

NEW YORK
CIVIL PRACTICE
BEFORE TRIAL

Revision 14

BY MICHAEL H. BARR,
BURTON N. LIPSHIE,
AND SHARON STERN GERSTMAN

New York Civil Practice Before Trial

Peipei Pang



New York Civil Practice Before Trial:

New York Civil Practice Before Trial Michael H. Barr, Burton N. Lipshie, Sharon Stern Gerstman, 2018-04-20 REVISION 14 HIGHLIGHTS This edition revises 22 chapters adds 14 new sections and updates more than 100 sections with over 200 recent case developments including these Six year CPLR 213 statute governed interior designer s contract as opposed to the four year UCC 2 725 statute The continuous representation doctrine applies to statutory limitations periods only and not to contractual limitations periods Parties may by contract provide that representations and warranties are made as of the Closing Date rather than the earlier date of execution of the agreement When a note and mortgage were assigned during a foreclosure action but the assignee opted to continue the action in the assignor s name the assignee could take advantage of CPLR 205 a when re commencing the dismissed action in its own name Courts disagree on whether registration by a foreign corporation constitutes consent to general jurisdiction In a dispute between Spanish companies over a contract executed in Spain the parties trips to New York to secure a customer were sufficient to permit New York long arm jurisdiction When a loan agreement contains the borrower s consent to New York jurisdiction but the accompanying guarantee does not contain such consent the guarantor may be subject to New York jurisdiction Residence for venue purposes cannot be demonstrated solely by evidence of ownership Defendant may demand a complaint after both steps of leave and mail service have been completed but before proof of service has been filed When counsel appears for a defendant in default without challenging jurisdiction the challenge is waived First and Second Departments disagree on whether a defendant must demonstrate existence of a meritorious defense when applying to extend the time to appear plead or answer Amended counterclaims must name the plaintiff even if the original counterclaim did so A defendant amending an answer as of right may include a previously omitted limitations defense Motion to amend or supplement pleadings must include a copy of the proposed amended or supplemental pleading Courts may allow discovery of system metadata when relevant Obtaining ESI from nonparties requires more than mere relevance Who bears the costs of e discovery the party seeking discovery or the producing party Drafting requirements for a litigation hold Differing standards for imposing sanctions for negligent and grossly negligent failure to preserve ESI Plaintiff s failure to promptly object to specificity of expert disclosure can foreclose objection at trial Courts will not engage in interest balancing to determine which state s privilege law will apply When attorneys consult in house counsel to the firm about ethical obligations to firm client their communications are not discoverable by the client Court of Appeals holds that the common interest privilege applies only when subject matter of otherwise protected attorney client communication is litigation not transactional advice *Gilbert-Bliss Civil Practice of the State of New York* New York (State), 1926 *The New York Supplement*, 1918 Cases argued and determined in the Court of Appeals Supreme and lower courts of record of New York State with key number annotations varies **Parsons' Practice Manual of the State of New York**, 1925 **Abbott's Digest of All the New York Reports** Austin Abbott, 1925 A

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