEN GRANTED. [Metropolitan Lofts of NY, LLC v Metroeb Realty 1, LLC, 2018 NY Slip Op 02319, Second Dept 4-4-18](#)

CORPORATION LAW.

AN ACTION AGAINST A NOT FOR PROFIT CORPORATION FOR BREACH OF A FIDUCIARY DUTY MUST ALLEGE THE FAILURE TO ACT IN GOOD FAITH ON BEHALF OF THE CORPORATION OR ITS MEMBERS, NOT, AS HERE, THE FAILURE TO ACT IN A MEMBER'S PERSONAL BEST INTEREST. [Nachbar v Cornwall Yacht Club, 2018 NY Slip Op 02795, Second Dept 4-25-18](#)

CRIMINAL LAW.

THE CROSS-RACIAL IDENTIFICATION JURY INSTRUCTION SHOULD HAVE BEEN GIVEN, ERROR HARMLESS HOWEVER. [People v Bradley, 2018 NY Slip Op 02481, Second Dept 4-11-18](#)

CRIMINAL LAW.

DEFENDANT WAS ELIGIBLE FOR CONDITIONAL SEALING OF THE RECORDS OF DRUG-RELATED CONVICTIONS PURSUANT TO CPL 160.58 NOTWITHSTANDING THAT HE WAS ALSO CONVICTED OF DWAI WHICH IS NOT COVERED BY THE SEALING STATUTE; THE SHOCK INCARCERATION PROGRAM WHICH DEFENDANT COMPLETED MET THE JUDICIAL DIVERSION REQUIREMENTS OF THE SEALING STATUTE. [People v Parker, 2018 NY Slip Op 02487, Second Dept 4-11-18](#)

CRIMINAL LAW.

THE COURT'S FAILURE TO SENTENCE DEFENDANT IN ACCORDANCE WITH THE PLEA AGREEMENT ON ONE INDICTMENT REQUIRED THAT THE DEFENDANT BE GIVEN THE OPPORTUNITY TO WITHDRAW HIS PLEAS TO THAT INDICTMENT AND ANOTHER INDICTMENT FROM WHICH NO APPEAL HAD BEEN TAKEN. [People v Robinson, 2018 NY Slip Op 02490, Second Dept 4-11-18](#)

CRIMINAL LAW.

JUDGE DID NOT MAKE IT CLEAR THAT DEFENDANT'S SENTENCE INCLUDED A PERIOD OF POSTRELEASE SUPERVISION, PLEA VACATED AND MATTER REMITTED. [People v James, 2018 NY Slip Op 02805, Second Dept 4-25-18](#)

CRIMINAL LAW, APPEALS.

JUDGE DID NOT RULE ON DEFENDANT'S PRO SE MOTION TO WITHDRAW HIS PLEA, APPEAL HELD IN ABEYANCE, MATTER REMITTED FOR APPOINTMENT OF NEW COUNSEL AND A RULING ON THE MOTION. [People v Rovinsky, 2018 NY Slip Op 02814, Second Dept 4-25-18](#)

CRIMINAL LAW, ATTORNEYS.

DESIGNATING ATTORNEY AS STANDBY COUNSEL WAS INSUFFICIENT, DEFENDANT'S REFUSAL TO BE REPRESENTED BY THE SUBSTITUTE COUNSEL WHO APPEARED FOR SENTENCING REQUIRED THE COURT TO CONDUCT A SEARCHING INQUIRY TO BE SURE THE DEFENDANT UNDERSTOOD THE CONSEQUENCES OF REPRESENTING HIMSELF. [People v Charles, 2018 NY Slip Op 02334, Second Dept 4-4-18](#)

CRIMINAL LAW, EVIDENCE.

DEFENDANT HAD PLED GUILTY IN ANOTHER COUNTY TO POSSESSION OF THE SAME WEAPON USED IN THE INSTANT ROBBERY, CONVICTION VIOLATED THE PROTECTION AGAINST DOUBLE JEOPARDY, EVIDENCE OF THE PRIOR CONVICTION PROPERLY ADMITTED UNDER *MOLINEUX*. [People v Wright, 2018 NY Slip Op 02347, Second Dept 4-4-18](#)

CRIMINAL LAW, EVIDENCE.

MOTION TO VACATE DEFENDANT'S CONVICTION FOR A 1991 MURDER PROPERLY GRANTED BASED IN PART ON SUBSEQUENT SERIOUS MISCONDUCT BY ONE OF THE POLICE INVESTIGATORS, CRITERIA FOR NEWLY DISCOVERED EVIDENCE IN THIS CONTEXT EXPLAINED. [People v Hargrove, 2018 NY Slip Op 02649, Second Dept 4-18-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

ALLOWING DEFENDANT TO BE CROSS-EXAMINED ABOUT A PRIOR ROBBERY WHICH WAS THE SUBJECT OF A PENDING APPEAL WAS ERROR, NEW TRIAL ORDERED. [People v Wahaab, 2018 NY Slip Op 02332, Second Dept 4-4-18](#)

CRIMINAL LAW, JUDGES.

JUDGE DEPRIVED DEFENDANT OF A FAIR TRIAL BY ASKING QUESTIONS OF WITNESSES AND INTERRUPTING CROSS-EXAMINATION. [People v Hinds, 2018 NY Slip Op 02804, Second Dept 4-25-18](#)

DEBTOR-CREDITOR, CIVIL PROCEDURE.

USURY IS AN AFFIRMATIVE DEFENSE WHICH IS WAIVED IF NOT RAISED, SUPREME COURT SHOULD NOT HAVE SEVERED USURIOUS PROVISIONS OF LOAN AGREEMENTS WHERE DEFENDANT DEFAULTED. [Power Up Lending Group, Ltd. v Cardinal Resources, Inc., 2018 NY Slip Op 02351, Second Dept 4-4-18](#)

DISCIPLINARY HEARINGS (INMATES), RELIGION.

DISTRIBUTING A LETTER WHICH DEALT WITH RELIGIOUS (NATION OF ISLAM) INFORMATION DID NOT VIOLATE ANY PRISON GUIDELINES OR POLICIES, MISBEHAVIOR DETERMINATION ANNULLED. [Matter of Smith v Annucci, 2018 NY Slip Op 02330, Second Dept 4-4-18](#)

EMPLOYMENT LAW, MUNICIPAL LAW, WORKERS' COMPENSATION LAW, PERSONAL INJURY.

COUNTY DID NOT DEMONSTRATE THAT A TOWN POLICE OFFICER WHO WAS INJURED UNDERGOING A PHYSICAL FITNESS TEST AS A CANDIDATE FOR A COUNTY SWAT TEAM WAS A SPECIAL EMPLOYEE OF THE COUNTY SUCH THAT THE POLICE OFFICER'S ONLY REMEDY WAS WORKERS' COMPENSATION. [Dube v County of Rockland, 2018 NY Slip Op 02597, Second Dept 4-18-18](#)

ENVIRONMENTAL LAW, MUNICIPAL LAW, ZONING, LAND USE.

TOWN'S COMPREHENSIVE PLAN, WHICH WAS ADOPTED WHILE PETITIONER'S DEVELOPMENT PROJECT APPLICATION WAS PENDING AND NEGATIVELY AFFECTED IT, WAS PROPERLY ADOPTED UNDER THE GENERAL MUNICIPAL LAW, TOWN LAW AND STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA), AND WAS A VALID EXERCISE OF THE TOWN'S POLICE AND ZONING POWERS. [Matter of Calverton Manor, LLC v Town of Riverhead, 2018 NY Slip Op 02608, Second Dept 4-18-18](#)

ENVIRONMENTAL LAW, MUNICIPAL LAW, ZONING, LAND USE.

AGRICULTURAL PROTECTION ZONE (APZ) COMPONENT OF TOWN'S COMPREHENSIVE PLAN PROPERLY ADOPTED UNDER THE GENERAL MUNICIPAL LAW, TOWN LAW, AND STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA), QUESTION OF FACT WHETHER PETITIONER'S DEVELOPMENT PROJECT APPLICATION WAS COMPLETE BEFORE THE NEW COMPREHENSIVE PLAN WAS ADOPTED, ENTITLING PETITIONER TO THE APPLICATION OF THE PRIOR LAW. [Matter of Calverton Manor, LLC v Town of Riverhead, 2018 NY Slip Op 02609, Second Dept 4-18-18](#)

ENVIRONMENTAL LAW, MUNICIPAL LAW, ZONING, LAND USE.

RURAL CORRIDOR (RLC) COMPONENT OF TOWN'S COMPREHENSIVE PLAN PROPERLY ADOPTED UNDER THE GENERAL MUNICIPAL LAW, TOWN LAW, AND STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA), QUESTION OF FACT WHETHER PETITIONER'S DEVELOPMENT PROJECT APPLICATION WAS COMPLETE BEFORE THE NEW COMPREHENSIVE PLAN WAS ADOPTED, ENTITLING PETITIONER TO THE APPLICATION OF THE PRIOR LAW. [Matter of Calverton Manor, LLC v Town of Riverhead, 2018 NY Slip Op 02610, Second Dept 4-18-18](#)

ENVIRONMENTAL LAW, MUNICIPAL LAW, ZONING, LAND USE.

TRANSFER OF DEVELOPMENT RIGHTS (TDR) COMPONENT OF TOWN'S COMPREHENSIVE PLAN WAS NOT PROPERLY ADOPTED UNDER THE GENERAL MUNICIPAL LAW. [Matter of Calverton Manor, LLC v Town of Riverhead, 2018 NY Slip Op 02611, Second Dept 4-18-18](#)

FAMILY LAW.

EXTRAORDINARY CIRCUMSTANCES WARRANTED THE AWARD OF CUSTODY TO A GRANDPARENT AND THE SHARING OF CUSTODY WITH THE PARENTS. [Matter of Conroy v Conroy, 2018 NY Slip Op 02462, Second Dept 4-11-18](#)

FAMILY LAW, IMMIGRATION LAW.

MOTHER'S IMMIGRATION STATUS DID NOT AFFECT HER STATUS AS A DOMICILIARY OF NEW YORK, HER GUARDIANSHIP PETITIONS SHOULD NOT HAVE BEEN DENIED, FAMILY COURT SHOULD HAVE MADE THE FINDINGS NECESSARY TO ALLOW HER CHILDREN TO APPLY FOR SPECIAL IMMIGRANT JUVENILE STATUS (SIJS). [Matter of Alan S. M. C., 2018 NY Slip Op 02459, Second Dept 4-11-18](#)

FORECLOSURE, EVIDENCE.

QUESTION OF FACT WHETHER PLAINTIFF BANK HAD POSSESSION OF THE NOTE AT THE TIME THE FORECLOSURE ACTION WAS COMMENCED, THE DOCUMENTARY EVIDENCE SUBMITTED BY PLAINTIFF CONTRADICTED THE DATE OF POSSESSION DESCRIBED IN PLAINTIFF'S AFFIDAVIT. [Green Tree Servicing, LLC v Vitaliti, 2018 NY Slip Op 02601, Second Dept 4-18-18](#)

FAMILY LAW, EVIDENCE.

WILLFULNESS IS NOT AN ELEMENT OF CIVIL CONTEMPT, MOTHER'S MOTION TO FIND FATHER IN CIVIL CONTEMPT FOR VIOLATIONS OF ORDERS CONCERNING CONTACT WITH THE CHILDREN SHOULD HAVE BEEN GRANTED. [Matter of Mendoza-Pautrat v Razdan, 2018 NY Slip Op 02790, Second Dept 4-25-18](#)

FORECLOSURE, MORTGAGES, REAL PROPERTY LAW.

MORTGAGE WAS AMBIGUOUS BECAUSE IT DESCRIBED THE SUBJECT PROPERTY BY A SINGLE LOT NUMBER AND BY METES AND BOUNDS WHICH ENCOMPASSED TWO LOTS, QUESTION OF FACT ABOUT THE INTENT OF THE PARTIES PRECLUDED SUMMARY JUDGMENT. [JPMorgan Chase Bank, N.A. v Zhan Hua Cao, 2018 NY Slip Op 02603, Second Dept 4-18-18](#)

FORECLOSURE, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW, EVIDENCE.

INSUFFICIENT PROOF OF COMPLIANCE WITH THE 90 DAY NOTICE MAILING REQUIREMENTS OF REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL), PLAINTIFF BANK'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Wells Fargo Bank, NA v Mandrin, 2018 NY Slip Op 02826, Second Dept 4-25-18](#)

FORECLOSURE, TRUSTS AND ESTATES, CIVIL PROCEDURE, EVIDENCE.

BANK'S MOTION TO CHANGE THE CAPTION IN THIS FORECLOSURE PROCEEDING SHOULD NOT HAVE BEEN GRANTED, NO ADMISSIBLE PROOF OF AN ASSIGNMENT OF THE NOTE TO A NEW PLAINTIFF, AND NO PROCEDURAL STEPS TO REMOVE A DECEASED DEFENDANT FROM THE ACTION WERE TAKEN. [Citimortgage, Inc. v Bredehorn, 2018 NY Slip Op 02595, Second Dept 4-18-18](#)

INSURANCE LAW, CONTRACT LAW.

ANY CONDUCT ON THE PART OF THE INSURER WAS NOT THE PROXIMATE CAUSE OF PLAINTIFF'S CLOSING OF ITS BUSINESS AFTER INCURRING WATER DAMAGE, THEREFORE THE INSURER WAS NOT LIABLE FOR THE LOSS OF BUSINESS CONSEQUENTIAL DAMAGES. [Lola Roberts Beauty Salon, Inc. v Leading Ins. Group Ins. Co., Ltd., 2018 NY Slip Op 02605, Second Dept 4-18-18](#)

LABOR LAW-CONSTRUCTION LAW, CIVIL PROCEDURE, WORKERS' COMPENSATION LAW, PERSONAL INJURY.

QUESTIONS OF FACT WHETHER THE WORK ON A BOILER WAS ROUTINE MAINTENANCE (NOT COVERED BY LABOR LAW 240 (1)) AND WHETHER A SAFETY DEVICE WAS REQUIRED, CONTRACTOR'S DEFAULT CONSTITUTED AN ADMISSION TO THE ALLEGATIONS IN THE COMPLAINT, INCLUDING THAT PLAINTIFF SUFFERED A GRAVE INJURY (TAKING THE INJURY OUT FROM UNDER THE WORKERS' COMPENSATION LAW). [Garbett v Wappingers Cent. Sch. Dist., 2018 NY Slip Op 02600, Second Dept 4-18-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PROPERTY OWNER'S LIABILITY UNDER LABOR LAW 240 (1) FOR PLAINTIFF'S FALL FROM A SCAFFOLD THAT DID NOT HAVE SAFETY RAILINGS IS BASED UPON ITS STATUS AS AN OWNER, NOT NEGLIGENCE, THEREFORE PROPERTY OWNER ENTITLED TO INDEMNIFICATION FROM GENERAL CONTRACTOR. [Marulanda v Vance Assoc., LLC, 2018 NY Slip Op 02452, Second Dept 4-11-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF WAS NOT ENGAGED IN 'CLEANING' WITHIN THE MEANING OF LABOR LAW 240 (1) WHEN SHE FELL FROM A LADDER, DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT PROPERLY GRANTED. [Holguin v Barton, 2018 NY Slip Op 02602, Second Dept 4-18-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF FELL FROM A LADDER WHEN A TIRE STORED ON THE ROOF OF A SHED FELL AND STRUCK THE LADDER, THE TIRE WAS NOT BEING HOISTED AND DID NOT NEED TO BE SECURED FOR THE PURPOSES OF PLAINTIFF'S WORK, THE ACCIDENT THEREFORE WAS NOT COVERED UNDER LABOR LAW 240(1). [Ruiz v Ford, 2018 NY Slip Op 02820, Second Dept 4-25-18](#)

MEDICAL MALPRACTICE, INTENTIONAL TORTS, PUBLIC HEALTH LAW, PERSONAL INJURY.

CAUSE OF ACTION ALLEGING DEFENDANTS PERFORMED AN UNWANTED C-SECTION BIRTH STATES AN INTENTIONAL TORT SUBJECT TO THE ONE YEAR STATUTE OF LIMITATIONS, THE PUBLIC HEALTH LAW DOES NOT CREATE A PRIVATE RIGHT OF ACTION AGAINST HOSPITALS. [Dray v Staten Is. Univ. Hosp., 2018 NY Slip Op 02314, Second Dept 4-4-18](#)

MUNICIPAL LAW.

PETITION FOR A REFERENDUM CONCERNING THE SALE OF TOWN LAND FOR THE DEVELOPMENT OF A RECREATIONAL PARK SHOULD NOT HAVE BEEN INVALIDATED, THE PETITION MET THE REQUIREMENTS OF TOWN LAW 91. [Matter of Merlin Entertainments Group U.S. Holdings, Inc. v 409 Signatories to the challenged Referendum Petition, 2018 NY Slip Op 02627, Second Dept 4-18-18](#)

MUNICIPAL LAW, PERSONAL INJURY.

A POLICE OFFICER'S OR POLICE DEPARTMENT'S KNOWLEDGE OF AN ACCIDENT CANNOT BE CONSIDERED ACTUAL KNOWLEDGE OF THE ESSENTIAL FACTS OF THE CLAIM BY THE MUNICIPALITY, REQUEST FOR LEAVE TO FILE A LATE NOTICE OF CLAIM PROPERLY DENIED. [Matter of Cruz v Transdev Servs., Inc., 2018 NY Slip Op 02463, Second Dept 4-11-18](#)

PERSONAL INJURY.

THE ROOT OVER WHICH PLAINTIFF TRIPPED WALKING THROUGH A LANDSCAPED AREA ADJACENT TO A PARKING LOT WAS INHERENT TO THE NATURE OF THE AREA AND THEREFORE NOT ACTIONABLE. [Miano v Rite Aid Hdgtrs. Corp., 2018 NY Slip Op 02453, Second Dept 4-11-18](#)

PERSONAL INJURY.

PLAINTIFF, A PASSENGER IN A STOPPED CAR HIT FROM BEHIND, WAS ENTITLED TO SUMMARY JUDGMENT, WHETHER THE PLAINTIFF'S DRIVER WAS COMPARATIVELY NEGLIGENT NO LONGER PRECLUDES SUMMARY JUDGMENT. [Edgerton v City of New York, 2018 NY Slip Op 02598, Second Dept 4-18-18](#)

PERSONAL INJURY, EMPLOYMENT LAW.

MAINTENANCE WORKER'S BACK INJURY FROM CARRYING A HEAVY BAG OF GARBAGE WAS CAUSED BY A RISK INHERENT IN THE WORK, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Moody v Kelly Drye & Warren, LLP, 2018 NY Slip Op 02454, Second Dept 4-11-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

TOWN DID NOT DEMONSTRATE IT DID NOT CREATE THE CONDITION WHICH RESULTED IN THE FORMATION OF ICE, TOWN'S MOTION FOR SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE PROPERLY DENIED. [Casciano v Town/Village of Harrison, 2018 NY Slip Op 02593, Second Dept 4-18-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

PETITIONER'S CHILD, A PRE-KINDERGARTEN STUDENT, FELL AND HIT HER HEAD, THE ACCIDENT REPORT DID NOT INFORM THE CITY OF THE ESSENTIAL FACTS OF THE NEGLIGENCE CLAIM, PETITION TO FILE LATE NOTICE OF CLAIM PROPERLY DENIED. [Matter of Quinones v City of New York, 2018 NY Slip Op 02630, Second Dept 4-18-18](#)

PERSONAL INJURY, MUNICIPAL LAW, TRUSTS AND ESTATES.

PETITION FOR LEAVE TO FILE LATE NOTICE OF CLAIM AGAINST THE TOWN AMBULANCE IN THIS WRONGFUL DEATH, MEDICAL MALPRACTICE AND PUBLIC HEALTH LAW ACTION SHOULD NOT HAVE BEEN GRANTED, NO REASONABLE EXCUSE FOR THE DELAY AND NO TIMELY KNOWLEDGE ON THE PART OF THE MUNICIPALITY. [Matter of Mangino v Town of Mamaroneck, 2018 NY Slip Op 02625, Second Dept 4-18-18](#)

REAL ESTATE, FRAUD, NEGLIGENCE, ATTORNEYS.

COMPLAINT STATED A CAUSE OF ACTION AGAINST THE SELLERS OF A CONDOMINIUM FOR FRAUDULENTLY CONCEALING MOLD AND WATER DAMAGE IN THE CONDOMINIUM AND COMMON AREAS, THE COMPLAINT ALSO STATED A MALPRACTICE CAUSE OF ACTION AGAINST THE BUYERS' ATTORNEY. [Razdolskaya v Lyubarsky, 2018 NY Slip Op 02817, Second Dept 4-25-18](#)

REAL PROPERTY ACTIONS AND PROCEEDINGS LAW.

COMPLAINT STATED A CAUSE OF ACTION TO QUIET TITLE AND SHOULD NOT HAVE BEEN DISMISSED, CRITERIA EXPLAINED. [Nurse v Rios, 2018 NY Slip Op 02640, Second Dept 4-18-18](#)

REAL PROPERTY LAW.

PLAINTIFF RECORDED HER DEED AND MORTGAGE PRIOR TO THE RECORDING OF A MORTGAGE BY DEFENDANT BANK, DEFENDANT BANK WAS NOT A GOOD FAITH PURCHASER IN THAT IT IS DEEMED TO HAVE PRIOR NOTICE OF PLAINTIFF'S INTERESTS, SUPREME COURT REVERSED. [Gregg v M&T Bank Corp., 2018 NY Slip Op 02774, Second Dept 4-25-18](#)

WORKERS' COMPENSATION LAW, CORPORATION LAW.

DEFENDANT WAS THE ALTER EGO OF PLAINTIFF'S EMPLOYER, THEREFORE WORKERS' COMPENSATION WAS THE ONLY REMEDY FOR THE PLAINTIFF WHO WAS INJURED ON THE JOB. [Clarke v First Student, Inc., 2018 NY Slip Op 02766, Second Dept 4-25-18](#)

THIRD DEPARTMENT

CRIMINAL LAW.

FAILURE TO ALLEGE AN OVERT ACT IN THE CONSPIRACY COUNT REQUIRED REVERSAL AND DISMISSAL OF THE COUNT AS JURISDICTIONALLY DEFECTIVE. [People v Pichardo, 2018 NY Slip Op 02365, Third Dept 4-5-18](#)

CRIMINAL LAW, APPEALS.

DEFENDANT'S STATEMENT AT SENTENCING THAT HE DIDN'T MEAN TO HURT THE VICTIM, RAISING THE POSSIBILITY OF THE JUSTIFICATION DEFENSE, REQUIRED FURTHER INQUIRY BY THE COURT, PLEA VACATED DESPITE FAILURE TO MAKE POSTALLOCUTION MOTION. [People v Chin, 2018 NY Slip Op 02363, Third Dept 4-5-18](#)

CRIMINAL LAW, ATTORNEYS.

COUNTY COURT'S FAILURE TO MAKE A SEARCHING INQUIRY WHEN DEFENDANT INDICATED HE WISHED TO REPRESENT HIMSELF REQUIRED REVERSAL, DESPITE PRESENCE OF STANDBY COUNSEL. [People v Myers, 2018 NY Slip Op 02361, Third Dept 4-5-18](#)

CRIMINAL LAW, CONSTITUTIONAL LAW, APPEALS.

ARGUMENT THAT THE SPECIAL PROSECUTOR FOR THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS DID NOT HAVE THE AUTHORITY TO PROSECUTE DEFENDANT WAS NOT RAISED BELOW AND COULD NOT BE DECIDED WITHOUT ADDITIONAL FACTS DEVELOPED ON REMITTAL, THE RECORD ON APPEAL THEREFORE WILL NOT ALLOW REVERSAL IN THE INTEREST OF JUSTICE. [People v Cubero, 2018 NY Slip Op 02839, Third Dept 4-26-18](#)

CRIMINAL LAW, ENVIRONMENTAL LAW, MUNICIPAL LAW.

VILLAGE CODE ENFORCEMENT OFFICER CHARGED WITH RECEIVING A BRIBE AND ENDANGERING THE PUBLIC HEALTH IN CONNECTION WITH THE DEMOLITION OF A BUILDING CONTAINING ASBESTOS, CHARGES SHOULD NOT HAVE BEEN DISMISSED IN THE INTEREST OF JUSTICE PURSUANT TO CPL 210.40. [People v Snowden, 2018 NY Slip Op 02369, Third Dept 4-5-18](#)

CRIMINAL LAW, EVIDENCE.

REVERSIBLE ERROR TO REFUSE TO ALLOW IN EVIDENCE THE DETECTIVE'S RECORDED STATEMENTS MADE TO DEFENDANT BEFORE THE MIRANDA WARNINGS AND HER CONFESSION, STATEMENTS WERE NOT OFFERED FOR THEIR TRUTH BUT RATHER TO SHOW DEFENDANT'S STATE OF MIND AND TO EXPLAIN WHY SHE CONFESSED. [People v Hall, 2018 NY Slip Op 02368, Third Dept 4-5-18](#)

CRIMINAL LAW, EVIDENCE.

REQUEST FOR A FRYE HEARING CONCERNING A COMPUTER PROGRAM (TRUEALLELE) THAT PURPORTS TO IDENTIFY DNA CONTAINED IN A MIXTURE THAT COULD NOT OTHERWISE BE TIED TO THE DEFENDANT PROPERLY DENIED BASED ON THE RESULTS OF A HEARING ON THE SAME ISSUE IN ANOTHER CASE, EVEN THOUGH THAT CASE IS ON APPEAL; DEFENSE REQUEST FOR THE ORIGINAL CODE FOR THE PROGRAM, MADE FOR THE FIRST TIME DURING CROSS-EXAMINATION OF THE PEOPLE'S EXPERT, PROPERLY DENIED. [People v Fields, 2018 NY Slip Op 02503, Third Dept 4-12-18](#)

CRIMINAL LAW, EVIDENCE.

THE MANNER IN WHICH A PRISON BODY CAVITY SEARCH WAS CONDUCTED DEEMED UNREASONABLE AND A VIOLATION OF THE FOURTH AMENDMENT, COCAINE SEIZED FROM DEFENDANT'S BUTTOCKS-AREA SHOULD HAVE BEEN SUPPRESSED. [People v Holton, 2018 NY Slip Op 02836, Third Dept 4-26-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

FAILURE TO INSTRUCT THE JURY THAT A WITNESS WAS AN ACCOMPLICE AS A MATTER OF LAW REQUIRED REVERSAL. [People v Pettus, 2018 NY Slip Op 02366, Third Dept 4-5-18](#)

ELECTION LAW, FREEDOM OF INFORMATION LAW (FOIL).

ELECTRONIC IMAGES OF ELECTION BALLOTS MAY BE OBTAINED THROUGH A FREEDOM OF INFORMATION LAW (FOIL) REQUEST. [Matter of Kosmider v Whitney, 2018 NY Slip Op 02517, Third Dept 4-12-18](#)

ENVIRONMENTAL LAW.

AFTER THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC) AND THE PERMIT APPLICANT CAME TO AN AGREEMENT, A REQUEST BY AFFECTED PROPERTY OWNERS FOR FURTHER ADJUDICATION OF ISSUES RELATING TO THE APPROVAL OF TWO DEVELOPMENT PROJECTS IN THE CATSKILLS WAS PROPERLY DENIED BY THE DEC COMMISSIONER. [Matter of Catskill Heritage Alliance, Inc. v New York State Dept. of Env'tl. Conservation, 2018 NY Slip Op 02516, Third Dept 4-12-18](#)

FAMILY LAW.

INCLUDING INCOME FROM STOCK ON A JOINT TAX RETURN, USING INCOME FROM THE STOCK FOR MARITAL PURPOSES AND USING THE STOCK AS COLLATERAL FOR A LOAN DID NOT TRANSMUTE THE STOCK FROM SEPARATE TO MARITAL PROPERTY. [Giannuzzi v Kearney, 2018 NY Slip Op 02378, Third Dept 4-5-18](#)

FAMILY LAW, CONTRACT LAW.

NO CHILD SUPPORT OR MAINTENANCE ORDER WAS IN EFFECT AT THE TIME HUSBAND MOVED TO REDUCE HIS OBLIGATION BECAUSE OF A LOSS OF EMPLOYMENT, THE CHILD SUPPORT AND MAINTENANCE PROVISIONS OF THE SEPARATION AGREEMENT, WHICH WAS NOT MERGED INTO THE DIVORCE DECREE, CONTROLLED, HUSBAND DID NOT DEMONSTRATE THE SETTLEMENT AGREEMENT WAS INVALID. [Abdelrahman v Mahdi, 2018 NY Slip Op 02698, Third Dept 4-19-18](#)

FORECLOSURE, APPEALS.

PLAINTIFF DID NOT PROVE AT TRIAL THAT HE HAD STANDING TO BRING THE FORECLOSURE ACTION, HE DID NOT PROVE PHYSICAL POSSESSION OF THE ORIGINAL NOTE AT THE TIME THE ACTION WAS BROUGHT AND DID NOT PROVE THE NOTE WAS INDORSED IN BLANK OR TO HIM, APPELLATE COURT CAN INDEPENDENTLY WEIGH THE EVIDENCE AFTER A NONJURY TRIAL. [McCormack v Maloney, 2018 NY Slip Op 02385, Third Dept 4-5-18](#)

INSURANCE LAW.

WATER DAMAGE, ALLEGED TO HAVE BEEN CAUSED BY HURRICANE SANDY, WAS DEMONSTRATED TO HAVE RESULTED FROM WEAR AND TEAR AND WAS THEREFORE SUBJECT TO THE POLICY EXCLUSION. [Superhost Hotels Inc. v Selective Ins. Co. of Am., 2018 NY Slip Op 02519, Third Dept 4-12-18](#)

LANDLORD-TENANT, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW, REAL PROPERTY LAW.

RETALIATORY EVICTION, CONSTRUCTIVE EVICTION AND BREACH OF WARRANTY OF HABITABILITY DEFENSES SHOULD HAVE BEEN CONSIDERED IN THIS EVICTION PROCEEDING. [Matter of Kirkview Assoc. LP v Amrock, 2018 NY Slip Op 02389, Third Dept 4-5-18](#)

MEDICAID, MORTGAGES.

SUBSTANTIAL EVIDENCE SUPPORTED THE DEPARTMENT OF HEALTH'S DETERMINATION THAT LOANS, NOTES AND MORTGAGES WERE PROHIBITED TRANSFERS UNDER THE MEDICAID LAW, TRIGGERING A PENALTY PERIOD BEFORE ELIGIBILITY FOR MEDICAID NURSING HOME BENEFITS.. [Matter of Wellner v Jablonka, 2018 NY Slip Op 02701, Third Dept 4-19-18](#)

MUNICIPAL LAW, IMMUNITY.

COMPLAINT STATED NEGLIGENCE CAUSES OF ACTION AGAINST THE TOWN, A SPECIAL RELATIONSHIP BETWEEN PLAINTIFFS AND THE TOWN WAS SUFFICIENTLY ALLEGED, AND IT WAS SUFFICIENTLY ALLEGED THAT GOVERNMENTAL IMMUNITY DID NOT APPLY BECAUSE THE TOWN ENGINEER DID NOT HAVE THE AUTHORITY OR DISCRETION TO ACT AS HE DID. [Normanskill Cr., LLC v Town of Bethlehem, 2018 NY Slip Op 02697, Third Dept 4-19-18](#)

MUNICIPAL LAW, LAND USE, ENVIRONMENTAL LAW, ZONING,

TOWN'S SITE PLAN REVIEW LAW IS CONSISTENT WITH THE TOWN'S COMPREHENSIVE PLAN AND IS A VALID SUBSTITUTE FOR ZONING ORDINANCES, TOWN PLANNING BOARD HAD THE AUTHORITY TO IMPOSE CONDITIONS ON THE STORAGE OF FIREWOOD UNDER THE SITE PLAN REVIEW LAW. [Matter of Bovee v Town of Hadley Planning Bd., 2018 NY Slip Op 02387, Third Dept 4-5-18](#)

PERSONAL INJURY.

QUESTION OF FACT WHETHER SPECTATOR PROTECTION AT A HOCKEY RINK WAS SUFFICIENT, PLAINTIFF WAS STRUCK BY A PUCK. [Smero v City of Saratoga Springs, 2018 NY Slip Op 02521, Third Dept 4-12-18](#)

PERSONAL INJURY.

DEFENDANTS DID NOT ELIMINATE ALL TRIABLE ISSUES OF FACT ABOUT CONSTRUCTIVE NOTICE OF THE ICY CONDITION IN THIS SLIP AND FALL CASE. [Hurley v City of Glens Falls, 2018 NY Slip Op 02529, Third Dept 4-12-18](#)

PERSONAL INJURY.

NEGLIGENT ENTRUSTMENT ACTION SURVIVED SUMMARY JUDGMENT, DEFENDANT ENTRUSTED HER MOTORCYCLE TO AN OPERATOR WHO DID NOT HAVE A DRIVER'S LICENSE. [Perkins v County of Tompkins, 2018 NY Slip Op 02530, Third Dept 4-12-18](#)

PERSONAL INJURY.

QUESTIONS OF FACT PRECLUDED SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE, RECENTLY MOPPED FLOOR WAS EXTREMELY WET, PLACEMENT OF CAUTION SIGNS DID NOT ELIMINATE NEGLIGENCE QUESTIONS. [Firment v Dick's Sporting Goods, Inc., 2018 NY Slip Op 02700, Third Dept 4-19-18](#)

PERSONAL INJURY, CIVIL PROCEDURE, EMPLOYMENT LAW.

ALTHOUGH THE BILL OF PARTICULARS MENTIONED NEGLIGENT HIRING AND RETENTION IN THIS BUS-PASSENGER-INJURY CASE, THE COMPLAINT DID NOT; THEREFORE THERE WERE NO GROUNDS FOR THE DEMAND TO DISCOVER REPORTS OF PREVIOUS ACCIDENTS INVOLVING THE BUS DRIVER. [Schonbrun v DeLuke, 2018 NY Slip Op 02386, Third Dept 4-5-18](#)

PRODUCTS LIABILITY, CIVIL PROCEDURE, EVIDENCE.

FACT THAT PLAINTIFF COULD NOT IDENTIFY THE PARTICULAR MACY'S STORE AT WHICH THE SKIRT WHICH CAUGHT FIRE WAS PURCHASED DID NOT WARRANT SUMMARY JUDGMENT IN FAVOR OF MACY'S, POINTING TO GAPS IN PLAINTIFF'S PROOF IS NOT SUFFICIENT FOR SUMMARY JUDGMENT. [Palmatier v Mr. Heater Corp., 2018 NY Slip Op 02382, Third Dept 4-5-18](#)

PERSONAL INJURY, EVIDENCE.

VERDICT EXONERATING DEFENDANT DRIVER OF ANY COMPARATIVE FAULT IN THIS PEDESTRIAN ACCIDENT CASE SHOULD HAVE BEEN SET ASIDE, DEFENDANT TESTIFIED SHE SAW PERSONS IN THE ROAD BUT DID NOT SLOW DOWN. [Blanchard v Chambers, 2018 NY Slip Op 02852, Third Dept 4-26-18](#)

REAL PROPERTY ACTIONS AND PROCEEDINGS LAW, CONTRACT LAW.

SUPREME COURT SHOULD NOT HAVE DEVIATED FROM THE STIPULATION ENTERED INTO BY THE PARTIES WHICH DESCRIBED THE DAMAGES AVAILABLE UNDER REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL) FOR THE INADVERTENT REMOVAL OF TREES FROM PLAINTIFFS' PROPERTY BY DEFENDANTS. [Halstead v Fournia, 2018 NY Slip Op 02525, Third Dept 4-12-18](#)

REAL PROPERTY LAW.

QUESTION OF FACT ABOUT THE HOSTILITY ELEMENT OF A PRESCRIPTIVE EASEMENT, PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Schwengber v Hultenius, 2018 NY Slip Op 02379, Third Dept 4-5-18](#)

RETIREMENT AND SOCIAL SECURITY LAW, PERSONAL INJURY.

CRITERIA FOR DETERMINING WHETHER A SLIP AND FALL ENTITLES A POLICE OFFICER TO ACCIDENTAL DISABILITY RETIREMENT BENEFITS UNDER THE RETIREMENT AD SOCIAL SECURITY LAW EXPLAINED IN DEPTH, MATTER WAS REMITTED FOR FACTS AND CONCLUSIONS UNDER THE LAW ARTICULATED IN THE OPINION. [Stancarone v DiNapoli, 2018 NY Slip Op 02844, Third Dept 4-26-18](#)

FOURTH DEPARTMENT

ATTORNEYS.

PRO SE PLAINTIFF'S CAUSE OF ACTION ALLEGING THE DEFENDANT ATTORNEY'S FEE WAS UNCONSCIONABLE SHOULD NOT HAVE BEEN DISMISSED; MOTION TO DISQUALIFY DEFENDANT'S ATTORNEY BECAUSE PLAINTIFF HAD INITIALLY CONSULTED WITH AN ATTORNEY AT THE DEFENDANT'S ATTORNEY'S FIRM PROPERLY DENIED. [Divito v Fiandach, 2018 NY Slip Op 02922, Fourth Dept 4-27-18](#)

CIVIL PROCEDURE.

PLAINTIFF ENTITLED TO RECOVER FROM DEFENDANT THE COST OF ALTERNATE SERVICE BECAUSE DEFENDANT DID NOT RETURN THE ACKNOWLEDGMENT OF RECEIPT (CPLR 312-a) UPON BEING SERVED BY MAIL. [McGriff v Mallory, 2018 NY Slip Op 03003, Third Dept 4-26-18](#)

CRIMINAL LAW.

UNDER THE DRUG LAW REFORM ACT (DRLA) A DEFENDANT CONVICTED OF A QUALIFYING DRUG FELONY CANNOT BE SENTENCED AS A PERSISTENT FELONY OFFENDER (PFO). [People v Boykins, 2018 NY Slip Op 02919, Fourth Dept 4-27-18](#)

CRIMINAL LAW.

THE PEOPLE'S GROUND FOR STEP ONE OF THE BATSON CHALLENGE PROCEDURE WAS NOT FACTUALLY CORRECT, THE JUDGE SHOULD NOT HAVE PROCEEDED TO STEP TWO AND THE JUROR SHOULD NOT HAVE BEEN SEATED. [People v Smouse, 2018 NY Slip Op 02921, Fourth Dept 4-27-18](#)

CRIMINAL LAW.

SENTENCE IMPOSED AFTER FAILURE TO PAY RESTITUTION UNDULY HARSH AND SEVERE. [People v Lloyd, 2018 NY Slip Op 03032, Fourth Dept 4-27-18](#)

CRIMINAL LAW, APPEALS, IMMIGRATION.

DEFENDANT ENTITLED TO DEMONSTRATE SHE WOULD NOT HAVE PLED GUILTY HAD SHE BEEN INFORMED OF THE DEPORTATION CONSEQUENCES, THE ISSUE SURVIVES THE WAIVER OF APPEAL AND THE FAILURE TO PRESERVE. [People v Roman, 2018 NY Slip Op 03048, Fourth Dept 4-27-18](#)

CRIMINAL LAW, EVIDENCE.

A DEFENDANT WHO REQUESTS A RESTITUTION HEARING IS ENTITLED TO ONE, EVEN WHERE A HEARING HAD BEEN HELD AFTER DEFENDANT'S FIRST TRIAL. [People v Case, 2018 NY Slip Op 02995, Fourth Dept 4-27-18](#)

CRIMINAL LAW, EVIDENCE.

JURY INSTRUCTION ALLOWED CONVICTION ON A THEORY NOT IN THE INDICTMENT, COUNT DISMISSED; SENTENCING JUDGE DID NOT CONSIDER MITIGATING FACTORS AND INDICATED DEFENDANT WAS SENTENCED HARSHLY BECAUSE HE WENT TO TRIAL, SENTENCE REDUCED. [People v Morales, 2018 NY Slip Op 02958, Fourth Dept 4-27-18](#)

CRIMINAL LAW, EVIDENCE.

IMPORTANT WITNESS RECANTED HER TRIAL TESTIMONY, MOTION TO VACATE CONVICTION SHOULD NOT HAVE BEEN DENIED WITHOUT A HEARING. [People v Grant, 2018 NY Slip Op 02951, Fourth Dept 4-27-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

THE TRIAL JUDGE RESERVED DECISION ON DEFENDANT'S MOTION FOR A TRIAL ORDER OF DISMISSAL ON THE RESISTING ARREST CHARGE AND DID NOT RULE ON IT AFTER CONVICTION, ON APPEAL THE FAILURE TO RULE CANNOT BE CONSIDERED A DENIAL, MATTER REMITTED FOR A RULING. [People v Hymes, 2018 NY Slip Op 02942, Fourth Dept 4-27-18](#)

CRIMINAL LAW, JUDGES.

SENTENCING JUDGE DID NOT HAVE THE AUTHORITY TO ASSURE DEFENDANT OF ADMISSION INTO THE SHOCK PROGRAM, DEFENDANT'S PLEA VACATED. [People v Smith, 2018 NY Slip Op 03025, Fourth Dept 4-27-18](#)

CRIMINAL LAW, JUDGES, EVIDENCE.

THE JUDGE DID NOT HAVE THE AUTHORITY TO GRANT DEFENSE COUNSEL'S REQUEST FOR A VIDEOTAPE OF AN INTERVIEW OF THE CHILD (ALLEGED) VICTIM IN THIS SEXUAL OFFENSE CASE, THE INTERVIEW WAS CONDUCTED BY A PRIVATE PARTY AND WAS DISCOVERABLE ONLY IF IT CONSTITUTED BRADY (EXCULPATORY) MATERIAL, THE JUDGE DID NOT VIEW THE TAPE TO DETERMINE WHETHER IT WAS BRADY MATERIAL. [Matter of Doorley v Castro, 2018 NY Slip Op 02939, Fourth Dept 4-27-18](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

SCHIZOPHRENIA DIAGNOSIS DID NOT JUSTIFY AN UPWARD DEPARTURE IN THIS SEX OFFENDER REGISTRATION ACT (SORA) RISK ASSESSMENT PROCEEDING. [People v Robinson, 2018 NY Slip Op 02986, Fourth Dept 4-27-18](#)

EMPLOYMENT LAW, CONTRACT LAW, ATTORNEYS.

LIQUIDATED DAMAGES CLAUSE IN NON-COMPETE COVENANT ENFORCEABLE, ATTORNEY'S FEES NOT ENCOMPASSED BY THE LIQUIDATED DAMAGES. [Mathew v Slocum-Dickson Med. Group, PLLC, 2018 NY Slip Op 03059, Fourth Dept 4-27-18](#)

FAMILY LAW.

WHERE FATHER RELINQUISHED CUSTODY BY CONSENT, HE NEED NOT MAKE A THRESHOLD SHOWING OF A CHANGE IN CIRCUMSTANCES TO BE ENTITLED TO A HEARING ON HIS CUSTODY PETITION, NUMEROUS LEGAL AND FACTUAL ERRORS BY THE JUDGE REQUIRED THAT THIS MATTER BE SENT BACK FOR HEARINGS AND RULINGS ON CUSTODY AND VISITATION ISSUES RAISED BY THE FATHER'S PETITION. [Matter of Schultz v Berke, 2018 NY Slip Op 02945, Fourth Dept 4-27-18](#)

FORECLOSURE.

BANK WHICH PURPORTEDLY ACCELERATED THE DEBT DID NOT HAVE STANDING TO DO SO, PLAINTIFF BANK ENTITLED ONLY TO THE UNPAID INSTALLMENTS WHICH ACCRUED DURING THE SIX YEARS PRIOR TO COMMENCING THE ACTION. [Wilmington Sav. Fund Socy., FSB v Gustafson, 2018 NY Slip Op 02954, Fourth Dept 5-27-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

ALTHOUGH THERE WERE NO GUARD RAILS ON THE SCAFFOLD, PLAINTIFF DID NOT TIE OFF HIS HARNESS AND LANYARD, QUESTION OF FACT WHETHER PLAINTIFF'S CONDUCT WAS THE SOLE PROXIMATE CAUSE OF HIS INJURY FROM A FALL, SUMMARY JUDGMENT ON HIS LABOR LAW 240(1) CAUSE OF ACTION PROPERLY DENIED. [Weitzel v State of New York, 2018 NY Slip Op 02946, Fourth Dept 4-27-18](#)

MEDICAL MALPRACTICE, CIVIL PROCEDURE, PERSONAL INJURY.

MOTION TO SET ASIDE THE VERDICT IN THIS MEDICAL MALPRACTICE ACTION SHOULD NOT HAVE BEEN GRANTED, THE JURY REASONABLY FOUND THE DOCTOR'S NEGLIGENCE WAS NOT A PROXIMATE CAUSE OF PLAINTIFF'S INJURIES. [Capierso v Tomaino, 2018 NY Slip Op 02917, Fourth Dept 4-27-18](#)

MEDICAL MALPRACTICE, CIVIL PROCEDURE, PERSONAL INJURY.

CONTINUOUS TREATMENT DOCTRINE RENDERED THE MEDICAL MALPRACTICE ACTION TIMELY, SUPREME COURT REVERSED. [Phillips v Buffalo Heart Group, LLP, 2018 NY Slip Op 03055, Fourth Dept 4-27-18](#)

MEDICAL MALPRACTICE, CIVIL PROCEDURE, EVIDENCE, PERSONAL INJURY.

CREDIBILITY ISSUES ARE FOR THE JURY, PLAINTIFF'S VERDICT SHOULD NOT HAVE BEEN SET ASIDE BASED UPON THE JUDGE'S FINDING DEFENDANT DOCTOR'S TESTIMONY CREDIBLE IN THIS MEDICAL MALPRACTICE, WRONGFUL DEATH CASE. [Bolin v Goodman, 2018 NY Slip Op 02920, Fourth Dept 4-27-18](#)

PERSONAL INJURY.

QUESTION OF FACT WHETHER DEFENDANTS UNREASONABLY INCREASED THE RISK IN THIS HORSEBACK-RIDING-LESSON ACCIDENT CASE. [Enos-Groff v Schumacher, 2018 NY Slip Op 02960, Fourth Dept 4-27-18](#)

PERSONAL INJURY, CIVIL PROCEDURE.

DEFENDANT DRIVER RAISED A QUESTION OF FACT WHETHER THE CAUSE OF THE ACCIDENT WAS BLACK ICE, PLAINTIFF PASSENGER'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED, DEFENDANT'S MOTION TO AMEND THE PLEADINGS TO ADD THE EMERGENCY DOCTRINE DEFENSE SHOULD HAVE BEEN GRANTED. [Greco v Grande, 2018 NY Slip Op 02916, Fourth Dept 4-27-18](#)

PERSONAL INJURY, CONTRACT LAW.

QUESTION OF FACT WHETHER SNOW PLOWING CONTRACTOR LAUNCHED AN INSTRUMENT OF HARM OR CREATED OR EXACERBATED A DANGEROUS CONDITION IN THIS ICE AND SNOW SLIP AND FALL CASE. [Chamberlain v Church of the Holy Family 2018 NY Slip Op 02949, Fourth Dept 4-27-18](#)

REAL PROPERTY.

DOCUMENT ALLOWING ACCESS TO PLAINTIFF'S LAND OVER DEFENDANT'S LAND DID NOT INCLUDE ANY WORDS OF PERMANENCY, THE DOCUMENT CREATED A REVOCABLE LICENSE NOT AN EASEMENT. [New York Land Dev. Corp. v Bennett, 2018 NY Slip Op 02926, Fourth Dept 4-27-18](#)

REAL PROPERTY.

PRIVATE NUISANCE CAUSE OF ACTION BASED UPON LIGHTS AND NOISE FROM A STADIUM PROPERLY SURVIVED SUMMARY JUDGMENT. [Ranney v Tonawanda City Sch. Dist., 2018 NY Slip Op 03004, Fourth Dept 4-27-18](#)

WORKERS' COMPENSATION LAW, CORPORATION LAW.

DEFENDANT PROPERTY OWNER WAS THE ALTER EGO OF PLAINTIFF'S EMPLOYER, PLAINTIFF'S ONLY REMEDY FOR INJURY FROM A FALL WAS UNDER THE WORKERS' COMPENSATION LAW. [Buchwald v 1307 Porterville Rd., LLC, 2018 NY Slip Op 03006, Fourth Dept 4-27-18](#)

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ADMINISTRATIVE LAW, EVIDENCE, APPEALS.

BECAUSE SUBSTANTIAL EVIDENCE SUPPORTED THE NYC COMMISSION ON HUMAN RIGHTS' RULING THAT CONSTRUCTION OF A HANDICAPPED ACCESSIBLE ENTRANCE WOULD NOT CAUSE UNDUE HARDSHIP TO THE PROPERTY OWNERS APPELLATE REVIEW CAN GO NO FURTHER, EXTENSIVE TWO-JUDGE DISSENT. [Matter of Marine Holdings, LLC v New York City Commn. on Human Rights, 2018 NY Slip Op 03303, CtApp 5-8-18](#)

ANIMAL LAW, APPEALS.

LEAVE TO APPEAL DENIAL OF HABEAS CORPUS RELIEF FOR TWO CHIMPANZEES DENIED, THOUGHTFUL CONCURRING OPINION QUESTIONS THE ANALYSIS USED BY THE APPELLATE DIVISION AND SUGGESTS RECOGNIZING THE CHIMPANZEES' RIGHT TO LIBERTY. [Matter of Nonhuman Rights Project, Inc. v Lavery, 2018 NY Slip Op 03309, CtApp 5-8-18](#)

CORPORATION LAW, INTELLECTUAL PROPERTY.

IN THIS MISAPPROPRIATION OF TRADE SECRETS, UNFAIR COMPETITION, UNJUST ENRICHMENT ACTION, DAMAGES CANNOT BE MEASURED BY THE DEVELOPMENT COSTS AVOIDED BY THE COMPANY WHICH MISAPPROPRIATED THE TRADE SECRETS. [E.J. Brooks Co. v Cambridge Sec. Seals, 2018 NY Slip Op 03171, CtApp 5-1-18](#)

CRIMINAL LAW.

MERE USE OF ANOTHER'S PERSONAL IDENTIFYING INFORMATION, LIKE A CREDIT CARD NUMBER, ESTABLISHES A VIOLATION OF NEW YORK'S IDENTITY THEFT STATUTE, THERE IS NO NEED TO PROVE THE DEFENDANT ASSUMED THE VICTIM'S IDENTITY IN SOME ADDITIONAL WAY. [People v Roberts, 2018 NY Slip Op 03172, CtApp 5-1-18](#)

CRIMINAL LAW.

PLACE OF BUSINESS EXCEPTION TO THE STATUTE CRIMINALIZING POSSESSION OF A FIREARM AS A FELONY DID NOT APPLY TO A MANAGER OF A MCDONALD'S RESTAURANT, AS OPPOSED TO A MERCHANT, STOREKEEPER OR PRINCIPAL OPERATOR. [People v Wallace, 2018 NY Slip Op 03305, CtApp 5-8-18](#)

CRIMINAL LAW, APPEALS.

APPEAL FROM LOCAL CRIMINAL COURT NOT PROPERLY TAKEN, THE PROCEEDINGS WERE NOT TRANSCRIBED AND NO AFFIDAVIT OF ERRORS WAS SERVED OR FILED. [People v Epakchi, 2018 NY Slip Op 03095, CtApp 5-1-18](#)

CRIMINAL LAW, EVIDENCE.

BEFORE CONSENTING TO A BREATHALYZER BLOOD-ALCOHOL TEST IN THIS DWI CASE, MORE THAN TWO HOURS AFTER DEFENDANT'S ARREST, DEFENDANT WAS INACCURATELY TOLD A TEST REFUSAL WOULD BE ADMISSIBLE AT TRIAL, DEFENDANT'S CONSENT TO THE TEST WAS THEREFORE NOT VOLUNTARY, EVIDENCE PROPERLY SUPPRESSED. [People v Odum, 2018 NY Slip Op 03173, CtApp 5-3-18](#)

CRIMINAL LAW, EVIDENCE.

EVIDENTIARY RULING BY A TRIAL JUDGE WAS NOT THE LAW OF THE CASE AND WAS PROPERLY RECONSIDERED PRIOR TO TRIAL BY A NEW TRIAL JUDGE, STATEMENT HEARD IN THE BACKGROUND OF A 911 CALL IDENTIFYING DEFENDANT AS THE SHOOTER SHOULD NOT HAVE BEEN ADMITTED AS AN EXCITED UTTERANCE, NO EVIDENCE THE DECLARANT SAW THE SHOOTING. [People v Cummings, 2018 NY Slip Op 03306, CtApp 5-8-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

AFTER A SPECTATOR ALERTED THE COURT JURORS HAD BEEN OVERHEARD REFERRING TO THE DEFENDANT IN DEROGATORY TERMS THE TRIAL JUDGE QUESTIONED THE SPECTATOR BUT TOOK NO FURTHER ACTION, MATTER REMITTED TO THE APPELLATE DIVISION FOR A DETERMINATION WHETHER THE TRIAL JUDGE'S ASSESSMENT OF THE CREDIBILITY OF THE SPECTATOR WAS SUPPORTED BY THE WEIGHT OF THE EVIDENCE. [People v Kuzdzal, 2018 NY Slip Op 03304, CtApp 5-8-18](#)

CRIMINAL LAW, EVIDENCE, INTELLECTUAL PROPERTY.

CONVICTION FOR UNLAWFUL USE OF SECRET SCIENTIFIC MATERIAL, STEMMING FROM DEFENDANT'S UPLOADING OF HIGH FREQUENCY TRADING SOURCE CODE OWNED BY GOLDMAN SACHS, AFFIRMED, SOURCE CODE HAD A PHYSICAL FORM AND WAS APPROPRIATED WITHIN THE MEANING OF THE STATUTE. [People v Aleynikov, 2018 NY Slip Op 03174, CtApp 5-3-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

SUPPRESSION OF ALL EVIDENCE IN THIS TRAFFIC STOP CASE AFFIRMED, EXTENSIVE DISSENT QUESTIONED CONTINUED VIABILITY OF THE DEBOUR STREET STOP ANALYSIS, ORAL SUPPRESSION RULING APPEALABLE. [People v Gates, 2018 NY Slip Op 03096, CtApp 5-1-18](#)

ENVIRONMENTAL LAW.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC) HAS THE POWER TO UNILATERALLY UNDERTAKE THE REMEDIATION OF A HAZARDOUS WASTE SITE, WITHOUT THE PARTICIPATION OF THE CORPORATION WHICH RELEASED THE WASTE. [Matter of FMC Corp. v New York State Dept. of Env'tl. Conservation, 2018 NY Slip Op 03094, CtApp 5-1-18](#)

INSURANCE LAW, CIVIL PROCEDURE.

BECAUSE NO-FAULT BENEFITS PROVIDED BY A SELF-INSURER ARE A CREATURE STATUTE, NOT AN INSURANCE CONTRACT, THE THREE-YEAR (NOT SIX-YEAR) STATUTE OF LIMITATIONS APPLIES TO NO-FAULT CLAIMS AGAINST A SELF-INSURER. [Contact Chiropractic, P.C. v New York City Tr. Auth., 2018 NY Slip Op 03093, CtApp 5-1-18](#)

FIRST DEPARTMENT

ATTORNEYS, LEGAL MALPRACTICE.

PLAINTIFF'S LEGAL MALPRACTICE ACTION PROPERLY SURVIVED A MOTION TO DISMISS, PLAINTIFF DEMONSTRATED THAT, 'BUT FOR' THE ATTORNEYS' WITHDRAWAL OF AN APPEAL, PLAINTIFF WOULD HAVE PREVAILED AND MAY NOT HAVE BEEN TERMINATED FROM HIS EMPLOYMENT. [Roth v Ostrer, 2018 NY Slip Op 03218, First Dept 5-3-18](#)

CIVIL PROCEDURE.

DEFENDANTS' MOTION TO CHANGE VENUE SHOULD HAVE BEEN GRANTED BASED UPON CONVENIENCE OF MATERIAL WITNESSES. [Taylor v Montreign Operating Co., LLC, 2018 NY Slip Op 03222, First Dept 5-3-18](#)

CIVIL PROCEDURE.

JOHN DOE NAMED IN TIMELY COMPLAINT DID NOT REFER TO THE LLC NAMED IN THE COMPLAINT FILED AFTER THE STATUTE OF LIMITATIONS HAD RUN, MOTION TO DISMISS PROPERLY GRANTED. [Markov v Stack's LLC \(Delaware\), 2018 NY Slip Op 03238, First Dept 5-3-18](#)

CIVIL PROCEDURE.

ESSENTIAL EVIDENCE SUBMITTED IN REPLY PAPERS PROPERLY CONSIDERED BECAUSE A SURREPLY WAS ALLOWED. [Frangiadakis v 51 W. 81st St. Corp., 2018 NY Slip Op 03331, First Dept 5-8-18](#)

CIVIL PROCEDURE.

DEFENDANT'S MOTION FOR A CHANGE OF VENUE IN THIS TRAFFIC ACCIDENT CASE PROPERLY GRANTED BASED UPON CONVENIENCE OF WITNESSES. [Kochan v Target Corp., 2018 NY Slip Op 03445, First Dept 5-10-18](#)

CIVIL PROCEDURE.

PLAINTIFF MADE A SUFFICIENT START DEMONSTRATING NEW YORK HAS JURISDICTION OVER THE DEFENDANTS TO WARRANT JURISDICTIONAL DISCLOSURE AND A HEARING. [Mischel v Safe Haven Enters., LLC, 2018 NY Slip Op 03902, First Dept 5-31-18](#)

CRIMINAL LAW, APPEALS.

PEOPLE CONCEDED ROBBERY THIRD SHOULD HAVE BEEN SUBMITTED TO THE JURY AS A LESSER INCLUDED OFFENSE, NO NEED FOR A NEW TRIAL, CONVICTION REDUCED. [People v Cabassa, 2018 NY Slip Op 03810, First Dept 5-29-18](#)

CIVIL PROCEDURE, ATTORNEYS.

LAW OFFICE FAILURE INSUFFICIENT, MOTION TO VACATE DEFAULT PROPERLY DENIED. [Fernandez v Santos, 2018 NY Slip Op 03326, First Dept 5-8-18](#)

CRIMINAL LAW, ATTORNEYS.

COURT DID NOT CONDUCT SEARCHING INQUIRY INTO DEFENDANT'S REQUEST TO PROCEED PRO SE, CONVICTION REVERSED. [People v Herbin, 2018 NY Slip Op 03811, First Dept 5-29-18](#)

CIVIL PROCEDURE, CORPORATION LAW.

ALTHOUGH DEFENDANT FOREIGN CORPORATION DID NOT HAVE AN OFFICE IN NEW YORK COUNTY, IT HAD DESIGNATED NEW YORK COUNTY AS ITS PLACE OF BUSINESS IN ITS FILING WITH THE SECRETARY OF STATE, MOTION TO CHANGE VENUE SHOULD NOT HAVE BEEN GRANTED. [Janis v Janson Supermarkets LLC, 2018 NY Slip Op 03333, First Dept 5-8-18](#)

CIVIL PROCEDURE, CORPORATION LAW, CONTRACT LAW, DEFAMATION.

ALTHOUGH THE DEFENDANT NEW YORK COMPANY IS A WHOLLY OWNED SUBSIDIARY OF AN ISRAELI COMPANY, THE TWO ENTITIES OPERATED INDEPENDENTLY SUCH THAT NEW YORK COULD NOT EXERCISE JURISDICTION OVER THE ISRAELI COMPANY; A QUALIFIED PRIVILEGE RE DEFAMATORY REMARKS ALLEGEDLY MADE BY DEFENDANT DOES NOT INSULATE THE DEFENDANT FROM A CAUSE OF ACTION BASED UPON BREACH OF A CONTRACTUAL NON-DISPARAGEMENT CLAUSE. [Wolberg v IAI N. Am., Inc., 2018 NY Slip Op 03321, First Dept 5-8-18](#)

CIVIL PROCEDURE, EVIDENCE.

COURT PROPERLY RELIED ON UNSIGNED COPIES OF A DEPOSITION TRANSCRIPT BECAUSE DEFENDANT DID NOT RETURN SIGNED COPIES WITHIN 60 DAYS AND DID NOT CHALLENGE THE ACCURACY OF THE TRANSCRIPT. [Shackman v 400 E. 85th St. Realty Corp., 2018 NY Slip Op 03223, First Dept 5-3-18](#)

CIVIL PROCEDURE, INSURANCE LAW.

DEFENDANT CANADIAN INSURANCE COMPANY'S TIES TO NEW YORK WERE NOT SUFFICIENT TO ALLOW THE EXERCISE OF LONG-ARM JURISDICTION OVER THE COMPANY. [AMT Capital Holdings, S.A. v Sun Life Assur. Co. of Can., 2018 NY Slip Op 03318, First Dept 5-8-18](#)

CONTRACT LAW, FRAUD, CIVIL PROCEDURE.

ALTHOUGH A PARTY WHO SIGNS AN AGREEMENT IS USUALLY DEEMED TO HAVE READ IT, A RELATIONSHIP OF TRUST AND CONFIDENCE BETWEEN THE PARTIES MAY ALLOW ONE PARTY TO RELY ON THE ASSURANCES OF THE OTHER; A CERTIFIED BUT UNSIGNED TRANSCRIPT OF A DEPOSITION WAS ADMISSIBLE BECAUSE IT HAD BEEN TIMELY MAILED TO OPPOSING COUNSEL. [Tsai Chung Chao v Chao, 2018 NY Slip Op 03620, First Dept 5-17-18](#)

CONTRACT LAW, FRAUD, CONVERSION.

DEFENDANT'S ALLEGED FAILURE TO REPAY MONEY PAID BY PLAINTIFFS PURSUANT TO A CONTRACT WHICH HAD BEEN TERMINATED STATED A CAUSE OF ACTION FOR CONVERSION, FRAUD IN THE INDUCEMENT CAUSE OF ACTION PROPERLY DISMISSED BECAUSE IT WAS BASED UPON NON-ACTIONABLE FUTURE EVENTS AND NON-ACTIONABLE OPINION ON THE PART OF THE DEFENDANT. [Yablon v Stern, 2018 NY Slip Op 03650, First Dept 5-22-18](#)

CRIMINAL LAW.

RECORD OF DEFENDANT'S ACQUITTAL SHOULD NOT HAVE BEEN UNSEALED FOR USE IN A SENTENCING PROCEEDING, RECORD SHOULD BE RESEALED BUT ERROR WAS HARMLESS. [People v Anonymous, 2018 NY Slip Op 03097, First Dept 5-1-18](#)

CRIMINAL LAW.

SUPREME COURT SHOULD HAVE PLACED DEFENDANT IN A JUDICIAL DIVERSION PROGRAM IN THIS COCAINE-SALE CASE, CRITERIA AND PURPOSE EXPLAINED. [People v Alston, 2018 NY Slip Op 03324, First Dept 5-8-18](#)

CRIMINAL LAW.

INDICTMENT COUNT CHARGING 20 INDIVIDUAL INSTANCES OF CONTEMPT WAS DUPLICITOUS, CONVICTION REVERSED. [People v Villalon, 2018 NY Slip Op 03431, First Dept 5-10-18](#)

CRIMINAL LAW.

NEW YORK LAW CONTROLS POLICE ENTRY AND SEARCH OF NEW JERSEY APARTMENT BUILDING, DEFENDANT DID NOT HAVE AN EXPECTATION OF PRIVACY IN THE COMMON AREAS OF THE BUILDING. [People v Espinal, 2018 NY Slip Op 03613, First Dept 5-17-18](#)

CRIMINAL LAW.

AFTER THE PEOPLE HAD EXERCISED THEIR PEREMPTORY CHALLENGES TO JURORS AND DEFENSE COUNSEL HAD BEGUN EXERCISING HER PEREMPTORY CHALLENGES, THE TRIAL COURT ALLOWED THE PEOPLE TO BELATEDLY MAKE A PEREMPTORY CHALLENGE, THAT WAS REVERSIBLE ERROR. [People v Robinson, 2018 NY Slip Op 03731, First Dept 5-24-18](#)

CRIMINAL LAW, APPEALS.

POLICE ENTRY INTO A SINGLE USE BATHROOM IN A COMMERCIAL ESTABLISHMENT CONSTITUTED A SEARCH, DEFENDANT'S SUPPRESSION MOTION SHOULD NOT HAVE BEEN DENIED BASED UPON THE CONCLUSION THE DEFENDANT DID NOT HAVE AN EXPECTATION OF PRIVACY, MATTER REMITTED FOR CONSIDERATION OF ANOTHER ISSUE WHICH SUPREME COURT DID NOT RULE ON. [People v Vinson, 2018 NY Slip Op 03437, First Dept 5-10-18](#)

CRIMINAL LAW, EVIDENCE.

THE PEOPLE DID NOT PROVE AT THE SUPPRESSION HEARING THAT THE SEARCH OF DEFENDANT'S PERSON AFTER A STREET STOP WAS SUPPORTED BY PROBABLE CAUSE. [People v Ayarde, 2018 NY Slip Op 03750, First Dept 5-24-18](#)

EDUCATION-SCHOOL LAW, ADMINISTRATIVE LAW, MUNICIPAL LAW, CIVIL PROCEDURE.

PETITIONER, A PRIVATE SCHOOL FOR DEVELOPMENTALLY DISABLED CHILDREN, HAD EXHAUSTED ITS ADMINISTRATIVE REMEDIES IN SEEKING REIMBURSEMENT FROM THE NYC DEPARTMENT OF EDUCATION FOR 24-HOUR CARE FOR A STUDENT WITH AUTISM, MATTER REMITTED WITH INSTRUCTION THAT THE DOCTRINE OF ESTOPPEL, BASED UPON A PROMISE TO REIMBURSE, MAY APPLY. [Matter of Center for Discovery, Inc. v NYC Dept. of Educ., 2018 NY Slip Op 03494, First Dept 5-15-18](#)

EMPLOYMENT LAW, LABOR LAW.

PLAINTIFF PHYSICIAN SUFFICIENTLY ALLEGED HE WAS TERMINATED IN VIOLATION OF LABOR LAW 741, PLAINTIFF EXPRESSED HIS DISAGREEMENT WITH DEFENDANT HOSPITAL CORPORATION'S POLICY THAT THE RESIDENTIAL DRINKING WATER OF PATIENTS DIAGNOSED WITH LEGIONNAIRE'S DISEASE SHOULD NOT BE TESTED. [Skelly v New York City Health & Hosps. Corp., 2018 NY Slip Op 03329, First Dept 5-8-18](#)

EMPLOYMENT LAW, LABOR LAW, PRIVILEGE, CIVIL PROCEDURE.

PLAINTIFF IN THIS WHISTLEBLOWER ACTION ENTITLED TO DISCOVER MEDICAL RECORDS WHICH ARE PROTECTED UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT AND THE PUBLIC HEALTH LAW. [McMahon v New York Organ Donor Network, 2018 NY Slip Op 03820, First Dept 5-29-18](#)

FAMILY LAW, ATTORNEYS.

COURT SHOULD HAVE TAKEN INTO CONSIDERATION THE FUTURE EARNING CAPACITY OF THE PARTIES IN CONNECTION WITH MOTHER'S MOTION FOR ATTORNEY'S FEES, MOTHER ENTITLED TO A HEARING. [Matter of Brookelyn M. v Christopher M., 2018 NY Slip Op 03801, First Dept 5-29-18](#)

FREEDOM OF INFORMATION LAW (FOIL), ATTORNEYS.

INTRA- OR INTER- AGENCY EXEMPTION TO DISCLOSURE UNDER THE FREEDOM OF INFORMATION LAW (FOIL) DID NOT EXTEND TO COMMUNICATIONS BETWEEN MAYOR DE BLASIO'S OFFICE AND A CONSULTANT RETAINED BY A PRIVATE ORGANIZATION (AS OPPOSED TO A CONSULTANT HIRED BY A GOVERNMENTAL AGENCY), PREVAILING PARTIES ENTITLED TO ATTORNEY'S FEES. [Matter of Rauh v de Blasio, 2018 NY Slip Op 03115, First Dept 5-1-18](#)

INSURANCE LAW.

FAILURE TO ATTEND INDEPENDENT MEDICAL EXAMINATIONS SET UP BY NO-FAULT CARRIER IS AN ABSOLUTE DEFENSE TO COVERAGE. [Hereford Ins. Co. v Lida's Med. Supply, Inc., 2018 NY Slip Op 03226, First Dept 5-3-18](#)

INSURANCE LAW.

THE CASE INVOLVES A NEW JERSEY INSURANCE POLICY ISSUED TO A NEW JERSEY COMPANY WHICH WAS DOING SUBWAY WORK IN NEW YORK, PURSUANT TO A 2017 COURT OF APPEALS RULING, WHETHER NEW YORK INSURANCE LAW'S TIMELY DISCLAIMER STATUTE APPLIES DEPENDS ON WHETHER THE INSURED HAS A SUBSTANTIAL BUSINESS PRESENCE IN NEW YORK, MATTER REMITTED FOR DEVELOPMENT OF THE RECORD ON THAT ISSUE. [Vista Eng'g Corp. v Everest Indem. Ins. Co., 2018 NY Slip Op 03730, First Dept 5-24-18](#)

INSURANCE LAW, CIVIL PROCEDURE.

FEDERAL RISK RETENTION GROUP (RRG) LAW PREEMPTS NEW YORK INSURANCE LAW'S TIMELY DISCLAIMER OF COVERAGE PROVISION, THEREFORE DEFENDANT FOREIGN RRG DID NOT NEED TO COMPLY WITH NEW YORK'S STATUTORY TIMELY DISCLAIMER REQUIREMENT. [Nadkos, Inc. v Preferred Contrs. Ins. Co. Risk Retention Group LLC, 2018 NY Slip Op 03242, First Dept 5-3-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

FALL THOUGH AN UNGUARDED FLOOR OPENING AT A CONSTRUCTION SITE IS COVERED UNDER LABOR LAW 240 (1), THERE WAS A QUESTION OF FACT WHETHER PLAINTIFF WAS ABLE TO TIE OFF HIS HARNESS, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Maman v Marx Realty & Improvement Co., Inc., 2018 NY Slip Op 03614, First Dept 5-17-18](#)

LABOR LAW-CONSTRUCTION LAW, CIVIL PROCEDURE, PERSONAL INJURY.

MOTORIZED SCAFFOLD BECAME STUCK AND PLAINTIFF WAS INJURED PUSHING IT FREE, THE INJURY FELL WITHIN THE GRAVITY-RELATED PROTECTIONS OF LABOR LAW 240 (1), PLAINTIFF'S MOTION TO AMEND HIS BILL OF PARTICULARS TO ADD AN ALLEGED VIOLATION OF THE INDUSTRIAL CODE SHOULD HAVE BEEN GRANTED, CRITERIA EXPLAINED. [Galvez v Columbus 95th St. LLC, 2018 NY Slip Op 03484, First Dept 5-15-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

ACCIDENT DID NOT INVOLVE AN ELEVATION-RELATED RISK, DEFENDANT SUBCONTRACTORS DID NOT EXERCISE CONTROL OF THE PLAINTIFF, THE AREA OR THE WORK, DEFENDANTS' SUMMARY JUDGMENT MOTION SHOULD HAVE BEEN GRANTED. [Adagio v New York State Urban Dev. Corp., 2018 NY Slip Op 03744, First Dept 5-24-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF LOST HIS BALANCE CARRYING A PIPE ON A RAMP, INCIDENT NOT COVERED BY LABOR LAW 240 (1). [Jackson v Hunter Roberts Constr. Group, LLC, 2018 NY Slip Op 03805, First Dept 5-29-18](#)

LANDLORD-TENANT, PERSONAL INJURY.

OUT-OF-POSSESSION LANDLORD WITH RIGHT OF ENTRY TO INSPECT OR REPAIR DID NOT HAVE A DUTY TO REPAIR THE DEFECT AT ISSUE, DEFECT WAS NOT STRUCTURAL AND DID NOT VIOLATE A STATUTORY SAFETY PROVISION. [Cuthbert v Foreign Dev. Serv., Ltd., 2018 NY Slip Op 03812, First Dept 5-29-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

QUESTION OF FACT WHETHER DEFENDANT, WHICH COULD STOP WORK FOR UNSAFE PRACTICES, WAS A STATUTORY AGENT OF THE OWNER OR CONSTRUCTION MANAGER FOR PURPOSES OF LIABILITY UNDER LABOR LAW 240 (1) AND 241 (6). [Santos v Condo 124 LLC, 2018 NY Slip Op 03799, First Dept 5-29-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF ENTITLED TO SUMMARY JUDGMENT ON HIS LABOR LAW 240 (1) CAUSE OF ACTION, PLAINTIFF FELL THROUGH AN OPENING COVERED BY A PIECE OF PARTICLE BOARD. [Giancola v Yale Club of N.Y. City, 2018 NY Slip Op 03901, First Dept 5-31-18](#)

LABOR LAW-CONSTRUCTION LAW, CIVIL PROCEDURE, PERSONAL INJURY.

PLAINTIFF ENTITLED TO SUMMARY JUDGMENT ON HIS LABOR LAW 240 (1) CAUSE OF ACTION, UNTIMELY CROSS MOTION CAN BE CONSIDERED ONLY TO THE EXTENT THE ISSUES RAISED ARE THE SAME AS THE ISSUES RAISED IN PLAINTIFF'S SUMMARY JUDGMENT MOTION. [Jarama v 902 Liberty Ave. Hous. Dev. Fund Corp., 2018 NY Slip Op 03897, First Dept 5-31-18](#)

MEDICAID, MENTAL HYGIENE LAW.

PETITIONER DEMONSTRATED AN INTELLECTUAL DISABILITY QUALIFYING HER FOR MEDICAID-REIMBURSED HOME AND COMMUNITY BASED SERVICES, CONTRARY FINDING BY THE NYS OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES ANNULLED. [Matter of Spencer-Cedeno v Zucker, 2018 NY Slip Op 03488, First Dept 5-15-18](#)

MENTAL HYGIENE LAW, CONSTITUTIONAL LAW, APPEALS.

LETTER WRITTEN BY PETITIONER UPON INVOLUNTARY ADMISSION TO A HOSPITAL SHOULD HAVE BEEN SEEN AS A DEMAND FOR AN EXPEDITED CHALLENGE TO THE CONFINEMENT UNDER THE MENTAL HYGIENE LAW (HABEAS CORPUS), ALTHOUGH THE ISSUE IS MOOT IN THIS CASE, THE ISSUE WAS HEARD ON APPEAL BECAUSE IT IS LIKELY TO RECUR. [Matter of State of N.Y. ex rel. Giffen v Hoffman, 2018 NY Slip Op 03462, First Dept 5-10-18](#)

MUNICIPAL LAW, ADMINISTRATIVE LAW, CONSTITUTIONAL LAW.

THE NYC LANDMARK PRESERVATION COMMISSION'S DESIGNATION OF TWO BUILDINGS AS PART OF A PROTECTED LANDMARK HAD A RATIONAL BASIS AND WAS NOT AN UNCONSTITUTIONAL TAKING, PETITIONER SOUGHT TO DEMOLISH THE TWO BUILDINGS AND CONSTRUCT CONDOMINIUMS. [Matter of Stahl York Ave. Co., LLC v City of New York, 2018 NY Slip Op 03653, First Dept 5-22-18](#)

PERSONAL INJURY.

STORE'S MOTION FOR SUMMARY JUDGMENT IN THIS ESCALATOR SLIP AND FALL CASE SHOULD HAVE BEEN GRANTED BASED UPON PROOF OF REGULAR MAINTENANCE AND INSPECTIONS AND NO REPORTS OF ACCIDENTS OR PROBLEMS. [Ahmed v Macy's Inc., 2018 NY Slip Op 03231, First Dept 5-3-18](#)

PERSONAL INJURY.

CITY DEMONSTRATED IT DID NOT CREATE, EXACERBATE OR HAVE ACTUAL OR CONSTRUCTIVE NOTICE OF THE BLACK ICE IN THE CROSSWALK WHERE PLAINTIFF SLIPPED AND FELL, DECISION ILLUSTRATES THE LEVEL OF PROOF REQUIRED OF A SLIP AND FALL DEFENDANT TO WIN SUMMARY JUDGMENT. [Pena v City of New York, 2018 NY Slip Op 03477, First Dept 5-15-18](#)

PERSONAL INJURY.

BACKING INTO A PARKED CAR IS PRIMA FACIE EVIDENCE OF NEGLIGENCE, PLAINTIFF, WHO WAS INJURED WHEN THE PARKED CAR WAS PUSHED INTO HIM, ENTITLED TO SUMMARY JUDGMENT. [Rodriguez v City of New York, 2018 NY Slip Op 03634, First Dept 5-22-18](#)

PERSONAL INJURY.

BUILDING INSPECTION REPORT STATED STAIRWAY WHERE PLAINTIFF FELL WAS IN NEED OF REPAIR, DEFENDANT SUBMITTED EVIDENCE OF GENERAL CLEANING PRACTICES, THEREFORE DEFENDANT DID NOT DEMONSTRATE IT DID NOT HAVE CONSTRUCTIVE OR ACTUAL NOTICE OF THE ALLEGED CRACK IN THE STAIRWAY. [Javier v New York City Hous. Auth., 2018 NY Slip Op 03736, First Dept 5-24-18](#)

PERSONAL INJURY.

CONFLICTING ASSERTIONS ABOUT THE PRESENCE OF LIQUID ON A STAIRWAY PRECLUDED SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE. [Capers v New York City Hous. Auth., 2018 NY Slip Op 03749, First Dept 5-24-18](#)

PERSONAL INJURY.

QUESTIONS OF FACT ABOUT THE CAUSE OF PLAINTIFF'S FALL AND DEFENDANT'S CONSTRUCTIVE NOTICE PRECLUDED THE AWARD OF SUMMARY JUDGMENT TO THE DEFENDANT IN THIS STAIRWAY SLIP AND FALL CASE. [Johnson v 675 Coster St. Hous. Dev. Fund, 2018 NY Slip Op 03756, First Dept 5-24-18](#)

PERSONAL INJURY.

UNDER PENNSYLVANIA LAW PLAINTIFF ASSUMED THE RISK OF INJURY ON A TRAMPOLINE WITH MULTIPLE JUMPERS. [Ramos v Hamelburg, 2018 NY Slip Op 03913, First Dept 5-31-18](#)

PERSONAL INJURY, APPEALS.

ALTHOUGH THE APPELLATE COURT TOOK JUDICIAL NOTICE OF A REGULATION ALLOWING CITY SANITATION TRUCKS TO DOUBLE PARK (RAISED FOR THE FIRST TIME ON APPEAL), THERE WERE DISPUTED FACTS ABOUT WHETHER THE DOUBLE PARKED SANITATION TRUCK COULD HAVE BEEN PULLED TO THE CURB, THE CITY'S MOTION FOR SUMMARY JUDGMENT IN THIS REAR-END COLLISION CASE SHOULD NOT HAVE BEEN GRANTED. [Nadella v City of New York, 2018 NY Slip Op 03103, First Dept 5-1-18](#)

PERSONAL INJURY, EVIDENCE.

ALTHOUGH DEFENDANT DID NOT, UNDER THE ADMINISTRATIVE CODE, HAVE A DUTY TO REMOVE ICE AND SNOW FROM THE AREA OF THE SLIP AND FALL, SINCE DEFENDANT UNDERTOOK TO DO SO IT MUST DEMONSTRATE IT DID NOT CREATE OR EXACERBATE THE DANGEROUS CONDITION TO BE ENTITLED TO SUMMARY JUDGMENT. [Maynard-Keeler v New York City Hous. Auth., 2018 NY Slip Op 03322, First Dept 5-8-18](#)

PERSONAL INJURY, EVIDENCE.

DEFENDANT DRIVER ADMITTED IN THE ACCIDENT REPORT HE WAS AWARE THE ROADS WERE WET AND SLIPPERY AT THE TIME THE DEFENDANT'S BUS SKIDDED INTO PLAINTIFF'S BUS AFTER HITTING A PUDDLE, PLAINTIFF ALLEGED DEFENDANT DRIVER WAS GOING TOO FAST FOR CONDITIONS, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED, DESPITE DEFENDANT'S DENIAL OF HIS ADMISSION IN HIS AFFIDAVIT OPPOSING THE MOTION. [Martinez v WE Transp. Inc., 2018 NY Slip Op 03311, First Dept 5-8-18](#)

PERSONAL INJURY, EVIDENCE.

RES IPSA LOQUITUR DOCTRINE APPLIES IN THIS ELEVATOR-DOOR INJURY CASE, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Lilly v City of New York, 2018 NY Slip Op 03314, First Dept 5-8-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

CITY NOT LIABLE FOR SLIP AND FALL IN CROSSWALK DURING STORM, ALLEGED FAILURE TO COMPLY WITH SNOW REMOVAL PROTOCOLS AND FAILURE TO APPLY SALT BEFORE THE STORM ARE NOT GROUNDS FOR LIABILITY. [Mimikos v City of New York, 2018 NY Slip Op 03813, First Dept 5-29-18](#)

PERSONAL INJURY, MUNICIPAL LAW, IMMUNITY.

PLAINTIFF'S DECEDENT WAS KILLED IN A MOTORCYCLE ACCIDENT DURING RECREATIONAL USE OF A CITY PARKING LOT, CITY NOT LIABLE PURSUANT TO THE GENERAL OBLIGATIONS LAW. [Rodriguez v City of New York, 2018 NY Slip Op 03821, First Dept 5-29-18](#)

TRUSTS AND ESTATES.

DATE OF WOMAN'S DISAPPEARANCE, NOT THE STATUTORY DEFAULT DATE FIVE YEARS LATER, WAS THE CORRECT DATE OF DEATH. [Matter of McCormack, 2018 NY Slip Op 03733, First Dept 5-24-18](#)

SECOND DEPARTMENT

ADMINISTRATIVE LAW, CIVIL PROCEDURE.

THE TOLLING PROVISION OF CPLR 205 APPLIES TO AN ARTICLE 78 PROCEEDING SEEKING REVIEW OF AN ADMINISTRATIVE RULING, THE PETITION, WHICH WAS MARKED OFF THE CALENDAR BUT NOT DISMISSED ON THE MERITS, CAN BE RE-FILED WITHIN SIX MONTHS OF THE DISMISSAL. [Matter of Lindenwood Cut Rate Liquors, Ltd. v New York State Liq. Auth., 2018 NY Slip Op 03680, Second Dept 5-23-18](#)

ADMINISTRATIVE LAW, EVIDENCE.

THE MEANING OF 'SUBSTANTIAL EVIDENCE' SUFFICIENT TO SUPPORT A DETERMINATION IN AN ADMINISTRATIVE HEARING EXPLAINED. [Matter of Sestito v City of White Plains, 2018 NY Slip Op 03528, Second Dept 5-16-18](#)

ADMINISTRATIVE LAW, MUNICIPAL LAW (NYC), CONSTITUTIONAL LAW.

ALLOWING UBER DRIVERS TO PICK UP PASSENGERS VIA SMARTPHONE APPLICATION IS NOT AN UNCONSTITUTIONAL TAKING OF THE PROPERTY OF TAXI CAB AND LIMOUSINE DRIVERS. [Matter of Glyka Trans, LLC v City of New York, 2018 NY Slip Op 03129, Second Dept 5-2-18](#)

ADMINISTRATIVE LAW, MUNICIPAL LAW (NYC), CIVIL PROCEDURE.

CREDIT UNION WHICH HOLDS SECURITY INTERESTS IN OVER 1400 TAXICAB MEDALLIONS DID NOT HAVE STANDING TO CONTEST THE NEW YORK CITY TAXI AND LIMOUSINE COMMISSION'S (TLC'S) RULING ALLOWING UBER TO PICK UP PASSENGERS VIA SMARTPHONE. [Matter of Melrose Credit Union v City of New York, 2018 NY Slip Op 03131, Second Dept 5-2-18](#)

ARBITRATION, FAMILY LAW, CONTRACT LAW, RELIGION.

ARBITRATION AWARD BY A RABBINICAL COURT IN THIS DIVORCE PROCEEDING SHOULD NOT HAVE BEEN VACATED, FAILURE TO FOLLOW THE EQUITABLE DISTRIBUTION LAW DID NOT VIOLATE PUBLIC POLICY, UNCONSCIONABILITY IS NOT A STATUTORY GROUND FOR VACATING AN ARBITRATION AWARD. [Zar v Yaghoobzar, 2018 NY Slip Op 03170, Second Dept 5-2-18](#)

ATTORNEYS, LEGAL MALPRACTICE, EVIDENCE.

DEFENDANT ATTORNEYS DID NOT DEMONSTRATE PLAINTIFFS SUFFERED NO DAMAGES AS A RESULT OF DELAYS IN THE DEFENDANTS' HANDLING OF EVICTION PROCEEDINGS, ALLEGING THAT PLAINTIFFS' DAMAGES WERE SPECULATIVE MERELY POINTED TO GAPS IN PLAINTIFFS' PROOF AND WAS INSUFFICIENT TO SUPPORT SUMMARY JUDGMENT IN DEFENDANTS' FAVOR. [Iannucci v Kucker & Bruh, LLP, 2018 NY Slip Op 03514, Second Dept 5-16-18](#)

BANKING LAW, UNIFORM COMMERCIAL CODE, EVIDENCE.

BANK DID NOT DEMONSTRATE IT ACTED IN ACCORDANCE WITH GENERAL BANKING RULES OR PRACTICES WHEN IT CASHED FORGED CHECKS, BANK'S MOTION FOR SUMMARY JUDGMENT IN THIS NEGLIGENCE ACTION PROPERLY DENIED. [Redgrave Elec. Maintenance, Inc. v Capital One, N.A., 2018 NY Slip Op 0316, Second Dept 5-2-18](#)

CIVIL PROCEDURE.

MOTION TO EXTEND TIME TO SERVE DEFENDANT IN THIS MEDICAL MALPRACTICE ACTION PROPERLY GRANTED, EVEN THOUGH STATUTE OF LIMITATIONS HAD EXPIRED. [Furze v Stapen, 2018 NY Slip Op 03338, Second Dept 5-9-18](#)

CIVIL PROCEDURE.

MOTION TO VACATE DEFAULT JUDGMENT SHOULD HAVE BEEN GRANTED, CRITERIA EXPLAINED. [Gately v Drummond, 2018 NY Slip Op 03507, Second Dept 5-16-18](#)

CIVIL PROCEDURE.

ARGUMENTS FIRST RAISED IN REPLY PAPERS PROPERLY REJECTED. [Lee v Law Offs. of Kim & Bae, P.C., 2018 NY Slip Op 03516, Second Dept 5-16-18](#)

CIVIL PROCEDURE.

WHERE DEFENDANT PRESENTS EVIDENCE HE DID NOT RECEIVE NOTICE OF THE COURT CONFERENCES, HIS MOTION TO VACATE HIS DEFAULT MUST BE GRANTED AS A MATTER OF LAW. [Notaro v Performance Team, 2018 NY Slip Op 03692, Second Dept 5-23-18](#)

CIVIL PROCEDURE.

DEFENDANT WHO HAD APPEARED IN THE ACTION BUT HAD SINCE MOVED TO SOUTH CAROLINA COULD BE COMPELLED TO APPEAR AT TRIAL BY A SUBPOENA MAILED TO HIS NEW YORK ATTORNEY. [Chicoine v Koch, 2018 NY Slip Op 03825, Second Dept 5-30-18](#)

CIVIL PROCEDURE, APPEALS.

MOTION TO REMOVE A PERSONAL INJURY ACTION FROM CIVIL COURT TO SUPREME COURT SHOULD NOT HAVE BEEN GRANTED BECAUSE IT WAS NOT ACCOMPANIED BY A REQUEST TO AMEND THE AD DAMNUM CLAUSE, NOTICE OF APPEAL WAS TIMELY BECAUSE DEFENDANT WAS NEVER SERVED WITH A NOTICE OF ENTRY. [Hart v New York City Hous. Auth., 2018 NY Slip Op 03123, Second Dept 5-2-18](#)

CIVIL PROCEDURE, ATTORNEYS.

LAW OFFICE FAILURE REJECTED AS AN EXCUSE FOR FAILURE TO TIMELY ENTER A DEFAULT JUDGMENT, CRITERIA EXPLAINED. [Ibrahim v Nablus Sweets Corp., 2018 NY Slip Op 03515, Second Dept 5-16-18](#)

CIVIL PROCEDURE, CONTRACT, NEGLIGENCE.

EMAIL DID NOT MEET THE REQUIREMENTS OF CPLR 2104 FOR AN OUT OF COURT STIPULATION OF SETTLEMENT, SETTLEMENT AGREEMENT NOT ENFORCEABLE. [Kataldo v Atlantic Chevrolet Cadillac, 2018 NY Slip Op 03669, Second Dept 5-23-18](#)

CIVIL PROCEDURE, MEDICAL MALPRACTICE, PERSONAL INJURY.

ARGUMENT RAISED FOR THE FIRST TIME IN REPLY PAPERS SHOULD NOT HAVE BEEN CONSIDERED; HOSPITAL DID NOT DEMONSTRATE IT WAS NOT VICARIOUSLY LIABLE FOR A PHYSICIAN BECAUSE THE WRITTEN AGREEMENTS CONCERNING THE RELATIONSHIP BETWEEN THE HOSPITAL AND THE PHYSICIAN WERE NOT SUBMITTED. [Castro v Durban, 2018 NY Slip Op 03503, Second Dept 5-16-18](#)

CIVIL PROCEDURE, TRUSTS AND ESTATES, FORECLOSURE.

COURT SHOULD NOT HAVE CONSIDERED AND RULED UPON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IN THIS FORECLOSURE PROCEEDING AFTER A DEFENDANT DIED. [American Airlines Fed. Credit Union v Costello, 2018 NY Slip Op 03335, Second Dept 5-9-18](#)

CONTRACT LAW.

DEFENDANTS' OWN MOTION PAPERS RAISED A QUESTION OF FACT WHETHER THE PARTIES INTENDED TO BE BOUND BY AN UNSIGNED LLC OPERATING AGREEMENT, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT PROPERLY DENIED WITHOUT REFERENCE TO THE OPPOSING PAPERS. [223 Sam, LLC v 223 15th St., LLC, 2018 NY Slip Op 03118, Second Dept 5-2-18](#)

CONTRACT LAW, LANDLORD-TENANT, CIVIL PROCEDURE.

COMPLAINT DID NOT SUFFICIENTLY ALLEGE DEFENDANT HAD WAIVED THE REQUIREMENT OF WRITTEN NOTICE TO EXERCISE THE OPTION TO RENEW THE LEASE, PROPOSED AMENDMENT OF THE COMPLAINT WAS PALPABLY WITHOUT MERIT, MOTION TO AMEND WAS NOT FRIVOLOUS CONDUCT WARRANTING SANCTIONS. [NHD Nigani, LLC v Angelina Zabel Props., Inc., 2018 NY Slip Op 03135, Second Dept 5-2-18](#)

COURT OF CLAIMS, PERSONAL INJURY, ATTORNEYS.

MOTION FOR LEAVE TO FILE A LATE NOTICE OF CLAIM IN THIS HIGHWAY ACCIDENT CASE SHOULD NOT HAVE BEEN GRANTED, LAW OFFICE FAILURE NOT AN ADEQUATE EXCUSE. [Casey v State of New York, 2018 NY Slip Op 03120, Second Dept 5-2-18](#)

COURT OF CLAIMS, PERSONAL INJURY, TRUSTS AND ESTATES.

FAILURE TO STRICTLY COMPLY WITH THE NOTICE PROVISIONS OF THE COURT OF CLAIMS ACT IN THIS WRONGFUL DEATH CLAIM REQUIRED THAT THE CLAIM BE DISMISSED. [Kiesow v State of New York, 2018 NY Slip Op 03670, Second Dept 5-23-18](#)

CRIMINAL LAW.

ALTERNATE JUROR'S PARTICIPATION IN DELIBERATIONS REQUIRED A NEW TRIAL. [People v Davis, 2018 NY Slip Op 03539, Second Dept 5-16-18](#)

CRIMINAL LAW, APPEALS.

WAIVER OF APPEAL INEFFECTIVE, DESPITE DEFENDANT'S SIGNING OF A WRITTEN WAIVER. [People v Medina, 2018 NY Slip Op 03151, Second Dept 5-2-18](#)

CRIMINAL LAW, ATTORNEYS, IMMIGRATION LAW.

DEFENDANT WAS NOT INFORMED OF THE DEPORTATION CONSEQUENCES OF HIS PLEA, HE IS ENTITLED TO A HEARING ON HIS MOTION TO VACATE THE JUDGMENT OF CONVICTION. [People v Hungria, 2018 NY Slip Op 03545, Second Dept 5-16-18](#)

CRIMINAL LAW, EVIDENCE.

ALTHOUGH THE MANSLAUGHTER AND NEGLIGENT HOMICIDE CONVICTIONS WERE SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE IN THIS TRAFFIC ACCIDENT CASE, THOSE CONVICTIONS WERE AGAINST THE WEIGHT OF THE EVIDENCE, THE POLICE OFFICER WAS KILLED BY ANOTHER DRIVER WHO WAS PASSING BY THE ACCIDENT SCENE A SUBSTANTIAL AMOUNT OF TIME AFTER THE DEFENDANT'S ACCIDENT. [People v Ryan, 2018 NY Slip Op 03380, Second Dept 5-9-18](#)

CRIMINAL LAW, EVIDENCE.

DEFENDANT WAS CHARGED WITH ENDANGERING THE WELFARE OF A CHILD BASED ON SEVERAL TYPES OF SEXUAL TOUCHING, BUT NOT KISSING, THE JURY WAS ALLOWED TO CONSIDER KISSING, CONVICTION REVERSED. [People v Vasquez, 2018 NY Slip Op 03382, Second Dept 5-9-18](#)

CRIMINAL LAW, EVIDENCE.

ALTHOUGH THE PEOPLE MADE AN UNTIMELY MOTION FOR A BUCCAL SWAB FOR DNA TESTING, THE ERROR DID NOT REQUIRE REVERSAL. [People v Cox, 2018 NY Slip Op 03698, Second Dept 5-23-18](#)

CRIMINAL LAW, EVIDENCE.

TRIAL COURT PROPERLY GAVE THE GALBO JURY INSTRUCTION RE DEFENDANT'S POSSESSION OF STOLEN PROPERTY IN THIS BURGLARY CASE. [People v Jones, 2018 NY Slip Op 03703, Second Dept 5-23-18](#)

CRIMINAL LAW, MENTAL HYGIENE LAW.

DEFENDANT DEMONSTRATED HE PLED GUILTY WITHOUT BEING INFORMED HE MIGHT BE SUBJECT TO CONFINEMENT UNDER THE SEX OFFENDER MANAGEMENT AND TREATMENT ACT (SOMTA) AFTER COMPLETION OF HIS SENTENCE, HIS MOTION TO SET ASIDE HIS CONVICTION WAS PROPERLY GRANTED. [People v Balcerak, 2018 NY Slip Op 03138, Second Dept 5-2-18](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA), APPEALS.

DENIAL OF A PETITION TO MODIFY A SEX OFFENDER REGISTRATION ACT (SORA) RISK ASSESSMENT IS APPEALABLE AS OF RIGHT, PETITION PROPERLY DENIED. [People v Charles, 2018 NY Slip Op 03864, Second Dept 5-30-18](#)

DISCIPLINARY HEARINGS (INMATES).

INMATE PETITIONER HAD THE RIGHT TO CALL A PRISON OFFICER AS A WITNESS TO DETERMINE THE BASIS OF THE OFFICER'S KNOWLEDGE THAT PETITIONER POSSESSED A WEAPON, DETERMINATION ANNULLED BASED UPON THE DENIAL OF THAT RIGHT. [Matter of Cumberland v Annucci, 2018 NY Slip Op 03357, Second Dept 5-9-18](#)

DEFAMATION.

STATEMENTS POSTED ON FACEBOOK CONCERNING PLAINTIFF'S UNAUTHORIZED PARTIAL DEMOLITION OF A LANDMARK BUILDING WERE DEEMED NON-ACTIONABLE OPINION AND HYPERBOLE. [Stolatis v Hernandez, 2018 NY Slip Op 03868, Second Dept 5-30-18](#)

DEFAMATION, CIVIL PROCEDURE.

TWO STATEMENTS FOUND TO BE NONACTIONABLE EXPRESSIONS OF OPINION IN THIS DEFAMATION ACTION, PLAINTIFFS HAVE NO PROOF BURDEN ON A MOTION TO DISMISS, DEFENDANTS NOT SHIELDED BY THE COMMUNICATIONS DECENCY ACT. [Trump Vil. Section 4, Inc. v Bezvoleva, 2018 NY Slip Op 03389, Second Dept 5-9-18](#)

EDUCATION-SCHOOL LAW, MUNICIPAL LAW, EMPLOYMENT LAW, HUMAN RIGHTS LAW.

EDUCATION LAW REQUIRES THAT PLAINTIFF FILE A NOTICE OF CLAIM AS A CONDITION PRECEDENT FOR AN ACTION AGAINST THE NYC DEPARTMENT OF EDUCATION ALLEGING A VIOLATION OF THE NYS HUMAN RIGHTS LAW. [Seifullah v City of New York, 2018 NY Slip Op 03867, Second Dept 5-30-18](#)

EDUCATION-SCHOOL LAW, MUNICIPAL LAW, PERSONAL INJURY.

LEAVE TO FILE LATE NOTICE OF CLAIM AGAINST THE SCHOOL DISTRICT IN THIS NEGLIGENT SUPERVISION ACTION PROPERLY GRANTED, EVEN IF THE EXCUSE FOR FAILURE TO TIMELY FILE WAS NOT REASONABLE, THE SCHOOL DISTRICT WAS NOT PREJUDICED BY THE DELAY. [Matter of D.D. v Village of Great Neck, 2018 NY Slip Op 03358, Second Dept 5-9-18](#)

EDUCATION-SCHOOL LAW, PERSONAL INJURY, MUNICIPAL LAW.

SUPREME COURT, IN THIS NEGLIGENT SUPERVISION ACTION, HAD USED CRITERIA FOR DETERMINING A MOTION FOR LEAVE TO FILE A LATE NOTICE OF CLAIM WHICH HAS SINCE BEEN CHANGED BY THE COURT OF APPEALS, MATTER REMITTED FOR A RULING UNDER THE CURRENT LAW. [N.F. v City of New York, 2018 NY Slip Op 03663, Second Dept 5-23-18](#)

EDUCATION LAW-SCHOOL LAW, PERSONAL INJURY, MUNICIPAL LAW, EMPLOYMENT LAW, CIVIL PROCEDURE.

ASSISTANT PRINCIPAL INJURED BREAKING UP A STUDENT FIGHT DID NOT DEMONSTRATE A SPECIAL RELATIONSHIP WITH THE SCHOOL DISTRICT, MOTION TO SET ASIDE THE VERDICT AS NOT SUPPORTED BY SUFFICIENT EVIDENCE SHOULD HAVE BEEN GRANTED. [Morgan-Word v New York City Dept. of Educ., 2018 NY Slip Op 03673, Second Dept 5-23-18](#)

EMPLOYMENT LAW, (NYC) HUMAN RIGHTS LAW, ADMINISTRATIVE LAW, CIVIL PROCEDURE.

BECAUSE PLAINTIFF HAD FILED HIS EMPLOYMENT DISCRIMINATION COMPLAINT WITH THE NYC DIVISION OF HUMAN RIGHTS, HE WAS PRECLUDED UNDER THE ELECTION OF REMEDIES DOCTRINE FROM BRINGING THIS COURT ACTION PURSUANT TO THE NYC HUMAN RIGHTS LAW. [Luckie v Northern Adult Day Health Care Ctr., 2018 NY Slip Op 03349, Second Dept 5-9-18](#)

EMPLOYMENT LAW, MUNICIPAL LAW, CIVIL SERVICE LAW, ARBITRATION.

CITY'S DECISION TO LAYOFF FIREFIGHTERS IS NOT ARBITRABLE UNDER A COLLECTIVE BARGAINING AGREEMENT, PUBLIC POLICY VESTS NONDELEGABLE DISCRETION TO HIRE AND FIRE IN THE PUBLIC CORPORATION. [Matter of City of Long Beach v Long Beach Professional Fire Fighters Assn., Local 287, 2018 NY Slip Op 03356, Second Dept 5-9-18](#)

FAMILY LAW.

ISRAELI CUSTODY ORDER WAS REGISTERED IN NEW YORK, FATHER FAILED TO CONTEST THE REGISTRATION OF THE ISRAELI CUSTODY ORDER WITHIN 20 DAYS, FATHER'S PETITION TO REGISTER AND ENFORCE A CALIFORNIA CUSTODY ORDER, WHICH HAD BEEN MODIFIED BY THE ISRAELI ORDER, PROPERLY DENIED. [Matter of Worsoff v Worsoff, 2018 NY Slip Op 03373, Second Dept 5-9-18](#)

FAMILY LAW.

NO INDICATION MOTHER SUFFERED FROM MENTAL ILLNESS, PSYCHOLOGICAL EXAM SHOULD NOT HAVE BEEN ORDERED PRIOR TO A FACT-FINDING HEARING IN THIS NEGLECT PROCEEDING. [Matter of Tyriek J. \(Tamika J.\), 2018 NY Slip Op 03361, Second Dept 5-9-18](#)

FAMILY LAW.

DESPITE TERMINATION OF MOTHER'S PARENTAL RIGHTS, GRANDMOTHER HAD STANDING TO SEEK VISITATION AND VISITATION WITH GRANDMOTHER WAS IN THE BEST INTERESTS OF THE CHILD. [Matter of Weiss v Weiss, 2018 NY Slip Op 03532, Second Dept 5-16-18](#)

FAMILY LAW, ATTORNEYS.

AWARD OF ATTORNEY'S FEES AND EXPERT WITNESS FEES IN THIS DIVORCE ACTION WAS AN ABUSE OF DISCRETION, ATTORNEY DID NOT COMPLY WITH BILLING RULES AND NO EXPERT AFFIDAVITS WERE SUBMITTED. [Greco v Greco, 2018 NY Slip Op 03509, Second Dept 5-16-18](#)

FAMILY LAW, IMMIGRATION LAW.

FAMILY COURT SHOULD HAVE MADE THE FINDINGS NECESSARY FOR PETITIONER MOTHER TO SEEK SPECIAL IMMIGRANT JUVENILE STATUS (SIJS) FOR HER SON. [Matter of Denia M. E. C. v Carlos R. M. O., 2018 NY Slip Op 03355, Second Dept 5-9-18](#)

FAMILY LAW, IMMIGRATION LAW.

MOTHER'S PETITION SEEKING FINDINGS TO ALLOW HER CHILD TO APPLY FOR SPECIAL IMMIGRANT JUVENILE STATUES SHOULD NOT HAVE BEEN DISMISSED, MOTHER WAS NOT REQUIRED TO BE FINGERPRINTED OR TO SUBMIT CERTAIN DOCUMENTATION, JUDGE'S COMMENTS ABOUT THE CHILD'S SPEAKING SPANISH REQUIRED TRANSFER TO A DIFFERENT JUDGE. [Matter of A. v P., 2018 NY Slip Op 03674, Second Dept 5-23-18](#)

FAMILY LAW, IMMIGRATION LAW, CIVIL PROCEDURE.

FAMILY COURT DIVESTED OF SUBJECT MATTER JURISDICTION IN THIS GUARDIANSHIP PROCEEDING BECAUSE THE CHILD TURNED 21, MOTION FOR FINDINGS ALLOWING THE CHILD TO APPLY FOR SPECIAL IMMIGRANT JUVENILE STATUS (SIJS) RENDERED ACADEMIC. [Matter of Vincenta E. V. v Alexander R. G., 2018 NY Slip Op 03849, Second Dept 5-30-18](#)

FAMILY LAW, JUDGES.

IN THIS DIVORCE PROCEEDING, THE JUDGE HAD THE POWER TO CORRECT AN INCONSISTENCY BETWEEN THE JUDGMENT AND THE UNDERLYING DECISION BUT DID NOT HAVE THE POWER TO CHANGE THE JUDGMENT BASED UPON NEW EVIDENCE. [Mascia v Mascia, 2018 NY Slip Op 03523, Second Dept 5-16-18](#)

FORECLOSURE, CIVIL PROCEDURE.

FORECLOSURE COMPLAINT SHOULD NOT HAVE BEEN DISMISSED, PLAINTIFF BANK TOOK PRELIMINARY STEPS TOWARD OBTAINING A DEFAULT JUDGMENT WITHIN ONE YEAR OF DEFENDANTS' DEFAULT.. [Deutsche Bank Natl. Trust Co. v Delisser, 2018 NY Slip Op 03504, Second Dept 5-16-18](#)

FORECLOSURE, CIVIL PROCEDURE, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW.

COURT SHOULD NOT HAVE CONVERTED THE MOTION TO DISMISS TO A MOTION FOR SUMMARY JUDGMENT, BANK'S LETTER SEEKING TO REVOKE THE ACCELERATION OF THE MORTGAGE BEFORE THE STATUTE OF LIMITATIONS FOR A FORECLOSURE ACTION RAN OUT WAS NOT DOCUMENTARY EVIDENCE UPON WHICH A MOTION TO DISMISS COULD BE BASED. [Soroush v Citimortgage, Inc., 2018 NY Slip Op 03724, Second Dept 5-23-18](#)

FREEDOM OF INFORMATION LAW (FOIL).

CIVILIAN COMPLAINT REVIEW BOARD'S RECORDS CONCERNING A PARTICULAR POLICE OFFICER EXEMPT FROM DISCLOSURE UNDER THE PUBLIC OFFICERS LAW AND CIVIL RIGHTS LAW. [Matter of Luongo v Records Access Officer, 2018 NY Slip Op 03681, Second Dept 5-23-18](#)

GROSS NEGLIGENCE, CIVIL PROCEDURE, INSURANCE LAW, ENVIRONMENTAL LAW.

GROSS NEGLIGENCE CAUSE OF ACTION AND DEMAND FOR PUNITIVE DAMAGES IN THIS OIL-CONTAMINATION-REMEDATION ACTION SHOULD NOT HAVE BEEN DISMISSED, CAUSES OF ACTION IN AMENDED COMPLAINT RELATED BACK TO THE ALLEGATIONS IN THE ORIGINAL COMPLAINT AND WERE NOT TIME-BARRERED. [Bennett v State Farm Fire & Cas. Co., 2018 NY Slip Op 03499, Second Dept 5-16-18](#)

INSURANCE LAW.

RECOVERY FROM THE MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION FOR INJURY BY AN UNKNOWN DRIVER DEPENDS ON WHETHER THE INJURY IS THE RESULT OF AN ACCIDENT OR INTENTIONAL CONDUCT, NO RECOVERY FOR INJURY RESULTING FROM INTENTIONAL CONDUCT. [Castillo v Motor Veh. Acc. Indem. Corp., 2018 NY Slip Op 03502, Second Dept 5-16-18](#)

INSURANCE LAW, ARBITRATION, CIVIL PROCEDURE.

ARBITRATOR'S RULING WAS IRRATIONAL AND VIOLATED CPLR 1209 IN THIS NO-FAULT INSURANCE ACTION, HEALTH CARE PROVIDER, AS AN ASSIGNEE, WAS ENTITLED TO ARBITRATE ITS CLAIM FOR CARE PROVIDED TO THE INJURED INFANT. [Matter of Fast Care Med. Diagnostics, PLLC/PV v Government Employees Ins. Co., 2018 NY Slip Op 03831, Second Dept 5-30-18](#)

INSURANCE LAW, CIVIL PROCEDURE.

THE MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION (MVAIC) CANNOT DEMAND A RELEASE FROM THE PLAINTIFF ONCE THE MVAIC'S OBLIGATION TO PAY HAS BEEN REDUCED TO A JUDGMENT. [Matter of Baker v Motor Veh. Acc. Indem. Corp., 2018 NY Slip Op 03676, Second Dept 5-23-18](#)

INSURANCE LAW, LANDLORD-TENANT, PERSONAL INJURY.

TENANT'S INSURANCE POLICY NAMED THE OWNER OF THE BUILDING AS AN ADDITIONAL INSURED, PLAINTIFF FELL ON A STAIRCASE IN AN AREA NOT LEASED TO THE TENANT, PLAINTIFF COULD NOT RECOVER UNDER THE ADDITIONAL INSURED PROVISION OF THE TENANT'S POLICY. [Lissauer v GuideOne Specialty Mut. Ins., 2018 NY Slip Op 03522, Second Dept 5-16-18](#)

LABOR LAW-CONSTRUCTION LAW.

QUESTION OF FACT WHETHER A SAFETY DEVICE WAS REQUIRED UNDER LABOR LAW 240 (1) IN THIS FALLING OBJECT CASE, QUESTION OF FACT WHETHER A HARD HAT THAT COULD BE WORN WITH A WELDING SHIELD WAS REQUIRED UNDER LABOR LAW 241 (6). [Carlton v City of New York, 2018 NY Slip Op 03500, Second Dept 5-16-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

THE MERE FACT THAT PLAINTIFF FELL FROM AN A-FRAME LADDER IS NOT ENOUGH TO WARRANT SUMMARY JUDGMENT IN FAVOR OF THE PLAINTIFF ON A LABOR LAW 240(1) CAUSE OF ACTION, PLAINTIFF'S MOTION PROPERLY DENIED BUT DEFENDANT'S MOTION SHOULD NOT HAVE BEEN GRANTED. [Yao Zong Wu v Zhen Jia Yang, 2018 NY Slip Op 03169, Second Dept 5-2-18](#)

LANDLORD-TENANT, ADMINISTRATIVE LAW.

NYS DIVISION OF HOUSING AND COMMUNITY RENEWAL (DHCR) ACTED ARBITRARILY AND CAPRICIOUSLY WHEN IT RULED THE MAXIMUM COLLECTIBLE RENT FOR AN APARTMENT IS \$125 PER MONTH, THE RENT HAD REMAINED LOW FOR DECADES BECAUSE THE APARTMENT HOUSE HAD BEEN OWNED AND RESIDED IN BY FAMILY MEMBERS.. [Matter of Migliaccio v New York State Div. of Hous. & Community Renewal, 2018 NY Slip Op 03132, Second Dept 5-2-18](#)

MEDICAL MALPRACTICE, PERSONAL INJURY.

PLAINTIFFS' EXPERT DID NOT SPECIALIZE IN THE RELEVANT AREA OF MEDICINE, HIS AFFIDAVIT THEREFORE DID NOT RAISE A QUESTION OF FACT, THERE WAS A QUESTION OF FACT WHETHER THE EMERGENCY EXCEPTION APPLIED TO THE GENERAL RULE A HOSPITAL IS NOT LIABLE FOR THE TREATMENT PROVIDED BY PRIVATE ATTENDING PHYSICIANS. [Galluccio v Grossman, 2018 NY Slip Op 03664, Second Dept 5-23-18](#)

MUNICIPAL LAW, PERSONAL INJURY.

CITY WAS NOTIFIED OF THE ESSENTIAL FACTS OF PETITIONER'S CLAIM BY A TIMELY NOTICE OF CLAIM FILED BY THE OTHER PARTY IN THIS TRAFFIC ACCIDENT CASE, PETITIONER'S REQUEST TO FILE A LATE NOTICE OF CLAIM SHOULD HAVE BEEN GRANTED. [Matter of Tejada v City of New York, 2018 NY Slip Op 03370, Second Dept 5-9-18](#)

PERSONAL INJURY.

PLAINTIFF BASKETBALL PLAYER WAS AWARE OF THE CRACK IN THE BASKETBALL COURT OVER WHICH HE TRIPPED AND FELL, SUIT WAS PRECLUDED BY THE DOCTRINE OF ASSUMPTION OF THE RISK, CONCURRING JUSTICE ARGUED THAT THE CRACK WAS NOT A RISK INHERENT IN THE SPORT, BUT WAS CONSTRAINED TO AGREE WITH THE MAJORITY BASED ON PRECEDENT. [Philius v City of New York, 2018 NY Slip Op 03161, Second Dept 5-2-18](#)

PERSONAL INJURY.

MERCHANDISE RACK IN THE AISLE OF DEFENDANT STORE WAS OPEN AND OBVIOUS AND NOT INHERENTLY DANGEROUS. [Nannariello v Kohl's Dept. Stores, Inc., 2018 NY Slip Op 03689, Second Dept 5-23-18](#)

PERSONAL INJURY.

PLAINTIFF INJURED IN A SLAM DUNK COMPETITION AT BASKETBALL CAMP, DEFENDANT ENTITLED TO SUMMARY JUDGMENT UNDER THE ASSUMPTION OF THE RISK DOCTRINE. [Osmond v Hofstra Univ., 2018 NY Slip Op 03693, Second Dept 5-23-18](#)

PERSONAL INJURY.

SMALL DEFECT THAT WAS UNDER THE HANDRAIL AND NOT IN THE WALKING SURFACE OF THE STAIRWAY WAS TRIVIAL AND NOT ACTIONABLE. [Stanley v New York City Hous. Auth., 2018 NY Slip Op 03726, Second Dept 5-23-18](#)

PERSONAL INJURY.

PLAINTIFF'S DEPOSITION TESTIMONY, SUBMITTED BY THE DEFENDANT IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IN THIS STAIRWAY SLIP AND FALL CASE, CONFLICTED WITH THE DEFENDANT'S EVIDENCE, SUMMARY JUDGMENT WAS NECESSARILY DENIED WITHOUT REFERENCE TO THE OPPOSING PAPERS, [Tavarez v Pistilli Assoc. III, LLC, 2018 NY Slip Op 03727, Second Dept 5-23-18](#)

PERSONAL INJURY.

DEFENDANT RESTAURANT-BAR DEMONSTRATED ITS EMPLOYEE DID NOT KNOW THE DRIVER WAS UNDER 21, RESTAURANT-BAR ENTITLED TO SUMMARY JUDGMENT IN THIS DRAM SHOP ACT ACTION. [Ferber v Olde Erie Brew Pub & Grill, LLC, 2018 NY Slip Op 03827, Second Dept 5-30-18](#)

PERSONAL INJURY.

DRAINAGE GRATE NEAR SOCCER FIELD DEEMED OPEN AND OBVIOUS, PLAINTIFF SOCCER PLAYER ASSUMED THE RISK OF INJURY RESULTING FROM HIS CLEAT GETTING STUCK IN THE GRATE. [O'Toole v Long Is. Jr. Soccer League, Inc., 2018 NY Slip Op 03853, Second Dept 5-30-18](#)

PERSONAL INJURY, LANDLORD-TENANT.

OUT-OF-POSSESSION LANDLORD ENTITLED TO SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE. [Fuzaylova v 63-28 99th St. Farm Ltd., 2018 NY Slip Op 03506, Second Dept 5-16-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

ABUTTING PROPERTY OWNER ENTITLED TO SUMMARY JUDGMENT IN THIS SIDEWALK SLIP AND FALL CASE, ALTHOUGH THE LOCAL CODE REQUIRED THE PROPERTY OWNER TO KEEP SIDEWALKS IN GOOD REPAIR, IT DID NOT IMPOSE TORT LIABILITY ON THE PROPERTY OWNER. [Bousquet v Water View Realty Corp., 2018 NY Slip Op 03119, Second Dept 5-2-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

ALTHOUGH THE VILLAGE DEMONSTRATED IT DID NOT HAVE WRITTEN NOTICE OF THE ICE AND SNOW CONDITION IN THE AREA WHERE PLAINTIFF FELL, IT FAILED TO DEMONSTRATE IT DID NOT CREATE THE CONDITION BY PILING SNOW IN THE AREA, VILLAGE'S MOTION FOR SUMMARY JUDGMENT PROPERLY DENIED. [Seegers v Village of Mineola, 2018 NY Slip Op 03387, Second Dept 5-9-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

ACCIDENT REPORT DID NOT ALERT CITY TO THE ESSENTIAL ELEMENTS OF THE CLAIM IN THIS FIRE TRUCK TRAFFIC ACCIDENT CASE, AND THE EXCUSE FOR THE DELAY IN SEEKING TO FILE A LATE NOTICE OF CLAIM, LAW OFFICE FAILURE, WAS INSUFFICIENT, PETITION FOR LEAVE TO FILE A LATE NOTICE OF CLAIM PROPERLY DENIED. [Matter of Naar v City of New York, 2018 NY Slip Op 03683, Second Dept 5-23-18](#)

PERSONAL INJURY, MUNICIPAL LAW, LABOR LAW.

PLAINTIFF FIREFIGHTER'S MOTION FOR SUMMARY JUDGMENT IN THIS GENERAL MUNICIPAL LAW 205-a, LABOR LAW 27-a, SLIP AND FALL CASE WAS PROPERLY DENIED, PLAINTIFF'S OWN SUBMISSIONS RAISED QUESTIONS OF FACT ABOUT DEFENDANT'S NOTICE OF THE ALLEGED DANGEROUS CONDITION. [Shea v New York City Economic Dev. Corp., 2018 NY Slip Op 03164, Second Dept 5-2-18](#)

PERSONAL INJURY, VEHICLE AND TRAFFIC LAW.

ALTHOUGH DEFENDANT GOULD DEMONSTRATED THE OTHER DRIVER, DEFENDANT PAPPAS, FAILED TO YIELD THE RIGHT-OF-WAY, DEFENDANT GOULD DID NOT DEMONSTRATE THE VEHICLE AND TRAFFIC LAW VIOLATION WAS THE SOLE PROXIMATE CAUSE OF THE ACCIDENT, THEREFORE DEFENDANT GOULD WAS NOT ENTITLED TO SUMMARY JUDGMENT. [Miron v Pappas, 2018 NY Slip Op 03672, Second Dept 5-23-18](#)

PERSONAL INJURY, VEHICLE AND TRAFFIC LAW, EVIDENCE.

DEFENDANT DRIVER'S DEPOSITION TESTIMONY, WHICH CONTRADICTED THE ACCIDENT REPORT AND MV-104 FORM, DID NOT RAISE A QUESTION OF FACT, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IN THIS TRAFFIC ACCIDENT CASE SHOULD HAVE BEEN GRANTED. [Lebron v Mensah, 2018 NY Slip Op 03521, Second Dept 5-16-18](#)

REAL ESTATE.

LAW REGARDING SALE OF PROPERTY OWNED BY TENANTS BY THE ENTIRETY WHERE ONLY ONE SPOUSE SIGNS THE CONTRACT EXPLAINED. [Carpenter v Crespo, 2018 NY Slip Op 03501, Second Dept 5-16-18](#)

REAL ESTATE.

DEFENDANTS DID NOT DEMONSTRATE PLAINTIFF COULD NOT PROVE IT WAS READY, WILLING AND ABLE TO CLOSE IN THIS ACTION FOR SPECIFIC PERFORMANCE, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN DENIED WITHOUT CONSIDERING THE OPPOSING PAPERS, [Chester Green Estates, LLC v Arlington Chester, LLC, 2018 NY Slip Op 03657, Second Dept 5-23-18](#)

REAL ESTATE, REAL PROPERTY LAW, AGENCY, CORPORATION LAW.

FORMER PRESIDENT OF THE CORPORATION WHICH OWNED AN APARTMENT BUILDING HAD THE APPARENT AUTHORITY TO SELL THE BUILDING, BUYER WAS A BONA FIDE PURCHASER. [Matter of Chau Chung Hu v Lowbet Realty Corp., 2018 NY Slip Op 03529, Second Dept 5-16-18](#)

REAL PROPERTY ACTIONS AND PROCEEDINGS LAW.

DISMISSAL OF DEFENDANT'S COUNTERCLAIM FOR ADVERSE POSSESSION PROPERLY GRANTED, ELEMENTS OF PRE-AMENDMENT PROOF OF A CLAIM OF RIGHT APPLIED TO THE DISPUTED PROPERTY. [SLC Coram, LLC v 543 Middle Country Rd. Realty, LLC, 2018 NY Slip Op 03723, Second Dept 5-23-18](#)

REAL PROPERTY LAW.

1941 AND 1953 DEEDS CREATED THE POSSIBILITY OF REVERTER WHICH COULD BE ASSIGNED.. [Njcb Spec-1, LLC v Budnik, 2018 NY Slip Op 03376, Second Dept 5-9-18](#)

THIRD DEPARTMENT

ATTORNEYS, CIVIL PROCEDURE, MEDICAL MALPRACTICE.

ALTHOUGH THE HOSPITAL'S POTENTIAL LIABILITY IN THIS MEDICAL MALPRACTICE ACTION WAS PURELY VICARIOUS, ATTORNEYS FOR BOTH THE HOSPITAL AND THE EMPLOYEE-PHYSICIAN WERE PROPERLY ALLOWED TO PARTICIPATE IN THE TRIAL; PLAINTIFFS' MID-TRIAL REQUEST TO CALL AN EXPERT WITNESS PROPERLY DENIED. [Lasher v Albany Mem. Hosp., 2018 NY Slip Op 03402, Third Dept 5-10-18](#)

CIVIL PROCEDURE.

THE TIME PERIOD FOR LEARNING THE IDENTITY OF DEFENDANTS DOES NOT BEGIN TO RUN WHEN A PLAINTIFF RETAINS COUNSEL, HERE THE ACTION WAS COMMENCED WHEN COUNSEL WAS RETAINED THREE DAYS BEFORE THE EXPIRATION OF THE STATUTE OF LIMITATIONS, THE COMPLAINT NAMED DEFENDANTS AS 'JOHN DOES' WHO WERE NOT IDENTIFIED UNTIL AFTER THE STATUTE HAD RUN, THE ACTION WAS DEEMED TIME-BARRED. [Walker v Glaxosmithkline, LLC, 2018 NY Slip Op 03581, Third Dept 5-17-18](#)

CIVIL PROCEDURE, CORPORATION LAW, WORKERS' COMPENSATION LAW.

WORKER'S COMPENSATION TRUST DEEMED TO OWE THE WORKERS' COMPENSATION BOARD \$220 MILLION, ATTEMPTS TO AMEND THE COMPLAINT TO ADD CAUSES OF ACTION AFTER THE STATUTE OF LIMITATIONS HAD RUN FAILED, CRITERIA EXPLAINED; CRITERIA FOR A GENERAL BUSINESS LAW 350 CAUSE OF ACTION AND PLEADING AN ALTER EGO THEORY ADDRESSED. [Belair Care Ctr., Inc. v Cool Insuring Agency, Inc., 2018 NY Slip Op 03196, Third Dept 5-3-18](#)

CONTRACT LAW, CIVIL PROCEDURE.

PARTIES' CONDUCT AFTER THE PURPORTED TERMINATION OF THE SHAREHOLDERS' AGREEMENT COULD INDICATE THE PARTIES INTENDED THE CONTRACT TO CONTINUE (IMPLIED CONTRACT), DEFENDANT'S MOTION TO DISMISS THIS BREACH OF CONTRACT ACTION SHOULD NOT HAVE BEEN GRANTED. [Harris v Reagan, 2018 NY Slip Op 03408, Third Dept 5-10-18](#)

CRIMINAL LAW.

UNDER THE STIPULATED FACTS, THE DEFENDANT'S TRAGIC ERROR, MISTAKING THE VICTIM FOR A DEER, DID NOT RISE TO THE LEVEL OF CRIMINAL NEGLIGENCE, NEGLIGENT HOMICIDE CONVICTION REVERSED. [People v Gerbino, 2018 NY Slip Op 03179, Third Dept 5-3-18](#)

CRIMINAL LAW.

NO INDICATION IN THE INDICTMENT OR THE ALLOCUTION THAT THE THREE 'POSSESSION OF A SEXUAL PERFORMANCE BY A CHILD' OFFENSES TOOK PLACE AT DIFFERENT TIMES OR LOCATIONS, CONSECUTIVE SENTENCES NOT AUTHORIZED. [People v Stein, 2018 NY Slip Op 03566, Third Dept 5-17-18](#)

CRIMINAL LAW.

PAROLE BOARD PROPERLY CONSIDERED PETITIONER'S YOUTH AT THE TIME HE COMMITTED SERIOUS CRIMES, PAROLE PROPERLY DENIED.. [Matter of Allen v Stanford, 2018 NY Slip Op 03888, Third Dept 5-31-18](#)

CRIMINAL LAW, MENTAL HYGIENE LAW, ATTORNEYS.

RESPONDENT, WHO PLED NOT RESPONSIBLE BY REASON OF MENTAL DISEASE OR DEFECT, DID NOT RECEIVE EFFECTIVE ASSISTANCE OF COUNSEL IN THE SUBSEQUENT CRIMINAL PROCEDURE LAW 330.20 COMMITMENT PROCEEDINGS, RESPONDENT'S COUNSEL SIMPLY ACCEPTED THE PSYCHIATRIC EXAMINATION REPORTS. [Matter of Matheson Kk., 2018 NY Slip Op 03195, Third Dept 5-3-18](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

CORRECTION LAW DOES NOT REQUIRE SEX OFFENDER TO DISCLOSE HIS OR HER USE OF FACEBOOK, IT IS ENOUGH THAT THE SEX OFFENDER DISCLOSE EMAIL ADDRESSES AND SCREEN NAMES. [People v Ellis, 2018 NY Slip Op 03873, Third Dept 5-31-18](#)

DISCIPLINARY HEARINGS (INMATES).

PETITIONER-INMATE, WHO WAS CONDUCTING A CLASS ON AFRICAN-AMERICAN HISTORY, DID NOT VIOLATE PRISON RULES PROHIBITING GANG ACTIVITY BY DISCUSSING THE BLACK PANTHER PARTY AND THE BLOODS. [Matter of Bottom v Annucci, 2018 NY Slip Op 03413, Third Dept 5-10-18](#)

ENVIRONMENTAL LAW, CIVIL PROCEDURE, LAND USE.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION'S (DEC'S) DETERMINATIONS ON THE USE OF SNOWMOBILES IN NEWLY ADDED PORTIONS OF THE ADIRONDACK PARK UPHELD, TWO CHALLENGES NOT RIPE FOR REVIEW. [Matter of Adirondack Wild: Friends of The Forest Preserve v New York State Adirondack Park Agency, 2018 NY Slip Op 03193, Third Dept 5-3-18](#)

ENVIRONMENTAL LAW, MUNICIPAL LAW.

VILLAGE BOARD DID NOT TAKE THE 'HARD LOOK' REQUIRED BY THE STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA), REVIEW WAS UNDERTAKEN TO FACILITATE THE CONDEMNATION OF LAND FOR THE CONSTRUCTION OF A PARKING GARAGE, VILLAGE DID NOT ADEQUATELY CONSIDER ADVERSE TRAFFIC IMPLICATIONS. [Matter of Adirondack Historical Assn. v Village of Lake Placid/lake Placid Vil., Inc., 2018 NY Slip Op 03194, Third Dept 5-3-18](#)

FAMILY LAW, ATTORNEYS.

FAMILY COURT SHOULD HAVE INFORMED WIFE OF HER RIGHT TO ASSIGNED COUNSEL WHEN IT BECAME CLEAR SHE WAS HAVING TROUBLE RETAINING AN ATTORNEY, NEW TRIAL ORDERED. [DiBella v DiBella, 2018 NY Slip Op 03186, Third Dept 5-3-18](#)

FAMILY LAW, CRIMINAL LAW.

WIFE NOT ENTITLED TO UNSEAL RECORD OF HUSBAND'S ALLEGED ASSAULT AGAINST HER IN THESE DIVORCE PROCEEDINGS, HUSBAND WAS GRANTED AN ADJOURNMENT IN CONTEMPLATION OF DISMISSAL AND DID NOT PLACE THE CRIMINAL MATTER IN ISSUE, THE RECORD WAS SEALED BY OPERATION OF THE CRIMINAL PROCEDURE LAW. [Prag v Prag, 2018 NY Slip Op 03414, Third Dept 5-10-18](#)

LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF, WHO WAS WORKING AT GROUND LEVEL, WAS STRUCK ON THE HEAD BY A TIRE RIM WHICH WAS BLOWN OFF THE ROOF IN HEAVY WINDS, THE TIRE RIM REQUIRED SECURING AND NO SAFETY DEVICE WAS EMPLOYED, PLAINTIFF ENTITLED TO SUMMARY JUDGMENT ON HIS LABOR LAW 240 (1) CAUSE OF ACTION. [Wellington v Christa Constr. LLC, 2018 NY Slip Op 03199, Third Dept 5-3-18](#)

LIEN LAW.

NOTICE SENT TO THE OWNER AND LIENHOLDER OF A CAR BY THE TOW SERVICE WHICH WAS STORING THE CAR DID NOT MEET THE REQUIREMENTS OF THE LIEN LAW, THEREFORE THE STORAGE FEES COULD NOT BE COLLECTED BY THE TOW SERVICE. [Matter of Nissan Motor Acceptance Corp v All County Towing, 2018 NY Slip Op 03583, Third Dept 5-17-18](#)

MUNICIPAL LAW, CIVIL PROCEDURE.

INMATE-PETITIONER'S INITIAL PRO SE ATTEMPT TO FILE A LATE NOTICE OF CLAIM REGARDING AN INCIDENT IN THE COUNTY JAIL BY SENDING THE PAPERS TO THE COURT CLERK, NOT THE COUNTY COURT, WAS A NULLITY, PETITIONER'S SECOND ATTEMPT TO FILE A LATE NOTICE AFTER THE STATUTE OF LIMITATIONS HAD RUN COULD NOT,

THEREFORE, RELATE BACK TO THE INITIAL ATTEMPT. [Matter of Dougherty v County of Greene, 2018 NY Slip Op 03192, Third Dept 5-3-18](#)

PERSONAL INJURY.

QUESTION OF FACT WHETHER ALLOWING TANDEM RIDING AND SPINNING THE TUBES IN ICY CONDITIONS UNREASONABLY INCREASED THE RISK IN THIS SNOW-TUBING INJURY CASE. [Thompson v Windham Mtn. Partners, LLC, 2018 NY Slip Op 03415, Third Dept 5-10-18](#)

REAL PROPERTY.

OWNERS OF PROPERTY ABUTTING A ROADWAY CANNOT PROHIBIT PARKING ALONG THE ROADWAY UNLESS PARKED CARS IMPEDE ACCESS TO THE OWNERS' PROPERTY. [Augusta v Kwornik, 2018 NY Slip Op 03574, Third Dept. 5-17-18](#)

RETIREMENT AND SOCIAL SECURITY LAW.

PETITIONER POLICE OFFICER SLIPPED ON WATER FROM A LEAKING WATER COOLER, THE HEARING OFFICER RULED THE INCIDENT WAS NOT A COMPENSABLE ACCIDENT BECAUSE THE WATER WAS READILY OBSERVABLE, THE COURT OF APPEALS RECENTLY HELD A PETITIONER IS NO LONGER REQUIRED TO DEMONSTRATE A CONDITION WAS NOT READILY OBSERVABLE, DETERMINATION ANNULLED. [Matter of Daquino v DiNapoli, 2018 NY Slip Op 03201, Third Dept 5-3-18](#)

SOCIAL SERVICES LAW.

PETITIONER, AN EMPLOYEE OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, COMMITTED NEGLECT WITHIN THE MEANING OF THE SOCIAL SERVICES LAW WHEN SHE USED THE TERM 'RETARDED' IN A CONVERSATION OVERHEARD BY SERVICE RECIPIENTS. [Matter of Kelly v New York State Justice Ctr. for The Protection of People With Special Needs, 2018 NY Slip Op 03407, Third Dept 5-10-18](#)

TRUSTS AND ESTATES, CIVIL PROCEDURE.

MOTION TO SET ASIDE THE VERDICT AS NOT SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE AND AS AGAINST THE WEIGHT OF THE EVIDENCE SHOULD HAVE BEEN GRANTED, THE EVIDENCE DID NOT ALLOW THE CONCLUSION THAT THE WILL, WRITTEN BY DECEDENT'S CARETAKER THREE DAYS BEFORE DEATH, WAS DULY EXECUTED. [Matter of Fraccaro, 2018 NY Slip Op 03198, Third Dept 5-3-18](#)

UNEMPLOYMENT INSURANCE.

TENDER AGE PT (TAPT), WHICH PROVIDED SUPPLEMENTAL EDUCATION SERVICES TO THE DEPARTMENT OF EDUCATION, WAS NOT THE EMPLOYER OF CLAIMANT, A BEHAVIORAL ANALYST THERAPIST WHO RECEIVED WORK ASSIGNMENTS FROM TAPT. [Matter of Giordano \(Commissioner of Labor\), 2018 NY Slip Op 03573, Third Dept 5-17-18](#)

UNEMPLOYMENT INSURANCE, LABOR LAW.

CLAIMANT, A SUBSTITUTE TEACHER, RECEIVED REASONABLE ASSURANCE OF EMPLOYMENT IN THE FOLLOWING SCHOOL YEAR (LABOR LAW 590), SHE WAS THEREFORE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS. [Matter of Enman \(New York City Dept. of Educ.--Commissioner of Labor\), 2018 NY Slip Op 03416, Third Dept 5-10-18](#)

WORKERS' COMPENSATION LAW.

CLAIMANT WAS ASSAULTED ON TRANSIT AUTHORITY PROPERTY WHILE WEARING HER TRANSIT AUTHORITY UNIFORM, ALTHOUGH SHE WAS COMMUTING TO WORK, HER COMMUTE HAD NOTHING TO DO WITH HER WORK, WORKERS' COMPENSATION BENEFITS PROPERLY DENIED. [Matter of Rodriguez v New York City Tr. Auth., 2018 NY Slip Op 03887, Third Dept 5-31-18](#)

FOURTH DEPARTMENT

CRIMINAL LAW, ANIMAL LAW, APPEALS.

DEFENDANT CONVICTED OF ASSAULT FIRST DEGREE FOR ALLOWING HIS DOG TO ATTACK THE VICTIM, EVIDENCE OF INTENT TO CAUSE SERIOUS INJURY WAS LEGALLY SUFFICIENT, MOTION FOR TRIAL ORDER OF DISMISSAL AT THE CLOSE OF THE EVIDENCE PRESERVED THE ISSUE BY REFERRING TO THE MOTION MADE AT THE CLOSE OF THE PEOPLE'S CASE.

[People v Bacon, 2018 NY Slip Op 03258, Fourth Dept 5-4-18](#)

CRIMINAL LAW, APPEALS.

WAIVER OF APPEAL INVALID, MATTER SENT BACK FOR YOUTHFUL OFFENDER DETERMINATION. [People v Willis, 2018 NY Slip Op 03291, Fourth Dept 5-4-18](#)

CRIMINAL LAW, ATTORNEYS.

DEFENDANT'S MOTION TO VACATE HIS CONVICTION BASED UPON INEFFECTIVE ASSISTANCE AND ACTUAL INNOCENCE SHOULD NOT HAVE BEEN DENIED WITHOUT A HEARING, DEFENDANT PRESENTED EVIDENCE DEFENSE COUNSEL NEVER SUBPOENAED A WITNESS. [People v Borcyk, 2018 NY Slip Op 03256, Fourth Dept 5-4-18](#)

EDUCATION-SCHOOL LAW, EMPLOYMENT LAW, CIVIL PROCEDURE.

PLAINTIFF'S MOTION TO AMEND HER COMPLAINT BY ADDING A BATTERY CAUSE OF ACTION AGAINST A TEACHER AND A RESPONDEAT SUPERIOR CAUSE OF ACTION AGAINST THE SCHOOL SHOULD HAVE BEEN GRANTED, CRITERIA EXPLAINED, RELATION-BACK DOCTRINE APPLIED TO THE NEW CAUSES OF ACTION. [Wojtalewski v Central Sq. Cent. Sch. Dist., 2018 NY Slip Op 03275, Fourth Dept 5-4-18](#)

FAMILY LAW.

FAMILY COURT DID NOT FOLLOW THE PROCEDURE SET OUT IN THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (UCCJEA) BEFORE DETERMINING IT DID NOT HAVE JURISDICTION OVER FATHER'S CUSTODY PROCEEDING, MOTHER HAD BROUGHT A CUSTODY PROCEEDING IN PENNSYLVANIA, MATTER REMITTED. [Matter of Beyer v Hofmann, 2018 NY Slip Op 03259, Fourth Dept 5-4-18](#)

FORECLOSURE.

ALTHOUGH THE MONTHLY MORTGAGE PAYMENTS STOPPED IN 2008, THE DEBT WAS NEVER ACCELERATED UNTIL THE INSTANT FORECLOSURE ACTION WAS BROUGHT IN 2015, THE ACTION SHOULD NOT HAVE BEEN DISMISSED AS TIME-BARRED. [Wilmington Sav. Fund Socy., FSB v Unknown Heirs at Law of Danny Higdon, 2018 NY Slip Op 03274, Fourth Dept 5-4-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

WHILE WORKING ON A SIGN AT EYE LEVEL PLAINTIFF SLIPPED OFF A LANDSCAPING ROCK WHICH HE DID NOT NEED TO STAND ON TO DO THE WORK, PLAINTIFF'S LABOR LAW 240 (1) AND 241 (6) CAUSES OF ACTION PROPERLY DISMISSED. [Maracle v Autoplace Infiniti, Inc., 2018 NY Slip Op 03252, Fourth Dept 5-4-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

INJURY FROM A SAFETY BAR IN A BOBCAT WHICH FELL AFTER PLAINTIFF RAISED IT TO STEP OUT OF THE MACHINE DID NOT RESULT FROM A SIGNIFICANT ELEVATION DIFFERENTIAL WITHIN THE MEANING OF LABOR LAW 240 (1), LABOR LAW 241 (6) CAUSES OF ACTION WERE VIABLE HOWEVER. [Salerno v Diocese of Buffalo, N.Y., 2018 NY Slip Op 03251, Fourth Dept 5-4-18](#)

MEDICAL MALPRACTICE, EVIDENCE, PERSONAL INJURY.

MATERIAL PREPARED FOR HOSPITAL QUALITY ASSURANCE REVIEW DISCOVERABLE IN THIS MEDICAL MALPRACTICE ACTION UNDER AN EXCEPTION TO EDUCATION LAW 6527. [Drum v Collure, 2018 NY Slip Op 03244, Fourth Dept 5-4-18](#)

MEDICAL MALPRACTICE, EVIDENCE, PERSONAL INJURY.

PLAINTIFF SUFFERED AN EYE INJURY AT SOME POINT IN HIP REPLACEMENT SURGERY OR IN THE RECOVERY ROOM AND SUED SEVERAL DEFENDANTS RELYING ON THE RES IPSA LOQUITUR DOCTRINE, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON THAT ASPECT OF PLAINTIFF'S CASE SHOULD NOT HAVE BEEN GRANTED. [White v Bajwa, 2018 NY Slip Op 03246, Fourth Dept 5-4-18](#)

MEDICAL MALPRACTICE, PERSONAL INJURY.

RESIDENT PHYSICIANS DID NOT EXERCISE INDEPENDENT JUDGMENT AND WERE NOT REQUIRED TO INTERVENE IN THE TREATMENT BY THE ATTENDING PHYSICIAN, THE RESIDENTS' MOTION FOR SUMMARY JUDGMENT IN THIS MEDICAL MALPRACTICE ACTION SHOULD HAVE BEEN GRANTED. [Groff v Kaleida Health, 2018 NY Slip Op 03249, Fourth Dept 5-4-18](#)

MUNICIPAL LAW, EMPLOYMENT LAW.

DEFENDANT COUNTY CORONER TOOK PLAINTIFF'S SON'S BRAIN MATTER FOR USE IN TRAINING CADAVER DOGS AND FATHER SUED, QUESTION OF FACT WHETHER COUNTY OBLIGATED UNDER THE PUBLIC OFFICERS LAW TO DEFEND AND INDEMNIFY THE CORONER (I.E., WAS THE CORONER ACTING WITHIN THE SCOPE OF HIS EMPLOYMENT?). [Dunn v County of Niagara, 2018 NY Slip Op 03271, Fourth Dept 5-4-18](#)

MUNICIPAL LAW, IMMUNITY.

DEFENDANT CITY PAVED A DRIVEWAY CONNECTING A ROAD TO A PAVED PARK PATH, DEFENDANT DRIVER DROVE UP THE DRIVEWAY TO THE PAVED PATH WHERE PLAINTIFFS HAD BEEN WALKING THEIR DOGS, MAINTENANCE OF A PARK IS A PROPRIETARY NOT GOVERNMENTAL FUNCTION, NO GOVERNMENTAL IMMUNITY, CITY'S MOTION FOR SUMMARY JUDGMENT RELIED SOLELY ON GAPS IN PLAINTIFFS' PROOF AND SHOULD HAVE BEEN DENIED. [Brady v City of N. Tonawanda, 2018 NY Slip Op 03253, Fourth Dept 5-4-18](#)

PERSONAL INJURY.

PERSON SENDING TEXT MESSAGES TO A DRIVER DOES NOT OWE A DUTY OF CARE TO A PERSON INJURED BY A DRIVER DISTRACTED BY THE TEXTS. [Vega v Crane, 2018 NY Slip Op 03262, Fourth Dept 5-4-18](#)

PERSONAL INJURY.

EVIDENCE THAT DEFENDANT'S EMPLOYEE SLIPPED ON ICE AND SNOW SEVERAL HOURS BEFORE PLAINTIFF SLIPPED AND FELL IN THE SAME PARKING LOT RAISED A QUESTION OF FACT ABOUT DEFENDANT'S CONSTRUCTIVE KNOWLEDGE OF THE DANGEROUS CONDITION. [Cosgrove v River Oaks Rests., LLC, 2018 NY Slip Op 03286, Fourth Dept 5-4-18](#)

PERSONAL INJURY.

RAISED METAL PLATE IN SIDEWALK DEEMED A NONACTIONABLE TRIVIAL DEFECT IN THIS SLIP AND FALL CASE. [Graham v State of New York, 2018 NY Slip Op 03294, Fourth Dept 5-4-18](#)

PERSONAL INJURY, AGENCY.

RESPONDEAT SUPERIOR DOCTRINE MAY BE APPLIED BASED UPON A PRINCIPAL-AGENT RELATIONSHIP INVOLVING VOLUNTEERS, HERE PLAINTIFF WAS INJURED BY A LADDER WHEN VOLUNTEERS WERE PAINTING THE BUILDING OWNED BY THE DEFENDANT; POINTING TO GAPS IN THE OPPOSING PARTY'S PROOF WILL NOT SUPPORT SUMMARY JUDGMENT. [Rozmus v Wesleyan Church of Hamburg, 2018 NY Slip Op 03261, Fourth Dept 5-4-18](#)

PERSONAL INJURY, ANIMAL LAW.

PLAINTIFF FELL FROM A HORSE DURING A RIDING LESSON, NEITHER THE ASSUMPTION OF THE RISK DOCTRINE NOR THE SIGNED RELEASE WARRANTED SUMMARY JUDGMENT IN FAVOR OF DEFENDANT HORSE FARM, THE COMPLAINT SHOULD NOT HAVE BEEN DISMISSED. [Jones v Smoke Tree Farm, 2018 NY Slip Op 03299, Fourth Dept 5-4-18](#)

PERSONAL INJURY, CRIMINAL LAW.

DEFENDANT WHO ALLOWED 16-YEAR-OLD NEIGHBOR TO WATCH PLAINTIFF'S FIVE-YEAR-OLD DAUGHTER WAS NOT LIABLE FOR THE MURDER OF PLAINTIFF'S DAUGHTER BY THE NEIGHBOR, THE CRIMINAL ACT SEVERED THE LIABILITY OF THE DEFENDANT, NEIGHBOR HAD WATCHED THE CHILD BEFORE WITHOUT INCIDENT, NO RED FLAGS. [Tennant v Lascelle, 2018 NY Slip Op 03279, Fourth Dept 5-4-18](#)

PERSONAL INJURY, MUNICIPAL LAW, VEHICLE AND TRAFFIC LAW.

RECKLESS DISREGARD STANDARD APPLIED TO DRIVER OF TOWN SNOWPLOW AND THE DRIVER DID NOT ACT WITH RECKLESS DISREGARD FOR THE SAFETY OF OTHERS, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Harris v Hanssen, 2018 NY Slip Op 03257, Fourth Dept 5-4-18](#)

PERSONAL INJURY, VEHICLE AND TRAFFIC LAW.

ALTHOUGH THE DRIVER'S MOTHER HAD PURCHASED AND INSURED THE CAR AT THE TIME OF THE ACCIDENT, THE SELLER'S REGISTRATION PLATES WERE STILL ON THE CAR, THE SELLER WAS ESTOPPED FROM DENYING OWNERSHIP. [White v Mayfield, 2018 NY Slip Op 03270, Fourth Dept 5-4-18](#)

TRUSTS AND ESTATES.

WILL THAT CANNOT BE FOUND IS PRESUMED REVOKED, HERE PETITIONER DID NOT REBUT THE PRESUMPTION OF REVOCATION, CRITERIA EXPLAINED. [Matter of Scollan, 2018 NY Slip Op 03287, Fourth Dept 5-4-18](#)

JUNE 2018

COURT OF APPEALS

ADMINISTRATIVE LAW, MUNICIPAL LAW.

NYC DEPARTMENT OF HEALTH AND BOARD OF HEALTH DID NOT VIOLATE THE SEPARATION OF POWERS BY PROMULGATING HEALTH CODE PROVISIONS REQUIRING YOUNG CHILDREN IN CITY REGULATED PROGRAMS TO RECEIVE FLU VACCINATIONS, NOR ARE THE CODE PROVISIONS PREEMPTED BY STATE LAW. [Garcia v New York City Dept. of Health & Mental Hygiene, 2018 NY Slip Op 04778, CtApp 6-28-18](#)

ADMINISTRATIVE LAW, SOCIAL SERVICES LAW.

NEGLECT ALLEGATION AGAINST NURSING HOME FOR SYSTEMIC FAILURE PROPERLY FOUND TO BE SUBSTANTIATED, EVEN THOUGH THE RELATED ALLEGATIONS AGAINST TWO EMPLOYEES WERE DEEMED TO BE UNSUBSTANTIATED. [Matter of Anonymous v Molik, 2018 NY Slip Op 04779, CtApp 6-28-18](#)

ARBITRATION, CONTRACT LAW, EMPLOYMENT LAW.

PLAIN LANGUAGE OF THE COLLECTIVE BARGAINING AGREEMENT LIMITED THE RIGHT TO DEMAND ARBITRATION TO THE UNION, NOT THE FIRED EMPLOYEE. [Matter of Widrick \(Carpinelli\), 2018 NY Slip Op 04780, CtApp 6-28-18](#)

CIVIL PROCEDURE, CONTRACT LAW.

NEW YORK'S BORROWING STATUTE APPLIED TO THE CONTRACT WITH A CANADIAN COMPANY WHICH CALLED FOR THE CONTRACT TO BE 'ENFORCED' ACCORDING TO NEW YORK LAW, ONTARIO'S TWO-YEAR STATUTE OF LIMITATIONS RENDERED THE ACTION UNTIMELY. [2138747 Ontario, Inc. v Samsung C&T Corp., 2018 NY Slip Op 04274, CtApp 6-12-18](#)

CIVIL PROCEDURE, SECURITIES, FRAUD.

THE MARTIN ACT CLAIMS IN THIS DECEPTIVE PRACTICES ACTION INVOLVING RESIDENTIAL MORTGAGE BACKED SECURITIES ARE TIME-BARRED UNDER THE THREE-YEAR STATUTE OF LIMITATIONS FOR STATUTORY VIOLATIONS, BUT THE EXECUTIVE LAW CLAIMS MAY NOT BE TIME-BARRED IF THEY ARE BASED SOLELY ON THE ELEMENTS OF COMMON LAW FRAUD SUBJECT TO THE SIX-YEAR STATUTE OF LIMITATIONS. [People v Credit Suisse Sec. \(USA\) LLC, 2018 NY Slip Op 04272, Ct App 6-12-18](#)

CRIMINAL LAW.

DEFENDANT'S SIGNING A WRITTEN WAIVER OF THE RIGHT TO AN INDICTMENT BY GRAND JURY MET CONSTITUTIONAL REQUIREMENTS, ALTHOUGH BETTER PRACTICE WOULD INCLUDE ELICITING DEFENDANT'S UNDERSTANDING OF THE RIGHT BEING WAIVED. [People v Myers, 2018 NY Slip Op 04685, CtApp 6-27-18](#)

CRIMINAL LAW.

STRICT REQUIREMENTS FOR NOTIFICATION OF COUNSEL OF THE CONTENTS OF JURY NOTES AND THE CREATION OF A COMPLETE RECORD OF HOW THE NOTES WERE HANDLED REAFFIRMED.. [People v Morrison, 2018 NY Slip Op 04777, CtApp 6-28-18](#)

CRIMINAL LAW.

DEFENDANT PROPERLY ACCUSED AND CONVICTED OF ATTEMPTED POSSESSION OF A SWITCHBLADE, EXTENSIVE DISSENTING OPINION. [People v Berrezueta, 2018 NY Slip Op 04032, CtApp 6-7-18](#)

CRIMINAL LAW, APPEALS, ATTORNEYS.

BENCH TRIAL JUDGE'S RESCINDING OF THE RULING DEFENSE COUNSEL COULD GIVE A SUMMATION IN THIS MISDEMEANOR CASE VIOLATED DEFENDANT'S SIXTH AMENDMENT RIGHT TO COUNSEL, RULING IS APPEALABLE BECAUSE DEFENSE COUNSEL DID NOT HAVE THE MEANINGFUL ABILITY TO OBJECT. [People v Harris, 2018 NY Slip Op 04667, CtApp 6-26-18](#)

CRIMINAL LAW, APPEALS, CIVIL PROCEDURE.

NO APPEAL LIES FROM THE DENIAL OF A REPORTER'S MOTION TO QUASH SUBPOENAS ISSUED IN A CRIMINAL ACTION BECAUSE THERE IS NO STATUTORY AUTHORITY IN THE CRIMINAL PROCEDURE LAW FOR SUCH AN APPEAL, THE SUBPOENAS SOUGHT THE REPORTER'S APPEARANCE AT TRIAL AND NOTES OF THE REPORTER'S POST-ARREST INTERVIEW WITH THE DEFENDANT; IN CONTRAST, HAD THE SUBPOENAS BEEN ISSUED PRIOR TO THE COMMENCEMENT OF CRIMINAL PROCEEDINGS, THE MOTION TO QUASH WOULD HAVE BEEN CIVIL IN NATURE AND THE DENIAL APPEALABLE. [Matter of People v Juarez, 2018 NY Slip Op 04684, CtApp 6-27-18](#)

CRIMINAL LAW, APPEALS, EVIDENCE.

VALIDITY OF STREET STOPS PRESENTS A MIXED QUESTION OF LAW AND FACT WHICH THE COURT OF APPEALS CAN REVIEW ONLY TO THE EXTENT OF WHETHER THE LOWER COURT RULING HAS SUPPORT IN THE RECORD, HERE THE RECORD SUPPORTED THE VALIDITY OF THE STOPS UNDER DE BOUR, TRIAL COURT'S FAILURE TO CREATE A RECORD

CONCERNING TWO JURY NOTES REQUIRED REVERSAL HOWEVER.. [People v Parker, 2018 NY Slip Op 04776, CtApp 6-28-18](#)

CRIMINAL LAW, APPEALS, EVIDENCE.

FAILURE TO RAISE THE SPECIFIC OBJECTION ARGUED ON APPEAL AND FAILURE TO SPECIFICALLY JOIN IN AN OBJECTION BY CO-COUNSEL RENDERED THE OBJECTIONS UNPRESERVED FOR APPEAL, EVIDENCE OF GANG STRUCTURE PROPERLY ADMITTED TO SHOW DEFENDANT'S MOTIVE AND INTENT, AND TO PROVIDE BACKGROUND INFORMATION. [People v Bailey, 2018 NY Slip Op 04383, CtApp 6-14-18](#)

CRIMINAL LAW, ATTORNEYS.

BRIEF QUESTIONING OF THE DEFENDANT ON A REPRESENTED MATTER WAS SEPARABLE AS A MATTER OF LAW FROM THE QUESTIONING ON AN UNREPRESENTED MATTER. [People v Silvagnoli, 2018 NY Slip Op 04276, CtApp 6-12-18](#)

CRIMINAL LAW, ATTORNEYS, EVIDENCE.

ALTHOUGH DEFENDANT WAS REPRESENTED ON A MARIJUANA CHARGE, QUESTIONING ABOUT AN UNRELATED MURDER DID NOT VIOLATE DEFENDANT'S RIGHT TO COUNSEL, APPELLATE DIVISION SHOULD NOT HAVE SUPPRESSED DEFENDANT'S STATEMENT ABOUT THE MURDER. [People v Henry, 2018 NY Slip Op 04275, CtApp 6-12-18](#)

CRIMINAL LAW, EVIDENCE.

THERE IS NO ACTUAL INNOCENCE GROUND FOR VACATION OF A GUILTY PLEA UNDER CRIMINAL PROCEDURE LAW 440.10 (h). [People v Tiger, 2018 NY Slip Op 04377, CtApp 6-14-18](#)

CRIMINAL LAW, EVIDENCE.

STATEMENTS ALLEGED TO EXCULPATE DEFENDANT DID NOT MEET THE CRITERIA FOR DECLARATIONS AGAINST PENAL INTEREST, DEFENDANT'S MOTION TO VACATE HIS CONVICTION PROPERLY DENIED. [People v Thibodeau, 2018 NY Slip Op 04378, CtApp 6-14-18](#)

CRIMINAL LAW, EVIDENCE.

DEPRAVED INDIFFERENCE ASSAULT CONVICTION INVOLVING A SINGLE VICTIM AFFIRMED, DEPRAVED INDIFFERENCE ASSAULT NEED NOT FIT WITHIN THE NARROW EXCEPTIONS CARVED OUT FOR DEPRAVED INDIFFERENCE MURDER. [People v Wilson, 2018 NY Slip Op 04380, CtApp 6-14-18](#)

DEFAMATION, PRIVILEGE.

QUALIFIED, NOT ABSOLUTE, PRIVILEGE APPLIES WHEN THE SUBJECT OF THE ALLEGED DEFAMATION HAS NO OPPORTUNITY TO REBUT THE ALLEGEDLY DEFAMATORY STATEMENTS. [Stega v New York Downtown Hosp., 2018 NY Slip Op 04687, CtApp 6-27-18](#)

FAMILY LAW.

TERMINATION OF PARENTAL RIGHTS BASED UPON ABANDONMENT REVERSED, AGENCY DID NOT MEET ITS BURDEN OF DEMONSTRATING FATHER, WHO WAS INCARCERATED, FAILED TO COMMUNICATE WITH THE CHILD DURING THE SIX MONTHS PRIOR TO THE PROCEEDING. [Matter of Mason H. \(Joseph H.\), 2018 NY Slip Op 04384, CtApp 6-14-18](#)

FAMILY LAW, ADMINISTRATIVE LAW.

ADMINISTRATIVE LAW JUDGE'S MARKING AN ADMINISTRATION OF CHILDREN'S SERVICES REPORT AS 'INDICATED' FOR MALTREATMENT OF PETITIONER'S CHILD HAD A RATIONAL BASIS AND SHOULD STAND, APPELLATE DIVISION REVERSED. [Matter of Natasha W. v New York State Off. of Children & Family Servs., 2018 NY Slip Op 04379, CtApp 6-14-18](#)

INSURANCE LAW, FRAUD, CONTRACT LAW, SECURITIES.

IN THIS ACTION STEMMING FROM PLAINTIFF'S INSURING OF RESIDENTIAL MORTGAGE BACKED SECURITIES ISSUED BY DEFENDANT, PLAINTIFF WAS REQUIRED TO SHOW JUSTIFIABLE RELIANCE AND LOSS CAUSATION FOR ITS FRAUDULENT INDUCEMENT CAUSE OF ACTION, PLAINTIFF'S RECOVERY WAS LIMITED TO THAT DESCRIBED IN THE SOLE REMEDY PROVISION, AND PLAINTIFF WAS NOT ENTITLED TO ATTORNEY'S FEES. [Ambac Assur. Corp. v Countrywide Home Loans, Inc., 2018 NY Slip Op 04686, CtApp 6-27-18](#)

LANDLORD-TENANT, ADMINISTRATIVE LAW.

TENANT'S HUSBAND HAD MOVED TO A NURSING HOME, DIVISION OF HOUSING AND COMMUNITY RENEWAL PROPERLY ONLY COUNTED TENANT'S PORTION OF THE COUPLE'S INCOME TO FIND HER ELIGIBLE FOR RENT CONTROL. [Matter of Brookford, LLC v New York State Div. of Hous. & Community Renewal, 2018 NY Slip Op 04381, CtApp 6-14-18](#)

MEDICAID. ADMINISTRATIVE LAW.

OFFICE OF THE MEDICAID INSPECTOR GENERAL (OMIG) WAS ENTITLED TO THE FULL AMOUNT OF OVERPAYMENT MADE BY MEDICAID TO A METHADONE CLINIC, DESPITE THE INCLUSION OF A LOWER SETTLEMENT AMOUNT IN TWO NOTICES. [West Midtown Mgt. Group, Inc. v State of New York, 2018 NY Slip Op 04666, CtApp 6-26-18](#)

MUNICIPAL LAW.

TOWN PROPERLY DISSOLVED THE EXISTING FIRE PROTECTION DISTRICT AND CREATED TWO NEW FIRE PROTECTION DISTRICTS. [Matter of Waite v Town of Champion, 2018 NY Slip Op 04688, CtApp 6-27-18](#)

MUNICIPAL LAW, ADMINISTRATIVE LAW.

NASSAU COUNTY PROPERLY DETERMINED A POLICE OFFICER WAS NOT ENTITLED TO INDEMNIFICATION FOR CIVIL DAMAGES STEMMING FROM A LAWSUIT BY AN ARRESTEE ALLOWED TO REMAIN IN JAIL AFTER THE OFFICER KNEW HE COULD NOT HAVE COMMITTED THE CRIME. [Matter of Lemma v Nassau County Police Officer Indem. Bd., 2018 NY Slip Op 04382, CtApp 5-14-18](#)

PERSONAL INJURY, COURT OF CLAIMS.

STATE'S FAILURE TO TAKE STEPS TO ADDRESS SAFETY PROBLEMS AT AN INTERSECTION WHICH WAS THE SITE OF FOURTEEN RIGHT-ANGLE COLLISIONS WAS THE PROXIMATE CAUSE OF THE FATAL COLLISION, STATE WAS 100% LIABLE DESPITE VEHICLE AND TRAFFIC LAW VIOLATION ON THE PART OF ONE OF THE DRIVERS. [Brown v State of New York, 2018 NY Slip Op 04029, CtApp 6-7-18](#)

PERSONAL INJURY, CIVIL PROCEDURE,

DAMAGES AWARD IN A NEGLIGENCE SUIT BROUGHT BY A POLICE OFFICER RECEIVING ACCIDENTAL RETIREMENT DISABILITY BENEFITS MUST BE OFFSET BY THOSE BENEFITS AS A COLLATERAL SOURCE PURSUANT TO CPLR 4545. [Andino v Mills, 2018 NY Slip Op 04273, CtApp, 6-12-18](#)

TAX LAW, INDIAN LAW.

REQUIREMENT THAT INDIAN RETAILERS COLLECT AND REMIT TAXES ON CIGARETTES SOLD TO NON-INDIAN CONSUMERS DOES NOT VIOLATE INDIAN LAW OR THE BUFFALO CREEK TREATY OF 1842. [White v Schneiderman, 2018 NY Slip Op 04028, CtApp 6-7-18](#)

FIRST DEPARTMENT

APPEALS.

SUPREME COURT PROPERLY CONSIDERED A RELEASE WHICH DID NOT EXIST AT THE TIME THE CASE WAS REVERSED ON APPEAL AND SENT BACK. [Gramercy Park Residence Corp. v Ellman, 2018 NY Slip Op 04424, First Dept 6-14-18](#)

ATTORNEYS.

CONTINGENCY FEE RETAINER VIOLATED FEDERAL LAW AND WAS VOID, UNJUST ENRICHMENT THEORY NOT AVAILABLE ON EQUITABLE AND EVIDENTIARY GROUNDS. [Sorenson v Winston & Strawn, LLP, 2018 NY Slip Op 04828, First Dept 6-28-18](#)

ATTORNEYS, LEGAL MALPRACTICE, NEGLIGENCE, EDUCATION-SCHOOL LAW.

MOTIONS TO DISMISS LEGAL MALPRACTICE CAUSES OF ACTION AGAINST ORIGINAL COUNSEL FOR FAILING TO FILE A NOTICE OF CLAIM AND AGAINST SUCCESSOR COUNSEL FOR FAILURE TO SEEK LEAVE TO FILE A LATE NOTICE OF CLAIM PROPERLY DENIED. [Liporace v Neimark & Neimark, LLP, 2018 NY Slip Op 04668, First Dept 6-26-18](#)

CIVIL PROCEDURE, EVIDENCE, TRUSTS AND ESTATES.

EVIDENCE INCLUDED IN A SETTLEMENT LETTER PROPERLY ADMITTED AT TRIAL, MISSING WITNESS JURY INSTRUCTION RE A WITNESS LIVING IN FLORIDA WAS ERROR, EXPERT TESTIMONY WHICH RELIED IN PART ON INADMISSIBLE HEARSAY WAS PROPERLY ADMITTED. [Matter of Chi-ChuanFile Wang, 2018 NY Slip Op 04090, First Dept 6-7-18](#)

CONSUMER LAW, FRAUD.

CIVIL ENFORCEMENT COMPLAINT BROUGHT BY THE ATTORNEY GENERAL STATED CAUSES OF ACTION AGAINST DEFENDANT INTERNET SERVICE PROVIDER ALLEGING FRAUDULENT AND DECEPTIVE PRACTICES CONCERNING THE ADVERTISING OF BROADBAND SPEEDS AND ACCESS TO ONLINE CONTENT. [People v Charter Communications, Inc., 2018 NY Slip Op 04644, First Dept 6-21-18](#)

CONTRACT LAW.

PLAINTIFF'S FAILURE TO SATISFY A NON-MATERIAL CONDITION PRECEDENT DID NOT JUSTIFY THE AWARD OF SUMMARY JUDGMENT TO DEFENDANT. [Danco Elec. Contrs., Inc. v Dormitory Auth. of the State of N.Y., 2018 NY Slip Op 03935, First Dept 6-5-18](#)

CONTRACT LAW, UNIFORM COMMERCIAL CODE.

PURPORTED ORAL AGREEMENT TO PURCHASE ART WORKS BY PLAINTIFF PETER BEARD BARRED BY THE STATUTE OF FRAUDS, PAYMENTS ALLEGEDLY MADE TO PLAINTIFF WERE NOT UNEQUIVOCALLY REFERABLE TO THE ALLEGED CONTRACT. [Beard v Chase, 2018 NY Slip Op 04636, First Dept 6-21-18](#)

CRIMINAL LAW.

FAILURE TO EXPLAIN TO THE JURY THAT ACQUITTAL OF ATTEMPTED MURDER BASED ON THE JUSTIFICATION DEFENSE REQUIRED ACQUITTAL OF ASSAULT FIRST WAS REVERSIBLE ERROR, NEW TRIAL ON ASSAULT FIRST ORDERED. [People v Breckenridge, 2018 NY Slip Op 04074, First Dept 6-7-18](#)

CRIMINAL LAW.

PETTY SLAPS DO NOT CONSTITUTE SUBSTANTIAL PAIN, ROBBERY SECOND REDUCED TO ROBBERY THIRD. [People v Ramos, 2018 NY Slip Op 04097, First Dept 6-7-18](#)

CRIMINAL LAW, APPEALS.

DEFENDANT ABSCONDED DURING TRIAL, WAS INVOLUNTARILY RETURNED ON A WARRANT 20 YEARS LATER, AND FILED HIS APPELLATE BRIEF 30 YEARS AFTER CONVICTION, APPEAL DISMISSED FOR FAILURE TO PROSECUTE. [People v Perez, 2018 NY Slip Op 04669, First Dept 6-25-18](#)

CRIMINAL LAW, ATTORNEYS, IMMIGRATION LAW.

DEFENDANT WAS ERRONEOUSLY TOLD BY HIS ATTORNEY A CERTIFICATE OF RELIEF FROM CIVIL DISABILITIES WOULD PROTECT DEFENDANT FROM DEPORTATION, MOTION TO VACATE DEFENDANT'S CONVICTION BY GUILTY PLEA SHOULD HAVE BEEN GRANTED. [People v Rosario, 2018 NY Slip Op 04114, First Dept 6-7-18](#)

CRIMINAL LAW, EVIDENCE.

RECORDING OF DEFENDANT'S PHONE CALL MADE WHILE DETAINED PROPERLY SUBPOENAED BY THE PROSECUTION, MOTION COURT PROPERLY DENIED DEFENDANT'S MOTION TO PRECLUDE THE RECORDING. [People v Holmes, 2018 NY Slip Op 04821, First Dept 6-28-18](#)

CRIMINAL LAW, EVIDENCE.

SEIZURE OF CREDIT CARDS FROM UNDER THE HOOD OF DEFENDANT'S CAR WAS NOT THE RESULT OF AN ILLEGAL SEARCH, POLICE WERE FOLLOWING A PROCEDURE TO SAFEGUARD THE CAR FROM THEFT. [People v Keita, 2018 NY Slip Op 04847, First Dept 6-28-18](#)

FAMILY LAW.

AN ADOPTIVE PARENT MAY BE EQUITABLY ESTOPPED FROM DENYING THAT HER FORMER SAME-SEX PARTNER, WITH WHOM SHE HAD AN AGREEMENT TO ADOPT A CHILD, HAS STANDING TO SEEK JOINT CUSTODY, MATTER REMITTED FOR PRESENTING EVIDENCE ON AND CONSIDERATION OF THAT ISSUE. [Matter of K.G. v C.H., 2018 NY Slip Op 04683, First Dept 6-26-18](#)

FAMILY LAW, CONTRACT LAW.

HUSBAND ENTITLED TO REVOKE HIS CONSENT TO USE OF A FROZEN EMBRYO, EMBRYO AWARDED TO HUSBAND FOR SOLE PURPOSE OF DISPOSAL IN THIS DIVORCE ACTION. [Finkelstein v Finkelstein, 2018 NY Slip Op 03926, First Dept 6-5-18](#)

FRAUD, CONTRACT LAW, LANDLORD-TENANT.

FRAUDULENT INDUCEMENT CAUSE OF ACTION MUST BE BASED UPON MATTERS COLLATERAL TO THE CONTRACT, NOT THE BREACH OF PROVISIONS OF THE CONTRACT ITSELF. [Iken v Bohemian Brethren Presbyt. Church, 2018 NY Slip Op 04830, First Dept 6-28-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

INJURY FROM SIX INCH FALL OF 500 POUND BEAM COVERED BY LABOR LAW 240 (1), POWER TO STOP WORK FOR SAFETY REASONS INSUFFICIENT BASIS FOR LIABILITY UNDER LABOR LAW 200.. [Villanueva v 114 Fifth Ave. Assoc. LLC, 2018 NY Slip Op 03928, First Dept 6-5-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

TWO TO THREE FOOT FALL OF HEAVY STEEL PLATE WHICH WAS BEING HOISTED IS COVERED UNDER LABOR LAW 240 (1), HEIGHT DIFFERENTIAL NOT DE MINIMUS. [Makkieh v Judlau Contr. Inc., 2018 NY Slip Op 04112, First Dept 6-7-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

QUESTION OF FACT WHETHER GENERAL CONTRACTOR LIABLE UNDER LABOR LAW 240 (1) FOR PLAINTIFF'S FALL FROM A LADDER BASED ON CONTRACTUAL SAFETY RESPONSIBILITIES, AND QUESTION OF FACT WHETHER A SUBCONTRACTOR IS LIABLE AS A STATUTORY AGENT OF THE OWNER. [White v 31-01 Steinway, LLC, 2018 NY Slip Op 04279. First Dept 6-12-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF ENTITLED TO SUMMARY JUDGMENT ON HIS LABOR LAW 240 (1) CAUSE OF ACTION, MAKESHIFT LADDER SLID OUT FROM UNDER HIM. [Nolan v Port Auth. of N.Y. & N.J., 2018 NY Slip Op 04293, First Dept 6-12-18](#)

LABOR LAW-CONSTRUCTION LAW, EVIDENCE, PERSONAL INJURY.

PLAINTIFF WAS ENGAGED IN ALTERATION WHEN HE FELL FROM AN A FRAME LADDER AND WAS ENTITLED TO SUMMARY JUDGMENT ON HIS LABOR LAW 240 (1) CAUSE OF ACTION, RECOVERY NOT PRECLUDED ON THE GROUND THAT PLAINTIFF WAS THE ONLY WITNESS OR ON THE GROUND OF COMPARATIVE NEGLIGENCE. [Concepcion v 333 Seventh LLC, 2018 NY Slip Op 04422, First Dept 6-14-18](#)

MEDICAL MALPRACTICE, EVIDENCE.

EDUCATION LAW AND PUBLIC HEALTH LAW DID NOT PROHIBIT RELEASE OF THE IDENTITIES OF NONPARTY PARTICIPANTS IN A QUALITY ASSURANCE REVIEW INVOLVING PLAINTIFF DOCTOR. [Brook v Peconic Bay Med. Ctr., 2018 NY Slip Op 04432, First Dept 6-14-18](#)

MUNICIPAL LAW, PERSONAL INJURY.

CITY HAD ASSIGNED A CROSSING GUARD TO THE CROSSWALK WHERE INFANT PLAINTIFF WAS STRUCK BY A SCHOOL BUS, THE GUARD HAD CALLED IN SICK THAT DAY, NO SPECIAL RELATIONSHIP BETWEEN THE CITY AND THE PLAINTIFFS, CITY'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Ivan D. v Little Richie Bus Serv. Inc., 2018 NY Slip Op 04823, First Dept 6-28-18](#)

PERSONAL INJURY.

BICYCLIST STRUCK BY SIDE OF TRUCK MAKING A LEFT TURN ENTITLED TO SUMMARY JUDGMENT, PLAINTIFF NEED NOT SHOW FREEDOM FROM COMPARATIVE FAULT. [Bermeo v Time Warner Entertainment Co., 2018 NY Slip Op 03927, First Dept 6-5-18](#)

PERSONAL INJURY.

ALLEGATION THAT CHAIN OVER WHICH PLAINTIFF TRIPPED AND FELL WAS OPEN AND OBVIOUS RELATES TO PLAINTIFF'S COMPARATIVE NEGLIGENCE WHICH DOES NOT PRECLUDE SUMMARY JUDGMENT IN PLAINTIFF'S FAVOR. [Derix v Port Auth. of N.Y. & N.J., 2018 NY Slip Op 04507, First Dept 6-19-18](#)

PERSONAL INJURY, DAMAGES, EMPLOYMENT LAW, CIVIL PROCEDURE.

DEFENDANT GENERAL CONTRACTOR NOT ENTITLED TO DISMISSAL OF THE PUNITIVE DAMAGES CLAIM STEMMING FROM A HIGH RISE FIRE, QUESTION OF FACT WHETHER GENERAL CONTRACTOR LIABLE FOR PUNITIVE DAMAGES STEMMING FROM THE ACTS AND OMISSIONS OF ITS SAFETY ENGINEER, NEW MOTION PAPERS SUBMITTED BY PLAINTIFFS BEFORE DEFENDANT'S REPLY PAPERS WERE DUE PROPERLY CONSIDERED. [Borst v Lower Manhattan Dev. Corp., 2018 NY Slip Op 04679, First Dept 6-26-18](#)

PERSONAL INJURY, EVIDENCE.

FAILURE TO PRESERVE VIDEO WHICH WOULD HAVE SHOWN THE CONDITION OF THE FLOOR PRIOR TO PLAINTIFF'S SLIP AND FALL JUSTIFIED THE AWARD OF SUMMARY JUDGMENT TO PLAINTIFF. [Davis v Pathmark, 2018 NY Slip Op 04656, First Dept 6-21-18](#)

PERSONAL INJURY, UTILITIES.

PLAINTIFF'S DECEDENT'S RECKLESSNESS WAS THE SOLE LEGAL CAUSE OF HER DEATH BY ELECTROCUTION BY DOWNED POWER LINES. [Abraham v Consolidated Edison Co. of N.Y., Inc., 2018 NY Slip Op 04517, First Dept 6-19-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

BUS DRIVER REACTED TO AN EMERGENCY, NOT LIABLE FOR SUDDENLY APPLYING THE BRAKES. [Jones v New York City Tr. Auth., 2018 NY Slip Op 04281, First Dept 6-12-18](#)

REAL ESTATE.

EASEMENT COVENANT CONCERNING A THREE INCH ENCROACHMENT WAS A PERMITTED EXCEPTION UNDER THE REAL ESTATE PURCHASE AGREEMENT AND COULD NOT SERVE AS A GROUND FOR DEMONSTRATING SELLER WAS NOT READY, WILLING AND ABLE TO SELL THE PROPERTY ON THE TIME OF THE ESSENCE DATE, SELLER ENTITLED TO SECURITY DEPOSIT AND ATTORNEY'S FEES. [45 Renwick St., LLC v Lionbridge, LLC, 2018 NY Slip Op 04641, First Dept 6-21-18](#)

RETIREMENT AND SOCIAL SECURITY LAW, MUNICIPAL LAW.

TIER 3 POLICE OFFICERS NOT ENTITLED TO SERVICE CREDIT FOR PERIODS OF UNPAID CHILD CARE LEAVE. [Lynch v City of New York, 2018 NY Slip Op 04826, First Dept 6-28-18](#)

TAX LAW. CONSTITUTIONAL LAW.

NEW YORK'S TAX SCHEME DOES NOT VIOLATE THE DORMANT COMMERCE CLAUSE BY DOUBLE TAXATION OF INTANGIBLE INCOME RE PLAINTIFFS WHO ARE STATUTORY RESIDENTS OF NEW YORK AND DOMICILED IN CONNECTICUT. [Edelman v New York State Dept. of Taxation & Fin., 2018 NY Slip Op 04672, First Dept \(6-26-18\)](#)

SECOND DEPARTMENT

ACCOUNT STATED, ATTORNEYS.

ATTORNEY ENTITLED TO THE REMAINDER OF HER FEE UNDER AN ACCOUNT STATED THEORY. [Holtzman v Griffith, 2018 NY Slip Op 04540, Second Dept 6-20-18](#)

ARBITRATION, CONTRACT LAW, FRAUD.

PLAINTIFFS' CONCLUSORY ALLEGATION OF FRAUD DID NOT DEFEAT THE AGREEMENT TO ARBITRATE. [Zafar v Fast Track Leasing, LLC, 2018 NY Slip Op 04774, Second Dept 6-27-18](#)

CIVIL PROCEDURE.

PLAINTIFF JUDICIALLY ESTOPPED FROM IMPOSING A CONSTRUCTIVE TRUST ON REAL PROPERTY, PLAINTIFF STATED HE HAD NO INTEREST IN THE PROPERTY IN PRIOR BANKRUPTCY PROCEEDINGS. [Bihn v Connelly, 2018 NY Slip Op 03956, Second Dept 6-6-18](#)

CIVIL PROCEDURE.

MOTION TO EXTEND THE TIME TO SERVE THE SUMMONS AND COMPLAINT PROPERLY GRANTED, DIFFERENCE BETWEEN 'GOOD CAUSE' AND 'INTEREST OF JUSTICE' CRITERIA EXPLAINED.. [Estate of Fernandez v Wyckoff Hgts. Med. Ctr., 2018 NY Slip Op 04306, Second Dept 6-13-18](#)

CIVIL PROCEDURE.

PLAINTIFF DID NOT DEMONSTRATE DILIGENT EFFORTS TO SERVE DEFENDANT BEFORE USING THE AFFIX AND MAIL PROCEDURE, DEFENDANT'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION SHOULD HAVE BEEN GRANTED. [Faruk v Dawn, 2018 NY Slip Op 04307, Second Dept 6-13-18](#)

CIVIL PROCEDURE.

ABSENCE OF A TRANSLATOR'S AFFIDAVIT CONTRIBUTED TO DEFENDANT'S FAILURE TO MAKE OUT A PRIMA FACIE CASE FOR SUMMARY JUDGMENT. [Gonzalez v Abreu, 2018 NY Slip Op 04309, Second Dept 6-13-18](#)

CIVIL PROCEDURE.

DEFENDANT'S MOTION TO VACATE A DEFAULT JUDGMENT SHOULD HAVE BEEN GRANTED, DEFENDANT WAS NOT SERVED WITH THE SUMMONS BY PERSONAL DELIVERY AND MOVED TO VACATE WITHIN ONE YEAR OF LEARNING OF THE SUIT.. [Benchmark Farm, Inc. v Red Horse Farm, LLC, 2018 NY Slip Op 04522, Second Dept 6-20-18](#)

CIVIL PROCEDURE.

WHERE THERE IS NO PREJUDICE TO A DEFENDANT, PLAINTIFF'S MOTION FOR A VOLUNTARY DISCONTINUANCE WITHOUT PREJUDICE SHOULD BE GRANTED. [Kondaur Capital Corp. v Reilly, 2018 NY Slip Op 04707, Second Dept 6-27-18](#)

CIVIL PROCEDURE.

PARTY MOVING TO PRECLUDE THE OTHER PARTY FROM PRESENTING EVIDENCE BASED UPON VIOLATIONS OF DISCOVERY ORDERS HAS THE BURDEN OF PROVING WILLFUL OR CONTUMACIOUS CONDUCT, BURDEN NOT MET HERE. [Cannon v 111 Fulton St. Condominium, Inc., 2018 NY Slip Op 04523, Second Dept 6-20-18](#)

CIVIL PROCEDURE.

ALTHOUGH SUPREME COURT PROPERLY PRECLUDED DEFENDANT FROM PRESENTING EVIDENCE AT TRIAL BECAUSE OF DISCOVERY ORDER VIOLATIONS, SUPREME COURT ABUSED ITS DISCRETION BY STRIKING DEFENDANT'S ANSWER. [Chowdhury v Hudson Val. Limousine Serv., LLC, 2018 NY Slip Op 04526, Second Dept 6-20-18](#)

CIVIL PROCEDURE.

STATUTORY CRITERIA OF CPLR 3216 NOT MET, COURT SHOULD NOT HAVE DISMISSED ACTION FOR NEGLECT TO PROSECUTE. [Goetz v Public Serv. Truck Renting, Inc., 2018 NY Slip Op 04534, Second Dept 6-20-18](#)

CIVIL PROCEDURE, APPEALS.

MOTION FOR A CHANGE OF VENUE ON DISCRETIONARY GROUNDS WAS MADE IN THE WRONG COUNTY, ISSUE PROPERLY HEARD ON APPEAL ALTHOUGH NOT RAISED BELOW. [Fensterman v Joseph, 2018 NY Slip Op 04532, Second Dept 6-20-18](#)

CIVIL PROCEDURE, MUNICIPAL LAW.

DECLARATORY JUDGMENT ACTION ATTACKING THE PROCEDURE USED TO ENACT LEGISLATION IS SUBJECT TO THE FOUR-MONTH ARTICLE 78 STATUTE OF LIMITATIONS, DECLARATORY JUDGMENT ACTION CHALLENGING THE LEGISLATION ITSELF IS SUBJECT

TO THE SIX-YEAR STATUTE OF LIMITATIONS. [Village of Islandia v County of Suffolk, 2018 NY Slip Op 04025, Second Dept 6-6-18](#)

CONTRACT LAW, CIVIL PROCEDURE, COOPERATIVES.

CONTINUING WRONG DOCTRINE TOLLED THE STATUTE OF LIMITATIONS IN THIS BREACH OF CONTRACT AND BREACH OF WARRANTY OF HABITABILITY ACTION BASED UPON THE ALLEGED FAILURE TO REPAIR DAMAGE TO A COOPERATIVE APARTMENT. [Garron v Bristol House, Inc., 2018 NY Slip Op 04533, Second Dept 6-20-18](#)

COURT OF CLAIMS, MEDICAL MALPRACTICE, PERSONAL INJURY, EVIDENCE.

FAILURE TO PLEAD A JURISDICTIONAL DEFECT AS A DEFENSE WAIVED THE DEFECT; WITHOUT EXPERT OPINION EVIDENCE, THE MEDICAL MALPRACTICE CAUSE OF ACTION WAS NOT PROVED. [Whitfield v State of New York, 2018 NY Slip Op 04773, Second Dept 6-27-18](#)

CRIMINAL LAW.

CRIME OF ATTEMPTED ASSAULT IN THE SECOND DEGREE IS A LEGAL IMPOSSIBILITY. [People v Jones, 2018 NY Slip Op 04565, Second Dept 6-20-18](#)

CRIMINAL LAW.

THERE WAS GOOD CAUSE FOR THE 31 YEAR DELAY IN INDICTING DEFENDANT FOR MURDER. [People v Mattison, 2018 NY Slip Op 04569, Second Dept 6-20-18](#)

CRIMINAL LAW.

FAILURE TO PROVIDE NOTICE TO COUNSEL OF THE CONTENTS OF JURY NOTES AND FAILURE TO MAKE A RECORD DEMONSTRATING MEANINGFUL NOTICE REQUIRED REVERSAL AND A NEW TRIAL. [People v Gedeon, 2018 NY Slip Op 04751, Second Dept 6-27-18](#)

CRIMINAL LAW, APPEALS.

TAXI LICENSES ARE NOT PROPERTY WITHIN THE MEANING OF THE GRAND LARCENY STATUTE, ALTHOUGH THE LEGAL INSUFFICIENCY ARGUMENT WAS NOT PRESERVED, DEFENDANT'S GRAND LARCENY CONVICTION WAS VACATED IN THE INTEREST OF JUSTICE. [People v Ishtiaq, 2018 NY Slip Op 04752,, Second Dept 6-27-18](#)

CRIMINAL LAW, APPEALS.

DEFENDANT'S WAIVER OF HIS RIGHT TO APPEAL DEEMED INVALID, CRITERIA EXPLAINED. [People v Latham, 2018 NY Slip Op 04753, Second Dept 6-27-18](#)

CRIMINAL LAW, APPEALS, EVIDENCE.

CHILD PORNOGRAPHY CONVICTIONS REVERSED AS AGAINST THE WEIGHT OF THE EVIDENCE, DEFENDANT DID NOT WAIVE HIS RIGHT TO CHALLENGE THE VOLUNTARINESS OF THE STATEMENT AT TRIAL BY WAIVING A PRE-TRIAL HUNTLEY HEARING (SECOND DEPT). [People v Vasquez, 2018 NY Slip Op 04761, Second Dept 6-27-18](#)

CRIMINAL LAW, EVIDENCE.

DEFENDANT FIRED INTO THE CAR AHEAD DURING A HIGH SPEED CHASE, DEPRAVED INDIFFERENCE MURDER AND ASSAULT CONVICTIONS AFFIRMED, TESTIMONY FROM THE FIRST TRIAL BY A WITNESS WHO HAD SINCE BEEN DEPORTED PROPERLY ADMITTED. [People v Williams, 2018 NY Slip Op 04015, Second Dept 6-6-18](#)

EDUCATION-SCHOOL LAW, PERSONAL INJURY.

DEFENDANTS SCHOOL BUS COMPANY AND BOARD OF EDUCATION DID NOT HAVE NOTICE CHILDREN WHO INJURED INFANT PLAINTIFF ON THE SCHOOL BUS WERE CAPABLE OF DANGEROUS CONDUCT, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Champagne v Lonero Tr., Inc., 2018 NY Slip Op 03959, Second Dept 6-6-18](#)

EDUCATION-SCHOOL LAW, PERSONAL INJURY, EVIDENCE.

SCHOOL DISTRICT'S MOTION FOR SUMMARY JUDGMENT IN THIS NEGLIGENT SUPERVISION PLAYGROUND ACCIDENT CASE PROPERLY DENIED, PLAINTIFFS' MOTION FOR A NEGATIVE INFERENCE JURY CHARGE BASED UPON THE SCHOOL DISTRICT'S DESTRUCTION OF VIDEO SURVEILLANCE EVIDENCE PROPERLY GRANTED. [SM v Plainedge Union Free Sch. Dist., 2018 NY Slip Op 04370, Second Dept 6-13-18](#)

EMPLOYMENT LAW, LABOR LAW, ATTORNEYS.

ALTHOUGH PLAINTIFF LOST HER LABOR LAW 740 WRONGFUL TERMINATION TRIAL, SUPREME COURT SHOULD NOT HAVE AWARDED ATTORNEY'S FEES TO DEFENDANT, PLAINTIFF'S CLAIM WAS NOT BASELESS. [Berde v North Shore- Long Is. Jewish Health Sys., Inc., 2018 NY Slip Op 03955, Second Dept 6-5-18](#)

ENVIRONMENTAL LAW, MUNICIPAL LAW.

LOCAL LAW REQUIRING A PERMIT FOR THE TRANSPORT OF WASTE WITHIN THE COUNTY WAS NOT PREEMPTED BY STATE LAW (WHICH ALSO REQUIRED A PERMIT) AND DID NOT VIOLATE THE COMMERCE CLAUSE, PETITIONER PROPERLY FINED FOR FAILURE TO OBTAIN A COUNTY PERMIT. [Matter of MVM Constr., LLC v Westchester County Solid Waste Commn., 2018 NY Slip Op 04731, Second Dept 6-27-18](#)

EVIDENCE.

SURVEILLANCE VIDEO PROPERLY EXCLUDED, IT WAS NOT AUTHENTICATED. [Torres v Hickman, 2018 NY Slip Op 04372, Second Dept 6-13-18](#)

FAMILY LAW, ATTORNEYS, APPEALS.

FAMILY COURT SHOULD NOT HAVE RELIEVED MOTHER'S COUNSEL WITHOUT NOTICE TO MOTHER, THEREFORE FAMILY COURT SHOULD NOT HAVE ENTERED A DEFAULT JUDGMENT UPON MOTHER'S FAILURE TO APPEAR, BECAUSE THE DEFAULT JUDGMENT SHOULD NOT HAVE BEEN ENTERED, APPEAL WAS THE PROPER REMEDY. [Matter of Menghi v Trotta-Menghi, 2018 NY Slip Op 04324, Second Dept 6-13-18](#)

FAMILY LAW, CIVIL PROCEDURE.

COURT ATTORNEY REFEREE WAS NOT AUTHORIZED TO DETERMINE A CONTESTED FAMILY OFFENSE PETITION OR CUSTODY AND VISITATION ISSUES. [Matter of Rose v Simon, 2018 NY Slip Op 04736, Second Dept 6-27-18](#)

FAMILY LAW, IMMIGRATION LAW.

FAMILY COURT SHOULD NOT HAVE DENIED THE PETITION RE THE CHILD'S SPECIAL IMMIGRANT JUVENILE STATUS WITHOUT HOLDING A HEARING TO DETERMINE WHETHER REUNITING THE CHILD WITH MOTHER WAS NOT VIABLE DUE TO NEGLECT OR ABANDONMENT. [Matter of A.M.G. v Gladis A.G., 2018 NY Slip Op 04321, Second Dept 6-13-18](#)

FRAUD. CIVIL PROCEDURE.

SIX YEAR STATUTE OF LIMITATIONS FOR FRAUD APPLIES TO A CONVERSION ACTION, ALTHOUGH THE FRAUD BEGAN IN 1998 PLAINTIFF COULD NOT HAVE BECOME AWARE OF IT UNTIL 2013, PLAINTIFF'S ACTION IS TIMELY. [Monteleone v Monteleone, 2018 NY Slip Op 04317, Second Dept 6-13-18](#)

FORECLOSURE, CIVIL PROCEDURE, APPEALS.

BANK WAS REQUIRED TO GIVE DEFENDANT NOTICE OF ITS MOTIONS FOR AN ORDER OF REFERENCE AND JUDGMENT OF FORECLOSURE BECAUSE DEFENDANT'S DEFAULT OCCURRED MORE THAN A YEAR BEFORE, DEFENDANT'S MOTION TO VACATE SHOULD HAVE BEEN GRANTED, FAILURE OF NOTICE PROPERLY RAISED FOR THE FIRST TIME ON APPEAL. [Citimortgage, Inc. v Reese, 2018 NY Slip Op 04527, Second Dept 6-20-18](#)

FORECLOSURE, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW, EVIDENCE.

PROOF OF MAILING OF THE REQUIRED NOTICE DEFICIENT, BANK'S MOTION FOR SUMMARY JUDGMENT IN THIS FORECLOSURE ACTION SHOULD NOT HAVE BEEN GRANTED. [US Bank N.A. v Sims, 2018 NY Slip Op 04374, Second Dept 6-13-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

QUESTION OF FACT WHETHER LADDERS WERE AVAILABLE, PLAINTIFF FELL WHEN AN INVERTED BUCKET HE WAS STANDING ON TIPPED, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IN THIS LABOR LAW 240 (1) ACTION PROPERLY DENIED. [Lorde v Margaret Tietz Nursing & Rehabilitation Ctr., 2018 NY Slip Op 04542, Second Dept 6-20-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

KNEE INJURY CAUSED BY CARRYING A HEAVY STEEL BEAM DOWN STAIRS IS NOT A COVERED ACCIDENT UNDER LABOR LAW 240 (1). [Sullivan v New York Athletic Club of City of N.Y., 2018 NY Slip Op 04590, Second Dept 6-20-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

GENERAL CONTRACTOR DID NOT EXERCISE SUFFICIENT SUPERVISORY CONTROL OVER PLAINTIFF'S WORK TO BE LIABLE UNDER LABOR LAW 200 OR COMMON LAW NEGLIGENCE. [Sullivan v New York Athletic Club of City of N.Y., 2018 NY Slip Op 04591, Second Dept 6-20-18](#)

MUNICIPAL LAW, CIVIL PROCEDURE.

PETITIONER WAS REQUIRED TO FILE A NOTICE OF CLAIM PURSUANT TO CPLR 9802 IN AN ACTION SEEKING A DECLARATORY JUDGMENT THAT A LOCAL LAW WAS INVALID, DECLARATORY JUDGMENT CAUSE OF ACTION SHOULD HAVE BEEN DISMISSED. [Matter of BT Holdings, LLC v Village of Chester, 2018 NY Slip Op 04544, Second Dept 6-20-18](#)

MUNICIPAL LAW, IMMUNITY, PERSONAL INJURY.

CITY LIABLE FOR STABBING DEATH OF PLAINTIFF'S DECEDENT IN PARKING GARAGE, SECURITY INADEQUATE, HISTORY OF CRIMINAL ACTIVITY, BUT CITY SHOULD NOT HAVE BEEN HELD 100% LIABLE. [Granata v City of White Plains, 2018 NY Slip Op 03964, Second Dept 6-6-18](#)

MUNICIPAL LAW, IMMUNITY, PERSONAL INJURY.

NO SPECIAL RELATIONSHIP BETWEEN PLAINTIFF'S DECEDENT AND THE POLICE DEPARTMENT, PLAINTIFF'S DECEDENT WAS KILLED BY HER HUSBAND SHORTLY AFTER SHE REPORTED TO THE POLICE THAT HER HUSBAND HAD CONTACTED HER IN VIOLATION OF AN ORDER OF PROTECTION. [Axt v Hyde Park Police Dept., 2018 NY Slip Op 04298, Second Dept 6-13-18](#)

MUNICIPAL LAW, PERSONAL INJURY.

BENCH TRIAL VERDICT REVERSED, COMMON CARRIER NOT LIABLE FOR BUS PASSENGER'S SLIP AND FALL ON BLACK ICE AFTER STEPPING OFF THE BUS. [Guzman v New York City Tr. Auth., 2018 NY Slip Op 04310, Second Dept 6-13-18](#)

MUNICIPAL LAW, PERSONAL INJURY.

MOTION TO AMEND NOTICE OF CLAIM TO CORRECT THE ADDRESS OF THE ACCIDENT TWO YEARS AFTER THE CLAIM ACCRUED PROPERLY DENIED, PLAINTIFF DID NOT SHOW DEFENDANT WAS NOT PREJUDICED BY THE WRONG ADDRESS. [Jenkins v New York City Hous. Auth., 2018 NY Slip Op 04313, Second Dept 6-13-18](#)

MUNICIPAL LAW, PERSONAL INJURY.

APPLICATION FOR LEAVE TO FILE A LATE NOTICE OF CLAIM SHOULD HAVE BEEN GRANTED, ALTHOUGH THE EXCUSE WAS NOT REASONABLE, THE NOTICE WAS ONLY TWO WEEKS LATE AND THERE WAS NO SHOWING DEFENDANT WAS PREJUDICED. [Matter of Ramos v New York City Hous. Auth., 2018 NY Slip Op 04547, Second Dept 6-20-18](#)

MUNICIPAL LAW, PERSONAL INJURY, IMMUNITY.

COMPLAINT STATED A NEGLIGENCE CAUSE OF ACTION AGAINST THE TOWN STEMMING FROM THE SHOOTING DEATH OF PLAINTIFF'S DECEDENT BY HER LIVE-IN COMPANION, THE COMPLAINT ALLEGED A SPECIAL RELATIONSHIP BETWEEN THE TOWN AND PLAINTIFF'S DECEDENT AND THE TOWN DID NOT DEMONSTRATE THAT GOVERNMENTAL IMMUNITY APPLIED AS A MATTER OF LAW. [Santaiti v Town of Ramapo, 2018 NY Slip Op 04584, Second Dept 6-20-18](#)

MUNICIPAL LAW, REAL PROPERTY TAX LAW.

PROPERTY USED BY THE TOWN AS A PUBLIC PARK WAS NOT SUBJECT TO COUNTY TAX. [Town of N. Hempstead v County of Nassau, 2018 NY Slip Op 04021, Second Dept 6-6-18](#)

PERSONAL INJURY.

BURDENS OF PROOF IN SUMMARY JUDGMENT MOTIONS AND THE APPLICABILITY OF COMPARATIVE NEGLIGENCE AS AN AFFIRMATIVE DEFENSE CAREFULLY EXPLAINED IN THIS REAR-END COLLISION CASE INVOLVING THREE CARS. [Poon v Nisanov, 2018 NY Slip Op 04365, Second Dept 6-13-18](#)

PERSONAL INJURY.

PLAINTIFF INJURED WHEN LAWN CHAIR SANK INTO A HOLE CONCEALED BY GRASS, QUESTION OF FACT WHETHER LANDOWNER HAD ACTUAL NOTICE OF THE CONDITION. [Mustafaj v Macri, 2018 NY Slip Op 04554, Second Dept 6-20-18](#)

PERSONAL INJURY, LANDLORD-TENANT.

TENANT WAS INJURED TRYING TO MOVE A HEAVY RADIATOR THAT HAD BEEN LEFT OUTSIDE HIS APARTMENT FOR MONTHS, DEFENDANT LANDLORD'S MOTION FOR SUMMARY JUDGMENT CLAIMING PLAINTIFF'S CONDUCT WAS THE SOLE PROXIMATE CAUSE OF THE ACCIDENT WAS PROPERLY DENIED. [Munoz v Kiryat Stockholm, LLC, 2018 NY Slip Op 04552, Second Dept 6-20-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

UTILITY BOX RECESSED IN CITY SIDEWALK WAS OPEN AND OBVIOUS AND NOT INHERENTLY DANGEROUS, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE PROPERLY GRANTED. [Graffino v City of New York, 2018 NY Slip Op 04702, Second Dept 6-27-18](#)

PERSONAL INJURY, MUNICIPAL LAW, CIVIL PROCEDURE.

SUMMARY JUDGMENT SHOULD NOT HAVE BEEN AWARDED TO PLAINTIFF IN THIS SIDEWALK SLIP AND FALL CASE ON A THEORY RAISED IN REPLY PAPERS, CITY DEFENDANTS DID NOT DEMONSTRATE THEY HAD NO NOTICE OF THE CONDITION OR DID NOT CREATE THE CONDITION, EVIDENCE SUBMITTED BY THE CITY DEFENDANTS IN REPLY PAPERS COULD NOT BE CONSIDERED. [Troia v City of New York, 2018 NY Slip Op 04770, Second Dept 6-27-18](#)

REAL ESTATE.

DEFENDANT SELLER DID NOT DEMONSTRATE PLAINTIFF BUYER COULD NOT BE READY, WILLING AND ABLE TO CLOSE ON THE PROPERTY BY POINTING TO REQUIREMENTS IN THE COMMITMENT LETTER, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IN THIS SPECIFIC PERFORMANCE ACTION PROPERLY DENIED. [Mendoza v Sterling Props., Inc., 2018 NY Slip Op 04543, Second Dept 6-20-18](#)

REAL PROPERTY, CIVIL PROCEDURE.

PLAINTIFFS' MOTION FOR LEAVE TO REPLEAD WITH AN AMENDED COMPLAINT ALLEGING DEFENDANTS' PLANTING AND WATERING ON DEFENDANTS' SIDE OF PLAINTIFFS' RETAINING WALL CONSTITUTED NEGLIGENCE, TRESPASS AND A PRIVATE NUISANCE SHOULD HAVE BEEN GRANTED. [Chaikin v Karipas, 2018 NY Slip Op 04525, Second Dept 6-20-18](#)

UNJUST ENRICHMENT.

THE RELATIONSHIP BETWEEN PLAINTIFF AND DEFENDANT WAS NOT CLOSE ENOUGH TO ALLOW AN UNJUST ENRICHMENT ACTION, DEFENDANT'S ACTIONS COULD NOT HAVE CAUSED PLAINTIFF'S RELIANCE OR INDUCEMENT. [Crescimanni v Trovato, 2018 NY Slip Op 04529, Second Dept 6-20-18](#)

THIRD DEPARTMENT

ADMINISTRATIVE LAW.

COMMISSIONER OF HEALTH'S DENIAL OF AN APPLICATION TO THE NYS MEDICAL INDEMNITY FUND FOR \$12,000 TO PAY FOR A LIFT FOR A DISABLED CHILD WAS ARBITRARY AND CAPRICIOUS. [Matter of Anson v Zucker, 2018 NY Slip Op 04063, Third Dept 6-7-18](#)

CIVIL PROCEDURE, EVIDENCE.

PLAINTIFFS' MOTION FOR A CONTINUANCE TO ALLOW THEIR EXPERT TO COMPLETE HIS TESTIMONY IN THIS MEDICAL MALPRACTICE ACTION SHOULD HAVE BEEN GRANTED. [Normandin v Bell, 2018 NY Slip Op 04053, Third Dept 6-7-18](#)

CIVIL PROCEDURE, MEDICAL MALPRACTICE.

ANNOUNCING A NEW RULE GOVERNING THE DISCLOSURE OF PROSPECTIVE EXPERT WITNESS'S QUALIFICATIONS IN MEDICAL MALPRACTICE ACTIONS, THE THIRD DEPARTMENT REQUIRES COMPLETE DISCLOSURE OF THE QUALIFICATIONS, EVEN IF SUCH DISCLOSURE FACILITATES THE IDENTIFICATION OF THE WITNESS. [Kanaly v DeMartino, 2018 NY Slip Op 04060, Third Dept 6-7-18](#)

CONTRACT LAW.

QUESTION OF FACT WHETHER AN ORAL CONTRACT WAS FORMED. [Carroll v Rondout Yacht Basin, Inc., 2018 NY Slip Op 04051, Third Dept 6-7-18](#)

CRIMINAL LAW.

BECAUSE A MATERIAL INDUCEMENT TO DEFENDANT'S GUILTY PLEA WAS NULLIFIED THE PLEA MUST BE VACATED. [People v Brewington, 2018 NY Slip Op 04035, Third Dept 6-7-18](#)

CRIMINAL LAW.

COUNTY COURT SHOULD HAVE INQUIRED INTO THE REASON FOR DEFENDANT'S FAILURE TO APPEAR AT SENTENCING, SENTENCE VACATED. [People v Sassenscheid, 2018 NY Slip Op 04037, Third Dept 6-7-18](#)

CRIMINAL LAW.

COURT DID NOT MAKE SURE DEFENDANT WAS AWARE OF THE RIGHTS HE WAS GIVING UP BY PLEADING GUILTY, PLEA VACATED. [People v Holmes, 2018 NY Slip Op 04039, Third Dept 6-7-18](#)

CRIMINAL LAW.

DEFENSE COUNSEL'S FOR CAUSE CHALLENGE TO A JUROR SHOULD HAVE BEEN GRANTED. [People v Horton, 2018 NY Slip Op 04040, Third Dept 6-7-18](#)

CRIMINAL LAW, APPEALS.

DEFENDANT DID NOT HAVE STATUTORY AUTHORITY TO APPEAL COUNTY COURT'S RULING GIVING THE DISTRICT ATTORNEY ACCESS TO A PRE-SENTENCE INVESTIGATION REPORT (PSI) RELATING TO DEFENDANT'S PRIOR CONVICTION. [People v Young, 2018 NY Slip Op 04596, Third Dept 6-21-18](#)

CRIMINAL LAW, ATTORNEYS.

WHEN DEFENDANT TOLD THE COURT AT HIS FIRST TWO APPEARANCES THAT HE WISHED TO TESTIFY AT THE GRAND JURY, THE COURT SHOULD HAVE RECOGNIZED THAT DEFENDANT WAS ATTEMPTING TO REPRESENT HIMSELF AND CONDUCTED A SEARCHING INQUIRY TO MAKE SURE DEFENDANT UNDERSTOOD THE RISKS. [People v Trapani, 2018 NY Slip Op 04041, Third Dept 6-7-18](#)

CRIMINAL LAW, ATTORNEYS.

WHETHER TO PRESENT PSYCHIATRIC EVIDENCE IS A STRATEGIC DECISION FOR DEFENSE COUNSEL, NOT DEFENDANT; DEFENSE COUNSEL DID NOT RELINQUISH HIS AUTHORITY TO DECIDE WHETHER TO REQUEST A MISTRIAL MERELY BY CONFERRING WITH THE DEFENDANT AND AGREEING WITH THE DEFENDANT'S REQUEST TO PROCEED; IT WAS NOT ERROR TO HANDCUFF DEFENDANT AND TO HAVE LAW ENFORCEMENT OFFICERS SEATED NEAR THE DEFENDANT DURING THE TRIAL. [People v Diaz, 2018 NY Slip Op 04389, Third Dept 6-14-18](#)

CRIMINAL LAW, CIVIL PROCEDURE.

PETITIONER ENTITLED TO RENEWED STATUTE OF LIMITATIONS UNDER THE SON OF SAM LAW TO SEEK FUNDS IN THE CONVICTED MURDERER'S INMATE ACCOUNT, THE INMATE'S EARNED AND UNEARNED INCOME ARE AVAILABLE FOR RECOVERY. [Matter of New York State Off. of Victim Servs. v Vigo, 2018 NY Slip Op 04608, Third Dept 6-21-18](#)

CRIMINAL LAW, EVIDENCE.

UNDER A WEIGHT OF THE EVIDENCE ANALYSIS, THE MAJORITY DETERMINED THE EVIDENCE OF SERIOUS PHYSICAL INJURY IN THIS ASSAULT FIRST PROSECUTION WAS INSUFFICIENT. [People v Marshall, 2018 NY Slip Op 04038, Third Dept 6-7-18](#)

CRIMINAL LAW, EVIDENCE.

PEOPLE SHOULD HAVE PROVIDED NOTICE OF BURGLARY VICTIM'S IDENTIFICATION OF DEFENDANT ON THE POLICE DEPARTMENT'S FACEBOOK PAGE AFTER THE VICTIM HAD BEEN GIVEN THE DEFENDANT'S NAME BY THE POLICE, ERROR HARMLESS HOWEVER. [People v Cole, 2018 NY Slip Op 04391, Third Dept 6-14-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

DECISION WITHHELD AND PEOPLE DIRECTED TO PROVIDE DEFENSE APPELLATE COUNSEL WITH TRIAL EXHIBITS COUNSEL WAS UNABLE TO ACCESS. [People v Haggray, 2018 NY Slip Op 04036, Third Dept 6-7-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

DEFENDANT DID NOT MOVE TO SUPPRESS INFORMATION OBTAINED FROM HIS CELL PHONE, COUNTY COURT ERRED IN SUPPRESSING THAT EVIDENCE, SUPPRESSION MOTION SHOULD HAVE BEEN DENIED. [People v Moore, 2018 NY Slip Op 04042, Third Dept 6-7-18](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

DEFENDANT DID NOT HAVE NOTICE OF OR A CHANCE TO OBJECT TO A 20 POINT ASSESSMENT MADE BY THE JUDGE SUA SPONTE, NEW HEARING ORDERED. [People v Maus, 2018 NY Slip Op 04796, Third Dept 6-28-18](#)

DEFAMATION, MALICIOUS PROSECUTION.

DEFAMATION AND MALICIOUS PROSECUTION CAUSES OF ACTION SHOULD NOT HAVE BEEN DISMISSED, ELEMENTS EXPLAINED. [Higgins v Goyer, 2018 NY Slip Op 04067, Third Dept 6-7-18](#)

DISCIPLINARY HEARINGS (INMATES).

PETITIONER WAS NEVER INFORMED OF HIS RIGHT TO CALL WITNESSES, DETERMINATION ANNULLED AND RECORD EXPUNGED. [Matter of Ballard v Annucci, 2018 NY Slip Op 04625, Third Dept 6-21-18](#)

DISCIPLINARY HEARINGS (INMATES).

PRISON'S FAILURE TO COMPLY WITH DEPARTMENT OF CORRECTIONS DIRECTIVE RE OPENING INMATES' MAIL REQUIRED ANNULMENT OF THE MISBEHAVIOR DETERMINATION. [Matter of Sudler v Annucci, 2018 NY Slip Op 04629, Third Dept 6-21-18](#)

EDUCATION-SCHOOL LAW, CONTRACT LAW, CONSTITUTIONAL LAW.

PROVISION OF THE EDUCATION LAW WHICH ALLOWS THE APPOINTMENT OF A RECEIVER TO TAKE OVER ALLEGEDLY FAILING SCHOOLS DOES NOT VIOLATE THE CONTRACT CLAUSE OF THE US CONSTITUTION. [Matter of Buffalo Teachers Fedn., Inc. v Elia, 2018 NY Slip Op 04061, Third Dept 6-7-18](#)

FAMILY LAW.

DURATION OF ORDERS OF PROTECTION FOR A BIOLOGICAL GRANDFATHER AND A STEPGRANDFATHER EXPLAINED. [Matter of Makayla I. \(Caleb K.\), 2018 NY Slip Op 04047, Third Dept 6-7-18](#)

FAMILY LAW.

SUSPENDED JUDGMENT COMMITTING RESPONDENT TO JAIL FOR FAILURE TO MAKE CHILD SUPPORT PAYMENTS SHOULD NOT HAVE BEEN REVOKED WITHOUT A HEARING. [Matter of Madison County Support Collection Unit v Campbell, 2018 NY Slip Op 04049, Third Dept 6-7-18](#)

FAMILY LAW, ATTORNEYS.

MOTHER DEMONSTRATED FATHER WILLFULLY VIOLATED THE SEPARATION AGREEMENT AND WAS THEREFORE ENTITLED TO ATTORNEY'S FEES. [Matter of Shkaf v Shkaf, 2018 NY Slip Op 04052, Third Dept 6-7-18](#)

FAMILY LAW, EVIDENCE.

CHILD'S OUT OF COURT STATEMENTS ABOUT ABUSE BY STEPFATHER SUFFICIENTLY CORROBORATED. [Matter of Cory O. v Katie P., 2018 NY Slip Op 04046, Third Dept 6-7-18](#)

INSURANCE LAW, CIVIL PROCEDURE, CRIMINAL LAW, PERSONAL INJURY.

ALTHOUGH THE INSURER COULD DISCLAIM COVERAGE FOR ANY INJURIES CAUSED BY THE INSURED ASSAILANT'S INTENTIONAL CRIMINAL ACTS UNDER THE DOCTRINE OF COLLATERAL ESTOPPEL, THE INSURER COULD NOT DISCLAIM COVERAGE FOR ANY SUBSEQUENT INJURIES THAT MAY HAVE BEEN CAUSED BY THE ASSAILANT'S NEGLIGENCE. [State Farm Fire & Cas. Co. v Chauncey McCabe, 2018 NY Slip Op 04416, Third Dept 6-14-18](#)

INSURANCE LAW, CONTRACT LAW.

DATE OF LOSS DEEMED TO BE DATE THE CLAIM FOR A STOLEN CAR WAS DENIED, NOT THE DATE THE CAR WAS STOLEN. [Mercedes-Benz Fin. Servs. USA, LLC v Allstate Ins. Co., 2018 NY Slip Op 04064, Third Dept 6-7-18](#)

MUNICIPAL LAW, IMMUNITY.

PLAINTIFFS DID NOT DEMONSTRATE A SPECIAL RELATIONSHIP WITH THE TOWN, TOWN WAS NOT LIABLE FOR FLOODING CAUSED BY LANDSLIDE. [Szydlowski v Town of Bethlehem, 2018 NY Slip Op 04066, Third Dept 6-7-18](#)

MUNICIPAL LAW, CIVIL PROCEDURE.

STATUTE OF LIMITATIONS FOR COMMENCING AN ACTION AGAINST THE MUNICIPALITY TOLLED WHEN PLAINTIFF MOVED FOR LEAVE TO FILE A LATE NOTICE OF CLAIM. [Kulon v Liberty Fire Dist., 2018 NY Slip Op 04062, Third Dept 6-7-18](#)

PERSONAL INJURY.

QUESTIONS OF FACT ABOUT THE APPLICABILITY OF THE EMERGENCY DOCTRINE IN THIS TRAFFIC ACCIDENT CASE, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Brust v McDaniel, 2018 NY Slip Op 04069, Third Dept 6-7-18](#)

PERSONAL INJURY.

QUESTION OF FACT WHETHER A FLOOR MAT NINE-SIXTEENTHS OF AN INCH THICK CREATED A TRIPPING HAZARD IN THIS SLIP AND FALL CASE. [Facteau v Mediquest Corp., 2018 NY Slip Op 04631, Third Dept 6-21-18](#)

PERSONAL INJURY.

DEFECT IN ROADWAY WHICH ALLEGEDLY CAUSED PLAINTIFF TO FALL OFF HER BICYCLE OVER THE HANDLEBARS WAS PROPERLY DEEMED TRIVIAL AND NOT ACTIONABLE. [Gami v Cornell Univ., 2018 NY Slip Op 04812, Third Dept 6-28-18](#)

PERSONAL INJURY, CIVIL PROCEDURE.

DEFENDANT OFFERED TWO NON-NEGLIGENT EXPLANATIONS FOR THE REAR-END COLLISION SUFFICIENT TO DEFEAT PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT, A WAIVED AFFIRMATIVE DEFENSE MAY BE CONSIDERED IN OPPOSITION TO SUMMARY

JUDGMENT WHERE THE MOVING PARTY IS NOT SURPRISED AND HAS AN OPPORTUNITY TO RESPOND. [Warner v Kain, 2018 NY Slip Op 04630, Third Dept 6-21-18](#)

REAL PROPERTY.

DEFENDANT PROPERTY OWNER DID NOT REBUT THE PRESUMPTION THAT THE DEED WAS DELIVERED AND ACCEPTED ON THE DATE OF THE DEED IN THIS SLIP AND FALL CASE, THE PLAINTIFF'S ALLEGED FALL OCCURRED THE DAY AFTER THE DATE OF THE DEED. [Wisdom v Reeco, LLC, 2018 NY Slip Op 04628, Third Dept 6-21-18](#)

RETIREMENT AND SOCIAL SECURITY LAW.

POLICE OFFICER'S INJURY WHEN HELPING LIFT A HEAVY DECEASED PERSON WAS NOT THE RESULT OF AN ACCIDENT WITHIN THE MEANING OF THE RETIREMENT AND SOCIAL SECURITY LAW. [Matter of Iovino v DiNapoli, 2018 NY Slip Op 04814, Third Dept 6-28-18](#)

SOCIAL SERVICES LAW, CIVIL PROCEDURE.

IN DETERMINING ELIGIBILITY FOR PUBLIC ASSISTANCE, THE APPLICANT'S EQUITY IN AN AUTOMOBILE, NOT ITS FAIR MARKET VALUE, MUST BE CONSIDERED; THE APPLICANT WAS ENTITLED TO DISCOVERY TO DETERMINE HOW MANY OTHERS HAVE BEEN AFFECTED BY THE WRONG ASSET-CALCULATION TECHNIQUE IN SEEKING CLASS CERTIFICATION. [Matter of Stewart v Roberts, 2018 NY Slip Op 04609, Third Dept 6-21-18](#)

UNEMPLOYMENT INSURANCE.

COURIER FOR A WEB BASED DELIVERY SERVICE NOT AN EMPLOYEE. [Matter of Vega \(Commissioner of Labor\), 2018 NY Slip Op 04610, Third Dept 6-21-18](#)

WORKERS' COMPENSATION LAW.

RECENT AMENDMENT TO THE WORKERS' COMPENSATION LAW APPLIES RETROACTIVELY, CLAIMANT WITH A PERMANENT PARTIAL DISABILITY WHO HAS INVOLUNTARILY WITHDRAWN FROM THE LABOR MARKET NEED NOT DEMONSTRATE A CONTINUED ATTACHMENT TO THE LABOR MARKET. [Matter of O'Donnell v Erie County, 2018 NY Slip Op 04410, Third Dept 6-14-18](#)

WORKERS' COMPENSATION LAW.

DIFFERENCE BETWEEN A SCHEDULE LOSS OF USE AND NONSCHEDULE PERMANENT PARTIAL DISABILITY EXPLAINED. [Matter of Tobin v Finger Lakes DDSO, 2018 NY Slip Op 04413, Third Dept 6-14-18](#)

WORKERS' COMPENSATION LAW.

A CLAIMANT MAY NOT RECEIVE BOTH A SCHEDULE LOSS OF USE AWARD AND A NONSCHEDULE PERMANENT PARTIAL DISABILITY AWARD FOR INJURIES FROM THE SAME ACCIDENT, BUT BOTH INJURY CLASSIFICATIONS CAN BE CONSIDERED IN DETERMINING LOSS OF WAGE-EARNING CAPACITY. [Matter of Taher v Yiota Taxi, Inc., 2018 NY Slip Op 04414, Third Dept 6-14-18](#)

WORKERS' COMPENSATION LAW.

NEW LAW THAT WENT INTO EFFECT WHEN THE CLAIM WAS BEING RECONSIDERED SHOULD HAVE BEEN APPLIED, CLAIMS MAY NO LONGER BE DENIED ON THE FACTUAL FINDING THAT THE STRESS EXPERIENCED BY CLAIMANT IS NOT GREATER THAN THAT WHICH USUALLY OCCURS IN THE WORK ENVIRONMENT, POLICE OFFICER CLAIMED ANXIETY AND PHOBIAS RELATED TO THE SIGHT OF BLOOD. [Matter of McMillan v Town of New Castle, 2018 NY Slip Op 04801, Third Dept 6-28-18.](#)

WORKERS' COMPENSATION LAW, EVIDENCE.

BOARD CONSIDERED MEDICAL FILE FROM A PRIOR INJURY WITHOUT NOTICE TO CLAIMANT, DENIAL OF CLAIM REVERSED. [Matter of Kaplan v New York City Tr. Auth., 2018 NY Slip Op 04068, Third Dept 6-7-18](#)

ZONING, CIVIL PROCEDURE, APPEALS.

PETITIONER WAS ENTITLED TO A VARIANCE ON FINANCIAL HARDSHIP GROUNDS, REGULATORY TAKING CAUSE OF ACTION WAS NOT RIPE FOR REVIEW. [Matter of 54 Marion Ave., LLC v City of Saratoga Springs, 2018 NY Slip Op 04611, Third Dept 6-21-18](#)

FOURTH DEPARTMENT

ANIMAL LAW.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IN THIS DOG BITE CASE SHOULD HAVE BEEN GRANTED. [Long v Hess, 2018 NY Slip Op 04475, Fourth Dept 6-15-18](#)

ARBITRATION, CONTRACT LAW, EMPLOYMENT LAW.

ELIMINATION OF A POSITION WAS ALLEGED TO CONSTITUTE AN IMPROPER DISMISSAL UNDER THE GUISE OF RETRENCHMENT, ALTHOUGH RETRENCHMENT IS NOT ARBITRABLE UNDER THE TERMS OF THE COLLECTIVE BARGAINING AGREEMENT, THE CLAIM THAT THE EMPLOYEE WAS IMPROPERLY DISMISSED UNDER THE GUISE OF RETRENCHMENT WAS DEEMED ARBITRABLE.. [Matter of Onondaga Community Coll. \(Professional Adm'rs of Onondaga Community Coll. Fedn. of Teachers & Adm'rs\), 2018 NY Slip Op 04878, Fourth Dept 6-29-18](#)

ARBITRATION, EMPLOYMENT LAW, EDUCATION-SCHOOL LAW.

ARBITRATION AWARD WAS INDEFINITE AND NONFINAL. [Matter of The Professional, Clerical, Tech. Empls. Assn. \(Board of Educ. for Buffalo City Sch. Dist.\), 2018 NY Slip Op 04128, Fourth Dept 6-8-18](#)

CIVIL PROCEDURE.

STRIKING THE ANSWER WAS TOO SEVERE A SANCTION FOR A DISCOVERY VIOLATION, THERE WAS NO SPOILIATION OF EVIDENCE, RATHER THERE WAS A DELAY IN PRODUCING THE EVIDENCE. [Woloszuk v Logan-Young, 2018 NY Slip Op 04176, Fourth Dept 6-8-18](#)

CIVIL PROCEDURE, EMPLOYMENT LAW.

CLASS ACTION CERTIFICATION FOR EMPLOYEES ALLEGING DEFENDANT'S FAILURE TO PAY THE PREVAILING WAGE SHOULD NOT HAVE BEEN DENIED. [Vandee v Suit-Kote Corp., 2018 NY Slip Op 04456, Fourth Dept 6-15-18](#)

CORPORATION LAW, DEBTOR-CREDITOR LAW.

PLAINTIFF DID NOT DEMONSTRATE THE CONTINUITY OF OWNERSHIP ELEMENT OF THE DE FACTO MERGER DOCTRINE SUCH THAT THE ASSETS OF ONE DEFENDANT SHOULD BE USED TO SATISFY THE DEBT OF ANOTHER. [R&D Electronics, Inc. v NYP Mgt., Co., Inc., 2018 NY Slip Op 04151, Fourth Dept 6-8-18](#)

CRIMINAL LAW.

DEFENDANT WAS NOT IN CUSTODY WHEN HIS STATEMENTS WERE MADE, SUPPRESSION MOTION SHOULD NOT HAVE BEEN GRANTED. [People v Bell-Scott, 2018 NY Slip Op 04192, Fourth Dept 6-8-18](#)

CRIMINAL LAW.

ACQUITTAL ON SOME COUNTS DID NOT RENDER PROOF OF OTHER COUNTS LEGALLY INSUFFICIENT, SERVICE ELEMENT OF CRIMINAL CONTEMPT PROVEN BY DEFENDANT'S RECEIPT OF THE ORDER IN COURT. [People v Nichols, 2018 NY Slip Op 04502, Fourth Dept 6-15-18](#)

CRIMINAL LAW.

DEFENDANT WAS NOT PRESENT IN THE COURTROOM WHEN HIS SENTENCE OF INCARCERATION WAS CHANGED, MATTER REMITTED FOR RESENTENCING.. [People v Perkins, 2018 NY Slip Op 04472, Fourth Dept 6-15-18](#)

CRIMINAL LAW.

JUROR MISCONDUCT, INCLUDING COMMUNICATIONS WITH THIRD PARTIES AND WEB BROWSING IN VIOLATION OF THE JUDGE'S ADMONITIONS, WARRANTED A NEW TRIAL IN THIS MURDER CASE. [People v Neulander, 2018 NY Slip Op 04925, Fourth Dept 6-29-18](#)

CRIMINAL LAW.

NUMEROUS FAILURES BY THE JUDGE TO FOLLOW THE PROTOCOL FOR BATSON CHALLENGES TO THE PROSECUTION'S ELIMINATION OF JURORS REQUIRED A NEW TRIAL, THE FOURTH DEPARTMENT NOTED THAT BATSON CHALLENGES MAY BE BASED UPON COLOR AS OPPOSED TO ETHNICITY, AND THE ETHNICITY OF THE DEFENDANT IS NOT A RELEVANT FACTOR IN A BATSON CHALLENGE. [People v Pescara, 2018 NY Slip Op 04927, Fourth Dept 6-29-18](#)

CRIMINAL LAW.

THE PROPONENT OF A MISSING WITNESS CHARGE MUST FIRST DEMONSTRATE THE TESTIMONY OF THE MISSING WITNESS WOULD NOT MERELY BE CUMULATIVE. [People v Smith, 2018 NY Slip Op 04863, Fourth Dept 6-29-18](#)

CRIMINAL LAW, APPEALS, EVIDENCE.

INSUFFICIENT EVIDENCE DEFENDANT INTENDED TO DESTROY A MOTORCYCLE WHEN SHE STARTED A FIRE IN A GARAGE, CRIMINAL MISCHIEF CONVICTION REVERSED UNDER A WEIGHT OF THE EVIDENCE ANALYSIS. [People v Colbert, 2018 NY Slip Op 04879, Fourth Dept 6-29-18](#)

CRIMINAL LAW, ATTORNEYS.

DEFENSE COUNSEL DID NOT OBJECT TO THE COURT'S FAILURE TO INSTRUCT THE JURY DEFENDANT'S PRIOR CONVICTIONS COULD NOT BE CONSIDERED AS EVIDENCE OF GUILT OF THE OFFENSE ON TRIAL, DEFENSE COUNSEL TOLD THE JURY THEIR JOB WAS TO SEARCH FOR THE TRUTH THEREBY DIMINISHING THE PEOPLE'S BURDEN OF PROOF, AND DEFENSE COUNSEL INDICATED TO THE JURY DEFENDANT HAD TEN PRIOR CONVICTIONS, DEFENDANT DID NOT RECEIVE EFFECTIVE ASSISTANCE. [People v Mccallum, 2018 NY Slip Op 04898, Fourth Dept 6-29-18](#)

CRIMINAL LAW, ATTORNEYS.

DEFENSE COUNSEL PROVIDED DEFENDANT WITH ERRONEOUS INFORMATION ABOUT THE LENGTH OF HIS SENTENCE SHOULD HE BE CONVICTED AFTER TRIAL AND ERRONEOUSLY TOLD THE DEFENDANT HIS PLEA TO SEX TRAFFICKING WOULD NOT MAKE HIM SUBJECT TO THE SEX OFFENDER REGISTRATION ACT (SORA), DEFENDANT DID NOT RECEIVE EFFECTIVE ASSISTANCE OF COUNSEL. CONVICTION BY GUILTY PLEA REVERSED. [People v Oliver, 2018 NY Slip Op 04885, Fourth Dept 6-29-18](#)

CRIMINAL LAW, ATTORNEYS, APPEALS.

DEFENDANT ENTITLED TO A HEARING ON HIS INEFFECTIVE ASSISTANCE ALLEGATIONS IN HIS MOTIONS TO VACATE HIS CONVICTIONS, EVEN THOSE ALLEGATIONS THAT COULD HAVE BEEN RAISED ON APPEAL. [People v Wilson, 2018 NY Slip Op 04233, Fourth Dept 6-8-18](#)

CRIMINAL LAW, EVIDENCE.

EVIDENCE OF CONSTRUCTIVE POSSESSION OF DRUGS IN AN APARTMENT LEGALLY INSUFFICIENT, CONVICTION REVERSED. [People v Williams, 2018 NY Slip Op 04173, Fourth Dept 6-8-18](#)

CRIMINAL LAW, EVIDENCE.

DEFENDANT'S PRE-MIRANDA STATEMENT SHOULD HAVE BEEN SUPPRESSED, DEFENDANT DEMONSTRATED HE WAS NOT COMPETENT TO TESTIFY AT THE GRAND JURY, HIS GRAND JURY TESTIMONY SHOULD NOT HAVE BEEN ADMITTED IN EVIDENCE. [People v Perri, 2018 NY Slip Op 04134, Fourth Dept 6-8-18](#)

CRIMINAL LAW, EVIDENCE.

FAILURE TO INSTRUCT THE JURY ON TWO REMOTE LESSER INCLUDED OFFENSES WAS HARMLESS ERROR, JURY WAS INSTRUCTED ON THE HIGHEST LESSER INCLUDED OFFENSE AND CONVICTED DEFENDANT OF THE TOP COUNT OF THE INDICTMENT.. [People v McIntosh, 2018 NY Slip Op 04455, Fourth Dept 6-15-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

DEFENDANT'S EVIDENTIARY ARGUMENTS ARE VIEWED ON APPEAL THROUGH THE LENS OF THE JURY INSTRUCTIONS TO WHICH NO OBJECTIONS WERE MADE, NO NEED TO PRESENT SPECIFIC PROOF THE CAR DEALERSHIP WHICH WAS VANDALIZED WAS A PERSON (A CORPORATION IN THIS CONTEXT) WITHIN THE MEANING OF THE CRIMINAL MISCHIEF STATUTE, NO NEED TO PROVE THE PRECISE AMOUNT OF DAMAGE CAUSED BY THE DEFENDANT AS OPPOSED TO THE DAMAGE CAUSED BY ALL PARTICIPANTS, ORDERING RESTITUTION IN THE FULL AMOUNT OF THE DAMAGES, AS OPPOSED TO APPORTIONING THE DAMAGES AMONG ALL THE PARTICIPANTS, WAS NOT ERROR. [People v Graves, 2018 NY Slip Op 04503, Fourth Dept 6-15-18](#)

CRIMINAL LAW, EVIDENCE.

AT THE SUPPRESSION HEARING THE PEOPLE DID NOT PROVE THE VALIDITY OF THE COMMUNICATIONS WITH THE ARRESTING OFFICERS ABOUT THE EXISTENCE OF AN ACTIVE WARRANT FOR DEFENDANT'S ARREST, MOTION TO SUPPRESS SHOULD HAVE BEEN GRANTED. [People v Searight, 2018 NY Slip Op 04466, Fourth Dept 6-15-18](#)

FAMILY LAW.

FAMILY COURT SHOULD HAVE SET A SPECIFIC AND DEFINITIVE VISITATION SCHEDULE, MATTER REMITTED. [Matter of Montes v Johnson, 2018 NY Slip Op 04194, Fourth Dept 6-8-18](#)

FAMILY LAW, APPEALS.

FOURTEEN YEAR OLD CHILD HAD THE STATUTORY RIGHT TO WAIVE HIS PRESENCE AT THE PERMANENCY HEARING AND SHOULD NOT HAVE BEEN ORDERED TO APPEAR, APPEAL HEARD AS AN EXCEPTION TO THE MOOTNESS DOCTRINE. [Matter of Shawn S., 2018 NY Slip Op 04208, Fourth Dept 6-8-18](#)

INSURANCE LAW, CIVIL PROCEDURE.

BAD FAITH DISCLAIMER ACTION BROUGHT AFTER INJURED PLAINTIFFS WERE ASSIGNED THE INSURED'S RIGHTS UNDER THE POLICY NOT BARRED BY RES JUDICATA, PLAINTIFFS DID NOT HAVE STANDING TO BRING THE BAD FAITH ACTION UNTIL THE RIGHTS WERE ASSIGNED. [Corle v Allstate Ins. Co., 2018 NY Slip Op 04135, Fourth Dept 6-8-18](#)

LABOR LAW-CONSTRUCTIVE LAW, PERSONAL INJURY.

QUESTION OF FACT WHETHER SAFETY DEVICES FOR LIFTING HEAVY MOTOR WERE AVAILABLE, PLAINTIFFS' MOTION OF SUMMARY JUDGMENT ON THE LABOR LAW 240 (1)

CAUSE OF ACTION SHOULD NOT HAVE BEEN GRANTED. [Smiley v Allgaier Constr. Corp., 2018 NY Slip Op 04130, Fourth Dept 6-8-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON THE LABOR LAW 241 (6) CAUSE OF ACTION SHOULD HAVE BEEN GRANTED, DEFENDANT DEMONSTRATED IT WAS NOT AN AGENT OF THE OWNER OR GENERAL CONTRACTOR. [Rohr v Dewald, 2018 NY Slip Op 04160, Fourth Dept 6-8-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON THE LABOR LAW 240 (1) CAUSE OF ACTION SHOULD NOT HAVE BEEN GRANTED, PLAINTIFF FELL FROM A SCAFFOLD AND HAD NOT TIED OFF HIS LANYARD. [Martin v Niagara Falls Bridge Commn., 2018 NY Slip Op 04452, Fourth Dept 6-15-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

QUESTIONS OF FACT ON THE LABOR LAW 240 (1), LABOR LAW 241 (6), AND COMMON LAW NEGLIGENCE CAUSES OF ACTION, PLAINTIFF WAS USING THE TOP HALF OF AN EXTENSION LADDER AND THE LADDER SLIPPED OUT FROM UNDER HIM. [Sochan v Mueller, 2018 NY Slip Op 04457, Fourth Dept 6-15-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

ALTHOUGH THE DEFENDANT HOMEOWNERS ACTED AS A GENERAL CONTRACTOR, THEY DID NOT SUPERVISE OR CONTROL ANY OF THE WORK, HOMEOWNERS' MOTION FOR SUMMARY JUDGMENT ON THE LABOR LAW 240 (1), 241 (6) AND 200 CAUSES OF ACTION SHOULD HAVE BEEN GRANTED. [Bund v Higgins, 2018 NY Slip Op 04897, Fourth Dept 6-29-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

THE PLACEMENT OF THE LADDER WAS DEEMED THE CAUSE OF PLAINTIFF'S FALL AND PLAINTIFF HAD PLACED THE LADDER, THEREFORE PLAINTIFF'S ACTIONS WERE DEEMED THE SOLE PROXIMATE CAUSE OF HIS INJURY PRECLUDING RECOVERY IN THIS LABOR LAW 240 (1) CASE. [Kipp v Marinus Homes, Inc., 2018 NY Slip Op 04859, Fourth Dept 6-29-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

QUESTION OF FACT WHETHER STAIRWAY WHICH COLLAPSED WAS TEMPORARY OR PERMANENT, ONLY TEMPORARY STAIRWAYS ARE COVERED UNDER LABOR LAW 240 (1), QUESTIONS OF FACT WHETHER PROJECT MANAGER HAD SUFFICIENT SUPERVISORY

CONTROL TO BE LIABLE UNDER LABOR LAW 240 (1), 241 (6) AND 200. [Stiegman v Barden & Robeson Corp., 2018 NY Slip Op 04865, Fourth Dept 6-29-18](#)

MEDICAID, ADMINISTRATIVE LAW, APPEALS.

PETITION SEEKING MEDICAL ASSISTANCE SHOULD NOT HAVE BEEN DENIED BASED UPON THE INABILITY TO DETERMINE THE FINANCIAL RESOURCES AVAILABLE TO THE NURSING HOME RESIDENT'S ESTRANGED WIFE, COURT MAY NOT CONSIDER THEORY NOT RAISED BEFORE THE AGENCY. [Matter of Waterfront Ctr. for Rehabilitation & Healthcare v New York State Dept. of Health, 2018 NY Slip Op 04881, Fourth Dept 6-29-18](#)

MEDICAL MALPRACTICE, EVIDENCE, CIVIL PROCEDURE, PERSONAL INJURY.

MOTION TO SET ASIDE THE VERDICT IN THIS MEDICAL MALPRACTICE CASE SHOULD NOT HAVE BEEN GRANTED. [Clark v Loftus, 2018 NY Slip Op 04473, Fourth Dept 6-15-18](#)

MEDICAL MALPRACTICE, EVIDENCE, PERSONAL INJURY.

CROSS EXAMINATION OF PLAINTIFF ABOUT HIS CRIMINAL HISTORY PROPERLY PRECLUDED IN THIS MEDICAL MALPRACTICE ACTION, EXPERT OPINION PROPERLY RELIED UPON HEARSAY STATEMENTS BY PLAINTIFF'S TREATING PHYSICIAN. [Tornatore v Cohen, 2018 NY Slip Op 04145, Fourth Dept 6-8-18](#)

MEDICAL MALPRACTICE, PERSONAL INJURY, BATTERY.

COMPLAINT ALLEGING A MEDICAL PROCEDURE WAS PERFORMED TO WHICH PLAINTIFF DID NOT CONSENT STATED A CAUSE OF ACTION FOR BATTERY. [McCarthy v Shah, 2018 NY Slip Op 04887, Fourth Dept 6-29-18](#)

MUNICIPAL LAW, CONTRACT LAW, EMPLOYMENT LAW.

THE COLLECTIVE BARGAINING AGREEMENTS ARE AMBIGUOUS ON THE ISSUE WHETHER COUNTY RETIREES WHO BECOME ELIGIBLE FOR MEDICARE ARE ENTITLED TO THE FULL MEDICAL BENEFITS AFFORDED THEM AT RETIREMENT, EXTRINSIC EVIDENCE, I.E., WHAT HAD BEEN DONE IN THE PAST, SUPPORTS THE DETERMINATION THAT RETIREES WHO BECOME ELIGIBLE FOR MEDICARE ARE NOT ENTITLED TO FULL BENEFITS. [Ames v County of Monroe, 2018 NY Slip Op 04886, Fourth Dept 6-29-18](#)

MUNICIPAL LAW, EMPLOYMENT LAW.

CITY'S DETERMINATION IT WOULD NOT DEFEND A POLICE OFFICER IN A CIVIL ACTION STEMMING FROM THE OFFICER'S STRIKING A CIVILIAN WAS ARBITRARY AND CAPRICIOUS. [Matter of Krug v City of Buffalo, 2018 NY Slip Op 04118, Fourth Dept 6-8-18](#)

MUNICIPAL LAW, EMPLOYMENT LAW.

LOCAL LAWS CONCERNING HEALTH BENEFITS FOR RETIRED TOWN EMPLOYEES WHICH WERE NOT ENACTED BY REFERENDUM ARE ENTIRELY INVALID. [Parker v Town of Alexandria, 2018 NY Slip Op 04126, Fourth Dept 6-8-18](#)

PARTNERSHIP LAW, CORPORATION LAW.

A PARTNERSHIP CANNOT OPERATE THROUGH AN EXISTING CORPORATE STRUCTURE. [Bianchi v Midtown Reporting Serv., Inc., 2018 NY Slip Op 04895, Fourth Dept 6-29-18](#)

PERSONAL INJURY.

QUESTION OF FACT WHETHER PLAINTIFF ASSUMED THE RISK OF FALLING FROM A CLIMBING WALL. [Stillman v Mobile Mtn., Inc., 2018 NY Slip Op 04149, Fourth Dept 6-8-18](#)

PERSONAL INJURY.

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT IN THIS VEHICLE-PEDESTRIAN ACCIDENT CASE SHOULD HAVE BEEN GRANTED, PLAINTIFFS NEED NOT SHOW THE ABSENCE OF COMPARATIVE NEGLIGENCE. [Edwards v Gorman, 2018 NY Slip Op 04129, Fourth Dept 6-8-18](#)

PERSONAL INJURY, COURT OF CLAIMS.

DEFECT WHICH CAUSED CLAIMANT TO SLIP AND FALL WAS NOT TRIVIAL AS A MATTER OF LAW, QUESTION OF FACT WHETHER DEFENDANT HAD ACTUAL AND CONSTRUCTIVE NOTICE OF THE DEFECT, DEFENDANT'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED. [Bennett v State of New York, 2018 NY Slip Op 04212, Fourth Dept 6-8-18](#)

PERSONAL INJURY, COURT OF CLAIMS.

SKATER DID NOT ASSUME THE RISK CREATED BY A NEGLIGENTLY MAINTAINED ICE SURFACE AND SKATER'S AWARENESS OF THE CONDITION RELATES ONLY TO COMPARATIVE NEGLIGENCE, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Wyzykowski v State of New York, 2018 NY Slip Op 04875, Fourth Dept 6-29-18](#)

PERSONAL INJURY, EVIDENCE, INSURANCE LAW, VEHICLE AND TRAFFIC LAW.

DEFENDANT'S SUMMARY JUDGMENT MOTION IN THIS VEHICLE-PEDESTRIAN ACCIDENT CASE SHOULD NOT HAVE BEEN GRANTED, DEFENDANT MAY HAVE VIOLATED THE DUTY TO SEE WHAT SHOULD HAVE BEEN SEEN, AND PLAINTIFF'S FRACTURED FOOT CONSTITUTED A SERIOUS INJURY AS A MATTER OF LAW. [Luttrell v Vega, 2018 NY Slip Op 04468, Fourth Dept 6-15-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

MOTION FOR LEAVE TO FILE LATE NOTICE OF CLAIM AGAINST A PUBLIC CORPORATION SHOULD NOT HAVE BEEN GRANTED FOR ONE OF TWO ACCIDENTS, CLAIMANT FAILED TO SHOW DEFENDANT HAD TIMELY ACTUAL KNOWLEDGE OF THE FIRST OF TWO ACCIDENTS. [Matter of Szymkowiak v New York Power Auth., 2018 NY Slip Op 04482, Fourth Dept 6-15-18](#)

PERSONAL INJURY, MUNICIPAL LAW, VEHICLE AND TRAFFIC LAW.

QUESTION OF FACT WHETHER SNOW PLOW DRIVER ACTED WITH RECKLESS DISREGARD IN THIS TRAFFIC ACCIDENT CASE, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Chase v Marsh, 2018 NY Slip Op 04231, Fourth Dept 6-8-18](#)

TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE. EMPLOYMENT LAW, CIVIL PROCEDURE.

THE PATTERN JURY INSTRUCTIONS FOR TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE ARE WRONG, THE INDEPENDENT CRIME OR TORT ELEMENT IS A FACTUAL QUESTION FOR THE JURY AND SHOULD NOT BE DECIDED AS A MATTER OF LAW BY THE COURT, MOTION TO SET ASIDE THE \$5 MILLION VERDICT SHOULD HAVE BEEN GRANTED. [Ray v Stockton, 2018 NY Slip Op 04861, Fourth Dept 6-29-18](#)

JULY 2018

FIRST DEPARTMENT

ADMINISTRATIVE LAW, MUNICIPAL LAW, CORPORATION LAW, ATTORNEYS.

ALTHOUGH PETITIONER-ATTORNEY FORMED THE CORPORATIONS WHICH OWNED THE BUILDINGS ON WHICH HE POSTED SIGNS ADVERTISING HIS LAW PRACTICE, THE ADVERTISING VIOLATED THE NYC ADMINISTRATIVE CODE. [Matter of Franklin St. Realty Corp. v NYC Envtl. Control Bd., 2018 NY Slip Op 05407, First Dept 7-19-18](#)

CIVIL PROCEDURE, LANDLORD-TENANT, MUNICIPAL LAW.

CLASS ACTION COMPLAINT BY TENANTS AGAINST LANDLORDS ALLEGING FAILURE TO PROVIDE RENT-STABILIZED LEASES SHOULD NOT HAVE BEEN DISMISSED AT THE PRE-ANSWER STAGE. [Maddicks v Big City Props., LLC, 2018 NY Slip Op 05523, First Dept 7-26-18](#)

CONTRACT LAW.

NEGLIGENCE ACTION STEMMING FROM AN ALLEGED BREACH OF CONTRACT SHOULD HAVE BEEN DISMISSED, CRITERIA FOR A VALID NEGLIGENCE CAUSE OF ACTION IN THIS CONTEXT EXPLAINED. [Ocean Gate Homeowners Assn., Inc. v T.W. Finnerty Prop. Mgt., Inc., 2018 NY Slip Op 05475, Second Dept 7-25-18](#)

CONTRACT LAW, ARBITRATION, CORPORATION LAW.

ALTHOUGH INDIVIDUAL DEFENDANTS, OFFICERS OR EMPLOYEES OF DEFENDANT CORPORATION, DID NOT SIGN THE AGREEMENT IN THEIR INDIVIDUAL CAPACITIES, THEY ARE ENTITLED TO ENFORCE THE ARBITRATION PROVISION OF THE AGREEMENT. [Huntsman Intl. LLC v Albemarle Corp., 2018 NY Slip Op 04962, First Dept 7-3-18](#)

CONTRACT LAW, MEDICAID, MEDICAL MALPRACTICE, PERSONAL INJURY.

HOSPITAL'S SETTLEMENT AGREEMENT WITH PLAINTIFF IN A MEDICAL MALPRACTICE ACTION TO PAY ALL MEDICAID COSTS WAS ENFORCEABLE BY THE MEDICAID ADMINISTRATOR AS A THIRD-PARTY BENEFICIARY OF THE AGREEMENT. [Commissioner of the Dept. of Social Servs. of the City of N.Y. v New York-Presbyterian Hosp., 2018 NY Slip Op 05524](#)

CONTRACT LAW, REAL ESTATE.

CONTRACT WAS AMBIGUOUS CONCERNING WHETHER PLAINTIFF BROKER WAS ENTITLED TO A COMMISSION, SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS SHOULD NOT HAVE BEEN GRANTED. [Georgia Malone & Co., Inc. v E&M Assoc., 2018 NY Slip Op 05525, First Dept 7-26-18](#)

CIVIL PROCEDURE.

ALLEGED TORTIOUS ACTS DID NOT OCCUR IN NEW YORK, OUT OF STATE DEFENDANT DID NOT HAVE SUFFICIENT CONTACT WITH NEW YORK TO MEET DUE PROCESS STANDARDS, NO PERSONAL JURISDICTION. [Deutsche Bank AG v Vik, 2018 NY Slip Op 04958, First Dept 7-3-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

UPON REMITTITUR FROM THE COURT OF APPEALS, DEFENDANT'S IDENTITY THEFT CONVICTION AFFIRMED, DEFENDANT ATTEMPTED TO PURCHASE ITEMS USING A CREDIT CARD AND DRIVER'S LICENSE WITH A FICTITIOUS NAME. [People v Roberts, 2018 NY Slip Op 05220, First Dept 7-12-18](#)

CRIMINAL LAW, IMMIGRATION LAW, ATTORNEYS.

MOTION TO VACATE CONVICTION SHOULD NOT HAVE BEEN SUMMARILY GRANTED WITHOUT A HEARING, THREE CRITERIA FOR VACATING A CONVICTION EXPLAINED, HERE DEFENDANT ALLEGED HE WOULD NOT HAVE PLED GUILTY HAD HE BEEN CORRECTLY INFORMED BY COUNSEL OF THE DEPORTATION CONSEQUENCES OF HIS PLEA.. [People v Gaston, 2018 NY Slip Op 05122, First Dept 7-10-18](#)

FAMILY LAW.

IN A COMPLEX PATERNITY CASE SPANNING EIGHT YEARS, ORDER PRECLUDING CHILD FROM ESTABLISHING ESTOPPEL AND FINDING PETITIONER HAD STANDING TO SEEK CUSTODY AND VISITATION PROPERLY GRANTED. [Matter of Michael S. v Sultana R., 2018 NY Slip Op 05404, First Dept 7-19-18](#)

FIDUCIARY DUTY, BREACH OF, COOPERATIVES, CORPORATION LAW, NEGLIGENCE.

NO CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY AGAINST INDIVIDUAL COOPERATIVE BOARD MEMBERS, MEMBERS OF THE BOARD DID NOT PARTICIPATE IN A CORPORATE TORT. [Hersh v One Fifth Ave. Apt. Corp., 2018 NY Slip Op 05522, First Dept 7-26-18](#)

LABOR LAW-CONSTRUCTION LAW, CONTRACT LAW, LANDLORD-TENANT, NEGLIGENCE.

VENTILATOR FROM WHICH PLAINTIFF FELL WAS NOT A SAFETY DEVICE, HOWEVER THE FACT THAT PLAINTIFF COULD NOT REACH THE VENTILATOR FROM THE LADDER ENTITLED HIM TO SUMMARY JUDGMENT ON THE LABOR LAW 240 (1) CAUSE OF ACTION, A VIOLATION OF LABOR LAW 240 (1) IS NOT A FINDING OF NEGLIGENCE, LANDLORD ENTITLED TO INDEMNIFICATION UNDER THE LEASE TERMS. [Hong-Bao Ren v Gioia St. Marks, LLC, 2018 NY Slip Op 05520, First Dept 7-26-18](#)

MUNICIPAL LAW. ADMINISTRATIVE LAW.

THE CONTROLLING STATUTE DOES NOT PROVIDE THAT THE CITY CAN SUE FOR DAMAGES FOR INJURY TO TREES, THE REGULATION WHICH PURPORTS TO ALLOW SUCH A SUIT DECLARED INVALID. [City of New York v Tri-Rail Constr., Inc., 2018 NY Slip Op 04954, First Dept 7-3-18](#)

PERSONAL INJURY, CONTRACT LAW.

QUESTION OF FACT WHETHER GENERAL CONTRACTOR'S REMOVAL OF A TANK EXPOSING AN OPENING LAUNCHED AN INSTRUMENT OF HARM IMPOSING CONTRACT-BASED LIABILITY, FACT THAT OPENING WAS OBVIOUS AND KNOWN TO PLAINTIFF SPEAKS TO COMPARATIVE NEGLIGENCE AND DID NOT WARRANT SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS. [Farrugia v 1440 Broadway Assoc., 2018 NY Slip Op 05222, First Dept 7-12-18](#)

REAL PROPERTY LAW, ASSOCIATIONS, UNINCORPORATED ASSOCIATIONS.

COMMUNITY GARDEN ASSOCIATION STATED A CAUSE OF ACTION FOR ADVERSE POSSESSION OF A LOT IN THE LOWER EAST SIDE OF MANHATTAN, THE PERIOD OF TIME THE LAND WAS USED BY THE ASSOCIATION BEFORE IT WAS INCORPORATED IN 2012 WAS PROPERLY TACKED ON. [Children's Magical Garden, Inc. v Norfolk St. Dev., LLC, 2018 NY Slip Op 05223, First Dept 7-12-18](#)

SECOND DEPARTMENT

ANIMAL LAW.

DEFENDANTS DEMONSTRATED THEY DID NOT HAVE NOTICE OF THE DOG'S VICIOUS PROPENSITIES IN THIS DOG-BITE CASE, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Cintorrino v Rowsell, 2018 NY Slip Op 05446, Second Dept 7-25-18](#)

ATTORNEYS.

ATTORNEY'S MOTION TO WITHDRAW BECAUSE OF CLIENT'S FAILURE TO PAY AND LACK OF COOPERATION SHOULD HAVE BEEN GRANTED. [Applebaum v Einstein, 2018 NY Slip Op 05437, Second Dept 7-25-18](#)

ATTORNEYS.

FEE-SHARING AGREEMENT VIOLATED JUDICIARY LAW 491 AND COULD NOT BE ENFORCED BY A COURT. [Ballan v Sirota, 2018 NY Slip Op 05014, Second Dept 7-5-18](#)

CIVIL PROCEDURE.

MOTION TO VACATE DEFAULT JUDGMENT MORE THAN A YEAR AFTER THE JUDGMENT WAS ENTERED SHOULD NOT HAVE BEEN GRANTED, ALTHOUGH THE COURT HAD THE POWER TO VACATE THE JUDGMENT IN THE INTEREST OF JUSTICE, DEFENDANT DID NOT OFFER A REASONABLE EXCUSE.. [Hairston v Marcus Garvey Residential Rehab Pavilion, Inc., 2018 NY Slip Op 05021, Second Dept 7-5-18](#)

CIVIL PROCEDURE.

MOTION TO VACATE DEFAULT JUDGMENT SHOULD HAVE BEEN GRANTED, PLAINTIFF'S ATTORNEY'S ILLNESS WAS A REASONABLE EXCUSE FOR FAILURE TO APPEAR AT ORAL ARGUMENT, MERITORIOUS ACTION DEMONSTRATED, FIRST MOTION DENIED WITHOUT PREJUDICE, SECOND MOTION ON THE SAME GROUNDS WAS NOT, THEREFORE, PRECLUDED. [World O World Corp. v Anoufrieve, 2018 NY Slip Op 05075, Second Dept 7-5-18](#)

CIVIL PROCEDURE.

THE FACT THAT DEFENDANT'S REPRESENTATIVE'S SIGNATURE AND THE JURAT APPEARED ON AN OTHERWISE BLANK PAGE SEPARATE FROM THE AFFIDAVIT WAS NOT A GROUND FOR DENIAL OF DEFENDANT'S UNOPPOSED MOTION FOR SUMMARY JUDGMENT. [Status Gen. Dev., Inc. v 501 Broadway Partners, LLC, 2018 NY Slip Op 05217, Second Dept 7-11-18](#)

CIVIL PROCEDURE.

DISCOVERY VIOLATIONS WARRANTED DISMISSAL OF THE COMPLAINT. [Westervelt v Westervelt, 2018 NY Slip Op 05519, Second Dept 7-25-18](#)

CIVIL PROCEDURE. DEBTOR-CREDITOR, LANDLORD-TENANT.

TENANT DID NOT VIOLATE THE COURT ORDER DIRECTING HIM TO PAY RENT DUE UNDER THE LEASE TO THE LANDLORD'S CREDITOR, TENANT STOPPED PAYING THE RENT TO THE CREDITOR ONLY AFTER THE LANDLORD TERMINATED THE LEASE. [Matter of First Am. Tit. Ins. Co. v Cohen, 2018 NY Slip Op 05306, Second Dept 7-18-18](#)

CIVIL PROCEDURE, LIMITED LIABILITY COMPANY LAW.

CPLR 311-A REQUIREMENTS FOR SERVICE OF PROCESS ON A LIMITED LIABILITY COMPANY NOT MET, COURT DID NOT OBTAIN JURISDICTION OVER DEFENDANT. [Pinzon v IKEA N.Y., LLC, 2018 NY Slip Op 05213, Second Dept 7-11-18](#)

CIVIL PROCEDURE, NEGLIGENCE, MEDICAL MALPRACTICE.

PROPERTY DEFENDANTS' MOTION TO JOIN THE SLIP AND FALL ACTION WITH A MEDICAL MALPRACTICE ACTION STEMMING FROM THE SLIP AND FALL INJURY PROPERLY DENIED. [Cromwell v CRP 482 Riverdale Ave., LLC, 2018 NY Slip Op 05137, Second Dept 7-11-18](#)

CIVIL PROCEDURE, PERSONAL INJURY, INSURANCE LAW.

RECORDS PERTAINING TO PLAINTIFF'S RECEIPT OF NO-FAULT BENEFITS ARE DISCOVERABLE AND MUST BE TURNED OVER TO THE DEFENDANT, EVEN IF PLAINTIFF IS NOT SEEKING RECOVERY OF UNREIMBURSED SPECIAL DAMAGES. [Cajamarca v Osatuk, 2018 NY Slip Op 05133, Second Dept 7-11-18](#)

CIVIL PROCEDURE, TRUSTS AND ESTATES, MEDICAL MALPRACTICE, NEGLIGENCE.

MEDICAL MALPRACTICE ACTION SHOULD NOT HAVE BEEN DISMISSED BASED ON A FINDING THE MOTION TO SUBSTITUTE THE REPRESENTATIVE OF THE ESTATE OF THE PLAINTIFF WAS UNTIMELY. [Tokar v Weissberg, 2018 NY Slip Op 05516, Second Dept 7-25-18](#)

CRIMINAL LAW, ATTORNEYS, APPEALS.

IMPROPER CROSS-EXAMINATION OF THE SOLE DEFENSE WITNESS DEPRIVED DEFENDANT OF A FAIR TRIAL, REVERSED IN THE INTEREST OF JUSTICE. [People v Moulton, 2018 NY Slip Op 05203, Second Dept 7-11-18](#)

CRIMINAL LAW.

DEFENDANT'S ABSENCE FROM AN IN CAMERA INTERVIEW WITH A JUROR CONCERNING POSSIBLE DISQUALIFICATION WAS NOT SHOWN TO HAVE HAD A SUBSTANTIAL EFFECT ON THE DEFENDANT'S ABILITY TO DEFEND AGAINST THE CHARGES. [People v Robinson, 2018 NY Slip Op 05496, Second Dept 7-25-18](#)

CRIMINAL LAW, APPEALS.

WAIVER OF APPEAL INVALID, DESPITE DEFENDANT'S SIGNING OF A WRITTEN WAIVER. [People v Alston, 2018 NY Slip Op 05327, Second Dept 7-18-18](#)

CRIMINAL LAW, ATTORNEYS.

DEFENDANT NOT GIVEN THE OPPORTUNITY TO EXPLAIN HIS REQUEST TO WITHDRAW HIS GUILTY PLEA, DEFENSE COUNSEL INDICATED THERE WAS NO REASON FOR THE WITHDRAWAL, MATTER REMITTED FOR CONSIDERATION OF THE REQUEST WITH NEW COUNSEL. [People v Caputo, 2018 NY Slip Op 05481, Second Dept 7-25-18](#)

CRIMINAL LAW, EVIDENCE.

ALTHOUGH THE SEARCH OF DEFENDANT'S PERSON INCIDENT TO ARREST WAS PROPER, THE SEARCH INSIDE DEFENDANT'S WALLET WAS NOT, CREDIT CARDS SHOULD HAVE BEEN SUPPRESSED. [People v Geddes-Kelly, 2018 NY Slip Op 05195, Second Dept 7-11-18](#)

CRIMINAL LAW, EVIDENCE.

AFFIDAVIT IN SUPPORT OF WARRANT FOR A DNA SWAB INSUFFICIENT, MOTION TO SUPPRESS SHOULD HAVE BEEN GRANTED. [People v Augustus, 2018 NY Slip Op 05480, Second Dept 7-25-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

HARMLESS ERROR TO ADMIT EVIDENCE OF PRIOR CRIMES, HARMLESS ERROR TO PROHIBIT CROSS-EXAMINATION OF ARRESTING OFFICER ABOUT A SETTLED FEDERAL CIVIL RIGHTS SUIT, STATEMENTS MADE BY DEFENDANT NOT ADMISSIBLE AS PRIOR CONSISTENT STATEMENTS OR AS EVIDENCE OF STATE OF MIND, EVIDENTIARY ARGUMENT NOT RAISED BELOW OR ON APPEAL CANNOT BE CONSIDERED. [People v Watson, 2018 NY Slip Op 05342, Second Dept 7-18-18](#)

CRIMINAL LAW, EVIDENCE, ATTORNEYS.

PROSECUTOR'S IMPROPER REMARKS DESIGNED TO ELICIT THE JURY'S SYMPATHY FOR THE VICTIM DID NOT DEPRIVE DEFENDANT OF A FAIR TRIAL, HOWEVER A NEW TRIAL ON THE MURDER CHARGE IS REQUIRED BECAUSE THE TRIAL JUDGE ERRONEOUSLY DENIED DEFENDANT'S REQUEST TO INSTRUCT THE JURY ON THE LESSER INCLUDED OFFENSE OF MANSLAUGHTER. [People v Cherry, 2018 NY Slip Op 05190, Second Dept 7-11-18](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA),

INSUFFICIENT EVIDENCE TO SUPPORT ASSESSMENT OF POINTS FOR SUBSTANCE ABUSE. [People v Trotter, 2018 NY Slip Op 05211, Second Dept 7-11-16](#)

DEFAMATION, CIVIL RIGHTS LAW, PRIVILEGE.

DEFAMATION ACTION PROPERLY SURVIVED PRE-DISCOVERY MOTION TO DISMISS, APPLICABILITY OF THE CIVIL RIGHTS LAW PRIVILEGE FOR REPORTING ON A JUDICIAL PROCEEDING NOT DEMONSTRATED AS A MATTER OF LAW. [Stone v Bloomberg L.P., 2018 NY Slip Op 05515, Second Dept 7-25-18](#)

EMPLOYMENT LAW, LABOR LAW, CONTRACT LAW, MUNICIPAL LAW.

PLAINTIFF STATED A BREACH OF CONTRACT CAUSE OF ACTION BASED UPON DEFENDANT CONTRACTOR'S ALLEGED FAILURE TO PAY THE PREVAILING WAGE FOR WORK ON PROPERTIES OWNED BY THE NYC HOUSING AUTHORITY. [Singh v Zoria Hous., LLC, 2018 NY Slip Op 05513, Second Dept 7-25-18](#)

ENVIRONMENTAL LAW, LAND USE, ADMINISTRATIVE LAW.

PLANNING BOARD'S DENIAL OF A WETLAND CONTROL PERMIT AND SITE PLAN APPROVAL PROPERLY ANNULLED, THE DENIAL WAS A DEPARTURE FROM PRIOR DETERMINATIONS AND THE BOARD DID NOT SET FORTH FACTUAL REASONS FOR THE DEPARTURE. [Matter of Nicolai v McLaughlin, 2018 NY Slip Op 05046, Second Dept 7-5-18](#)

ENVIRONMENTAL LAW, LAND USE, ADMINISTRATIVE LAW.

PLANNING BOARD'S FINDING THE DEVELOPMENT PROJECT WOULD NOT HAVE SIGNIFICANT IMPACT ON THE ENVIRONMENT WAS ARBITRARY AND CAPRICIOUS, MATTER REMITTED FOR PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT.. [Matter of Peterson v Planning Bd. of the City of Poughkeepsie, 2018 NY Slip Op 05049, Second Dept 7-5-18](#)

FAMILY LAW, CIVIL PROCEDURE.

CHILD'S REQUEST FOR AN ADJOURNMENT WHEN MOTHER FAILED TO APPEAR AT AN EQUITABLE ESTOPPEL HEARING IN THIS PATERNITY AND CUSTODY PROCEEDING SHOULD HAVE BEEN GRANTED. [Matter of Simmons v Ford, 2018 NY Slip Op 05176, Second Dept 7-11-18](#)

FORECLOSURE, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW.

BANK DID NOT DEMONSTRATE COMPLIANCE WITH THE NOTICE PROVISIONS OF RPAPL 1304 AND DID NOT DEMONSTRATE IT HAD STANDING TO BRING THE FORECLOSURE ACTION, BANK'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [U.S. Bank N.A. v Henderson, 2018 NY Slip Op 05071, Second Dept 7-5-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF, A HOMEOWNER WHOSE COMPANY HIRED DEFENDANT SUBCONTRACTOR TO WORK AT PLAINTIFF'S HOME, WAS A PROPER PLAINTIFF UNDER LABOR LAW 240 (1) AND 241 (6), QUESTIONS OF FACT WHETHER DEFENDANT WAS IN CONTROL OF THE WORK SITE AND HAD BEEN DELEGATED SITE SAFETY RESPONSIBILITIES. [Eliassian v G.F. Constr., Inc., 2018 NY Slip Op 05020, Second Dept 7-5-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY

PLAINTIFF PROPERLY GRANTED SUMMARY JUDGMENT IN THIS LABOR LAW 240 (1) ACTION STEMMING FROM A FALL FROM A LADDER, DEFENDANT WAS APPARENTLY LIABLE AS AN AGENT OF THE OWNER WITH AUTHORITY OVER SAFETY MEASURES. [Cabrera v Arrow Steel Window Corp., 2018 NY Slip Op 05275, Second Dept 7-18-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF WAS NOT ENGAGED IN CONSTRUCTION WORK OR IN A CONSTRUCTION AREA WHEN HE WAS INJURED, HE WAS BRINGING IN SUPPLIES WHICH WERE BEING STOCKPILED AND WERE NOT FOR IMMEDIATE USE, THEREFORE THE LABOR LAW 240 (1) AND 241 (6) CAUSES OF ACTION WERE PROPERLY DISMISSED. [Kusayev v Sussex Apts. Assoc., LLC, 2018 NY Slip Op 05458, Second Dept 7-25-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IN THIS LABOR LAW 240 (1) ACTION SHOULD NOT HAVE BEEN GRANTED, PLAINTIFF FELL WHEN A PLANK ON A SCAFFOLD HE WAS ERECTING BROKE. [Rapalo v MJRB Kings Highway Realty, LLC, 2018 NY Slip Op 05512, Second Dept 7-25-18](#)

MEDICAL MALPRACTICE, EMPLOYMENT LAW, NEGLIGENCE.

MEDICAL MALPRACTICE ACTION AGAINST HOSPITAL PROPERLY DISMISSED, THE DEFENDANT PHYSICIANS WERE PRIVATE INDEPENDENT PHYSICIANS, HOSPITAL PERSONNEL WERE NOT NEGLIGENT, AND THE HOSPITAL DEMONSTRATED IT HAD NO REASON TO SUSPECT THE PHYSICIANS WOULD ACT WITHOUT INFORMED CONSENT. [Cynamon v Mount Sinai Hosp., 2018 NY Slip Op 05448, Second Dept 7-25-18](#)

MUNICIPAL LAW, PERSONAL INJURY, MEDICAL MALPRACTICE.

LEAVE TO FILE A LATE NOTICE OF CLAIM WAS PROPERLY GRANTED IN THIS CANCER TREATMENT MALPRACTICE ACTION, WHERE THE ALLEGED MALPRACTICE IS APPARENT FROM THE MEDICAL RECORDS, THE RECORDS CONSTITUTE ACTUAL KNOWLEDGE OF THE CLAIM. [Matter of Leon v New York City Health & Hosps. Corp., 2018 NY Slip Op 05165, Second Dept 7-11-18](#)

PERSONAL INJURY.

QUESTION OF FACT WHETHER OPERATOR OF A SKATING RINK PROVIDED PROPER SUPERVISION AND THEREFORE WHETHER THE ASSUMPTION OF RISK DOCTRINE APPLIED, PLAINTIFF ALLEGED SHE WAS PUSHED TO THE ICE BY AN UNRULY SKATER. [Laurent v Town of Oyster Bay, 2018 NY Slip Op 05028, Second Dept 7-5-18](#)

PERSONAL INJURY.

PLAINTIFFS DID NOT ALLEGE THAT DEFENDANT CREATED THE DANGEROUS CONDITION AND DEFENDANT DEMONSTRATED IT DID NOT HAVE NOTICE OF THE CONDITION, THEREFORE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IN THIS ICE AND SNOW SLIP AND FALL CASE SHOULD HAVE BEEN GRANTED. [Bombino-Munroe v Church of St. Bernard, 2018 NY Slip Op 05131, Second Dept 7-11-18](#)

PERSONAL INJURY.

\$1.5 MILLION VERDICT AFFIRMED, PLAINTIFF, A 72-YEAR-OLD WOMAN, WAS INJURED WHEN THE BUS SHE HAD JUST BOARDED ACCELERATED QUICKLY CAUSING HER TO FALL, INJURING HER HEAD, BACK, NERVES AND KNEE. [Castillo v MTA Bus Co., 2018 NY Slip Op 05134, Second Dept 7-11-18](#)

PERSONAL INJURY.

ALTHOUGH PLAINTIFF INDICATED SHE DID NOT KNOW THE CAUSE OF HER FALL IN HER DEPOSITION, IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHE RAISED A QUESTION OF FACT ABOUT WHETHER THE FLOOR WAS WET FROM TRACKED IN SNOW AND DEFENDANT DID NOT PRESENT ANY EVIDENCE ON THE ISSUE OF NOTICE. [Matadin v Bank of Am. Corp., 2018 NY Slip Op 05297, Second Dept 7-18-18](#)

PERSONAL INJURY.

ACTION ALLEGING INJURY FROM A FALLING TREE ON DEFENDANT'S PROPERTY SHOULD HAVE BEEN DISMISSED, DEFENDANT DEMONSTRATED A LACK OF NOTICE OF THE CONDITION OF THE TREE. [Pagan v Jordan, 2018 NY Slip Op 05477, Second Dept 7-25-18](#)

PERSONAL INJURY.

DEFENDANTS IN THIS SLIP AND FALL CASE DID NOT DEMONSTRATE WHEN THE AREA WAS LAST CLEANED OR INSPECTED, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Quinones v Starret City, Inc., 2018 NY Slip Op 05510, Second Dept 7-25-18](#)

PERSONAL INJURY.

PLAINTIFF ENTITLED TO SUMMARY JUDGMENT IN THIS REAR-END COLLISION CASE. [Tsyganash v Auto Mall Fleet Mgt., Inc., 2018 NY Slip Op 05517, Second Dept 7-25-18](#)

PERSONAL INJURY, CIVIL PROCEDURE, MUNICIPAL LAW.

MOTION FOR A NEW TRIAL UNLESS PLAINTIFF AGREED TO A REDUCTION IN DAMAGES FOR PRE-IMPACT TERROR AND CONSCIOUS PAIN AND SUFFERING IN THIS TRAFFIC-ACCIDENT WRONGFUL DEATH CASE PROPERLY GRANTED. [Vatalaro v County of Suffolk, 2018 NY Slip Op 05352, Second Dept 7-18-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

A TREE FELL ON THE CAR IN WHICH PLAINTIFF WAS A PASSENGER, TOWN'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED, TOWN DID NOT DEMONSTRATE IT HAD INSPECTED THE TREE AND DID NOT DEMONSTRATE A LACK OF NOTICE OF THE CONDITION OF THE TREE. [Schillaci v Town of Islip, 2018 NY Slip Op 05070, Second Dept 7-5-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

ALTHOUGH DEFENDANT HOMEOWNER MAY HAVE REMOVED ICE AND SNOW FROM THE SIDEWALK, THERE WAS NO SHOWING THE REMOVAL EFFORTS EXACERBATED OR CREATED THE DANGEROUS CONDITION IN THIS SLIP AND FALL CASE, HOMEOWNER'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Wise v Filincieri, 2018 NY Slip Op 05074, Second Dept 7-5-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

ALTHOUGH THE NYC ADMINISTRATIVE CODE IMPOSES A DUTY TO KEEP SIDEWALKS SAFE ON ABUTTING PROPERTY OWNERS, IT DOES NOT IMPOSE STRICT LIABILITY, DEFENDANT FAILED TO DEMONSTRATE IT DID NOT CREATE OR HAVE NOTICE OF THE ALLEGED DANGEROUS CONDITION IN THIS SIDEWALK ICE AND SNOW SLIP AND FALL CASE, DEFENDANT'S SUMMARY JUDGMENT MOTION PROPERLY DENIED. [Muhammad v St. Rose of Limas R.C. Church, 2018 NY Slip Op 05181, Second Dept 7-11-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

COUNTY DID NOT DEMONSTRATE THAT IT DID NOT CREATE THE DANGEROUS CONDITION, I.E. SNOW PILED AT AN INTERSECTION, PLAINTIFF ALLEGED THE INTERSECTION COLLISION WAS CAUSED BY THE INABILITY TO SEE BECAUSE OF THE PILE OF SNOW, COUNTY'S MOTION FOR SUMMARY JUDGMENT PROPERLY DENIED. [Manzella v County of Suffolk, 2018 NY Slip Op 05296, Second Dept 7-18-18](#)

PERSONAL INJURY, VEHICLE AND TRAFFIC LAW.

REAR MOST DRIVER RAISED A QUESTION OF FACT ABOUT WHETHER THE DRIVER IN FRONT STOPPED SUDDENLY AND DID NOT SIGNAL. [Martinez v Allen, 2018 NY Slip Op 05462, Second Dept 7-25-18](#)

REAL ESTATE.

PLAINTIFF, WHO LOST HIS JOB AFTER HIS MORTGAGE HAD BEEN APPROVED AND THE MORTGAGE CONTINGENCY IN THE PURCHASE CONTRACT WAS SATISFIED, WAS ENTITLED TO THE RETURN OF THE DEPOSIT, THE REVOCATION OF THE MORTGAGE COMMITMENT WAS NOT DUE TO BAD FAITH ON PLAINTIFF'S PART. [Chahal v Roberta Ebert Irrevocable Trust, 2018 NY Slip Op 05135, Second Dept 7-11-18](#)

THIRD DEPARTMENT

ATTORNEYS, PRIVILEGE.

MEDICAL JOURNAL KEPT BY PLAINTIFF'S DECEDENT AFTER SHE WAS INJURED AT THE DIRECTION OF HER ATTORNEY PROTECTED BY ATTORNEY-CLIENT PRIVILEGE, MEDICATION LOG IS NOT PROTECTED. [Wrubleski v Mary Imogene Bassett Hosp., 2018 NY Slip Op 05256, Third Dept 7-12-18](#)

CIVIL PROCEDURE, CRIMINAL LAW, APPEALS.

NEW YORK CITY DEPARTMENT OF CORRECTIONS WAS A NECESSARY PARTY TO THIS JAIL TIME CALCULATION PROCEEDING, ISSUE CAN BE RAISED FOR THE FIRST TIME ON APPEAL, MATTER REVERSED AND REMITTED. [Matter of Velez v New York State, Dept. of Corr. & Community Supervision, 2018 NY Slip Op 05243, Third Dept 7-11-18](#)

CIVIL PROCEDURE, EVIDENCE, APPEALS.

ALTHOUGH, ON A PRIOR APPEAL, THE APPEALS COURT FOUND THAT AN OFFER OF PROOF OF PRIOR ACCIDENTS WAS INADEQUATE, AT THE SUBSEQUENT TRIAL THE COURT SHOULD HAVE CONSIDERED THE PLAINTIFF'S OFFER OF EVIDENCE OF PRIOR ACCIDENTS, THE APPELLATE RULING WAS NOT THE LAW OF THE CASE. [O'Buckley v County of Chemung, 2018 NY Slip Op 05003, Third Dept 7-5-18](#)

CONTRACT LAW, INSURANCE LAW, FRAUD.

PLAINTIFF DID NOT KNOW HER LEG HAD BEEN BROKEN IN A CAR ACCIDENT AT THE TIME SHE SIGNED A RELEASE FOR \$2500, HER COMPLAINT STATED CAUSES OF ACTION FOR INVALIDATING THE RELEASE BASED UPON MUTUAL MISTAKE AND FRAUDULENT INDUCEMENT, SUPREME COURT REVERSED. [Fimbel v Vasquez, 2018 NY Slip Op 05001, Third Dept 7-5-18](#)

CRIMINAL LAW.

IT IS NOT REVERSIBLE ERROR FOR DEFENDANT TO NOT BE PRESENT AT A SIDEBAR WHICH RESULTS IN GRANTING A PEREMPTORY OR FOR CAUSE CHALLENGE TO A JUROR, AN ORDER OF PROTECTION SHOULD NOT HAVE BEEN ISSUED FOR A FACT WITNESS WHO DID NOT ACTUALLY SEE THE SHOOTING. [People v Myers, 2018 NY Slip Op 05225, Third Dept 7-12-18](#)

CRIMINAL LAW.

WAIVER OF INDICTMENT AND SUPERIOR COURT INFORMATION (SCI) WERE JURISDICTIONALLY DEFECTIVE, THE SCI DID NOT CONTAIN A CHARGE HELD FOR THE ACTION OF A GRAND JURY OR A LESSER INCLUDED OFFENSE. [People v Hulstrunk, 2018 NY Slip Op 05234, Third Dept 7-12-18](#)

CRIMINAL LAW, ATTORNEYS.

DEFENSE COUNSEL INEFFECTIVE FOR FAILING TO MOVE TO DISMISS THE ACCUSATORY INSTRUMENTS ON SPEEDY TRIAL GROUNDS, CONVICTIONS REVERSED. [People v Smart, 2018 NY Slip Op 04979, Third Dept 7-5-18](#)

CRIMINAL LAW, CONSTITUTIONAL LAW.

COUNTY COURT ABUSED ITS DISCRETION WHEN IT DECLARED A MISTRIAL AFTER ONLY A SHORT PERIOD OF DELIBERATIONS, JEOPARDY ATTACHED AND DEFENDANT CAN NOT BE REPROSECUTED. [People v Wilson, 2018 NY Slip Op 04982, Third Dept 7-5-18](#)

CRIMINAL LAW, DEBTOR-CREDITOR, CIVIL PROCEDURE.

EXECUTIVE LAW DOES NOT PROVIDE FOR THE CIRCUMSTANCE WHERE MORE THAN ONE CRIME VICTIM OBTAINS A JUDGMENT AGAINST THE ASSETS OF THE OFFENDER, HERE THE OFFICE OF VICTIM SERVICES PROPERLY PAID OUT THE ASSETS TO THE FIRST CRIME VICTIM WHO OBTAINED A JUDGMENT. [Waldman v State of New York, 2018 NY Slip Op 05000, Third Dept 7-5-18](#)

CRIMINAL LAW, EVIDENCE.

EMERGENCY EXCEPTION TO THE WARRANT REQUIREMENT DID NOT JUSTIFY ENTRY AND SEARCH OF DEFENDANT'S APARTMENT, CONVICTIONS REVERSED. [People v Sears, 2018 NY Slip Op 04980, Third Dept 7-5-18](#)

CRIMINAL LAW, EVIDENCE.

ALTHOUGH DEFENDANT WAS PRESENT IN A GARAGE WHERE METHAMPHETAMINE WAS BEING MANUFACTURED, THE EVIDENCE WAS INSUFFICIENT TO DEMONSTRATE SHE CONSTRUCTIVELY POSSESSED THE DRUGS, POSSESSION CONVICTION REVERSED AND INDICTMENT DISMISSED. [People v Yerian, 2018 NY Slip Op 04981, Third Dept 7-5-18](#)

CRIMINAL LAW, EVIDENCE.

DVDs SUBMITTED BY THE VICTIM'S FAMILY MEMBERS HAD BEEN SUBMITTED BEFORE IN CONNECTION WITH WHETHER PETITIONER SHOULD BE GRANTED PAROLE, BECAUSE THE DVDs DID NOT PRESENT NEW EVIDENCE, THE PAROLE BOARD SHOULD NOT HAVE RESCINDED ITS DECISION TO SET A RELEASE DATE. [Matter of Duffy v New York State Bd. of Parole, 2018 NY Slip Op 05002, Third Dept 7-5-18](#)

CRIMINAL LAW, EVIDENCE.

OFFICER HAD A REASONABLE BASIS TO CONDUCT A FRISK OF THE DEFENDANT FOR SAFETY REASONS AFTER A VEHICLE STOP. [People v Carey, 2018 NY Slip Op 05376, Third Dept 7-19-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

ALTHOUGH THE EVIDENCE DEFENDANT ACTED AS AN ACCOMPLICE IN THE FATAL SHOOTING OF THE VICTIM WAS LEGALLY SUFFICIENT, THE CONVICTION WAS AGAINST THE WEIGHT OF THE EVIDENCE BECAUSE OF WEAKNESS OF THE EVIDENCE DEFENDANT KNEW OF THE SHOOTER'S INTENT TO KILL THE VICTIM, AS OPPOSED TO AN INTENT TO ROB OR ASSAULT. [People v Croley, 2018 NY Slip Op 04984, Third Dept 7-5-18](#)

CRIMINAL LAW, EVIDENCE, ATTORNEYS.

DESPITE RULING THAT NO EVIDENCE OF DEFENDANT'S REQUESTS TO TALK TO COUNSEL COULD BE PRESENTED, TWO TESTIFYING WITNESSES VIOLATED THAT RULING, BECAUSE THAT EVIDENCE CONFLICTED WITH THE DEFENSE STRATEGY A MISTRIAL SHOULD HAVE BEEN DECLARED, NEW TRIAL ORDERED. [People v Lentini, 2018 NY Slip Op 04983, Third Dept 7-5-18](#)

CRIMINAL LAW, EVIDENCE, EMPLOYMENT LAW, LABOR LAW.

INDICTMENT COUNTS ALLEGING FALSIFYING BUSINESS RECORDS RELATING TO PAYROLL AND THE EMPLOYMENT OF A MINOR IN VIOLATION OF THE LABOR LAW SHOULD NOT HAVE BEEN DISMISSED, LEGAL SUFFICIENCY CRITERIA EXPLAINED. [People v Park, 2018 NY Slip Op 04985, Third Dept 7-5-18](#)

DISCIPLINARY HEARINGS (INMATES), EVIDENCE.

HEARSAY NOT DEMONSTRATED TO BE RELIABLE, DISCIPLINARY DETERMINATION ANNULLED AND EXPUNGED. [Matter of Maisonett v Venettozzi, 2018 NY Slip Op 05257, Third Dept 7-12-18](#)

EDUCATION-SCHOOL LAW, ADMINISTRATIVE LAW. EVIDENCE.

DETERMINATION PETITIONER VIOLATED THE COLLEGE'S SEXUAL ASSAULT POLICY AND THE ADMINISTRATIVE PROCEDURE USED BY THE COLLEGE DEEMED PROPER. [Matter of Doe v Cornell Univ., 2018 NY Slip Op 05255, Third Dept 7-12-18](#)

EDUCATION-SCHOOL LAW, CONSTITUTIONAL LAW, CIVIL PROCEDURE.

PARENTS HAD STANDING TO BRING A MANDAMUS ACTION SEEKING A SOUND BASIC EDUCATION FOR THEIR CHILDREN, HOWEVER MANDAMUS LIES ONLY FOR GOVERNMENT ACTIONS WHICH ARE MANDATORY, NOT THE DISCRETIONARY ACTIONS SOUGHT BY THE PETITION HERE. [Matter of Curry v New York State Educ. Dept., 2018 NY Slip Op 05393, Third Dept 7-19-18](#)

EDUCATION-SCHOOL LAW, NEGLIGENCE, CIVIL PROCEDURE.

ALTHOUGH PLAINTIFF'S FATHER'S PRIOR ATTEMPT TO MOVE FOR LEAVE TO FILE A LATE NOTICE OF CLAIM FAILED BECAUSE OF FLAWED SERVICE, PLAINTIFF, UPON TURNING 18, BECAUSE OF THE TOLLING STATUTE, MADE A TIMELY MOTION FOR LEAVE TO FILE A LATE NOTICE OF CLAIM WHICH SHOULD HAVE BEEN GRANTED, THE SCHOOL HAD TIMELY NOTICE OF THE BULLYING AND HARASSMENT, PLAINTIFF MADE A SHOWING THE SCHOOL SUFFERED NO PREJUDICE FROM THE DELAY, AND THE SCHOOL'S SHOWING OF PREJUDICE WAS SPECULATIVE. [Sherb v Monticello Cent. Sch. Dist., 2018 NY Slip Op 05004, Third Dept 7-5-18](#)

EMINENT DOMAIN, CONDEMNATION, MUNICIPAL LAW, ENVIRONMENTAL LAW.

CITY DID NOT VIOLATE THE PUBLIC USE DOCTRINE AND COMPLIED WITH THE EMINENT DOMAIN PROCEDURE LAW AND THE STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) IN APPROVING THE TAKING OF LAND FOR A BICYCLE-PEDESTRIAN TRAIL. [Matter of Village of Ballston Spa v City of Saratoga Springs, 2018 NY Slip Op 05248, Third Dept 7-12-18](#)

EMPLOYMENT LAW, UNIONS.

UNDER THE PUBLIC AUTHORITIES LAW, LAID OFF SEASONAL EMPLOYEES WHO HAD BEEN TRANSFERRED FROM THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO A PUBLIC BENEFIT CORPORATION WERE NOT ENTITLED TO REMAIN IN THE COLLECTIVE BARGAINING UNIT OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION WHEN REHIRED BY THE PUBLIC BENEFIT CORPORATION. [Matter of Civil Serv. Empls. Assn., Inc., Local 1000, AFSCME, AFL-CIO v Olympic Regional Dev. Auth., 2018 NY Slip Op 04998, Third Dept 7-5-18](#)

ENVIRONMENTAL LAW.

STATE PROPERLY SOUGHT OIL SPILL CLEANUP COSTS FROM DEFENDANT PROPERTY OWNER, EVEN THOUGH THOSE COSTS WERE COVERED BY PAYMENT FROM THE LEAKING UNDERGROUND STORAGE TANK FUND, PAYMENT BY THE DEFENDANT WOULD BE USED TO REPLENISH THE FUND AND DID NOT CONSTITUTE DOUBLE RECOVERY BY THE STATE. [State of New York v Ronney, 2018 NY Slip Op 05389, Third Dept 7-19-18](#)

FAMILY LAW.

ALTHOUGH MOTHER VIOLATED THE TERMS OF HER SUSPENDED JUDGMENT, FAMILY COURT SHOULD NOT HAVE TERMINATED HER PARENTAL RIGHTS WITHOUT A FINDING, BASED UPON A HEARING, THAT TERMINATION WAS IN THE BEST INTERESTS OF THE CHILD. [Matter of Cecilia P. \(Carlenna Q.\), 2018 NY Slip Op 04993, Third Dept 7-5-18](#)

FAMILY LAW, ATTORNEYS.

FAMILY COURT'S FAILURE TO CONDUCT A SEARCHING INQUIRY BEFORE ALLOWING FATHER TO PROCEED PRO SE REQUIRED REVERSAL, DESPITE FATHER'S BEING REPRESENTED WHEN THE HEARING CONTINUED. [Matter of Hensley v DeMun, 2018 NY Slip Op 04995, Third Dept 7-5-18](#)

FREEDOM OF INFORMATION LAW (FOIL).

DESPITE THE FACT THAT THE PETITION SEEKING REVIEW OF FREEDOM OF INFORMATION LAW (FOIL) REQUESTS WAS MOOT, PETITIONER HAD SUBSTANTIALLY PREVAILED AND WAS ENTITLED TO COSTS AND FEES, MATTER REMITTED. [Matter of Cobado v Benziger, 2018 NY Slip Op 04996, Third Dept 7-5-18](#)

INSURANCE LAW, ANIMAL LAW.

QUESTIONS OF FACT ABOUT WHETHER THERE WAS A MISREPRESENTATION BY THE INSURED ABOUT A PRIOR BITE BY A DOG, AND WHETHER THERE ACTUALLY WAS A PRIOR BITE, PRECLUDED SUMMARY JUDGMENT ON WHETHER A CANINE POLICY EXCLUSION APPLIED AND WHETHER THERE WAS A TIMELY DISCLAIMER. [Battisti v Broome Coop. Ins. Co., 2018 NY Slip Op 04992, Third Dept 7-5-18](#)

INSURANCE LAW, CONTRACT LAW, NEGLIGENCE.

NO AGREEMENT TO INCREASE INSURANCE COVERAGE OF HOME DESTROYED BY FIRE AFTER RENOVATIONS, NO SPECIAL RELATIONSHIP BETWEEN THE INSURANCE BROKERS AND THE INSURED. [Hefty v Paul Seymour Ins. Agency, 2018 NY Slip Op 05547, Third Dept 7-26-18](#)

MENTAL HYGIENE LAW.

SEX OFFENDER MANAGEMENT PROCEEDING IN THIS HIGH PROFILE CASE SHOULD BE CLOSED TO THE PUBLIC TO PROTECT THE IDENTITIES OF THE VICTIMS. [Matter of State of New York v John T., 2018 NY Slip Op 05012, Third Dept 7-5-18](#)

MUNICIPAL LAW, LANDLORD-TENANT, CONSTITUTIONAL LAW.

CITY ORDINANCE PROVISIONS REQUIRING A RENTAL PERMIT AND LIMITING OCCUPANCY OF RENTAL UNITS TO A "FAMILY" AS DEFINED IN THE ORDINANCE ARE NOT UNCONSTITUTIONAL. [Grodinsky v City of Cortland, 2018 NY Slip Op 05236, Third Dept 7-12-18](#)

PERSONAL INJURY.

QUESTIONS OF FACT WHETHER CLUTTER AT A DAY CARE CENTER WAS A PROXIMATE CAUSE OF PLAINTIFF'S FALL AND WHETHER A BICYCLE RIDDEN BY A THREE-YEAR-OLD WAS A DANGEROUS INSTRUMENT REQUIRING SUPERVISION BY THE OPERATOR OF THE DAY CARE CENTER. [Pineiro v Rush, 2018 NY Slip Op 04994, Third Dept 7-5-18](#)

PERSONAL INJURY.

THE SCOPE OF A LANDOWNER'S DUTY TO KEEP PROPERTY IN A SAFE CONDITION IS MEASURED BY FORESEEABILITY, HERE A GRASSY PATH WAS CLEARED OF SNOW BY A SCHOOL CUSTODIAN, SO USE OF THE PATH WAS FORESEEABLE, HOWEVER THERE WAS A QUESTION OF FACT WHETHER THE PATH CONSTITUTED A DANGEROUS CONDITION. [Ellis v Lansingburgh Cent. Sch. Dist., 2018 NY Slip Op 05011, Third Dept 7-5-18](#)

PERSONAL INJURY.

QUESTIONS OF FACT WHETHER THE PLACEMENT OF A PROPANE HEATER IN DEFENDANT'S STORE CREATED A DANGEROUS CONDITION AND WAS A PROXIMATE CAUSE OF PLAINTIFF'S CLOTHING CATCHING FIRE. [Palmatier v Mr. Heater Corp., 2018 NY Slip Op 05250, Second Dept 7-12-18](#)

PERSONAL INJURY.

QUESTION OF FACT WHETHER PLAINTIFF, A YOUTH HOCKEY PLAYER INJURED BY A TIPPING BENCH IN THE LOCKER ROOM, WAS IN THE CUSTODY OF THE COACH OR HIS FATHER IN THIS NEGLIGENT SUPERVISION ACTION. [Beninati v City of Troy, 2018 NY Slip Op 05254, Third Dept 7-12-18](#)

PERSONAL INJURY, EVIDENCE.

ALTHOUGH PROOF OF THE STAIRWAY FALL CASE WAS ENTIRELY CIRCUMSTANTIAL BECAUSE OF PLAINTIFF'S DECEDENT'S DEATH, THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE PLAINTIFF'S VERDICT AND THE JURY WAS PROPERLY GIVEN THE NOSEWORTHY INSTRUCTION. [Tyrell v Pollak, 2018 NY Slip Op 05251, Third Dept 7-12-18](#)

PERSONAL INJURY, EMPLOYMENT LAW, CIVIL PROCEDURE.

PLAINTIFF ALLEGED HE WAS PUNCHED IN THE FACE BY A BAR EMPLOYEE AND SUED THE BAR FOR BREACH OF A DUTY TO KEEP THE PREMISES SAFE, WHICH WAS PROPERLY DISMISSED AS UNTIMELY, NEGLIGENT HIRING AND SUPERVISION, WHICH SHOULD NOT HAVE BEEN DISMISSED, AND VICARIOUS LIABILITY, WHICH ALTHOUGH INCONSISTENT WITH NEGLIGENT SUPERVISION, CAN BE PLED IN THE ALTERNATIVE. [McCarthy v Mario Enters., Inc., 2018 NY Slip Op 05006, Third Dept 7-5-18](#)

PRODUCTS LIABILITY, PERSONAL INJURY.

FAILURE TO WARN CAUSE OF ACTION IN THIS PRODUCTS LIABILITY CASE PROPERLY SURVIVED SUMMARY JUDGMENT, PLAINTIFF'S CLOTHES CAUGHT FIRE WHEN SHE STOOD NEAR A PROPANE HEATER, QUESTIONS OF FACT WHETHER THE WARNING WAS ADEQUATE AND WHETHER FAILURE TO WARN WAS A PROXIMATE CAUSE. [Palmatier v Mr. Heater Corp., 2018 NY Slip Op 05238, Third Dept 7-12-18](#)

REAL PROPERTY.

DEFENDANT DEMONSTRATED CONTINUOUS SEASONAL USE OF A TRAIL WHICH CROSSED OVER ONTO PLAINTIFF'S LAND (TO GO AROUND TWO OBSTACLES) FOR 20 YEARS, DEFENDANT HAD A PRESCRIPTIVE EASEMENT OVER THE TWO CROSS-OVER PORTIONS OF THE TRAIL. [Auswin Realty Corp. v Klondike Ventures, Inc., 2018 NY Slip Op 04997, Third Dept 7-5-18](#)

REAL PROPERTY ACTIONS AND PROCEEDINGS LAW.

PLAINTIFF'S CLAIM FOR TREBLE DAMAGES IN THIS TIMBER TRESPASS ACTION SHOULD NOT HAVE BEEN DISMISSED, THERE EXIST QUESTIONS OF FACT WHETHER DEFENDANT MADE ADEQUATE EFFORTS TO ENSURE IT HAD THE LEGAL RIGHT TO HARVEST THE TIMBER. [DiSanto v D'Assy, 2018 NY Slip Op 05007, Third Dept 7-5-18](#)

TAX LAW, MUNICIPAL LAW, REAL PROPERTY TAX LAW.

ALTHOUGH THE STATUTE STATES THAT EMPIRE ZONE REAL PROPERTY TAX CREDITS ARE AVAILABLE WHEN THE TAX PAYER MAKES DIRECT PAYMENTS TO THE TAXING AUTHORITY, PETITIONERS WERE ENTITLED TO THE TAX CREDITS EVEN THOUGH THE PAYMENTS WERE MADE FROM A MORTGAGE TAX ESCROW ACCOUNT. [Matter of Balbo v New York State Tax Appeals Trib., 2018 NY Slip Op 05540, Third Dept 7-26-18](#)

UNEMPLOYMENT INSURANCE.

NURSE PROVIDING HOME HEALTH CARE SERVICES WAS AN EMPLOYEE ENTITLED TO BENEFITS. [Matter of Dillon \(Commissioner of Labor\), 2018 NY Slip Op 05386. Third Dept 7-19-18](#)

FOURTH DEPARTMENT

ARBITRATION, EMPLOYMENT LAW, CONTRACT LAW.

THE ARBITRATOR'S DECISION TO OVERLOOK AN INSTANCE OF TARDINESS (ONE MINUTE LATE DUE TO A DISABLED TRAIN BLOCKING TRAFFIC) WHICH OTHERWISE WOULD REQUIRE THE GRIEVANT'S TERMINATION WAS NOT IRRATIONAL AND DID NOT EXCEED THE ARBITRATOR'S ENUMERATED POWERS. [Matter of Lift Line, Inc. \(Amalgamated Tr. Union, Local 282\), 2018 NY Slip Op 05102, Fourth Dept 7-6-18](#)

ARBITRATION, MUNICIPAL LAW, ATTORNEYS, CIVIL PROCEDURE.

COURT EXCEEDED ITS AUTHORITY WHEN IT VACATED AN ARBITRATION AWARD, COURT DID NOT ACQUIRE PERSONAL JURISDICTION OVER A POLICE OFFICER SEEKING MUNICIPAL LAW 207-c BENEFITS BECAUSE THE OFFICER NEVER AUTHORIZED THE UNION ATTORNEY TO REPRESENT HER. [Matter of City of Syracuse \(Lee\), 2018 NY Slip Op 05077, Third Dept 7-6-18](#)

CIVIL PROCEDURE, EMPLOYMENT LAW, LABOR LAW.

AN UNPLEADED AFFIRMATIVE DEFENSE MAY BE SUCCESSFULLY RAISED TO DEFEAT A MOTION FOR SUMMARY JUDGMENT. [Salahuddin v Craver, 2018 NY Slip Op 05429, Fourth Dept 7-25-18](#)

CIVIL PROCEDURE, ENVIRONMENTAL LAW, CORPORATION LAW.

ALTHOUGH THE FOREIGN CORPORATION MIGHT BE LIABLE FOR CONTAMINATION OF PLAINTIFFS' PROPERTY, THE CORPORATION HAS NO PRESENT CONTACTS IN NEW YORK AND THEREFORE IS NOT SUBJECT TO THE COURT'S JURISDICTION. [BRG Corp. v Chevron U.S.A., Inc., 2018 NY Slip Op 05425, Fourth Dept 7-25-18](#)

CIVIL PROCEDURE, INDIAN LAW.

SUPREME COURT PROPERLY REFUSED TO DISMISS A COMPLAINT CONCERNING CONTROL OF CERTAIN CAYUGA NATION PROPERTY ON SUBJECT MATTER JURISDICTION GROUNDS, TWO JUSTICE DISSENT. [Cayuga Nation v Campbell, 2018 NY Slip Op 05427, Fourth Dept 7-25-18](#)

CIVIL PROCEDURE, LANDLORD-TENANT, MUNICIPAL LAW, REAL PROPERTY LAW, CONVERSION.

CLASS ACTION COMPLAINT ON BEHALF OF TENANTS ALLEGING LANDLORDS' MISHANDLING OF SECURITY DEPOSITS SHOULD NOT HAVE BEEN DISMISSED. [Rubman v Osuchowski, 2018 NY Slip Op 05416, Fourth Dept 7-25-18](#)

CRIMINAL LAW.

RESENTENCING IN SUPREME COURT AFTER CONVICTION IN COUNTY COURT WAS ILLEGAL. [People v Williams, 2018 NY Slip Op 05090, Fourth Dept 7-6-18](#)

CRIMINAL LAW.

SPECTATOR'S CLAIM JURORS REFERRED TO DEFENDANT AS A 'SCUMBAG' WAS NOT CREDIBLE, TRIAL JUDGE PROPERLY DECIDED A JUROR-BIAS (BUFORD) HEARING WAS NOT REQUIRED. [People v Kuzdzal, 2018 NY Slip Op 05099, Fourth Dept 7-6-18](#)

CRIMINAL LAW.

CONTRARY TO THE TRIAL JUDGE'S RULING, DEFENDANT HAD SATISFIED THE FIRST STEP OF A BATSON CHALLENGE TO THE PEOPLE'S STRIKING OF AN AFRICAN-AMERICAN PROSPECTIVE JUROR, THE BURDEN THEN SHIFTED TO THE PEOPLE TO ARTICULATE A NONDISCRIMINATORY REASON, THE MATTER IS SENT BACK FOR A DETERMINATION OF THE BATSON CHALLENGE USING THE CORRECT PROCEDURE. [People v Herrod, 2018 NY Slip Op 05110, Fourth Dept 7-6-18](#)

CRIMINAL LAW.

ERROR FOR JUDGE TO EFFECTIVELY IGNORE SPECIFIC QUESTIONS IN A JURY NOTE AND TO INSTRUCT THE JURY ON A LEGAL ISSUE THAT HAD NOT BEEN RAISED BEFORE AND COULD NOT, THEREFORE, HAVE BEEN ADDRESSED BY DEFENSE COUNSEL IN SUMMATION. [People v Wood, 2018 NY Slip Op 05422, Fourth Dept 7-25-18](#)

CRIMINAL LAW, EVIDENCE.

IT WAS REVERSIBLE ERROR TO ALLOW EVIDENCE OF TWO FORGED CHECKS AT THE SECOND FORGERY TRIAL BECAUSE DEFENDANT HAD BEEN ACQUITTED OF THE CHARGES RELATED TO THOSE CHECKS IN THE FIRST TRIAL. [People v Williams, 2018 NY Slip Op 05089, Fourth Dept 7-6-18](#)

CRIMINAL LAW, EVIDENCE.

POLICE DID NOT HAVE A REASONABLE SUSPICION OF CRIMINAL ACTIVITY AT THE TIME DEFENDANT WAS STOPPED ON THE STREET, SHOWUP IDENTIFICATION SHOULD HAVE BEEN SUPPRESSED. [People v Spinks, 2018 NY Slip Op 05103, Fourth Dept 7-6-18](#)

CRIMINAL LAW, EVIDENCE, ATTORNEYS.

DEFENSE COUNSEL WAS NOT INEFFECTIVE FOR FAILURE TO MOVE TO SUPPRESS THE RESULTS OF THE WARRANTLESS SEARCH OF A GARBAGE BAG AND CELL-SITE LOCATION RECORDS WHICH WERE JUSTIFIED BY EXIGENT CIRCUMSTANCES , AND DEFENSE COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO OBJECT TO THE PROSECUTOR'S MISCHARACTERIZATION OF THE STRENGTH OF DNA EVIDENCE. [People v Lively, 2018 NY Slip Op 05413, Fourth Dept 7-25-18](#)

EDUCATION-SCHOOL LAW, ADMINISTRATIVE LAW, EVIDENCE.

COLLEGE'S DISCIPLINARY DETERMINATION REGARDING A STUDENT WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, DETERMINATION ANNULLED AND EXPUNGED, [Matter of Hill v State Univ. of N.Y. At Buffalo, 2018 NY Slip Op 05104, Fourth Dept 7-6-18](#)

EMPLOYMENT LAW, CIVIL PROCEDURE.

PLAINTIFF STAFFING AGENCY WAS NOT ENTITLED, BASED UPON A BALANCING OF THE EQUITIES, TO A PRELIMINARY INJUNCTION ENFORCING A RESTRICTIVE COVENANT WHICH OSTENSIBLY PROHIBITED DEFENDANT FROM CONTINUING TO WORK AT THE HOSPITAL WHERE PLAINTIFF HAD PLACED HIM AFTER DEFENDANT TERMINATED HIS CONTRACT WITH PLAINTIFF. [Delphi Hospitalist Servs. LLC v Patrick, 2018 NY Slip Op 05100, Fourth Dept 7-6-18](#)

ENVIRONMENTAL LAW, MUNICIPAL LAW, ADMINISTRATIVE LAW.

PETITION SEEKING TO ANNUL A NEGATIVE DECLARATION UNDER THE STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) CONCERNING A TRUCK STOP PROJECT PROPERLY DISMISSED FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES, TOWN PLANNING BOARD DID NOT ACT ARBITRARILY AND CAPRICIOUSLY WHEN IT FAILED TO FOLLOW A LOCAL LAW WHICH CONFLICTED WITH SEQRA. [Matter of Pilot Travel Ctrs., LLC v Town Bd. of Town of Bath, 2018 NY Slip Op 05082, Fourth Dept 7-6-18](#)

FAMILY LAW, CIVIL PROCEDURE.

PETITION BY A FORMER ROMANTIC PARTNER SEEKING JOINT CUSTODY OF CHILDREN BORN TO RESPONDENT BASED UPON AN ALLEGED AGREEMENT TO RAISE THE CHILDREN AS A FAMILY SHOULD NOT HAVE BEEN DISMISSED BY THE REFEREE FOR FAILURE TO MAKE OUT A PRIMA FACIE CASE, THE REFEREE SHOULD NOT HAVE MADE CREDIBILITY DETERMINATIONS IN A MOTION PURSUANT TO CPLR 4401. [Matter of deMarc v Goodyear, 2018 NY Slip Op 05095, Fourth Dept 7-6-18](#)

FAMILY LAW, CIVIL PROCEDURE.

PROPERTY ACQUIRED DURING A VERMONT CIVIL UNION, UNDER PRINCIPLES OF COMITY, IS SUBJECT TO EQUITABLE DISTRIBUTION. [O'Reilly-Morshead v O'Reilly-Morshead, 2018 NY Slip Op 05419, Fourth Dept 7-25-18](#)

FAMILY LAW, CONTRACT LAW.

DIVORCE SETTLEMENT AGREEMENT WHICH WAS SILENT ON THE DEFINITION OF MAINTENANCE WAS INTERPRETED IN ACCORDANCE WITH THE STATUTORY DEFINITION OF MAINTENANCE IN DOMESTIC RELATIONS LAW 236. [Burns v Burns, 2018 NY Slip Op 05411, Fourth Dept 7-25-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF ENTITLED TO SUMMARY JUDGMENT ON THE LABOR LAW 240 (1) CAUSE OF ACTION, PLAINTIFF DEMONSTRATED THE FAILURE OF A TOE BOARD WAS AT LEAST A CONTRIBUTING CAUSE OF PLAINTIFF'S FALL FROM A ROOF, CONTRIBUTORY NEGLIGENCE IS NOT A BAR TO RECOVERY AS A MATTER OF LAW. [Provens v Ben-Fall Dev., LLC, 2018 NY Slip Op 05426, Fourth Dept 7-25-18](#)

PERSONAL INJURY.

CONDUCT OF THE BUFFALO BILLS OR THE COUNTY OF ERIE AS THE OWNER OF THE FOOTBALL STADIUM WAS NOT THE PROXIMATE CAUSE OF AN UNPROVOKED CRIMINAL ASSAULT ON THE PLAINTIFF AT THE STADIUM, NEGLIGENCE ACTION PROPERLY DISMISSED. [Wrobel v Doe, 2018 NY Slip Op 05097, Fourth Dept 7-6-18](#)

PERSONAL INJURY.

QUESTION OF FACT WHETHER DEFENDANT BUS COMPANY HAD NOTICE OF A PUDDLE OF HYDRAULIC FLUID ON THE FLOOR OF THE BUS IN THIS SLIP AND FALL CASE. [Mills v Niagara Frontier Transp. Auth., 2018 NY Slip Op 05098, Fourth Dept 7-6-18](#)

PERSONAL INJURY, EDUCATION-SCHOOL LAW.

EIGHT YEAR OLD STUDENT MISSED HIS BUS AND WAS ALLEGEDLY TOLD BY A SCHOOL EMPLOYEE TO WALK HOME, THE STUDENT WAS STRUCK BY A CAR ON HIS WAY HOME, THE NEGLIGENT SUPERVISION COMPLAINT AGAINST THE SCHOOL DISTRICT SHOULD NOT HAVE BEEN DISMISSED. [Deng v Young, 2018 NY Slip Op 05414, Second Dept 7-25-18](#)

PERSONAL INJURY, EVIDENCE, APPEALS, CIVIL PROCEDURE.

PLAINTIFF'S EXPERT WITNESS DISCLOSURE SHOULD NOT HAVE BEEN STRUCK AND THE EXPERT SHOULD NOT HAVE BEEN PRECLUDED FROM TESTIFYING ABOUT THE RELEVANT STANDARDS FOR USE OF SLIDES IN SWIMMING POOLS, PLAINTIFF ALLEGEDLY STRUCK HER HEAD ON THE BOTTOM OF THE POOL AFTER SLIDING HEAD FIRST, THE RULING ON THE MOTION IS APPEALABLE BECAUSE IT DEALS WITH THE MERITS AND AFFECTS A SUBSTANTIAL RIGHT. [Redmond v Redmond, 2018 NY Slip Op 05417, Fourth Dept 7-25-18](#)

PERSONAL INJURY, WRONGFUL DEATH, EMPLOYMENT LAW.

THE MEDICAL PROFESSIONALS INVOLVED WITH REVIEWING AN X-RAY OF PLAINTIFF'S DECEDENT'S CHEST ON BEHALF OF DECEDENT'S EMPLOYER DID NOT HAVE A DUTY TO INFORM THE DECEDENT OR HIS PHYSICIAN OF THE CANCER FINDINGS. [Kingsley v Price, 2018 NY Slip Op 05088, Fourth Dept 7-6-18](#)

REAL ESTATE, FRAUD.

THERE ARE QUESTIONS OF FACT WHETHER THE BROKER REPRESENTED BOTH SELLERS AND BUYER WITHOUT DISCLOSING THE DUAL REPRESENTATION, A BREACH OF A FIDUCIARY DUTY, AND THERE ARE QUESTIONS OF FACT WHETHER THE SELLERS WERE FRAUDULENTLY INDUCED BY THE BROKER TO ENTER THE PURCHASE AGREEMENT, BROKER'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Northland E., LLC v J.R. Militello Realty, Inc., 2018 NY Slip Op 05078, Fourth Dept 7-6-18](#)

ZONING, ENVIRONMENTAL LAW.

TOWN DID NOT VIOLATE THE TOWN CODE OR THE STATE ENVIRONMENTAL QUALITY REVIEW ACT WHEN IT GRANTED A SPECIAL USE PERMIT AND VARIANCES FOR THE CONSTRUCTION OF A CELL TOWER. [Matter of Edwards v Zoning Bd. of Appeals of Town of Amherst, 2018 NY Slip Op 05430, Fourth Dept 7-25-18](#)

ZONING, ADMINISTRATIVE LAW, CIVIL PROCEDURE.

THE COURT REVERSED THE ZONING BOARD OF APPEALS BECAUSE THE BOARD FAILED TO FOLLOW THE PROCEDURE MANDATED BY THE TOWN CODE WHEN IT GRANTED AREA VARIANCES, THE COURT ALSO NOTED THAT A DECLARATORY JUDGMENT IS NOT AN AVAILABLE REMEDY FOR CHALLENGING AN ADMINISTRATIVE DETERMINATION. [Matter of Schulz v Town of Hopewell Zoning Bd. of Appeals, 2018 NY Slip Op 05418, Fourth Dept 7-25-18](#)

AUGUST 2018

COURT OF APPEALS

ELECTION LAW.

FAILURE TO SPECIFY THE GENDER OF THE CANDIDATE REQUIRED DENIAL OF THE DESIGNATING PETITION. [Matter of Mintz v Board of Elections in the City of N.Y., 2018 NY Slip Op 05958, CtApp 8-29-28](#)

FIRST DEPARTMENT

CIVIL PROCEDURE, CONTRACT LAW.

SIX-MONTH CONTRACTUAL STATUTE OF LIMITATIONS EXPIRED BEFORE THE CLAIM ACCRUED AND WILL NOT BE ENFORCED TO PRECLUDE PAYMENT ON THE CLAIM. [AWI Sec. & Investigators, Inc. v Whitestone Constr. Corp., 2018 NY Slip Op 05907, First Dept 8-23-18](#)

CIVIL PROCEDURE. PRIVILEGE, ATTORNEYS.

CRITERIA FOR DETERMINING WHETHER A PROTECTIVE ORDER PROHIBITING THE DEPOSITION OF OPPOSING COUNSEL SHOULD BE GRANTED EXPLAINED, MATTER REMANDED. [Liberty Petroleum Realty, LLC v Gulf Oil, L.P., 2018 NY Slip Op 05624, First Dept 8-2-18](#)

CRIMINAL LAW, IMMIGRATION LAW, ATTORNEYS.

ALTHOUGH SUPREME COURT USED THE WRONG STANDARD OF PROOF, THE FINDING THAT DEFENDANT'S TESTIMONY AT THE HEARING ON HIS MOTION TO VACATE HIS CONVICTION WAS NOT CREDIBLE JUSTIFIED DENIAL OF THE MOTION, DEFENDANT, WHO HAS BEEN DEPORTED, ARGUED HE WOULD NOT HAVE PLED GUILTY BUT FOR HIS ATTORNEY'S ASSURANCE HE WOULD NOT BE SUBJECT TO DEPORTATION. [People v Pinilla, 2018 NY Slip Op 05960, First Dept 8-30-18](#)

EMPLOYMENT LAW, HUMAN RIGHTS LAW, MUNICIPAL LAW.

PLAINTIFF STATED A CAUSE OF ACTION FOR EMPLOYMENT DISCRIMINATION UNDER THE NYC HUMAN RIGHTS LAW, WHICH WAS DEEMED BROADER IN SCOPE THAN THE STATE HUMAN RIGHTS LAW, PLAINTIFF ALLEGED HER SUPERVISOR SQUEEZED HER THIGH AND HER REJECTION OF THAT ADVANCE RESULTED IN HER BEING TREATED LESS WELL THAN OTHER EMPLOYEES THEREAFTER. [Suri v Grey Global Group, Inc., 2018 NY Slip Op 05627, First Dept 8-2-18](#)

FAMILY LAW, ATTORNEYS.

CHILD'S ATTORNEY HAD STANDING TO OBJECT TO THE SUPPORT MAGISTRATE'S CHILD SUPPORT RULINGS, AN ADOPTIVE SUBSIDY IS A RESOURCE OF THE ADOPTED CHILD AND SHOULD BE PAID TO THE ADOPTIVE MOTHER ON THE CHILD'S BEHALF UNTIL THE CHILD TURNS 21, EVEN THOUGH MOTHER NO LONGER CARES FOR THE CHILD. [Matter of Barbara T. v Acquinetta M., 2018 NY Slip Op 05736, First Dept 8-9-18](#)

INSURANCE LAW, TAX LAW, FRAUD, EMPLOYMENT LAW.

IN THIS QUI TAM (WHISTLEBLOWER) ACTION THE COMPLAINT SUFFICIENTLY ALLEGED DEFENDANT FILED FALSE TAX RETURNS RE: A CAPTIVE INSURANCE COMPANY AND TERMINATED THE WHISTLEBLOWER FOR RAISING HIS CONCERNS WITH HIS SUPERIORS. [Anonymous v Anonymous, 2018 NY Slip Op 05963, First Dept 8-30-18](#)

LABOR LAW-CONSTRUCTION LAW, CIVIL PROCEDURE, PERSONAL INJURY.

HOMEOWNER EXEMPTION APPLIED TO THE CHURCH IN THIS LABOR LAW 240 (1), 241 (6) AND 200 ACTION STEMMING FROM A FALL FROM A SCAFFOLD, FAILURE TO PLEAD THE EXEMPTION AS A DEFENSE DID NOT PRECLUDE RAISING IT IN A SUMMARY JUDGMENT MOTION, ARCHDIOCESE WAS NOT AN AGENT OF THE OWNER, NO LABOR LAW 200 LIABILITY BECAUSE PLAINTIFF'S EMPLOYER SUPERVISED AND CONTROLLED THE MEANS AND MANNER OF WORK. [Bautista v Archdiocese of N.Y., 2018 NY Slip Op 05959, First Dept 8-30-18](#)

LABOR LAW-CONSTRUCTION LAW, EVIDENCE, CIVIL PROCEDURE.

AFFIDAVIT FROM AN EYEWITNESS TO THE ACCIDENT SUBMITTED WITH THE REPLY PAPERS WAS PROPERLY CONSIDERED AS IT DID NOT CONFLICT THE WITNESS'S OTHER AFFIDAVIT OR THE WITNESS'S PRIOR UNSWORN STATEMENT, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON HIS LABOR LAW 240 (1) CAUSE OF ACTION PROPERLY GRANTED. [Cuevas v Baruti Constr. Corp., 2018 NY Slip Op 05905, Second Dept 8-23-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON HIS LABOR LAW 240 (1) AND 241 (6) CAUSES OF ACTION SHOULD HAVE BEEN GRANTED, PLAINTIFF FELL OFF THE BACK OF A FLATBED TRUCK AS STEEL BEAMS WERE BEING HOISTED FROM THE TRUCK. [Flores v Metropolitan Transp. Auth., 2018 NY Slip Op 05734, First Dept 8-9-18](#)

LANDLORD-TENANT, MUNICIPAL LAW.

THE LOW AND MODERATE INCOME APARTMENT BUILDING WAS SUBJECT TO FEDERAL HUD REGULATION UNTIL THE HUD MORTGAGE WAS PAID OFF IN 2011, AFTER THAT THE BUILDING WAS SUBJECT TO THE NYC RENT STABILIZATION LAW. [435 Cent. Park W. Tenant Assn. v Park Front Apts., LLC, 2018 NY Slip Op 05625, First Dept 8-2-18](#)

LANDLORD-TENANT, MUNICIPAL LAW, CIVIL PROCEDURE.

WHERE THERE IS NO FRAUD ON THE LANDLORD'S PART, THE NYC DEPARTMENT OF HOUSING AND COMMUNITY RENEWAL CANNOT LOOK BACK FURTHER THAN THE FOUR-YEAR STATUTE-OF-LIMITATIONS PERIOD IN THE RENT STABILIZATION LAW TO

DETERMINE THE BASE RENT FOR CALCULATING AN OVERCHARGE. [Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal, 2018 NY Slip Op 05797, First Dept 8-16-18](#)

LANDLORD-TENANT, MUNICIPAL LAW, CIVIL PROCEDURE.

LANDLORDS PROPERLY CALCULATED THE RENT OVERCHARGE PURSUANT TO THE NYC RENT STABILIZATION CODE BY CHOOSING A BASE RENT DATE FOUR YEARS BEFORE THE DATE DEEMED TO BE WHEN THE OVERCHARGE COMPLAINT WOULD HAVE BEEN FILED HAD THE LAW BEEN CLEAR AT THE TIME. [Raden v W 7879, LLC, 2018 NY Slip Op 05799, First Dept 8-16-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON HIS LABOR LAW 240 (1) AND 241 (6) CAUSES OF ACTION SHOULD HAVE BEEN GRANTED, PLAINTIFF FELL OFF THE BACK OF A FLATBED TRUCK AS STEEL BEAMS WERE BEING HOISTED FROM THE TRUCK. [Flores v Metropolitan Transp. Auth., 2018 NY Slip Op 05734, First Dept 8-9-18](#)

LANDLORD-TENANT, MUNICIPAL LAW, ADMINISTRATIVE LAW.

OWNER PROPERLY FOUND RESPONSIBLE FOR REFUNDING OVERCHARGES COLLECTED BY THE PRIME TENANT WHICH HAD CREATED AN ILLUSORY TENANCY TO CIRCUMVENT THE NYC RENT STABILIZATION LAW. [Matter of 333 E. 49th Partnership, LP v New York State Div. of Hous. & Community Renewal, 2018 NY Slip Op 05735, First Dept 8-9-18](#)

MENTAL HYGIENE LAW, TRUSTS AND ESTATES, CONSTITUTIONAL LAW, APPEALS.

DECISION TO WITHDRAW LIFE SUPPORT FROM A DEVELOPMENTALLY DISABLED MAN IN A VEGETATIVE STATE PURSUANT TO THE CRITERIA IN SURROGATE'S COURT PROCEDURE ACT 1750-b DID NOT VIOLATE HIS RIGHT TO EQUAL PROTECTION UNDER THE LAW. [Matter of Sloane v M.G., 2018 NY Slip Op 05800, First Dept 8-16-18](#)

PARTNERSHIP LAW, CONTRACT LAW.

COMPLAINT ALLEGING BREACH OF A JOINT VENTURE AGREEMENT SHOULD HAVE BEEN DISMISSED, TWO ESSENTIAL ELEMENTS OF A JOINT VENTURE, SHARING COSTS AND CONTROL, WERE ABSENT. [Slabakis v Schik, 2018 NY Slip Op 05962, First Dept 8-30-18](#)

PERSONAL INJURY, EVIDENCE.

DEFENDANT DEMONSTRATED THE ABSENCE OF ACTUAL OR CONSTRUCTIVE NOTICE OF THE ALLEGEDLY SLIPPERY CONDITION IN THIS SLIP AND FALL CASE. [Canteen v New York City Hous. Auth., 2018 NY Slip Op 05733, First Dept 8-9-18](#)

REAL PROPERTY LAW, CORPORATION LAW, MUNICIPAL LAW, CIVIL PROCEDURE, ENVIRONMENTAL LAW. LAND USE.

THE REAL ESTATE BOARD OF NEW YORK, WHOSE MEMBERS OWN HOTELS, HAD STANDING TO CONTEST A LOCAL LAW PLACING A TWO-YEAR MORATORIUM ON THE CONVERSION OF HOTELS TO RESIDENTIAL UNITS, THE BOARD DID NOT HAVE STANDING TO CHALLENGE THE LAW UNDER THE STATE ENVIRONMENTAL QUALITY REVIEW ACT, HOWEVER, BECAUSE IT DID NOT ALLEGE ENVIRONMENTAL HARM AND DID NOT ALLEGE HARM SEPARATE AND APART FROM INJURY TO THE GENERAL PUBLIC.. [Matter of Real Estate Bd. of N.Y., Inc. v City of New York, 2018 NY Slip Op 05906, First Dept 8-23-18](#)

SEPULCHER, MUNICIPAL LAW, NEGLIGENCE, IMMUNITY.

CITY WAS IMMUNE FROM SUIT BASED UPON THE HANDLING OF A DECEASED PERSON DURING HURRICANE SANDY AND NO SPECIAL RELATIONSHIP WAS DEMONSTRATED WITH THE CITY. [Lee v City of New York, 2018 NY Slip Op 05626, First Dept 8-2-18](#)

SECOND DEPARTMENT

ANIMAL LAW, CIVIL PROCEDURE.

OUT-OF-STATE AFFIDAVIT RAISED A QUESTION OF FACT WHETHER DEFENDANT WAS AWARE OF THE DOG'S VICIOUS PROPENSITIES IN THIS DOG BITE CASE, THE AFFIDAVIT WAS ADMISSIBLE DESPITE ABSENCE OF A CERTIFICATE OF CONFORMITY. [Lipinsky v Yarusso, 2018 NY Slip Op 05925, Second Dept 8-29-18](#)

APPEALS, CRIMINAL LAW, FAMILY LAW.

ADJOURNMENT IN CONTEMPLATION OF DISMISSAL WHICH HAS RESULTED IN DISMISSAL IS NOT APPEALABLE. [Matter of Priciliyana C. \(Jacklyn L.\), 2018 NY Slip Op 05927, Second Dept 8-29-18](#)

ATTORNEYS, LEGAL MALPRACTICE, NEGLIGENCE.

PLAINTIFF COULD NOT HAVE PREVAILED IN THE UNDERLYING SLIP AND FALL CASE BECAUSE OF THE STORM IN PROGRESS RULE, LEGAL MALPRACTICE ACTION BASED UPON A FAILURE TO SERVE THE CORRECT PARTY SHOULD HAVE BEEN DISMISSED. [Blair v Loduca, 2018 NY Slip Op 05744, Second Dept 6-15-18](#)

ATTORNEYS, LEGAL MALPRACTICE, NEGLIGENCE, CIVIL PROCEDURE.

ALLEGATIONS OF NEGLIGENCE IN A LEGAL MALPRACTICE CONTEXT DO NOT SUPPORT A CAUSE OF ACTION ALLEGING A JUDICIARY LAW 487 VIOLATION, INTENT TO DECEIVE MUST BE ALLEGED WITH PARTICULARITY, JUDICIARY LAW CAUSE OF ACTION SHOULD HAVE BEEN DISMISSED. [Bill Birds, Inc. v Stein Law Firm, P.C., 2018 NY Slip Op 05743, Second Dept 8-15-18](#)

ATTORNEYS, TRUSTS AND ESTATES.

ATTORNEYS FOR THE EXECUTOR OF THE ESTATE IN A REMOVAL PROCEEDING SHOULD NOT HAVE BEEN DISQUALIFIED BASED UPON THEIR PRIOR REPRESENTATION OF DECEDENT'S WIFE FOR HER ESTATE PLANNING. [Matter of Kopet, 2018 NY Slip Op 05678, Second Dept 8-8-18](#)

CIVIL PROCEDURE.

FAILURE TO USE FEDERAL EXPRESS'S OVERNIGHT DELIVERY RENDERED SERVICE UNTIMELY, EVEN THOUGH SERVICE WOULD HAVE BEEN TIMELY IF THE PAPERS HAD BEEN MAILED. [Moran v BAC Field Servs. Corp., 2018 NY Slip Op 05586, Second Dept 8-1-18](#)

CIVIL PROCEDURE.

COURT PROPERLY REFUSED TO CONSIDER EVIDENCE SUBMITTED WITH REPLY PAPERS. [Matter of Murnane v New York City Sch. Constr. Auth., 2018 NY Slip Op 05594, Second Dept 8-1-18](#)

CIVIL PROCEDURE.

NO REASONABLE JUSTIFICATION FOR FAILURE TO PRESENT DOCUMENTS WITH ORIGINAL MOTION, MOTION FOR LEAVE TO RENEW PROPERLY DENIED. [Matter of Serviss v Incorporated Vil. of Floral Park, 2018 NY Slip Op 05597, Second Dept 8-1-18](#)

CIVIL PROCEDURE.

CROSS MOTION TO COMPEL ACCEPTANCE OF A LATE ANSWER PROPERLY GRANTED. [Stavola v Bodd. 2018 NY Slip Op 05617, Second Dept 8-1-18](#)

CIVIL PROCEDURE.

FAILURE TO ATTACH PLEADINGS TO A MOTION FOR SUMMARY JUDGMENT PROPERLY DISREGARDED BY THE MOTION COURT. [Sensible Choice Contr., LLC v Rodgers, 2018 NY Slip Op 05790, Second Dept 8-15-18](#)

CIVIL PROCEDURE.

OMISSION OF RETURN DATE FROM AN ORDER TO SHOW CAUSE, WHICH DID NOT RESULT IN PREJUDICE, SHOULD HAVE BEEN DISREGARDED AS A TECHNICAL DEFECT. [Young v City of New York, 2018 NY Slip Op 05793, Second Dept 8-15-18](#)

CIVIL PROCEDURE.

ALTHOUGH SUPREME COURT PROPERLY DEEMED SERVICE COMPLETE DESPITE LATE FILING OF THE AFFIDAVIT OF SERVICE, DEFENDANT'S MOTION TO VACATE THE DEFAULT JUDGMENT SHOULD NOT HAVE BEEN DENIED, RATHER DEFENDANT SHOULD HAVE BEEN GIVEN EXTRA TIME TO FILE AN ANSWER. [First Fed. Sav. & Loan Assn. of Charleston v Tezzi, 2018 NY Slip Op 05826, Second Dept 8-22-18](#)

CIVIL PROCEDURE, CONTRACT LAW.

PLAINTIFF WAS NOT ENTITLED TO PREJUDGMENT INTEREST IN THIS BREACH OF CONTRACT ACTION BECAUSE PLAINTIFF FAILED TO DEMONSTRATE WHEN THE DAMAGES WERE INCURRED. [Kachkovskiy v Khlebopros, 2018 NY Slip Op 05671, Second Dept 8-8-18](#)

CIVIL PROCEDURE, CONTRACT LAW, REAL ESTATE, FRAUD.

REAL ESTATE CONTRACT LIMITING REMEDIES CONSTITUTED DOCUMENTARY EVIDENCE SUFFICIENT TO WARRANT DISMISSAL OF CAUSES OF ACTION FOR SPECIFIC PERFORMANCE AND REFORMATION OF THE PURCHASE CONTRACT, PLEADING REQUIREMENTS FOR FRAUDULENT MISREPRESENTATION EXPLAINED. [Hiu Ian Cheng v Salguero, 2018 NY Slip Op 05831, Second Dept 8-22-18](#)

CIVIL PROCEDURE, CORPORATION LAW.

ALTHOUGH DEFENDANT CORPORATION WAS NOT PERSONALLY SERVED WITH THE SUMMONS AND COMPLAINT, SUPREME COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO VACATE THE DEFAULT JUDGMENT, DEFENDANT DID NOT ADEQUATELY EXPLAIN ITS CLAIM THAT NOTICE BY MAIL WAS NOT RECEIVED. [Stevens v Stepanski, 2018 NY Slip Op 05954, Second Dept 8-29-18](#)

CIVIL PROCEDURE, EVIDENCE.

EMAILS SUBMITTED WITH REPLY PAPERS SHOULD NOT HAVE BEEN CONSIDERED, DEFENDANT'S CROSS MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Gelaj v Gelaj, 2018 NY Slip Op 05917, Second Dept 8-29-18](#)

CIVIL PROCEDURE, EVIDENCE, LIEN LAW.

SUPREME COURT ABUSED ITS DISCRETION IN PRECLUDING PLAINTIFF FROM PRESENTING EVIDENCE OF ITEMS ALLEGEDLY SOLD OR DAMAGED BY DEFENDANTS (OWNERS-OPERATORS OF A STORAGE UNIT) AS A SANCTION FOR PLAINTIFF'S ALLEGED SPOILIATION OF ITEMS IN THE STORAGE UNIT. [Heins v Public Stor., 2018 NY Slip Op 05919, Second Dept 8-29-18](#)

CIVIL PROCEDURE, FORECLOSURE.

ALTHOUGH THE LACK OF STANDING DEFENSE TO A FORECLOSURE ACTION IS WAIVED IF NOT ASSERTED IN THE ANSWER OR A PRE-ANSWER MOTION TO DISMISS, IT MAY BE ADDED TO A COMPLAINT AMENDED BY LEAVE OF COURT. [U.S. Bank Trust, N.A. v Carter, 2018 NY Slip Op 05618, Second Dept 8-1-18](#)

CIVIL PROCEDURE, FORECLOSURE.

NO REASONABLE EXCUSE FOR FAILURE TO SEEK A DEFAULT JUDGMENT WITHIN ONE YEAR, DEFENDANTS' MOTION TO DISMISS THE COMPLAINT IN THIS FORECLOSURE ACTION SHOULD HAVE BEEN GRANTED. [Federal Natl. Mtge. Assn. v Heilpern, 2018 NY Slip Op 05752, Second Dept 8-15-18](#)

CIVIL PROCEDURE, FORECLOSURE.

CONDITIONAL ORDER DID NOT MEET THE NOTICE REQUIREMENTS OF CPLR 3216, FORECLOSURE ACTION SHOULD NOT HAVE BEEN ADMINISTRATIVELY DISMISSED. [Deutsche Bank Natl. Trust Co. v Bastelli, 2018 NY Slip Op 05822, Second Dept 8-22-18](#)

CIVIL PROCEDURE, FORECLOSURE.

JUDGE SHOULD NOT HAVE REFUSED TO SIGN A PROPOSED ORDER TO SHOW CAUSE FOR DEFENDANTS' MOTION TO VACATE A DEFAULT JUDGMENT IN THIS FORECLOSURE ACTION. [Gluck v Hirsch, 2018 NY Slip Op 05828, Second Dept 8-22-18](#)

CIVIL PROCEDURE, JUDGES, FORECLOSURE.

JUDGE SHOULD NOT HAVE, SUA SPONTE, RAISED THE STATUTE OF LIMITATIONS DEFENSE, IF THE DEFENSE IS NOT RAISED IN THE PLEADINGS IT IS WAIVED, JUDGE CANNOT TAKE JUDICIAL NOTICE OF IT. [352 Legion Funding Assoc. v 348 Riverdale, LLC, 2018 NY Slip Op 05662, Second Dept 8-8-18](#)

CIVIL PROCEDURE, LEGAL MALPRACTICE. ATTORNEYS, EVIDENCE.

EMAILS AND LETTERS WERE NOT DOCUMENTARY EVIDENCE, MOTION TO DISMISS LEGAL MALPRACTICE ACTION PURSUANT TO CPLR 3211 (a)(1) SHOULD NOT HAVE BEEN GRANTED. [First Choice Plumbing Corp. v Miller Law Offs., PLLC, 2018 NY Slip Op 05825, Second Dept 8-22-18](#)

CIVIL PROCEDURE, MEDICAL MALPRACTICE, PERSONAL INJURY.

MOTION TO VACATE AUTOMATIC DISMISSAL OF PLAINTIFFS' MEDICAL MALPRACTICE ACTION AFTER A 12 YEAR DELAY PROPERLY DENIED. [Hagler v Southampton Hosp., 2018 NY Slip Op 05579, Second Dept 8-1-18](#)

CIVIL PROCEDURE, PERSONAL INJURY.

SUPREME COURT PROPERLY GRANTED DEFENDANTS' MOTION TO SET ASIDE THE VERDICT IN THIS PERSONAL INJURY ACTION UNLESS PLAINTIFF STIPULATED TO A SUBSTANTIAL REDUCTION IN DAMAGES FOR PAST AND FUTURE PAIN AND SUFFERING. [Garcia v CPS 1 Realty, LP, 2018 NY Slip Op 05753, Second Dept 8-15-18](#)

CIVIL PROCEDURE, TRUSTS AND ESTATES.

MOTION TO AMEND THE COMPLAINT BY NAMING PLAINTIFF IN HER CAPACITY AS THE REPRESENTATIVE OF HER HUSBAND'S ESTATE, WHERE THE ORIGINAL COMPLAINT

WAS ERRONEOUSLY BROUGHT IN HER INDIVIDUAL CAPACITY, WAS PROPERLY GRANTED. [D'Angelo v Kujawski, 2018 NY Slip Op 05750, Second Dept 8-15-18](#)

COURT OF CLAIMS, MEDICAL MALPRACTICE, NEGLIGENCE.

MOTION TO FILE A LATE NOTICE OF CLAIM IN THIS MEDICAL MALPRACTICE ACTION SHOULD NOT HAVE BEEN GRANTED, CRITERIA FOR LATE NOTICE IN THE COURT OF CLAIMS EXPLAINED. [Decker v State of New York, 2018 NY Slip Op 05751, Second Dept 8-15-18](#)

CONTRACT LAW, FORECLOSURE.

"NOTWITHSTANDING" CLAUSE IN THE ADDENDUM TO THE NOTE CONTROLS, THE ADDENDUM REQUIRED THAT THE MONTHLY PAYMENTS ON THE NOTE START BEFORE THE DATE DESCRIBED IN THE NOTE ITSELF. [IndyMac Venture, LLC v Amus, 2018 NY Slip Op 05920, Second Dept 8-29-18](#)

CRIMINAL LAW.

POSSESSION OF A WEAPON IN THE THIRD DEGREE IS NOT AN ARMED FELONY, DEFENDANT THEREFORE WAS ELIGIBLE FOR YOUTHFUL OFFENDER STATUS WITHOUT ANY FINDING OF MITIGATION. [People v Loney, 2018 NY Slip Op 05606, Second Dept 8-1-18](#)

CRIMINAL LAW.

PETITIONER, A LEVEL THREE SEX OFFENDER UNDER POST-RELEASE SUPERVISION, CAN BE PLACED IN RESIDENTIAL CORRECTIONS FACILITIES PENDING THE AVAILABILITY OF COMMUNITY HOUSING THAT IS MORE THAN 1000 FEET FROM A SCHOOL. [People v Warden, Westchester County Corr. Facility, 2018 NY Slip Op 05777, Second Dept 8-15-18](#)

CRIMINAL LAW.

NO EVIDENCE POSSESSION OF A WEAPON AND SHOOTING THE VICTIM WERE SEPARATE AND DISTINCT, SENTENCES SHOULD HAVE BEEN CONCURRENT. [People v Ross, 2018 NY Slip Op 05610, Second Dept 8-1-18](#)

CRIMINAL LAW.

COURT SHOULD HAVE INQUIRED FURTHER WHEN DEFENDANT INDICATED IN HIS PLEA COLLOQUY THAT HE ACTED IN SELF-DEFENSE, CONVICTION BY GUILTY PLEA REVERSED. [People v Williams, 2018 NY Slip Op 05711, Second Dept 8-8-18](#)

CRIMINAL LAW, APPEALS.

MATTER SENT BACK TO RECONSTRUCT THE RECORD ABOUT POSSIBLE BRADY MATERIAL THAT WAS TO BE REVIEWED BY THE JUDGE, CURRENT RECORD IS SILENT ON THE ISSUE. [People v DeFelice, 2018 NY Slip Op 05781, Second Dept 8-15-18](#)

CRIMINAL LAW, ATTORNEYS.

PROSECUTOR'S REPEATED USE OF THE TERM 'STATUTORY RAPE' TO GIVE THE JURY THE MISIMPRESSION THE VICTIM OF THE SHOOTING IN THIS MANSLAUGHTER CASE HAD NOT BEEN CHARGED WITH A VIOLENT RAPE DEPRIVED DEFENDANT OF A FAIR TRIAL BECAUSE DEFENDANT WAS RELYING ON THE JUSTIFICATION DEFENSE. [People v Carlson, 2018 NY Slip Op 05859, Second Dept 8-22-18](#)

CRIMINAL LAW, CONSTITUTIONAL LAW, APPEALS.

CPL 450.10 (1), WHICH PURPORTS TO PROHIBIT AN 'EXCESSIVE SENTENCE' APPEAL AFTER A GUILTY PLEA, IS UNCONSTITUTIONAL, DEFENDANT'S WAIVER OF APPEAL, HOWEVER, WAS VALID. [People v Swen, 2018 NY Slip Op 05949, Second Dept 8-29-18](#)

CRIMINAL LAW, EVIDENCE.

(HARMLESS) ERROR TO ALLOW DETECTIVE TO TESTIFY THE PERSON DEPICTED IN A VIDEO WAS THE DEFENDANT. [People v Reddick, 2018 NY Slip Op 05608, Second Dept 8-1-18](#)

CRIMINAL LAW, EVIDENCE.

EVIDENCE DEFENDANT HAD PREVIOUSLY BEEN CONVICTED OF STEALING A CAR SHOULD NOT HAVE BEEN ADMITTED TO SHOW KNOWLEDGE AND INTENT IN THIS CAR THEFT CASE, KNOWLEDGE AND INTENT CAN BE INFERRED FROM THE ACT, ERROR HARMLESS HOWEVER. [People v Sands, 2018 NY Slip Op 05701, Second Dept 8-8-18](#)

CRIMINAL LAW EVIDENCE.

ANONYMOUS PHONE CALL DESCRIBING 'A MAN WITH A GUN' AND DESCRIBING THE MAN'S CAR, INCLUDING THE LICENSE PLATE NUMBER, DID NOT PROVIDE THE POLICE WITH REASONABLE SUSPICION SUFFICIENT TO JUSTIFY STOPPING THE CAR, APPROACHING WITH GUNS DRAWN, AND FRISKING THE DEFENDANT, MOTION TO SUPPRESS SHOULD HAVE GRANTED, CRIMINAL POSSESSION OF A WEAPON CONVICTIONS REVERSED. [People v Bailey, 2018 NY Slip Op 05856, Second Dept 8-22-18](#)

CRIMINAL LAW, EVIDENCE.

POLICE OFFICER RESPONDED APPROPRIATELY TO AN ESCALATING SITUATION AFTER A STREET STOP, MOTION TO SUPPRESS ABANDONED HANDGUN AND STATEMENTS SHOULD NOT HAVE BEEN GRANTED. [People v King, 2018 NY Slip Op 05941, Second Dept 8-29-18](#)

CRIMINAL LAW, EVIDENCE.

RESUMPTION OF QUESTIONING THE NEXT MORNING DID NOT REQUIRE REPEATING THE MIRANDA WARNINGS, EVIDENCE OF A PRIOR UNCHARGED CRIME WAS ADMISSIBLE TO COMPLETE THE NARRATIVE, DEFENDANT SHOULD HAVE BEEN ALLOWED TO INTERVIEW A PROSECUTION WITNESS WITHOUT A PROSECUTOR OR DETECTIVE PRESENT. [People v Wisdom, 2018 NY Slip Op 05950, Second Dept 8-29-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

CONVICTION OF ENDANGERING THE WELFARE OF A CHILD SHOULD NOT HAVE BEEN SET ASIDE BASED UPON THE ACQUITTALS ON THE REMAINING 27 COUNTS OF CRIMINAL SEXUAL ACT, COURT CANNOT CONSIDER DEFENDANT'S ALTERNATIVE ARGUMENT FOR AFFIRMANCE ON AN APPEAL BROUGHT BY THE PEOPLE. [People v Sturges, 2018 NY Slip Op 05703, Second Dept 8-8-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

RECKLESS ENDANGERMENT AND RECKLESS ASSAULT CONVICTIONS AGAINST THE WEIGHT OF THE EVIDENCE. [People v Marin, 2018 NY Slip Op 05942, Second Dept 8-29-18](#)

DEBTOR-CREDITOR.

ASSIGNMENT OF AN INTEREST IN A JUDGMENT WAS VALID EVEN THOUGH THE PARTY WHO PAID THE ASSIGNOR HAD NOT BEEN NOTIFIED OF THE ASSIGNMENT, PAYMENT MADE IN GOOD FAITH TO THE ASSIGNOR TREATED AS IF MADE TO THE ASSIGNEE. [1051 Corp v Bynum, 2018 NY Slip Op 05740, Second Dept 8-15-18](#)

DEFAMATION, CIVIL PROCEDURE, PRIVILEGE.

DEFAMATION PLEADING INSUFFICIENT, STATEMENT ENJOYED QUALIFIED PRIVILEGE, INTERNET POST WAS NONACTIONABLE OPINION. [New York Horse Rescue Corp. v Suffolk County Socy. for the Prevention of Cruelty to Animals, 2018 NY Slip Op 05934, Second Dept 8-29-18](#)

EDUCATION-SCHOOL LAW, NEGLIGENCE.

LEAVE TO FILE A LATE NOTICE OF CLAIM AGAINST THE SCHOOL DISTRICT IN THIS STUDENT BULLYING AND HARASSMENT ACTION WAS PROPERLY GRANTED, CRITERIA EXPLAINED. [Matter of C.B. v Carmel Cent. Sch. Dist., 2018 NY Slip Op 05761, Second Dept 8-15-18](#)

ELECTION LAW.

POSSIBLE CONFUSION ABOUT WHICH MICHAEL YACUBICH AT THE SAME ADDRESS WAS THE "MIKE YACUBICH" SEEKING TO BE PLACED ON THE BALLOT FOR ASSEMBLY WAS NOT A PROPER GROUND FOR INVALIDATING THE DESIGNATING PETITION. [Matter of Yacubich v Suffolk County Bd. of Elections, 2018 NY Slip Op 05912, Second Dept 8-24-18](#)

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

COLLATERAL ESTOPPEL DOCTRINE REQUIRED DISMISSAL OF HUMAN RIGHTS LAW CAUSES OF ACTION WHERE THE FACTS ALLEGED WERE THE SAME AS IN A FEDERAL EMPLOYMENT DISCRIMINATION ACTION WHICH WAS DISMISSED, PRE-ANSWER MOTION FOR SUMMARY JUDGMENT PURSUANT TO CPLR 3211 (c) PROPERLY DENIED, BREACH OF CONTRACT AND QUANTUM MERUIT CAUSES OF ACTION PROPERLY PLED. [Karimian v Time Equities, Inc., 2018 NY Slip Op 05583, Second Dept 8-1-18](#)

EMPLOYMENT LAW, CONTRACT LAW.

COVENANT NOT TO COMPETE WHICH EFFECTIVELY PRECLUDED DEFENDANT SURGEON FROM PRACTICING MEDICINE IN METROPOLITAN NEW YORK WAS INVALIDATED, ARGUMENT FOR PARTIAL ENFORCEMENT REJECTED, CRITERIA EXPLAINED. [Long Is. Minimally Invasive Surgery, P.C. v St. John's Episcopal Hosp., 2018 NY Slip Op 05674, Second Dept 8-8-18](#)

ENVIRONMENTAL LAW, ADMINISTRATIVE LAW, APPEALS.

TOWN PLANNING BOARD PROPERLY RESCINDED A 1987 NEGATIVE SEQRA DECLARATION FOR A SUBDIVISION BECAUSE OF THE NEW REGULATORY LANDSCAPE, COURT'S REVIEW POWERS ARE LIMITED TO WHETHER THE BOARD SATISFIED SEQRA PROCEDURALLY AND SUBSTANTIVELY. [Leonard v Planning Bd. of the Town of Union Vale, 2018 NY Slip Op 05757, Second Dept 8-15-18](#)

FAMILY LAW, ATTORNEYS, CIVIL PROCEDURE, CONTRACT LAW.

HUSBAND'S ATTORNEY SHOULD NOT HAVE BEEN DISQUALIFIED ON THE GROUND SHE WOULD BE A WITNESS FOR THE WIFE, PLENARY ACTION SEEKING TO SET ASIDE A PRENUPTIAL AGREEMENT PROPERLY JOINED WITH DIVORCE ACTION, INTERIM ATTORNEY'S FEES NOT AVAILABLE FOR THE ACTION TO SET ASIDE THE PRENUPTIAL AGREEMENT. [Lombardi v Lombardi, 2018 NY Slip Op 05758, Second Dept 8-15-18](#)

FORECLOSURE, CIVIL PROCEDURE.

JUDGE SHOULD NOT HAVE, SUA SPONTE, DISMISSED A FORECLOSURE COMPLAINT AND SHOULD NOT HAVE ADDRESSED THE ISSUE OF STANDING, WHICH IS NOT JURISDICTIONAL AND COULD NOT BE RAISED BY A DEFAULTING DEFENDANT. [Countrywide Home Loans, Inc. v Campbell, 2018 NY Slip Op 05749, Second Dept 8-15-18](#)

FORECLOSURE, CIVIL PROCEDURE, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW.

BANK MUST DEMONSTRATE IT HAS STANDING TO FORECLOSE TO ESTABLISH BOTH A VALID NOTICE OF THE ACCELERATION OF THE NOTE AND A VALID NOTICE OF THE DE-ACCELERATION OF THE NOTE, BANK WAS NOT ENTITLED TO DISMISS THE ACTION SEEKING TO CANCEL AND DISCHARGE A NOTE AND MORTGAGE ON STATUTE OF LIMITATIONS GROUNDS, AND PLAINTIFF WAS NOT ENTITLED TO SUMMARY JUDGMENT ON THE GROUND THE BANK HAD NOT VALIDLY DE-ACCELERATED THE NOTE TO STOP THE RUNNING OF THE STATUTE. [Milone v US Bank Natl. Assn., 2018 NY Slip Op 05760, Second Dept 8-15-18](#)

FORECLOSURE, CIVIL PROCEDURE, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL), DEBTOR-CREDITOR.

LETTER DID NOT ACKNOWLEDGE THE DEBT AND THEREBY REVIVE A TIME-BARRED FORECLOSURE ACTION, MORTGAGE PROPERLY CANCELED AND DISCHARGED IN THIS RPAPL 1501 ACTION. [Karpa Realty Group, LLC v Deutsche Bank Natl. Trust Co., 2018 NY Slip Op 05921, Second Dept 8-29-18](#)

Similar issues and result in [Yadegar v Deutsche Bank Natl. Trust Co, 2018 NY Slip Op 05957, Second Dept 8-29-18](#)

FORECLOSURE, REAL PROPERTY LAW, CONTRACT LAW.

DESPITE THE TERMS OF THE REAL PROPERTY PURCHASE CONTRACT, WHICH PURPORTED TO REQUIRE THE DEFENDANT PURCHASER TO FORFEIT ALL MONTHLY PAYMENTS WHICH HAD BEEN MADE AND VACATE THE PROPERTY UPON DEFAULT, DEFENDANT HAD ACQUIRED EQUITABLE TITLE TO THE PROPERTY, PLAINTIFFS' ONLY AVAILABLE REMEDIES ARE TO BRING AN ACTION TO FORECLOSE OR AN ACTION FOR THE PURCHASE PRICE.. [Russell v Pisana, 2018 NY Slip Op 05789, Second Dept 8-15-18](#)

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, MUNICIPAL LAW.

AS A MATTER OF PUBLIC POLICY, AN ACTION ALLEGING INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS CANNOT BE BROUGHT AGAINST A MUNICIPALITY. [Ball v Miller, 2018 NY Slip Op 05813, Second Dept 8-22-18](#)

INSURANCE LAW, CONTRACT LAW.

ALTHOUGH THE CONDOMINIUM WAS OCCUPIED BY PLAINTIFFS' DAUGHTER WHEN THE PIPE BROKE, THE INSURER WAS ENTITLED TO RESCIND THE POLICY BECAUSE THE PLAINTIFFS REPRESENTED THE CONDOMINIUM WOULD BE OCCUPIED BY THEM. [Piller v Otsego Mut. Fire Ins. Co., 2018 NY Slip Op 05615, Second Dept 8-1-18](#)

INSURANCE LAW, CONTRACT LAW.

RELEASE ENTERED WITH THE INSURER OF THE OTHER CAR INVOLVED IN THE ACCIDENT PRECLUDED CLAIM FOR SUPPLEMENTARY UNDERINSURED MOTORIST (SUM) BENEFITS AGAINST INSURER OF THE CAR IN WHICH APPELLANT WAS A PASSENGER. [Matter of Travelers Home & Mar. Ins. Co. v Fiumara, 2018 NY Slip Op 05681, Second Dept 8-8-18](#)

LABOR LAW-CONSTRUCTION LAW, TRUSTS AND ESTATES, PERSONAL INJURY.

HOMEOWNER'S DAUGHTER, AS EXECUTRIX OF DECEDENT HOMEOWNER'S ESTATE, ENTITLED TO HOMEOWNER'S EXEMPTION FROM LIABILITY UNDER LABOR LAW 240 (1) AND 241 (6), BUT DECEDENT'S SON, WHO GAVE WORK INSTRUCTIONS TO THE INJURED PLAINTIFF, WAS NOT ENTITLED TO THE HOMEOWNER'S EXEMPTION AND MAY BE LIABLE AS AN AGENT OF THE OWNER. [Diaz v Trevisani, 2018 NY Slip Op 05823, Second Dept 8-22-18](#)

MEDICAL MALPRACTICE, PERSONAL INJURY.

RES IPSA LOQUITUR DOCTRINE NOT SHOWN TO BE APPLICABLE, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IN THIS MEDICAL MALPRACTICE ACTION PROPERLY GRANTED.. [Pagano v Cohen, 2018 NY Slip Op 05599, Second Dept 8-1-18](#)

MEDICAL MALPRACTICE, PERSONAL INJURY.

EXPERT AFFIDAVIT DID NOT DEMONSTRATE, PRIMA FACIE, THAT DEFENDANT DOCTORS DID NOT DEPART FROM GOOD AND ACCEPTED PRACTICE, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IN THIS MEDICAL MALPRACTICE ACTION SHOULD NOT HAVE BEEN GRANTED. [Kelly v Rosca, 2018 NY Slip Op 05922, Second Dept 8-29-18](#)

MEDICAL MALPRACTICE, PERSONAL INJURY, CIVIL PROCEDURE.

INSTRUCTION TO FOLLOW UP IS NOT PART OF A CONTINUING COURSE OF TREATMENT, RELATION BACK DOCTRINE DOES NOT APPLY TO DEFENDANTS DELIBERATELY OMITTED FROM THE ACTION, MEDICAL MALPRACTICE CAUSES OF ACTION TIME-BARRED. [Yanez v Watkins, 2018 NY Slip Op 05622, Second Dept 8-1-18](#)

MEDICAL MALPRACTICE, PERSONAL INJURY, CONTRACT LAW.

RELEASE, WHICH PURPORTED TO COVER FUTURE MALPRACTICE ACTIONS STEMMING FROM THE FIRST ADMISSION TO THE HOSPITAL, DID NOT COVER A MALPRACTICE ACTION STEMMING FROM A SECOND ADMISSION, SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Chiappone v North Shore Univ. Hosp., 2018 NY Slip Op 05569, Second Dept 8-1-18](#)

MENTAL HYGIENE LAW.

EVIDENCE DID NOT SUPPORT THE APPOINTMENT OF MOTHER AS GUARDIAN OF FRITZ, A PERSON SUFFERING FROM SCHIZOPHRENIA, HOWEVER MOTHER IS NOT PRECLUDED FROM SEEKING ANY APPROPRIATE ASSISTANCE FOR FRITZ. [Matter of Fritz G., 2018 NY Slip Op 05592, Second Dept 8-1-18](#)

MUNICIPAL LAW, CIVIL PROCEDURE, NEGLIGENCE.

INFANCY TOLL OF STATUTE OF LIMITATIONS DOES NOT APPLY TO MOTHER'S DERIVATIVE ACTION IN THIS SLIP AND FALL ACTION AGAINST A MUNICIPALITY, PETITION FOR LEAVE TO FILE A LATE NOTICE OF CLAIM SHOULD NOT HAVE BEEN GRANTED. [Matter of R.N. v Village of New Sq., 2018 NY Slip Op 05595, Second Dept 8-1-18](#)

MUNICIPAL LAW, FALSE ARREST, FALSE IMPRISONMENT, MALICIOUS PROSECUTION.

POLICE REPORT DID NOT NOTIFY CITY OF THE NATURE OF PETITIONER'S FALSE ARREST, FALSE IMPRISONMENT AND MALICIOUS PROSECUTION CLAIMS, PETITION TO FILE LATE NOTICE OF CLAIM PROPERLY DENIED. [Matter of Islam v City of New York, 2018 NY Slip Op 05763, Second Dept 8-15-18](#)

MUNICIPAL LAW, PERSONAL INJURY.

POLICE REPORT DID NOT NOTIFY TOWN OF THE ESSENTIAL FACTS OF A CLAIM STEMMING FROM A COLLISION WITH A TOWN SNOW PLOW, PETITION FOR LEAVE TO FILE A LATE NOTICE OF CLAIM PROPERLY DENIED. [Matter of Vega v Incorporated Vil. of Freeport, 2018 NY Slip Op 05598, Second Dept 8-1-18](#)

PERSONAL INJURY.

RAISED PORTION OF A FLOOR MAT WAS NOT A TRIVIAL DEFECT AS A MATTER OF LAW IN THIS SLIP AND FALL CASE.. [Green v Price Chopper, Inc., 2018 NY Slip Op 05578, Second Dept 8-1-18](#)

PERSONAL INJURY.

VIDEO SHOWED ELEVATOR DOORS OPERATED PROPERLY, PLAINTIFF ALLEGED INJURY FROM DOORS CLOSING ON HER, SUMMARY JUDGMENT GRANTED TO HOTEL AND

ELEVATOR MAINTENANCE COMPANY. [Hussey v Hilton Worldwide, Inc., 2018 NY Slip Op 05581, Second Dept 8-1-18](#)

PERSONAL INJURY.

INCREASED SUSCEPTIBILITY TO INJURY JURY INSTRUCTION DID NOT AFFECT THE VERDICT, NO DUTY TO MITIGATE DAMAGES BY LOSING WEIGHT, REQUEST FOR MITIGATION OF DAMAGES JURY INSTRUCTION PROPERLY DENIED. [People v Kolsky, 2018 NY Slip Op 05713, Second Dept 8-8-18](#)

PERSONAL INJURY.

PLAINTIFF INJURED WHEN CHAIR IN CUSTODIAN'S BREAK ROOM COLLAPSED, SCHOOL DEMONSTRATED IT DID NOT HAVE NOTICE OF THE DANGEROUS CONDITION AND RES IPSA LOQUITUR DID NOT APPLY BECAUSE THE CHAIR WAS DEEMED NOT TO BE IN THE EXCLUSIVE CONTROL OF THE SCHOOL DISTRICT. [Brennan v Wappingers Cent. Sch. Dist., 2018 NY Slip Op 05745, Second Dept 8-15-18](#)

PERSONAL INJURY.

QUESTION OF FACT WHETHER LOCATION OF THE DOORWAY AND THE STAIRWAY PILLAR, WHICH WAS OPEN AND OBVIOUS, WAS AN INHERENTLY DANGEROUS CONDITION, DEFENDANT PROPERTY OWNER'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Dudnik v 1055 Hylan Offs., LLC, 2018 NY Slip Op 05914, Second Dept 8-29-18](#)

PERSONAL INJURY.

ABUTTING PROPERTY OWNER NOT LIABLE FOR HOLE IN BRICKWORK PUBLIC SIDEWALK IN THIS SLIP AND FALL CASE. [Finocchiaro v Town of Islip, 2018 NY Slip Op 05915, Second Dept 8-29-18](#)

PERSONAL INJURY.

NO ONE WITNESSED FOUR-YEAR-OLD'S INJURY, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT PROPERLY GRANTED, PLAINTIFFS COULD NOT IDENTIFY THE CAUSE OF THE INJURY, INFANT PLAINTIFF SAID SHE WAS INJURED ON AN INFLATABLE SLIDE. [Harris v Live, Play & Bounce Corp., 2018 NY Slip Op 05918, Second Dept 8-29-18](#)

PERSONAL INJURY, CIVIL PROCEDURE.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND PLAINTIFF'S MOTION TO SET ASIDE THE DEFENSE VERDICT IN THIS REAR-END COLLISION CASE PROPERLY DENIED. [Miller v Steinberg, 2018 NY Slip Op 05585, Second Dept 8-1-18](#)

PERSONAL INJURY, CIVIL PROCEDURE, EVIDENCE.

DESPITE FAILURE TO DISCLOSE EXPERT, AFFIDAVIT FROM EXPERT PROPERLY CONSIDERED IN SUPPORT OF DEFENDANTS' SUMMARY JUDGMENT MOTION IN THIS SLIP AND FALL CASE, DEFECT FOUND TO BE TRIVIAL AS A MATTER OF LAW.. [Cobham v 330 W. 34th SPE, LLC, 2018 NY Slip Op 05748, Second Dept 8-15-18](#)

PERSONAL INJURY, CONTRACT LAW.

DEFENDANT WHICH BUILT THE SWIMMING POOL, DEFENDANT WHICH INSTALLED THE POOL LINER, AND DEFENDANT OWNERS OF THE POOL, WERE NOT ENTITLED TO SUMMARY JUDGMENT IN THIS SWIMMING POOL INJURY CASE, PLAINTIFF WAS INJURED WHEN HE DOVE IN AND STRUCK HIS CHIN IN A SHALLOW AREA. [Grosse v Olsen, 2018 NY Slip Op 05829, second Dept 8-22-18](#)

PERSONAL INJURY, CONTRACT LAW.

PLAINTIFF DID NOT ALLEGE OR DEMONSTRATE IN THE OPPOSING PAPERS THAT ANY OF THE ESPINAL EXCEPTIONS APPLIED TO DEFENDANT SNOW-REMOVAL CONTRACTOR IN THIS SLIP AND FALL CASE, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Laronga v Atlas-Suffolk Corp., 2018 NY Slip Op 05924, Second Dept 8-29-18](#)

PERSONAL INJURY, EDUCATION-SCHOOL LAW.

SNOW-REMOVAL EFFORTS NOT PARTICULARIZED, SCHOOL DISTRICT'S MOTION FOR SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE PROPERLY DENIED. [Pickles v Hyde Park Cent. Sch. Dist., 2018 NY Slip Op 05787, Second Dept 8-15-18](#)

PERSONAL INJURY, EDUCATION-SCHOOL LAW.

SCHOOL DISTRICT'S MOTION FOR SUMMARY JUDGMENT IN THIS STUDENT ON STUDENT ASSAULT CASE SHOULD HAVE BEEN GRANTED, THE STUDENT'S ACTIONS WERE IMPULSIVE AND COULD NOT HAVE BEEN ANTICIPATED. [Ramirez v Brentwood Union Free Sch. Dist., 2018 NY Slip Op 05788, Second Dept 8-15-18](#)

PERSONAL INJURY, EDUCATION-SCHOOL LAW, EVIDENCE.

NEGLIGENT MAINTENANCE OF THE PLAYGROUND CAUSE OF ACTION AGAINST THE SCHOOL DISTRICT SHOULD HAVE BEEN DISMISSED, ALLEGED VIOLATIONS OF AMERICAN SOCIETY OF TESTING MATERIAL AND CONSUMER PRODUCT SAFETY COMMISSION STANDARDS DO NOT RAISE A QUESTION OF FACT ABOUT NEGLIGENCE. [Boland v North Bellmore Union Free Sch. Dist., 2018 NY Slip Op 05663, Second Dept 8-8-18](#)

PERSONAL INJURY, EMPLOYMENT LAW.

NO QUESTION OF FACT RAISED ABOUT WHETHER FENCING CLUB WAS LIABLE FOR THE SEXUAL ASSAULT OF A FENCING STUDENT BY A FENCING COACH, CLUB'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [KM v Fencers Club, Inc., 2018 NY Slip Op 05923, Second Dept 8-29-18](#)

PERSONAL INJURY, EVIDENCE, EDUCATION-SCHOOL LAW.

MOTION TO STRIKE SCHOOL'S ANSWER FOR SPOILIATION OF EVIDENCE PROPERLY DENIED, SCHOOL'S MOTION FOR SUMMARY JUDGMENT IN THIS NEGLIGENT SUPERVISION ACTION PROPERLY GRANTED, PLAINTIFF WAS INJURED BY ANOTHER STUDENT. [Francis v Mount Vernon Bd. of Educ., 2018 NY Slip Op 05916, Second Dept 8-29-18](#)

PERSONAL INJURY, LANDLORD-TENANT.

LEASE TRANSFERRED RESPONSIBILITY FOR MAINTENANCE OF ENTIRE PREMISES TO TENANT, DEFENDANT OUT-OF-POSSESSION LANDLORD ENTITLED TO SUMMARY JUDGMENT IN THIS PARKING LOT SLIP AND FALL CASE. [Vicchiarelli v Cold Spring Hills Realty Co., LLC, 2018 NY Slip Op 05619, Second Dept 8-1-18](#)

PERSONAL INJURY, LANDLORD-TENANT.

DEFENDANT LANDLORD DID NOT DEMONSTRATE IT WAS AN OUT-OF-POSSESSION LANDLORD AND DID NOT DEMONSTRATE A LACK OF NOTICE OF THE ALLEGEDLY DANGEROUS CONDITION IN THIS SLIP AND FALL CASE, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT PROPERLY DENIED. [Washington-Fraser v Industrial Home for the Blind, 2018 NY Slip Op 05620, Second Dept 8-1-18](#)

PERSONAL INJURY, LANDLORD-TENANT.

THEATER NOT LIABLE FOR THIRD PARTY ASSAULT IN PARKING LOT, ASSAULT WAS SUDDEN AND WAS NOT FORESEEABLE. [Muzafarov v Casallas-Gonzalez, 2018 NY Slip Op 05771, Second Dept 8-15-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

CITY DEMONSTRATED IT DID NOT HAVE PRIOR WRITTEN NOTICE OF A POTHOLE WHICH PLAINTIFF BICYCLIST RAN OVER, DEFENDANTS' SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Allen v City of New York, 2018 NY Slip Op 05811, Second Dept 8-22-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

ALTHOUGH PLAINTIFF TURNED RIGHT INTO DEFENDANT DRIVER'S PATH AT AN INTERSECTION, DEFENDANT DRIVER DID NOT DEMONSTRATE FREEDOM FROM FAULT AND DEFENDANT TOWN DID NOT DEMONSTRATE FOLIAGE OBSTRUCTING A STOP SIGN DID NOT CONTRIBUTE TO THE ACCIDENT, DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Rivera v Town of Wappinger, 2018 NY Slip Op 05953, Second Dept 8-29-18](#)

PERSONAL INJURY, MUNICIPAL LAW, CIVIL PROCEDURE, APPEALS.

ORDER FOLLOWING GRANT OF A MOTION TO REARGUE IS APPEALABLE, APPEAL HEARD EVEN THOUGH A PRIOR APPEAL OF THE ORIGINAL ORDER HAD BEEN ABANDONED INSTEAD OF WITHDRAWN, CITY DEMONSTRATED IT DID NOT HAVE WRITTEN NOTICE OF DEFECT IN BICYCLE LANE, NO SPECIAL USE EXCEPTION TO THE PRIOR WRITTEN NOTICE REQUIREMENT. [Budoff v City of New York, 2018 NY Slip Op 05817, Second Dept 8-22-18](#)

REAL ESTATE, CONTRACT LAW.

REAL ESTATE BROKER ENTITLED TO COMMISSION, DEFENDANTS TERMINATED THE BROKER'S SERVICES IN BAD FAITH JUST BEFORE ENTERING THE LEASE AGREEMENT. [Gluck & Co. Realtors, LLC v Burger King Corp., 2018 NY Slip Op 05668, Second Dept 8-8-18](#)

REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL).

CRITERIA FOR AN EQUITABLE MORTGAGE EXPLAINED, CRITERIA FOR STANDING IN AN ACTION TO QUIET TITLE IS NOT THE SAME AS IN A FORECLOSURE ACTION. [JP Morgan Chase Bank, N.A. v Bank of Am., 2018 NY Slip Op 05670, Second Dept 8-8-18](#)

TOXIC TORTS, PERSONAL INJURY, MUNICIPAL LAW, CIVIL PROCEDURE, FRAUD.

ACTIONS AGAINST THE COUNTY STEMMING FROM PLAINTIFF'S EXPOSURE TO ASBESTOS WHILE WORKING ON COUNTY PROPERTY WERE TIME BARRED, INCLUDING AN ACTION ALLEGING FRAUDULENT CONCEALMENT OF THE PRESENCE OF ASBESTOS. [O'Brien v County of Nassau, 2018 NY Slip Op 05774, Second Dept 8-15-18](#)

TRUSTS AND ESTATES, MENTAL HYGIENE LAW.

SURROGATE'S COURT SHOULD HAVE GRANTED THE PETITION FOR THE APPOINTMENT OF A GUARDIAN TO MANAGE THE AFFAIRS OF A SEVERELY DISABLED PERSON, THE SURROGATE'S COURT PROCEDURE ACT AUTHORIZES THE APPOINTMENT, SURROGATE'S COURT ERRED BY FINDING THE PETITION SHOULD BE BROUGHT UNDER THE MENTAL HYGIENE LAW. [Matter of Anna F., 2018 NY Slip Op 05590, Second Dept 8-1-18](#)

WORKERS' COMPENSATION, EMPLOYMENT LAW.

PLAINTIFF WAS A SPECIAL EMPLOYEE OF OWNER OF THE PROPERTY ON WHICH PLAINTIFF WAS INJURED, PLAINTIFF'S RECOVERY RESTRICTED TO WORKERS' COMPENSATION BENEFITS. [James v Crystal Springs Water, 2018 NY Slip Op 05756, Second Dept 8-15-18](#)

WORKERS' COMPENSATION, PERSONAL INJURY.

PLAINTIFF WAS A SPECIAL EMPLOYEE, HIS ONLY AVAILABLE REMEDY FOR HIS ON THE JOB INJURY WAS WORKERS' COMPENSATION. [Spasic v Cammeby's Mgt. Co., 2018 NY Slip Op 05616, Second Dept 8-1-18](#)

ZONING.

BECAUSE THE DETERMINATION THAT THE PROPOSED CONSTRUCTION WAS ZONING COMPLIANT WAS NEVER FILED THE 30-DAY APPEAL PERIOD NEVER RAN, BECAUSE A NOTICED HEARING WAS NEVER HELD THE APPROVAL OF THE CONSTRUCTION WAS JURISDICTIONALLY DEFECTIVE. [Matter of Corrales v Zoning Bd. of Appeals of the Vil. of Dobbs Ferry, 2018 NY Slip Op 05676, Second Dept 8-8-18](#)

ZONING.

SUPREME COURT SHOULD NOT HAVE REVERSED THE ZONING BOARD OF APPEALS AND GRANTED THE PETITION FOR A VARIANCE TO CONSTRUCT AN IN-LAW APARTMENT, COURT'S LIMITED REVIEW POWERS EXPLAINED. [Matter of Gray v Village of Patchogue, 2018 NY Slip Op 05677, Second Dept 8-8-18](#)

THIRD DEPARTMENT

CRIMINAL LAW, ADMINISTRATIVE LAW, COURT OF CLAIMS.

NO PRIVATE RIGHT OF ACTION FOR NEGLIGENT PERFORMANCE OF A GOVERNMENTAL FUNCTION AGAINST THE BOARD OF PAROLE. [Franza v State of New York, 2018 NY Slip Op 05641, Third Dept 8-2-18](#)

CRIMINAL LAW, APPEALS.

APPELLATE COURT EXERCISED ITS POWER TO REDUCE A SENTENCE EVEN THOUGH THE SENTENCING COURT DID NOT ABUSE ITS DISCRETION, NOTING EXTRAORDINARY CIRCUMSTANCES. [People v Gretzinger, 2018 NY Slip Op 05716, Third Dept 8-9-18](#)

CRIMINAL LAW, EVIDENCE.

POSSESSION OF SEXUAL PERFORMANCE OF A CHILD CONVICTIONS REVERSED, PHOTOGRAPHS DID NOT MEET STATUTORY CRITERIA; ALTHOUGH THE MAJORITY AFFIRMED DEFENDANT'S CONVICTION IN THIS RAPE, CRIMINAL SEXUAL ACT, AND POSSESSION OF SEXUAL PERFORMANCE BY A CHILD PROSECUTION, THE DISSENT WOULD HAVE REVERSED BECAUSE THE PHOTOGRAPHIC EXHIBITS UPON WHICH THE PROSECUTION RELIED WERE NOT PROPERLY AUTHENTICATED. [People v Pendell, 2018 NY Slip Op 05899, Third Dept 8-23-18](#)

CRIMINAL LAW, EVIDENCE, ATTORNEYS, APPEALS.

DEFENSE COUNSEL WAS INEFFECTIVE IN FAILING TO REQUEST A FRYE HEARING CONCERNING A COMPUTER PROGRAM USED TO INTERPRET MIXED DNA SAMPLES, APPEAL HELD IN ABEYANCE AND MATTER REMITTED FOR A HEARING. [People v Wilson, 2018 NY Slip Op 05715, Third Dept 8-9-18](#)

EDUCATION-SCHOOL LAW, ADMINISTRATIVE LAW.

STUDENT PROPERLY DISMISSED FROM A STATE UNIVERSITY FOR VIOLATIONS OF THE STUDENT CODE OF CONDUCT, PROCEDURES AND PROOF REQUIREMENTS EXPLAINED. [Matter of Agudio v State Univ. of N.Y., 2018 NY Slip Op 05647, Third Dept 8-2-18](#)

EMPLOYMENT LAW, HUMAN RIGHTS LAW, MUNICIPAL LAW.

LOST PENSION BENEFITS AS DAMAGES IN THIS SEXUAL HARASSMENT CASE WERE PROPERLY CALCULATED USING THE TOTAL OFFSET METHOD. [Matter of Rensselaer County Sheriff's Dept. v New York State Div. of Human Rights, 2018 NY Slip Op 05719, Third Dept 8-9-18](#)

INSURANCE LAW, CONTRACT LAW.

BUSINESS PURSUITS EXCLUSION IN THE HOMEOWNER'S INSURANCE POLICY DID NOT APPLY BECAUSE THE FIRE WOULD HAVE OCCURRED IRRESPECTIVE OF THE OPERATION OF THE BUSINESS, A RESPITE HOME FOR ELDERLY AND SPECIAL NEEDS ADULTS, THREE OF THE RESIDENTS DIED IN THE FIRE STARTED BY CHILDREN PLAYING IN THE GARAGE.. [Waddy v Genessee Patrons Coop. Ins. Co., 2018 NY Slip Op 05794, Third Dept 8-15-18](#)

REAL PROPERTY LAW, ENVIRONMENTAL LAW.

OWNERS OF A PARCEL OF LAND WHICH ADJOINS A PARCEL RESTRICTED BY A COVENANT TO REMAIN FOREVER WILD DO NOT HAVE STANDING TO ENFORCE THE COVENANT. [Gorman v Despart, 2018 NY Slip Op 05795, Third Dept 8-16-18](#)

RETIREMENT AND SOCIAL SECURITY LAW.

EXTRA PAYMENTS MADE TO PORT AUTHORITY EMPLOYEES IN THE WAKE OF 9/11 IN ORDER TO RETAIN EMPLOYEES WHO COULD RETIRE SHOULD HAVE BEEN INCLUDED IN THE AVERAGE SALARY CALCULATION FOR RETIREMENT BENEFITS. [Matter of Bohlen v DiNapoli, 2018 NY Slip Op 05720, Third Dept 8-9-18](#)

UNEMPLOYMENT INSURANCE.

TUTOR WAS AN EMPLOYEE OF THE TUTORING SERVICE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS. [Matter of Eidelson \(Mulberry Tree Ctr. LLC--Commissioner of Labor\), 2018 NY Slip Op 05645, Third Dept 8-2-18](#)

UNEMPLOYMENT INSURANCE, ATTORNEYS.

ATTORNEY HIRED FOR DOCUMENT REVIEW WAS AN EMPLOYEE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS, DESPITE THE ATTORNEY'S SIGNING A DOCUMENT INDICATING SHE WAS AN INDEPENDENT CONTRACTOR. [Matter of Philip \(Brody--Commissioner of Labor\), 2018 NY Slip Op 05648, Third Dept 8-2-18](#)

WORKERS' COMPENSATION.

WORKERS' COMPENSATION CARRIER ENTITLED TO REIMBURSEMENT OF BOTH TEMPORARY TOTAL DISABILITY PAYMENTS AND TEMPORARY PARTIAL DISABILITY PAYMENTS. [Matter of Robinson v Workmen's Circle Home, 2018 NY Slip Op 05652, Third Dept 8-2-18](#)

FOURTH DEPARTMENT

CORPORATION LAW.

IN THIS COMMON LAW DISSOLUTION ACTION, PLAINTIFF WAS ENTITLED TO PAYMENT BY THE CORPORATION OF HIS EXPENSES FOR DEFENDING AGAINST THE CORPORATION'S COUNTERCLAIMS, AND PLAINTIFF'S MOTION TO PROHIBIT THE DEFENDANTS FROM USING CORPORATE FUNDS TO DEFEND AGAINST THE COMMON LAW DISSOLUTION ACTION SHOULD HAVE BEEN GRANTED. [Feldmeier v Feldmeier Equip., Inc., 2018 NY Slip Op 05893, Fourth Dept 8-22-18](#)

FAMILY LAW, EVIDENCE.

A SHOWING THAT MOTHER WAS ABUSED AND THE CHILD WITNESSED THE ABUSE IS NOT LEGALLY SUFFICIENT EVIDENCE THAT MOTHER NEGLECTED THE CHILD. [Matter of Nevin H. \(Stephanie H.\), 2018 NY Slip Op 05891, Fourth Dept 8-22-18](#)

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COURT OF APPEALS

CONSTITUTIONAL LAW, ELECTION LAW, MUNICIPAL LAW, EMPLOYMENT LAW.

DEPARTMENT OF AGRICULTURE'S RULE PROHIBITING DEPARTMENT INSPECTORS FROM RUNNING FOR PUBLIC OFFICE IS NOT AN UNCONSTITUTIONAL RESTRICTION OF FREE SPEECH. [Matter of Spence v New York State Dept. of Agric. & Mkts., 2018 NY Slip Op 06071, CtApp 9-18-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

APPELLATE DIVISION APPLIED THE CORRECT CRITERIA IN ITS WEIGHT OF THE EVIDENCE ANALYSIS, DESPITE CITING SEVERAL DECISIONS THAT SHOULD NO LONGER BE FOLLOWED. [People v Sanchez, 2018 NY Slip Op 06052, CtApp 9-13-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

WHETHER THE POLICE RECEIVED VOLUNTARY CONSENT TO ENTER AN APARTMENT IS A MIXED QUESTION OF LAW AND FACT WHICH THE COURT OF APPEALS WILL NOT REVIEW, TWO CONCURRING OPINIONS DEALT WITH AN ISSUE WHICH WAS NOT RAISED, WHETHER THE POLICE WENT TO THE APARTMENT INTENDING TO MAKE A WARRANTLESS ARREST. [People v Xochimitl, 2018 NY Slip Op 06053, CtApp 9-13-18](#)

MUNICIPAL LAW, PERSONAL INJURY.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IN PLAINTIFF FIREFIGHTER'S GENERAL MUNICIPAL LAW 205-a ACTION SHOULD NOT HAVE BEEN GRANTED. (see [Powers v 31 E 31 LLC, 24 NY3d 84](#), 93 [2014])." [Viselli v Riverbay Corp., 2018 NY Slip Op 05968, CtApp 9-6-18](#)

WORKERS' COMPENSATION.

APPELLATE DIVISION REVERSED, WORKERS' COMPENSATION BOARD'S FINDING THAT CLAIMANT HAS A PERMANENT PARTIAL DISABILITY WITH A 75% LOSS OF WAGE-EARNING CAPACITY REINSTATED. [Matter of Wohlfeil v Sharel Ventures, LLC, 2018 NY Slip Op 05967, CtApp 9-6-18](#)

FIRST DEPARTMENT

ARBITRATION.

COURT'S LIMITED POWER OF REVIEW OF AN ARBITRATION AWARD EXPLAINED IN DEPTH, VACATION OF AWARD REVERSED. [Matter of Daesang Corp. v NutraSweet Co., 2018 NY Slip Op 06331, First Dept 9-27-18](#)

ATTORNEYS, EVIDENCE.

PLAINTIFF CAN PRESENT EXPERT TESTIMONY ABOUT THE AMOUNT OF PLAINTIFF'S LEGAL COSTS ATTRIBUTABLE TO DEFENDANT-ATTORNEY'S ALLEGED USE OF AN ALLEGEDLY FORGED DOCUMENT IN LITIGATION IN VIOLATION OF JUDICIARY LAW 487. [Melcher v Greenberg Traurig LLP, 2018 NY Slip Op 06310, First Dept 9-27-18](#)

CONTRACT LAW.

PLAINTIFF, AS A THIRD PARTY BENEFICIARY OF THE AGREEMENT, HAD STANDING TO BRING THE BREACH OF CONTRACT ACTION, DESPITE THE BOILERPLATE EXCLUSION OF THIRD PARTY BENEFICIARIES. [MPEG LA, LLC v Samsung Elecs. Co., Ltd., 2018 NY Slip Op 06147, First Dept 9-19-18](#)

CRIMINAL LAW.

SENTENCING JUDGE MAY HAVE MISTAKENLY BELIEVED THE MINIMUM PERIOD OF POST RELEASE SUPERVISION (PRS) WAS FIVE YEARS WHEN IT ACTUALLY WAS TWO AND A HALF YEARS, MATTER SENT BACK FOR RESENTENCING. [People v Holmes, 2018 NY Slip Op 06055, First Dept 9-13-18](#)

CRIMINAL LAW.

SENTENCING JUDGE MAY HAVE MISTAKENLY BELIEVED THE MINIMUM PERIOD OF POST RELEASE SUPERVISION (PRS) WAS FIVE YEARS WHEN IT ACTUALLY WAS TWO AND A HALF YEARS, MATTER SENT BACK FOR RESENTENCING. [People v Holmes, 2018 NY Slip Op 06055, First Dept 9-13-18](#)

CRIMINAL LAW.

HABEAS CORPUS PETITIONS STEMMING FROM THE DENIAL OF BAIL IN AN ATTEMPTED MURDER CASE PROPERLY DENIED. [Matter of State of NY ex rel. Fischetti v Brann, 2018 NY Slip Op 06220, First Dept 9-25-18](#)

CRIMINAL LAW, APPEALS.

POST-JUDGMENT MOTION TO VACATE A SENTENCE IMPOSED UNDER AN INCORRECT PREDICATE-FELONY-DESIGNATION THAT WAS LESS SEVERE THAN THE SENTENCE REQUIRED BY THE CORRECT PREDICATE-FELONY DESIGNATION PROPERLY DENIED. [People v McNeil, 2018 NY Slip Op 05970, First Dept 9-6-18](#)

Similar issues and result in [People v Francis, 2018 NY Slip Op 05971, First Dept 9-6-18.](#)

CRIMINAL LAW, APPEALS.

2015 MOTION TO REINSTATE THE APPEAL OF A 1986 CONVICTION DENIED. [People v Williams, 2018 NY Slip Op 06182, First Dept 9-25-18](#)

CRIMINAL LAW, CIVIL PROCEDURE, APPEALS, CONSTITUTIONAL LAW, EVIDENCE.

DENIAL OF A REPORTER'S MOTION TO QUASH A SUBPOENA FOR EVIDENCE OF HER JAILHOUSE INTERVIEW OF THE DEFENDANT IN A CRIMINAL PROCEEDING IS NOT APPEALABLE. [People v Juarez, 2018 NY Slip Op 05969, First Dept 9-6-18](#)

EDUCATION-SCHOOL LAW.

COLLEGE ADEQUATELY ADDRESSED PH.D STUDENT'S LEARNING DISABILITY, STUDENT WAS PROPERLY TERMINATED FROM THE PROGRAM UPON FAILURE OF AN EXAM. [Matter of De Jesus v Teachers Coll., 2018 NY Slip Op 06186, First Dept 9-25-18](#)

FAMILY LAW.

OFFICE OF CHILDREN AND FAMILY SERVICES' CHILD-MALTREATMENT FINDING NOT SUPPORTED BY THE EVIDENCE. [Matter of Charles v Poole, 2018 NY Slip Op 06185, First Dept 9-25-18](#)

FAMILY LAW.

VISITATION SHOULD NOT HAVE BEEN CONDITIONED ON CHILDREN'S CONSENT. [Matter of Cornell S.J. v Altemease R.J., 2018 NY Slip Op 06320, First Dept 9-27-18](#)

HUMAN RIGHTS LAW, EMPLOYMENT LAW, ADMINISTRATIVE LAW.

NYC HUMAN RIGHTS LAW PROTECTS AGAINST TERMINATION BASED UPON AN EMPLOYEE'S MARRIAGE TO A PARTICULAR PERSON WHO HAD LEFT TO WORK FOR A COMPETITOR, THERE WAS NO NEED TO ALLEGE THAT THE EMPLOYER WAS BIASED AGAINST MARRIED COUPLES GENERALLY. [Morse v Fidessa Corp., 2018 NY Slip Op 05975, First Dept 9-6-18](#)

INSURANCE LAW, CONTRACT LAW, SECURITIES, FRAUD.

INSURER OF RESIDENTIAL MORTGAGE-BACKED SECURITIES NOT ENTITLED TO RECOVER ALL CLAIMS PAID OUT AS A RESULT OF 50% OF THE UNDERLYING MORTGAGES GOING INTO DEFAULT UNDER A FRAUD THEORY, ONLY A BREACH OF CONTRACT THEORY WAS AVAILABLE. [MBIA Ins. Corp. v Credit Suisse Sec. \(USA\) LLC, 2018 NY Slip Op 06060, First Dept 9-13-18](#)

INSURANCE LAW, SECURITIES.

A PENALTY OR DISGORGEMENT STEMMING FROM IMPROPER PROFIT-TAKING BY BEAR STEARNS IS NOT AN INSURABLE LOSS, EVEN IF THE BENEFITS OF THE PROFIT-TAKING WENT TO OTHERS AND NOT TO BEAR STEARNS. [J.P. Morgan Sec., Inc. v Vigilant Ins. Co., 2018 NY Slip Op 06146, First Dept 9-19-18](#)

LABOR LAW-CONSTRUCTION LAW, EVIDENCE, PERSONAL INJURY.

PLAINTIFF'S TESTIMONY THAT THE STEP LADDER WOBBLED CAUSING HIM TO FALL WAS SUFFICIENT TO SUPPORT SUMMARY JUDGMENT IN PLAINTIFF'S FAVOR IN THIS LABOR LAW 240 (1) ACTION, DESPITE THE LACK OF WITNESSES TO THE FALL, HEARSAY EVIDENCE IN THE ACCIDENT REPORT, AND A CONCLUSORY EXPERT AFFIDAVIT FROM THE DEFENSE. [Rroku v West Rac Contr. Corp., 2018 NY Slip Op 06312, First Dept 9-27-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF'S LADDER WAS PLACED ON A MUDDY WATERY SURFACE IN A TUNNEL AND IT SLIPPED OUT FROM UNDER HIM, PLAINTIFFS' SUMMARY JUDGMENT MOTION ON THE LABOR LAW 240 (1) CAUSE OF ACTION SHOULD HAVE BEEN GRANTED. [Gordon v City of New York, 2018 NY Slip Op 05972, First Dept 9-6-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

REMOVING RENTED AIR CONDITIONING EQUIPMENT FROM A HOSPITAL CONSTITUTED A COVERED "ALTERATION" WITHIN THE MEANING OF LABOR LAW 240 (1). [Mananghaya v Bronx-Lebanon Hosp. Ctr. 2018 NY Slip Op 06061, First Dept 9-13-18](#)

PARTNERSHIP LAW, CONTRACT LAW.

NOTICE PURPORTING TO DISSOLVE A PARTNERSHIP WAS A NULLITY BECAUSE IT DID NOT COMPORT WITH THE RELEVANT PROVISIONS OF THE PARTNERSHIP AGREEMENT. [Wiener v Weissman, 2018 NY Slip Op 06205, First Dept 9-25-18](#)

PERSONAL INJURY.

SIDEWALK DEFECT WAS NOT TRIVIAL AS A MATTER OF LAW, TRIVIALITY IS NOT A QUESTION OF DIMENSIONS ALONE, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE PROPERLY DENIED. [Suarez v Emerald 115 Mosholu LLC, 2018 NY Slip Op 06059, First Dept 9-13-18](#)

PERSONAL INJURY.

QUESTION OF FACT WHETHER ICE WAS PRESENT ON THE SIDEWALK IN THIS SLIP AND FALL CASE, SUPREME COURT REVERSED. [Adario-Caine v 69th Tenants Corp., 2018 NY Slip Op 06180, First Dept 9-25-18](#)

PERSONAL INJURY, EVIDENCE.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE WAS PROPERLY DENIED, DEFENDANT DID NOT DEMONSTRATE WHEN THE AREA WAS LAST INSPECTED OR CLEANED AND DID NOT DEMONSTRATE A LACK OF CONSTRUCTIVE NOTICE OF WATER ON THE FLOOR. [Hill v Manhattan N. Mgt., 2018 NY Slip Op 06323, First Dept 9-27-18](#)

PERSONAL INJURY, EVIDENCE.

QUESTION OF FACT WHETHER THE INADEQUATE HEIGHT OF A GUARDRAIL ALONG THE STAIRWELL WAS THE PROXIMATE CAUSE OF PLAINTIFF'S FALL, HEIGHT WAS BELOW THAT MANDATED BY THE NATIONAL FIRE PROTECTION ASSOCIATION. [Sussman v MK LCP Rye LLC, 2018 NY Slip Op 06143, First Dept 9-19-18](#)

SECOND DEPARTMENT

ANIMAL LAW.

NEGLIGENCE, AS OPPOSED TO STRICT LIABILITY, THEORY DID NOT APPLY TO INJURY FROM A HORSE WHICH WAS STARTLED WHEN THREE HORSES ESCAPED FROM A Paddock AND GALLOPED TOWARD THE BARN WHERE PLAINTIFF WAS GROOMING THE HORSE WHICH INJURED HER. [Brinkman v Marshall Field VI, 2018 NY Slip Op 05996, Second Dept 9-12-18](#)

CIVIL PROCEDURE.

MOTION TO VACATE A DEFAULT JUDGMENT PURSUANT TO CPLR 317 AND 5015 PROPERLY DENIED, CRITERIA EXPLAINED. [Dwyer Agency of Mahopac, LLC v Dring Holding Corp., 2018 NY Slip Op 06001, Second Dept 9-12-18](#)

CIVIL PROCEDURE.

MOTION TO COMPEL PLAINTIFF TO ACCEPT A LATE ANSWER, IN RESPONSE TO PLAINTIFF'S MOTION FOR A DEFAULT JUDGMENT, PROPERLY GRANTED. [Marcelli v Lorraine Arms Apts., LLC, 2018 NY Slip Op 06006, Second Dept 9-12-18](#)

CIVIL PROCEDURE.

DEFENDANT COULD NOT BRING A SUMMARY JUDGMENT MOTION BEFORE ISSUE WAS JOINED BY SERVICE OF AN ANSWER. [Cremosa Food Co., LLC v Amella, 2018 NY Slip Op 06077, Second Dept 9-19-18](#)

CIVIL PROCEDURE.

RELATION BACK DOCTRINE SHOULD HAVE BEEN APPLIED IN THE LABOR LAW 200 AND 241 (6) ACTION TO ALLOW PLAINTIFF TO ADD A PARTY AFTER THE STATUTE OF LIMITATIONS HAD RUN. [Uddin v A.T.A. Constr. Corp., 2018 NY Slip Op 06135, Second Dept 9-19-18](#)

CIVIL PROCEDURE.

AFFIDAVIT AND ATTORNEY AFFIRMATION CONSTITUTED THE FUNCTIONAL EQUIVALENT OF A VERIFIED PETITION IN THIS ARTICLE 78 PROCEEDING, THEREFORE THE PROCEEDING SHOULD NOT HAVE BEEN DISMISSED. [Matter of Levine v Suffolk County Dept. of Social Servs., 2018 NY Slip Op 06242, Second Dept 9-26-18](#)

CIVIL PROCEDURE, ATTORNEYS, PRIVILEGE, IMMUNITY, INSURANCE LAW.

LEGAL DOCUMENTS, BILLS FOR LEGAL SERVICES AND AN INSURER'S FILE PROTECTED BY ATTORNEY-CLIENT PRIVILEGE OR CONDITIONAL IMMUNITY, SUPREME COURT SHOULD NOT HAVE ORDERED DISCLOSURE. [Teran v Ast, 2018 NY Slip Op 06288, Second Dept 9-26-18](#)

CIVIL PROCEDURE, ATTORNEYS, TOXIC TORTS.

SUPREME COURT SHOULD NOT HAVE REFUSED TO VACATE A DISMISSAL AND ALLOW AMENDMENT PLAINTIFF'S BILL OF PARTICULARS, PLAINTIFF'S DELAY IN COMPLYING WITH A CONDITIONAL PRECLUSION ORDER WAS SHORT AND WAS ADEQUATELY EXCUSED BY LAW OFFICER FAILURE. [Liese v Hennessey, 2018 NY Slip Op 06087, Second Dept 9-19-18](#)

CIVIL PROCEDURE, CONTRACT LAW, ATTORNEYS, AGENCY.

ATTORNEY HAD APPARENT AUTHORITY TO SIGN STIPULATION OF SETTLEMENT. [Anghel v Utica Mut. Ins. Co., 2018 NY Slip Op 06073, Second Dept 9-19-18](#)

CIVIL PROCEDURE, CONTRACT LAW, REAL PROPERTY LAW.

PLAINTIFF WAS GRANTED A PRELIMINARY INJUNCTION IN THIS ACTION FOR SPECIFIC PERFORMANCE OF A REAL ESTATE PURCHASE AGREEMENT, ALTHOUGH THE AMOUNT OF THE UNDERTAKING IS WITHIN THE COURT'S DISCRETION, THE COURT MUST REQUIRE PLAINTIFF TO GIVE AN UNDERTAKING. [Chao-Yu C. Huang v Shih, 2018 NY Slip Op 06075, Second Dept 9-19-18](#)

CIVIL PROCEDURE, FORECLOSURE.

FAILURE TO SUBMIT AN ORDER FOR SIGNATURE WITHIN 60 DAYS CONSTITUTED ABANDONMENT. [Lasalle Bank N.A. v Benjamin, 2018 NY Slip Op 06005, Second Dept 9-12-18](#)

CIVIL PROCEDURE, FORECLOSURE.

STATUTE OF LIMITATIONS DEFENSE WAS WAIVED BECAUSE IT WAS NOT RAISED IN AN ANSWER OR A PRE-ANSWER MOTION TO DISMISS IN THIS FORECLOSURE ACTION. [21st Mtge. Corp. v Palazzotto, 2018 NY Slip Op 06072, Second Dept 9-19-18](#)

CIVIL PROCEDURE, FORECLOSURE, ATTORNEYS.

LAW OFFICE FAILURE WAS AN INADEQUATE EXCUSE FOR PLAINTIFF'S FAILURE TO APPEAR AT A SCHEDULED COURT CONFERENCE IN A FORECLOSURE ACTION. [Option One Mtge. Corp. v Rose, 2018 NY Slip Op 06023, Second Dept 9-12-18](#)

CIVIL PROCEDURE, FORECLOSURE, ATTORNEYS.

CONCLUSORY AND UNSUBSTANTIATED ALLEGATION OF LAW OFFICE FAILURE DID NOT JUSTIFY VACATING THE DISMISSAL OF THE FORECLOSURE ACTION. [Fremont Inv. & Loan v Fausta, 2018 NY Slip Op 06084, Second Dept 9-19-18](#)

CIVIL PROCEDURE, LIMITED LIABILITY COMPANY LAW.

MOTION TO VACATE A DEFAULT JUDGMENT PURSUANT TO CPLR 317 PROPERLY GRANTED, DEFENDANT DEMONSTRATED IT WAS NOT PERSONALLY SERVED AND THE FAILURE TO PROVIDE THE CORRECT ADDRESS TO THE SECRETARY OF STATE WAS NOT A DELIBERATE ATTEMPT TO EVADE NOTICE. [Acqua Capital, LLC v 510 W. Boston Post Rd, LLC, 2018 NY Slip Op 05991, Second Dept 9-12-18](#)

CIVIL PROCEDURE, MEDICAL MALPRACTICE, NEGLIGENCE, INSURANCE LAW.

MEDICAL MALPRACTICE ACTION SHOULD NOT HAVE BEEN CONSOLIDATED WITH AN ACTION TO DETERMINE WHETHER THE MALPRACTICE WAS COVERED BY INSURANCE. [Hershfeld v JM Woodworth Risk Retention Group, Inc., 2018 NY Slip Op 06229, Second Dept 9-26-18](#)

CONTRACT LAW.

CONTRACT PROVISION ABOUT ALLOWED USES OF THE DIOCESE'S PROPERTY BY A CATHOLIC SCHOOL WAS AMBIGUOUS, DIOCESE'S SUMMARY JUDGMENT MOTION SEEKING DAMAGES FOR BREACH SHOULD NOT HAVE BEEN GRANTED. [Roman Catholic Diocese of Brooklyn, N.Y. v Christ the King Regional High Sch., 2018 NY Slip Op 06130, Second Dept 9-19-18](#)

CRIMINAL LAW.

DENIAL OF A LATE PEREMPTORY CHALLENGE TO A JUROR WAS AN ABUSE OF DISCRETION, NEW TRIAL ORDERED. [People v Viera, 2018 NY Slip Op 06043, Second Dept 9-12-18](#)

CRIMINAL LAW.

INDICTMENT CHARGING CRIMINAL POSSESSION OF A WEAPON WAS JURISDICTIONALLY DEFECTIVE BECAUSE IT DID NOT ALLEGE THE POSSESSION WAS OUTSIDE DEFENDANT'S HOME OR BUSINESS. [People v Tromp, 2018 NY Slip Op 06275, Second Dept 9-26-18](#)

CRIMINAL LAW, APPEALS.

TRIAL JUDGE'S HANDLING OF JURY NOTES CONSTITUTED A MODE OF PROCEEDINGS ERROR, REVERSAL REQUIRED DESPITE FAILURE TO PRESERVE THE ERROR. [People v Wood, 2018 NY Slip Op 06277, Second Dept 9-26-18](#)

CRIMINAL LAW, EVIDENCE.

ALTHOUGH THE DNA EVIDENCE PRESENTED BY A CRIMINALIST WAS IN PART TESTIMONIAL, THE DEFENDANT'S RIGHT TO CONFRONTATION WAS NOT VIOLATED AND THE EVIDENCE WAS PROPERLY ADMITTED. [People v Pascall, 2018 NY Slip Op 06037, Second Dept 9-12-18](#)

CRIMINAL LAW, ATTORNEYS.

DEFENSE ATTORNEY TOOK A POSITION ADVERSE TO DEFENDANT STATING THERE WAS NO BASIS FOR DEFENDANT'S PRO SE MOTION TO WITHDRAW HIS PLEA, MATTER REMITTED FOR CONSIDERATION OF THE MOTION WITH NEW DEFENSE COUNSEL. [People v Falls, 2018 NY Slip Op 06110, Second Dept 9-19-18](#)

CRIMINAL LAW, EVIDENCE.

MOTION TO VACATE DEFENDANT'S CONVICTION SHOULD NOT HAVE BEEN GRANTED, EVIDENCE ALLEGEDLY WITHHELD FROM THE DEFENSE WAS NOT *BRADY* MATERIAL [People v Spruill, 2018 NY Slip Op 06041, Second Dept 9-12-18](#)

CRIMINAL LAW, EVIDENCE.

STREET STOP NOT JUSTIFIED UNDER DE BOUR ANALYSIS, SEIZED FIREARM AND STATEMENT SHOULD HAVE BEEN SUPPRESSED. [People v Jones, 2018 NY Slip Op 06114, Second Dept 9-19-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS, ATTORNEYS.

DETECTIVE'S TESTIMONY THAT COMPLAINANT PICKED DEFENDANT OUT OF A LINEUP WAS INADMISSIBLE BOLSTERING, ERROR REVIEWED IN THE INTEREST OF JUSTICE, CONVICTION REVERSED. [People v Ramirez, 2018 NY Slip Op 06120, Second Dept 9-19-18](#)

CRIMINAL LAW, IMMIGRATION LAW, EVIDENCE, CIVIL PROCEDURE.

SUPREME COURT LACKED TO POWER TO SUPPRESS DEFENDANT'S PRESENTENCE REPORT IN IMMIGRATION PROCEEDINGS. [People v Sagline K., 2018 NY Slip Op 06115, Second Dept 9-19-18](#)

CRIMINAL LAW, JUDGES.

JUDGE CONDUCTED EXCESSIVE QUESTIONING OF WITNESSES, NEW TRIAL WITH A DIFFERENT JUDGE ORDERED. [People v Sookdeo, 2018 NY Slip Op 06040, Second Dept 9-12-18](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

DEFENDANT'S LEVEL THREE SEX OFFENDER ADJUDICATION SHOULD NOT HAVE BEEN VACATED, HIS SENTENCE ON A SEX OFFENSE WAS INTERRUPTED WHEN THE PAROLE BOARD DECLARED HIM DELINQUENT, WHEN DEFENDANT RETURNED TO STATE CUSTODY AFTER A SUBSEQUENT MURDER CONVICTION, HIS SEX OFFENSE SENTENCE RESUMED MAKING HIM SUBJECT TO SORA. [People v Johnson, 2018 NY Slip Op 06045, Second Dept 9-12-18](#)

DEFAMATION, PRIVILEGE.

STATEMENTS ABOUT PROBLEMS WITH THE INSTALLATION OF GAS LINES MADE BY DEFENDANT WHO WAS HIRED TO FIND THE CAUSE OF THE GAS LEAKS PROTECTED BY QUALIFIED COMMON-INTEREST PRIVILEGE. [Franco Belli Plumbing & Heating & Sons, Inc. v Dimino, 2018 NY Slip Op 06083, Second Dept 9-19-18](#)

EDUCATION-SCHOOL LAW, ATTORNEYS.

STUDENT WAS NOT DEPRIVED OF HIS RIGHT TO HAVE AN ATTORNEY PRESENT AT A COLLEGE DISCIPLINARY HEARING BY THE COLLEGE'S REFUSAL TO ADJOURN THE MATTER FOR THREE HOURS SO THE ATTORNEY COULD ATTEND, STUDENT WAS PROPERLY FOUND RESPONSIBLE FOR THE DISCIPLINARY CHARGES AND WAS PROPERLY EXPELLED. [Matter of Bursch v Purchase Coll. of the State Univ. of N.Y., 2018 NY Slip Op 06090, Second Dept 9-19-18](#)

EDUCATION-SCHOOL LAW, MUNICIPAL LAW, NEGLIGENCE.

STUDENT WALKING HOME FROM SCHOOL STRUCK BY A CAR, SUIT AGAINST SCHOOL BOARD AND MUNICIPALITY PROPERLY DISMISSED, NO SPECIAL RELATIONSHIP WITH MUNICIPALITY, NO DUTY TO SUPERVISE AFTER DISMISSAL FROM SCHOOL. [Ade v City of New York, 2018 NY Slip Op 05993, Second Dept 8-12-18](#)

EDUCATION-SCHOOL LAW, NEGLIGENCE, MUNICIPAL LAW.

SCHOOL HAD ACTUAL KNOWLEDGE OF THE FACTS OF THE SLIP AND FALL CLAIM WITHIN 90 DAYS AND WAS NOT PREJUDICED BY THE DELAY IN FILING A NOTICE OF CLAIM, PETITION FOR LEAVE TO FILE A LATE NOTICE SHOULD HAVE BEEN GRANTED, DESPITE AN INADEQUATE EXCUSE. [Matter of Messick v Greenwood Lake Union Free Sch. Dist., 2018 NY Slip Op 06244, Second Dept 9-26-18](#)

FAMILY LAW.

MOTHER'S MENTAL ILLNESS SUPPORTED NEGLECT FINDING. [Matter of Nialani T. \(Elizabeth B.\), 2018 NY Slip Op 06019, Second Dept 9-12-18](#)

FAMILY LAW, IMMIGRATION LAW.

MOTHER'S PETITION FOR GUARDIANSHIP RE: SEEKING SPECIAL IMMIGRANT JUVENILE STATUS FOR HER SON SHOULD NOT HAVE BEEN DISMISSED ON THE GROUND PATERNITY HAD NOT BEEN ESTABLISHED.. [Matter of Olga L.G.M. \(Santos T.F.\), 2018 NY Slip Op 06093, Second Dept 9-19-18](#)

FAMILY LAW, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

NEW YORK DOES NOT RECOGNIZE A CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST A SPOUSE OR FORMER SPOUSE STEMMING FROM EVENTS DURING THE MARRIAGE. [Chen v Dehung Deborah Wang, 2018 NY Slip Op 06076, Second Dept 9-19-18](#)

FORECLOSURE.

DEFAULT NOTICE WAS NOT A CLEAR AND UNEQUIVOCAL ACCELERATION OF THE MORTGAGE, THE STATUTE OF LIMITATIONS FOR A FORECLOSURE ACTION DID NOT START RUNNING FROM THE DATE OF THE NOTICE. [Fbp 250, LLC v Wells Fargo Bank, N.A., 2018 NY Slip Op 06082, Second Dept 9-19-18](#)

FORECLOSURE, UNIFORM COMMERCIAL CODE (UCC).

A CASH ACCOUNT AGREEMENT WHICH MEMORIALIZED A REVERSE MORTGAGE WAS NOT A NEGOTIABLE INSTRUMENT WITHIN THE MEANING OF THE UNIFORM COMMERCIAL CODE, THEREFORE THE HOLDER OF THE CASH ACCOUNT AGREEMENT DID NOT HAVE STANDING TO FORECLOSE [OneWest Bank, N.A. v FMCDH Realty, Inc., 2018 NY Slip Op 06101, Second Dept 9-19-18](#)

INSURANCE LAW.

INSURER DID NOT DEMONSTRATE THE INSURED'S LACK OF COOPERATION WITH THE INVESTIGATION INTO THE TRAFFIC ACCIDENT AND DID NOT MAKE A TIMELY DISCLAIMER, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Robinson v Global Liberty Ins. Co. of N.Y., 2018 NY Slip Op 06128, Second Dept 9-19-18](#)

INSURANCE LAW, ATTORNEYS.

PROPERTY OWNER'S MOTION FOR SUMMARY JUDGMENT DECLARING THAT THE INSURER WAS OBLIGATED TO REIMBURSE THE PROPERTY OWNER FOR COSTS AND ATTORNEY'S

FEES INCURRED IN DEFENDING THIS SLIP AND FALL CASE SHOULD HAVE BEEN GRANTED.. [McCoy v Medford Landing, L.P., 2018 NY Slip Op 06236, Second Dept 9-26-18](#)

INSURANCE LAW, CIVIL PROCEDURE.

SUPREME COURT SHOULD NOT HAVE SEARCHED THE RECORD TO AWARD SUMMARY JUDGMENT ON A GROUND NOT RAISED BY THE PARTIES, HOWEVER, FAILURE TO TIMELY NOTIFY UMBRELLA INSURER OF THE CLAIM WARRANTED SUMMARY JUDGMENT. [Daimler Chrysler Ins. Co. v Keller, 2018 NY Slip Op 05999, Second Dept 9-12-18](#)

INSURANCE LAW, CONTRACT LAW.

CONSTRUCTION CONTRACT REQUIRING INSURANCE WILL NOT BE INTERPRETED TO REQUIRE ADDITIONAL INSURED COVERAGE ABSENT A SPECIFIC PROVISION. [Uddin v A.T.A. Constr. Corp., 2018 NY Slip Op 06136, Second Dept 9-19-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

INJURY FROM STEPPING INTO AN OPENING THAT IS NOT BIG ENOUGH FOR A PERSON TO FALL THROUGH IS NOT COVERED BY LABOR 240 (1) OR 241 (6). [Johnson v Lend Lease Constr. LMB, Inc., 2018 NY Slip Op 06004, Second Dept 9-12-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

IN THIS LABOR LAW 240(1), 241(6) AND 200 ACTION, THERE WAS A QUESTION OF FACT WHETHER DEFENDANT WAS AN OWNER OF THE PROPERTY WHERE PLAINTIFF WAS INJURED BY A FALLING OBJECT, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Powell v Norfolk Hudson, LLC, 2018 NY Slip Op 06047, Second Dept 9-12-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

DEFENDANT PROPERTY OWNERS BORROWED A LIFT FROM DEFENDANT MIS, PLAINTIFF WAS INJURED USING THE LIFT, THE LABOR LAW 200 CAUSE OF ACTION AGAINST MIS WAS PROPERLY DISMISSED AS INAPPLICABLE, BUT THE NEGLIGENCE ACTION AGAINST MIS SHOULD NOT HAVE BEEN DISMISSED. [Hill v Mid Is. Steel Corp., 2018 NY Slip Op 06230, Second Dept 9-26-18](#)

LANDLORD-TENANT, CIVIL PROCEDURE.

YELLOWSTONE INJUNCTION NOT WARRANTED IN THIS LEASE-TERMINATION CASE, PLAINTIFF NIGHTCLUB DID NOT DEMONSTRATE ITS WILLINGNESS TO CURE AN ALLEGED NOISE-LEVEL VIOLATION OF THE LEASE. [146 Broadway Assoc., LLC v Bridgeview at Broadway, LLC, 2018 NY Slip Op 05990, Second Dept 9-12-18](#)

MEDICAL MALPRACTICE, PERSONAL INJURY, EMPLOYMENT LAW.

HOSPITAL DID NOT DEMONSTRATE PHYSICIANS ALLEGED TO HAVE COMMITTED MALPRACTICE WERE NOT EMPLOYEES AND WERE NOT NEGLIGENT, MOTION FOR SUMMARY JUDGMENT PROPERLY DENIED. [Dupree v Westchester County Health Care Corp., 2018 NY Slip Op 06000, Second Dept 9-12-18](#)

MUNICIPAL LAW, CIVIL PROCEDURE.

CITY WAS NOT ESTOPPED FROM ASSERTING THE STATUTE OF LIMITATIONS DEFENSE TO A CHALLENGE TO CITY WATER BILLS, ALTHOUGH AN INACCURATE BILL HAD BEEN ISSUED, THE ERROR WAS CORRECTED AND THE CITY DID NOT ACT IMPROPERLY. [Matter of Maimonides Med. Ctr. v New York City Water Dept., 2018 NY Slip Op 06094, Second Dept 9-19-18](#)

MUNICIPAL LAW, REAL PROPERTY LAW, IMMUNITY.

LAND HELD BY A MUNICIPALITY IN A PROPRIETARY CAPACITY IS NOT IMMUNE FROM ADVERSE POSSESSION. [Mazzei v Metropolitan Transp. Auth., 2018 NY Slip Op 06007, Second Dept 9-12-18](#)

PERSONAL INJURY.

EVIDENCE NOT SUFFICIENT TO DEMONSTRATE SIDEWALK DEFECT WAS TRIVIAL, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE PROPERLY DENIED. [Coriat v Miller, 2018 NY Slip Op 05998, Second Dept 9-12-18](#)

PERSONAL INJURY.

PLAINTIFF INJURED WHEN, AFTER CONSUMING ALCOHOL, HE DOVE INTO A SHALLOW PART OF DEFENDANT'S POOL, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT PROPERLY GRANTED. [Carroll v Montalvo, 2018 NY Slip Op 05997, Second Dept 9-12-18](#)

PERSONAL INJURY.

PLAINTIFF, A TRAFFIC ENFORCEMENT OFFICER, WAS WALKING IN THE STREET WHEN DEFENDANT STRUCK HIM AFTER TAKING HIS EYES OFF THE ROAD, PLAINTIFF DID NOT HAVE TO DEMONSTRATE FREEDOM FROM COMPARATIVE FAULT, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Outar v Sumner, 2018 NY Slip Op 06103, Second Dept 9-19-18](#)

PERSONAL INJURY.

THE DEFENDANT IN THIS REAR-END COLLISION CASE DID NOT RAISE A QUESTION OF FACT ABOUT WHETHER THERE WAS A NONNEGLIGENT EXPLANATION FOR STRIKING PLAINTIFF'S VEHICLE. [Arslan v Costello, 2018 NY Slip Op 06221, Second Dept 9-26-18](#)

PERSONAL INJURY, EVIDENCE.

HEARSAY IN POLICE REPORT ABOUT THE PROXIMATE CAUSE OF THE TRAFFIC ACCIDENT WAS INADMISSIBLE, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED.. [Ardanuy v RB Juice, LLC, 2018 NY Slip Op 06074, Second Dept 9-19-18](#)

PERSONAL INJURY, EVIDENCE.

IN THIS SIDEWALK SLIP AND FALL CASE, DEFENDANT DID NOT ELIMINATE ISSUES OF FACT ABOUT WHETHER THE PLAINTIFF CAN PROVE THE CAUSE OF PLAINTIFF'S DECEDENT'S FALL, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Eisenstein v Block 5298, Inc., 2018 NY Slip Op 06080, Second Dept 9-19-18](#)

PERSONAL INJURY, LABOR LAW-CONSTRUCTION LAW, LABOR LAW, TOXIC TORTS, ENVIRONMENTAL LAW.

ACTION ALLEGING LEAD POISONING IN UTERO FROM FATHER'S CLOTHES WHICH WERE SATURATED WITH LEAD AND OTHER HAZARDOUS MATERIALS AT WORK DISMISSED. [Campanelli v Long Is. Light. Co., 2018 NY Slip Op 06225, Second Dept 9-26-18](#)

PERSONAL INJURY, LANDLORD-TENANT, EVIDENCE.

IN THIS SLIP AND FALL CASE, THERE WAS A QUESTION OF FACT WHETHER THE OUT-OF-POSSESSION LANDLORD WAS LIABLE FOR AN ALLEGEDLY DEFECTIVE DRAINAGE SYSTEM WHICH RESULTED IN ICE ACCUMULATION. PLAINTIFF'S AFFIDAVITS SHOULD HAVE BEEN CONSIDERED. [Bartels v Eack, 2018 NY Slip Op 05995, Second Dept 9-12-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

TOWN DID NOT OWE A DUTY TO PLAINTIFF WHO WAS STRUCK BY A CAR CROSSING A STREET AFTER ATTENDING A TOWN FIREWORKS DISPLAY. [Janas v Town of Oyster Bay, 2018 NY Slip Op 06086, Second Dept 9-19-18](#)

PERSONAL INJURY, MUNICIPAL LAW, UTILITIES.

ABUTTING PROPERTY OWNERS AND CITY NOT LIABLE FOR A LAMP POST BASE IN THE SIDEWALK OVER WHICH PLAINTIFF ALLEGEDLY TRIPPED, THERE WAS, HOWEVER, A QUESTION OF FACT WHETHER CON ED INSTALLED THE BASE AND WAS THEREFORE LIABLE. [Madonia v City of New York, 2018 NY Slip Op 06088, Second Dept 9-19-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

EXPOSED TREE ROOT IN TOWN PARK WAS AN OPEN AND OBVIOUS CONDITION, SLIP AND FALL ACTION PROPERLY DISMISSED. [Ibragimov v Town of N. Hempstead, 2018 NY Slip Op 06231, Second Dept 9-26-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

MOTION TO AMEND NOTICE OF CLAIM TO ADD THE ADDRESS OF PLAINTIFF'S SLIP AND FALL SHOULD HAVE BEEN GRANTED. [Ruark v City of Glen Cove, 2018 NY Slip Op 06286, Second Dept 9-26-18](#)

PERSONAL INJURY, UTILITIES.

PLAINTIFF DID NOT RAISE A QUESTION OF FACT ABOUT THE GAS COMPANY'S LIABILITY FOR A GAS EXPLOSION TRIGGERED BY A TREE UPROOTED DURING A HURRICANE, GAS COMPANY'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Deitrick v Long Is. Power Auth., 2018 NY Slip Op 06079, Second Dept 9-19-18](#)

PRODUCTS LIABILITY, NEGLIGENCE.

FAILURE TO WARN WAS NOT A SUBSTANTIAL CAUSE OF THE INJURIES AND DEATHS IN THIS PRODUCTS LIABILITY ACTION, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Reece v J.D. Posillico, Inc., 2018 NY Slip Op 06048, Second Dept 9-12-18](#)

REAL PROPERTY LAW, CONTRACT LAW.

SELLER DID NOT DEMONSTRATE THE TIME OF THE ESSENCE LETTER GAVE BUYER SUFFICIENT TIME AND DID NOT DEMONSTRATE THE ABILITY TO CLOSE ON THAT DATE, SELLER'S MOTION FOR SUMMARY JUDGMENT IN THIS SPECIFIC PERFORMANCE ACTION PROPERLY DENIED. [Rodrigues NBA, LLC v Allied XV, LLC, 2018 NY Slip Op 06129, Second Dept 9-19-18](#)

REAL PROPERTY LAW, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW.

CRITERIA FOR ADVERSE POSSESSION AND OUSTER AGAINST A COTENANT NOT MET. [Fini v Marini, 2018 NY Slip Op 06003, Second Dept 9-12-18](#)

THIRD DEPARTMENT

DISCIPLINARY HEARINGS (INMATES).

PETITIONER, WHO WAS URINATING WHEN A FEMALE CORRECTION OFFICER PASSED HIS CELL, WAS NOT GUILTY OF LEWD CONDUCT. [Matter of Burroughs v Annucci, 2018 NY Slip Op 06168, Third Dept 9-19-18](#)

ELECTION LAW.

PARTY OBJECTING TO CONGRESSIONAL CANDIDATE'S NOMINATING PETITION DID NOT PROPERLY NOTIFY THE CANDIDATE OF THE OBJECTIONS, STATE BOARD OF ELECTIONS SHOULD NOT HAVE INVALIDATED THE PETITION. [Matter of Neal v Liscum, 2018 NY Slip Op 06070, Third Dept 9-17-18](#)

RETIREMENT AND SOCIAL SECURITY LAW, PERSONAL INJURY.

FIREFIGHTER'S FALL EXITING AN AMBULANCE WAS AN ACCIDENT WITHIN THE MEANING OF THE RETIREMENT AND SOCIAL SECURITY LAW. [Matter of Loia v DiNapolil, 2018 NY Slip Op 05984, Third Dept 9-6-18](#)

TRUSTS AND ESTATES, EVIDENCE.

SUMMARY JUDGMENT DISMISSING THE OBJECTION THAT THE DECEDENT LACKED TESTAMENTARY CAPACITY WAS PROPERLY GRANTED, THE INQUIRY IS CONFINED TO THE TIME AT WHICH THE WILL IS SIGNED, TWO DISSENTERS. [Matter of Giaquinto, 2018 NY Slip Op 06065, Third Dept 9-12-18](#)

WORKERS' COMPENSATION.

NO SCHEDULE LOSS OF USE (SLU) BENEFITS CALCULATED BASED UPON THE LOSS OF USE OF THE KNEE AND ANKLE SEPARATELY, AS OPPOSED A CALCULATION BASED UPON THE LOSS OF USE OF THE LEG AS A WHOLE. [Matter of Genduso v New York City Dept. of Educ., 2018 NY Slip Op 05981, Third Dept 9-6-18](#)

FOURTH DEPARTMENT

ARBITRATION.

ARBITRATOR'S AWARD WAS NOT IRRATIONAL, SUPREME COURT SHOULD NOT HAVE VACATED THE AWARD IN THIS REAR-END COLLISION CASE. [Whitney v Perrotti, 2018 NY Slip Op 06343, Fourth Dept 9-28-18](#)

CIVIL PROCEDURE, INSURANCE LAW, PRIVILEGE, EVIDENCE.

ALTHOUGH DISCLOSURE OF INSURER'S SUPPLEMENTAL UNDERINSURED MOTORIST (SUM) FILE IS NOT LIMITED TO THE TIME BEFORE THE COMMENCEMENT OF THE ACTION, THE ORDER TO DISCLOSE THE WHOLE FILE WAS IMPROPER, A PRIVILEGE LOG SHOULD BE CREATED FOLLOWED BY AN IN CAMERA REVIEW. [Rickard v New York Cent. Mut. Fire Ins. Co., 2018 NY Slip Op 06333, Fourth Dept 9-28-18](#)

CRIMINAL LAW.

FOR CAUSE CHALLENGE TO JUROR, BASED UPON IMPLIED BIAS, SHOULD HAVE BEEN GRANTED, JUROR'S LIFE WAS SAVED BY THE TRAUMA SURGEON WHO TESTIFIED ABOUT THE VICTIM'S WOUNDS, MULTIPLE STAB WOUNDS DID NOT SUPPORT LESSER INCLUDED OFFENSE OF RECKLESS ASSAULT. [People v Farley, 2018 NY Slip Op 06380, Fourth Dept 9-28-18](#)

CRIMINAL LAW.

SENTENCING JUDGE INDICATED HE WAS BOUND BY AN AGREEMENT WITH THE PEOPLE CONCERNING DEFENDANT'S SENTENCE, HOWEVER, A SENTENCING JUDGE HAS DISCRETION IN SENTENCING, MATTER REMITTED FOR RESENTENCING. [People v Dupont, 2018 NY Slip Op 06392, Fourth Dept 9-28-18](#)

DISCIPLINARY HEARINGS (INMATES).

INMATE'S 'THREAT' TO BRING A LAWSUIT WAS NOT AN ACTIONABLE RULE VIOLATION. [Matter of Gourdine v Annucci, 2018 NY Slip Op 06391, Fourth Dept 9-29-18](#)

ELECTION LAW.

"OPPORTUNITY TO BALLOT" REMEDY AVAILABLE WHERE SIGNATURES ON A NOMINATING PETITION INVALIDATED FOR A TECHNICAL DEFECT AND THE PARTY WOULD BE LEFT WITHOUT A CANDIDATE. [Matter of Trevisani v Karp, 2018 NY Slip Op 05966, Fourth Dept 9-5-18](#)

ELECTION LAW, FRAUD.

FRAUD WARRANTED INVALIDATION OF THE DESIGNATING PETITION. [Matter of Buttenschon v Salatino, 2018 NY Slip Op 05988, Fourth Dept 9-7-18](#)

PERSONAL INJURY.

QUESTION OF FACT WHETHER DEFENDANT ACTED RECKLESSLY IN THIS SKIING ACCIDENT CASE, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Sopkovich v Smith, 2018 NY Slip Op 06342, Fourth Dept 9-28-18](#)

PERSONAL INJURY.

DEFENDANT OFFERED A NONNEGLIGENT EXPLANATION OF THE REAR-END COLLISION, PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Macri v Kotrys, 2018 NY Slip Op 06387, Fourth Dept 9-28-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

DEFENDANT MUNICIPALITY DEMONSTRATED IT DID NOT RECEIVE WRITTEN NOTICE OF THE SIDEWALK DEFECT IN THIS SLIP AND FALL CASE, MUNICIPALITY'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Hernandez v City of Syracuse, 2018 NY Slip Op 06351, Fourth Dept 9-28-18](#)

OCTOBER 2018

COURT OF APPEALS

ADMINISTRATIVE LAW, CONSTITUTIONAL LAW, EMPLOYMENT LAW.

DEPARTMENT OF HEALTH REGULATIONS PLACING HARD CAPS ON EXECUTIVE COMPENSATION AND ADMINISTRATIVE EXPENDITURES BY HEALTHCARE PROVIDERS RECEIVING PUBLIC FUNDS PROPERLY PROMULGATED. [Matter of LeadingAge N.Y., Inc. v Shah, 2018 NY Slip Op 06965, CtApp 10-18-18](#)

CONSUMER LAW.

SELLERS MUST POST THE TOTAL PRICE CHARGED TO CUSTOMERS WHO PAY WITH CREDIT CARDS, WHICH CAN BE HIGHER THAN THAT CHARGED TO CUSTOMERS WHO PAY CASH. [Expressions Hair Design v Schneiderman, 2018 NY Slip Op 07037, CtApp 10-23-18](#)

CONTRACT LAW, CIVIL PROCEDURE, SECURITIES.

WARRANTIES AND REPRESENTATIONS CLAUSE IN RESIDENTIAL MORTGAGE-BACKED SECURITIES PURCHASE AGREEMENT DID NOT POSTPONE THE ACCRUAL OF A BREACH OF CONTRACT ACTION, THE ACTION WAS THEREFORE TIME-BARRED. [Deutsche Bank Natl. Trust Co. v Flagstar Capital Mkts., 2018 NY Slip Op 06851, CtApp 10-16-18](#)

CRIMINAL LAW.

ACCUSATORY INSTRUMENT CHARGING DEFENDANT WITH PATRONIZING A PROSTITUTE WAS NOT JURISDICTIONALLY DEFECTIVE BECAUSE A CLINICAL PHRASE WAS USED TO DESCRIBE SEXUAL ACTIVITY. [People v Drelich, 2018 NY Slip Op 06785, CtApp 10-11-18](#)

CRIMINAL LAW, APPEALS, ATTORNEYS, CONSTITUTIONAL LAW.

MISSING THE DEADLINES FOR APPLYING FOR LEAVE TO APPEAL TO THE COURT OF APPEALS DOES NOT GIVE RISE TO A WRIT OF ERROR CORAM NOBIS OR AN EXCEPTION TO CPL 460.30 BASED UPON INEFFECTIVE ASSISTANCE OF COUNSEL OR A VIOLATION OF DUE PROCESS. [People v Grimes, 2018 NY Slip Op 07038, CtApp 10-23-18](#)

CRIMINAL LAW, ATTORNEYS.

DEFENDANT'S REQUEST TO REPRESENT HIMSELF, MADE AFTER ELEVEN JURORS HAD BEEN SELECTED, WAS PROPERLY REJECTED AS UNTIMELY. [People v Crespo, 2018 NY Slip Op 06849, CtApp 10-16-18](#)

EDUCATION-SCHOOL LAW, EVIDENCE, ADMINISTRATIVE LAW.

COLLEGE'S DETERMINATION STUDENT VIOLATED THE CODE OF STUDENT CONDUCT SUPPORTED BY SUBSTANTIAL EVIDENCE, EVIDENTIARY STANDARD DEFINED. [Matter of Haug v State Univ. of N.Y. at Potsdam, 2018 NY Slip Op 06964, CtApp 10-18-18](#)

EMPLOYMENT LAW, LABOR LAW, ADMINISTRATIVE LAW.

APPRENTICES WHO WORK OUTSIDE THE THEIR APPRENTICESHIP TRAINING CANNOT BE PAID THE LOWER APPRENTICE RATES, HERE APPRENTICE GLAZIERS DOING IRONWORK WHEN INSTALLING STOREFRONTS MUST BE PAID AT THE HIGHER JOURNEY-LEVEL RATE. [International Union of Painters & Allied Trades, Dist. Council No. 4 v New York State Dept. of Labor, 2018 NY Slip Op 06963, CtApp 10-18-18](#)

FAMILY LAW.

FAMILY COURT MADE REASONABLE EFFORTS TO REUNITE MOTHER, WHO IS INTELLECTUALLY DISABLED, WITH HER CHILD, WHO WAS REMOVED AFTER A NEGLECT FINDING, THE APPLICABILITY OF REASONABLE ACCOMMODATIONS UNDER THE AMERICANS WITH DISABILITIES ACT (ADA) AND THE ADA'S INTERPLAY WITH NEW YORK LAW IN THIS CONTEXT EXPLAINED. [Matter of Lacey L. \(Dekodia L.\), 2018 NY Slip Op 06966, CtApp 10-18-18](#)

FIRST DEPARTMENT

ARBITRATION, INSURANCE LAW, CIVIL PROCEDURE.

THE ARBITRATOR-PANEL DID NOT HAVE THE AUTHORITY TO RECONSIDER A PARTIAL FINAL AWARD IN THIS DISPUTE BETWEEN AN INSURER AND THE INSURED, THE PANEL INITIALLY FOUND THAT A \$10 MILLION SETTLEMENT PAID BY THE INSURED WAS NOT A COVERED LOSS, BUT SUBSEQUENTLY REVERSED ITSELF. [American Intl. Specialty Lines Ins. Co. v Allied Capital Corp., 2018 NY Slip Op 07194, First Dept 10-25-18](#)

CIVIL PROCEDURE, JUDGES.

COURT DID NOT HAVE THE AUTHORITY TO, SUA SPONTE, VACATE ITS DECISION AND REINSTATE A 2014 JUDGMENT WHERE NO REQUEST THAT COULD FORM THE BASIS OF THAT ACTION WAS MADE IN THE MOTION PAPERS. [Howell v City of New York, 2018 NY Slip Op 07178, First Dept 10-25-18](#)

CONTRACT LAW, TRUSTS AND ESTATES.

ALTHOUGH THE AGREEMENT BETWEEN BROTHER AND SISTER TO SHARE MOTHER'S ESTATE WAS NOT ENFORCEABLE UNDER THE STATUTE OF FRAUDS, THE COMPLAINT STATED CAUSES OF ACTION FOR PROMISSORY ESTOPPEL AND A CONSTRUCTIVE TRUST. [Castellotti v Free, 2018 NY Slip Op 07045, First Dept 10-23-18](#)

CRIMINAL LAW.

NO EVIDENCE ROBBERY VICTIM SAW A FIREARM, ROBBERY FIRST CONVICTION VACATED. [People v Allende, 2018 NY Slip Op 06967, First Dept 10-18-18](#)

CRIMINAL LAW.

FOR CAUSE CHALLENGE TO JUROR SHOULD HAVE BEEN GRANTED, CONVICTION REVERSED. [People v Brith, 2018 NY Slip Op 07250, First Dept 10-30-18](#)

CRIMINAL LAW, APPEALS, MENTAL HYGIENE LAW.

THE DENIAL OF DEFENDANT'S PETITION FOR A DE NOVO JURY TRIAL TO DETERMINE WHETHER HE IS MENTALLY ILL IS APPEALABLE AS OF RIGHT AND THE PETITION SHOULD HAVE BEEN GRANTED, AN EXCEPTION TO THE MOOTNESS DOCTRINE APPLIED AND DEFENSE COUNSEL'S STATEMENTS AND THE DEFENSE EXPERT'S TESTIMONY AT THE HEARING TO THE EFFECT DEFENDANT WAS MENTALLY ILL DID NOT CONSTITUTE A WAIVER OF THE DEFENDANT'S RIGHT TO A DE NOVO TRIAL. [Matter of New York State Off. of Mental Health v Marco G., 2018 NY Slip Op 06998, First Dept 10-18-18](#)

CRIMINAL LAW, ATTORNEYS, IMMIGRATION.

DEFENDANT WAS TOLD MERELY THAT DEPORTATION WAS A POSSIBILITY WHEN IT WAS MANDATORY, HE IS ENTITLED TO MOVE TO VACATE HIS GUILTY PLEA ON INEFFECTIVE ASSISTANCE GROUNDS. [People v Rodriguez, 2018 NY Slip Op 07061, First Dept 10-23-18](#)

CRIMINAL LAW, ATTORNEYS, IMMIGRATION.

DEFENDANT WAS TOLD MERELY THAT DEPORTATION WAS A PROBABILITY WHEN IT WAS MANDATORY, HE IS ENTITLED TO MOVE TO VACATE HIS GUILTY PLEA ON INEFFECTIVE ASSISTANCE GROUNDS. [People v Johnson, 2018 NY Slip Op 07072, First Dept 10-23-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

EXPERT EVIDENCE ON THE CROSS-RACE EFFECT ON THE ABILITY TO IDENTIFY THE PERPETRATOR SHOULD HAVE BEEN ALLOWED, THE REQUEST TO GIVE THE CROSS-RACIAL IDENTIFICATION JURY INSTRUCTION SHOULD HAVE BEEN GRANTED, THE NEW (2017) RULING ON CROSS-RACIAL IDENTIFICATION SHOULD BE RETROACTIVELY APPLIED TO CASES ON DIRECT APPEAL WHEN THE RULING WAS MADE. [People v Crovador, 2018 NY Slip Op 07273, First Dept 10-30-18](#)

CRIMINAL LAW, MENTAL HYGIENE LAW, ATTORNEYS.

DEFENDANT'S ATTORNEY DID NOT PROVIDE EFFECTIVE ASSISTANCE OF COUNSEL BY CONCEDED DEFENDANT SUFFERED FROM A DANGEROUS MENTAL DISORDER AND THEREBY EFFECTIVELY WAIVING A HEARING TO DETERMINE THE APPROPRIATE TRACK FOR DEFENDANT'S TREATMENT-CIVIL CONFINEMENT. [People v Darryl T., 2018 NY Slip Op 06634, First Dept 10-4-18](#)

EMPLOYMENT LAW, CONTRACT LAW.

THE FIRST EMPLOYMENT AGREEMENT INCLUDED A FORUM SELECTION CLAUSE, THE SECOND AGREEMENT REQUIRED ARBITRATION, THE SECOND AGREEMENT SUPERSEDED THE FIRST. [Hyuncheol Hwang v Mirae Asset Sec. \(USA\) Inc., 2018 NY Slip Op 06485, First Dept 10-2-18](#)

FAMILY LAW, EVIDENCE.

FAMILY COURT SHOULD NOT HAVE RULED ON MOTHER'S PETITION TO MODIFY CUSTODY WITHOUT HOLDING A HEARING, FAMILY COURT IMPROPERLY RELIED SOLELY UPON AN IN CAMERA INTERVIEW WITH THE CHILD AND UNSWORN DOCUMENTS FROM MENTAL HEALTH SERVICES AND THERAPISTS. [Matter of Kenneth J. v Lesley B., 2018 NY Slip Op 06625, First Dept 10-4-18](#)

INSURANCE LAW, CIVIL PROCEDURE, CONSTITUTIONAL LAW.

INSURER OF NEW YORK DRIVER INVOLVED IN AN ACCIDENT WHILE DRIVING A U-HAUL VEHICLE IN NORTH CAROLINA DID NOT HAVE SUFFICIENT CONTACTS WITH NORTH CAROLINA TO WARRANT THE IMPOSITION OF LONG-ARM JURISDICTION IN A NORTH CAROLINA ACTION, THE NEW YORK ACTION SEEKING DOMESTICATION OF A NORTH CAROLINA DEFAULT JUDGMENT SHOULD HAVE BEEN DISMISSED. [Repwest Ins. Co. v Country-Wide Ins. Co., 2018 NY Slip Op 06505, First Dept 10-2-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

QUESTIONS OF FACT WHETHER THE GENERAL CONTRACTOR AND A STATUTORY AGENT OF THE PROJECT OWNER ARE LIABLE FOR THE INJURIES TO AN EMPLOYEE OF A SUBCONTRACTOR IN THIS LABOR LAW 240 (1) LADDER CASE. [White v 31-01 Steinway, LLC, 2018 NY Slip Op 06685, First Dept 10-9-18](#)

LEGAL MALPRACTICE, NEGLIGENCE, ATTORNEYS, IMMIGRATION LAW, ELECTION LAW.

PLAINTIFF, A LEGAL RESIDENT OF THE US, PLED GUILTY TO AN ELECTION LAW VIOLATION, PLAINTIFF'S COMPLAINT STATED CAUSES OF ACTION FOR LEGAL MALPRACTICE STEMMING FROM ALLEGED ADVICE THAT TRAVELING ABROAD WOULD NOT HAVE DETRIMENTAL IMMIGRATION CONSEQUENCES, PLAINTIFF WAS DETAINED FOR FOUR MONTHS WHEN HE ATTEMPTED TO RETURN FROM TRAVEL ABROAD. [Sehgal v DiRaimondo, 2018 NY Slip Op 06619, First Dept 10-4-18](#)

PERSONAL INJURY.

QUESTION OF FACT WHETHER LEG OF A CLOTHING RACK IN A STORE WAS OPEN AND OBVIOUS, STORE'S MOTION FOR SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE PROPERLY DENIED. [Stadler v Lord & Taylor LLC, 2018 NY Slip Op 06861, First Dept 10-16-18](#)

PERSONAL INJURY.

PLAINTIFF ALLEGED SHE SLIPPED ON LIQUID AND FELL AFTER REACHING FOR THE HANDRAIL, WHICH WAS LOOSE, DEFENDANTS DEMONSTRATED THEY DID NOT HAVE NOTICE OF THE LIQUID BUT DID NOT MEET THEIR BURDEN ON THE ALLEGEDLY LOOSE HANDRAIL. [DeSuero v 1386 Assoc., LLC, 2018 NY Slip Op 06810, First Dept 10-11-18](#)

PERSONAL INJURY.

QUESTIONS OF FACT ABOUT ASSUMPTION OF THE RISK AND THE LOCATION OF AN UNPADDED SNOW MACHINE POLE PRECLUDED SUMMARY JUDGMENT IN THIS SKIING ACCIDENT CASE. [Madsen v Catamount Ski Resort, 2018 NY Slip Op 06794, First Dept 10-11-18](#)

PERSONAL INJURY.

DRAM SHOP CAUSE OF ACTION AGAINST DEFENDANT RESTAURANT IN THIS THIRD-PARTY ASSAULT CASE PROPERLY DISMISSED, BUT NEGLIGENCE CAUSE OF ACTION SHOULD NOT HAVE BEEN DISMISSED. [Ricaurte v Inwood Beer Garden & Bistro Inc., 2018 NY Slip Op 07242, First Dept 10-30-18](#)

PERSONAL INJURY, EVIDENCE.

ALTHOUGH THERE IS EVIDENCE THE STORM IN PROGRESS DOCTRINE MAY APPLY IN THIS SLIP AND FALL CASE, DEFENDANT DID NOT DEMONSTRATE THE CONDITION OF THE WALKWAY BEFORE THE STORM, ALTHOUGH PLAINTIFF'S DECEDENT'S TESTIMONY STRAINED CREDULITY, IT WAS NOT INCREDIBLE AS A MATTER OF LAW. [Thomas v New York City Hous. Auth., 2018 NY Slip Op 06789, First Dept 10-11-18](#)

PERSONAL INJURY, LANDLORD-TENANT.

LANDLORD'S SUMMARY JUDGMENT MOTION PROPERLY DENIED IN THIS THIRD PARTY ASSAULT CASE, PLAINTIFF TENANT WAS ASSAULTED IN AN ALLEYWAY WHERE TENANTS LEFT THEIR TRASH. [Sanchez v Morris Ave. Equities Corp., 2018 NY Slip Op 07071, First Dept 10-23-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

FIREFIGHTER'S RULE DID NOT PRECLUDE NEGLIGENCE SUIT BY A POLICE OFFICER INJURED WHEN HE STEPPED OUT OF HIS VAN INTO A DEPRESSED AREA AROUND A SEWER GRATE, CITY DID NOT DEMONSTRATE IT DID NOT HAVE CONSTRUCTIVE NOTICE OF THE CONDITION. [Genova v City of New York, 2018 NY Slip Op 06813, First Dept 10-11-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

UNDER THE NYC ADMINISTRATIVE CODE HOMEOWNER IS EXEMPT FROM LIABILITY IN THIS SIDEWALK SLIP AND FALL CASE, FENCE AND GATE DID NOT CONSTITUTE A SPECIAL USE OF THE SIDEWALK BY THE HOMEOWNER. [Hernandez v Ortiz, 2018 NY Slip Op 07075, First Dept 10-23-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

DEFENDANT PROPERTY OWNER'S MOTION FOR SUMMARY JUDGMENT IN THIS SIDEWALK SLIP AND FALL CASE SHOULD NOT HAVE BEEN GRANTED, QUESTION OF FACT WHETHER AREA WHERE PLAINTIFF FELL WAS THE PROPERTY OWNER'S RESPONSIBILITY UNDER THE NYC ADMINISTRATIVE CODE OR THE CITY'S RESPONSIBILITY AS PART OF A BUS STOP. [McCormick v City of New York, 2018 NY Slip Op 07175, First Dept 10-25-1](#)

PERSONAL INJURY, VEHICLE AND TRAFFIC LAW.

PLAINTIFFS ENTITLED TO SUMMARY JUDGMENT IN THIS REAR-END COLLISION CASE, SUPREME COURT REVERSED. [Miller v DeSouza, 2018 NY Slip Op 07065, First Dept 10-23-18](#)

PRODUCTS LIABILITY, NEGLIGENCE, CIVIL PROCEDURE.

PRODUCTS LIABILITY AND NEGLIGENCE CAUSES OF ACTION CONCERNING THE METHODS OF SECURING A MOTORCYCLE HELMET PROPERLY SURVIVED SUMMARY JUDGMENT, SUPREME COURT PROPERLY CONSIDERED PLAINTIFF'S UNTIMELY OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT. [Narvaez v Wadsworth, 2018 NY Slip Op 06475, First Dept 10-2-18](#)

TRUSTS AND ESTATES.

UNSIGNED FORM INSUFFICIENT TO MAKE RESPONDENT THE BENEFICIARY OF DECEDENT'S IRA. [Matter of Durcan, 2018 NY Slip Op 07241, First Dept 10-30-18](#)

ZONING, MUNICIPAL LAW, ADMINISTRATIVE LAW.

ROOF OF A PROPOSED BUILDING WOULD NOT BE ACCESSIBLE TO ALL WHO RESIDED ON THE ZONING LOT, THEREFORE THE OPEN SPACE REQUIREMENTS OF THE ZONING RESOLUTION WOULD NOT BE MET BY THE ROOF SPACE, PERMIT ALLOWING CONSTRUCTION OF THE BUILDING SHOULD NOT HAVE BEEN ISSUED. [Matter of Peyton v New York City Bd. of Stds. & Appeals, 2018 NY Slip Op 06870, First Dept 10-16-18](#)

SECOND DEPARTMENT

ARBITRATION, CONTRACT LAW, CIVIL PROCEDURE, UTILITIES.

IN THIS CLASS ACTION AGAINST NATIONAL GRID AND LONG ISLAND POWER AUTHORITY (LIPA) STEMMING FROM THE LOSS OF POWER DURING HURRICANE SANDY, THE PUBLIC IS SUBJECT TO THE ARBITRATION CLAUSE IN THE CONTRACT BETWEEN NATIONAL GRID AND LIPA, FILING A PRE-ANSWER MOTION TO DISMISS AND APPEALING THE RULING ON IT DID NOT WAIVE ARBITRATION. [Matter of Long Is. Power Auth. Hurricane Sandy Litig., 2018 NY Slip Op 07127, Second Dept 10-24-18](#)

ATTORNEYS, TRUSTS AND ESTATES.

IN A DISPUTE BETWEEN A HOSPITAL AND A DOCTOR CONCERNING A CHARITABLE GIFT TO THE HOSPITAL, DISQUALIFICATION OF THE DOCTOR'S LAW FIRM WAS PROPER, A LAWYER AT THE FIRM WAS ON THE HOSPITAL'S BOARD OF TRUSTEES. [Matter of Blackman, 2018 NY Slip Op 06528, Second Dept 10-3-18](#)

CIVIL PROCEDURE.

ALTHOUGH DEFENDANTS, RESIDENTS OF ISRAEL, HAD TIMELY NOTICE OF A NEW YORK LAWSUIT, THE PROCESS SERVER'S AFFIDAVIT INDICATES DUE DILIGENCE IN A FAILED ATTEMPT TO SERVE DEFENDANTS AT A NEW YORK ADDRESS, BECAUSE DEFENDANTS WERE NEVER SERVED, THE DEFAULT JUDGMENT IS A NULLITY. [2004 McDonald Ave. Corp. v KGYM Holdings Group, Inc., 2018 NY Slip Op 06508, Second Dept 10-3-18](#)

CIVIL PROCEDURE.

BECAUSE DEFENDANT WAS GIVEN EXTRA TIME TO COMPLETE DISCOVERY, THE TIME TO FILE A MOTION FOR SUMMARY JUDGMENT WAS EXTENDED AS WELL.. [Khan v Macchia, 2018 NY Slip Op 06519, Second Dept 10-3-18](#)

CIVIL PROCEDURE.

SECOND MOTION TO VACATE A DEFAULT JUDGMENT SHOULD NOT HAVE BEEN GRANTED ON GROUNDS THAT COULD HAVE BEEN RAISED IN THE FIRST MOTION, SECOND MOTION SHOULD NOT HAVE BEEN TREATED AS A MOTION TO RENEW. [A.G. Parker, Inc. v 246 Rochester Partners, LLC, 2018 NY Slip Op 06711, Second Dept 10-10-18](#)

CIVIL PROCEDURE.

MOTION TO VACATE A DEFAULT JUDGMENT SHOULD HAVE BEEN GRANTED AS A MATTER OF LAW, SIMILARLY THE MOTION VACATE THE NOTE OF ISSUE AND CERTIFICATE OF READINESS SHOULD HAVE GRANTED. [Sposito v Cutting, 2018 NY Slip Op 06782, Second Dept 10-10-18](#)

CIVIL PROCEDURE.

MOTION PAPERS WERE MAILED TO DEFENDANT 20, NOT 21, DAYS BEFORE THE RETURN DATE, THEREFORE THE CROSS MOTION, SERVED SIX DAYS BEFORE THE RETURN DATE, WAS TIMELY. [Zisholtz & Zisholtz, LLP v Mandel, 2018 NY Slip Op 07349, Second Dept 10-31-18](#)

CIVIL PROCEDURE, CONTRACT LAW, ATTORNEYS.

STIPULATION OF DISCONTINUANCE ENTERED INTO BY PLAINTIFF'S ATTORNEY COULD NOT BE INVALIDATED, EVEN THOUGH PLAINTIFF CHANGED HER MIND BEFORE THE STIPULATION WAS FILED, NO EVIDENCE OF DURESS, FRAUD, MISTAKE, OVERREACHING.. [Demetriou v Wolfer, 2018 NY Slip Op 07288, Second Dept 10-31-18](#)

CIVIL PROCEDURE, CONTRACT LAW, LIEN LAW, MUNICIPAL LAW.

PLAINTIFF CONTRACTOR DID NOT ALLEGE IT WAS LICENSED TO DO HOME IMPROVEMENT WORK IN ITS COMPLAINT ALLEGING BREACH OF CONTRACT AND SEEKING TO FORECLOSE ON A MECHANIC'S LIEN, THE COMPLAINT SHOULD HAVE BEEN DISMISSED. [Krissteel, Inc. v Seaview Dev. Corp., 2018 NY Slip Op 07296, Second Dept 10-31-18](#)

CONTRACT LAW, EVIDENCE, FRAUD, ATTORNEYS.

DAMAGES FOR BREACH OF HOME IMPROVEMENT CONTRACT NOT PROVEN, RESTITUTION IS NOT A REMEDY UNDER THE GENERAL BUSINESS LAW, GROUNDS FOR PUNITIVE DAMAGES NOT PROVEN, STATUTORY FEES, INCLUDING ATTORNEY'S FEES, APPLICABLE.. [Crippen v Adamao, 2018 NY Slip Op 07287, Second Dept 10-31-18](#)

CONTRACT LAW, LANDLORD-TENANT, NEGLIGENCE, TOXIC TORTS.

BUILDING OWNER COULD NOT SEEK INDEMNIFICATION FROM THE LESSEE IN THIS LEAD PAINT CASE WHERE THE INJURED PARTY WAS A SUBTENANT, THE INDEMNIFICATION CLAUSE IN THE LEASE DID NOT LIMIT RECOVERY TO THE NEGLIGENCE OF THE LESSEE AND THEREFORE THE CLAUSE WAS UNENFORCEABLE UNDER THE GENERAL OBLIGATIONS LAW. [N.A. v Hillcrest Owners Assn., Inc., 2018 NY Slip Op 07133, Second Dept 10-24-18](#)

CRIMINAL LAW, APPEALS.

DEFENDANT IMPROPERLY SENTENCED AS A SECOND FELONY OFFENDER, ISSUE REVIEWED IN THE INTEREST OF JUSTICE. [People v Spencer, 2018 NY Slip Op 06574, Second Dept 10-3-18](#)

CIVIL PROCEDURE, ATTORNEYS.

LAW OFFICE FAILURE ALLEGATIONS INSUFFICIENT TO SUPPORT VACATION OF A DEFAULT JUDGMENT. [Ferraro Foods, Inc. v Guyon, Inc., 2018 NY Slip Op 06515, Second Dept 10-3-18](#)

CIVIL PROCEDURE, ATTORNEYS.

LAW OFFICE FAILURE ALLEGATIONS INSUFFICIENT TO WARRANT VACATING A DEFAULT JUDGMENT. [Torres v Rely On Us, Inc., 2018 NY Slip Op 06587, Second Dept 10-3-18](#)

CIVIL PROCEDURE, ATTORNEYS.

LAW OFFICE FAILURE EXCUSE FOR FAILING TO APPEAR DEEMED INSUFFICIENT.. [Lefcort v Samowitz, 2018 NY Slip Op 06727, Second Dept 10-10-18](#)

CONTRACT LAW, DEBTOR-CREDITOR, CIVIL PROCEDURE.

FEE-SPLITTING ARRANGEMENT BETWEEN PHYSICIANS AND NON-PHYSICIANS IS ILLEGAL UNDER THE EDUCATION LAW AND CANNOT BE ENFORCED BY THE COURTS, SUPREME COURT PROPERLY SEARCHED THE RECORD AND AWARDED SUMMARY JUDGMENT TO DEFENDANTS IN THIS ACTION ON A PROMISSORY NOTE. [Linchitz Practice Mgt., Inc. v Daat Med. Mgt., LLC, 2018 NY Slip Op 06891, Second Dept 10-17-18](#)

CRIMINAL LAW, EVIDENCE.

TRIAL TESTIMONY ALLEGING MULTIPLE INSTANCES OF SEXUAL INTERCOURSE IN THE SINGLE MONTH ENCOMPASSED BY THIRTY INDICTMENT COUNTS RENDERED THOSE COUNTS DUPLICITOUS REQUIRING DISMISSAL. [People v Gerardi, 2018 NY Slip Op 07325, Second Dept 10-31-18](#)

CRIMINAL LAW, EVIDENCE.

FOR CAUSE CHALLENGE TO A JUROR SHOULD HAVE BEEN GRANTED, INDICTMENTS SHOULD NOT HAVE BEEN CONSOLIDATED FOR TRIAL BECAUSE OF A DISPARITY IN THE AMOUNT OF EVIDENCE, CONVICTIONS REVERSED. [People v Martinez, 2018 NY Slip Op 07329, Second Dept 10-31-18](#)

CRIMINAL LAW, EVIDENCE, VEHICLE AND TRAFFIC LAW.

IN THIS AGGRAVATED UNLICENSED OPERATION CASE, TESTIMONY THAT NOTICE OF THE REVOCATION OF DEFENDANT'S DRIVER'S LICENSE WAS MAILED TO HIM VIOLATED DEFENDANT'S RIGHT TO CONFRONT THE WITNESSES AGAINST HIM BECAUSE THE TESTIMONY WAS NOT BASED UPON FIRST-HAND KNOWLEDGE. [People v Stokeling, 2018 NY Slip Op 07158, Second Dept 10-24-18](#)

CRIMINAL LAW, EVIDENCE, ATTORNEYS.

DETECTIVE WHO CONDUCTED THE LINEUP IDENTIFICATION PROCEDURE WAS AWARE DEFENDANT WAS REPRESENTED BY COUNSEL BUT DID NOT NOTIFY COUNSEL OF THE PROCEDURE, CONVICTIONS REVERSED. [People v Johnson, 2018 NY Slip Op 07147, Second Dept 10-24-18](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

DEFENDANT DID NOT HAVE AN OPPORTUNITY TO BE HEARD ON THE SEXUAL PREDATOR DESIGNATION WHICH THE JUDGE IMPOSED SUA SPONTE, DESIGNATION DELETED. [People v Medina, 2018 NY Slip Op 07162, Second Dept 10-24-18](#)

CONVERSION, TORTIOUS INTERFERENCE WITH CONTRACT, CIVIL PROCEDURE.

COMPLAINT STATED CAUSES OF ACTION FOR CONVERSION AND TORTIOUS INTERFERENCE WITH A CONTRACT. [Nero v Fiore, 2018 NY Slip Op 06755, Second Dept 10-10-18](#)

COURT OF CLAIMS, IMMUNITY, PERSONAL INJURY.

STATE WAS ENTITLED TO QUALIFIED IMMUNITY IN THIS NEGLIGENT HIGHWAY DESIGN CASE, CLAIMANT'S DECEDENT WAS KILLED WHEN HIS MOTORCYCLE STRUCK A CAR WHICH CROSSED THREE LANES OF TRAFFIC. [Iovine v State of New York, 2018 NY Slip Op 06723, Second Dept 10-10-18](#)

CRIMINAL LAW, APPEALS.

THE CONTENTION DEFENDANT WAS ILLEGALLY SENTENCED SURVIVES A WAIVER OF APPEAL AND WILL BE HEARD IN THE INTEREST OF JUSTICE, THE PEOPLE DID NOT SHOW THE EQUIVALENCY OF THE CALIFORNIA ROBBERY CONVICTION, DEFENDANT SHOULD NOT HAVE BEEN SENTENCED AS A SECOND VIOLENT FELONY OFFENDER. [People v Salako, 2018 NY Slip Op 06770, Second Dept 10-10-18](#)

CRIMINAL LAW, ATTORNEYS, APPEALS.

ALTHOUGH THE ERRORS WERE NOT PRESERVED, DEFENDANT'S MURDER CONVICTION REVERSED FOR THREE REASONS; FAILURE TO GIVE THE ACCOMPLICE IN FACT JURY INSTRUCTION, PROSECUTORIAL MISCONDUCT, AND INEFFECTIVE ASSISTANCE OF COUNSEL. [People v Powell, 2018 NY Slip Op 06768, Second Dept 10-10-18](#)

CRIMINAL LAW, ATTORNEYS, EVIDENCE, APPEALS.

JURY SHOULD HAVE BEEN INSTRUCTED ON LESSER INCLUDED OFFENSES, EVIDENCE OF DEFENDANT'S PRETRIAL SILENCE SHOULD NOT HAVE BEEN ADMITTED, PROSECUTORIAL MISCONDUCT REVIEWED IN THE INTEREST OF JUSTICE, MISCONDUCT ALONE SUFFICIENT TO WARRANT REVERSAL. [People v Flores, 2018 NY Slip Op 06557, Second Dept 10-3-18](#)

CRIMINAL LAW, EVIDENCE.

CRITERIA FOR ADMISSION OF EVIDENCE OF UNCHARGED CRIMES AND BAD ACTS EXPLAINED, EVIDENCE OF PRIOR DOMESTIC ABUSE PROPERLY ADMITTED IN THIS CRIMINAL CONTEMPT PROSECUTION. [People v Bittrolff, 2018 NY Slip Op 06551, Second Dept 10-3-18](#)

CRIMINAL LAW, EVIDENCE.

MOTION TO SET ASIDE THE CONVICTION PROPERLY DENIED, EVIDENCE IN AN UNSWORN PRESENTENCE REPORT DID NOT MEET THE STATUTORY CRITERIA FOR THE MOTION. [People v Windsor, 2018 NY Slip Op 06576, Second Dept 10-3-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

THE WEAKNESS OF THE COMPLAINANT'S TESTIMONY ABOUT THE IDENTITY OF THE ASSAILANT AND THE WEAKNESS OF THE HIGH-SENSITIVITY DNA ANALYSIS REQUIRED REVERSAL UNDER A WEIGHT OF THE EVIDENCE REVIEW. [People v Herskovic, 2018 NY Slip Op 06763, Second Dept 10-10-18](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

PEOPLE'S REQUEST FOR AN UPWARD DEPARTURE SHOULD NOT HAVE BEEN GRANTED. [People v Mota, 2018 NY Slip Op 06950, Second Dept 10-17-18](#)

DENTAL MALPRACTICE, CIVIL PROCEDURE, PERSONAL INJURY.

QUESTION OF FACT WHETHER THE CONTINUOUS TREATMENT DOCTRINE APPLIED TO TOLL THE STATUTE OF LIMITATIONS IN THIS DENTAL MALPRACTICE ACTION, DOCTRINE MAY APPLY TO A DENTIST WHO RETIRED BASED ON TREATMENT PROVIDED BY OTHER DENTISTS. [Cohen v Gold, 2018 NY Slip Op 06878, CtApp 10-17-18](#)

ELECTION LAW.

FAILURE TO TIMELY FILE CERTIFIED MINUTES OF THE CONVENTION REQUIRED REMOVAL OF TWO CANDIDATES FOR SUPREME COURT FROM THE BALLOT. [Matter of Fuentes v Catalano, 2018 NY Slip Op 07034, Second Dept 10-17-18](#)

EMPLOYMENT LAW, PERSONAL INJURY.

INSURANCE COMPANY NOT VICARIOUSLY LIABLE FOR AN ALLEGED CIVIL ASSAULT AND BATTERY BY A PRIVATE INVESTIGATOR, THE INVESTIGATOR WAS DEEMED A SUBCONTRACTOR, NOT AN EMPLOYEE. [McHale v Metropolitan Life Ins. Co., 2018 NY Slip Op 06895, Second Dept 10-17-18](#)

FAMILY LAW.

PETITION TO MODIFY VISITATION SHOULD NOT HAVE BEEN DENIED WITHOUT A HEARING. [Matter of King v Peters, 2018 NY Slip Op 06538, Second Dept 10-3-18](#)

FAMILY LAW.

MATERNAL GRANDMOTHER WAS A PERSON LEGALLY RESPONSIBLE FOR THE CARE OF THE CHILD AND THEREFORE WAS SUBJECT TO A NEGLECT FINDING. [Matter of Jonah B. \(Riva V.\), 2018 NY Slip Op 06736, Second Dept 10-10-18](#)

FAMILY LAW.

IT WAS IN THE BEST INTERESTS OF THE CHILD TO RESTRICT CONTACT WITH THE INCARCERATED FATHER TO TELEPHONE CALLS. [Matter of Grimes v Pignalosa-Grimes, 2018 NY Slip Op 06740, Second Dept 10-10-18](#)

FAMILY LAW.

PAYOR OF VOLUNTARY SPOUSAL SUPPORT SHOULD HAVE BEEN GIVEN CREDIT FOR THOSE PAYMENTS IN THIS DIVORCE ACTION. [Stern v Stern, 2018 NY Slip Op 06959, Second Dept 10-17-18](#)

FAMILY LAW.

IN THIS PATERNITY PROCEEDING THE COURT SHOULD NOT HAVE ORDERED GENETIC MARKER TESTING WITHOUT FIRST RESOLVING THE ISSUE OF EQUITABLE ESTOPPEL. [Matter of George C.S. v Kerry-Ann B., 2018 NY Slip Op 06917, Second Dept 10-17-18](#)

FAMILY LAW.

SEVERE ABUSE FINDING COULD ONLY BE MADE AGAINST A LEGAL PARENT, PRESUMPTION MOTHER'S HUSBAND IS THE FATHER OF THE CHILDREN WAS REBUTTED. [Matter of Alexandria F. \(George R.\), 2018 NY Slip Op 07122, Second Dept 10-24-18](#)

FAMILY LAW, ATTORNEYS.

ATTORNEY FOR THE SEVERELY DISABLED CHILD COULD CONTINUE TO MAKE FOSTER CARE AND MEDICAL CARE DECISIONS FOR THE CHILD AFTER THE CHILD'S EIGHTEENTH BIRTHDAY, APPOINTMENT OF A GUARDIAN IS UNNECESSARY. [Matter of Elliot Z. \(Joseph Z.\), 2018 NY Slip Op 06547, Second Dept 10-3-18](#)

FAMILY LAW, CONTRACT LAW.

DOMESTIC RELATIONS ORDER WHICH CONFLICTED WITH THE STIPULATION OF SETTLEMENT IN THIS DIVORCE ACTION COULD NOT BE ENFORCED. [McPhillips v McPhillips, 2018 NY Slip Op 06896, Second Dept 10-17-18](#)

FAMILY LAW, CONTRACT LAW.

STIPULATION ALLOWING MOTHER TO RELOCATE IS NOT DISPOSITIVE, HEARING TO ASSESS THE BEST INTERESTS OF THE CHILDREN REQUIRED. [Matter of Jaimes v Gyerko, 2018 NY Slip Op 07125, Second Dept 10-24-18](#)

FAMILY LAW, CONTRACT LAW, ATTORNEYS.

PETITION FOR SANCTIONS AGAINST DEFENDANT'S ATTORNEY FOR FRIVOLOUS CONDUCT SHOULD HAVE BEEN GRANTED, DEFENDANT'S ATTORNEY, WITHOUT PROOF, CONTENDED THE PRENUPTIAL AGREEMENT HAD BEEN REPLACED, APPARENTLY IN ORDER TO DELAY THE PROCEEDINGS. [Tamburello v Tamburello, 2018 NY Slip Op 06961, Second Dept 10-17-18](#)

FAMILY LAW, CRIMINAL LAW.

THE CRIMINAL LAW DEFINITION OF SERIOUS PHYSICAL INJURY IS NOT THE STANDARD FOR ABUSE IN FAMILY COURT, THE STANDARD IS 'CREATING A SUBSTANTIAL RISK OF SERIOUS INJURY.' [Matter of Jonah B. \(Ferida B.\), 2018 NY Slip Op 06735, Second Dept 10-10-18](#)

FAMILY LAW, EVIDENCE.

NEGLECT FINDING AGAINST MOTHER AND FATHER BASED UPON THE CHILD'S BRUISES NOT SUPPORTED BY THE EVIDENCE. [Matter of Alana H. \(Caitlin M.\), 2018 NY Slip Op 06534, Second Dept 10-3-18](#)

FAMILY LAW, EVIDENCE.

CUSTODY MODIFICATION PETITION SHOULD NOT HAVE BEEN GRANTED WITHOUT A HEARING.. [Matter of Migliore v Santiago, 2018 NY Slip Op 06911, Second Dept 10-17-18](#)

FORECLOSURE, EVIDENCE, CIVIL PROCEDURE, DEBTOR-CREDITOR.

PLAINTIFF DID NOT SUBMIT ADMISSIBLE PROOF OF DEFAULT, MOTION TO INTERVENE WAS UNTIMELY, JUDICIARY LAW 489 WAS NOT VIOLATED. [Fulton Holding Group, LLC v Lindoff, 2018 NY Slip Op 07096, Second Dept 10-24-18](#)

FORECLOSURE, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL), EVIDENCE.

PLAINTIFF DID NOT PROVIDE SUFFICIENT PROOF IT HAD NOTIFIED DEFENDANT OF THE FORECLOSURE ACTION PURSUANT TO RPAPL 1304, DEFENDANT'S SUMMARY JUDGMENT MOTION SHOULD HAVE BEEN GRANTED. [Deutsche Bank Natl. Trust Co. v Heitner, 2018 NY Slip Op 07090, Second Dept 10-24-18](#)

FAMILY LAW, FRAUD.

PARTIES' CONSENT TO A DNA TEST DID NOT ELIMINATE THE NEED FOR A HEARING TO DETERMINE WHETHER AN ACKNOWLEDGEMENT OF PATERNITY NEARLY 20 YEARS AGO WAS THE PRODUCT OF FRAUD, FAMILY COURT PROPERLY FOUND THAT FRAUD WAS NOT ESTABLISHED. [Matter of Andrew E. v Angela N.S., 2018 NY Slip Op 06530, Second Dept 10-3-18](#)

FAMILY LAW, IMMIGRATION LAW, CRIMINAL LAW.

ADJUDICATED JUVENILE DELINQUENT NOT ELIGIBLE FOR SPECIAL IMMIGRANT JUVENILE STATUS (SIJS). [Matter of Keanu S., 2018 NY Slip Op 06918, Second Dept 10-17-18](#)

FORECLOSURE, CIVIL PROCEDURE, EVIDENCE.

BANK'S EVIDENCE OF STANDING TO BRING THE FORECLOSURE ACTION INSUFFICIENT. [Bank of N.Y. Mellon v Selig, 2018 NY Slip Op 06874, Second Dept 10-17-18](#)

FORECLOSURE, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL), CIVIL PROCEDURE.

DEFENDANT'S MOTION TO CANCEL AND DISCHARGE THE MORTGAGE BASED ON THE EXPIRATION OF THE STATUTE OF LIMITATIONS SHOULD HAVE BEEN GRANTED, NO GROUNDS FOR IMPOSING AN EQUITABLE MORTGAGE IN FAVOR OF PLAINTIFF. [21st Mtge. Corp. v Nweke, 2018 NY Slip Op 06509, Second Dept 10-3-18](#)

FRAUD, CIVIL PROCEDURE, INSURANCE LAW.

INSURANCE AGENCY ALLEGED FRAUD ON THE PART OF THE INSURED WHICH RESULTED IN A LOWER PREMIUM, THE COMPLAINT ADEQUATELY ALLEGED A FRAUD CAUSE OF ACTION. [Minico Ins. Agency, LLC v B&M Cleanup Servs., 2018 NY Slip Op 06729, Second Dept 10-10-18](#)

FRAUD, INSURANCE LAW, CIVIL PROCEDURE.

COMPLAINT STATED A FRAUD CAUSE OF ACTION BASED UPON ALLEGED MISREPRESENTATIONS ABOUT INSURANCE COVERAGE MADE BY DEFENDANT TO THE INJURED PLAINTIFF, BUT DID NOT STATE A FRAUD CAUSE OF ACTION BASED UPON ALLEGED MISREPRESENTATIONS MADE BY DEFENDANT TO THE NONPARTY INSURER, THERE WAS NO ALLEGATION THE MISREPRESENTATIONS MADE TO THE INSURER WERE TO BE COMMUNICATED TO THE PLAINTIFF.. [Robles v Patel, 2018 NY Slip Op 06779, Second Dept 10-10-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

A COMPRESSOR ROLLING OFF A PALLET JACK ONTO PLAINTIFF'S ANKLE WAS NOT AN ELEVATION-RELATED ACCIDENT COVERED BY LABOR LAW 240 (1), REGULATION-VIOLATION RAISED FOR THE FIRST TIME IN OPPOSITION PAPERS PROPERLY CONSIDERED, CRITERIA FOR LABOR LAW 240 (1), 241 (6) AND 200 CAUSES OF ACTION EXPLAINED IN SOME DETAIL. [Simmons v City of New York, 2018 NY Slip Op 06585, Second Dept 10-3-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF FELL FROM A SCAFFOLD THAT DID NOT HAVE SAFETY RAILINGS, SUMMARY JUDGMENT ON THE LABOR LAW 240 (1) AND 241 (6) CAUSES OF ACTION PROPERLY GRANTED. [Morocho v Boulevard Gardens Owners Corp., 2018 NY Slip Op 06730 Second Dept 10-10-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

QUESTIONS OF FACT WHETHER USING AN A-FRAME LADDER IN THE CLOSED POSITION WAS THE SOLE PROXIMATE CAUSE OF PLAINTIFF'S FALL, DEFENDANT'S SUMMARY JUDGMENT MOTION ON THE LABOR LAW 240 (1) CAUSE OF ACTION SHOULD NOT HAVE BEEN GRANTED.. [Gillett v City of New York, 2018 NY Slip Op 07102, Second Dept 10-24-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

COMPANY WHICH HIRED PLAINTIFF'S EMPLOYER AND PROPERTY OWNER LIABLE FOR PLAINTIFF'S FALL UNDER LABOR LAW 240 (1) AND 241 (6), THE COMPANY WHICH HIRED PLAINTIFF'S EMPLOYER WAS A PROPER DEFENDANT BECAUSE IT HAD THE AUTHORITY TO SUPERVISE, EVEN IF IT DID NOT EXERCISE THAT AUTHORITY.. [Padilla v Park Plaza Owners Corp., 2018 NY Slip Op 07317, Second Dept 10-31-18](#)

LABOR LAW-CONSTRUCTION LAW, CONTRACT LAW, PERSONAL INJURY.

PLAINTIFF ALLEGEDLY TRIPPED OVER CONSTRUCTION DEBRIS IN THIS LABOR LAW 240 (1) AND 241 (6) ACTION, INDEMNIFICATION CAUSES OF ACTION SHOULD HAVE BEEN DISMISSED BECAUSE THE DEFENDANTS COULD NOT DEMONSTRATE THEY WERE FREE FROM NEGLIGENCE, BUT THE CONTRIBUTION CAUSE OF ACTION PROPERLY SURVIVED, CRITERIA FOR INDEMNIFICATION AND CONTRIBUTION EXPLAINED IN SOME DEPTH. [Fedrich v Granite Bldg. 2, LLC, 2018 NY Slip Op 06717, Second Dept 10-10-18](#)

LABOR LAW-CONSTRUCTION LAW, WORKERS' COMPENSATION, EVIDENCE.

PLAINTIFF IN THIS LABOR LAW 240 (1) ACTION WAS INJURED WHEN THE ROOF OF THE BUILDING COLLAPSED, HIS ACTION AGAINST HIS EMPLOYER (A DEMOLITION COMPANY) WAS BARRED BY THE EXCLUSIVITY PROVISIONS OF THE WORKERS' COMPENSATION LAW, QUESTION OF FACT WHETHER THE COLLAPSE WAS FORESEEABLE IN THE ACTION AGAINST THE BUILDING OWNER, EVIDENCE THAT BEAMS HAD BEEN CUT WAS INADMISSIBLE HEARSAY. [Paguay v Cup of Tea, LLC, 2018 NY Slip Op 06926, Second Dept 10-17-18](#)

LANDLORD-TENANT.

OKAY TO REPLACE PART-TIME LOBBY ATTENDANTS WITH VIDEO SURVEILLANCE. [Matter of Bazile v Rubin, 2018 NY Slip Op 06737, Second Dept 10-10-18](#)

LEGAL MALPRACTICE, ATTORNEYS.

COMPLAINT STATED A CAUSE OF ACTION FOR LEGAL MALPRACTICE, BUT DID NOT STATE A CAUSE OF ACTION FOR A VIOLATION OF JUDICIARY LAW 487 ABSENT AN ALLEGATION OF AN INTENTIONAL DECEPTION. [Aristakesian v Ballon Stoll Bader & Nadler, P.C., 2018 NY Slip Op 07084, Second Dept 10-24-18](#)

MENTAL HYGIENE LAW.

POWERS GRANTED TO THE GUARDIAN FOR AN INCAPACITATED PERSON SHOULD NOT HAVE EXCEEDED THOSE RECOMMENDED BY THE COURT APPOINTED EVALUATOR. [Matter of Heidi B. \(Pasternak\), 2018 NY Slip Op 06899, Second Dept 10-17-18](#)

MUNICIPAL LAW.

TOWN CODE PROVISION WAS NOT AUTHORIZED BY THE TOWN LAW AND WAS THEREFORE VOID. [Joy Bldrs., Inc. v Town of Clarkstown, 2018 NY Slip Op 07110, Second Dept 10-24-18](#)

MUNICIPAL LAW, EMPLOYMENT LAW.

PROBATIONARY CITY EMPLOYEE WAS NOT GIVEN SEVEN DAYS NOTICE OF HIS TERMINATION, REMEDY IS TO PAY THE EMPLOYEE FOR THE SEVEN DAYS. [Matter of Santucci v City of Mount Vernon, 2018 NY Slip Op 06745, Second Dept 10-10-18](#)

MUNICIPAL LAW, WORKERS' COMPENSATION.

INJURED POLICE OFFICER CAN RECEIVE BOTH WORKERS' COMPENSATION AND GENERAL MUNICIPAL LAW 207-c BENEFITS. [Matter of Lavin v Incorporated Vil. of Muttontown, 2018 NY Slip Op 06909, Second Dept 10-17-18](#)

MUNICIPAL LAW, ZONING, CONSTITUTIONAL LAW.

TOWN EXCEEDED ITS AUTHORITY AND VIOLATED A FEDERAL REGULATION WHEN IT ASSESSED CONSULTING FEES IN CONNECTION WITH PETITIONER'S REQUESTS FOR A SPECIAL USE PERMIT AND A VARIANCE TO CONSTRUCT A HAM RADIO ANTENNA ON PETITIONER'S PROPERTY. [Matter of Landstein v Town of LaGrange, 2018 NY Slip Op 06741, Second Dept 10-10-18](#)

PERSONAL INJURY.

LESSOR OF VEHICLE INVOLVED IN AN ACCIDENT DID NOT DEMONSTRATE IT WAS NOT LIABLE BASED UPON ITS MAINTENANCE OF THE VEHICLE, THEREFORE THERE WAS A QUESTION OF FACT WHETHER THE GRAVES AMENDMENT APPLIED. [Casine v Wesner, 2018 NY Slip Op 06714, Second Dept 10-10-18](#)

PERSONAL INJURY.

PLAINTIFF OFFERED DIFFERENT EXPLANATIONS OF THE CAUSE OF HIS FALL, COURT HELD PLAINTIFF COULD NOT IDENTIFY THE CAUSE OF HIS FALL, REQUIRING DISMISSAL. [Pasqualoni v Jacklou Corp., 2018 NY Slip Op 06928, Second Dept 10-17-18](#)

PERSONAL INJURY.

DEFENDANT TOWN DID NOT DEMONSTRATE THE HUMP OVER WHICH PLAINTIFF ALLEGEDLY TRIPPED AND FELL WAS OPEN AND OBVIOUS, TOWN'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Dillon v Town of Smithtown, 2018 NY Slip Op 07289, Second Dept 10-31-18](#)

PERSONAL INJURY, BATTERY. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS.

ALTHOUGH DEFENDANT MAY NOT HAVE INTENDED TO INJURE PLAINTIFF IN A PHYSICAL ALTERCATION WITH OTHERS, THE COMPLAINT ALLEGED ONLY INTENTIONAL CONDUCT BY THE DEFENDANT, THE NEGLIGENCE AND NEGLIGENT INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS CAUSES OF ACTION WERE PROPERLY DISMISSED. [Borrero v Haks Group, Inc., 2018 NY Slip Op 07282, Second Dept 10-31-18](#)

PERSONAL INJURY, CONTRACT LAW.

SNOW REMOVAL CONTRACTOR'S MOTION FOR SUMMARY JUDGMENT IN THIS PARKING LOT SLIP AND FALL CASE SHOULD HAVE BEEN GRANTED, NO QUESTION OF FACT ABOUT ANY OF THE *ESPINAL* FACTORS. [Reisert v Mayne Constr. of Long Is., Inc., 2018 NY Slip Op 06777, Second Dept 10-10-18](#)

PERSONAL INJURY, EDUCATION-SCHOOL LAW.

SCHOOL'S MOTION FOR SUMMARY JUDGMENT IN THIS NEGLIGENT SUPERVISION ACTION STEMMING FROM A STABBING WAS PROPERLY DENIED, THE INADEQUATE SECURITY CAUSE OF ACTION, HOWEVER, SHOULD HAVE BEEN DISMISSED. [Gaston v East Ramapo Cent. Sch. Dist., 2018 NY Slip Op 06720, Second Dept 10-10-18](#)

PERSONAL INJURY, EDUCATION-SCHOOL LAW.

NEGLIGENT SUPERVISION CAUSE OF ACTION AGAINST THE SCHOOL DISTRICT PROPERLY DISMISSED, STUDENT PLAINTIFF, WHO HAD A ONE-ON-ONE AIDE BUT WENT TO THE BATHROOM UNACCOMPANIED, WAS INJURED WHEN SHE CAUGHT HER FINGER IN A BATHROOM DOOR. [Hinz v Wantagh Union Free Sch. Dist., 2018 NY Slip Op 07105, Second Dept 10-24-18](#)

PERSONAL INJURY, EDUCATION-SCHOOL LAW.

SCHOOL DISTRICT NOT LIABLE FOR A SEXUAL ASSAULT BY A STUDENT BEFORE CLASSES STARTED, THE ATTACK WAS NOT FORESEEABLE, ALTHOUGH PLAINTIFF WAS A SPECIAL EDUCATION STUDENT, HER EDUCATION PLAN DID NOT PROVIDE FOR AN AIDE TO ESCORT HER FROM THE BUS TO THE SCHOOL OR BETWEEN CLASSES. [Deb B. v Longwood Cent. Sch. Dist., 2018 NY Slip Op 07280, Second Dept 10-31-18](#)

PERSONAL INJURY, EDUCATION-SCHOOL LAW, EMPLOYMENT LAW.

NEGLIGENT HIRING, TRAINING, SUPERVISION AND RETENTION CAUSES OF ACTION PROPERLY SURVIVED SUMMARY JUDGMENT, SCHOOL EMPLOYEE ALLEGEDLY SEXUALLY ABUSED A STUDENT, ACTIONS WERE VIABLE EVEN THOUGH THE ABUSE DID NOT OCCUR ON THE SCHOOL GROUNDS. [Johansmeyer v New York City Dept. of Educ., 2018 NY Slip Op 06518, Second Dept 10-3-18](#)

PERSONAL INJURY, EMPLOYMENT LAW.

THERE IS A QUESTION OF FACT WHETHER THE DRIVER WHO ALLEGEDLY INJURED PLAINTIFF WAS AN EMPLOYEE OR A SUBCONTRACTOR WITH RESPECT TO ONE OF THE THREE DEFENDANTS, THE OTHER TWO DEFENDANTS DEMONSTRATED THE DRIVER WAS NOT AN EMPLOYEE ENTITLING THEM TO SUMMARY JUDGMENT. [Nachman v Koureichi, 2018 NY Slip Op 06752, Second Dept 10-10-18](#)

PERSONAL INJURY, EVIDENCE.

QUESTIONS OF FACT WHETHER DEFENDANT DRIVER HAD A NONNEGLIGENT EXPLANATION FOR THE REAR-END COLLISION PRECLUDED SUMMARY JUDGMENT IN PLAINTIFF'S FAVOR, PLAINTIFF SUBMITTED A POLICE REPORT WHICH RAISED THE QUESTIONS OF FACT, BY SUBMITTING THE REPORT PLAINTIFF WAIVED ANY OBJECTIONS TO INADMISSIBLE STATEMENTS INCLUDED IN IT. [Grant v Carrasco, 2018 NY Slip Op 06516, Second Dept 10-3-18](#)

PERSONAL INJURY, EVIDENCE.

ELEVATOR MAINTENANCE COMPANY PROPERLY GRANTED SUMMARY JUDGMENT IN THIS (ALLEGEDLY) MISALIGNED ELEVATOR SLIP AND FALL CASE, THE MAINTENANCE COMPANY DEMONSTRATED IT DID NOT HAVE NOTICE OF THE CONDITION AND PLAINTIFFS FAILED TO DEMONSTRATE THE DOCTRINE OF RES IPSA LOQUITUR APPLIED. [Daconta v Otis El. Co., 2018 NY Slip Op 06716, Second Dept 10-10-18](#)

PERSONAL INJURY, EVIDENCE.

PLAINTIFF COULD NOT IDENTIFY THE CAUSE OF HER FALL FROM A FIRE ESCAPE, OPPOSITION PAPERS RAISED A FEIGNED ISSUE OF FACT, DEFENDANT'S SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Burns v Linden St. Realty, LLC, 2018 NY Slip Op 06876, Second Dept 10-17-18](#)

PERSONAL INJURY, EVIDENCE.

DEFENDANTS DEMONSTRATED THEY DID NOT HAVE NOTICE OF A DEFECTIVE MOVIE THEATER SEAT AND THE RES IPSA LOQUITUR DOCTRINE DID NOT APPLY BECAUSE SOMEONE OTHER THAN DEFENDANTS COULD HAVE DAMAGED THE SEAT. [Newisky v United Artists Kaufman Astoria 14 Regal Cinemas, 2018 NY Slip Op 06880, Second Dept 10-17-18](#)

PERSONAL INJURY, EVIDENCE, CIVIL PROCEDURE.

SLIP AND FALL OCCURRED WITHIN FOUR HOURS OF THE END OF PRECIPITATION, THEREFORE DEFENDANTS WERE NOT LIABLE, NEWLY SUBMITTED EVIDENCE IN SUPPORT OF THE MOTION TO RENEW DID NOT AFFECT THE APPLICABILITY OF THE FOUR HOUR RULE. [Ghoneim v Vision Enters. Mgt., LLC, 2018 NY Slip Op 06884, Second Dept 10-17-18](#)

PERSONAL INJURY, LANDLORD-TENANT.

LANDLORD'S MOTION FOR SUMMARY JUDGMENT IN THIS THIRD PARTY ASSAULT CASE PROPERLY GRANTED, TENANT WAS ASSAULTED IN THE BUILDING, ASSAULT WAS NOT FORESEEABLE. [George v 855 Ocean Ave., LLC, 2018 NY Slip Op 07100, Second Dept 10-24-18](#)

PERSONAL INJURY, LANDLORD-TENANT.

OUT-OF-POSSESSION LANDLORD'S MOTION FOR SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE PROPERLY DENIED.. [Nieves v Pennsylvania, LLC, 2018 NY Slip Op 07134, Second Dept 10-24-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

TOWN DID NOT HAVE WRITTEN NOTICE OF A RUSTY DRAINAGE PIPE IN THE WATER AT A TOWN BEACH AND WAS THEREFORE NOT LIABLE FOR THE INJURY TO THE INFANT PLAINTIFF WHO CUT HIS FOOT ON THE PIPE WHEN WALKING IN THE WATER. [Coventry v Town of Huntington, 2018 NY Slip Op 06715, Second Dept 10-10-18](#)

PERSONAL INJURY, MUNICIPAL LAW.

PETITION FOR LEAVE TO FILE A LATE NOTICE OF CLAIM IN THIS SIDEWALK SLIP AND FALL CASE PROPERLY DENIED, LATE NOTICE OF CLAIM WHICH WAS REJECTED WAS A NULLITY WHICH COULD NOT BE DEEMED TO PROVIDE THE CITY WITH ACTUAL KNOWLEDGE OF THE CLAIM. [Matter of Ashkenazie v City of New York, 2018 NY Slip Op 06734, Second Dept 10-10-18](#)

PERSONAL INJURY, MUNICIPAL LAW, CIVIL PROCEDURE.

MOTION TO SERVE AN AMENDED NOTICE OF CLAIM AS A LATE NOTICE OF CLAIM PROPERLY DENIED, AMENDED NOTICE PURPORTED TO ADD NEW THEORIES OF LIABILITY AND A TIME-BARRED DERIVATIVE CLAIM. [Palacios v Town of N. Hempstead, 2018 NY Slip Op 06927, Second Dept 10-17-18](#)

PERSONAL INJURY, MUNICIPAL LAW, EDUCATION-SCHOOL LAW, LABOR LAW-CONSTRUCTION LAW.

PETITIONER'S REQUEST FOR LEAVE TO FILE A LATE NOTICE OF CLAIM IN A POTENTIAL LABOR LAW 200, 240 (1), 241 (6) ACTION SHOULD NOT HAVE BEEN GRANTED. [Matter of Moroz v City of New York, 2018 NY Slip Op 06743, Second Dept 10-10-18](#)

PERSONAL INJURY, MUNICIPAL LAW, VEHICLE AND TRAFFIC LAW.

EMERGENCY EXEMPTION IN THE VEHICLE AND TRAFFIC LAW DID NOT APPLY TO THIS POLICE-VEHICLE TRAFFIC ACCIDENT CASE, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Portalatin v City of New York, 2018 NY Slip Op 07341, Second Dept 10-31-18](#)

PERSONAL INJURY, VEHICLE AND TRAFFIC LAW.

PEDESTRIAN PLAINTIFF'S EMERGING FROM BETWEEN PARKED CARS AND ATTEMPTING TO CROSS THE STREET WHERE THERE WAS NO CROSSWALK CONSTITUTED THE SOLE PROXIMATE CAUSE OF THE PEDESTRIAN-VEHICLE ACCIDENT, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Pixtun-Suret v Gevinski, 2018 NY Slip Op 06581, Second Dept 10-3-18](#)

PERSONAL INJURY, VEHICLE AND TRAFFIC LAW, EVIDENCE.

DEFENDANT VIOLATED THE VEHICLE AND TRAFFIC LAW WHEN SHE MADE A LEFT TURN INTO PLAINTIFF'S PATH, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED, STATEMENT IN A MEDICAL RECORD ABOUT PLAINTIFF'S SPEED WAS UNRELATED TO DIAGNOSIS OR TREATMENT AND WAS NOT SOURCED, THE STATEMENT SHOULD NOT HAVE BEEN CONSIDERED AS AN ADMISSION. [Ming-Fai Jon v Wager, 2018 NY Slip Op 07304, Second Dept 10-31-18](#)

PUBLIC NUISANCE, RELIGION.

PUBLIC NUISANCE CAUSE OF ACTION BROUGHT BY THE PLAINTIFF WHO ALLEGED SEXUAL ABUSE BY A PRIEST SHOULD HAVE BEEN DISMISSED, PLAINTIFF ALLEGED THE DIOCESE SHOULD HAVE RELEASED THE NAMES OF PRIESTS ACCUSED OF ABUSE. [Monaghan v Roman Catholic Diocese of Rockville Ctr., 2018 NY Slip Op 06527, Second Dept 10-3-18](#)

REAL ESTATE.

SUMMARY JUDGMENT ON SPECIFIC PERFORMANCE CAUSE OF ACTION PROPERLY DENIED, CRITERIA EXPLAINED. [Kok Chai Lee v Robertson, 2018 NY Slip Op 06520, Second Dept 10-3-18](#)

REAL PROPERTY LAW, FORECLOSURE.

REAL PROPERTY LAW 329 PROVIDES THAT THE OWNER OF PROPERTY CAN BRING ACTIONS TO CANCEL RECORDED ASSIGNMENTS OF MORTGAGE, SUPREME COURT SHOULD NOT HAVE GRANTED DEFENDANTS' MOTIONS TO DISMISS ON THE GROUND THE PLAINTIFF LACKED STANDING. [Silverberg v Bank of N.Y. Mellon, 2018 NY Slip Op 07167, Second Dept 10-24-18](#)

REAL PROPERTY LAW, NUISANCE.

PLAINTIFFS' COMPLAINT DID NOT STATE PRIVATE AND PUBLIC NUISANCE CAUSES OF ACTION BASED UPON SINKHOLES ON PLAINTIFFS' LAND WHICH ALLEGEDLY RESULTED FROM THE FAILURE OF A BULKHEAD ON DEFENDANT'S PROPERTY. [Sunlight Clinton Realty, LLC v Gowanus Indus. Park, Inc., 2018 NY Slip Op 06783, Second Dept 10-10-18](#)

REAL PROPERTY LAW, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL).

AN ACCOUNTING WAS REQUIRED IN THIS PARTITION ACTION BETWEEN JOINT TENANTS WITH THE RIGHT OF SURVIVORSHIP. [Khotylev v Spektor, 2018 NY Slip Op 07112, Second Dept 10-24-18](#)

REAL PROPERTY TAX LAW, TRUSTS AND ESTATES, CIVIL PROCEDURE.

TAX FORECLOSURE PROCEEDING IS A NULLITY, THE PROPERTY OWNERS HAD DIED AND NO REPRESENTATIVES OF THE ESTATES HAD BEEN APPOINTED OR NAMED PURSUANT TO THE SURROGATE'S COURT PROCEDURE ACT OR THE CPLR. [Matter of Foreclosure of Tax Liens v Goldman, 2018 NY Slip Op 07123, Second Dept 10-24-18](#)

ZONING, CIVIL PROCEDURE, ADMINISTRATIVE LAW.

PETITIONER MUST EXHAUST ITS ADMINISTRATIVE REMEDIES BY APPEALING THE DENIAL OF A BUILDING PERMIT BY THE TOWN BUILDING DEPARTMENT TO THE ZONING BOARD OF APPEALS BEFORE BRINGING A COURT ACTION. [Matter of Vineland Commons, LLC v Building Dept. of Town of Riverhead, 2018 NY Slip Op 06748, Second Dept 10-10-18](#)

TRUSTS AND ESTATES. FORECLOSURE.

APPELLANT EXERCISED UNDUE INFLUENCE OVER DECEDENT, SATISFACTION OF MORTGAGE PROVIDED TO APPELLANT BY DECEDENT NULLIFIED PURSUANT TO THE RIGGS DOCTRINE, FORECLOSURE OF THE MORTGAGE DEEMED PROPER. [Rajic v Faust, 2018 NY Slip Op 06582, Second Dept 10-3-18](#)

THIRD DEPARTMENT

ADMINISTRATIVE LAW, UTILITIES.

NYS PUBLIC SERVICE COMMISSION PROPERLY IMPOSED A MORATORIUM ON ENERGY SERVICE COMPANIES' ENROLLMENTS AND RENEWALS OF CUSTOMERS WHO PARTICIPATE IN UTILITY LOW INCOME ASSISTANCE PROGRAMS AS PART OF ITS AUTHORITY TO MAKE SURE LOW INCOME CUSTOMERS ARE NOT CHARGED MORE THAN THEY WOULD HAVE BEEN HAD THEY JUST USED A UTILITY. [Matter of National Energy Marketers Assn. v New York State Pub. Serv. Commn., 2018 NY Slip Op 07378, Third Dept 11-1-18](#)

CIVIL PROCEDURE.

MOTION FOR LEAVE TO AMEND THE COMPLAINT SHOULD HAVE BEEN GRANTED, CRITERIA EXPLAINED. [Gulfstream Anesthesia Consultants, P.A. v Cortland Regional Med. Ctr., Inc., 2018 NY Slip Op 07018, Third Dept 10-18-18](#)

CIVIL PROCEDURE.

THE PHRASE 'WITHIN FIVE DAYS' IN CPLR 511, A CHANGE OF VENUE STATUTE, DOES NOT IMPOSE A WAITING PERIOD FOR A MOTION TO CHANGE VENUE, THE MOTION MAY BE MADE WITHIN THE FIVE DAYS. [Matter of Aaron v Steele, 2018 NY Slip Op 07393, Third Dept 11-1-18](#)

CRIMINAL LAW, APPEALS.

GUILTY PLEA VACATED IN THE INTEREST OF JUSTICE, NO SHOWING DEFENDANT UNDERSTOOD THE RIGHTS HE WAS WAIVING BY ENTERING THE PLEA.. [People v Simon, 2018 NY Slip Op 07370, Third Dept 11-1-18](#)

CIVIL PROCEDURE, MUNICIPAL LAW, ZONING, APPEALS.

REVERSING SUPREME COURT THE THIRD DEPARTMENT NOTED THAT SUMMARY JUDGMENT MAY BE AWARDED ON THE BASIS OF AN UNPLEADED CAUSE OF ACTION AND DID SO IN FAVOR OF THE TOWN IN THIS ZONING AND BUILDING CODE VIOLATION CASE. [Village of Sharon Springs v Barr, 2018 NY Slip Op 07022, Third Dept 10-18-19](#)

CONTRACT LAW, REAL ESTATE.

SELLERS STRUCTURED THEIR OFFER TO SELL PROPERTY WITH THE INTENT TO DEPRIVE PLAINTIFF OF HIS RIGHT OF FIRST REFUSAL, SELLERS EXHIBITED BAD FAITH AS A MATTER OF LAW, SUPREME COURT REVERSED. [Clifton Land Co. LLC v Magic Car Wash, LLC, 2018 NY Slip Op 07027, Third Dept. 10-18-18](#)

COURT OF CLAIMS.

CLAIM DID NOT MEET THE SPECIFICITY REQUIREMENTS OF COURT OF CLAIMS ACT 11 AND WAS PROPERLY DISMISSED. [Clark v State of New York, 2018 NY Slip Op 06844, Third Dept 10-11-18](#)

CRIMINAL LAW, EVIDENCE.

WARRANTLESS ENTRY INTO DEFENDANT'S APARTMENT WAS NOT JUSTIFIED BY THE EMERGENCY EXCEPTION TO THE WARRANT REQUIREMENT, MOTION TO SUPPRESS SHOULD HAVE BEEN GRANTED, CONVICTION REVERSED. [People v Sears, 2018 NY Slip Op 07197, Third Dept 10-25-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

PEOPLE DID NOT DISPROVE THE JUSTIFICATION DEFENSE IN THIS NONJURY ASSAULT TRIAL, EXERCISING ITS FACTUAL REVIEW POWER THE APPELLATE COURT REVERSED DEFENDANT'S CONVICTION. [People v Hernandez, 2018 NY Slip Op 07196, Second Dept 10-24-18](#)

DISCIPLINARY HEARINGS (INMATES), EVIDENCE.

INSUFFICIENT EVIDENCE CONNECTING THE INMATE TO THE DOCUMENTS CONTAINING GANG RELATED INFORMATION, MISBEHAVIOR DETERMINATION ANNULLED. [Matter of Telesford v Annucci, 2018 NY Slip Op 07397, Third Dept 11-1-18](#)

FAMILY LAW.

FAMILY COURT SHOULD NOT HAVE DISMISSED MOTHER'S VISITATION PETITION FOR FAILURE TO PROSECUTE. [Matter of Crisell v Fletcher, 2018 NY Slip Op 07016, Third Dept 10-18-18](#)

FAMILY LAW, CIVIL PROCEDURE.

MATTER REMITTED FOR FINDINGS CONCERNING WHETHER NEW YORK IS THE MORE APPROPRIATE OR CONVENIENT FORUM FOR THE CUSTODY PROCEEDINGS, CUSTODY PROCEEDINGS WERE PENDING IN A MISSISSIPPI COURT. [Matter of Hiles v Hiles, 2018 NY Slip Op 07004, Third Dept 10-18-18](#)

FAMILY LAW, EVIDENCE.

FATHER REBUTTED THE STATUTORY PRESUMPTION THAT THE CHILD'S MEDICAL CONDITION WAS THE RESULT OF NEGLECT AND ABUSE, NEGLECT AND ABUSE FINDINGS REVERSED. [Matter of Liana HH. \(Christopher HH.\), 2018 NY Slip Op 07001, Third Dept 10-18-18](#)

FAMILY LAW, EVIDENCE.

MOTHER WAS NOT GIVEN THE CHANCE TO ADEQUATELY RESPOND TO THE ALLEGATIONS FORMING THE BASIS OF FAMILY COURT'S FINDING THAT MOTHER VIOLATED A VISITATION ORDER, MATTER REMITTED. [Matter of Pike v Bigelow, 2018 NY Slip Op 07006, Third Dept 10-18-18](#)

FAMILY LAW, EVIDENCE.

MOTHER'S PETITION FOR CUSTODY AND PERMISSION TO RELOCATE TO TEXAS SHOULD HAVE BEEN GRANTED. [Matter of Fisher v Perez, 2018 NY Slip Op 07014, Third Dept 10-18-18](#)

FAMILY LAW, EVIDENCE, APPEALS.

FAMILY COURT SHOULD HAVE HELD A HEARING TO DETERMINE WHETHER THE MATERNAL GRANDPARENTS HAD STANDING TO SEEK VISITATION AND WHETHER VISITATION WOULD BE IN THE CHILD'S BEST INTERESTS, FAMILY COURT HAD MADE FINDINGS BASED UPON PRIOR PROCEEDINGS THAT WERE NOT PART OF THE RECORD. [Matter of Ferguson v Weaver, 2018 NY Slip Op 07005, Third Dept 10-18-18](#)

FREEDOM OF INFORMATION LAW (FOIL), RETIREMENT AND SOCIAL SECURITY LAW.

POLICE PERSONNEL RECORDS CAN BE REDACTED TO REMOVE PERSONAL IDENTIFYING INFORMATION. [Matter of Police Benevolent Assn. of N.Y. State, Inc. v State of New York, 2018 NY Slip Op 07019, Third Dept 10-18-18](#)

INSURANCE LAW.

QUESTION OF FACT WHETHER INSURERS FAILED TO SETTLE A MULTI-MILLION DOLLAR MEDICAL MALPRACTICE ACTION IN BAD FAITH, SUPREME COURT REVERSED. [Healthcare Professionals Ins. Co. v Parentis, 2018 NY Slip Op 07224, Third Dept 10-25-18](#)

INSURANCE LAW, CIVIL PROCEDURE, EVIDENCE.

THE INSURANCE POLICY WAS PROPERLY AUTHENTICATED AND IT EXCLUDED COVERAGE FOR THE PROPERTY DAMAGE, MOTION TO DISMISS THE COMPLAINT SHOULD HAVE BEEN GRANTED. [Calhoun v Midrox Ins. Co., 2018 NY Slip Op 07024, Third Dept 10-18-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

STACKED SHEETROCK DID NOT PRESENT AN ELEVATION RELATED HAZARD AND DID NOT BLOCK A PASSAGEWAY, DEFENDANTS DID NOT EXERCISE CONTROL OVER THE STACKING OF THE SHEETROCK, LABOR LAW 240 (1), 241 (6), 200 AND COMMON LAW NEGLIGENCE CAUSES OF ACTION PROPERLY DISMISSED. [Wiley v Marjam Supply Co., Inc., 2018 NY Slip Op 07381, Third Dept 11-1-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF WAS ENTITLED TO SUMMARY JUDGMENT ON HIS LABOR LAW 240 (1) CAUSE OF ACTION DESPITE FALLING FROM AN UNSAFE MAKESHIFT PLATFORM MADE BY THE PLAINTIFF. [Cooper v Delliveneri, 2018 NY Slip Op 07396, Third Dept 11-1-18](#)

MEDICAID, ADMINISTRATIVE LAW.

MATTER REMITTED TO THE COMMISSIONER OF HEALTH TO DETERMINE WHETHER BONE SURGERY TO REPAIR CANCER-RELATED DAMAGE TO PETITIONER'S JAW IS COVERED UNDER MEDICAID, IF THERE IS A CONFLICT BETWEEN THE DSS REGULATIONS AND THE DEPARTMENT OF HEALTH'S GUIDELINES, THE REGULATIONS CONTROL. [Matter of Rovinsky v Zucker, 2018 NY Slip Op 07026, Third Dept 10-18-18](#)

MENTAL HYGIENE LAW, CRIMINAL LAW, EVIDENCE.

PETITIONER ENTITLED TO A *FRYE* HEARING TO DETERMINE THE EFFICACY OF AN 'OTHER SPECIFIED PARAPHILIC DISORDER' (OSPD) DIAGNOSIS IN THIS DANGEROUS SEX OFFENDER CIVIL CONFINEMENT HEARING. [Matter of Miguel II. v State of New York, 2018 NY Slip Op 07210, Third Dept 10-25-18](#)

MUNICIPAL LAW, NEGLIGENCE, TRESPASS.

NEGLIGENCE AND TRESPASS ACTIONS AGAINST THE TOWN BASED UPON A LANDSLIDE WHICH CAUSED FLOODING OF PLAINTIFF'S LAND SHOULD HAVE BEEN DISMISSED. [City of Albany v Normanskill Cr., LLC, 2018 NY Slip Op 07020, Third Dept 10-18-18](#)

REAL ESTATE, CONTRACT LAW, DEBTOR-CREDITOR.

ALTHOUGH PLAINTIFF DEFAULTED ON A MATERIAL TERM OF AN INSTALLMENT LAND SALE CONTRACT, DEFENDANT WAS NOT ENTITLED TO SPECIFIC PERFORMANCE OR CANCELLATION AND RETENTION OF THE SUBSTANTIAL PAYMENTS WHICH PLAINTIFF HAD MADE, PLAINTIFF WAS ENTITLED TO CONTINUED POSSESSION. [Clope v Findlan, 2018 NY Slip Op 07220, Third Dept 10-25-18](#)

REAL PROPERTY TAX LAW.

PROPERTY TAX ASSESSMENTS WERE PROPERLY REDUCED BY OVER \$20 MILLION BUT THE COURT CANNOT REDUCE THE ASSESSMENTS BELOW THE AMOUNTS REQUESTED IN THE PETITION. [Matter of Champlain Ctr. N. LLC v Town of Plattsburgh, 2018 NY Slip Op 07021, Third Dept 10-18-18](#)

RETIREMENT AND SOCIAL SECURITY LAW, PERSONAL INJURY.

CORRECTION OFFICER'S FALL DOWN A STAIRWAY WAS PROXIMATELY CAUSED BY THE ACT OF AN INMATE, THE RESULTING DISABILITY IS THEREFORE COMPENSABLE. [Matter of Garcia v DiNapoli, 2018 NY Slip Op 06602, Third Dept 10-4-18](#)

UNEMPLOYMENT INSURANCE, EMPLOYMENT LAW, MUNICIPAL LAW, CRIMINAL LAW.

CLAIMANT'S TERMINATION FROM HER EMPLOYMENT WITH THE CITY BASED UPON TWO DRIVING WHILE UNDER THE INFLUENCE CONVICTIONS DID NOT PRECLUDE HER FROM RECEIVING UNEMPLOYMENT INSURANCE BENEFITS. [Matter of Stack \(City of Glens Falls--Commissioner of Labor\), 2018 NY Slip Op 06840, Third Dept 10-11-18](#)

WORKERS' COMPENSATION, ADMINISTRATIVE LAW.

SHOULDER INJURY WHICH OCCURRED WHEN CLAIMANT SCANNED HER PARKING PASS TO ENTER A PARKING GARAGE USED BY EMPLOYEES WAS NOT COMPENSABLE, TWO JUSTICE DISSENT. [Matter of Grover v State Ins. Fund, 2018 NY Slip Op 06601, Third Dept 10-4-18](#)

WORKERS' COMPENSATION.

CLAIMANT-NURSE'S MENTAL HEALTH PROBLEMS WERE NOT COMPENSABLE AS THEY WERE NOT CAUSED BY GREATER THAN NORMAL STRESSORS. [Matter of Lanese v Anthem Health Servs., 2018 NY Slip Op 06845, Third Dept 10-11-18](#)

WORKERS' COMPENSATION, EMPLOYMENT LAW.

THE WORKERS' COMPENSATION BOARD PROPERLY FOUND CLAIMANT WAS AN EMPLOYEE OF A TRUCKING COMPANY AND A SPECIAL EMPLOYEE OF A COMPANY WITH WHICH THE TRUCKING COMPANY HAD A CONTRACT, THEREFORE THE WORKERS' COMPENSATION AWARD WAS PROPERLY SPLIT BETWEEN THEM. [Matter of Mitchell v Eaton's Trucking Serv., Inc., 2018 NY Slip Op 06839, Third Dept 10-11-18](#)

FOURTH DEPARTMENT

CIVIL PROCEDURE, DEBTOR-CREDITOR, EVIDENCE.

DEFENDANTS' EVIDENCE DESIGNED TO RAISE A FEIGNED QUESTION OF FACT, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IN LIEU OF A COMPLAINT SHOULD HAVE BEEN GRANTED. [Birjukow v Niagara Coating Servs., Inc., 2018 NY Slip Op 06637, Fourth Dept 10-5-18](#)

CRIMINAL LAW.

SUPERIOR COURT INFORMATION WAS JURISDICTIONALLY DEFECTIVE BECAUSE IT DID NOT INCLUDE A CRIME CHARGED IN THE FELONY COMPLAINT OR A LESSER INCLUDED OFFENSE. [People v Bennett, 2018 NY Slip Op 06663, Fourth Dept 10-5-18](#)

CRIMINAL LAW, APPEALS.

APPEAL HELD IN RESERVE AND THE MATTER SENT BACK FOR A RECONSTRUCTION HEARING TO DETERMINE WHETHER THE TRIAL JUDGE APPRISED DEFENSE COUNSEL OF THE ENTIRE CONTENTS OF A JURY NOTE. [People v Timmons, 2018 NY Slip Op 06644, Fourth Dept 10-5-18](#)

CRIMINAL LAW, APPEALS.

FAILURE TO RULE ON A PORTION OF DEFENDANT'S MOTION TO VACATE HIS CONVICTION IS NOT A DENIAL, DECISION ON APPEAL RESERVED AND MATTER REMITTED FOR A RULING. [People v Lewis, 2018 NY Slip Op 06645, Fourth Dept 10-5-18](#)

CRIMINAL LAW, APPEALS.

FAILURE TO APPRISE COUNSEL OF THE CONTENTS OF A JURY NOTE WAS A MODE OF PROCEEDINGS ERROR REQUIRING REVERSAL. [People v Ott, 2018 NY Slip Op 06646, Fourth Dept 10-5-18](#)

CRIMINAL LAW, APPEALS.

WAIVER OF APPEAL INVALID AND GUILTY PLEA VACATED BECAUSE DEFENDANT WAS NOT INFORMED OF THE PERIOD OF POST-RELEASE SUPERVISION. [People v Teta, 2018 NY Slip Op 06674, Fourth Dept 10-5-18](#)

CRIMINAL LAW, CIVIL PROCEDURE.

THERE IS NO MECHANISM IN THE CRIMINAL PROCEDURE LAW FOR A REPORTER'S MOTION TO INTERVENE IN A CRIMINAL PROCEEDING, THE REQUIREMENTS FOR A CPLR MOTION TO INTERVENE WERE NOT MET. [People v Conley, 2018 NY Slip Op 06647, Fourth Dept 10-5-18](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

INSUFFICIENT EVIDENCE DEFENDANT AND VICTIM WERE STRANGERS, RISK ASSESSMENT REDUCED BY 20 POINTS MAKING DEFENDANT A PRESUMPTIVE LEVEL ONE SEX OFFENDER. [People v Perez, 2018 NY Slip Op 06666, Fourth Dept 10-5-18](#)

FAMILY LAW.

FAMILY COURT SHOULD HAVE COMPLETED THE HEARING, AWARD OF PRIMARY PHYSICAL CUSTODY OF THE CHILDREN TO THE MATERNAL GRANDMOTHER REVERSED. [Matter of Driscoll v Mack, 2018 NY Slip Op 06640, Fourth Dept 10-5-18](#)

FAMILY LAW.

COURT IMPROPERLY INCLUDED A PROVISION IN THE ORDER DENYING MOTHER'S PETITION TO RELOCATE WHICH WOULD AUTOMATICALLY AWARD CUSTODY TO FATHER IF MOTHER RELOCATES. [Matter of Eason v Bowick, 2018 NY Slip Op 06641, Fourth Dept 10-5-18](#)

FAMILY LAW.

FATHER COULD NOT BE FOUND TO HAVE PERMANENTLY NEGLECTED THE CHILDREN AND ALSO BE FOUND MENTALLY ILL TO A DEGREE WARRANTING TERMINATION OF HIS PARENTAL RIGHTS. [Matter of Norah T. \(Norman T.\), 2018 NY Slip Op 06681, Fourth Dept 10-5-18](#)

FAMILY LAW, APPEALS.

APPEAL HELD IN RESERVE AND MATTER SENT BACK FOR FACTUAL FINDINGS IN THIS CUSTODY CASE. [Matter of Valentin v Mendez, 2018 NY Slip Op 06680, Fourth Dept 10-5-18](#)

FAMILY LAW, EVIDENCE.

DRUG-RELATED NEGLECT FINDING NOT SUPPORTED BY THE EVIDENCE. [Matter of Bentley C. \(Zachary D.\), 2018 NY Slip Op 06667, Fourth Dept 10-5-18](#)

FAMILY LAW, EVIDENCE.

DRUG-RELATED NEGLECT FINDING NOT SUPPORTED BY THE EVIDENCE. [Matter of Delanie S. \(Jeremy S.\), 2018 NY Slip Op 06677, Fourth Dept 10-5-18](#)

FAMILY LAW, EVIDENCE, APPEALS.

UNCORROBORATED HEARSAY OF ONE OF THE CHILDREN SHOULD NOT HAVE BEEN RELIED UPON BY THE COURT, NEGLECT FINDING REVERSED IN THE INTEREST OF JUSTICE. [Matter of Chance C. \(Jennifer S.\), 2018 NY Slip Op 06642, Fourth Dept 10-5-18](#)

INSURANCE LAW, CONTRACT LAW.

OWNER OF PROPERTY WHERE THE EMPLOYEE SLIPPED AND FELL WAS NOT AN ADDITIONAL INSURED UNDER THE EMPLOYER'S POLICY, EMPLOYER FURNISHED THE CONDITION FOR THE SLIP AND FALL BUT DID NOT PROXIMATELY CAUSE THE SLIP AND FALL. [Pioneer Cent. Sch. Dist. v Preferred Mut. Ins. Co., 2018 NY Slip Op 06682, Fourth Dept 10-5-18](#)

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COURT OF APPEALS

ADMINISTRATIVE LAW, EVIDENCE.

REVOCATION OF RACEHORSE TRAINER'S LICENSE BY THE NYS RACING AND WAGERING BOARD SHOULD HAVE BEEN CONFIRMED, SUBSTANTIAL EVIDENCE STANDARD WAS MET. [Matter of Pena v New York State Gaming Commn., 2018 NY Slip Op 08060, CtApp 11-27-18](#)

CIVIL PROCEDURE, CONSTITUTIONAL LAW.

CPLR 8501 AND 8503, WHICH REQUIRE AN OUT OF STATE LITIGANT TO POST SECURITY FOR COSTS IN CASE THE NONRESIDENT LOSES THE CASE, DOES NOT VIOLATE THE PRIVILEGES AND IMMUNITIES CLAUSE. [Clement v Durban, 2018 NY Slip Op 07693, CtApp 11-14-18](#)

CIVIL PROCEDURE, MUNICIPAL LAW, RELIGION, ANIMAL LAW.

WRIT OF MANDAMUS SEEKING TO COMPEL ENFORCEMENT OF ANIMAL CRUELTY LAWS IN CONNECTION WITH THE RELIGIOUS PRACTICE OF KILLING CHICKENS PROPERLY DENIED, MANDAMUS DOES NOT LIE FOR DISCRETIONARY ACTS OR TO COMPEL A PARTICULAR OUTCOME. [Alliance to End Chickens as Kaporos v New York City Police Dept., 2018 NY Slip Op 07694, CtApp 11-14-18](#)

CRIMINAL LAW.

COUNTERFEIT CONCERT TICKETS FALL WITHIN THE AMBIT OF THE STATUTE PROHIBITING POSSESSION OF A FORGED INSTRUMENT. [People v Watts, 2018 NY Slip Op 07926, CtApp 11-20-18](#)

CRIMINAL LAW, CONSTITUTIONAL LAW, IMMIGRATION LAW.

EVEN THOUGH DEFENDANT WAS NOT ENTITLED TO A JURY TRIAL BECAUSE THE CHARGES WERE B MISDEMEANORS, THE FACT THAT DEPORTATION WAS A POTENTIAL PENALTY ENTITLED DEFENDANT TO A JURY TRIAL PURSUANT TO THE SIXTH AMENDMENT. [People v Suazo, 2018 NY Slip Op 08056, CtApp 11-27-18](#)

CRIMINAL LAW, CORRECTION LAW.

THE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION MET ITS STATUTORY BURDEN TO ASSIST PETITIONER, A SEX OFFENDER, IN FINDING SUITABLE HOUSING UPON RELEASE, APPELLATE DIVISION REVERSED. [Matter of Gonzalez v Annucci, 2018 NY Slip Op 08057, CtApp 11-27-18](#)

CRIMINAL LAW, EVIDENCE.

ENTERPRISE CORRUPTION CONVICTION NOT SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE OF DEFENDANT'S KNOWLEDGE OF THE EXISTENCE OF THE ENTERPRISE AND HIS INTENT TO PARTICIPATE IN AFFAIRS OF THE ENTERPRISE. [People v Jones, 2018 NY Slip Op 08058, CtApp 11-27-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

THE PROSECUTION'S FAILURE TO PRESENT A WITNESS TO THE GRAND JURY, AS REQUESTED BY THE DEFENDANT, DID NOT RISE TO A CONSTITUTIONAL DEFECT, THEREFORE THE ISSUE DID NOT SURVIVE DEFENDANT'S GUILTY PLEA. [People v Manragh, 2018 NY Slip Op 07924, CtApp 11-20-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

EVIDENCE OF SERIOUS PHYSICAL INJURY MET THE LEGALLY SUFFICIENT EVIDENCE APPELLATE REVIEW CRITERIA. [People v Garland, 2018 NY Slip Op 07927, CtApp 11-20-18](#)

EDUCATION-SCHOOL LAW, ADMINISTRATIVE LAW.

SCHOOL DISTRICTS DO NOT HAVE THE AUTHORITY TO OVERSEE PRE-KINDERGARTEN PROGRAMS OFFERED BY CHARTER SCHOOLS, BECAUSE THE ISSUE IS ONE OF PURE STATUTORY INTERPRETATION, DEFERENCE TO THE COMMISSIONER OF EDUCATION'S CONTRARY CONCLUSION IS NOT REQUIRED. [Matter of DeVera v Elia, 2018 NY Slip Op 07922, CtApp 11-20-18](#)

LIEN LAW, LANDLORD-TENANT.

LANDLORD, BY THE TERMS OF THE LEASE WHICH REQUIRED THE TENANT TO DO RENOVATION WORK, IS DEEMED TO HAVE CONSENTED TO THE WORK, THE CONTRACTOR THEREFORE HAD A VALID MECHANIC'S LIEN WITH RESPECT TO THE LANDLORD. [Ferrara v Peaches Cafe LLC, 2018 NY Slip Op 07925, CtApp 11-20-18](#)

MUNICIPAL LAW.

ALTHOUGH THE VILLAGE BUILT THE BRIDGE, THE VILLAGE NEVER IMPLEMENTED THE PROCEDURES IN THE VILLAGE CODE FOR ASSUMING CONTROL OVER THE BRIDGE, THEREFORE THE TOWN WAS RESPONSIBLE FOR REPAIR. [Town of Aurora v Village of E. Aurora, 018 NY Slip Op 07923, CtApp 11-20-18](#)

PRODUCTS LIABILITY, TOXIC TORTS, NEGLIGENCE, EMPLOYMENT LAW.

THE GRANT OF FORD'S MOTION TO SET ASIDE THE VERDICT IN THIS ASBESTOS CASE AFFIRMED, EVIDENCE OF A CAUSAL CONNECTION BETWEEN ASBESTOS IN BRAKE LININGS AND PLAINTIFF'S DECEDENT'S MESOTHELIOMA NOT SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE. [Matter of New York City Asbestos Litig., 2018 NY Slip Op 08059, CtApp 11-27-18](#)

FIRST DEPARTMENT

ADMINISTRATIVE LAW, CIVIL PROCEDURE, EMPLOYMENT LAW, APPEALS, MUNICIPAL LAW.

BECAUSE THE PETITIONERS CHOSE TO APPEAL THEIR TERMINATION FROM EMPLOYMENT AS CORRECTION OFFICERS TO THE NYC CIVIL SERVICE COMMISSION INSTEAD OF BRINGING AN ARTICLE 78, THE COURT'S REVIEW POWERS ARE EXTREMELY LIMITED, THE TERMINATION WAS UPHELD. [Matter of Almanzar v City of New York City Civ. Serv. Commn., 2018 NY Slip Op 08062, First Dept 11-27-18](#)

ADMINISTRATIVE LAW, CONTRACT LAW, EMPLOYMENT LAW, EDUCATION-SCHOOL LAW, CIVIL PROCEDURE.

ALTHOUGH CPLR 2104 DOES NOT APPLY TO STIPULATIONS IN ADMINISTRATIVE PROCEEDINGS, THE STIPULATION SIGNED BY PLAINTIFF, IN WHICH HE AGREED TO RETIRE IN RETURN FOR THE CESSATION OF DISCIPLINARY PROCEEDINGS, WAS ENFORCEABLE UNDER CONTRACT PRINCIPLES DESPITE PLAINTIFF'S SUBSEQUENT CHANGE OF HEART. [Matter of Nobile v Board of Educ. of the City Sch. Dist. of the City of N.Y., 2018 NY Slip Op 08065, First Dept 11-27-1](#)

CIVIL PROCEDURE, NEGLIGENCE, EVIDENCE.

MOTION TO AMEND COMPLAINT AND BILL OF PARTICULARS TO CHANGE THE DATE OF THE ALLEGED SLIP AND FALL PROPERLY DENIED. [Otero v Walton Ave. Assoc. LLC, 2018 NY Slip Op 08083, First Dept 11-27-18](#)

ARBITRATION, CIVIL PROCEDURE, CONTRACT LAW.

ARBITRATION AWARD SHOULD NOT HAVE BEEN VACATED, LIMITED COURT-REVIEW POWERS EXPLAINED. [Matter of NRT N.Y. LLC v Spell, 2018 NY Slip Op 07664, First Dept 11-13-18](#)

CONDOMINIUMS, ATTORNEYS.

PRODUCTION OF CONDOMINIUM RECORDS PROPERLY REQUESTED, THE BOARD'S PAYMENT OF THE SUBPOENAED PARTIES' LEGAL EXPENSES IN RESISTING THE SUBPOENAS FOR THE RECORDS WAS PROPER. [Matter of Healy v Carriage House Condominium, 2018 NY Slip Op 07970, First Dept 11-20-18](#)

CONTRACT LAW, FRAUD, CONSUMER LAW, REAL ESTATE, COOPERATIVES.

THE ACTUAL DIMENSIONS OF THE COOPERATIVE APARTMENT WERE SMALLER THAN THE DIMENSIONS DESCRIBED IN THE LISTING, THE LISTING COULD NOT BE DEEMED

INCORPORATED BY REFERENCE INTO THE PURCHASE AGREEMENT, THE COMPLAINT ALLEGING BREACH OF CONTRACT, FRAUD AND DECEPTIVE BUSINESS PRACTICES PROPERLY DISMISSED. [Von Ancken v 7 E. 14 L.L.C., 2018 NY Slip Op 08097, First Dept 11-27-18](#)

CRIMINAL LAW.

NEW JERSEY FORGED INSTRUMENT CONVICTION WAS NOT THE EQUIVALENT OF A NEW YORK FELONY AND SHOULD NOT HAVE BEEN THE BASIS OF SECOND FELONY OFFENDER STATUS. [People v Allison, 2018 NY Slip Op 08194, First Dept 11-29-18](#)

CRIMINAL LAW, EVIDENCE.

DEFENDANT DEEMED TO HAVE CONSENTED TO THE RECORDING OF PHONE CALLS MADE FROM JAIL AND TO THE PRESENTATION OF THE RECORDINGS AS TRIAL EVIDENCE. [People v Mason, 2018 NY Slip Op 07944, First Dept 11-20-18](#)

CRIMINAL LAW, EVIDENCE.

SUPREME COURT PROPERLY FOUND THE GUNPOINT ARREST UNLAWFUL AND PROPERLY SUPPRESSED THE SEIZED ITEMS AND THE LINEUP IDENTIFICATION. [People v Brown, 2018 NY Slip Op 07956, First Dept 11-20-18](#)

CRIMINAL LAW, EVIDENCE.

ADMITTING INTO EVIDENCE A PISTOL ALLEGED TO BE THE SAME TYPE OF WEAPON USED IN THE CRIME WAS NOT ERROR. [People v Birkett, 2018 NY Slip Op 08072, First Dept 11-27-18](#)

CRIMINAL LAW, EVIDENCE.

JURY SHOULD HAVE BEEN INSTRUCTED TO CONSIDER A LESSER INCLUDED OFFENSE AND AN ADVERSE INFERENCE INSTRUCTION SHOULD HAVE BEEN GIVEN CONCERNING SURVEILLANCE PHOTOS DESTROYED BY THE POLICE, CONVICTION REVERSED. [People v Holmes, 2018 NY Slip Op 08178, First Dept 11-29-18](#)

DEBTOR-CREDITOR, CONTRACT LAW.

VOLUNTARY PAYMENT OF CERTAIN CHARGES ASSESSED IN CONNECTION WITH REFINANCING MULTI-MILLION DOLLAR LOANS WARRANTED DISMISSAL OF THE COMPLAINT WHICH ALLEGED THE CHARGES WERE UNENFORCEABLE PENALTIES AND WERE PAID UNDER DURESS. [Beltway 7 & Props., Ltd. v Blackrock Realty Advisers, Inc., 2018 NY Slip Op 07844, First Dept 11-15-18](#)

DEFAMATION, CIVIL PROCEDURE, CONSTITUTIONAL LAW.

MATERIAL PUBLISHED ON DEFENDANTS' WEBSITE DID NOT RISE TO THE LEVEL OF THREATENING SPEECH THAT WOULD ALLOW PRIOR RESTRAINT, PRELIMINARY INJUNCTION NOT GRANTED. [Brummer v Wey, 2018 NY Slip Op 07843, First Dept 11-15-18](#)

EMPLOYMENT LAW, LABOR LAW, CONTRACT LAW.

EMPLOYEES OF SUBCONTRACTOR CAN SUE FOR THE PREVAILING WAGE REQUIRED BY LABOR LAW 220 AS THIRD PARTY BENEFICIARIES OF THE PRIME CONTRACT. [Wroble v Shaw Env'tl. & Infrastructure Eng'g of N.Y., P.C., 2018 NY Slip Op 08061, First Dept 11-27-18](#)

FAMILY LAW.

DESPITE FATHER'S PRO SE MOTION SEEKING VISITATION, NO PROVISION FOR VISITATION WAS MADE IN THE CUSTODY ORDER, MATTER REMANDED FOR A HEARING. [Matter of Jolanda K. v Damian B., 2018 NY Slip Op 07675, First Dept 11-13-18](#)

FAMILY LAW.

FATHER'S PETITION TO MODIFY CUSTODY SHOULD NOT HAVE BEEN DENIED, MOTHER HAD RELOCATED TO FLORIDA WITHOUT FATHER'S CONSENT AND WITHOUT THE PERMISSION OF THE COURT. [Matter of Michael B. v Latasha T.-M., 2018 NY Slip Op 07929, First Dept 11-20-18](#)

FAMILY LAW.

FAMILY COURT ABUSED ITS DISCRETION IN ORDERING UNSUPERVISED VISITATION WITH CHILDREN WHO HAD BEEN REMOVED FROM THE PARENTS' CARE, THERE WAS NO EVIDENCE OF A CHANGE IN CIRCUMSTANCES SINCE THE DENIAL OF THE PARENTS' APPLICATION TO HAVE THE CHILDREN RETURNED TO THEM. [Matter of Abass D. \(Mamadou D.-- Sitan D.\), 2018 NY Slip Op 07968, First Dept 11-20-18](#)

FAMILY LAW, EVIDENCE.

FAMILY COURT DID NOT HAVE ENOUGH EVIDENCE TO WARRANT DENIAL OF MOTHER'S PETITION TO MODIFY CUSTODY, A HEARSAY LETTER FROM THE NYS OFFICE OF CHILDREN AND FAMILY SERVICES CHILD ABUSE AND MALTREATMENT REGISTER, FINDING CERTAIN ALLEGATIONS AGAINST FATHER TO BE UNFOUNDED, WAS INSUFFICIENT. [Matter of Juliette S. v Tykym S., 2018 NY Slip Op 07960, First Dept 11-20-18](#)

FORECLOSURE, EVIDENCE.

IT IS NOT NECESSARY TO HAVE POSSESSION OF THE MORTGAGE, AS OPPOSED TO THE NOTE, AT THE TIME OF THE COMMENCEMENT OF A FORECLOSURE ACTION, EVIDENCE ADMISSIBLE UNDER THE BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE RAISED A QUESTION OF FACT ABOUT PLAINTIFF'S STANDING. [DLJ Mtge. Capital v Mahadeo, 2018 NY Slip Op 07963, First Dept 11-20-18](#)

LABOR LAW-CONSTRUCTION LAW, CIVIL PROCEDURE.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON HIS LABOR LAW 240(1) CAUSE OF ACTION SHOULD HAVE BEEN GRANTED, ARGUMENT IN PLAINTIFF'S REPLY PAPERS SHOULD HAVE BEEN CONSIDERED. [Keerdoja v Legacy Yards Tenant, LLC, 2018 NY Slip Op 07537, First Dept 11-8-18](#)

LABOR LAW-CONSTRUCTION LAW, EVIDENCE, CIVIL PROCEDURE, APPEALS.

QUESTION OF FACT WHETHER PLAINTIFF-DECEDENT'S INJURY WAS CAUSED BY A TIPPING LADDER, FACTUAL ASSERTIONS IN A MEMO OF LAW OPPOSING PLAINTIFF-DECEDENT'S MOTION FOR SUMMARY JUDGMENT ON THE LABOR LAW 240 (1) CAUSE OF ACTION PRESERVED ISSUES FOR APPEAL, PLAINTIFF-DECEDENT'S STATEMENT TO HIS WIFE IN THE EMERGENCY ROOM PROPERLY CONSIDERED AS A DECLARATION AGAINST INTEREST. [Caminiti v Extell W. 57th St. LLC, 2018 NY Slip Op 07667, First Dept 11-13-18](#)

LANDLORD-TENANT, CONTRACT LAW.

PROPRIETARY LEASE PROVISION ALLOWING THE LANDLORD TO RECOVER ATTORNEY'S FEES EVEN WHEN THE LANDLORD IS IN DEFAULT IS UNCONSCIONABLE AND UNENFORCEABLE. [Matter of Krodell v Amalgamated Dwellings Inc., 2018 NY Slip Op 07531, First Dept 11-8-18](#)

MUNICIPAL LAW, NEGLIGENCE, LABOR LAW-CONSTRUCTION LAW.

MOTION TO DEEM NOTICE OF CLAIM FILED ONE DAY LATE TIMELY SHOULD HAVE BEEN GRANTED. [Matter of Dominguez v City Univ. of N.Y., 2018 NY Slip Op 08084, First Dept 11-27-18](#)

PERSONAL INJURY.

QUESTIONS OF FACT WHETHER THE DEFENDANT CITY WAS AWARE OF A DEFECT IN THE SOFTBALL PLAYING FIELD, WHETHER THE DEFECT WAS NEGLIGENTLY REPAIRED AND WHETHER PLAINTIFF ASSUMED THE RISK OF INJURY, DEFENDANT'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED. [Martin v City of New York, 2018 NY Slip Op 07946, First Dept 11-20-18](#)

PERSONAL INJURY, EVIDENCE, PRIVILEGE.

PLAINTIFF DID NOT PLACE HER PRIOR KNEE INJURIES IN CONTROVERSY BY ALLEGING A LOSS OF ENJOYMENT OF LIFE, THEREFORE PLAINTIFF DID NOT WAIVE HER PATIENT-PHYSICIAN PRIVILEGE RE: THE KNEE-INJURY MEDICAL RECORDS, THE FIRST DEPARTMENT DECIDED NOT TO FOLLOW THE SECOND DEPARTMENT'S CONTRARY RULING, EXTENSIVE TWO-JUSTICE DISSENT. [Brito v Gomez, 2018 NY Slip Op 08105, First Dept 11-27-18](#)

PERSONAL INJURY, VEHICLE AND TRAFFIC LAW.

DEALERSHIP HAD NOT TRANSFERRED OWNERSHIP OF THE CAR TO THE PURCHASER AT THE TIME OF THE ACCIDENT AND WAS THEREFORE LIABLE TO PLAINTIFF AS THE OWNER, THE DRIVER STRUCK A BARRICADE WHICH IN TURN STRUCK PLAINTIFF WHO WAS WALKING ON THE SIDEWALK, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Bunn v City of New York, 2018 NY Slip Op 07936, First Dept 11-20-18](#)

SECOND DEPARTMENT

ARBITRATION CONTRACT LAW.

SIGNATORY TO AGREEMENT WITH AN ARBITRATION CLAUSE CANNOT AVOID ARBITRATION SIMPLY BECAUSE PARTIES ENTWINED IN THE PROCEEDINGS ARE NOT SIGNATORIES. [Matter of DeNobile v Panetta, 2018 NY Slip Op 07722, Second Dept 11-14-18](#)

ATTORNEYS, LEGAL MALPRACTICE, NEGLIGENCE, CIVIL PROCEDURE.

COMPLAINT STATED A CAUSE OF ACTION FOR LEGAL MALPRACTICE, MOTION TO DISMISS SHOULD NOT HAVE BEEN GRANTED. [Lopez v Lozner & Mastropietro, P.C. , 2018 NY Slip Op 08017, Second Dept 11-21-18](#)

CIVIL PROCEDURE.

SUPREME COURT SHOULD NOT HAVE GRANTED PLAINTIFF PERMISSION TO SERVE AN AMENDED COMPLAINT AND SIMULTANEOUSLY AWARDED PLAINTIFF SUMMARY JUDGMENT ON SEVERAL CAUSES OF ACTION, THE AMENDED COMPLAINT SUPERSEDES THE ORIGINAL AND MUST BE ANSWERED BEFORE FURTHER PROCEEDINGS. [R&G Brenner Income Tax Consultants v Gilmartin, 2018 NY Slip Op 07470, Second Dept 11-7-18](#)

CIVIL PROCEDURE.

STATUTE OF LIMITATIONS FOR A DECLARATORY JUDGMENT ACTION IS DETERMINED BY THE NATURE OF THE UNDERLYING ACTION, HERE CONVERSION AND FRAUD. [Schulman v Schulman, 2018 NY Slip Op 07770, Second Dept 11-14-18](#)

CIVIL PROCEDURE, ADMINISTRATIVE LAW, APPEALS.

EXCEPTION TO THE MOOTNESS DOCTRINE DID NOT APPLY AFTER THE UNDERLYING ACTION WAS SETTLED, CRITERIA EXPLAINED. [Berger v Prospect Park Residence, LLC, 2018 NY Slip Op 08110, Second Dept 11-28-18](#)

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

COMPLAINANT'S ACTUAL EMPLOYER WAS ADDED TO THE EMPLOYMENT DISCRIMINATION PROCEEDING MORE THAN ONE YEAR AFTER TERMINATION, THE RELATION-BACK DOCTRINE DID NOT APPLY, DISCRIMINATION FINDING ANNULLED. [Matter of 130-10 Food Corp. v New York State Div. of Human Rights, 2018 NY Slip Op 08123, Second Dept 11-28-18](#)

CIVIL PROCEDURE, ATTORNEYS.

LAW OFFICE FAILURE EXCUSE WAS SUFFICIENT TO WARRANT GRANTING DEFENDANTS' MOTION TO VACATE THE DEFAULT JUDGMENTS, SUPREME COURT REVERSED. [Government Employees Ins. Co. v Avenue C Med., P.C., 2018 NY Slip Op 08010, Second Dept 11-21-18](#)

CIVIL PROCEDURE, ATTORNEYS.

LAW OFFICE FAILURE EXCUSE INSUFFICIENT, MOTION TO VACATE DISCONTINUANCE SHOULD NOT HAVE BEEN GRANTED. [IndyMac Bank, FSB v Izzo, 2018 NY Slip Op 08014, Second Dept 11-21-18](#)

CIVIL PROCEDURE, CONTRACT LAW, DEBTOR-CREDITOR.

COMPLAINT DID NOT SUFFICIENTLY DESCRIBE THE GOODS FOR WHICH PLAINTIFF WAS SEEKING PAYMENT IN THIS BREACH OF CONTRACT ACTION AS REQUIRED BY CPLR 3016, THEREFORE DEFENDANT DID NOT HAVE TO SPECIFICALLY DISPUTE EACH ITEM, A GENERAL DENIAL WAS SUFFICIENT, PLAINTIFF'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED. [SSG Door & Hardware, Inc. v APS Contr., Inc., 2018 NY Slip Op 07481, Second Dept 11-7-18](#)

CIVIL PROCEDURE, CORPORATION LAW.

CORPORATE OFFICER WHO SIGNED THE CONTRACT AT ISSUE WAS NOT UNITED IN INTEREST WITH THE CORPORATION, THEREFORE THE ATTEMPT TO ADD AN UNTIMELY FRAUD CAUSE OF ACTION AGAINST THE OFFICER WAS NOT POSSIBLE UNDER THE RELATION BACK DOCTRINE. [Roco G.C. Corp. v Bridge View Tower, LLC, 2018 NY Slip Op 08164, Second Dept 11-28-18](#)

CIVIL PROCEDURE, FORECLOSURE.

COURT HAD DISCRETION TO ACCEPT A BELATED ORDER OF REFERENCE SUBMITTED AFTER THE 60-DAY DEADLINE IN 22 NYCRR 202.48 IN THIS FORECLOSURE ACTION, LAW OF THE CASE DOCTRINE DOES NOT APPLY TO A DISCRETIONARY ORDER. [Solomon v Burden, 2018 NY Slip Op 07480, Second Dept 11-7-18](#)

CONTEMPT, APPEALS, FAMILY LAW.

PLAINTIFF COULD BE HELD IN CONTEMPT FOR FAILURE TO COMPLY WITH A COURT ORDER TO POST A BOND, EVEN THOUGH THE BOND REQUIREMENT WAS LATER ELIMINATED ON APPEAL, HOWEVER PLAINTIFF PRESENTED CREDIBLE EVIDENCE HE WAS UNABLE TO OBTAIN THE BOND WHICH IS A DEFENSE TO CIVIL AND CRIMINAL CONTEMPT. [Lueker v Lueker, 2018 NY Slip Op 07421, Second Dept 11-7-18](#)

CONTRACT LAW.

PLAINTIFF RETAILER ATTEMPTED TO RECOVER PAYMENTS MADE TO A BANK STEMMING FROM THE HACKING OF MASTERCARD CREDIT CARD INFORMATION FROM THE RETAILER'S ACCOUNTS UNDER EQUITABLE SUBROGATION, MONEY HAD AND RECEIVED AND UNJUST ENRICHMENT THEORIES, COMPLAINT PROPERLY DISMISSED. [Jetro Holdings, LLC v MasterCard Intl., Inc., 2018 NY Slip Op 07418, Second Dept 11-7-18](#)

CONTRACT LAW, REAL ESTATE, CIVIL PROCEDURE, MUNICIPAL LAW.

PLAINTIFF'S COMPLAINT SEEKING SPECIFIC PERFORMANCE OF A REAL ESTATE PURCHASE CONTRACT PROPERLY DISMISSED BASED UPON THE LANGUAGE OF THE CONTRACT, PLAINTIFF DID NOT APPEAR AT EITHER SCHEDULED CLOSING AFTER SUBMITTING THE HIGHEST BID AND SIGNING THE CONTRACT. [Mahmood v County of Suffolk, 2018 NY Slip Op 07715, Second Dept 11-14-18](#)

CONVERSION, CIVIL PROCEDURE.

PLAINTIFF ENTITLED TO PREJUDGMENT INTEREST AT THE STATUTORY RATE IN THIS CONVERSION ACTION. [Scotti v Barrett, 2018 NY Slip Op 07477, Second Dept 11-7-18](#)

CORPORATION LAW, CIVIL PROCEDURE, BANKING LAW, FIDUCIARY DUTY.

UK LAW REQUIRING COURT PERMISSION TO BRING A SHAREHOLDER DERIVATIVE ACTION WAS PROCEDURAL AND THEREFORE DID NOT APPLY IN THIS NEW YORK ACTION AGAINST LONDON-BASED HSBC FOR FAILURE TO IMPLEMENT MONEY-LAUNDERING PROTECTIONS, COMPLAINT DEMONSTRATED THE FUTILITY OF FIRST SEEKING REDRESS FROM THE CORPORATION, DOCTRINE OF FORUM NON CONVENIENS DID NOT APPLY, COMPLAINT SHOULD NOT HAVE BEEN DISMISSED. [Mason-Mahon v Flint, 2018 NY Slip Op 07716, Second Dept 11-14-18](#)

CRIMINAL LAW, APPEALS.

IN A CLOSE CASE THE SECOND DEPARTMENT HELD DEFENDANT VALIDLY WAIVED HIS RIGHT TO APPEAL, THE COMPREHENSIVE OPINIONS BY TWO CONCURRING JUSTICES AIM TO INSTRUCT TRIAL JUDGES ON THE REQUIREMENTS FOR A VALID WAIVER. [People v Batista, 2018 NY Slip Op 07445, Second Dept 11-7-18](#)

CRIMINAL LAW, ATTORNEYS, APPEALS, IMMIGRATION LAW.

DEFENDANT'S MOTION TO VACATE HIS CONVICTION BY GUILTY PLEA SHOULD NOT HAVE BEEN DENIED WITHOUT A HEARING, THE PAPERS SUFFICIENTLY RAISED THE QUESTION WHETHER DEFENSE COUNSEL FAILED TO INFORM DEFENDANT OF THE DEPORTATION CONSEQUENCES OF THE PLEA AND WHETHER THAT FAILURE AMOUNTED TO INEFFECTIVE

ASSISTANCE UNDER THE FEDERAL STANDARD, THE ARGUMENT THAT THE COURT FAILED TO INFORM DEFENDANT OF THE DEPORTATION CONSEQUENCES WAS REJECTED BECAUSE THERE WAS A SUFFICIENT RECORD TO HAVE RAISED THAT ARGUMENT ON APPEAL.. [People v Malik, 2018 NY Slip Op 07452, Second Dept 11-7-18](#)

CRIMINAL LAW, ATTORNEYS, CONSTITUTIONAL LAW.

CONVICTION AFFIRMED BUT STRONG DISSENT ARGUED DEFENDANT WAS DEPRIVED OF HIS RIGHT TO COUNSEL AND WAS DENIED A FAIR TRIAL BECAUSE HE WORE THE SAME PRISON-ISSUE CLOTHES FOR EIGHT DAYS. [People v Ellis, 2018 NY Slip Op 08143, Second Dept 11-28-18](#)

CRIMINAL LAW, ATTORNEYS, EVIDENCE.

DESPITE THE PROSECUTION'S CALLING OF 13 MEDICAL PROFESSIONALS IN THIS SHAKEN BABY CASE, DEFENSE COUNSEL'S FAILURE TO PRESENT EXPERT MEDICAL OPINION EVIDENCE DID NOT AMOUNT TO INEFFECTIVE ASSISTANCE OF COUNSEL. [People v Caldavado, 2018 NY Slip Op 07743, Second Dept 11-14-18](#)

CRIMINAL LAW, ATTORNEYS, IMMIGRATION LAW.

DEFENDANT DID NOT RECEIVE EFFECTIVE ASSISTANCE OF COUNSEL CONCERNING THE POSSIBILITY OF DEPORTATION BASED UPON HIS GUILTY PLEA, MOTION TO WITHDRAW THE PLEA GRANTED. [People v Ghingoree, 2018 NY Slip Op 07748, Second Dept 11-14-18](#)

CRIMINAL LAW, EVIDENCE.

THE JURY SHOULD HAVE BEEN TOLD NOT TO CONSIDER THE LESSER INCLUDED OFFENSE IF THE JUSTIFICATION DEFENSE WAS PROVEN FOR THE HIGHER OFFENSE, THE JURY ALSO SHOULD HAVE BEEN INSTRUCTED ON THE 'TEMPORARY INNOCENT POSSESSION OF A WEAPON' DEFENSE, JUDGMENT OF CONVICTION REVERSED. [People v Fletcher, 2018 NY Slip Op 07747, Second Dept 11-14-18](#)

CRIMINAL LAW, EVIDENCE.

POLICE OFFICERS CERTIFIED AS GANG EXPERTS PRESENTED INADMISSIBLE TESTIMONIAL HEARSAY IN THE GUISE OF EXPERT OPINION, ONE OF THE OFFICERS ACTED AS A SUMMATION WITNESS USURPING THE JURY'S FUNCTION OF INTERPRETING THE EVIDENCE, CONVICTIONS REVERSED. [People v Jones, 2018 NY Slip Op 07752, Second Dept 11-14-18](#)

CRIMINAL LAW, EVIDENCE.

EVIDENCE THAT DEFENDANT JOINED A CONSPIRACY TO MURDER WAS LEGALLY INSUFFICIENT, MOTION FOR A TRIAL ORDER OF DISMISSAL SHOULD HAVE BEEN GRANTED. [People v Lucas, 2018 NY Slip Op 07755, Second Dept 11-14-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

TESTIMONY OF SOLE EYEWITNESS DEEMED INCREDIBLE AND UNRELIABLE, CONVICTION REVERSED UNDER A WEIGHT OF THE EVIDENCE ANALYSIS. [People v Andujar, 2018 NY Slip Op 08028, Second Dept 11-21-18](#)

DEBTOR-CREDITOR, CONTRACT LAW.

DEFENDANT SHOULD HAVE BEEN AFFORDED THE OPPORTUNITY TO CURE A DEFAULT IN MONTHLY PAYMENTS ON A LOAN BEFORE PLAINTIFF SOUGHT TO ENFORCE THE TERMS OF THE STIPULATION OF SETTLEMENT, WHICH WOULD RESULT IN DEFENDANT OWING MORE THAN TWICE WHAT REMAINED TO BE PAID. [RCS Recovery Servs., LLC v Mensah, 2018 NY Slip Op 07766, Second Dept 11-14-18](#)

DEFAMATION, CIVIL RIGHTS LAW, PRIVILEGE.

STATEMENTS IN A NEWSPAPER ARTICLE ABOUT PLAINTIFF'S DIVORCE WHICH REFERRED TO PLAINTIFF'S CONVICTION STEMMING FROM A BOILER ROOM PENNY STOCK OPERATION WERE ABSOLUTELY PRIVILEGED UNDER THE CIVIL RIGHTS LAW. [Gillings v New York Post, 2018 NY Slip Op 07413, Second Dept 11-7-18](#)

EDUCATION-SCHOOL LAW, NEGLIGENCE.

NEGLIGENT SUPERVISION ACTION AGAINST THE SCHOOL DISTRICT AND BUS COMPANY STEMMING FROM A FIGHT INSTIGATED BY A STUDENT ON THE BUS SHOULD NOT HAVE BEEN DISMISSED. [Palopoli v Sewanhaka Cent. High Sch. Dist., 2018 NY Slip Op 07441, Second Dept 11-7-18](#)

EDUCATION-SCHOOL LAW, PERSONAL INJURY, MUNICIPAL LAW.

PLAINTIFF STUDENT INJURED WHEN GYMNASIUM DOOR CLOSED ON HIS FINGER, INADEQUATE SUPERVISION WAS NOT THE PROXIMATE CAUSE OF THE INJURY, CITY IS NOT LIABLE FOR TORTS OF THE DEPARTMENT OF EDUCATION, NOTICE OF CLAIM DID NOT INCLUDE ALLEGATION THAT THE DOOR WAS DEFECTIVE. [K.B. v City of New York, 2018 NY Slip Op 07710, Second Dept 11-14-18](#)

EMPLOYMENT LAW, CONTRACT LAW, PERSONAL INJURY, CIVIL PROCEDURE.

VOLUNTEER AGREEMENT WHICH PURPORTED TO RELEASE DEFENDANT EMPLOYER FROM LIABILITY FOR PLAINTIFF'S ON THE JOB INJURY WAS VOID AS AGAINST PUBLIC POLICY, MOTION TO AMEND THE ANSWER TO ASSERT THE RELEASE AS A DEFENSE SHOULD NOT HAVE BEEN GRANTED. [Richardson v Island Harvest, Ltd., 2018 NY Slip Op 07768, Second Dept 11-14-18](#)

EMPLOYMENT LAW, LABOR LAW, FRAUD.

LAI D OFF AT-WILL EMPLOYEE'S WHISTLEBLOWER (LABOR LAW 740) AND FRAUDULENT INDUCEMENT CAUSES OF ACTION PROPERLY DISMISSED. [Coyle v College of Westchester, Inc., 2018 NY Slip Op 07699, Second Dept 11-14-18](#)

FAMILY LAW.

FATHER, WHO WAS INCARCERATED, SHOULD HAVE BEEN PRODUCED FOR THE PROCEEDING TO APPOINT A GUARDIAN FOR THE CHILD, NEW HEARING ORDERED. [Matter of Krystle L.B. v Crystal L.W., 2018 NY Slip Op 08019, Second Dept 11-21-18](#)

FAMILY LAW, ATTORNEYS.

LOSS OF EMPLOYMENT DID NOT JUSTIFY DOWNWARD MODIFICATION OF MAINTENANCE AND SUPPORT, NO SHOWING FATHER WAS NOT AT FAULT FOR LOSING THE JOB, BECAUSE FATHER DID NOT HAVE A RIGHT TO COUNSEL IN THESE PROCEEDINGS, HIS INEFFECTIVE ASSISTANCE ARGUMENT MUST BE BASED UPON EXTRAORDINARY CIRCUMSTANCES WHICH WERE NOT DEMONSTRATED. [Matter of Berg v Berg, 2018 NY Slip Op 07720, Second Dept 11-14-18](#)

FAMILY LAW, ATTORNEYS.

FATHER WAS NEVER PROPERLY INFORMED OF HIS RIGHT TO COUNSEL IN THIS MAINTENANCE AND CHILD SUPPORT ENFORCEMENT PROCEEDING AND NEVER WAIVED THAT RIGHT, ORDER OF COMMITMENT REVERSED. [Matter of Gallousis v Gallousis, 2018 NY Slip Op 08129, Second Dept 11-28-18](#)

FAMILY LAW, CIVIL PROCEDURE, EVIDENCE, ATTORNEYS.

SUPREME COURT SHOULD HAVE PRECLUDED DEFENDANT FROM INTRODUCING CERTAIN EVIDENCE AT TRIAL BECAUSE OF THE FAILURE TO COMPLY WITH DISCOVERY ORDERS, HOWEVER, SUPREME COURT PROPERLY DENIED DEFENDANT'S REQUEST FOR ATTORNEY'S FEES BECAUSE PLAINTIFF IS THE LESS-MONIED SPOUSE. [Maliah-Dupass v Dupass, 2018 NY Slip Op 08018, Second Dept 11-21-18](#)

FAMILY LAW, CONSTITUTIONAL LAW.

PROCEEDING LEADING TO THE REVOCATION OF APPELLANT'S ADJOURNMENT IN CONTEMPLATION OF DISMISSAL (ACD) AND ADJUDGING HIM A PERSON IN NEED OF SUPERVISION (PINS) FATALLY FLAWED BECAUSE APPELLANT WAS NEVER TOLD OF HIS RIGHT TO REMAIN SILENT. [Matter of Tyler D., 2018 NY Slip Op 07427, Second Dept 11-7-18](#)

FAMILY LAW, EVIDENCE.

FINDING THAT DENNIS T IS A PERSON LEGALLY RESPONSIBLE FOR THE CARE OF A CHILD WAS PROPER, EVIDENTIARY RULE ANALOGOUS TO RES IPSA LOQUITUR SUPPORTED THE ABUSE FINDING. [Matter of Unity T. \(Dennis T.\), 2018 NY Slip Op 07437, Second Dept 11-7-18](#)

FAMILY LAW, EVIDENCE.

EVIDENCE DID NOT SUPPORT NEGLECT FOR FAILURE TO PROVIDE ADEQUATE SHELTER, EVIDENCE DEMONSTRATED THE HOME WAS IN DISARRAY BUT NOT THAT IT WAS UNSANITARY OR UNSAFE. [Matter of Majesty M. \(Brandy P.\), 2018 NY Slip Op 07726, Second Dept 11-14-18](#)

FAMILY LAW, EVIDENCE.

FAMILY COURT'S FINDING THAT FREEING THE CHILD FOR ADOPTION WOULD NOT BE IN THE CHILD'S BEST INTERESTS WAS NOT SUPPORTED BY A SOUND AND SUBSTANTIAL BASIS. [Matter of Jasiah T.-V. S.J. \(Joshua W.--Shatesse J.\), 2018 NY Slip Op 08020, Second Dept 11-21-18](#)

FAMILY LAW, IMMIGRATION LAW.

FAMILY COURT SHOULD AMEND ITS ORDER GRANTING A SPECIAL IMMIGRANT JUVENILE STATUS (SIJS) PETITION TO ADDRESS THE REASONS FOR THE REVOCATION OF THE PETITION BY THE US CITIZENSHIP AND IMMIGRATION SERVICES.

[Matter of Argueta v Santos, 2018 NY Slip Op 07424, Second Dept 11-7-18](#)

FAMILY LAW, JUDGES.

FAMILY COURT SHOULD NOT HAVE LEFT SCHEDULING SUPERVISED THERAPEUTIC PARENTAL ACCESS TO THE PARTIES. [Matter of Thomas R.K. v Tamara S.K., 2018 NY Slip Op 07725, Second Dept 11-14-18](#)

FAMILY LAW, JUDGES, APPEALS.

ALTHOUGH FATHER HAD COMPLETED THE PERIOD OF INCARCERATION IMPOSED IN THIS SUPPORT ARREARS PROCEEDING, THE COMMITMENT ORDER IS APPEALABLE BECAUSE OF THE STIGMA ATTACHED TO VIOLATING SUPPORT ALLEGATIONS, ALTHOUGH THE JUDICIAL BIAS ARGUMENT WAS NOT PRESERVED, THE SECOND DEPARTMENT

CONSIDERED THE ISSUE AND REVERSED IN THE INTEREST OF JUSTICE. [Matter of Berg v Berg, 2018 NY Slip Op 07719, Second Dept 11-14-18](#)

FORECLOSURE, CIVIL PROCEDURE.

MOTION TO DISMISS THE COMPLAINT IN THIS FORECLOSURE ACTION FOR FAILURE TO TIMELY SERVE WITHIN THE 120 DAY WINDOW SHOULD HAVE BEEN GRANTED, CRITERIA FOR ALLOWING LATE SERVICE EXPLAINED. [Wells Fargo Bank, NA v Barrella, 2018 NY Slip Op 07486, Second Dept 11-7-18](#)

FORECLOSURE, CIVIL PROCEDURE, JUDGES.

THE DEFENSE OF LACK OF STANDING WAS NOT RAISED IN THE ANSWER AND WAS THEREFORE WAIVED, JUDGE SHOULD NOT HAVE, SUA SPONTE, DISMISSED THE COMPLAINT ON THAT GROUND. [Wells Fargo Bank, N.A. v Halberstam, 2018 NY Slip Op 07485, Second Dept 11-7-18](#)

FORECLOSURE, CONTRACT LAW, EVIDENCE.

PLAINTIFF DID NOT DEMONSTRATE THE CONDITIONS PRECEDENT TO THE ACCELERATION OF THE MORTGAGE DEBT HAD BEEN SATISFIED, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Wilmington Sav. Fund Socy. FSB v Yisroel, 2018 NY Slip Op 08174, Second Dept 11-28-18](#)

FORECLOSURE, JUDGES, CIVIL PROCEDURE.

SUPREME COURT SHOULD NOT HAVE, SUA SPONTE, FOUND THAT A DEFENDANT WHO HAD NOT BEEN SERVED WAS A NECESSARY PARTY AND SHOULD NOT HAVE DISMISSED THE FORECLOSURE ACTION AGAINST OTHER DEFENDANTS ON THAT GROUND. [Aurora Loan Servs., LLC v Moreno, 2018 NY Slip Op 08107, Second Dept 11-28-18](#)

FRAUD, APPEALS.

DAMAGES FOR FRAUD SHOULD HAVE BEEN BASED UPON OUT OF POCKET LOSS, NOT PROFITS THAT WOULD HAVE BEEN EARNED ABSENT THE FRAUD, EVEN THOUGH RESPONDENT WAS ENTITLED TO MORE DAMAGES UNDER THE OUT OF POCKET RULE, NO RELIEF CAN BE AFFORDED TO THE NONAPPEALING PARTY. [Global Granite Sales Corp. v Sabovic, 2018 NY Slip Op 07414, Second Dept 11-7-18](#)

IMMIGRATION LAW, MUNICIPAL LAW, APPEALS, CRIMINAL LAW.

STATE AND LOCAL LAW ENFORCEMENT OFFICERS ARE NOT AUTHORIZED TO EFFECT CIVIL ADMINISTRATIVE ARRESTS PURSUANT TO ICE DETAINERS, IMMIGRATION LAW VIOLATIONS ARE NOT CRIMES, HABEAS CORPUS PETITION GRANTED TO FRANCES, A

CITIZEN OF INDIA WHO WAS HELD IN A COUNTY JAIL OSTENSIBLY PURSUANT TO AN ICE DETAINER, EVEN THOUGH FRANCES IS NO LONGER IN THE CUSTODY OF THE COUNTY, THE PETITIONER'S CIRCUMSTANCE IS LIKELY TO RECUR AND THE APPEAL WAS CONSIDERED AS AN EXCEPTION TO THE MOOTNESS DOCTRINE. [People ex rel. Wells v DeMarco, 2018 NY Slip Op 07740, Second Dept 11-14-18](#)

INSURANCE LAW, LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

ANTISUBROGATION RULE BARRED PLAINTIFF INSURER'S CAUSES OF ACTION, THE UNDERLYING ACTION ALLEGED NEGLIGENCE AND LABOR LAW VIOLATIONS STEMMING FROM A CONSTRUCTION ACCIDENT. [Wausau Underwriters Ins. Co. v Gamma USA, Inc., 2018 NY Slip Op 08055, Second Dept 11-21-18](#)

LABOR LAW-CONSTRUCTION LAW, CIVIL PROCEDURE, WORKERS' COMPENSATION, JUDGES, PERSONAL INJURY.

LABOR LAW 200 CAUSE OF ACTION SHOULD HAVE BEEN DISMISSED BECAUSE DEFENDANT GENERAL CONTRACTOR DID NOT EXERCISE SUPERVISORY CONTROL OVER THE MANNER OF PLAINTIFF'S WORK, SUPREME COURT SHOULD NOT HAVE, SUA SPONTE, DISMISSED CROSS CLAIMS BECAUSE THAT RELIEF WAS NOT REQUESTED, PLAINTIFF'S EMPLOYER WAS NOT ENTITLED TO PROTECTION FROM SUIT UNDER THE WORKERS' COMPENSATION LAW BECAUSE IT DID NOT MAINTAIN A WORKERS' COMPENSATION POLICY. [Poulin v Ultimate Homes, Inc., 2018 NY Slip Op 07468, Second Dept 11-7-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF WAS NOT INVOLVED IN CONSTRUCTION WORK WHEN HE FELL, LABOR LAW 240(1) CAUSE OF ACTION PROPERLY DISMISSED. [Trotman v Verizon Communications, Inc., 2018 NY Slip Op 07483, Second Dept 11-7-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON THE LABOR LAW 240 (1) CAUSE OF ACTION PROPERLY DENIED, PLAINTIFF TESTIFIED OTHER SAFETY DEVICES (LADDERS, SCAFFOLDS) WERE AVAILABLE AND DID NOT DEMONSTRATE HIS ACTIONS WERE NOT THE SOLE PROXIMATE CAUSE OF HIS INJURIES. [Jones v City of New York, 2018 NY Slip Op 07708, Second Dept 11-14-18](#)

LEGAL MALPRACTICE, CIVIL PROCEDURE, ATTORNEYS, NEGLIGENCE.

QUESTION OF FACT WHETHER THE CONTINUOUS REPRESENTATION DOCTRINE TOLLED THE STATUTE OF LIMITATIONS IN THIS LEGAL MALPRACTICE ACTION. [Schrull v Weis, 2018 NY Slip Op 07769, Second Dept 11-14-18](#)

JUDGES, ATTORNEYS, CIVIL PROCEDURE.

COURT SHOULD NOT HAVE ORDERED THE PAYMENT OF ATTORNEY'S FEES FOR FRIVOLOUS CONDUCT WITHOUT ALLOWING THE AFFECTED PARTY TO BE HEARD. [Matter of Garvey v Sullivan, 2018 NY Slip Op 07724, Second Dept 11-14-18](#)

MUNICIPAL LAW, CIVIL RIGHTS LAW, CIVIL PROCEDURE, FALSE ARREST, FALSE IMPRISONMENT, ASSAULT, BATTERY. MALICIOUS PROSECUTION.

NO NOTICE OF CLAIM REQUIRED FOR ALLEGED VIOLATIONS OF 42 USC 1983, STATUTE OF LIMITATIONS EXPIRED ON ASSAULT AND BATTERY, PERMISSION TO FILE LATE NOTICE OF CLAIM ON THE REMAINING STATE CHARGES SHOULD NOT HAVE BEEN GRANTED. [Matter of Nicholson v City of New York, 2018 NY Slip Op 08134, Second Dept 11-28-18](#)

PERSONAL INJURY.

PLAINTIFF ALLEGEDLY TRIPPED AND FELL WHEN SHE CAUGHT HER FOOT UNDER A TIRE-WHEEL STOP IN A PARKING LOT, DEFENDANTS DID NOT DEMONSTRATE WHEN THE WHEEL STOP WAS LAST INSPECTED, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Troina v Canyon Donuts Jericho Turnpike, Inc., 2018 NY Slip Op 07482, Second Dept 11-7-18](#)

PERSONAL INJURY.

DEFENDANT RAISED A QUESTION OF FACT ABOUT WHETHER THERE EXISTS A NONNEGLIGENT EXPLANATION FOR THIS REAR END COLLISION, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Merino v Tessel, 2018 NY Slip Op 07717, Second Dept 11-14-18](#)

PERSONAL INJURY, CIVIL PROCEDURE, ATTORNEYS, EVIDENCE.

WHETHER A CONDITION IS OPEN AND OBVIOUS SPEAKS TO COMPARATIVE NEGLIGENCE, AN OPEN AND OBVIOUS CONDITION CAN BE THE BASIS FOR LIABILITY IF THE CONDITION AMOUNTS TO A TRAP FOR THE UNWARY OR DISTRACTED, MOTION TO SET ASIDE THE VERDICT SHOULD NOT HAVE BEEN GRANTED, MOTION FOR SANCTIONS AGAINST DEFENSE COUNSEL FOR BRINGING THE MOTION TO SET ASIDE SHOULD HAVE BEEN GRANTED. [Cram v Keller, 2018 NY Slip Op 08007, Second Dept 11-21-18](#)

PERSONAL INJURY, CIVIL PROCEDURE, EVIDENCE, APPEALS.

PLAINTIFF'S VERDICT SET ASIDE IN THIS SUBWAY SLIP AND FALL CASE AS AGAINST THE WEIGHT OF THE EVIDENCE, TRIAL EVIDENCE INDICATED COMPARATIVE NEGLIGENCE ON

PLAINTIFF'S PART. [Stallings-Wiggins v New York City Tr. Auth., 2018 NY Slip Op 07774, Second Dept 11-14-18](#)

PERSONAL INJURY, CIVIL PROCEDURE, EVIDENCE.

DEFENDANT HAD PLED GUILTY TO SCALDING A DISABLED CHILD BY BATHING HER IN WATER THAT WAS TOO HOT, AT THE SUBSEQUENT CIVIL TRIAL DEFENDANT WAS ALLOWED TO CROSS-EXAMINE PLAINTIFF'S EXPERTS ABOUT THE EVIDENCE THAT THE CHILD SUFFERED AN ALLERGIC REACTION AND HAD NOT BEEN SCALDED, THE DEFENSE VERDICT WAS AFFIRMED, PLAINTIFF'S MOTION IN LIMINE REQUESTING THAT THE GUILTY PLEA BE GIVEN COLLATERAL ESTOPPEL EFFECT AND THAT THE PLAINTIFF BE PRECLUDED FROM PRESENTING EVIDENCE OF THE ALLERGIC REACTION WAS ACTUALLY AN UNTIMELY SUMMARY JUDGMENT MOTION, DESPITE SUPREME COURT'S GRANTING OF THE MOTION, THE DEFENSE VERDICT MAKES ANY FURTHER CONSIDERATION OF THE ERROR UNNECESSARY. [Farias-Alvarez v Interim Healthcare of Greater N.Y., 2018 NY Slip Op 08115, Second Dept 11-28-18](#)

PERSONAL INJURY, CIVIL PROCEDURE, JUDGES.

THE REAR-END CHAIN-REACTION ACCIDENT OCCURRED IN PENNSYLVANIA BUT ALL PARTIES RESIDED IN NEW YORK, SUPREME COURT SHOULD NOT HAVE, SUA SPONTE, DETERMINED THAT PENNSYLVANIA LAW APPLIED, BECAUSE THE PARTIES DID NOT RAISE THE CHOICE OF LAW ISSUE THEY ARE DEEMED TO HAVE CONSENTED TO THE APPLICABILITY OF NEW YORK LAW. [Abdou v Malone, 2018 NY Slip Op 08106, Second Dept 11-28-18](#)

PERSONAL INJURY, CONTRACT LAW.

CONSTRUCTIVE NOTICE OF LIQUID ON THE FLOOR IN THIS SLIP AND FALL CASE NOT DEMONSTRATED WITH RESPECT TO THE BUILDING OWNER, NO ESPINAL FACTORS ALLEGED WITH RESPECT TO THE CLEANING SERVICE, DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Hagan v City of New York, 2018 NY Slip Op 07415, Second Dept 11-7-18](#)

PERSONAL INJURY, EDUCATION-SCHOOL LAW.

INFANT PLAINTIFF WAS INJURED DURING RECESS WHEN, PLAYING FOOTBALL OUTSIDE THE DESIGNATED FOOTBALL AREA, HE DOVE FOR THE BALL AND STRUCK A PIECE OF PLAYGROUND EQUIPMENT, THE SCHOOL DISTRICT'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [M.P. v Mineola Union Free Sch. Dist., 2018 NY Slip Op 08119, Second Dept 11-28-18](#)

PERSONAL INJURY, EDUCATION-SCHOOL LAW, EVIDENCE.

NEITHER THE LEVEL OF PLAYGROUND SUPERVISION NOR THE PLAYGROUND EQUIPMENT CONSTITUTED THE PROXIMATE CAUSE OF INFANT PLAINTIFF'S FALL, PLAINTIFFS' EXPERT DID NOT DEMONSTRATE EXPERTISE RE: PLAYGROUND EQUIPMENT, THE SCHOOL DISTRICT'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Ponzini v Sag Harbor Union Free Sch. Dist., 2018 NY Slip Op 08046, Second Dept 11-21-18](#)

PERSONAL INJURY, EVIDENCE.

QUESTION OF FACT WHETHER THE ABSENCE OF A SECOND HANDRAIL, A VIOLATION OF THE BUILDING CODE, WAS A PROXIMATE CAUSE OF PLAINTIFF'S SLIP AND FALL IN A STAIRWAY, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Rakovsky v Rob-Lee Corp., 2018 NY Slip Op 07471, Second Dept 11-7-18](#)

PERSONAL INJURY, EVIDENCE.

QUESTION OF FACT WHETHER DEFENDANT WAS NEGLIGENT IN THIS REAR END COLLISION CASE, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Richter v Delutri, 2018 NY Slip Op 07475, Second Dept 11-7-18](#)

PERSONAL INJURY, EVIDENCE.

A METAL PROTRUSION IN A PARKING LOT MEASURING AN INCH OR LESS WAS A NON-ACTIONABLE TRIVIAL DEFECT, SUPREME COURT REVERSED. [Easley v U Haul, 2018 NY Slip Op 08008, Second Dept 11-21-18](#)

PERSONAL INJURY, MEDICAL MALPRACTICE, MUNICIPAL LAW, EVIDENCE.

WHERE MALPRACTICE IS APPARENT FROM AN INDEPENDENT REVIEW OF MEDICAL RECORDS, THOSE RECORDS CONSTITUTE TIMELY NOTICE OF THE FACTS CONSTITUTING THE CLAIM, PLAINTIFF'S MOTION FOR LEAVE TO FILE A LATE NOTICE OF CLAIM PROPERLY GRANTED. [Ballantine v Pine Plains Hose Co., Inc., 2018 NY Slip Op 07697, Second Dept 11-14-18](#)

PRODUCTS LIABILITY, PERSONAL INJURY, CIVIL PROCEDURE, EVIDENCE.

VEHICLE SOFT CLOSE AUTOMATIC DOOR CLOSING MECHANISM WAS REPLACED AND DESTROYED AFTER PLAINTIFF'S FINGER WAS ALLEGEDLY CRUSHED WHEN THE DOOR ON THE VAN CLOSED, PROPER SANCTION FOR SPOILIATION IS AN ADVERSE INFERENCE JURY INSTRUCTION. [Richter v BMW of N. Am., LLC, 2018 NY Slip Op 08163, Second Dept 11-28-18](#)

REAL PROPERTY LAW, ATTORNEYS.

CRITERIA FOR INTERPRETING AN EXPRESS EASEMENT AND A PRESCRIPTIVE EASEMENT EXPLAINED, PARTY PROPERLY SANCTIONED FOR COUNSEL'S FILING AN AMENDED COMPLAINT DIFFERENT FROM THE COMPLAINT APPROVED BY THE COURT. [DiDonato v Dyckman, 2018 NY Slip Op 08113, Second Dept 11-28-18](#)

REAL ESTATE, CONTRACT LAW, EVIDENCE.

REAL ESTATE PURCHASE CONTRACT, ALTHOUGH MISSING SOME TERMS, SATISFIED THE STATUTE OF FRAUDS, SUMMARY JUDGMENT ON THE SPECIFIC PERFORMANCE ACTION, HOWEVER, SHOULD NOT HAVE BEEN GRANTED, PLAINTIFF FAILED TO DEMONSTRATE THE FINANCIAL ABILITY TO CLOSE ON THE LAW DATE.. [O'Hanlon v Renwick, 2018 NY Slip Op 08027, Second Dept 11-21-18](#)

REAL PROPERTY LAW, TRUSTS AND ESTATES.

DECEDENT DIED INTESTATE, COTENANTS' INTERESTS IN THE REAL PROPERTY VESTED UPON DEATH, COTENANTS COULD THEREFORE CONVEY THEIR INTERESTS IN THE PROPERTY, SURROGATE'S COURT SHOULD NOT HAVE SET ASIDE DEEDS. [Matter of Blango, 2018 NY Slip Op 07721, Second Dept 11-14-18](#)

RELIGION, CONSTITUTIONAL LAW, CIVIL PROCEDURE.

DISPUTE BETWEEN THE CHURCH AND THE NUN WHO WAS DEFROCKED AND EJECTED FROM THE CONVENT IS NOT JUSTICIABLE IN NEW YORK COURTS UNDER THE FIRST AMENDMENT. [Russian Orthodox Convent Novo-Diveevo, Inc. v Sukharevskaya, 2018 NY Slip Op 08167, Second Dept 11-28-18](#)

SOCIAL SERVICES LAW, MUNICIPAL LAW, CONSTITUTIONAL LAW, EVIDENCE.

PETITIONER'S PUBLIC ASSISTANCE BENEFITS SHOULD NOT HAVE BEEN TERMINATED, NOTICE DID NOT SPECIFY SPECIFIC INSTANCES OF A FAILURE TO COOPERATION WITH EMPLOYMENT TRAINING AND SOME EVIDENCE PRESENTED AT THE HEARING WAS NOT INCLUDED IN THE NOTICE, PETITIONER'S DUE PROCESS RIGHTS WERE VIOLATED. [Matter of Pearl v Imhof, 2018 NY Slip Op 08024, Second Dept 11-21-18](#)

TRUSTS AND ESTATES, CIVIL PROCEDURE, APPEALS.

PETITIONER WAS A PARTY ALONG WITH DECEDENT IN SEVERAL ACTIONS WHICH RESULTED IN PENDING APPEALS, PETITIONER THEREFORE HAD STANDING TO SEEK THE APPOINTMENT OF AN ADMINISTRATOR OF THE ESTATE OF THE DECEDENT, SURROGATE'S COURT REVERSED." [Matter of Quinn, 2018 NY Slip Op 07433, Second Dept 11-7-18](#)

WORKERS' COMPENSATION, EMPLOYMENT LAW, CIVIL PROCEDURE.

WHERE THERE IS A QUESTION OF FACT WHETHER THE INJURED PLAINTIFF'S EXCLUSIVE REMEDY IS WORKERS' COMPENSATION BECAUSE THERE IS A QUESTION OF FACT WHETHER PLAINTIFF WAS AN EMPLOYEE OR AN INDEPENDENT CONTRACTOR, THE ISSUE MUST FIRST BE DECIDED BY THE WORKERS' COMPENSATION BOARD, NOT THE COURTS. [Findlater v Catering by Michael Schick, Inc., 2018 NY Slip Op 07702, Second Dept 11-14-18](#)

ZONING, LAND USE, ADMINISTRATIVE LAW, EVIDENCE.

DENIAL OF SPECIAL USE PERMIT FOR A GAS STATION WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE. [Matter of QuickChek Corp. v Town of Islip, 2018 NY Slip Op 08136, Second Dept 11-28-18](#)

THIRD DEPARTMENT

ADMINISTRATIVE LAW, UTILITIES.

NYS PUBLIC SERVICE COMMISSION PROPERLY IMPOSED A MORATORIUM ON ENERGY SERVICE COMPANIES' ENROLLMENTS AND RENEWALS OF CUSTOMERS WHO PARTICIPATE IN UTILITY LOW INCOME ASSISTANCE PROGRAMS AS PART OF ITS AUTHORITY TO MAKE SURE LOW INCOME CUSTOMERS ARE NOT CHARGED MORE THAN THEY WOULD HAVE BEEN HAD THEY JUST USED A UTILITY. [Matter of National Energy Marketers Assn. v New York State Pub. Serv. Commn., 2018 NY Slip Op 07378, Third Dept 11-1-18](#)

CIVIL PROCEDURE.

THE PHRASE 'WITHIN FIVE DAYS' IN CPLR 511, A CHANGE OF VENUE STATUTE, DOES NOT IMPOSE A WAITING PERIOD FOR A MOTION TO CHANGE VENUE, THE MOTION MAY BE MADE WITHIN THE FIVE DAYS. [Matter of Aaron v Steele, 2018 NY Slip Op 07393, Third Dept 11-1-18](#)

CRIMINAL LAW

UNLIKE AN INDICTMENT, A WAIVER OF INDICTMENT MUST INCLUDE THE APPROXIMATE TIME OF THE OFFENSE, THE WAIVER HERE INCLUDED ONLY THE DAY OF THE OFFENSE AND WAS THEREFORE INVALID. [People v Busch-Scardino, 2018 NY Slip Op 07979, Third Dept 11-21-18](#)

CRIMINAL LAW, APPEALS.

GUILTY PLEA VACATED IN THE INTEREST OF JUSTICE, NO SHOWING DEFENDANT UNDERSTOOD THE RIGHTS HE WAS WAIVING BY ENTERING THE PLEA. [People v Simon, 2018 NY Slip Op 07370, Third Dept 11-1-18](#)

CRIMINAL LAW, APPEALS.

DURING THE PLEA COLLOQUY DEFENDANT NEGATED AN ELEMENT OF THE CRIME AND THE COURT DID NOT CONDUCT FURTHER INQUIRY, THE ERROR NEED NOT BE PRESERVED FOR CONSIDERATION ON APPEAL, PLEA VACATED. [People v Brassard, 2018 NY Slip Op 07978, Third Dept 11-21-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

RESISTING ARREST COUNT RENDERED DUPLICITOUS BY TRIAL TESTIMONY, UNPRESERVED ERROR CONSIDERED IN THE INTEREST OF JUSTICE, RESISTING ARREST CONVICTION REVERSED. [People v Hilton, 2018 NY Slip Op 07981, Third Dept 11-21-18](#)

CRIMINAL LAW, ATTORNEYS.

DEFENSE COUNSEL APOLOGIZED TO COUNTY COURT AND INDICATED DEFENSE COUNSEL'S BEHAVIOR MAY HAVE CAUSED THE PEOPLE TO HAVE WITHDRAWN A MORE FAVORABLE PLEA OFFER, COUNTY COURT SHOULD HAVE ASSIGNED SUBSTITUTE COUNSEL AND SHOULD HAVE CONDUCTED AN INQUIRY TO DETERMINE WHETHER THE PEOPLE SHOULD BE COMPELLED TO REOFFER THE PRIOR PLEA DEAL. [People v McGee, 2018 NY Slip Op 08203, Third Dept 11-29-18](#)

CRIMINAL LAW, EVIDENCE, ATTORNEYS.

THERE ARE QUESTIONS OF FACT WHETHER DEFENSE COUNSEL CONSENTED TO ADJOURNMENTS, DEFENDANT'S MOTION TO SET ASIDE HIS CONVICTION ALLEGING INEFFECTIVE ASSISTANCE IN THAT DEFENSE COUNSEL DID NOT MOVE TO DISMISS THE INDICTMENT ON SPEEDY TRIAL GROUNDS SHOULD NOT HAVE BEEN DENIED WITHOUT A HEARING. [People v Matteson, 2018 NY Slip Op 07976, Third Dept 11-21-18](#)

CRIMINAL LAW, EVIDENCE, ATTORNEYS, AGENCY.

DEPARTMENT OF CORRECTIONAL SERVICES (DOCS) PERSONNEL WERE NOT ACTING AS AGENTS FOR THE POLICE WHEN INVESTIGATING THE PRISON KILLING WITH WHICH DEFENDANT WAS CHARGED, THEREFORE THE PROSECUTOR WAS NOT OBLIGATED TO LEARN ABOUT AND TURN OVER TO THE DEFENSE ANY ALLEGED EXCULPATORY EVIDENCE TURNED UP IN THE DOCS INVESTIGATION. [People v Lewis, 2018 NY Slip Op 07980, Third Dept 11-21-18](#)

CRIMINAL LAW, EVIDENCE, CONSTITUTIONAL LAW.

THE PEOPLE OPENED THE DOOR AT TRIAL CREATING THE NEED FOR DEFENDANT TO CALL AN ALIBI WITNESS FOR WHOM THE DEFENDANT HAD NOT SERVED A NOTICE, THE DENIAL OF THE REQUEST IMPLICATED THE COMPULSORY PROCESS CLAUSE OF THE SIXTH AMENDMENT AND CONSTITUTED REVERSIBLE ERROR. [People v Perkins, 2018 NY Slip Op 07972, Third Dept 11-21-18](#)

CRIMINAL LAW, IMMIGRATION LAW, ATTORNEYS.

DEFENDANT ENTITLED TO A HEARING ON HIS MOTION TO VACATE HIS CONVICTION ON INEFFECTIVE ASSISTANCE GROUNDS, DEFENDANT ALLEGED HE WAS NOT INFORMED OF THE DEPORTATION CONSEQUENCES OF HIS MARIJUANA CONVICTION. [People v Blackman, 2018 NY Slip Op 07982, Third Dept 11-21-18](#)

DISCIPLINARY HEARINGS (INMATES), EVIDENCE.

INSUFFICIENT EVIDENCE CONNECTING THE INMATE TO THE DOCUMENTS CONTAINING GANG RELATED INFORMATION, MISBEHAVIOR DETERMINATION ANNULLED. [Matter of Telesford v Annucci, 2018 NY Slip Op 07397, Third Dept 11-1-18](#)

EDUCATION-SCHOOL LAW, ADMINISTRATIVE LAW.

AFTER REVERSAL BY THE COURT OF APPEALS, THE EXPULSION OF PETITIONER STUDENT FOR SEXUAL MISCONDUCT IN VIOLATION OF THE COLLEGE'S STUDENT CODE CONFIRMED, COLLEGE APPEALS BOARD HAD THE POWER TO IMPOSE ANY AVAILABLE REMEDY INCLUDING EXPULSION. [Matter of Haug v State Univ. of N.Y. At Potsdam, 2018 NY Slip Op 08208, Third Dept 11-29-18](#)

FAMILY LAW, APPEALS.

APPEAL RENDERED MOOT BY THE RETURN OF THE CHILD IN THIS CHILD NEGLECT - TEMPORARY REMOVAL PROCEEDING AND THE EXCEPTION TO THE MOOTNESS DOCTRINE DID NOT APPLY, TWO JUSTICE DISSENT ARGUED A NOVEL ISSUE HAD BEEN RAISED CONCERNING CONSENT TO THE TEMPORARY REMOVAL AND THE EXCEPTION TO THE MOOTNESS DOCTRINE WAS APPLICABLE. [Matter of Tyrell FF. \(Jaquasisa GG.\), 2018 NY Slip Op 07985, Third Dept 11-21-18](#)

FAMILY LAW, ATTORNEYS.

FATHER DENIED HIS RIGHT TO COUNSEL IN THIS MODIFICATION OF CUSTODY PROCEEDING. [Matter of DeMun v DeMun, 2018 NY Slip Op 07987, Third Dept 11-21-18](#)

FAMILY LAW, ATTORNEYS.

CHILD DID NOT RECEIVE EFFECTIVE ASSISTANCE OF COUNSEL, MOTHER SOUGHT A MODIFICATION OF VISITATION WITH FATHER BASED UPON THE CHILD'S REACTIONS TO VISITS WITH FATHER, THE ATTORNEY FOR THE CHILD DID NOT MAKE A SUFFICIENT RECORD ON THE RELEVANT ISSUES THROUGH QUESTIONING THE CHILD AND CROSS-EXAMINING MOTHER. [Matter of Payne v Montano, 2018 NY Slip Op 07990, Third Dept 11-21-18](#)

FAMILY LAW, ATTORNEYS, CRIMINAL LAW.

RESPONDENT WAS NOT AFFORDED EFFECTIVE ASSISTANCE OF COUNSEL IN THIS FAMILY OFFENSE PROCEEDING, DEFENSE COUNSEL DID ALMOST NOTHING TO ASSIST HIS CLIENT, FINDINGS AND ORDER OF PROTECTION REVERSED. [Matter of Wood v Rebich, 2018 NY Slip Op 08213, Third Dept 11-29-18](#)

FAMILY LAW, EVIDENCE.

TERMINATION OF FATHER'S VISITATION RIGHTS WAS NOT SUPPORTED BY A SOUND AND SUBSTANTIAL BASIS IN THE RECORD, WHICH INCLUDED HEARSAY. [Matter of Boisvenue v Gamboa, 2018 NY Slip Op 08211, Third Dept 11-29-18](#)

FAMILY LAW, EVIDENCE.

FAMILY COURT'S CONCLUSIONS IN THIS CUSTODY MATTER WERE NOT SUPPORTED BY THE RECORD, MATTER REMITTED FOR PROCEEDINGS BEFORE A DIFFERENT JUDGE. [Matter of Shirreece AA. v Matthew BB., 2018 NY Slip Op 08215, Third Dept 11-29-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

STACKED SHEETROCK DID NOT PRESENT AN ELEVATION RELATED HAZARD AND DID NOT BLOCK A PASSAGEWAY, DEFENDANTS DID NOT EXERCISE CONTROL OVER THE STACKING OF THE SHEETROCK, LABOR LAW 240 (1), 241 (6), 200 AND COMMON LAW NEGLIGENCE CAUSES OF ACTION PROPERLY DISMISSED. [Wiley v Marjam Supply Co., Inc., 2018 NY Slip Op 07381, Third Dept 11-1-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF WAS ENTITLED TO SUMMARY JUDGMENT ON HIS LABOR LAW 240 (1) CAUSE OF ACTION DESPITE FALLING FROM AN UNSAFE MAKESHIFT PLATFORM MADE BY THE PLAINTIFF. [Cooper v Delliveneri, 2018 NY Slip Op 07396, Third Dept 11-1-18](#)

LIEN LAW.

THE LIEN LAW DOES NOT PROVIDE THAT A TOWING COMPANY STORING A CAR PURSUANT TO A POLICE IMPOUND HAS THE RIGHT TO DEMAND A RELEASE FROM THE POLICE DEPARTMENT AND A HOLD HARMLESS AGREEMENT BEFORE RELEASING THE CAR, THE CAR SHOULD HAVE BEEN RELEASED WHEN PETITIONER FIRST REQUESTED IT, IN ADDITION, THE \$50 A DAY STORAGE FEE IS EXCESSIVE. [Matter of Ally Fin., Inc v All County Towing & Recovery, 2018 NY Slip Op 08223, Third Dept 11-29-18](#)

MUNICIPAL LAW, ENVIRONMENTAL LAW, EMPLOYMENT LAW.

BUILDING INSPECTOR WAS PROPERLY TERMINATED FOR FAILURE TO REQUIRE ASBESTOS ABATEMENT FOR A DEMOLISHED BUILDING, BECAUSE THE ACTIONS OF THE INSPECTOR CONSTITUTED CRIMES UNDER THE ENVIRONMENTAL CONSERVATION LAW AND PENAL LAW, THE EMPLOYMENT-RELATED CHARGES WERE TIMELY. [Matter of Snowden v Village of Monticello, 2018 NY Slip Op 08226, Third Dept 11-29-18](#)

SOCIAL SERVICES LAW, ARBITRATION, CIVIL PROCEDURE.

COLLATERAL ESTOPPEL APPLIED TO THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES' (OPWDD'S) ARBITRATION PROCEEDINGS WHICH FOUND PETITIONER WAS NOT GUILTY OF SUPPLYING MARIJUANA TO A RESIDENT OF A GROUP HOME FOR PERSONS WITH DEVELOPMENTAL DISABILITIES, THE SUBSEQUENT PROCEEDINGS BY THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS WERE BOUND BY THE FINDINGS OF THE OPWDD ARBITRATION. [Matter of Anonymous v New York State Justice Ctr. for The Protection of People With Special Needs, 2018 NY Slip Op 07996, Third Dept 11-21-18](#)

TRUSTS AND ESTATES, FIDUCIARY DUTY.

ONLY SERIOUS MISCONDUCT, NOT CONFLICTS OF INTEREST, JUSTIFIES REMOVAL OF NAMED EXECUTORS, SURROGATE'S COURT REVERSED, MATTER SENT BACK FOR A HEARING. [Matter of Bolen, 2018 NY Slip Op 08001, Third Dept 11-21-18](#)

UNEMPLOYMENT INSURANCE.

LIMOUSINE DRIVER WAS AN EMPLOYEE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS. [Matter of Jung Yen Tsai \(XYZ Two Way Radio Serv., Inc.--Commissioner of Labor\), 2018 NY Slip Op 07807, Third Dept 11-15-18](#)

WORKERS' COMPENSATION.

NEW YORK WORKERS' COMPENSATION TREATMENT GUIDELINES APPLY TO CLAIMANTS WHO HAVE MOVED TO AND ARE TREATED IN OTHER STATES. [Matter of Gasparro v Hospice of Dutchess County, 2018 NY Slip Op 07815, Third Dept 11-15-18](#)

WORKERS' COMPENSATION.

IN ORDER FOR THE INJURED RAILROAD WORKER TO BE ELIGIBLE FOR WORKERS' COMPENSATION LAW BENEFITS, ALL PARTIES WOULD HAVE TO WAIVE FEDERAL JURISDICTION UNDER THE FEDERAL EMPLOYER'S LIABILITY ACT (FELA), MATTER SENT BACK. [Matter of McCray v CTS Enters., Inc., 2018 NY Slip Op 07997, Third Dept 11-21-18](#)

WORKERS' COMPENSATION, ATTORNEYS, EVIDENCE.

THE COMMUNICATION BETWEEN CLAIMANT'S ATTORNEY AND THE INDEPENDENT MEDICAL EXAMINER DID NOT CREATE THE APPEARANCE OF IMPROPRIETY, THE INDEPENDENT MEDICAL EXAMINER'S REPORT AND TESTIMONY SHOULD NOT HAVE BEEN PRECLUDED. [Matter of Knapp v Bette & Cring LLC, 2018 NY Slip Op 08218, Third Dept 11-29-18](#)

WORKERS' COMPENSATION, EMPLOYMENT LAW.

CLAIMANT LEFT HIS EMPLOYER'S FARM BRIEFLY USING HIS EMPLOYER'S ATV AND WAS STRUCK BY A VEHICLE WHEN HE ATTEMPTED TO RETURN TO THE FARM, THERE WAS EVIDENCE CLAIMANT CONSUMED ALCOHOL WHICH WAS PROHIBITED BY HIS EMPLOYER, CLAIMANT'S INJURIES DID NOT ARISE FROM HIS EMPLOYMENT, WORKER'S COMPENSATION CLAIM PROPERLY DENIED. [Matter of Button v Button, 2018 NY Slip Op 07809, Third Dept 11-15-18](#)

FOURTH DEPARTMENT

APPEALS, CIVIL PROCEDURE, ATTORNEYS.

APPEAL DISMISSED BECAUSE IT WAS FROM A STIPULATION ENTERED BY CONSENT, IT WAS NOT FROM AN APPEALABLE ORDER UNDER CPLR 5701, AND THE ISSUES COULD HAVE BEEN RAISED IN A PRIOR APPEAL, COUNSEL SHOULD HAVE NOTIFIED THE COURT OF THE PRIOR DISMISSED APPEAL. [Dumond v New York Cent. Mut. Fire Ins. Co., 2018 NY Slip Op 07853, Fourth Dept 11-16-18](#)

CIVIL PROCEDURE, LABOR LAW-CONSTRUCTION LAW, JUDGES.

MOTION SEEKING SUMMARY JUDGMENT ON THE LABOR LAW 241 (6) CAUSE OF ACTION ON ONE GROUND DID NOT JUSTIFY, SUA SPONTE, SEARCHING THE RECORD AND GRANTING SUMMARY JUDGMENT ON A GROUND NOT RAISED IN THE MOTION PAPERS. [Lord v Whelan & Curry Constr. Servs., Inc., 2018 NY Slip Op 07563, Fourth Dept 11-9-18](#)

CRIMINAL LAW.

DENIAL OF YOUTHFUL OFFENDER TREATMENT WAS NOT AN ABUSE OF DISCRETION, 35-YEAR SENTENCE WAS HARSH AND EXCESSIVE. [People v Jones, 2018 NY Slip Op 07556, Fourth Dept 11-9-18](#)

CRIMINAL LAW.

PEOPLE DID NOT PROVIDE A SUFFICIENT RACE-NEUTRAL REASON FOR STRIKING AN AFRICAN-AMERICAN JUROR, CONVICTION REVERSED. [People v Davis, 2018 NY Slip Op 07569, Fourth Dept 11-9-18](#)

CRIMINAL LAW.

DEFENDANT WAS NOT INFORMED OF THE POSTRELEASE SUPERVISION ASPECT OF HIS SENTENCE, PLEA VACATED.. [People v Hemingway, 2018 NY Slip Op 07587, Fourth Dept 11-9-18](#)

CRIMINAL LAW, APPEALS.

DEFENDANT SHOULD NOT HAVE BEEN SENTENCED AS A SECOND FELONY OFFENDER BECAUSE THE PENNSYLVANIA BURGLARY WAS NOT THE EQUIVALENT OF A NEW YORK FELONY, ALTHOUGH THE ERROR WAS NOT PRESERVED THE ISSUE WAS CONSIDERED IN THE INTEREST OF JUSTICE. [People v Funk, 2018 NY Slip Op 07558, Fourth Dept 11-9-18](#)

CRIMINAL LAW, APPEALS.

DEFENDANT'S STATEMENT DURING THE PLEA ALLOCUTION RAISED A VIABLE AFFIRMATIVE DEFENSE WHICH REQUIRED FURTHER INQUIRY BY THE JUDGE, ERROR IS A RARE EXCEPTION TO THE PRESERVATION REQUIREMENT. [People v Rosario, 2018 NY Slip Op 07564, Fourth Dept 11-9-18](#)

CRIMINAL LAW, EVIDENCE.

AGENT FOR US CUSTOMS WAS NOT ACTING AS A PEACE OFFICER WHEN HE EFFECTED A VEHICLE STOP AND DID NOT EFFECT A VALID CITIZEN'S ARREST, THEREFORE THE MOTION TO SUPPRESS THE FIREARM FOUND IN THE VEHICLE WAS PROPERLY GRANTED. [People v Page, 2018 NY Slip Op 07552, Fourth Dept 11-9-18](#)

CRIMINAL LAW, EVIDENCE.

POLICE OFFICER'S SENDING A TEXT TO DEFENDANT'S PHONE FROM A NUMBER USED TO COMMUNICATE WITH THE VICTIM, AND OBSERVING THE ARRIVAL OF A TEXT ON DEFENDANT'S PHONE SHORTLY THEREAFTER, DID NOT VIOLATE THE US SUPREME COURT'S RULING IN *RILEY* REQUIRING A WARRANT FOR A CELL PHONE SEARCH. [People v Hackett, 2018 NY Slip Op 07557, Fourth Dept 11-9-18](#)

CRIMINAL LAW, EVIDENCE.

DEFENDANT SHOULD HAVE BEEN ALLOWED TO PRESENT EVIDENCE OF A WITNESS'S MOTIVE TO LIE, PROMPT OUTCRY EVIDENCE SHOULD NOT HAVE INCLUDED THE IDENTITY OF THE ASSAILANT, CONVICTION REVERSED. [People v Vo, 2018 NY Slip Op 07909, Fourth Dept 11-16-18](#)

CRIMINAL LAW, EVIDENCE.

FOUR TRAMADOL PILLS DID NOT CONSTITUTE DANGEROUS CONTRABAND, PROMOTING PRISON CONTRABAND FIRST DEGREE REDUCED TO SECOND DEGREE. [People v Flagg, 2018 NY Slip Op 07849, Fourth Dept \(11-16-18](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA). ADMINISTRATIVE LAW.

STATUTE PROHIBITING LEVEL THREE SEX OFFENDERS FROM ENTERING SCHOOL GROUNDS APPLIES TO ALL LEVEL THREE OFFENDERS, NOT ONLY THOSE INCARCERATED FOR AN ENUMERATED SEX CRIME AT THE TIME OF THEIR RELEASE ON PAROLE, HERE THE PETITIONER HAD PREVIOUSLY BEEN ADJUDICATED A LEVEL THREE SEX OFFENDER BUT WAS BEING PAROLED AFTER INCARCERATION FOR A ROBBERY CONVICTION. [People ex rel. Garcia v Annucci, 2018 NY Slip Op 07868, Fourth Dept 11-16-18](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA), ATTORNEYS, APPEALS, CORRECTION LAW.

DEFENSE COUNSEL WROTE A LETTER TO THE COURT STATING THAT DEFENDANT'S PETITION FOR A DOWNWARD MODIFICATION OF HIS SORA RISK LEVEL LACKED MERIT, WHICH CONSTITUTED INEFFECTIVE ASSISTANCE, APPEAL OF THE DENIAL OF THE PETITION IS PURSUANT TO CPLR 5701, NOT CPL 450.10, THE CORRECTION LAW ALLOWS SUCH A PETITION ONCE A YEAR. [People v Griffith, 2018 NY Slip Op 07579, Fourth Dept 11-9-18](#)

FAMILY LAW.

FATHER'S PETITION TO MODIFY SUPPORT SHOULD HAVE BEEN GRANTED, ALTHOUGH FATHER VOLUNTARILY LEFT A BETTER PAYING JOB IN VIRGINIA, HE DID SO TO BE NEARER TO HIS SON WHO HAD MOVED WITH MOTHER TO NEW YORK FROM VIRGINIA. [Matter of Parmenter v Nash, 2018 NY Slip Op 07553, Fourth Dept 11-9-18](#)

FAMILY LAW, APPEALS.

FAMILY COURT DID NOT MAKE FACTUAL FINDINGS IN SUPPORT OF ITS GRANT OF SOLE CUSTODY, MATTER REMITTED. [Matter of Brown v Orr, 2018 NY Slip Op 07905, Fourth Dept 11-16-28](#)

FAMILY LAW, ATTORNEYS.

FATHER DEPRIVED OF HIS RIGHT TO COUNSEL IN THIS MAINTENANCE AND SUPPORT ARREARS PROCEEDING, SUPREME COURT REVERSED. [Villella v Villella, 2018 NY Slip Op 07917, Fourth Dept 11-16-18](#)

FORECLOSURE, BANKING LAW.

PLAINTIFF BANK DID NOT MEET FACE TO FACE WITH DEFENDANT BEFORE THREE MONTHLY MORTGAGE PAYMENTS WERE MISSED, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IN THIS FORECLOSURE ACTION SHOULD NOT HAVE BEEN GRANTED. [Bank of Am., N.A. v Spencer, 2018 NY Slip Op 07573, Fourth Dept 11-9-18](#)

INSURANCE LAW.

FAILURE OF NO-FAULT BENEFIT ASSIGNEE TO APPEAR AT EXAMINATIONS UNDER OATH (EUO'S) REQUESTED BY THE CARRIER IS NOT A DEFENSE TO THE CARRIER'S OBLIGATION TO PAY THE NO-FAULT CLAIMS WHERE COVERAGE HAS NOT BEEN TIMELY DENIED. [Nationwide Affinity Ins. Co. of Am. v Jamaica Wellness Med., P.C., 2018 NY Slip Op 07850, Fourth Dept 11-16-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

DEFENDANTS DID NOT EXERCISE SUPERVISORY CONTROL OVER THE MEANS AND MANNER OF PLAINTIFF'S WORK. LABOR LAW 200 AND COMMON LAW NEGLIGENCE CAUSES OF ACTION PROPERLY DISMISSED. [Anderson v National Grid USA Serv. Co., 2018 NY Slip Op 07572, Fourth Dept 11-9-18](#)

MENTAL HYGIENE LAW, CRIMINAL LAW, APPEALS, EVIDENCE.

PETITIONER SEX OFFENDER HAD THE RIGHT TO APPEAL FROM A RULING WHICH GRANTED RELIEF REQUESTED IN THE ALTERNATIVE BUT DENIED THE MORE COMPLETE RELIEF REQUESTED, EVIDENCE SUPPORTED FINDING THAT PETITIONER SUFFERED FROM A MENTAL ABNORMALITY AND REQUIRED A REGIMEN OF STRICT AND INTENSIVE SUPERVISION AND TREATMENT (SIST). [Matter of Luis S. v State of New York, 2018 NY Slip Op 07852, Fourth Dept 11-16-18](#)

PERSONAL INJURY, EMPLOYMENT LAW, BATTERY.

EMPLOYEE WAS NOT ACTING WITHIN THE SCOPE OF HER EMPLOYMENT WHEN SHE ASSAULTED PLAINTIFF IN THE EMPLOYER'S PARKING LOT, SUMMARY JUDGMENT IN THIS THIRD PARTY ASSAULT CASE PROPERLY GRANTED. [Stribing v Bill Gray's Inc., 2018 NY Slip Op 07566, Fourth Dept 11-9-18](#)

PERSONAL INJURY, EVIDENCE.

EVIDENCE OF ROUTINE MAINTENANCE OF THE PARKING LOT WHERE PLAINTIFF ALLEGEDLY FELL, I.E. EVIDENCE OF HABIT, PROPERLY ADMITTED IN THIS ICE AND SNOW SLIP AND FALL CASE. [Rozier v BTNH, Inc., 2018 NY Slip Op 07575, Fourth Dept 11-9-18](#)

PERSONAL INJURY, MUNICIPAL LAW, VEHICLE AND TRAFFIC LAW.

POLICE OFFICER TOOK PRECAUTIONS BEFORE ATTEMPTING A U-TURN TO PURSUE A SUSPECT AND COLLIDING WITH PLAINTIFF'S VEHICLE, MOMENTARY JUDGMENT LAPSE DOES NOT MEET RECKLESS DISREGARD STANDARD, CITY'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Flood v City of Syracuse, 2018 NY Slip Op 07869, Fourth Dept 11-16-18](#)

PERSONAL INJURY, MUNICIPAL LAW, VEHICLE AND TRAFFIC LAW.

TOWN'S MOTION FOR SUMMARY JUDGMENT IN THIS SNOWPLOW TRAFFIC ACCIDENT CASE SHOULD HAVE BEEN GRANTED, PLAINTIFF DID NOT RAISE A QUESTION OF FACT ABOUT WHETHER THE SNOWPLOW OPERATOR'S ACTIONS ROSE TO THE RECKLESS DISREGARD STANDARD IN THE VEHICLE AND TRAFFIC LAW. [Clark v Town of Lyonsdale, 2018 NY Slip Op 07870, Fourth Dept 11-16-18](#)

PERSONAL INJURY, PRODUCTS LIABILITY.

OWNER OF THE FARM AND HAY CONVEYOR OWED A DUTY OF CARE TO PLAINTIFF WHO WAS INJURED BY THE CONVEYOR, LICENSEES USING THE CONVEYOR ON OWNER'S LAND DID NOT OWE A DUTY OF CARE TO PLAINTIFF, WHO WAS A VOLUNTEER HELPING THE LICENSEES. [Breau v Burdick, 2018 NY Slip Op 07851, Fourth Dept 11-16-18](#)

PERSONAL INJURY, VEHICLE AND TRAFFIC LAW.

QUESTION OF FACT WHETHER DEFENDANT SAW WHAT WAS TO BE SEEN IN THIS BICYCLE-CAR COLLISION CASE, SUPREME COURT REVERSED, TWO JUSTICE DISSENT. [Pagels v Mullen, 2018 NY Slip Op 07855, Fourth Dept 11-16-18](#)

UTILITIES, REAL PROPERTY LAW, EMINENT DOMAIN, ENVIRONMENTAL LAW.

ALTHOUGH THE FEDERAL ENERGY REGULATORY COMMISSION (FERC) APPROVED THE GAS PIPELINE, THE STATE DID NOT ISSUE A WATER QUALITY CERTIFICATION (WQC) FOR THE PROJECT, THEREFORE THE PIPELINE COMPANY CAN NOT SEEK EASEMENTS OVER PRIVATE LAND PURSUANT TO THE EMINENT DOMAIN PROCEDURE LAW (EDPL) TO INSTALL THE PIPELINE, [Matter of National Fuel Gas Supply Corp. v Schueckler, 2018 NY Slip Op 07550, Fourth Dept 11-9-18](#)

DECEMBER 2018

COURT OF APPEALS

CRIMINAL LAW.

COUNTY COURT SHOULD NOT HAVE IMPANELED AN ANONYMOUS JURY. [People v Flores, 2018 NY Slip Op 08540, CtApp 12-13-18](#)

CRIMINAL LAW, APPEALS.

WHETHER A JUVENILE'S STATEMENT TO THE POLICE WAS VOLUNTARILY GIVEN PRESENTED A MIXED QUESTION OF LAW AND FACT WHICH IS NOT REVIEWABLE BY THE COURT OF APPEALS, TWO DISSENSERS ARGUED JUVENILES SHOULD NOT BE INTERROGATED OUTSIDE THE PRESENCE OF THEIR ADULT LEGAL GUARDIANS. [Matter of Luis P., 2018 NY Slip Op 08427, CtApp 12-11-18](#)

CRIMINAL LAW, CORRECTION LAW, SEX OFFENDER REGISTRATION ACT (SORA).

ALTHOUGH DEFENDANT WAS REQUIRED TO REGISTER AS A SEX OFFENDER IN VIRGINIA, THERE WAS NO SEX-RELATED ELEMENT IN THE VIRGINIA OFFENSE, DEFENDANT NEED NOT REGISTER AS A SEX OFFENDER IN NEW YORK. [People v Diaz, 2018 NY Slip Op 08424, CtApp 12-11-18](#)

CRIMINAL LAW, EVIDENCE.

THE MURDER COUNT, WHICH SHOULD HAVE BEEN DISMISSED BECAUSE THE PEOPLE DID NOT SEEK PERMISSION TO RESUBMIT IT AFTER THE GRAND JURY DEADLOCKED ON THE CHARGE, DID NOT TAINT THE CONVICTION ON THE MANSLAUGHTER COUNT UNDER A SPILL-OVER ANALYSIS. [People v Allen, 2018 NY Slip Op 08537, CtApp 12-13-18](#)

CRIMINAL LAW, VEHICLE AND TRAFFIC LAW.

A SENTENCING COURT MAY REQUIRE A DEFENDANT, AS A CONDITION OF PROBATION, TO PAY FOR ELECTRONIC MONITORING, IF A DEFENDANT CLAIMS AN INABILITY TO PAY, A HEARING MUST BE HELD TO DETERMINE WHETHER ANOTHER ALTERNATIVE TO INCARCERATION IS APPROPRIATE AND, IF NOT, THE DEFENDANT MAY BE SENTENCED TO PRISON. [People v Hakes, 2018 NY Slip Op 08538, CtApp 12-13-18](#)

FREEDOM OF INFORMATION LAW (FOIL).

RECORDS OF DISCIPLINARY PROCEEDINGS CONCERNING A POLICE OFFICER ARE EXEMPT FROM DISCLOSURE EVEN IF THE IDENTIFYING INFORMATION IS REDACTED. [Matter of New York Civ. Liberties Union v New York City Police Dept., 2018 NY Slip Op 08423, CtApp 12-13-18](#)

REAL PROPERTY TAX LAW (RPTL).

LARGE CELLULAR DATA TRANSMISSION EQUIPMENT OWNED BY T-MOBILE IS TAXABLE REAL PROPERTY SUBJECT TO REAL PROPERTY TAX LAW 102. [Matter of T-Mobile Northeast, LLC v DeBellis, 2018 NY Slip Op 08539, CtApp 12-13-18](#)

WORKERS' COMPENSATION.

TIME LIMITS ON ADDITIONAL COMPENSATION FOR A PERMANENT PARTIAL DISABILITY INCLUDED IN WCL 15 (3) (w) APPLY TO THE CALCULATION OF THE AMOUNT OF THE BENEFITS IN WCL 15 (3) (v). [Matter of Mancini v Office of Children & Family Servs., 2018 NY Slip Op 08425, CtApp 12-11-18](#)

FIRST DEPARTMENT

ATTORNEYS.

LAW FIRM ENTITLED TO ATTORNEY'S FEES FROM ADDITIONAL DEFENDANTS WHO DID NOT SIGN THE RETAINER AGREEMENT, THE ADDITIONAL DEFENDANTS BENEFITED FROM THE SETTLEMENT AGREEMENT REACHED BY THE LAW FIRM AND THE ADDITIONAL DEFENDANTS HAD SIGNED THE SETTLEMENT AGREEMENT. [Ital Assoc. v Axon, 2018 NY Slip Op 09013, First Dept 12-27-18](#)

ATTORNEYS, FAMILY LAW, FRAUD, FIDUCIARY DUTY, NEGLIGENCE, LEGAL MALPRACTICE.

BREACH OF FIDUCIARY DUTY, FRAUD AND JUDICIARY LAW 487 ALLEGATIONS STEMMING FROM DEFENDANT LAW FIRM'S REPRESENTATION OF PLAINTIFF IN DIVORCE PROCEEDINGS DUPLICATED THE LEGAL MALPRACTICE ALLEGATIONS, THE COMPLAINT SHOULD HAVE BEEN DISMISSED. [Knox v Aronson, Mayefsky & Sloan, LLP, 2018 NY Slip Op 09030, First Dept 12-27-18](#)

CRIMINAL LAW.

28 MONTH DELAY DID NOT DEPRIVE DEFENDANT OF HIS CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL, DELAY ATTRIBUTED TO PROSECUTION, HOWEVER, WAS CRITICIZED. [People v Desselle, 2018 NY Slip Op 08252, First Dept 12-4-18](#)

CRIMINAL LAW.

DENIAL OF A FOR CAUSE CHALLENGE TO A JUROR WHO SAID IT WOULD BE DIFFICULT TO REACH A VERDICT WITHOUT HEARING FROM THE DEFENDANT REQUIRED REVERSAL. [People v Rivera, 2018 NY Slip Op 08750, First Dept 12-20-18](#)

CRIMINAL LAW, ATTORNEYS, EVIDENCE.

DEFENSE COUNSEL'S FAILURE TO REQUEST A JURY INSTRUCTION ON THE CORRECT LESSER INCLUDED OFFENSE CONSTITUTED INEFFECTIVE ASSISTANCE, PETIT LARCENY IS A LESSER INCLUDED OFFENSE OF ROBBERY THIRD, NEW TRIAL ORDERED. [People v Jones, 2018 NY Slip Op 08356, First Dept 12-4-18](#)

CRIMINAL LAW, ATTORNEYS, EVIDENCE.

DEFENSE COUNSEL'S FAILURE TO OBTAIN EXPERT OPINION EVIDENCE CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL, THE CASE TURNED ON WHETHER DEFENDANT WAS INTOXICATED, THE INTOXILYZER RESULTS WERE INCONSISTENT, CONVICTION REVERSED. [People v Carter, 2018 NY Slip Op 08745, First Dept 12-20-18](#)

DEBTOR-CREDITOR, MUNICIPAL LAW, TAX LAW.

ONCE THE CITY TAX LIENS HAD BEEN ASSIGNED PAYMENT TO THE CITY, INSTEAD OF THE LIENHOLDER, IS NOT APPLIED TO THE DEBT. [NYCTL 1998-2 Trust v 70 Orchard LLC, 2018 NY Slip Op 09004, First Dept 12-27-18](#)

DEFAMATION, CIVIL RIGHTS LAW, PRIVILEGE.

REMARKS ALLEGED TO BE DEFAMATORY REFLECTED THE RESULTS OF A JUDICIAL PROCEEDING AND WERE THEREFORE PRIVILEGED PURSUANT TO CIVIL RIGHTS LAW 74. [Shawe v Kramer Levin Naftalis & Frankel LLP, 2018 NY Slip Op 08550, First Dept 12-13-18](#)

FAMILY LAW, EVIDENCE.

FAMILY COURT DID NOT HAVE SUFFICIENT EVIDENCE BEFORE IT TO GRANT FATHER'S PETITION FOR CUSTODY WHEN MOTHER FAILED TO APPEAR, MOTHER'S MOTION TO VACATE THE DEFAULT ORDER SHOULD HAVE BEEN GRANTED. [Matter of Abel A. v Imanda M., 2018 NY Slip Op 09000, First Dept 12-27-18](#)

FAMILY LAW, EVIDENCE, JUDGES.

CUSTODY SHOULD NOT HAVE BEEN TRANSFERRED TO FATHER AND ALL CONTACT BETWEEN MOTHER AND CHILD SHOULD NOT HAVE BEEN SUSPENDED WITHOUT A HEARING, JUDGE, SUA SPONTE, SHOULD NOT HAVE PROHIBITED FUTURE PETITIONS FOR CUSTODY OR VISITATION BY MOTHER. [Matter of Michael G. v Katherine C., 2018 NY Slip Op 08568, First Dept 12-13-18](#)

FORECLOSURE, CIVIL PROCEDURE, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL).

DEFENDANT'S ALLEGATION THAT SHE DOES NOT LIVE AT THE ADDRESS WHERE HER BROTHER WAS SERVED IN THIS FORECLOSURE ACTION NECESSITATED A TRAVERSE HEARING. [Nationstar Mtge. LLC v McCallum, 2018 NY Slip Op 08755, First Dept 12-20-18](#)

FORECLOSURE, EVIDENCE, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL).

QUESTIONS OF FACT ABOUT WHETHER PLAINTIFF HAS STANDING IN THIS FORECLOSURE ACTION AND WHETHER THE RPAPL 1304 NOTICE WAS SERVED, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [AS Helios LLC v Chauhan, 2018 NY Slip Op 08565, First Dept 12-13-18](#)

FORECLOSURE, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL).

PROOF THAT DEFENDANT WAS SERVED WITH THE RPAPL 1304 NOTICE IN THIS FORECLOSURE PROCEEDING WAS NOT SUFFICIENT, THE BANK'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [CitiMortgage, Inc. v Moran, 2018 NY Slip Op 08435, First Dept 12-11-18](#)

FRAUD, CONVERSION, BANKING LAW.

COMPLAINT ALLEGED VALID CAUSES OF ACTION FOR AIDING AND ABETTING FRAUD AND AIDING AND ABETTING CONVERSION AGAINST A BANK WHICH PROVIDED A LETTER TO PLAINTIFF STATING DEFENDANT MAINTAINED ENOUGH IN HIS BANK ACCOUNTS TO COVER A POST-DATED CHECK FOR OVER \$400,000. [William Doyle Galleries, Inc. v Stettner, 2018 NY Slip Op 08743, First Dept 12-20-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

QUESTION OF FACT WHETHER PLAINTIFF'S SLIP AND FALL OCCURRED ON DEBRIS IN A WALKWAY WITHIN THE MEANING OF THE NYCRR IN THIS LABOR LAW 241(6) ACTION, HOWEVER, BECAUSE THE FALL OCCURRED OUTSIDE THE ENTRANCE TO A SHANTY, THE NYCRR PROVISION WHICH PERTAINS TO PASSAGEWAYS WAS NOT APPLICABLE. [Quigley v Port Auth. of N.Y. & N.J., 2018 NY Slip Op 08577, First Dept 12-13-18](#)

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY, EVIDENCE.

PLAINTIFF SHOULD HAVE BEEN GRANTED SUMMARY JUDGMENT ON HIS LABOR LAW 240 (1) CAUSE OF ACTION, PLAINTIFF'S LADDER SHIFTED AND HE FELL, HEARSAY IN A REPORT WHICH CONSTITUTED A MISTRANSLATION OF THE PLAINTIFF'S STATEMENT DID NOT RAISE A TRIABLE ISSUE OF FACT. [Nava-Juarez v Mosholu Fieldston Realty, LLC, 2018 NY Slip Op 08744, First Dept 12-20-18](#)

LANDLORD-TENANT, MENTAL HYGIENE LAW, MUNICIPAL LAW, FAIR HOUSING ACT.

HEARING WAS REQUIRED TO DETERMINE WHETHER A PERMANENT STAY OF EVICTION WAS A PROPER ACCOMMODATION FOR DISABLED TENANTS PURSUANT TO THE FAIR HOUSING ACT. [Matter of Prospect Union Assoc. v DeJesus, 2018 NY Slip Op 09016, First Dept 12-27-18](#)

PERSONAL INJURY, CONTRACT LAW.

PROPERTY OWNER DID NOT DEMONSTRATE A LACK OF CONSTRUCTIVE KNOWLEDGE OF THE SNOW AND ICE CONDITION IN THIS SLIP AND FALL CASE, AND THE SNOW REMOVAL CONTRACTOR DID NOT OFFER ANY EVIDENCE OF THE STATE OF THE AREA WHERE PLAINTIFF FELL, DEFENDANTS' SUMMARY JUDGMENT MOTIONS SHOULD NOT HAVE BEEN GRANTED. [Barrett v Aero Snow Removal Corp., 2018 NY Slip Op 08753, First Dept 12-20-18](#)

PERSONAL INJURY, EVIDENCE.

ALTHOUGH THE RULES OF THE CITY OF NEW YORK REQUIRED THAT TIME WARNER MAINTAIN ONLY THE AREA 12 INCHES AROUND A METAL BOX COVER IN THE SIDEWALK, THERE WERE QUESTIONS OF FACT WHETHER TIME WARNER OR A PREDECESSOR CREATED THE DEFECT OR HAD CONSTRUCTIVE NOTICE OF THE DEFECT OUTSIDE THE 12 INCH AREA, SUPREME COURT REVERSED IN THIS SLIP AND FALL CASE. [Robles v Time Warner Cable Inc., 2018 NY Slip Op 08244, First Dept 12-4-18](#)

PERSONAL INJURY, EVIDENCE.

DOCTRINE OF RES IPSA LOQUITUR MAY APPLY TO WINDOW FALLING ONTO PLAINTIFF, DEFENDANT BUILDING MANAGER'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Wilkins v West Harlem Group Assistance, Inc., 2018 NY Slip Op 08247, First Dept 12-4-18](#)

SECOND DEPARTMENT

ARBITRATION, EMPLOYMENT LAW, CONTRACT LAW, MUNICIPAL LAW.

ARBITRATOR, NOT THE COURTS, MUST FIRST DETERMINE WHETHER THE MATTER IS ARBITRABLE, CITY HAD ISSUED NEW PROTOCOLS FOR FIRST RESPONDERS, THE UNION FILED A GRIEVANCE ARGUING THE NEW PROTOCOLS MUST BE THE SUBJECT OF ARBITRATION, AN ARBITRATOR MUST DECIDE WHETHER THE ISSUE IS COVERED BY THE COLLECTIVE BARGAINING AGREEMENT. [Matter of City of Yonkers v Yonkers Fire Fighters, Local 628, IAFF, AFL-CIO, 2018 NY Slip Op 08294, Second Dept 12-5-18](#)

CIVIL PROCEDURE.

INDICATING INCONSISTENT DECISIONS SHOULD NO LONGER BE FOLLOWED, THE SECOND DEPARTMENT DETERMINED SUPREME COURT COULD NOT DISMISS A CASE BASED ON THE FAILURE TO FILE A NOTE OF ISSUE WITHIN 90 DAYS OF THE COURT'S ORDER UNLESS THE STATUTORY REQUIREMENTS OF CPLR 3216 ARE COMPLIED WITH. [Element E, LLC v Allyson Enters., Inc., 2018 NY Slip Op 08915, Second Dept 12-26-18](#)

CIVIL PROCEDURE, APPEALS.

SUPREME COURT DID NOT ABUSE ITS DISCRETION BY DISMISSING THE COMPLAINT WHEN PLAINTIFF WAS NOT READY FOR TRIAL AND REFUSING TO ALLOW THE TESTIMONY OF A 'SUBSTITUTE EXPERT,' DISMISSAL WAS NOT ON THE MERITS AND THEREFORE THE DISMISSAL SHOULD NOT HAVE BEEN 'WITH PREJUDICE,' ALTHOUGH NO APPEAL LIES FROM A JUDGMENT ENTERED UPON DEFAULT, THE UNDERLYING ISSUES MAY BE REVIEWED. [Geffner v Mercy Med. Ctr., 2018 NY Slip Op 08280, Second Dept 12-5-18](#)

CIVIL PROCEDURE, APPEALS.

PRIOR RULINGS ON APPEAL CONSTITUTE THE LAW OF THE CASE, SUPREME COURT RULING TO THE CONTRARY REVERSED. [Matter of Norton v Town of Islip, 2018 NY Slip Op 08308, Second Dept 12-5-18](#)

CIVIL PROCEDURE, ATTORNEYS.

LAW OFFICE FAILURE JUSTIFIED CONSIDERING EVIDENCE WHICH COULD HAVE BEEN PROVIDED IN SUPPORT OF THE ORIGINAL MOTION, MOTION TO RENEW PROPERLY GRANTED, HOWEVER DELAYS IN DISCOVERY WARRANTED SANCTIONS AGAINST PLAINTIFF. [Burro v Kang, 2018 NY Slip Op 08457, Second Dept 12-12-18](#)

CIVIL PROCEDURE, CONTEMPT. MUNICIPAL LAW.

TOWN SHOULD HAVE BEEN HELD IN CONTEMPT FOR FAILURE TO BUILD A FENCE IN ACCORDANCE WITH A STIPULATION. [Palmieri v Town of Babylon, 2018 NY Slip Op 08317, Second Dept 12-5-18](#)

CIVIL PROCEDURE, CONTRACT LAW.

BY ENTERING A STIPULATION SETTling A FORECLOSURE ACTION, DEFENDANT WAIVED ANY DEFECT IN SERVICE OF THE COMPLAINT, THE STIPULATION WAS VALID EVEN THOUGH IT DID NOT OCCUR IN COURT, EMAILS AND PAYMENT OF A SETTLEMENT AMOUNT MEMORIALIZED THE STIPULATION. [Eastern Sav. Bank, FSB v Campbell, 2018 NY Slip Op 08465, Second Dept 12-12-18](#)

CIVIL PROCEDURE, EVIDENCE.

INSUFFICIENT EVIDENCE THAT THE FAILURE TO TURN OVER REQUESTED INVOICES IN DISCOVERY WAS WILLFUL AND CONTUMACIOUS, BUT PRESENTATION OF EVIDENCE ABOUT THE INVOICES AT TRIAL SHOULD HAVE BEEN PRECLUDED. [Cap Rents Supply, LLC v Durante, 2018 NY Slip Op 08458, Second Dept 12-12-18](#)

CIVIL PROCEDURE, FORECLOSURE.

MOTION TO VACATE DEFAULT JUDGMENT OF FORECLOSURE WAS SUPPORTED BY A SWORN DENIAL OF SERVICE AND SPECIFIC FACTS WHICH REBUTTED THE PRESUMPTION OF PROPER SERVICE, MATTER SENT BACK FOR A HEARING. [Federal Natl. Mtge. Assn. v Alverado, 2018 NY Slip Op 08918, Second Dept 12-26-18](#)

CIVIL PROCEDURE, TRUSTS AND ESTATES.

MOTION TO SUBSTITUTE THE ADMINISTRATRIX OF PLAINTIFF'S ESTATE FOR THE DECEASED PLAINTIFF PROPERLY DENIED BECAUSE THE DELAY IN SEEKING SUBSTITUTION WAS NOT EXPLAINED, THE MERITS WERE NOT DESCRIBED, AND THE EXISTENCE OF PREJUDICE WAS NOT REBUTTED, HOWEVER THE ACTION COULD NOT BE DISMISSED ABSENT THE SUBSTITUTION OF A LEGAL REPRESENTATIVE. [Medlock v Dr. William O. Benenson Rehabilitation Pavilion, 2018 NY Slip Op 08922, Second Dept 12-26-18](#)

CONTRACT LAW.

ORAL AGREEMENTS BETWEEN PERSONS COHABITING TOGETHER ARE NOT PER SE REQUIRED TO BE IN WRITING, SEVERAL CAUSES OF ACTION SHOULD NOT HAVE BEEN DISMISSED BECAUSE THE UNDERLYING AGREEMENTS WERE NOT SUBJECT TO THE STATUTE OF FRAUDS. [Baron v Suissa, 2018 NY Slip Op 08453, Second Dept 12-12-18](#)

CORPORATION LAW, LIMITED LIABILITY COMPANY LAW, CONTRACT LAW, LANDLORD-TENANT.

ALTHOUGH THE PLAINTIFF LIMITED LIABILITY COMPANY DID NOT EXIST AT THE TIME THE LEASE WAS SIGNED, DEFENDANT TOOK POSSESSION OF THE PROPERTY, UNDER THE DOCTRINE OF INCORPORATION BY ESTOPPEL, DEFENDANT CANNOT ESCAPE LIABILITY FOR BREACH OF THE LEASE. [TY Bldrs. II, Inc. v 55 Day Spa, Inc., 2018 NY Slip Op 08345, Second Dept 12-5-18](#)

CRIMINAL LAW.

THE 2015 COURT OF APPEALS DECISION WHICH PROHIBITED INSTRUCTING A JURY THAT IT COULD FIND A DEFENDANT GUILTY OF BOTH DEPRAVED INDIFFERENCE MURDER AND INTENTIONAL (TRANSFERRED INTENT) MURDER OF A SINGLE VICTIM SHOULD NOT BE APPLIED RETROACTIVELY. [People v Drayton, 2018 NY Slip Op 08323, Second Dept 12-5-18](#)

CRIMINAL LAW, ATTORNEYS.

DEFENDANT WAS DEPRIVED OF HIS RIGHT TO COUNSEL WHEN DEFENSE COUNSEL TOLD THE COURT HE DID NOT WANT ANY PART OF DEFENDANT'S MOTION TO WITHDRAW HIS GUILTY PLEA. [People v Sarner, 2018 NY Slip Op 08335, Second Dept 12-5-18](#)

CRIMINAL LAW, EVIDENCE.

ANONYMOUS 911 CALL DID NOT VIOLATE DEFENDANT'S RIGHT OF CONFRONTATION BECAUSE THE INFORMATION WAS NONTESTIMONIAL IN THAT IT DID NOT IDENTIFY THE DEFENDANT BUT MERELY ALERTED THE POLICE TO A BURGLARY IN PROGRESS. [People v Torres, 2018 NY Slip Op 08337, Second Dept 12-5-18](#)

CRIMINAL LAW, EVIDENCE.

CONSECUTIVE SENTENCES NOT SUPPORTED BY ALLEGATIONS OR PLEA ALLOCUTION, NO ALLEGATION THE THREE CRIMINAL POSSESSION OF A WEAPON COUNTS WERE SEPARATE ACTS. [People v Bailey, 2018 NY Slip Op 08674, Second Dept 12-19-18](#)

CRIMINAL LAW, EVIDENCE.

NO EVIDENCE THREE WEAPONS IN A SAFE WERE POSSESSED BY THREE SEPARATE ACTS, SENTENCES SHOULD HAVE BEEN CONCURRENT, DECISIONS TO THE CONTRARY SHOULD NO LONGER BE FOLLOWED. [People v Smith, 2018 NY Slip Op 08695, Second Dept 12-19-18](#)

CRIMINAL LAW, EVIDENCE.

COUNTY COURT SHOULD NOT HAVE DENIED THE REQUEST FOR A CROSS-RACIAL IDENTIFICATION JURY INSTRUCTION, THE COURT OF APPEALS CROSS-RACIAL IDENTIFICATION RULING IN PEOPLE V BOONE APPLIES RETROACTIVELY, HOWEVER THE ERROR WAS HARMLESS. [People v Jordan, 2018 NY Slip Op 08956, Second Dept 12-26-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

THE PROOF REQUIREMENTS FOR DEPRAVED INDIFFERENCE MURDER CHANGED WHEN THE COURT OF APPEALS DECIDED PEOPLE V PAYNE, BEFORE DEFENDANT'S CONVICTION BECAME FINAL, SUPREME COURT SHOULD HAVE HEARD DEFENDANT'S MOTION TO VACATE THE CONVICTION AND SHOULD HAVE REVERSED THE DEPRAVED INDIFFERENCE MURDER CONVICTION AND DISMISSED THE COUNT. [People v Hernandez, 2018 NY Slip Op 08690, Second Dept 12-19-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

DETECTIVE'S TESTIMONY INDICATING DEFENDANT WAS IDENTIFIED IN A LINEUP IDENTIFICATION PROCEDURE CONSTITUTED INADMISSIBLE BOLSTERING, ALTHOUGH THIS WAS A ONE WITNESS IDENTIFICATION CASE, THE EVIDENCE WAS OVERWHELMING AND THE ERROR WAS DEEMED HARMLESS. [People v Holmes, 2018 NY Slip Op 08954, Second Dept 12-26-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

ALTHOUGH SUPREME COURT DENIED DEFENDANT'S MOTION TO SUPPRESS A GUN FOUND IN A VEHICLE, THE COURT DID NOT ARTICULATE THE REASON FOR THE DENIAL, THE SECOND DEPARTMENT DID NOT THEREFORE HAVE THE POWER TO REVIEW THE ISSUE, MATTER SENT BACK SO SUPREME COURT CAN ARTICULATE ITS REASONING. [People v Thomas, 2018 NY Slip Op 08962, Second Dept 12-26-18](#)

EDUCATION-SCHOOL LAW, NEGLIGENCE.

THE DIGNITY FOR ALL STUDENTS ACT (DASA) DOES NOT CREATE A PRIVATE RIGHT OF ACTION FOR IN-SCHOOL BULLYING AND HARASSMENT. [Eskanazi-McGibney v Connetquot Cent. Sch. Dist., 2018 NY Slip Op 08467, Second Dept 12-12-18](#)

FAMILY LAW.

FAMILY COURT'S TERMINATION OF MOTHER'S PARENTAL RIGHTS WAS NOT SUPPORTED BY THE EVIDENCE, MOTHER WAS DEALING WITH HER MENTAL HEALTH AND DRUG PROBLEMS AND THE SPECIAL NEEDS OF THE CHILDREN WERE BEING ADDRESSED. [Matter of Jaylen R.B. \(Lisa G.\) 2018 NY Slip Op 08643, Second Dept 12-19-18](#)

FAMILY LAW, APPEALS.

MOTHER'S PETITION TO HAVE HER CHILD RETURNED AFTER TEMPORARY REMOVAL SHOULD HAVE BEEN GRANTED, EVEN THOUGH THE CHILD HAD BEEN RETURNED AT THE TIME OF THE APPEAL, THE ISSUE IS NOT ACADEMIC BECAUSE OF THE STIGMA ASSOCIATED WITH REMOVAL OF A CHILD. [Matter of Saad A. \(Umda M.\), 2018 NY Slip Op 08292, Second Dept 12-5-18](#)

FAMILY LAW, ATTORNEYS.

FATHER WAS NOT ADEQUATELY INFORMED OF THE CONSEQUENCES OF PROCEEDING WITHOUT AN ATTORNEY, NEW HEARING ORDERED. [Matter of Alivia F. \(John F.\), 2018 NY Slip Op 08649, Second Dept 12-19-18](#)

FAMILY LAW, CIVIL PROCEDURE.

FAMILY COURT SHOULD NOT HAVE DETERMINED HAWAII WAS THE MORE APPROPRIATE FORUM FOR THIS CUSTODY DISPUTE, HAWAII NEVER HAD SUBJECT MATTER JURISDICTION AND WAS UNAWARE OF THE FATHER'S NEW YORK CUSTODY PROCEEDINGS UNTIL AFTER THE HAWAII PROCEEDINGS WERE COMPLETED, THE HAWAII RULINGS MUST BE VACATED, ONLY THEN CAN FAMILY COURT MAKE A VALID ANALYSIS OF THE APPROPRIATE FORUM. [Matter of Montanez v Tompkinson, 2018 NY Slip Op 08305, Second Dept 12-5-18](#)

FAMILY LAW, CIVIL PROCEDURE, EVIDENCE.

AUDIOTAPES OF CONVERSATIONS BETWEEN THE PATERNAL GRANDMOTHER AND THE CHILD WERE PROPERLY SUPPRESSED BECAUSE THEY WERE THE PRODUCT OF ILLEGAL WIRETAPPING UNDER CPLR 4506. [Matter of Dennis v Davis-Schloemer, 2018 NY Slip Op 08480, Second Dept 12-12-18](#)

FAMILY LAW, CRIMINAL LAW.

ABSENCE OF A SEXUAL RELATIONSHIP IS NOT NECESSARILY DETERMINATIVE IN AN ASSESSMENT OF WHETHER A PARTY IS A MEMBER OF A HOUSEHOLD FOR PURPOSES OF JURISDICTION OVER A FAMILY OFFENSE PROCEEDING, FAMILY COURT SHOULD NOT HAVE MADE A FINDING RESPONDENT WAS NOT A MEMBER OF THE HOUSEHOLD WITHOUT HOLDING A HEARING. [Matter of Raigosa v Zafirakopoulos, 2018 NY Slip Op 08485, Second Dept 12-12-18](#)

FAMILY LAW, EVIDENCE.

MOTHER'S PETITION TO RELOCATE WITH THE CHILD SHOULD NOT HAVE BEEN GRANTED WITHOUT A HEARING, THE PETITION WAS GRANTED AFTER FATHER SCREAMED AT COURT PERSONNEL. [Matter of Williams v Jenkins, 2018 NY Slip Op 08491, Second Dept 12-12-18](#)

FAMILY LAW, EVIDENCE.

FATHER MADE OUT A PRIMA FACIE CASE FOR A MODIFICATION OF CUSTODY BASED UPON LOSS OF EMPLOYMENT, PETITION SHOULD NOT HAVE BEEN DISMISSED, REMITTED FOR A CONTINUED HEARING. [Matter of Gonzalez v Santiago, 2018 NY Slip Op 08652, Second Dept 12-19-18](#)

FAMILY LAW, EVIDENCE.

FATHER SHOULD NOT HAVE BEEN PRECLUDED FROM BRINGING FUTURE PARENTAL ACCESS PETITIONS WITHOUT COURT APPROVAL. [Matter of Gonzalez v Santiago, 2018 NY Slip Op 08653, Second Dept 12-19-18](#)

FAMILY LAW, EVIDENCE.

FAMILY COURT DID NOT HAVE SUFFICIENT EVIDENCE TO DETERMINE IT WAS IN THE CHILD'S BEST INTERESTS TO BE WITH FATHER IN THIS TEMPORARY CUSTODY PROCEEDING, ALLEGATIONS OF EXCESSIVE CORPORAL PUNISHMENT REQUIRED A HEARING. [Matter of Poltorak v Poltorak, 2018 NY Slip Op 08662, Second Dept 12-19-18](#)

FAMILY LAW, EVIDENCE.

EVIDENCE DID NOT SUPPORT TEMPORARY REMOVAL OF CHILD FROM FATHER'S CUSTODY DURING THE PENDENCY OF A CHILD PROTECTIVE PROCEEDING. [Matter of Chloe-Elizabeth A.T. \(Albert T.\), 2018 NY Slip Op 08666, Second Dept 12-19-18](#)

FAMILY LAW, EVIDENCE.

EVIDENCE THE CHILD WITNESSED A PHYSICAL ALTERCATION BETWEEN MOTHER AND FATHER WAS SUFFICIENT FOR A FINDING FATHER NEGLECTED THE CHILD. [Matter of Meeya P. \(Anthony C.\), 2018 NY Slip Op 08938, Second Dept 12-26-18](#)

FAMILY LAW, EVIDENCE.

FAMILY COURT SHOULD HAVE FOUND BISHME'S DAUGHTER TO HAVE BEEN DERIVATIVELY ABUSED AND NEGLECTED BASED UPON BISHME'S ABUSE AND NEGLECT OF ANOTHER CHILD. [Matter of Akeliah A. \(Bishme A.\), 2018 NY Slip Op 08925, Second Dept 12-26-18](#)

FAMILY LAW, IMMIGRATION LAW, SOCIAL SERVICES LAW.

FAMILY COURT SHOULD HAVE APPOINTED A GUARDIAN FOR THE CHILD AND MADE THE FINDINGS NECESSARY FOR THE CHILD TO PETITION FOR SPECIAL IMMIGRANT JUVENILE STATUS (SIJS). [Matter of Grechel L.J., 2018 NY Slip Op 08934, Second Dept 12-26-18](#)

FORECLOSURE, CIVIL PROCEDURE.

CROSS-MOTION TO EXTEND THE TIME FOR SERVICE OF PROCESS PURSUANT TO CPLR 306-b IN THIS FORECLOSURE ACTION PROPERLY GRANTED, THE JUDGMENT OF FORECLOSURE HAD BEEN VACATED BECAUSE DEFENDANT WAS NOT PROPERLY SERVED INITIALLY. [Bank United, FSB v Verbitsky, 2018 NY Slip Op 08623, Second Dept 12-19-18](#)

FORECLOSURE, CIVIL PROCEDURE, ATTORNEYS, APPEALS.

NOTICE OF APPEARANCE FILED BY DEFENDANT'S ATTORNEY WAIVED ANY SUBSEQUENT OBJECTION TO PERSONAL JURISDICTION IN THIS FORECLOSURE ACTION, ISSUE HEARD ON APPEAL ALTHOUGH NOT RAISED BELOW. [Deutsche Bank Natl. Trust Co. v Vu, 2018 NY Slip Op 08629, Second Dept 12-19-18](#)

FORECLOSURE, CIVIL PROCEDURE, EVIDENCE.

PLAINTIFF BANK DID NOT DEMONSTRATE STANDING TO FORECLOSE ON THE REVERSE MORTGAGE WITH EVIDENCE ADMISSIBLE UNDER THE BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE. [Nationstar HECM Acquisition Trust 2015-2 v Andrews, 2018 NY Slip Op 08944, Second Dept 12-26-18](#)

FORECLOSURE, EVIDENCE, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL).

BANK DID NOT DEMONSTRATE COMPLIANCE WITH THE NOTICE PROVISIONS OF REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL) 1304, BANK'S MOTION FOR SUMMARY JUDGMENT IN THIS FORECLOSURE ACTION SHOULD NOT HAVE BEEN GRANTED. [Aurora Loan Servs., LLC v Vrionedes, 2018 NY Slip Op 08622, Second Dept 12-19-18](#)

FORECLOSURE, EVIDENCE, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL), UNIFORM COMMERCIAL CODE (UCC), CONTRACT LAW.

LOST NOTE AFFIDAVIT INSUFFICIENT BECAUSE UCC REQUIREMENTS NOT MET, PROOF OF RPAPL 1304 NOTICE INSUFFICIENT, PROOF OF COMPLIANCE WITH NOTICE CONDITION OF THE MORTGAGE INSUFFICIENT, SUPREME COURT SHOULD NOT HAVE GRANTED THE BANK'S MOTION FOR SUMMARY JUDGMENT IN THIS FORECLOSURE PROCEEDING. [U.S. Bank N.A. v Cope, 2018 NY Slip Op 08709, Second Dept 12-19-18](#)

INSURANCE LAW, EVIDENCE, CIVIL PROCEDURE.

THE PETITION SEEKING LEAVE TO COMMENCE AN ACTION AGAINST THE MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION (MVAIC) IN THIS PEDESTRIAN ACCIDENT CASE SHOULD NOT HAVE BEEN DISMISSED WITHOUT A HEARING, THERE WERE QUESTIONS OF FACT ABOUT WHETHER THE NOTICE CONDITIONS PRECEDENT TO THE

ACTION WERE MET. [Matter of Laszlone v Motor Veh. Acc. Indem. Corp., 2018 NY Slip Op 08657, Second Dept 12-19-18](#)

INSURANCE LAW, ARBITRATION, CONTRACT LAW, CIVIL PROCEDURE.

INSURER WAIVED THE CONTRACTUAL ISSUE WHETHER PETITIONER WAS A PASSENGER IN THE CAR BY NOT SEEKING A STAY OF ARBITRATION, THEREFORE THE ARBITRATOR EXCEEDED HIS POWERS BY FINDING PETITIONER WAS NOT A PASSENGER AT THE TIME OF THE HIT AND RUN ACCIDENT. [Matter of Banegas v GEICO Ins. Co., 2018 NY Slip Op 08644, Second Dept 12-19-18](#)

LANDLORD-TENANT, CONTRACT LAW.

LEASE INCLUDED AN EXPRESS PROVISION ALLOWING TENANT TO WITHHOLD RENT IF THE PREMISES IS DAMAGED AND NOT REPAIRED, THEREFORE WITHHOLDING RENT WAS NOT AN ELECTION OF REMEDIES AND THE TENANT COULD WITHHOLD RENT AND SUE FOR DAMAGES. [Fifth Line, LLC v Fitch, 2018 NY Slip Op 08630, Second Dept 12-19-18](#)

MENTAL HYGIENE LAW.

ABSENT A FINDING THE GUARDIAN OF THE PROPERTY OF AN INCAPACITATED PERSON FAILED TO PROPERLY DISCHARGE HER DUTIES, THE COURT SHOULD NOT HAVE ORDERED THE GUARDIAN TO PAY THE ACCOUNTANT WHO ASSISTED IN PREPARING THE FINAL ACCOUNT FROM HER OWN FUNDS. [Matter of Ruby T. \(Carrion\), 2018 NY Slip Op 08314, Second Dept 12-5-18](#)

MENTAL HYGIENE LAW, CRIMINAL LAW, EVIDENCE, APPEALS.

RESPONSE TO A JURY NOTE MAY HAVE MISLED THE JURY TO CONCLUDE THEY COULD MAKE THEIR OWN LAY JUDGMENT, AS OPPOSED TO RELYING ON EXPERT OPINION, ABOUT WHETHER DEFENDANT SEX OFFENDER SUFFERED FROM A MENTAL ABNORMALITY IN THIS CIVIL MANAGEMENT PROCEEDING, ISSUE REVIEWED ON APPEAL IN THE INTEREST OF JUSTICE, NEW TRIAL ORDERED. [Matter of State of New York v Timothy R., 2018 NY Slip Op 08940, Second Dept 12-26-18](#)

PERSONAL INJURY.

PLAINTIFF ASSUMED THE RISK OF INJURY STEMMING FROM A FIGHT DURING A HOCKEY GAME. [Falcaro v American Skating Ctrs., LLC, 2018 NY Slip Op 08469, Second Dept 12-12-18](#)

PERSONAL INJURY.

QUESTION OF FACT WHETHER FRONTMOST DRIVER NEGLIGENTLY BROUGHT HER CAR TO A COMPLETE STOP IN THIS REAR-END COLLISION CASE, FRONTMOST DRIVER'S MOTION

FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Conroy v New York City Tr. Auth., 2018 NY Slip Op 08913, Second Dept 12-26-18](#)

PERSONAL INJURY.

DEFENDANT BAR NOT LIABLE FOR INJURIES AND DEATH OF PLAINTIFF'S DECEDENT RESULTING FROM AN ALTERCATION ON A PUBLIC ROAD IN FRONT OF THE BAR, BAR EXERCISED NO CONTROL OVER THE AREA WHERE THE ALTERCATION OCCURRED. [Covelli v Silver Fist, Ltd., 2018 NY Slip Op 08914, Second Dept 12-26-18](#)

PERSONAL INJURY, EVIDENCE.

DEFENDANT'S UNSUPPORTED ALLEGATION THAT PLAINTIFF STOPPED SUDDENLY WAS NOT ENOUGH TO DEFEAT PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IN THIS REAR END COLLISION CASE. [Auguste v Jeter, 2018 NY Slip Op 08274, Second Dept 12-5-18](#)

PERSONAL INJURY, EVIDENCE.

QUESTION OF FACT WHETHER SMALL TABLE OVER WHICH PLAINTIFF TRIPPED AND FELL WAS OPEN AND OBVIOUS, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Elfassi v Hollister Co., 2018 NY Slip Op 08279, Second Dept 12-5-18](#)

PERSONAL INJURY, EVIDENCE.

EVEN PHYSICALLY SMALL DEFECTS, IN COMBINATION WITH OTHER FACTORS, CAN CONSTITUTE A DANGEROUS CONDITION, DEFENDANT'S SUMMARY JUDGMENT MOTION IN THIS SLIP AND FALL CASE SHOULD NOT HAVE BEEN GRANTED. [Poliziani v Culinary Inst. of Am., 2018 NY Slip Op 08519, Second Dept 12-12-18](#)

PERSONAL INJURY, EVIDENCE.

DEFENDANT PROPERTY MANAGER AND DEFENDANT OWNER DID NOT DEMONSTRATE A LACK OF CONSTRUCTIVE KNOWLEDGE OF THE ICE AND SNOW CONDITION WHERE PLAINTIFF FELL IN THIS STRIP MALL PARKING LOT SLIP AND FALL CASE, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT FOR SUMMARY JUDGMENT. [Bronstein v Benderson Dev. Co., LLC, 2018 NY Slip Op 08625, Second Dept 12-19-18](#)

PERSONAL INJURY, EVIDENCE, CIVIL PROCEDURE.

THERE WAS NO PROPER FOUNDATION FOR THE DEFENSE EXPERT'S TESTIMONY IN THIS TRAFFIC ACCIDENT CASE, DEFENSE VERDICT FINDING THAT PLAINTIFF DID NOT SUFFER A SERIOUS INJURY WAS NECESSARILY BASED ON THE DEFENSE EXPERT'S TESTIMONY, VERDICT WAS PROPERLY SET ASIDE. [Imran v R. Barany Monuments, Inc., 2018 NY Slip Op 08921, Second Dept 12-26-18](#)

PERSONAL INJURY, EVIDENCE, CIVIL PROCEDURE, INSURANCE LAW, VEHICLE AND TRAFFIC LAW.

THE PRESUMPTION OF OWNERSHIP OF A VEHICLE CREATED BY THE CERTIFICATE OF TITLE CAN BE REBUTTED BY PROOF OF DOMINION AND CONTROL OVER THE VEHICLE, PLAINTIFF'S MOTION TO DISCOVER THE INSURER'S FILE IN THIS TRAFFIC ACCIDENT CASE TO DETERMINE WHETHER DEFENDANT EXERCISED DOMINION AND CONTROL OVER THE VEHICLE SHOULD NOT HAVE BEEN DENIED. [Portillo v Carlson, 2018 NY Slip Op 08520, Second Dept 12-12-18](#)

PERSONAL INJURY, EVIDENCE, CIVIL PROCEDURE.

SUPREME COURT PROPERLY RELIED ON THE RESULTS OF A FRYE HEARING IN A PRIOR TRIAL TO ALLOW THE TESTIMONY OF A DEFENSE EXPERT. [Shah v Rahman, 2018 NY Slip Op 08342, Second Dept 12-5-18](#)

PERSONAL INJURY, EVIDENCE, CIVIL PROCEDURE.

ADVERSE INFERENCE JURY INSTRUCTION IS THE PROPER SANCTION FOR THE NEGLIGENT DESTRUCTION OF AN EMPLOYEE'S RECORDS IN THIS NEGLIGENT SUPERVISION ACTION AGAINST A RESPITE CARE FACILITY. [Squillacioti v Independent Group Home Living Program, Inc., 2018 NY Slip Op 08343, Second Dept 12-5-18](#)

PERSONAL INJURY, MEDICAL MALPRACTICE.

A BLOCKED TRACHEOSTOMY TUBE IS A FORESEEABLE EVENT FOR WHICH DEFENDANT ANESTHESIOLOGIST WAS TRAINED AND PREPARED, THEREFORE THE JURY SHOULD NOT HAVE BEEN INSTRUCTED ON THE EMERGENCY DOCTRINE, DEFENSE VERDICT IN THIS MEDICAL MALPRACTICE ACTION REVERSED AND NEW TRIAL ORDERED. [Crayton v Sher, 2018 NY Slip Op 08461, Second Dept 12-12-18](#)

PERSONAL INJURY, MEDICAL MALPRACTICE.

QUESTION OF FACT WHETHER FALL FROM BED WAS THE RESULT OF THE FAILURE TO TAKE ADEQUATE PRECAUTIONS AGAINST FALLING AND QUESTION OF FACT WHETHER THE FALL EXACERBATED THE PROGRESSION OF PLAINTIFF'S INTERCRANIAL HEMORRHAGE IN THIS MEDICAL MALPRACTICE ACTION, DEFENDANTS' SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED. [Salgado v North Shore Univ. Hosp., 2018 NY Slip Op 08967, Second Dept 12-26-18](#)

PERSONAL INJURY, MEDICAL MALPRACTICE, CIVIL PROCEDURE.

A STENT WAS DELIBERATELY INSERTED IN PLAINTIFF DURING SURGERY IN 1993 AND WAS DISCOVERED AND REMOVED IN 2012, ALTHOUGH THE STENT SHOULD HAVE SUBSEQUENTLY BEEN REMOVED, BECAUSE IT WAS INSERTED INTENTIONALLY AND SERVED A SURGICAL PURPOSE IT WAS NOT A 'FOREIGN OBJECT,' THEREFORE THE DISCOVERY OF THE STENT IN 2012 DID NOT START THE STATUTE OF LIMITATIONS, COMPLAINT DISMISSED AS TIME-BARRED. [Livsey v Nyack Hosp., 2018 NY Slip Op 08289, Second Dept 12-5-18](#)

PERSONAL INJURY, MUNICIPAL LAW, CIVIL PROCEDURE.

PETITION TO AMEND A NOTICE OF CLAIM WAS UNTIMELY WITH RESPECT TO THE PARENTS' DERIVATIVE ACTION IN THIS PEDESTRIAN-VEHICLE TRAFFIC ACCIDENT CASE, THE PETITIONERS DID NOT SHOW THAT THE TOWN HAD TIMELY KNOWLEDGE OF THE ALLEGED INVOLVEMENT OF TOWN PERSONNEL, PETITION SHOULD NOT HAVE BEEN GRANTED. [Matter of Johnson v County of Suffolk, 2018 NY Slip Op 08482, Second Dept 12-12-18](#)

PERSONAL INJURY, MUNICIPAL LAW, EVIDENCE.

POLICE OFFICER SLIPPED AND FELL ON AN OUTSIDE STAIRWAY WHEN PATROLLING DEFENDANTS' PROPERTY, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON THE NEGLIGENCE AND GENERAL MUNICIPAL LAW 205-a CAUSES OF ACTION SHOULD NOT HAVE BEEN GRANTED, PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT PROPERLY DENIED. [Stancarone v Sullivan, 2018 NY Slip Op 08344, Second Dept 12-5-18](#)

PERSONAL INJURY, MUNICIPAL LAW, EVIDENCE.

PETITION TO DEEM A LATE NOTICE OF CLAIM TIMELY SERVED SHOULD NOT HAVE BEEN GRANTED, THE CITY'S KNOWLEDGE OF THE CROSSWALK DEFECT IN THIS SLIP AND FALL CASE IS NOT EQUIVALENT TO TIMELY KNOWLEDGE OF THE NATURE OF PLAINTIFF'S CLAIM. [Matter of Bermudez v City of New York, 2018 NY Slip Op 08477, Second Dept 12-12-18](#)

PERSONAL INJURY, VEHICLE AND TRAFFIC LAW.

THE PARTY WITH THE RIGHT OF WAY ENTERING THE INTERSECTION WAS ENTITLED TO SUMMARY JUDGMENT AGAINST THE DRIVER MAKING A LEFT TURN, ALLEGATIONS THE PARTY WITH THE RIGHT OF WAY WAS SPEEDING DID NOT RAISE A QUESTION OF FACT BECAUSE THERE WAS NO EVIDENCE THE ACCIDENT COULD HAVE BEEN AVOIDED IF SPEEDING WAS NOT INVOLVED. [Rohn v Aly, 2018 NY Slip Op 08966, Second Dept 12-26-18](#)

PRODUCTS LIABILITY, EVIDENCE.

THE OWNER OF THE DEFECTIVE LADDER WHICH CAUSED PLAINTIFF'S INJURY ALLEGED THE LADDER WAS PURCHASED AT A PARTICULAR HOME DEPOT STORE, IN THE FACE OF

PROOF THE STORE DID NOT OPEN UNTIL YEARS AFTER THE ALLEGED PURCHASE, THE OWNER OF THE LADDER ALLEGED THE LADDER WAS EITHER PURCHASED AT A DIFFERENT TIME OR AT A DIFFERENT HOME DEPOT STORE, HOME DEPOT'S SUMMARY JUDGMENT MOTION SHOULD HAVE BEEN GRANTED. [Rooney v Garberg, 2018 NY Slip Op 08521, Second Dept 11-12-18](#)

REAL PROPERTY LAW, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW, MUNICIPAL LAW, CIVIL PROCEDURE.

QUESTIONS OF FACT PRECLUDED SUMMARY JUDGMENT WITH RESPECT TO THE ADVERSE POSSESSION ACTION AND THE LACHES DEFENSE, THE ACTION INVOLVED LAND THAT WAS ONCE UNDER WATER CREATED BY THE MOVEMENT OF SAND DURING STORMS DECADES AGO. [Strough v Incorporated Vil. of W. Hampton Dunes, 2018 NY Slip Op 08525, Second Dept 12-12-18](#)

ZONING, LAND USE, ENVIRONMENTAL LAW, CIVIL PROCEDURE.

FOUR MONTH STATUTE OF LIMITATIONS APPLIED TO THE DECISION BY THE PLANNING BOARD THAT NO ENVIRONMENTAL IMPACT STATEMENT WAS NECESSARY, PETITION TO ANNUL THAT DECISION WAS UNTIMELY. [Matter of Stengel v Town of Poughkeepsie Planning Bd., 2018 NY Slip Op 08488, Second Dept 12-12-18](#)

THIRD DEPARTMENT

ANIMAL LAW.

THEORY THAT DEFENDANT VETERINARY CLINIC WAS LIABLE IN NEGLIGENCE FOR A DOG BITE WHICH OCCURRED IN THE CLINIC WAITING ROOM REJECTED, ONLY A STRICT LIABILITY THEORY COULD APPLY AND PLAINTIFF CONCEDED RELIEF WAS NOT AVAILABLE PURSUANT TO STRICT LIABILITY. [Hewitt v Palmer Veterinary Clinic, PC, 2018 NY Slip Op 08396, Third Dept 12-6-18](#)

CIVIL PROCEDURE.

DEFENDANTS NEVER INTERPOSED AN ANSWER SO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED, DEFENDANTS' MOTION FOR PERMISSION TO SERVE A LATE ANSWER PROPERLY DENIED, MATTER REMITTED SO PLAINTIFF CAN MOVE FOR A DEFAULT JUDGMENT. [Gerster's Triple E. Towing & Repair, Inc. v Pishon Trucking, LLC, 2018 NY Slip Op 08979, Third Dept 12-27-18](#)

CIVIL PROCEDURE, CONTEMPT, CONSTITUTIONAL LAW, PRIVILEGE.

DEFENDANTS ARE REQUIRED TO PRODUCE TAX AND WAGE DOCUMENTS AND TO PROVIDE FACTUAL BASES FOR THEIR REFUSAL TO ANSWER QUESTIONS, SUPREME COURT SHOULD NOT HAVE ACCEPTED DEFENDANTS' BLANKET ASSERTIONS OF THE PRIVILEGE AGAINST SELF-INCRIMINATION AND SPOUSAL PRIVILEGE IN THIS CONTEMPT PROCEEDING STEMMING FROM AN ACTION TO RECOVER A DEFICIENCY JUDGMENT. [Carver Fed. Sav. Bank v Shaker Gardens, Inc., 2018 NY Slip Op 08975, Third Dept 12-27-18](#)

CIVIL PROCEDURE, WORKERS' COMPENSATION, TRUSTS AND ESTATES.

COUNTERCLAIMS AGAINST INDIVIDUAL TRUSTEES RELATED BACK TO THE COUNTERCLAIMS AGAINST THE TRUST AND THEREFORE WERE NOT TIME-BARRED, SUPREME COURT REVERSED. [NYAHS Servs., Inc., Self-Insurance Trust v People Care Inc., 2018 NY Slip Op 08735, Third Dept 12-20-18](#)

CONTRACT LAW, ACCOUNT STATED.

ALTHOUGH THERE WAS NO ENFORCEABLE CONTRACT TO INSTALL SOLAR PANELS, PLAINTIFF WAS ENTITLED TO SUMMARY JUDGMENT ON ITS ACCOUNT STATED CAUSE OF ACTION BASED ON INVOICES SENT TO DEFENDANT FOR THE SOLAR PANELS. [Solartech Renewables, LLC v Techcity Props., Inc., 2018 NY Slip Op 08739, Third Dept 12-20-18](#)

CONTRACT LAW, CIVIL PROCEDURE.

GENERAL RELEASE WAS NOT LIMITED TO A 2007 ACTION AND THEREFORE PRECLUDED THE 2014 ACTION, A UNILATERAL MISTAKE DOES NOT INVALIDATE A CONTRACT. [Stevens v Town of Chenango \(Forks\), 2018 NY Slip Op 08389, Third Dept 12-6-18](#)

CORPORATION LAW, CIVIL PROCEDURE.

IN THIS CPLR ARTICLE 4 PROCEEDING BROUGHT BY THE ATTORNEY GENERAL, THERE WERE QUESTIONS OF FACT ABOUT WHETHER THE RESPONDENT NOT-FOR-PROFIT CORPORATION VIOLATED ITS FIDUCIARY DUTY AND THE NOT-FOR-PROFIT-CORPORATION LAW WITH RESPECT TO ITS AFFILIATE NOT-FOR-PROFIT CORPORATIONS AND WHETHER THE BUSINESS JUDGMENT RULE APPLIED. [Matter of The People of The State of New York v The Lutheran Care Network, Inc., 2018 NY Slip Op 08727, Third Dept 12-20-18](#)

COURT OF CLAIMS, CRIMINAL LAW.

CLAIMANT WAS CONVICTED OF MURDER AND AN UNRELATED ROBBERY WHICH WERE CHARGED IN A SINGLE INDICTMENT, AFTER A MAN CONFESSED TO THE MURDER, CLAIMANT'S MURDER CONVICTION WAS VACATED BUT THE ROBBERY CONVICTION REMAINED, REVERSING THE COURT OF CLAIMS, THE THIRD DEPARTMENT DETERMINED CLAIMANT WAS ENTITLED TO COMPENSATION FOR THE UNJUST MURDER CONVICTION AND RELATED IMPRISONMENT. [Jones v State of New York, 2018 NY Slip Op 08985, Third Dept 12-27-18](#)

CRIMINAL LAW.

ALTHOUGH THE CRIME WITH WHICH DEFENDANT WAS CHARGED, ATTEMPTED DISSEMINATION OF INDECENT MATERIAL TO A MINOR FIRST DEGREE, CAN BE A FELONY SEX OFFENSE, THE ABSENCE OF STATUTORILY REQUIRED LANGUAGE IN THE ACCUSATORY INSTRUMENT PRECLUDED SENTENCING DEFENDANT AS A FELONY SEX OFFENDER. [People v Lavelle, 2018 NY Slip Op 08378, Third Dept 12-6-18](#)

CRIMINAL LAW.

THE MAJORITY CONCLUDED COMMUNITY OPPOSITION TO PETITIONER'S RELEASE ON PAROLE WAS PROPERLY CONSIDERED BY THE BOARD OF PAROLE AND UPHELD THE DENIAL OF PAROLE, TWO-JUSTICE DISSENT ARGUED COMMUNITY OPPOSITION IS NOT INCLUDED IN THE STATUTORY FACTORS TO BE CONSIDERED BY THE BOARD. [Matter of Applewhite v New York State Bd. of Parole, 2018 NY Slip Op 08989, Third Dept 12-27-18](#)

CRIMINAL LAW, APPEALS.

DEFENDANT CANNOT PLEAD GUILTY TO A VIOLATION OF A STATUTE WHICH HAD NOT BEEN ENACTED AT THE TIME OF THE OFFENSE, THE DEFECT IS JURISDICTIONAL AND SURVIVES A WAIVER OF APPEAL. [People v Gannon, 2018 NY Slip Op 08582, Third Dept 12-13-18](#)

CRIMINAL LAW, APPEALS, EVIDENCE.

ALTHOUGH DEFENDANT THREATENED TO KILL A JUDGE THE EVIDENCE DID NOT SUPPORT THE TERRORISM CONVICTION, THERE WAS NO EVIDENCE THE THREAT WAS MADE TO INFLUENCE OR AFFECT THE POLICY OR CONDUCT OF A GOVERNMENTAL UNIT, CONVICTION REVERSED UNDER A WEIGHT OF THE EVIDENCE REVIEW. [People v Richardson, 2018 NY Slip Op 08368, Third Dept 12-6-18](#)

DISCIPLINARY HEARINGS (INMATES).

PETITIONER MAY NOT HAVE BEEN AFFORDED HIS RIGHT TO BE PRESENT WHEN THE UNAUTHORIZED MEDICATION WAS FOUND IN HIS CELL, DETERMINATION ANNULLED. [Matter of Torres v Annucci, 2018 NY Slip Op 08595, Third Dept 12-13-18](#)

FAMILY LAW, EVIDENCE.

FAILURE TO HOLD A LINCOLN HEARING WAS NOT AN ABUSE OF DISCRETION. [Matter of Lorimer v Lorimer, 2018 NY Slip Op 08721, Third Dept 12-20-18](#)

FAMILY LAW, EVIDENCE, CRIMINAL LAW.

UNLIKE IN FAMILY COURT ACT ARTICLE 10 AND 6 PROCEEDINGS, CHILDREN'S HEARSAY STATEMENTS ARE NOT ADMISSIBLE IN FAMILY COURT ACT ARTICLE 8 (FAMILY OFFENSE) PROCEEDINGS. [Matter of Kristie GG. v Sean GG., 2018 NY Slip Op 08718, Third Dept 12-20-18](#)

FAMILY LAW, EVIDENCE, CRIMINAL LAW.

FAMILY COURT, IN THE WIFE'S ABSENCE, SUA SPONTE, RAISED ALLEGATIONS NOT INCLUDED IN THE FAMILY OFFENSE PETITION BEFORE THE COURT, FAMILY COURT THEN ALLOWED THE ALLEGATIONS TO BE ADDED TO THE PETITION, AND THE COURT WENT ON TO FIND THAT THE WIFE HAD COMMITTED THE FAMILY OFFENSES OF HARASSMENT AND MENACING, BECAUSE THE WIFE WAS NOT GIVEN NOTICE OF THE ADDED ALLEGATIONS, REVERSAL WAS REQUIRED. [Matter of King v King, 2018 NY Slip Op 08724, Third Dept 12-20-18](#)

INSURANCE LAW, NEGLIGENCE, EVIDENCE.

IN THIS TRAFFIC ACCIDENT CASE, AN AFFIDAVIT FROM A LICENSED CLINICAL SOCIAL WORKER (LCSW) CONSTITUTED COMPETENT EVIDENCE PLAINTIFF SUFFERS FROM POST-

TRAUMATIC STRESS DISORDER (PTSD), PTSD IS A 'SERIOUS INJURY' WITHIN THE MEANING OF INSURANCE LAW 5102. [Vergine v Phillips, 2018 NY Slip Op 08740, Third Dept 12-20-18](#)

JUDGES.

LAWSUIT SEEKING TO ENJOIN JUDICIAL SALARY INCREASES WAS PROPERLY DISMISSED. [Center for Jud. Accountability, Inc. v Cuomo, 2018 NY Slip Op 08996, Third Dept 12-27-18](#)

PERSONAL INJURY, EMPLOYMENT LAW.

QUESTIONS OF FACT WHETHER THE EMPLOYER OF THE DRIVER WHO KILLED A BICYCLIST WHEN ATTEMPTING TO LEAVE THE EMPLOYER'S PREMISES IS LIABLE, QUESTIONS OF FACT WERE RAISED ABOUT (1) THE EMPLOYER'S SPECIAL USE OF THE AREA WHERE THE ACCIDENT OCCURRED, (2) A SPECIAL RELATIONSHIP WITH THE EMPLOYEE (MASTER-SERVANT) GIVING RISE TO A DUTY TO CONTROL THE EMPLOYEE, AND (3) PROXIMATE CAUSE. [Giannelis v Borgwarner Morse Tec Inc., 2018 NY Slip Op 08593, Third Dept 12-13-18](#)

UNEMPLOYMENT INSURANCE.

DANCE INSTRUCTOR WAS AN EMPLOYEE OF THE FOUNDATION CHARTERED BY THE NYS BOARD OF REGENTS TO SET UP ARTISTIC PROGRAMS IN SCHOOLS. [Matter of Pearson \(Commissioner of Labor\), 2018 NY Slip Op 08588, Third Dept 12-13-18](#)

UNEMPLOYMENT INSURANCE.

NEWSPAPER CARRIER WAS AN EMPLOYEE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS. [Matter of Nicholas \(Commissioner of Labor\), 2018 NY Slip Op 08589, Third Dept 12-13-18](#)

UNEMPLOYMENT INSURANCE.

CLAIMANT, WHO HAD BEEN INJURED, DID NOT DEMONSTRATE SHE WAS ABLE TO WORK DURING THE TIME SHE WAS CERTIFIED FOR BENEFITS, UNEMPLOYMENT INSURANCE APPEALS BOARD RULING SHE WAS ENTITLED TO BENEFITS REVERSED. [Matter of Ormanian \(Commissioner of Labor\), 2018 NY Slip Op 08592, Third Dept 12-13-18](#)

WORKERS' COMPENSATION, APPEALS.

THE WORKERS' COMPENSATION BOARD DID NOT PROVIDE AN EXPLANATION FOR DISQUALIFYING CLAIMANT FROM FUTURE WAGE REPLACEMENT BENEFITS, MATTER REMITTED SO THAT ASPECT OF THE PENALTY CAN BE REVIEWED ON APPEAL. [Matter of Papadakis v Fresh Meadow Power NE LLC, 2018 NY Slip Op 08728, Third Dept 12-29-18](#)

WORKERS' COMPENSATION, EVIDENCE.

THE OPINION EVIDENCE THAT CLAIMANT'S PRE-EXISTING HEART CONDITION WAS A HINDRANCE TO HER EMPLOYABILITY WAS INSUFFICIENT, THE WORKERS' COMPENSATION CARRIER, THEREFORE, WAS NOT ENTITLED TO REIMBURSEMENT FROM THE SPECIAL DISABILITY FUND. [Matter of Ricci v Maria Regina Residence, 2018 NY Slip Op 08980, Third Dept 12-27-18](#)

FOURTH DEPARTMENT

ARBITRATION, MUNICIPAL LAW, EMPLOYMENT LAW, CONTRACT LAW.

ARBITRATOR DID NOT EXCEED HIS AUTHORITY IN FINDING THAT THE COLLECTIVE BARGAINING AGREEMENT REQUIRED DUE PROCESS PROTECTIONS, INCLUDING NOTICE, BEFORE AN EMPLOYEE COULD BE TERMINATED FOR ALLEGED MISCONDUCT, ARBITRATOR'S AWARD SHOULD HAVE BEEN CONFIRMED. [Matter of Town of Greece Guardians' Club, Local 1170 \(Town of Greece\), 2018 NY Slip Op 08775, Fourth Dept 12-21-18](#)

CIVIL PROCEDURE.

PURELY CONCLUSORY ALLEGATIONS IN A COMPLAINT WILL NOT SURVIVE A PRE-ANSWER MOTION TO DISMISS. [Bratge v Simons, 2018 NY Slip Op 08778, Fourth Dept 12-21-18](#)

CRIMINAL LAW.

INCARCERATION AFTER A PROBATION VIOLATION IN THIS VEHICULAR MANSLAUGHTER CASE DEEMED HARSH AND SEVERE, PROBATION REINSTATED WITH 100 HOURS COMMUNITY SERVICE. [People v Clause, 2018 NY Slip Op 08815, Fourth Dept 12-21-18](#)

CRIMINAL LAW, ATTORNEYS, APPEALS.

LEGAL SENTENCE FOR A PERSISTENT FELONY OFFENDER DRASTICALLY REDUCED IN THE INTEREST OF JUSTICE PURSUANT TO A MOTION FOR A WRIT OF CORAM NOBIS BASED UPON APPELLATE COUNSEL'S FAILURE TO CONTEND THE SENTENCING COURT ABUSED ITS DISCRETION. [People v Ellison, 2018 NY Slip Op 08833, Fourth Dept 12-21-18](#)

CRIMINAL LAW, ATTORNEYS, APPEALS.

ALTHOUGH THE PROSECUTOR WAS GUILTY OF SERIOUS MISCONDUCT, DEFENDANT DID NOT OBJECT TO THE PROSECUTOR'S REMARKS AND REVERSAL IN THE INTEREST OF JUSTICE WAS NOT WARRANTED, TWO-JUSTICE DISSENT. [People v Fick, 2018 NY Slip Op 08788, Fourth Dept 12-21-18](#)

CRIMINAL LAW, EVIDENCE.

SENTENCES FOR MURDER AND CRIMINAL POSSESSION OF A WEAPON MUST RUN CONCURRENTLY. [People v Maull, 2018 NY Slip Op 08780, Fourth Dept 12-21-18](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

THE AFORD PLEA WAS NOT SUPPORTED BY STRONG EVIDENCE OF DEFENDANT'S INTENT TO COMMIT GRAND LARCENY, THE PLEA WAS VACATED IN THE INTEREST OF JUSTICE. [People v Johnson, 2018 NY Slip Op 08802, Fourth Dept 12-21-18](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA), EVIDENCE.

INSUFFICIENT EVIDENCE THAT DEFENDANT HAD A HISTORY OF DRUG AND ALCOHOL ABUSE, RISK ASSESSMENT REDUCED. [People v Madonna, 2018 NY Slip Op 08789, Fourth Dept 12-21-18](#)

EDUCATION-SCHOOL LAW, PERSONAL INJURY, EMPLOYMENT LAW.

INFANT PLAINTIFF WAS ALLEGEDLY SEXUALLY ABUSED BY ANOTHER STUDENT ON A PRIVATE BUS TAKING THE CHILD HOME FROM SCHOOL, CERTAIN NEGLIGENCE CAUSES OF ACTION AGAINST THE SCHOOL SURVIVED A PRE-ANSWER MOTION TO DISMISS, NEGLIGENT SUPERVISION, HIRING AND TRAINING CAUSES OF ACTION DISMISSED BECAUSE THE EMPLOYEES WERE ALLEGED TO HAVE BEEN ACTING WITHIN THE SCOPE OF EMPLOYMENT, TWO DISSENTING JUSTICES ARGUED THE STUDENT WAS NO LONGER IN THE CUSTODY AND CONTROL OF THE SCHOOL WHEN THE ABUSE OCCURRED ON THE BUS. [Brown v First Student, Inc., 2018 NY Slip Op 08776, Fourth Dept 12-21-18](#)

FAMILY LAW.

FAMILY COURT SHOULD NOT HAVE DELEGATED ITS AUTHORITY TO ORDER VISITATION TO THE THERAPISTS BY CONDITIONING FATHER'S VISITATION ON HIS PARTICIPATION IN THERAPEUTIC COUNSELING. [Matter of Rice v Wightman, 2018 NY Slip Op 08813, Fourth Dept 12-21-18](#)

FAMILY LAW, CIVIL PROCEDURE.

IN THIS CUSTODY PROCEEDING BROUGHT BY MOTHER, A HEARING IS NECESSARY TO DETERMINE WHETHER NEW YORK HAD JURISDICTION AFTER THE CHILD SPENT FOUR OR FIVE MONTHS WITH FATHER IN NORTH CAROLINA. [Matter of Dean v Sherron, 2018 NY Slip Op 08807, Fourth Dept 12-21-18](#)

FAMILY LAW, CIVIL PROCEDURE, MENTAL HYGIENE LAW, SOCIAL SERVICES LAW.

HEARING IS REQUIRED TO DETERMINE WHETHER A GUARDIAN SHOULD BE APPOINTED FOR MOTHER IN THIS TERMINATION OF PARENTAL RIGHTS PROCEEDING, MOTHER SUFFERS FROM SCHIZOPHRENIA. [Matter of Jesten J.F. \(Ruth P.S.\), 2018 NY Slip Op 08812, Fourth Dept 12-21-18](#)

FAMILY LAW, CIVIL RIGHTS LAW.

SUPREME COURT SHOULD NOT HAVE AUTHORIZED CHANGING THE CHILD'S NAME TO A NAME NOT REQUESTED IN FATHER'S PETITION, A HEARING IS REQUIRED TO DETERMINE WHETHER THE NAME CHANGE IS IN THE CHILD'S BEST INTERESTS. [Matter of Segool v Fazio, 2018 NY Slip Op 08799, Fourth Dept 12-21-18](#)

FAMILY LAW, EVIDENCE.

FAMILY COURT SHOULD NOT HAVE GRANTED GRANDMOTHER'S PETITION FOR VISITATION, THE PARENTS WERE FIT AND THEIR TESTIMONY SHOULD HAVE BEEN GIVEN WEIGHT, INSTEAD FAMILY COURT IGNORED THE PARENTS' TESTIMONY. [Matter of Jones v Laubacker, 2018 NY Slip Op 08822, First Dept 12-20-18](#)

MEDICAL MALPRACTICE, PERSONAL INJURY, EVIDENCE.

EXPERTS MAY NOT RELY ON DISPUTED FACTS IN RENDERING AN OPINION IN A MEDICAL MALPRACTICE CASE. [Kubera v Bartholomew, 2018 NY Slip Op 08784, Fourth Dept 12-21-18](#)

MUNICIPAL LAW, EMPLOYMENT LAW, CONTRACT LAW.

CITY EMPLOYEE'S CONTRACTUAL RIGHT TO MEDICAL BENEFITS VESTED BEFORE THE COLLECTIVE BARGAINING AGREEMENT WAS TERMINATED. [Timkey v City of Lockport, 2018 NY Slip Op 08792, Fourth Dept 12-21-18](#)

PERSONAL INJURY, EVIDENCE.

ISSUE OF FACT WHETHER DRIVER WITH THE RIGHT OF WAY SHOULD HAVE SEEN THE CAR THAT WAS NOT SLOWING DOWN AS IT APPROACHED THE INTERSECTION, SUPREME COURT REVERSED, TWO-JUSTICE DISSENT. [Gilkerson v Buck, 2018 NY Slip Op 08782, Fourth Dept 12-21-18](#)

REAL PROPERTY LAW, CIVIL PROCEDURE, JUDGES.

SUPREME COURT SHOULD NOT HAVE, SUA SPONTE, SEARCHED THE RECORD AND ISSUED A DECLARATORY JUDGMENT ALLOWING PLAINTIFFS TO PAVE AN EASEMENT. [Tarsel v Trombino, 2018 NY Slip Op 08779, Fourth Dept 12-21-18](#)