

YEAR IN REVIEW

A Compilation of Selected Issues Addressed By Our Appellate Courts
in 2017 (January-December), Organized by Court with Links to the
Decisions.

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2017

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JANUARY 2017

FIRST DEPARTMENT

APPEALS.

ORDER DISMISSING COMPLAINT, ENTERED BY THE CLERK AT THE DIRECTION OF THE APPELLATE COURT AFTER REVERSAL, DOES NOT BRING UP TRIAL INTERLOCUTORY RULINGS FOR APPEAL. [Powell v City of New York, 2017 NY Slip Op 00576, 1st Dept 1-31-17](#)

ATTORNEYS, LEGAL MALPRACTICE.

PLAINTIFF, WHICH ULTIMATELY WON THE PATENT INFRINGEMENT SUIT, ALLEGED MALPRACTICE IN THE BRINGING OF CERTAIN MOTIONS; HAD THE MOTIONS WON, IT WAS ALLEGED, \$10 MILLION IN LEGAL FEES WOULD HAVE BEEN AVOIDED; THE MALPRACTICE ACTION WAS PROPERLY DISMISSED. [Brookwood Cos., Inc. v Alston & Bird LLP, 2017 NY Slip Op 00535, 1st Dept 1-26-17](#)

CIVIL PROCEDURE.

PLAINTIFF DID NOT SUFFICIENTLY DEMONSTRATE DEFENDANT'S AGENTS TRANSACTED BUSINESS IN NEW YORK, NEW YORK DID NOT HAVE LONG-ARM JURISDICTION. [Coast to Coast Energy, Inc. v Gasarch, 2017 NY Slip Op 00532, 1st Dept 1-26-17](#)

CIVIL PROCEDURE, EDUCATION-SCHOOL LAW.

NO JUSTICIABLE CONTROVERSY BETWEEN LAW SCHOOL AND AN ALLEGED DIPLOMA MILL, DECLARATORY JUDGMENT ACTION PROPERLY DISMISSED. [Touro Coll. v Novus Univ. Corp., 2017 NY Slip Op 00546, 1st Dept 1-26-17](#)

CONDOMINIUMS.

FAILURE TO PAY CONDOMINIUM COMMON CHARGES WAS A PROPER BASIS FOR EJECTION FROM THE CONDOMINIUM. [Heywood Condominium v Wozencraft, 2017 NY Slip Op 00257, 1st Dept 1-12-17](#)

CONTRACT LAW.

TERMS OF CONTRACT WERE NOT ABSOLUTE AND UNCONDITIONAL, MOTION TO DIMSIS BREACH AND REPUDIATION OF CONTRACT CAUSE OF ACTION SHOULD NOT HAVE BEEN GRANTED. [Guidance Enhanced Green Terrain, LLC v Bank of Am. Merrill Lynch, 2017 NY Slip Op 00068, 1st Dept 1-5-17](#)

CORPORATION LAW.

PIERCING THE CORPORATE VEIL (ALTER EGO) ALLEGATIONS PROPERLY SURVIVED MOTION TO DISMISS. [Cargill Soluciones Empresariales, S.A. de C.V., SOFOM, ENR v Desarrolladora Farallon S. de R.L. de C.V., 2017 NY Slip Op 00069, 1st Dept 1-5-17](#)

CRIMINAL LAW.

DEFENDANT NOT ENTITLED TO JURY TRIAL ON MISDEMEANORS, DESPITE POSSIBLE DEPORTATION UPON CONVICTION. [People v Suazo, 1st Dept 1-3-172017 NY Slip Op 00030](#)

CRIMINAL LAW.

FORMER GOLDMAN SACHS EMPLOYEE'S CONVICTION FOR UNLAWFUL USE OF SCIENTIFIC MATERIAL (COPYING PROPRIETARY COMPUTER SOURCE CODE) SHOULD NOT HAVE BEEN SET ASIDE, VERDICT REINSTATED. [People v Aleynikov, 2017 NY Slip Op 00449m 1st Dept 1-24-17](#)

CRIMINAL LAW.

A MOVING CAR IS A PLACE WHERE THE VICTIM IS NOT LIKELY TO BE FOUND WITHIN THE MEANING OF THE KIDNAPPING STATUTE, UNDER THE FACTS, UNLAWFUL IMPRISONMENT WAS NOT A LESSER INCLUDED OFFENSE. [People v Grohoske, 2017 NY Slip Op 00617, 1st Dept 1-31-17](#)

DEFAMATION, PRIVILEGE.

PROCEEDINGS BEFORE THE FOOD AND DRUG ADMINISTRATION ARE QUASI-JUDICIAL IN NATURE, STATEMENTS PROTECTED BY ABSOLUTE PRIVILEGE. [Stega v New York Downtown Hosp., 2017 NY Slip Op 00139, 1st Dept 1-10-17](#)

EMPLOYMENT LAW.

PLAINTIFF'S DISCRIMINATION SUIT SHOULD NOT HAVE BEEN DISMISSED, QUESTIONS OF FACT ABOUT WHETHER ACCOMMODATIONS FOR DISABLING ANXIETY SHOULD HAVE BEEN MADE. [Chernov v Securities Training Corp., 2017 NY Slip Op 00126, 1st Dept 1-10-17](#)

ENVIRONMENTAL LAW.

A COURT'S LIMITED REVIEW POWERS RE AN AGENCY'S FINDINGS PURSUANT TO A STATE ENVIRONMENTAL REVIEW QUALITY ACT ASSESSMENT CLARIFIED, SUPREME COURT'S REJECTION OF AGENCY FINDINGS REVERSED. [Matter of Friends of P.S. 163, Inc. v Jewish Home Lifecare, Manhattan, 2017 NY Slip Op 00383, 1st Dept 1-19-17](#)

FAMILY LAW.

REQUEST FOR DNA PATERNITY TEST PROPERLY DENIED, NOT IN THE CHILD'S BEST INTEREST. [Matter of Commissioner of Social Servs. v Dwayne W., 2017 NY Slip Op 00595, 1st Dept 1-31-17](#)

FAMILY LAW, ATTORNEYS.

PRO SE PETITIONER SHOULD HAVE BEEN INFORMED OF HIS RIGHT TO COUNSEL IN THIS ORDER OF PROTECTION PROCEEDING. [Matter of Gustavo D. v Michael D., 2017 NY Slip Op 00246, 1st Dept 1-12-17](#)

INSURANCE LAW.

QUESTION OF FACT WHETHER CONTRACTUAL SUBROGATION PROVISIONS APPLIED TO CERTAIN POLICIES COVERING INJURY BY LEAD PAINT. [Millennium Holdings LLC v Glidden Co., 2017 NY Slip Op 00258, 1st Dept 1-17-17](#)

LABOR LAW-CONSTRUCTION LAW.

FAILURE TO TIE OFF HARNESS WAS NOT THE SOLE PROXIMATE CAUSE OF PLAINTIFF'S FALL, DEFENDANTS DID NOT DEMONSTRATE PLAINTIFF KNEW OF A SAFE PLACE TO TIE OFF, PLAINTIFF ENTITLED TO SUMMARY JUDGMENT ON LABOR LAW 240(1) AND 241(6) CAUSES OF ACTION. [Anderson v MSG Holdings, L.P., 2017 NY Slip Op 00002, 1st Dept 1-3-17](#)

LABOR LAW-CONSTRUCTION LAW.

FALL ON THE SURFACE OF SCAFFOLDING NOT COVERED BY LABOR LAW 240(1), OVERSIGHT OF SITE SAFETY NOT ENOUGH FOR LABOR LAW 200 LIABILITY, SLIP AND FALL ON DUST ENTITLED PLAINTIFF TO SUMMARY JUDGMENT ON LABOR LAW 241(6) CAUSE OF ACTION. [Serrano v Consolidated Edison Co. of N.Y. Inc., 2017 NY Slip Op 00003, 1st Dept 1-3-17](#)

LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF ALLEGED HE WAS PROVIDED WITH A DEFECTIVE LADDER, QUESTION OF FACT WHETHER THE LADDER WAS A DANGEROUS CONDITION CREATED BY DEFENDANT OR OF WHICH DEFENDANT HAD NOTICE, LABOR LAW 200 CAUSE OF ACTION SHOULD NOT HAVE BEEN DISMISSED. [Jaycox v VNO Bruckner Plaza, LLC, 2017 NY Slip Op 00012, 1st Dept 1-3-17](#)

LABOR LAW-CONSTRUCTION LAW.

DEFENDANT CON EDISON EXERCISED SUFFICIENT CONTROL OVER THE MANNER OF PLAINTIFF'S WORK TO SUPPORT THE LABOR LAW 200 VERDICT, MOTION TO SET ASIDE THE VERDICT SHOULD NOT HAVE BEEN GRANTED. [Matter of New York Asbestos Litig., 2017 NY Slip Op 00098, 1st Dept 1-10-17](#)

LABOR LAW-CONSTRUCTION LAW.

LADDER SHIFTED, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON HIS LABOR LAW 240(1) CAUSE OF ACTION SHOULD HAVE BEEN GRANTED. [Garcia v Church of St. Joseph of the Holy Family of the City of N.Y., 2017 NY Slip Op 00239, 1st Dept 1-12-17](#)

LABOR LAW-CONSTRUCTION LAW.

QUESTION OF FACT WHETHER WORK ON AIR CONDITIONER WAS REPAIR COVERED BY LABOR LAW 240(1). [Roth v Lenox Terrace Assoc., 2017 NY Slip Op 00402, 1st Dept 1-19-17](#)

LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF INJURED BY A PORTION OF A ROOF WHICH FELL ON HIM UNEXPECTEDLY WHEN ANOTHER PORTION OF THE ROOF WAS BEING DEMOLISHED, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON THE LABOR LAW 240(1) CAUSE OF ACTION PROPERLY DENIED, PROPERTY MANAGER COULD BE LIABLE AS AGENT OF OWNER. [Ragubir v Gibraltar Mgt. Co., Inc., 2017 NY Slip Op 00265, 1st Dept 1-17-17](#)

LABOR LAW-CONSTRUCTION LAW.

PLANK USED TO CROSS GAP IN ROOF COLLAPSED, PLAINTIFF ENTITLED TO SUMMARY JUDGMENT ON LABOR LAW 240(1) CAUSE OF ACTION. [DeFreitas v Penta Painting & Decorating Corp., 2017 NY Slip Op 00277, 1st Dept 1-17-17](#)

LABOR LAW-CONSTRUCTION LAW.

LABOR LAW 240 (1) AND 241 (6) CAUSES OF ACTION SHOULD NOT HAVE BEEN DISMISSED, LIGHTING BAR FELL ON PLAINTIFF WHEN HE WAS DISMANTLING AN EXHIBITION BOOTH. [Rutkowski v New York Convention Ctr. Dev. Corp., 2017 NY Slip Op 00555, 1st Dept 1-26-17](#)

LABOR LAW-CONSTRUCTION LAW, EVIDENCE.

SUMMARY JUDGMENT IN FAVOR OF PLAINTIFF ON HIS LABOR LAW 240(1) CAUSE OF ACTION SHOULD HAVE BEEN GRANTED, UNCERTIFIED DOCUMENTS IN OPPOSITION SHOULD NOT HAVE BEEN CONSIDERED. [Erkan v McDonald's Corp., 2017 NY Slip Op 00099, 1st Dept 1-10-17](#)

LABOR LAW-CONSTRUCTION LAW, EVIDENCE.

QUESTION OF FACT WHETHER SITE SAFETY CONSULTANT EXERCISED SUFFICIENT CONTROL OVER PLAINTIFF'S WORK TO BE LIABLE UNDER LABOR LAW 200. [Oliveri v City of New York, 2017 NY Slip Op 00237, 1st Dept 1-12-17](#)

LANDLORD-TENANT.

LEASE WAS NOT AN ATTEMPT TO THWART (NYC) RENT CONTROL AND WAS THEREFORE VALID AND ENFORCEABLE. [204 Columbia Hgts., LLC v Manheim, 2017 NY Slip Op 00425, 1st Dept 1-19-17](#)

MENTAL HYGIENE LAW.

COMPENSATION FOR A GUARDIAN UNDER THE MENTAL HYGIENE LAW IS NOT CALCULATED ACCORDING TO THE FORMULA IN THE SURROGATE'S COURT PROCEDURE ACT, GUARDIAN ENTITLED ONLY TO REASONABLE COMPENSATION. [Matter of Goldstein v Zabel, 2017 NY Slip Op 00426, 1st Dept 1-24-17](#)

MUNICIPAL LAW.

NEW YORK CITY LOCAL LAW BANNING E-CIGARETTES DOES NOT VIOLATE THE ONE SUBJECT RULE OF THE NEW YORK STATE CONSTITUTION, THE MUNICIPAL HOME RULE LAW, OR THE NEW YORK CITY CHARTER. [NYC C.L.A.S.H. v City of New York, 2017 NY Slip Op 00042, 1st Dept 1-3-17](#)

NEGLIGENCE.

QUESTION OF FACT WHETHER SIDEWALK LOW-LYING TRIPPING HAZARD NARROWED THE PASSABLE AREA AND WAS VISIBLE AT NIGHT. [Stolzman v City of New York, 2017 NY Slip Op 00247, 1st Dept 1-12-17](#)

NEGLIGENCE.

OPEN AND OBVIOUS CONDITION ELIMINATES DUTY TO WARN BUT NOT DUTY TO KEEP PREMISES SAFE. [Polini v Schindler El. Corp., 2017 NY Slip Op 00254, 1st Dept 1-12-17](#)

NEGLIGENCE.

NO DUTY OWED BY CAB COMPANY TO GENERAL PUBLIC, PLAINTIFF INJURED BY THE CAB AFTER THE DRIVER WAS RENDERED UNCONSCIOUS DURING A ROBBERY. [On v BKO Express LLC, 2017 NY Slip Op 00281, 1st Dept 1-17-17](#)

NEGLIGENCE.

EVEN THOUGH THE PEDESTRIAN DID NOT HAVE THE RIGHT OF WAY WHEN HE CROSSED THE STREET, QUESTION OF FACT WHETHER DRIVER COULD HAVE AVOIDED STRIKING HIM. [Sylvester v Velez, 2017 NY Slip Op 00390, 1st Dept 1-19-17](#)

NEGLIGENCE.

NO NOTICE OF ALLEGED SKIDDING AND SHAKING OF ESCALATOR, RES IPSA LOQUITUR NOT APPLICABLE. [Torres-Martinez v Macy's, Inc., 2017 NY Slip Op 00429, 1st Dept 1-24-17](#)

NEGLIGENCE.

DOCTRINE OF RES IPSA LOQUITUR PRECLUDED SUMMARY JUDGMENT IN THIS ELEVATOR ACCIDENT CASE. [Galante v New York City Hous. Auth., 2017 NY Slip Op 00430, 1st Dept 1-24-17](#)

NEGLIGENCE.

QUESTION OF FACT WHETHER OPTICAL CONFUSION OBSCURED A STEP, DEFENDANT'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED. [Buonchristiano v Fordham Univ., 2017 NY Slip Op 00586, 1st Dept 1-31-17](#)

NEGLIGENCE.

SPEED OF PLAINTIFF BICYCLIST RAISED A QUESTION OF FACT RE HIS COMPARATIVE NEGLIGENCE. [Bell v Angah, 2017 NY Slip Op 00613, 1st Dept 1-31-17](#)

NEGLIGENCE, EVIDENCE.

DEFENDANTS DEMONSTRATED THEY DID NOT HAVE CONSTRUCTIVE NOTICE OF WET CONDITION WHERE PLAINTIFF FELL, CAUSE OF ACTION BASED ON ABSENCE OF A HANDRAIL SHOULD NOT HAVE BEEN DISMISSED. [Lee v Alma Realty Corp., 2017 NY Slip Op 00101, 1st Dept 1-10-17](#)

NEGLIGENCE, MUNICIPAL LAW.

BIG APPLE MAP RAISED QUESTION OF FACT WHETHER THE CITY WAS AWARE OF MANHOLE-SIDEWALK DEFECT, SUMMARY JUDGMENT SHOULD NOT HAVE BEEN AWARDED TO THE CITY IN THIS SLIP AND FALL CASE. [Hennessey-Diaz v City of New York, 2017 NY Slip Op 00025, 1st Dept 1-3-17](#)

NEGLIGENCE, WORKERS' COMPENSATION LAW, EMPLOYMENT LAW.

METROPOLITAN OPERA STAR'S NEGLIGENCE SUIT STEMMING FROM A FALL DURING A PERFORMANCE SURVIVED A MOTION DISMISS WHICH ARGUED SHE WAS AN EMPLOYEE AND THE WORKERS' COMPENSATION LAW WAS HER ONLY REMEDY. [White v Metropolitan Opera Assn., Inc., 2017 NY Slip Op 00093, 1st Dept 1-5-17](#)

SECURITIES, CONTRACT LAW, EVIDENCE.

DEUTSCHE BANK BREACHED CREDIT DEFAULT SWAP AGREEMENTS. [Good Hill Master Fund L.P. v Deutsche Bank AG, 2017 NY Slip Op 00428, 1st Dept 1-24-17](#)

SECOND DEPARTMENT

COURT OF CLAIMS, MUNICIPAL LAW, ENVIRONMENTAL LAW.

ACTION BY TOWN SEEKING REIMBURSEMENT OF LITIGATION COSTS PURSUANT TO A PROVISION OF THE ENVIRONMENTAL CONSERVATION LAW WAS PROPERLY AND TIMELY BROUGHT IN THE COURT OF CLAIMS. [Town of Rhinebeck v State of New York, 2017 NY Slip Op 00502, 2nd Dept 1-25-17](#)

CRIMINAL LAW.

SEARCH NOT JUSTIFIED BY THE EMERGENCY DOCTRINE, INJURY NOT SUFFICIENT TO SUPPORT ASSAULT 2ND. [People v Williams, 2017 NY Slip Op 00329, 2nd Dept 1-18-17](#)

CRIMINAL LAW, APPEALS.

WAIVER OF A-1 FELONY INDICTMENT INVALID, DESPITE GUILTY PLEA, WAIVER OF APPEAL AND FAILURE TO PRESERVE THE ERROR. [People v Janelle, 2017 NY Slip Op 00188, 2nd Dept 1-11-17](#)

CRIMINAL LAW, ATTORNEYS.

NO PROOF DEFENDANT WAS DEPRIVED OF HIS LIMITED RIGHT TO SPEAK TO COUNSEL BEFORE TAKING BLOOD-ALCOHOL TEST, SUPPRESSION SHOULD NOT HAVE BEEN GRANTED, APPLICABLE LAW EXPLAINED. [People v Lucifero, 2017 NY Slip Op 00190, 2nd Dept 1-11-17](#)

CRIMINAL LAW, EVIDENCE.

ERRONEOUS SANDOVAL RULING REQUIRED REVERSAL. [People v Calderon, 2017 NY Slip Op 00479, 2nd Dept 1-25-17](#)

CRIMINAL LAW, EVIDENCE.

EVIDENCE BEFORE THE GRAND JURY WAS LEGALLY SUFFICIENT, CRITERIA EXPLAINED. [People v Franov, 2017 NY Slip Op 00482, 2nd Dept 1-25-17](#)

CRIMINAL LAW, EVIDENCE.

JURY-NOTE ERROR REQUIRED REVERSAL; ALL INDICTMENT COUNTS WERE TAINTED BY THE JURY-NOTE ERROR; UNSWORN VIDEOTAPED STATEMENT OF WITNESS PROPERLY ALLOWED BECAUSE DEFENDANT CAUSED THE WITNESS'S UNAVAILABILITY. [People v Thomas, 2017 NY Slip Op 00497, 2nd Dept 1-25-17](#)

EMPLOYMENT LAW, CIVIL PROCEDURE, APPEALS, CONTRACT LAW.

APPELLATE COURT NEED NOT REVIEW ISSUES NOT SUPPORTED BY DOCUMENTS IN THE APPENDIX; COUPLING DECLARATORY JUDGMENT WITH SPECIFIC PERFORMANCE WAIVED RIGHT TO JURY TRIAL; FAITHLESS SERVANT DOCTRINE FORFEITED PLAINTIFF'S RIGHT TO A STOCK OPTION. [Trimarco v Data Treasury Corp., 2017 NY Slip Op 00503, 2nd Dept 1-25-17](#)

ENVIRONMENTAL LAW.

SUMMARY JUDGMENT PROPERLY GRANTED FOR OIL SPILL ON PLAINTIFF'S PROPERTY. [Zinke v Pacific Energy Corp., 2017 NY Slip Op 00341, 2nd Dept 1-18-17](#)

FAMILY LAW.

MOTHER'S MOTION TO RELOCATE WITH THE CHILDREN SHOULD NOT HAVE BEEN GRANTED. [DeFilippis v DeFilippis, 2017 NY Slip Op 00147, 2nd Dept 1-11-17](#)

FORECLOSURE, EVIDENCE.

BANK DID NOT DEMONSTRATE STANDING (REQUIREMENTS OF BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE NOT MET), SUPREME COURT REVERSED. [Arch Bay Holdings, LLC v Albanese, 2017 NY Slip Op 00284, 2nd Dept 1-18-17](#)

LABOR LAW-CONSTRUCTION LAW.

HOMEOWNER'S EXCEPTION TO LABOR LAW 240 (1) LIABILITY APPLIED, DEFENDANTS DEMONSTRATED FREEDOM FROM FAULT UNDER LABOR LAW 200. [Dasilva v Nussdorf, 2017 NY Slip Op 00288, 2nd Dept 1-18-17](#)

MUNICIPAL LAW.

RESOLUTION IMPOSING A SURCHARGE ON DEVELOPERS FOR CONSTRUCTION OF WATER MAINS DECLARED VOID, WATER AUTHORITY FAILED TO PROVIDE PROPER NOTICE BEFORE ENACTING THE RESOLUTION. [Matter of 22-50 Jackson Ave. Assoc., L.P. v Suffolk County Water Auth., 2017 NY Slip Op 00299, 2nd Dept 1-18-17](#)

MUNICIPAL LAW.

APPLICATION FOR LEAVE TO SERVE LATE NOTICES OF CLAIM SHOULD HAVE BEEN GRANTED, CRITERIA EXPLAINED. [Matter of City of New York v County of Nassau, 2017 NY Slip Op 00465, 2nd Dept 1-25-17](#)

MUNICIPAL LAW, NEGLIGENCE.

ACCIDENT REPORT WHICH DID NOT INDICATE PETITIONER WAS INJURED DID NOT NOTIFY THE CITY OF THE ESSENTIAL FACTS, THEREFORE LEAVE TO FILE LATE NOTICE OF CLAIM PROPERLY DENIED. [Matter of D'Agostino v City of New York, 2017 NY Slip Op 00302, 2nd Dept 1-18-17](#)

NEGLIGENCE.

DEPARTMENT STORE'S MOTION FOR SUMMARY JUDGMENT IN THIS ESCALATOR SLIP AND FALL CASE SHOULD HAVE BEEN GRANTED, NO ACTUAL OR CONSTRUCTIVE NOTICE OF CONDITION. [Isaacs v Federated Dept. Stores, Inc., 2017 NY Slip Op 00156, 2nd Dept 1-11-17](#)

NEGLIGENCE.

DEFECT NOT TRIVIAL AS A MATTER OF LAW, DEFENDANT'S MOTION FOR A JUDGMENT AS A MATTER OF LAW SHOULD NOT HAVE BEEN GRANTED. [Pitt v New York City Tr. Auth., 2017 NY Slip Op 00203, 2nd Dept 1-11-17](#)

NEGLIGENCE.

EMERGENCY DOCTRINE APPLIED, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IN THIS TRAFFIC ACCIDENT CASE PROPERLY GRANTED. [Graci v Kingsley, 2017 NY Slip Op 00291, 2nd Dept 1-18-17](#)

NEGLIGENCE.

PLAINTIFF ENTITLED TO SUMMARY JUDGMENT IN THIS INTERSECTION ACCIDENT CASE, WHETHER DEFENDANT STOPPED BEFORE ENTERING PLAINTIFF'S RIGHT OF WAY WAS NOT DISPOSITIVE. [Fuertes v City of New York, 2017 NY Slip Op 00457, 2nd Dept 1-25-17](#)

NEGLIGENCE.

DEFENDANT DID NOT DEMONSTRATE WHEN ALLEGEDLY DEFECTIVE STEP WAS LAST INSPECTED AND DID NOT DEMONSTRATE ANY DEFECT WAS LATENT, SUMMARY JUDGMENT PROPERLY DENIED. [Gairy v 3900 Harper Ave., LLC, 2017 NY Slip Op 00458, 2nd Dept 1-25-17](#)

NEGLIGENCE, COURT OF CLAIMS.

STATE DOES NOT HAVE A DUTY TO WARN SWIMMERS OF RIP CURRENTS AT STATE BEACHES. [Seetaram v State of New York, 2017 NY Slip Op 00336, 2nd Dept 1-18-17](#)

NEGLIGENCE, EVIDENCE.

ALTHOUGH PLAINTIFF DRIVER HAD THE RIGHT OF WAY, HE DID NOT DEMONSTRATE FREEDOM FROM COMPARATIVE FAULT IN THIS INTERSECTION ACCIDENT, SUMMARY JUDGMENT PROPERLY DENIED, SUMMARY JUDGMENT SHOULD HAVE BEEN AWARDED TO PLAINTIFF'S PASSENGER, HOWEVER. [Al-Mamar v Terrones, 2017 NY Slip Op 00140, 2nd Dept 1-11-17](#)

NEGLIGENCE, EVIDENCE.

DEFENDANT BUS DRIVER, WHO HAD THE RIGHT OF WAY, FAILED TO DEMONSTRATE FREEDOM FROM COMPARATIVE FAULT IN AN INTERSECTION ACCIDENT, SUMMARY JUDGMENT PROPERLY DENIED. [Blair v Coleman, 2017 NY Slip Op 00143, 2nd Dept 1-11-17](#)

NEGLIGENCE, MEDICAL MALPRACTICE, EVIDENCE.

DISCLOSURE OF SUBSTANCE OF DEFENSE EXPERT'S OPINION INADEQUATE, MOTION TO SET ASIDE DEFENSE VERDICT IN THIS MEDICAL MALPRACTICE CASE SHOULD HAVE BEEN GRANTED. [Rocco v Ahmed, 2017 NY Slip Op 00207, 2nd Dept 1-11-17](#)

ZONING.

ZONING BOARD DID NOT SET OUT A FACTUAL BASIS FOR FAILING TO FOLLOW ITS OWN PRECEDENT IN THIS VARIANCE PROCEEDING, ZONING BOARD'S GRANT OF THE VARIANCES WAS THEREFORE ARBITRARY AND CAPRICIOUS. [Matter of Amdurer v Village of New Hempstead Zoning Bd. of Appeals, 2017 NY Slip Op 00300, 2nd Dept 1-18-17](#)

THIRD DEPARTMENT

ATTORNEYS, FORECLOSURE.

HEARING NECESSARY TO ASSESS ATTORNEY'S FEES, CRITERIA EXPLAINED. [Lehman Commercial Paper, Inc. v Point Prop. Co., LLC, 2017 NY Slip Op 00358, 3rd Dept 1-19-17](#)

ATTORNEYS, WORKERS' COMPENSATION LAW.

ATTORNEY'S FEE PROPERLY REDUCED BASED UPON FAILURE TO FULLY FILL OUT THE RELEVANT FORM. [Matter of Fernandez v Royal Coach Lines, Inc., 2017 NY Slip Op 00368, 3rd Dept 1-19-17](#)

DISCIPLINARY HEARINGS (INMATES).

HEARING OFFICER'S DENIAL OF REQUEST FOR A WITNESS AND FAILURE TO INQUIRE INTO INMATE WITNESSES' REFUSAL TO TESTIFY REQUIRED A NEW HEARING. [Matter of Mosley v Annucci, 2017 NY Slip Op 00061, 3rd Dept 1-5-17](#)

DISCIPLINARY HEARINGS (INMATES).

FAILURE TO INQUIRE INTO WITNESS'S REFUSAL TO TESTIFY REQUIRED A NEW HEARING. [Matter of Banks v Annucci, 2017 NY Slip Op 00529, 3rd Dept 1-26-17](#)

DISCIPLINARY HEARINGS (INMATES).

FLAWED EVIDENCE REQUIRED ANNULMENT OF SMUGGLING CHARGES. [Matter of McGriff v Venettozzi, 2017 NY Slip Op 00530, 3rd Dept 1-26-17](#)

FAMILY LAW, APPEALS.

FAMILY COURT'S REFUSAL TO ACKNOWLEDGE THE THIRD DEPARTMENT'S REVERSAL OF THE TERMINATION OF MOTHER'S PARENTAL RIGHTS REQUIRED NEW HEARING IN FRONT OF A DIFFERENT JUDGE. [Matter of Angela F. v St. Lawrence County Dept. of Social Servs., 2017 NY Slip Op 00513, 3rd Dept 1-26-17](#)

See also the related case: [Matter of Angela F. v Gail WW., 2017 NY Slip Op 00514, 3rd Dept 1-25-17](#)

INSURANCE LAW.

HOMEOWNERS INSURANCE COMPANY HAD DUTY TO DEFEND IN AN ACTION STEMMING FROM A SHOOTING BY THE INSURED, SHOOTING MAY HAVE BEEN UNINTENTIONAL (RECKLESS). [Guzy v New York Cent. Mut. Fire Ins. Co., 2017 NY Slip Op 00233, 3rd Dept 1-12-17](#)

REAL PROPERTY TAX LAW, MUNICIPAL LAW, IMMUNITY, CIVIL RIGHTS (42 USC 1983).

TOWN BOARD OF ASSESSMENT REVIEW IS A QUASI-JUDICIAL BODY IMMUNE FROM SUIT, 42 USC 1983 CAUSES OF ACTION AGAINST TOWN ASSESSORS INDIVIDUALLY CAN GO FORWARD]. [Corvetti v Town of Lake Pleasant, 2017 NY Slip Op 00227, 3rd Dept 1-12-17](#)

UNEMPLOYMENT INSURANCE.

INABILITY TO MEET THE REQUIREMENTS OF AN EMPLOYMENT AGREEMENT IS NOT GOOD CAUSE FOR LEAVING EMPLOYMENT. [Matter of Brown \(Express Delivery LLC--Commissioner of Labor\), 2017 NY Slip Op 00359, 3rd Dept 1-19-17](#)

UNEMPLOYMENT INSURANCE.

COMPUTER DESKTOP ENGINEER NOT AN EMPLOYEE OF JOB PLACEMENT SERVICE. [Matter of Desravines \(Logic Corp.--Commissioner of Labor\), 2017 NY Slip Op 00361, 3rd Dept 1-19-17](#)

UNEMPLOYMENT INSURANCE.

BIOMETRIC SCREENER WAS AN EMPLOYEE OF HEALTH AND WELLNESS COMPANY. [Matter of Williams \(Summit Health, Inc.--Commissioner of Labor\), 2017 NY Slip Op 00363, 3rd Dept 1-19-17](#)

WORKERS' COMPENSATION LAW.

FAILURE TO TIMELY SERVE ONE OF CLAIMANT'S EMPLOYERS WAS A VALID BASIS FOR DENIAL OF THE CLAIM. [Matter of Harrell v Blue Diamond Sheet Metal, 2017 NY Slip Op 00356, 3rd Dept 1-19-17](#)

WORKERS' COMPENSATION LAW.

CARRIER'S APPLICATION TO REOPEN CLAIM WAS MADE WITHOUT REASONABLE GROUNDS, PENALTY PROPERLY IMPOSED. [Matter of Andrews v Combined Life Ins., 2017 NY Slip Op 00360, 3rd Dept 1-19-17](#)

WORKERS' COMPENSATION LAW.

CARRIER'S REQUEST FOR AN ADJOURNMENT OF AN EXPEDITED PERMANENCY HEARING PROPERLY DENIED, REQUEST WAS NOT BASED UPON AN EMERGENCY. [Matter of Maffei v Russin Lbr. Corp., 2017 NY Slip Op 00362, 3rd Dept 1-19-17](#)

WORKERS' COMPENSATION LAW.

MEDICAL REPORT WAS SUFFICIENT TO REOPEN A CLOSED CLAIM WITHIN SEVEN YEARS, CLAIM SHOULD NOT HAVE BEEN TRANSFERRED TO THE SPECIAL FUND. [Matter of Williams v General Elec., 2017 NY Slip Op 00364, 3rd Dept 1-19-17](#)

WORKERS' COMPENSATION LAW.

INSUFFICIENT PROOF OF CAUSAL CONNECTION BETWEEN JOB-RELATED STRESS AND STROKE. [Matter of Qualls v Bronx Dist. Attorney's Off., 2017 NY Slip Op 00365, 3rd Dept 1-19-17](#)

WORKERS' COMPENSATION LAW.

ALTHOUGH CLAIMANT WAS INJURED IN FLORIDA, NEW YORK HAD SUBJECT MATTER JURISDICTION. [Matter of Barnett v Callaway, 2017 NY Slip Op 00366, 3rd Dept 1-19-17](#)

WORKERS' COMPENSATION LAW, FRAUD, CIVIL PROCEDURE.

CAUSES OF ACTION AGAINST ACCOUNTANTS STEMMING FROM A WORKERS' COMPENSATION TRUST FOUND TO BE \$8 MILLION IN DEBT SURVIVED MOTIONS TO DISMISS, SIX YEAR STATUTE OF LIMITATIONS APPLIES TO INTENTIONAL (AS OPPOSED TO NEGLIGENT) CONDUCT. [New York State Workers' Compensation Bd. v Fuller & LaFiura, CPAs, P.C., 2017 NY Slip Op 00225, 3rd Dept 1-12-17](#)

WORKERS' COMPENSATION LAW, TRUSTS AND ESTATES.

MANY (BUT NOT ALL) CAUSES OF ACTION ALLOWED TO GO FORWARD IN AN ACTION AGAINST ADMINISTRATORS AND TRUSTEES OF A WORKERS' COMPENSATION TRUST FOUND TO BE \$188 MILLION IN DEBT. [State of N.Y. Workers' Compensation Bd. v Wang, 2017 NY Slip Op 00057, 3rd Dept 1-5-17](#)

WORKERS' COMPENSATION LAW, TRUSTS AND ESTATES, CONTRACT LAW.

IN A LAWSUIT BY EMPLOYERS AGAINST THE ADMINISTRATORS AND TRUSTEES OF A WORKERS' COMPENSATION TRUST FOUND TO BE \$188 MILLION IN DEBT, THE EMPLOYERS WERE DEEMED THIRD PARTY BENEFICIARIES OF THE CONTRACT BETWEEN THE ADMINISTRATORS AND THE TRUST, MANY OF THE EMPLOYERS' NONCONTRACTUAL CLAIMS WERE PROPERLY DISMISSED AS DERIVATIVE (PERTAINING TO THE TRUST) RATHER THAN DIRECT. [Accredited Aides Plus, Inc. v Program Risk Mgt., Inc., 2017 NY Slip Op 00058, 3rd Dept 1-5-17](#)

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COURT OF APPEALS

ATTORNEYS, CONTRACT LAW.

ETHICAL VIOLATION CANNOT BE USED AS A SWORD TO AVOID PAYMENT OF ATTORNEY'S FEE; BECAUSE TRIAL PREPARATION NOT NECESSARY, LOWER ATTORNEY'S-FEE PERCENTAGE APPLIED. [Marin v Constitution Realty, LLC, 2017 NY Slip Op 01019, CtApp 2-9-17](#)

CIVIL PROCEDURE, IMMUNITY, NEGLIGENCE.

CPLR 1601 DOES NOT ALLOW DAMAGES TO BE APPORTIONED AGAINST THE NON-PARTY STATE IN A NEGLIGENCE ACTION IN SUPREME COURT. [Artibee v Home Place Corp., 2017 NY Slip Op 01145, CtApp 2-14-17](#)

CRIMINAL LAW.

NO EVIDENCE JURY COULD SEE ORANGE CORRECTIONS DEPARTMENT PANTS WORN BY DEFENDANT ON THE FIRST DAY OF TRIAL, DEFENDANT NOT DENIED A FAIR TRIAL [People v Then, 2017 NY Slip Op 01021, CtApp 2-9-17](#)

CRIMINAL LAW.

PLEA TO HINDERING PROSECUTION FOR PROVIDING AND HIDING WEAPON STANDS, DESPITE ACQUITTAL OF THE SHOOTER. [People v Fisher, 2017 NY Slip Op 01143, CtApp 2-14-17](#)

CRIMINAL LAW, APPEALS.

CRUEL AND UNUSUAL PUNISHMENT ARGUMENT NOT PRESERVED FOR REVIEW. [People v Pena, 2017 NY Slip Op 01142, CtApp 2-14-17](#)

CRIMINAL LAW, ATTORNEYS.

DEFENDANT DID NOT RECEIVE EFFECTIVE ASSISTANCE OF COUNSEL, CONVICTION REVERSED. [People v Maldonado, 2017 NY Slip Op 01254, CtApp 2-16-17](#)

CRIMINAL LAW, EVIDENCE.

ELEMENTS OF OFFICIAL MISCONDUCT, MALFEASANCE AND NONFEASANCE, EXPLAINED; COCONSPIRATOR STATEMENTS MADE BEFORE A DEFENDANT JOINS A CONSPIRACY AND AFTER A DEFENDANT LEAVES A CONSPIRACY ARE ADMISSIBLE. [People v Flanagan, 2017 NY Slip Op 01018, CtApp 2-9-17](#)

CRIMINAL LAW, EVIDENCE.

OKAY FOR THE JURY TO CONSIDER WHETHER DEFENDANT'S SILENCE AND EVASIVENESS DURING A PHONE CALL WITH THE VICTIM RECORDED BY THE JAIL WAS AN ADOPTIVE ADMISSION. [People v Vining, 2017 NY Slip Op 01144, CtApp 2-14-17](#)

CRIMINAL LAW, EVIDENCE.

TESTIMONY BY OFFICER WHO WAS PRESENT BUT DID NOT ADMINISTER THE DWI BREATHALYZER TEST DID NOT VIOLATE THE CONFRONTATION CLAUSE. [People v Hao Lin, 2017 NY Slip Op 01253, CtApp 2-16-17](#)

FAMILY LAW.

EXPUNGEMENT NOT AVAILABLE FOR CHILD NEGLECT CASE REFERRED TO THE FAMILY ASSESSMENT RESPONSE TRACK (FAR TRACK). [Matter of Corrigan v New York State Off. of Children & Family Servs., 2017 NY Slip Op 01020, CtApp 2-9-17](#)

INSURANCE LAW, CONTRACT LAW.

HUGE CONSTRUCTION CRANE DESTROYED IN SUPERSTORM SANDY NOT COVERED BY INSURANCE, CONTRACTOR'S TOOLS EXCLUSION APPLIED. [Lend Lease \(US\) Constr. LMB Inc. v Zurich Am. Ins. Co., 2017 NY Slip Op 01141, CtApp 2-14-17](#)

MUNICIPAL LAW, IMMUNITY.

COUNTY IMMUNE FROM SUIT BY STUDENT ASSAULTED BY A WORKER, A LEVEL THREE SEX OFFENDER, WHO WAS REFERRED BY THE COUNTY AS PART OF A WELFARE TO WORK PROGRAM. [Tara N.P. v Western Suffolk Bd. of Coop. Educ. Servs., 2017 NY Slip Op 01255, CtApp 2-16-17](#)

NEGLIGENCE.

SUBSTANCE ABUSE TREATMENT FACILITY OWED NO DUTY TO PLAINTIFF WHO WAS ASSAULTED BY A RESIDENT SHORTLY AFTER THE RESIDENT WAS DISMISSED FROM THE TREATMENT PROGRAM. [Oddo v Queens Vil. Comm. for Mental Health for Jamaica Community Adolescent Program, Inc., 2017 NY Slip Op 01256, CtApp 2-16-17](#)

FIRST DEPARTMENT

CIVIL PROCEDURE, DEBTOR-CREDITOR

PAYMENT GUARANTEES NOT ENTITLED TO EXPEDITED TREATMENT PURSUANT TO CPLR 3213 AS INSTRUMENTS FOR THE PAYMENT OF MONEY ONLY, REFERENCE TO OTHER DOCUMENTS WAS NEEDED. [PDL Biopharma, Inc. v Wohlstadter, 2017 NY Slip Op 01151, 1st Dept 2-14-17](#)

CIVIL PROCEDURE, EVIDENCE, NEGLIGENCE.

STRIKING DEFENDANTS' ANSWERS WAS AN APPROPRIATE REMEDY FOR SPOILIATION OF EVIDENCE. [Rookwood v Busy B's Child Care Daycare Inc., 2017 NY Slip Op 01281, 1st Dept 2-16-17](#)

CIVIL PROCEDURE, NEGLIGENCE, PRIVILEGE.

MENTAL HEALTH, HIV, SUBSTANCE ABUSE AND ALCOHOL ABUSE MEDICAL RECORDS NOT DISCOVERABLE IN THIS NEGLIGENCE CASE. [James v 1620 Westchester Ave. LLC, 2017 NY Slip Op 01303, 1st Dept 2-21-17](#)

CONTRACT LAW.

POSSIBLE APPLICABILITY OF THE CONSCIOUS IGNORANCE DOCTRINE PRECLUDED SUMMARY JUDGMENT IN THIS MUTUAL MISTAKE ACTION. [Jerome M. Eisenberg, Inc. v Hall, 2017 NY Slip Op 01437, 1st Dept 2-23-17](#)

CONTRACT LAW, CIVIL PROCEDURE.

CONTINUING WRONG DOCTRINE DID NOT APPLY TO EXTEND THE STATUTE OF LIMITATIONS IN THIS BREACH OF CONTRACT ACTION. [Henry v Bank of Am., 2017 NY Slip Op 01436, 1st Dept 2-23-17](#)

CONTRACT LAW, CIVIL PROCEDURE.

CONTRACT FOR INTERIOR DECORATOR SERVICES AND THE PURCHASE OF FURNITURE AND ACCESSORIES WAS A SERVICE CONTRACT GOVERNED BY THE SIX-YEAR STATUTE OF LIMITATIONS, NOT A CONTRACT FOR THE PURCHASE OF GOODS GOVERNED BY THE FOUR-YEAR STATUTE OF LIMITATIONS. [Hagman v Swenson, 2017 NY Slip Op 01483, 1st Dept 2-23-17](#)

CONTRACT LAW, FRAUD.

A SOPHISTICATED PARTY'S REQUEST FOR AND RECEIPT OF WRITTEN ASSURANCES FROM DEFENDANT WAS A VALID SUBSTITUTE FOR A DUE DILIGENCE INQUIRY, SUPREME COURT'S DISMISSAL OF FRAUD ACTION REVERSED. [Remediation Capital Funding LLC v Noto, 2017 NY Slip Op 01119, 1st Dept 2-10-17](#)

CONTRACT LAW, REAL PROPERTY LAW.

HEATING AGREEMENT WAS A COVENANT WHICH RUNS WITH THE LAND, ORAL WAIVER MAY BE VALID DESPITE WRITING REQUIREMENT IN THE COVENANT. [Condor Funding, LLC v 176 Broadway Owners Corp., 2017 NY Slip Op 00719, 1st Dept 2-2-17](#)

CORPORATION LAW.

NONMONETARY SETTLEMENT OF A SHAREHOLDERS' CLASS ACTION SUIT APPROVED, NEW ANALYTICAL CRITERIA ANNOUNCED. [Gordon v Verizon Communications, Inc., 2017 NY Slip Op 00742, 1st Dept 2-2-17](#)

CRIMINAL LAW, APPEALS, CIVIL PROCEDURE.

NO INTERLOCUTORY APPEAL FROM DENIAL OF A CIVIL MOTION MADE IN THE CONTEXT OF A CRIMINAL PROCEEDING. [People v DePalo, 2017 NY Slip Op 01441, 1st Dept 2-23-17](#)

CRIMINAL LAW, ATTORNEYS.

DEFENDANT WAS ENTITLED TO A HEARING ON HIS MOTION TO SET ASIDE HIS CONVICTION ON INEFFECTIVE ASSISTANCE GROUNDS, WHETHER THE OUTCOME OF THE TRIAL WOULD HAVE BEEN DIFFERENT ABSENT DEFENSE COUNSEL'S MISTAKES IS NOT THE FOCUS OF THE INEFFECTIVE-ASSISTANCE ANALYSIS. [People v Mercado, 2017 NY Slip Op 01439, 1st Dept 2-23-17](#)

CRIMINAL LAW, CIVIL PROCEDURE, EVIDENCE, JUDGES.

WRIT OF PROHIBITION PROPER REMEDY FOR TRIAL COURT'S ERRONEOUS EVIDENTIARY RULING, COLLATERAL ESTOPPEL DOCTRINE SHOULD NOT HAVE BEEN APPLIED TO PRECLUDE EVIDENCE IN THIS CRIMINAL CASE. [Matter of Clark v Newbauer, 2017 NY Slip Op 01326, 1st Dept 2-21-17](#)

CRIMINAL LAW, EVIDENCE.

VICTIM'S IDENTIFICATION TESTIMONY WAS SUFFICIENT TO SUPPORT CONVICTION, DESPITE LOSS OF CONSCIOUSNESS, DIZZINESS AND INCONSISTENCIES. [People v Kahson B., 2017 NY Slip Op 01265, 1st Dept 2-16-17](#)

CRIMINAL LAW, EVIDENCE.

THREATENING TO CALL SOMEONE TO HAVE VICTIM BEATEN UP MET THE THREAT OF IMMEDIATE USE OF PHYSICAL FORCE ELEMENT OF ROBBERY. [People v Villanueva, 2017 NY Slip Op 01299, 1st Dept 2-16-17](#)

CRIMINAL LAW, EVIDENCE.

FIVE HOUR BREAK SUFFICIENT TO DISSIPATE EFFECT OF THE MIRANDA VIOLATION. [People v Richardson, 2017 NY Slip Op 01304, 1st Dept 2-21-17](#)

CRIMINAL LAW, EVIDENCE.

MIRANDA WARNINGS AND 710.30 NOTICE NOT REQUIRED; DEFENDANT'S STATEMENT HE RESIDED AT THE APARTMENT WHERE CONTRABAND WAS FOUND WAS IN RESPONSE TO PEDIGREE QUESTIONS. [People v Martin, 2017 NY Slip Op 01309, 1st Dept 2-21-17](#)

EMPLOYMENT LAW, (NYS) HUMAN RIGHTS LAW, (NYC) HUMAN RIGHTS LAW.

PLAINTIFF'S FIRING FOR WORKPLACE DISRUPTION AND CUSTOMER RELATIONS STEMMING FROM PLAINTIFF'S PERCEIVED INVOLVEMENT IN A NOTORIOUS ASSAULT CASE [HIS CONVICTIONS WERE VACATED] DID NOT VIOLATE THE HUMAN RIGHTS LAW. [Schwarz v Consolidated Edison, Inc., 2017 NY Slip Op 00927, 1st Dept 2-7-17](#)

FAMILY LAW.

WIFE ENTITLED TO A PERCENTAGE OF HUSBAND'S ENHANCED EARNING CAPACITY BY ENABLING HUSBAND'S LONG WORKING HOURS AND HIS STUDY FOR MEDICAL BOARD EXAMS. [Ning-Yen Yao v Karen Kao-Yao, 2017 NY Slip Op 01440, 1st Dept 2-23-17](#)

FAMILY LAW.

ALTHOUGH THE CHILD HAD NOT BEEN HARMED, MOTHER'S MENTAL ILLNESS JUSTIFIED THE NEGLECT FINDING.

[Matter of Ruth Joanna O.O. \(Melissa O.\), 2017 NY Slip Op 01524, 1st Dept 2-28-17](#)

FAMILY LAW, APPEALS.

VIOLATION OF A TEMPORARY ORDER OF PROTECTION IS A VALID GROUND FOR ISSUANCE OF A FINAL ORDER OF PROTECTION; EXPIRATION OF AN ORDER OF PROTECTION DOES NOT RENDER AN APPEAL MOOT.

[Matter of Lisa T. v King E.T., 2017 NY Slip Op 01487, 1st Dept 2-28-17](#)

FRAUD.

FRAUD-BASED AND UNJUST ENRICHMENT CAUSES OF ACTION PROPERLY DISMISSED, PLEADING REQUIREMENTS EXPLAINED. [Norcast S.ar.l. v Castle Harlan, Inc., 2017 NY Slip Op 01479, 1st Dept 2-23-17](#)

INSURANCE LAW.

EXCLUSION FOR INJURY DURING UNLOADING AN INSURED TRAILER APPLIED, EVEN THOUGH THE INJURY WAS CAUSED BY A DEFECT IN THE TRAILER. [Country-Wide Ins. Co. v Excelsior Ins. Co., 2017 NY Slip Op 00718, 1st Dept 2-2-17](#)

INSURANCE LAW, CONTRACT LAW.

ALTHOUGH THE INSURANCE POLICY EXCLUDED WATER DAMAGE AND THE INSURED PROPERTY WAS FLOODED DURING HURRICANE SANDY, THE INSURER'S EXPERT'S AFFIDAVIT DID NOT REFUTE THE ALLEGATION THE INSURED PROPERTY WAS DAMAGED BY AN ELECTRICAL SHORT A MONTH AFTER THE STORM WHEN ELECTRICITY WAS RESTORED. [Pastabar Café Corp. v 343 E. 8th St. Assoc., LLC, 2017 NY Slip Op 01305, 1st Dept 2-21-17](#)

LABOR LAW-CONSTRUCTION LAW.

ALTHOUGH PLAINTIFF WAS NOT AT THE CONSTRUCTION SITE, HE WAS INJURED IN A TEMPORARY FACILITY DOING WORK FOR THE CONSTRUCTION SITE, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Gerrish v 56 Leonard LLC, 2017 NY Slip Op 01262, 1st Dept 2-16-17](#)

LABOR LAW-CONSTRUCTION LAW.

UNCONTESTED TESTIMONY A WHEEL ON A HAND-PROPELLED DEBRIS CONTAINER STOPPED TURNING FREELY AS PLAINTIFF WAS MOVING IT (CAUSING INJURY) REQUIRED DENIAL OF DEFENDANT'S SUMMARY JUDGMENT MOTION IN THIS LABOR LAW 241 (6) ACTION. [Ahern v NYU Langone Med. Ctr., 2017 NY Slip Op 01264, 1st Dept 2-16-17](#)

LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF ENTITLED TO SUMMARY JUDGMENT ON LABOR LAW 240(1) CAUSE OF ACTION, PLAINTIFF FELL OFF MATERIAL STACKED ON A FLATBED TRUCK. [Idona v Manhattan Plaza, Inc., 2017 NY Slip Op 01444m 1st Dept 2-23-17](#)

MUNICIPAL LAW (NYC).

NYC WATER BOARD'S ONE-TIME CREDIT TO CLASS 1 PROPERTY OWNERS COUPLED WITH A 2.1% RATE INCREASE DID NOT HAVE A RATIONAL BASIS AND WAS PROPERLY ANNULLED AND VACATED. [Matter of Prometheus Realty Corp. v New York City Water Bd., 2017 NY Slip Op 01263, 1st Dept 2-16-17](#)

MUNICIPAL LAW (NYC), ADMINISTRATIVE LAW.

NYC BOARD OF HEALTH PROPERLY ISSUED REGULATION REQUIRING CERTAIN RESTAURANTS TO PROVIDE INFORMATION ABOUT THE LEVEL OF SODIUM IN THE RESTAURANT FOOD. [National Rest. Assn. v New York City Dept. of Health & Mental Hygiene, 2017 NY Slip Op 01140, 1st Dept 2-10-17](#)

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

THE RECORD-KEEPING AND INSPECTION REQUIREMENTS FOR NYC PAWNBROKERS DO NOT VIOLATE THE UNREASONABLE SEARCH AND SEIZURE PROHIBITION IN THE NYS CONSTITUTION. [Collateral Loanbrokers Assn. of N.Y., Inc. v City of New York, 2017 NY Slip Op 00953, 1st Dept 2-7-17](#)

MUNICIPAL LAW, NEGLIGENCE.

WRITTEN NOTICE REQUIREMENT APPLIED TO GRAVEL PILED NEAR A MANHOLE, ACTION BY BICYCLIST INJURED WHEN HIS WHEEL STRUCK THE GRAVEL PROPERLY DISMISSED. [Chambers v City of New York, 2017 NY Slip Op 01120, 1st Dept 2-10-17](#)

MUNICIPAL LAW, NEGLIGENCE, MEDICAL MALPRACTICE.

NOTICE OF CLAIM TIMELY SERVED AS A MATTER OF LAW UNDER THE CONTINUOUS TREATMENT DOCTRINE. [Hill v New York City Health & Hosps. Corp., 2017 NY Slip Op 00914, 1st Dept 2-7-17](#)

NEGLIGENCE.

CONFLICTING TESTIMONY RAISED QUESTION OF FACT ABOUT APPLICABILITY OF THE EMERGENCY. [Powers v Kyong Kwan Min, 2017 NY Slip Op 00716, 1st Dept 2-2-17](#)

NEGLIGENCE.

REAR DRIVER MUST TAKE WEATHER CONDITIONS INTO ACCOUNT WHEN FOLLOWING ANOTHER CAR, PLAINTIFF'S SUMMARY JUDGMENT MOTION PROPERLY GRANTED IN THIS REAR-END COLLISION CASE. [Matos v Sanchez, 2017 NY Slip Op 01306, 1st Dept 2-21-17](#)

NEGLIGENCE.

THE ALLEGATION THE LEAD CAR STOPPED SUDDENLY NOT ENOUGH TO DEFEAT LEAD CAR'S SUMMARY JUDGMENT MOTION. [Bajrami v Twinkle Cab Corp., 2017 NY Slip Op 01458, 1st Dept 2-23-17](#)

NEGLIGENCE, EMPLOYMENT LAW.

JANITOR CAN NOT SUE FOR A SLIP AND FALL CAUSED BY THE CONDITION HE WAS TO REMEDY AS PART OF HIS JOB. [Black v Wallace Church Assoc., 2017 NY Slip Op 01480, 1st Dept 2-23-17](#)

NEGLIGENCE, MEDICAL MALPRACTICE, EVIDENCE.

PLAINTIFFS' EXPERTS RAISED ISSUES OF FACT REQUIRING DENIAL OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IN THIS MEDICAL MALPRACTICE ACTION. ...". [Severino v Weller, 2017 NY Slip Op 01325, 1st Dept 2-21-17](#)

NEGLIGENCE, MUNICIPAL LAW.

COMMON CARRIERS DO NOT HAVE A DUTY TO KEEP BUS STEPS FREE OF SNOW TRACKED IN DUE TO A RECENT STORM. [Harbison v New York City Tr. Auth., 2017 NY Slip Op 01503, 1st Dept 2-28-17](#)

PRODUCTS LIABILITY, TOXIC TORTS, NEGLIGENCE.

PLAINTIFF'S VERDICT IN THIS ASBESTOS CASE PROPERLY SET ASIDE, INSUFFICIENT PROOF PLAINTIFF WAS EXPOSED TO DANGEROUS LEVELS OF ASBESTOS EMANATING FROM DEFENDANT'S PRODUCTS. [Matter of New York City Asbestos Litig., 2017 NY Slip Op 01523, 1st Dept 2-28-17](#)

SECURITIES, FRAUD.

INFORMATION ALLEGED BY THE DEFENDANTS TO HAVE REVEALED FRAUD IN THE SALE OF CREDIT DEFAULT OBLIGATIONS AT A TIME WHICH RENDERED THE CURRENT FRAUDULENT MISREPRESENTATION ACTION TIME-BARRED WAS NOT SUFFICIENT TO WARRANT A DISMISSAL AT THE PLEADING STAGE. [Norddeutsche Landesbank Girozentrale v Tilton, 2017 NY Slip Op 01482, 1st Dept 2-23-17](#)

TRUSTS AND ESTATES.

SURROGATE'S COURT HAD JURISDICTION TO ISSUE ANCILLARY LETTERS ALLOWING THE NONDOMICILIARY HEIR OF THE OWNER OF A \$25 MILLION PAINTING CONFISCATED BY THE NAZIS TO SUE TO RECOVER THE PAINTING. [Matter of Stettiner, 2017 NY Slip Op 01168, 1st Dept 2-14-17](#)

SECOND DEPARTMENT

ANIMAL LAW.

DOG INJURED PLAINTIFF BY RUNNING AND JUMPING UP ON HER IN PLAY, COMPLAINT PROPERLY DISMISSED, DEFENDANTS DEMONSTRATED THE DOG DID NOT HAVE A PROPENSITY TO JUMP IN PLAY EXCEPT ON COMMAND. [Gammon v Curley, 2017 NY Slip Op 00630, 2nd Dept 2-1-17](#)

ANIMAL LAW, LANDLORD-TENANT, NEGLIGENCE.

QUESTION OF FACT WHETHER LANDLORD'S AGENTS WERE AWARE OF THE DOG'S VICIOUS PROPENSITIES IN THIS DOG-BITE CASE, LANDLORD'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED. [Kraycer v Fowler St., LLC, 2017 NY Slip Op 01345, 2nd Dept 2-22-17](#)

CIVIL PROCEDURE, FORECLOSURE.

CPLR 205 (a), WHICH ALLOWS SIX MONTHS FOR RECOMMENCING AN ACTION AFTER DISMISSAL, APPLIES TO FORECLOSURE PROCEEDINGS, EVEN WHEN THE CURRENT HOLDER OF THE NOTE IS A SUCCESSOR IN INTEREST TO THE PARTY WHICH STARTED THE FORECLOSURE ACTION. [Wells Fargo Bank, N.A. v Eitani, 2017 NY Slip Op 01015, 2nd Dept 2-8-17](#)

CIVIL PROCEDURE, NEGLIGENCE.

PROTECTIVE ORDER PROHIBITING ANY NON-LAWYER FROM ATTENDING PLAINTIFF'S PHYSICAL EXAMINATION SHOULD NOT HAVE BEEN ISSUED. [Henderson v Ross, 2017 NY Slip Op 01186, 2nd Dept 2-15-17](#)

CIVIL PROCEDURE, NEGLIGENCE.

PROMPT MOTION TO STRIKE NOTE OF ISSUE AND CERTIFICATE OF READINESS SHOULD HAVE BEEN GRANTED, DISCOVERY WAS NOT COMPLETE. [Moses v B & E Lorge Family Trust, 2017 NY Slip Op 01349, 2nd Dept 2-22-17](#)

CIVIL PROCEDURE, NEGLIGENCE.

EXCLUDING A REPRESENTATIVE OF THE DEFENDANT ELEVATOR COMPANY FROM THE COURTROOM AND PROHIBITING COMMUNICATION BETWEEN DEFENSE COUNSEL AND THE REPRESENTATIVE REQUIRED A NEW TRIAL IN THE INTEREST OF JUSTICE. [Perry v Kone, Inc., 2017 NY Slip Op 01395, 2nd Dept 2-22-17](#)

CIVIL PROCEDURE, NEGLIGENCE, ATTORNEYS, MEDICAL MALPRACTICE.

FAILURE TO RESPOND TO DISCOVERY DEMANDS AND OBEY COURT ORDERS WARRANTED STRIKING DEFENDANTS' ANSWERS IN THIS MEDICAL MALPRACTICE ACTION. [Lucas v Stam, 2017 NY Slip Op 01190, 2nd Dept 2-15-17](#)

CONTRACT LAW, EVIDENCE.

PROFFERED COPY OF A GUARANTY PROPERLY EXCLUDED FROM EVIDENCE. [76-82 St. Marks, LLC v Gluck, 2017 NY Slip Op 01329, 2nd Dept 2-22-17](#)

CRIMINAL LAW.

NO EVIDENTIARY BASIS FOR CONSTRUCTIVE POSSESSION JURY INSTRUCTION, NEW TRIAL ORDERED. [People v Golden, 2017 NY Slip Op 00661, 2nd Dept 2-1-17](#)

CRIMINAL LAW.

MOTION FOR DNA TESTING OF CERTAIN TRIAL EVIDENCE SHOULD NOT HAVE BEEN DENIED. [People v Robinson, 2017 NY Slip Op 00665, 2nd Dept 2-1-17](#)

CRIMINAL LAW.

FAILURE TO READBACK THE CROSS OF AN IMPORTANT WITNESS PURSUANT TO THE JURY'S REQUEST REQUIRED REVERSAL IN THE INTEREST OF JUSTICE. [People v Morris, 2017 NY Slip Op 01007, 2nd Dept 2-8-17](#)

CRIMINAL LAW.

FAILURE TO CHARGE THE JURY ON LESSER INCLUDED OFFENSES REQUIRED REVERSAL [People v Davis, 2017 NY Slip Op 01223, 2nd Dept 2-15-17](#)

CRIMINAL LAW.

DEFENDANT GIVEN OPPORTUNITY TO MOVE TO VACATE GUILTY PLEA ON GROUND HE WAS NOT INFORMED OF THE DEPORTATION CONSEQUENCES. [People v Singh, 2017 NY Slip Op 01235, 2nd Dept 2-15-17](#)

CRIMINAL LAW, EVIDENCE.

NO PROOF DEFENDANT INTENDED TO PERMANENTLY, AS OPPOSED TO TEMPORARILY, DEPRIVE COMPLAINANT OF POSSESSION OF HIS CAR, ATTEMPTED ROBBERY CONVICTIONS REVERSED. [People v Terranova, 2017 NY Slip Op 01390, 2nd Dept 2-22-17](#)

CRIMINAL LAW, JUDGES.

TRIAL JUDGE'S EXTENSIVE QUESTIONING OF WITNESSES DEPRIVED DEFENDANT OF A FAIR TRIAL. [People v Davis, 2017 NY Slip Op 01381, 2nd Dept 2-22-17](#)

EDUCATION-SCHOOL LAW, NEGLIGENCE.

SCHOOL NOT LIABLE FOR OFF PREMISES ASSAULT. [Hernandez v City of New York, 2017 NY Slip Op 00962, 2nd Dept 2-8-17](#)

EDUCATION-SCHOOL LAW, NEGLIGENCE.

REQUEST TO FILE LATE NOTICE OF CLAIM SHOULD NOT HAVE BEEN GRANTED . [Matter of A.C. v West Babylon Union Free School Dist., 2017 NY Slip Op 01351, 2nd Dept 2-22-17](#)

FAMILY LAW.

MOTHER'S PETITION FOR MODIFICATION OF CUSTODY SHOULD NOT HAVE BEEN DENIED WITHOUT A HEARING. [Matter of Chess v Lichtman, 2017 NY Slip Op 00644, 2nd Dept 2-1-17](#)

FAMILY LAW.

WIFE ENTITLED TO SHARE OF HUSBAND'S SEPARATE PROPERTY WHICH WAS COMMINGLED WITH MARITAL FUNDS; WIFE ALSO ENTITLED TO SHARE OF APPRECIATION OF HUSBAND'S SEPARATE PROPERTY. [Brown v Brown, 2017 NY Slip Op 01175, 2nd Dept 2-15-17](#)

FAMILY LAW.

FATHER SHOULD NOT HAVE BEEN AWARDED SOLE CUSTODY IN THE ABSENCE OF A HEARING. [Matter of Fraser v Fleary, 2017 NY Slip Op 01197, 2nd Dept 2-15-17](#)

FAMILY LAW.

FAMILY COURT COULD NOT ALLOW VISITATION WHILE A CRIMINAL ORDER OF PROTECTION IS IN PLACE. [Matter of Rihana J.H. \(Quianna J.\), 2017 NY Slip Op 01202, 2nd Dept 2-15-17](#)

FAMILY LAW.

SUPREME COURT SHOULD HAVE ORDERED PENDENTE LITE MAINTENANCE DESPITE WAIVER OF MAINTENANCE UPON TERMINATION OF THE MARRIAGE IN THE PRENUPTIAL AGREEMENT, SUPREME COURT FAILED TO EXPLAIN THE DEVIATION FROM THE CHILD SUPPORT STANDARDS ACT IN ITS AWARD OF PENDENTE LITE CHILD SUPPORT, CASE REMITTED. [Kashman v Kashman, 2017 NY Slip Op 01343, 2nd Dept 2-22-17](#)

FAMILY LAW.

FAMILY COURT SHOULD NOT HAVE SUMMARILY DENIED COUNTY'S APPLICATION FOR PATERNITY DNA TESTING WITHOUT REQUIRING PUTATIVE FATHER TO RAISE A QUESTION OF FACT TO SUPPORT THE EQUITABLE ESTOPPEL DEFENSE; COUNTY HAS STATUTORY AUTHORITY TO BRING A PATERNITY ACTION WHEN THE MOTHER OR CHILD IS LIKELY TO BECOME A PUBLIC CHARGE. [Matter of Suffolk County Dept. of Social Servs. v James D., 2017 NY Slip Op 01369, 2nd Dept 2-22-17](#)

FAMILY LAW.

ABSENT PROOF OF 16-YEAR-OLD CHILD'S COLLEGE PLANS, ANY AWARD OF COLLEGE EXPENSES WOULD BE PREMATURE. [Repetti v Repetti, 2017 NY Slip Op 01396, 2nd Dept 2-22-17](#)

FAMILY LAW, APPEALS.

CHILD SHOULD NOT HAVE BEEN REMOVED FROM FATHER'S CARE; EVEN THOUGH CHILD HAS BEEN RETURNED, APPEAL NOT MOOT BECAUSE OF THE STIGMA OF REMOVAL [Matter of Emmanuela B. \(Jean E.B.\), 2017 NY Slip Op 01195, 2nd Dept 2-15-17](#)

FAMILY LAW, IMMIGRATION LAW.

MOTION FOR FINDINGS ALLOWING CHILD TO PETITION FOR SPECIAL IMMIGRANT JUVENILE STATUS SHOULD HAVE BEEN GRANTED. [Matter of Varinder S. v Satwinder S., 2017 NY Slip Op 00987, 2nd Dept 2-8-17](#)

FAMILY LAW, IMMIGRATION LAW.

FAMILY COURT SHOULD HAVE MADE FINDINGS TO ALLOW JUVENILE TO PETITION FOR SPECIAL IMMIGRANT JUVENILE STATUS. [Matter of Wilson A.T.Z. \(Jose M.T.G.--Manuela Z.M.\), 2017 NY Slip Op 01215, 2nd Dept 2-15-17](#)

FORECLOSURE, EVIDENCE.

BANK EMPLOYEE'S AFFIDAVIT DID NOT DEMONSTRATE 90 DAY NOTICE WAS PROPERLY SERVED. [CitiMortgage, Inc. v Pappas, 2017 NY Slip Op 01177, 2nd Dept 2-15-17](#)

INSURANCE LAW.

INSURER DID NOT DEMONSTRATE REQUIREMENTS FOR DISCLAIMER BASED UPON THE INSURED'S NONCOOPERATION. [Matter of Government Empls. Ins. Co. v Fletcher, 2017 NY Slip Op 01199, 2nd Dept 2-15-17](#)

INSURANCE LAW, EMPLOYMENT LAW.

COVERAGE FOR CLAIMS ALLEGING PAYMENT OF INADEQUATE WAGES AND RETALIATION FOR BRINGING SUIT PRECLUDED BY EXCLUSION FOR EMPLOYMENT-RELATED WRONGFUL ACTS. [Hansard v Federal Ins. Co., 2017 NY Slip Op 00633, 2nd Dept 2-1-17](#)

LABOR LAW-CONSTRUCTION LAW.

DEFENDANT DID NOT EXERCISE SUFFICIENT CONTROL OVER PLAINTIFF'S WORK TO BE LIABLE UNDER LABOR LAW 200. [Messina v City of New York, 2017 NY Slip Op 00640, 2nd Dept 2-1-17](#)

LABOR LAW-CONSTRUCTION LAW.

BASEMENT OFFICE DID NOT CAUSE DEFENDANT TO LOSE THE HOMEOWNER'S EXEMPTION TO LIABILITY UNDER THE LABOR LAW. [Levy v Baumgarten, 2017 NY Slip Op 00963, 2nd Dept 2-8-17](#)

LABOR LAW-CONSTRUCTION LAW.

CORRIDOR FORMED BY LUMBER AND MATERIALS PILED ON EITHER SIDE WAS A PASSAGEWAY WITHIN THE MEANING OF THE INDUSTRIAL CODE, DEFENDANT LIABLE UNDER LABOR LAW 241 (6). [Aragona v State of New York, 2017 NY Slip Op 00954, 2nd Dept 2-8-17](#)

LABOR LAW-CONSTRUCTION LAW.

HOMEOWNER'S EXCEPTION APPLIED TO HOMEOWNER BUT NOT TO AGENT OF HOMEOWNER WHO SUPERVISED THE WORK. [Abdou v Rampaul, 2017 NY Slip Op 01169, 2nd Dept 2-15-17](#)

LABOR LAW-CONSTRUCTION LAW.

SIDEWALK REPAIR TOO FAR REMOVED FROM WORK ON A STRUCTURE, I.E., A GAS MAIN, INJURY NOT WITHIN PURVIEW OF LABOR LAW 240 (1). [Davis v City of New York, 2017 NY Slip Op 01179, 2nd Dept 2-15-17](#)

LABOR LAW-CONSTRUCTION LAW.

QUESTION OF FACT WHETHER DEFENDANTS HAD NOTICE OF CRACKED CONCRETE SLAB WHICH COLLAPSED; PLAINTIFF DID NOT IDENTIFY ANY INDUSTRIAL CODE VIOLATION, LABOR LAW 241 (6) CAUSE OF ACTION SHOULD HAVE BEEN DISMISSED. [Grabowski v Board of Mgrs. of Avonova Condominium, 2017 NY Slip Op 01185, 2nd Dept 2-15-17](#)

LABOR LAW-CONSTRUCTION LAW.

ALLEGATIONS NOT SUFFICIENT TO SUPPORT SUMMARY JUDGMENT MOTION ON PLAINTIFF'S LABOR LAW 240(1) CAUSE OF ACTION STEMMING FROM A FALL FROM A LADDER. [Shaughnessy v Huntington Hosp. Assn., 2017 NY Slip Op 01245, 2nd Dept 2-15-17](#)

LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF FELL WHILE DOING ROUTINE REPAIR ON AN AIR CONDITIONER, NOT COVERED BY LABOR LAW 240(1). [Tserpelis v Tamares Real Estate Holdings, Inc., 2017 NY Slip Op 01247, 2nd Dept 2-15-17](#)

LABOR LAW-CONSTRUCTION LAW, CIVIL PROCEDURE.

PLAINTIFFS' MOTION FOR JUDGMENT AS A MATTER OF LAW PURSUANT TO CPLR 4401 PROPERLY GRANTED ON THE LABOR LAW 240(1) CAUSE OF ACTION; JURY HAD FOUND THE LABOR LAW 240(1) VIOLATION WAS NOT THE PROXIMATE CAUSE OF THE ACCIDENT. [Raia v Berkeley Coop. Towers Section II Corp., 2017 NY Slip Op 01243, 2nd Dept 2-15-17](#)

LABOR LAW-CONSTRUCTION LAW, WORKERS' COMPENSATION LAW, CONTRACT LAW.

PLAINTIFF ENTITLED TO SUMMARY JUDGMENT ON HIS LABOR LAW 240 (1) CLAIM; QUESTION OF FACT WHETHER INDEMNIFICATION AGREEMENT WAS INTENDED TO BE EFFECTIVE RETROACTIVELY. [Cacanoski v 35 Cedar Place Assoc., LLC, 2017 NY Slip Op 00956, 2nd Dept 2-8-17](#)

MENTAL HYGIENE LAW.

SUPREME COURT SHOULD NOT HAVE DISMISSED PETITION FOR CIVIL MANAGEMENT OF A SEX OFFENDER FOR FAILURE TO STATE A CAUSE OF ACTION. [Matter of State of New York v Ezekiel R., 2017 NY Slip Op 01213, 2nd Dept 2-15-17](#)

MUNICIPAL LAW.

ALTHOUGH THE ADMINISTRATIVE INTERPRETATION OF THE GENERAL MUNICIPAL LAW WAS WRONG, THE RULING WAS CORRECT; THE ARRESTING OFFICER WHO LEARNED THE SUSPECT COULD NOT HAVE COMMITTED THE CRIME, BUT SAID NOTHING, WAS NOT ENTITLED TO INDEMNIFICATION FOR COSTS OF DEFENDING THE RELATED CIVIL RIGHTS SUIT. [Matter of Lemma v Nassau County Police Officer Indem. Bd., 2017 NY Slip Op 00649, 2nd Dept 2-1-17](#)

MUNICIPAL LAW, NEGLIGENCE.

LACK OF WRITTEN NOTICE OF AN ICY CONDITION PRECLUDED SUIT IN THIS SLIP AND FALL CASE. [Walker v County of Nassau, 2017 NY Slip Op 00683, 2nd Dept 2-1-17](#)

MUNICIPAL LAW, NEGLIGENCE.

MOTION TO AMEND NOTICE OF CLAIM TO CHANGE THE DATE OF THE ACCIDENT, RENDERING THE NOTICE OF CLAIM TIMELY, PROPERLY GRANTED. [Bowers v City of New York, 2017 NY Slip Op 01174, 2nd Dept 2-15-17](#)

MUNICIPAL LAW, PROPERTY DAMAGE, IMMUNITY, CONTRACT LAW.

COUNTY NOT IMMUNE FROM SUIT ALLEGING NEGLIGENT MAINTENANCE OF DRAINAGE SYSTEM; INDEPENDENT CONTRACTOR MAY BE LIABLE FOR LAUNCHING AN INSTRUMENT OF HARM; FLOOD DAMAGE RESULTED FROM DREDGING OPERATION. [Nachamie v County of Nassau, 2017 NY Slip Op 00657, 2nd Dept 2-1-17](#)

NEGLIGENCE.

QUESTION OF FACT WHETHER PLAINTIFF TRIPPED OVER A SIDEWALK DEFECT OR A TREE WELL DEFECT, CITY'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED. [Antonyuk v Brightwater Towers Condo Homeowners' Assn., Inc., 2017 NY Slip Op 00619, 2nd Dept 2-1-17](#)

NEGLIGENCE.

EVIDENCE OF GENERAL CLEANING PRACTICES NOT ENOUGH TO DEMONSTRATE LACK OF CONSTRUCTIVE NOTICE IN A SLIP AND FALL CASE. [Jeremias v Lake Forest Estates, 2017 NY Slip Op 00635, 2nd Dept 2-1-17](#)

NEGLIGENCE.

DEFENDANT MADE A SUDDEN LEFT TURN IN FRONT ACROSS PLAINTIFF'S RIGHT OF WAY, PLAINTIFF'S SUMMARY JUDGMENT MOTION SHOULD HAVE BEEN GRANTED. [Mei-Hua Gao v Makrinos, 2017 NY Slip Op 00639, 2nd Dept 2-1-17](#)

NEGLIGENCE.

TREE ROOT OVER WHICH PLAINTIFF TRIPPED WAS A NON-ACTIONABLE OPEN AND OBVIOUS DEFECT. [Dottavio v Aspen Knolls Estates Home Owners Assn., 2017 NY Slip Op 01182, 2nd Dept 2-15-17](#)

NEGLIGENCE.

BUILDING OWNER'S AND ELEVATOR COMPANY'S MOTIONS FOR SUMMARY JUDGMENT IN THIS ELEVATOR-INJURY CASE PROPERLY DENIED. [Orahovac v CF Lex Assoc., 2017 NY Slip Op 01219, 2nd Dept 2-15-17](#)

NEGLIGENCE.

NO LIABILITY WHERE DRIVER SUFFERED AN UNFORESEEABLE MEDICAL EMERGENCY. [Van De Merlen v Karpf, 2017 NY Slip Op 01251, 2nd Dept 2-15-17](#)

NEGLIGENCE.

KNEE HIGH TABLE, UNDER THE CIRCUMSTANCES, WAS NOT AN OPEN AND OBVIOUS DEFECT AS A MATTER OF LAW. [Dalton v North Ritz Club, 2017 NY Slip Op 01333, 2nd Dept 2-22-17](#)

NEGLIGENCE.

PLAINTIFF'S RECKLESS ACTIONS SEVERED ANY CONNECTION BETWEEN ANY ALLEGED NEGLIGENCE AND THE ACCIDENT. [Weimar v Metropolitan Transp. Auth., 2017 NY Slip Op 01403, 2nd Dept 2-22-17](#)

NEGLIGENCE, EDUCATION-SCHOOL LAW.

STUDENT INJURED HORSEING AROUND IN GYM CLASS, SCHOOL'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Cruz-Martinez v Brentwood Union Free Sch. Dist., 2017 NY Slip Op 00626, 2nd Dept 2-1-17](#)

NEGLIGENCE, EMPLOYMENT LAW.

WHERE AN EMPLOYEE ACTS WITHIN THE SCOPE OF EMPLOYMENT, ABSENT A VALID CLAIM FOR PUNITIVE DAMAGES, AN EMPLOYER CANNOT BE SUED FOR NEGLIGENT HIRING AND RETENTION. [Henry v Sunrise Manor Ctr. for Nursing & Rehabilitation, 2017 NY Slip Op 00634, 2nd Dept 2-1-17](#)

NEGLIGENCE, LANDLORD-TENANT.

QUESTION OF FACT WHETHER ASSAILANT WAS AN INTRUDER WHO ENTERED BUILDING THROUGH A BROKEN DOOR. [Ramos v New York City Hous. Auth., 2017 NY Slip Op 01244, 2nd Dept 2-15-17](#)

NEGLIGENCE, MEDICAL MALPRACTICE, EVIDENCE.

SANCTIONS FOR SPOILIATION OF EVIDENCE SHOULD NOT HAVE BEEN IMPOSED, NO SHOWING EVIDENCE WAS DESTROYED WITH A CULPABLE STATE OF MIND. [Golan v North Shore-Long Is. Jewish Health Sys., Inc., 2017 NY Slip Op 01342, 2nd Dept 2-22-17](#)

NEGLIGENCE, MUNICIPAL LAW (NYC)

BASEMENT OFFICE DID NOT DEPRIVE DEFENDANT HOMEOWNERS OF RESIDENTIAL EXEMPTION FROM LIABILITY FOR A DEFECTIVE SIDEWALK. [Koronkevich v Dembitzer, 2017 NY Slip Op 01187, 2nd Dept 2-15-17](#)

NEGLIGENCE, MUNICIPAL LAW (NYC)

ALTHOUGH DEFENDANTS WERE ENTITLED TO EXEMPTION FROM SNOW-ICE SIDEWALK-FALL LIABILITY UNDER THE NYC ADMINISTRATIVE LAW, THEY DID NOT DEMONSTRATE THE HAZARD WAS NOT CREATED BY THEIR SNOW REMOVAL EFFORTS, SUMMARY JUDGMENT PROPERLY DENIED. [Ming Hsia v Valle, 2017 NY Slip Op 01193, 2nd Dept 2-15-17](#)

NEGLIGENCE, MUNICIPAL LAW.

CITY DID NOT DEMONSTRATE IT DID NOT CREATE THE ROADWAY DEPRESSION WHICH CAUSED PLAINTIFF'S BICYCLE ACCIDENT, SUMMARY JUDGMENT PROPERLY DENIED. [Lewak v Town of Hempstead, 2017 NY Slip Op 01189, 2nd Dept 2-15-17](#)

REAL PROPERTY LAW.

A PARTY'S FAILURE TO EXECUTE A MEMORANDUM OF A PURCHASE AND SALE AGREEMENT RENDERED THE MEMORANDUM IMPROPERLY RECORDED AND FAILED TO GIVE PRIORITY TO A CLAIM TO THE PROPERTY. [Vanderbilt Brookland, LLC v Vanderbilt Myrtle, Inc., 2017 NY Slip Op 01402, 2nd Dept 2-22-17](#)

SEPULCHER, RIGHT OF.

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT BASED UPON THE RIGHT OF SEPULCHER SHOULD NOT HAVE BEEN GRANTED; DEFENDANT HOSPITAL'S MOTION TO DISMISS THE CAUSE OF ACTION FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS SHOULD HAVE BEEN GRANTED. [Zhuangzi Li v New York Hosp. Med. Ctr. of Queens, 2017 NY Slip Op 01405, 2nd Dept 2-22-17](#)

TRUSTS AND ESTATES.

BENEFICIARIES OF TRUST ENTITLED TO EXAMINE TRUSTEE ABOUT MATTERS RELATING TO ADMINISTRATION OF THE TRUST, BUT NOT APPOINTMENT OF THE TRUSTEE. [Matter of Jane D. Ritter Revocable Living Trust., 2017 NY Slip Op 00647, 2nd Dept 2-1-17](#)

WORKER'S COMPENSATION LAW, CORPORATION LAW, NEGLIGENCE.

DEFENDANT DID NOT DEMONSTRATE IT WAS THE ALTER EGO OF PLAINTIFF'S EMPLOYER, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT DISMISSING THE NEGLIGENCE COMPLAINT SHOULD NOT HAVE BEEN GRANTED. [Moses v B & E Lorge Family Trust, 2017 NY Slip Op 01350, 2nd Dept 2-22-17](#)

THIRD DEPARTMENT

CIVIL RIGHTS LAW (PRIVACY).

COMPLAINT BY PLAINTIFF, WHO HAD COMMITTED MURDER, SUFFICIENTLY ALLEGED THE FILM ABOUT HIM WAS INTENDED TO BE FICTIONAL AND THEREFORE WAS SUBJECT TO THE PRIVACY PROTECTIONS OF THE CIVIL RIGHTS LAW, COMPLAINT SHOULD NOT HAVE BEEN DISMISSED. [Porco v Lifetime Entertainment Servs., LLC, 2017 NY Slip Op 01421, 3rd Dept 2-23-17](#)

CONTRACT LAW, REAL PROPERTY TAX LAW, MUNICIPAL LAW.

AGREEMENT TO FOREGO APPLYING FOR A REAL PROPERTY TAX EXEMPTION IN RETURN FOR THE TRANSFER OF TWO BUILDINGS FOR ONE DOLLAR WAS ENFORCEABLE. [City of Schenectady v Edison Exploratorium, Inc., 2017 NY Slip Op 01427, 3rd Dept 2-23-17](#)

CRIMINAL LAW.

ALTHOUGH DEFECTS IN GUILTY PLEA NOT PRESERVED BY A MOTION, PLEA VACATED IN THE INTEREST OF JUSTICE BECAUSE JUDGE DID NOT ENSURE DEFENDANT UNDERSTOOD THE CONSTITUTIONAL RIGHTS HE WAS GIVING UP. [People v Herbert, 2017 NY Slip Op 01408, 3rd Dept 2-23-17](#)

CRIMINAL LAW.

UNDER THE FACTS, THE ATTEMPTED KIDNAPPING CONVICTION MERGED WITH THE SEXUAL ABUSE AND ASSAULT CONVICTIONS. [People v Bautista, 2017 NY Slip Op 01410, 3rd Dept 2-23-17](#)

CRIMINAL LAW, EVIDENCE.

PEOPLE SHOULD NOT HAVE BEEN ALLOWED TO IMPEACH THEIR OWN WITNESS WITH A PRIOR INCONSISTENT STATEMENT THAT SUBSTANTIALLY WEAKENED BUT DID NOT CONTRADICT THE PEOPLE'S THEORY OF PROSECUTION; DESPITE DIRECT EVIDENCE OF DEFENDANT'S DOMINION AND CONTROL OVER APARTMENT WHERE HEROIN WAS FOUND, THE EVIDENCE DEFENDANT POSSESSED THE HEROIN WAS CIRCUMSTANTIAL, THE JURY SHOULD HAVE BEEN GIVEN THE CIRCUMSTANTIAL EVIDENCE INSTRUCTION. [People v Gaston, 2017 NY Slip Op 01411, 3rd Dept 2-23-17](#)

CRIMINAL LAW, EVIDENCE, ATTORNEYS.

DNA EVIDENCE WAS STRONG EVIDENCE DEFENDANT WAS THE ROBBER, DESPITE THE DNA MATCH, THE FULL CIRCUMSTANTIAL EVIDENCE JURY INSTRUCTION SHOULD HAVE BEEN GIVEN, NEW TRIAL ORDERED; PROSECUTOR'S STATEMENT IN SUMMATION THAT THE BLOOD BELONGED TO THE ROBBER WAS IMPROPER. [People v James, 2017 NY Slip Op 01409, 3rd Dept 2-23-17](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA)

A SEXUAL OFFENSE WHICH DEFENDANT ADMITTED COMMITTING BUT WITH WHICH HE WAS NEVER CHARGED SHOULD NOT HAVE BEEN CONSIDERED. [People v Current, 2017 NY Slip Op 01415, 3rd Dept 2-23-17](#)

DEFAMATION.

UPON DEFENDANT'S DEFAULT, PUNITIVE DAMAGES, ATTORNEY'S FEES AND DAMAGES FOR LIBEL PER SE AND ABUSE OF PROCESS WERE PROPER, HOWEVER THE INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS AND VIOLATION OF PRIVACY CAUSES OF ACTION WERE NOT VIABLE, AND SUPREME COURT DID NOT HAVE THE AUTHORITY TO ISSUE THE ORDER OF PROTECTION. [Xiaokang Xu v Xioling Shirley He, 2017 NY Slip Op 01412, 3rd Dept 2-23-17](#)

DISCIPLINARY HEARINGS (INMATES).

DENIAL OF INMATE'S REQUEST FOR WITNESS TESTIMONY AND INCOMPLETE INVESTIGATION BY EMPLOYEE ASSISTANT REQUIRED ANNULMENT AND EXPUNGEMENT. [Matter of Nance v Annucci, 2017 NY Slip Op 01044, 3rd Dept 2-9-17](#)

FAMILY LAW.

UPON REVERSAL OF MOTHER'S MURDER AND MANSLAUGHTER CONVICTIONS, MOTHER ENTITLED TO NEW DISPOSITIONAL HEARING ON TERMINATION OF HER PARENTAL RIGHTS. [Matter of Zoey O. \(Veronica O.\), 2017 NY Slip Op 01413, 3rd Dept 2-23-17](#)

FAMILY LAW.

FATHER PAID CHILD SUPPORT PRIOR TO SENTENCING FOR WILLFUL FAILURE TO PAY, FAMILY COURT SHOULD NOT HAVE ISSUED THE ORDER OF COMMITMENT. [Matter of Provost v Provost, 2017 NY Slip Op 01422, 3rd Dept 2-23-17](#)

FAMILY LAW.

REPORT OF INADEQUATE GUARDIANSHIP MAINTAINED BY THE CENTRAL REGISTER OF CHILD ABUSE AND MALTREATMENT SHOULD HAVE BEEN AMENDED TO BE UNFOUNDED AND EXPUNGED. [Matter of Elizabeth B. v New York State Off. of Children & Family Servs., 2017 NY Slip Op 01424, 3rd Dept 2-23-17](#)

INSURANCE LAW.

EVIDENCE WAS SUFFICIENT TO SUPPORT THE JURY'S FINDING PLAINTIFF'S HEAD INJURY WAS A SERIOUS INJURY WITHIN THE MEANING OF INSURANCE LAW 5102, SUPREME COURT REVERSED. [Rodman v Deangeles, 2017 NY Slip Op 01260, 3rd Dept 2-16-17](#)

INSURANCE LAW.

EVEN WHERE PLAINTIFF CAN NOT DEMONSTRATE SERIOUS INJURY WITHIN THE MEANING OF THE NO-FAULT LAW, PLAINTIFF MAY BE ABLE TO RECOVER ECONOMIC LOSS ABOVE THE STATUTORY BASIC ECONOMIC LOSS (\$50,000). [Jones v Marshall, 2017 NY Slip Op 01432, 3rd Dept 2-23-17](#)

LABOR LAW, EMPLOYMENT LAW.

INSUFFICIENT EVIDENCE PUBLIC FUNDS WERE USED TO PAY FOR CONSTRUCTION AT THE SARATOGA RACE COURSE, THEREFORE THE PREVAILING WAGE REQUIREMENT OF LABOR LAW 220 DID NOT APPLY. [W.M. Schultz Constr., Inc. v Musolino, 2017 NY Slip Op 01425, 3rd Dept 2-23-17](#)

MEDICAL MALPRACTICE, NEGLIGENCE, EVIDENCE.

PLAINTIFFS' DECEDENT COMMITTED SUICIDE SHORTLY AFTER DEFENDANT PSYCHIATRISTS SAW HER, PLAINTIFFS' EXPERT RAISED QUESTIONS OF FACT ABOUT WHETHER DEFENDANTS DEVIATED FROM THE MINIMUM STANDARD OF CARE. [Tkacheff v Roberts, 2017 NY Slip Op 01429, 3rd Dept 2-23-17](#)

MUNICIPAL LAW, REAL PROPERTY.

TOWN'S PUBLIC ROAD EASEMENT IS THREE RODS WIDE AND IS NOT CONFINED TO THE PAVED PORTION OF THE ROAD. [Hoffman v Town of Shandaken, 2017 NY Slip Op 01430, 3rd Dept 2-23-17](#)

NEGLIGENCE.

PLAINTIFF'S DECEDENT FELL DOWN A STAIRWAY LEADING TO THE RESTAURANT BASEMENT WHICH WAS ACCESSED BY AN UNMARKED, UNLOCKED DOOR; ALTHOUGH THE ACCIDENT WAS NOT WITNESSED, DEFENDANT RESTAURANT'S SUMMARY JUDGMENT MOTION SHOULD HAVE BEEN DENIED. [Acton v 1906 Rest. Corp., 2017 NY Slip Op 01431, 3rd Dept 2-23-17](#)

WORKER'S COMPENSATION LAW.

EMPLOYER ENTITLED TO FULL REIMBURSEMENT OF WAGES PAID TO CLAIMANT SINCE THE ACCIDENT, DESPITE THE FACT THAT CLAIMANT WAS NOT PAID COMPENSATION BENEFITS FOR THE ENTIRE TIME SINCE THE ACCIDENT. [Matter of Newbill v Town of Hempstead, 2017 NY Slip Op 01049, 3rd Dept 2-9-17](#)

WORKER'S COMPENSATION LAW.

THE DIFFERENT PURPOSES OF THE TERMS "LOSS OF WAGE-EARNING CAPACITY" AND "WAGE-EARNING CAPACITY" EXPLAINED. [Matter of Barrett v New York City Dept. of Transp., 2017 NY Slip Op 01037, 3rd Dept 2-9-17](#)

WORKER'S COMPENSATION LAW, ATTORNEYS.

ATTORNEY'S FEE PROPERLY REDUCED TO \$450, FEE APPLICATION NOT PROPERLY FILLED OUT. [Matter of Curcio v Sherwood 370 Mgt. LLC, 2017 NY Slip Op 01047, 3rd Dept 2-9-17](#)

WORKER'S COMPENSATION LAW, ATTORNEY'S FEES.

ATTORNEY'S FEE FORM IMPROPERLY FILLED, IMPOSSIBLE FOR APPELLATE REVIEW OF \$3000 AWARD. [Matter of Shiqerukaj v Gotham Broad, LLC, 2017 NY Slip Op 01426, 3rd Dept 2-23-17](#)

ZONING.

PROPERTY OWNERS' FRAUD AND OFFICIAL MISCONDUCT COUNTERCLAIM SHOULD HAVE BEEN DISMISSED IN THIS ACTION BY THE TOWN ALLEGING ZONING VIOLATIONS. [Town of Tupper Lake v Sootbusters, LLC, 2017 NY Slip Op 01428, 3rd Dept 2-23-17](#)

FOURTH DEPARTMENT

ANIMAL LAW, MUNICIPAL LAW.

COUNTY'S MOTION FOR SUMMARY JUDGMENT IN THIS DOG BITE CASE SHOULD HAVE BEEN GRANTED; NO EVIDENCE SHELTER PERSONNEL WERE AWARE OF VICIOUS PROPENSITIES; HEALTH DEPARTMENT'S KNOWLEDGE THE DOG HAD BITTEN SOMEONE ELSE NOT IMPUTED TO SHELTER PERSONNEL; NEGLIGENCE CAUSE OF ACTION SHOULD HAVE BEEN DISMISSED. [Blake v County of Wyo., 2017 NY Slip Op 00826, 4th Dept 2-3-17](#)

ATTORNEYS.

SUPREME COURT SHOULD NOT HAVE AWARDED ATTORNEY'S FEES AND COSTS TO PREVAILING DEFENDANTS, CRITERIA EXPLAINED. [Perry v Edwards, 2017 NY Slip Op 00862, 4th Dept 2-3-17](#)

ATTORNEYS.

PLENARY ACTION ALLEGING ATTORNEY MISCONDUCT DURING A FORECLOSURE PROCEEDING PROPERLY BROUGHT UNDER JUDICIARY LAW 487; PRIOR MOTIONS FOR SANCTIONS DID NOT PRECLUDE JUDICIARY LAW 487 ACTION. [Kimbroke Rte. 31, L.L.C. v Bass, 2017 NY Slip Op 01083, 4th Dept 2-10-17](#)

CONSTITUTIONAL LAW (STATE), INDIAN LAW, CIVIL PROCEDURE.

TRANSFER OF LAND TO A TRUST PURSUANT TO THE ONEIDA SETTLEMENT AGREEMENT DID NOT CEDE THE STATE'S TAXATION AUTHORITY; MOTION TO DISMISS A DECLARATORY JUDGMENT ACTION WILL BE TREATED AS A MOTION FOR A DECLARATION IN DEFENDANT'S FAVOR. [Kaplan v State of New York, 2017 NY Slip Op 00766, 4th Dept 2-3-17](#)

CONTRACT LAW, FRAUD.

DISCLAIMER IN SUBCONTRACT IS AMBIGUOUS, MOTION TO DISMISS FRAUD COUNTERCLAIM BASED UPON THE DISCLAIMER SHOULD NOT HAVE BEEN GRANTED. [Pike Co., Inc. v Jersen Constr. Group, LLC, 2017 NY Slip Op 01116, 4th Dept 2-10-17](#)

CONTRACT LAW, LIMITED LIABILITY COMPANY LAW.

NO DEMONSTRATION A PARTICULAR INTERPRETATION OF AN AMBIGUOUS CONTRACT WAS THE ONLY FAIR INTERPRETATION; THEREFORE MOTIONS FOR SUMMARY JUDGMENT WERE PROPERLY DENIED. [Maven Tech., LLC v Vasile, 2017 NY Slip Op 00840, 4th Dept 2-3-17](#)

CRIMINAL LAW.

FOR CAUSE CHALLENGE TO JUROR SHOULD HAVE BEEN GRANTED, CONVICTION REVERSED. [People v Betances, 2017 NY Slip Op 00804, 4th Dept 2-3-17](#)

CRIMINAL LAW.

AT THE SUPPRESSION HEARING THE PEOPLE PRESENTED NO EVIDENCE OF THE LEGALITY OF THE VEHICLE STOP, CONSENT TO SEARCH THE CAR WAS THEREFORE DEEMED INVOLUNTARY AND THE SEIZED COCAINE SUPPRESSED. [People v Kendrick, 2017 NY Slip Op 00870, 4th Dept 2-3-17](#)

CRIMINAL LAW.

INSUFFICIENT PROOF GUNSHOT CAUSED SERIOUS PHYSICAL INJURY, ASSAULT FIRST CONVICTION REDUCED TO ASSAULT SECOND. [People v Romero, 2017 NY Slip Op 01069, 4th Dept 2-10-17](#)

CRIMINAL LAW.

DEFENDANT SHOULD HAVE BEEN ALLOWED TO TESTIFY BEFORE THE GRAND JURY EVEN THOUGH THE REQUEST WAS MADE AFTER THE GRAND JURY HAD VOTED TO INDICT. [People v White, 2017 NY Slip Op 01070, 4th Dept 2-10-17](#)

CRIMINAL LAW.

PLACE OF BUSINESS EXCEPTION TO CRIMINAL POSSESSION OF A WEAPON DID NOT APPLY WHERE DEFENDANT'S EMPLOYER PROHIBITED POSSESSION OF FIREARMS IN THE WORKPLACE. [People v Wallace, 2017 NY Slip Op 01071, 4th Dept 2-10-17](#)

CRIMINAL LAW.

LATE REQUEST TO EXERCISE A PEREMPTORY CHALLENGE TO A JUROR SHOULD NOT HAVE BEEN DENIED, CONVICTION REVERSED. [People v Scerbo, 2017 NY Slip Op 01073, 4th Dept 2-10-17](#)

CRIMINAL LAW.

NO PRETRIAL NOTICE OF IDENTIFICATION TESTIMONY BY A POLICE OFFICER, CONVICTION REVERSED. [People v Clay, 2017 NY Slip Op 01074, 4th Dept 2-10-17](#)

CRIMINAL LAW.

JUDGE DID NOT PUT ON THE RECORD THE REASONS FOR DENIAL OF YOUTHFUL OFFENDER STATUS, CASE REMITTED. [People v Dukes, 2017 NY Slip Op 01105, 4th Dept 2-10-17](#)

CRIMINAL LAW.

CROSSING THE CENTER LINE AND TRAVELING IN THE ONCOMING LANE PROVIDED PROBABLE CAUSE FOR THE VEHICLE STOP, GRANT OF MOTION TO SUPPRESS REVERSED. [People v Lewis, 2017 NY Slip Op 01059, 4th Dept 2-10-17](#)

CRIMINAL LAW, APPEALS.

AFTER APPEAL AND REMITTAL, DEFENDANT WAS ENTITLED TO PUT ON A DEFENSE AFTER THE MOTION FOR A TRIAL ORDER OF DISMISSAL WAS DENIED, PRIOR TO THE APPEAL THE VERDICT HAD BEEN PREMATURELY ANNOUNCED WITHOUT ANY RULING ON THE TRIAL ORDER OF DISMISSAL MOTION. [People v White, 2017 NY Slip Op 01058, 4th Dept 2-10-17](#)

CRIMINAL LAW, EVIDENCE.

ATTEMPTED FIRST DEGREE MURDER CONVICTIONS PRECLUDED BY FAILURE TO PROVE THE 38-YEAR-OLD DEFENDANT WAS MORE THAN 18 YEARS OLD, RECKLESS ENDANGERMENT FIRST DEGREE CONVICTION NOT SUPPORTED BY PROOF OF A GRAVE RISK OF DEATH. [People v VanGorden, 2017 NY Slip Op 00877, 4th Dept 2-3-17](#)

EMPLOYMENT LAW, (NYS) HUMAN RIGHTS LAW.

DEPARTMENT OF HUMAN RIGHTS' DETERMINATION WITHOUT A HEARING IN THIS DISABILITY DISCRIMINATION MATTER WAS NOT ARBITRARY OR CAPRICIOUS AND HAD A RATIONAL BASIS, SUPREME COURT SHOULD NOT HAVE ANNULLED THE DETERMINATION. [Matter of McDonald v New York State Div. of Human Rights, 2017 NY Slip Op 01060, 4th Dept 2-10-17](#)

EMPLOYMENT LAW, LABOR LAW.

GLAZIERS ENROLLED IN AN APPRENTICE PROGRAM SHOULD BE PAID AS APPRENTICES EVEN IF THE WORK FOR WHICH THEY ARE PAID IS NOT IN THE SAME TRADE AS THE APPRENTICESHIP PROGRAM. [International Union of Painters & Allied Trades v New York State Dept. of Labor, 2017 NY Slip Op 01112, 4th Dept 2-10-17](#)

FAMILY LAW.

UNDER CRITERIA RECENTLY ANNOUNCED BY THE COURT OF APPEALS, GRANDPARENTS HAD STANDING TO CONTEST MOTHER'S PETITION FOR CUSTODY. [Matter of Orlowski v Zwack, 2017 NY Slip Op 00880, 4th Dept 2-3-17](#)

FAMILY LAW.

18% REDUCTION IN INCOME SUFFICIENT TO WARRANT RECALCULATION OF CHILD SUPPORT. [Matter of Brink v Brink, 2017 NY Slip Op 00879, 4th Dept 2-3-17](#)

INSURANCE LAW, CONTRACT LAW.

UNAMBIGUOUS TERM OF INSURANCE CONTRACT CAPPING PAYMENT FOR WATER DAMAGE SHOULD HAVE BEEN ENFORCED. [Papa v Associated Indem. Corp., 2017 NY Slip Op 01118, 4th Dept 2-10-17](#)

LABOR LAW-CONSTRUCTION LAW.

QUESTION OF FACT WHETHER LADDER WAS DEFECTIVE AND WHETHER ADDITIONAL SAFETY DEVICES WERE REQUIRED, SUMMARY JUDGMENT ON LABOR LAW 240(1) CAUSE OF ACTION PROPERLY DENIED. [Jones v Nazareth Coll. of Rochester, 2017 NY Slip Op 00825, 4th Dept 2-3-17](#)

LABOR LAW-CONSTRUCTION LAW.

FALL FROM TRUCK BED 20 INCHES ABOVE THE GROUND NOT COVERED BY LABOR LAW 240 (1). [Grabar v Nichols, Long & Moore Constr. Corp., 2017 NY Slip Op 01068, 4th Dept 2-10-17](#)

MEDICAID, ADMINISTRATIVE LAW.

COUNTY'S INTERPRETATION OF REGULATION WAS RATIONAL AND COULD NOT, THEREFORE, BE DISTURBED BY THE COURT; TIME LIMITS APPLICABLE TO ADMINISTRATIVE DECISIONS ARE DISCRETIONARY. [Matter of County of Oneida v Zucker, 2017 NY Slip Op 00785, 4th Dept 2-3-16](#)

MUNICIPAL LAW, NEGLIGENCE.

LEAVE TO FILE LATE NOTICE OF CLAIM PROPERLY GRANTED, NOTICE FILED PROMPTLY AFTER CLAIMANTS LEARNED THE WATER AUTHORITY CREATED THE DEFECT IN THE ROADWAY. [King v Niagara Falls Water Auth., 2017 NY Slip Op 00855, 4th Dept 2-3-17](#)

NEGLIGENCE.

DEFENDANT CAR RENTAL COMPANY'S MOTION FOR SUMMARY JUDGMENT IN THIS NEGLIGENT ENTRUSTMENT CASE WAS PROPERLY DENIED; QUESTION OF FACT WHETHER COMPANY KNEW AN UNLICENSED DRIVER WOULD USE THE CAR. [Graham v Jones, 2017 NY Slip Op 00835, 4th Dept 2-3-17](#)

NEGLIGENCE.

SNOW REMOVAL CONTRACTOR DID NOT OWE A DUTY TO PLAINTIFF IN THIS SLIP AND FALL CASE; INSPECTION THREE HOURS BEFORE THE FALL DID NOT WARRANT DISMISSAL OF THE CAUSE OF ACTION ALLEGING CONSTRUCTIVE NOTICE. [Waters v Ciminelli Dev. Co., Inc., 2017 NY Slip Op 00854, 4th Dept 2-3-17](#)

NEGLIGENCE.

TRIPPING OVER EDGE OF A RUG NOT ACTIONABLE, NO SHOWING RUG DEFECTIVE OR DANGEROUS. [Slattery v Tops Mkts., LLC, 2017 NY Slip Op 01078, 4th Dept 2-10-17](#)

NEGLIGENCE.

NEGLIGENT BRAKING BY TRUCK DRIVER, IN RESPONSE TO A COLLISION WITH A THIRD PARTY, MAY HAVE BEEN A PROXIMATE CAUSE OF THE COLLISION BETWEEN THE TRUCK AND PLAINTIFF. [Pacino v Lewis, 2017 NY Slip Op 01099, 4th Dept 2-10-17](#)

PRODUCTS LIABILITY, TOXIC TORTS, NEGLIGENCE.

ONLY FAILURE TO WARN CAUSES OF ACTION PREEMPTED BY FEDERAL LAW IN THIS PESTICIDE-INJURY LAWSUIT. [Esposito v Contec, Inc., 2017 NY Slip Op 00842, 4th Dept 2-3-17](#)

REAL PROPERTY TAX LAW, MUNICIPAL LAW.

PETITIONER DID NOT COME FORWARD WITH SUFFICIENT EVIDENCE TO OVERCOME THE PRESUMPTION THAT THE REAL PROPERTY TAX ASSESSMENT WAS VALID. [Matter of City of Rome v Board of Assessors, 2017 NY Slip Op 00864, 4th Dept 2-3-17](#)

ZONING.

DETERMINATION ALLOWING USE OF RESIDENTIAL STREETS TO ACCESS A CLAY MINING OPERATION REVERSED, NO DEMONSTRATION PROPERTY WAS WORTHLESS UNDER EXISTING ZONING. [Matter of Lemmon v Seneca Meadows, Inc., 2017 NY Slip Op 00798, 4th Dept 2-3-17](#)

ZONING.

DENIAL OF VARIANCES FOR BILLBOARDS UPHELD, ANY HARDSHIP DEEMED SELF-CREATED. [Matter of Expressview Dev., Inc. v Town of Gates Zoning Bd. of Appeals, 2017 NY Slip Op 00874, 4th Dept 2-3-17](#)

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COURT OF APPEALS

CIVIL PROCEDURE, ADMINISTRATIVE LAW, EDUCATION-SCHOOL LAW.

STATE'S RULING SCHOOL DISTRICT VIOLATED INDIVIDUALS WITH DISABILITIES ACT NOT FINAL, ARTICLE 78 PROCEEDING CHALLENGING RULING PROPERLY DISMISSED. [Matter of East Ramapo Cent. Sch. Dist. v King, 2017 NY Slip Op 02360, CtApp 3-28-17](#)

CRIMINAL LAW.

DEFENDANT DID NOT CONSENT TO THE ENTRY AND SEARCH OF HIS HOME, MOTION TO SUPPRESS SHOULD HAVE BEEN GRANTED. [People v Freeman, 2017 NY Slip Op 02090, CtApp 3-23-17](#)

CRIMINAL LAW, ATTORNEYS, APPEALS.

WHETHER DEFENDANT MADE AN UNEQUIVOCAL REQUEST FOR COUNSEL IS A MIXED QUESTION OF LAW AND FACT WHICH CANNOT BE HEARD BY THE COURT OF APPEALS. [People v Slocum, 2017 NY Slip Op 02089, CtApp 3-23-17](#)

CRIMINAL LAW, EVIDENCE.

POSSESSION OF COCAINE CAN BE PROVEN WITHOUT SUBMITTING THE COCAINE ITSELF AS EVIDENCE. [People v Whitehead, 2017 NY Slip Op 02358, CtApp 3-28-17](#)

CRIMINAL LAW, EVIDENCE.

EVIDENCE OF AN ALLEGED PRIOR IDENTICAL SEXUAL ASSAULT NOT ADMISSIBLE TO SHOW INTENT, MOTIVE, OR AS BACKGROUND EVIDENCE, CONVICTION REVERSED. [People v Leonard, 2017 NY Slip Op 02359, CtApp 3-28-17](#)

CRIMINAL LAW, EVIDENCE.

DEFENDANT'S HAND UNDER HIS HOODIE WAS SUFFICIENT TO SUPPORT THE ELEMENT OF ROBBERY FIRST WHICH REQUIRES THE DISPLAY OF WHAT APPEARS TO BE A FIREARM. [People v Smith, 2017 NY Slip Op 02362, CtApp 3-28-17](#)

CRIMINAL LAW, EVIDENCE.

ALTHOUGH THE MURDER WAS A NECESSARY ELEMENT OF THE BURGLARY CHARGE, THE PEOPLE JUSTIFIED CONSECUTIVE SENTENCES BY PRESENTING PROOF THE TWO CRIMES ENCOMPASSED DISTINCT ACTS. [People v Brahney, 2017 NY Slip Op 02465, CtApp 3-30-17](#)

CRIMINAL LAW, EVIDENCE.

TRIAL COURT CORRECTLY REFUSED TO CHARGE THE JURY ON THE JUSTIFICATION DEFENSE IN THIS ASSAULT CASE. [People v Sparks, 2017 NY Slip Op 02469, CtApp 3-30-17](#)

CRIMINAL LAW, EVIDENCE.

TRIAL COURT PROPERLY CHARGED THE JURY WITH THE INITIAL AGGRESSOR EXCEPTION TO THE JUSTIFICATION DEFENSE, APPELLATE DIVISION REVERSED.. [People v Valentin, 2017 NY Slip Op 02470, CtApp 3-30-17](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

ALTHOUGH DEFENDANT OBJECTED TO THE SANDOVAL RULING AT TRIAL, THE OBJECTION WAS NOT ON THE PRECISE GROUND RAISED ON APPEAL, THE ISSUE WAS THEREFORE NOT PRESERVED. [People v Jackson, 2017 NY Slip Op 02361, CtApp 3-28-17](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

WHERE THE RELEVANT OFFENSES WERE COMMITTED IN TWO COUNTIES, NO NEED FOR TWO SORA RISK ASSESSMENT PROCEEDINGS. [People v Cook, 2017 NY Slip Op 02467, CtApp 3-30-17](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

DEFENDANT SHOULD NOT HAVE BEEN ASSESSED POINTS UNDER RISK FACTOR 7, DEFENDANT HAD LONG-TERM NON-SEXUAL RELATIONSHIPS WITH THE VICTIMS BEFORE THE ABUSE STARTED, DEFENDANT DID NOT ESTABLISH THE RELATIONSHIPS FOR THE PRIMARY PURPOSE OF VICTIMIZATION. [People v Cook, 2017 NY Slip Op 02468, CtApp 3-30-17](#)

LABOR LAW-CONSTRUCTION LAW.

QUESTION OF FACT, CREATED BY CONFLICTING EXPERTS, WHETHER OUTSIDE STEEL STAIRCASE WAS SAFE FOR USE IN WET WEATHER, PLAINTIFF SHOULD NOT HAVE BEEN GRANTED SUMMARY JUDGMENT ON HIS LABOR LAW 240(1) CAUSE OF ACTION. [O'Brien v Port Auth. of N.Y. & N.J., 2017 NY Slip Op 02466, CtApp 3-30-17](#)

FIRST DEPARTMENT

ANIMAL LAW.

ALTHOUGH THE FIRST DEPARTMENT FELT CONSTRAINED BY COURT OF APPEALS PRECEDENT TO DISMISS THIS DOG INJURY CASE SOUNDING IN NEGLIGENCE, THE COURT FORCEFULLY ARGUED THE LAW SHOULD BE CHANGED TO ALLOW SUCH A SUIT. [Scavetta v Wechsler, 2017 NY Slip Op 01985, 1st Dept 3-16-17](#)

ATTORNEYS.

ATTORNEY MISCONDUCT CLAIM UNDER JUDICIARY LAW 487 APPLIES ONLY TO COURT, NOT ARBITRATION, PROCEEDINGS. [Doscher v Mannatt, Phelps & Phillips, LLP, 2017 NY Slip Op 01973, 1st Dept 3-16-17](#)

ATTORNEYS, PRIVILEGE.

NO EXPECTATION OF PRIVACY IN EMAIL ACCOUNT OWNED BY ATTORNEY'S EMPLOYER, THEREFORE ATTORNEY CLIENT AND SPOUSAL PRIVILEGES DID NOT APPLY, ATTORNEY WORK PRODUCT PROTECTION MAY APPLY. [Peerenboom v Marvel Entertainment, LLC, 2017 NY Slip Op 01981, 1st Dept 3-16-17](#)

CIVIL PROCEDURE.

SIX MONTHS WITHIN WHICH TO RECOMMENCE AN ACTION IN STATE COURT AFTER DISMISSAL IN FEDERAL COURT RUNS FROM THE DETERMINATION OF THE FEDERAL RECONSIDERATION MOTION, NOT FROM THE INITIAL FEDERAL DISMISSAL. [Arty v New York City Health & Hosps. Corp., 2017 NY Slip Op 01626, 1st Dept 3-2-17](#)

CIVIL PROCEDURE.

DEFENDANTS' DEMAND FOR A CHANGE OF VENUE WAS PROPERLY DISMISSED AS UNTIMELY UNDER THE ELECTRONIC FILING RULES (TO WHICH DEFENDANTS HAD CONSENTED). [Woodward v Millbrook Ventures LLC, 2017 NY Slip Op 02522, 1st Dept 3-30-17](#)

CIVIL PROCEDURE, LANDORD-TENANT, NEGLIGENCE.

BUILDING RESIDENTS CAN BRING CLASS ACTION AGAINST OWNERS-MANAGERS ALLEGING NEGLIGENCE IN PREPARATION FOR SUPERSTORM SANDY. [Roberts v Ocean Prime, LLC, 2017 NY Slip Op 01974, 1st Dept 3-16-17](#)

CONTRACT LAW.

IMPLIED COVENANT OF GOOD FAITH DOES NOT APPLY WHERE THE CONTRACT ALLOWS REFUSAL OF LOANS FOR ANY REASON, EVEN THOUGH THE REFUSAL MAY HAVE BEEN INTENTIONALLY AIMED AT PUTTING PLAINTIFF OUT OF BUSINESS. [Transit Funding Assoc., LLC v Capital One Equip. Fin. Corp., 2017 NY Slip Op 01525](#)

CRIMINAL LAW.

PRESENCE OF POLICE OFFICERS AND OFFICER'S STATEMENT TO THE VICTIM DID NOT RENDER THE SHOWUP IDENTIFICATION UNDULY SUGGESTIVE. [People v Vizcaino, 2017 NY Slip Op 01811, 1st Dept 3-5-17](#)

CRIMINAL LAW.

FAILURE TO GIVE SUPPLEMENTAL INSTRUCTIONS TO CLARIFY THE SHARED INTENT REQUIREMENTS FOR ACCOMPLICE LIABILITY DEPRIVED DEFENDANTS OF A FAIR TRIAL. [People v Telesford, 2017 NY Slip Op 01836, 1st Dept 3-15-17](#)

CRIMINAL LAW.

FIRST DEPARTMENT REDUCED DEFENDANT'S SORA RISK LEVEL FROM THREE TO TWO, BASED PRIMARILY UPON DEFENDANT'S USE OF EDUCATIONAL AND REHABILITATIVE RESOURCES WHILE IN PRISON. [People v Williams, 2017 NY Slip Op 01988, 1st Dept 3-21-17](#)

CRIMINAL LAW, EVIDENCE.

WITNESS'S DISAVOWED IDENTIFICATION OF ANOTHER AS THE PERPETRATOR COULD NOT BE USED AFFIRMATIVELY BY THE DEFENDANT AS EVIDENCE OF THIRD-PARTY CULPABILITY. [People v Francis, 2017 NY Slip Op 01817, 1st Dept 3-15-17](#)

CRIMINAL LAW, EVIDENCE.

ALLOWING POLICE OFFICER TO TESTIFY ABOUT VICTIM'S IDENTIFICATION OF DEFENDANT AT A SHOWUP WAS NOT BOLSTERING, VICTIM'S STATEMENT WAS AN EXCITED UTTERANCE. [People v Everette, 2017 NY Slip Op 01962, 1st Dept 3-16-17](#)

CRIMINAL LAW, EVIDENCE.

NO NEED FOR ARRESTING OFFICER TO TESTIFY AT SUPPRESSION HEARING, INFERENCE OF MUTUAL COMMUNICATION APPLIED. [People v Vidro, 2017 NY Slip Op 01975, 1st Dept 3-16-17](#)

EMPLOYMENT LAW, NEGLIGENCE, LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT.

QUESTIONS OF FACT WHETHER VESSEL OWNER LIABLE IN NEGLIGENCE UNDER LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT, PLAINTIFF INJURED JUMPING DOWN FROM THE DOCK TO THE VESSEL DECK. [Schnapp v Miller's Launch, Inc., 2017 NY Slip Op 02172, 1st Dept 3-23-17](#)

EDUCATION-SCHOOL LAW, EMPLOYMENT LAW, MUNICIPAL LAW.

TERMINATION OF TEACHER BASED ON HER SUBMISSION OF INACCURATE TIME SHEETS, UNDER THE CIRCUMSTANCES, SHOCKS THE CONSCIENCE. [Matter of Beatty v City of New York, 2017 NY Slip Op 01628, 1st Dept 3-2-17](#)

FAMILY LAW.

ALTHOUGH THE CHILD HAD NOT BEEN HARMED, MOTHER'S MENTAL ILLNESS JUSTIFIED THE NEGLECT FINDING. [Matter of Ruth Joanna O.O. \(Melissa O.\), 2017 NY Slip Op 01524, 1st Dept 2-28-17](#)

FAMILY LAW, APPEALS.

VIOLATION OF A TEMPORARY ORDER OF PROTECTION IS A VALID GROUND FOR ISSUANCE OF A FINAL ORDER OF PROTECTION; EXPIRATION OF AN ORDER OF PROTECTION DOES NOT RENDER AN APPEAL MOOT. [Matter of Lisa T. v King E.T., 2017 NY Slip Op 01487, 1st Dept 2-28-17](#)

FREEDOM OF INFORMATION LAW (FOIL),

RECORDS OF PROCEEDINGS BEFORE THE CIVILIAN COMPLAINT REVIEW BOARD ARE POLICE OFFICER PERSONNEL RECORDS WHICH ARE EXEMPT FROM A FREEDOM OF INFORMATION LAW REQUEST. [Matter of Luongo v Records Access Officer, Civilian Complaint Review Bd., 2017 NY Slip Op 02523, 1st Dept 3-30-17](#)

FREEDOM OF INFORMATION LAW (FOIL).

RESULTS OF NYPD DISCIPLINARY TRIALS ARE PERSONNEL RECORDS EXEMPT FROM A FREEDOM OF INFORMATION LAW REQUEST. [Matter of New York Civ. Liberties Union v New York City Police Dept., 2017 NY Slip Op 02506, 1st Dept 3-30-17](#)

LABOR LAW-CONSTRUCTION LAW, EVIDENCE.

PLAINTIFF'S INABILITY TO PINPOINT THE CAUSE OF HIS FALL FROM A LADDER DID NOT WARRANT SUMMARY JUDGMENT, THERE WAS CIRCUMSTANTIAL EVIDENCE OF THE CAUSE. [Weicht v City of New York, 2017 NY Slip Op 01995, 1st Dept 3-21-17](#)

LABOR LAW-CONSTRUCTION LAW.

LABOR LAW 241(6) CAUSES OF ACTION SHOULD SURVIVE SUMMARY JUDGMENT BECAUSE THE ITEMS PLAINTIFF TRIPPED OVER WERE NOT INTEGRAL TO THE WORK BEING DONE BY PLAINTIFF AT THE TIME HE FELL. [Pereira v New School, 2017 NY Slip Op 01627, 1st Dept 3-2-17](#)

LABOR LAW-CONSTRUCTION LAW.

TILTING A SKID FROM A VERTICAL POSITION ONTO A DOLLY IS COVERED UNDER LABOR LAW 240(1), QUESTION OF FACT WHETHER A SAFETY DEVICE WAS REQUIRED. [Natoli v City of New York, 2017 NY Slip Op 01818, 1st Dept 3-15-17](#)

LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF ENTITLED TO SUMMARY JUDGMENT ON HIS LABOR LAW 240(1) CAUSE OF ACTION, FALL FROM A-FRAME LADDER. [Messina v City of New York, 2017 NY Slip Op 01823, 1st Dept 3-15-17](#)

LANDLORD-TENANT (NYC).

DEFENDANT LANDLORD DEMONSTRATED RENOVATIONS TO THE APARTMENT, WHICH WAS ONCE RENT-CONTROLLED, WERE SUFFICIENT TO WARRANT CHARGING MARKET RENT (FIRST RENT), COMPLAINT DISMISSED BASED ON LANDLORD'S DOCUMENTARY EVIDENCE. [Dixon v 105 W. 75th St. LLC, 2017 NY Slip Op 02504, 1st Dept 3-30-17](#)

MUNICIPAL LAW, CIVIL RIGHTS LAW (42 USC 1983), CIVIL PROCEDURE.

THREE YEAR STATUTE OF LIMITATIONS FOR A FALSE ARREST CAUSE OF ACTION UNDER 42 USC 1983 BEGAN TO RUN UPON ARRAIGNMENT. [Cruz v City of New York, 2017 NY Slip Op 02386, 1st Dept 3-28-17](#)

MUNICIPAL LAW, NEGLIGENCE.

LATE NOTICE OF CLAIM SHOULD HAVE BEEN ALLOWED DESPITE LACK OF A REASONABLE EXCUSE AND DEFENDANT'S LACK OF KNOWLEDGE OF THE INJURY. [Eboni B. v New York City Hous. Auth., 2017 NY Slip Op 01816, 1st Dept 3-15-17](#)

NEGLIGENCE.

PLAINTIFF'S ALLEGATION SHE SAW A DENT IN A WAXY SUBSTANCE MADE BY HER SHOE AS SHE FELL WAS SUFFICIENT TO DEFEAT DEFENDANT'S SUMMARY JUDGMENT MOTION, SUPREME COURT REVERSED. [De Paris v Women's Natl. Republican Club, Inc., 2017 NY Slip Op 01625, 1st Dept 3-2-17](#)

NEGLIGENCE.

QUESTION OF FACT WHETHER FAILURE TO SAND OR SALT STEPS CREATED OR EXACERBATED A DANGEROUS CONDITION. [Arroyo v Clarke, 2017 NY Slip Op 01809, 1st Dept 3-15-17](#)

NEGLIGENCE.

QUESTION OF FACT WHETHER NEGLIGENT WAXING WAS CAUSE OF PLAINTIFF'S FALL. [Sanchez v Mitsui Fudosan Am., Inc., 2017 NY Slip Op 01821, 1st Dept 3-15-17](#)

NEGLIGENCE.

EVEN THOUGH THERE WAS A STORM IN PROGRESS, QUESTION OF FACT RAISED WHETHER SNOW REMOVAL EFFORTS CREATED OR EXACERBATED THE DANGEROUS ICY CONDITION. [Baumann v Dawn Liquors, Inc., 2017 NY Slip Op 01986, 1st Dept 3-21-17](#)

NEGLIGENCE.

DEFENDANT DID NOT DEMONSTRATE A LACK OF ACTUAL OR CONSTRUCTIVE NOTICE OF A HOLE WHICH CAUSED PLAINTIFF TO FALL, SUMMARY JUDGMENT PROPERLY DENIED. [Clarkin v In Line Rest. Corp., 2017 NY Slip Op 02004, 1st Dept 3-21-17](#)

NEGLIGENCE, CONTRACT LAW.

TRIVIAL DEFECT IN SIDEWALK NOT ACTIONABLE, DESPITE ABSENCE OF NEGLIGENCE BROAD INDEMNIFICATION CLAUSE MANDATED PAYMENT OF DEFENDANT'S COSTS ASSOCIATED WITH THE ACTION. [Robinson v Brooks Shopping Ctrs., LLC, 2017 NY Slip Op 01972 1st Dept 3-16-17](#)

NEGLIGENCE, EMPLOYMENT LAW.

QUESTION OF FACT WHETHER BOUNCER WAS ACTING WITHIN THE SCOPE OF HIS EMPLOYMENT WHEN HE THREW PLAINTIFF TO THE GROUND. [Salem v MacDougal Rest. Inc., 2017 NY Slip Op 01832, 1st Dept 3-15-17](#)

NEGLIGENCE, EVIDENCE.

REVERSIBLE ERROR TO REFUSE TO INSTRUCT THE JURY ON RES IPSA LOQUITUR AND MULTIPLE DWELLING LAW LIABILITY IN THIS ELEVATOR ACCIDENT CASE. [Barkley v Plaza Realty Invs. Inc., 2017 NY Slip Op 01664, 1st Dept 3-7-17](#)

NEGLIGENCE, MUNICIPAL LAW.

COMMON CARRIERS DO NOT HAVE A DUTY TO KEEP BUS STEPS FREE OF SNOW TRACKED IN DUE TO A RECENT STORM. [Harbison v New York City Tr. Auth., 2017 NY Slip Op 01503, 1st Dept 2-28-17](#)

NEGLIGENCE, MUNICIPAL LAW (NYC).

NEW YORK CITY HOUSING AUTHORITY NOT ENTITLED TO PRESUMPTION BUILDING CONSTRUCTED IN 1974 DID NOT HAVE LEAD PAINT, SUMMARY JUDGMENT PROPERLY DENIED. [Dakota Jade T. v New York City Hous. Auth., 2017 NY Slip Op 01987, 1st Dept 3-21-17](#)

PRODUCTS LIABILITY, LABOR LAW-CONSTRUCTION LAW.

PRODUCTS LIABILITY ACTION AGAINST ELEVATOR MANUFACTURER SHOULD HAVE SURVIVED SUMMARY JUDGMENT, LABOR LAW 240(1) INAPPLICABLE TO ELEVATOR ACCIDENT. [Versace v 1540 Broadway L.P., 2017 NY Slip Op 01813, 1st Dept 3-15-17](#)

PRODUCTS LIABILITY, TOXIC TORTS.

PLAINTIFF'S VERDICT IN THIS ASBESTOS CASE PROPERLY SET ASIDE, INSUFFICIENT PROOF PLAINTIFF WAS EXPOSED TO DANGEROUS LEVELS OF ASBESTOS EMANATING FROM DEFENDANT'S PRODUCTS. [Matter of New York City Asbestos Litig., 2017 NY Slip Op 01523, 1st Dept 2-28-17](#)

RETIREMENT AND SOCIAL SECURITY LAW.

POLICE OFFICER DID NOT DEMONSTRATE HIS PULMONARY HYPERTENSION WAS RELATED TO HIS SERVICE AT THE WORLD TRADE CENTER ON 9-11. [Matter of Stavropoulos v Bratton, 2017 NY Slip Op 01779, 1st Dept 3-9-17](#)

SECURITIES, CONTRACT LAW.

PUTBACK ACTION STEMMING FROM THE PURCHASE OF RESIDENTIAL MORTGAGE BACKED SECURITIES SURVIVED MOTIONS TO DISMISS. [Natixis Real Estate Capital Trust 2007-HE2 v Natixis Real Estate Holdings, LLC, 2017 NY Slip Op 01796, 1st Dept 3-9-17](#)

SECURITIES, FRAUD.

PLAINTIFF'S LOSS WAS DUE TO THE MARKET COLLAPSE OF RESIDENTIAL-BACKED MORTGAGE SECURITIES, LOSS CAUSATION ELEMENT OF FRAUD CAUSE OF ACTION THEREFORE NOT DEMONSTRATED. [Basis PAC-Rim Opportunity Fund \(Master\) v TCW Asset Mgt. Co., 2017 NY Slip Op 01644, 1st Dept 3-2-17](#)

TAX LAW.

IN THIS PROSECUTION ALLEGING DEFENDANT CELL PHONE COMPANY'S UNDERPAYMENT OF SALES TAX, DEFENDANT WAS ENTITLED TO THE SALES TAX RETURNS OF OTHER CELL PHONE SERVICE PROVIDERS. [People v Sprint Communications Inc., 2017 NY Slip Op 01801, 1st Dept 3-15-17](#)

TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS, APPEALS.

TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS CAUSE OF ACTION PROPERLY SURVIVED A MOTION TO DISMISS, LAW OF THE CASE DOCTRINE APPLIES ONLY TO COURTS OF COORDINATE JURISDICTION.

[**Sprecher v Thibodeau, 2017 NY Slip Op 02519, 1st Dept 3-30-17**](#)

TRUSTS AND ESTATES.

DEFENDANT FOUND NOT GUILTY BY REASON OF INSANITY CAN BE SUED FOR WRONGFUL DEATH UNDER THE EPTL, BOTH FOR THE STABBING DEATH OF HIS MOTHER AND THE RELATED SUICIDE OF HIS BROTHER.

[**Rosen v Schwartz, 2017 NY Slip Op 02517, 1st Dept 3-30-17**](#)

SECOND DEPARTMENT

ADMINISTRATIVE LAW.

DEPARTMENT OF CONSUMER AFFAIR'S DETERMINATION WAS AFFECTED BY AN ERROR OF LAW WHICH RESULTED IN A MISINTERPRETATION OF THE ADMINISTRATIVE CODE, DETERMINATION SHOULD HAVE BEEN ANNULLED. [Matter of Arash Real Estate & Mgt. Co. v New York City Dept. of Consumer Affairs, 2017 NY Slip Op 02416, 2nd Dept 3-29-17](#)

ARBITRATION, EMPLOYMENT LAW, EDUCATION-SCHOOL LAW.

TERMINATION OF OUT OF WORK SCHOOL DISTRICT EMPLOYEE PURSUANT TO THE CIVIL SERVICE LAW IS NOT ARBITRABLE, PETITION TO STAY ARBITRATION SHOULD HAVE BEEN GRANTED. [Matter of Enlarged City Sch. Dist. of Middletown N.Y. v Civil Serv. Empls. Assn., Inc., 2017 NY Slip Op 02421, 2nd Dept 3-29-17](#)

CIVIL PROCEDURE.

FOUR-MONTH ARTICLE 78 STATUTE OF LIMITATIONS STARTS WHEN THE PETITIONER'S ATTORNEY IS NOTIFIED OF THE CHALLENGED DETERMINATION, NOT WHEN PETITIONER IS NOTIFIED. [Matter of Munroe v Ponte, 2017 NY Slip Op 02041, 2nd Dept 3-22-17](#)

CIVIL PROCEDURE, BANKRUPTCY, ATTORNEYS.

PLAINTIFFS HAD STANDING TO SUE FOR LEGAL MALPRACTICE STEMMING FROM A TRIAL BROUGHT IN THE NAME OF PLAINTIFFS' CHAPTER 13 BANKRUPTCY TRUSTEE. [Nicke v Schwartzapfel Partners, P.C., 2017 NY Slip Op 02437, 2nd Dept 3-29-17](#)

CIVIL PROCEDURE, CONTRACT LAW.

GUARANTY WHICH DID NOT HAVE A FORUM SELECTION CLAUSE DEEMED TO BE SUBJECT TO THE CLAUSE IN A RELATED CONTRACT EXECUTED CLOSE IN TIME, SUMMARY JUDGMENT IN LIEU OF COMPLAINT SHOULD NOT HAVE BEEN GRANTED, OUTSIDE PROOF NECESSARY. [Oak Rock Fin., LLC v Rodriguez, 2017 NY Slip Op 02048, 2nd Dept 3-22-17](#)

CIVIL PROCEDURE, NEGLIGENCE, MEDICAL MALPRACTICE.

PLAINTIFF ENTITLED TO AMEND BILL OF PARTICULARS AS OF RIGHT PRIOR TO FILING OF NOTE OF ISSUE. [Mackauer v Parikh, 2017 NY Slip Op 01847, 2nd Dept 3-15-17](#)

CONTRACT LAW.

DEFENDANTS' FAILURE TO INSIST ON PROMISED MONTHLY MINIMUM PURCHASES OF DEFENDANTS' PRODUCTS CONSTITUTED A WAIVER OF THE CONTRACTUAL MINIMUM PURCHASE REQUIREMENTS, NOTWITHSTANDING A NO ORAL WAIVER CLAUSE. [Kamco Supply Corp. v On the Right Track, LLC, 2017 NY Slip Op, 02025, 2nd Dept 3-22-17](#)

CONTRACT LAW.

STATUTE OF FRAUDS (GENERAL OBLIGATIONS LAW) REQUIREMENTS FOR A CONTRACT TO NEGOTIATE A BUSINESS OPPORTUNITY NOT MET, PART PERFORMANCE NOT APPLICABLE. [Kelly v P & G Ventures 1, LLC, 2017 NY Slip Op 02026, 2nd Dept 3-22-17](#)

COURT OF CLAIMS, IMMUNITY, NEGLIGENCE.

CLAIM ALLEGING NEGLIGENT PLACEMENT OF A GUARDRAIL PROPERLY DISMISSED, STATE ENTITLED TO QUALIFIED IMMUNITY. [Gagliardi v State of New York, 2017 NY Slip Op 01845, 2nd Dept 3-15-17](#)

CRIMINAL LAW.

POSSIBILITY OF DEPORTATION NOT MENTIONED AT TIME OF GUILTY PLEA, MATTER REMITTED. [People v Agramonte, 2017 NY Slip Op 01876, 2nd Dept 3-15-17](#)

CRIMINAL LAW.

IT WAS THEORETICALLY POSSIBLE (ALTHOUGH HIGHLY UNLIKELY) THE TWO ASSAULT CONVICTIONS WERE BASED UPON THE SAME ACT, DEFENDANT SHOULD NOT HAVE BEEN GIVEN CONSECUTIVE SENTENCES. [People v Henderson, 2017 NY Slip Op 01885, 2nd Dept 3-15-17](#)

CRIMINAL LAW, ATTORNEYS, EVIDENCE.

PROSECUTOR'S SUMMATION AMOUNTED TO MISCONDUCT, 911 CALL SHOULD NOT HAVE BEEN ADMITTED AS PRESENT SENSE IMPRESSION OR AN EXCITED UTTERANCE, CROSS-EXAMINATION OF COMPLAINANT UNDULY RESTRICTED. [People v Casiano, 2017 NY Slip Op 02053, 2nd Dept 3-22-17](#)

CRIMINAL LAW, EVIDENCE.

UNWARNED STATEMENT PRECEDED MIRANDIZED STATEMENT BY TEN MINUTES, MOTION TO SUPPRESS SHOULD HAVE BEEN GRANTED. [People v Ghee, 2017 NY Slip Op 01564, 2nd Dept 3-1-17](#)

CRIMINAL LAW, EVIDENCE.

EVIDENCE OF KNOWING POSSESSION OF A CONTROLLED SUBSTANCE WAS SUFFICIENT TO SUPPORT AN INDICTMENT, SUPREME COURT REVERSED. [People v Jimenez, 2017 NY Slip Op 01566, 2nd Dept 3-1-17](#)

CRIMINAL LAW, EVIDENCE.

DESPITE CONFLICTING EVIDENCE, JURY SHOULD HAVE BEEN INSTRUCTED ON THE JUSTIFICATION DEFENSE IN THIS MANSLAUGHTER-ASSAULT CASE, DEFENDANT, WHO PROVIDED THE GUN TO THE SHOOTER, WAS DEEMED TO SHARE THE SHOOTER'S INTENT. [People v Sanchez, 2017 NY Slip Op 01718, 2nd Dept 3-8-17](#)

CRIMINAL LAW, EVIDENCE.

911 CALL AND PRIOR CONSISTENT STATEMENT PROPERLY ADMITTED AS EXCITED UTTERANCES. [People v Chin, 2017 NY Slip Op 01880, 2nd Dept 3-15-17](#)

CRIMINAL LAW, EVIDENCE.

INSUFFICIENT EVIDENCE TO SUPPORT PHYSICAL INJURY ELEMENT OF ASSAULT THIRD, INSUFFICIENT EVIDENCE TO WARRANT SENTENCING AS A PERSISTENT FELONY OFFENDER. [People v Fews, 2017 NY Slip Op 02443, 2nd Dept 3-29-17](#)

CRIMINAL LAW, EVIDENCE, ATTORNEYS.

A CONVICTION BY GUILTY PLEA MAY BE SET ASIDE ON ACTUAL INNOCENCE GROUNDS, DEFENDANT ENTITLED TO A HEARING ON HER ACTUAL INNOCENCE CLAIM AND ON HER INEFFECTIVE ASSISTANCE CLAIM. [People v Tiger, 2017 NY Slip Op 01575, 2nd Dept 3-1-17](#)

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

INSUFFICIENT INQUIRY INTO SEX OFFENDER'S REQUEST TO REPRESENT HIMSELF. [People v Griffin, 2017 NY Slip Op 01577, 2nd Dept 3-1-17](#)

EMPLOYMENT LAW, NEGLIGENCE.

DRIVER AND CAR OWNER WERE NOT EMPLOYEES OF CAR SERVICE, CAR SERVICE THEREFORE NOT LIABLE FOR ACCIDENT UNDER DOCTRINE OF RESPONDEAT SUPERIOR. [Castro-Quesada v Tuapanta, 2017 NY Slip Op 02014, 2nd Dept 3-22-17](#)

FAMILY LAW.

PUBLIC POLICY PROHIBITS RECOUPMENT OF OVERPAYMENT OF CHILD SUPPORT. [Matter of McGovern v McGovern, 2017 NY Slip Op 01862, 2nd Dept 3-15-17](#)

FAMILY LAW.

APPELLANT'S LATE APPEARANCE FOR A HEARING DID NOT JUSTIFY A DEFAULT FINDING. [Matter of Williams v Williams, 2017 NY Slip Op 01873, 2nd Dept 3-15-17](#)

FAMILY LAW, APPEALS.

PETITIONER'S PATERNITY CLAIM PROPERLY DISMISSED ON EQUITABLE ESTOPPEL GROUNDS, REINSTATEMENT OF PETITION UPON A PRIOR APPEAL DID NOT PRECLUDE DISMISSAL. [Matter of Thomas T. v Luba R., 2017 NY Slip Op 01870, 2nd Dept 3-15-17](#)

FAMILY LAW, EVIDENCE.

NOT NECESSARY TO PROVE WHICH OF TWO CARETAKERS WITH ACCESS TO THE CHILD ACTUALLY INJURED THE CHILD. [Matter of Zoey D. \(Simona D.\), 2017 NY Slip Op 01689, 2nd Dept 3-8-17](#)

FAMILY LAW, EVIDENCE.

CHILD'S STATEMENTS ABOUT RESPONDENT PROPERLY EXCLUDED FROM NEGLECT PROCEEDING INVOLVING A DIFFERENT CHILD, NO SHOWING RESPONDENT WAS LEGALLY RESPONSIBLE FOR THE CHILD WHO MADE THE STATEMENTS. [Matter of Kaliia F. \(Jason F.\), 2017 NY Slip Op 01691, 2nd Dept 3-8-17](#)

FAMILY LAW, EVIDENCE.

CHILDREN WERE HEALTHY AND WELL CARED FOR, NEGLECT PETITION BASED UPON MOTHER'S MENTAL ILLNESS PROPERLY DISMISSED. [Matter of Jaurelious G. \(Gwendolyn J.\), 2017 NY Slip Op 01692, 2nd Dept 3-8-17](#)

FAMILY LAW, EVIDENCE.

NEGLECT PETITION ALLEGING EXCESSIVE CORPORAL PUNISHMENT SHOULD NOT HAVE BEEN DISMISSED AFTER PRESENTATION OF DIRECT CASE, CHILD'S OUT OF COURT STATEMENTS SUFFICIENTLY CORROBORATED. [Matter of Jaivon J. \(Patricia D.\), 2017 NY Slip Op 01856, 2nd Dept 3-15-17](#)

FAMILY LAW, IMMIGRATION LAW.

FAMILY COURT SHOULD HAVE MADE FINDINGS ALLOWING JUVENILE TO PETITION FOR SPECIAL IMMIGRANT JUVENILE STATUS, PARENTAL NEGLECT PRECLUDED REUNIFICATION. [Matter of Palwinder K. v Kuldeep K., 2017 NY Slip Op 02423, 2nd Dept 3-29-17](#)

EDUCATION-SCHOOL LAW, NEGLIGENCE.

PETITION FOR LEAVE TO FILE LATE NOTICE OF CLAIM PROPERLY DENIED. [Matter of Ramos v Board of Educ. of the City of New York, 2017 NY Slip Op 01868, 2nd Dept 3-15-17](#)

FORECLOSURE, CIVIL PROCEDURE.

LENDER DID NOT NEGOTIATE A MORTGAGE MODIFICATION IN GOOD FAITH AND WAS PROPERLY SANCTIONED. [Aurora Loan Servs., LLC v Diakite, 2017 NY Slip Op 01528, 2nd Dept 3-1-17](#)

INSURANCE LAW.

EVEN AN INNOCENT MATERIAL MISTAKE ON AN INSURANCE APPLICATION RENDERS THE POLICY UNENFORCEABLE. [Estate of Gen Yee Chu v Otsego Mut. Fire Ins. Co., 2017 NY Slip Op 01536, 2nd Dept 3-1-17](#)

INSURANCE LAW.

NOTICE OF DISCLAIMER SENT TO PLAINTIFF'S INSURER WAS NOT EFFECTIVE NOTICE TO PLAINTIFF. [Harco Constr., LLC v First Mercury Ins. Co., 2017 NY Slip Op 01846, 2nd Dept 2-15-17](#)

INTENTIONAL TORTS, CIVIL PROCEDURE.

CONTINUING TORT DOCTRINE APPLIED TO A COUNTERCLAIM FOR A DELIBERATE CAMPAIGN OF HARASSMENT SPANNING 13 YEARS. [Estreicher v Oner, 2017 NY Slip Op 01844, 2nd Dept 3-15-17](#)

LABOR LAW-CONSTRUCTION LAW.

QUESTION OF FACT WHETHER OBJECT THAT FELL WAS THE TYPE OF OBJECT WHICH SHOULD HAVE BEEN SECURED WITH A SAFETY DEVICE ENUMERATED IN THE LABOR LAW STATUTE. [Romero v 2200 N. Steel, LLC, 2017 NY Slip Op 02075, 2nd Dept 3-22-17](#)

LABOR LAW-CONSTRUCTION LAW.

INJURY WHILE TRIMMING A TREE NOT ACTIONABLE UNDER LABOR LAW 200 OR LABOR LAW 240(1). [Olarte v Morgan, 2017 NY Slip Op 01874, 2nd Dept 3-15-17](#)

LABOR LAW-CONSTRUCTION LAW, CIVIL PROCEDURE.

PLAINTIFF WAS NOT INJURED ON THE CONSTRUCTION SITE, LABOR LAW 241(6) CAUSE OF ACTION SHOULD HAVE BEEN DISMISSED, LABOR LAW 200 AND NEGLIGENCE CAUSES OF ACTION WERE VIABLE HOWEVER, USE OF ALIAS WAS NOT A FRAUD UPON THE COURT. [Bessa v Anflo Indus., Inc., 2017 NY Slip Op 02013, 2nd Dept 3-22-17](#)

LABOR LAW-CONSTRUCTION LAW, LANDLORD-TENANT.

TREE CUTTING NOT COVERED, PILE OF DEBRIS NOT A STRUCTURE, OUT OF POSSESSION LANDLORD NOT LIABLE UNDER LABOR LAW 200. [Derosas v Rosmarins Land Holdings, LLC, 2017 NY Slip Op 02019, 2nd Dept 3-22-17](#)

LABOR LAW-CONSTRUCTION LAW, MUNICIPAL LAW, LONGSHOREMAN'S AND HARBOR WORKERS' COMPENSATION ACT.

NOTICE OF CLAIM REQUIREMENT FOR LABOR LAW ACTION AGAINST CITY NOT PREEMPTED BY LONGSHOREMAN'S AND HARBOR WORKERS' COMPENSATION ACT. [Fernandez v City of New York, 2017 NY Slip Op 02022, 2nd Dept 3-22-17](#)

LANDLORD-TENANT, CONTRACT LAW.

LEASE PROVISION ALLOWING THE COLLECTION OF RENT AFTER EVICTION BY SUMMARY PROCEEDINGS VALID AND ENFORCEABLE. [L'Aquila Realty, LLC v Jalyng Food Corp., 2017 NY Slip Op 02027, 2nd Dept 3-22-17](#)

MENTAL HYGIENE LAW.

PURPORTED WAIVER OF JURY TRIAL NOT VALID, NOTHING ON THE RECORD. [Matter of State of New York v Jesus M., 2017 NY Slip Op 01557, 2nd Dept 3-1-17](#)

MUNICIPAL LAW.

SECOND DEPARTMENT JOINS THE THIRD AND FOURTH DEPARTMENTS IN HOLDING INDIVIDUAL MUNICIPAL EMPLOYEES NEED NOT BE NAMED AS DEFENDANTS IN A NOTICE OF CLAIM. [Blake v City of New York, 2017 NY Slip Op 02399, 2nd Dept 3-29-17](#)

MUNICIPAL LAW, NEGLIGENCE.

19 YEAR OLD NOTICE OF CLAIM WAS NOT SUFFICIENT WRITTEN NOTICE OF SIDEWALK DEFECT. [Gellman v Cooke, 2017 NY Slip Op 02404, 2nd Dept 3-29-17](#)

NEGLIGENCE.

WRONGFUL DEATH VERDICT AWARDED ZERO DAMAGES FOR LOSS OF PARENTAL GUIDANCE NOT AGAINST THE WEIGHT OF THE EVIDENCE. [Estevez v Tam, 2017 NY Slip Op 01675, 2nd Dept 3-8-17](#)

NEGLIGENCE.

DEFENDANT HEAVY METAL CLUB DID NOT DEMONSTRATE PLAINTIFF ASSUMED THE RISK OF COLLIDING WITH A SLAM DANCER, DEFENDANT'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED. [Brosnan v 6 Crannell St., LLC, 2017 NY Slip Op 01840, 2nd Dept 3-15-17](#)

NEGLIGENCE.

DEFENDANT DID NOT DEMONSTRATE NONNEGLIGENT EXPLANATION FOR REAR-END COLLISION, PLAINTIFF'S SUMMARY JUDGMENT MOTION SHOULD HAVE BEEN GRANTED. [Tumminello v City of New York, 2017 NY Slip Op 02083, 2nd Dept. 3-22-17](#)

NEGLIGENCE.

ALTHOUGH THERE WAS A STORM IN PROGRESS, DEFENDANT'S SNOW REMOVAL MAY HAVE EXACERBATED THE SLIPPERY CONDITION, DEFENDANT'S SUMMARY JUDGMENT MOTION SHOULD HAVE BEEN DENIED. [Dylan v CEJ Props., LLC, 2017 NY Slip Op 02403, 2nd Dept 3-29-17](#)

NEGLIGENCE.

FOOT OF A DECORATIVE FENCE OVER WHICH PLAINTIFF TRIPPED WAS OPEN AND OBVIOUS AS A MATTER OF LAW. [Gerner v Shop-Rite of Uniondale, Inc., 2017 NY Slip Op 02407, 2nd Dept 3-29-17](#)

NEGLIGENCE, COURT OF CLAIMS.

CLAIMANT STRUCK A DOWNED LIGHT POLE WHICH HAD ROTTED BELOW GROUND, STATE DID NOT HAVE ACTUAL OR CONSTRUCTIVE NOTICE OF THE CONDITION. [Jeffries v State of New York, 2017 NY Slip Op 02409, 2nd Dept 3-29-17](#)

NEGLIGENCE, EVIDENCE.

FAILURE TO PRESERVE SURVEILLANCE VIDEO WHICH ALLEGEDLY SHOWED HOW PLAINTIFF WAS INJURED WARRANTED A SANCTION, EVEN THOUGH PLAINTIFF DID NOT DEMAND THE TAPE OR ASK THAT IT BE PRESERVED. [Rokach v Taback, 2017 NY Slip Op 02456, 2nd Dept 3-29-17](#)

NEGLIGENCE, INTENTIONAL TORTS, CIVIL PROCEDURE.

DISMISSAL OF INTENTIONAL TORT CAUSES OF ACTION PRECLUDED SUBSEQUENT ACTION SOUNDING IN NEGLIGENCE, NO NEGLIGENT ASSAULT IN NEW YORK. [Johnson v City of New York, 2017 NY Slip Op 02410, 2nd Dept 3-29-17](#)

NEGLIGENCE, MUNICIPAL LAW.

PLAINTIFF INJURED IN COLLISION WITH A POLICE CAR, POLICE REPORT PROVIDED CITY WITH NOTICE OF THE CLAIM, PETITION TO FILE LATE NOTICE OF CLAIM SHOULD HAVE BEEN GRANTED DESPITE LACK OF EXCUSE. [Matter of Jaffier v City of New York, 2017 NY Slip Op 02039, 2nd Dept 3-22-17](#)

NEGLIGENCE, MUNICIPAL LAW.

PLAINTIFF COULD NOT IDENTIFY CAUSE OF HIS FALL, COMPLAINT PROPERLY DISMISSED. [Vojvodic v City of New York, 2017 NY Slip Op 02085, 2nd Dept 3-22-17](#)

PROPERTY DAMAGE, INSURANCE LAW, LANDLORD-TENANT.

LANDLORD (SUBLESSOR) DID NOT OWE A DUTY TO PLAINTIFF'S SUBROGEE TO PREVENT A MENTALLY ILL TENANT FROM SMOKING IN THE APARTMENT WHERE A FIRE STARTED. [Tower Ins. Co. of N.Y. v Hands Across Long Is., Inc., 2017 NY Slip Op 02082, 2nd Dept 3-22-17](#)

THIRD DEPARTMENT

CRIMINAL LAW.

DEFENDANT'S OMISSIONS, INCONSISTENT STATEMENTS AND LIES AFTER A ROUTINE TRAFFIC STOP JUSTIFIED THE CANINE SNIFF. [People v Banks, 2017 NY Slip Op 01916, 3rd Dept 3-16-17](#)

CRIMINAL LAW, APPEALS.

AFTER FINDING THE ISSUE PRESENTED AN EXCEPTION TO THE MOOTNESS DOCTRINE, THE COURT DETERMINED THE STATE DID NOT ADEQUATELY ASSIST A SEX OFFENDER IN FINDING SUITABLE HOUSING UPON RELEASE. [Matter of Gonzalez v Annucci, 2017 NY Slip Op 02099, 3rd Dept 3-23-17](#)

CRIMINAL 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 INTOXICATION DEFENSE PRIOR TO PLEADING GUILTY. [People v Perry, 2017 NY Slip Op 02095, 3rd Dept 3-23-17](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA)

ANOMALY IN GUIDELINES MAY RESULT IN AN OVERESTIMATION OF THE CHILD-PORNOGRAPHY-BASED RISK, CASE REMITTED FOR FINDINGS. [People v Kemp, 2017 NY Slip Op 01618, 3rd Dept 3-2-17](#)

DISCIPLINARY HEARINGS (INMATES)

NO PROOF INMATE WAS PROPERLY INFORMED OF THE CONSEQUENCES OF HIS NOT ATTENDING THE HEARING AT THE TIME OF HIS PURPORTED REFUSAL TO ATTEND, DETERMINATION ANNULLED. [Matter of Wilson v Annucci, 2017 NY Slip Op 01617, 3rd Dept 3-2-17](#)

DISCIPLINARY HEARINGS (INMATES).

THERE WAS NO GOOD REASON TO DENY PETITIONER'S REQUEST FOR A WITNESS, DETERMINATION ANNULLED AND EXPUNGED. [Matter of Balkum v Annucci, 2017 NY Slip Op 01741, 3rd Dept 3-9-17](#)

DISCIPLINARY HEARINGS (INMATES).

FAILURE TO PRODUCE A COPY OF THE MAIL WATCH AUTHORIZATION REQUIRED THAT THE DETERMINATION BE ANNULLED AND EXPUNGED. [Matter of Wilson v Commissioner of N.Y. State Dept. of Corr. & Community Supervision, 2017 NY Slip Op 01921, 3rd Dept 3-16-17](#)

FAMILY LAW, EVIDENCE.

ALTHOUGH NONE OF THE THREE CHILDREN TESTIFIED IN THIS NEGLECT CASE, THE STATEMENTS ATTRIBUTED TO THEM CROSS-CORROBORATED ONE ANOTHER AND WERE THEREFORE ADMISSIBLE. [Matter of Annarae I. \(Jennifer K.\), 2017 NY Slip Op 01605, 3rd Dept 3-2-17](#)

FREEDOM OF INFORMATION LAW (FOIL).

INSUFFICIENT SHOWING BY THE STATE POLICE TO JUSTIFY DENIAL OF REQUEST FOR RECORDS PERTAINING TO A VICTIM OF CRIMES COMMITTED BY PETITIONER, MATTER REMITTED. [Matter of McFadden v Fonda, 2017 NY Slip Op 02101, 3rd Dept 3-23-17](#)

INSURANCE LAW.

INSURANCE BROKER ENGAGED IN UNTRUSTWORTHY CONDUCT STEMMING FROM A MISLEADING AD FOR VIATICAL SETTLEMENT AGREEMENTS AND WAS PROPERLY FINED. [Matter of Nichols v New York State Dept. of Fin. Servs., 2017 NY Slip Op 01944m 3rd Dept 3-16-17](#)

MEDICAL MALPRACTICE, NEGLIGENCE.

CERTIFICATE OF MERIT INADEQUATE, COMPLAINT DISMISSED. [Calcagno v Orthopedic Assoc. of Dutchess County, PC, 2017 NY Slip Op 01616, 3rd Dept 3-2-17](#)

NEGLECT, TOXIC TORTS.

LEAD POISONING, STATUTE OF LIMITATIONS RUNS FROM WHEN THE SYMPTOMS ARE FIRST DISCOVERED, NOT WHEN THE CAUSE OF THE SYMPTOMS IS LEARNED. [Vasilatos v Dzamba, 2017 NY Slip Op 01615, 3rd Dept 3-2-17](#)

NEGLECT, WORKERS' COMPENSATION LAW, EMPLOYMENT LAW.

ALTHOUGH PLAINTIFF INJURED BY CO-WORKER, QUESTION OF FACT WHETHER DEFENDANT'S ACTIONS WERE GROSSLY NEGLIGENT AND THEREFORE NOT WITHIN THE SCOPE OF EMPLOYMENT, ALSO A QUESTION OF FACT WHETHER EMPLOYER CONDONED DEFENDANT'S ACTIONS, PLAINTIFF'S SUIT NOT PRECLUDED BY WORKERS' COMPENSATION LAW. [Montgomery v Hackenburg, 2017 NY Slip Op 01744, 3rd Dept 3-9-17](#)

REAL PROPERTY.

MINERAL RIGHTS INCLUDE THE RIGHT TO REMOVE SAND AND GRAVEL. [Champlain Gas & Oil, LLC v People of The State of New York, 2017 NY Slip Op 01610, 3rd Dept 3-2-17](#)

UNEMPLOYMENT INSURANCE LAW.

BUILDING AND HOME INSPECTORS WERE EMPLOYEES OF ENGINEERING FIRM. [Matter of Tauscher Cronacher PE PC \(Commissioner of Labor\). 2017 NY Slip Op 02488. 3rd Dept 3-30-17](#)

WORKERS' COMPENSATION LAW.

EXERTIONAL ABILITY OF LESS THAN SEDENTARY WORK DOES NOT EQUATE TO A FINDING OF PERMANENT TOTAL DISABILITY, PERMANENT PARTIAL DISABILITY FINDING AFFIRMED. [Matter of Burgos v Citywide Cent. Ins. Program, 2017 NY Slip Op 02489, 3rd Dept 3-30-17](#)

FOURTH DEPARTMENT

CIVIL PROCEDURE.

RECORDS OF PLAINTIFF'S STAY AT A SHELTER FOR VICTIMS OF DOMESTIC VIOLENCE ARE DISCOVERABLE IN THIS MEDICAL MALPRACTICE ACTION AS DEEMED APPROPRIATE BY THE TRIAL COURT UPON REVIEW, DEFENDANTS ENTITLED TO PRIVILEGE LOG. [Abraha v Adams, 2017 NY Slip Op 02526, 4th Dept 3-31-17](#)

CIVIL PROCEDURE, FREEDOM OF INFORMATION LAW (FOIL), MUNICIPAL LAW.

DELIBERATIVE PROCESS PRIVILEGE UNDER THE FREEDOM OF INFORMATION LAW DOES NOT APPLY TO DISCOVERY REQUEST FOR GOVERNMENT DOCUMENTS UNDER THE CPLR. [Mosey v County of Erie, 2017 NY Slip Op 02201, 4th Dept 3-24-17](#)

CRIMINAL LAW.

BOTH THE GRAND JURY AND THE TRIAL JURY SHOULD HAVE BEEN INSTRUCTED ON THE DEFENSE OF INNOCENT POSSESSION OF A WEAPON, INDICTMENT DISMISSED. [People v Graham, 2017 NY Slip Op 02175, 4th Dept 3-24-17](#)

CRIMINAL LAW.

IF POSSIBLE, A RECONSTRUCTION HEARING MUST BE HELD TO DETERMINE DEFENDANT'S COMPETENCY AT THE TIME HE ENTERED A GUILTY PLEA, IF A HEARING CANNOT BE HELD THE PLEA MUST BE VACATED. [People v Pett, 2017 NY Slip Op 02178, 4th Dept 3-24-17](#)

CRIMINAL LAW.

AMENDMENT OF INDICTMENTS CHARGING A COURSE OF SEXUAL CONDUCT TO CHARGES WHICH REQUIRE A UNANIMOUS VERDICT WITH RESPECT TO A PARTICULAR ACT DEPRIVED DEFENDANT OF HIS RIGHT TO BE TRIED ONLY ON THE CRIMES CHARGED. [People v Vickers, 2017 NY Slip Op 02183, 4th Dept 3-24-17](#)

CRIMINAL LAW.

ATTEMPTED ASSAULT IN THE FIRST DEGREE COULD NOT SERVE AS A PREDICATE FOR CONVICTION OF CRIMINAL USE OF A FIREARM IN THE SECOND DEGREE. [People v Butler, 2017 NY Slip Op 02186, 4th Dept 3-24-17](#)

CRIMINAL LAW.

DIFFERENT OFFENSE DATES IN THE SUPERIOR COURT INFORMATION REQUIRED DISMISSAL. [People v Walker, 2017 NY Slip Op 02200, 4th Dept 3-24-17](#)

CRIMINAL LAW.

DEFENDANT WAS ENTITLED TO SEVERANCE FROM THE CODEFENDANTS, CODEFENDANTS TOOK AN AGGRESSIVE ADVERSARIAL STANCE AGAINST DEFENDANT AT TRIAL, NEW TRIAL ORDERED. [People v Mcquire, 2017 NY Slip Op 02206, 4th Dept 3-24-17](#)

CRIMINAL LAW.

FINE BELOW THE MINIMUM STATUTORY AMOUNT WAS ILLEGAL AND WAS THEREFORE VACATED BY THE APPELLATE DIVISION. [People v Neal, 2017 NY Slip Op 02320, 4th Dept 3-24-17](#)

CRIMINAL LAW.

FAILURE TO READ JURY NOTE INTO RECORD REQUIRED REVERSAL. [People v Morrison, 2017 NY Slip Op 02324, 4th Dept 3-24-17](#)

CRIMINAL LAW, APPEALS.

TRIAL JUDGE'S GRANT OF A TRIAL ORDER OF DISMISSAL IN THIS MURDER CASE WAS ERROR, HOWEVER THERE IS NO STATUTORY AUTHORITY FOR THE PEOPLE'S APPEAL. [People v Tan, 2017 NY Slip Op 02541, 4th Dept 3-31-17](#)

CRIMINAL LAW, EVIDENCE.

IN THIS DRUG OFFENSE TRIAL, COURT SHOULD NOT HAVE ALLOWED IMPEACHMENT OF DEFENDANT WITH EVIDENCE OF PRIOR DRUG-RELATED CONVICTIONS. [People v Brown, 2017 NY Slip Op 02190, 4th Dept 3-24-17](#)

CRIMINAL LAW, EVIDENCE.

DEFENDANT'S MOTION TO VACATE HIS CONVICTION, BASED UPON NEWLY DISCOVERED EVIDENCE IN THE FORM OF A DECLARATION AGAINST PENAL INTEREST, SHOULD HAVE BEEN GRANTED. [People v Mcfarland, 2017 NY Slip Op 02194, 4th Dept 3-24-17](#)

CRIMINAL LAW, EVIDENCE.

DEFENDANT THREW BAGS OF COCAINE ONTO THE FLOOR IN PLAIN SIGHT OF POLICE OFFICERS, NOT SUFFICIENT TO SUPPORT TAMPERING WITH EVIDENCE CHARGE. [People v Parker, 2017 NY Slip Op 02208, 4th Dept 3-24-17](#)

CRIMINAL LAW, EVIDENCE, ATTORNEYS.

DEFENSE COUNSEL NOT INEFFECTIVE FOR FAILING TO INTRODUCE TAPED THIRD-PARTY CONFESSION, THE RELIABILITY PRONG OF THE STATEMENT AGAINST PENAL INTEREST CRITERIA WAS VERY WEAK. [People v Conway, 2017 NY Slip Op 02530, 4th Dept 3-31-17](#)

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

SORA GUIDELINE WHICH ALLOWS JUVENILE DELINQUENCY ADJUDICATION TO BE CONSIDERED IN THE CRIMINAL HISTORY CALCULATION SHOULD NOT BE FOLLOWED. [People v Brown, 2017 NY Slip Op 02323, 4th Dept 3-24-17](#)

LABOR LAW-CONSTRUCTION LAW,.

QUESTIONS OF FACT WHETHER PLAINTIFF'S INJURIES WERE CAUSED BY THE PLACEMENT OF THE SCAFFOLD OR THE ABSENCE OF RAILINGS. [Kopasz v City of Buffalo, 2017 NY Slip Op 02305, 4th Dept 3-24-17](#)

LABOR LAW-CONSTRUCTION LAW.

FALL FROM FIRST FLOOR TO BASEMENT FLOOR IS COVERED UNDER LABOR LAW 240(1), THE UNGUARDED OPENING VIOLATED A PROVISION OF THE INDUSTRIAL CODE. [McKay v Weeden, 2017 NY Slip Op 02327, 4th Dept 3-24-17](#)

MUNICIPAL LAW.

CITIZEN REVIEW BOARD HAS THE CAPACITY TO SUE AND STANDING TO BRING AN ARTICLE 78-DECLARATORY JUDGMENT ACTION SEEKING THE POLICE DEPARTMENT'S COMPLIANCE WITH POLICE-ACTION-REVIEW PROCEDURES. [Matter of Citizen Review Bd. of The City of Syracuse v Syracuse Police Dept., 2017 NY Slip Op 02181, 4th Dept 3-24-17](#)

MUNICIPAL LAW, NEGLIGENCE.

LATE NOTICE OF CLAIM PROPERLY ALLOWED DESPITE ABSENCE OF REASONABLE EXCUSE AND LACK OF TIMELY NOTICE OF THE UNDERLYING FACTS. [Matter of Diegelman v City of Buffalo, 2017 NY Slip Op 02316, 4th Dept 3-24-17](#)

NEGLIGENCE TOXIC TORTS.

DEFENDANTS DID NOT HAVE ACTUAL OR CONSTRUCTIVE NOTICE OF LEAD-PAINT CONDITION, DEFENDANTS DID NOT HAVE A DUTY TO TEST FOR LEAD, COMPLAINT SHOULD HAVE BEEN DISMISSED. [Taggart v Fandel, 2017 NY Slip Op 02177, 4th Dept 3-24-17](#)

NEGLIGENCE.

NO SHOWING RUG OVER WHICH PLAINTIFF TRIPPED WAS NOT FLUSH TO THE FLOOR, HEIGHT DIFFERENTIAL WAS TRIVIAL, DEFENDANT'S SUMMARY JUDGMENT MOTION SHOULD HAVE BEEN GRANTED. [Langgood v Carrols, LLC, 2017 NY Slip Op 02528, 4th Dept 3-31-17](#)

NEGLIGENCE, CIVIL PROCEDURE, GENERAL OBLIGATIONS LAW.

RACE TRACK WAIVER OF LIABILITY INVALID, PRIMARY ASSUMPTION OF RISK NOT APPLICABLE, IMPLIED ASSUMPTION OF RISK APPLICABLE, LAW OF THE CASE DID NOT PRECLUDE DIRECTED VERDICT AFTER DENIAL OF SUMMARY JUDGMENT ON THE SAME ISSUES. [Knight v Holland, 2017 NY Slip Op 02525, 4th Dept 3-31-17](#)

REAL PROPERTY TAX LAW.

FIBER OPTIC CABLES NOT TAXABLE UNDER THE REAL PROPERTY TAX LAW. [Matter of Level 3 Communications, LLC v Chautauqua County, 2017 NY Slip Op 02322, 4th Dept 3-24-17](#)

ZONING, ENVIRONMENTAL LAW.

PLANNING BOARD ACTED ARBITRARILY AND CAPRICIOUSLY WHEN IT DENIED PETITIONER'S CHALLENGE TO A WOODLOT ENVIRONMENTAL PROTECTION OVERLAY DISTRICT (EPOD) FINDING, PLANNING BOARD DID NOT CONSIDER THE CRITERIA LAID OUT IN THE TOWN CODE. [Matter of Gilbert v Planning Bd. of Town of Irondequoit, 2017 NY Slip Op 02210, 4th Dept 3-24-17](#)

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CRIMINAL LAW.

WARRANTS ISSUED TO FACEBOOK UNDER THE STORED COMMUNICATIONS ACT CANNOT BE TREATED AS CIVIL SUBPOENAS, UNDER THE CRIMINAL PROCEDURE LAW THERE IS NO MECHANISM FOR APPEALING THE DENIAL OF A MOTION TO QUASH A WARRANT. [Matter of 381 Search Warrants Directed to Facebook, Inc., 2017 NY Slip Op 02586, CtApp 4-4-17](#)

CRIMINAL LAW, ATTORNEYS.

INACCURATE ANNOTATIONS ON TRIAL EXHIBITS DISPLAYED BY THE PROSECUTOR IN A POWERPOINT PRESENTATION DURING SUMMATION DID NOT DEPRIVE THE DEFENDANT OF A FAIR TRIAL, THE TRIAL JUDGE TOOK APPROPRIATE STEPS TO ADDRESS THE PROBLEM. [People v Williams, 2017 NY Slip Op 02588, CtApp 4-4-17](#)

CRIMINAL LAW, ATTORNEYS.

POWERPOINT PRESENTATION OF ANNOTATED TRIAL EXHIBITS DURING PROSECUTOR'S SUMMATION WAS PROPER BECAUSE THE ANNOTATIONS WERE CONSISTENT WITH THE TRIAL EVIDENCE. [People v Anderson, 2017 NY Slip Op 02589, CtApp 4-4-17](#)

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

THE REASONABLENESS OF THE COSTS OF TEMPORARILY RELOCATING A TENANT FORCED TO VACATE AN UNINHABITABLE BUILDING MUST BE DETERMINED IN A LIEN FORECLOSURE PROCEEDING, THE LIEN CANNOT BE SUMMARILY DISCHARGED BY FINDING THE COSTS AS STATED IN THE NOTICE OF LIEN FACIALLY UNREASONABLE. [Rivera v Department of Hous. Preserv. & Dev. of the City of N.Y., 2017 NY Slip Op 02587, CtApp 4-4-17](#)

NEGLIGENCE, EVIDENCE.

THERE WAS LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE VERDICT FINDING THAT THE NEW YORK TRANSIT AUTHORITY WAS NEGLIGENT AND THE NEGLIGENCE WAS THE PROXIMATE CAUSE OF PLAINTIFF'S INJURIES, PLAINTIFF HAD FALLEN OFF A SUBWAY PLATFORM AND ALLEGED HE WAS STRUCK BY A TRAIN. [Obey v City of New York, 2017 NY Slip Op 02590, CtApp 4-4-17](#)

FIRST DEPARTMENT

ATTORNEYS, CIVIL PROCEDURE, NEGLIGENCE.

DEFENSE COUNSEL'S UNACCEPTABLE CONDUCT IN THIS NEGLIGENCE TRIAL WARRANTED THE TRIAL JUDGE'S ORDERING A NEW TRIAL (AFTER THE VERDICT) IN THE INTERESTS OF JUSTICE. [Smith v Rudolph, 2017 NY Slip Op 02957, 1st Dept 4-18-17](#)

CIVIL PROCEDURE, AGENCY.

PLAINTIFFS' CONCLUSORY ALLEGATIONS OF AN AGENCY RELATIONSHIP INSUFFICIENT TO DEMONSTRATE A BASIS FOR LONG-ARM JURISDICTION, MOTION TO DISMISS PROPERLY GRANTED. [Coast to Coast Energy, Inc. v Gasarch, 2017 NY Slip Op 02876, 1st Dept 4-13-17](#)

CIVIL PROCEDURE, AGENCY, NEGLIGENCE.

EVIDENCE DEFENDANT HOTEL HELD ITSELF OUT AS THE PROPERTY OWNER ON ITS WEBSITE RAISED THE POSSIBILITY OF LIABILITY IN THIS SLIP AND FALL CASE AS THE APPARENT AGENT OF THE OWNER, SUMMARY JUDGMENT PROPERLY DENIED AS PREMATURE. [Stern v Starwood Hotels & Resorts Worldwide, Inc., 2017 NY Slip Op 02882, 1st Dept 4-13-17](#)

CIVIL PROCEDURE, LABOR LAW-CONSTRUCTION LAW, NEGLIGENCE, INSURANCE LAW.

DEFENDANT'S RELIANCE ON ITS INSURANCE BROKER TO HANDLE A LABOR LAW NEGLIGENCE CLAIM WAS NOT, UNDER THE FACTS, A SUFFICIENT EXCUSE, THE DEFAULT JUDGMENT SHOULD NOT HAVE BEEN VACATED. [Gecaj v Gjonaj Realty & Mgt. Corp., 2017 NY Slip Op 03109, 1st Dept 4-25-17](#)

CRIMINAL LAW.

IDENTITY THEFT STATUTE AMBIGUOUS, THE ASSUMPTION OF THE VICTIM'S IDENTITY IS AN ESSENTIAL ELEMENT OF THE OFFENSE, HERE DEFENDANT USED HER OWN NAME, CONVICTION REVERSED. [People v Destin, 2017 NY Slip Op 02767, 1st Dept, 4-11-17](#)

CRIMINAL LAW.

STATUTE PROHIBITING CRIMINAL POSSESSION OF A WEAPON AS AN ACT OF TERRORISM NOT PREEMPTED BY FEDERAL LAW AND NOT UNCONSTITUTIONAL. [People v Pimentel, 2017 NY Slip Op 02891, 1st Dept 4-13-17](#)

CRIMINAL LAW.

DEFENDANT NEVER ADMITTED THE PRIOR FELONY CONVICTION AND WAS NEVER PROPERLY NOTIFIED THE PRIOR CONVICTION WOULD BE USED AS A PREDICATE, RESENTENCING REQUIRED. [People v Traylor, 2017 NY Slip Op 03111, 1st Dept 4-25-17](#)

CRIMINAL LAW, APPEALS.

LOSS OF TRANSCRIPT OF LAST DAY OF BENCH TRIAL AND SENTENCING DID NOT PRECLUDE APPEAL. [People v Zuniga, 2017 NY Slip Op 03264, 1st Dept 4-27-17](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

DEFENDANT, WHO WAS CONVICTED IN VIRGINIA OF THE MURDER OF A 15-YEAR-OLD WITH NO SEXUAL COMPONENT, AND WHO WAS REQUIRED TO REGISTER AS A SEX OFFENDER IN VIRGINIA, NEED NOT REGISTER AS A SEX OFFENDER IN NEW YORK. [People v Diaz, 2017 NY Slip Op 02915, 1st Dept 4-13-17](#)

FAMILY LAW.

TITLE TO ARTWORK PURCHASED DURING THE MARRIAGE CANNOT BE DETERMINED BY REFERENCE TO INVOICES ALONE. [Anonymous v Anonymous, 2017 NY Slip Op 02613, 1st Dept 4-4-17](#)

FAMILY LAW, CONTRACT LAW.

CHILD SUPPORT PROVISIONS OF A STIPULATION OF SETTLEMENT WOULD NOT BE ENFORCED BECAUSE THE CAP ON CHILD SUPPORT MAY DEPRIVE CHILDREN OF THEIR RIGHT TO SUPPORT. [Keller-Goldman v Goldman, 2017 NY Slip Op 02723, 1st Dept 4-6-17](#)

INSURANCE LAW, CONTRACT LAW.

ISSUE OF FACT ABOUT MEANING OF AN EXCLUSION IN A FLOOD INSURANCE POLICY. [Heartland Brewery, Inc. v Nova Cas. Co., 2017 NY Slip Op 02908, 1st Dept 4-13-17](#)

INTENTIONAL TORTS, EMPLOYMENT LAW.

BAR NOT LIABLE FOR ASSAULT BY SECURITY GUARD WHO WAS AN INDEPENDENT CONTRACTOR, NOT AN EMPLOYEE. [McLaughlan v BR Guest, Inc., 2017 NY Slip Op 02906, 1st Dept 4-13-17](#)

LABOR LAW-CONSTRUCTION LAW, CIVIL PROCEDURE.

NEW YORK LAW APPLIED WHERE BOTH PLAINTIFF AND HIS EMPLOYER ARE CANADIAN, PLAINTIFF, WHO WAS SHOCKED BY ELECTRIC WIRES ON THE FLOOR, ENTITLED TO SUMMARY JUDGMENT ON HIS LABOR LAW 241(6) CAUSE OF ACTION. [O'Leary v S&A Elec. Contr. Corp., 2017 NY Slip Op 02888, 1st Dept 4-13-17](#)

LANDLORD-TENANT, MUNICIPAL LAW (NYC)

FAIR MARKET RENT APPEAL PROPERLY DISMISSED. [Matter of Park v New York State Div. of Hous. & Community Renewal, 1st Dept 4-6-17](#)

MEDICAL MALPRACTICE, CIVIL PROCEDURE, NEGLIGENCE.

NEW THEORY COULD NOT BE CONSIDERED IN RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IN THIS MEDICAL MALPRACTICE ACTION, MOTION SHOULD HAVE BEEN GRANTED. [Biondi v Behrman, 2017 NY Slip Op 03039, 1st Dept 4-20-17](#)

MEDICAL MALPRACTICE, EVIDENCE, NEGLIGENCE.

PLAINTIFF'S EXPERT, A GENERAL SURGEON, DID NOT ASSERT KNOWLEDGE OF GASTROENTEROLOGY AND THEREFORE DID NOT RAISE A QUESTION OF FACT IN THE FACE OF DEFENDANTS' GASTROENTEROLOGY EXPERTS. [Bartolacci-Meir v Sassoon, 2017 NY Slip Op 03040, 1st Dept 4-20-17](#)

MENTAL HYGIENE LAW.

15 MONTH DELAY IN ARTICLE 10 TRIAL DID NOT DEPRIVE RESPONDENT OF DUE PROCESS. [Matter of State of New York v Keith F., 2017 NY Slip Op 03276, 1st Dept 4-27-17](#)

NEGLIGENCE.

KILLING OF PLAINTIFF IN HER OFFICE WAS NOT FORESEEABLE BY THE BUILDING OWNERS OR TENANTS. [Faughey v New 56-79 IG Assoc., L.P., 2017 NY Slip Op 02608, 1st Dept](#)

NEGLIGENCE.

NO DUTY TO KEEP BUS STEPS FREE OF TRACKED IN WATER DURING RAINSTORM. [Collins v Nate Tours Bus Co., 2017 NY Slip Op 02739, 1st Dept 4-6-17](#)

NEGLIGENCE.

INTERNAL RULE THAT BUS DRIVER MUST ASSIST PASSENGERS OFF THE BUS EXCEEDED THE STANDARD OF ORDINARY CARE AND THEREFORE COULD NOT BE THE BASIS FOR LIABILITY IN THIS SLIP AND FALL CASE. [Ziman-Scheuer v Golden Touch Transp. of NY, Inc., 2017 NY Slip Op 03124, 1st Dept 4-25-17](#)

REAL PROPERTY ACTIONS AND PROCEEDINGS LAW.

PETITIONER, WHO WAS GRANTED A LICENSE TO ENTER RESPONDENT'S PROPERTY UNDER RPAPL 881 TO MAKE REPAIRS ON PETITIONER'S PROPERTY (OTHERWISE NOT ACCESSIBLE), WAS REQUIRED TO PAY

RESPONDENT A LICENSE FEE. [Matter of Van Dorn Holdings, LLC v 152 W. 58th Owners Corp., 2017 NY Slip Op 02905, 1st Dept 4-13-17](#)

SECOND DEPARTMENT

ARBITRATION, INSURANCE LAW.

FAILURE TO APPLY FOR A STAY OF ARBITRATION WAIVES ANY CLAIM THE ARBITRATOR HAS EXCEEDED HIS/HER POWERS. [Matter of Infinity Indem. Ins. Co. v Hereford Ins. Co., 2017 NY Slip Op 03177, 2nd Dept 4-26-17](#)

ATTORNEYS, FAMILY LAW.

ALTHOUGH THE DEFENDANT ATTORNEY'S CONTINGENCY FEE IN THIS EQUITABLE DISTRIBUTION MATTER WAS UNENFORCEABLE, THE ATTORNEY MAY BE ENTITLED TO PAYMENT UNDER A QUANTUM MERUIT THEORY. [Medina v Kraslow, 2017 NY Slip Op 02979, 2nd Dept 4-19-17](#)

ATTORNEYS, NEGLIGENCE, LEGAL MALPRACTICE. CIVIL PROCEDURE.

QUESTION OF FACT WHETHER CONTINUOUS REPRESENTATION DOCTRINE RENDERED LEGAL MALPRACTICE ACTION TIMELY. [Stein Indus., Inc. v Certilman Balin Adler & Hyman, LLP, 2017 NY Slip Op 02688, 2nd Dept 4-5-17](#)

CIVIL PROCEDURE.

LAWSUIT SHOULD NOT HAVE BEEN DISMISSED BASED ON THE DIAGNOSIS PLAINTIFF WAS SEVERELY MENTALLY RETARDED, HEARING ABOUT APPOINTMENT OF A GUARDIAN AD LITEM SHOULD HAVE BEEN HELD. [Piggott v Lifespire, Inc., 2017 NY Slip Op 02686, 2nd Dept 4-5-17](#)

CIVIL PROCEDURE.

FAILURE TO COMPLY WITH DISCOVERY DEMANDS WARRANTED STRIKING THE ANSWER. [Mears v Long, 2017 NY Slip Op 02782, 2nd Dept 4-12-17](#)

CIVIL PROCEDURE.

CROSS MOTION TO COMPEL PLAINTIFF TO ACCEPT A LATE ANSWER PROPERLY GRANTED. [Yongjie Xu v JJW Enters., Inc., 2017 NY Slip Op 03221, 2nd Dept 4-26-17](#)

CIVIL PROCEDURE, BANKING LAW, DEBTOR-CREDITOR LAW.

NOT CLEAR WHETHER \$1740 EXEMPTION FROM A JUDGMENT CREDITOR'S RESTRAINT OF FUNDS HELD BY A BANK APPLIES TO ALL ACCOUNTS IN THE AGGREGATE OR TO EACH ACCOUNT, BANK'S MOTION TO DISMISS THE COMPLAINT ALLEGING EACH ACCOUNT MUST BE CONSIDERED SEPARATELY PROPERLY DENIED. [Jackson v Bank of Am., N.A., 2017 NY Slip Op 02780, 2nd Dept 4-12-17](#)

CIVIL PROCEDURE, BANKRUPTCY.

CONFIRMED BANKRUPTCY PLAN DID NOT HAVE A RES JUDICATA EFFECT ON AN ACTION ON A MORTGAGE WHICH WAS PENDING WHEN THE BANKRUPTCY PROCEEDINGS WERE COMMENCED. [U.S. Bank N.A. v McKenna, 2017 NY Slip Op 03215, 2nd Dept 4-26-17](#)

CIVIL PROCEDURE, EVIDENCE.

HEARSAY CAN BE SUBMITTED IN OPPOSITION TO A MOTION FOR SUMMARY JUDGMENT, BUT HEARSAY ALONE WILL NOT DEFEAT THE MOTION.

The Second Department noted that hearsay can be submitted in opposition to a summary judgment motion but, to raise a question fact, hearsay alone is not enough. [Dindiya v Dindiya, 2017 NY Slip Op 03152, 2nd Dept 4-26-17](#)

CIVIL PROCEDURE, EVIDENCE, ANIMAL LAW.

HEARSAY ALONE CANNOT DEFEAT SUMMARY JUDGMENT, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IN THIS DOG-BITE CASE PROPERLY GRANTED. [Ciliotta v Ranieri, 2017 NY Slip Op 03150, 2nd Dept 4-26-17](#)

CIVIL PROCEDURE, EVIDENCE, NEGLIGENCE.

MOTION TO RENEW SHOULD NOT HAVE BEEN DENIED AS A MOTION TO REARGUE, NEW EVIDENCE SUFFICIENT TO DEFEAT SUMMARY JUDGMENT WAS PRESENTED. [Donovan v Rizzo, 2017 NY Slip Op 03154, 2nd Dept 4-26-17](#)

CIVIL PROCEDURE, NEGLIGENCE.

MOTION, ON THE EVE OF TRIAL, TO AMEND THE BILL OF PARTICULARS TO CHANGE THE DATE OF THE INJURY SHOULD NOT HAVE BEEN GRANTED. [Tabak v Shaw Indus., Inc., 2017 NY Slip Op 03213, 2nd Dept 4-26-17](#)

CIVIL PROCEDURE, LANDLORD-TENANT.

CRITERIA FOR A PRELIMINARY INJUNCTION NOT MET, ALLOWING PAYMENT OF REDUCED RENT DURING THE PENDING LANDLORD-TENANT DISPUTE WAS IMPROPER. [Soundview Cinemas, Inc. v AC I Soundview, LLC, 2017 NY Slip Op 03209, 2nd Dept 4-26-17](#)

CIVIL RIGHTS LAW (18 USC 1983), MUNICIPAL LAW, IMMUNITY, CIVIL PROCEDURE.

HANDCUFFING PLAINTIFF DURING EXECUTION OF SEARCH WARRANT CAUSED NO PHYSICAL INJURY AND WAS ENTITLED TO QUALIFIED IMMUNITY, CITY'S MOTION TO SET ASIDE THE JURY VERDICT AS A MATTER OF LAW SHOULD HAVE BEEN GRANTED. [Boyd v City of New York, 2017 NY Slip Op 02619, 2nd Dept 4-5-17](#)

CONTRACT LAW.

HOME RENOVATION CONTRACTOR, WHO PERFORMED WORK WITHOUT A WRITTEN CONTRACT, DID NOT DEMONSTRATE ENTITLEMENT TO QUANTUM MERUIT RELIEF, HOMEOWNERS ENTITLED TO DAMAGES TO

COMPLETE OR REPAIR CONTRACTOR'S WORK. [Home Constr. Corp. v Beaury, 2017 NY Slip Op 02628, 2nd Dept 4-5-17](#)

CONTRACT LAW, AGENCY, LANDLORD-TENANT, NEGLIGENCE.

UNDISCLOSED PRINCIPAL CAN SUE ON A LEASE ENTERED INTO BY ITS AGENT. [Simmons v Berkshire Equity, LLC, 2017 NY Slip Op 03208, 2nd Dept 4-26-17](#)

CONTRACT LAW, LANDLORD-TENANT.

LIQUIDATED DAMAGES PROVISION IN THIS LEASE AGREEMENT WAS AN UNENFORCEABLE PENALTY. [555 W. John St., LLC v Westbury Jeep Chrysler Dodge, Inc., 2017 NY Slip Op 02769, 2nd Dept 4-12-17](#)

CRIMINAL LAW.

DEFENDANT WAS NOT INFORMED OF THE DEPORTATION CONSEQUENCES OF HIS GUILTY PLEA, MATTER REMITTED, PROCEDURE ON REMITTAL EXPLAINED. [People v Lopez-Alvarado, 2017 NY Slip Op 03018, 2nd Dept 4-19-17](#)

CRIMINAL LAW.

PURSUIT OF DEFENDANT, WHO RAN, HOLDING HIS WAISTBAND, WHEN POLICE TOLD HIM TO STOP, NOT JUSTIFIED, FIREARM AND DRUGS SHOULD HAVE BEEN SUPPRESSED. [People v Furrs, 2017 NY Slip Op 03192, 2nd Dept 4-26-17](#)

CRIMINAL LAW.

PROSECUTOR'S FAILURE TO INSTRUCT THE GRAND JURY ON THE DEFENSE OF COMMON OWNERSHIP REQUIRED REVERSAL AND DISMISSAL OF THE INDICTMENT IN THE INTERESTS OF JUSTICE. [People v Tunit, 2017 NY Slip Op 03201, 2nd Dept 4-26-17](#)

CRIMINAL LAW.

JURY SHOULD HAVE BEEN INSTRUCTED ON THE JUSTIFICATION DEFENSE AND LAWFUL TEMPORARY POSSESSION OF A WEAPON. [People v Sackey-El, 2017 NY Slip Op 03198, 2nd Dept 4-26-17](#)

CRIMINAL LAW, EVIDENCE.

COURT REJECTS ARGUMENT DEFENDANT DID NOT CONSENT TO THE RELEASE TO THE PROSECUTION OF RECORDINGS OF HIS PHONE CALLS FROM JAIL. [People v Diaz, 2017 NY Slip Op 03013, 2nd Dept 4-19-17](#)

DISCIPLINARY HEARINGS (INMATES).

DETERMINATION THAT PETITIONER USED MARIJUANA WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, DETERMINATION ANNULLED, RECORD EXPUNGED. [Matter of Jackson v Annucci, 2017 NY Slip Op 03178, 2nd Dept 4-26-17](#)

EDUCATION-SCHOOL LAW, NEGLIGENCE.

SCHOOL OWED NO DUTY OF CARE TO STUDENT STRUCK BY A CAR AFTER LEAVING THE SCHOOL WITH PERMISSION. [Donofrio v Rockville Ctr. Union Free Sch. Dist., 2017 NY Slip Op 02774, 2nd Dept 4-12-17](#)

EMPLOYMENT LAW, HUMAN RIGHTS LAW.

DISCRIMINATION AND RETALIATION CAUSES ACTION, AS WELL AS A FAMILY AND MEDICAL LEAVE ACT CAUSE OF ACTION, SHOULD NOT HAVE BEEN DISMISSED. [Macchio v Michaels Elec. Supply Corp., 2017 NY Slip Op 02636, 2nd Dept 4-5-17](#)

EMPLOYMENT LAW, NEGLIGENCE.

PHOTOGRAPHER WAS AN INDEPENDENT CONTRACTOR NOT AN EMPLOYEE, NO VICARIOUS LIABILITY FOR INJURY CAUSED BY PHOTOGRAPHER. [Weinfeld v HR Photography, Inc., 2017 NY Slip Op 03038, 2nd Dept 4-19-17](#)

FAMILY LAW.

DOMESTIC RELATIONS LAW NO LONGER REQUIRES EXHAUSTION OF ENFORCEMENT REMEDIES BEFORE A MOTION FOR CIVIL CONTEMPT CAN BE BROUGHT. [Cassarino v Cassarino, 2017 NY Slip Op 02623, 2nd Dept 4-5-17](#)

FAMILY LAW.

NEGLECT FINDING REVERSED, CRITERIA EXPLAINED. [Matter of Zachariah W. v Dominique W., 2017 NY Slip Op 02801, 2nd Dept 4-12-17](#)

FAMILY LAW.

BIOLOGICAL FATHER ESTOPPED FROM ASSERTING PATERNITY. [Matter of Carlos O. v Maria G., 2017 NY Slip Op 02993, 2nd Dept 4-19-17](#)

FAMILY LAW, ATTORNEYS.

PARTY FACING POSSIBLE INCARCERATION IN SUPPORT PROCEEDINGS IS ENTITLED TO EFFECTIVE ASSISTANCE OF COUNSEL, FATHER HERE DID NOT RECEIVE MEANINGFUL REPRESENTATION. [Matter of Nassau County Dept. of Social Servs. v King, 2017 NY Slip Op 02992, 2nd Dept 4-19-17](#)

FAMILY LAW, EVIDENCE.

CHILD'S OUT OF COURT STATEMENTS ABOUT FATHER'S ABUSE OF MOTHER SUFFICIENTLY CORROBORATED BY EVIDENCE FROM A PRIOR NEGLECT PROCEEDING, PETITION SHOULD NOT HAVE BEEN DISMISSED. [Matter of Jubilee S. \(James S.\), 2017 NY Slip Op 03006, 2nd Dept 4-19-17](#)

LABOR LAW-CONSTRUCTION LAW.

BED OF A PICKUP TRUCK IS A PROPER PLATFORM WITHIN THE MEANING OF THE INDUSTRIAL CODE, PLAINTIFF'S RIDING ON THE BED OF THE PICKUP WHILE DOING DEMOLITION WORK, THEREFORE, DID NOT VIOLATE THE INDUSTRIAL CODE. [Pruszek v Pine Hollow Country Club, Inc., 2017 NY Slip Op 03025, 2nd Dept 4-19-17](#)

LABOR LAW-CONSTRUCTION LAW.

ELEVATOR REPAIR COVERED UNDER LABOR LAW 240(1), STATIONARY LADDER WAS A SAFETY DEVICE, QUESTION OF FACT WHETHER THE LADDER AFFORDED ADEQUATE PROTECTION. [Esquivel v 2707 Creston Realty, LLC, 2017 NY Slip Op 03155, 2nd Dept 4-26-17](#)

INSURANCE LAW, CORPORATION LAW, EVIDENCE.

INSURER'S FRAUDULENT INCORPORATION DEFENSE TO ITS REFUSAL TO PAY NO-FAULT BENEFITS TO A CORPORATION RUN BY NON-PHYSICIANS WAS PROPERLY PRESENTED TO THE JURY; DEPOSITION TESTIMONY IN WHICH NON-PARTIES INVOKED THE FIFTH AMENDMENT SHOULD NOT HAVE BEEN READ TO THE JURY. [Carothers v Progressive Ins. Co., 2017 NY Slip Op 02614, 2nd Dept 4-5-17](#)

MEDICAL MALPRACTICE, MUNICIPAL LAW, NEGLIGENCE.

NOTICE OF CLAIM CANNOT BE AMENDED BY ADDING A NEW INJURY AND THEORY OF LIABILITY. [Castillo v Kings County Hosp. Ctr., 2017 NY Slip Op 02962, 2nd Dept 4-19-17](#)

MEDICAL MALPRACTICE, NEGLIGENCE.

HOSPITAL NOT LIABLE OF ACTS OF SURGEON WHO WAS NOT AN EMPLOYEE, ANALYTICAL CRITERIA OUTLINED. [Spiegel v Beth Israel Med. Center-Kings Highway Div., 2017 NY Slip Op 03211, 2nd Dept 4-26-17](#)

MENTAL HYGIENE LAW, ATTORNEYS.

SEX OFFENDERS HAVE A RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL IN MENTAL HYGIENE LAW ARTICLE 10 PROCEEDINGS. [Matter of State of New York v Wayne J., 2017 NY Slip Op 02798, 2nd Dept 4-12-17](#)

MUNICIPAL LAW, NEGLIGENCE.

APPLICATION TO FILE LATE NOTICE OF CLAIM SHOULD HAVE BEEN GRANTED DESPITE LACK OF ADEQUATE EXCUSE. [Matter of Cruz v City of New York, 2017 NY Slip Op 02789, 2nd Dept 4-12-17](#)

MUNICIPAL LAW, NEGLIGENCE.

LATE NOTICE OF CLAIM PROPERLY DENIED, POSSESSION OF DECEDENT'S HOSPITAL RECORDS NOT ENOUGH TO DEMONSTRATE HOSPITAL'S TIMELY AWARENESS OF THE POTENTIAL CLAIM FOR CONSCIOUS PAIN AND SUFFERING. [Matter of Rosenblatt v New York City Health & Hosps. Corp., 2017 NY Slip Op 03004, 1st Dept 4-19-17](#)

MUNICIPAL LAW, NEGLIGENCE.

NOTICE OF CLAIM WHICH WAS MISDIRECTED BECAUSE OF A MINOR MISNOMER ON THE MAILED ENVELOPE DEEMED TIMELY SERVED. [Carroll v City of New York, 2017 NY Slip Op 03148, 2nd Dept 4-26-17](#)

NEGLIGENCE.

PEDESTRIAN STRUCK WHILE LAWFULLY IN CROSSWALK ENTITLED TO SUMMARY JUDGMENT, SUPREME COURT REVERSED. [Huang v Franco, 2017 NY Slip Op 02629, 2nd Dept 4-5-17](#)

NEGLIGENCE.

COMMON CARRIER DID NOT HAVE A DUTY TO KEEP SIDEWALK CLEAR OF ICE AND SNOW BECAUSE THE SIDEWALK SERVED AS INGRESS AND EGRESS FOR SEVERAL COMMON CARRIERS, NOT SOLELY DEFENDANT COMMON CARRIER. [Mashall v Long Is. R.R., 2017 NY Slip Op 02637, 2nd Dept 4-5-17](#)

NEGLIGENCE.

DEFENDANT PROPERTY OWNERS DID NOT DEMONSTRATE SNOW REMOVAL EFFORTS DID NOT EXACERBATE THE ICY CONDITION AND DID NOT DEMONSTRATE A LACK OF CONSTRUCTIVE NOTICE OF THE CONDITION, SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Rong Wen Wu v Arniotes, 2017 NY Slip Op 02687, 2nd Dept 4-5-17](#)

NEGLIGENCE.

MISLEVELED SIDEWALK WAS A NON-ACTIONABLE TRIVIAL DEFECT. [Fasone v Northside Props. Mgt. Corp., 2017 NY Slip Op 02966, 2nd Dept 4-19-17](#)

NEGLIGENCE.

WRONGFUL DEATH ACTION AGAINST DOCTOR WHO OVER-PRESCRIBED DRUGS TO PERSONS WHO MURDERED A PHARMACIST SHOULD HAVE BEEN DISMISSED. [Ferguson v Laffer, 2017 NY Slip Op 02967, 2nd Dept 4-19-17](#)

NEGLIGENCE.

FIVE INCH HIGH THRESHOLD WAS OPEN AND OBVIOUS AND NOT INHERENTLY DANGEROUS, NO EVIDENCE BUILDING BUILT IN 1924 MUST BE BROUGHT UP TO CODE OR COMPLY WITH THE AMERICANS WITH DISABILITIES ACT. [Futter v Hewlett Sta. Yogurt, Inc., 2017 NY Slip Op 02970, 2nd Dept 4-19-17](#)

NEGLIGENCE.

DEFENDANTS DID NOT DEMONSTRATE (1) THE STAIRS DOWN WHICH PLAINTIFFS FELL WERE NOT REQUIRED TO HAVE A HANDRAIL (2) THE STAIRS WERE ADEQUATELY ILLUMINATED (3) OUT OF POSSESSION LANDLORD STATUS, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Lopez-Serrano v Ochoa, 2017 NY Slip Op 03167, 2nd Dept 4-26-17](#)

NEGLIGENCE.

DEFENDANT CONCERT HALL'S MOTION FOR SUMMARY JUDGMENT PROPERLY DENIED, PLAINTIFF WAS INJURED AFTER BEING PUSHED INTO A MOSH PIT, QUESTIONS OF FACT ABOUT WHETHER PLAINTIFF ASSUMED THE RISK AND WHETHER THE CONCERT HALL WAS NEGLIGENT. [Nevo v Knitting Factory Brooklyn, Inc., 2017 NY Slip Op 03186, 2nd Dept 4-26-17](#)

NEGLIGENCE, CONTRACT LAW, CIVIL PROCEDURE.

AUTO REPAIR SHOP OWED NO DUTY TO PLAINTIFF WHO HAD BORROWED THE CAR WHICH HAD BEEN REPAIRED FOR THE OWNER, SINCE NO *ESPINAL* FACTORS WERE ALLEGED DEFENDANT REPAIR SHOP DID NOT NEED TO NEGATE THOSE FACTORS IN ITS MOTION FOR SUMMARY JUDGMENT. [Koslosky v Malmut, 2017 NY Slip Op 02977, 2nd Dept 4-19-17](#)

NEGLIGENCE, EDUCATION-SCHOOL LAW, CIVIL PROCEDURE.

MOTION TO SET ASIDE VERDICT IN THIS NEGLIGENCE CASE WAS PROPERLY GRANTED, PLAINTIFF, A SCHOOL BUS MATRON INJURED ON THE BUS, DID NOT HAVE A SPECIAL RELATIONSHIP WITH THE SCHOOL DISTRICT. [Destefano v City of New York, 2017 NY Slip Op 02626, 2nd Dept 4-5-17](#)

NEGLIGENCE, EVIDENCE.

SURVEILLANCE TAPE SHOULD HAVE BEEN CONSIDERED IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, IT WAS PROPERLY AUTHENTICATED BY DEFENDANT'S STATEMENT THE TAPE ACCURATELY DEPICTED WHAT HAPPENED IN THIS CAR ACCIDENT CASE. [Nesbitt v Gallant, 2017 NY Slip Op 02665, 2nd Dept 4-5-17](#)

NEGLIGENCE, LANDLORD-TENANT.

DEFENDANT ABUTTING LESSEE DID NOT AFFIRMATIVELY DEMONSTRATE ITS SNOW REMOVAL EFFORTS DID NOT EXACERBATE THE ICE-SNOW CONDITION IN THIS SIDEWALK SLIP AND FALL CASE, SUMMARY JUDGMENT PROPERLY DENIED. [Ramjohn v Yahoo Green, LLC. 2017 NY Slip Op 03028, 2nd Dept 4-19-17](#)

NEGLIGENCE, MEDICAL MALPRACTICE.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IN THIS PODIATRIC MALPRACTICE CASE SHOULD NOT HAVE BEEN GRANTED, REQUIREMENTS FOR A LACK OF INFORMED CONSENT CAUSE OF ACTION EXPLAINED. [Parrilla v Sapphire, 2017 NY Slip Op 02803, 2nd Dept 4-12-17](#)

NEGLIGENCE, MUNICIPAL LAW.

EVIDENCE A SIDEWALK DEFECT DEVELOPED OVER TIME DID NOT RAISE A QUESTION OF FACT ABOUT WHETHER THE DEFECT AROSE UPON INSTALLATION, VILLAGE'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Beiner v Village of Scarsdale, 2017 NY Slip Op 02617, 2nd Dept 4-5-17](#)

Same issues and result in [Loghry v Village of Scarsdale, 2017 NY Slip Op 02635, 2nd Dept 4-5-17](#)

NEGLIGENCE, MUNICIPAL LAW.

COUNTY'S MOTION FOR SUMMARY JUDGMENT PROPERLY DENIED, PLAINTIFFS ALLEGED FAILURE TO CLEAN UP LOOSE GRAVEL IN A BIKE PATH AFTER PATCHING A HOLE CAUSED THE BICYCLE ACCIDENT. [Fornuto v County of Nassau. 2017 NY Slip Op 02969, 2nd Dept 4-19-17](#)

PISTOL PERMITS, CIVIL PROCEDURE.

APPLICATION TO ADD HANDGUNS TO PISTOL PERMIT PROPERLY DENIED BASED UPON PETITIONER'S CRIMINAL HISTORY, DECLARATORY JUDGMENT ACTION IS THE PROPER PROCEEDING IN WHICH TO

CHALLENGE THE CONSTITUTIONALITY OF A STATUTE. [Matter of Jackson v Anderson, 2017 NY Slip Op 02985, 2nd Dept 4-19-17](#)

PRODUCTS LIABILITY.

TRIAL JUDGE PROPERLY REFUSED TO INSTRUCT THE JURY ON THE SCARANGELLA DEFENSE WHICH PLACES THE RESPONSIBILITY FOR EMPLOYING A SAFETY DEVICE ON THE BUYER RATHER THAN THE MANUFACTURER. [Fasolas v Bobcat of N.Y., Inc., 2017 NY Slip Op 02777, 2nd Dept 4-12-17](#)

PROPERTY DAMAGE, CONTRACT LAW, CORPORATION LAW, MUNICIPAL LAW.

DIFFERENCES BETWEEN CONTRIBUTION AND INDEMNIFICATION EXPLAINED, PERSONAL TORT LIABILITY OF CORPORATE OFFICERS NOTED. [Eisman v Village of E. Hills. 2017 NY Slip Op 02775, 2nd Dept 4-12-17](#)

REAL ESTATE, INTENTIONAL TORTS, CONTRACT LAW.

ABUSE OF PROCESS AND ATTORNEY'S FEES COUNTERCLAIMS PROPERLY DISMISSED IN THIS DISPUTE BETWEEN BROKERS OVER A COMMISSION, CRITERIA FOR BOTH COUNTERCLAIMS EXPLAINED. [Goldman v Citicore I, LLC, 2017 NY Slip Op 03156, 2nd Dept 4-26-17](#)

REAL PROPERTY, FORECLOSURE.

REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL) 1501 WAS THE PROPER BASIS FOR THE ACTION SEEKING TO SET ASIDE THE DEED AND MORTGAGES WHICH WERE THE BASES FOR THE BANK'S JUDGMENT OF FORECLOSURE. [Deramo v Laffey, 2017 NY Slip Op 02772, 2nd Dept 4-12-17](#)

REAL PROPERTY TAX LAW.

SMALL CLAIMS ASSESSMENT REVIEW (SCAR) CRITERIA EXPLAINED. [Matter of Klein v Department of Assessment, 2017 NY Slip Op 02988, 2nd Dept 4-19-17](#)

TRUSTS AND ESTATES.

DEFENDANT DID NOT DEMONSTRATE A LOAN WAS ORALLY CONVERTED TO A GIFT BY DECEDENT, CRITERIA FOR PROOF OF A GIFT EXPLAINED. [Scotti v Barrett, 2017 NY Slip Op 03031, 2nd Dept 4-19-17](#)

VEHICLE AND TRAFFIC LAW (DEALER ACT).

NEW AUDI DEALERSHIP WAS OUTSIDE PLAINTIFF DEALERSHIP'S MARKET AREA, SUIT UNDER THE DEALER ACT PROPERLY DISMISSED. [JJM Sunrise Automotive, LLC v Volkswagen Group of Am., Inc., 2017 NY Slip Op 03160, 2nd Dept 4-26-17](#)

WORKERS' COMPENSATION LAW. EMPLOYMENT LAW, NEGLIGENCE.

PLAINTIFF PROPERLY OPTED TO SUE EMPLOYER FOR WORKPLACE INJURY, EMPLOYER DID NOT CARRY WORKERS' COMPENSATION INSURANCE. [Rosario v Montalvo & Son Auto Repair Ctr., Ltd., 2017 NY Slip Op 02837, 2nd Dept 4-12-17](#)

ZONING.

BECAUSE THE ZONING BOARD DID NOT ADDRESS THE MERITS OF AN APPLICATION FOR A VARIANCE, SUPREME COURT COULD NOT ADDRESS THE MERITS. [Matter of Rodriguez v Weiss, 2017 NY Slip Op 02794, 2nd Dept 4-12-17](#)

ZONING.

LOCAL LAWS CONCERNING PROCEDURES TO BE FOLLOWED BY THE VILLAGE ZONING BOARD OF APPEALS WERE NOT PREEMPTED BY THE STATE-WIDE VILLAGE LAW. [Matter of Wenz v Brogan, 2017 NY Slip Op 03009, 2nd Dept 4-19-17](#)

THIRD DEPARTMENT

CONTRACT LAW, BANKRUPTCY.

AFTER TERMINATION OF BANKRUPTCY PROCEEDINGS PLAINTIFF CANNOT SUE ON INVOICES NOT INCLUDED IN THE SCHEDULE OF ASSETS. [Lightning Capital Holdings LLC v Erie Painting & Maintenance, Inc., 2017 NY Slip Op 02716, 3rd Dept 4-6-17](#)

CONTRACT LAW, DEBTOR-CREDITOR.

ALTHOUGH THE NOTE WAS NOT NEGOTIABLE, IT SUFFICIENTLY MEMORIALIZED THE DEBT UNDER CONTRACT PRINCIPLES. [Shlang v Inbar, 2017 NY Slip Op 03107, 3rd Dept 4-20-17](#)

CRIMINAL LAW.

RARE CIRCUMSTANCE WHERE COURT SHOULD HAVE DIRECTLY QUESTIONED DEFENDANT ABOUT WHETHER HE KNOWINGLY AND INTELLIGENTLY WAIVED HIS RIGHT TO TESTIFY. [People v Morgan, 2017 NY Slip Op 02692, 3rd Dept 4-6-17](#)

CRIMINAL LAW.

COUNTY COURT DID NOT HAVE THE AUTHORITY TO ALLOW PEOPLE TO AMEND A DEFECTIVE CONSPIRACY COUNT BY ADDING AN ALLEGED OVERT ACT. [People v Placido, 2017 NY Slip Op 02694, 3rd Dept 4-6-17](#)

CRIMINAL LAW.

SENTENCE NOT CONTEMPLATED BY THE PLEA AGREEMENT MUST BE VACATED AS THE RESULT OF AN INVOLUNTARY PLEA. [People v Brewington, 2017 NY Slip Op 03224, 3rd Dept 4-27-17](#)

CRIMINAL LAW, APPEALS.

COUNTY COURT DID NOT HAVE AUTHORITY TO ALLOW AMENDMENT OF CONSPIRACY COUNT BY ADDING AN OVERT ACT, ISSUE HEARD ON APPEAL DESPITE LACK OF PRESERVATION AND FAILURE TO RAISE ON APPEAL. [People v Deleon, 2017 NY Slip Op 02848, 3rd Dept 4-13-17](#)

CRIMINAL LAW, APPEALS.

COURT IMPROPERLY REQUIRED DEFENDANT TO WAIVE HIS RIGHT TO APPEAL, DEFENDANT'S PLEA WAS NOT SUBJECT TO A PLEA BARGAIN. [People v Tarver, 2017 NY Slip Op 03079, 3rd Dept 4-20-17](#)

CRIMINAL LAW, ATTORNEYS.

DEFENDANT ARGUED HAD SHE BEEN INFORMED DEPORTATION WAS NOT AN ISSUE SHE WOULD HAVE PLED GUILTY AND THEREBY AVOIDED THE LONGER SENTENCE IMPOSED AFTER TRIAL, HEARING ON MOTION TO

SET ASIDE HER CONVICTION ON INEFFECTIVE ASSISTANCE GROUNDS SHOULD HAVE BEEN HELD. [People v Monterio, 2017 NY Slip Op 02693, 3rd Dept 4-6-17](#)

DISCIPLINARY HEARINGS (INMATES).

HEARING OFFICER'S FAILURE TO INQUIRE INTO A WITNESS'S REFUSAL TO TESTIFY REQUIRED ANNULMENT. [Matter of Kalwasinski v Venettozzi, 2017 NY Slip Op 03092, 3rd Dept 4-20-17](#)

DISCIPLINARY HEARINGS (INMATES).

INMATE'S REQUESTS FOR UNIDENTIFIED WITNESSES IMPROPERLY DENIED. [Matter of Harriott v Koenigsmann, 2017 NY Slip Op 03240, 3rd Dept 4-27-17](#)

EDUCATION-SCHOOL LAW, ADMINISTRATIVE LAW, EVIDENCE.

SUNY POTSDAM'S SEXUAL MISCONDUCT DETERMINATION ANNULLED, NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, IMPOSITION OF A HARSHER PENALTY AFTER STUDENT'S APPEAL CRITICIZED. [Matter of Haug v State Univ. of N.Y. At Potsdam, 2017 NY Slip Op 02708, 3rd Dept 4-6-17](#)

ENVIRONMENTAL LAW.

PETITIONER LACKED STANDING TO CONTEST BAN ON FRACKING. [Matter of Morabito v Martens, 2017 NY Slip Op 02863, 3rd Dept 4-13-17](#)

FAMILY LAW.

GRANDMOTHER DID NOT DEMONSTRATE A PROLONGED SEPARATION OF THE CHILD FROM MOTHER OR THE MOTHER'S RELINQUISHMENT OF CONTROL AND CARE, CUSTODY SHOULD NOT HAVE BEEN AWARDED TO GRANDMOTHER. [Matter of Donna SS. v Amy TT., 2017 NY Slip Op 02710, 3rd Dept 4-6-17](#)

FAMILY LAW.

DESPITE THE PRESUMPTION OF LEGITIMACY IN THIS PATERNITY PROCEEDING, FAMILY COURT SHOULD HAVE HELD A BEST INTERESTS HEARING. [Matter of Mario WW. v Kristin XX., 2017 NY Slip Op 02715, 3rd Dept 4-6-17](#)

FAMILY LAW.

RESPONDENT NOT INFORMED OF HIS RIGHT TO REMAIN SILENT IN THIS PINS PROCEEDING, ORDER OF DISPOSITION VACATED. [Matter of Daniel XX., 2017 NY Slip Op 02717, 3rd Dept 4-6-17](#)

FAMILY LAW.

JUDGE'S REFUSAL TO ACCEPT PARTIES' AGREEMENT ON ALL BUT ONE ISSUE WAS AN ABUSE OF DISCRETION. [Matter of Woodrow v Arnold, 2017 NY Slip Op 03081, 3rd Dept 4-20-17](#)

INSURANCE LAW, CONTRACT LAW.

EXCLUSION OF INJURY FROM ASSAULT CONTROLLED, NEGLIGENCE CAUSES OF ACTION STEMMING FROM ASSAULT NOT COVERED. [Graytwig Inc. v Dryden Mut. Ins. Co., 2017 NY Slip Op 03229, 3rd Dept 4-27-17](#)

INSURANCE LAW, PRIVILEGE, EVIDENCE.

RECORDED PHONE CONVERSATION WITH INSURER PROTECTED AS A STATEMENT PREPARED FOR LITIGATION. [Curci v Foley, 2017 NY Slip Op 03100, 3rd Dept 4-20-17](#)

LABOR LAW-CONSTRUCTION LAW.

QUESTIONS OF FACT WHETHER HOMEOWNER'S EXEMPTION APPLIED (LABOR LAW 240 (1)) AND WHETHER DEFENDANT CREATED THE DANGEROUS CONDITION (LABOR LAW 200). [Vogler v Perrault, 2017 NY Slip Op 02857, 3rd Dept 4-13-17](#)

NEGLIGENCE, CONTRACT LAW.

CONTRACTOR OWED A DUTY OF CARE TO PLAINTIFF OVER AND ABOVE THE OBLIGATIONS IN THE CONTRACT BETWEEN THEM. [Southern Tier Crane Servs., Inc. v Dakksco Pipeline Corp., 2017 NY Slip Op 02859, 3rd Dept 4-13-17](#)

REAL PROPERTY.

SPECIFIC PERFORMANCE OF A RECORDED OPTION TO BUY LAND WAS PROPERLY ORDERED DESPITE THE INABILITY TO IMMEDIATELY RECORD THE DEED UPON PURCHASE, TRANSFER OF THE DEED, NOT RECORDING OF THE DEED, WAS ALL THAT WAS REQUIRED BY THE OPTION AGREEMENT. [Tomhannock, LLC v Roustabout Resources, LLC, 2017 NY Slip Op 02712, 3rd Dept 4-6-17](#)

UNEMPLOYMENT INSURANCE.

UNDER THE CRITERIA OF THE FAIR PLAY ACT, WINDOW, GUTTER, SIDING INSTALLERS WERE EMPLOYEES, NOT INDEPENDENT CONTRACTORS. [Matter of Barrier Window Sys., Inc. \(Commissioner of Labor\), 2017 NY Slip Op 03093, 3rd Dept 4-20-17](#)

UNEMPLOYMENT INSURANCE.

NON-PROFIT PROVIDING WORK TRAINING TO PSYCHIATRIC PATIENTS IS EXEMPT FROM UNEMPLOYMENT INSURANCE COVERAGE. [Matter of Janakievski \(Commissioner of Labor\), 2017 NY Slip Op 03253, 3rd Dept 4-27-17](#)

ZONING.

TIE ZONING BOARD OF APPEALS VOTE IS NOT A DEFAULT DENIAL WHEN THE BOARD IS EXERCISING ITS ORIGINAL JURISDICTION. [Matter of Alper Rest. Inc. v Town of Copake Zoning Bd. of Appeals, 2017 NY Slip Op 02871, 3rd Dept 4-13-17](#)

ZONING.

RECORD DID NOT SUPPORT DENIAL OF SPECIAL USE PERMIT, ZONING BOARD IMPROPERLY BOWED TO THE OBJECTIONS BY TWO NEIGHBORS. [Matter of Blanchfield v Hoosick, 2017 NY Slip Op 03097, 3rd Dept 4-20-17](#)

FOURTH DEPARTMENT

ADMINISTRATIVE LAW, CIVIL PROCEDURE.

SCHOOL DISTRICT'S TERMINATION OF A CERTAIN HEALTH INSURANCE OPTION FOR RETIREES WAS NOT QUASI-LEGISLATIVE, THEREFORE MAILING THE NOTIFICATION LETTER DID NOT TRIGGER THE FOUR-MONTH STATUTE OF LIMITATIONS FOR AN ARTICLE 78 CONTESTING THE ACTION. [Matter of Knavel v West Seneca Cent. Sch. Dist., 2017 NY Slip Op 03416, 4th Dept 4-28-17](#)

CRIMINAL LAW.

DEFENDANT WALKED BY POLICE OFFICER HOLDING HIS WAISTBAND, OFFICER WAS JUSTIFIED IN REQUESTING DEFENDANT TO SHOW HIM HIS HANDS REVEALING A GUN, SUPPRESSION PROPERLY DENIED. [People v Simmons, 2017 NY Slip Op 03280, 4th Dept 4-28-17](#)

CRIMINAL LAW.

JUDGE DID NOT GIVE A COMPLETE JURY INSTRUCTION ON THE ELEMENTS OF BURGLARY, NEW TRIAL ORDERED. [People v Pritchard, 2017 NY Slip Op 03287, 4th Dept 4-28-17](#)

CRIMINAL LAW.

DEFENDANT'S REFUSAL TO TURN AROUND AND HIS HANDS POSITIONED AT HIS WAISTBAND JUSTIFIED AN OFFICER'S DRAWING HIS WEAPON AND POLICE PURSUIT. [People v Walker, 2017 NY Slip Op 03317, 4th Dept 4-28-17](#)

CRIMINAL LAW.

DESCRIPTION OF CLOTHES WORN BY THE SUSPECT DID NOT MATCH THE CLOTHES WORN BY THE MAN OBSERVED BY THE POLICE, THE STOP OF THE CAR THE MAN GOT INTO WAS NOT JUSTIFIED BY REASONABLE SUSPICION OF CRIMINAL ACTIVITY, SEIZED WEAPONS SHOULD HAVE BEEN SUPPRESSED. [People v Lopez, 2017 NY Slip Op 03327, 4th Dept 4-28-17](#)

CRIMINAL LAW, ATTORNEYS.

THE TRIAL JUDGE SHOULD NOT HAVE ACCEDDED TO DEFENDANT'S REQUEST THAT THE JURY NOT BE INSTRUCTED ON A LESSER INCLUDED OFFENSE, AND, BASED UPON DEFENDANT'S BEHAVIOR, THE TRIAL JUDGE SHOULD HAVE ORDERED A COMPETENCY EXAMINATION. [People v Minckler, 2017 NY Slip Op 03311, 4th Dept 4-28-17](#)

CRIMINAL LAW, ATTORNEYS, EVIDENCE.

DEFENSE COUNSEL WAIVED *BRUTON* OBJECTION TO CODEFENDANT'S STATEMENT IMPLICATING DEFENDANT, WAIVER OF *BRUTON* OBJECTION AND STRATEGIC DECISION NOT TO SEVER DEFENDANT'S TRIAL DID NOT CONSTITUTE INEFFECTIVE ASSISTANCE. [People v Howie, 2017 NY Slip Op 03298, 4th Dept 4-28-17](#)

CRIMINAL LAW, ATTORNEYS, EVIDENCE.

HEARING SHOULD HAVE BEEN HELD ON DEFENDANT'S MOTION TO VACATE HIS CONVICTION, HEARSAY EVIDENCE A THIRD PARTY CONFESSED TO THE MURDER MUST BE ASSESSED AND WHETHER DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILURE TO INVESTIGATE THE THIRD PARTY CONFESSION MUST BE DETERMINED. [People v Davis, 2017 NY Slip Op 03375, 4th Dept 4-28-17](#)

CRIMINAL LAW, CIVIL PROCEDURE, JUDGES.

JUDGE PROHIBITED FROM ADDING PROBATION TO DEFENDANT'S SENTENCE OUTSIDE OF DEFENDANT'S PRESENCE, ONCE DEFENDANT WAS RELEASED FROM JAIL ANY ATTEMPT TO INCREASE HIS SENTENCE PRECLUDED BY DOUBLE JEOPARDY RULE. [Matter of Brandon v Doran, 2017 NY Slip Op 03371, 4th Dept 4-28-17](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

JUVENILE DELINQUENCY ADJUDICATION SHOULD NOT HAVE BEEN CONSIDERED UNDER RISK FACTOR 9. [People v Gibson, 2017 NY Slip Op 03355, 4th Dept 4-28-17](#)

FAMILY LAW.

REQUEST FOR AN ADJOURNMENT IN THIS FAMILY OFFENSE PROCEEDING SHOULD HAVE BEEN GRANTED. [Matter of Drake v Riley, 2017 NY Slip Op 03282, 4th Dept 4-28-17](#)

FAMILY LAW.

MOTHER DID NOT DEFAULT IN THIS NEGLECT PROCEEDING BECAUSE HER ATTORNEY WAS PRESENT AND MOTHER'S ATTORNEY'S REQUEST FOR AN ADJOURNMENT SHOULD HAVE BEEN GRANTED. [Matter of Cameron B., 2017 NY Slip Op 03299, 4th Dept 4-28-17](#)

FAMILY LAW.

FAMILY COURT DOES NOT HAVE THE AUTHORITY TO ORDER COUNSELING AS A PREREQUISITE FOR FATHER'S VISITATION. [Matter of Allen v Boswell, 2017 NY Slip Op 03312, 4th Dept 4-28-17](#)

FAMILY LAW.

PROOF INSUFFICIENT TO DEMONSTRATE INCARCERATED FATHER ABANDONED THE CHILDREN. [Matter of John F. \(John F., Jr.\), 2017 NY Slip Op 03369, 4th Dept 4-28-17](#)

FRAUD, CIVIL PROCEDURE.

FRAUD ALLEGED TO HAVE BEEN COMMITTED IN A PRIOR PROCEEDING MUST BE ADDRESSED BY A MOTION TO VACATE THE JUDGMENT IN THAT PROCEEDING, NOT IN A SECOND PLENARY ACTION. [MAA-Sharda, Inc. v First Citizens Bank & Trust Co., 2017 NY Slip Op 03290, 4th Dept 4-28-17](#)

MEDICAL MALPRACTICE, CIVIL PROCEDURE, PRIVILEGE.

DOCTOR'S CREDENTIALING FILE PRIVILEGED AND NOT DISCOVERABLE, WHETHER CONTENTS OF PERSONNEL FILE ARE PRIVILEGED MUST BE DETERMINED DOCUMENT BY DOCUMENT. [Jousma v Kolli, 2017 NY Slip Op 03308, 4th Dept 4-28-17](#)

MENTAL HYGIENE LAW.

CHANGE OF VENUE TO ALLOW PETITIONER'S MOTHER TO TESTIFY SHOULD HAVE BEEN GRANTED. [Matter of Charada T. v State of New York, 2017 NY Slip Op 03379, 4th Dept 4-28-17](#)

LABOR LAW-CONSTRUCTION LAW.

QUESTION OF FACT WHETHER SCAFFOLD WAS AN ADEQUATE SAFETY DEVICE UNDER THE CIRCUMSTANCES, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON THE LABOR LAW 240 (1) CAUSE OF ACTION SHOULD NOT HAVE BEEN GRANTED. [Videan v NRG Energy, Inc., 2017 NY Slip Op 03315, 4th Dept 4-28-17](#)

NEGLIGENCE.

SPEED BUMP NOT OPEN AND OBVIOUS AS A MATTER OF LAW.

The Fourth Department determined defendants' summary judgment motion in this slip and fall case was properly denied. [Schneider v Corporate Place, LLC, 2017 NY Slip Op 03300, 4th Dept 4-28-17](#)

NEGLIGENCE.

STONE WALL ABUTTING A SIDEWALK IS NOT A FEATURE CONSTRUCTED ON THE SIDEWALK, THE SPECIAL USE DOCTRINE THEREFORE DID NOT APPLY, HERE THE WALL OBSTRUCTED PLAINTIFF BICYCLIST'S VIEW AND PLAINTIFF WAS STRUCK BY A CAR BACKING ACROSS THE SIDEWALK, PROPERTY OWNER OWED NO DUTY TO PLAINTIFF. [Weston v Martinez, 2017 NY Slip Op 03301, 4th Dept 4-28-17](#)

NEGLIGENCE, CONTRACT LAW.

SNOW REMOVAL CONTRACTOR'S MOTION FOR SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE SHOULD HAVE BEEN GRANTED, CONTRACTOR DID NOT LAUNCH AN INSTRUMENT OF HARM. [Lingenfelter v Delevan Terrace Assoc., 2017 NY Slip Op 03309, 4th Dept 4-28-17](#)

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COURT OF APPEALS

CRIMINAL LAW.

JUDGE'S FIRST AGREEING WITH PROSECUTION'S REQUEST NOT TO CHARGE THE JURY WITH CONSTRUCTIVE POSSESSION AND THEN GIVING THE CHARGE WAS REVERSIBLE ERROR. [People v Smalling, 2017 NY Slip Op 03442, CtApp 5-2-17](#)

CRIMINAL LAW, EVIDENCE.

EVEN THOUGH DEFENDANT RELIED SOLELY ON THE PROSECUTION'S EVIDENCE TO RAISE THE AGENCY DEFENSE TO A DRUG SALE, EVIDENCE OF A PRIOR DRUG-SALE CONVICTION WAS PROPERLY ADMITTED IN THE PEOPLE'S CASE TO PROVE INTENT. [People v Valentin, 2017 NY Slip Op 03444, CtApp 5-2-17](#)

CRIMINAL LAW, EVIDENCE.

WARRANTLESS SEARCH OF A PAROLEE'S EMPTY CAR WAS LAWFUL, NOTWITHSTANDING THE SEARCH WAS DONE BY A POLICE OFFICER, NOT A PAROLE OFFICER. [People v McMillan, 2017 NY Slip Op 03446, CtApp 5-2-17](#)

CRIMINAL LAW, EVIDENCE.

ALTHOUGH HEARSAY VIOLATED DEFENDANT'S RIGHT OF CONFRONTATION, THE WEAKNESS OF THE EVIDENCE AND THE STRIKING OF THE TESTIMONY PRESERVED THE FAIRNESS OF THE TRIAL. [People v Stone, 2017 NY Slip Op 03559, CtApp 5-4-17](#)

CRIMINAL LAW, EVIDENCE.

RUNNING A DMV DATABASE SEARCH FOR A VEHICLE'S PLATE NUMBER IS NOT A SEARCH, THEREFORE THE DMV CHECK CAN BE RUN WITHOUT ANY ARTICULABLE REASON FOR STOPPING A VEHICLE. [People v Bushey, 2017 NY Slip Op 03560, CtApp 5-4-17](#)

EMPLOYMENT LAW, CIVIL PROCEDURE LAW, ATTORNEYS.

PLAINTIFF STATE TROOPER ENTITLED TO ATTORNEY'S FEES AFTER HER SUCCESSFUL SEX DISCRIMINATION ACTION AGAINST THE STATE UNDER THE EQUAL ACCESS TO JUSTICE ACT. [Kimmel v State of New York, 2017 NY Slip Op 03689, CtApp 5-9-17](#)

EMPLOYMENT LAW, HUMAN RIGHTS LAW.

HUMAN RIGHTS LAW PROHIBITION OF EMPLOYMENT DISCRIMINATION BASED UPON A CRIMINAL CONVICTION EXTENDS TO AIDING AND ABETTING DISCRIMINATION BY AN OUT-OF-STATE NON-EMPLOYER. [Griffin v Sirva, Inc., 2017 NY Slip Op 03557, CtApp 5-4-17](#)

FRAUD, CONTRACT LAW, EMPLOYMENT LAW.

NO OUT-OF-POCKET LOSS ALLEGED, FRAUDULENT INDUCEMENT CAUSE OF ACTION PROPERLY DISMISSED FOR FAILURE TO STATE A CAUSE OF ACTION. [Connaughton v Chipotle Mexican Grill, Inc., 2017 NY Slip Op 03445, CtApp 5-2-17](#)

JUDGES.

RULE THAT RETIRED JUDGES WHO RETURN TO THE BENCH CANNOT RECEIVE BOTH A SALARY AND RETIREMENT BENEFITS IS NEITHER ILLEGAL NOR UNCONSTITUTIONAL. [Matter of Loehr v Administrative Bd. of the Cts. of the State of New York, 2017 NY Slip Op 03558, CtApp 5-4-17](#)

VEHICLE AND TRAFFIC LAW, ADMINISTRATIVE LAW.

DEPARTMENT OF MOTOR VEHICLES REGULATIONS ALLOWING A 25 YEAR LOOK BACK FOR CERTAIN DRIVERS WITH DRIVING WHILE INTOXICATED CONVICTIONS WERE LAWFULLY PROMULGATED AND APPLIED. [Matter of Acevedo v New York State Dept. of Motor Vehs., 2017 NY Slip Op 03690, CtApp 5-9-17](#)

FIRST DEPARTMENT

ATTORNEYS, APPEALS.

PLAINTIFF'S COUNSEL REPEATEDLY MADE A DEMONSTRABLY FALSE ALLEGATION AGAINST DEFENDANT LAW FIRM THROUGHOUT THE PROCEEDINGS IN THIS LEGAL MALPRACTICE ACTION, INCLUDING ON APPEAL, WARRANTING SANCTIONS. [Boye v Rubin & Bailin, LLP, 2017 NY Slip Op 04239, 1st Dept 5-30-17](#)

ATTORNEYS, LEGAL MALPRACTICE.

ALLEGATION THE DEFENDANT-ATTORNEYS FAILED TO REFRESH THE EYEWITNESS'S RECOLLECTION LEADING TO ERRONEOUS TESTIMONY STATED A CAUSE OF ACTION FOR LEGAL MALPRACTICE. [Caso v Miranda Sambursky Sloane Sklarin Ver Veniotis LLP, 2017 NY Slip Op 03607, 1st Dept 5-4-17](#)

CIVIL PROCEDURE, CORPORATION LAW, FRAUD.

CONSPIRACY JURISDICTION DISCUSSED IN THIS COMPLEX LITIGATION INVOLVING MANY INTER-RELATED INTERNATIONAL CORPORATIONS AND ALLEGATIONS OF FRAUD. [FIA Leveraged Fund Ltd. v Grant Thornton LLP, 2017 NY Slip Op 03887, 1st Dept 5-16-17](#)

CIVIL PROCEDURE, FREEDOM OF INFORMATION LAW (FOIL), PRIVILEGE.

MOTION TO COMPEL DISCOVERY OF NYPD DOCUMENTS SHOULD NOT HAVE BEEN DENIED SOLELY BECAUSE FOIL REQUESTS FOR THE DOCUMENTS HAD BEEN DENIED. [Smith v Watson, 2017 NY Slip Op 03878, 1st Dept 5-11-17](#)

CIVIL PROCEDURE, PRIVILEGE, ENVIRONMENTAL LAW.

NEW YORK LAW APPLIES TO DISCOVERY IN THIS SUIT BY THE ATTORNEY GENERAL AGAINST EXXON ALLEGING FRAUD IN CONNECTION WITH EXXON'S KNOWLEDGE OF THE CAUSES AND EFFECTS OF GLOBAL WARMING. [Matter of People of the State of New York v PriceWaterhouseCoopers, LLP, 2017 NY Slip Op 04071, 1st Dept 5-23-17](#)

CONTRACT LAW.

CONTRACT BETWEEN NYU AND A PHARMACEUTICAL COMPANY CONCERNING THE DEVELOPMENT OF A CANCER-INHIBITING DRUG IS AMBIGUOUS, NYU'S COMPLAINT SEEKING ROYALTIES SHOULD NOT HAVE BEEN DISMISSED. [New York Univ. v Pfizer Inc., 2017 NY Slip Op 03464, 1st Dept. 5-2-17](#)

CORPORATION LAW, SECURITIES, INSURANCE LAW.

QUESTION OF FACT WHETHER BANK OF AMERICA'S PURCHASE OF THE ASSETS OF COUNTRYWIDE WAS A DE FACTO MERGER ALLOWING THE INSURER OF RESIDENTIAL MORTGAGE-BACKED SECURITIES ISSUED BY COUNTRYWIDE TO SUE BANK OF AMERICA. [Ambac Assur. Corp. v Countrywide Home Loans, Inc., 2017 NY Slip Op 03886, 1st Dept 5-16-17](#)

CRIMINAL LAW.

WHERE THE CRITERIA ARE MET SENTENCING AS A PREDICATE FELON IS MANDATORY, DEFENDANT SHOULD HAVE BEEN SO SENTENCED BUT WAS NOT, PEOPLE'S MOTION TO SET ASIDE THE ILLEGAL SENTENCE PROPERLY BROUGHT AND GRANTED. [People v Heisler, 2017 NY Slip Op 04220, 1st Dept 5-30-17](#)

CRIMINAL LAW.

IN A TRESPASS INVESTIGATION, DETAINING DEFENDANT AND RETAINING HIS ID TO CHECK WHETHER HAD, AS HE CLAIMED, VISITED HIS GIRLFRIEND AT A SPECIFIED APARTMENT IN THE COMPLEX WAS NOT A SEIZURE. [People v Hill, 2017 NY Slip Op 04236, 1st Dept 5-30-17](#)

CRIMINAL LAW, APPEALS.

THE ABSENCE FROM THE JURY CHARGE OF AN ESSENTIAL ELEMENT OF ATTEMPTED ROBBERY FIRST DEGREE (ACTUAL POSSESSION OF A DANGEROUS INSTRUMENT) REQUIRED REVERSAL IN THE INTERESTS OF JUSTICE. [People v Saigo, 2017 NY Slip Op 04237, 1st Dept 5-30-17](#)

CRIMINAL LAW, ATTORNEYS.

DEFENDANT ENTITLED TO A HEARING ON HER MOTION TO SET ASIDE HER CONVICTION, ERRONEOUS ADVICE ABOUT DEPORTATION ALLEGED TO CONSTITUTE INEFFECTIVE ASSISTANCE. [People v Sanchez, 2017 NY Slip Op 04200, 1st Dept 5-26-17](#)

CRIMINAL LAW, EVIDENCE.

TRIAL JUDGE IMPROPERLY LIMITED DISCOVERY OF ROSARIO MATERIAL AND IMPROPERLY COMMUNICATED WITH THE JURY OFF THE RECORD AND OUTSIDE THE PRESENCE OF DEFENDANT AND COUNSEL. [People v Farez, 2017 NY Slip Op 04041, 1st Dept 5-18-17](#)

CRIMINAL LAW, EVIDENCE.

ALTHOUGH THE EVIDENCE WAS FOUND AS A RESULT OF A SUPPRESSED STATEMENT, THE EVIDENCE WAS ADMISSIBLE UNDER THE INEVITABLE DISCOVERY DOCTRINE. [People v Jaquez, 2017 NY Slip Op 04050, 1st Dept 5-18-17](#)

EDUCATION-SCHOOL LAW, NEGLIGENCE.

NEGLIGENT SUPERVISION ACTION AGAINST SCHOOL DISTRICT PROPERLY SURVIVED SUMMARY JUDGMENT, STUDENT ASSAULTED INFANT PLAINTIFF. [Guerriero v Sewanhaka Cent. High Sch. Dist., 2017 NY Slip Op 03736, 2nd Dept 5-10-17](#)

FAMILY LAW.

FATHER'S REQUEST FOR UNSUPERVISED VISITATION SHOULD NOT HAVE BEEN DENIED, NOTWITHSTANDING THE PENDING PERMANENT NEGLECT PROCEEDINGS. [Matter of Gerald Y.-C. \(Roland Y.\), 2017 NY Slip Op 03843, 1st Dept 5-11-17](#)

FORECLOSURE, CIVIL PROCEDURE, CONDOMINIUMS.

DEFENDANT IN THIS CONDOMINIUM FORECLOSURE ACTION WAS NOT ENTITLED TO A MANDATORY FORECLOSURE SETTLEMENT CONFERENCE. [Board of Mgrs. of St. James's Tower Condominium v Kutler, 2017 NY Slip Op 03605, 1st Dept 5-4-17](#)

FRAUD.

A CAUSE OF ACTION FOR AIDING AND ABETTING A FRAUDULENT CONVEYANCE CANNOT BE BROUGHT AGAINST A PROFESSIONAL WHO WORKED ON THE CONVEYANCE BUT GAINED NOTHING FROM IT. [BBCN Bank v 12th Ave. Rest. Group Inc., 2017 NY Slip Op 04229, 1st Dept 5-30-17](#)

FRAUD, INSURANCE LAW, SECURITIES.

INSURANCE LAW 3105 DOES NOT DISPENSE WITH THE COMMON-LAW PROOF REQUIREMENTS FOR FRAUDULENT INDUCEMENT IN THIS ACTION BY AN INSURER OF RESIDENTIAL MORTGAGE-BACKED SECURITIES. [Ambac Assur. Corp. v Countrywide Home Loans, Inc., 2017 NY Slip Op 03919, 1st Dept 5-16-17](#)

LABOR LAW-CONSTRUCTION LAW.

THE LADDER PLAINTIFF WAS USING WOBBLER, SPUN AND FELL OVER, PLAINTIFF WAS PROPERLY AWARDED SUMMARY JUDGMENT ON HIS LABOR LAW 240 (1) CAUSE OF ACTION. [Kebe v Greenpoint-Goldman Corp., 2017 NY Slip Op 03712, 1st Dept 5-9-17](#)

LABOR LAW-CONSTRUCTION LAW.

FAILURE TO TIE OFF LANYARD WAS NOT THE SOLE PROXIMATE CAUSE OF PLAINTIFF'S DECEDENT'S FALL, ABSENCE OF A GUARDRAIL ON THE SCAFFOLD REQUIRED SUMMARY JUDGMENT ON THE LABOR LAW 240(1) CAUSE OF ACTION. [Wilk v Columbia Univ., 2017 NY Slip Op 03892, 1st Dept 5-16-17](#)

LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF ENTITLED TO SUMMARY JUDGMENT ON HIS LABOR LAW 241(6) CAUSE ACTION, CONTACT WITH A HANGING LIVE ELECTRIC WIRE, DEFENDANTS VICARIOUSLY LIABLE. [Rubino v 330 Madison Co., LLC, 2017 NY Slip Op 04210, 1st Dept 5-25-17](#)

LABOR LAW-CONSTRUCTION LAW.

TAKING MEASUREMENTS IN PREPARATION FOR ROOF WORK IS AN ACTIVITY COVERED UNDER LABOR LAW 240 (1), PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT BASED UPON HIS FALL FROM A BROKEN LADDER WAS PROPERLY GRANTED. [Ortiz-Cruz v Evers, 2017 NY Slip Op 04228, 1st Dept 5-30-17](#)

LANDLORD-TENANT.

TAKING IN AIRBNB CUSTOMERS IN A RENT-STABILIZED APARTMENT VIOLATED THE RENT STABILIZATION CODE (NYC), LESSOR ENTITLED TO TERMINATE THE ELDERLY 40-YEAR TENANT'S LEASE. [Goldstein v Lipetz, 2017 NY Slip Op 04070, 1st Dept 5-23-17](#)

LANDLORD-TENANT.

COMPLEX ISSUES ARISE IN RETROACTIVELY DETERMINING THE APPROPRIATE RENTAL AMOUNT FOR A RENT STABILIZED APARTMENT OCCUPIED BY THE SAME TENANTS SINCE 2000. [Taylor v 72A Realty Assoc., L.P., 2017 NY Slip Op 04218, 1st Dept 5-25-17](#)

MUNICIPAL LAW, NEGLIGENCE.

LEAVE TO FILE A LATE NOTICE OF CLAIM SHOULD NOT HAVE BEEN GRANTED. [Matter of Grajko v City of New York, 2017 NY Slip Op 04203, 1st Dept 5-24-17](#)

MUNICIPAL LAW, NEGLIGENCE.

PLAINTIFF DID NOT ALLEGE THE CITY HAD WRITTEN NOTICE OF THE SIGN POST STUMP OVER WHICH SHE TRIPPED AND FELL, THE FALL OCCURRED WITHIN THE 15-DAY GRACE PERIOD FOR THE NOTICE THE CITY DID RECEIVE, COMPLAINT PROPERLY DISMISSED. [Brown v City of New York, 2017 NY Slip Op 04221, 1st Dept 5-30-17](#)

NEGLIGENCE.

SIDEWALK DEFECT WAS TRIVIAL AS A MATTER OF LAW, SLIP AND FALL ACTION SHOULD HAVE BEEN DISMISSED. [McCullough v Riverbay Corp., 2017 NY Slip Op 04231, 1st Dept 5-30-17](#)

NEGLIGENCE, EVIDENCE.

MISLEVELED ELEVATOR TRIGGERS RES IPSA LOQUITUR DOCTRINE. [Rojas v New York El. & Elec. Corp., 2017 NY Slip Op 04043, 1st Dept 5-18-17](#)

NEGLIGENCE, LANDLORD-TENANT.

TENANT ASSAULTED BY INTRUDER, QUESTIONS OF FACT ABOUT FORESEEABILITY, ADEQUACY OF SAFETY PRECAUTIONS, AND PROXIMATE CAUSE REQUIRED REVERSAL OF GRANT OF SUMMARY JUDGMENT TO DEFENDANTS. [Gonzalez v Riverbay Corp., 2017 NY Slip Op 04042, 1st Dept 5-18-17](#)

NEGLIGENCE, TOXIC TORTS.

MOLD-INJURY CAUSE OF ACTION SHOULD NOT HAVE BEEN DISMISSED AS TIME-BARRED AT THE PLEADING STAGE, PLAINTIFF ADEQUATELY PLED THE DEVELOPMENT OF "NEW" SYMPTOMS WITHIN THREE YEARS OF FILING SUIT. [Gordon v ROL Realty Co., 2017 NY Slip Op 03851, 1st Dept 5-11-17](#)

SECURITIES, CONTRACT LAW, CIVIL PROCEDURE.

ALTHOUGH MOST OF THE CAUSES OF ACTION STEMMING FROM THE PURCHASE OF RESIDENTIAL MORTGAGE-BACKED SECURITIES WERE TIME-BARRED, A LIMITED BACKSTOP GUARANTY CAUSE OF ACTION AND A FAILURE TO NOTIFY CAUSE OF ACTION WERE REINSTATED. [Bank of N.Y. Mellon v WMC Mtge., LLC, 2017 NY Slip Op 03881, 1st Dept 5-11-17](#)

SECOND DEPARTMENT

ADMINISTRATIVE LAW, EMPLOYMENT LAW, CIVIL PROCEDURE.

SUPREME COURT SHOULD NOT HAVE RELIED ON AN AUTHORIZATION LETTER WHICH WAS NOT IN THE RECORD TO FIND THAT THE ADMINISTRATIVE LAW JUDGE WAS AUTHORIZED TO CONDUCT THE DISCIPLINARY PROCEEDING WHICH RESULTED IN THE TERMINATION OF A CORRECTIONS OFFICER. [Matter of Lindo v Ponte, 2017 NY Slip Op 04282, 2nd Dept 5-31-17](#)

CIVIL PROCEDURE.

CRITERIA FOR DISCLOSURE OF ORIGINAL DOCUMENTS FOR FORENSIC TESTING EXPLAINED, NOT MET HERE. [Freely v Donnenfeld, 2017 NY Slip Op 03490, 2nd Dept 5-3-17](#)

CIVIL PROCEDURE.

DEFENDANT DID NOT DEMONSTRATE AN ADEQUATE EXCUSE FOR FAILURE TO ANSWER THE COMPLAINT, CRITERIA EXPLAINED, MOTION FOR LEAVE TO FILE A DEFAULT JUDGMENT SHOULD HAVE BEEN GRANTED. [Clarke v Liberty Mut. Fire Ins. Co., 2017 NY Slip Op 04250, 2nd Dept 5-31-17](#)

CIVIL PROCEDURE, ATTORNEYS, LEGAL MALPRACTICE.

LETTER TERMINATING ATTORNEY-CLIENT RELATIONSHIP CANNOT BE THE BASIS FOR A MOTION TO DISMISS A LEGAL MALPRACTICE COMPLAINT AS BARRED BY DOCUMENTARY EVIDENCE. [Prott v Lewin & Baglio, LLP, 2017 NY Slip Op 03786, 2nd Dept 5-10-17](#)

CIVIL PROCEDURE, DEBTOR-CREDITOR.

CAUSE OF ACTION BASED UPON A LOAN PAYABLE UPON DEMAND ACCRUES WHEN THE LOAN IS MADE. [Elia v Perla, 2017 NY Slip Op 03930, 2nd Dept 5-17-17](#)

CIVIL PROCEDURE, EDUCATION-SCHOOL LAW, INTENTIONAL TORTS, EVIDENCE.

PRE-ACTION DISCLOSURE OF THE IDENTITY OF THE PERSON OR PERSONS WHO DISTRIBUTED AN INTIMATE PHOTO OF A PORTION OF A HIGH SCHOOL STUDENT'S BODY PROPERLY GRANTED, THE FACTS SUPPORTED A CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS. [Matter of Leff v Our Lady of Mercy Academy, 2017 NY Slip Op 04280, 2nd Dept 5-31-17](#)

CIVIL PROCEDURE, EVIDENCE.

DICTA IN A COURT ORDER WAS NOT A FINDING ON THE MERITS AND THEREFORE COULD NOT BE THE BASIS FOR A DISMISSAL FOUNDED UPON DOCUMENTARY EVIDENCE. [4777 Food Servs. Corp. v Anthony P. Gallo, P.C., 2017 NY Slip Op 04086, 2nd Dept 5-24-17](#)

CIVIL PROCEDURE, EVIDENCE, DEBTOR-CREDITOR.

REQUIREMENTS OF BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE NOT MET, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SEEKING PAYMENT ON A NOTE SHOULD NOT HAVE BEEN GRANTED. [Cadlerock Joint Venture, L.P. v Trombley, 2017 NY Slip Op 03927, 2nd Dept 5-17-17](#)

CIVIL PROCEDURE, FORECLOSURE.

NEW INFORMATION IN REPLY PAPERS PROPERLY CONSIDERED BY THE COURT. [Central Mtge. Co. v Jahnsen, 2017 NY Slip Op 03474, 2nd Dept 5-3-17](#)

CIVIL PROCEDURE, FORECLOSURE.

NOTICE OF APPEARANCE FILED BY AN ATTORNEY WAIVES ANY DEFENSE BASED UPON LACK OF PERSONAL JURISDICTION, DEFENSE OF LACK OF STANDING IN THIS FORECLOSURE ACTION SHOULD NOT HAVE BEEN RAISED BY SUPREME COURT SUA SPONTE. [American Home Mtge. Servicing, Inc. v Arklis, 2017 NY Slip Op 04242, 2nd Dept 5-31-17](#)

CIVIL PROCEDURE, FRAUD, INTENTIONAL TORTS.

PLAINTIFF, INTER ALIA, ALLEGED THE FLORIDA DEFENDANT IN THIS FRAUD-BASED ACTION DEPOSITED RELEVANT FUNDS IN A NEW YORK LAW FIRM ESCROW ACCOUNT AND CONVERTED THOSE FUNDS, DEFENDANT'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION SHOULD NOT HAVE BEEN GRANTED. [Nick v Schneider, 2017 NY Slip Op 04285, 2nd Dept 5-30-17](#)

CIVIL PROCEDURE, NEGLIGENCE.

MOTION TO SET ASIDE THE VERDICT IN THIS NEGLIGENCE CASE PROPERLY GRANTED, THE JURY FOUND DEFENDANT NEGLIGENT BUT WENT ON TO FIND THE NEGLIGENCE WAS NOT THE PROXIMATE CAUSE OF THE INJURY. [Piro v Demeglio, 2017 NY Slip Op 03785, 2nd Dept 5-10-17](#)

CONTRACT LAW.

CAUSE OF ACTION FOR MONEY HAD AND RECEIVED SHOULD NOT HAVE BEEN DISMISSED. [Litvinoff v Wright, 2017 NY Slip Op 03501, 2nd Dept 5-3-17](#)

CONTRACT LAW.

PLAINTIFF DEEMED TO HAVE READ AND UNDERSTOOD THE SETTLEMENT DOCUMENT BEFORE SIGNING, LEGAL MALPRACTICE COMPLAINT AGAINST HER ATTORNEYS PROPERLY DISMISSED. [Anderson v Dinkes & Schwitzer, P.C., 2017 NY Slip Op 03721, 2nd Dept 5-19-17](#)

CRIMINAL LAW.

FOR CAUSE CHALLENGE SHOULD HAVE BEEN GRANTED, NEW TRIAL ORDERED. [People v Hutthinson, 2017 NY Slip Op 03774, 2nd Dept 5-10-17](#)

CRIMINAL LAW.

JUROR MISCONDUCT REQUIRED A NEW TRIAL, JURORS SHARED INFORMATION FROM A FORMER DA AND A FORMER POLICE OFFICER DURING DELIBERATIONS. [People v Plowden, 2017 NY Slip Op 03779, 2nd Dept 5-10-17](#)

CRIMINAL LAW, ATTORNEYS.

PROSECUTOR ACTED AS AN UNSWORN WITNESS DURING SUMMATION, PROSECUTORIAL MISCONDUCT MANDATED A NEW TRIAL. [People v Ramirez, 2017 NY Slip Op 03780, 2nd Dept 5-10-17](#)

CRIMINAL LAW, ATTORNEYS.

DEFENDANT COULD HAVE PLED GUILTY TO AN OFFENSE THAT DID NOT REQUIRE DEPORTATION, MOTION TO VACATE CONVICTION PROPERLY GRANTED. [People v Guzman, 2017 NY Slip Op 04291, 2nd Dept 5-31-17](#)

CRIMINAL LAW, CIVIL RIGHTS LAW (18 USC 1983), MUNICIPAL LAW.

PLAINTIFF STATED A CAUSE OF ACTION AGAINST THE COUNTY UNDER 18 USC 1983 FOR VIOLATION OF HIS RIGHT TO A SPEEDY TRIAL. [Victor v County of Suffolk, 2017 NY Slip Op 03796, 2nd Dept 5-10-17](#)

CRIMINAL LAW, CONSTITUTIONAL LAW.

SEXUAL ASSAULT REFORM ACT, WHICH PROHIBITED PETITIONER FROM LIVING AND TRAVELING WITHIN 1000 FEET OF A SCHOOL, AS APPLIED TO PETITIONER, WAS NOT SHOWN TO BE SUFFICIENTLY PUNITIVE IN CHARACTER AS TO VIOLATE THE EX POST FACTO CLAUSE. [Matter of Devine v Annucci, 2017 NY Slip Op 04114, 2nd Dept 5-24-17](#)

CRIMINAL LAW, EVIDENCE.

SCHOOL CUSTODIAN'S STATEMENT TO A TEACHER THAT ON THE DAY HE IS FIRED HE WILL COME IN AND 'COLUMBINE THIS SHIT' DID NOT CONSTITUTE SUFFICIENT EVIDENCE OF A TERRORISTIC THREAT WITHIN THE MEANING OF THE PENAL LAW, DISMISSAL OF THE INDICTMENT AFTER A READING OF THE GRAND JURY MINUTES WAS PROPER. [People v Hulsen, 2017 NY Slip Op 04294, 2nd Dept 5-31-17](#)

CRIMINAL LAW, EVIDENCE.

DEFENDANT'S DRIVING WHILE INTOXICATED AT HIGH SPEEDS AND IGNORING TRAFFIC LIGHTS, RESULTING IN AN INTERSECTION COLLISION WHICH KILLED THE OTHER DRIVER, SUPPORTED THE DEPRAVED INDIFFERENCE MURDER CONVICTION. [People v Williams, 2017 NY Slip Op 04302, 2nd Dept 5-31-17](#)

CRIMINAL LAW, VEHICLE AND TRAFFIC LAW, ATTORNEYS.

DRIVER WAS NOT SUFFICIENTLY WARNED OF THE CONSEQUENCES OF WAITING FOR A RETURN CALL FROM HIS ATTORNEY CONCERNING WHETHER HE SHOULD SUBMIT TO A BLOOD ALCOHOL TEST, ARRESTING OFFICER DEEMED THE CIRCUMSTANCES TO CONSTITUTE A REFUSAL. [Matter of Lamb v Egan, 2017 NY Slip Op 03751, 2nd Dept 5-10-17](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

SECOND RISK ASSESSMENT PROCEEDING, IN A DIFFERENT COUNTY, BASED UPON THE SAME RISK ASSESSMENT INSTRUMENT, SHOULD NOT HAVE BEEN HELD. [People v Katz, 2017 NY Slip Op 04154, 2nd Dept 5-24-17](#)

FAMILY LAW

FATHER'S MOTION TO VACATE THE DEFAULT DISMISSAL OF HIS VISITATION PETITION SHOULD HAVE BEEN GRANTED, LIBERAL POLICY IN FAVOR OF VACATING DEFAULT NOTED. [Matter of Lemon v Faison, 2017 NY Slip Op 03953, 2nd Dept 5-17-17](#)

FAMILY LAW, APPEALS.

AWARD OF SOLE CUSTODY TO MOTHER NOT SUPPORTED BY THE RECORD, PREFERENCE OF CHILDREN NOT ADEQUATELY CONSIDERED. [Matter of Tofalli v Sarrett, 2017 NY Slip Op 04125, 2nd Dept 5-25-17](#)

FAMILY LAW, CRIMINAL LAW.

ORDER OF PROTECTION ISSUED BY AN INTEGRATED DOMESTIC VIOLENCE COURT AS PART OF A CRIMINAL PROCEEDING CAN BE APPEALED BUT NOT MODIFIED BY MOTION, HERE THE CRIMINAL ORDER OF PROTECTION COULD NOT BE MODIFIED BY A SUBSEQUENT CHILD NEGLECT PROCEEDING ORDER OF PROTECTION ISSUED BY THE SAME COURT. [Matter of Utter v Usher, 2017 NY Slip Op 03760, 2nd Dept 5-10-17](#)

FAMILY LAW, CRIMINAL LAW.

FATHER SHOULD NOT HAVE BEEN DEEMED TO HAVE DERIVATIVELY NEGLECTED ALL HIS CHILDREN BASED SOLELY ON HIS GUILTY PLEA TO ENDANGERING THE WELFARE OF ONE OF HIS CHILDREN. [Matter of Blima M. \(Samuel M.\), 2017 NY Slip Op 03954, 2nd Dept 5-17-17](#)

FORECLOSURE.

REAL PROPERTY ACTIONS AND PROCEEDINGS LAW 90-DAY NOTICE REQUIREMENT FOR FORECLOSURE PROCEEDINGS NOT MET, PROOF OF MAILING INSUFFICIENT. [Citibank, N.A. v Wood, 2017 NY Slip Op 03727, 2nd Dept 5-10-17](#)

FORECLOSURE, EVIDENCE.

BANK DID NOT DEMONSTRATE STANDING TO BRING THE FORECLOSURE ACTION, CRITERIA FOR BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE NOT MET. [Bank of N.Y. v Willis, 2017 NY Slip Op 03468, 2nd Dept 5-3-17](#)

FORECLOSURE, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW, EVIDENCE.

NOTICE REQUIREMENTS OF REAL PROPERTY ACTIONS AND PROCEEDINGS LAW NOT DEMONSTRATED, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IN THE FORECLOSURE ACTION SHOULD NOT HAVE BEEN GRANTED. [Central Mtge. Co. v Abraham, 2017 NY Slip Op 03929, 2nd Dept 5-17-17](#)

FORECLOSURE, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW, EVIDENCE.

NOTICE REQUIREMENTS OF REAL PROPERTY ACTIONS AND PROCEEDINGS LAW NOT DEMONSTRATED, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IN THE FORECLOSURE ACTION SHOULD NOT HAVE BEEN GRANTED. [Wells Fargo Bank, N.A. v Trupia, 2017 NY Slip Op 03986, 2nd Dept 5-17-17](#)

INSURANCE LAW.

LATE NOTIFICATION OF THE INSURER BY THE INSURED ABOUT AN ACTION AGAINST THE INSURED DOES NOT EXCUSE A LATE DISCLAIMER, TIMELINESS OF A DISCLAIMER DEPENDS ON WHEN THE INSURER FIRST LEARNED OF THE ACTION. [Evanston Ins. Co. v P.S. Bruckel, Inc., 2017 NY Slip Op 03489, 2nd Dept 5-3-17](#)

INSURANCE LAW.

INJURED PARTY DID NOT TIMELY NOTIFY INSURER OF HIS CLAIM, INSURER NOT OBLIGATED TO SATISFY DEFAULT JUDGMENT AGAINST THE INSURED. [Glanz v New York Mar. & Gen. Ins. Co., 2017 NY Slip Op 03494, 2nd Dept 5-3-17](#)

INSURANCE LAW.

INSURED'S REFUSAL TO COOPERATE WITH INSURER RELIEVED INSURER OF LIABILITY FOR DEFAULT JUDGMENT AGAINST THE INSURED. [West St. Props., LLC v American States Ins. Co., 2017 NY Slip Op 03555, 2nd Dept 5-3-17](#)

INSURANCE LAW.

ANY GROUND FOR A DISCLAIMER NOT MENTIONED IN THE DISCLAIMER LETTER IS WAIVED. [Ability Transmission, Inc. v John's Transmission, Inc., 2017 NY Slip Op 04087, 2nd Dept 5-24-17](#)

INSURANCE LAW.

INSURED'S FAILURE TO TIMELY NOTIFY INSURER OF THE ACTION AGAINST THE INSURED RELIEVED THE INSURER OF ANY OBLIGATION TO SATISFY THE JUDGMENT AGAINST THE INSURED. [Ramlochan v Scottsdale Ins. Co., 2017 NY Slip Op 04159, 2nd Dept 5-24-17](#)

INSURANCE LAW.

REQUIREMENT THAT COVERAGE CANNOT BE DENIED UNLESS THE GROUND FOR THE DENIAL IS SPECIFIED IN THE DISCLAIMER LETTER APPLIES ONLY TO DEATH AND BODILY INJURY CLAIMS, THE INSURER'S MOTION FOR SUMMARY JUDGMENT BASED ON A VANDALISM EXCLUSION IN THIS PROPERTY DAMAGE CASE SHOULD HAVE BEEN GRANTED. [Swanson v Allstate Ins. Co., 2017 NY Slip Op 04311, 2nd Dept 5-31-17](#)

INSURANCE LAW, LANDLORD-TENANT.

ALTHOUGH THE BUILDING OWNER WAS AN ADDITIONAL INSURED ON THE LESSEE'S POLICY, THE INSURER HAD NO DUTY TO DEFEND AN ACTION STEMMING FROM A SLIP AND FALL IN THE BUILDING PARKING LOT, THE LEASE DID NOT CALL FOR MAINTENANCE OF THE PARKING LOT BY THE LESSEE. [Atlantic Ave. Sixteen AD, Inc. v Valley Forge Ins. Co., 2017 NY Slip Op 04243, 2nd Dept 5-31-17](#)

LABOR LAW-CONSTRUCTION LAW.

ELECTRICIAN SLIPPED AND FELL ON ICE IN DRIVEWAY OF DEFENDANTS' HOME, DEFENDANTS, WHO WERE OUT-OF-STATE, DID NOT DEMONSTRATE WHEN THE DRIVEWAY WAS LAST INSPECTED OR WHAT THE CONDITION OF THE DRIVEWAY WAS ON THE DAY OF THE SLIP AND FALL, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON THE LABOR LAW 200 CAUSE OF ACTION PROPERLY DENIED. [DeFelice v Seakco Constr. Co., LLC, 2017 NY Slip Op 03481, 2nd Dept 5-3-17](#)

LABOR LAW-CONSTRUCTION LAW.

DEFECT WHICH ALLEGEDLY CAUSED PLAINTIFF TO FALL WAS NOT DESIGNED TO PROTECT AGAINST FALLS AND THEREFORE WAS NOT ACTIONABLE UNDER LABOR LAW 240 (1), PLAINTIFF NOT ENGAGED IN CONSTRUCTION, DEMOLITION OR EXCAVATION, THEREFORE LABOR LAW 241 (6) NOT APPLICABLE. [Robinson v National Grid Energy Mgt., LLC, 2017 NY Slip Op 03787, 2nd Dept 5-10-17](#)

LABOR LAW-CONSTRUCTION LAW.

HOMEOWNER'S MOTION FOR SUMMARY JUDGMENT ON LABOR LAW 240(1), 241(6) AND 200 CAUSES OF ACTION PROPERLY DENIED, HOMEOWNER DID NOT DEMONSTRATE HE DID NOT CONTROL AND SUPERVISE PLAINTIFF'S WORK OR DID NOT CREATE OR WAS NOT AWARE OF THE DANGEROUS CONDITION. [Wadlowski v Cohen, 2017 NY Slip Op 03797, 2nd Dept 5-10-17](#)

LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF ENTITLED TO SUMMARY JUDGMENT ON HIS LABOR LAW 240(1) CAUSE OF ACTION IRRESPECTIVE OF WHETHER PLYWOOD FELL WHILE HOISTED OR DURING INSTALLATION. [Escobar v Safi, 2017 NY Slip Op 04099, 2nd Dept 5-24-17](#)

LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF FELL FROM AN UNSECURED A-FRAME LADDER THAT SHIFTED FOR NO APPARENT REASON, SUMMARY JUDGMENT ON HIS LABOR LAW 240 (1) CAUSE OF ACTION PROPERLY GRANTED. [Alvarez v Vingsan L.P., 2017 NY Slip Op 04241, 2nd Dept 5-31-17](#)

LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF SLIPPED ON ROSIN PAPER WHICH WAS PLACED ON THE STEPS AS AN INTEGRAL PART OF THE WORK, LABOR LAW 240 (1) AND 241 (6) CAUSES OF ACTION PROPERLY DISMISSED. [Lopez v Edge 11211, LLC, 2017 NY Slip Op 04262, 2nd Dept 5-31-17](#)

MEDICAL MALPRACTICE.

CONTINUOUS TREATMENT TOLLS THE STATUTE OF LIMITATIONS IN A MEDICAL MALPRACTICE ACTION WHEN THE INITIAL ERRONEOUS DIAGNOSIS IS OUTSIDE THE STATUTE AND THE CONTINUED TREATMENT WAS BY OTHER DOCTORS IN THE GROUP. [Matthews v Barrau, 2017 NY Slip Op 03738, 2nd Dept 5-10-17](#)

MEDICAL MALPRACTICE, NEGLIGENCE, CIVIL PROCEDURE.

QUESTION OF FACT WHETHER THE CONTINUOUS TREATMENT DOCTRINE APPLIED, SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Freely v Donnenfeld, 2017 NY Slip Op 03491, 2nd Dept 5-3-17](#)

MUNICIPAL LAW, NEGLIGENCE.

MOTION FOR LEAVE TO AMEND NOTICE OF CLAIM TO INDICATE PLAINTIFF WAS RIDING A BICYCLE AT THE TIME OF THE ACCIDENT PROPERLY GRANTED. [Fast v County of Nassau, 2017 NY Slip Op 03734, 2nd Dept 5-10-17](#)

MUNICIPAL LAW, NEGLIGENCE, TRUSTS AND ESTATES, CIVIL PROCEDURE.

MOTION TO RENEW PETITION FOR LEAVE TO FILE A LATE NOTICE OF CLAIM IN THIS WRONGFUL DEATH ACTION SHOULD HAVE BEEN GRANTED, LEAVE TO FILE A LATE NOTICE OF CLAIM SHOULD HAVE BEEN GRANTED. [Matter of Kerner v County of Nassau, 2017 NY Slip Op 04277, 2nd Dept 5-31-17](#)

NEGLIGENCE.

ALLEGATION PLAINTIFF STOPPED SUDDENLY NOT ENOUGH TO DEFEAT PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IN THIS REAR-END COLLISION CASE. [Nikolic v City-Wide Sewer & Drain Serv. Corp., 2017 NY Slip Op 03524, 2nd Dept 5-3-17](#)

NEGLIGENCE.

PLAINTIFF DID NOT KNOW WHAT CAUSED HER FALL, CODE VIOLATIONS NOT CONNECTED TO THE FALL, DEFENSE SUMMARY JUDGMENT PROPERLY GRANTED. [Amster v Kromer, 2017 NY Slip Op 03720, 2nd Dept 5-10-17](#)

NEGLIGENCE.

DEFENDANTS DID NOT DEMONSTRATE THEY DID NOT HAVE ACTUAL OR CONSTRUCTIVE NOTICE OF OR CREATE THE ICY CONDITION, THEIR SUMMARY JUDGMENT MOTION IN THIS SLIP AND FALL CASE SHOULD HAVE BEEN DENIED WITHOUT REFERENCE TO THE OPPOSING PAPERS. [D'Esposito v Manetto Hill Auto Serv., Inc., 2017 NY Slip Op 03729, 2nd Dept 5-10-17](#)

NEGLIGENCE.

EVIDENCE OF GENERAL CLEANING PRACTICES DID NOT DEMONSTRATE DEFENDANT DID NOT HAVE CONSTRUCTIVE NOTICE OF THE PRESENCE OF LIQUID ON THE FLOOR, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE PROPERLY DENIED. [Valdes v Pepsi-Cola Bottling Co. of N.Y., Inc., 2017 NY Slip Op 03794, 2nd Dept 5-10-17](#)

NEGLIGENCE.

PLAINTIFF, WHO HAD THE RIGHT OF WAY, DID NOT DEMONSTRATE FREEDOM FROM COMPARATIVE FAULT IN THIS BUS-CAR COLLISION CASE, SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Mark v New York City Tr. Auth., 2017 NY Slip Op 03940, 2nd Dept 5-17-17](#)

NEGLIGENCE.

DEFENDANT STORE NOT ENTITLED TO SUMMARY JUDGMENT IN THIS TRACKED-IN-WATER SLIP AND FALL CASE. [Hickson v Walgreen Co., 2017 NY Slip Op 04103, 2nd Dept 5-24-17](#)

NEGLIGENCE.

PROOF OF GENERAL CLEANING PRACTICES NOT SUFFICIENT TO DEMONSTRATE A LACK OF NOTICE OF THE WET AREA WHERE PLAINTIFF SLIPPED AND FELL, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Perez v Wendell Terrace Owners Corp., 2017 NY Slip Op 04156, 2nd Dept 5-24-17](#)

NEGLIGENCE.

DEFENDANT, WHO COLLIDED WITH PLAINTIFF AFTER PLAINTIFF CROSSED INTO DEFENDANT'S ONCOMING LANE OF TRAFFIC, WAS ENTITLED TO SUMMARY JUDGMENT, SUPREME COURT REVERSED. [Victor v Daley, 2017 NY Slip Op 04315, 2nd Dept 5-31-17](#)

PERSONAL INJURY, CIVIL PROCEDURE, EVIDENCE.

MOTION TO RENEW PROPERLY USED TO CORRECT DEFECT IN INITIAL PAPERS (DEPOSITION TRANSCRIPTS UNSIGNED), PLAINTIFF RAISED A QUESTION OF FACT WHETHER DEFENDANT BAR SERVED DRIVER WHEN HE WAS VISIBLY INTOXICATED (DRAM SHOP ACT). [Trigoso v Correa, 2017 NY Slip Op 03983, 2nd Dept 5-17-17](#)

NEGLIGENCE, CIVIL PROCEDURE, EVIDENCE.

PLAINTIFF'S MOTION TO SET ASIDE THE VERDICT AS AGAINST THE WEIGHT OF THE EVIDENCE SHOULD HAVE BEEN GRANTED. [Mancini v Metropolitan Suburban Bus Auth., 2017 NY Slip Op 03939, 2nd Dept 5-17-17](#)

NEGLIGENCE, CIVIL PROCEDURE, WORKERS' COMPENSATION.

WORKERS' COMPENSATION BENEFITS WERE A COLLATERAL SOURCE, DAMAGES FOR PAST AND FUTURE LOST WAGES REDUCED BY THE AMOUNT OF THE BENEFITS. [McKnight v New York City Tr. Auth., 2017 NY Slip Op 03740, 2nd Dept 5-10-17](#)

NEGLIGENCE, EMPLOYMENT LAW, CIVIL PROCEDURE.

CAUSE OF ACTION SEEKING PUNITIVE DAMAGES FOR NEGLIGENT HIRING, RETENTION AND SUPERVISION NOT PRECLUDED BY DOCTRINE OF RESPONDEAT SUPERIOR. [Gipe v DBT Xpress, LLC, 2017 NY Slip Op 04258, 2nd Dept 5-31-17](#)

NEGLIGENCE, MEDICAL MALPRACTICE, EVIDENCE.

PLAINTIFF'S EXPERT, A RADIOLOGIST, DID NOT INDICATE FAMILIARITY WITH THE STANDARD OF CARE FOR ORTHOPEDIC SURGEONS, SURGEON-DEFENDANTS PROPERLY GRANTED SUMMARY JUDGMENT. [Donnelly v Parikh, 2017 NY Slip Op 03731, 2nd pt 5-10-17](#)

NEGLIGENCE, MUNICIPAL LAW.

CHILD BURNED BY HOT EMBERS IN A CAMPSITE, NEITHER THE LAST OCCUPANT OF THE CAMPSITE NOR THE LANDOWNER (THE COUNTY) WAS ENTITLED TO SUMMARY JUDGMENT. [Holohan v County of Suffolk, 2017 NY Slip Op 04104, 2nd Dept 5-24-17](#)

NEGLIGENCE, MUNICIPAL LAW.

EVEN THOUGH THE ALLEGEDLY DEFECTIVE SIDEWALK ABUTTED AN UNDEVELOPED LOT, DEFENDANT WAS ENTITLED TO THE SMALL-PROPERTY EXEMPTION FROM TORT LIABILITY. [Johnson v Manley, 2017 NY Slip Op 04259, 2nd Dept 5-31-17](#)

NEGLIGENCE, VEHICLE AND TRAFFIC LAW.

OWNER OF LEASED VEHICLE NOT VICARIOUSLY LIABLE FOR DEFENDANT DRIVER'S ACCIDENT, LESSOR IS PROTECTED BY THE GRAVES AMENDMENT. [Aviaev v Nissan Infiniti LT, 2017 NY Slip Op 03722, 2nd Dept 5-10-17](#)

STATUTES.

ABSENCE OF A COMMA, STANDING ALONE, WAS NOT ENOUGH TO DICTATE THE MEANING OF A CODE PROVISION. [Matter of Elenson v Nassau County, 2017 NY Slip Op 04116, 2nd Dept 5-24-17](#)

TRUSTS AND ESTATES.

QUESTION OF FACT WHETHER RENUNCIATION OF INHERITANCE WAS INVALID. [Matter of Kaplan, 2017 NY Slip Op 03750, 2nd Dept 5-10-17](#)

TRUSTS AND ESTATES.

SURROGATE'S COURT SHOULD HAVE CARRIED OUT WHAT DECEDENT CLEARLY INTENDED, DESPITE THE DEFECT IN THE MEANS CHOSEN TO EFFECT HIS INTENT. [Matter of Perlman, 2017 NY Slip Op 03957, 2nd Dept 5-17-17](#)

TRUSTS AND ESTATES, CIVIL PROCEDURE.

PLAINTIFF DID NOT HAVE STANDING TO CONTEST PROPERTY TRANSFER TO HER BROTHER BY HER MOTHER BASED UPON AN ALLEGATION MOTHER LACKED MENTAL CAPACITY AT THE TIME OF THE TRANSFER, PLAINTIFF HAD ONLY A POTENTIAL, SPECULATIVE INTEREST IN HER MOTHER'S PROPERTY. [Jacob v Conway, 2017 NY Slip Op 03936, 2nd Dept 5-17-17](#)

TRUSTS AND ESTATES, CONTRACT LAW.

AFTER FATHER'S DEATH, SON COULD NOT SEEK AN INJUNCTION AGAINST MOTHER AND SUE MOTHER FOR BREACH OF CONTRACT BASED UPON MOTHER AND FATHER'S AGREEMENT NOT TO MODIFY OR REVOKE THEIR WILLS WITHOUT THE MUTUAL CONSENT OF THE PARTIES. [Tretter v Tretter, 2017 NY Slip Op 03982, 2nd Dept 5-17-17](#)

TRUSTS AND ESTATES, REAL PROPERTY, CIVIL PROCEDURE, EVIDENCE.

PROPERTY OWNED AS TENANTS BY THE ENTIRETY PASSES FREE AND CLEAR TO THE SURVIVING SPOUSE, PURCHASE FROM THE SURVIVING SPOUSE PROVIDES CLEAR TITLE, HEARSAY ALONE WILL NOT DEFEAT SUMMARY JUDGMENT. [Cormack v Burks, 2017 NY Slip Op 04252, 2nd Dept 5-31-17](#)

VEHICLE AND TRAFFIC LAW.

EVIDENCE THE SON WAS DRIVING HIS FATHER'S CAR WITHOUT HIS FATHER'S PERMISSION, THEREBY RELIEVING THE FATHER OF LIABILITY, WAS NOT SUFFICIENT TO WARRANT SUMMARY JUDGMENT IN THIS PROPERTY DAMAGE CASE. [State Farm Fire & Cas. Co. v Sajewski, 2017 NY Slip Op 04310, 2nd Dept 5-31-17](#)

ZONING, ENVIRONMENTAL LAW.

ZONING BOARD PROPERLY CONDUCTED A SEQRA REVIEW AND PROPERLY ISSUED A SUBSTANTIAL SETBACK VARIANCE, REVIEW CRITERIA EXPLAINED. [Matter of Beekman Delamater Props., LLC v Village of Rhinebeck Zoning Bd. of Appeals, 2017 NY Slip Op 04112, 2nd Dept 5-24-17](#)

ZONING, ENVIRONMENTAL LAW, MUNICIPAL LAW.

WATER DISTRICT'S CONSTRUCTION OF A REPLACEMENT DRINKING WATER SUPPLY TANK WAS IMMUNE FROM COMPLIANCE WITH THE VILLAGE CODE AND DID NOT TRIGGER THE STATE ENVIRONMENTAL QUALITY REVIEW ACT. [Incorporated Vil. of Munsey Park v Manhasset-Lakeville Water Dist., 2017 NY Slip Op 03934, 2nd Dept 5-17-17](#)

THIRD DEPARTMENT

ANIMAL LAW.

EVEN THOUGH THE DOG HAD NEVER BITTEN ANYONE BEFORE, THE EVIDENCE SUBMITTED BY DEFENDANT DEMONSTRATED VICIOUS PROPENSITIES AND DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN DENIED. [Olsen v Campbell, 2017 NY Slip Op 03828, 3rd Dept 5-11-17](#)

ATTORNEYS, WORKERS' COMPENSATION LAW, NEGLIGENCE.

BUT FOR TEST FOR LEGAL MALPRACTICE IS NOT THE SAME AS SOLE PROXIMATE CAUSE, IT IS ENOUGH THAT AN ATTORNEY'S ACTIONS CONSTITUTE A PROXIMATE CAUSE. [New York State Workers' Compensation Bd. v Program Risk Mgt., Inc., 2017 NY Slip Op 04184, 3rd Dept 5-25-17](#)

CIVIL PROCEDURE, MEDICAL MALPRACTICE, NEGLIGENCE.

PLAINTIFF'S MOTION TO AMEND THE PLEADINGS TO CONFORM TO THE PROOF AT TRIAL SHOULD HAVE BEEN GRANTED. [Noble v Slavin, 2017 NY Slip Op 03578, 3rd Dept 5-4-17](#)

CIVIL PROCEDURE, MEDICAL MALPRACTICE, PRIVILEGE.

REPORT REGARDING CARE OF PLAINTIFF'S DECEDENT WAS NOT PART OF A MEDICAL OR QUALITY ASSURANCE PROGRAM, WAS NOT PRIVILEGED UNDER THE EDUCATION LAW OR PUBLIC HEALTH LAW, AND WAS THEREFORE SUBJECT TO DISCOVERY IN THIS MEDICAL MALPRACTICE ACTION. [Estate of Savage v Kredentser, 2017 NY Slip Op 03825, 3rd Dept 5-11-17](#)

CONTRACT LAW, NEGLIGENCE.

RELEASE REFERRED ONLY TO INJURIES SUFFERED BY DEFENDANT AND THEREFORE DID NOT PRECLUDE A SUIT STEMMING FROM INJURIES TO ANOTHER. [Salewski v Music, 2017 NY Slip Op 03582, 3rd Dept 5-5-17](#)

CONTRACT LAW, REAL PROPERTY, CORPORATION LAW.

ORAL OFFER TO SELL SHARES IN FAMILY CORPORATION FORMED SOLELY TO OWN ONE PIECE OF REAL PROPERTY WAS SUBJECT TO THE STATUTE OF FRAUDS, THE WRITING REQUIREMENT WAS NOT REMOVED BY PART PERFORMANCE. [Wells v Hodgkins, 2017 NY Slip Op 03824, 3rd Dept 5-11-17](#)

CRIMINAL LAW.

ALTHOUGH DEFENDANT'S GUILTY PLEA SATISFIED AN UNCHARGED BURGLARY, THE SENTENCING COURT SHOULD NOT HAVE ORDERED RESTITUTION FOR THE UNCHARGED BURGLARY. [People v Pixley, 2017 NY Slip Op 04173, 3rd Dept 5-25-17](#)

CRIMINAL LAW, EVIDENCE.

TESTIMONY ABOUT DEFENDANT'S ASSERTION OF HIS RIGHT TO REMAIN SILENT SHOULD NOT HAVE BEEN ADMITTED, ERROR DEEMED HARMLESS HOWEVER. [People v Johnson, 2017 NY Slip Op 03804, 3rd Dept 5-11-17](#)

DISCIPLINARY HEARINGS (INMATES).

HEARING OFFICER'S REFUSAL WITHOUT EXPLANATION TO CALL A WITNESS TO THE INCIDENT REQUIRED ANNULMENT AND EXPUNGEMENT. [Matter of Reyes v Keyser, 2017 NY Slip Op 04007, 3rd Dept 5-18-17](#)

EMPLOYMENT LAW, EVIDENCE, NEGLIGENCE.

INCONSISTENCIES IN THE RETIREMENT SYSTEM'S EXPERT'S TESTIMONY REQUIRED ANNULMENT OF THE DENIAL OF PETITIONER POLICE OFFICER'S APPLICATION FOR ACCIDENTAL AND PERFORMANCE OF DUTY RETIREMENT BENEFITS. [Matter of Rawson v DiNapoli, 2017 NY Slip Op 04189, 3rd Dept 5-25-17](#)

EMPLOYMENT LAW, ADMINISTRATIVE LAW.

ATTEMPT TO EXHAUST REMEDIES UNDER THE COLLECTIVE BARGAINING AGREEMENT WOULD HAVE BEEN FUTILE, THEREFORE THE ARTICLE 78 PETITION PRESENTED AN ISSUE RIPE FOR COURT REVIEW. [Matter of Police Benevolent Assn. of N.Y. State, Inc. v State of New York, 2017 NY Slip Op 03588, 3rd Dept 5-4-17](#)

FAMILY LAW.

PARENTS REMEDIED THE FILTHY CONDITIONS OF THE HOME AND MADE ARRANGEMENTS TO LIVE WITH GRANDPARENTS, WHO AGREED TO SUPERVISE AND HELP THE PARENTS, FAMILY COURT'S AWARD OF CUSTODY TO AN AUNT REVERSED. [Matter of Jennifer BB. v Megan CC., 2017 NY Slip Op 03576, 3rd Dept 5-4-17](#)

FAMILY LAW.

AUNT DID NOT HAVE STANDING TO SEEK VISITATION, AWARDING ADDITIONAL VISITATION TO GRANDPARENTS NOT SUPPORTED BY THE RECORD. [Matter of Romasz v Coombs, 2017 NY Slip Op 04001, 3rd Dept 5-18-17](#)

FAMILY LAW, APPEALS.

MOTHER'S ATTORNEY APPEARED AND PARTICIPATED IN THE PROCEEDINGS, EXPLAINING MOTHER'S ABSENCE, MOTHER, CONTRARY TO FAMILY COURT'S RULING, WAS NOT IN DEFAULT AND COULD APPEAL THE ORDER. [Matter of Linger v Linger, 2017 NY Slip Op 03822, 3rd Dept 5-11-17](#)

LABOR LAW-CONSTRUCTION LAW.

LABOR LAW 240(1) LIABILITY IS NONDELEGABLE AND EXTENDS TO INDEPENDENT CONTRACTORS. [Griffin v AVA Realty Ithaca, LLC, 2017 NY Slip Op 03829, 3rd Dept 5-11-17](#)

NEGLIGENCE, EDUCATION-SCHOOL LAW.

PLAINTIFF ASSUMED THE RISK OF BEING STRUCK BY A BASEBALL DURING TRYOUTS CONDUCTED IN THE GYMNASIUM DUE TO WEATHER. [Legac v South Glens Falls Cent. Sch. Dist., 2017 NY Slip Op 04182, 3rd Dept 5-25-17](#)

NEGLIGENCE, INSURANCE LAW.

PLAINTIFF ENTITLED TO SUMMARY JUDGMENT ON LIABILITY, DEFENDANT CROSSED DOUBLE YELLOW LINE, PLAINTIFF RAISED QUESTIONS OF FACT ABOUT WHETHER HIS PHYSICAL AND PSYCHOLOGICAL INJURIES MET THE NO-FAULT CRITERIA FOR SERIOUS INJURY. [Fillette v Lundberg, 2017 NY Slip Op 04180, 3rd Dept 5-24-17](#)

NEGLIGENCE, MUNICIPAL LAW, IMMUNITY.

STATE TROOPER IMMUNE FROM A NEGLIGENCE SUIT BASED UPON THE TROOPER'S DISCRETIONARY ACTS. [Feeney v County of Del., 2017 NY Slip Op 03583, 3rd Dept 5-4-17](#)

UNEMPLOYMENT INSURANCE.

CLAIMANT, WHO WAS UNABLE TO WORK BECAUSE OF DOMESTIC ABUSE, WAS ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS. [Matter of Derfert \(Commissioner of Labor\), 2017 NY Slip Op 04016, 3rd Dept 5-18-17](#)

UNEMPLOYMENT INSURANCE.

DRIVER FOR A MEDICAL DELIVERY SERVICE WAS AN EMPLOYEE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS, NOTWITHSTANDING THE DRIVER'S CONTRACT WITH A THIRD PARTY PAYROLL COMPANY. [Matter of Crystal \(Medical Delivery Servs.--Commissioner of Labor\), 2017 NY Slip Op 04185, 3rd Dept 5-25-17](#)

WORKERS' COMPENSATION LAW.

SPECIAL FUND LIABLE FOR CLAIM MADE AFTER THE 2014 CUTOFF FOR NEWLY REOPENED CLAIMS, DECEDENT'S CLAIM WAS TRANSFERRED TO THE SPECIAL FUND IN 2002 AND HIS DEATH WAS CAUSALLY RELATED TO THE 2002 CLAIM. [Matter of Misquitta v Getty Petroleum, 2017 NY Slip Op 03585, 3rd Dept 5-4-17](#)

WORKERS' COMPENSATION LAW.

CLAIMANT PROPERLY FOUND TO HAVE A 35% LOSS OF WAGE EARNING CAPACITY DESPITE HIS HAVING RETURNED TO WORK FULL-TIME. [Matter of De Ruggiero v City of N.Y. Dept. of Citywide Admin. Servs., 2017 NY Slip Op 03999, 3rd Dept 5-18-17](#)

WORKERS' COMPENSATION LAW.

CLAIMANT PROPERLY AWARDED 100% SLU FOR FOUR AMPUTATED FINGERS AND AN ADDITIONAL 100% SLU FOR THE REATTACHED NONFUNCTIONAL THUMB. [Matter of Deck v Dorr, 2017 NY Slip Op 04186, 3rd Dept 5-25-17](#)

FOURTH DEPARTMENT

CRIMINAL LAW, APPEALS.

A WRITTEN WAIVER OF APPEAL WAS NOT PART OF THE PLEA AGREEMENT, SENTENCE SHOULD NOT HAVE BEEN ENHANCED FOR DEFENDANT'S REFUSING TO SIGN THE WRITTEN WAIVER. [People v Days, 2017 NY Slip Op 03632, 4th Dept 5-5-17](#)

CRIMINAL LAW, APPEALS.

IDENTIFICATION PROCEDURE WAS UNDULY SUGGESTIVE, OFFICER WAS TOLD WHO THE POLICE WERE SEEKING TO IDENTIFY BEFORE VIEWING A SURVEILLANCE VIDEO, ALTHOUGH THE ISSUE WAS NOT PRESERVED FOR APPEAL IN THE MOTION PAPERS, IT IS APPEALABLE BECAUSE COUNTY COURT ADDRESSED IT. [People v Gambale, 2017 NY Slip Op 03658, 4th Dept 5-5-17](#)

CRIMINAL LAW, APPEALS, EVIDENCE.

DEFENDANT'S STATEMENT WAS NOT ADMISSIBLE AS SPONTANEOUS, CASE HELD IN RESERVE TO ALLOW COUNTY COURT TO RULE ON OTHER ISSUES RAISED IN OPPOSITION TO THE SUPPRESSION MOTION. [People v Ibarrondo, 2017 NY Slip Op 03643, 4th Dept 5-5-17](#)

CRIMINAL LAW, ATTORNEYS, EVIDENCE.

PROSECUTORIAL MISCONDUCT AND INEFFECTIVE ASSISTANCE REQUIRED REVERSAL IN THE INTEREST OF JUSTICE. [People v Case, 2017 NY Slip Op 03638, 4th Dept 5-5-17](#)

CRIMINAL LAW, EVIDENCE.

AFTER A WEIGHT OF THE EVIDENCE ANALYSIS, THE COURT CONCLUDED THE PROOF DID NOT DEMONSTRATE BEYOND A REASONABLE DOUBT THAT DEFENDANT SHARED THE INTENT OF HIS SON, WHO STABBED THE VICTIM EIGHT TIMES. [People v Farley, 2017 NY Slip Op 03634, 4th Dept 5-5-17](#)

ENVIRONMENTAL LAW, ZONING.

PARTIES HAD STANDING TO CONTEST THE NEGATIVE DECLARATION ISSUED PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT, NEGATIVE DECLARATION SHOULD HAVE BEEN ANNULLED FOR FAILURE TO SET OUT THE UNDERLYING REASONING. [Matter of Rochester Eastside Residents for Appropriate Dev., Inc. v City of Rochester, 2017 NY Slip Op 03665, 4th Dept 5-5-17](#)

LABOR LAW-CONSTRUCTION LAW.

LABOR LAW 240 (1) CAUSE OF ACTION SHOULD NOT HAVE BEEN DISMISSED, PLAINTIFF, WHO WAS USING STILTS, FELL WHEN A STILT CONTACTED AN OBJECT ON THE FLOOR. [Piche v Synergy Tooling Sys., Inc., 2017 NY Slip Op 03673, 4th Dept 5-5-17](#)

NEGLIGENCE, MEDICAL MALPRACTICE.

PLAINTIFF'S EXPERT, AN ANESTHESIOLOGIST, DID NOT DEMONSTRATE HOW HE WAS FAMILIAR WITH THE ACCEPTED STANDARD OF CARE FOR AN ORTHOPEDIC SURGEON, THE SURGEON'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Chillis v Brundin, 2017 NY Slip Op 03646, 4th Dept 5-5-17](#)

PRODUCTS LIABILITY, TOXIC TORTS, NEGLIGENCE.

HUGE COKE OVENS IN A STEEL PLANT WERE NOT PRODUCTS IN THE STREAM OF COMMERCE, PRODUCTS LIABILITY CAUSES OF ACTION AGAINST THE MANUFACTURER OF THE OVENS IN THIS ASBESTOS CASE SHOULD HAVE BEEN DISMISSED. [Terwilliger v Beazer E., Inc., 2017 NY Slip Op 03629, 4th Dept 5-5-17](#)

TOXIC TORTS, NEGLIGENCE.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IN THIS LEAD PAINT POISONING CASE SHOULD NOT HAVE BEEN GRANTED. [Rodrigues v Lesser, 2017 NY Slip Op 03669, 4th Dept 5-5-17](#)

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COURT OF APPEALS

CIVIL PROCEDURE.

ALTHOUGH PLAINTIFF AND DEFENDANT ARE SPANISH COMPANIES OPERATING IN SPAIN, DEFENDANT IS SUBJECT TO NEW YORK'S LONG-ARM JURISDICTION. [D&R Global Selections, S.L. v Bodega Olegario Falcon Pineiro, 2017 NY Slip Op 04494, CtApp 6-8-17](#)

CONTRACT LAW, TRUSTS AND ESTATES.

THE DOCTRINE OF PROMISSORY ESTOPPEL CAN BE APPLIED TO BYPASS THE STATUTE OF FRAUDS IF THE RESULT OF ENFORCING THE STATUTE WOULD BE UNCONSCIONABLE, THE RESULT HERE WAS NOT UNCONSCIONABLE. [Matter of Hennel, 2017 NY Slip Op 05266, CtApp 6-29-17](#)

CRIMINAL LAW.

JUROR WHO ASKED TO BE EXCUSED AFTER FOUR DAYS OF DELIBERATIONS BECAUSE SHE COULD NOT SEPARATE HER EMOTIONS FROM HER ANALYSIS OF THE FACTS SHOULD HAVE BEEN EXCUSED AS GROSSLY UNQUALIFIED. [People v Spencer, 2017 NY Slip Op 05118, CtApp 6-22-17](#)

CRIMINAL LAW.

PROPER PROCEDURE FOR DETERMINING YOUTHFUL OFFENDER STATUS NOT FOLLOWED, CASE REMITTED. [People v Lofton, 2017 NY Slip Op 05119, CtApp 6-22-17](#)

CRIMINAL LAW.

SENTENCING COURT'S RELIANCE ON A CONFIDENTIAL DOCUMENT IN A PRE-SENTENCE REPORT, AND FAILURE TO INFORM THE DEFENDANT OF THE NATURE OF THE DOCUMENT, VIOLATED DUE PROCESS; SENTENCING COURTS ARE NOT REQUIRED TO PUT THE REASONS FOR DENIAL OF YOUTHFUL OFFENDER STATUS ON THE RECORD. [People v Minemier, 2017 NY Slip Op 05120, CtApp 6-22-17](#)

CRIMINAL LAW, APPEALS.

WHETHER THE POLICE ENTRY INTO DEFENDANT'S HOME WAS JUSTIFIED BY EXIGENT CIRCUMSTANCES IS A MIXED QUESTION OF LAW AND FACT AND IS THEREFORE NOT REVIEWABLE BY THE COURT OF APPEALS. [People v Sivertson, 2017 NY Slip Op 04320, CtApp 6-1-17](#)

CRIMINAL LAW, APPEALS.

TRIAL JUDGE PROPERLY RESETTLED THE RECORD OF THE TRIAL BY CORRECTING TYPOGRAPHICAL ERRORS IN THE TRANSCRIPT WITHOUT A HEARING. [People v Bethune, 2017 NY Slip Op 04493, CtApp 6-8-17](#)

CRIMINAL LAW, ATTORNEYS, EVIDENCE.

DEFENSE COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO OBJECT TO EVIDENCE OF THE COMPLAINANT'S DISCLOSURE OF ALLEGED SEXUAL ABUSE UP TO SEVEN YEARS AFTER THE ABUSE CEASED, THE EVIDENCE MAY HAVE BEEN ADMISSIBLE AND DEFENSE COUNSEL USED DISCREPANCIES IN THE DISCLOSURES TO SUPPORT THE DEFENSE. [People v Honghirun, 2017 NY Slip Op 04496, CtApp 6-8-17](#)

CRIMINAL LAW, ATTORNEYS, EVIDENCE.

PROSECUTOR'S CHARACTERIZATION OF DNA EVIDENCE WAS NOT IMPROPER, DEFENSE COUNSEL'S FAILURE TO OBJECT TO THE CHARACTERIZATION WAS NOT INEFFECTIVE ASSISTANCE. [People v Ramsaran, 2017 NY Slip Op 05268, CtApp 6-29-17](#)

CRIMINAL LAW CONSTITUTIONAL LAW.

NEW YORK'S PERSISTENT FELONY OFFENDER SENTENCING SCHEME IS CONSTITUTIONAL, IT DOES NOT INVOLVE PROOF OF A FACT OTHER THAN A PRIOR FELONY CONVICTION. [People v Prindle, 2017 NY Slip Op 05267, CtApp 6-29-17](#)

CRIMINAL LAW, EVIDENCE.

POLICE LOST A VIDEO WHICH WAS LIKELY TO BE OF MATERIAL IMPORTANCE, FAILURE TO GIVE THE ADVERSE INFERENCE CHARGE TO THE JURY WAS (HARMLESS) ERROR. [People v Viruet, 2017 NY Slip Op 04386, CtApp 6-6-17](#)

CRIMINAL LAW, EVIDENCE.

CONTEMPT ORDER IN A CIVIL MATTER INVOLVING THE SAME FUNDS DEFENDANT WAS ACCUSED OF STEALING IN THE CRIMINAL MATTER IS NOT MOLINEUX EVIDENCE, THE PROBATIVE VALUE OF THE ORDER ON THE QUESTION OF INTENT OUTWEIGHED ITS PREJUDICIAL EFFECT. [People v Frumusa, 2017 NY Slip Op 04495, CtApp 6-8-17](#)

CRIMINAL LAW, EVIDENCE.

PHOTOGRAPH TAKEN FROM A WEBSITE NOT SUFFICIENTLY CONNECTED TO THE DEFENDANT, CONVICTION REVERSED. [People v Price, 2017 NY Slip Op 05174, CtApp 6-27-17](#)

CRIMINAL LAW, INSURANCE LAW.

BAIL BONDSMAN IS NOT ENTITLED TO KEEP THE PREMIUM POSTED TO UNDERWRITE A BAIL BOND IF BAIL IS SUBSEQUENTLY DISAPPROVED AND THE ARRESTEE IS NOT RELEASED. [Gevorkyan v Judelson, 2017 NY Slip Op 05176, CtApp 6-27-17](#)

EDUCATION-SCHOOL LAW, CONSTITUTIONAL LAW.

LAWSUIT ALLEGING THE FAILURE TO PROVIDE SOUND BASIC EDUCATION CAN PROCEED, BUT ONLY WITH RESPECT TO SCHOOL DISTRICTS IN NEW YORK CITY AND SYRACUSE. [Aristy-Farer v State of New York, 2017 NY Slip Op 05175, CtApp 6-27-17](#)

INSURANCE LAW, NEGLIGENCE.

POLICY LANGUAGE MUST BE INTERPRETED TO MEAN THAT COVERAGE OF ADDITIONAL INSURED IS TRIGGERED ONLY WHEN THE INSURED IS NEGLIGENT, NOT MERELY WHEN THE ACTIONS OF THE INSURED

HAVE A CAUSAL RELATIONSHIP WITH THE INJURY. [Burlington Ins. Co. v NYC Tr. Auth., 2017 NY Slip Op 04384, CtApp 6-6-17](#)

MUNICIPAL LAW (NYC).

THE PROPOSED DEVELOPMENT OF THE OLD PARKING LOT FOR SHEA STADIUM, ON PARKLAND, IS SUBJECT TO THE PUBLIC TRUST DOCTRINE AND REQUIRES SPECIFIC ENABLING LEGISLATION, THE LEGISLATION FOR THE CONSTRUCTION OF SHEA STADIUM IS NOT APPLICABLE. [Matter of Avella v City of New York , 2017 NY Slip Op 04383, CtApp 6-6-17](#)

MUNICIPAL LAW (NYC), EMPLOYMENT LAW.

UNION FOR NURSES EMPLOYED BY NEW YORK CITY WAS ENTITLED TO INFORMATION UNDERLYING DISCIPLINARY CHARGES LODGED AGAINST THE NURSES. [Matter of City of New York v New York State Nurses Assn., 2017 NY Slip Op 04492, CtApp 6-8-17](#)

ZONING, CONSTITUTIONAL LAW.

NYC ZONING ORDINANCES CONCERNING ADULT BOOKSTORES AND CLUBS ARE CONSTITUTIONAL AND ENFORCEABLE. [For the People Theatres of N.Y. Inc. v City of New York, 2017 NY Slip Op 04385, CtApp 6-6-17](#)

FIRST DEPARTMENT

ANIMAL LAW, CIVIL PROCEDURE.

CHIMPANZEES NOT ENTITLED TO HABEAS CORPUS RELIEF. [Matter of Nonhuman Rights Project, Inc. v Lavery, 2017 NY Slip Op 04574, 1st Dept 6-8-17](#)

ARBITRATION, INSURANCE LAW.

INSURER'S MOTION TO STAY ARBITRATION SHOULD NOT HAVE BEEN DISMISSED AS UNTIMELY, RESPONDENT HAD WAIVED ARBITRATION BY STARTING LITIGATION, TIME RESTRICTIONS ON A MOTION FOR A STAY DID NOT APPLY. [Matter of Allstate Ins. Co. v Howell, 2017 NY Slip Op 04406, 1st Dept 6-6-17](#)

ATTORNEYS, PRIVILEGE.

ATTORNEY-CLIENT PRIVILEGE DID NOT APPLY TO INFORMATION ON A COMPANY OWNED COMPUTER, HOWEVER ATTORNEY WORK PRODUCT PRIVILEGE MAY APPLY. [Miller v Zara USA, Inc., 2017 NY Slip Op 04407, 1st Dept 6-6-17](#)

CIVIL PROCEDURE.

MOTION TO COMPEL DISCOVERY OF INFORMATION POSTED ON FACEBOOK SHOULD HAVE BEEN GRANTED. [Flowers v City of New York, 2017 NY Slip Op 05040, 1st Dept 6-20-17](#)

CIVIL PROCEDURE

LAWSUIT INVOLVED WITNESSES AND DOCUMENTS LOCATED IN RUSSIA, DISMISSAL BASED UPON THE DOCTRINE OF FORUM NON CONVENIENS WAS PROPER. [Norex Petroleum Ltd. v Blavatnik, 2017 NY Slip Op 05310, 1st Dept 6-29-17](#)

CONTRACT LAW, SECURITIES.

CRITERIA FOR REFORMATION, DOCTRINES OF MUTUAL MISTAKE AND NOVATION, AND THE RIGHTS OF ASSIGNEES EXPLAINED IN THIS BREACH OF CONTRACT ACTION CONCERNING THE ISSUANCE OF WARRANTS TO PURCHASE SHARES IN DEFENDANT GEOSOURCE. [Warberg Opportunistic Trading Fund L.P. v GeoResources, Inc., 2017 NY Slip Op 04537, 1st Dept 6-8-17](#)

CRIMINAL LAW.

TRIAL COURT DID NOT ABUSE ITS DISCRETION IN NOT LETTING THE POSSESSION-OF-A-BB-GUN COUNT GO TO THE JURY BECAUSE THE COUNT COULD CONFUSE THE JURY AND LEAD TO A COMPROMISE VERDICT, DEFENDANT WAS CONVICTED OF POSSESSION OF A 9 MM HANDGUN. [People v Boyd, 2017 NY Slip Op 04809, 1st Dept 6-13-17](#)

CRIMINAL LAW.

MISDEMEANOR COMPLAINT DID NOT INCLUDE FACTS DEMONSTRATING THE ARREST OF DEFENDANT'S BROTHER WAS AUTHORIZED, THEREFORE THE COMPLAINT CHARGING DEFENDANT WITH RESISTING ARREST AND OBSTRUCTING GOVERNMENTAL ADMINISTRATION WAS JURISDICTIONALLY DEFECTIVE. [People v Sumter, 2017 NY Slip Op 04897, 1st Dept 6-15-17](#)

CRIMINAL LAW.

THE TOTALITY OF THE RECORD INDICATED DEFENSE COUNSEL WAIVED THE SPEEDY TRIAL RULE, SUPREME COURT REVERSED. [People v Lewins, 2017 NY Slip Op 04908, 1st Dept 6-15-17](#)

CRIMINAL LAW.

DEFENDANT DID NOT DEMONSTRATE HE WOULD NOT HAVE PLED GUILTY HAD THE COURT WARNED HIM OF THE DEPORTATION CONSEQUENCES OF THE PLEA. [People v Corporan, 2017 NY Slip Op 05178, 1st Dept 6-27-17](#)

CRIMINAL LAW, APPEALS.

DEFENDANT EXPRESSLY DENIED THE INTENT ELEMENT OF UNLAWFUL POSSESSION OF A WEAPON DURING THE PLEA COLLOQUY, THE JUDGE DID NOT ADEQUATELY ADDRESS THE ISSUE, CONVICTION REVERSED DESPITE FAILURE TO PRESERVE THE ERROR. [People v Medina-Feliz, 2017 NY Slip Op 05053, 1st Dept 6-20-17](#)

CRIMINAL LAW, APPEALS.

THE SEARCH WAS NOT INCIDENT TO ARREST AS THE SUPPRESSION COURT RULED, CASE REMITTED FOR CONSIDERATION OF AN ALTERNATE GROUND FOR A VALID SEARCH WHICH WAS ARGUED BUT NOT RULED UPON BELOW. [People v Simmons, 2017 NY Slip Op 05179, 1st Dept 6-27-17](#)

CRIMINAL LAW, EVIDENCE.

REFERENCES TO DEFENDANT'S PRIOR COMMISSION OF A VIOLENT CRIME AND IMPRISONMENT WERE INTERTWINED WITH THE DEFENSE EVIDENCE OF DEFENDANT'S LACK OF RESPONSIBILITY DUE TO MENTAL ILLNESS, THE PROBATIVE VALUE OUTWEIGHED THE PREJUDICIAL EFFECT. [People v Sanabria, 2017 NY Slip Op 04359, 1st Dept 6-1-17](#)

CRIMINAL LAW, EVIDENCE, ATTORNEYS.

BRIEF MENTION OF AN OFFENSE FOR WHICH THE INTERROGATING DETECTIVE KNEW DEFENDANT WAS REPRESENTED BY COUNSEL TAINTED THE INTERROGATION AND REQUIRED SUPPRESSION OF THE INTERVIEW. [People v Silvagnoli, 2017 NY Slip Op 04392, 1st Dept 6-6-17](#)

EMPLOYMENT LAW, HUMAN RIGHTS LAW.

PLAINTIFF'S GENDER DISCRIMINATION SUIT SHOULD NOT HAVE BEEN DISMISSED. [Barone v Emmis Communications Corp., 2017 NY Slip Op 04787, 1st Dept 6-13-17](#)

FAMILY LAW.

MOTHER'S PETITION TO RELOCATE TO FLORIDA PROPERLY DENIED, INSUFFICIENT SHOWING THE MOVE WOULD BE IN THE BEST INTERESTS OF THE CHILD. [Matter of Salena S. v Ahmad G., 2017 NY Slip Op 05172, 1st Dept 6-22-17](#)

FRAUD, CIVIL PROCEDURE.

FACTS ALLEGED IN THE COMPLAINT INDICATE PLAINTIFFS HAD A DUTY TO INQUIRE INTO THE POSSIBLE FRAUD IN 2008, MORE THAN SIX YEARS BEFORE THE ACTION WAS BROUGHT, FRAUD-BASED CAUSES OF ACTION PROPERLY DISMISSED AS TIME-BARRED. [MBI Intl. Holdings Inc. v Barclays Bank PLC, 2017 NY Slip Op 04381, 1st Dept 6-1-17](#)

INSURANCE LAW, CIVIL PROCEDURE, LABOR LAW-CONSTRUCTION LAW.

ACTION BY PLAINTIFF'S SUBROGEE (INSURER) AGAINST DEFENDANT'S SUBROGEE (INSURER) IN THIS CONSTRUCTION ACCIDENT CASE BARRED BY COLLATERAL ESTOPPEL AND RES JUDICATA, CONCEPTS OF SUBROGATION AND PRIVITY EXPLAINED. [Nationwide Mut. Ins. Co. v U.S. Underwriters Ins. Co., 2017 NY Slip Op 04774, 1st Dept 6-13-17](#)

INSURANCE LAW, ATTORNEYS, WORKER'S COMPENSATION LAW.

INSURER WHICH OPTED NOT TO DEFEND THIS CONSTRUCTION ACCIDENT CASE WAS REQUIRED TO INDEMNIFY THE INSURERS WHICH SETTLED THE CLAIM FOR BOTH DAMAGES AND EXCESS ATTORNEYS' FEES, PLAINTIFF HIRED A MORE EXPENSIVE LAW FIRM (\$795/HR) RATHER THAN USE THE FIRM HIRED BY THE WORKERS' COMPENSATION CARRIER (\$150/HR). [Cohen Bros. Realty Corp. v RLI Ins. Co., 2017 NY Slip Op 04776, 1st Dept 6-13-17](#)

INSURANCE LAW, CONTRACT LAW.

INSURERS' RESPONSES TO INSURED'S CLAIMS UNDER THE INSURANCE CONTRACTS AMOUNTED TO A DENIAL OF LIABILITY, INSURED NOT OBLIGATED TO COOPERATE OR OBTAIN CONSENT TO SETTLE.. [J.P. Morgan Sec. Inc. v Vigilant Ins. Co., 2017 NY Slip Op 05181, 1st Dept 6-27-17](#)

INSURANCE LAW, ENVIRONMENTAL LAW.

DAMAGE TO SOIL FROM LEAD EMISSIONS AND LEAD PAINT COULD NOT BE SEPARATED, ALTHOUGH LEAD PAINT DAMAGE WAS NOT SUBJECT TO THE POLICY EXCLUSION, THE EXCLUSION FOR LEAD EMISSIONS CONTROLLED. [Matter of Midland Ins. Co., 2017 NY Slip Op 05171, 1st Dept 6-22-17](#)

LABOR LAW-CONSTRUCTION LAW.

FALL INTO AN UNGUARDED TRENCH WARRANTED SUMMARY JUDGMENT ON PLAINTIFF'S LABOR LAW 240 (1) AND 241 (6) CAUSES OF ACTION. [Gjeka v Iron Horse Transp., Inc., 2017 NY Slip Op 04536, 1st Dept 6-8-17](#)

LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF STRUCK BY A PLANK WHICH FELL OFF A SCAFFOLD, SUMMARY JUDGMENT ON PLAINTIFF'S LABOR LAW 240 (1) CAUSE OF ACTION PROPERLY GRANTED. [Gonzalez v City of New York, 2017 NY Slip Op 04555, 1st Dept 6-8-17](#)

MEDICAL MALPRACTICE, EVIDENCE, NEGLIGENCE.

EXPERT AFFIDAVIT SUFFICIENT TO RAISE A QUESTION OF FACT WHETHER THE SCHOOL NURSE'S FAILURE TO TELL PLAINTIFF TO REMOVE A CONTRACEPTIVE DEVICE WAS A PROXIMATE CAUSE OF BLOOD CLOTS AND SEVERE BRAIN DAMAGE. [Adams v Pilarte, 2017 NY Slip Op 04913, 1st Dept 6-15-17](#)

MENTAL HYGIENE LAW.

STATE'S EXPERT DID NOT ESTABLISH RESPONDENT SEX OFFENDER SHOULD BE SUBJECT TO CIVIL COMMITMENT, SUPREME COURT REVERSED. [Matter of State of New York v Howard H., 2017 NY Slip Op 05311, 1st Dept 6-29-17](#)

MUNICIPAL LAW, ANIMAL LAW, FREEDOM OF RELIGION.

THE DECISION TO ENFORCE ANIMAL CRUELTY AND OTHER LAWS AND REGULATIONS WHICH MAY PERTAIN TO THE RITUAL KILLING OF CHICKENS AS A RELIGIOUS PRACTICE IS DISCRETIONARY, THEREFORE A MANDAMUS ACTION TO ENFORCE THE LAWS DOES NOT LIE. [Alliance to End Chickens as Kaporos v New York City Police Dept., 2017 NY Slip Op 04408, 1st Dept 6-6-17](#)

MUNICIPAL LAW, NEGLIGENCE.

WHETHER THE BIG APPLE MAP PROVIDED NOTICE TO THE CITY OF THE DEFECTIVE CURB WHERE PLAINTIFF FELL WAS AN APPROPRIATE QUESTION FOR THE JURY, PLAINTIFF'S VERDICT SHOULD NOT HAVE BEEN SET ASIDE. [Foley v City of New York, 2017 NY Slip Op 04389, 1st Dept 6-6-17](#)

NEGLIGENCE.

DEFENDANT NOT ENTITLED TO SUMMARY JUDGMENT IN THIS REAR-END COLLISION CASE, DEFENDANT STOPPED SUDDENLY ON A HIGHWAY BECAUSE THE TOP OF HIS TRUCK STRUCK AN OVERHEAD BRIDGE. [Baez-Pena v MM Truck & Body Repair, Inc., 2017 NY Slip Op 04538, 1st Dept 6-8-17](#)

NEGLIGENCE.

REASONABLE EXPECTATION DOCTRINE PRECLUDED SUIT AGAINST RESTAURANT FOR CHOKING ON A ONE INCH FISH BONE. [Amiano v Greenwich Vil. Fish Co., Inc., 2017 NY Slip Op 04544, 1st Dept 6-8-17](#)

NEGLIGENCE.

QUESTION OF FACT WHETHER DEFENDANTS HAD CONSTRUCTIVE NOTICE OF A DEFECTIVE TAILGATE, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Rosada v Mendon Truck Rentals, Inc., 2017 NY Slip Op 05314, 1st Dept 6-29-17](#)

NEGLIGENCE.

CONVENIENCE STORE HAD TAKEN ADEQUATE MEASURES TO ADDRESS TRACKED IN SLUSH AND SNOW DURING A STORM, DEFENDANTS' SUMMARY JUDGMENT MOTION IN THIS SLIP AND FALL CASE WAS PROPERLY GRANTED. [O'Sullivan v 7-Eleven, Inc., 2017 NY Slip Op 05321, 1st Dept 6-29-17](#)

NEGLIGENCE, EVIDENCE, CIVIL PROCEDURE.

MOTION TO SET ASIDE THE VERDICT IN THIS SLIP AND FALL CASE SHOULD NOT HAVE BEEN GRANTED, PHOTOGRAPHS TAKEN TWO WEEKS AFTER THE ACCIDENT SHOULD NOT HAVE BEEN EXCLUDED, CONTRACT SPECIFICATIONS FOR WORK ON THE AREA OF THE FALL SHOULD NOT HAVE BEEN EXCLUDED, SUBPOENAS FOR WITNESSES WHO HAD NOT BEEN DEPOSED SHOULD NOT HAVE BEEN QUASHED. [Gonzalez v City of New York, 2017 NY Slip Op 05180, 1st Dept 6-27-17](#)

NEGLIGENCE, MUNICIPAL LAW.

AMENDMENT OF NOTICE OF CLAIM TO ALLEGE A DIFFERENT THEORY (CREATION OF THE DEFECT) IN THIS SLIP AND FALL CASE PROPERLY DENIED. [Aleksandrova v City of New York, 2017 NY Slip Op 04379, 1st Dept 6-1-17](#)

NEGLIGENCE, MUNICIPAL LAW, CIVIL PROCEDURE.

THE JURY COULD HAVE REASONABLY FOUND PLAINTIFF'S REGULAR USE OF THE UNLIGHTED SUBWAY STAIRWAY WAS NOT NEGLIGENT, PLAINTIFF'S VERDICT IN THIS SLIP AND FALL CASE SHOULD NOT HAVE BEEN SET ASIDE. [Sanchez v New York City Tr. Auth., 2017 NY Slip Op 04899, 1st Dept 6-15-17](#)

TAX LAW (NYC), MUNICIPAL LAW (NYC).

SPRINT IS NOT A UTILITY AND THEREFORE IS NOT EXEMPT FROM THE UNINCORPORATED BUSINESS INCOME TAX. [Sprint Communications Co., L.P. v City of N.Y. Dept. of Fin., 2017 NY Slip Op 05194, 1st Dept 6-27-17](#)

SECOND DEPARTMENT

CIVIL PROCEDURE.

MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN DENIED SOLELY ON THE GROUND THAT THE AFFIDAVIT OF SERVICE WAS FILED IN THE WRONG COURT. [Buist v Bromley Co., LLC, 2017 NY Slip Op 04417, 2nd Dept 6-7-17](#)

CIVIL PROCEDURE.

FURTHER LAWSUITS BETWEEN HUSBAND AND WIFE PROPERLY PROHIBITED BY THE COURT. [Lew v Sobel, 2017 NY Slip Op 05076, 2nd Dept 6-21-17](#)

CIVIL PROCEDURE.

DEFENDANTS, OPERATORS OF A VIRGINIA HOTEL WHERE PLAINTIFF WAS INJURED IN A SHOWER, DEMONSTRATED THE ABSENCE OF BUSINESS TIES TO NEW YORK, THE FACT THAT NEW YORKERS CAN MAKE RESERVATIONS THROUGH A WEBSITE IS NOT ENOUGH. [Leuthner v Homewood Suites by Hilton, 2017 NY Slip Op 05212, 2nd Dept 6-28-17](#)

CIVIL PROCEDURE, ATTORNEYS.

NOTICE OF APPEARANCE FILED ON BEHALF OF DEFENDANT BEFORE DEFENDANT WAS MADE A PARTY WAIVED ANY SUBSEQUENT LACK-OF-PERSONAL-JURISDICTION DEFENSE. [Jaramillo v Asconcio, 2017 NY Slip Op 05073, 2nd Dept 6-21-17](#)

CIVIL PROCEDURE, ATTORNEYS.

ALTHOUGH PLAINTIFF'S COUNSEL HAD NOTIFIED ALL PARTIES HE WAS NO LONGER REPRESENTING PLAINTIFF, THE PROPER PROCEDURE FOR WITHDRAWAL OF AN ATTORNEY OF RECORD HAD NOT BEEN FOLLOWED, THEREFORE THE STIPULATION OF DISCONTINUANCE SIGNED BY PLAINTIFF PRO SE WAS NOT VALID. [Garafalo v Mayoka, 2017 NY Slip Op 05201, 2nd Dept 6-28-17](#)

CIVIL PROCEDURE, CONSTITUTIONAL LAW.

ATTORNEY GENERAL PROPERLY SUBPOENAED DOCUMENTS RELEVANT TO WHETHER A NON-PROFIT WHICH COUNSELS WOMEN AGAINST TERMINATING THEIR PREGNANCIES WAS PRACTICING MEDICINE WITHOUT A LICENSE, HOWEVER THE SUBPOENA MUST BE TAILORED TO PROTECT THE RIGHT TO FREEDOM OF ASSOCIATION. [Matter of Evergreen Assn., Inc. v Schneiderman, 2017 NY Slip Op 05086, 2nd Dept 6-21-17](#)

CIVIL PROCEDURE, EVIDENCE.

INSUFFICIENT PROOF SIGNATURE ON A POWER OF ATTORNEY WAS FORGED, SUPREME COURT REVERSED. [Kanterakis v Minos Realty I, LLC, 2017 NY Slip Op 05074, 2nd Dept 6-21-17](#)

CIVIL PROCEDURE, MEDICAL MALPRACTICE, NEGLIGENCE, EVIDENCE.

SUPREME COURT IMPROPERLY, SUA SPONTE, ORDERED A FRYE HEARING AFTER WHICH THE COMPLAINT AGAINST A DOCTOR IN THIS MEDICAL MALPRACTICE ACTION WAS, SUA SPONTE, DISMISSED, SUPREME COURT IMPROPERLY USED A FRYE HEARING TO AVOID THE LAW OF THE CASE DOCTRINE. [Aguilar v Feygin, 2017 NY Slip Op 04811, 2nd Dept 6-14-17](#)

CIVIL PROCEDURE, NEGLIGENCE.

NO NEW INJURIES WERE ALLEGED, THE DOCUMENT WAS A SUPPLEMENTAL, NOT AN AMENDED, BILL OF PARTICULARS, LEAVE OF COURT NOT REQUIRED. [Khosrova v Hampton Bays Union Free Sch. Dist., 2017 NY Slip Op 05075, 2nd Dept 6-21-17](#)

CONTRACT LAW.

THIRD-PARTY BENEFICIARY OF A CONTRACT DEMONSTRATED BREACH OF CONTRACT, CRITERIA EXPLAINED, A HEARING WAS REQUIRED TO ASSESS DAMAGES; CONVERSION CAUSE OF ACTION CANNOT BE BASED UPON BREACH OF CONTRACT ALONE. [Greater Bright Light Home Care Servs., Inc. v Jeffries-El, 2017 NY Slip Op 04821, 2nd Dept 6-14-17](#)

CRIMINAL LAW, ATTORNEYS, APPEALS.

TWO OF THE COUNTS TO WHICH DEFENDANT PLED GUILTY WERE NOT SUPPORTED BY THE FACTS ALLEGED, THE ISSUE WAS NOT RAISED ON APPEAL, THEREFORE THE MOTION TO VACATE THE CONVICTION WAS PROCEDURALLY BARRED, STRONG DISSENT. [People v McKenzie, 2017 NY Slip Op 05243, 2nd Dept 6-28-17](#)

CRIMINAL LAW, JUDGES.

EXCESSIVE INTERFERENCE BY THE JUDGE DEPRIVED DEFENDANT OF A FAIR TRIAL. [People v Robinson, 2017 NY Slip Op 04473, 2nd Dept 6-7-17](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

FAILURE TO DETERMINE WHETHER DEFENDANT RECEIVED NOTICE OF THE SORA HEARING REQUIRED REVERSAL. [People v Jenkins, 2017 NY Slip Op 04869, 2nd Dept 6-14-17](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

UPWARD DEPARTMENT FROM THE PRESUMPTIVE RISK LEVEL NOT AUTHORIZED, CRITERIA EXPLAINED. [People v Cassarly, 2017 NY Slip Op 05251, 2nd Dept 6-28-17](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

SUPREME COURT DID NOT ERR IN HOLDING THE SORA HEARING IN DEFENDANT'S ABSENCE WITHOUT MAKING A DETERMINATION OF DEFENDANT'S COMPETENCE, THERE WERE CLEAR SIGNS DEFENDANT DID NOT UNDERSTAND THE PROCEEDINGS. [People v Parris, 2017 NY Slip Op 05252, 2nd Dept 6-28-17](#)

DEFAMATION.

REVIEW OF PLAINTIFF'S WORK POSTED ON YELP WAS OPINION, NOT ACTIONABLE LIBEL. [Crescendo Designs, Ltd. v Reses, 2017 NY Slip Op 05198, 2nd Dept 6-28-17](#)

EDUCATION-SCHOOL LAW.

CRITERIA FOR COURT REVIEW OF THE EXPULSION OF A STUDENT FROM A PRIVATE COLLEGE EXPLAINED. [Matter of Ibe v Pratt Inst., 2017 NY Slip Op 04443, 2nd Dept 6-7-17](#)

EDUCATION-SCHOOL LAW, NEGLIGENCE.

MOTION FOR LEAVE TO FILE A LATE NOTICE OF CLAIM SHOULD HAVE BEEN GRANTED, THE SCHOOL INVESTIGATED THE INCIDENT WITHIN 90 DAYS, PLAINTIFF IS DEVELOPMENTALLY DISABLED, THE NOTICE WAS TWO DAYS LATE. [K.A. v Wappingers Cent. Sch. Dist., 2017 NY Slip Op 04824, 2nd Dept 6-14-17](#)

EDUCATION-SCHOOL LAW, NEGLIGENCE.

LEAVE TO FILE A LATE NOTICE OF CLAIM SHOULD NOT HAVE BEEN GRANTED, NO SHOWING SCHOOL WAS AWARE OF POTENTIAL LIABILITY WITHIN 90 DAYS, NO ADEQUATE EXCUSE FOR THE DELAY, NO SHOWING SCHOOL WAS NOT PREJUDICED BY THE DELAY. [Matter of D.M. v Center Moriches Union Free Sch. Dist., 2017 NY Slip Op 05090, 2nd Dept 6-21-17](#)

EMPLOYMENT LAW, HUMAN RIGHTS LAW.

THERE WERE QUESTIONS OF FACT WHETHER THE SUPERVISORS' FAILURE TO TAKE APPROPRIATE ACTION ON COMPLAINTS OF SEXUAL DISCRIMINATION BY THE COMPANY PRESIDENT CONSTITUTED AIDING AND ABETTING DISCRIMINATION AND RETALIATION. [Ananiadis v Mediterranean Gyros Prods., Inc., 2017 NY Slip Op 05058, 1st Dept 6-21-17](#)

FAMILY LAW.

THE RECORD SUPPORTED A NEGLECT FINDING BASED UPON FATHER'S ABUSE OF MOTHER, FAMILY COURT REVERSED. [Matter of Jihad H. \(Fawaz H.\), 2017 NY Slip Op 05224, 2nd Dept 6-28-17](#)

FAMILY LAW.

SUPREME COURT IMPROPERLY AWARDED CUSTODY TO FATHER, RELIEF WHICH HAD NOT BEEN REQUESTED BY FATHER, WITHOUT A BEST INTERESTS HEARING, AFTER MOTHER ASKED TO APPEAR AT A HEARING BY TELEPHONE. [Matter of Noel v Melle, 2017 NY Slip Op 05226, 2nd Dept 6-28-17](#)

FAMILY LAW, ATTORNEYS.

FAMILY COURT DID NOT MAKE SURE APPELLANT UNDERSTOOD THE CONSEQUENCES OF PROCEEDING WITHOUT COUNSEL IN THIS ORDER OF PROTECTION MATTER, ORDER OF PROTECTION REVERSED. [Matter of Gugliara v Gugliara, 2017 NY Slip Op 04840, 2nd Dept 6-14-17](#)

FAMILY LAW, ATTORNEYS.

ATTORNEYS FEES IN EXCESS OF WHAT COURT AWARDED NOT AVAILABLE, NOT ENTITLED TO PAYMENT FOR APPELLATE WORK WITHOUT A RETAINER AGREEMENT, LETTER OF ENGAGEMENT IN MATRIMONIAL MATTERS IS MANDATORY. [Hyman & Gilbert v Withers, 2017 NY Slip Op 05072, 2nd Dept 6-21-17](#)

FAMILY LAW, ATTORNEYS.

PARTY SUBJECT TO THIS ORDER OF PROTECTION PROCEEDING DID NOT KNOWINGLY AND INTELLIGENTLY WAIVE HIS RIGHT TO COUNSEL. [Matter of Dixon v Marshall, 2017 NY Slip Op 05085, 2nd Dept 6-21-17](#)

FAMILY LAW, ATTORNEYS.

FAILURE TO APPOINT NEW COUNSEL IN THE THIS CUSTODY PROCEEDING, AFTER RELIEVING FATHER'S PRIOR COUNSEL, VIOLATED FATHER'S RIGHT TO COUNSEL. [Matter of Rosado v Badillo, 2017 NY Slip Op 05096, 2nd Dept 6-21-17](#)

FAMILY LAW, ATTORNEYS.

FATHER TOLD THE COURT HE HAD RETAINED COUNSEL BUT COUNSEL COULD NOT ATTEND THE PETITION-TO-RELOCATE HEARING THAT DAY, COURT WENT AHEAD WITH THE HEARING, FATHER DEPRIVED OF HIS STATUTORY RIGHT TO COUNSEL. [Matter of Charbonneau v Charbonneau, 2017 NY Slip Op 05221, 2nd Dept 6-28-17](#)

FAMILY LAW, CONTRACT LAW.

A HEARING IS NECESSARY TO DETERMINE WHETHER A POSTNUPTIAL AGREEMENT IS UNCONSCIONABLE, CRITERIA EXPLAINED. [Barclay v Barclay, 2017 NY Slip Op 04414, 2nd Dept 6-7-17](#)

FORECLOSURE, CIVIL PROCEDURE.

STATUTE OF LIMITATIONS STARTED TO RUN IN THE FIRST FORECLOSURE PROCEEDING WHEN THE DEBT WAS ACCELERATED, THE ELECTION TO ACCELERATE WAS NEVER REVOKED, THE INSTANT FORECLOSURE ACTION IS TIME-BARRED. [U.S. Bank N.A. v Barnett, 2017 NY Slip Op 04490, 2nd Dept 6-7-17](#)

FORECLOSURE, CIVIL PROCEDURE.

QUESTION OF FACT WHETHER WITHDRAWAL OF PRIOR FORECLOSURE PROCEEDING CONSTITUTED THE REVOCATION OF THE ELECTION TO ACCELERATE THE DEBT, THEREBY STOPPING THE RUNNING OF THE SIX-YEAR STATUTE OF LIMITATIONS. [NMNT Realty Corp. v Knoxville 2012 Trust, 2017 NY Slip Op 05230, 2nd Dept 6-28-17](#)

FORECLOSURE, EVIDENCE.

STANDING EVIDENCE DID NOT MEET THE CRITERIA FOR THE BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE, EVIDENCE THE LOAN WAS GOING TO BE USED FOR INVESTMENT PURPOSES RAISED A QUESTION OF FACT WHETHER THE RPAPL NOTICE REQUIREMENTS FOR HOME LOANS APPLIED. [Aurora Loan Servs., LLC v Komarovsky, 2017 NY Slip Op 05061, 2nd Dept 6-21-17](#)

INDIAN LAW, CONTRACT LAW, IMMUNITY.

CHOICE OF LAW PROVISIONS OF CONTRACT DID NOT CONSTITUTE AN UNAMBIGUOUS WAIVER OF SOVEREIGN IMMUNITY, THE INDIAN NATION WAS IMMUNE FROM SUIT IN THIS BREACH OF CONTRACT ACTION. [Aron Sec., Inc. v Unkechaug Indian Nation, 2017 NY Slip Op 04413, 2nd Dept 6-7-17](#)

INSURANCE LAW.

POST-DEATH INTEREST ON AN ANNUITY SHOULD NOT BE CALCULATED BY APPLYING THE INTEREST RATE AT THE TIME OF PAYMENT TO THE ENTIRE PERIOD BETWEEN THE DEATH OF THE ANNUITANT (1998) AND THE TIME OF PAYMENT (2012). [Fleischman v Transamerica Corp., 2017 NY Slip Op 05068, 2nd Dept 6-21-17](#)

INSURANCE LAW.

THE \$2,000,000 REPLACEMENT INSURANCE POLICY WAS CANCELLED FOR NON-PAYMENT JUST HOURS BEFORE PLAINTIFF WAS STRUCK BY THE INSURED'S CAR, THE FACT THAT A PREMIUM SUFFICIENT FOR THE PRIOR \$1,000,000 POLICY HAD BEEN PAID WAS OF NO CONSEQUENCE. [Garcia v Government Empls. Ins. Co., 2017 NY Slip Op 05202, 2nd Dept 6-28-17](#)

LABOR LAW-CONSTRUCTION LAW.

AFTER THE JURY HAD FOUND DEFENDANT DID NOT VIOLATE LABOR LAW 240 (1), THE APPELLATE COURT DETERMINED PLAINTIFF SHOULD HAVE BEEN GRANTED SUMMARY JUDGMENT ON HIS LABOR LAW 240 (1) CAUSE OF ACTION AT THE OUTSET, PLAINTIFF FELL FROM A LADDER WHEN THE LADDER SHIFTED. [Cano v Mid-Valley Oil Co., Inc., 2017 NY Slip Op 04419, 2nd Dept 6-7-17](#)

LABOR LAW-CONSTRUCTION LAW.

DEFENDANTS DID NOT CONTROL THE MANNER OF PLAINTIFF'S WORK AND PLAINTIFF WAS ENGAGED IN ROUTINE MAINTENANCE, NOT CONSTRUCTION. LABOR LAW 200 AND 240(1) CAUSES OF ACTION PROPERLY DISMISSED. [Kearney v Dynegy, Inc., 2017 NY Slip Op 05209, 2nd Dept 6-28-17](#)

MEDICAL MALPRACTICE, CIVIL PROCEDURE.

CAPSULE CAMERA SWALLOWED TO VISUALIZE A PATIENT'S INTESTINES IS NOT A FOREIGN OBJECT WITHIN THE MEANING OF THE STATUTE OF LIMITATIONS, THE LIMITATIONS PERIOD IS THEREFORE NOT TOLLED UNTIL DISCOVERY OF THE CAPSULE, MEDICAL MALPRACTICE ACTION TIME-BARRED. [Leace v Kohlroser, 2017 NY Slip Op 04429, 2nd Dept 6-7-17](#)

MUNICIPAL LAW, IMMUNITY, NEGLIGENCE.

COUNTY PROTECTED BY GOVERNMENTAL FUNCTION IMMUNITY, COMPLAINT ALLEGED MOTORCYCLE ACCIDENT CAUSED BY NEGLIGENT TRAFFIC CONTROL. [Farrago v County of Suffolk, 2nd Dept 6-21-17 2017 NY Slip Op 05067](#)

MUNICIPAL LAW, NEGLIGENCE.

WRITTEN NOTICE AS A PREREQUISITE FOR CITY LIABILITY APPLIES EVEN TO TRANSITORY CONDITIONS, HERE ICE ON THE SIDEWALK, SLIP AND FALL ACTION AGAINST CITY SHOULD HAVE BEEN DISMISSED. [Puzhayeva v City of New York, 2017 NY Slip Op 05107, 2nd Dept 6-21-17](#)

NEGLIGENCE.

DEFENDANT DID NOT DEMONSTRATE THE SINGLE STEP DOWN WAS OPEN AND OBVIOUS, DESPITE THE PRESENCE OF A HANDRAIL, DEFENDANT'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED IN THIS SLIP AND FALL CASE. [Ross v Bretton Woods Home Owners Assn., Inc., 2017 NY Slip Op 04482, 2nd Dept 6-7-17](#)

NEGLIGENCE.

THE SNOW REMOVAL CONTRACTOR WAS NOT LIABLE FOR PASSIVE OMISSIONS, FAILURE TO SALT ICY AREA DOES NOT CONSTITUTE THE LAUNCHING OF AN INSTRUMENT OF HARM. [Somekh v Valley Natl. Bank, 2017 NY Slip Op 04487, 2nd Dept 6-7-17](#)

NEGLIGENCE.

PLAINTIFFS, PASSENGERS IN DEFENDANT'S CAR, ENTITLED TO SUMMARY JUDGMENT IN THIS REAR-END COLLISION CASE, DESPITE DEFENDANT'S CLAIM THAT THE CAR AHEAD STOPPED SUDDENLY FOR NO REASON. [Gonzalez v Alvarez, 2017 NY Slip Op 04819, 2nd Dept 6-14-1](#)

NEGLIGENCE.

SMALL DECORATIVE LANDSCAPING STONES ON THE PARKING LOT WERE OPEN AND OBVIOUS, SLIP AND FALL COMPLAINT PROPERLY DISMISSED. [Lawrence v Darden Rests., Inc., 2017 NY Slip Op 04826, 2nd Dept 6-14-17](#)

NEGLIGENCE.

PROOF OF GENERAL CLEANING PRACTICES DID NOT DEMONSTRATE A LACK OF CONSTRUCTIVE NOTICE OF THE WATER WHERE PLAINTIFF SLIPPED AND FELL, DEFENDANT'S SUMMARY JUDGMENT MOTION PROPERLY DENIED. [Lebron v 142 S 9, LLC, 2017 NY Slip Op 04827, 2nd Dept 6-14-17](#)

NEGLIGENCE.

A GENERAL AWARENESS THAT WATER COULD COLLECT ON THE FLOOR OF THE LAUNDRY ROOM WAS INSUFFICIENT TO DEFEAT DEFENDANT'S EVIDENCE OF A LACK OF CONSTRUCTIVE NOTICE OF THE CONDITION IN THIS SLIP AND FALL CASE. [Adamson v Radford Mgt. Assoc., LLC, 2017 NY Slip Op 05057, 2nd Dept 6-21-17](#)

NEGLIGENCE.

PLAINTIFF FELL THROUGH OPEN TRAPDOOR IN LEASED PREMISES, DOOR WAS NOT DEFECTIVE, NO BASIS FOR LIABILITY OF BUILDING OWNER. [Curran v 201 W. 87th St., L.P., 2017 NY Slip Op 05064, 2nd Dept 6-21-17](#)

NEGLIGENCE.

EXPOSED TREE ROOT OVER WHICH PLAINTIFF TRIPPED AND FELL WAS OPEN AND OBVIOUS. [Commender v Strathmore Ct. Home Owners Assn., 2017 NY Slip Op 0519, 2nd Dept 6-28-17](#)

NEGLIGENCE, EVIDENCE.

PLAINTIFF BICYCLIST STRUCK FROM BEHIND, NO EVIDENCE OF PLAINTIFF'S COMPARATIVE NEGLIGENCE, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Harth v Reyes, 2017 NY Slip Op 05204, 2nd Dept 6-28-17](#)

NEGLIGENCE, EVIDENCE.

DOCTRINE OF RES IPSA LOQUITUR RAISED A QUESTION OF FACT IN THIS ESCALATOR ACCIDENT CASE. [Ramjohn v Port Auth. of N.Y. & N.J., 2017 NY Slip Op 05254, 2nd Dept 6-28-17](#)

NEGLIGENCE, MUNICIPAL LAW.

CITY DID NOT DEMONSTRATE ABSENCE OF WRITTEN NOTICE OF THE POTHOLE WHERE PLAINTIFF SLIPPED AND FELL, PROPERTY OWNER DID NOT DEMONSTRATE THE AREA WHERE PLAINTIFF FELL WAS NOT SUBJECT TO THE OWNER'S SPECIAL USE, DEFENDANTS' SUMMARY JUDGMENT MOTIONS SHOULD NOT HAVE BEEN GRANTED. [Llanos v Stark, 2017 NY Slip Op 04828, 2nd Dept 6-14-17](#)

REAL ESTATE, CONTRACT LAW.

THE EMAIL EXCHANGE IN WHICH THE PURCHASE PRICE WAS AGREED TO DID NOT SATISFY THE STATUTE OF FRAUDS, SELLER WAS FREE TO BACK OUT AND SEEK A HIGHER PRICE. [Saul v Vidokle, 2017 NY Slip Op 04485, 2nd Dept 6-7-17](#)

WORKER'S COMPENSATION LAW, NEGLIGENCE.

WORKERS' COMPENSATION BOARD'S DETERMINATION PLAINTIFF WAS ENTITLED TO BENEFITS IN THIS SLIP AND FALL CASE WAS FINAL DESPITE HER LACK OF PARTICIPATION IN THE PROCEEDINGS, PLAINTIFF CANNOT BRING A LAWSUIT, WORKERS' COMPENSATION BENEFITS ARE HER ONLY REMEDY. [Aprile-Sci v St. Raymond of Penyafort R.C. Church, 2017 NY Slip Op 04412, 2nd Dept 6-7-17](#)

ZONING, REAL PROPERTY.

CAUSES OF ACTION SEEKING TO ENFORCE A ZONING ORDINANCE AND COVENANTS IN ANOTHER'S DEED PROPERLY DISMISSED, CRITERIA EXPLAINED. [Wheeler v Del Duca, 2017 NY Slip Op 05116, 2nd Dept 6-21-17](#)

THIRD DEPARTMENT

ADMINISTRATIVE LAW, EVIDENCE.

HEARSAY CONSTITUTED SUBSTANTIAL EVIDENCE AND SUPPORTED THE ABUSE REPORT. [Matter of Cauthen v New York State Justice Ctr. for the Protection of People with Special Needs, 2017 NY Slip Op 05147, 3rd Dept 6-22-17](#)

ATTORNEYS.

IN THE FACE OF AN ALLEGATION OF CONFLICT OF INTEREST, SUPREME COURT PROPERLY ORDERED DEFENSE COUNSEL TO PROVIDE STATEMENTS FROM THE JOINTLY REPRESENTED DEFENDANTS CONSENTING TO THE REPRESENTATION. [Bynum v Camp Bisco, LLC, 2017 NY Slip Op 05143, 3rd Dept 6-22-17](#)

CIVIL PROCEDURE, MEDICAL MALPRACTICE, FREEDOM OF INFORMATION LAW (FOIL).

UNDER THE PUBLIC HEALTH LAW CERTAIN DOCUMENTS RELATED TO A HOSPITAL DEATH THAT WERE NOT PART OF A QUALITY ASSURANCE INVESTIGATION SHOULD HAVE BEEN MADE AVAILABLE TO PETITIONER. [Matter of Pasek v New York State Dept. of Health, 2017 NY Slip Op 04526, 3rd Dept 6-8-17](#)

CIVIL PROCEDURE, NEGLIGENCE, EVIDENCE.

THIRD DEPARTMENT, UNLIKE THE OTHER DEPARTMENTS, REQUIRES THE CPLR EXPERT-WITNESS NOTICE EVEN FOR A TREATING PHYSICIAN, PLAINTIFF WILL HAVE TO DECIDE IF THE DOCTOR WILL TESTIFY AS A FACT WITNESS, AN EXPERT WITNESS, OR BOTH, WITH THE CONSEQUENCES OF THE NOTICE FAILURE TO BE IMPOSED ACCORDINGLY. [Schmitt v Oneonta City Sch. Dist., 2017 NY Slip Op 04527, 3rd Dept 6-8-17](#)

COURT OF CLAIMS, CORPORATION LAW, CIVIL PROCEDURE, ATTORNEYS.

ABSENCE OF AN ATTORNEY'S SIGNATURE ON A LIMITED LIABILITY COMPANY'S NOTICE OF CLAIM WAS NOT A JURISDICTIONAL DEFECT, COURT OF CLAIMS CAN NOT GRANT EQUITABLE RELIEF WHICH IS NOT RELATED TO THE REQUESTED MONETARY RELIEF. [Hamilton Livery Leasing, LLC v State of New York, 2017 NY Slip Op 04943, 3rd Dept 6-15-17](#)

CRIMINAL LAW.

MOTION TO CONDITIONALLY SEAL RECORD OF A MISDEMEANOR DRUG CONVICTION SHOULD HAVE BEEN REVIEWED AND GRANTED. [People v Jihan Qq., 2017 NY Slip Op 04524, 3rd Dept 6-8-17](#)

CRIMINAL LAW, JUDGES.

WHEN DEFENDANT INDICATED AT SENTENCING HE WAS NOT INVOLVED IN ONE OF THE RELEVANT OFFENSES THE SENTENCING JUDGE SHOULD HAVE QUESTIONED THE DEFENDANT ABOUT WHETHER HIS WISHED TO WITHDRAW HIS PLEA, FAILURE TO DO SO REQUIRED REVERSAL. [People v Gresham, 2017 NY Slip Op 04498, 3rd Dept 6-8-17](#)

DISCIPLINARY HEARINGS (INMATES).

WITNESS TESTIMONY TAKEN OUTSIDE THE INMATE'S PRESENCE REQUIRED ANNULMENT AND EXPUNGEMENT. [Matter of Kalwasinski v Venettozzi, 2017 NY Slip Op 05139, 3rd Dept 6-22-17](#)

EDUCATION-SCHOOL LAW.

UNDER THE EDUCATION LAW, A CHARTER SCHOOL HAS THE AUTHORITY TO OVERSEE ITS OWN PRE-KINDERGARTEN PROGRAM, THERE IS NO STATUTORY AUTHORITY FOR CONTROL OF THE PROGRAM BY THE DEPARTMENT OF EDUCATION OR A SCHOOL DISTRICT. [Matter of DeVera v Elia, 2017 NY Slip Op 04522, 3rd Dept 6-8-17](#)

EDUCATION-SCHOOL LAW, EMPLOYMENT LAW.

SCHOOL DISTRICT'S UNILATERALLY CONTRACTING WITH AN OUTSIDE AGENCY FOR A PREKINDERGARTEN PROGRAM WAS NOT AN IMPROPER PRACTICE UNDER THE EDUCATION LAW (TAYLOR LAW). [Matter of Lawrence Teachers' Assn., NYSUT, AFT, NEA, AFL-CIO v New York State Pub. Relations Bd., 2017 NY Slip Op 04944, 3rd Dept 6-15-17](#)

EDUCATION-SCHOOL LAW, NEGLIGENCE.

PETITIONER SUBMITTED SUFFICIENT EVIDENCE THE SCHOOL DISTRICT WAS NOT PREJUDICED BY THE DELAY IN FILING A NOTICE OF CLAIM, THE SCHOOL DISTRICT PROVIDED NO EVIDENCE OF PREJUDICE, MOTION FOR LEAVE TO FILE A LATE NOTICE OF CLAIM SHOULD HAVE BEEN GRANTED. [Matter of Kranick v Niskayuna Cent. Sch. Dist., 2017 NY Slip Op 04529, 3rd Dept 6-8-17](#)

FAMILY LAW.

PROOF WAS SUFFICIENT TO DEMONSTRATE FATHER WOULD REMAIN MENTALLY ILL FOR THE FORESEEABLE FUTURE (DISSENT DISAGREES), PARENTAL RIGHTS PROPERLY TERMINATED. [Matter of Duane II. \(Andrew II.\), 2017 NY Slip Op 04331, 3rd Dept 6-1-17](#)

FAMILY LAW.

FATHER'S MOTION TO VACATE THE DEFAULT JUDGMENT IN THIS CUSTODY MATTER SHOULD NOT HAVE BEEN DENIED, FATHER DEMONSTRATED HE WAS ILL AND, BECAUSE CUSTODY WAS AWARDED TO A NON-PARENT IN HIS ABSENCE BASED UPON UNPROVEN ALLEGATIONS, HE HAD A MERITORIOUS DEFENSE. [Matter of Hannah MM. v Elizabeth NN., 2017 NY Slip Op 04504, 3rd Dept 6-8-17](#)

FAMILY LAW.

TERMINATION OF PARENTAL RIGHTS PROCEEDING REMITTED FOR AGE-APPROPRIATE CONSULTATION CONCERNING THREE OF THE CHILDREN TO DETERMINE THEIR WISHES. [Matter of Dawn M. \(Michael M.\), 2017 NY Slip Op 05282, 3rd Dept 6-29-17](#)

FAMILY LAW, EVIDENCE.

CHILD'S TESTIMONY ALLEGING SEXUAL ABUSE NOT CORROBORATED, SEXUAL ABUSE ADJUDICATION REVERSED. [Matter of Lee-Ann W. \(James U.\), 2017 NY Slip Op 04920, 3rd Dept 6-15-17](#)

FORECLOSURE, CONTRACT LAW.

QUESTIONS OF FACT ABOUT WHETHER DECEDENT'S WIFE IS A BORROWER WITHIN THE MEANING OF THE REVERSE MORTGAGE DOCUMENTS PRECLUDES SUMMARY JUDGMENT, IF DECEDENT'S WIFE IS A BORROWER SHE MAY REMAIN IN THE MORTGAGED PREMISES, IF NOT, FORECLOSURE CAN PROCEED. [Nationstar Mtge. LLC v Goeke, 2017 NY Slip Op 04521, 3rd Dept 6-8-17](#)

MEDICAID, ADMINISTRATIVE LAW.

CAP ON STATE MEDICAID FUNDS USED FOR ADMINISTRATIVE COSTS AND EXECUTIVE PAY PROPERLY PROMULGATED BY DEPARTMENT OF HEALTH, CAP ON EXECUTIVE PAY FROM ALL SOURCES EXCEEDED DOH'S REGULATORY AUTHORITY. [Matter of Leadingage N.Y., Inc. v Shah, 2017 NY Slip Op 05136, 3rd Dept 6-22-17](#)

MEDICAL MALPRACTICE, EVIDENCE, NEGLIGENCE.

PLAINTIFF'S EXPERT DID NOT POINT TO ANY SUBSTANTIVE DEVIATION FROM A STANDARD OF APPROPRIATE CARE BY THE PSYCHIATRIC CARE-GIVERS, AND DID NOT DEMONSTRATE EXPERTISE IN EMERGENCY MEDICINE, MEDICAL MALPRACTICE ACTION BASED UPON PLAINTIFF'S DECEDENT'S COMMITTING SUICIDE SHORTLY AFTER RELEASE FROM DEFENDANTS' CARE PROPERLY DISMISSED. [Gallagher v Cayuga Med. Ctr. 2017 NY Slip Op 04941, 3rd Dept 6-15-17](#)

MEDICAL MALPRACTICE, EVIDENCE, NEGLIGENCE.

PLAINTIFF'S EXPERT DID NOT RAISE A QUESTION OF FACT IN THIS MEDICAL MALPRACTICE ACTION. [Webb v Albany Med. Ctr., 2017 NY Slip Op 05146, 3rd Dept 6-22-17](#)

MEDICAL MALPRACTICE, NEGLIGENCE.

JUDGE'S INADEQUATE AND IMPROPER RESPONSE TO JURY QUESTIONS REQUIRED A NEW TRIAL IN THIS MEDICAL MALPRACTICE CASE, DEFENSE VERDICT REVERSED. [Meyer v Saint Francis Hosp., Poughkeepsie, N.Y., 2017 NY Slip Op 05286, 3rd Dept 6-28-17](#)

MUNICIPAL LAW.

AN OPINION SURVEY WAS PROPERLY CIRCULATED BY THE VILLAGE (CONCERNING THE POLICE DEPARTMENT), THE SURVEY WAS NOT A PROHIBITED ADVISORY REFERENDUM. [Matter of Woodburn v Village of Owego, 2017 NY Slip Op 04513, 3rd Dept 6-8-17](#)

MUNICIPAL LAW, CONSTITUTIONAL LAW, LANDLORD-TENANT.

NUISANCE LAW COULD LEAD TO EVICTION FOR REPORTING CRIMES TO THE POLICE, THE REACH OF THE LAW VIOLATED TENANTS' FIRST AMENDMENT RIGHTS AND WAS THEREFORE UNENFORCEABLE AGAINST THE LANDLORD. [Board of Trustees of The Vil. of Groton v Pirro, 2017 NY Slip Op 04938, 3rd Dept 6-5-17](#)

NEGLIGENCE, IMMUNITY.

CAUSE OF ACTION BASED UPON THE ALLEGATION THE HIGHWAY SHOULDER WAS TOO NARROW, RESULTING IN CLAIMANT'S STRIKING A DISABLED VEHICLE, PROPERLY NO-CAUSED, STATE ENTITLED TO QUALIFIED IMMUNITY. [Lake v State of New York, 2017 NY Slip Op 05142, 3rd Dept 6-22-17](#)

NEGLIGENCE, IMMUNITY, MENTAL HYGIENE LAW.

OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES (OMRDD) WAS IMMUNE FROM A NEGLIGENCE SUIT ALLEGING ABUSE OF A DISABLED RESIDENT WHILE IN THE CARE OF A COMPANY CERTIFIED BY THE OMRDD. [T.T. v State of New York, 2017 NY Slip Op 04940, 3rd Dept 6-15-17](#)

REAL PROPERTY.

NON-USE ALONE DOES NOT AMOUNT TO ABANDONMENT OF AN EASEMENT, RPAPL 1951 CANNOT BE USED TO RETROACTIVELY EXTINGUISH AN EASEMENT ON SOMEONE ELSE'S LAND. [Ferguson v Hart, 2017 NY Slip Op 04523, 3rd Dept 6-8-17](#)

UNEMPLOYMENT INSURANCE.

ALTHOUGH CLAIMANTS WERE TEMPORARY EMPLOYEES HIRED BECAUSE OF HURRICANE DAMAGE, THE EMERGENCY EXCEPTION TO UNEMPLOYMENT INSURANCE COVERAGE DID NOT APPLY, CLAIMANTS ENTITLED TO BENEFITS. [Matter of Clemons \(Village of Freeport--Commissioner of Labor\), 2017 NY Slip Op 04333, 3rd Dept 6-1-17](#)

UNEMPLOYMENT INSURANCE.

EXOTIC DANCER WAS AN EMPLOYEE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS. [Matter of Commissiong \(Jacaranda Club LLC--Commissioner of Labor\), 2017 NY Slip Op 04337, 3rd Dept 6-1-17](#)

VEHICLE AND TRAFFIC LAW.

HOLDING A GPS DEVICE WHILE DRIVING VIOLATES VEHICLE AND TRAFFIC LAW 1225-D. [Matter of Clark v New York State Dept. of Motor Vehs., 2017 NY Slip Op 05133, 3rd Dept 6-22-17](#)

WORKERS' COMPENSATION LAW.

CLAIMANT DID NOT REMOVE HIMSELF FROM EXPOSURE TO HARMFUL NOISE FOR THREE MONTHS PRIOR TO APPLYING FOR WORKERS' COMPENSATION FOR HEARING LOSS, CLAIM PROPERLY DENIED. [Matter of Durkot v Newsday, 2017 NY Slip Op 04341, 3rd Dept 6-1-17](#)

WORKER'S COMPENSATION LAW.

DIFFERENT PURPOSES OF THE TERMS LOSS OF WAGE-EARNING CAPACITY AND WAGE-EARNING CAPACITY EXPLAINED. [Matter of Perez v Bronx Lebanon Hosp. Ctr., 2017 NY Slip Op 04344, 3rd Dept 6-1-17](#)

FOURTH DEPARTMENT

CIVIL PROCEDURE.

NOTICES OF DISCONTINUANCE FILED AFTER MOTIONS TO DISMISS WERE BROUGHT, BUT BEFORE RESPONSIVE PLEADINGS, WERE TIMELY. [Harris v Ward Greenberg Heller & Reidy LLP, 2017 NY Slip Op 04970, 4th Dept 6-16-17](#)

CIVIL PROCEDURE, APPEALS.

STATUTE OF LIMITATIONS ENDED ON A SATURDAY, ACTION COMMENCED ON THE FOLLOWING BUSINESS DAY WAS TIMELY, DISMISSAL OF COMPLAINT REVERSED SUA SPONTE IN THE INTEREST OF JUSTICE. [Wilson v Exigence of Team Health, 2017 NY Slip Op 04993, 4th Dept 6-16-17](#)

CIVIL PROCEDURE, EMPLOYMENT LAW.

PLAINTIFF'S MOTION TO COMPEL POST-JUDGMENT DISCOVERY TO DETERMINE DAMAGES SHOULD HAVE BEEN GRANTED, DEFENDANTS' ANSWER HAD BEEN STRUCK FOR FAILURE TO COMPLY WITH A DISCOVERY ORDER AND A DEFAULT JUDGMENT HAD BEEN GRANTED. [ICM Controls Corp. v Morrow, 2017 NY Slip Op 05355, 4th Dept 6-30-17](#)

CIVIL PROCEDURE, MUNICIPAL LAW, NEGLIGENCE.

COUNTY LAW 308 DOES NOT PROHIBIT DISCOVERY OF 911 CALL RECORDS IN A CIVIL LAWSUIT, INCLUDING THE RECORDS OF 911 CALLS MADE BY NONPARTIES. [Abate v County of Erie, 2017 NY Slip Op 05351, 4th Dept 6-30-17](#)

CIVIL PROCEDURE, NEGLIGENCE, EVIDENCE.

ALTHOUGH DEFENDANTS SHOULD BE SANCTIONED FOR REPLACING THE STAIRS WHERE PLAINTIFF SLIPPED AND FELL, STRIKING THE ANSWER WAS TOO SEVERE, PLAINTIFF HAD PHOTOGRAPHS OF THE STAIRS AND COULD PROCEED WITH THE SUIT. [Burke v Queen of Heaven R.C. Elementary Sch., 2017 NY Slip Op 04593, 4th Dept 6-9-17](#)

CIVIL PROCEDURE, NEGLIGENCE.

THE PRESENCE OF PLAINTIFF'S REPRESENTATIVE IN AN EXAMINATION OF PLAINTIFF BY DEFENDANT'S PHYSICIAN WAS NOT WAIVED, EXCLUSION OF THE REPRESENTATIVE WARRANTED SANCTIONS. [Marriott v Cappello, 2017 NY Slip Op 04580, 4th Dept 6-9-17](#)

CONTRACT LAW.

RELEASE DID NOT ENCOMPASS A BREACH OF THE SETTLEMENT AGREEMENT ITSELF. [Marinaccio v Town of Clarence, 2017 NY Slip Op 04962, 4th Dept 6-16-17](#)

CRIMINAL LAW.

COUNTY COURT FAILED TO MAKE A YOUTHFUL OFFENDER DETERMINATION, CASE REMITTED. [People v Wilson, 2017 NY Slip Op 04985, 4th Dept 6-16-17](#)

CRIMINAL LAW.

FAILURE TO PROVIDE MEANINGFUL NOTICE OF A JURY NOTE REQUIRED REVERSAL. [People v Holloman, 2017 NY Slip Op 05015, 4th Dept 6-16-17](#)

CRIMINAL LAW.

DEFENDANT, WHO HAD BEEN RETAINED AFTER A PLEA OF NOT RESPONSIBLE BY REASON OF MENTAL DISEASE OR DEFECT, SHOULD NOT HAVE BEEN SUMMARILY RELEASED BY COUNTY COURT WITHOUT A HEARING. [Guttmacher v S.J., 2017 NY Slip Op 04968, 4th Dept 6-16-17](#)

CRIMINAL LAW.

FOR CAUSE CHALLENGE TO JUROR WHO WANTED TO HEAR FROM EVERYONE (IMPLICITLY INCLUDING THE DEFENDANT) SHOULD HAVE BEEN GRANTED, CONVICTION REVERSED. [People v Hargis, 2017 NY Slip Op 05363, 4th Dept 6-30-17](#)

CRIMINAL LAW, APPEALS.

FAILURE TO PROVIDE DEFENDANT WITH A STATEMENT OF CONVICTION REQUIRED VACATION OF HIS SENTENCE AS A SECOND FELONY OFFENDER IN THE INTEREST OF JUSTICE. [People v Edwards, 2017 NY Slip Op 04983, 4th Dept 6-16-17](#)

CRIMINAL LAW, APPEALS.

DEFENDANT WAS ERRONEOUSLY TOLD HE COULD APPEAL THE GRAND JURY EVIDENCE ISSUES AFTER ENTERING A GUILTY PLEA, HIS MOTION TO WITHDRAW HIS PLEA UPON LEARNING OF THE ERROR SHOULD HAVE BEEN GRANTED. [People v Colon, 2017 NY Slip Op 05343, 4th Dept 6-30-17](#)

CRIMINAL LAW, APPEALS.

MULTIPLICITOUS COUNTS OF SEX OFFENSE INDICTMENT DISMISSED IN THE INTEREST OF JUSTICE, THE COUNTS CHARGED SINGLE UNINTERRUPTED OFFENSES WHICH SHOULD NOT HAVE BEEN SPLIT INTO TWO COUNTS EACH. [People v Sprague, 2017 NY Slip Op 05347, 4th dept 6-30-17](#)

CRIMINAL LAW, ATTORNEYS.

PROSECUTORIAL MISCONDUCT WARRANTED A NEW TRIAL IN THE INTEREST OF JUSTICE WITHOUT ANY NEED TO EVALUATE THE EFFECT OF THE ERRORS ON THE CONVICTION. [People v Hayward-Crawford, 2017 NY Slip Op 04581, 4th Dept 6-9-17](#)

CRIMINAL LAW, EVIDENCE.

PEOPLE DID NOT DEMONSTRATE THE WARRANT WHICH WAS THE BASIS FOR DEFENDANT'S ARREST WAS VALID, THE PAT-DOWN SEARCH WAS NOT JUSTIFIED AS A SAFETY MEASURE, SEIZED DRUGS SHOULD HAVE BEEN SUPPRESSED. [People v Richards, 2017 NY Slip Op 04668, 4th Dept 6-9-17](#)

CRIMINAL LAW, EVIDENCE.

DEFENDANT'S MOTION TO VACATE HIS CONVICTION PROPERLY DENIED, EXTENSIVE DISSENT ARGUES NEWLY DISCOVERED THIRD-PARTY ADMISSIONS REQUIRE A NEW TRIAL. [People v Thibodeau, 2017 NY Slip Op 04577, 4th Dept 6-9-17](#)

CRIMINAL LAW, EVIDENCE.

DEFENDANT'S STATEMENT THAT HE HAD A HANDGUN SHOULD HAVE BEEN SUPPRESSED, HOWEVER THE HANDGUN WOULD HAVE BEEN DISCOVERED ABSENT THE STATEMENT AND WAS ADMISSIBLE, THE SUPPRESSION ERROR THEREFORE COULD NOT HAVE AFFECTED DEFENDANT'S DECISION TO PLEAD GUILTY. [People v Clanton, 2017 NY Slip Op 04579, 4th Dept 6-9-17](#)

CRIMINAL LAW, EVIDENCE.

PEOPLE PROPERLY ALLOWED TO IMPEACH THEIR OWN WITNESS, THE WITNESS'S TESTIMONY AFFIRMATIVELY DAMAGED THE PEOPLE'S CASE AND WAS NOT, AS ARGUED BY THE CONCURRING JUSTICES, MERELY NEUTRAL OR UNHELPFUL. [People v Ellison, 2017 NY Slip Op 05339, 4th Dept 6-30-17](#)

DEFAMATION, EMPLOYMENT LAW, MUNICIPAL LAW, IMMUNITY.

QUESTIONS OF FACT RAISED WHETHER DEFAMATORY STATEMENTS WERE MOTIVATED SOLELY BY MALICE, THEREBY OVERCOMING QUALIFIED IMMUNITY, AND WERE MADE WITHIN THE SCOPE OF EMPLOYMENT, THEREBY RENDERING THE EMPLOYER VICARIOUSLY LIABLE. [Stevenson v Cramer, 2017 NY Slip Op 05353, 4th Dept 6-30-17](#)

DISCIPLINARY HEARINGS (INMATES).

FAILURE TO PRESERVE AND PHOTOGRAPH THE CONTRABAND REQUIRED ANNULMENT OF THE CONTRABAND AND SMUGGLING DETERMINATIONS. [Matter of Adams v New York State Dept. of Corr. & Community Supervision, 2017 NY Slip Op 04728, 4th Dept 6-9-17](#)

FAMILY LAW.

MOTHER'S REQUEST FOR A CONTINUANCE IN THIS TERMINATION OF PARENTAL RIGHTS PROCEEDING SHOULD HAVE BEEN GRANTED. [Matter of Destiny G. \(Laricia H.\), 2017 NY Slip Op 04965, 4th Dept 6-16-17](#)

FAMILY LAW.

MOTHER'S PETITION FOR A DOWNWARD MODIFICATION OF CHILD SUPPORT SHOULD NOT HAVE BEEN DISMISSED BASED ON MOTHER'S PARAMOUR'S REFUSAL TO PROVIDE FINANCIAL DISCLOSURE. [Matter of Deshotel v Mandile, 2017 NY Slip Op 04972, 4th Dept 6-16-17](#)

FAMILY LAW.

THE RECORD DID NOT SUPPORT THE AWARD OF PRIMARY PHYSICAL CUSTODY TO MOTHER, FAMILY COURT REVERSED, ALTHOUGH THE CHILD WISHED TO STAY WITH MOTHER, THAT FACTOR WAS AFFORDED LITTLE WEIGHT DUE TO THE CHILD'S YOUNG AGE. [Matter of Braga v Bell, 2017 NY Slip Op 05348, 4th Dept 6-30-17](#)

FAMILY LAW, CIVIL RIGHTS LAW.

HEARING NECESSARY ON MOTHER'S PETITION TO CHANGE THE SURNAME OF ONE OF THE CHILDREN, MATTER REMITTED. [Matter of Niethe \(McCarthy--DePerno\), 2017 NY Slip Op 05371, 4th Dept 6-30-17](#)

FORECLOSURE, EVIDENCE.

PROOF OF STANDING DID NOT MEET CRITERIA OF THE BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE, BANK'S SUMMARY JUDGMENT MOTION SHOULD HAVE BEEN DENIED. [The Bank of N.Y. Mellon v Anderson, 2017 NY Slip Op 05349, 4th Dept 6-30-17](#)

FREEDOM OF INFORMATION LAW (FOIL).

GRAND JURY MINUTES SHOULD NOT BE RELEASED IN THIS CIVIL RIGHTS ACTION STEMMING FROM A FATAL SHOOTING BY A POLICE OFFICER. [Williams v City of Rochester, 2017 NY Slip Op 04646, 4th Dept 6-9-17](#)

INSURANCE LAW.

ALTHOUGH NO SPECIAL RELATIONSHIP EXISTED BETWEEN BROKER AND PLAINTIFF, CAUSE OF ACTION BASED UPON PLAINTIFF'S SPECIFIC REQUEST FOR FLOOD INSURANCE (WHICH WAS NOT INCLUDED IN THE POLICY) SURVIVED SUMMARY JUDGMENT. [Petri Baking Prods., Inc. v Hatch Leonard Naples, Inc., 2017 NY Slip Op 05338, 4th Dept 6-30-17](#)

INSURANCE LAW, CONTRACT LAW, LANDLORD-TENANT.

INSURER'S DISCLAIMER OF COVERAGE IN THIS SLIP AND FALL CASE IS NOT SUFFICIENT PROOF THE TENANT FAILED TO PROCURE THE INSURANCE REQUIRED BY THE LEASE, SUMMARY JUDGMENT ON THE BREACH OF CONTRACT CAUSE OF ACTION SHOULD NOT HAVE BEEN GRANTED. [Strong v St. Thomas Church of Irondequoit, 2017 NY Slip Op 05333, 4th Dept 6-30-17](#)

INSURANCE LAW, TOXIC TORTS.

INSURER HAD A DUTY TO DEFEND LAWSUIT BY RESIDENTS WHICH ALLEGED THE INSURED CONTAMINATED THE AREA WITH HAZARDOUS MATERIALS, ALTHOUGH THERE WAS AN EXCLUSION FOR DAMAGES CAUSED BY HAZARDOUS MATERIALS, THE ALLEGATION OF A MALODOROUS CONDITION WAS DEEMED NOT NECESSARILY RELATED TO HAZARDOUS MATERIALS. [Hillcrest Coatings, Inc. v Colony Ins. Co., 2017 NY Slip Op 04613, 4th Dept 6-9-17](#)

LABOR LAW-CONSTRUCTION LAW, CIVIL PROCEDURE.

SUMMARY JUDGMENT TO PLAINTIFF ON THE LABOR LAW 240 (1) CAUSE OF ACTION, BASED UPON A FALL FROM A LADDER, WAS PREMATURE AS IT WAS BASED SOLELY ON PLAINTIFF'S DEPOSITION. [Jones v Jay P. Tovey Co., Inc., 2017 NY Slip Op 05017, 4th Dept 6-16-17](#)

MENTAL HYGIENE LAW.

ALTHOUGH DEFENDANT'S STRICT AND INTENSIVE SUPERVISION AND TREATMENT (SIST) CONDITIONS WERE VIOLATED, THE VIOLATIONS PERTAINED TO DRUG USE, NOT SEXUAL MISCONDUCT, EVIDENCE LINKING DEFENDANT'S COCAINE USE TO SEXUAL AROUSAL WAS DEEMED SUFFICIENT TO WARRANT CIVIL COMMITMENT. [Matter of State of New York v William J., 2017 NY Slip Op 05335, 4th Dept 6-30-17](#)

MUNICIPAL LAW, LABOR LAW-CONSTRUCTION LAW, NEGLIGENCE.

ALTHOUGH THE TOWN HIRED PLAINTIFF TO REPAIR A VACANT HOUSE, THE TOWN WAS NOT AN OWNER OR GENERAL CONTRACTOR WITHIN THE MEANING OF THE LABOR LAW, TOWN'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED FOR THE LABOR LAW 240 (1) AND 241 (6) CAUSES OF ACTION STEMMING FROM PLAINTIFF'S FALL FROM A LADDER. [Bernier v Town of Cheektowaga, 2017 NY Slip Op 04610, 4th Dept 6-9-17](#)

MUNICIPAL LAW, NEGLIGENCE.

VILLAGE CODE DID NOT EXPLICITLY IMPOSE TORT LIABILITY FOR SIDEWALK SLIP AND FALLS ON THE ABUTTING PROPERTY OWNERS, ABUTTING PROPERTY OWNER'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Clauss v Bank of Am., N.A., 2017 NY Slip Op 04606, 4th Dept 6-9-17](#)

MUNICIPAL LAW, NEGLIGENCE.

LEAVE TO FILE LATE NOTICE OF CLAIM FOR HUSBAND'S DERIVATIVE CLAIM SHOULD HAVE BEEN GRANTED. [Matter of Darrin v County of Cattaraugus, 2017 NY Slip Op 05352, 4th Dept 6-30-17](#)

PARTNERSHIPS, CONTRACT LAW.

DEFENDANT DEMONSTRATED NO PARTNERSHIP HAD BEEN FORMED, SUMMARY JUDGMENT IN THIS ACTION ALLEGING BREACH OF A PARTNERSHIP AGREEMENT PROPERLY GRANTED. [Hammond v Smith, 2017 NY Slip Op 05337, 4th Dept 6-30-17](#)

NEGLIGENCE.

DUE TO NEGLIGENCE BY A TIRE SHOP WHICH CONCEDED LIABILITY, A WHEEL FLEW OFF DEFENDANT'S CAR AND STRUCK PLAINTIFF'S CAR, DEFENDANT-DRIVER'S CROSS MOTION FOR SUMMARY JUDGMENT PROPERLY DENIED. [Michael v Wagner, 2017 NY Slip Op 04578, 4th Dept 6-9-17](#)

NEGLIGENCE.

BANK'S MANAGER WAS AWARE OF ICE IN THE PARKING LOT, SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED, BANK DID NOT DEMONSTRATE A LACK OF CONSTRUCTIVE NOTICE. [Zazzaro v HSBC Bank USA, N.A., 2017 NY Slip Op 04607, 4th Dept 6-9-17](#)

NEGLIGENCE.

PLAINTIFF'S EVIDENCE WAS SUFFICIENT TO RAISE TRIABLE QUESTIONS OF FACT ABOUT WHETHER THE DEFECT IN THE WALKWAY WAS TRIVIAL AND WHETHER THE DEFECT CAUSED THE SLIP AND FALL. [Divens v Finger Lakes Gaming & Racing Assn., Inc., LP, 2017 NY Slip Op 04612 4th Dept 6-9-17](#)

NEGLIGENCE, CIVIL PROCEDURE.

CONCLUSORY ALLEGATIONS THAT THE LANDLORD WAS AN OWNER OF OR A PARTNER IN THE BUSINESS WHICH LEASED THE PREMISES WHERE PLAINTIFF'S DECEDENT WAS INJURED SHOULD NOT HAVE SURVIVED THE MOTION TO DISMISS. [Sager v City of Buffalo, 2017 NY Slip Op 05340, 4th Dept 6-30-17](#)

NEGLIGENCE, EVIDENCE.

QUESTION OF FACT WHETHER PLAINTIFF'S LANE CHANGE CONSTITUTED A NON-NEGLIGENT EXPLANATION FOR THIS REAR-END COLLISION, PLEA TO FOLLOWING TOO CLOSELY IS NEGLIGENCE PER SE ONLY IF THE VIOLATION IS UNEXCUSED. [Gardner v Chester, 2017 NY Slip Op 05336, 4th Dept 6-30-17](#)

REAL PROPERTY.

TITLE VESTS IN THE ADVERSE POSSESSOR AFTER TEN YEARS WITHOUT THE NEED FOR COURT ACTION, CONDUCT OF THE ADVERSE POSSESSOR TRUMPS THE POSSESSOR'S KNOWLEDGE OF A SURVEY SHOWING THE ENCROACHMENT. [Slacer v Kearney, 2017 NY Slip Op 04589, 4th Dept 6-9-17](#)

REAL PROPERTY, FORECLOSURE.

SOLAR AND WIND EASEMENTS, WHICH WERE RECORDED AFTER THE MORTGAGES, ARE SUBJECT TO FORECLOSURE. [Bank of Akron v Spring Cr. Athletic Club, Inc., 2017 NY Slip Op 05008, 4th Dept 6-16-17](#)

TOXIC TORTS, MUNICIPAL LAW, IMMUNITY, NEGLIGENCE.

CITY'S LEAD PAINT ABATEMENT PROJECT WAS A PROPRIETARY FUNCTION, CITY THEREFORE COULD BE SUED IN NEGLIGENCE FOR INEFFECTIVE ABATEMENT IN THE ABSENCE OF A SPECIAL RELATIONSHIP WITH PLAINTIFF. [Moore v Del-Rich Props., Inc., 2017 NY Slip Op 04975, 4th Dept 6-16-17](#)

VEHICLE AND TRAFFIC LAW, CONSTITUTIONAL LAW.

MOTOR VEHICLES REGULATION WHICH ALLOWS A LIFETIME DRIVING BAN TO BE IMPOSED UPON DRIVERS WITH MULTIPLE DWI CONVICTIONS IS NOT VOID FOR VAGUENESS. [Matter of Gurnsey v Sampson, 2017 NY Slip Op 05350, 4th Dept 6-30-17](#)

WORKERS' COMPENSATION LAW.

ACTION SEEKING PAYMENT OF ASSESSMENTS FOR A WORKERS' COMPENSATION LAW SELF-INSURANCE TRUST SHOULD NOT HAVE BEEN DISMISSED. [NCA Comp, Inc. v 1289 Clifford Ave., 2017 NY Slip Op 04575, 4th Dept 6-9-17](#)

ZONING.

NO SHOWING A REASONABLE RETURN ON THE PROPERTY WAS NOT POSSIBLE WITH A CONFORMING USE, USE VARIANCE SHOULD NOT HAVE BEEN GRANTED. [Leone v City of Jamestown Zoning Bd. of Appeals, 2017 NY Slip Op 04980, 4th Dept 6-16-17](#)

JULY 2017

FIRST DEPARTMENT

ARBITRATION, CONTRACT LAW, ATTORNEYS.

ARBITRATION AWARD IN DISPUTE OVER TELEVISION BROADCAST FEES FOR MAJOR LEAGUE BASEBALL PROPERLY VACATED BASED UPON COUNSEL'S CONFLICTS OF INTEREST, SECOND ARBITRATION SHOULD NOT BE MOVED TO A DIFFERENT FORUM. [Matter of TCR Sports Broadcasting Holding, LLP v WN Partner, LLC, 2017 NY Slip Op 05689, 1st Dept 7-13-17](#)

CIVIL PROCEDURE, EMPLOYMENT LAW, ARBITRATION, INSURANCE LAW.

A CLAUSE IN AN EMPLOYMENT CONTRACT PURPORTING TO WAIVE THE RIGHT TO BRING A CLASS ACTION SUIT AND SUBMIT COLLECTIVE CLAIMS TO ARBITRATION VIOLATED THE NATIONAL LABOR RELATIONS ACT AND IS UNENFORCEABLE. [Gold v New York Life Ins. Co., 2017 NY Slip Op 05695, 1st Dept 7-18-17](#)

CIVIL RIGHTS LAW (SHIELD LAW), CONSTITUTIONAL LAW, CIVIL PROCEDURE.

SHIELD LAW PROTECTS RESPONDENT FROM PRE-ACTION DISCLOSURE OF THE IDENTITIES OF THE SOURCES OF PUBLISHED INFORMATION, RESPONDENT PROVIDES INFORMATION ABOUT DEBT-DISTRESSED COMPANIES TO A SMALL GROUP OF SUBSCRIBERS WHO SIGN A CONFIDENTIALITY AGREEMENT. [Matter of Murray Energy Corp. v Reorg Research, Inc., 2017 NY Slip Op 05688, 1st Dept 7-13-17](#)

CONTRACT LAW, ATTORNEYS.

EMAIL FROM ATTORNEY CONSTITUTED A BINDING SETTLEMENT AGREEMENT, SUPREME COURT REVERSED. [Jimenez v Yanne, 2017 NY Slip Op 05677, 1st Dept 7-13-17](#)

CRIMINAL LAW.

FAILURE TO SEEK THE COURT'S PERMISSION BEFORE RE-PRESENTING THE MURDER CHARGE TO THE GRAND JURY WAS A JURISDICTIONAL DEFECT NOT SUBJECT TO A HARMLESS ERROR ANALYSIS. [People v Allen, 2017 NY Slip Op 05501, 1st Dept 7-6-17](#)

CRIMINAL LAW.

BECAUSE THE PEOPLE PROVIDED NO INFORMATION ABOUT THE CIRCUMSTANCES OF DEFENDANT'S ARREST, DEFENDANT'S ALLEGATIONS IN THE OMNIBUS MOTION WERE SUFFICIENT TO REQUIRE A PROBABLE CAUSE HEARING. [People v McUllin, 2017 NY Slip Op 05795, 1st Dept 7-25-17](#)

CRIMINAL LAW, ATTORNEYS.

DEFENDANT SHOULD HAVE BEEN GRANTED A HEARING ON HIS MOTION TO VACATE HIS CONVICTION, DEFENDANT ALLEGED COUNSEL'S ADVICE ON THE DEPORTATION CONSEQUENCES OF HIS GUILTY PLEA WAS ERRONEOUS. [People v Candel, 2017 NY Slip Op 05680, 1st Dept 7-13-17](#)

CRIMINAL LAW, EVIDENCE.

RAW DATA IN REPORT CONNECTING DEFENDANT TO DNA EVIDENCE WAS NOT TESTIMONIAL IN NATURE, THEREFORE TESTIMONY ABOUT THE COLLECTION METHODS WAS NOT REQUIRED. [People v Rodriguez, 2017 NY Slip Op 05799, 1st Dept 7-25-17](#)

DEBTOR-CREDITOR, FRAUD.

PLAINTIFF DID NOT DEMONSTRATE FRAUD CAUSE OF ACTION WOULD SUCCEED ON ITS MERITS, WARRANT OF ATTACHMENT SHOULD NOT HAVE BEEN GRANTED. [Genger v Genger, 2017 NY Slip Op 05687, 1st Dept 7-13-17](#)

LABOR LAW-CONSTRUCTION LAW.

ALTHOUGH THE BOOM TRUCK WAS 700 FEET FROM WHERE IT WAS LOADED WHEN THE BOOM STRUCK AN OVERHEAD SIGN, THE TRUCK WAS AT THE WORK SITE WITHIN THE MEANING OF THE LABOR LAW, ALTHOUGH THE INDUSTRIAL CODE PROVISION ADDRESSED THE POSITION OF THE BOOM BUT NOT THE NATURE OF THE ACCIDENT, THE PROVISION WAS BROADLY WORDED AND RAISED A QUESTION OF FACT ON THE LABOR LAW 241 (6) CAUSE OF ACTION. [James v Alpha Painting & Constr. Co., Inc., 2017 NY Slip Op 05692, 1st Dept 7-18-17](#)

LABOR LAW-CONSTRUCTION LAW.

ALTHOUGH PLAINTIFF'S LANYARD WAS UNHOOKED AT THE TIME HE FELL, THERE WAS A QUESTION OF FACT WHETHER THE SCAFFOLD PROVIDED A PROPER WAY TO TIE OFF THE LANYARD. [Giordano v Tishman Constr. Corp., 2017 NY Slip Op 05796, 1st Dept 7-25-17](#)

SECOND DEPARTMENT

ANIMAL LAW, MUNICIPAL LAW, IMMUNITY.

CITY NOT LIABLE FOR A DOG BITE AT CITY ANIMAL SHELTER. [Abrahams v City of Mount Vernon, 2017 NY Slip Op 05699, 2nd Dept 7-19-17](#)

ARBITRATION, CONTRACT LAW, CORPORATION LAW.

OFFICERS AND EMPLOYEES OF DEFENDANT CORPORATION, ALTHOUGH NON-SIGNATORIES, CAN ENFORCE THE ARBITRATION PROVISION OF THE CONTRACT BETWEEN PLAINTIFF AND THE CORPORATION. [Degraw Constr. Group, Inc. v McGowan Bldrs., Inc., 2017 NY Slip Op 05580, 2nd Dept 7-12-17](#)

CIVIL PROCEDURE, ATTORNEYS.

PETITIONER, WHO WAS ADMITTED TO THE PRISON NURSERY PROGRAM AFTER STARTING AN ARTICLE 78 PROCEEDING CONTESTING THE WITHDRAWAL OF ADMISSION, WAS NOT A PREVAILING PARTY WITHIN THE MEANING OF THE EQUAL ACCESS TO JUSTICE ACT, SHE WAS NOT, THEREFORE, ENTITLED TO ATTORNEY'S FEES. [Matter of Gonzalez v New York State Dept. of Corr. & Community Supervision, 2017 NY Slip Op 05724, 2nd Dept 7-19-17](#)

CIVIL PROCEDURE LAW, CORRECTIONS LAW, ATTORNEYS.

UNDER THE EQUAL ACCESS TO JUSTICE ACT, PETITIONER, AN INMATE WHO WAS INITIALLY DENIED ENTRY INTO A PRISON NURSERY PROGRAM FOR HER AND HER CHILD, WAS NOT ENTITLED TO ATTORNEYS' FEES FOR THE REVERSAL OF THE DENIAL. [Matter of Losurdo v New York State Dept. of Corr. & Community Supervision, 2017 NY Slip Op 05603, 2nd Dept 7-12-17](#)

CIVIL PROCEDURE, NEGLIGENCE, TOXIC TORTS.

TRIAL JUDGE'S INSTRUCTIONS TO THE JURORS AFTER THEY RETURNED AN INCONSISTENT VERDICT WERE INADEQUATE, NEW TRIAL ORDERED. [Cleveland v Djeu, 2017 NY Slip Op 05417, 2nd Dept 7-5-17](#)

CONTRACT LAW, CONDOMINIUMS.

CONDOMINIUM BOARD STATED BREACH OF CONTRACT CAUSES OF ACTION AGAINST THE FIRM WHICH INSPECTED THE CONDOMINIUMS DURING CONSTRUCTION. [Board of Mgrs. of 100 Congress Condominium v SDS Congress, LLC, 2017 NY Slip Op 05414, 2nd Dept 7-5-17](#)

CORPORATION LAW, REAL PROPERTY.

REAL PROPERTY TRANSFER BY RELIGIOUS CORPORATION INVALID, CORPORATION DID NOT SEEK COURT APPROVAL FOR THE TRANSFER. [Heights v Schwarz, 2017 NY Slip Op 05707, 2nd Dept 7-19-17](#)

COURT OF CLAIMS, TRUSTS AND ESTATES.

NOTICE OF INTENTION TO FILE A CLAIM CAN BE FILED BY ANY INTERESTED PERSON, THE NOTICE WAS NOT INVALID BECAUSE THE FILER, DECEDENT'S WIFE, WAS NOT REPRESENTING DECEDENT'S ESTATE AT THE TIME. [Matter of Dolce v State of New York, 2017 NY Slip Op 05434, 2nd Dept 7-5-17](#)

CRIMINAL LAW.

EMPANELING AN ANONYMOUS JURY VIOLATED THE CRIMINAL PROCEDURE LAW AND WAS NOT HARMLESS ERROR. [People v Flores, 2017 NY Slip Op 05457, 2nd Dept 7-5-17](#)

CRIMINAL LAW.

DEFENDANT CHARGED WITH INSURANCE FRAUD INVOLVING AIG, FOR CAUSE CHALLENGE TO JUROR WHO WORKED FOR AIG SHOULD HAVE BEEN GRANTED. [People v Guldi, 2017 NY Slip Op 05459, 2nd Dept 7-5-17](#)

CRIMINAL LAW.

JUDGE SHOULD NOT HAVE VACATED DEFENDANT'S GUILTY PLEA OVER DEFENDANT'S OBJECTION. [People v Brown, 2017 NY Slip Op 05748, 2nd Dept 7-19-17](#)

CRIMINAL LAW, EVIDENCE.

FAILURE TO INSTRUCT THE JURY ON THE NEED FOR CORROBORATION OF THE TESTIMONY OF AN ACCOMPLICE REQUIRED A NEW TRIAL. [People v Riley, 2017 NY Slip Op 05755, 2nd Dept 7-19-17](#)

CRIMINAL LAW, MENTAL HYGIENE LAW.

INSUFFICIENT PROOF DEFENDANT SUFFERED FROM A DANGEROUS MENTAL DISORDER WITHIN THE MEANING OF THE CRIMINAL PROCEDURE LAW. [Matter of Eric F., 2017 NY Slip Op 05594, 2nd Dept 7-12-1](#)

EDUCATION-SCHOOL LAW, ARBITRATION.

THE DISCIPLINE AND SUSPENSION OF STUDENTS ARE NOT ARBITRABLE TOPICS, ARBITRATION WOULD CONFLICT WITH PUBLIC POLICY AFFORDING DISCRETION TO SCHOOL DISTRICTS. [Matter of Board of Educ. of the Newburgh Enlarged City Sch. Dist. v Newburgh Teachers' Assn., 2017 NY Slip Op 05817, 2nd Dept 7-25-17](#)

FAIR HOUSING ACT, CONDOMINIUMS.

PLAINTIFF CONDOMINIUM OWNER STATED A CAUSE OF ACTION AGAINST THE CONDOMINIUM DEFENDANTS FOR VIOLATION OF THE FAIR HOUSING ACT. [Gutierrez v McGrath Mgt. Servs., Inc., 2017 NY Slip Op 05425, 2nd Dept 7-5-17](#)

FAMILY LAW.

PUTATIVE FATHER'S REQUEST FOR A DNA PATERNITY TEST SHOULD NOT HAVE BEEN DENIED. [Commissioner of Social Servs. v Dorian E.L., 2017 NY Slip Op 05590, 2nd Dept 7-12-17](#)

FAMILY LAW.

EVEN ONE INSTANCE OF EXCESSIVE CORPORAL PUNISHMENT IS SUFFICIENT TO SUPPORT A NEGLECT FINDING. [Matter of Tarelle J. \(Walter J.\), 2017 NY Slip Op 05600, 2nd Dept 7-12-17](#)

FAMILY LAW.

NO PRESUMPTION THE BEST INTERESTS OF A CHILD ARE SERVED BY PLACEMENT WITH A FAMILY MEMBER, FAMILY COURT REVERSED. [Matter of Rebecca B. v Michael B., 2017 NY Slip Op 05720, 2nd Dept 7-19-17](#)

FAMILY LAW.

AFTER MOTHER CONSENTED TO A NEGLECT FINDING AND THE CHILD WAS PLACED IN KINSHIP FOSTER CARE, MOTHER SHOULD NOT HAVE BEEN AWARDED UNSUPERVISED VISITATION WITHOUT A HEARING. [Matter of Jeanette V. \(Marina L.\), 2017 NY Slip Op 05741, 2nd Dept 7-19-17](#)

FAMILY LAW, CRIMINAL LAW, EVIDENCE.

EVIDENCE OF ACCESSORIAL LIABILITY INSUFFICIENT IN THIS JUVENILE DELINQUENCY PROCEEDING, PRESENCE IS NOT ENOUGH. [Matter of Justin M., 2017 NY Slip Op 05605, 2nd Dept 7-12-17](#)

FORECLOSURE.

BANK DID NOT COMPLY WITH THE STATUTORY NOTICE REQUIREMENTS IN THIS FORECLOSURE ACTION. [Investors Sav. Bank v Salas, 2017 NY Slip Op 05811, 2nd Dept 7-26-17](#)

FORECLOSURE, EVIDENCE.

STATUTORY NOTICE REQUIREMENTS NOT PROVEN, BANK'S SUMMARY JUDGMENT MOTION SHOULD HAVE BEEN DENIED. [M&T Bank v Joseph, 2017 NY Slip Op 05587, 2nd Dept 7-12-17](#)

FORECLOSURE, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW, EVIDENCE.

BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE NOT MET IN THIS FORECLOSURE ACTION, BANK'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED. [Deutsche Bank Natl. Trust Co. v Carlin, 2017 NY Slip Op 05421, 2nd Dept 6-5-17](#)

LABOR LAW-CONSTRUCTION LAW.

QUESTION OF FACT WHETHER PLAINTIFF WAS ENGAGED IN ROUTINE MAINTENANCE OR REPAIR COVERED BY LABOR LAW 240 (1) WHEN HE FELL FROM A LADDER. [Ferrigno v Jaghab, Jaghab & Jaghab, P.C., 2017 NY Slip Op 05709, 2nd Dept 7-19-17](#)

MENTAL HYGIENE LAW, CRIMINAL LAW.

FOR CAUSE CHALLENGE TO A JUROR IN THIS SEX-OFFENDER CIVIL COMMITMENT ACTION SHOULD HAVE BEEN GRANTED, NEW TRIAL ORDERED. [Matter of State of New York v Keith G., 2017 NY Slip Op 05444, 2nd Dept 7-5-17](#)

NEGLIGENCE.

DEFENDANTS DID NOT DEMONSTRATE THE CONFIGURATION AT THE TOP OF THE STAIRS AND THE ABSENCE OF A HANDRAIL WERE NOT DANGEROUS CONDITIONS WHICH PROXIMATELY CAUSED PLAINTIFF'S FALL, SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Lee v Acevedo, 2017 NY Slip Op 05586, 2nd Dept 7-12-17](#)

NEGLIGENCE.

DEFENDANTS PROPERLY GRANTED SUMMARY JUDGMENT UNDER THE STORM IN PROGRESS RULE IN THIS SLIP AND FALL CASE. [Bradshaw v PEL 300 Assoc., 2017 NY Slip Op 05701, 2nd Dept 7-19-17](#)

NEGLIGENCE.

DEFENDANTS DID NOT DEMONSTRATE THE RAISED BRICK WAS A TRIVIAL DEFECT OR AN OPEN AND OBVIOUS DEFECT IN THIS SLIP AND FALL CASE, SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Chojnacki v Old Westbury Gardens, Inc., 2017 NY Slip Op 05706, 2nd Dept 7-19-17](#)

NEGLIGENCE.

DEFECT WHICH CAUSED SLIP AND FALL WAS TRIVIAL AS A MATTER OF LAW. [Kavanagh v Archdiocese of the City of N.Y., 2017 NY Slip Op 05711, 2nd Dept 7-19-17](#)

NEGLIGENCE.

QUESTION OF FACT WHETHER HOMEOWNER WAS LIABLE FOR A LATENT DEFECT IN AN OUTSIDE STEP UNDER THE DOCTRINE OF RES IPSA LOQUITUR. [Marinaro v Reynolds, 2017 NY Slip Op 05714, 2nd Dept 7-19-17](#)

NEGLIGENCE.

STORM IN PROGRESS RULE DID NOT APPLY, STORM STOPPED 12 HOURS BEFORE THE SLIP AND FALL. [Morris v Home Depot USA, 2017 NY Slip Op 05717, 2nd Dept 7-19-17](#)

NEGLIGENCE.

PLAINTIFF PASSENGER'S MOTION FOR SUMMARY JUDGMENT IN THIS REAR-END COLLISION CASE SHOULD NOT HAVE BEEN GRANTED, DEFENDANT RAISED A QUESTION OF FACT ABOUT THE LEAD DRIVER'S COMPARATIVE NEGLIGENCE. [Ortiz v Welna, 2017 NY Slip Op 05744, 2nd Dept 7-19-17](#)

NEGLIGENCE.

QUESTION OF FACT WHETHER DEFENDANT DRIVER WAS COMPARATIVELY NEGLIGENT IN THIS REAR-END COLLISION CASE, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Hasan Sharif Williams v Sala, 2017 NY Slip Op 05762, 2nd Dept 7-19-17](#)

NEGLIGENCE.

QUESTION OF FACT WHETHER PROPERTY OWNER EXACERBATED OR CREATED THE DANGEROUS CONDITION IN THIS SNOW-RELATED SLIP AND FALL CASE. [Balan v Rooney, 2017 NY Slip Op 05801, 2nd Dept 7-26-17](#)

NEGLIGENCE.

PLAINTIFF DID NOT RAISE A QUESTION OF FACT ON ACTUAL OR CONSTRUCTIVE NOTICE OF THE BLACK ICE IN THIS SLIP AND FALL CASE, DEFENDANT'S SUMMARY JUDGMENT MOTION SHOULD HAVE BEEN GRANTED. [Vozzo v Fairfield Westlake Sq., LLC, 2017 NY Slip Op 05868, 2nd Dept 7-25-17](#)

NEGLIGENCE, CIVIL PROCEDURE, EVIDENCE.

QUESTION OF FACT WHETHER HOLE IN GOLF COURSE UNREASONABLY INCREASED THE INHERENT RISKS, PERSON WHO AUTHENTICATED PHOTOGRAPHS WAS NOT A NOTICE WITNESS. [MacIsaac v Nassau County, 2017 NY Slip Op 05814, 2nd Dept 7-25-17](#)

NEGLIGENCE, EVIDENCE.

THERE WAS SUFFICIENT CIRCUMSTANTIAL EVIDENCE OF THE CAUSE OF PLAINTIFF'S FALL (INADEQUATE LIGHTING), DEFENDANT'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED 2ND DEPT. [Pajovic v 94-06 34th Rd. Realty Co., LLC, 2017 NY Slip Op 05831, 2nd Dept 7-25-17](#)

NEGLIGENCE, MUNICIPAL LAW, IMMUNITY.

CITY NOT LIABLE FOR A CITY EMT'S REFUSAL TO OFFER MEDICAL ASSISTANCE TO PLAINTIFF'S DECEDENT, A RESTAURANT EMPLOYEE WHO HAD COLLAPSED WHILE THE EMT WAS IN THE RESTAURANT. [Rennix v Jackson, 2017 NY Slip Op 05471, 2nd Dept 7-5-17](#)

REAL PROPERTY.

DEVELOPMENT RIGHTS CONSTITUTE REAL PROPERTY WHICH CAN BE SOLD PURSUANT TO RPAPL 1602. [Hahn v Hagar, 2017 NY Slip Op 05710, 2nd Dept 7-19-17](#)

REAL PROPERTY, FORECLOSURE.

ERRONEOUS HUSBAND AND WIFE DESIGNATION ON THE DEED CREATED A TENANCY IN COMMON, DEFENDANT'S INTEREST IN THE PROPERTY WAS SUBJECT TO FORECLOSURE. [John T. Walsh Enters., LLC v Jordan, 2017 NY Slip Op 05813, 2nd Dept 7-25-17](#)

ZONING.

SPECIAL USE PERMIT PROPERLY GRANTED, CRITERIA FOR A SPECIAL USE PERMIT VERSUS A VARIANCE EXPLAINED. [Matter of Mamaroneck Coastal Envt. Coalition, Inc. v Board of Appeals of the Vil. of Mamaroneck, 2017 NY Slip Op 05822, 2nd Dept 7-25-17](#)

THIRD DEPARTMENT

ADMINISTRATIVE LAW, EVIDENCE.

ENTIRELY HEARSAY EVIDENCE SUPPORTED THE ADMINISTRATIVE AGENCY'S ABUSE FINDING. [Matter of Watson v New York State Justice Ctr. for The Protection of People With Special Needs, 2017 NY Slip Op 05780, 3rd Dept 7-20-17](#)

ATTORNEYS.

SMALL INFORMAL LAW FIRM PROPERLY DISQUALIFIED BECAUSE AN ASSOCIATE PREVIOUSLY REPRESENTED THE OPPOSING PARTY. [Matter of Yeomans v Gaska, 2017 NY Slip Op 05786, 3rd Dept 7-20-17](#)

CIVIL PROCEDURE.

PURSUANT TO THE PERMISSIVE COUNTERCLAIM RULE, THE DOCTRINE OF RES JUDICATA DID NOT APPLY; PRETRIAL MOTION TO DISMISS IS RARELY APPROPRIATE WITHIN THE SIMPLIFIED SMALL CLAIMS PROCEDURE. [Rackowski v Araya, 2017 NY Slip Op 05481, 3rd Dept 7-6-17](#)

CIVIL PROCEDURE.

FAILURE TO INCLUDE A RETURN DATE IN A NOTICE OF PETITION IS NO LONGER A JURISDICTIONAL DEFECT AND CAN BE CORRECTED IF THERE IS NO PREJUDICE 3RD DEPT. [Matter of Oneida Pub. Lib. Dist. v Town Bd. of The Town of Verona, 2017 NY Slip Op 05659, 3rd Dept 7-13-17](#)

CIVIL PROCEDURE.

CPLR 5003-A, WHICH MANDATES PROMPT PAYMENT OF A SETTLEMENT TO THE PLAINTIFF, DOES NOT APPLY TO PAYMENTS TO THIRD PARTIES REQUIRED BY THE SETTLEMENT AGREEMENT. [Ronkese v Tilcon N.Y., Inc., 2017 NY Slip Op 05905, 3rd Dept 7-27-17](#)

CRIMINAL LAW.

COUNTY COURT JUDGE DID NOT HAVE THE AUTHORITY TO ISSUE A VERDICT BASED UPON THE REVIEW OF THE TRANSCRIPT OF THE PRIOR NON-JURY TRIAL WHICH HAD BEEN HELD BEFORE A DIFFERENT JUDGE AND REVERSED. [People v Banks, 2017 NY Slip Op 05474, 3rd Dept 7-6-17](#)

CRIMINAL LAW.

DELAY DUE TO MOTION PRACTICE BY CO-DEFENDANTS NOT CHARGEABLE TO THE PEOPLE, DEFENDANT'S MOTION TO DISMISS FOR A SPEEDY TRIAL VIOLATION SHOULD NOT HAVE BEEN GRANTED. [People v Chrysler, 2017 NY Slip Op 05477, 3rd Dept 7-6-17](#)

CRIMINAL LAW.

NEITHER THE SUPERIOR COURT INFORMATION TO WHICH DEFENDANT PLED GUILTY NOR THE PLEA ALLOCUTION INDICATED THE TWO SEXUAL OFFENSES OCCURRED AT DIFFERENT TIMES, CONSECUTIVE SENTENCES WERE NOT AUTHORIZED. [People v Mangarillo, 2017 NY Slip Op 05872, 3rd Dept 7-27-17](#)

CRIMINAL LAW.

DESPITE THE TRAGIC CIRCUMSTANCES WHICH PRECEDED DEFENDANT'S CRIMINAL OFFENSES, COUNTY COURT DID NOT ABUSE ITS DISCRETION IN DENYING YOUTHFUL OFFENDER STATUS. [People v Strong, 2017 NY Slip Op 05876, 3rd Dept 7-27-17](#)

CRIMINAL LAW, APPEALS.

COUNTY COURT DID NOT ENSURE DEFENDANT WAS AWARE OF THE RIGHTS HE WAS GIVING UP BY PLEADING GUILTY, PLEA VACATED IN THE INTEREST OF JUSTICE. [People v Aubain, 2017 NY Slip Op 05632, 3rd Dept 7-13-17](#)

CRIMINAL LAW, ATTORNEYS.

DEFENDANT'S REQUEST TO REPRESENT HIMSELF SHOULD HAVE BEEN GRANTED, NEW TRIAL ORDERED.. [People v Curry, 2017 NY Slip Op 05475, 3rd Dept 7-6-17](#)

CRIMINAL LAW, ATTORNEYS.

MOTION TO VACATE THE CONVICTION, ALLEGING DEFENSE COUNSEL'S FAILURE TO INVESTIGATE, SHOULD NOT HAVE BEEN DENIED WITHOUT A HEARING. [People v Cruz, 2017 NY Slip Op 05476, 3rd Dept 7-6-17](#)

CRIMINAL LAW, EVIDENCE.

HATE CRIMES SHOULD NOT HAVE BEEN DISMISSED UPON A READING OF THE GRAND JURY MINUTES. [People v Spratley, 2017 NY Slip Op 05478, 3rd Dept 7-6-17](#)

CRIMINAL LAW, EVIDENCE.

INSUFFICIENT PROOF OF CRIMINAL POSSESSION OF A WEAPON UNDER AN ACCESSORIAL LIABILITY THEORY. [People v Spencer, 2017 NY Slip Op 05631, 3rd Dept 7-13-17](#)

DISCIPLINARY HEARINGS (INMATES).

RECORD DID NOT DEMONSTRATE PETITIONER KNOWINGLY WAIVED HIS RIGHT TO BE PRESENT AT THE HEARING, DETERMINATION ANNULLED AND EXPUNGED. [Matter of Micolo v Annucci, 2017 NY Slip Op 05893, 3rd Dept 7-27-17](#)

DISCIPLINARY HEARINGS (INMATES).

ALTHOUGH THE SEIZED SUBSTANCE TESTED NEGATIVE FOR MARIJUANA, THE SUPERVISOR'S STATEMENT THAT THE SUBSTANCE WAS SYNTHETIC MARIJUANA WAS SUFFICIENT SUPPORT FOR THE CONTRABAND-POSSESSION CHARGE. [Matter of King v Venettozzi, 2017 NY Slip Op 05899, 3rd Dept 7-27-17](#)

DISCIPLINARY HEARINGS (INMATES).

RAISED FIST DID NOT SUPPORT AN INTERFERENCE-WITH-AN-EMPLOYEE CHARGE. [Matter of Taylor v Lee, 2017 NY Slip Op 05903, 3rd Dept 7-27-17](#)

DISCIPLINARY HEARINGS (INMATES), CIVIL PROCEDURE.

COMMISSIONER AND CENTRAL OFFICE REVIEW COMMITTEE ARE NOT NECESSARY PARTIES FOR A REVIEW OF A DISCIPLINARY DETERMINATION. [Matter of Green v Uhler, 2017 NY Slip Op 05491, 3rd Dept 7-6-17](#)

EDUCATION-SCHOOL LAW.

SKIDMORE COLLEGE STUDENT REINSTATED AFTER EXPULSION, SCHOOL DID NOT FOLLOW ITS OWN PROCEDURES IN THE SEXUAL MISCONDUCT INVESTIGATION, SEVERELY PREJUDICING THE STUDENT. [Matter of Doe v Skidmore Coll., 2017 NY Slip Op 05654, 3rd Dept 7-13-17](#)

EMPLOYMENT LAW, CONTRACT LAW.

AN AGREEMENT TO PAY COMMISSIONS CAN BE PERFORMED IN ONE YEAR AND THEREFORE IS NOT SUBJECT TO THE STATUTE OF FRAUDS. [Kieper v The Fusco Group Partners Inc., 2017 NY Slip Op 05782, 3rd Dept 7-20-17](#)

ENVIRONMENTAL LAW.

ELECTRIC GENERATING FACILITY WHICH USES HUDSON RIVER WATER TO COOL MACHINERY AND RETURNS WARM WATER TO THE RIVER WAS PROPERLY ALLOWED TO CONTINUE OPERATION UNDER RENEWED PERMITS. [Matter of Riverkeeper, Inc. v New York State Dept. of Envtl. Conservation, 2017 NY Slip Op 05778, 3rd Dept 7-20-17](#)

FAMILY LAW.

PURSUANT TO THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC) A CHILD CAN NOT BE PLACED IN ANOTHER STATE ABSENT THAT STATE'S PERMISSION, EVEN IF PLACEMENT IS WITH A RELATIVE WITH PARENTAL CONSENT. [Matter of Dawn N. v Schenectady County Dept. of Social Servs., 2017 NY Slip Op 05482, 3rd Dept 7-6-17](#)

INSURANCE LAW.

THE PROOF OF PLAINTIFF'S CLAIM FOR LOST EARNINGS WAS INSUFFICIENT AS A MATTER OF LAW, DEFENDANT INSURER'S MOTION FOR SUMMARY JUDGMENT IN THIS NO-FAULT CASE SHOULD HAVE BEEN GRANTED. [Freligh v Government Empls. Ins. Co., 2017 NY Slip Op 05911, 3rd Dept 7-27-17](#)

INSURANCE LAW, CONTRACT LAW.

QUESTION OF FACT WHETHER PLAINTIFF WAS A RESIDENT OF THE HOME WHICH WAS DAMAGED BY FIRE WITHIN THE MEANING OF THE POLICY LANGUAGE, DESPITE PLAINTIFF'S ADMISSION SHE PRIMARILY RESIDED IN ANOTHER HOME TEN MINUTES AWAY. [Craft v New York Cent. Mut. Fire Ins. Co., 2017 NY Slip Op 05655, 3rd Dept 7-13-17](#)

LABOR LAW-CONSTRUCTION LAW.

PRIME CONTRACTOR WAS A STATUTORY AGENT OF THE OWNER, LABOR LAW 200 AND 241(6) CAUSES OF ACTION PROPERLY SURVIVED SUMMARY JUDGMENT, PLAINTIFF TRIPPED OVER EXTENSION CORDS ON THE FLOOR. [Mitchell v T. McElligott, Inc., 2017 NY Slip Op 05653, 3rd Dept 7-13-17](#)

MENTAL HYGIENE LAW, ATTORNEYS.

COUNSEL FOR A CIVILLY COMMITTED SEX OFFENDER WAS NOT ENTITLED TO ATTEND MEETINGS ABOUT APPROPRIATE TREATMENT FOR THE SEX OFFENDER. [Matter of Mental Hygiene Legal Serv. v Sullivan, 2017 NY Slip Op 05656, 3rd Dept 7-13-17](#)

NEGLIGENCE.

QUESTION OF FACT RE DEFENDANT'S COMPARATIVE FAULT IN THIS INTERSECTION COLLISION CASE, DESPITE PLAINTIFF'S PLEADING GUILTY TO FAILURE TO YIELD THE RIGHT OF WAY. [London v North, 2017 NY Slip Op 05636, 3rd Dept 7-13-17](#)

NEGLIGENCE.

PLAINTIFF'S USE OF AN AREA AS A WALKWAY WAS NOT FORESEEABLE, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT PROPERLY GRANTED. [Kirby v Summitville Fire Dist., 2017 NY Slip Op 05652, 3rd Dept 7-13-17](#)

NEGLIGENCE.

QUESTION OF FACT WHETHER THERE WAS A NONNEGLIGENT EXPLANATION FOR PLAINTIFF'S COLLIDING WITH THE REAR OF DEFENDANT'S CAR. [Bell v Brown, 2017 NY Slip Op 05898, 3rd Dept 7-27-17](#)

PRODUCTS LIABILITY, CIVIL PROCEDURE, EVIDENCE, NEGLIGENCE.

DEFENDANTS DID NOT AFFIRMATIVELY DEMONSTRATE THEIR PRODUCTS WERE NOT THE SOURCE OF ASBESTOS EXPOSURE, POINTING TO GAPS IN PLAINTIFFS' PROOF IS NOT ENOUGH, DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [O'Connor v Aerco Intl., Inc., 2017 NY Slip Op 05487, 3rd Dept 7-6-17](#)

REAL PROPERTY.

QUESTIONS OF FACT ABOUT EASEMENT BY NECESSITY CLAIM AND LOCATION OF EASEMENT APPURTENANT, SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Finster Inc. v Albin, 2017 NY Slip Op 05651, 3rd Dept 7-13-17](#)

REAL PROPERTY TAX LAW.

HOMEOWNERS REBUTTED THE PRESUMPTION THAT THE TAX ASSESSMENT OF THEIR PROPERTY WAS VALID. [Matter of Weslowski v Assessor of The City of Schenectady, 2017 NY Slip Op 05784, 3rd Dept 7-20-17](#)

TRUSTS AND ESTATES.

THE TRUST AGREEMENT INDICATED THE DECEDENT INTENDED A CHARITABLE GIFT BE MADE TO A PARTICULAR LOCAL CATHOLIC SCHOOL WHICH HAD CLOSED, NOT TO THE ROMAN CATHOLIC CHURCH WHICH HAD OPERATED THE CLOSED SCHOOL. [Matter of Gurney, 2017 NY Slip Op 05902, 3rd Dept 7-27-17](#)

UNEMPLOYMENT INSURANCE.

DESPITE CLAIMANT'S SIGNING A STIPULATION AGREEING TO RESIGN, A HOSTILE WORK ENVIRONMENT PROVIDED GOOD CAUSE FOR HER RESIGNATION. [Matter of Cohen \(Commissioner of Labor\), 2017 NY Slip Op 05885, 3rd Dept 7-27-17](#)

UTILITIES.

THE PUBLIC SERVICE COMMISSION HAS THE STATUTORY AUTHORITY TO IMPOSE RATES CHARGED FOR GAS AND ELECTRICITY BY ENERGY SERVICE COMPANIES. [Matter of Retail Energy Supply Assn. v Public Serv. Commn. of The State of New York, 2017 NY Slip Op 05908, 3rd Dept 7-27-17](#)

WORKERS' COMPENSATION LAW.

EMPLOYER DID NOT DEMONSTRATE CLAIMANT'S PREEXISTING CONDITION HINDERED HER EMPLOYABILITY, THEREFORE EMPLOYER WAS NOT ENTITLED TO REIMBURSEMENT FROM THE SPECIAL DISABILITY FUND. [Matter of Murphy v Newburgh Enlarged City Sch. Dist., 2017 NY Slip Op 05500, 3rd Dept 7-6-17](#)

WORKERS' COMPENSATION LAW.

COMPENSATION FOR CARE BY CLAIMANT'S FAMILY MEMBER MUST BE PAID TO THE CLAIMANT, NOT THE FAMILY MEMBER. [Matter of Buckner v Buckner & Kourofsky, LLP, 2017 NY Slip Op 05650, 3rd Dept, 7-13-17](#)

WORKERS' COMPENSATION LAW, CRIMINAL LAW.

EMPLOYER DID NOT SUBMIT SUFFICIENT PROOF THAT CLAIMANT RECEIVED UNREPORTED INCOME FROM THE SALE OF DRUGS, THEREFORE CLAIMANT WAS NOT DISQUALIFIED FROM RECEIVING WORKERS' COMPENSATION BENEFITS. [Matter of Pompeo v Auction Direct USA LP, 2017 NY Slip Op 05910, 3rd Dept 7-27-17](#)

FOURTH DEPARTMENT

CIVIL PROCEDURE, APPEALS.

ACTION SEEKING INJUNCTION WAS NOT STARTED WITH A SUMMONS AND COMPLAINT, COURTS DID NOT HAVE JURISDICTION OVER THE MATTER, THE PAPERS WERE NOT APPEALABLE. [Matter of Town of Cicero v Lakeshore Estates, LLC, 2017 NY Slip Op 05524, 4th Dept 7-7-1](#)

CORPORATION LAW.

COMPLAINT STATED A CAUSE OF ACTION AGAINST THE LEGAL OWNER OF A LIMITED LIABILITY COMPANY UNDER THE ALTER EGO DOCTRINE BUT NOT AGAINST AN EQUITABLE OWNER OF THE COMPANY 4TH DEPT. [Grigsby v Francabandiero, 2017 NY Slip Op 05539, 4th Dept 7-7-17](#)

CRIMINAL LAW.

A JURY'S FAILURE TO RENDER A VERDICT ON A COUNT OF AN INDICTMENT IS THE EQUIVALENT OF AN ACQUITTAL ON THAT COUNT. [People v Samuel, 2017 NY Slip Op 05542, 4th Dept 7-7-17](#)

CRIMINAL LAW.

PEOPLE'S REQUEST FOR AN ADJOURNMENT WHEN TWO DEPUTIES DID NOT SHOW UP FOR A MAPP HEARING SHOULD HAVE BEEN GRANTED 4TH DEPT. [People v Schafer, 2017 NY Slip Op 05551, 4th Dept 7-7-17](#)

CRIMINAL LAW, APPEALS.

FAILURE TO FOLLOW PROCEDURE FOR SENTENCING A SECOND FELONY OFFENDER RENDERED THE SENTENCE ILLEGAL, SENTENCE CANNOT STAND DESPITE FAILURE TO RAISE THE ISSUE ON APPEAL 4TH DEPT. [People v Mattice, 2017 NY Slip Op 05558, 4th Dept 7-7-17](#)

CRIMINAL LAW, EVIDENCE.

THE FAILURE TO PLACE THE PHOTOGRAPH WHICH WAS THE BASIS FOR THE POLICE OFFICER'S IDENTIFICATION OF THE DEFENDANT IN EVIDENCE RENDERED THE OFFICER'S IDENTIFICATION TESTIMONY UNRELIABLE, NEW TRIAL ORDERED. [People v Reeves, 2017 NY Slip Op 05526, 4th Dept 7-7-17](#)

CRIMINAL LAW, EVIDENCE.

TROOPER DID NOT HAVE A REASONABLE SUSPICION OF CRIMINAL ACTIVITY WHEN DEFENDANT WAS QUESTIONED ABOUT THE CONTENTS OF BAGS IN HIS VEHICLE, DEFENDANT'S NERVOUSNESS AND INCONSISTENT ANSWERS DID NOT JUSTIFY THE QUESTIONING, MOTION TO SUPPRESS SHOULD HAVE BEEN GRANTED. [People v Gates, 2017 NY Slip Op 05549, 4th Dept 7-7-17](#)

CRIMINAL LAW, EVIDENCE.

THE JURY'S FINDING THAT DEFENDANT'S ACTIONS IN THIS MANSLAUGHTER CASE WERE NOT JUSTIFIED WAS AGAINST THE WEIGHT OF THE EVIDENCE, CONVICTION REVERSED AND INDICTMENT DISMISSED. [People v Marchant, 2017 NY Slip Op 05918, 4th Dept 7-27-17](#)

ENVIRONMENTAL LAW, CIVIL PROCEDURE.

DEC CONTRACTORS HAD THE RIGHT TO ENTER PROPERTY TO TEST FOR GASOLINE CONTAMINATION WITHOUT SIGNING THE PROPERTY OWNER'S ACCESS AGREEMENT, BECAUSE ONLY A CHANGE IN FORM WAS REQUIRED, THE DEC'S ACTION WAS CONVERTED TO A DECLARATORY JUDGMENT ACTION. [Matter of State of New York \(Essex Prop. Mgt., LLC\), 2017 NY Slip Op 05525, 4th Dept 7-7-17](#)

ENVIRONMENTAL LAW, MUNICIPAL LAW.

LOCAL LAW WHICH CONFLICTED WITH THE STATE ENVIRONMENTAL QUALITY REVIEW ACT WAS PROPERLY DECLARED INVALID. [Miranda Holdings, Inc. v Town Bd. of Town of Orchard Park, 2017 NY Slip Op 05554, 4th Dept 7-7-17](#)

FAMILY LAW.

EVIDENCE MOTHER HAD BEEN ARRESTED FOR A DRUG OFFENSE WAS ENOUGH TO WARRANT A HEARING ON FATHER'S PETITION FOR A CUSTODY MODIFICATION 4TH DEPT. [Matter of Farner v Farner, 2017 NY Slip Op 05545, 4th Dept 7-7-17](#)

FAMILY LAW, CIVIL RIGHTS LAW.

HEARING NECESSARY ON MOTHER'S PETITION TO CHANGE THE SURNAME OF ONE OF THE CHILDREN, MATTER REMITTED. [Matter of Niethe \(McCarthy--DePerno\), 2017 NY Slip Op 05371, 4th Dept 6-30-17](#)

INSURANCE LAW, CIVIL PROCEDURE.

DATE OF LOSS MEANS THE DATE OF THE DENIAL OF THE CLAIM, NOT THE DATE OF THE EVENT TRIGGERING THE CLAIM, CAUSE OF ACTION NOT BARRED BY TWO YEAR STATUTE OF LIMITATIONS. [Lobello v New York Cent. Mut. Fire Ins. Co., 2017 NY Slip Op 05543, 4th Dept 7-7-17](#)

LABOR LAW-CONSTRUCTION LAW.

ALTHOUGH PLAINTIFF'S DECEDENT FELL FROM EITHER A LADDER OR A SCAFFOLD, THERE WAS NO EVIDENCE THE LADDER OR SCAFFOLD TIPPED OR SHIFTED, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON THE LABOR LAW 240(1) CAUSE OF ACTION SHOULD NOT HAVE BEEN GRANTED. [Hastedt v Bovis Lend Lease Holdings, Inc., 2017 NY Slip Op 05522, 4th Dept 7-7-17](#)

LANDLORD-TENANT.

BROKER WHICH NEGOTIATED A 2001 LEASE NOT ENTITLED TO COMMISSION ON THE 2011 LEASE BETWEEN THE SAME PARTIES, 2011 LEASE WAS DEEMED A NEW LEASE, NOT A RENEWAL OF THE 2001 LEASE 4TH DEPT. [Baumann Realtors, Inc. v First Columbia Century-30, LLC, 2017 NY Slip Op 05546, 4th Dept 7-7-17](#)

NEGLIGENCE.

INITIAL ACCIDENT FURNISHED A CONDITION FOR THE SUBSEQUENT ACCIDENT WHICH INJURED PLAINTIFF, BUT WAS NOT THE PROXIMATE CAUSE OF THE SUBSEQUENT ACCIDENT. [Serrano v Gilray, 2017 NY Slip Op 05523, 4th Dept 7-7-17](#)

NEGLIGENCE, IMMUNITY.

QUESTION OF FACT WHETHER THE ROAD ON WHICH PLAINTIFF WAS DRIVING HIS ATV WHEN HE WAS INJURED WAS SUITABLE FOR RECREATIONAL USE, SUMMARY JUDGMENT FINDING THE LANDOWNER WAS IMMUNE FROM SUIT UNDER THE RECREATIONAL USE IMMUNITY PROVISION OF GENERAL OBLIGATIONS LAW 9-103 SHOULD NOT HAVE BEEN GRANTED 4TH DEPT. [Cummings v Manville, 2017 NY Slip Op 05530, 4th Dept 7-7-17](#)

NEGLIGENCE, MUNICIPAL LAW, IMMUNITY.

COUNTY DID NOT DEMONSTRATE THE INSTALLATION OF A GUARD RAIL WAS PRECEDED BY A DELIBERATIVE DECISION-MAKING PROCESS, SUMMARY JUDGMENT BASED UPON QUALIFIED IMMUNITY SHOULD NOT HAVE BEEN GRANTED. [Morris v Ontario County, 2017 NY Slip Op 05533, 4th Dept 7-7-17](#)

AUGUST 2017

COURT OF APPEALS

ELECTION LAW, CIVIL PROCEDURE.

PETITION TO ADD MAYOR DE BLASIO AS A CANDIDATE PROPERLY DENIED, THE WORKING FAMILIES PARTY'S EXECUTIVE BOARD WAS A NECESSARY PARTY (CT APP). [Matter of Morgan v de Blasio, 2017 NY Slip Op 06399, CtApp 8-31-17](#)

FIRST DEPARTMENT

CIVIL PROCEDURE, CONTRACT LAW, CORPORATION LAW.

FURTHER DISCOVERY NECESSARY TO DETERMINE RELATIONSHIP BETWEEN SIGNATORIES AND NON-SIGNATORIES TO A CONTRACT WITH A FORUM SELECTION CLAUSE, IF THE RELATIONSHIP IS CLOSE ENOUGH, NON-SIGNATORIES WILL BE COVERED BY THE CLAUSE. [Universal Inv. Advisory SA v Bakrie Telecom PTE, Ltd., 2017 NY Slip Op 06344, First Dept 8-29-17](#)

CONTRACT LAW, EMPLOYMENT LAW.

FOR CAUSE FORFEITURE TERM OF DEFERRED COMPENSATION AGREEMENT NOT ELIMINATED BY A SUBSEQUENT FORM EXTENDING THE DUE DATE OF THE DEFERRED COMPENSATION. [Perella Weinberg Partners LLC v Kramer, 2017 NY Slip Op 06341, First Dept 8-29-17](#)

CONTRACT LAW, TOXIC TORTS, NEGLIGENCE.

ALTHOUGH THE ASBESTOS LIABILITY RELEASE SIGNED BY PLAINTIFF'S DECEDENT IN 1997 MENTIONED MESOTHEMIOLA, THE LANGUAGE OF THE RELEASE WAS DEEMED TO BE BOILERPLATE WHICH DID NOT PRECLUDE THE INSTANT SUIT ALLEGING DEATH FROM MESOTHEMIOLA. [Matter of New York City Asbestos Litig., 2017 NY Slip Op 06343 First Dept 8-29-17](#)

CRIMINAL LAW.

ALTHOUGH DEFENDANT WAS TOLD HE COULD RECEIVE JAIL TIME IF HE VIOLATED THE PLEA AGREEMENT, HE WAS NOT TOLD HE COULD BE SENTENCED TO STATE PRISON, PLEA VACATED. [People v Renvill, 2017 NY Slip Op 05921, First Dept 8-1-17](#)

CRIMINAL LAW.

THE PEOPLE WERE AWARE OF THEIR WITNESS'S PLANS TO VACATION OUT OF THE COUNTRY, THE WITNESS'S ABSENCE WAS NOT AN EXCEPTIONAL CIRCUMSTANCE JUSTIFYING AN EXCLUSION OF TIME UNDER THE SPEEDY TRIAL STATUTE. [People v Ricart, 2017 NY Slip Op 05922, First Dept 8-1-17](#)

CRIMINAL LAW, EVIDENCE.

ADMISSION OF BUSINESS RECORDS WITHOUT THE PROPER FOUNDATION REQUIRED REVERSAL OF THE ATTEMPTED MURDER CONVICTION. [People v Bell, 2017 NY Slip Op 05919, First Dept 8-1-17](#)

CRIMINAL LAW, EVIDENCE.

PURSUANT TO THE INDEPENDENT SOURCE RULE, THE ILLEGAL SEARCH OF DEFENDANT'S BELONGINGS AT THE HOSPITAL DID NOT TAINT THE SUBSEQUENT INVESTIGATION AND SEARCH NEAR DEFENDANT'S RESIDENCE. [People v Hill, 2017 NY Slip Op 0592, First Dept 8-1-17](#)

EMPLOYMENT LAW, HUMAN RIGHTS LAW.

ALLEGATIONS THAT PLAINTIFF WAS FIRED BECAUSE OF EMPLOYER'S WIFE'S UNFOUNDED JEALOUSY STATED CAUSES OF ACTION FOR GENDER DISCRIMINATION. [Edwards v Nicolai, 2017 NY Slip Op 06235, First Dept 8-22-17](#)

EMPLOYMENT LAW, HUMAN RIGHTS LAW, CIVIL PROCEDURE.

SEX AND DISABILITY EMPLOYMENT DISCRIMINATION COMPLAINT PROPERLY AMENDED UNDER THE RELATION BACK STATUTE WITH OTHERWISE UNTIMELY CAUSES OF ACTION ALLEGING SEXUAL ORIENTATION DISCRIMINATION. [O'Halloran v Metropolitan Transp. Auth., 2017 NY Slip Op 06237, First Dept 8-22-17](#)

FAMILY LAW.

FAMILY COURT HAD THE POWER TO RETROACTIVELY DISMISS A NEGLECT PETITION AND IMPOSE A SUSPENDED JUDGMENT AFTER MOTHER DEMONSTRATED THE ABILITY TO CARE FOR HER CHILDREN (FIRST DEPT). [Matter of Leenasia C. \(Lamarriea C.--Maxie B.\), 2017 NY Slip Op 06050, First Dept 8-8-17](#)

FAMILY LAW, EVIDENCE.

CHILD ABUSE ALLEGATIONS SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE, NO NEED TO DEMONSTRATE WHICH OF THE TWO RESPONDENTS ABUSED THE CHILD (FIRST DEPT). [Matter of Syriah J. \(Esther J.\), 2017 NY Slip Op 06048, First Dept 8-8-17](#)

LIMITED LIABILITY COMPANY LAW, CONTRACT LAW.

APPOINTMENT OF AN OUTSIDE ATTORNEY TO DETERMINE MERITS OF A DERIVATIVE SUIT NOT ALLOWED BY THE LIMITED LIABILITY COMPANY OPERATING AGREEMENTS. [LNYC Loft, LLC v Hudson Opportunity Fund I, LLC, 2017 NY Slip Op 06147, First Dept 8-15-17](#)

MEDICAL MALPRACTICE, NEGLIGENCE, CIVIL PROCEDURE.

DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN DISMISSED FOR FAILURE TO MEET 60-DAY DEADLINE IMPOSED BY A LOCAL COURT RULE, QUESTION OF FACT WHETHER THE CONTINUOUS TREATMENT DOCTRINE TOLLED THE STATUTE OF LIMITATIONS, LACK OF INFORMED CONSENT DOES NOT APPLY TO FAILURE TO DIAGNOSE. [Lewis v Rutkovsky, 2017 NY Slip Op 06342, First Dept 8-29-17](#)

SECURITIES, TRUSTS AND ESTATES, CONTRACT LAW.

ALTHOUGH THE DEFENDANT INDENTURE TRUSTEE DID NOT OWE PLAINTIFFS A FIDUCIARY DUTY, THE TRUSTEE DID OWE PLAINTIFFS A DUTY OF CARE AS DESCRIBED IN THE TRUST AGREEMENT, THE BREACH OF CONTRACT CAUSE OF ACTION SHOULD NOT HAVE BEEN DISMISSED. [NMC Residual Ownership L.L.C. v U.S. Bank N.A., 2017 NY Slip Op 05923, First Dept 8-1-17](#)

Similar issues and result in [Cece & Co. Ltd. v U.S. Bank N.A., 2017 NY Slip Op 05924, First Dept 8-1-17 \(Gische, J\)](#)

SECOND DEPARTMENT

ADMINISTRATIVE LAW, EVIDENCE.

PROCEEDING UNDER REVIEW WAS NOT QUASI-JUDICIAL, SUBSTANTIAL EVIDENCE STANDARD DID NOT APPLY (SECOND DEPT). [Matter of Manning v New York State-Unified Ct. Sys., 2017 NY Slip Op 06077, Second Dept 8-9-17](#)

ARBITRATION, EMPLOYMENT LAW, MUNICIPAL LAW.

UNION'S CLAIM MEDICAL TREATMENT FOR LINE OF DUTY INJURIES WAS BEING UNDULY DELAYED OR DENIED WAS ARBITRABLE; WHETHER THE UNDERLYING GRIEVANCE WAS TIMELY BROUGHT MUST BE DETERMINED BY THE ARBITRATOR, NOT THE COURT (SECOND DEPT). [Matter of City of Yonkers v Yonkers Fire Fighters, Local 628, IAFF, AFL-CIO, 2017 NY Slip Op 06073, Second Dept 8-9-17](#)

ATTORNEYS.

DEFENDANT ATTORNEY COULD NOT ACT AS BOTH BROKER AND ATTORNEY IN THE SALE OF A BUSINESS, RETAINER AGREEMENT UNENFORCEABLE, FEES ALREADY PAID MUST BE RETURNED. [Jay Deitz & Assoc. of Nassau County, Ltd. v Breslow & Walker, LLP, 2017 NY Slip Op 05940, Second Dept 8-2-17](#)

ATTORNEYS.

JUDICIARY LAW 487 ACTION AGAINST ATTORNEYS, ALLEGING AN INTENTION TO DECEIVE THE COURT IN A DIVORCE PROCEEDING, PROPERLY DISMISSED (SECOND DEPT). [Dupree v Voorhees, 2017 NY Slip Op 06062, Second Dept 8-9-17](#)

CIVIL PROCEDURE.

SUPREME COURT SHOULD HAVE GRANTED PLAINTIFF MORE TIME TO FILE PAPERS OPPOSING DEFENDANT'S MOTION TO DISMISS, PLAINTIFF DEMONSTRATED GOOD CAUSE FOR THE DELAY, THE LACK OF PREJUDICE AND MERITORIOUS DEFENSES. [Calderone v Molloy Coll., 2017 NY Slip Op 05932, Second Dept 8-2-17](#)

CIVIL PROCEDURE.

SIGNIFICANT GAPS IN THE STENOGRAPHIC RECORD, COUPLED WITH THE DEATH OF THE STENOGRAPHER AND THE INABILITY TO RECONSTRUCT THE RECORD, REQUIRED A NEW TRIAL. [Monaco v New York City Tr. Auth., 2017 NY Slip Op 06178, Second Dept 8-16-17](#)

CIVIL PROCEDURE.

WHEN A PRELIMINARY INJUNCTION IS GRANTED THE PLAINTIFF MUST GIVE AN UNDERTAKING. [Mobstsub, Inc. v www.staytrendy.com, 2017 NY Slip Op 06265, Second Dept 8-23-17](#)

CIVIL PROCEDURE.

CALIFORNIA STATUTE IS A PROCEDURAL STATUTE OF LIMITATIONS, NOT A SUBSTANTIVE STATUTE OF REPOSE, THEREFORE THE STATUTE WOULD NOT BE APPLIED IN A NEW YORK ACTION. [Nestor v Putney Twombly Hall & Hirson, LLP, 2017 NY Slip Op 06284, Second Dept 8-23-17](#)

CIVIL PROCEDURE.

CERTIFICATE OF READINESS WHICH INDICATED FURTHER DISCOVERY WAS NECESSARY RENDERED THE FILING OF THE NOTE OF ISSUE A NULLITY. [Rizzo v Balish & Friedman, 2017 NY Slip Op 06307, Second Dept 8-23-17](#)

CIVIL PROCEDURE.

MOTION TO EXTEND TIME FOR SERVICE SHOULD HAVE BEEN GRANTED. [Singh v Trahan, 2017 NY Slip Op 06395, Second Dept 8-30-17](#)

CIVIL PROCEDURE, ATTORNEYS.

WINNING A MOTION TO DISMISS DOES NOT TRIGGER THE AWARD OF ATTORNEY'S FEES UNDER CPLR 3220. [Saul v Cahan, 2017 NY Slip Op 06391, Second Dept 8-30-17](#)

CIVIL PROCEDURE, EVIDENCE, INSURANCE LAW.

ATTORNEY LETTERS DID NOT CONSTITUTE DOCUMENTARY EVIDENCE WHICH WOULD SUPPORT A MOTION TO DISMISS. [Fox Paine & Co., LLC v Houston Cas. Co., 2017 NY Slip Op 06162, Second Dept 8-16-17](#)

CIVIL PROCEDURE, EVIDENCE, APPEALS, REAL ESTATE.

LETTERS PURPORTING TO CONSTITUTE TIME OF THE ESSENCE NOTICE DID NOT CONSTITUTE DOCUMENTARY EVIDENCE WHICH CAN SUPPORT A MOTION TO DISMISS; ALTHOUGH NOT RAISED BELOW THE DOCUMENTARY EVIDENCE ISSUE WAS A PROPER BASIS FOR REVERSAL ON APPEAL. [Feldshteyn v Brighton Beach 2012, LLC, 2017 NY Slip Op 06160, Second Dept 8-16-17](#)

CIVIL PROCEDURE, JUDGES.

COURT SHOULD NOT HAVE ORDERED AN ACCOUNTING BEFORE DETERMINING A SUMMARY JUDGMENT MOTION, NEITHER PARTY REQUESTED AN ACCOUNTING. [Samuel Field YM & YWHA, Inc. v Irvings Roth & Rubin, PLLC, 2017 NY Slip Op 06208, Second Dept 8-16-17](#)

CIVIL PROCEDURE, LIMITED LIABILITY COMPANY LAW.

REQUIREMENTS FOR SERVICE ON AN UNAUTHORIZED FOREIGN LIMITED LIABILITY COMPANY NOT MET, DEFAULT JUDGMENT PROPERLY DENIED (SECOND DEPT). [Global Liberty Ins. Co. v Surgery Ctr. of Oradell, LLC, 2017 NY Slip Op 06065, Second Dept 8-9-17](#)

CIVIL PROCEDURE, SECURITIES, COOPERATIVES.

DECLARATORY JUDGMENT ACTION SEEKING A DETERMINATION OF THE OWNERSHIP OF A STOCK CERTIFICATE REPRESENTING SHARES IN A COOPERATIVE APARTMENT IS GOVERNED BY A THREE-YEAR STATUTE OF LIMITATIONS, THE STOCK CERTIFICATE IS PERSONAL NOT REAL PROPERTY (SECOND DEPT). [Loscalzo v 507-509 President St. Tenants Assn. Hous. Dev. Fund Corp., 2017 NY Slip Op 06070, Second Dept 8-9-17](#)

CIVIL PROCEDURE, TRUSTS AND ESTATES, ATTORNEYS.

DECEASED PLAINTIFF'S LAWSUIT DISMISSED FOR FAILURE TO TIMELY SUBSTITUTE A REPRESENTATIVE OF PLAINTIFF'S ESTATE (SECOND DEPT). [Howlader v Lucky Star Grocery, Inc., 2017 NY Slip Op 06067, Second Dept 8-9-17](#)

CONTRACT LAW, CIVIL PROCEDURE, EVIDENCE.

IN THE FACE OF A COMPLETE WRITTEN AGREEMENT, EVIDENCE OF A RELATED ORAL AGREEMENT SHOULD NOT HAVE BEEN CONSIDERED, DEFENDANT'S MOTION TO DISMISS FOUNDED UPON DOCUMENTARY EVIDENCE (THE WRITTEN AGREEMENT) SHOULD HAVE BEEN GRANTED (SECOND DEPT). [Hoeg Corp. v Peebles Corp., 2017 NY Slip Op 06066, Second Dept 8-9-17](#)

CONTRACT LAW, PUBLIC HEALTH LAW.

HEALTH SERVICES PROVIDERS' COMPLAINT AGAINST HEALTH PLAN STATED CAUSES OF ACTION FOR BREACH OF AN IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING AND VIOLATION OF PUBLIC HEALTH LAW 4406-D. [Ahmed Elkoulily, M.D., P.C. v New York State Catholic Healthplan, Inc., 2017 NY Slip Op 06242, Second Dept 8-23-17](#)

CRIMINAL LAW.

IN SENTENCING DEFENDANT, SUPREME COURT ERRONEOUSLY CONSIDERED A CRIME OF WHICH DEFENDANT WAS ACQUITTED; PEOPLE DID NOT DEMONSTRATE UNDERLYING FACTS OF THE ASSAULT AND ROBBERY CONVICTIONS WERE DIFFERENT, SENTENCES MUST RUN CONCURRENTLY (SECOND DEPT). [People v Newman, 2017 NY Slip Op 06086, Second Dept 8-9-17](#)

CRIMINAL LAW.

PROSECUTOR'S REASONS FOR STRIKING TWO BLACK PROSPECTIVE JURORS WERE PRETEXTUAL, NEW TRIAL ORDERED. [People v Brown, 2017 NY Slip Op 06289, Second Dept 8-23-17](#)

CRIMINAL LAW.

CONFUSION ABOUT THE EFFECT OF FINDING THE DEFENDANT NOT GUILTY BY VIRTUE OF THE JUSTIFICATION DEFENSE REQUIRED A NEW TRIAL, IF THE JUSTIFICATION DEFENSE APPLIES TO A HIGHER COUNT THERE CAN BE NO FURTHER CONSIDERATION OF ANY LESSER COUNT. [People v Braithwaite, 2017 NY Slip Op 06369, Second Dept 8-30-17](#)

CRIMINAL LAW, APPEALS.

DEFENDANT WAS NOT GIVEN THE OPPORTUNITY TO OBJECT TO THE PROCEDURE RE AN ALLEGED VIOLATION OF PROBATION AND DID NOT WAIVE HIS RIGHT TO A HEARING, APPELLATE REVIEW APPROPRIATE IN THE ABSENCE OF PRESERVATION. [People v Montenegro, 2017 NY Slip Op 05973, Second Dept 8-2-17](#)

CRIMINAL LAW, APPEALS.

FAILURE TO FOLLOW O'RAMA PROCEDURE FOR JURY NOTES REQUIRED REVERSAL, MODE OF PROCEEDINGS ERROR DID NOT REQUIRE PRESERVATION. [People v Webster, 2017 NY Slip Op 06198, Second Dept 8-16-17](#)

CRIMINAL LAW, ATTORNEYS.

PEOPLE WERE UNABLE TO DEMONSTRATE WITNESS'S REFUSAL TO TESTIFY WAS THE RESULT OF DEFENDANT'S THREATS, NEW TRIAL ORDERED; DEFENSE COUNSEL'S REQUEST TO BE RELIEVED REQUIRED FURTHER INQUIRY BY THE COURT. [People v Middleton, 2017 NY Slip Op 06378, Second Dept 8-30-17](#)

CRIMINAL LAW, EVIDENCE.

ADMISSION OF DNA EVIDENCE WITHOUT THE TESTIMONY OF THE ANALYST VIOLATED THE CONFRONTATION CLAUSE, BUT WAS HARMLESS ERROR IN THIS CASE. [People v Tsintzelis, 2017 NY Slip Op 05980, Second Dept 8-2-17](#)

CRIMINAL LAW, EVIDENCE.

ADMISSION OF A CHART SHOWING THE STRUCTURE AND MEMBERSHIP OF A GANG WAS (HARMLESS) ERROR (SECOND DEPT). [People v Burkette, 2017 NY Slip Op 06082, Second Dept 8-9-17](#)

CRIMINAL LAW, EVIDENCE.

(HARMLESS) ERROR TO ALLOW DETECTIVE TO TESTIFY AS AN EXPERT ABOUT THE STRUCTURE OF THE GANG AND THE RELATIONSHIPS AMONG SPECIFIC MEMBERS, (HARMLESS) ERROR TO ALLOW IN EVIDENCE A CHART DESCRIBING THE STRUCTURE AND MEMBERSHIP OF THE GANG (SECOND DEPT). [People v Vazquez, 2017 NY Slip Op 06092, Second Dept 8-9-17](#)

CRIMINAL LAW, EVIDENCE.

DEFENDANT'S STATEMENT PROVIDING THE COMBINATION TO A SAFE TO SEARCHING PAROLE OFFICERS, AS WELL AS THE FIREARMS FOUND IN THE SAFE, SHOULD HAVE BEEN SUPPRESSED. [People v Blacks, 2017 NY Slip Op 06186, Second Dept 8-16-17](#)

CRIMINAL LAW, EVIDENCE.

FIREARMS FOUND IN THE PARTIALLY CLOSED CENTER CONSOLE OF A VEHICLE PROPERLY SUPPRESSED, DEFENDANTS WERE OUT OF THE VEHICLE AND HANDCUFFED WHEN THE CONSOLE WAS SEARCHED. [People v Morris, 2017 NY Slip Op 06194, Second Dept 8-16-17](#)

CRIMINAL LAW, EVIDENCE.

TRIAL COURT SHOULD NOT HAVE RULED DEFENDANT COULD BE CROSS-EXAMINED ABOUT A PRIOR SIMILAR STABBING OF THE SAME VICTIM IF THE DEFENDANT CHOSE TO TESTIFY, NEW TRIAL ORDERED. [People v Ridenhour, 2017 NY Slip Op 06383, Second Dept 8-30-17](#)

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

PROOF DID NOT JUSTIFY ASSESSMENT FOR DRUG AND ALCOHOL USE, RISK LEVEL REDUCED IN THE INTEREST OF JUSTICE. [People v Madison, 2017 NY Slip Op 06200, Second Dept 8-16-17](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

THEFT DID NOT WARRANT UPWARD DEPARTURE FROM PRESUMPTIVE RISK LEVEL. [People v Garcia, 2017 NY Slip Op 06199, Second Dept 8-16-17](#)

DEFAMATION, PRIVILEGE, EVIDENCE.

COMMON-INTEREST PRIVILEGE OVERCOME BY ALLEGATIONS OF MALICE, NO NEED FOR FACTUAL EVIDENCE OF MALICE AT THE MOTION TO DISMISS STAGE. [Ferrara v Bank, 2017 NY Slip Op 06161, Second Dept 8-16-17](#)

EDUCATION-SCHOOL LAW.

LAW STUDENT FAILED TO COMPLY WITH SCHOOL RULES FOR MISSING EXAMS DUE TO ILLNESS, FAILING GRADES ALLOWED TO STAND. [Matter of Daniel v Brooklyn Law Sch., 2017 NY Slip Op 06181, Second Dept 8-16-17](#)

ELECTION LAW.

DESIGNATING PETITION SHOULD HAVE BEEN INVALIDATED, OFFICE SOUGHT NOT SUFFICIENTLY DESCRIBED. [Matter of Bragman v Larsen, 2017 NY Slip Op 06267, Second Dept 8-23-17](#)

ELECTION LAW.

PROCEEDING TO VALIDATE A DESIGNATING PETITION SHOULD HAVE BEEN DISMISSED AS UNTIMELY. [Matter of DeStefano v Borkowski, 2017 NY Slip Op 06269, Second Dept 8-23-17](#)

ELECTION LAW.

USE OF SIGNERS' POST OFFICE BOX ADDRESSES ON THE DESIGNATING PETITION WAS PROPER. [Matter of Giordano v Westchester County Bd. of Elections, 2017 NY Slip Op 06272, Second Dept 8-23-17](#)

ELECTION LAW.

AGGRIEVED CANDIDATE NOT BOUND BY STATUTORY DEADLINES FOR FILING OF OBJECTIONS TO DESIGNATING PETITIONS, RESPONDENT HAD ADEQUATE NOTICE OF THE OBJECTIONS, SUPREME COURT SHOULD NOT HAVE DEEMED THE OBJECTIONS UNTIMELY. [Matter of Lancaster v Nicolas, 2017 NY Slip Op 06275, Second Dept 8-23-17](#)

ENVIRONMENTAL LAW, MUNICIPAL LAW.

PETITIONERS CLOSE TO THE PROPOSED GAS STATION HAD STANDING TO CONTEST THE BOARD'S SEQRA RULING APPROVING CONSTRUCTION, SUPREME COURT PROPERLY FOUND THE BOARD'S APPROVAL WAS IMPROPER UNDER SEQRA. [Matter of Green Earth Farms Rockland, LLC v Town of Haverstraw Planning Bd., 2017 NY Slip Op 06273, Second Dept 8-23-17](#)

FAMILY LAW.

CHILD WAS ENTITLED TO A FINDING THAT REUNIFICATION WITH HIS MOTHER IN EL SALVADOR WAS NOT VIABLE DUE TO PARENTAL NEGLECT (SECOND DEPT). [Matter of Dennis X.G.D.V., 2017 NY Slip Op 06080, Second Dept 8-9-17](#)

FAMILY LAW, CONSTITUTIONAL LAW, RELIGION.

RELIGIOUS LIFESTYLE RESTRICTIONS PLACED UPON MOTHER VIOLATED HER CONSTITUTIONAL RIGHTS, FATHER'S DESIRE TO RAISE AND EDUCATE THE CHILDREN IN THE HASIDIC TRADITION WAS IN THE CHILDREN'S BEST INTERESTS. [Weisberger v Weisberger, 2017 NY Slip Op 06212, Second Dept 8-16-17](#)

FORECLOSURE.

BANK DID NOT DEMONSTRATE COMPLIANCE WITH REAL PROPERTY ACTIONS AND PROCEEDINGS LAW, SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED IN THIS FORECLOSURE PROCEEDING. [Wells Fargo Bank, N.A. v Lewczuk, 2017 NY Slip Op 06318, Second Dept 8-23-17](#)

FORECLOSURE, CIVIL PROCEDURE, ATTORNEYS.

LAW OFFICE CONFUSION NOT A SUFFICIENT EXCUSE FOR BANK ATTORNEY'S FAILURE TO ATTEND A SETTLEMENT CONFERENCE, DEFAULT JUDGMENT DISMISSING THE COMPLAINT SHOULD NOT HAVE BEEN VACATED. [OneWest Bank, FSB v Singer, 2017 NY Slip Op 06184, Second Dept 8-16-17](#)

FORECLOSURE, CIVIL PROCEDURE, EVIDENCE.

DEFAULT JUDGMENT DISCHARGING THE MORTGAGE SHOULD HAVE BEEN GRANTED, THE SIX YEAR STATUTE OF LIMITATIONS FOR FORECLOSURE STARTED WHEN THE DEBT WAS ACCELERATED BY THE FORECLOSURE ACTION WHICH WAS ULTIMATELY DISMISSED. [53 PL Realty, LLC v US Bank N.A., 2017 NY Slip Op 06345, Second Dept 8-30-17](#)

FORECLOSURE, EVIDENCE.

PLAINTIFF MORTGAGE SERVICER DID NOT MEET THE REQUIREMENTS OF THE BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE TO DEMONSTRATE STANDING AND DID NOT SUBMIT PROOF IT HAD BEEN DELEGATED THE AUTHORITY TO FORECLOSE, SUMMARY JUDGMENT PROPERLY DENIED. [21st Mtge. Corp. v Adames, 2017 NY Slip Op 05925, Second Dept 8-2-17](#)

FORECLOSURE, EVIDENCE.

PLAINTIFF BANK FAILED TO MEET THE CRITERIA FOR THE BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE TO DEMONSTRATE STANDING, SUMMARY JUDGMENT SHOULD HAVE BEEN DENIED. [Wells Fargo Bank, N.A. v Talley, 2017 NY Slip Op 05996, Second Dept 8-2-17](#)

INSURANCE LAW, CIVIL PROCEDURE, ATTORNEYS.

PRE-LITIGATION INVESTIGATION BY THE INSURER'S LAW FIRM INTO WHETHER TO REJECT OR PAY AN INSURANCE CLAIM IS NOT PRIVILEGED AND IS DISCOVERABLE, THE ATTORNEY WHO CONDUCTED THE INVESTIGATION WAS PROPERLY DISQUALIFIED FROM THE UNDERLYING LITIGATION, BUT HER LAW FIRM

SHOULD NOT HAVE BEEN DISQUALIFIED. [Advanced Chimney, Inc. v Graziano, 2017 NY Slip Op 05927, Second Dept 8-2-17](#)

INSURANCE LAW, NEGLIGENCE.

PLAINTIFF, AFTER A SUBSTANTIAL VERDICT IN A TRAFFIC ACCIDENT CASE, WAS ASSIGNED DEFENDANT'S RIGHT TO SUE DEFENDANT'S INSURER ALLEGING A BAD FAITH FAILURE TO SETTLE, THE INSURER'S MOTION TO DISMISS WAS PROPERLY DENIED (SECOND DEPT). [Weathers v Tri State Consumer Ins. Co., 2017 NY Slip Op 06099, Second Dept 8-9-17](#)

INTENTIONAL TORTS, ABUSE OF PROCESS.

COMMENCING A LAWSUIT, STANDING ALONE, DOES NOT CONSTITUTE ABUSE OF PROCESS. [Lynn v McCormick, 2017 NY Slip Op 06169, Second Dept 8-16-17](#)

LABOR LAW-CONSTRUCTION LAW.

LABOR LAW 200 CAUSE OF ACTION SHOULD NOT HAVE BEEN DISMISSED, QUESTION OF FACT WHETHER DEFENDANT EXERCISED SUFFICIENT CONTROL OVER THE MEANS AND METHODS OF PLAINTIFF'S WORK. [Caban v Plaza Constr. Corp., 2017 NY Slip Op 05931, Second Dept 8-2-17](#)

LABOR LAW-CONSTRUCTION LAW.

ONE DEFENDANT ENTITLED TO HOMEOWNER'S EXEMPTION, THE OTHER DID NOT EXERCISE CONTROL OVER THE WORK, LABOR LAW 240(1), 241(6) AND 200 CAUSES OF ACTION SHOULD HAVE BEEN DISMISSED. [Rodriguez v Mendlovits, 2017 NY Slip Op 05988, Second Dept 8-2-17](#)

LABOR LAW-CONSTRUCTION LAW.

LABOR LAW 240(1) NOT APPLICABLE TO INJURY FROM A PORTION OF A FENCE WHICH FELL ON PLAINTIFF. [Berman-Rey v Gomez, 2017 NY Slip Op 06151, 2nd Dept 8-16-](#)

LABOR LAW-CONSTRUCTION LAW.

CONSTRUCTION MANAGER DID NOT EXERCISE SUFFICIENT CONTROL TO BE LIABLE UNDER LABOR LAW 240(1). [Lamar v Hill Intl., Inc., 2017 NY Slip Op 06167, Second Dept 8-16-17](#)

LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF'S STEPPING ON AN UNSECURED PLANK HE HAD JUST PLACED, RATHER THAN AN AVAILABLE SECURED PLANK, CONSTITUTED THE SOLE PROXIMATE CAUSE OF HIS FALL, DEFENDANTS' PROPERLY GRANTED SUMMARY JUDGMENT ON THE LABOR LAW 240(1) CAUSE OF ACTION. [Melendez v 778 Park Ave. Bldg. Corp., 2017 NY Slip Op 06175, Second Dept 8-16-17](#)

LABOR LAW-CONSTRUCTION LAW.

QUESTION OF FACT WHETHER PLAINTIFF'S ACTIONS CONSTITUTED THE SOLE PROXIMATE CAUSE OF HIS INJURIES IN THIS LABOR LAW 240(1) ACTION. [Nalvarte v Long Is. Univ., 2017 NY Slip Op 06183, Second Dept 8-16-17](#)

LANDLORD-TENANT, CONTRACT LAW.

MISTAKEN COMMENCEMENT DATE IN A LEASE IS A SUFFICIENT GROUND FOR RESCISSION. [K.A.M.M. Group, LLC v 161 Lafayette Realty, Inc., 2017 NY Slip Op 06260, Second Dept 8-23-17](#)

LIEN LAW.

SECOND MECHANIC'S LIEN MAY BE FILED TO CORRECT THE NAMING OF THE WRONG CONTRACTOR IN THE FIRST LIEN. [Munoz Trucking Corp. v Darcon Constr., Inc., 2017 NY Slip Op 06283, Second Dept 8-23-17](#)

MEDICAL (DENTAL) MALPRACTICE, CIVIL PROCEDURE, EVIDENCE.

SUPREME COURT SHOULD NOT HAVE RULED PLAINTIFF'S EXPERT WAS NOT QUALIFIED, EXPERT WAS QUALIFIED AND THE ISSUE WAS NOT RAISED BY THE PARTIES, QUESTION OF FACT WHETHER PLAINTIFF GAVE INFORMED CONSENT. [Dyckes v Stabile, 2017 NY Slip Op 06252, Second Dept 8-23-17](#)

MEDICAL (DENTAL) MALPRACTICE.

QUESTION OF FACT WHETHER PLAINTIFF WAS PROPERLY INFORMED OF THE POTENTIAL COMPLICATIONS OF A DENTAL PROCEDURE, DESPITE PLAINTIFF'S SIGNING OF A CONSENT FORM. [Mathias v Capuano, 2017 NY Slip Op 06174, Second Dept 8-16-17](#)

MEDICAL MALPRACTICE, EVIDENCE.

FAILURE TO PROVIDE WRITTEN POST-COLONOSCOPY INSTRUCTIONS AND FAILURE TO NOTIFY PLAINTIFF OF THE DISCOVERY OF A COLON PERFORATION CONSTITUTED SUFFICIENT EVIDENCE OF PROXIMATE CAUSE IN THIS MEDICAL MALPRACTICE ACTION. [Gaspard v Aronoff, 2017 NY Slip Op 06258, Second Dept 8-23-17](#)

MEDICAL MALPRACTICE, PRIVILEGE, EVIDENCE.

DOCUMENTS REGARDING PLAINTIFF'S DECEDENT'S FALLS IN DEFENDANT'S NURSING HOME WERE NOT PRIVILEGED UNDER THE PUBLIC HEALTH LAW. [Robertson v Brookdale Hosp. Med. Ctr., 2017 NY Slip Op 06204, Second Dept 8-16-17](#)

MUNICIPAL LAW.

MUNICIPALITY CAN BE LIABLE FOR NEGLIGENT MAINTENANCE OF A DRAINAGE SYSTEM, NUISANCE CAUSE OF ACTION WAS DUPLICATIVE OF THE NEGLIGENT MAINTENANCE CAUSE OF ACTION. [Trulio v Village of Ossining, 2017 NY Slip Op 05993, Second Dept 8-2-17](#)

MUNICIPAL LAW.

FAILURE TO ANSWER SOME QUESTIONS AT THE 50-H HEARING REQUIRED DISMISSAL OF THIS FALSE ARREST AND FALSE IMPRISONMENT ACTION (SECOND DEPT). [Di Pompo v City of Beacon Police Dept., 2017 NY Slip Op 06059, Second Dept 8-9-17](#)

MUNICIPAL LAW, CIVIL RIGHTS LAW (42 USC 1983).

1983 CAUSE OF ACTION PROPERLY DISMISSED, PLAINTIFF DID NOT ADEQUATELY ALLEGE THE ARRESTING OFFICERS ACTED PURSUANT TO AN UNCONSTITUTIONAL POLICY OR CUSTOM. [Martin v City of New York, 2017 NY Slip Op 06172, Second Dept 8-16-17](#)

MUNICIPAL LAW, EMPLOYMENT LAW.

MUNICIPAL RESOLUTION DID NOT CREATE A VESTED CONTRACTUAL RIGHT TO HEALTH INSURANCE BENEFITS FOR RETIRED TOWN EMPLOYEES. [Matter of Weaver v Town of N. Castle, 2017 NY Slip Op 05960, Second Dept 8-2-17](#)

NEGLIGENCE.

NO DUTY OF CARE OWED PLAINTIFF, DEFENDANTS DID NOT OWN, OCCUPY OR CONTROL THE STAIRCASE WHERE PLAINTIFF SLIPPED AND FELL (SECOND DEPT). [Donatien v Long Is. Coll. Hosp., 2017 NY Slip Op 06061, Second Dept 8-9-17](#)

NEGLIGENCE.

PLAINTIFF DEMONSTRATED FREEDOM FROM COMPARATIVE FAULT IN THIS TRAFFIC ACCIDENT CASE, DEFENDANT RAN A RED LIGHT, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Lanicci v Hansen, 2017 NY Slip Op 06168, Second Dept 8-16-17](#)

NEGLIGENCE.

ONE INCH GAP BETWEEN SIDEWALK SLABS WAS A NON-ACTIONABLE TRIVIAL DEFECT. [Melia v 50 Ct. St. Assoc., 2017 NY Slip Op 06176, Second Dept 8-16-17](#)

NEGLIGENCE.

SNOW AND ICE ON FRONT STEPS WAS AN OPEN AND OBVIOUS CONDITION, NO DUTY TO WARN. [De Chica v Saldana, 2017 NY Slip Op 06251, Second Dept 8-23-17](#)

NEGLIGENCE.

INSUFFICIENT WEIGHT BEARING CAPACITY OF SHEETROCK FORMING THE ATTIC FLOOR WAS NOT AN OPEN AND OBVIOUS CONDITION. [Gallardo v Gilbert, 2017 NY Slip Op 06256, Second Dept 8-23-17](#)

NEGLIGENCE, COURT OF CLAIMS.

STATE HAS NO DUTY TO WARN SWIMMERS OF NATURAL CONDITIONS OF THE OCEAN FLOOR, PLAINTIFF WAS INJURED WHILE DIVING INTO WAVES. [Courtney v State of New York, 2017 NY Slip Op 06250, Second Dept 8-23-17](#)

NEGLIGENCE, EDUCATION-SCHOOL LAW.

QUESTION OF FACT WHETHER THE SCHOOL DISTRICT CREATED OR EXACERBATED THE ICE CONDITION IN THE PARKING LOT AND WHETHER THE SCHOOL DISTRICT HAD CONSTRUCTIVE NOTICE OF THE CONDITION, SCHOOL'S MOTION FOR SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE PROPERLY DENIED. [Scott v North Bellmore Pub. Sch. Dist., 2017 NY Slip Op 05989, Second Dept 8-2-17](#)

NEGLIGENCE, EDUCATION-SCHOOL LAW.

SUMMARY JUDGMENT BASED ON THE ASSUMPTION OF RISK DOCTRINE PROPERLY GRANTED TO THE SCHOOL IN THIS BASEBALL-RELATED SLIP AND FALL CASE. [Siegel v Albertus Magnus High Sch., 2017 NY Slip Op 05991, Second Dept 8-2-17](#)

NEGLIGENCE, EDUCATION-SCHOOL LAW.

QUESTION OF FACT WHETHER A STEEL PLATE NEAR THE SIDELINE OF A FOOTBALL FIELD UNREASONABLY INCREASED THE RISKS ASSOCIATED WITH PLAYING HIGH SCHOOL FOOTBALL. [Deserto v Goshen Cent. Sch. Dist., 2017 NY Slip Op 06058, Second Dept 8-9-17](#)

NEGLIGENCE, EDUCATION-SCHOOL LAW.

QUESTIONS OF FACT RAISED ABOUT THE SCHOOL'S KNOWLEDGE OF A STUDENT'S VIOLENT PROPENSITIES AND THE SCHOOL'S ABILITY TO PREVENT THE STUDENT ON STUDENT ASSAULT, SCHOOL'S MOTION FOR SUMMARY JUDGMENT PROPERLY DENIED. [Rt v Three Vil. Cent. Sch. Dist., 2017 NY Slip Op 06207, Second Dept 8-16-17](#)

NEGLIGENCE, EMPLOYMENT LAW.

EVEN THOUGH DEFENDANT WAS NEGLIGENT AS A MATTER OF LAW BASED ON A VEHICLE AND TRAFFIC LAW VIOLATION, THERE WAS A QUESTION OF FACT WHETHER PLAINTIFF WAS COMPARATIVELY NEGLIGENT IN THIS REAR-END COLLISION CASE; DEFENDANT WAS DRIVING HIS OWN VEHICLE TO WORK AND WAS NOT ACTING WITHIN THE SCOPE OF HIS EMPLOYMENT AT THE TIME OF THE ACCIDENT, EMPLOYER ENTITLED TO SUMMARY JUDGMENT. [Beres v Terranera, 2017 NY Slip Op 05929, Second Dept 8-2-17](#)

NEGLIGENCE, EVIDENCE.

PLAINTIFF WAS UNABLE TO RAISE A QUESTION OF FACT WHETHER THE RAMP FROM WHICH HE FELL WAS NEGLIGENTLY DESIGNED OR MAINTAINED, NO APPLICABLE BUILDING OR SAFETY CODES (FIRST DEPT). [Schmidt v One N.Y. Plaza Co. LLC, 2017 NY Slip Op 06047, First Dept 8-8-17](#)

NEGLIGENCE, EVIDENCE.

CAUSE OF PLAINTIFF'S SLIP AND FALL COULD NOT BE ESTABLISHED WITHOUT SPECULATION, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Razza v LP Petroleum Corp., 2017 NY Slip Op 06202, Second Dept 8-16-17](#)

NEGLIGENCE, EVIDENCE.

QUESTIONS OF FACT ABOUT DEFENDANT DRIVER'S COMPARATIVE NEGLIGENCE IN THIS BICYCLE-CAR COLLISION CASE, DEFENDANT'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED. [Searless v Karczewski, 2017 NY Slip Op 06393, Second Dept 8-30-17](#)

NEGLIGENCE, LANDLORD-TENANT.

DEFENDANT COLLEGE DEMONSTRATED IT DID NOT CREATE OR HAVE NOTICE OF THE CONDITION WHICH INJURED PLAINTIFF, A PORTION OF A LIGHT FIXTURE IN PLAINTIFF'S ON-CAMPUS ROOM FELL ON HER (SECOND DEPT). [Williamson v Long Is. Univ., 2017 NY Slip Op 06100, Second Dept 8-9-17](#)

NEGLIGENCE, LANDLORD-TENANT.

NEGLIGENCE CAUSE OF ACTION AGAINST LANDLORD BASED UPON AN ASSAULT AGAINST PLAINTIFF IN THE HALLWAY OF PLAINTIFF'S APARTMENT BUILDING PROPERLY DISMISSED. [Martinez v City of New York, 2017 NY Slip Op 06263, Second Dept 8-23-17](#)

NEGLIGENCE, LANDLORD-TENANT.

LANDLORD DEMONSTRATED THE BREAK-IN WAS NOT FORESEEABLE BECAUSE THERE HAD BEEN NO SIMILAR BREAK-INS IN THE VICINITY, PLAINTIFFS' SUIT STEMMING FROM INJURY DURING A ROBBERY SHOULD HAVE BEEN DISMISSED. [Golub v Louris, 2017 NY Slip Op 06353, second Dept 8-30-17](#)

NEGLIGENCE, MEDICAL MALPRACTICE.

PLAINTIFF RAISED A QUESTION OF FACT ON CAUSATION WITH PROOF AN ACT OR OMISSION DECREASED THE CHANCE OF A BETTER OUTCOME IN THIS MEDICAL MALPRACTICE ACTION ALLEGING THE FAILURE TO TIMELY DETECT THE PRESENCE OF CANCER. [Neyman v Doshi Diagnostic Imaging Servs., P.C., 2017 NY Slip Op 05962, Second Dept 8-2-17](#)

NEGLIGENCE, MEDICAL MALPRACTICE, CIVIL PROCEDURE.

INJURIES STEMMING FROM FAILURE TO RESTRAIN A PATIENT WITH DEMENTIA FALL UNDER THE MEDICAL MALPRACTICE, NOT NEGLIGENCE, STATUTE OF LIMITATIONS, PLAINTIFF'S ACTION IS TIME-BARRED. [Bell v WSNCHS N., Inc., 2017 NY Slip Op 05937, 2nd Dept 8-2-17](#)

NEGLIGENCE, MUNICIPAL LAW.

PLAINTIFF ALLEGED SHE WAS FORCED TO WALK IN THE STREET, WHERE SHE WAS STRUCK BY A CAR, BECAUSE THE COUNTY HAD OBSTRUCTED THE SIDEWALK WITH SNOW, COUNTY'S SUMMARY JUDGMENT MOTION PROPERLY DENIED. [Piazza v Volpe, 2017 NY Slip Op 05986, Second Dept 8-2-17](#)

NEGLIGENCE, MUNICIPAL LAW.

DEFENDANT ABUTTING PROPERTY OWNER FAILED TO ELIMINATE ALL TRIABLE ISSUES OF FACT RE WHETHER A GAP BETWEEN THE CURB AND THE SIDEWALK WAS ATTRIBUTABLE TO ITS NEGLIGENCE AND CONTRIBUTED TO PLAINTIFF'S SLIP AND FALL (SECOND DEPT). [Gelstein v City of New York, 2017 NY Slip Op 06064, Second Dept 8-9-17](#)

NEGLIGENCE, MUNICIPAL LAW.

MOTION TO DISMISS THIS SIDEWALK SLIP AND FALL ACTION PROPERLY DENIED, DEFENDANT DID NOT UTTERLY REFUTE THE ALLEGATION IT CREATED THE CONDITION OR THAT IT HAD NOT ASSUMED THE RESPONSIBILITY FOR MAINTAINING THE SIDEWALK BY THE TERMS OF ITS LEASE (SECOND DEPT). [Torres v City of New York, 2017 NY Slip Op 06096, Second Dept 8-9-17](#)

NEGLIGENCE, MUNICIPAL LAW.

TESTIMONY AT THE 50-H HEARING COULD NOT BE THE BASIS FOR THE ASSERTION OF THEORIES NOT MENTIONED IN THE NOTICE OF CLAIM. [Davis v City of New York, 2017 NY Slip Op 06155, Second Dept 8-16-17](#)

NEGLIGENCE, MUNICIPAL LAW.

TOWN'S FAILURE TO REMOVE ICE AND SNOW IS NOT AN AFFIRMATIVE ACT OF NEGLIGENCE WHICH IS EXEMPT FROM THE WRITTEN NOTICE REQUIREMENT. [Morreale v Town of Smithtown, 2017 NY Slip Op 06361, Second Dept 8-30-17](#)

PROFESSIONAL (ARCHITECT) MALPRACTICE, EVIDENCE.

NECESSARY EXPERT EVIDENCE WAS NOT PRESENTED BY THE PLAINTIFF IN THIS ARCHITECT MALPRACTICE CASE, ARCHITECT'S MOTION TO SET ASIDE THE VERDICT SHOULD HAVE BEEN GRANTED. [Michael v He Gin Lee Architect Planner, PLLC, 2017 NY Slip Op 06177, Second Dept 8-16-17](#)

PRODUCTS LIABILITY, CORPORATION LAW, NEGLIGENCE.

COMPANY WHICH PURCHASED MANUFACTURER OF ALLEGEDLY DEFECTIVE LADDER NOT LIABLE, COMPANY DID NOT CONTINUE MANUFACTURER'S BUSINESS. [Wass v County of Nassau, 2017 NY Slip Op 06317, Second Dept 8-23-17](#)

REAL PROPERTY, ENVIRONMENTAL LAW, MUNICIPAL LAW.

AIR, LIGHT AND ACCESS EASEMENTS COULD NOT BE ASSERTED AGAINST THE STATE AS OWNER OF THE PUBLIC HIGHWAY, RESIDENTS DID NOT HAVE STANDING UNDER SEQRA TO CONTEST CONSTRUCTION OF PUBLIC COMFORT STATIONS. [Matter of Shapiro v Torres, 2017 NY Slip Op 06281, Second Dept 8-23-17](#)

REAL PROPERTY, MUNICIPAL LAW.

CITY ACQUIRED TITLE BY ADVERSE POSSESSION, DESPITE PLAINTIFF'S HAVING CONTINUOUSLY PAID THE PROPERTY TAXES. [Estate of Vertley Clanton v City of New York, 2017 NY Slip Op 06254, Second Dept 8-23-17](#)

ZONING.

TOWN RESIDENTS CANNOT COMPEL TOWN TO ISSUE A FORMAL DETERMINATION OF THEIR ZONING COMPLAINT AND CANNOT COMPEL THE ZONING BOARD OF APPEALS TO REVIEW THE FAILURE TO ISSUE SUCH A DETERMINATION. [Matter of Willows Condominium Assn. v Town of Greenburgh, 2017 NY Slip Op 05961, Second Dept 8-2-17](#)

THIRD DEPARTMENT

ATTORNEYS.

MASSACHUSETTS ATTORNEYS' REQUEST FOR A WAIVER OF THE JUDICIARY LAW REQUIREMENT THAT THEY MAINTAIN A PHYSICAL OFFICE IN NEW YORK IN ORDER TO PRACTICE IN NEW YORK DENIED (THIRD DEPT). [Stegemann v Rensselaer County Sheriff's Off., 2017 NY Slip Op 06114, Third Dept 8-10-17](#)

CIVIL PROCEDURE.

PLAINTIFF'S ATTEMPT TO AMEND THE COMPLAINT TO ADD A PARTY INITIALLY NAMED AS JOHN DOE TIME-BARRED. [Walker v Hormann Flexon, LLC, 2017 NY Slip Op 06023, Third Dept 8-3-17](#)

CIVIL PROCEDURE, ATTORNEYS.

ATTORNEY'S INACTION NOT IMPUTED TO THE CLIENT, DEFAULT ORDER AND JUDGMENT PROPERLY VACATED. [Inwald Enters., LLC v Aloha Energy, 2017 NY Slip Op 06031, Third Dept 8-3-17](#)

CORPORATION LAW, CIVIL PROCEDURE.

ACTION TO DISSOLVE A CLOSELY HELD CORPORATION BASED UPON BREACH OF A FIDUCIARY DUTY WAS TIMELY AND JUDICIAL DISSOLUTION WAS PROPERLY GRANTED. [Matter of Twin Bay Vil., Inc. v Kasian, 2017 NY Slip Op 06024, Third Dept 8-3-17](#)

CRIMINAL LAW, ATTORNEYS.

FOR CAUSE CHALLENGE TO A SWORN JUROR, AN ATTORNEY, WHOSE FIRM REPRESENTED THE MURDER VICTIM'S PARENTS IN AN ACTION TO GAIN CUSTODY OF THE DEFENDANT'S AND VICTIM'S CHILD SHOULD HAVE BEEN GRANTED ON IMPLIED BIAS GROUNDS (THIRD DEPT). [People v Powell, 2017 NY Slip Op 06104, Third Dept 8-10-17](#)

ELECTION LAW.

PETITIONERS HAD CAPACITY AND STANDING TO BRING AN ACTION SEEKING A DECLARATION RESPONDENTS' VIOLATED THE ELECTION LAW AND COMPELLING REMEDIAL ACTION. [Matter of Lauder v Pellegrino, 2017 NY Slip Op 06337, Third Dept 8-24-17](#)

ELECTION LAW.

PRINTED NAMES ARE NOT THE EQUIVALENT OF SIGNATURES, CERTIFICATES OF SUBSTITUTION DEEMED INVALID. [Matter of Harder v Kuhn, 2017 NY Slip Op 06338, Third Dept 8-23-17](#)

MENTAL HYGIENE LAW, CRIMINAL LAW.

RECORD OF A RETENTION HEARING FOR AN INSANITY ACQUITTEE NEED NOT BE SEALED. [Matter of James Q., 2017 NY Slip Op 06222, 3rd Dept 8-17-17](#)

UNEMPLOYMENT INSURANCE.

CLAIMANT, WHO WAS HIRED TO SHOW RENTAL PROPERTIES FOR A REAL ESTATE BROKER, WAS AN EMPLOYEE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS (THIRD DEPT). [Matter of Link \(Cantor & Pecorella, Inc.--Commissioner of Labor\), 2017 NY Slip Op 06118, Third Dept 8-10-17](#)

WORKERS' COMPENSATION LAW.

PROOF THAT CLAIMANT'S PROSTATE CANCER WAS CAUSED BY TOXINS TO WHICH CLAIMANT WAS EXPOSED AS A FIREFIGHTER WAS SPECULATIVE, CLAIM PROPERLY DENIED. [Matter of Tucker v City of Plattsburgh Fire Dept., 2017 NY Slip Op 06013, Third Dept 8-3-17](#)

WORKERS' COMPENSATION LAW.

CLAIMANT, DECEDENT'S HUSBAND, WAS ENTITLED TO WORKERS' COMPENSATION DEATH BENEFITS BASED UPON DECEDENT'S UNWITNESSED DEATH DUE TO CARDIAC ARREST. [Matter of Lavigne v Hannaford Bros. Co., 2017 NY Slip Op 06121, Third Dept 8-10-17](#)

WORKERS' COMPENSATION LAW.

SUBSTANTIAL EVIDENCE SUPPORTED THE DETERMINATION THE UNWITNESSED ACCIDENT OCCURRED WHILE DECEDENT WAS PERFORMING WORK-RELATED DUTIES. [Matter of Silvestri v New York City Tr. Auth., 2017 NY Slip Op 06123, Third Dept 8-9-17](#)

FOURTH DEPARTMENT

ELECTION LAW.

FAILURE TO IDENTIFY A SPECIFIC VIOLATION OF THE ELECTION LAW OR PARTY RULE REQUIRED THE DISMISSAL OF THE PETITION, JUDICIAL INTERVENTION NOT WARRANTED. [Matter of Nitti v Reilich, 2017 NY Slip Op 06327, Fourth Dept 8-23-17](#)

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CONSTITUTIONAL LAW, CRIMINAL LAW.

STATUTES WHICH CRIMINALIZE ASSISTED SUICIDE ARE CONSTITUTIONAL. [Myers v Schneiderman, 2017 NY Slip Op 06412, CtApp 9-7-17](#)

CRIMINAL LAW, APPEALS.

PEOPLE DEMONSTRATED INVENTORY SEARCH WAS VALID, DESPITE EXPECTATION CONTRABAND WOULD BE FOUND, CREDIBILITY OF POLICE WITNESSES BEYOND REVIEW BY COURT OF APPEALS. [People v Lee, 2017 NY Slip Op 06415, CtApp 9-12-17](#)

LABOR LAW-CONSTRUCTION LAW.

IN THIS LABOR LAW 240 (1) ACTION PLAINTIFF SLIPPED AND FELL FROM A GREASY RAMP HE CONSTRUCTED FROM PLANKS, THERE WAS A QUESTION OF FACT WHETHER PLAINTIFF'S CONDUCT WAS THE SOLE PROXIMATE CAUSE OF HIS INJURIES. [Valente v Lend Lease \(US\) Constr. LMB, Inc., 2017 NY Slip Op 06400, CtApp 9-5-17](#)

NEGLIGENCE.

SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE SHOULD NOT HAVE BEEN AWARDED TO DEFENDANT RETAIL STORE, STORE DID NOT DEMONSTRATE IT DID NOT CREATE OR HAVE NOTICE OF THE HAZARDOUS CONDITION. [Parietti v Wal-Mart Stores, Inc., 2017 NY Slip Op 06479, CtApp 9-14-17](#)

FIRST DEPARTMENT

CIVIL PROCEDURE, CONTRACT LAW, EVIDENCE.

MOTION FOR DIRECTED VERDICT MADE BEFORE PLAINTIFF CLOSED ITS CASE SHOULD NOT HAVE BEEN GRANTED, MOTION FOR DIRECTED VERDICT BASED UPON PLAINTIFF'S ADMISSIONS PROPERLY GRANTED, INDEMNIFICATION AGREEMENT VOID UNDER GENERAL OBLIGATIONS LAW. [11 Essex St. Corp. v Tower Ins. Co. of N.Y., 2017 NY Slip Op 06709, First Dept 9-28-17](#)

CONTRACT LAW, EMPLOYMENT LAW.

EMAILS DID NOT EXPLICITLY WAIVE THE INITIAL AGREEMENT THAT THE PARTIES WOULD NOT BE BOUND UNTIL A FORMAL AGREEMENT WAS EXECUTED, NO CONTRACT WAS CREATED. [Keitel v E*TRADE Fin. Corp., 2017 NY Slip Op 06624, First Dept 9-26-17](#)

CONTRACT LAW, FRAUD.

CONTRACT ALLEGATIONS DUPLICATED FRAUD ALLEGATIONS, FRAUD CAUSE OF ACTION SHOULD HAVE BEEN DISMISSED (FIRST DEPT). [Cronos Group Ltd. v XComIP, LLC, 2017 NY Slip Op 06515, 1st Dept 9-19-17](#)

CRIMINAL LAW.

FOR CAUSE CHALLENGE TO JUROR WHO EXPRESSED BIAS IN FAVOR OF THE CREDIBILITY OF POLICE OFFICERS SHOULD HAVE BEEN GRANTED. [People v Whitefield, 2017 NY Slip Op 06618, First Dept 9-26-17](#)

CRIMINAL LAW.

JURY SHOULD HAVE BEEN INSTRUCTED ON ARSON FOURTH (RECKLESS) AS A LESSER INCLUDED OF ARSON SECOND (INTENTIONAL), NEW TRIAL ORDERED. [People v Acevedo, 2017 NY Slip Op 06626, First Dept 9-26-17](#)

CRIMINAL LAW, ATTORNEYS.

FAILURE TO CLEARLY INFORM DEFENDANT THAT PLEADING GUILTY TO AN AGGRAVATED FELONY TRIGGERS DEPORTATION CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL, MERELY TELLING DEFENDANT THERE WAS A RISK OF DEPORTATION WAS NOT ENOUGH. [People v Doumbia, 2017 NY Slip Op 06402, First Dept 9-5-17](#)

CRIMINAL LAW, EVIDENCE.

JURY SHOULD HAVE BEEN INSTRUCTED ON THE INNOCENT POSSESSION OF A WEAPON DEFENSE, NEW TRIAL ORDERED. [People v Bonilla, 2017 NY Slip Op 06405, First Dept 9-5-17](#)

CRIMINAL LAW, EVIDENCE, ATTORNEYS.

DEFENDANT DID NOT UNDERSTAND HE HAD A RIGHT TO AN ATTORNEY AT THE TIME HIS STATEMENTS WERE MADE EVEN IF HE COULD NOT AFFORD ONE, BOTH STATEMENTS SHOULD HAVE BEEN SUPPRESSED. [People v Flores, 2017 NY Slip Op 06629, First Dept 9-26-17](#)

EMPLOYMENT LAW, HUMAN RIGHTS LAW.

PLAINTIFF'S AGE DISCRIMINATION AND BREACH OF CONTRACT CAUSES OF ACTION DISMISSED. [Hamburg v New York Univ. Sch. of Medicine, 2017 NY Slip Op 06635, First Dept 9-26-17](#)

FAMILY LAW.

ADOPTION OF CHILD BORN TO A SURROGATE WHILE THE PARTNERS WERE LEGALLY MARRIED UNDER BRITISH LAW WAS PROPERLY VACATED, DURING THE ADOPTION PROCEEDINGS THE COURT WAS MISINFORMED ABOUT ONE OF THE PARTNER'S INVOLVEMENT WITH THE CHILD. [Matter of Maria-Irene D., 2017 NY Slip Op 06716, First Dept 9-28-17](#)

FAMILY LAW, APPEALS.

FAMILY COURT EXERCISED THE PROPER LEVEL OF CONSIDERATION OF THE AMERICANS WITH DISABILITIES ACT IN THIS TERMINATION OF PARENTAL RIGHTS PROCEEDING, THE MOOTNESS EXCEPTION APPLIED TO THE APPEAL. [Matter of Lacey L. \(Stephanie L.--Dekodia L.\), 2017 NY Slip Op 06418, First Dept 9-12-17](#)

INSURANCE LAW.

OPERATIVE DATE FOR POLICY COVERAGE WAS THE DATE THE POWER GENERATING TURBINE WAS TAKEN OUT OF SERVICE, EVEN THOUGH THE DAMAGE WHICH ULTIMATELY LED TO THE SHUT DOWN HAPPENED BEFORE THE POLICY PERIOD (FIRST DEPT). [National Union Fire Ins. Co. of Pittsburgh, Pa. v TransCanada Energy USA, Inc., 2017 NY Slip Op 06513, 1st Dept 9-19-17](#)

INSURANCE LAW, CIVIL PROCEDURE, ATTORNEYS.

INSURER'S ATTORNEY MUST BE DEPOSED TO DETERMINE HIS ROLE IN THE INVESTIGATION OF A FIRE ON PLAINTIFFS' PROPERTY AND THE DENIAL OF COVERAGE, THE INFORMATION PROVIDED BY THE DEPOSITION WILL DETERMINE WHETHER THE ATTORNEY'S FILES ARE DISCOVERABLE BY THE PLAINTIFFS. [Venture v Preferred Mut. Ins. Co., 2017 NY Slip Op 06594, First Dept 9-26-17](#)

LABOR LAW-CONSTRUCTION LAW, CORPORATION LAW.

MULTI-MILLION DOLLAR VERDICTS AGAINST THE OWNER PERSONALLY AND HIS COMPANIES WARRANTED, WORKER SAFETY DISREGARDED WHEN REPAIR TO CONSTRUCTION CRANE UNDERTAKEN, CRANE OPERATOR AND CO-WORKER ON THE GROUND KILLED WHEN CRANE FELL. [Matter of 91st St. Crane Collapse Litig., 2017 NY Slip Op 06419, First Dept 9-12-17](#)

LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF ALLEGED HE WAS NOT PROVIDED WITH A LADDER AND WAS INSTRUCTED TO CLIMB UP THE SIDE OF A BRIDGE FROM WHICH HE FELL, SUMMARY JUDGMENT ON THE LABOR LAW 240(1) CAUSE OF ACTION PROPERLY GRANTED, COMPARATIVE FAULT IS NOT A DEFENSE. [Cardona v New York City Hous. Auth., 2017 NY Slip Op 06620, First Dept 9-26-17](#)

LANDLORD-TENANT, NEGLIGENCE.

QUESTION OF FACT WHETHER LANDLORD'S FAILURE TO UPGRADE 1930'S ELECTRICAL SYSTEM BREACHED A DUTY OWED TO THE TENANT TO KEEP THE APARTMENT SAFE, PLAINTIFF TENANT WAS INJURED IN A FIRE WHICH STARTED IN THE ELECTRICAL WIRING. [Daly v 9 E. 36th LLC, 2017 NY Slip Op 06404, First Dept 9-5-17](#)

NEGLIGENCE.

DEFENDANT DEMONSTRATED IT TOOK ADEQUATE MEASURES TO KEEP THE FLOOR DRY, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE SHOULD HAVE BEEN GRANTED. [Kelly v Roza 14W LLC, 2017 NY Slip Op 06630, First Dept 9-26-17](#)

NEGLIGENCE, EMPLOYMENT LAW.

DEFENDANT BICYCLIST WAS NOT ACTING WITHIN THE SCOPE OF HIS EMPLOYMENT WHEN HE STRUCK AND KILLED PLAINTIFF, EMPLOYER NOT VICARIOUSLY OR DIRECTLY LIABLE. [Fein v Cook, 2017 NY Slip Op 06603, First Dept 9-26-17](#)

NEGLIGENCE, MUNICIPAL LAW, VEHICLE AND TRAFFIC LAW.

POLICE OFFICER WAS RESPONDING TO AN EMERGENCY AND WAS NOT ACTING IN RECKLESS DISREGARD FOR THE SAFETY OF OTHERS WHEN THE POLICE CAR STRUCK PLAINTIFF WHO WAS STANDING IN THE ROAD, COMPLAINT SHOULD HAVE BEEN DISMISSED. [Green v Zarella, 2017 NY Slip Op 06599, First Dept 9-26-17](#)

SECOND DEPARTMENT

ATTORNEYS.

DEFENDANT, AN ATTORNEY, SHOULD NOT HAVE BEEN DISQUALIFIED FROM REPRESENTING HIMSELF IN THIS ACTION WHICH INCLUDED A CAUSE OF ACTION AGAINST THE ATTORNEY FOR LEGAL MALPRACTICE (SECOND DEPT). [Herczl v Feinsilver, 2017 NY Slip Op 06528, 2nd Dept 9-20-17](#)

CIVIL PROCEDURE.

MOTION TO EXTEND TIME TO EFFECT SERVICE SHOULD HAVE BEEN GRANTED (SECOND DEPT). [US Bank N.A. v Saintus, 2017 NY Slip Op 06567, Second Dept 9-20-17](#)

CIVIL PROCEDURE, APPEALS, FORECLOSURE.

FORECLOSURE ACTION SHOULD NOT HAVE BEEN DISMISSED, ISSUE WAS NEVER JOINED, EVEN THOUGH THE DEFENSE WAS FIRST RAISED IN REPLY PAPERS, IT COULD BE CONSIDERED ON APPEAL [U.S. Bank N.A. v Ricketts, 2017 NY Slip Op 06475, Second Dept 9-13-17](#)

CIVIL PROCEDURE, CONSTITUTIONAL LAW.

ALTHOUGH THE DISPUTE BETWEEN PLAINTIFF AND A RABBI INVOLVED THE PURCHASE OF TORAH BOOKS AND THE JEWISH CUSTOM OF SHIDUCH, THE MATTER COULD BE DECIDED BASED ON NEUTRAL PRINCIPLES OF LAW IN THE STATE COURTS (SECOND DEPT). [Lifschitz v Sharabi, 2017 NY Slip Op 06530, 2nd Dept 9-20-17](#)

CIVIL PROCEDURE, FORECLOSURE.

QUESTION OF FACT IN THIS FORECLOSURE ACTION WHETHER NAIL AND MAIL SERVICE ON A SATURDAY VIOLATED THE GENERAL BUSINESS LAW BECAUSE PLAINTIFF BANK WAS AWARE DEFENDANTS RECOGNIZED SATURDAY AS A HOLY DAY. [JPMorgan Chase Bank, N.A. v Lilker, 2017 NY Slip Op 06434, Second Dept 9-13-17](#)

CIVIL PROCEDURE, NEGLIGENCE, MEDICAL MALPRACTICE.

DISCOVERY STATUTE MUST BE LIBERALLY CONSTRUED, PLAINTIFF ENTITLED TO CONTRACTS AND AGREEMENTS DEMONSTRATING THE RELATIONSHIP AMONG THE DEFENDANTS IN THIS MEDICAL MALPRACTICE ACTION (SECOND DEPT). [Redmond v Hanypsiak, 2017 NY Slip Op 06563, Second Dept 9-20-17](#)

CIVIL RIGHTS LAW (42 USC 1983), MUNICIPAL LAW.

EXCESSIVE FORCE ALLEGATIONS AGAINST POLICE AND 42 USC 1983 CAUSE OF ACTION AGAINST THE MUNICIPALITY PROPERLY DISMISSED (SECOND DEPT). [Harris v City of New York, 2017 NY Slip Op 06527, 2nd Dept 9-20-17](#)

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

42 USC 1983 AND MALICIOUS PROSECUTION CAUSES OF ACTION AGAINST THE CITY AND A POLICE OFFICER SHOULD NOT HAVE BEEN DISMISSED. [Williams v City of New York, 2017 NY Slip Op 06477, Second Dept 9-13-17](#)

COOPERATIVES, CIVIL PROCEDURE.

COOPERATIVE BOARD'S DETERMINATION TO WAIVE THE CONSENT REQUIREMENT FOR THE CONSTRUCTION OF A SECOND-FLOOR TERRACE WAS NOT JUSTIFIED BY THE BUSINESS JUDGMENT RULE, THE BOARD'S RULING IS A PROPER SUBJECT OF AN ARTICLE 78 ACTION. [Matter of Dicker v Glen Oaks Vil. Owners, Inc., 2017 NY Slip Op 06645, Second Dept 9-27-17](#)

CORPORATION LAW, INTENTIONAL TORTS, FRAUD.

CORPORATE OFFICER COULD BE PERSONALLY LIABLE FOR CONVERSION AND FRAUD, CAUSES OF ACTION AGAINST THE OFFICER PERSONALLY SHOULD NOT HAVE BEEN DISMISSED AS SHIELDED BY THE CORPORATE STRUCTURE. [North Shore Architectural Stone, Inc. v American Artisan Constr., Inc., 2017 NY Slip Op 06655, Second Dept 9-27-17](#)

CRIMINAL LAW.

MANIFEST NECESSITY JUSTIFIED DECLARATION OF A MISTRIAL OVER DEFENDANT'S OBJECTION, COMPLAINANT IN THIS SEX OFFENSE TRIAL COULD NOT BE LOCATED. [Matter of Palacios v Singas, 2017 NY Slip Op 06652, Second Dept 9-27-17](#)

CRIMINAL LAW, ATTORNEYS.

DEFENSE COUNSEL FAILED TO INFORM DEFENDANT OF THE MANDATORY DEPORTATION CONSEQUENCE OF HIS GUILTY PLEA, DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE, GUILTY PLEA SHOULD HAVE BEEN VACATED. [People v Abdallah, 2017 NY Slip Op 06657, Second Dept 9-27-17](#)

CRIMINAL LAW, EVIDENCE.

(HARMLESS) ERROR TO ALLOW THE LEAD DETECTIVE TO EXPLAIN THE ROLES PLAYED BY PERSONS RECORDED BY THE WIRETAPS, AND (HARMLESS) ERROR TO ADMIT THE WIRETAP ORDERS INTO EVIDENCE. [People v Guzman, 2017 NY Slip Op 06454, Second Dept 9-13-17](#)

CRIMINAL LAW, EVIDENCE.

(HARMLESS) ERROR TO SHOW THE INJURED CHILD TO THE JURY IN THIS SHAKEN BABY CASE, THE EXTENT OF THE LONG-TERM INJURIES WAS NOT AN ELEMENT OF THE CRIME. [People v Narine, 2017 NY Slip Op 06460, Second Dept 9-13-17](#)

CRIMINAL LAW, EVIDENCE.

DEFENDANT ENTITLED TO IMMUNITY FROM PROSECUTION BECAUSE HER GRAND JURY TESTIMONY WAS RELATED TO THE GRAND LARCENY CHARGE (STEALING REAL PROPERTY), HOWEVER SHE WAS NOT ENTITLED TO IMMUNITY RE THE FORGED DEED CHARGES. [People v O'Neal, 2017 NY Slip Op 06461, Second Dept 9-13-17](#)

CRIMINAL LAW, EVIDENCE.

(HARMLESS) ERROR TO ALLOW CROSS-EXAMINATION OF DEFENSE WITNESS ABOUT HER GANG AFFILIATION, GANG MEMBERSHIP HAD NO RELATIONSHIP TO THE CHARGES. [People v Chinloy, 2017 NY Slip Op 06450, Second Dept 9-13-17](#)

DEFAMATION, CIVIL PROCEDURE.

MANY STATEMENTS MADE BY A FORMER NEW YORK ATTORNEY GENERAL CONCERNING A FORMER CEO OF AIG DEEMED ACTIONABLE IN THIS DEFAMATION SUIT. [Greenberg v Spitzer, 2017 NY Slip Op 06432, Second Dept 9-13-17](#)

EDUCATION-SCHOOL LAW, CIVIL PROCEDURE.

AN ARTICLE 78 PROCEEDING IS THE PROPER VEHICLE FOR A STUDENT TO ADDRESS DISMISSAL FROM A PRIVATE COLLEGE, BRINGING A BREACH OF CONTRACT ACTION AFTER THE FOUR-MONTH STATUTE OF LIMITATIONS FOR AN ARTICLE 78 HAS PASSED WILL NOT WORK. [Hernandez v Teachers Coll., Columbia Univ., 2017 NY Slip Op 06433, Second Dept 9-13-17](#)

ELECTION LAW.

DESCRIPTION OF OFFICE SOUGHT WAS SUFFICIENT, DESIGNATING PETITION SHOULD NOT HAVE BEEN INVALIDATED. [Matter of Fochtman v Coll, 2017 NY Slip Op 06414, Second Dept 9-11-17](#)

EMPLOYMENT LAW, LABOR LAW, CIVIL PROCEDURE.

PLAINTIFF HOME HEALTH CARE WORKERS PROPERLY CERTIFIED TO BRING CLASS ACTION SUIT ALLEGING INADEQUATE PAY. [Andryeyeva v New York Health Care, Inc., 2017 NY Slip Op 06421, Second Dept 9-13-17](#)

Similar issues and result in [Moreno v Future Care Health Servs., Inc., 2017 NY Slip Op 06439, Second Dept 9-13-17](#)

FAMILY LAW

WIFE NOT ENTITLED TO INTEREST ON A LATE LUMP SUM PAYMENT, HUSBAND NOT ENTITLED TO RECOUP OVERPAYMENT OF MAINTENANCE (SECOND DEPT). [O'Donnell v O'Donnell, 2017 NY Slip Op 06540, Second Dept 9-20-17](#)

INSURANCE LAW.

COMMERCIAL LIABILITY CARRIER NOT OBLIGATED TO DEFEND ACTION FOR BREACH OF CONTRACT, UNJUST ENRICHMENT AND FORECLOSURE OF MECHANIC'S LIENS, POLICY ONLY COVERS NEGLIGENCE, PROPERTY DAMAGE AND ADVERTISING INJURY. [J.W. Mays, Inc. v Liberty Mut. Ins. Co., 2017 NY Slip Op 06639, Second Dept 9-27-17](#)

LANDLORD-TENANT, MUNICIPAL LAW.

PETITIONER'S RENT SUBSIDY SHOULD NOT HAVE BEEN TERMINATED BASED UPON THE UNWANTED PRESENCE IN THE HOME OF A FORMER INTIMATE PARTNER, TERMINATION OF BENEFITS VIOLATED THE VIOLENCE AGAINST WOMEN ACT (SECOND DEPT). [Matter of Johnson v Palumbo, 2017 NY Slip Op 06534, 2nd Dept 9-20-17](#)

MEDICAL MALPRACTICE, NEGLIGENCE, MUNICIPAL LAW.

SUPREME COURT SHOULD HAVE ALLOWED THE SERVICE OF A LATE NOTICE OF CLAIM AGAINST A MUNICIPAL HOSPITAL ALLEGING MEDICAL MALPRACTICE, MEDICAL RECORDS PROVIDED NOTICE OF THE CLAIM. [Matter of Breslin v Nassau Health Care Corp., 2017 NY Slip Op 06440, Second Dept 9-13-17](#)

NEGLIGENCE.

SIGNALING THE DRIVER TO STOP FURNISHED THE CONDITION FOR THE ACCIDENT BUT WAS NOT THE PROXIMATE CAUSE OF THE ACCIDENT, THE DRIVER'S DECISION TO BACK UP WAS THE PROXIMATE CAUSE OF HER STRIKING PLAINTIFF'S DECEDENT. [Goldstein v Kingston, 2017 NY Slip Op 06429, Second Dept 9-13-17](#)

NEGLIGENCE.

PLAINTIFF DID NOT DEMONSTRATE FREEDOM FROM COMPARATIVE FAULT IN THIS TRAFFIC ACCIDENT CASE, PLAINTIFF'S SUMMARY JUDGMENT MOTION SHOULD HAVE BEEN DENIED. [Palmer v Ecco III Enters., Inc., 2017 NY Slip Op 06446, Second Dept 9-13-17](#)

NEGLIGENCE.

RESTAURANT DID NOT DEMONSTRATE WHEN THE AREA OF THE SLIP AND FALL HAD LAST BEEN CLEANED OR INSPECTED, SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED (SECOND DEPT). [Lombardo v Kimco Cent. Islip Venture, LLC, 2017 NY Slip Op 06531, 2nd Dept 9-20-17](#)

NEGLIGENCE, EDUCATION-SCHOOL LAW.

LEAVE TO FILE A LATE NOTICE OF CLAIM SHOULD NOT HAVE BEEN GRANTED. [McClancy v Plainedge Union Free Sch. Dist., 2017 NY Slip Op 06651, Second Dept 9-27-17](#)

NEGLIGENCE, LANDLORD-TENANT.

RES IPSA LOQUITUR DID NOT APPLY TO APARTMENT CEILING COLLAPSE BECAUSE LANDLORD DID NOT HAVE EXCLUSIVE CONTROL, QUESTION OF FACT WHETHER LANDLORD BREACHED DUTY TO KEEP PREMISES SAFE (SECOND DEPT). [Correa v Matsias, 2017 NY Slip Op 06520, 2nd Dept 9-20-17](#)

NEGLIGENCE, MUNICIPAL LAW.

FAILURE TO MENTION INADEQUATE LIGHTING IN THE NOTICE OF CLAIM DID NOT WARRANT SUMMARY JUDGMENT ON THE RELATED CAUSE OF ACTION IN THE COMPLAINT. [Lipani v Hiawatha Elementary Sch., 2017 NY Slip Op 06436, Second Dept 9-13-17](#)

NEGLIGENCE, MUNICIPAL LAW.

NYC TRANSIT AUTHORITY RESPONSIBLE FOR MAINTENANCE OF AREA AROUND MANHOLE COVERS IN CITY SIDEWALKS, TRANSIT AUTHORITY'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED IN THIS SLIP AND FALL CASE. [Nyack v City of New York, 2017 NY Slip Op 06445, Second Dept 9-13-17](#)

NEGLIGENCE, MUNICIPAL LAW.

LEAVE TO FILE A LATE NOTICE OF CLAIM IN THIS SLIP AND FALL CASE SHOULD NOT HAVE BEEN GRANTED. [Kelly v City of New York, 2017 NY Slip Op 06640, Second Dept 9-27-17](#)

PRODUCTS LIABILITY, CIVIL PROCEDURE.

COUNTERCLAIMS FOR CONTRIBUTION AND INDEMNIFICATION BASED UPON NEGLIGENT SUPERVISION OF THE INJURED CHILD ARE NOT PROPER IN A PRODUCTS LIABILITY ACTION (SECOND DEPT). [Siragusa v Conair Corp., 2017 NY Slip Op 06564, Second Dept 9-20-17](#)

REAL ESTATE, CONTRACT LAW.

PLAINTIFF DID NOT DEMONSTRATE HE WAS READY WILLING AND ABLE TO PURCHASE THE PROPERTY, SUMMARY JUDGMENT IN THIS SPECIFIC PERFORMANCE ACTION SHOULD NOT HAVE BEEN GRANTED. [Grunbaum v Nicole Brittany, Ltd., 2017 NY Slip Op 06638, Second Dept 9-27-17](#)

REAL PROPERTY.

COVENANT PROHIBITING CONSTRUCTION OF A COMMERCIAL GARAGE DID NOT RUN WITH THE LAND, PLAINTIFF THEREFORE DID NOT HAVE STANDING TO ENFORCE IT. [Fleetwood Chateau Owners Corp. v Fleetwood Garage Corp., 2017 NY Slip Op 06431, Second Dept 9-13-17](#)

REAL PROPERTY, MUNICIPAL LAW.

PLAINTIFF DID NOT DEMONSTRATE THE REQUIREMENTS OF THE NYC BUILDING CODE PROVISION RE LIABILITY FOR EXCAVATION DAMAGE WERE MET, PLAINTIFF'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED. [Chan v Begum, 2017 NY Slip Op 06425, Second Dept 9-13-17](#)

THIRD DEPARTMENT

CRIMINAL LAW.

HABEAS CORPUS IS NOT A VEHICLE FOR RELIEF FOR ISSUES WHICH COULD HAVE BEEN RAISED ON APPEAL AND IS NOT AVAILABLE UNTIL A PRISONER IS ENTITLED TO IMMEDIATE RELEASE (THIRD DEPT). [People v D'Amico, 2017 NY Slip Op 06574, Third Dept 9-21-17](#)

Similar issue and result in [People v Kirkpatrick, 2017 NY Slip Op 06578, Third Dept 9-21-17](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

FAILURE TO FILE PREDICATE FELONY STATEMENT REQUIRED RESENTENCING DESPITE FAILURE TO MAKE AN APPROPRIATE MOTION TO PRESERVE THE ERROR. [People v Fenner, 2017 NY Slip Op 06483, Third Dept 9-14-17](#)

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

ALTHOUGH DEFENDANT WAS NOT REQUIRED TO REGISTER AS A SEX OFFENDER UNDER THE LAW OF WASHINGTON STATE, NEW YORK LAW PROPERLY REQUIRED REGISTRATION, FULL FAITH AND CREDIT CLAUSE NOT VIOLATED. [People v Hlatky, 2017 NY Slip Op 06693, Third Dept 9-28-17](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

SORA COURT'S FAILURE TO ADDRESS DEFENDANT'S REQUEST FOR A DOWNWARD DEPARTURE REQUIRED REMITTAL. [People v Darrah, 2017 NY Slip Op 06684, Third Dept 9-28-17](#)

DISCIPLINARY HEARINGS (INMATES), EVIDENCE.

RELIABILITY OF CONFIDENTIAL INFORMANT NOT INDEPENDENTLY ASSESSED BY HEARING OFFICER, DETERMINATION ANNULLED AND EXPUNGED. [Matter of Fields v Annucci, 2017 NY Slip Op 06697, Third Dept 9-28-17](#)

DISCIPLINARY HEARINGS (INMATES).

HEARING OFFICER DID NOT PROVIDE PETITIONER WITH WRITTEN NOTICE OF HER DENIAL OF PETITIONER'S REQUEST THAT A WITNESS TESTIFY, PETITIONER ENTITLED TO A NEW HEARING (THIRD DEPT). [Matter of Blades v Annucci, 2017 NY Slip Op 06581, Third Dept 9-21-17](#)

WORKERS' COMPENSATION LAW.

FINDING THAT CLAIMANT WAS CAPABLE OF PERFORMING LIGHT WORK WAS NOT SUPPORTED BY THE EVIDENCE, MATTER REMITTED. [Matter of Golovashchenko v Asar Intl. Corp., 2017 NY Slip Op 06500, Third Dept 9-14-17](#)

FOURTH DEPARTMENT

ARBITRATION, EMPLOYMENT LAW, EDUCATION-SCHOOL LAW.

SUPREME COURT SHOULD HAVE DETERMINED THE PROPER PAY FOR A TEACHER WAS ARBITRABLE UNDER THE COLLECTIVE BARGAINING AGREEMENT. [Matter of Thousand Is. Cent. Sch. Dist. v Thousand Is. Educ. Assn., 2017 NY Slip Op 06759, Fourth Dept 9-29-17](#)

ARBITRATION, EMPLOYMENT LAW, MUNICIPAL LAW.

SUPREME COURT SHOULD HAVE DETERMINED THE CONTESTED PROMOTION OF A SHERIFF'S DISPATCHER WAS ARBITRABLE UNDER THE COLLECTIVE BARGAINING AGREEMENT. [Matter of Lewis County \(CSEA Local 1000, AFSCME, AFL-CIO, Lewis County Sheriff's Empls. Unit #7250-03, Lewis County Local 825\), 2017 NY Slip Op 06743, Fourth Dept 9-29-17](#)

CIVIL PROCEDURE, CONTRACT LAW.

SUPREME COURT SHOULD NOT HAVE AWARDED SUMMARY JUDGMENT ON A CAUSE OF ACTION (ACCOUNT STATED) NOT RAISED IN THE MOTION PAPERS. [Diamond Roofing Co., Inc. v PCL Props., LLC, 2017 NY Slip Op 06745, Fourth Dept 9-29-17](#)

CIVIL PROCEDURE, EMPLOYMENT LAW, ATTORNEYS.

CHEERLEADERS FOR BUFFALO BILLS PROPERLY CERTIFIED AS A CLASS ALLEGING LABOR LAW VIOLATIONS AND FRAUD, EVIDENCE PRESENTED IN REPLY PAPERS PROPERLY CONSIDERED, MULTIPLE LAW FIRMS PROPERLY CERTIFIED AS CLASS COUNSEL. [Ferrari v The Natl. Football League, 2017 NY Slip Op 06755, Fourth Dept 9-29-17](#)

CRIMINAL LAW.

DEFENDANT SUFFICIENTLY RAISED THE FIRST STEP OF A BATSON CHALLENGE TO A PEREMPTORY CHALLENGE EXERCISED BY THE PEOPLE, BUT THE NEXT STEPS IN THE BATSON PROCEDURE WERE NOT TAKEN, ALTHOUGH DEFENDANT WAS CONVICTED AFTER A JURY TRIAL, THE MATTER WAS REMITTED TO COMPLETE THE BATSON PROCEDURE. [People v Davis, 2017 NY Slip Op 06790, Fourth Dept 9-29-17](#)

CRIMINAL LAW, APPEALS, CONSTITUTIONAL LAW.

WAIVER OF FOURTH AMENDMENT RIGHTS AS CONDITION OF PROBATION INVALID, DENIAL OF YOUTHFUL OFFENDER STATUS ENCOMPASSED BY WAIVER OF APPEAL. [People v Saraceni, 2017 NY Slip Op 06732, Fourth Dept 9-29-17](#)

CRIMINAL LAW, ATTORNEYS, EVIDENCE.

DEFENDANT SAID HE WOULD NOT GO TO THE POLICE STATION WITHOUT A PARENT OR AN ATTORNEY, THAT CONSTITUTED AN ASSERTION OF HIS RIGHT TO COUNSEL, SUBSEQUENT STATEMENT SHOULD HAVE BEEN SUPPRESSED. [People v Lewis, 2017 NY Slip Op 06776, Fourth Dept 9-29-17](#)

ELECTION LAW.

DESIGNATING PETITION SHOULD NOT HAVE BEEN INVALIDATED, WIFE SIGNED FOR HUSBAND WHO WAS PRESENT, AT MOST ONLY THE ONE SIGNATURE SHOULD HAVE BEEN STRUCK, NOT THE ENTIRE PAGE OF SIGNATURES. [Matter of Van Der Water v Czarny, 2017 NY Slip Op 06408, Fourth Dept 9-6-17](#)

FAMILY LAW.

EVIDENCE DID NOT SUPPORT FINDING THAT RESPONDENT WAS LEGALLY RESPONSIBLE FOR THE CHILD, NEGLECT DETERMINATION CANNOT STAND. [Matter of Kameron V. \(Eva V.\), 2017 NY Slip Op 06782, Fourth Dept 9-29-17](#)

FAMILY LAW.

STIPULATION WHICH WAS NOT MERGED INTO THE JUDGMENT OF DIVORCE SHOULD NOT HAVE BEEN DISMISSED AS UNENFORCEABLE. [Anderson v Anderson, 2017 NY Slip Op 06786, Fourth Dept 9-29-17](#)

NEGLIGENCE.

WATER ON THE BATHROOM FLOOR NEAR THE SHOWER WAS NECESSARILY INCIDENTAL TO THE USE OF THE SHOWER AND WAS NOT AN ACTIONABLE CONDITION IN THIS SLIP AND FALL CASE. [Keller v Keller, 2017 NY Slip Op 06773, Fourth Dept 9-29-17](#)

REAL ESTATE, CONTRACT LAW, TAX LAW.

DOCTRINE OF TAX ESTOPPEL PREVENTED DEFENDANTS FROM ASSERTING FACTS ABOUT THE SALE OF PROPERTY CONTRARY TO THE INFORMATION IN THE REAL PROPERTY TRANSFER REPORT, PLAINTIFF'S ACTION TO ENFORCE A RIGHT OF FIRST REFUSAL SHOULD NOT HAVE BEEN DISMISSED. [Amalfi, Inc. v 428 Co., Inc., 2017 NY Slip Op 06770, Fourth Dept 9-29-17](#)

ZONING.

TRAFFIC CONCERNS JUSTIFIED THE ZONING BOARD'S RESTRICTIONS ON A RESTAURANT'S HOURS OF OPERATION AND REQUIREMENT FOR VALET PARKING. [Matter of Bonefish Grill, LLC v Zoning Bd. of Appeals of the Vil. of Rockville Ctr., 2017 NY Slip Op 06643, Fourth Dept 9-29-17](#)

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ARBITRATION, CONTRACT LAW.

WHETHER THE MATTER IS ARBITRABLE MUST BE DETERMINED BY THE ARBITRATOR. [Garthon Bus. Inc. v Stein, 2017 NY Slip Op 07160, Ct App 10-12-17](#)

CIVIL PROCEDURE.

PARTY PROPERLY PRECLUDED FROM PARTICIPATION IN DAMAGES INQUEST BASED UPON THE PARTY'S REFUSAL TO PROVIDE COURT-ORDERED DISCLOSURE OF TAX RETURNS. [Herman v Herman, 2017 NY Slip Op 07161, CtApp 10-12-17](#)

CIVIL PROCEDURE, INSURANCE LAW.

LEGISLATIVELY CREATED INSURANCE LAW ADVISORY ASSOCIATION DID NOT HAVE THE CAPACITY TO SUE AN INSURER FOR FEES THE ASSOCIATION WAS AUTHORIZED TO RECEIVE. [Excess Line Assn. of N.Y. \(ELANY\) v Waldorf & Assoc., 2017 NY Slip Op 07301, CtApp 10-19-17](#)

CONTRACT LAW.

LAWSUIT SEEKING RESCISSION OR REFORMATION OF A REAL ESTATE PURCHASE AND SALE AGREEMENT DID NOT CONSTITUTE AN ANTICIPATORY BREACH OF THE CONTRACT, APPELLATE DIVISION REVERSED. [Princes Point LLC v Muss Dev. L.L.C., 2017 NY Slip Op 07298, CtApp 10-19-17](#)

CRIMINAL LAW.

FOR CAUSE JUROR CHALLENGE SHOULD HAVE BEEN GRANTED, NEW TRIAL ORDERED. [People v Wright, 2017 NY Slip Op 07159, CtApp 10-12-17](#)

CRIMINAL LAW.

RULE THAT A WARRANTLESS ARREST AT THE THRESHOLD OF AN APARTMENT DOORWAY DOES NOT VIOLATE PAYTON REAFFIRMED, DISSENT ARGUED NEW YORK'S PERSISTENT FELONY OFFENDER STATUTE VIOLATES APPRENDI. [People v Garvin, 2017 NY Slip Op 07382, CtApp 10-24-17](#)

CRIMINAL LAW.

TOW TRUCK WAS "EQUIPPED" WITH A POLICE SCANNER, EVEN THOUGH THE SCANNER WAS IN DEFENDANT'S POCKET, NOT ATTACHED TO THE TRUCK. [People v Andujar, 2017 NY Slip Op 07383, CtApp 10-24-17](#)

CRIMINAL LAW, APPEALS, JUDGES.

CITY COURT JUDGE WHO CONVICTED DEFENDANT AND WAS THEN ELECTED TO COUNTY COURT SHOULD HAVE RECUSED HIMSELF FROM ADJUDICATING THE APPEAL OF DEFENDANT'S CITY COURT CONVICTION. [People v Novak, 2017 NY Slip Op 07384, CtApp 10-24-17](#)

CRIMINAL LAW, EVIDENCE.

CRIMINALIST'S TESTIMONY ABOUT THE DNA EVIDENCE PURPORTEDLY LINKING DEFENDANT TO THE BURGLARY SCENES WAS ENTIRELY HEARSAY, RIGHT TO CONFRONT WITNESSES VIOLATED, NEW TRIAL ORDERED. [People v Austin, 2017 NY Slip Op 07300, Ct App 10-19-17](#)

EMPLOYMENT LAW, HUMAN RIGHTS LAW.

NEW YORK CITY HUMAN RIGHTS LAW DOES NOT PROTECT FROM DISCRIMINATION EMPLOYEES MISTAKENLY PERCEIVED BY THEIR EMPLOYER TO SUFFER FROM ALCOHOLISM. [Makinen v City of New York, 2017 NY Slip Op 07208, Ct App 10-17-17](#)

FREEDOM OF INFORMATION LAW (FOIL), EDUCATION LAW, ATTORNEYS.

DOCUMENTS RELATING TO AUDITS OF SPECIAL EDUCATION PROGRAMS PROPERLY REDACTED TO EXCLUDE INFORMATION ABOUT LAW ENFORCEMENT PROCEDURES, PETITIONER ENTITLED TO ATTORNEY'S FEES. [Matter of Madeiros v New York State Educ. Dept., 2017 NY Slip Op 07209, CtApp 10-17-17](#)

MENTAL HYGIENE LAW, EVIDENCE, CRIMINAL LAW.

MAJORITY FOUND THE PROOF SUFFICIENT TO JUSTIFY CONTINUED CIVIL COMMITMENT OF THE SEX OFFENDER DIAGNOSED WITH PEDOPHILIA, THE DISSENT DISAGREED AND FORCEFULLY ARGUED THE ACCEPTED STANDARDS OF PSYCHIATRIC/PSYCHOLOGICAL PROOF ARE FLAWED. [Matter of State of New York v Floyd Y., 2017 NY Slip Op 07381, CtApp 10-24-17](#)

MUNICIPAL LAW, EMPLOYMENT LAW.

POLICE DISCIPLINARY PROCEDURES ARE NOT SUBJECT TO COLLECTIVE BARGAINING. [Matter of City of Schenectady v New York State Pub. Empl. Relations Bd., 2017 NY Slip Op 07210, CtApp 10-17-17](#)

NEGLIGENCE, MEDICAL MALPRACTICE.

SUMMARY JUDGMENT REVERSED. [Burns v Goyal, 2017 NY Slip Op 07162, Ct App 10-12-17](#)

WORKERS' COMPENSATION LAW, INSURANCE LAW.

AMENDMENT TO WORKERS' COMPENSATION LAW WHICH CLOSED THE SPECIAL FUND FOR REOPENED CASES IS CONSTITUTIONAL. [American Economy Ins. Co. v State of New York, 2017 NY Slip Op 07385, CtApp 10-24-17](#)

FIRST DEPARTMENT

ADMINISTRATIVE LAW.

STATE LIQUOR AUTHORITY SHOULD NOT HAVE DENIED APPLICATION FOR A LIQUOR LICENSE BASED UPON THE HISTORY OF PRIOR TAVERNS AT THE SAME LOCATION WITH WHICH THE CURRENT APPLICANT HAD NO CONNECTION. [Matter of Galaxy Bar & Grill Corp. v New York State Liq. Auth., 2017 NY Slip Op 07168, First Dept 10-12-17](#)

ATTORNEYS.

LAWSUIT BROUGHT BY AN ATTORNEY WHO DID NOT HAVE AN IN-STATE OFFICE WAS A NULLITY. [Arrowhead Capital Fin., Ltd. v Cheyne Specialty Fin. Fund L.P., 2017 NY Slip Op 07219, First Dept 10-17-17](#)

CIVIL PROCEDURE,

INSUFFICIENT SHOWING DISCLOSURE OF TAX RETURNS WAS NECESSARY TO PROVE DEFENDANT'S CLAIMS. [Pinnacle Sports Media & Entertainment, LLC v Greene, 2017 NY Slip Op 07527, First Dept 10-26-17](#)

COOPERATIVES, CIVIL PROCEDURE.

ACTION BY COOPERATIVE APARTMENT OWNER CONTESTING RULES PROMULGATED BY THE COOPERATIVE BOARD MUST BE BROUGHT UNDER ARTICLE 78, ATTEMPT TO BRING A PLENARY ACTION DISMISSED AS TIME-BARRED. [Musey v 425 E. 86 Apts. Corp., 2017 NY Slip Op 06880, First Dept 10-3-17](#)

CONTRACT LAW, ENERGY LAW.

NOT CLEAR WHETHER WIND POWER CONTRACT INCLUDED RENEWABLE ENERGY CREDITS AS PART OF THE REVENUE, SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [DKRW Wind Holdings, LLC v Transcanada Energy, Ltd., 2017 NY Slip Op 06907, First Dept 10-3-17](#)

CRIMINAL LAW.

FAILURE TO CLARIFY WHETHER DEFENDANT WAS A CITIZEN REQUIRED VACATION OF THE GUILTY PLEA. [People v Bermudez, 2017 NY Slip Op 06888, First Dept 10-3-17](#)

CRIMINAL LAW.

TRIAL JUDGE FAILED TO INSTRUCT THE JURY THAT AN ACQUITTAL ON THE TOP COUNT BASED UPON THE JUSTIFICATION DEFENSE REQUIRED ACQUITTAL ON THE REMAINING CHARGES, NEW TRIAL ORDERED. [People v Valentin, 2017 NY Slip Op 07166, First Dept 10-12-17](#)

CRIMINAL LAW

DEFENDANT DID NOT INTEND TO COMMIT ASSAULT AT THE TIME HE REFUSED TO LEAVE HIS WIFE'S HOME, BURGLARY CONVICTION VACATED. [People v Swinson, 2017 NY Slip Op 07302, First Dept 10-19-17](#)

CRIMINAL LAW, ANIMAL LAW.

AGGRAVATED CRUELTY TO ANIMALS CONVICTION AFFIRMED. [People v Jones, 2017 NY Slip Op 07171, First Dept 10-12-17](#)

CRIMINAL LAW, APPEALS.

COURT DID NOT MAKE SURE DEFENDANT KNEW HE WAS PLEADING GUILTY TO A DWELLING, AS OPPOSED TO A COMMERCIAL, BURGLARY, PLEA VACATED DESPITE FAILURE TO PRESERVE THE ERROR. [People v Ortiz, 2017 NY Slip Op 06990, First Dept 10-5-17](#)

CRIMINAL LAW, EVIDENCE.

DEFENSE COUNSEL SHOULD HAVE BEEN ALLOWED TO CROSS-EXAMINE THE ARRESTING DETECTIVE ABOUT A CIVIL SUIT AGAINST HIM; REVERSAL OF POSSESSION CONVICTION DID NOT REQUIRE REVERSAL OF SALE CONVICTION; CROSS-EXAMINATION OF DEFENDANT ABOUT A CONVICTION WHICH WAS SUBSEQUENTLY REVERSED DID NOT AFFECT THE CONVICTION. [People v Robinson, 2017 NY Slip Op 07175, First Dept 10-12-17](#)

CRIMINAL LAW, LANDLORD-TENANT.

RECORD OF DEFENDANT'S DISORDERLY CONDUCT CONVICTION COULD NOT BE UNSEALED BY THE DISTRICT ATTORNEY'S OFFICE IN AN EVICTION PROCEEDING BASED UPON THE UNDERLYING DRUG CHARGE, DISTRICT ATTORNEY'S OFFICE WAS NOT ACTING AS A LAW ENFORCEMENT AGENCY IN THE EVICTION PROCEEDING WITHIN THE MEANING OF THE SEALING STATUTE. [People v F.B., 2017 NY Slip Op 07232, First Dept 10-17-17](#)

DEBTOR-CREDITOR, CIVIL PROCEDURE.

PLAINTIFF ENTITLED TO A RENEWAL JUDGMENT PLUS ACCRUED INTEREST DESPITE MORE THAN TEN YEAR DELAY IN ENFORCEMENT. [C.T. Holdings, Ltd. v Schreiber Family Charitable Found., Inc., 2017 NY Slip Op 06914, First Dept 10-3-17](#)

EMPLOYMENT LAW, HUMAN RIGHTS LAW (NYC).

MOTION TO DISMISS PLAINTIFF'S GENDER DISCRIMINATION SUIT PROPERLY DENIED, EVEN IF DEFENDANT WAS NOT PLAINTIFF'S EMPLOYER OR A JOINT EMPLOYER, IT COULD BE LIABLE FOR AIDING AND ABETTING DISCRIMINATION. [Schindler v Plaza Constr. LLC, 2017 NY Slip Op 07182, First Dept 10-12-17](#)

FAMILY LAW.

FAMILY COURT SHOULD HAVE FOUND FOUR MONTH OLD CHILD TO HAVE BEEN NEGLECTED, FATHER CHOKED MOTHER WITH CHILD IN THE ROOM. [Matter of Isabella S. \(Robert T.\), 2017 NY Slip Op 07533, First Dept 10-26-17](#)

FORECLOSURE, EVIDENCE.

AFFIDAVIT WAS SUFFICIENT TO DEMONSTRATE PLAINTIFF BANK'S ENTITLEMENT TO SUMMARY JUDGMENT IN THIS FORECLOSURE ACTION UNDER THE CONTROLLING ADMINISTRATIVE ORDER AND THE BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE. [Bank of Am., N.A. v Brannon, 2017 NY Slip Op 07578, First Dept 10-31-17](#)

LABOR LAW-CONSTRUCTION LAW.

DECKING WHICH WAS TO BECOME A PERMANENT FLOOR COLLAPSED, PLAINTIFF ENTITLED TO SUMMARY JUDGMENT ON HIS LABOR LAW 240 (1) CAUSE OF ACTION BECAUSE WORK REMAINED TO COMPLETE THE FLOOR. [Cross v CIM Group, LLC, 2017 NY Slip Op 06912, First Dept 10-3-17](#)

LABOR LAW-CONSTRUCTION LAW, CIVIL PROCEDURE.

LICENSEE WAS THE OWNER OF THE PREMISES WITHIN THE MEANING OF THE LABOR LAW, EVIDENCE OF LICENSEE STATUS PROPERLY PRESENTED FOR THE FIRST TIME IN REPLY PAPERS, PLAINTIFF FELL FROM A STRUCTURE WITHIN THE MEANING OF LABOR LAW 240 (1). [Perez v Beach Concerts, Inc., 2017 NY Slip Op 07528, First Dept 10-26-17](#)

MEDICAL MALPRACTICE, NEGLIGENCE, EVIDENCE.

THE CONCLUSORY ALLEGATIONS IN PLAINTIFF'S EXPERT'S AFFIDAVIT WERE INSUFFICIENT TO RAISE A QUESTION OF FACT ABOUT THE ADEQUACY OF PLAINTIFF'S TREATMENT, APPELLATE DIVISION REVERSED, TWO JUSTICE DISSENT. [Brooks v April, 2017 NY Slip Op 07386, First Dept 10-24-17](#)

NEGLIGENCE.

DRIVER'S NEGLIGENCE IS NOT ALWAYS A QUESTION OF FACT WHEN THE DRIVER IS AWARE OF THE POSSIBILITY CHILDREN ARE PRESENT, PLAINTIFFS' CHILD WAS STRUCK BY DEFENDANT'S CAR, SUMMARY JUDGMENT PROPERLY AWARDED TO DEFENDANT DRIVER. [A.C. v Ajisogun, 2017 NY Slip Op 06894, First Dept 10-3-17](#)

NEGLIGENCE.

BUS DRIVER ACTED REASONABLY IN RESPONSE TO AN EMERGENCY SITUATION (AN ASSAULT ON THE DRIVER), PLAINTIFF PASSENGER'S NEGLIGENCE AND FALSE IMPRISONMENT ACTION SHOULD HAVE BEEN DISMISSED. [Savinon v New York City Tr. Auth., 2017 NY Slip Op 07390, First Dept 10-24-17](#)

NEGLIGENCE, EMPLOYMENT LAW.

PLAINTIFF'S DECEDENT DIED AFTER BECOMING INTOXICATED AT A PARTY HELD BY CO-WORKERS, THE PARTY WAS NOT SANCTIONED BY THE EMPLOYER, EMPLOYER'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED.

[Gillern v Mahoney, 2017 NY Slip Op 06979, First Dept 10-5-17](#)

NEGLIGENCE, MEDICAID, ATTORNEYS.

PLAINTIFF'S COUNSEL'S ARGUMENT THAT THE ENTIRE SETTLEMENT AMOUNT WAS ALLOCATED TO PAIN AND SUFFERING AND NOTHING WAS AVAILABLE TO PAY THE MEDICAID LIEN REJECTED. [D.J. v 636 Holding Corp., 2017 NY Slip Op 07085, First Dept 10-10-17](#)

NEGLIGENCE, MUNICIPAL LAW (NYC).

DEFENDANT DID NOT DEMONSTRATE AS A MATTER OF LAW SHE WAS ENTITLED TO THE NYC ADMINISTRATIVE CODE EXEMPTION FROM LIABILITY FOR A SIDEWALK SLIP AND FALL, DEFENDANT HAD TWO OTHER HOMES (FIRST DEPT). [Kalajian v 320 E. 50th St. Realty Co., 2017 NY Slip Op 07225, First Dept 10-17-17](#)

PRODUCTS LIABILITY, NEGLIGENCE, IMMUNITY.

MANUFACTURERS' MOTION TO AMEND THEIR ANSWER TO ADD A COUNTERCLAIM FOR CONTRIBUTION AND INDEMNIFICATION AGAINST THE MOTHER OF THE INJURED CHILD IN THIS PRODUCTS LIABILITY ACTION PROPERLY DENIED, THE COUNTERCLAIM WAS APPARENTLY PROHIBITED BY THE RULE OF INTRAFAMILIAL IMMUNITY. [Y.A. v Conair Corp., 2017 NY Slip Op 07542, First Dept 10-26-17](#)

REAL PROPERTY TAX LAW, ADMINISTRATIVE LAW, LIMITED LIABILITY CORPORATION LAW.

A SERIES OF AGREEMENTS AND TRANSFERS OF INTERESTS IN REAL PROPERTY TO AN LLC CONSTITUTED A SINGLE TRANSACTION SUBJECT TO THE REAL PROPERTY TRANSFER TAX. [GKK 2 Herald LLC v City of N.Y. Tax Appeals Trib., 2017 NY Slip Op 07102, First Dept, 10-10-17](#)

WORKERS' COMPENSATION LAW, EMPLOYMENT LAW, LABOR LAW-CONSTRUCTION LAW.

MEMBER OF A JOINT VENTURE, INJURED ON THE JOB, COULD NOT SUE ANOTHER MEMBER OF THE JOINT VENTURE UNDER THE LABOR LAW, WORKERS' COMPENSATION WAS HIS EXCLUSIVE REMEDY. [Cortes v Skanska USA Civ. Northeast, Inc., 2017 NY Slip Op 07307, First Dept 10-19-17](#)

SECOND DEPARTMENT

CIVIL PROCEDURE, EVIDENCE.

PRECLUDING EXPERT TESTIMONY WAS TOO SEVERE A SANCTION FOR SPOILIATION OF EVIDENCE IN THIS CONTRACT ACTION. [Smith v Cunningham, 2017 NY Slip Op 06938, Second Dept 10-4-17](#)

CIVIL PROCEDURE, MUNICIPAL LAW.

MOTION TO AMEND THE COMPLAINT TO ADD NAMED DEPUTIES TO SUBSTITUTE FOR JOHN DOES AFTER THE STATUTE OF LIMITATIONS HAD RUN SHOULD HAVE BEEN GRANTED, RELATION BACK DOCTRINE APPLIED. [Eriksen v County of Suffolk, 2017 NY Slip Op 06974, Second Dept 10-4-17](#)

CIVIL PROCEDURE, NEGLIGENCE.

DRIVER'S AFFIDAVIT SUBSCRIBED AND SWORN TO OUT OF STATE SHOULD HAVE BEEN CONSIDERED IN THIS PEDESTRIAN ACCIDENT CASE, DESPITE ABSENCE OF CERTIFICATE OF CONFORMITY, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Voskoboinyk v Trebisovsky, 2017 NY Slip Op 07481, Second Dept 10-25-17](#)

CONTRACT LAW, ATTORNEYS.

THE INDEMNIFICATION PROVISIONS OF THE CONTRACT DID NOT INCLUDE INDEMNIFICATION FOR ATTORNEY'S FEES. [Lawson v R&L Carriers, Inc., 2017 NY Slip Op 07245, Second Dept 10-18-17](#)

CONTRACT LAW, CIVIL PROCEDURE, MUNICIPAL LAW.

STIPULATION WAS AMBIGUOUS ABOUT WHETHER IT EXTENDED THE TIME FOR FILING OF CERTAIN NOTICES OF CLAIM IN THIS CONSTRUCTION CONTRACT DISPUTE, SUPREME COURT SHOULD NOT HAVE DISMISSED THOSE CLAIMS AT THE PLEADING STAGE. [AMCC Corp. v New York City Sch. Constr. Auth., 2017 NY Slip Op 06934, Second Dept 10-4-17](#)

CRIMINAL LAW.

COURT FAILED TO CONDUCT A SUFFICIENT INQUIRY INTO THE REASON FOR DEFENDANT'S ABSENCE FROM TRIAL BEFORE HEARING TESTIMONY, NEW TRIAL ORDERED. [People v Johnson, 2017 NY Slip Op 07143, Second Dept 10-11-17](#)

CRIMINAL LAW.

PROSECUTOR'S FAILURE TO ARGUE DEFENSE COUNSEL'S REASONS FOR PEREMPTORY CHALLENGES WERE PRETEXTUAL AFTER MAKING A REVERSE BATSON OBJECTION REQUIRED REVERSAL AND A NEW TRIAL. [People v Owoaje, 2017 NY Slip Op 07147, Second Dept 10-11-17](#)

CRIMINAL LAW.

RARE CASE WHERE DEFENDANT WAS PROPERLY CONVICTED OF DEPRAVED INDIFFERENCE MURDER WHEN ONLY ONE VICTIM WAS ENDANGERED. [People v Spears, 2017 NY Slip Op 07148, Second Dept 10-11-17](#)

CRIMINAL LAW.

MOTION COURT DENIED SUPPRESSION AFTER APPLYING THE WRONG STANDARD TO THE STREET STOP, SUPPRESSION GRANTED AND INDICTMENT DISMISSED. [People v Noble, 2017 NY Slip Op 07280, Second Dept 10-18-17](#)

CRIMINAL LAW, APPEALS.

DEFENDANT PENALIZED FOR GOING TO TRIAL WITH AN EXCESSIVE SENTENCE, SENTENCE REDUCED IN THE INTEREST OF JUSTICE. [People v Hodge, 2017 NY Slip Op 07456, Second Dept 10-25-17](#)

CRIMINAL LAW, EVIDENCE.

PEOPLE DID NOT DEMONSTRATE THE INVENTORY SEARCH OF DEFENDANT'S VEHICLE WAS VALIDLY EXECUTED, HANDGUN FOUND IN THE SEARCH SHOULD HAVE BEEN SUPPRESSED. [People v Bacquie, 2017 NY Slip Op 06924, Second Dept 10-4-17](#)

CRIMINAL LAW, EVIDENCE.

EVIDENCE WAS SUFFICIENT TO SUPPORT MANSLAUGHTER CONVICTION FOR THE DEATH OF A BABY, TWO JUSTICE DISSENT. [People v Hang Bin Li, 2017 NY Slip Op 07454, Second Dept 10-25-17](#)

CRIMINAL LAW, EVIDENCE.

INSUFFICIENT EVIDENCE LINKING DEFENDANT TO THREATS TO WITNESS, WITNESS'S GRAND JURY TESTIMONY SHOULD NOT HAVE BEEN READ TO THE JURY, WITNESS SHOULD NOT HAVE BEEN ALLOWED TO TESTIFY ABOUT THE THREATS, TWO JUSTICE DISSENT. [People v Vargas, 2017 NY Slip Op 07465, Second Dept 10-25-17](#)

DEBTOR-CREDITOR.

DEBTOR CAN SIMPLY REFUSE TO REPAY THE CRIMINALLY USURIOUS LOAN. [Roopchand v Mohammed, 2017 NY Slip Op 07476, Second Dept 10-25-17](#)

FAMILY LAW.

EVIDENCE OF MOTHER'S DRUG USE PRESENTED A PRIMA FACIE CASE OF CHILD NEGLECT. [Matter of Isiah L. \(Terry C.\), 2017 NY Slip Op 06954, Second Dept 10-4-17](#)

FAMILY LAW.

EVEN THOUGH THE CHILD TURNED 21 FAMILY COURT HAD JURISDICTION TO MAKE CHANGES IN ITS SPECIAL IMMIGRANT JUVENILE STATUS FINDINGS. [Matter of Juan R.E.M. \(Juan R.E.\), 2017 NY Slip Op 06977, Second Dept 10-4-17](#)

FAMILY LAW.

GARNISHMENT OF HUSBAND'S INCOME FOR CHILD SUPPORT ARREARS AT 65% DID NOT STRIKE A FAIR BALANCE BETWEEN THE NEEDS OF THE CREDITOR WIFE AND THE NEEDS OF THE DEBTOR HUSBAND, REDUCED TO 40%. [Fishler v Fishler, 2017 NY Slip Op 07429, Second Dept 10-25-17](#)

FAMILY LAW.

RESPONDENT WAS A PERSON LEGALLY RESPONSIBLE FOR THE CHILDREN, RESPONDENT'S VIOLENCE TOWARD MOTHER IN THE CHILDREN'S PRESENCE AND EXCESSIVE CORPORAL PUNISHMENT CONSTITUTED NEGLECT AND DERIVATIVE NEGLECT, FAMILY COURT REVERSED. [Matter of Gary J. \(Engerys J.\), 2017 NY Slip Op 07441, Second Dept 10-25-17](#)

FORECLOSURE.

BANK DID NOT DEMONSTRATE STANDING TO BRING THE FORECLOSURE ACTION. [Wells Fargo Bank, N.A. v Allen, 2017 NY Slip Op 06922, Second Dept 10-4-17](#)

FORECLOSURE, APPEALS, EVIDENCE.

MORTGAGE ON COMMERCIAL PROPERTY WAS NOT A HOME LOAN AND WAS THEREFORE NOT SUBJECT TO THE NOTICE REQUIREMENTS OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL), HOME LOAN ISSUE COULD BE RAISED FOR THE FIRST TIME ON APPEAL, MAILING REQUIREMENTS OF THE RPAPL MAY BE PROVED BY EVIDENCE OTHER THAN AN AFFIDAVIT OF SERVICE. [HSBC Bank USA, N.A. v Ozcan, 2017 NY Slip Op 07242, Second Dept 10-18-17](#)

FORECLOSURE, CIVIL PROCEDURE.

MOVING FOR AN ORDER OF REFERENCE WITHIN ONE YEAR OF DEFAULT IN A FORECLOSURE ACTION SUFFICIENT TO AVOID ABANDONMENT UNDER CPLR 3215. [Wells Fargo Bank, N.A. v Lilley, 2017 NY Slip Op 07157, Second Dept 10-11-17](#)

FORECLOSURE, EVIDENCE.

BANK FAILED TO DEMONSTRATE STANDING TO FORECLOSE, SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED (SECOND DEPT). [Bank of N.Y. Mellon v Cutler, 2017 NY Slip Op 07424, Second Dept 10-25-17](#)

LABOR LAW-CONSTRUCTION LAW.

FAILED DEVICE WAS NOT A SAFETY DEVICE WITHIN THE MEANING OF LABOR LAW 240 (1) AND WAS NOT COVERED BY THE INDUSTRIAL CODE (LABOR LAW 241 (6)), HOWEVER THE LABOR LAW 200 CAUSE OF ACTION SHOULD NOT HAVE BEEN DISMISSED. [Honeyman v Curiosity Works, Inc., 2017 NY Slip Op 07241, Second Dept 10-18-17](#)

LIMITED LIABILITY COMPANY LAW, EVIDENCE, CIVIL PROCEDURE.

SUMMARY JUDGMENT IN FAVOR OF PETITIONER IN A SPECIAL PROCEEDING SEEKING DISSOLUTION OF A LIMITED LIABILITY COMPANY SHOULD NOT HAVE BEEN GRANTED, NO COMPETENT EVIDENTIARY PROOF SUBMITTED WITH THE PETITION. [Matter of FR Holdings, FLP v Homapour, 2017 NY Slip Op 07439, Second Dept 10-25-17](#)

MEDICAL MALPRACTICE, NEGLIGENCE, EVIDENCE.

PLAINTIFF'S EXPERTS DID NOT RAISE A QUESTION OF FACT ABOUT THE ADEQUACY OF DEFENDANTS' CARE, AFFIDAVITS WERE CONCLUSORY, DID NOT ADDRESS PROXIMATE CAUSE, AND DID NOT PROVIDE A FOUNDATION FOR OPINIONS OUTSIDE THE EXPERTS' AREA OF EXPERTISE. [Tsitrin v New York Community Hosp., 2017 NY Slip Op 07480, Second Dept 10-25-17](#)

MORTGAGES, BANKRUPTCY.

EVEN THOUGH THE MORTGAGE NOTE WAS DISCHARGED IN BANKRUPTCY IN PERSONAM, THE HOLDER OF THE NOTE AND MORTGAGE HAD A SECURITY INTEREST IN REM. [Citimortgage, Inc. v Chouen, 2017 NY Slip Op 07427, Second Dept 10-25-17](#)

MUNICIPAL LAW.

PETITIONER DEMONSTRATED CITY WOULD NOT BE PREJUDICED BY THE FILING OF A LATE NOTICE OF CLAIM, BUT DID NOT SHOW THE CITY HAD TIMELY KNOWLEDGE OF THE CLAIM AND DID NOT PRESENT AN ADEQUATE EXCUSE FOR FAILURE TO FILE ON TIME, LEAVE TO FILE A LATE NOTICE PROPERLY DENIED, TWO JUSTICE DISSENT. [Matter of Ruiz v City of New York, 2017 NY Slip Op 07445, Second Dept 10-25-17](#)

NEGLIGENCE.

ALTHOUGH DEFENDANT HAD RIGHT OF WAY AND ON-COMING CAR RAN A RED LIGHT, DEFENDANT FAILED TO DEMONSTRATE FREEDOM FROM COMPARATIVE FAULT, SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Fargione v Chance, 2017 NY Slip Op 06965, Second Dept 10-4-17](#)

NEGLIGENCE.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IN THIS INTERSECTION ACCIDENT CASE SHOULD HAVE BEEN GRANTED, PLAINTIFF DEMONSTRATED ABSENCE OF COMPARATIVE NEGLIGENCE. [Giwa v Bloom, 2017 NY Slip Op 07430, Second Dept 10-25-17](#)

NEGLIGENCE.

QUESTION OF FACT WHETHER DRIVER WAS LIABLE IN COLLISION WITH BICYCLIST, DESPITE THE FACT THE BICYCLIST WAS NEGLIGENT AS A MATTER OF LAW FOR RIDING THE WRONG WAY ON A ONE WAY STREET. [Rojas v Solis, 2017 NY Slip Op 07475, Second Dept 10-25-17](#)

NEGLIGENCE, CIVIL PROCEDURE, MUNICIPAL LAW.

PLAINTIFF'S MOTION TO RENEW AND REARGUE HER OPPOSITION TO THE CITY'S SUMMARY JUDGMENT MOTION IN THIS SIDEWALK SLIP AND FALL CASE SHOULD HAVE BEEN GRANTED, NEWLY DISCOVERED DOCUMENTS RAISED A QUESTION OF FACT WHETHER THE CITY CREATED THE DANGEROUS CONDITION. [Trawinski v Jabir & Farag Props., LLC, 2017 NY Slip Op 07479, Second Dept 10-25-17](#)

NEGLIGENCE, EVIDENCE.

BASES FOR DEFENSE EXPERT'S OPINION THAT PLAINTIFF'S INJURIES COULD NOT HAVE BEEN CAUSED BY THE REAR-END COLLISION WERE NOT SUFFICIENTLY DESCRIBED, NEW DAMAGES TRIAL ORDERED. [Dovberg v Laubach, 2017 NY Slip Op 07238, Second Dept 10-18-17](#)

NEGLIGENCE, EVIDENCE.

NONTREATING PHYSICIAN WHO SAW PLAINTIFF ONCE CAN TESTIFY ABOUT FUTURE PAIN AND SUFFERING, TESTIMONY SHOULD NOT HAVE BEEN PRECLUDED AND FUTURE PAIN AND SUFFERING SHOULD HAVE BEEN CONSIDERED BY THE JURY. [Knight v Barsch, 2017 NY Slip Op 07244, Second Dept 10-18-17](#)

NEGLIGENCE, EVIDENCE.

PLAINTIFF WAS ONLY ABLE TO SPECULATE ABOUT THE CAUSE OF HER SLIP AND FALL, DEFENDANT'S SUMMARY JUDGMENT MOTION PROPERLY GRANTED. [Cross v Friendship Rest. Group, LLC, 2017 NY Slip Op 07428, Second Dept 10-25-17](#)

REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL).

PETITIONER ENTITLED TO A LICENSE PURSUANT TO RPAPL 881 ALLOWING TEMPORARY ACCESS TO RESPONDENT'S PROPERTY DURING CONSTRUCTION ON PETITIONER'S ADJACENT PROPERTY. [Matter of Queens Coll. Special Projects Fund, Inc. v Newman, 2017 NY Slip Op 07444, Second Dept 10-25-17](#)

REAL PROPERTY LAW, CIVIL PROCEDURE.

A RIGHT OF FIRST REFUSAL IN A DEED IS NOT A RESERVATION WITHIN THE MEANING OF THE STRANGER TO THE DEED RULE, PLAINTIFFS FAILED TO GIVE THE NOTICE REQUIRED BY THE RIGHT OF FIRST REFUSAL, MATTER IS NOT YET A JUSTICIABLE CONTROVERSY. [Peters v Smolian, 2017 NY Slip Op 07473, Second Dept 10-25-17](#)

THIRD DEPARTMENT

CIVIL PROCEDURE, PRIVILEGE.

WITNESS PRIVILEGE DID NOT PRECLUDE COUNTERCLAIMS WHICH WERE SUPPORTED BY THE WITNESS'S TRIAL TESTIMONY BUT WHICH WERE NOT BASED UPON THE TRIAL TESTIMONY. [Toasperm v Laduca Law Firm LLP, 2017 NY Slip Op 07374, Third Dept 10-19-17](#)

CRIMINAL LAW.

ALTHOUGH DEFENDANT HAD BEEN PROPERLY WARNED OF THE CONSEQUENCES OF NOT APPEARING FOR TRIAL, COUNTY COURT DID NOT TAKE ADEQUATE STEPS TO ATTEMPT TO SECURE DEFENDANT'S PRESENCE, CONVICTION REVERSED. [People v Atkins, 2017 NY Slip Op 07342, Third Dept 10-19-17](#)

CRIMINAL LAW.

DEFENDANT'S SENTENCE FOR ROBBING A PHARMACY OF OXYCODONE REDUCED BASED IN PART ON HIS STATUS AS A WOUNDED VETERAN AND HIS OPIOID ADDICTION. [People v Wyrick, 2017 NY Slip Op 07488, Third Dept 10-26-17](#)

CRIMINAL LAW, ATTORNEYS.

DEFENSE COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO ANTICIPATE THE HARASSMENT STATUTE WOULD BE DECLARED UNCONSTITUTIONAL SIX YEARS AFTER DEFENDANT'S PLEA. [People v Rapp, 2017 NY Slip Op 07006, Second Dept 10-5-17](#)

CRIMINAL LAW, EVIDENCE.

JURY SHOULD HAVE BEEN INSTRUCTED ON THE JUSTIFICATION DEFENSE, EVIDENCE OF PRIOR BAD ACTS INVOLVING A DIFFERENT VICTIM NOT ADMISSIBLE. [People v Ball, 2017 NY Slip Op 07341, Third Dept 10-18-17](#)

CRIMINAL LAW, EVIDENCE.

HEARSAY NOT ADMISSIBLE AS BACKGROUND INFORMATION TO EXPLAIN THE REASON FOR A SEARCH, PEOPLE SHOULD NOT HAVE BEEN ALLOWED TO IMPEACH THEIR OWN WITNESS. [People v Grierson, 2017 NY Slip Op 07344, Third Department 10-19-17](#)

CRIMINAL LAW, EVIDENCE, ATTORNEYS.

POLICE SHOULD HAVE STOPPED QUESTIONING AFTER DEFENDANT INDICATED HE WANTED TO SPEAK TO A LAWYER, SUBSEQUENT STATEMENTS SHOULD HAVE BEEN SUPPRESSED, ERROR HARMLESS HOWEVER. [People v Leflore, 2017 NY Slip Op 07483, Third Dept 10-26-17](#)

DISCIPLINARY HEARINGS (INMATES).

PETITIONER'S REQUEST FOR A WITNESS TO TESTIFY ABOUT THE CALIBRATION PROCEDURES FOR THE MACHINE USED TO TEST FOR THE PRESENCE OF MARIJUANA IN URINE SHOULD HAVE BEEN GRANTED. [Matter of Paddyfote v Annucci, 2017 NY Slip Op 07502, Third Dept 10-26-17](#)

EDUCATION-SCHOOL LAW, CONSTITUTIONAL LAW.

CASE ALLEGING SCHOOL DISTRICTS' FAILURE TO PROVIDE THE SOUND BASIC EDUCATION REQUIRED BY THE NYS CONSTITUTION REMITTED FOR FINDINGS OF FACT WHETHER THE FUNDING FOR EACH OF THE EIGHT SCHOOL DISTRICTS PASSES CONSTITUTIONAL MUSTER. [Maisto v State of New York, 2017 NY Slip Op 07511, Third Dept 10-26-17](#)

EMPLOYMENT LAW, CONSTITUTIONAL LAW.

DEPARTMENT OF AGRICULTURE AND MARKETS PROPERLY PROHIBITED ITS MILK PLANT AND FARM INSPECTORS FROM SERVING AS COUNTY LEGISLATORS, THE RESULTING CONSTRAINT ON FREE SPEECH IS JUSTIFIED. [Matter of Spence v New York State Dept. of Agric. & Mkts., 2017 NY Slip Op 07506, Third Dept 10-26-17](#)

ENVIRONMENTAL LAW.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC) HAD THE AUTHORITY TO RESCIND ITS NOTICE OF COMPLETE APPLICATION (NOCA) AND NEGATIVE DECLARATION RE: THE EXPANSION OF AN OIL STORAGE FACILITY. [Matter of Global Cos. LLC v New York State Dept. of Envtl. Conservation, 2017 NY Slip Op 07495, Third Dept 10-26-17](#)

ENVIRONMENTAL LAW.

VILLAGE PROPERLY GRANTED A PERMIT TO WITHDRAW WATER FROM AN AQUIFER, REQUIREMENTS FOR STANDING TO CONTEST PERMIT AND NEGATIVE DECLARATION EXPLAINED. [Matter of Village of Woodbury v Seggos, 2017 NY Slip Op 07512, Third Dept 10-26-17](#)

FAMILY LAW.

GRANDPARENTS' VISITATION PETITION SHOULD NOT HAVE BEEN DENIED WITHOUT A HEARING, PETITION ALLEGED MOTHER PROHIBITED GRANDPARENTS FROM SEEING THE CHILDREN. [Matter of Monroe v Monroe, 2017 NY Slip Op 07358, Third Dept 10-19-17](#)

FAMILY LAW.

DIVORCE SUPPORT STIPULATION WHICH DEVIATED FROM THE PROVISIONS OF THE CHILD SUPPORT STANDARDS ACT WAS INVALID FROM THE OUTSET, PRIMARILY BECAUSE THE STIPULATION DID NOT INCLUDE THE STATUTORILY REQUIRED RECITALS (THIRD DEPT). [Matter of Hardman v Coleman, 2017 NY Slip Op 07373, Third Dept 10-19-17](#)

FAMILY LAW.

MOTHER'S PRO SE PETITION FOR A MODIFICATION OF CUSTODY SHOULD NOT HAVE BEEN DENIED WITHOUT A HEARING. [Matter of Horowitz v Horowitz, 2017 NY Slip Op 07498, Third Dept 10-26-17](#)

FAMILY LAW, CIVIL PROCEDURE.

FAMILY COURT ABUSED ITS DISCRETION WHEN IT FAILED TO CONSIDER OBJECTIONS TO RULINGS BY A SUPPORT MAGISTRATE FILED THE MORNING AFTER THE 30 DAY DEADLINE. [Matter of Alberino v Alberino, 2017 NY Slip Op 07370, Third Dept 10-19-17](#)

FAMILY LAW, CRIMINAL LAW.

WHERE VIOLATION OF AN ORDER OF PROTECTION RESULTS IN JAIL TIME, THE VIOLATION MUST BE PROVED BEYOND A REASONABLE DOUBT. [Matter of Cori Xx., 2017 NY Slip Op 07354, Third Dept 10-19-17](#)

FAMILY LAW, EVIDENCE, APPEALS.

CUSTODY PETITION SHOULD NOT HAVE BEEN DISMISSED WITHOUT A HEARING, FAMILY COURT'S RELIANCE ON OFF THE RECORD DISCUSSIONS FRUSTRATED APPELLATE REVIEW. [Matter of Buck v Buck, 2017 NY Slip Op 07368, Third Dept 10-19-17](#)

INSURANCE LAW, CIVIL PROCEDURE.

PLAINTIFF ENTITLED TO DISCLOSURE OF INSURER'S PRE-DENIAL FILE, CAUSES OF ACTION FOR BREACH OF CONTRACT AGAINST THE INSURER (DENIAL OF THE CLAIM) AND THE UNDERLYING NEGLIGENCE ACTION AGAINST THE INSURED MUST BE SEVERED. [Cascade Bldrs. Corp. v Rugar, 2017 NY Slip Op 07375, Third Dept 10-19-17](#)

NEGLIGENCE.

TRIAL JUDGE PROPERLY INSTRUCTED THE JURY ON THE IMPLIED ASSUMPTION OF RISK DOCTRINE, RATHER THAN THE PRIMARY ASSUMPTION OF RISK DOCTRINE. [DeMarco v DeMarco, 2017 NY Slip Op 07504, Third Dept 10-26-17](#)

NEGLIGENCE, EMPLOYMENT LAW.

RESIDENTIAL CARE FACILITY NOT LIABLE FOR ASSAULT ON PLAINTIFF EMPLOYEE BY A RESIDENT, ASSAULT WAS NOT FORESEEABLE. [Boudreaux v Columbia Mem. Hosp., 2017 NY Slip Op 07513, Third Dept 10-26-17](#)

NEGLIGENCE, LANDLORD-TENANT.

CONFLICTING TESTIMONY RAISED QUESTIONS OF FACT IN THIS STAIRWAY FALL CASE WHETHER THE HANDRAIL WAS LOOSE AND ONE OF THE LANDLORDS HAD NOTICE OF THE CONDITION, OUT-OF-POSSESSION LANDLORD NOT LIABLE. [Kraft v Loso, 2017 NY Slip Op 07514, Third Dept 10-26-17](#)

NEGLIGENCE, IMMUNITY.

COMPLAINT AGAINST STATE TROOPER BASED UPON INJURY TO A DOCTOR BY A VIOLENT PATIENT BROUGHT TO THE HOSPITAL BY THE TROOPER DISMISSED ON GOVERNMENTAL IMMUNITY GROUNDS. [Feeney v State of New York, 2017 NY Slip Op 07359, Third Dept 10-19-17](#)

UNEMPLOYMENT INSURANCE.

REAL ESTATE BROKER WAS AN EMPLOYEE ENTITLED TO UNEMPLOYMENT BENEFITS. [Matter of Cushman & Wakefield, Inc. \(Commissioner of Labor\), 2017 NY Slip Op 07022, Third Dept 10-5-17](#)

FOURTH DEPARTMENT

ARBITRATION, EMPLOYMENT LAW, LABOR LAW, ATTORNEYS.

STATUTORY RIGHT TO ATTORNEY'S FEES IN A SUCCESSFUL ACTION FOR THE PAYMENT OF WAGES PURSUANT TO LABOR LAW 198 WAS VALIDLY WAIVED BY THE ARBITRATION AGREEMENT. [Schiferle v Capital Fence Co., Inc., 2017 NY Slip Op 07059, Fourth Dept 10-6-17](#)

CIVIL PROCEDURE.

IN THE FOURTH DEPARTMENT, UNLIKE THE OTHER DEPARTMENTS, A DEFENDANT'S EQUITABLE COUNTERCLAIM DOES NOT WAIVE THE RIGHT TO A JURY TRIAL [Pittsford Canalside Props., LLC v Pittsford Vil. Green, 2017 NY Slip Op 07052, Fourth Dept 10-6-17](#)

CIVIL PROCEDURE.

IT IS NO LONGER A JURISDICTIONAL DEFECT TO FAIL TO INCLUDE A RETURN DATE IN AN ARTICLE 78 PETITION. [Matter of Kennedy v New York State Off. for People With Dev. Disabilities, 2017 NY Slip Op 07082, Fourth Dept 10-6-17](#)

CIVIL PROCEDURE, APPEALS.

DENIAL OF A MOTION TO DISMISS WITHOUT PREJUDICE IS APPEALABLE. [Barrett v Grenda, 2017 NY Slip Op 07031, Fourth Dept 10-6-17](#)

CIVIL PROCEDURE, MUNICIPAL LAW, EMPLOYMENT LAW.

COUNTY COULD NOT BE SUED UNDER THE DOCTRINE OF RESPONDEAT SUPERIOR BASED UPON THE ACTIONS OF A DEPUTY SHERIFF, THE COMPLAINT COULD NOT BE AMENDED TO ADD THE DEPUTY UNDER THE RELATION BACK DOCTRINE. [Jones v Seneca County, 2017 NY Slip Op 07084, Fourth Dept 10-6-17](#)

CRIMINAL LAW.

COURT WILL NOT LOSE JURISDICTION OVER A CASE DUE TO A DELAY BETWEEN SENTENCING AND RESENTENCING UNLESS PREJUDICE RESULTS FROM THE DELAY, NO PREJUDICE HERE. [People v Robinson, 2017 NY Slip Op 07073, Fourth Dept 10-6-17](#)

CRIMINAL LAW, APPEALS.

DEFENDANT SHOULD NOT HAVE BEEN SENTENCED AS A SECOND FELONY OFFENDER, CURRENT OFFENSE BEGAN BEFORE DEFENDANT WAS SENTENCED ON THE PRIOR FELONIES, ILLEGAL SENTENCE IS APPEALABLE WITHOUT PRESERVATION. [People v Jones, 2017 NY Slip Op 07072, Fourth Dept 10-6-17](#)

CRIMINAL LAW, EVIDENCE.

VARIANCE BETWEEN THE ALLEGATIONS IN THE INDICTMENT AND BILL OF PARTICULARS AND THE PROOF AT TRIAL REQUIRED REVERSAL AND DISMISSAL OF THE INDICTMENT. [People v Bradley, 2017 NY Slip Op 07032, Fourth Dept 10-6-17](#)

CRIMINAL LAW, EVIDENCE.

EVIDENCE OF DEFENDANT'S CONSTRUCTIVE POSSESSION OF COCAINE WAS CIRCUMSTANTIAL, FAILURE TO INSTRUCT THE JURY ON CIRCUMSTANTIAL EVIDENCE WAS REVERSIBLE ERROR. [People v Ayala, 2017 NY Slip Op 07041, Fourth Dept 10-6-17](#)

DISCIPLINARY HEARINGS (INMATES), EVIDENCE.

UNEXPLAINED UNAVAILABILITY OF VIDEOTAPE ALLEGEDLY DEPICTING CHARGED BEHAVIOR REQUIRED ANNULMENT AND EXPUNGEMENT OF THE DETERMINATION. [Matter of Hubbard v Annucci, 2017 NY Slip Op 07036, Fourth Dept 10-6-17](#)

FAMILY LAW.

ALTHOUGH THE CHILD SHOULD NOT HAVE BEEN REMOVED FROM PETITIONERS' HOME FOR PLACEMENT IN ANOTHER FOSTER HOME WITH THE CHILD'S SIBLINGS, SO MUCH TIME HAS ELAPSED A HEARING MUST BE HELD TO DETERMINE WHICH PLACEMENT IS NOW IN THE BEST INTERESTS OF THE CHILD. [Matter of Schneider v New York State Off. of Children & Family Servs., 2017 NY Slip Op 07035, Fourth Dept 10-6-17](#)

NEGLIGENCE, ATTORNEYS.

DEFENSE COUNSEL DID NOT CREATE THE IMPRESSION DEFENDANT DID NOT HAVE INSURANCE IN THIS TRAFFIC ACCIDENT CASE, DISSENT DISAGREED. [Boehm v Rosario, 2017 NY Slip Op 07049, Fourth Dept 10-6-17](#)

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CIVIL PROCEDURE, CORPORATION LAW.

CAYMAN ISLANDS RULE GOVERNING SHAREHOLDER DERIVATIVE ACTIONS IS PROCEDURAL, NOT SUBSTANTIVE, FAILURE TO COMPLY WITH RULE DOES NOT BAR SUIT IN NEW YORK. [Davis v Scottish Re Group Ltd., 2017 NY Slip Op 08157, CtApp 11-20-17](#)

CONSTITUTIONAL LAW (NYS), JUDGES, EMPLOYMENT LAW.

STATUTE REDUCING HEALTH BENEFITS FOR STATE EMPLOYEES DID NOT VIOLATE THE JUDICIAL COMPENSATION CLAUSE OF THE NEW YORK STATE CONSTITUTION. [Bransten v State of New York, 2017 NY Slip Op 08168, CtApp 11-21-17](#)

CRIMINAL LAW.

DEFENDANT HAS THE RIGHT TO BE PRESENT WHEN, IN RESPONSE TO A MOTION TO VACATE BECAUSE THE PERIOD OF POST-RELEASE SUPERVISION (PRS) WAS NOT MENTIONED AT THE ORIGINAL SENTENCING, THE COURT IMPOSES A SENTENCE WITHOUT A PERIOD OF PRS. [People v Estremera, 2017 NY Slip Op 08036, CtApp 11-16-17](#)

CRIMINAL LAW.

GEORGIA BURGLARY STATUTE WAS EQUIVALENT TO A NEW YORK VIOLENT FELONY DESPITE THE ABSENCE OF AN EXPLICIT INTENT ELEMENT BECAUSE THE LESSER INCLUDED OFFENSE OF CRIMINAL TRESPASS INCLUDED A KNOWINGLY ELEMENT. [People v Helms, 2017 NY Slip Op 08160, CtApp 11-20-17](#)

CRIMINAL LAW.

VIOLATION OF PROBATION PETITION FACIALLY INSUFFICIENT, TIME, PLACE AND MANNER OF ALLEGED VIOLATIONS NOT STATED. [People v Kislowksi, 2017 NY Slip Op 08169, CtApp 11-21-17](#)

CRIMINAL LAW, APPEALS.

BECAUSE NO AFFIDAVIT OF ERRORS WAS FILED AFTER A CONVICTION IN TOWN COURT, COUNTY COURT DID NOT HAVE JURISDICTION TO HEAR THE APPEAL. [People v Flores, 2017 NY Slip Op 08037, CtApp 11-16-17](#)

CRIMINAL LAW, APPEALS.

WHETHER THE PROTECTIVE SEARCH OF A VEHICLE WAS VALID PRESENTED A MIXED QUESTION OF LAW AND FACT AND WAS NOT REVIEWABLE BY THE COURT OF APPEALS. [People v Hardee, 2017 NY Slip Op 08038, CtApp 11-16-17](#)

CRIMINAL LAW, ATTORNEYS.

TRIAL JUDGE DID NOT INQUIRE INTO DEFENDANT'S SERIOUS REQUEST FOR ANOTHER ATTORNEY, CONVICTION REVERSED AND NEW TRIAL ORDERED. [People v Smith, 2017 NY Slip Op 08165, CtApp 11-21-17](#)

Similar issue and result in [People v Dodson, 2017 NY Slip Op 08171, CtApp 11-21-17](#)

CRIMINAL LAW, ATTORNEYS, APPEALS.

NO CORAM NOBIS RELIEF FOR DEFENDANT WHERE DEFENSE COUNSEL FILED A NOTICE OF APPEAL BUT ALLEGEDLY DID NOT ADVISE DEFENDANT OF THE AVAILABILITY OF POOR PERSON RELIEF AND DID NOT TAKE ANY ACTION ON A MOTION TO DISMISS THE APPEAL, DEFENDANT DID NOT MEET HIS BURDEN OF PROOF ON THE INEFFECTIVE ASSISTANCE CLAIM. [People v Arjune, 2017 NY Slip Op 08159, CtApp 11-20-17](#)

EMPLOYMENT LAW, (NYC) HUMAN RIGHTS LAW.

STANDARD FOR PUNITIVE DAMAGES IN EMPLOYMENT DISCRIMINATION SUIT PURSUANT TO THE NYC HUMAN RIGHTS LAW DETERMINED. [Chauca v Abraham, 2017 NY Slip Op 08158, CtApp 11-20-17](#)

FAMILY LAW, CIVIL PROCEDURE.

ONCE THE NEGLECT PETITION WHICH LED TO THE PLACEMENT OF THE CHILD IN FOSTER CARE HAS BEEN DISMISSED, FAMILY COURT LOSES JURISDICTION AND CANNOT ENTERTAIN PERMANENCY HEARINGS TO CONTINUE FOSTER CARE PLACEMENT. [Matter of Jamie J. \(Michelle E.C.\), 2017 NY Slip Op 08161, CtApp 11-20-17](#)

FREEDOM OF INFORMATION LAW (FOIL).

SECOND DEPARTMENT USED THE WRONG STANDARD FOR APPLYING THE CONFIDENTIAL SOURCE EXEMPTION TO A FREEDOM OF INFORMATION LAW (FOIL) REQUEST FOR DOCUMENTS, CASE REMITTED, PETITIONER SOUGHT DOCUMENTS RELATING TO A REVIEW OF HIS SEX OFFENSE CASE WHICH WAS PROSECUTED AMID NATIONWIDE HYSTERIA OVER ALLEGATIONS OF RITUAL ABUSE AT DAY CARE CENTERS. [Matter of Friedman v Rice, 2017 NY Slip Op 08167, CtApp 11-21-17](#)

INSURANCE LAW.

INSURANCE LAW 3240 ALLOWS A DIRECT CAUSE OF ACTION AGAINST INSURERS BY THE INJURED PARTY IF THE INSUREDS AND RISKS ARE IN NEW YORK, NOT ONLY WHEN THE POLICY IS ISSUED OR DELIVERED IN NEW YORK. [Carlson v American Intl. Group, Inc., 2017 NY Slip Op 08163, CtApp 11-20-17](#)

MUNICIPAL LAW, CONSTITUTIONAL LAW.

PUBLIC BENEFIT CORPORATIONS ARE TREATED LIKE THE STATE FOR DETERMINING THEIR CAPACITY TO CHALLENGE A STATUTE, APPLICABLE DUE PROCESS STANDARD IS WHETHER THE STATUTE WAS ENACTED AS A REASONABLE RESPONSE TO REMEDY AN INJUSTICE, AT ISSUE IS A STATUTE ALLOWING LATE NOTICES OF CLAIM AGAINST BATTERY PARK CITY AUTHORITY TO BE FILED IN A 9-11 CLEANUP NEGLIGENCE ACTION. [Matter of World Trade Ctr. Lower Manhattan Disaster Site Litigation., 2017 NY Slip Op 08166, CtApp 11-21-17](#)

MUNICIPAL LAW (NYC), REAL PROPERTY LAW, CIVIL PROCEDURE.

NEW YORK CITY CHARTER PROVISION REQUIRES ONLY ONE ATTEMPT AT PERSONAL SERVICE OF NOTICES OF BUILDING CODE VIOLATIONS BEFORE TURNING TO THE NAIL AND MAIL ALTERNATIVE. [Matter of Mesteky v City of New York, 2017 NY Slip Op 08162, CtApp 11-20-17](#)

NEGLIGENCE.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED IN THIS SLIP AND FALL CASE. [Lau v Margaret E. Pescatore Parking, Inc., 2017 NY Slip Op 08170, CtApp 11-21-17](#)

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FIRST DEPARTMENT

ADMINISTRATIVE LAW, MUNICIPAL LAW, ENVIRONMENTAL LAW.

NYC LANDMARKS PRESERVATION COMMISSION'S DECISION THAT IT DID NOT HAVE THE AUTHORITY TO REGULATE THE MECHANISM OF AND ACCESS TO A LANDMARK NINETEENTH CENTURY CLOCKTOWER WHICH HAD BEEN PURCHASED BY A PRIVATE PARTY WAS BASED UPON AN ERROR OF LAW AND WAS IRRATIONAL. [Matter of Save America's Clocks, Inc. v City of New York, 2017 NY Slip Op 08457, First Dept 11-30-17](#)

CIVIL PROCEDURE.

HOLOCAUST EXPROPRIATED ART RECOVERY ACT CONTROLS THE APPLICABLE STATUTE OF LIMITATIONS IN AN ACTION SEEKING RECOVERY OF A PAINTING CONFISCATED DURING THE GERMAN OCCUPATION OF FRANCE. [Maestracci v Helly Nahmad Gallery, Inc., 2017 NY Slip Op 07676, First Dept 11-2-17](#)

CIVIL PROCEDURE.

TRIAL COURT VIOLATED THE LAW OF THE CASE DOCTRINE, PRIOR RULING BY THE COMMERCIAL DIVISION BECAME THE LAW OF THE CASE.. [Glaze Teriyaki, LLC v MacArthur Props. I, LLC, 2017 NY Slip Op 07770, First Dept 11-9-17](#)

CIVIL PROCEDURE, EMPLOYMENT LAW.

NEW YORK LABOR LAW WORK-PAY REQUIREMENTS DO NOT APPLY TO WORK DONE OUT-OF-STATE. [Rodriguez v KGA Inc., 2017 NY Slip Op 07948, First Dept 11-14-17](#)

CONTRACT LAW, CIVIL PROCEDURE.

CONTRACT NOT ACTIONABLE BECAUSE IT DID NOT SPELL OUT THE CONSIDERATION FOR A PAST OR EXECUTED PROMISE; DECISION ON A MOTION TO DISMISS DOES NOT BECOME THE LAW OF THE CASE IN A SUBSEQUENT MOTION FOR SUMMARY JUDGMENT.. [Korff v Corbett, 2017 NY Slip Op 07677, First Dept 11-2-17](#)

COOPERATIVES.

WHOLLY ARBITRARY DECISION BY COOPERATIVE BOARD TO RESCIND PLAINTIFF'S PURCHASE CONTRACT NOT SHIELDED BY THE BUSINESS JUDGMENT RULE [Kallop v Board of Directors for Edgewater Park Owners' Coop. Inc., 2017 NY Slip Op 08174, First Dept 11-21-17](#)

CRIMINAL LAW.

JUROR DID NOT REVEAL DURING VOIR DIRE SHE HAD APPLIED FOR A JOB IN THE DISTRICT ATTORNEY'S OFFICE TWO DAYS BEFORE, DEFENDANT WAS DEPRIVED OF AN IMPARTIAL JURY, NEW TRIAL ORDERED. [People v Southall, 2017 NY Slip Op 08344, First Dept 11-28-17](#)

CRIMINAL LAW, APPEALS.

FAILURE TO INSTRUCT THE JURY THAT AN ACQUITTAL ON THE TOP COUNT BASED UPON THE JUSTIFICATION DEFENSE REQUIRED ACQUITTAL ON THE REMAINING CHARGES IS REVERSIBLE ERROR, DESPITE THE FAILURE TO PRESERVE THE ERROR. [People v Santiago, 2017 NY Slip Op 08190, First Dept 11-21-17](#)

CRIMINAL LAW, APPEALS.

DEFENDANT WAS TOLD HE COULD APPEAL THE DENIAL OF HIS SPEEDY TRIAL MOTION AFTER ENTERING A GUILTY PLEA, WRONG ADVICE WARRANTED VACATING THE PLEA DESPITE FAILURE TO PRESERVE THE ARGUMENT. [People v Sanchez, 2017 NY Slip Op 08193, First Dept 11-21-17](#)

CRIMINAL LAW, EVIDENCE.

IN DENYING DEFENDANT'S MOTIONS FOR FRYE HEARINGS, THE TRIAL COURT PROPERLY RELIED ON THE RESULTS OF FRYE HEARINGS IN OTHER COURTS OF COORDINATE JURISDICTION CONCERNING LCN AND FST DNA TESTING. [People v Gonzalez, 2017 NY Slip Op 08191, First Dept 11-21-17](#)

CRIMINAL LAW, EVIDENCE.

DOCTOR WHO OPERATED A PILL MILL FOR PERSONS ADDICTED TO OPIOIDS PROPERLY CONVICTED OF MANSLAUGHTER FOR OVERDOSE DEATHS. [People v Stan XuHui Li, 2017 NY Slip Op 08438, First Dept 11-30-17](#)

CRIMINAL LAW, EVIDENCE.

PAIN AND PRESENCE OF BULLET FRAGMENTS FOUR YEARS AFTER THE SHOOTING WAS SUFFICIENT PROOF OF SERIOUS PHYSICAL INJURY, DISSENT DISAGREED. [People v Garland, 2017 NY Slip Op 08302, First Dept 11-28-17](#)

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

WHISTLEBLOWER CAUSE OF ACTION WAS TIMELY UNDER THE RELATION-BACK DOCTRINE AND DID NOT WAIVE THE HUMAN RIGHTS LAW GENDER DISCRIMINATION CLAIM. [Demir v Sandoz Inc., 2017 NY Slip Op 07961, First Dept 11-14-17](#)

FORECLOSURE.

STATUTORY NOTICE REQUIREMENTS NOT MET IN THIS FORECLOSURE ACTION, BANK'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED. [HSBC Bank USA v Rice, 2017 NY Slip Op 07936, First Dept 11-14-17](#)

FORECLOSURE, CIVIL PROCEDURE.

MOTION TO VACATE DEFAULT IN THIS FORECLOSURE PROCEEDING SHOULD HAVE BEEN GRANTED, THE REASON FOR THE DEFAULT WAS DEEMED EXCUSABLE, THERE WAS NO PREJUDICE, THERE WERE MERITORIOUS ISSUES RE NOTICE AND STANDING.. [US Bank N.A. v Richards, 2017 NY Slip Op 08299, First Dept 11-28-17](#)

FORECLOSURE, REAL PROPERTY LAW, UNIFORM COMMERCIAL CODE.

DESPITE THE INITIAL FRAUDULENT TRANSFER OF THE MORTGAGED PROPERTY AND THE ABSENCE OF THE NOTE, PLAINTIFF LENDER COULD FORECLOSE AS THE UNDISPUTED HOLDER OF THE NOTE, THE INITIAL FRAUDULENTLY INDUCED DEED WAS VOIDABLE, NOT VOID. [Weiss v Phillips, 2017 NY Slip Op 08209, First Dept 11-21-17](#)

LABOR LAW-CONSTRUCTION LAW.

AMONG SEVERAL LABOR LAW, NEGLIGENCE AND INSURANCE ISSUES ADDRESSED IN THIS LABOR LAW 240 (1), 241 (6) AND 200 ACTION, THE SECOND DEPARTMENT DETERMINED SUPREME COURT APPLIED THE WRONG STANDARD IN ITS LABOR LAW 200 ANALYSIS. [Prevost v One City Block LLC, 2017 NY Slip Op 08303, First Dept 11-28-17](#)

NEGLIGENCE.

ALTHOUGH DEFENDANT'S TRUCK WAS IN THE WRONG LANE, THE POSITION OF THE TRUCK FURNISHED A CONDITION FOR THE ACCIDENT BUT WAS NOT THE PROXIMATE CAUSE OF THE ACCIDENT, PLAINTIFF'S DECEDENT WAS WEAVING IN AND OUT OF TRAFFIC ON HIS MOTORCYCLE AT HIGH SPEED WHEN HE STRUCK A CAR, AND WAS THROWN UNDER THE TRUCK. [Caro v Chesnick, 2017 NY Slip Op 07940, First Dept 11-14-17](#)

NEGLIGENCE, EVIDENCE.

DEFENDANTS FAILED TO ELIMINATE QUESTIONS OF FACT RE WHETHER INADEQUATE ILLUMINATION WAS A PROXIMATE CAUSE OF PLAINTIFF'S DECEDENT'S STAIRWAY FALL. [Haibi v 790 Riverside Dr. Owners, Inc., 2017 NY Slip Op 08102, First Dept 11-16-17](#)

NEGLIGENCE, LANDLORD-TENANT.

LEASE WITH PLAINTIFF'S EMPLOYER DID NOT REQUIRE LANDLORD TO MAINTAIN THE YARD OUTSIDE THE BUILDING, PLAINTIFF WAS INJURED WHEN HE STEPPED INTO A HOLE DUG BY PLAINTIFF'S EMPLOYER IN THE YARD, LANDLORD'S MOTION FOR SUMMARY JUDGMENT PROPERLY GRANTED. [Martinez v 3801 Equity Co., LLC, 2017 NY Slip Op 07938, First Dept 11-14-17](#)

NEGLIGENCE, LANDLORD-TENANT.

LANDLORD DID NOT HAVE A DUTY TO INSULATE A PIPE BECAUSE IT WAS PART OF THE HEATING SYSTEM, INFANT PLAINTIFF WAS INJURED BY CONTACT WITH THE HOT PIPE. [P.R. v New York City Hous. Auth., 2017 NY Slip Op 07955, First Dept 11-14-17](#)

NEGLIGENCE, LANDLORD-TENANT.

OUT OF POSSESSION LANDLORD NOT LIABLE FOR INJURY TO PLAINTIFF WHO WAS SHOT ON THE SIDEWALK OUTSIDE THE LESSEE'S BAR. [Ballo v AIMCO 2252-2258 ACP, LLC, 2017 NY Slip Op 08443, First Dept 11-30-17](#)

NEGLIGENCE, MUNICIPAL LAW.

POLICE OFFICER DID NOT ACT IN RECKLESS DISREGARD FOR SAFETY IN THIS INTERSECTION ACCIDENT CASE, OFFICER WAS AUTHORIZED TO DRIVE THROUGH A RED LIGHT EVEN IF THE SIREN AND EMERGENCY LIGHTS WERE NOT ACTIVATED. [Lewis v City of New York, 2017 NY Slip Op 07785, First Dept 11-9-17](#)

PRODUCTS LIABILITY, NEGLIGENCE.

PLAINTIFFS ENTITLED TO SUMMARY JUDGMENT ON THEIR DEFECTIVE DESIGN CAUSE OF ACTION IN THIS PRODUCTS LIABILITY CASE. [M.H. v Bed Bath & Beyond Inc., 2017 NY Slip Op 07790, First Dept 11-9-17](#)

REAL ESTATE, CONTRACT LAW.

BUYER OF PROPERTY WAS UNABLE TO RAISE A QUESTION OF FACT WHETHER SELLER WAS AWARE OF UNDERGROUND GAS TANKS ON THE PROPERTY. [West 17th St. & Tenth Ave. Realty, LLC v N.E.W. Corp., 2017 NY Slip Op 08088, First Dept 11-16-17](#)

SECOND DEPARTMENT

CIVIL PROCEDURE.

SUPREME COURT SHOULD NOT HAVE STAYED THE ENFORCEMENT OF PLAINTIFFS' JUDGMENT PURSUANT TO CPLR 5240 BASED ON COUNTERCLAIMS ASSERTED BY DEFENDANTS, ACTION ON THE COUNTERCLAIMS COULD PROCEED DESPITE ENFORCEMENT OF THE JUDGMENT. [Castle Restoration & Constr., Inc. v Castle Restoration, LLC, 2017 NY Slip Op 07703, Second Dept 11-8-17](#)

CIVIL PROCEDURE.

AFFIRMATIVE DEFENSE WHICH ARISES FROM THE ACTION BROUGHT IS NOT TIME-BARRED. [Matter of Jenkins v Astorino, 2017 NY Slip Op 07730, Second Dept 11-8-17](#)

CIVIL PROCEDURE.

DUE DILIGENCE STANDARD FOR SERVICE OF PROCESS PURSUANT TO CPLR 308 (4) WAS MET. [U.S. Bank, N.A. v Cepeda, 2017 NY Slip Op 07767, Second Dept 11-8-17](#)

CIVIL PROCEDURE.

WHERE ISSUE WAS NEVER JOINED, ACTION CANNOT BE DISMISSED FOR NEGLECT TO PROSECUTE PURSUANT TO CPLR 3216. [Deutsche Bank Natl. Trust Co. v Augustin, 2017 NY Slip Op 07973, Second Dept 11-15-17](#)

CIVIL PROCEDURE, DEBTOR-CREDITOR.

SUMMARY JUDGMENT ENTERING A RENEWAL JUDGMENT PROPERLY GRANTED, CRITERIA EXPLAINED. [Jones Morrison, LLP v Schloss, 2017 NY Slip Op 07712, Second Dept 11-8-17](#)

CIVIL PROCEDURE, FORECLOSURE.

BANK MOVED FOR AN ORDER OF REFERENCE WITHIN ONE YEAR OF DEFAULT IN THIS FORECLOSURE ACTION, THE ACTION SHOULD NOT HAVE BEEN DISMISSED AS ABANDONED. [Wells Fargo Bank, N.A. v Mayen, 2017 NY Slip Op 07768, Second Dept 11-8-17](#)

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

PLAINTIFF BANK SHOULD HAVE BEEN ALLOWED TO AMEND THE COMPLAINT BY ADDING PARTIES AND TO EXTEND THE REACH OF THE ACTION TO THE ENTIRE PREMISES WHICH HAD BEEN ACQUIRED BY ADVERSE POSSESSION. [Emigrant Sav. Bank v Walters, 2017 NY Slip Op 07976, Second Dept 11-15-17](#)

CIVIL PROCEDURE, FRAUD, ATTORNEYS, EVIDENCE .

ALLEGATION THAT LAW FIRM ADDUCED FALSE EVIDENCE IN A PROCEEDING MUST BE ASSERTED IN A MOTION TO VACATE THE JUDGMENT IN THAT PROCEEDING, NOT AS A NEW ACTION. [DeMartino v Lomonaco, 2017 NY Slip Op 07706, Second Dept 11-8-17](#)

CIVIL PROCEDURE, TRUSTS AND ESTATES.

SUPREME COURT SHOULD NOT HAVE AWARDED A MONEY JUDGMENT AGAINST DEFENDANT PERSONALLY, DEFENDANT WAS ONLY A PARTY TO THE ACTION AS A TRUSTEE. [Magid v Sunrise Holdings Group, LLC, 2017 NY Slip Op 07718, Second Dept 11-8-17](#)

CIVIL PROCEDURE, MEDICAL MALPRACTICE, NEGLIGENCE.

MOTION TO AMEND THE BILL OF PARTICULARS TO ADD A NEW THEORY OF LIABILITY WHICH WAS FIRST RAISED BY PLAINTIFFS' EXPERT SHOULD HAVE BEEN GRANTED. [Moore v Franklin Hosp. Med. Center-North Shore-Long Is. Jewish Health Sys., 2017 NY Slip Op 08263, Second Dept 11-22-17](#)

CRIMINAL LAW.

HOT PURSUIT JUSTIFIED WARRANTLESS ARREST IN DEFENDANT'S HOME. [People v Caputo, 2017 NY Slip Op 07614, Second Dept 11-1-17](#)

CRIMINAL LAW.

ASKING DEFENDANT DURING A TRAFFIC STOP WHETHER HE HAD ANYTHING ILLEGAL IN THE CAR WAS NOT JUSTIFIED BY A FOUNDED SUSPICION, ALL PHYSICAL EVIDENCE TAKEN FROM THE CAR AND SUBSEQUENT STATEMENTS AT THE POLICE STATION SHOULD HAVE BEEN SUPPRESSED. [People v Newson, 2017 NY Slip Op 07752, Second Dept, 11-8-17](#)

CRIMINAL LAW.

THE KILLING OF ONE PERSON AND WOUNDING OF TWO BY FIRING 13 SHOTS INTO A GROUP OF PEOPLE FROM A ROOFTOP WERE NOT SEPARATE AND DISTINCT OFFENSES, SENTENCES MUST BE CONCURRENT. [People v Lopez, 2017 NY Slip Op 08016, Second Dept 11-15-17](#)

CRIMINAL LAW.

DEFENDANT PRESENTED EVIDENCE HE WOULD NOT HAVE PLED GUILTY HAD HE KNOWN HIS FEDERAL AND STATE SENTENCES WOULD NOT RUN CONCURRENTLY, MOTION TO VACATE CONVICTION SHOULD NOT HAVE BEEN DENIED WITHOUT A HEARING.. [People v Oquendo, 2017 NY Slip Op 08018, Second Dept 11-15-17](#)

CRIMINAL LAW.

DENIAL OF PAROLEE'S REQUEST TO LIVE IN HIS FAMILY HOME WAS APPARENTLY BASED UPON COMMUNITY PRESSURE AND WAS REVERSED AS ARBITRARY AND CAPRICIOUS. [Matter of Telford v McCartney, 2017 NY Slip Op 08384, Second Dept 11-29-17](#)

CRIMINAL LAW, APPEALS.

ARREST WAS NOT AUTHORIZED, CONVICTION FOR RESISTING ARREST REVERSED IN THE INTEREST OF JUSTICE (ERROR NOT PRESERVED). [People v Andrews, 2017 NY Slip Op 07747, Second Dept 11-8-17](#)

CRIMINAL LAW, APPEALS.

DEFENDANT WAS TOLD HE COULD APPEAL THE DENIAL OF HIS SPEEDY TRIAL MOTION AFTER ENTERING A GUILTY PLEA, WRONG ADVICE WARRANTED VACATING THE PLEA. [People v Smith, 2017 NY Slip Op 08288, Second Dept 11-22-17](#)

CRIMINAL LAW, ATTORNEYS.

FAILURE TO REQUEST A JURY CHARGE ON THE INTOXICATION DEFENSE MAY HAVE BEEN A STRATEGIC DECISION WHICH THE APPELLATE COURT WILL NOT SECOND GUESS IN HINDSIGHT. [People v Pagan, 2017 NY Slip Op 07753, Second Dept 11-8-17](#)

CRIMINAL LAW, EVIDENCE.

DUCT TAPE USED TO SILENCE AND RESTRAIN THE VICTIM WAS A DANGEROUS INSTRUMENT WITHIN THE MEANING OF THE ROBBERY FIRST STATUTE, KIDNAPPING BASED UPON THE RESTRAINT OF THE VICTIM DID NOT MERGE WITH ROBBERY, DISSENT DISAGREED. [People v Williams, 2017 NY Slip Op 07758, Second Dept 11-8-17](#)

CRIMINAL LAW, EVIDENCE, CONSTITUTIONAL LAW, APPEALS.

UNEXPECTED ABSENCE OF A PROSECUTION WITNESS AFTER ARRESTING OFFICERS TESTIFIED ABOUT THE WITNESS'S INVOLVEMENT IN DEFENDANT'S ARREST DEPRIVED DEFENDANT OF HIS RIGHT TO CONFRONT THE WITNESSES AGAINST HIM, CONVICTION REVERSED IN THE INTEREST OF JUSTICE (ERROR NOT PRESERVED). [People v Tavaréz, 2017 NY Slip Op 07756, Second Dept 11-8-17](#)

CRIMINAL LAW, JUDGES, EVIDENCE.

EXCESSIVE INTERVENTION IN THE QUESTIONING OF DEFENDANT AND WITNESSES BY THE TRIAL JUDGE REQUIRED A NEW TRIAL, DEFENDANT SHOULD NOT HAVE BEEN QUESTIONED ABOUT HIS BEING INCARCERATED DURING THE TRIAL. [People v Estevez, 2017 NY Slip Op 07615, Second Dept 11-1-17](#)

DEBTOR-CREDITOR.

GUARANTOR OF A CRIMINALLY USURIOUS LOAN WAS ENTITLED TO SUMMARY JUDGMENT IN AN ACTION SEEKING PAYMENT, THE DOCTRINE OF ESTOPPEL IN PAIS DID NOT APPLY. [Kingsize Entertainment, LLC v Martino, 2017 NY Slip Op 07986, Second Dept 11-15-17](#)

EMPLOYMENT LAW.

AGE DISCRIMINATION LAWSUIT PROPERLY DISMISSED FOR FAILURE TO STATE A CAUSE OF ACTION. [Murphy v Department of Educ. of the City of New York, 2017 NY Slip Op 07609, Second Dept 11-1-17](#)

EMPLOYMENT LAW, MUNICIPAL LAW, HUMAN RIGHTS LAW, CONSTITUTIONAL LAW.

PLAINTIFF'S SEX AND AGE DISCRIMINATION CAUSES OF ACTIONS, AS WELL AS A RETALIATION CAUSE OF ACTION, SHOULD NOT HAVE BEEN DISMISSED, FIRST AMENDMENT VIOLATION CAUSE OF ACTION AGAINST CITY REQUIRES A NOTICE OF CLAIM, MOTION TO AMEND COMPLAINT TO ADD A FIRST AMENDMENT VIOLATION UNDER FEDERAL LAW, WHICH DOES NOT REQUIRE A NOTICE OF CLAIM, SHOULD HAVE BEEN GRANTED. [Kassapian v City of New York, 2017 NY Slip Op 07985, Second Dept 11-15-17](#)

ENVIRONMENTAL LAW, ZONING, MUNICIPAL LAW.

PLANNING BOARD'S APPROVAL OF DEVELOPMENT INCLUDING WETLANDS NEEDED APPROVAL BY THE ARMY CORPS OF ENGINEERS, REQUEST FOR A SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT SHOULD HAVE BEEN GRANTED. [Matter of Shapiro v Planning Bd. of the Town of Ramapo, 2017 NY Slip Op 07734, Second Dept 11-8-17](#)

ENVIRONMENTAL LAW, ZONING, MUNICIPAL LAW.

PLANNING BOARD DID NOT TAKE THE REQUISITE HARD LOOK AT THE IMPACT OF THE PROPOSED DEVELOPMENT, SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT REQUIRED. [Matter of Youngewirth v Town of Ramapo Town Bd., 2017 NY Slip Op 07744, Second Dept 11-8-17](#)

FAMILY LAW.

DERIVATIVE NEGLECT FINDING CANNOT BE BASED UPON A PRIOR ADJOURNMENT IN CONTEMPLATION OF DISMISSAL (ACD) WHICH IS NOT A DETERMINATION ON THE MERITS. [Matter of Delilah D. \(Richard D.\), 2017 NY Slip Op 07724, Second Dept 11-8-17](#)

FAMILY LAW.

THIRD CHILD SHOULD HAVE BEEN FOUND TO HAVE BEEN DERIVATIVELY NEGLECTED BASED UPON PROOF FATHER INJURED THE TWO OTHER CHILDREN. [Matter of Nyair J. \(Vernon J.\), 2017 NY Slip Op 07729, Second Dept 11-8-17](#)

FAMILY LAW.

ALTHOUGH CHILD RESIDED WITH NON-PARENT FOR A NUMBER OF YEARS, THE ARRANGEMENT WAS TEMPORARY TO ALLOW FATHER TO ATTEND LAW SCHOOL, NON-PARENT'S PETITION FOR CUSTODY PROPERLY DISMISSED WITHOUT A HEARING. [Matter of Schmitt v Troche, 2017 NY Slip Op 07732, Second Dept 11-8-17](#)

FAMILY LAW.

FAMILY COURT SHOULD HAVE MADE FINDINGS TO ALLOW JUVENILE TO APPLY FOR SPECIAL IMMIGRANT JUVENILE STATUS (SIJS), REUNIFICATION WITH A PARENT AND RETURN TO INDIA WERE NOT IN THE CHILD'S BEST INTERESTS. [Matter of Gurwinder S., 2017 NY Slip Op 08272, Second Dept 11-22-17](#)

FAMILY LAW.

COURT IMPROPERLY DELEGATED ITS AUTHORITY BY ALLOWING MOTHER TO CANCEL VISITATION IF FATHER WAS MORE THAN 15 MINUTES LATE. [Matter of Michael R. v Aliesha H., 2017 NY Slip Op 08377, Second Dept 11-29-17](#)

FAMILY LAW, APPEALS.

FATHER WHO WAS EXCLUDED FROM THE HOME AFTER CHILD ABUSE ALLEGATIONS HAD A RIGHT TO AN EXPEDITED HEARING PURSUANT TO FAMILY COURT ACT 1028, BECAUSE THE ISSUE IS IMPORTANT AND LIKELY TO RECUR THE MOOTNESS DOCTRINE WAS NOT APPLIED TO PRECLUDE APPEAL. [Matter of Elizabeth C. \(Omar C.\), 2017 NY Slip Op 08370, Second Dept 11-29-17](#)

FAMILY LAW, CRIMINAL LAW.

FAMILY OFFENSES OF AGGRAVATED HARASSMENT AND ASSAULT THIRD NOT SUPPORTED BY PROOF OF PHYSICAL INJURY. [Matter of Stanislaus v Stanislaus, 2017 NY Slip Op 08274, Second Dept 11-22-17](#)

FORECLOSURE, ATTORNEYS.

INTEREST MUST BE RECALCULATED AND ATTORNEY'S FEES MUST BE SHOWN TO BE REASONABLE, PERHAPS IN A HEARING, IN THIS FORECLOSURE ACTION. [Greenpoint Mtge. Corp. v Lamberti, 2017 NY Slip Op 08353, Second Dept 11-29-17](#)

FORECLOSURE, MORTGAGES, CONTRACT LAW.

PARTY IS DEEMED TO HAVE READ A SIGNED DOCUMENT, JUDGMENT OF FORECLOSURE ON THIS CONSTRUCTION MORTGAGE PROPERLY GRANTED, BANKING LAW REQUIREMENTS DO NOT APPLY TO CONSTRUCTION MORTGAGE. [Prompt Mtge. Providers of N. Am., LLC v Zarour, 2017 NY Slip Op 08028, Second Dept 11-15-17](#)

FRAUD, CONTRACT LAW.

FRAUDULENT INDUCEMENT AND DEMAND FOR PUNITIVE DAMAGES SHOULD NOT HAVE BEEN DISMISSED IN THIS BREACH OF CONTRACT ACTION, PLAINTIFF ALLEGED AIR AMBULANCE WAS NOT EQUIPPED WITH PROPER EQUIPMENT AND PERSONNEL [Greenberg v Meyreles, 2017 NY Slip Op 08351, Second Dept 11-20-17](#)

INSURANCE LAW.

INSURED SETTLED THE MATTER WITHOUT INSURER'S CONSENT, INSURER NOT OBLIGATED TO DEFEND OR INDEMNIFY INSURED. [Ralex Servs., Inc. v Southwest Mar. & Gen. Ins. Co., 2017 NY Slip Op 07763, Second Dept 11-8-17](#)

LABOR LAW-CONSTRUCTION LAW, CIVIL PROCEDURE, EVIDENCE.

BECAUSE THERE WAS EVIDENCE PLAINTIFF FELL OFF A BEAM IN THIS LABOR LAW 240(1) ACTION, IN ADDITION TO EVIDENCE HE TRIPPED OVER DEBRIS, THE TRIAL JUDGE ERRED IN REFUSING TO INSTRUCT THE JURY TO DECIDE WHETHER PLAINTIFF FELL OFF THE BEAM, MOTION TO SET ASIDE THE VERDICT IN THE INTEREST OF JUSTICE SHOULD HAVE BEEN GRANTED. [Duran v Temple Beth Shalom, Inc., 2017 NY Slip Op 07708, Second Dept 11-8-17](#)

LABOR LAW-CONSTRUCTION LAW, INSURANCE LAW, CONTRACT LAW.

COMPLEX DECISION EXPLAINING BLACK LETTER LAW ON LABOR LAW 240(1), 241(6) AND 200 CAUSES OF ACTION, CONTRACTUAL AND IMPLIED INDEMNIFICATION, AND INSURANCE COVERAGE ISSUES. [Poalacin v Mall Props., Inc., 2017 NY Slip Op 08027, Second Dept 11-15-17](#)

LABOR LAW-CONSTRUCTION LAW.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON PLAINTIFFS' LABOR LAW 240(1), 241(6) AND 200 CAUSES OF ACTION SHOULD NOT HAVE BEEN GRANTED. [King v Villette, 2017 NY Slip Op 07596, Second Dept 11-1-17](#)

LABOR LAW-CONSTRUCTION LAW.

NO SUPERVISORY CONTROL OVER THE MANNER OF PLAINTIFF'S WORK, INJURY WAS NOT THE RESULT OF THE ABSENCE OR FAILURE OF A SAFETY DEVICE, LABOR LAW 200 AND 240 (1) CAUSES OF ACTION PROPERLY DISMISSED. [Portalatin v Tully Constr. Co.- E.E. Cruz & Co., 2017 NY Slip Op 07762, Second Dept 11-8-17](#)

LABOR LAW-CONSTRUCTION LAW.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S LABOR LAW 240 (1) CAUSE OF ACTION SHOULD NOT HAVE BEEN GRANTED, PLAINTIFF WAS ATTEMPTING TO PUSH A HEAVY DOLLY UP A RAMP WHEN IT ROLLED BACK AND INJURED HIM. [Kandatyan v 400 Fifth Realty, LLC, 2017 NY Slip Op 07984, Second Dept 11-15-17](#)

LANDLORD-TENANT.

LESSEE DID NOT MOVE FOR A YELLOWSTONE INJUNCTION WITHIN THE CURE PERIOD ALLOWED BY THE LEASE, SUPREME COURT NO LONGER HAD JURISDICTION TO GRANT THE INJUNCTION. [Riesenburger Props., LLLP v Pi Assoc., LLC, 2017 NY Slip Op 08294, Second Dept 11-22-17](#)

MEDICAL (DENTAL) MALPRACTICE, NEGLIGENCE.

DESPITE PLAINTIFF'S SIGNING A CONSENT FORM, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON THE LACK OF INFORMED CONSENT CAUSE OF ACTION PROPERLY DENIED, PLAINTIFF ALLEGED THE WRONG TOOTH WAS EXTRACTED. [Godel v Goldstein, 2017 NY Slip Op 08260, Second Dept 11-22-17](#)

MENTAL HYGIENE LAW, CRIMINAL LAW.

ORDER THAT THE PATIENT INMATE SHOULD BE TREATED WITH A PARTICULAR DRUG FOR SCHIZOPHRENIA OVER HIS OBJECTION SUPPORTED BY CLEAR AND CONVINCING EVIDENCE, ORDER ALLOWING ALTERNATIVE DRUGS, AND A NONDURATIONAL ORDER NOT SUPPORTED. [Matter of Radcliffe M., 2017 NY Slip Op 08270, Second Dept 11-22-17](#)

MUNICIPAL LAW, REAL PROPERTY LAW, CONSTITUTIONAL LAW.

OWNER OF REGULATED WETLANDS ENTITLED TO AN INCREASED VALUATION IN CONDEMNATION PROCEEDINGS REPRESENTING THE PREMIUM A KNOWLEDGEABLE BUYER MIGHT PAY FOR A POTENTIAL CHANGE TO A MORE VALUABLE USE. [Matter of New Cr. Bluebelt, Phase 3., 2017 NY Slip Op 07994, Second Dept 11-15-17](#)

NEGLIGENCE.

DEFENDANT PROPERTY OWNER AND DEFENDANT ELEVATOR COMPANY DEMONSTRATED THEY DID NOT HAVE NOTICE OF THE ELEVATOR DEFECT WHICH CAUSED PLAINTIFF'S INJURY, DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Nunez v Chase Manhattan Bank, 2017 NY Slip Op 07610, Second Dept 11-1-17](#)

NEGLIGENCE.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED IN THIS TRAFFIC ACCIDENT CASE, DEFENDANT PULLED IN FRONT OF PLAINTIFF AFTER TURNING ON HIS TURN SIGNAL BUT PLAINTIFF ONLY HAD ONE OR TWO SECONDS TO REACT. [Criollo v Maggies Paratransit Corp., 2017 NY Slip Op 07704, Second Dept 11-8-17](#)

NEGLIGENCE.

DEFENDANT DRIVER DID NOT DEMONSTRATE FREEDOM FROM COMPARATIVE FAULT AS A MATTER OF LAW IN THIS BICYCLE-CAR COLLISION CASE, DESPITE VIDEO SHOWING PLAINTIFF DARTING INTO TRAFFIC.. [Ellis v Vazquez, 2017 NY Slip Op 07709, Second Dept 11-8-17](#)

NEGLIGENCE.

BUILDING OWNERS' MOTION FOR SUMMARY JUDGMENT PROPERLY DENIED IN THIS WET-FLOOR SLIP AND FALL CASE. [Dow v Hermes Realty, LLC, 2017 NY Slip Op 07974, Second Dept 11-15-17](#)

NEGLIGENCE.

DESPITE PLAINTIFF'S APPARENT VIOLATION OF THE VEHICLE AND TRAFFIC LAW, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED IN THIS TRAFFIC ACCIDENT CASE. [Aponte v Vani, 2017 NY Slip Op 08252, Second Dept 11-22-17](#)

NEGLIGENCE.

DEFENDANTS FAILED TO DEMONSTRATE THEY DID NOT CREATE OR HAVE NOTICE OF THE ICE-SNOW CONDITION ON THE SIDEWALK IN THIS SLIP AND FALL CASE, DEFENDANTS' SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED. [Michalska v Coney Is. Site 1824 Houses, Inc., 2017 NY Slip Op 08365, Second Dept 11-29-17](#)

NEGLIGENCE.

DEFENDANTS SUBMITTED CONFLICTING EVIDENCE ABOUT THE WEATHER IN THIS SLIP AND FALL CASE, SUMMARY JUDGMENT PURSUANT TO THE STORM IN PROGRESS RULE SHOULD NOT HAVE BEEN GRANTED. [Pecoraro v Tribuzio, 2017 NY Slip Op 08386, Second Dept 11-29-17](#)

NEGLIGENCE.

DEFENDANT ATTEMPTED A TURN IN VIOLATION OF THE VEHICLE AND TRAFFIC LAW WHICH CONSTITUTED NEGLIGENCE PER SE, CO-DEFENDANTS, WHOSE TRUCK COLLIDED WITH THE CAR DRIVEN BY THE DEFENDANT WHO VIOLATED THE VEHICLE AND TRAFFIC LAW, ENTITLED TO SUMMARY JUDGMENT. [Pipinias v Ferreira, 2017 NY Slip Op 08400, Second Dept 11-29-17](#)

NEGLIGENCE, CIVIL PROCEDURE.

PLAINTIFF'S MOTION FOR JUDGMENT AS A MATTER OF LAW SHOULD HAVE BEEN GRANTED, DESK LEFT UNATTENDED ON A DOLLY BY DEFENDANT MOVER FELL OVER ONTO PLAINTIFF. [Canale v L & M Assoc. of N.Y., Inc., 2017 NY Slip Op 07701, Second Dept 11-8-17](#)

NEGLIGENCE, CONTRACT LAW, EMPLOYMENT LAW.

TRANSMISSION REPAIR COMPANY OWED A DUTY TO PLAINTIFF'S DECEDENT AS A THIRD PARTY BENEFICIARY OF A TRUCK REPAIR CONTRACT WITH PLAINTIFF'S DECEDENT'S EMPLOYER, IF THE TRUCK HAD BEEN EQUIPPED WITH A FUNCTIONING NEUTRAL INTERLOCK SYSTEM IT WOULD NOT HAVE LURCHED BACK, KILLING PLAINTIFF'S DECEDENT. [Vargas v Crown Container Co., Inc., 2017 NY Slip Op 08297, Second Dept 11-22-17](#)

NEGLIGENCE, EDUCATION-SCHOOL LAW.

STUDENT WITH CEREBRAL PALSY COLLIDED WITH ANOTHER STUDENT DURING A SUPERVISED GAME, SUPERVISION WAS ADEQUATE AND INJURY WAS DUE TO A SPONTANEOUS ACT WHICH SUPERVISION COULD NOT PREVENT, SCHOOL'S SUMMARY JUDGMENT MOTION PROPERLY GRANTED. [Tzimopoulos v Plainview-Old Bethpage Cent. Sch. Dist., 2017 NY Slip Op 08296, Second Dept 11-22-17](#)

NEGLIGENCE, EDUCATION-SCHOOL LAW.

PRIMARY ASSUMPTION OF RISK PRECLUDED RECOVERY FOR INJURY DURING GYM CLASS, INHERENT COMPULSION DOCTRINE INAPPLICABLE. [Hanson v Sewanhaka Cent. High Sch. Dist., 2017 NY Slip Op 07711, Second Dept 11-8-17](#)

NEGLIGENCE, EVIDENCE.

PROOF OF GENERAL CLEANING PRACTICES DID NOT DEMONSTRATE LACK OF NOTICE IN THIS SLIP AND FALL CASE, NEGLIGENT LOSS OF VIDEO WARRANTED AN ADVERSE INFERENCE CHARGE. [Eksarko v Associated Supermarket, 2017 NY Slip Op 07975, Second Dept 11-15-17](#)

NEGLIGENCE, EVIDENCE.

PLAINTIFF'S CROSSING IN FRONT OF DEFENDANT DRIVER IN AN ATTEMPT TO MAKE A RIGHT TURN FROM THE CENTER LANE VIOLATED THE VEHICLE AND TRAFFIC LAW AND CONSTITUTED THE SOLE PROXIMATE CAUSE OF THE TRAFFIC ACCIDENT, PLAINTIFF'S OPPOSING PAPERS RAISED ONLY FEIGNED ISSUES OF FACT. [Park v Sanchez, 2017 NY Slip Op 08279, Second Dept 11-22-16](#)

NEGLIGENCE, LANDLORD-TENANT, MUNICIPAL LAW.

OUT OF POSSESSION LANDLORD (NYC HOUSING AUTHORITY) DEMONSTRATED IT DID NOT HAVE NOTICE OF A DEFECTIVE WINDOW WHICH ALLEGEDLY SLAMMED SHUT SEVERING A PORTION OF PLAINTIFF'S FINGER, LANDLORD'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Cotto v New York City Hous. Auth., 2017 NY Slip Op 08258, Second Dept 11-22-17](#)

REAL PROPERTY LAW.

EASEMENT EXTINGUISHED BY MERGER WHEN BOTH AFFECTED PARCELS OWNED BY THE SAME PARTY, COMPLAINT DID NOT STATE A CAUSE OF ACTION FOR EASEMENT BY NECESSITY. [GDG Realty, LLC v 149 Glen St. Corp., 2017 NY Slip Op 07978, Second Dept 11-15-17](#)

TRUSTS AND ESTATES.

EXECUTOR'S DISCLOSURE OF THE INFORMAL ACCOUNTING OF THE ESTATE TO BENEFICIARIES WAS SUFFICIENT, BENEFICIARY'S MOTION TO SET ASIDE A RELEASE PROPERLY DENIED. [Matter of Spacek, 2017 NY Slip Op 07737, Second Dept 11-8-17](#)

ZONING, CIVIL PROCEDURE, ENVIRONMENTAL LAW.

ALTHOUGH THE PLANNING BOARD HELD THAT IT HAD JURISDICTION OVER THE PROPOSED DEVELOPMENT, A FINDING WITH WHICH PETITIONERS DISAGREED, THE BOARD ALSO HELD THE PETITIONERS COULD APPLY FOR A HARDSHIP EXEMPTION WHICH WAS NOT DONE, THE ACTION IS THEREFORE PREMATURE. [Matter of Equine Facility, LLC v Pavacic, 2017 NY Slip Op 08371, Second Dept 11-29-17](#)

THIRD DEPARTMENT

ARBITRATION, EMPLOYMENT LAW, CONTRACT LAW.

ARBITRATOR'S INTERIM DECISION RE PETITIONER'S SUSPENSION WITHOUT PAY WAS IMPROPER, AND THE ARBITRATOR'S DISMISSAL OF THE CHARGES VIOLATED PUBLIC POLICY, THIRD DEPARTMENT PROVIDED A COMPREHENSIVE DISCUSSION OF A COURT'S POWER TO REVIEW AN ARBITRATOR'S DECISION. [Matter of Virginia Livermore-johnson, 2017 NY Slip Op 08239, Third Dept 11-22-17](#)

ADMINISTRATIVE LAW, CIVIL PROCEDURE.

NYS COMPTROLLER HAS THE CONSTITUTIONAL AND STATUTORY RIGHT TO SUBPOENA PATIENT BILLING RECORDS FROM HEALTH SERVICES PROVIDERS PAID UNDER THE STATE'S EMPIRE PLAN TO FACILITATE AN AUDIT, SUPREME COURT REVERSED. [Matter of The Plastic Surgery Group, P.C. v Comptroller of The State of New York, 2017 NY Slip Op 08247, Third Dept 11-22-17](#)

ATTORNEYS, PRIVILEGE, CIVIL PROCEDURE.

REPORT BY CONSULTANT IN THIS BILLING DISPUTE NOT PROTECTED BY ATTORNEY-CLIENT, ATTORNEY WORK-PRODUCT OR MATERIAL-PREPARED-FOR-LITIGATION PRIVILEGES, CRITERIA EXPLAINED. [NYAHS Servs., Inc., Self-Insurance Trust v People Care Inc., 2017 NY Slip Op 07909, Third Dept 11-9-17](#)

CIVIL PROCEDURE.

MOTION TO AMEND PLEADINGS NO LONGER REQUIRES A SHOWING OF THE MERIT OF THE PROPOSED AMENDMENT, THIRD DEPARTMENT JOINS THE OTHER THREE DEPARTMENTS. [NYAHS Servs., Inc., Self-Insurance Trust v People Care Inc., 2017 NY Slip Op 07918, Third Dept 11-9-17](#)

CIVIL PROCEDURE.

MOTION TO CHANGE VENUE BROUGHT IN WRONG COUNTY SHOULD NOT HAVE BEEN ENTERTAINED. [Minenko v Swinging Bridge Camp Grounds of N.Y., Inc., 2017 NY Slip Op 08245, Third Dept 11-22-17](#)

CIVIL PROCEDURE, LIMITED LIABILITY COMPANY LAW, CONTRACT LAW.

SERVICE AND VENUE PROVISIONS IN CONTRACT WITH A LIMITED LIABILITY COMPANY DID NOT APPLY TO DEFENDANT INDIVIDUALLY, DEFECTS IN SERVICE PROPERLY OVERLOOKED PURSUANT TO CPLR 2001. [Capolino v Goren, 2017 NY Slip Op 08246, Third Dept 11-22-17](#)

CIVIL PROCEDURE, NEGLIGENCE.

PLAINTIFF'S DAUGHTER DIED AFTER THE LAWSUIT HAD BEGUN, MOTION TO AMEND THE COMPLAINT TO ADD A CAUSE OF ACTION FOR WRONGFUL DEATH PROPERLY GRANTED, NO MEDICAL PROOF OF A CAUSAL CONNECTION BETWEEN THE DEATH AND THE ALLEGATIONS IN THE COMPLAINT REQUIRED. [Matter of Bynum v Camp Bisco, LLC, 2017 NY Slip Op 08433, Third Dept 11-30-17](#)

CRIMINAL LAW.

COUNTY COURT DID NOT HAVE STATUTORY AUTHORITY TO IMPOSE INCARCERATION FOR VIOLATION OF THE TERMS OF A CONDITIONAL DISCHARGE, DEFENDANT HAD COMPLETED HIS ONE YEAR DEFINITE SENTENCE OF INCARCERATION FOR FELONY DWI AND WAS IN THE CONSECUTIVE PERIOD OF CONDITIONAL DISCHARGE WHEN HE DROVE WITHOUT AN IGNITION INTERLOCK DEVICE. [People v Coon, 2017 NY Slip Op 08216, Third Dept 11-22-17](#)

CRIMINAL LAW.

OFFICER'S PURSUIT, FORCIBLE STOP, DETENTION AND ARREST OF FLEEING DEFENDANT NOT JUSTIFIED, MOTION TO SUPPRESS STATEMENTS AND ITEMS SEIZED IN SEARCHES PROPERLY GRANTED. [People v Rose, 2017 NY Slip Op 08217, Third Dept 11-22-17](#)

CRIMINAL LAW, APPEALS.

PLEA COLLOQUY RAISED QUESTIONS ABOUT DEFENDANT'S MENTAL HEALTH, NARROW EXCEPTION TO PRESERVATION REQUIREMENT ALLOWED ISSUE TO BE HEARD ON APPEAL, PLEA VACATED. [People v Rogers, 2017 NY Slip Op 07889, Third Dept 11-9-17](#)

CRIMINAL LAW, APPEALS.

DESPITE THE FAILURE TO RAISE THE ISSUE ON APPEAL, THE INCLUSORY CONCURRENT SECOND DEGREE MURDER COUNTS MUST BE DISMISSED BASED UPON THE FIRST DEGREE MURDER CONVICTION. [People v Davis, 2017 NY Slip Op 08214, Third Dept 11-22-17](#)

CRIMINAL LAW, ATTORNEYS.

ALTHOUGH SOME OF THE INEFFECTIVE ASSISTANCE ISSUES SHOULD HAVE BEEN RAISED ON APPEAL, BECAUSE SOME OF THE INEFFECTIVE ASSISTANCE ISSUES COULD ONLY BE RAISED IN THE MOTION TO VACATE, ALL THE INEFFECTIVE ASSISTANCE ISSUES SHOULD HAVE BEEN CONSIDERED PURSUANT TO THE MOTION TO VACATE THE CONVICTION, HERE INEFFECTIVE ASSISTANCE WARRANTED A NEW TRIAL. [People v Taylor, 2017 NY Slip Op 07649, Third Dept 11-2-17](#)

CRIMINAL LAW, EVIDENCE.

MOTION TO VACATE A CONVICTION CAN BE BASED UPON A SHOWING OF ACTUAL INNOCENCE, NOT SHOWN HERE. [People v Mosley, 2017 NY Slip Op 07648, Third Dept 11-2-17](#)

CRIMINAL LAW, EVIDENCE.

PROSECUTION CAN NOT USE THE DOCTRINE OF COLLATERAL ESTOPPEL, BASED UPON A PRIOR ATTEMPTED MURDER CONVICTION, TO PROVE INTENT IN A MURDER PROSECUTION STEMMING FROM THE DEATH OF THE SAME VICTIM, EVIDENCE PRESENTED TO THE GRAND JURY INSUFFICIENT, INDICTMENT DISMISSED. [People v Morrison, 2017 NY Slip Op 08405, Third Dept 11-30-17](#)

CRIMINAL LAW, VEHICLE AND TRAFFIC LAW.

DRIVING WITH HIGH BEAMS ON JUSTIFIED THE VEHICLE STOP WHICH LED TO A DWI ARREST. [Matter of Barr v New York State Dept. of Motor Vehicles, 2017 NY Slip Op 07664, Third Dept 11-2-17](#)

DEBTOR-CREDITOR, CONTRACT LAW, CRIMINAL LAW.

ORAL AGREEMENT BETWEEN TWO BOOKMAKERS FOR REPAYMENT OF A \$170,000 LOAN ENFORCEABLE, DESPITE THE MONEY-LAUNDERING PURPOSE. [Centi v McGillin, 2017 NY Slip Op 08430, Third Dept 11-30-17](#)

DISCIPLINARY HEARINGS (INMATES).

PETITIONER'S REQUEST FOR A WITNESS SHOULD NOT HAVE BEEN DENIED, NEW HEARING ORDERED. [Matter of Castillo v Annucci, 2017 NY Slip Op 07922, Third Dept 11-9-17](#)

EDUCATION-SCHOOL LAW, EMPLOYMENT LAW.

TRANSFER OF ASSISTANT SUPERINTENDENT TO A LOWER PAYING JOB WAS NOT DISCIPLINE UNDER THE EDUCATION LAW AND DID NOT CONSTITUTE A DUE PROCESS VIOLATION. [Matter of Soriano v Elia, 2017 NY Slip Op 08431, Third Dept 11-30-17](#)

EMPLOYMENT LAW, PUBLIC OFFICERS LAW, CRIMINAL LAW.

CORRECTIONS OFFICER'S OFFICIAL MISCONDUCT PLEA ALLOCUTION DID NOT ADDRESS ALL THE ALLEGATIONS IN THE INMATE'S CIVIL COMPLAINT AGAINST THE OFFICER, THEREFORE THE STATE WAS OBLIGATED TO DEFEND THE OFFICER IN THE CIVIL PROCEEDING. [Matter of Rademacher v Schneiderman, 2017 NY Slip Op 08416, Third Dept 11-30-17](#)

FAMILY LAW, CONTRACT LAW.

SEPARATION AGREEMENT REQUIRED BOTH PARENTS TO CONTRIBUTE TO COLLEGE EXPENSES BUT DID NOT INDICATE HOW MUCH EACH PARTY SHOULD CONTRIBUTE, AGREEMENT BREACHED BY WIFE'S FAILURE TO PAY ANYTHING, FAMILY COURT TO DETERMINE EACH PARENT'S APPROPRIATE CONTRIBUTION. [Matter of Dillon v Dillon, 2017 NY Slip Op 08062, Second Dept 11-15-17](#)

FAMILY LAW, CONTRACT LAW.

STIPULATION COMPLIED WITH THE CHILD SUPPORT STANDARDS ACT AND STATED THE PROPER STANDARD FOR AN UPWARD MODIFICATION OF SUPPORT. [Matter of Frederick-Kane v Potter, 2017 NY Slip Op 08219, Third Dept 11-22-17](#)

FAMILY LAW, CRIMINAL LAW.

BECAUSE INCARCERATION IMPOSED AS PART OF A FAMILY COURT NEGLECT/PROTECTIVE-ORDER-VIOLATION DISPOSITION WAS REMEDIAL, NOT PUNITIVE, CRIMINAL PROSECUTION FOR CONTEMPT STEMMING FROM THE VIOLATIONS OF THE PROTECTIVE ORDER NOT PRECLUDED BY THE DOUBLE JEOPARDY RULE. [People v Lamica, 2017 NY Slip Op 07646, Third Dept 11-2-17](#)

FAMILY LAW, EVIDENCE.

EVIDENCE DID NOT SUPPORT CONCLUSION THAT MOTHER WAS OR SHOULD HAVE BEEN AWARE FATHER HAD INJURED THE CHILD, CHILD ABUSE AND NEGLECT FINDINGS REVERSED. [Matter of Lucien HH. \(Michelle PP.\), 2017 NY Slip Op 08224, Third Dept 11-22-17](#)

FAMILY LAW, EVIDENCE.

EVIDENCE DID NOT SUPPORT THE AWARD OF SOLE CUSTODY OF THE CHILDREN TO THE MATERNAL GRANDMOTHER, MATTER REMITTED FOR FURTHER INQUIRY ABOUT A LEVEL ONE SEX OFFENDER IN THE HOME, INFORMATION FIRST LEARNED IN A LINCOLN HEARING CANNOT BE RELIED UPON WITHOUT FURTHER INVESTIGATION. [Matter of Shaver v Bolster, 2017 NY Slip Op 08232, Third Dept 11-22-17](#)

FAMILY LAW, EVIDENCE.

FAMILY COURT RELINQUISHED ITS FACT-FINDING FUNCTION TO THE BIASED FORENSIC EVALUATOR AND FAILED TO CONSIDER THE CUSTODY-RELOCATION MODIFICATION FACTORS. [Matter of Montoya v Davis, 2017 NY Slip Op 08434, Third Dept 11-30-17](#)

INSURANCE LAW.

QUESTION OF FACT ABOUT WHETHER THE FIRE DAMAGED PROPERTY WAS PLAINTIFF'S RESIDENCE REQUIRED DENIAL OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IN THIS DISCLAIMER ACTION. [Sosenko v Allstate Ins. Co., 2017 NY Slip Op 08425, Third Dept 11-30-17](#)

MUNICIPAL LAW, REAL PROPERTY LAW.

PLAINTIFF'S MOTION FOR LEAVE TO FILE A LATE NOTICE OF CLAIM IN THIS TRESPASS-NUISANCE ACTION AGAINST THE TOWN SHOULD HAVE BEEN GRANTED, PLAINTIFF DEMONSTRATED ACTUAL NOTICE AND LACK OF PREJUDICE. [Daprice v Town of Copake, 2017 NY Slip Op 08243, Third Dept 11-22-17](#)

NEGLIGENCE.

QUESTIONS OF FACT WHETHER PARENTS WERE AWARE OF A PARTY HELD BY THEIR SON AND WHETHER IT WAS FORESEEABLE PLAINTIFF WOULD BE INJURED IN A FIGHT AT THE PARTY. [Lathers v Denero, 2017 NY Slip Op 07672, Third Dept 11-2-17](#)

NEGLIGENCE.

BUS DRIVER'S GESTURE TO PLAINTIFF TO CROSS THE STREET WAS NOT THE PROXIMATE CAUSE OF PLAINTIFF'S INJURY, PLAINTIFF WAS SUBSEQUENTLY STRUCK BY A DRIVER WHO RAN THE STOP SIGN. [Esen v Narian, 2017 NY Slip Op 07592, Third Dept 11-2-17](#)

NEGLIGENCE.

MANNER IN WHICH DECORATIONS WERE STACKED IN A STORE DID NOT PRESENT A FORESEEABLE RISK, RES IPSA LOQUITUR DOCTRINE DID NOT APPLY. [Parke v Dollar Tree, Inc. 2017 NY Slip Op 08427, Third Dept 11-30-17](#)

NEGLIGENCE.

QUESTION OF FACT WHETHER DRIVER WITH RIGHT OF WAY HAD TIME TO TAKE EVASIVE ACTION TO AVOID A CAR CROSSING HIS PATH TO MAKE A LEFT TURN. [Debra F. v New Hope View Farm, 2017 NY Slip Op 08429, Third Dept 11-30-17](#)

NEGLIGENCE, CONTRACT LAW, INSURANCE LAW.

THICKNESS OF THE ICE RAISED A QUESTION OF FACT ABOUT CONSTRUCTIVE NOTICE IN THIS SIDEWALK SLIP AND FALL CASE, PROMISE TO PURCHASE LIABILITY INSURANCE IS NOT THE SAME AS A PROMISE TO INDEMNIFY. [Calvitti v 40 Garden, LLC, 2017 NY Slip Op 08241, Third Dept 11-22-17](#)

NEGLIGENCE, MUNICIPAL LAW.

QUESTION OF FACT WHETHER THE RECKLESS DISREGARD OF SAFETY STANDARD WAS MET IN THIS PARKING LOT FRONT-END LOADER ACCIDENT CASE, VILLAGE'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Freitag v Village of Potsdam, 2017 NY Slip Op 07919, Third Dept 11-9-17](#)

TAX LAW.

INFORMATION ABOUT COMPETITORS' PRODUCT PRICING PROVIDED TO SUPERMARKET CHAIN IS NOT TAXABLE. [Matter of Wegmans Food Mkts., Inc. v Tax Appeals Trib. of The State of New York, 2017 NY Slip Op 08225, Third Dept 11-22-17](#)

TAX LAW.

HOTEL NOT ENTITLED TO CREDIT FOR SALES TAX FOR CONTINENTAL BREAKFASTS PURCHASED FROM A THIRD PARTY, CONTINENTAL BREAKFASTS WERE INCLUDED IN THE ROOM RENTAL AND WERE NOT PURCHASED FOR RESALE. [Matter of Washington Sq. Hotel LLC v Tax Appeals Trib. of The State of New York, 2017 NY Slip Op 08422, Third Dept 11-30-17](#)

UNEMPLOYMENT INSURANCE.

MEDICAL LAB DRIVERS WERE EMPLOYEES ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS. [Matter of Raupov \(Empire City Labs., Inc.--Commissioner of Labor\), 2017 NY Slip Op 08068, Third Dept 11-16-17](#)

UNEMPLOYMENT INSURANCE, CORPORATION LAW.

CLAIMANT WAS NOT TOTALLY UNEMPLOYED WHEN WINDING UP HIS CORPORATION'S BUSINESS, ACTUAL FINANCIAL GAIN IS NOT A PREREQUISITE TO FINDING A CLAIMANT IS NOT TOTALLY UNEMPLOYED. [Matter of Lasker \(Commissioner of Labor\), 2017 NY Slip Op 07924, Third Dept 11-9-17](#)

WORKERS' COMPENSATION.

BOARD'S FINDING CLAIMANT WAS CAPABLE OF PERFORMING SEDENTARY EMPLOYMENT NOT SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD, FINDING OF PERMANENT TOTAL DISABILITY WARRANTED. [Matter of Wohlfeil v Sharel Ventures, LLC, 2017 NY Slip Op 08060, Third Dept 11-16-17](#)

WORKERS' COMPENSATION LAW, CONTRACT LAW, CIVIL PROCEDURE.

THE TERMS OF THE SETTLEMENT AGREEMENT DID NOT ALLOW THE COURT TO ALLOCATE ALL THE PROCEEDS OF AN INSURANCE POLICY TO THE WORKERS' COMPENSATION BOARD, RESPONDENT, A FORMER MEMBER OF AN INSOLVENT WORKERS' COMPENSATION TRUST WHICH HAD SETTLED WITH THE BOARD, WAS ENTITLED TO SOME OF THE PROCEEDS AND AN ACCOUNTING PURSUANT TO CPLR 7702. [Matter of New York State Workers' Compensation Bd. v Murray Bresky Consultants, Ltd, 2017 NY Slip Op 08244, Third Dept 11-22-17](#)

WORKERS' COMPENSATION LAW, NEGLIGENCE.

NEGLIGENCE AND GROSS NEGLIGENCE CAUSES OF ACTION AGAINST AN ACTUARY FOR AN INSOLVENT WORKERS' COMPENSATION TRUST PROPERLY SURVIVED MOTIONS TO DISMISS. [New York State Workers' Compensation Bd. v Program Risk Mgt., Inc., 2017 NY Slip Op 08426, Third Dept 11-30-17](#)

ZONING, EDUCATION-SCHOOL LAW.

SCHOOLS ARE NOT IMMUNE FROM ZONING REGULATIONS, ZONING BOARD PROPERLY DENIED SCHOOL DISTRICT'S VARIANCE APPLICATION FOR AN ELECTRONIC SIGN. [Matter of Ravana- Coeymans-Selkirk Cent. Sch. Dist. v Town of Bethlehem, 2017 NY Slip Op 08428, Third Dept 11-30-17](#)

FOURTH DEPARTMENT

CIVIL PROCEDURE.

FAILURE TO INCLUDE RETURN DATE IN A NOTICE OF PETITION IS NO LONGER A JURISDICTIONAL DEFECT, HERE THERE WAS ACTUAL NOTICE AND NO PREJUDICE. [Matter of Bender v Lancaster Cent. Sch. Dist., 2017 NY Slip Op 07853, Fourth Dept 11-9-17](#)

CIVIL PROCEDURE.

WHERE A NOTE OF ISSUE HAS BEEN FILED BUT IS SUBSEQUENTLY VACATED, THE ACTION IS NOT SUBJECT TO DISMISSAL AS ABANDONED PURSUANT TO CPLR 3404. [Bradley v Konakanchi, 2017 NY Slip Op 08125, Fourth Dept 11-17-17](#)

CIVIL PROCEDURE, APPEALS, PRIVILEGE.

PRIOR APPELLATE DECISION VACATING AN ORDER CONCERNING A COUNTERCLAIM WAS THE LAW OF THE CASE, NOT A PRIOR SUPREME COURT RULING ON THE COUNTERCLAIM, ACCOUNTANT REPORT PREPARED FOR LITIGATION NOT DISCOVERABLE. [Micro-Link, LLC v Town of Amherst, 2017 NY Slip Op 08120, Fourth Dept 11-17-17](#)

CIVIL PROCEDURE, MUNICIPAL LAW, MENTAL HYGIENE LAW.

TOWN'S REQUEST FOR AN ADJOURNMENT OF A HEARING ABOUT THE PLACEMENT OF A RESIDENCE FOR THE DEVELOPMENTALLY DISABLED IN THE TOWN WAS PROPERLY DENIED, THE REASONS FOR THE REQUEST FOR THE ADJOURNMENT WERE NOT PROVIDED UNTIL AFTER THE FACT. [Matter of Town of Boston v New York State Off. for People with Dev. Disabilities, 2017 NY Slip Op 07803, Fourth Dept 11-9-17](#)

CONTRACT LAW.

CONTRACT WHICH CALLED FOR THE PRICE FOR EXHIBITS AT TRADE SHOWS TO BE AMORTIZED OVER UP-COMING EVENTS WAS NOT AN AGREEMENT TO AGREE AND WAS SUFFICIENTLY DEFINITE, LIQUIDATED DAMAGES CLAUSE ENFORCEABLE. [RES Exhibit Servs., LLC v Genesis Vision, Inc., 2017 NY Slip Op 07796, Fourth Dept 11-9-17](#)

CORPORATION LAW, CONTRACT LAW. CIVIL PROCEDURE.

EVEN THOUGH THE WRONG CORPORATION WAS NAMED IN THE CONTRACT DEFENDANT SIGNED AS PRESIDENT, DEFENDANT COULD NOT BE HELD PERSONALLY LIABLE, MOTION TO SET ASIDE THE VERDICT SHOULD HAVE BEEN GRANTED. [TBW, INC. J.N.K. Mach. Corp. v TBW, Ltd., 2017 NY Slip Op 08106, Fourth Dept 11-17-17](#)

CRIMINAL LAW.

BECAUSE PROMISE IN PLEA AGREEMENT RE CREDIT FOR JAIL TIME COULD NOT BE FULFILLED, SENTENCE VACATED AND CASE REMITTED FOR A SENTENCE WHICH COMPORTS WITH DEFENDANT'S LEGITIMATE EXPECTATIONS. [People v Drake, 2017 NY Slip Op 07844, Fourth Dept 11-9-17](#)

CRIMINAL LAW.

SUPERIOR COURT INFORMATION (SCI) JURISDICTIONALLY DEFECTIVE BECAUSE THE A FELONY COMPLAINT WAS NOT DISMISSED UNTIL AFTER THE PLEA TO THE SCI. [People v Priest, 2017 NY Slip Op 07859, Fourth Dept 11-9-17](#)

CRIMINAL LAW.

SECTION EIGHT HOUSING SUBSIDIES ARE NOT ADMINISTERED BY THE DEPARTMENT OF SOCIAL SERVICES, THEREFORE A WELFARE FRAUD PROSECUTION CANNOT BE BASED UPON SECTION EIGHT BENEFITS. [People v Davis, 2017 NY Slip Op 07800, Fourth Dept 11-9-17](#)

CRIMINAL LAW.

STREET STOP JUSTIFIED, FACTS AND LAW EXPLAINED IN DETAIL (FOURTH DEPT). [People v Jones, 2017 NY Slip Op 07808, Fourth Dept 11-9-17](#)

CRIMINAL LAW.

DEFENDANT WAS NOT ADVISED THE SENTENCE TO WHICH HE AGREED WHEN PLEADING GUILTY WAS FIXED REGARDLESS OF THE OUTCOME OF THE SECOND VIOLENT FELONY OFFENDER HEARING, PLEA VACATED. [People v Smith, 2017 NY Slip Op 08132, Fourth Dept 11-17-17](#)

CRIMINAL LAW, APPEALS.

DWI COUNTS WERE LESSER INCLUSORY COUNTS OF VEHICULAR MANSLAUGHTER AND SHOULD HAVE BEEN DISMISSED, ERROR DID NOT REQUIRE PRESERVATION. [People v Mastowski, 2017 NY Slip Op 08113, Fourth Dept 11-17-17](#)

CRIMINAL LAW, APPEALS, ATTORNEYS.

JURY INSTRUCTION ALLOWED JURY TO CONSIDER UNCHARGED OFFENSE, A FUNDAMENTAL ERROR THAT NEED NOT BE PRESERVED, JURY SHOULD HAVE BEEN INSTRUCTED ON A LESSER INCLUDED OFFENSE, PROSECUTOR SHOULD NOT HAVE REFERRED TO EVIDENCE WHICH WAS DESTROYED. [People v Barber, 2017 NY Slip Op 07807, Fourth Dept 11-9-17](#)

CRIMINAL LAW, APPEALS, ATTORNEYS.

WHETHER A SUCCESSFUL MOTION TO DISMISS COULD HAVE BEEN MADE ON DOUBLE JEOPARDY GROUNDS PURSUANT TO CPL 40.20 COULD NOT HAVE BEEN DETERMINED ON DIRECT APPEAL, THEREFORE DEFENDANT'S MOTION TO VACATE HIS CONVICTION ON INEFFECTIVE ASSISTANCE GROUNDS SHOULD NOT HAVE BEEN DISMISSED WITHOUT A HEARING. [People v Pace, 2017 NY Slip Op 08137, Fourth Dept 11-17-17](#)

CRIMINAL LAW, EVIDENCE.

MOTION TO VACATE CONVICTION BASED UPON RECANTING TESTIMONY PROPERLY DENIED WITHOUT A HEARING, WEAKNESS OF RECANTING TESTIMONY EMPHASIZED. [People v Pringle, 2017 NY Slip Op 08131, Fourth Dept 11-17-17](#)

CRIMINAL LAW, MUNICIPAL LAW.

GRAND JURY EVIDENCE SUFFICIENT TO SUPPORT OFFERING A FALSE INSTRUMENT FOR FILING CHARGES, INSTRUMENTS WERE PREPARED FOR A PRIVATE COMPANY UNDER CONTRACT WITH THE COUNTY, COUNTY COURT REVERSED. [People v Rafferty, 2017 NY Slip Op 07797, Fourth Dept 11-9-17](#)

DEFAMATION.

SIGN ON PLAINTIFF'S PROPERTY SAYING THE DEFENDANT "SCREWED US BEWARE" WAS ACTIONABLE DEFAMATION, MOTION TO DISMISS THE DEFAMATION COUNTERCLAIM IN THIS CONTRACT ACTION PROPERLY DENIED. [Sallustio v R. Kessler & Assoc., Inc., 2017 NY Slip Op 07792, Fourth Dept 11-9-17](#)

EMPLOYMENT LAW, LABOR LAW, CONTRACT LAW.

LAW FIRM ASSOCIATE WAS ENTITLED TO 5% OF \$5 MILLION FEE UNDER A BREACH OF ORAL CONTRACT THEORY, BUT NOT UNDER A LABOR LAW 190 THEORY. [Doolittle v Nixon Peabody LLP, 2017 NY Slip Op 08126, Fourth Dept 11-17-17](#)

FAMILY LAW.

RELOCATION AND CUSTODY MODIFICATION ISSUES REQUIRED A HEARING FOCUSING ON THE BEST INTERESTS OF THE CHILD. [Shaw v Shaw, 2017 NY Slip Op 08138, Fourth Dept 11-17-17](#)

FAMILY LAW.

QDRO WAS ENTERED IN VIOLATION OF THE SEPARATION AGREEMENT, SUPREME COURT SHOULD HAVE VACATED THE QDRO, LACHES INAPPLICABLE. [Santillo v Santillo, 2017 NY Slip Op 08155, Fourth Dept 11-17-17](#)

INSURANCE LAW, CIVIL PROCEDURE, ATTORNEYS, PRIVILEGE.

SUPREME COURT ERRED IN ORDERING DISCLOSURE OF SOME OF THE INSURER'S RECORDS AND MATERIALS, INCLUDING THE LEGAL OPINION OF OUTSIDE COUNSEL. [Celani v Allstate Indem. Co., 2017 NY Slip Op 07799, Fourth Dept 11-9-17](#)

LABOR LAW-CONSTRUCTION LAW.

PRIME CONTRACTOR DID NOT CONTRACT WITH PLAINTIFF'S EMPLOYER, DID NOT SUPERVISE PLAINTIFF'S WORK AND DID NOT HAVE CONTROL OVER THE WORKSITE, ITS MOTION FOR SUMMARY JUDGMENT IN THIS LABOR LAW 241 (6) 200 AND COMMON LAW NEGLIGENCE ACTION SHOULD HAVE BEEN GRANTED. [Knab v Robertson, 2017 NY Slip Op 07822, Fourth Department 11-9-17](#)

LABOR LAW-CONSTRUCTION LAW.

INJURY WHILE LIFTING A HEAVY OBJECT FROM A HORIZONTAL TO A VERTICAL POSITION NOT ENCOMPASSED BY LABOR LAW 240 (1). [Horton v Board of Educ. of Campbell-Savona Cent. Sch. Dist., 2017 NY Slip Op 07806, Fourth Dept 11-9-17](#)

LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON THE LABOR LAW 240 (1) CAUSE OF ACTION PROPERLY GRANTED, PLAINTIFF'S ACTIONS COULD NOT HAVE BEEN THE SOLE PROXIMATE CAUSE OF THE ACCIDENT. [Flowers v Harborcenter Dev., LLC, 2017 NY Slip Op 08117, Fourth Dept 11-17-17](#)

MUNICIPAL LAW, EMPLOYMENT LAW.

DEPUTY SHERIFF WAS COERCED INTO RESIGNING WITHOUT A HEARING, SHERIFF SHOULD HAVE ALLOWED DEPUTY TO WITHDRAW HIS RESIGNATION. [Matter of Ortlieb v Lewis County Sheriff's Dept., 2017 NY Slip Op 08115, Fourth Dept 11-17-17](#)

NEGLIGENCE.

QUESTIONS OF FACT WHETHER PLAINTIFF'S SON'S INVOLVEMENT IN A DRAG RACE PRECLUDED RECOVERY FOR HIS DEATH IN AN ACCIDENT. [Kovach v McCollum, 2017 NY Slip Op 08121, Fourth Dept 11-17-17](#)

NEGLIGENCE, MUNICIPAL LAW.

TEMPORARY ROAD WORK TRAFFIC CONTROL MAY HAVE FURNISHED THE CONDITION FOR THE ACCIDENT BUT WAS NOT THE PROXIMATE CAUSE OF THE DRIVER STRIKING THE PEDESTRIAN PLAINTIFF, SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED TO THE ROAD WORK DEFENDANTS.

[Gregory v Cavarello, 2017 NY Slip Op 07791, Fourth Dept 11-9-17](#)

NEGLIGENCE, MUNICIPAL LAW.

ALTHOUGH THE DRIVER WAS INTOXICATED AND WAS DRIVING AT HIGH SPEED, DEFENDANT MUNICIPALITY DID NOT DEMONSTRATE THE FAILURE TO CLOSE THE PARK GATE AND THE FAILURE TO PROVIDE SPEED LIMIT AND ROAD-CURVE SIGNS DID NOT CONSTITUTE NEGLIGENCE, DEFENDANT'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED. [Stiggins v Town of N. Dansville, 2017 NY Slip Op 08108, Fourth Dept 11-17-17](#)

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COURT OF APPEALS

CIVIL PROCEDURE.

EVEN WHERE THE CLASS HAS NOT BEEN CERTIFIED, CPLR 908 REQUIRES THE PUTATIVE CLASS MEMBERS BE GIVEN NOTICE OF THE SETTLEMENT OR DISMISSAL OF THE ACTION. [Desrosiers v Perry Ellis Menswear, LLC, 2017 NY Slip Op 08620, CtApp 12-12-17](#)

CRIMINAL LAW.

WHERE THE DEFENDANT AND THE IDENTIFYING WITNESS APPEAR TO BELONG TO DIFFERENT RACIAL GROUPS, THE DEFENDANT, UPON REQUEST, IS ENTITLED TO A CROSS-RACIAL IDENTIFICATION JURY INSTRUCTION, IRRESPECTIVE OF WHETHER THE ISSUE WAS RAISED AT TRIAL. [People v Boone, 2017 NY Slip Op 08713, CtApp 12-14-17](#)

CRIMINAL LAW, ATTORNEYS.

DETERMINATION OF MOTION TO TAKE A BUCCAL SWAB FOR DNA TESTING IS A CRITICAL STAGE OF THE PROCEEDINGS REQUIRING REPRESENTATION BY COUNSEL, BECAUSE DEFENSE COUNSEL HAD BEEN RELIEVED, DEFENDANT'S GUILTY PLEAS MUST BE VACATED. [People v Smith, 2017 NY Slip Op 08798, CtApp 12-19-17](#)

ENVIRONMENTAL LAW.

LEAD AGENCY TOOK THE REQUISITE HARD LOOK AT LEAD DUST AND NOISE CONCERNS RAISED IN CONNECTION WITH CONSTRUCTION NEAR A SCHOOL IN NEW YORK CITY AND, AFTER IMPOSING MITIGATION MEASURES, PROPERLY APPROVED THE CONSTRUCTION. [Friends of P.S. 163, Inc. v Jewish Home Lifecare, Manhattan, 2017 NY Slip Op 08621, CtApp 12-12-17](#)

FAMILY LAW.

FAMILY COURT MAINTAINED JURISDICTION TO ISSUE A FINAL ORDER OF PROTECTION FOR VIOLATION OF A TEMPORARY ORDER OF PROTECTION AFTER THE FAMILY OFFENSES, WHICH LED TO THE TEMPORARY VIOLATION OF PROTECTION, HAD BEEN DISMISSED. [Matter of Lisa T. v King E.T., 2017 NY Slip Op 08800, CtApp 12-19-17](#)

INSURANCE LAW.

REINSURANCE POLICIES TO BE INTERPRETED USING STANDARD CONTRACT PRINCIPLES, THERE IS NO PRESUMPTION OR RULE OF CONSTRUCTION CONCERNING WHETHER A COVERAGE CAP INCLUDES ONLY LOSS, OR INCLUDES BOTH LOSS AND LITIGATION COSTS. [Global Reins. Corp. of Am. v Century Indem. Co., 2017 NY Slip Op 08711, CtApp 12-14-17](#)

MEDICAL MALPRACTICE, NEGLIGENCE.

PARENTS' MEDICAL MALPRACTICE ACTION FOR EXTRAORDINARY EXPENSES ASSOCIATED WITH THE CARE OF A CHILD BORN WITH A GENETIC DEFECT AFTER IN VITRO FERTILIZATION ACCRUES UPON THE BIRTH OF THE CHILD, NOT WHEN THE EGG WAS IMPLANTED. [B.F. v Reproductive Medicine Assoc. of N.Y., LLP, 2017 NY Slip Op 08712, CtApp 12-14-17](#)

MUNICIPAL LAW, ADMINISTRATIVE LAW.

NYC WATER BOARD'S RATE HIKE AND BILL CREDIT WERE NOT IRRATIONAL. ARBITRARY OR CAPRICIOUS. [Matter of Prometheus Realty Corp. v New York City Water Bd., 2017 NY Slip Op 08801, CtApp 12-19-17](#)

SECURITIES, CONTRACT LAW.

THE RESIDENTIAL MORTGAGE-BACKED SECURITIES CONTRACTS PROVIDED FOR THE SOLE REMEDY OF CURE AND REPURCHASE, PLAINTIFF TRUSTEE'S CAUSES OF ACTION FOR GENERAL CONTRACT DAMAGES DISMISSED. [Nomura Home Equity Loan, Inc., Series 2006-FM2 v Nomura Credit & Capital, Inc., 2017 NY Slip Op 08622, CtApp 12-12-17](#)

WORKERS' COMPENSATION LAW.

EVEN WHERE AN INJURED WORKER SETTLES WITH A THIRD-PARTY BEFORE THE WORKERS' COMPENSATION SCHEDULE LOSS OF USE IS DETERMINED, THE EMPLOYER'S CARRIER MUST SHARE IN THE LITIGATION COSTS. [Matter of Terranova v Lehr Constr. Co., 2017 NY Slip Op 08799, CtApp 12-19-17](#)

FIRST DEPARTMENT

ARBITRATION, EMPLOYMENT LAW, LABOR LAW.

PLAINTIFF ENTITLED TO CONSIDERATION WHETHER ENFORCING THE AGREEMENT TO ARBITRATE THIS EMPLOYMENT DISPUTE WOULD, BECAUSE OF THE COSTS INVOLVED, EFFECTIVELY PRECLUDE PLAINTIFF FROM PURSUING HIS CLAIM. [Adams v Kent Sec. of N.Y., Inc., 2017 NY Slip Op 09274, First Dept 12-28-17](#)

CIVIL PROCEDURE, CONTRACT LAW, SECURITIES, TRUSTS AND ESTATES.

BREACH OF CONTRACT ACTION BY CALIFORNIA TRUSTEE OF MORTGAGE-BACKED-SECURITIES TRUSTS IS CONTROLLED BY NEW YORK'S BORROWING STATUTE AND MUST BE TIMELY UNDER BOTH CALIFORNIA AND NEW YORK LAW, SUIT WAS UNTIMELY UNDER CALIFORNIA LAW. [Deutsche Bank Natl. Trust Co. v Barclays Bank PLC, 2017 NY Slip Op 08459, First Dept 12-5-17](#)

CIVIL PROCEDURE, FORECLOSURE.

DEFENDANTS' MOTION TO FILE A LATE ANSWER PURSUANT TO CPLR 3012 AFTER A DEFAULT IN THIS FORECLOSURE PROCEEDING WAS PROPERLY DENIED, FIVE FACTORS TO BE CONSIDERED EXPLAINED, ALLEGATION DEFENDANTS WERE CHEATED WAS NOT A DEFENSE. [Emigrant Bank v Rosabianca, 2017 NY Slip Op 08716, First Dept 12-14-17](#)

CONSTITUTIONAL LAW, ANIMAL LAW, CIVIL PROCEDURE.

PRELIMINARY INJUNCTION REGULATING PROTESTS BY ANIMAL RIGHTS ADVOCATES AGAINST A CENTRAL PARK HORSE-DRAWN CARRIAGE SIGHTSEEING BUSINESS UPHeld, BUFFER ZONE PROVISION MODIFIED TO COMPORT WITH FIRST AMENDMENT. [Central Park Sightseeing LLC v New Yorkers for Clean, Livable & Safe Sts., Inc., 2017 NY Slip Op 08619, First Dept 12-7-17](#)

CRIMINAL LAW, ATTORNEYS.

DEFENDANT'S PRO SE MOTION TO VACATE HIS CONVICTION SHOULD NOT HAVE BEEN DENIED WITHOUT A HEARING BASED UPON THE ABSENCE OF AN ATTORNEY AFFIDAVIT, DEFENDANT ALLEGED HIS ATTORNEY DID NOT ACCURATELY INFORM HIM OF THE DEPORTATION CONSEQUENCES OF THE GUILTY PLEA AND THE FACTS CORROBORATED THE ALLEGATION. [People v Mebuin, 2017 NY Slip Op 09276, First Dept 12-28-17](#)

CRIMINAL LAW, ATTORNEYS, EVIDENCE.

DEFENSE COUNSEL REPRESENTED BOTH DEFENDANT AND A WITNESS AGAINST DEFENDANT, CONFLICT OF INTEREST REQUIRED A NEW TRIAL, EVIDENCE ELICITED CAN NOT BE USED AT SECOND TRIAL. [People v Peters, 2017 NY Slip Op 08497, First Dept 12-5-17](#)

CRIMINAL LAW, EVIDENCE.

SUBSTANTIAL PAIN ELEMENT OF ASSAULT THIRD EXPLAINED. [People v Cordero, 2017 NY Slip Op 08466, First Dept 12-5-17](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

DEFENDANT'S CONVICTION SUPPORTED BY THE WEIGHT OF THE EVIDENCE, DETAILED DISCUSSION OF THE WEIGHT OF THE EVIDENCE ANALYSIS, DISSENT DISAGREED. [People v Sanchez, 2017 NY Slip Op 08899, First Dept 12-21-17](#)

LABOR LAW-CONSTRUCTION LAW.

QUESTION OF FACT WHETHER BRICKS WHICH STRUCK PLAINTIFF WERE DELIBERATELY DROPPED, WHICH WOULD NOT BE COVERED BY LABOR LAW 240 (1). [Torres v Love Lane Mews, LLC, 2017 NY Slip Op 08467, First Dept 12-5-17](#)

LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF ENTITLED TO SUMMARY JUDGMENT ON HIS LABOR LAW 240 (1) CAUSE OF ACTION, HEAVY ROLL OF WIRE FELL BECAUSE OF ABSENCE OF A SAFETY DEVICE. [Gutierrez v 451 Lexington Realty LLC, 2017 NY Slip Op 08475, First Dept 12-5-17](#)

LABOR LAW-CONSTRUCTION LAW.

ALTHOUGH PLAINTIFF FELL OFF A LOADING DOCK WHILE WAITING TO SIGN IN TO WORK IN A BUILDING, HIS INJURY OCCURRED AT THE CONSTRUCTION SITE AND WHILE HE WAS ENGAGED IN WORK INVOLVING A GRAVITY-RELATED RISK WITHIN THE MEANING OF LABOR LAW 240 (1). [Hoyos v NY-1095 Ave. of the Ams., LLC, 2017 NY Slip Op 08717, First Dept 12-14-17](#)

LABOR LAW-CONSTRUCTION LAW.

PRESENCE OF LOOSE GRANULES WHICH CAUSED PLAINTIFF TO SLIP TO HIS KNEES VIOLATED INDUSTRIAL CODE, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON HIS LABOR LAW 241(6) CAUSE OF ACTION SHOULD HAVE BEEN GRANTED. [Lester v JD Carlisle Dev. Corp., 2017 NY Slip Op 09259, First Dept 12-28-17](#)

MENTAL HYGIENE LAW, CIVIL PROCEDURE.

MENTAL HEALTH LEGAL SERVICE (MHLS) HAS ORGANIZATIONAL STANDING TO BRING AN ARTICLE 78 PROCEEDING TO REQUIRE THE BRONX PSYCHIATRIC CENTER TO PROVIDE A COMPLETE COPY OF A PATIENT'S MEDICAL RECORD PRIOR TO AN INVOLUNTARY RETENTION HEARING, AND, ON THE MERITS, MHLS IS ENTITLED TO SUCH RECORDS. [Matter of Mental Hygiene Legal Serv. v Daniels, 2017 NY Slip Op 08645, First Dept 12-12-17](#)

MUNICIPAL LAW, NEGLIGENCE.

FIREFIGHTER'S GENERAL MUNICIPAL LAW 205-a CAUSE OF ACTION SHOULD NOT HAVE BEEN DISMISSED, ACTION ONLY REQUIRES A CONNECTION BETWEEN A CODE VIOLATION AND A FIREFIGHTER'S INJURY IN A FIRE, NOT A PROXIMATE-CAUSE RELATIONSHIP. [Walsh v Michelson, 2017 NY Slip Op 08616, First Dept 12-7-17](#)

NEGLIGENCE.

QUESTION FACT ABOUT THE APPLICABILITY OF THE RES IPSA LOQUITUR DOCTRINE IN THIS ELEVATOR ACCIDENT CASE. [Colon v New York City Hous. Auth., 2017 NY Slip Op 08463, First Dept 12-5-17](#)

NEGLIGENCE.

PHOTOGRAPH OF SIDEWALK DEFECT RAISED A QUESTION OF FACT ABOUT CONSTRUCTIVE NOTICE IN THIS SLIP AND FALL CASE, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [Flanders v Sedgwick Ave. Assoc., LLC, 2017 NY Slip Op 08718, First Dept 12-14-17](#)

NEGLIGENCE.

STEP WAS OPEN AND OBVIOUS AND THEREFORE WAS NOT ACTIONABLE IN THIS SLIP AND FALL CASE. [Faber v Place Furniture, Inc., 2017 NY Slip Op 09265, First Dept 12-28-17](#)

NEGLIGENCE, FAMILY LAW.

NEGLIGENCE ACTION AGAINST THE AGENCY WHICH PLACED A BABY IN A FOSTER HOME WHERE THE BABY WAS INJURED BY THE TEENAGED BOYFRIEND OF THE FOSTER MOTHER'S DAUGHTER PROPERLY SURVIVED SUMMARY JUDGMENT. [De'L. A. v City of New York, 2017 NY Slip Op 08897, First Dept 12-21-17](#)

SECURITIES, CONTRACT LAW.

UNDER THE TERMS OF THE RELEVANT CONTRACTS, WHICH MUST BE INTERPRETED TOGETHER TO GIVE EFFECT TO THEIR TERMS, PLAINTIFF DID NOT HAVE STANDING TO SUE IN ONE ASPECT OF THIS ACTION STEMMING FROM THE SALE OF ALLEGEDLY DEFECTIVE RESIDENTIAL MORTGAGE-BACKED SECURITIES. [U.S. Bank N.A. v GreenPoint Mtge. Funding, Inc., 2017 NY Slip Op 08644, First Dept 12-12-17](#)

TRUSTS AND ESTATES, CORPORATION LAW.

UNDER THE TERMS OF THE LIMITED LIABILITY AGREEMENT, THE ESTATE OF A DECEASED MEMBER OF THE LIMITED LIABILITY COMPANY (LLC) WAS NOT A MEMBER OF THE LLC AND THEREFORE COULD NOT PARTICIPATE IN THE RUNNING OF THE LLC OR INSPECT ITS BOOKS AND WAS NOT OWED A FIDUCIARY DUTY. [Estate of Calderwood v ACE Group Intl. LLC, 2017 NY Slip Op 08750, First Dept 12-14-17](#)

SECOND DEPARTMENT

ADMINISTRATIVE LAW, EVIDENCE.

HEARSAY IS ADMISSIBLE IN ADMINISTRATIVE PROCEEDINGS AND MAY CONSTITUTE THE SOLE BASIS FOR A DETERMINATION. [Matter of Bracco's Clam & Oyster Bar, Inc. v New York State Liq. Auth., 2017 NY Slip Op 08516, Second Dept 12-6-17](#)

APPEALS.

SECOND DEPARTMENT ASKED FOR FURTHER SUBMISSIONS TO DETERMINE WHETHER PLAINTIFF BROUGHT A FRIVOLOUS APPEAL. [Carbone v US Bank N.A., 2017 NY Slip Op 08653, Second Dept 12-13-17](#)

ATTORNEYS.

ATTORNEY WHO HIRED AN ASSOCIATE WHO PREVIOUSLY WORKED AS A PARALEGAL AT THE FIRM REPRESENTING DEFENDANTS SHOULD HAVE BEEN DISQUALIFIED. [Moray v UFS Indus., Inc., 2017 NY Slip Op 08822, Second Dept 12-20-17](#)

ATTORNEYS, APPEALS.

APPELLANT AND ATTORNEY SANCTIONED FOR BRINGING MERITLESS APPEAL.. [ATS-1 Corp. v Rodriguez, 2017 NY Slip Op 08651, Second Dept 12-13-17](#)

CIVIL PROCEDURE.

PLAINTIFF'S FAILURE TO COMPLY WITH DISCOVERY DEMANDS AND A CONDITIONAL ORDER WARRANTED DISMISSAL OF THE COMPLAINT PURSUANT TO CPLR 3126. [Corex-SPA v Janel Group of N.Y., Inc., 2017 NY Slip Op 08502, Second Dept 12-6-17](#)

CIVIL PROCEDURE.

COURT HAS DISCRETION TO ACCEPT UNAUTHORIZED SURREPLIES. [U.S. Bank Trust, N.A. v Rudick, 2017 NY Slip Op 08874, Second Dept 12-20-17](#)

CIVIL PROCEDURE.

FAILURE TO OBJECT TO DISCOVERY DEMANDS REQUIRED THAT THE COURT GRANT THE MOTION TO COMPEL DISCOVERY. [Recine v City of New York, 2017 NY Slip Op 08870, Second Dept 12-20-17](#)

CIVIL PROCEDURE, CONSTITUTIONAL LAW.

DISPUTE ABOUT VOTES FOR THE BOARD OF TRUSTEES OF A RELIGIOUS CORPORATION PROPERLY RESOLVED BY THE COURTS, THE MATTER DID NOT REQUIRE CONSIDERATION OF RELIGIOUS ISSUES. [Queens Branch of the Bhuvaneshwar Mandir, Inc. v Sherman, 2017 NY Slip Op 08546, Second Dept 12-6-17](#)

CIVIL PROCEDURE, ENVIRONMENTAL LAW, ADMINISTRATIVE LAW.

DECLARATORY JUDGMENT ACTION ALLEGING VIOLATION OF BUILDING HEIGHT RESTRICTIONS WAS UNTIMELY BECAUSE THE ACTION SHOULD HAVE BEEN BROUGHT AS AN ARTICLE 78 PROCEEDING. [Save The View Now v Brooklyn Bridge Park Corp., 2017 NY Slip Op 09189, Second Dept 12-27-17](#)

CIVIL PROCEDURE, EVIDENCE.

ALTHOUGH PLAINTIFF BEARS THE BURDEN OF PROOF AT TRIAL, A DEFENDANT BRINGING A MOTION FOR SUMMARY JUDGMENT BEARS THE BURDEN OF PROOF, GAPS IN DEFENDANT'S PROOF REQUIRE DENIAL OF THE MOTION WITHOUT CONSIDERING THE OPPOSING PAPERS. [Vumbico v Estate of Rose H. Wiltse, 2017 NY Slip Op 09194, Second Dept 12-27-17](#)

CIVIL PROCEDURE, EVIDENCE, FORECLOSURE.

IN MOVING FOR SUMMARY JUDGMENT PLAINTIFF COULD NOT MAKE OUT A PRIMA FACIE CASE WITH EVIDENCE SUBMITTED FOR THE FIRST TIME IN REPLY PAPERS, PLAINTIFF'S SUMMARY JUDGMENT MOTION SHOULD HAVE BEEN DENIED. [Wells Fargo Bank, N.A. v Osias, 2017 NY Slip Op 09195, Second Dept 12-27-17](#)

CIVIL PROCEDURE, FORECLOSURE.

BANK'S FAILURE TO COMPLY WITH COURT'S ORDER TO MOVE FOR SUMMARY JUDGMENT IN THIS FORECLOSURE ACTION WITHIN 60 DAYS DID NOT SUPPORT DISMISSAL FOR FAILURE TO PROSECUTE PURSUANT TO CPLR 3216. [US Bank, N.A. v Mizrahi, 2017 NY Slip Op 08548, Second Dept 12-6-17](#)

CORPORATION LAW, LIMITED LIABILITY COMPANY LAW.

ALTHOUGH PLAINTIFF WAS A MEMBER OF THE LIMITED LIABILITY COMPANY (LLC) WHEN HE STARTED THE LAWSUIT ASSERTING DERIVATIVE CAUSES OF ACTION, HE LOST STANDING TO CONTINUE WITH THE SUIT AFTER WITHDRAWING HIS MEMBERSHIP IN THE LLC. [Jacobs v Cartalemi, 2017 NY Slip Op 08506, Second Dept 12-6-17](#)

CRIMINAL LAW.

FAILURE TO ADEQUATELY QUESTION JUROR ABOUT HER ABILITY TO BE FAIR AFTER SHE INDICATED SHE DID NOT THINK A PERSON SHOULD RESPOND TO VIOLENCE WITH VIOLENCE REQUIRED REVERSAL. [People v Francois, 2017 NY Slip Op 08844, Second Dept 12-20-17](#)

CRIMINAL LAW, ATTORNEYS, EVIDENCE.

THE FACT THAT DEFENSE COUNSEL WAS THE ONLY PERSON WHO HEARD A PROSECUTION WITNESS RECENT HIS IDENTIFICATION OF THE DEFENDANT AS THE SHOOTER CREATED A CONFLICT OF INTEREST, PEOPLE'S APPLICATION TO RELIEVE DEFENSE COUNSEL SHOULD HAVE BEEN GRANTED. [People v Lawrence, 2017 NY Slip Op 08538, Second Dept 12-6-17](#)

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

DEFENDANT WAS NOT AFFORDED EFFECTIVE COUNSEL AT THE SORA RISK LEVEL HEARING, COUNSEL DID NOT ADVOCATE FOR HIM AND DID NOT UNDERSTAND DOWNWARD DEPARTURE WAS AVAILABLE, NEW HEARING ORDERED. [People v Collins, 2017 NY Slip Op 08866, Second Dept 12-20-17](#)

CRIMINAL LAW, CONSTITUTIONAL LAW.

ABSENCE OF A SIGNED WRITTEN WAIVER OF INDICTMENT REQUIRED BY THE NYS CONSTITUTION IS A JURISDICTIONAL DEFECT, GUILTY PLEA VACATED. [People v Eulo, 2017 NY Slip Op 08684, Second Dept 12-13-17](#)

CRIMINAL LAW, MUNICIPAL LAW.

THE PARAMEDIC DEFENDANT WAS ACCUSED OF ASSAULTING WAS NOT A PEACE OFFICER AND THE JURY SHOULD NOT HAVE BEEN SO INSTRUCTED, THEREBY EFFECTIVELY NEGATING THE JUSTIFICATION DEFENSE. [People v Thomas, 2017 NY Slip Op 09178, Second Dept 12-27-17](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

DEFENDANT'S SUBMISSION OF RE-OFFENSE RISK ASSESSMENTS OTHER THAN NEW YORK'S RISK ASSESSMENT INSTRUMENT (RAI) DID NOT CONSTITUTE A MITIGATING FACTOR WARRANTING DOWNWARD DEPARTURE. [People v Curry, 2017 NY Slip Op 09184, Second Dept 12-27-17](#)

EDUCATION-SCHOOL LAW, NEGLIGENCE, CIVIL PROCEDURE.

ALTHOUGH CONTRACT ACTION AGAINST SCHOOL DEFENDANTS WAS PRECLUDED BY THE ARBITRATION AWARD, TORT ACTIONS AGAINST THE SCHOOL DEFENDANTS WERE NOT PRECLUDED, THE TORT ACTIONS AGAINST THE SCHOOL DEFENDANTS WERE NOT SUBJECT TO THE ARTICLE 78 STATUTE OF LIMITATIONS, DISMISSAL SHOULD NOT HAVE BEEN GRANTED ON A GROUND NOT RAISED BY THE PARTIES, DISMISSAL SHOULD NOT HAVE BEEN GRANTED IN FAVOR OF A DEFENDANT WHO DID NOT MOVE FOR DISMISSAL. [Cheslowitz v Board of Trustees of the Knox Sch., 2017 NY Slip Op 08807, Second Dept 12-20-17](#)

EMPLOYMENT LAW, EDUCATION-SCHOOL LAW, DEFAMATION.

NEGLIGENT HIRING AND RETENTION CAUSE ACTION BASED UPON A JANITOR'S CALLING PLAINTIFF'S DAUGHTER NAMES PROPERLY SURVIVED SUMMARY JUDGMENT, PROOF JANITOR WAS AN INDEPENDENT CONTRACTOR INSUFFICIENT, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, DEFAMATION, AND PRIMA FACIE TORT CAUSES OF ACTION SHOULD HAVE BEEN DISMISSED. [Gadson v City of New York, 2017 NY Slip Op 08657, Second Dept 12-13-17](#)

ENVIRONMENTAL LAW, MUNICIPAL LAW.

FIRE DISTRICT DID NOT HAVE STANDING TO CONTEST A SEQRA NEGATIVE DECLARATION FOR A RESIDENTIAL DEVELOPMENT, THE FIRE DISTRICT RAISED AN ECONOMIC CONCERN ABOUT INCREASED SERVICE CALLS, NOT AN ENVIRONMENTAL CONCERN. [Matter of Board of Fire Commr. of the Fairview Fire Dist. v Town of Poughkeepsie Planning Bd., 2017 NY Slip Op 08514, Second Dept 12-6-17](#)

FAMILY LAW, ATTORNEYS.

ALTHOUGH FATHER HAD THE RIGHT TO WAIVE COUNSEL AND PROCEED PRO SE IN THIS TERMINATION OF PARENTAL RIGHTS PROCEEDING, FAMILY COURT PROPERLY REFUSED HIS UNTIMELY REQUEST. [Matter of Sarah J. A. \(Ramadan G. O.-A.\), 2017 NY Slip Op 08661, Second Dept 12-13-17](#)

FAMILY LAW.

PROOF DID NOT SUPPORT TERMINATION OF FATHER'S PARENTAL RIGHTS. [Matter of Darrell J. D. J. \(Kenneth R.\), 2017 NY Slip Op 08826, Second Dept 12-20-17](#)

FAMILY LAW.

FAMILY COURT DID NOT HAVE THE AUTHORITY TO ORDER THE FINGERPRINTING OF MOTHER SEEKING TO BE APPOINTED GUARDIAN IN THIS SPECIAL IMMIGRANT JUVENILE STATUS PROCEEDING. [Matter of Fermina B. v Rene P., 2017 NY Slip Op 09125, Second Dept 12-27-17](#)

FAMILY LAW, ATTORNEYS.

ALTHOUGH FATHER HAD THE RIGHT TO WAIVE COUNSEL AND PROCEED PRO SE IN THIS TERMINATION OF PARENTAL RIGHTS PROCEEDING, FAMILY COURT PROPERLY REFUSED HIS UNTIMELY REQUEST. [Matter of Sarah J. A. \(Ramadan G. O.-A.\), 2017 NY Slip Op 08661, Second Dept 12-13-17](#)

FAMILY LAW, CRIMINAL LAW.

FAMILY OFFENSES OF DISORDERLY CONDUCT, MENACING AND AGGRAVATED HARASSMENT NOT PROVEN. [Paruchuri v Akil, 2017 NY Slip Op 08675, Second Dept 12-13-17](#)

FAMILY LAW, EVIDENCE.

FATHER'S VISITATION RIGHTS SHOULD NOT HAVE BEEN INDEFINITELY SUSPENDED WITHOUT A HEARING, UNTESTED EVIDENCE PRESENTED AT CONFERENCES NOT SUFFICIENT. [Matter of Edmunds v Fortune, 2017 NY Slip Op 09126, Second Dept 12-27-17](#)

FORECLOSURE, CIVIL PROCEDURE.

FORECLOSURE ACTION PROPERLY DISMISSED FOR FAILURE TO COMPLY WITH 90-DAY DEMAND AND OVERALL DELAY AND NEGLECT [Deutsche Bank Natl. Trust Co. v Inga, 2017 NY Slip Op 08810, Second Department 12-20-17](#)

FORECLOSURE, CIVIL PROCEDURE.

MOTION FOR SUMMARY JUDGMENT CANNOT BE BROUGHT WHERE DEFENDANT HAS ONLY FILED A NOTICE OF APPEARANCE, FORECLOSURE ACTION PROPERLY DISMISSED AS ABANDONED PURSUANT TO CPLR 3215. [Jbbny, LLC v Begum, 2017 NY Slip Op 08816, Second Dept 12-20-17](#)

FORECLOSURE, EVIDENCE.

BANK DID NOT MEET THE REQUIREMENTS OF THE BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE AND THEREFORE DID NOT DEMONSTRATE STANDING TO BRING THE FORECLOSURE ACTION, BANK'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED. [Bank of N.Y. Mellon v Alli, 2017 NY Slip Op 08501, Second Dept 12-6-17](#)

FORECLOSURE, EVIDENCE.

BANK WAS UNABLE TO DEMONSTRATE STANDING AND FAILED TO MEET THE REQUIREMENTS OF THE BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE, BANK'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED. [U.S. Bank N.A. v Brody, 2017 NY Slip Op 08873, Second Dept 12-20-17](#)

LABOR LAW-CONSTRUCTION LAW.

THREE-FOOT HEIGHT DIFFERENTIAL IN ROOF LEVELS WAS NOT THE TYPE OF ELEVATION HAZARD CONTEMPLATED BY LABOR LAW 240 (1). [Pita v Roosevelt Union Free Sch. Dist., 2017 NY Slip Op 08869, Second Dept 12-20-17](#)

MENTAL HYGIENE LAW, EVIDENCE.

STATE'S EXPERTS SHOULD NOT HAVE RELIED ON HEARSAY EVIDENCE OF CONVICTIONS WHICH WERE VACATED BASED UPON DNA EVIDENCE, NEW MENTAL ABNORMALITY TRIAL ORDERED, SEALED CRIMINAL RECORDS PROPERLY CONSIDERED, FAILURE HOLD PROBABLE CAUSE HEARING AND TRIAL WITH STATUTORY TIME FRAMES DID NOT VIOLATE DUE PROCESS. [Matter of State of New York v Kerry K., 2017 NY Slip Op 08671, Second Dept 12-13-17](#)

MENTAL HYGIENE LAW, EVIDENCE, MUNICIPAL LAW.

SEALED LOCAL GOVERNMENT RECORDS PROPERLY UNSEALED FOR CONSIDERATION IN THIS SEX OFFENDER CIVIL COMMITMENT PROCEEDING. [Matter of State of New York v David B., 2017 NY Slip Op 08831, Second Dept 12-20-17](#)

MUNICIPAL LAW.

IN THIS CONDEMNATION PROCEEDING, VALUATION OF REAL PROPERTY BASED UPON THE ASSUMPTION A SPECIAL USE PERMIT WOULD BE GRANTED WAS NOT SUPPORTED BY THE EVIDENCE. [Matter of Town of Oyster Bay v 55 Motor Ave. Co., LLC, 2017 NY Slip Op 08672, Second Dept 12-13-17](#)

MUNICIPAL LAW, NEGLIGENCE.

EXPLOSION BENEATH AN ABANDONED AND SEALED MANHOLE OWNED BY THE VILLAGE LIFTED UP PLAINTIFF'S CAR WHICH CAME DOWN ON THE OPPOSITE SIDE OF THE STREET, COMPLAINT DISMISSED BECAUSE THE VILLAGE DEMONSTRATED IT DID NOT HAVE WRITTEN NOTICE OF THE DEFECT. [Dibble v Village of Sleepy Hollow, 2017 NY Slip Op 08503, Second Dept 12-6-17](#)

NEGLIGENCE.

MIDDLE DRIVER WAS PUSHED INTO PLAINTIFF'S CAR BY THE DRIVER BEHIND, MIDDLE DRIVER'S MOTION FOR SUMMARY JUDGMENT IN THIS REAR-END COLLISION CASE SHOULD HAVE BEEN GRANTED. [Pomerantsev v Vladimir Kodinsky, 2017 NY Slip Op 08545, Second Dept 12-6-17](#)

NEGLIGENCE.

RELEASE SIGNED BY PLAINTIFF INDOOR ROCK CLIMBER INVALID PURSUANT TO GENERAL OBLIGATIONS LAW, COMPLAINT ALLEGED INJURY CAUSED BY CONCEALED DEFECT WHICH WOULD NOT BE COVERED BY THE ASSUMPTION OF RISK DOCTRINE, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT PROPERLY DENIED. [Lee v Brooklyn Boulders, LLC, 2017 NY Slip Op 08660, Second Dept 12-13-17](#)

NEGLIGENCE.

PROPERTY OWNER DID NOT DEMONSTRATE LEAVES ON A STAIRWAY CONSTITUTED AN OPEN AND OBVIOUS CONDITION AND DID NOT DEMONSTRATE A LACK OF NOTICE OF THE CONDITION, SUMMARY JUDGMENT PROPERLY DENIED. [Bissett v 30 Merrick Plaza, LLC, 2017 NY Slip Op 08805, Second Dept 12-20-17](#)

NEGLIGENCE.

SIGN ON A LIGHT POLE, WHICH PLAINTIFF STRUCK WHEN JUMPING TO CATCH A BALL, WAS A NON-ACTIONABLE OPEN AND OBVIOUS CONDITION. [Genefar v Great Neck Park Dist., 2017 NY Slip Op 08812, Second Dept 12-20-17](#)

NEGLIGENCE.

BUILDING OWNER, MANAGER, AND ELEVATOR MAINTENANCE COMPANY ENTITLED TO SUMMARY JUDGMENT IN THIS ELEVATOR MISLEVELING SLIP AND FALL CASE, NO NOTICE OF THE CONDITION. [Goodwin v Guardian Life Ins. Co. of Am., 2017 NY Slip Op 08814, Second Dept 12-20-17](#)

NEGLIGENCE.

BUS DRIVER WAS LIABLE AS A MATTER OF LAW, BUS CROSSED THE YELLOW LINE INTO PLAINTIFF'S ON-COMING LANE, NO EMERGENCY. [Browne v Logan Bus Co., Inc., 2017 NY Slip Op 09111, Second Dept 12-27-17](#)

NEGLIGENCE.

DEFENDANTS DID NOT HAVE NOTICE OF THE DEPRESSION OR HOLE PLAINTIFF STEPPED INTO, AREA WAS COVERED WITH GRASS AND APPEARED TO BE LEVEL, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED. [Carriero v St. Charles/ Resurrection Cemetery, 2017 NY Slip Op 09112, Second Dept 12-27-17](#)

NEGLIGENCE.

PLAINTIFF ASSUMED THE RISK OF TRIPPING OVER BENCHES NEAR THE FIELD WHERE HE WAS PLAYING FOOTBALL, SUPREME COURT REVERSED. [E.B. v Achim, 2017 NY Slip Op 09115, Second Dept 12-27-17](#)

NEGLIGENCE.

QUESTION OF FACT WHETHER DEFENDANT'S EMPLOYEE SAW WHAT HE SHOULD HAVE SEEN BEFORE THE EMPLOYEE'S GARBAGE CART COLLIDED WITH PLAINTIFF'S SCOOTER AS PLAINTIFF BACKED OUT OF AN ELEVATOR. [Richardson v County of Nassau, 2017 NY Slip Op 09187, Second Dept 12-27-17](#)

NEGLIGENCE, CIVIL PROCEDURE, CRIMINAL LAW.

ALTHOUGH THERE IS NO CAUSE OF ACTION FOR PUNITIVE DAMAGES IN NEW YORK, PUNITIVE DAMAGES WERE PROPERLY REQUESTED IN THE AD DAMNUM CLAUSE IN THIS DRUNK DRIVING ACCIDENT CASE. [Gershman v Ahmad, 2017 NY Slip Op 09117, Second Dept 12-27-17](#)

NEGLIGENCE, EDUCATION-SCHOOL LAW.

PLAINTIFF WAS BEATEN UP BY OTHER STUDENTS, SCHOOL DID NOT DEMONSTRATE A LACK OF NOTICE OF THE ATTACKERS' VIOLENT PROPENSITIES AND THE ADEQUACY OF SECURITY MEASURES, SCHOOL'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED. [K.J. v City of New York, 2017 NY Slip Op 08508, Second Dept 12-6-17](#)

NEGLIGENCE, EVIDENCE.

PHOTOGRAPHS OF UNEVEN SIDEWALK WHERE PLAINTIFF FELL WERE PROPERLY AUTHENTICATED AND SHOULD NOT HAVE BEEN EXCLUDED, NEW TRIAL ORDERED. [Davidow v CSC Holdings, Inc., 2017 NY Slip Op 08655, Second Dept 12-13-17](#)

NEGLIGENCE, MUNICIPAL LAW.

WET AND MUDDY CONDITION OF A FIELD WAS OPEN AND OBVIOUS, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE SHOULD HAVE BEEN GRANTED. [Sirianni v Town of Oyster Bay, 2017 NY Slip Op 08707, Second Dept 12-13-17](#)

NEGLIGENCE, MUNICIPAL LAW.

COUNTY DID NOT PRESENT SUFFICIENT PROOF THAT THE INJURY OF PLAINTIFF INMATE BY OTHER INMATES WAS NOT FORESEEABLE, THAT THE SAFETY PRECAUTIONS WERE ADEQUATE, OR THAT THE MEDICAL CARE WAS ADEQUATE, COUNTY'S MOTION FOR SUMMARY JUDGMENT PROPERLY DENIED. [Adeleke v County of Suffolk, 2017 NY Slip Op 08803, Second Dept 12-20-17](#)

NEGLIGENCE, MUNICIPAL LAW.

COUNTY DID NOT DEMONSTRATE PLAINTIFF'S SUICIDE ATTEMPT WAS NOT FORESEEABLE, PLAINTIFF WAS IN THE COUNTY JAIL AT THE TIME, SHE JUMPED OUT OF A SECOND STORY WINDOW, COUNTY'S MOTION FOR SUMMARY JUDGMENT PROPERLY DENIED. [Iannelli v County of Nassau, 2017 NY Slip Op 08815, Second Dept 12-20-17](#)

NEGLIGENCE, MUNICIPAL LAW.

TOWN DEMONSTRATED IT DID NOT HAVE WRITTEN NOTICE OF THE DANGEROUS CONDITION IN THIS SLIP AND FALL CASE, BUT IT DID NOT DEMONSTRATE IT DID NOT CREATE THE CONDITION, TOWN'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED [Toscano v Town of Huntington, 2017 NY Slip Op 08872, Second Dept 12-20-17](#)

REAL ESTATE, CONTRACT LAW.

DEFENDANTS HAD NOT CLEARED UP LIENS ON THE PROPERTY ON LAW DAY, SO THEY WERE NOT READY TO CLOSE AND WERE NOT ENTITLED TO KEEP PLAINTIFFS' DOWN PAYMENT, WHETHER DEFENDANTS HAD A DUTY TO SPEAK WHEN PLAINTIFFS ASKED FOR AN ADJOURNMENT OF THE CLOSING CANNOT BE DETERMINED ON A MOTION TO DISMISS. [533 Park Ave. Realty, LLC v Park Ave. Bldg. & Roofing Supplies, LLC, 2017 NY Slip Op 08802, Second Dept 12-20-17](#)

REAL PROPERTY LAW.

DEFENDANT DID NOT PROVE IT HAD A PRESCRIPTIVE EASEMENT ALLOWING EFFLUENT AND STORM WATER TO BE DISCHARGED ONTO PLAINTIFFS' PROPERTY, ON APPEAL PLAINTIFFS AWARDED JUDGMENT ON THEIR TRESPASS ACTION. [Patel v Garden Homes Mgt. Corp., 2017 NY Slip Op 08839, Second Dept 12-20-17](#)

REAL PROPERTY LAW, APPEALS.

PLAINTIFFS ENTITLED TO DAMAGES FOR REDUCED PROPERTY VALUE, PUNITIVE DAMAGES, AND INJUNCTIVE RELIEF IN THIS TRESPASS BY ENCROACHMENT ACTION, APPELLATE COURT CAN MAKE ITS OWN

CREDIBILITY ASSESSMENTS IN THE APPEAL OF A BENCH TRIAL [Arcamone-Makinano v Britton Prop., Inc., 2017 NY Slip Op 08650, Second Dept 12-13-17](#)

REAL PROPERTY LAW, REAL ESTATE.

SECOND PURCHASER OF REAL PROPERTY DEMONSTRATED HE WAS A BONA FIDE PURCHASER WITHOUT NOTICE OF THE PLAINTIFF'S PRIOR PURCHASE CONTRACT, PLAINTIFF'S FILING OF A NOTICE OF PENDENCY DID NOT SERVE AS A SUBSTITUTE FOR RECORDING OF THE CONTRACT. [139 Lefferts, LLC v Melendez, 2017 NY Slip Op 08647, Second Dept 12-13-17](#)

THIRD DEPARTMENT

ARBITRATION, CIVIL PROCEDURE.

THE AGREEMENT TO ARBITRATE WAS NOT A DEFENSE TO THE COMPLAINT, THE COMPLAINT SHOULD NOT HAVE BEEN DISMISSED, RATHER, THE ACTION SHOULD HAVE BEEN STAYED.. [Piller v Tribeca Dev. Group LLC, 2017 NY Slip Op 09209, Third Dept 12-28-17](#)

CIVIL PROCEDURE.

COURT SHOULD NOT HAVE DISMISSED CAUSES OF ACTION FOR FAILURE TO NAME NECESSARY PARTIES, BECAUSE THE PARTIES WERE SUBJECT TO THE COURT'S JURISDICTION, THE COURT SHOULD HAVE ORDERED THE PARTIES JOINED. [Matter of Farrell v City of Kingston, 2017 NY Slip Op 09214, Third Dept 12-28-17](#)

CIVIL PROCEDURE, PRODUCTS LIABILITY, ATTORNEYS.

DISCOVERY OF THE COMPLETE DATABASE SHOWING THE DISTRIBUTION OF THE TYPE OF CLOTHES WHICH CAUGHT FIRE WAS APPROPRIATE, MOTION TO AMEND ANSWER PRECLUDED BY DISINGENUOUS BEHAVIOR WHICH PREJUDICED CODEFENDANTS. [Palmatier v Mr. Heater Corp., 2017 NY Slip Op 08918, Third Dept 12-21-17](#)

CONTRACT LAW.

ALTHOUGH A TYPED NAME ON AN EMAIL MAY SUFFICE AS A SIGNATURE FOR STATUTE OF FRAUD PURPOSES, THE SAME IS NOT TRUE FOR AN ATTACHMENT TO AN EMAIL, WHICH CAN EASILY BE SIGNED BY THE SENDER. [Solartech Renewables, LLC v Vitti, 2017 NY Slip Op 08574, Third Dept 12-6-17](#)

CONTRACT LAW.

IN A DESIGN-BUILD TURNKEY PROJECT, A PROPERTY OWNER IS NOT A THIRD PARTY BENEFICIARY OF CONTRACTS ENTERED INTO BY THE TURNKEY BUILDER IN CHARGE OF THE PROJECT. [Luckow v RBG Design-Build, Inc., 2017 NY Slip Op 09221, Third Dept 12-28-17](#)

CONTRACT LAW, INSURANCE LAW.

ALLEGATION THAT DEFENDANT INSURER PRESSURED PHYSICIANS TO FIND NO CAUSAL CONNECTION BETWEEN THE ACCIDENT AND INJURY IN NO-FAULT CASES STATED A CAUSE OF ACTION UNDER THE GENERAL BUSINESS LAW, EMOTIONAL DISTRESS IS NOT AN ELEMENT OF DAMAGES FOR BREACH OF CONTRACT, THE ALLEGATIONS DID NOT SUPPORT A CLAIM FOR PUNITIVE DAMAGES. [Brown v Government Employees Ins. Co., 2017 NY Slip Op 08774, Third Dept 12-14-17](#)

CRIMINAL LAW.

PAROLE PROPERLY RESCINDED BASED UPON PETITIONER'S BEHAVIOR AT THE RESCISSION HEARING AND VICTIM IMPACT STATEMENTS PROVIDED AFTER PETITIONER HAD BEEN RELEASED. [Matter of Thorn v New York State Bd. of Parole, 2017 NY Slip Op 08566, Third Dept 12-7-17](#)

CRIMINAL LAW, APPEALS.

DEFENDANT WAS NOT FULLY INFORMED OF THE RIGHTS HE WAS GIVING UP BY PLEADING GUILTY, CONVICTION REVERSED IN THE INTEREST OF JUSTICE. [People v Cotto, 2017 NY Slip Op 08759, Third Dept 12-14-17](#)

CRIMINAL LAW, EVIDENCE.

SUPREME COURT SHOULD HAVE ORDERED AND REVIEWED THE VICTIM'S PSYCHIATRIC FILE IN THIS RAPE PROSECUTION, NO OPPORTUNITY FOR APPELLATE REVIEW, NEW TRIAL ORDERED. [People v Kiah, 2017 NY Slip Op 08752, Third Dept 12-13-17](#)

CRIMINAL LAW, EVIDENCE.

PRIOR BURGLARY CONVICTION SHOULD NOT HAVE BEEN ALLOWED AS MOLINEUX AND SANDOVAL EVIDENCE IN THIS ROBBERY PROSECUTION, ERROR HARMLESS HOWEVER. [People v Williams, 2017 NY Slip Op 09196, Third Dept 12-28-17](#)

DISCIPLINARY HEARINGS (INMATES).

VIOLATION OF A DIRECTIVE BY THE PRISON DID NOT WARRANT ANNULMENT OF THE DISCIPLINARY DETERMINATION. [Matter of Tenney v Annucci, 2017 NY Slip Op 08794, Third Dept 12-14-17](#)

FAMILY LAW.

RECORD DID NOT SUPPORT REMOVING CHILD FROM MOTHER'S CUSTODY, FAMILY COURT REVERSED. [Matter of Connie VV. v Cheryl XX., 2017 NY Slip Op 08913, Third Dept 12-21-17](#)

FAMILY LAW.

MOTHER'S PETITION TO REGAIN CUSTODY FROM GRANDMOTHER SHOULD NOT HAVE BEEN DISMISSED FOR FAILURE TO DEMONSTRATE A CHANGE IN CIRCUMSTANCES BECAUSE THE AWARD OF CUSTODY TO GRANDMOTHER WAS BY CONSENT, GRANDMOTHER DEMONSTRATED EXTRAORDINARY CIRCUMSTANCES JUSTIFYING THE AWARD OF CUSTODY TO HER, MATTER REMITTED FOR HEARING TO DETERMINE BEST INTERESTS OF THE CHILD. [Matter of Christy T. v Diana T., 2017 NY Slip Op 08916, Third Dept 12-21-17](#)

FAMILY LAW.

MOTHER, ALTHOUGH A FIT AND LOVING PARENT, WAS PROPERLY STRIPPED OF LEGAL CUSTODY, DISSENT DISAGREED. [Matter of Thompson v Wood, 2017 NY Slip Op 09219, Third Dept 12-28-17](#)

FAMILY LAW, CRIMINAL LAW.

ADMISSION AND ALLOCUTION DID NOT MEET THE REQUIREMENTS OF THE FAMILY COURT ACT, JUVENILE DELINQUENCY PETITION DISMISSED. [Matter of Kameron Vv., 2017 NY Slip Op 09215, Third Dept 12-28-17](#)

FAMILY LAW, MUNICIPAL LAW.

FACT THAT FATHER'S SISTER WORKED FOR ST LAWRENCE COUNTY DSS (SLCDSS) DID NOT CREATE A CONFLICT OF INTEREST, SLCDSS CAN PROSECUTE THE NEGLECT PETITION. [Matter of Gage II. \(Rachel JJ.\), 2017 NY Slip Op 08931, Third Dept 12-21-17](#)

INSURANCE LAW.

BROKER NOT LIABLE FOR FAILURE TO PROCURE INSURANCE TO COVER INJURY TO CONSTRUCTION WORKERS, BROKER HAD NOTIFIED THE PROPERTY OWNER OF THE GAP IN COVERAGE, \$6,000,000 VERDICT IN FAVOR OF PLAINTIFF CONSTRUCTION WORKER NOT COVERED. [Cromer v Rosenzweig Ins. Agency Inc., 2017 NY Slip Op 08926, Third Dept 12-21-17](#)

INSURANCE LAW, LANDLORD-TENANT, CONTRACT LAW.

TENANT DID NOT HAVE STANDING TO SUE LANDLORD'S INSURER FOR DENIAL OF A PROPERTY DAMAGE CLAIM, TENANT HAD NOT PROCURED A JUDGMENT AGAINST THE LANDLORD, A PREREQUISITE FOR A DIRECT SUIT AGAINST THE INSURER. [GM Broadcasting, Inc. v Cornelius Enters., LLC, 2017 NY Slip Op 08593, Third Dept 12-7-17](#)

MUNICIPAL LAW, NEGLIGENCE.

COUNTY WHICH HAS A WRITTEN-NOTICE PREREQUISITE FOR TRAFFIC-ACCIDENT ACTIONS STEMMING FROM ROAD DEFECTS MAY BE STILL BE LIABLE ABSENT WRITTEN NOTICE UNDER THE HIGHWAY LAW IF IT OTHERWISE HAD NOTICE OF THE DEFECTS. [Pasternak v Chenango, 2017 NY Slip Op 08578, Third Dept 12-7-17](#)

NEGLIGENCE, IMMUNITY.

STATE POLICE STOPPED DECEDENT FOR FOLLOWING TOO CLOSELY, DID NOT NOTICE SIGNS OF INTOXICATION, AND LEFT WITHOUT ISSUING A TICKET, DECEDENT LATER FOUND DEAD IN HIS CAR, NO SPECIAL RELATIONSHIP BETWEEN OFFICERS AND DECEDENT, STATE IMMUNE FROM SUIT. [Barnes v State of New York, 2017 NY Slip Op 08564, Third Dept 12-7-17](#)

REAL PROPERTY.

TRESPASS AND NUISANCE ACTIONS BASED UPON WATER RUNOFF FROM NEIGHBORING PROPERTY SHOULD NOT HAVE BEEN DISMISSED, CRITERIA EXPLAINED. [517 Union St. Assoc. LLC v Town Homes of Union Sq. LLC, 2017 NY Slip Op 08925, Third Dept 12-21-17](#)

REAL PROPERTY.

EASEMENT WHICH ALLOWED ACCESS TO A GARAGE AND WOODSHED WAS EXTINGUISHED, GARAGE AND WOODSHED NO LONGER EXISTED AND HAD NOT EXISTED FOR 50 YEARS. [Stone v Donlon, 2017 NY Slip Op 09225, Third Dept 12-28-17](#)

TAX LAW.

CLUB FEATURING SEMI-NUDE DANCERS WAS SUBJECT TO SALES TAX FOR SALE OF IN-HOUSE CURRENCY USED FOR ACCESS TO PRIVATE-ROOM DANCES. [Matter of HDV Manhattan, LLC v Tax Appeals Trib. of The State of New York, 2017 NY Slip Op 08559, Third Dept 12-7-17](#)

UNEMPLOYMENT INSURANCE.

OFFICE LEASING BROKER WAS AN EMPLOYEE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS. [Matter of Slater \(Kaufman Leasing Co. LLC--Commissioner. of Labor\), 2017 NY Slip Op 09218, Third Dept 12-28-17](#)

UNEMPLOYMENT INSURANCE, EDUCATION-SCHOOL LAW, LABOR LAW.

SUBSTITUTE TEACHER WAS NOT GIVEN REASONABLE ASSURANCE OF FUTURE EMPLOYMENT AS REQUIRED BY THE LABOR LAW, UNEMPLOYMENT BENEFITS SHOULD NOT HAVE BEEN DENIED ON THAT GROUND. [Matter of Papapietro \(Commissioner of Labor\), 2017 NY Slip Op 08596, Third Dept 12-7-17](#)

WORKERS' COMPENSATION LAW.

CLAIMANT, WHO HAD RETIRED, BUT CLAIMS TO HAVE REATTACHED TO THE LABOR MARKET, DID NOT DEMONSTRATE HIS INABILITY TO FIND COMPARABLE WORK WAS RELATED TO HIS ASBESTOS-CAUSED DISABILITY, MATTER REMITTED. [Matter of Pontillo v Consolidated Edison of N.Y., Inc., 2017 NY Slip Op 08760, Second Dept 12-14-17](#)

ZONING, ENVIRONMENTAL LAW.

TOWN BOARD'S DENIAL OF A SPECIAL USE PERMIT ALLOWING THE BLASTING AND REMOVAL OF ROCK WAS NOT ARBITRARY OR CAPRICIOUS DESPITE THE TOWN'S IMPROPER CONSIDERATION OF INFORMATION GATHERED OUTSIDE THE STATE ENVIRONMENTAL QUALITY REVIEW ACT PROCESS, THE TOWN'S RULING WAS SUPPORTED BY THE LOCAL LAW CRITERIA FOR ISSUANCE OF A SPECIAL USE PERMIT. [Matter of Troy Sand & Gravel Co., Inc. v Fleming, 2017 NY Slip Op 09222, Third Dept 12-28-17](#)

FOURTH DEPARTMENT

ARBITRATION, EMPLOYMENT LAW, MUNICIPAL LAW, CONTRACT LAW.

SUPREME COURT DOES NOT HAVE THE POWER TO CONSIDER THE MERITS OF AN ARBITRATION AWARD, AWARD CONFIRMED. [Matter of Lackawanna Professional Fire Fighters Assn., Local 3166, IAFF, AFL-CIO \(City of Lackawanna\), 2017 NY Slip Op 08994, Fourth Dept 12-22-17](#)

CIVIL PROCEDURE.

MOTION TO AMEND THE COMPLAINT SHOULD HAVE BEEN GRANTED, CRITERIA EXPLAINED, CIVIL CONSPIRACY CLAIM PROPERLY ALLEGED. [Great Lakes Motor Corp. v Johnson, 2017 NY Slip Op 08970, Fourth Dept 12-22-17](#)

CIVIL PROCEDURE.

AN ATTEMPT TO SERVE WALTER WITKOWSKI JR AT THE ADDRESS OF WALTER WITKOWSKI SR DID NOT CHANGE THE FACT THAT PLAINTIFF INTENDED TO SERVE JUNIOR, SERVICE UPON JUNIOR WITHIN THE 120 DAY SERVICE PERIOD, BUT AFTER THE STATUTE OF LIMITATIONS HAD RUN, WAS VALID. [Martin v Witkowski, 2017 NY Slip Op 09014, Fourth Dept 12-22-17](#)

CIVIL PROCEDURE, LANDLORD-TENANT, REAL PROPERTY LAW.

TENANT DID NOT COUNTERCLAIM FOR ATTORNEY'S FEES IN THE EVICTION PROCEEDINGS, TENANT'S BRINGING A PLENARY ACTION FOR ATTORNEY'S FEES AFTER SUCCESSFULLY DEFENDING THE EVICTION DID NOT VIOLATE THE PROHIBITION AGAINST CLAIM SPLITTING. [Caracaus v Conifer Cent. Sq. Assoc., 2017 NY Slip Op 08946, Fourth Dept 12-22-17](#)

CIVIL PROCEDURE, LIMITED LIABILITY COMPANY LAW.

PLAINTIFF FAILED TO COMPLY WITH THE STATUTORY REQUIREMENTS FOR SERVICE OF PROCESS ON AN UNAUTHORIZED FOREIGN LIMITED LIABILITY COMPANY, THE COURT NEVER ACQUIRED JURISDICTION. [Chan v Onyx Capital, LLC, 2017 NY Slip Op 08966, Fourth Dept 12-22-1](#)

CRIMINAL LAW.

DEFENDANT'S REQUEST FOR A DARDEN HEARING SHOULD HAVE BEEN GRANTED, PEOPLE DID NOT DEMONSTRATE INFORMANT WAS LEGITIMATELY UNAVAILABLE. [People v Givans, 2017 NY Slip Op 09066, Fourth Dept 12-22-17](#)

CRIMINAL LAW.

FAILURE TO INFORM DEFENDANT OF THE PERIOD OF POSTRELEASE SUPERVISION FOR ONE COUNT INFECTED THE PLEAS TO THE OTHER COUNTS AS WELL. [People v Maxwell, 2017 NY Slip Op 08986, Fourth Dept 12-22-17](#)

CRIMINAL LAW.

82 YEAR SENTENCE FOR THREE BURGLARIES AND RECKLESS ENDANGERMENT DEEMED TOO HARSH FOR THIS PERSISTENT FELONY OFFENDER, REDUCED TO 35 YEARS TO LIFE. [People v Barnes, 2017 NY Slip Op 09004, Fourth Dept 12-22-17](#)

CRIMINAL LAW, APPEALS.

WAIVER OF APPEAL INVALID. [People v Smith, 2017 NY Slip Op 08949, Fourth Dept 12-22-17](#)

CRIMINAL LAW, APPEALS, ATTORNEYS.

PETITION FOR WRIT OF CORAM NOBIS GRANTED, APPEAL CONSIDERED DE NOVO, TRIAL COURT'S FAILURE TO PUT REASONS FOR RESTRAINING DEFENDANT ON THE RECORD REQUIRED REVERSAL AND A NEW TRIAL. [People v Hall, 2017 NY Slip Op 09074, Fourth Dept 12-22-17](#)

CRIMINAL LAW, ATTORNEYS.

DEFENDANT'S MOTION TO VACATE HIS CONVICTION SHOULD NOT HAVE BEEN DENIED WITHOUT A HEARING, QUESTIONS SUFFICIENTLY RAISED ABOUT WHETHER DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO INTERVIEW ALIBI WITNESSES AND DEFENDANT'S ACTUAL INNOCENCE. [People v Pottinger, 2017 NY Slip Op 08972, Fourth Dept 12-22-17](#)

CRIMINAL LAW, ATTORNEYS, EVIDENCE.

GRAND JURY EVIDENCE OF SERIOUS PHYSICAL INJURY PRESENTED THROUGH THE VICTIM'S TESTIMONY WAS SUFFICIENT, PROSECUTORIAL MISCONDUCT DURING THE GRAND JURY PROCEEDINGS WARRANTED DISMISSAL OF THE INDICTMENT. [People v Blauvelt, 2017 NY Slip Op 08948, Fourth Dept 12-21-17](#)

CRIMINAL LAW, EVIDENCE.

ACQUISITION OF CELL PHONE LOCATION DATA, PLACING DEFENDANT NEAR THE MURDER SCENE, DID NOT REQUIRE A WARRANT SUPPORTED BY PROBABLE CAUSE. [People v Jiles, 2017 NY Slip Op 08944, Fourth Dept 12-22-17](#)

CRIMINAL LAW, EVIDENCE.

POLICE OFFICER DID NOT HAVE REASON TO REACH INSIDE DEFENDANT'S POCKET DURING A FRISK FOR WEAPONS, THE PEOPLE DID NOT DEMONSTRATE THE INVENTORY SEARCH OF A VEHICLE WHICH LACKED A VALID INSPECTION STICKER WAS PROPER. [People v Solivan, 2017 NY Slip Op 09021, Fourth Dept 12-22-17](#)

CRIMINAL LAW, EVIDENCE, APPEALS.

EVIDENCE DEFENDANT CONSTRUCTIVELY POSSESSED DRUGS THAT WERE LOCATED IN HIS SISTER'S (NOT HIS) RESIDENCE SUFFICIENT, SENTENCE REDUCED IN THE INTEREST OF JUSTICE. [People v Tuff, 2017 NY Slip Op 08971, Fourth Dept 12-22-17](#)

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

DEFENDANT PROPERLY ASSESSED 80 POINTS FOR CHILD PORNOGRAPHY IN THIS SEX OFFENDER REGISTRATION ACT (SORA) RISK LEVEL PROCEEDING, CRITERIA EXPLAINED, DETERMINATION REVERSED

HOWEVER BECAUSE COUNTY COURT DID NOT CONSIDER DOWNWARD DEPARTURE REQUEST. [People v Tutty, 2017 NY Slip Op 09029, Fourth Dept 12-22-17](#)

FAMILY LAW.

SEPARATION AGREEMENTS UNCONSCIONABLE, MATTER REMITTED FOR NEW EQUITABLE DISTRIBUTION AND MAINTENANCE FINDINGS. [Tuzzolino v Tuzzolino, 2017 NY Slip Op 08991, Fourth Dept 12-22-17](#)

FAMILY LAW.

EVIDENCE DID NOT SUPPORT NEGLECT FINDING BASED UPON CORPORAL PUNISHMENT. [Matter of Damone H., Jr. \(Damone H., Sr.\), 2017 NY Slip Op 09023, Fourth Dept 12-22-17](#)

NEGLIGENCE.

DEFENDANT MADE A LEFT TURN IN FRONT OF AN ONCOMING CAR IN VIOLATION OF VEHICLE AND TRAFFIC LAW, PLAINTIFF ENTITLED TO SUMMARY JUDGMENT. [Peterson v Ward, 2017 NY Slip Op 09024, Fourth Dept 12-22-17](#)

NEGLIGENCE, EMPLOYMENT LAW, VEHICLE AND TRAFFIC LAW.

ALTHOUGH THE EMPLOYEE OF THE OWNER OF THE TRUCK WAS NOT ACTING WITHIN THE SCOPE OF HIS EMPLOYMENT AT THE TIME OF THE ACCIDENT, THERE WAS A QUESTION OF FACT WHETHER THE EMPLOYEE WAS USING THE TRUCK WITH THE COMPANY'S PERMISSION, RENDERING THE COMPANY LIABLE PURSUANT TO VEHICLE AND TRAFFIC LAW 388. [Baker v Lisconish, 2017 NY Slip Op 08943, Fourth Dept 12-22-17](#)

NEGLIGENCE, FORECLOSURE, REAL PROPERTY.

DEFENDANTS LOST TITLE TO THE PROPERTY WHEN THE FORECLOSURE SALE TOOK PLACE, NOT WHEN THE JUDGMENT OF FORECLOSURE WAS ENTERED, THEREFORE PLAINTIFFS' ALLEGED EXPOSURE TO LEAD PAINT TOOK PLACE WHEN THE DEFENDANTS STILL HELD TITLE. [Nero v Kendrick, 017 NY Slip Op 08980, Fourth Department 12-22-17](#)

NEGLIGENCE, MEDICAL MALPRACTICE.

PLAINTIFFS' BATTERY AND MEDICAL MALPRACTICE ACTIONS PROPERLY SURVIVED SUMMARY JUDGMENT, DEFENDANTS PAPERS, WHICH INCLUDED PLAINTIFF'S TESTIMONY, DEMONSTRATED TRIABLE ISSUES OF FACT. [Tirado v Koritz, 2017 NY Slip Op 08954, Fourth Dept 12-22-17](#)

NEGLIGENCE, MUNICIPAL LAW.

IN THIS SLIP AND FALL CASE, COLLAPSE OF PAVEMENT NEAR A STORM DRAIN WAS CAUSED BY WATER FLOWING INTO THE DRAIN OVER TIME AND WAS NOT THE IMMEDIATE RESULT OF ACTION TAKEN BY THE VILLAGE, THE CONDITION WAS NOT ACTIONABLE.. [Malek v Village of Depew, 2017 NY Slip Op 08998, Fourth Dept 12-22-17](#)

NEGLIGENCE, MUNICIPAL LAW, EMPLOYMENT LAW.

CITY NOT LIABLE FOR ACTIONS OF OFF-DUTY POLICE OFFICER WHO WAS ACTING OUTSIDE THE SCOPE OF HIS EMPLOYMENT DURING THE ENCOUNTER WITH PLAINTIFF. [Maloney v Rodriguez, 2017 NY Slip Op 08993, Fourth Dept 12-22-17](#)