Table of Contents

Chapter 1: Introduction to Motion Practice.....	1
1-1 WHAT IS A MOTION?.....	1
1-2 SOURCES OF RULES THAT GOVERN NEW YORK MOTION PRACTICE.....	2
1-2:1 CPLR	2
1-2:2 Uniform Rules	2
1-2:3 Rules of the Commercial Division	3
1-2:4 Rules of Individual Courts	3
1-2:5 Judges' Rules.....	3
1-3 TYPES OF MOTIONS	4
1-3:1 Motions Made by Notice of Motion	4
1-3:2 Motions by Order to Show Cause.....	5
1-3:3 Ex Parte Motions.....	5
1-3:4 Oral Motions	5
1-4 WHERE ARE MOTIONS MADE?	6
1-4:1 Motions Made by Notice of Motion	6
1-4:2 Motions to Change Venue	6
1-4:3 Motions Made by Order to Show Cause.....	7
1-4:4 Ex Parte Motions.....	7
1-4:5 Motions in County Court	8
1-5 PRIOR JUDICIAL REVIEW AND PRE-MOTION CONFERENCES.....	9
1-6 MOTIONS GRANTED ON DEFAULT	10
1-7 WITHDRAWING A MOTION.....	10
1-8 FORM OF MOTION PAPERS	11
1-9 PAGE LIMITS	15
1-10 DECISIONS, ORDERS AND APPEALABLE PAPER	15
 Chapter 2: How to Make a Motion	 19
2-1 CHOOSING A RETURN DATE	19
2-1:1 Return Date Must Be a Proper Motion Date.....	20
2-1:2 Return Date Must Give Other Parties Sufficient Time to Respond.....	20

Table of Contents

2-1:3	Additional Time for Service by Overnight or Regular Mail	21
2-1:4	Adjournments.....	21
2-2	COMPUTING THE DATE FOR ANSWERS AND REPLIES.....	22
2-2:1	Time for Serving Opposition and Reply Papers	22
2-2:2	Additional Time Based on Method of Service.....	23
2-2:3	Weekends and Holidays	24
2-2:4	Papers Served Out of Time.....	25
2-3	THE PAPERS THAT CONSTITUTE A MOTION	26
2-3:1	Notice of Motion	26
2-3:1.1	Unrequested Relief	27
2-3:1.2	Granting Requested Relief on Grounds Not Argued.....	29
2-3:2	Affidavits and Affirmations.....	29
2-3:2.1	Affidavits From Out-of-State Witnesses Executed Within the United States or Its Territories	30
2-3:2.2	Affirmations Executed Outside the United States or Its Territories.....	33
2-3:2.3	Foreign Language Affidavits	33
2-3:2.4	Affirmations	34
2-3:2.5	Submitting an Affirmation in Lieu of an Affidavit on Religious Grounds.....	36
2-3:3	Supporting Papers	37
2-3:4	Briefs	38
2-3:5	Request for Judicial Intervention in Initial Motion.....	38
2-3:6	Request for Oral Argument	38
2-4	CROSS-MOTIONS.....	39
2-4:1	Advantages and Disadvantages of Cross-Motions.....	40
2-4:2	How to Make a Cross-Motion	41
2-4:3	Time to Serve Cross-Motion.....	43
2-4:4	Opposition to Cross-Motion.....	43
2-5	REPLY PAPERS	44
2-5:1	New Arguments Cannot Be Made for the First Time on Reply.....	44
2-5:2	Sur-Replies Require Leave of Court	45
2-6	SERVICE OF PAPERS	46
2-6:1	Methods of Service.....	47
2-6:2	Proof of Service.....	48
2-6:3	Importance of Proper Service.....	49
2-6:4	Duty to Update Address.....	49

Table of Contents

2-7	FILING OF PAPERS	50
	2-7:1 Electronic Filing	50
2-8	EX PARTE MOTIONS AND ORDERS TO SHOW CAUSE	51
	2-8:1 When to Proceed by Order to Show Cause	52
	2-8:2 Required Statement Regarding Prior Applications	52
	2-8:3 Required Statement for Temporary Injunctive Relief	53
	2-8:4 Procedures for Ex Parte Motions and Orders to Show Cause	54
	2-8:5 Service Requirements for Orders to Show Cause	55
	2-8:6 Reply Papers on Orders to Show Cause	55
2-9	FILING UNDER SEAL.....	56
 Chapter 3: Motion to Dismiss		57
3-1	PROCEDURE FOR MOTION TO DISMISS	57
	3-1:1 When a Motion to Dismiss May Be Made.....	58
	3-1:1.1 Motion to Dismiss in Lieu of Responsive Pleading	58
	3-1:1.2 Post-Answer Motion to Dismiss Based on Lack of Service.....	58
	3-1:1.3 Motions to Dismiss After Service of Responsive Pleading	60
	3-1:2 The Single Motion Rule and Its Exceptions.....	60
	3-1:3 Waiver of Objections	64
	3-1:3.1 Waiver of Non-Jurisdictional Defenses.....	65
	3-1:3.2 Waiver of Jurisdictional Defenses.....	67
	3-1:3.3 Effect of Amended Pleading on Pending Motion	69
	3-1:3.4 Sua Sponte Dismissal.....	69
	3-1:4 Automatic Stay of Disclosure	69
	3-1:5 Continuance of Motion Pending Additional Disclosure.....	71
	3-1:6 Immediate Trial or Inquest	72
3-2	DEFENSE FOUNDED ON DOCUMENTARY EVIDENCE	74
3-3	LACK OF SUBJECT MATTER JURISDICTION.....	78
	3-3:1 Objection Is Non-Waivable and Can Be Raised at Any Time	78
	3-3:2 Dismissal of Claim Brought in Wrong Court.....	79
	3-3:3 Suits Against Foreign Corporations.....	80

Table of Contents

3-3:4	Justiciability and Standing to Challenge	
	Government Action	82
3-3:5	Other Grounds for Dismissal	84
3-4	LACK OF CAPACITY TO SUE	85
3-4:1	Waiver of Lack “Standing” Defense	87
3-5	ANOTHER PENDING ACTION	88
3-5:1	Difference in Parties or Relief Sought	90
3-5:2	First-in-Time Rule and Exceptions	91
3-6	ARBITRATION AND AWARD	93
3-7	COLLATERAL ESTOPPEL	95
3-8	RES JUDICATA	99
3-8:1	Proceedings Giving Rise to Res Judicata	100
3-8:2	Effect of Failure to Assert Counterclaim in Prior Proceeding	102
3-9	DISCHARGE IN BANKRUPTCY	103
3-10	INFANCY OR DISABILITY OF MOVING PARTY	104
3-11	PAYMENT OR RELEASE	104
3-12	STATUTE OF LIMITATIONS	107
3-12:1	Essence of the Claim Controls the Statute of Limitations	110
3-12:2	Borrowing Statute	112
3-12:3	Accrual	115
3-12:3.1	Fraud Discovery Rule	117
3-12:3.2	Foreign Body Discovery Rule	119
3-12:3.3	Exposure to Harmful Substance	120
3-12:3.4	Continuing Wrong Doctrine	122
3-12:4	Tolling	123
3-12:4.1	General Considerations	123
3-12:4.2	Tolling of Professional Malpractice Claims	124
3-12:4.3	Fiduciary Toll	130
3-12:4.4	Stay of Commencement by Court or Statutory Prohibition	131
3-12:4.5	Arbitration	133
3-12:4.6	Dismissal of Prior Action	133
3-12:4.7	Equitable Tolling	138
3-12:4.8	Undue Influence and Duress	140
3-12:4.9	Other Statutory Tolls	140
3-12:4.10	Tolling Agreements	141
3-12:4.11	Tolling During Pendency of Class Action	142

Table of Contents

	3-12:4.12 Statute of Limitations for Defense or Counterclaim.....	143
	3-12:4.13 Tolling Arising from Executive Orders Issued in Response to COVID-19 Pandemic	144
	3-12:5 Relation Back	145
	3-12:6 Administrative Proceedings	146
	3-12:7 Statutes of Limitations for Sex Offenses and Other Crimes	146
	3-12:8 Wrongful Death Actions.....	147
3-13	STATUTE OF FRAUDS	148
	3-13:1 Types of Agreements That Are Subject to Statute of Frauds.....	148
	3-13:2 Impossibility of Performance Within One Year	151
	3-13:3 Unsigned Documents and Multiple Writings.....	152
	3-13:4 Electronic Signatures and Emails.....	153
	3-13:5 Part Performance.....	154
	3-13:5.1 “No Oral Modification” Clauses.....	155
	3-13:6 Promissory Estoppel.....	156
3-14	IMPROPER IMPOSITION OF A COUNTERCLAIM.....	157
3-15	FAILURE TO STATE A CAUSE OF ACTION	157
	3-15:1 Use of Factual Affidavits in Support of Motion.....	159
	3-15:2 Use of Factual Affidavits in Opposition to Motion	160
3-16	INSUFFICIENCY OF PROCESS.....	161
	3-16:1 Time to Assert Objection to Service of Process.....	161
	3-16:2 The 120-Day Period to Serve Process.....	161
	3-16:3 Proof of Service.....	164
	3-16:3.1 The Contents of the Proof of Service	164
	3-16:3.2 When Proof of Service Must Be Filed	165
	3-16:4 Procedure for Contesting Service of Process.....	166
	3-16:5 Motion for Leave for Service by Alternative Means	169
3-17	LACK OF PERSONAL JURISDICTION	170
	3-17:1 Presence Within the State.....	170
	3-17:1.1 In-State Service and Transient Jurisdiction	170
	3-17:1.2 Domicile Within the State.....	172
	3-17:1.3 Corporation Doing Business Within the State	172
	3-17:2 Contractual Consent to Jurisdiction	174
	3-17:3 Long-Arm Jurisdiction	176

Table of Contents

3-17:3.1	Statute Has Narrower Reach Than Constitutional Due Process.....	177
3-17:3.2	Long-Arm Jurisdiction Over Executors and Administrators.....	177
3-17:3.3	Transacting Business or Making Contract in Forum.....	178
3-17:3.4	Defamation.....	181
3-17:3.5	Tortious Conduct Within the State, Including Acts of an Agent or Co-Conspirator.....	183
3-17:3.6	Extraterritorial Act Causing Injury Within the State	184
3-17:3.7	Jurisdiction Arising From Internet Activity	188
3-17:3.8	Corporate Officers and Directors.....	192
3-17:3.9	Declaratory Relief Concerning Foreign Libel Judgments.....	192
3-17:3.10	Ownership of Property Within the State.....	193
3-17:4	Constitutional Due Process	193
3-17:4.1	Minimum Contacts.....	194
3-17:4.2	Fair Play	195
3-17:4.3	Products Liability and Stream of Commerce	197
3-17:5	Effect of Counterclaim on Personal Jurisdiction Defense.....	198
3-17:6	Participation in Discovery Proceedings and Conferences	200
3-17:7	Participation in Settlement.....	200
3-17:8	Standards Governing Pre-Answer Motion to Dismiss for Lack of Personal Jurisdiction	201
3-18	LACK OF IN REM JURISDICTION	202
3-18:1	Marital Proceedings.....	202
3-18:2	In Rem Jurisdiction Over Real and Personal Property	203
3-18:3	Quasi In Rem Jurisdiction	204
3-19	FAILURE TO JOIN A NECESSARY PARTY.....	206
3-20	QUALIFIED STATUTORY IMMUNITY.....	211
3-21	MOTION TO DISMISS DEFENSE.....	213
3-22	CASES INVOLVING PUBLIC PETITION AND PARTICIPATION	214

Table of Contents

3-23	CASES INVOLVING LICENSED ARCHITECTS, ENGINEERS, LAND SURVEYORS OR LANDSCAPE ARCHITECTS.....	217
3-24	LACK OF PARTICULARITY.....	218
3-24:1	Libel or Slander.....	219
3-24:2	Fraud, Mistake, Willful Default, Breach of Trust, Undue Influence.....	219
3-24:3	Separation or Divorce.....	222
3-24:4	Satisfaction of Judgment in Suit Against Judgment Debtor or Co-Obligor.....	222
3-24:5	Law of a Foreign Country.....	223
3-24:6	Sale and Delivery of Goods or Performance of Labor or Services.....	224
3-24:7	Serious Injury in Automobile Accidents.....	225
3-24:8	Culpable Conduct by Officer, Director or Trustee of Non-Profit Corporation.....	226
3-25	INCONVENIENT FORUM.....	226
3-25:1	Foreign Forum Selection Clauses.....	227
3-25:2	Enforcement of Forum Selection Clause by Non-Signatories.....	229
3-25:3	Relevant Factors in the Absence of Forum Selection Clause.....	229
3-25:4	Imposition of Terms.....	234
3-25:5	Non-Dismissability of Disputes Governed by General Obligations Law § 5-1402.....	235
3-25:6	Dismissal of Counterclaims.....	235
3-25:7	Child Custody Disputes.....	235
Chapter 4: Disclosure Motions.....		237
4-1	SCOPE OF DISCOVERY.....	237
4-1:1	Broad Standard of Relevance.....	238
4-1:2	Third-Party Discovery.....	241
4-1:3	Authorizations.....	244
4-1:4	Electronically Stored Information (“ESI”).....	246
4-1:4.1	Duty to Preserve ESI.....	249
4-1:4.2	Allocation of Costs of Production.....	255
4-1:5	Discovery of Social Media Content.....	256
4-1:6	Duty to Supplement.....	259
4-1:7	Pre-Action Disclosure.....	260
4-1:8	Informal Discovery.....	262
4-2	PRIVILEGED MATTER.....	263
4-2:1	Immunity of Privileged Matter From Disclosure.....	264

Table of Contents

4-2:2	Scope of Attorney-Client Privilege	265
4-2:2.1	Joint Client Exception.....	267
4-2:2.2	Fiduciary Exception	267
4-2:2.3	Crime-Fraud Exception	268
4-2:2.4	Choice of Law	269
4-2:3	Common Interest Privilege	269
4-2:4	Effect of Disclosure to Third Party.....	270
4-2:5	Employee’s Use of Company Email.....	271
4-2:6	At-Issue Waiver	272
4-2:7	Waiver During Litigation.....	274
4-2:8	Privilege Against Self-Incrimination	275
4-3	ATTORNEY WORK PRODUCT	277
4-3:1	Underlying Factual Material Not Protected	277
4-3:2	Waiver	279
4-4	TRIAL PREPARATION MATERIALS	279
4-4:1	Materials Prepared Before Litigation Commences.....	279
4-4:2	Materials Prepared Without Attorney Supervision.....	280
4-4:3	Witness Statements	280
4-4:4	Expert and Consultant Reports	280
4-4:5	Company Accident Reports.....	281
4-4:6	Reports Made by or for Insurers.....	281
4-4:7	Showing Needed to Obtain Disclosure	283
4-4:8	Protection Against Disclosure of Mental Impressions.....	284
4-4:9	Waiver	285
4-5	OBJECTIONS TO DOCUMENT REQUESTS AND INTERROGATORIES	285
4-5:1	Waiver of Objections	286
4-5:2	Responses and Objections.....	287
4-5:3	Privilege Logs	289
4-5:4	Confidential Settlement Information	290
4-5:5	Tax Returns	292
4-5:6	Third-Party Business Records.....	293
4-5:7	Testing	294
4-5:8	Limitations on Interrogatories	295
4-6	OBJECTIONS RELATING TO DEPOSITIONS	296
4-6:1	Conduct of Deposition	297
4-6:2	Objections to Location of Deposition	301
4-6:3	Limitation on Combined Use of Interrogatories and Depositions.....	302

Table of Contents

4-6:4	Waiver of Protection for Documents Used to Refresh Recollection	303
4-6:5	Deposition of Corporate Designees	304
4-6:6	Deposition of Opposing Counsel.....	305
4-7	OBJECTIONS TO REQUEST FOR ADMISSION	305
4-8	OBJECTIONS RELATING TO REQUESTS FOR EXAMINATION.....	308
4-8:1	Videotaping of Independent Medical Examinations.....	309
4-8:2	Plaintiff’s Right to IME Observer.....	310
4-9	OBJECTIONS TO DEMAND FOR BILL OF PARTICULARS	310
4-9:1	Grounds for Objection.....	311
4-9:2	Amendment and Supplementation	312
4-9:3	Variance Between Bill of Particulars and Proof at Trial	314
4-9:4	Limitation on Combined Use of Interrogatories and Bills of Particulars	315
4-10	MOTIONS TO COMPEL DISCLOSURE	315
4-10:1	Place Where Motion Is to Be Made	316
4-10:2	Affirmation of Good Faith	316
4-10:3	Affidavit Concerning Privilege, Work Product or Trial Preparation	318
4-11	MOTION FOR PROTECTIVE ORDER	319
4-11:1	Confidential Materials	320
4-11:2	Stay of Discovery.....	322
4-12	MOTION FOR SANCTIONS.....	323
4-12:1	Affirmation of Good Faith.....	324
4-12:2	Types of Sanctions Available	324
4-12:3	Enforcement of Conditional Orders	327
4-12:4	Sanctions for Failure to Appear at Deposition	328
4-12:5	Sanctions in Absence of Prior Discovery Order	329
4-12:6	Spoliation of Evidence.....	331
4-12:7	Sanctions for Fraud on the Court	335
4-12:8	Monetary Sanctions.....	336
4-12:9	Waiver of Objections to Non-Compliance.....	337
4-12:10	Scope of Review	337
4-13	PERSONAL INJURY AND WRONGFUL DEATH CASES	337
4-14	EXPERT DISCLOSURE.....	340

Table of Contents

4-14:1 Scope of Expert Disclosure
(Non-Commercial Cases)..... 340

4-14:2 Expert Depositions (Non-Commercial Cases) 343

 4-14:2.1 By Consent 343

 4-14:2.2 By Court Order..... 343

4-14:3 Time to Make Expert Disclosure
(Non-Commercial Cases)..... 344

4-14:4 Rules Governing Expert Disclosure in the
Commercial Division 346

4-14:5 Expert First Disclosed in Summary
Judgment Papers..... 347

4-14:6 Expert Testimony Regarding Scientific
Evidence 348

Chapter 5: Provisional Remedies..... 351

5-1 GENERAL REQUIREMENTS 351

 5-1:1 Affidavit Concerning Prior Relief 351

 5-1:2 Election of Remedies 352

 5-1:3 Provisional Relief for Counterclaimant
or Cross-Claimant 352

5-2 PREJUDGMENT ATTACHMENT 353

 5-2:1 Grounds of Attachment 354

 5-2:1.1 Non-Domiciliaries and Foreign
Corporations 354

 5-2:1.2 Domiciliary or Resident Who Cannot
Be Served Personally..... 356

 5-2:1.3 Defendant Who Secretes Assets 357

 5-2:1.4 Victim of Crime Seeking Restitution
From Criminal..... 358

 5-2:1.5 Action in Aid of Foreign Judgment 359

 5-2:2 Property Subject to Attachment 359

 5-2:2.1 Tangible Property 361

 5-2:2.2 Certificated Stock and Negotiable
Instruments..... 361

 5-2:2.3 Intangible Interests 361

 5-2:2.4 Bank Accounts 362

 5-2:3 Motion for Order of Attachment or
to Confirm Order..... 363

 5-2:3.1 Content of Papers..... 364

 5-2:3.2 Statement Concerning Prior
Relief Sought or Obtained..... 366

 5-2:3.3 Mandatory Undertaking..... 366

Table of Contents

	5-2:3.4 Filing of Papers	367
	5-2:3.5 Demand for Papers	367
	5-2:3.6 Content of Order of Attachment.....	367
	5-2:3.7 Ex Parte Order of Attachment.....	368
	5-2:3.8 Pre-Summons Order of Attachment	370
	5-2:3.9 Ex Parte TRO Pending Attachment	371
	5-2:3.10 Disclosure Concerning Attachment	371
	5-2:3.11 Discharge of Attachment by Defendant....	372
	5-2:3.12 Vacating or Modifying Order of Attachment.....	373
	5-2:3.13 Annulment of Attachment.....	375
5-2:4	Levy by Sheriff	376
	5-2:4.1 Levy Upon Personal Property by Service of Order.....	376
	5-2:4.2 Duties of Garnishee.....	376
	5-2:4.3 Perfecting a Levy Made by Service of Order	378
	5-2:4.4 Special Proceeding to Compel Delivery or Payment	379
	5-2:4.5 Levy Upon Personal Property by Seizure	380
	5-2:4.6 Levy Upon Real Property	381
	5-2:4.7 Priority of Attachment Lien	381
	5-2:4.8 Sheriff’s Duties After Levy	382
	5-2:4.9 Return, Release or Inventory of Levied Property.....	382
	5-2:4.10 Sheriff’s Fees.....	383
5-2:5	Proceedings to Determine Adverse Claims	384
5-2:6	Damages for Wrongful Attachment	385
	5-2:6.1 Liability to Defendant	386
	5-2:6.2 Liability to Other Interested Persons	386
	5-2:6.3 Requirement of an Actual Attachment....	386
	5-2:6.4 Dismissal Not on the Merits Supports Damages.....	387
	5-2:6.5 Liability to Innocent Owners in Case of Joint Representation	388
	5-2:6.6 Recovery of Legal Expense.....	388
	5-2:6.7 Other Damages.....	389
	5-2:6.8 Interest.....	390
5-2:7	Attachment in Aid of Arbitration.....	390
5-2:8	Attachment as Basis for Quasi In Rem Jurisdiction	391

Table of Contents

5-3	TEMPORARY RESTRAINING ORDERS.....	392
5-3:1	Motion for TRO	392
5-3:1.1	Ex Parte TRO	393
5-3:1.2	Service of TRO	394
5-3:1.3	Discretionary Undertaking.....	394
5-3:1.4	Duration of TRO.....	395
5-3:2	Vacating or Modifying TRO	396
5-3:3	Damages Sustained by Reason of TRO	396
5-3:4	Contempt.....	397
5-4	PRELIMINARY INJUNCTIONS	399
5-4:1	Motion for Preliminary Injunction	399
5-4:1.1	Notice Requirement.....	399
5-4:1.2	Mandatory and Prohibitory Injunctions.....	399
5-4:1.3	Required Showing.....	400
5-4:1.4	Irreparable Harm.....	401
5-4:1.5	Statement Concerning Prior Relief Sought or Obtained	402
5-4:1.6	Mandatory Undertaking.....	402
5-4:1.7	Hearing.....	404
5-4:2	Vacating or Modifying Preliminary Injunction	405
5-4:3	Damages Caused by Preliminary Injunction.....	405
5-4:4	Contempt.....	406
5-5	TEMPORARY RECEIVERSHIP	406
5-5:1	Motion for Appointment of Temporary Receiver	406
5-5:2	Powers of Temporary Receiver	409
5-5:3	Receiver's Fees	409
5-5:4	Undertaking	411
5-5:5	Duration of Receivership.....	411
5-5:6	Extension of Receivership.....	411
5-5:7	Receivership Accounts.....	412
5-5:8	Removal of Receiver	412
5-5:9	Liability of Temporary Receiver	412
5-5:10	Use of Counsel.....	413
5-6	NOTICE OF PENDENCY.....	414
5-6:1	Actions in Which Notice of Pendancy May Be Filed	414
5-6:2	Establishing a Notice of Pendancy.....	416
5-6:2.1	Filing the Notice of Pendancy	417
5-6:2.2	Content of Notice.....	417
5-6:2.3	Indexing the Notice	418
5-6:2.4	Amendment of Notice.....	418

Table of Contents

	5-6:2.5 Requirement of Filing a Facially Sufficient Complaint	418
5-6:3	Effect of Notice	420
5-6:4	Service of Summons	422
5-6:5	Duration of Notice of Pendency.....	423
5-6:6	Motion to Cancel Notice of Pendency.....	424
	5-6:6.1 Standing to Make Motion	424
	5-6:6.2 Mandatory Cancellation	425
	5-6:6.3 Discretionary Cancellation	426
	5-6:6.4 Costs and Expenses	427
	5-6:6.5 Voluntary Cancellation	429
5-6:7	Undertaking	430
5-6:8	Successive Notices of Pendency	431
 Chapter 6: Motions Concerning Parties		433
6-1	ADDING OR DROPPING NEW PARTIES.....	433
	6-1:1 Amended Summons and Complaint	435
	6-1:2 Tolling of Statute of Limitations	435
	6-1:3 Effect of Intervening Legislation	436
6-2	INTERPLEADER	436
	6-2:1 Nature of Action	436
	6-2:2 Procedure for Commencing Interpleader Action	436
	6-2:3 Multiple Actions or Claims Involving Stakeholder	437
	6-2:4 Discharge of Stakeholder	438
	6-2:4.1 Procedure for Discharge	438
	6-2:4.2 Grounds to Deny Interpleader Relief	438
	6-2:4.3 Stakeholder’s Fees and Expenses	439
	6-2:4.4 Interest to Claimant.....	440
	6-2:5 Deposit Into Court as Basis of Jurisdiction	440
6-3	IMPLEADER	441
	6-3:1 Grounds for Impleader	441
	6-3:1.1 Subrogation Claims	443
	6-3:1.2 Impleader Unavailable in Court of Claims.....	445
	6-3:1.3 Third-Party Claim May Exceed Plaintiff’s Demand.....	446
	6-3:2 Procedure for Joining Third Party.....	446
	6-3:3 Answer of Third-Party Defendant.....	447
	6-3:3.1 Defenses Asserted by Third-Party Defendant.....	447
	6-3:3.2 Claims Asserted by Third-Party Defendant.....	448

Table of Contents

6-3:4	Claim by Plaintiff Against Third-Party Defendant.....	449
6-3:5	Dismissal or Separate Trial of Third-Party Complaint.....	450
6-4	INTERVENTION.....	451
6-4:1	Mandatory Intervention	451
6-4:1.1	Right Conferred by Statute.....	451
6-4:1.2	Persons Who May Be Bound by Judgment	451
6-4:1.3	Action Affecting Property.....	453
6-4:1.4	Constitutional Challenges.....	455
6-4:1.5	Notice to the State Comptroller	456
6-4:2	Permissive Intervention.....	456
6-4:2.1	Prejudice as Ground for Denial	457
6-4:2.2	Restriction on Adding New Issues	458
6-4:3	Time to Make Motion	458
6-4:4	Intervention Pleading	460
6-5	SUBSTITUTION OF PARTIES	460
6-5:1	Effect of Death of a Party	461
6-5:2	Motion for Substitution.....	464
6-5:3	John Doe Defendants	466
6-5:4	Motion to Proceed Anonymously	467
Chapter 7: Miscellaneous Pretrial Motions		471
7-1	MOTION TO CHANGE VENUE	471
7-1:1	Rules of Venue.....	471
7-1:1.1	Plaintiff's Initial Choice of Venue	471
7-1:1.2	Contractual Forum Clauses	471
7-1:1.3	Venue Based on Residence or Occurrence of Events.....	473
7-1:1.4	Actions Involving Municipalities and Public Authorities	475
7-1:1.5	Special Proceedings.....	476
7-1:1.6	Real or Personal Property	477
7-1:1.7	Conflicting Venue Provisions	478
7-1:2	Motion to Change Venue Based on Improper Venue... ..	478
7-1:2.1	Time to Make Motion	479
7-1:2.2	Procedure for Making Motion	481
7-1:2.3	Where to Make Motion Based Upon Improper Venue	481
7-1:3	Other Grounds to Change Venue	482
7-1:3.1	Inability to Obtain Impartial Trial	483

Table of Contents

	7-1:3.2 Convenience of Witnesses and Interest of Justice.....	484
	7-1:3.3 Change of Venue in Bench Trials	486
	7-1:3.4 Venue in Actions Concerning Consumer Credit Transactions.....	487
	7-1:3.5 Disregard of Choice of Venue Clause in Actions Relating to Consumer Goods.....	487
7-2	CONSOLIDATION AND SEVERANCE.....	488
	7-2:1 Grounds for Consolidation or Joint Trial.....	488
	7-2:2 Distinction Between Consolidation and Joint Trial.....	490
	7-2:3 Consolidation of Cases Pending in Different Courts	491
	7-2:4 Severance of Claims.....	492
	7-2:5 Bifurcated Trials	496
7-3	MOTION TO STAY PROCEEDINGS	497
	7-3:1 Distinguished From Other Grounds for Stay	497
	7-3:2 Stay Distinguished From Injunction	498
	7-3:3 Stay of Related Proceeding	498
	7-3:4 Stay of Trial Pending Appeal.....	500
	7-3:5 Stay Pending Criminal Proceedings	500
	7-3:6 Stay of Execution	501
	7-3:7 Vacating Stay	502
7-4	MOTION FOR LEAVE TO REARGUE.....	502
	7-4:1 Grounds for Motion	502
	7-4:2 Procedural Requirements.....	505
	7-4:3 Time to Make Motion	505
	7-4:4 Appeal Issues.....	505
7-5	MOTION FOR LEAVE TO RENEW	506
	7-5:1 Grounds for Motion	506
	7-5:2 Procedural Requirements.....	509
	7-5:3 Time to Make Motion	509
	7-5:4 Combined Motion to Reargue and Renew.....	510
	7-5:5 Appeal Issues.....	510
7-6	RESPONSE TO SUMMONS WITH NOTICE.....	510
7-7	MOTION FOR LEAVE TO AMEND.....	513
	7-7:1 Liberal Amendment Rules	515
	7-7:2 Statute of Limitations Issues	518
	7-7:3 Costs and Continuances	522
	7-7:4 Amendment to Conform to the Evidence	523
7-8	MOTION TO DISQUALIFY COUNSEL.....	525

Table of Contents

7-8:1	Disqualification of Lawyer-Witness.....	526
7-8:1.1	Advocate-Witness Rule.....	526
7-8:1.2	Adverse Witness Rule.....	528
7-8:2	Current Clients With Conflicting Interests.....	529
7-8:3	Former Client.....	532
7-8:3.1	Representation Adverse to Former Client.....	532
7-8:3.2	Representation Adverse to Client of Former Firm.....	534
7-8:3.3	Imputation of Conflict and Screening.....	535
7-8:3.4	Representation Adverse to Departing Attorney's Client.....	537
7-8:4	Ex Parte Contact With Represented Clients.....	537
7-8:5	Disqualification of Former Judge.....	537
7-9	MOTION TO RECUSE.....	538
7-10	MOTION TO CORRECT PLEADINGS.....	539
7-10:1	Grounds for Motion for More Definite Statement....	540
7-10:2	Grounds for Motion to Strike.....	540
7-10:3	Time to Make Motion.....	542
7-10:4	Effect of Motion on Time to Answer or Amend Challenged Pleading.....	543
7-10:5	Consequence of Failure to Amend If Motion Is Granted.....	543
7-10:6	Appealability.....	543
7-11	MOTION FOR SANCTIONS BASED UPON FRIVOLOUS CONDUCT.....	544
7-11:1	Requirement of Notice and Opportunity to Be Heard.....	544
7-11:2	Meaning of "Frivolous Conduct".....	545
7-11:3	Signing of Papers.....	548
7-11:4	Nature of the Award.....	549
7-11:5	Requirement of Reasoned Decision.....	549
7-11:6	Sanctions in Tort Actions Under CPLR 8303-a.....	550
7-12	JURY DEMAND.....	551
7-12:1	Issues Triable to a Jury.....	551
7-12:2	Jury Demand.....	552
7-12:2.1	Time to Make Demand.....	552
7-12:2.2	Specification of Issues.....	553
7-12:2.3	Waiver of Right to Jury Trial.....	553
7-12:2.4	Relief by the Court.....	555
7-12:3	Issues Triable by a Jury Revealed at Trial.....	556

Table of Contents

Chapter 8: Summary Dispositions.....557

8-1 SUMMARY JUDGMENT.....557

8-1:1 Time to Make Motion557

8-1:2 Time to Make Cross-Motion for
Summary Judgment.....561

8-1:3 Burden of Moving Party.....563

8-1:4 Affidavits566

8-1:4.1 Personal Knowledge566

8-1:4.2 Permissible Uses of Attorney Affidavit567

8-1:4.3 Expert Affidavits.....567

8-1:4.4 Formal Requirements569

8-1:4.5 Affidavit that Contradicts Prior
Testimony570

8-1:5 Copy of Pleadings570

8-1:6 Admissible Evidence.....571

8-1:7 Statement of Undisputed Facts572

8-1:8 Burden of Non-Moving Party574

8-1:9 Use of Hearsay by Non-Moving Party575

8-1:10 Facts Unavailable to Non-Moving Party576

8-1:11 Statement of Disputed Facts by
Non-Moving Party577

8-1:12 Partial Summary Judgment578

8-1:13 Immediate Trial or Inquest579

8-1:14 Additional Notice Requirement to *Pro Se*
Consumer Defendant in Summary Judgment
Motion in Action to Collect Consumer Debt.....579

8-1:15 Claims Involving Public Petition and
Participation580

8-2 SUMMARY JUDGMENT IN LIEU
OF COMPLAINT.....581

8-2:1 Action Upon Instrument for the Payment
of Money Only582

8-2:1.1 Assertion of Defenses585

8-2:1.2 Claims Against Guarantors586

8-2:1.3 Additional Notice Requirement in
CPLR 3213 Motion to Collect
Consumer Debt587

8-2:2 Action on a Judgment.....587

8-2:2.1 Judgment of Another State587

8-2:2.2 Foreign Country Judgment.....589

8-2:2.3 Personal Jurisdiction Over Defendant in
New York Not Required592

Table of Contents

8-2:3	Notice.....	593
8-2:3.1	Minimum Notice Required.....	593
8-2:3.2	Service of Opposition in Advance of Motion Date.....	595
8-2:3.3	Consequence of Insufficient Time for Response.....	595
8-2:4	Late Service of Opposition.....	596
8-2:5	Counterclaim.....	597
8-2:6	Conversion to Ordinary Action If Motion Is Denied.....	597
8-2:7	Automatic Stay.....	598
8-3	MOTION FOR DEFAULT.....	598
8-3:1	Grounds for Default.....	598
8-3:1.1	Failure to Respond to Summons or Pleading.....	598
8-3:1.2	Failure to Appear at Trial or Conference.....	600
8-3:2	Proof Required for Default.....	603
8-3:2.1	Proof of Service.....	603
8-3:2.2	Proof of Claim.....	603
8-3:2.3	Motion for Default Based on a Summons With Notice.....	606
8-3:2.4	Affidavit of Additional Mailing.....	607
8-3:2.5	Jurisdiction by Attachment.....	610
8-3:2.6	Affidavit of Nonmilitary Service.....	610
8-3:3	Motion to Extend Time to Answer.....	611
8-3:4	Clerk’s Judgment for Sum Certain.....	614
8-3:4.1	Default Judgment in Consumer Credit Action.....	615
8-3:5	Inquest on Damages.....	617
8-3:6	One-Year Limit to Take Proceedings for Default Judgment.....	619
8-3:7	Default Against Fewer Than All Defendants.....	623
8-3:8	Notice Requirements.....	624
8-3:9	Motion to Vacate Default Under CPLR 5015.....	625
8-3:10	Motion to Vacate Default Under CPLR 317.....	627
8-3:11	Clerk’s Judgment Where Counterclaim Is Interposed.....	628
8-4	WANT OF PROSECUTION.....	629
8-4:1	Grounds for Dismissal Based Upon Want of Prosecution.....	629

Table of Contents

	8-4:1.1	Requirement That One Year Elapse After Joinder of Issue and That Six Months Elapse After Any Preliminary Conference Order	631
	8-4:1.2	Requirement of Proper 90-Day Demand	631
	8-4:1.3	Other Facial Requirements	633
	8-4:1.4	Service Requirements.....	633
8-4:2		Action by Court, Not Clerk, Is Required for Dismissal.....	634
8-4:3		Standing to Move for Dismissal.....	635
8-4:4		Compliance Within 90 Days of Demand Bars Dismissal	635
8-4:5		Effect of 90-Day Demand on Defendant’s Right to Discovery.....	636
8-4:6		Party Who Cannot Comply Must Move to Vacate Demand or Seek Extension	636
8-4:7		Showing Required to Avoid Dismissal	637
	8-4:7.1	Justifiable Excuse for Delay.....	638
	8-4:7.2	Meritorious Cause of Action.....	640
8-4:8		Post-Note of Issue Delay	641
8-4:9		Effect of Dismissal on Recommencement of Action.....	642
8-4:10		Dismissal Does Not Bar Defense of Counterclaim.....	643
8-5		VOLUNTARY DISCONTINUANCE	643
	8-5:1	Discontinuance by Notice.....	643
	8-5:1.1	Cross-Claim	643
	8-5:1.2	Summons With Notice.....	644
	8-5:1.3	Discontinuance After Motion to Dismiss	644
8-5:2		Discontinuance by Stipulation	645
8-5:3		Tax Delinquent Parcel of Land.....	646
8-5:4		Class Actions	646
8-5:5		Discontinuance by Order of Court	646
8-5:6		Effect of Voluntary Discontinuance.....	649
8-5:7		Vacatur of Discontinuance	650
8-6		CONFESSION OF JUDGMENT	651
	8-6:1	Due Execution of Affidavit.....	652
	8-6:2	Recitation of Facts Underlying Debt	653
	8-6:3	County in Which Affidavit May Be Filed.....	655
	8-6:4	Debt to Attorney	655

Table of Contents

8-6:5	Three-Year Period for Entry of Judgment.....	656
8-6:6	Attack on Confession of Judgment	656
8-6:7	Execution Where Judgment Is Not All Due	658
8-6:8	Joint Debt.....	658
8-6:9	Cognovit Judgment of Sister State.....	659
8-7	DISMISSAL OF ABANDONED CASE AFTER PLACEMENT ON TRIAL CALENDAR.....	659
8-7:1	Grounds for Dismissal	659
8-7:2	Effect of Vacatur of Note of Issue.....	661
8-7:3	Restoration to Trial Calendar as of Right.....	661
8-7:4	Showing Required After Dismissal	661
8-8	TENDER, CONDITIONAL OFFER OF LIQUIDATED DAMAGES, AND OFFER TO COMPROMISE.....	662
8-8:1	Tender.....	663
8-8:2	Offer to Liquidate Damages Conditionally	664
8-8:3	Offer to Compromise	666
	Chapter 9: Trial Motions.....	669
9-1	MOTION FOR JUDGMENT DURING TRIAL.....	669
9-1:1	Legal Standard	669
9-1:2	Time to Make Motion	671
9-1:3	Specification of Grounds	673
9-1:4	Effect on Appellate Review of Failure to Make Motion for Directed Verdict	673
9-2	DIRECTED VERDICT IN INFORMED CONSENT CASE.....	673
9-3	MOTION FOR CONTINUANCE OR MISTRIAL	674
9-4	REPORT OF REFEREE OR ADVISORY JURY.....	677
9-5	POST-TRIAL MOTIONS FOR JUDGMENT AND NEW TRIAL	680
9-5:1	Time to Make Motion	681
9-5:2	Single Motion Rule.....	682
9-5:3	Judgment Notwithstanding the Verdict.....	682
9-5:3.1	Legal Standard	682
9-5:3.2	General Verdicts and Multiple Theories of Liability	683
9-5:4	Verdict Against the Weight of the Evidence.....	683
9-5:5	Excessive or Insufficient Damages	685
9-5:6	New Trial in the Interest of Justice	687
9-5:7	Inconsistent or Compromise Verdict.....	689
9-5:8	Jury Deadlock	690

Table of Contents

Chapter 10: Appeals and Motions to the Appellate Courts..... 693

10-1 APPELLATE PRACTICE RULES AND MOTION PROCEDURES 693

10-2 TAKING AN APPEAL..... 693

10-2:1 Types of Appeal and Methods of Taking Appeal 694

10-2:2 Time to Take Appeal 694

10-2:3 Enlargement of Time to Take Appeal..... 696

10-2:4 Time to Take Cross-Appeal 698

10-2:5 Time to Perfect Appeal..... 699

10-2:6 Enlarging Time to Perfect Appeal..... 701

10-2:7 Notice to Appellate Division of Change in Circumstances..... 701

10-3 MOTION FOR LEAVE TO APPEAL—APPELLATE DIVISION 702

10-3:1 Requirement of Appealable Paper 702

10-3:2 Orders Appealable as of Right..... 703

10-3:2.1 Appeals From Supreme Court and County Court 703

10-3:2.2 Appeals From Other Courts 704

10-3:3 Supreme Court and County Court Orders Appealable by Permission 704

10-3:4 Appeals to Appellate Division From Appellate Term 705

10-4 APPELLATE REVIEW OF EX PARTE OR SUA SPONTE ORDERS 706

10-5 MOTION FOR LEAVE TO APPEAL—COURT OF APPEALS 707

10-5:1 Appeal as of Right..... 707

10-5:2 Appeal by Permission 709

10-5:2.1 Permission of Either Appellate Division or Court of Appeals..... 709

10-5:2.2 Permission of Appellate Division Only 711

10-5:3 When an Appellate Order Is Deemed Final 712

10-6 MANDAMUS..... 712

10-7 MOTION FOR STAY PENDING APPEAL..... 713

Chapter 11: Arbitration 717

11-1 ENFORCEABILITY OF ARBITRATION AGREEMENTS 717

11-1:1 Justiciability of Underlying Dispute Is Not Required 717

Table of Contents

11-1:2	Signed Agreement is Not Required	718
11-1:3	Public Policy Exceptions to Arbitrability	718
11-1:3.1	Discrimination Claims Under New York State Law	720
11-1:4	Enforceability Against Nonsignatories	720
11-1:4.1	Waiver or Voluntary Participation	721
11-1:4.2	Alter Ego	721
11-1:4.3	Equitable Estoppel.....	722
11-1:4.4	Successor Liability	723
11-1:5	Inter-Relationship of Claims Involving Signatories and Nonsignatories	723
11-1:6	Enforcement by Nonsignatories.....	723
11-2	ROLE OF COURT IN DETERMINING ARBITRABILITY	725
11-2:1	Applicability of Federal Law to Agreements Affecting Interstate Commerce	726
11-2:2	Broad and Narrow Clauses.....	727
11-2:3	Fraud and Duress	729
11-2:4	Conditions Precedent.....	730
11-2:5	Statute of Limitations.....	731
11-2:6	Provisional Remedies.....	733
11-3	SPECIAL PROCEEDINGS RELATING TO ARBITRATION	735
11-4	APPLICATION TO COMPEL ARBITRATION.....	737
11-4:1	Waiver of Right to Arbitrate Through Litigation Conduct	738
11-4:2	Waiver of Right to Maintain Class Action Arbitration.....	740
11-5	APPLICATION TO STAY ARBITRATION	740
11-5:1	Grounds for Stay	741
11-5:2	Participation in Arbitration Waives Right to Seek Stay	741
11-5:3	Service of Demand for Arbitration and Time to Apply for Stay	742
11-5:4	Existence of Both Arbitrable and Non-Arbitrable Claims	745
11-5:5	Personal Jurisdiction.....	746
11-6	MOTION TO APPOINT ARBITRATOR	746
11-7	MOTIONS TO DISQUALIFY	747
11-7:1	Motion to Disqualify Arbitrator.....	747
11-7:2	Motion to Disqualify Arbitration Counsel	748
11-8	SUBPOENAS.....	749

Table of Contents

11-9	COURT-ORDERED DISCOVERY IN AID OF ARBITRATION	750
11-10	PROCEDURAL REQUIREMENTS	751
11-10:1	Oath of Arbitrator	751
11-10:2	Notice of Time and Place of Hearing	752
11-10:3	Right to Participate, Present Evidence and Cross-Examine Witnesses	753
11-10:4	Representation by Attorney	754
11-10:5	Conduct of the Hearing by the Arbitrators.....	755
11-11	THE ARBITRATION AWARD	756
11-11:1	Failure to Affirm Award Is Not a Fatal Defect	756
11-11:2	Time to Render Award May Be Extended.....	756
11-11:3	Delivery Requirement	757
11-11:4	Partial Final Awards	757
11-12	AWARD BY CONFESSION	758
11-13	MODIFICATION OF AWARD BY ARBITRATOR	759
11-13:1	Time to Make Application.....	759
11-13:2	Grounds for Modification by Arbitrator.....	759
11-13:3	Application to Clarify Award.....	761
11-14	APPLICATION TO CONFIRM AWARD.....	761
11-15	TIME TO VACATE OR MODIFY AN AWARD	762
11-16	GROUND TO VACATE AWARD BY PARTICIPANT IN ARBITRATION	763
11-16:1	Fraud, Corruption or Misconduct	764
11-16:2	Partiality of the Arbitrator	766
11-16:3	Award That Exceeds Arbitrator's Power	767
11-16:3.1	Award That Violates Public Policy	768
11-16:3.2	Irrational Award	769
11-16:3.3	Award That Exceeds Arbitrator's Specifically Enumerated Limitations.....	771
11-16:3.4	Failure to Make Final and Definite Award.....	774
11-16:3.5	Punitive Damages	775
11-16:4	Failure to Follow Statutory Procedure.....	776
11-16:5	New Evidence Is Not Grounds to Vacate Award	776
11-16:6	Judicial Review of Compulsory Arbitration	776
11-17	GROUND TO VACATE AWARD BY NON-PARTICIPANT	777
11-18	GROUND FOR COURT TO MODIFY AWARD	777
11-19	REHEARING	778
11-20	SUBSTITUTION OF PARTIES	779

Table of Contents

11-21	ARBITRATOR FEES, EXPENSES AND ATTORNEY'S FEES.....	779
11-22	INTEREST	781
Chapter 12: Special Proceedings		783
12-1	NATURE OF A SPECIAL PROCEEDING	783
12-2	PARTIES IN A SPECIAL PROCEEDING.....	783
12-3	COMMENCEMENT OF A SPECIAL PROCEEDING.....	784
12-4	PLEADINGS IN A SPECIAL PROCEEDING	784
12-5	NOTICE OF PETITION AND ORDER TO SHOW CAUSE	786
12-5:1	Contents of Notice of Petition	786
12-5:2	Time to Serve Papers	786
12-5:3	Service of Process Requirements.....	787
12-5:4	Proceeding by Order to Show Cause.....	788
12-6	OBJECTIONS IN POINTS OF LAW.....	789
12-7	CORRECTION OF PLEADING DEFECTS	791
12-7:1	Types of Motions Permitted	791
12-7:2	Time to Make Motion	791
12-8	SEVERANCE.....	792
12-9	DISCLOSURE.....	792
12-10	HEARING.....	794
12-11	TRIAL	796
12-12	JUDGMENT	796
Chapter 13: Article 78 Proceedings		799
13-1	NATURE OF PROCEEDING	799
13-1:1	Unavailability of Article 78 Review for Legislative or Executive Acts	800
13-1:2	Finality and Exhaustion Requirement	801
13-1:3	Civil and Criminal Matters.....	803
13-1:4	Hybrid Proceedings	805
13-2	PARTIES.....	806
13-2:1	Definition of “Body or Officer”	806
13-2:1.1	Corporations	806
13-2:1.2	Colleges and Universities.....	807
13-2:2	Successors and Holders of Agency Records.....	808
13-2:3	Necessary Parties	808
13-2:4	Intervention	809
13-3	QUESTIONS THAT MAY BE RAISED.....	810
13-3:1	Failure to Perform Duty Enjoined by Law.....	811
13-3:2	Proceeding Without or in Excess of Jurisdiction.....	812

Table of Contents

13-3:3	Review of Hearings Taken Pursuant to Law	812
13-3:4	Other Agency Review	816
13-3:4.1	Violation of Lawful Procedure.....	816
13-3:4.2	Error of Law.....	817
13-3:4.3	Arbitrary or Capricious	818
13-3:4.4	Abuse of Discretion.....	820
13-4	PROCEDURE	822
13-4:1	Commencing a Proceeding.....	822
13-4:2	Venue.....	823
13-4:3	Service Requirements.....	823
13-4:3.1	Time to Serve Papers	823
13-4:3.2	Service Upon Attorney General or Government.....	824
13-4:4	Pleadings	825
13-4:5	Filing of Transcript.....	825
13-4:6	Objections in Point of Law	826
13-4:7	Disclosure.....	828
13-4:8	Hearing and Determination; Transfer to Appellate Division	829
13-4:9	Trial	829
13-4:10	Appearance by Judicial Officer	830
13-5	STATUTE OF LIMITATIONS	830
13-6	STAY	832
13-7	SCOPE OF RELIEF	833
 Chapter 14: Class Actions.....		837
14-1	PREREQUISITES TO A CLASS ACTION	837
14-1:1	Numerosity.....	838
14-1:2	Common Questions or Law or Fact.....	839
14-1:3	Typicality.....	842
14-1:4	Adequacy of Representation	844
14-1:4.1	Conflicts Between Representative and Class	844
14-1:4.2	Representative's Familiarity With Litigation	846
14-1:4.3	Adequacy of Representative's Financial Resources	846
14-1:4.4	Adequacy of Class Counsel.....	847
14-1:5	Superiority of Class Action to Other Methods of Adjudication	848
14-1:6	Class Actions Against the Government	848
14-1:7	Recovery of Penalties.....	850

Table of Contents

14-2	CLASS CERTIFICATION	851
14-2:1	Time to Move for Class Certification	851
14-2:2	Discovery Relevant to Class Certification	852
14-2:3	Procedure.....	853
14-2:3.1	Factors Relevant to Motion	855
14-2:3.2	Amending the Class and Decertification	859
14-2:3.3	Pre-Answer Motion to Dismiss Class Allegations.....	860
14-2:3.4	Appellate Review	861
14-3	DESCRIPTION OF CLASS.....	862
14-4	NOTICE OF CLASS ACTION	863
14-4:1	Notice in Class Actions Seeking Injunctive or Declaratory Relief	863
14-4:2	Contents of Notice	865
14-4:3	Method of Notice.....	865
14-4:4	Allocation of Expense of Notice	866
14-5	JUDGMENT	867
14-5:1	Requirement That Elements of Class Action Be Satisfied	868
14-5:2	Res Judicata Effect of Judgment.....	868
14-6	ACTIONS CONDUCTED PARTIALLY AS CLASS ACTIONS.....	870
14-7	ORDERS IN CONDUCT OF CLASS ACTIONS	871
14-8	DISMISSAL, DISCONTINUANCE OR COMPROMISE.....	873
14-8:1	Judicial Review of Class Settlements	873
14-8:2	Voluntary Dismissal.....	875
14-8:3	Notice Requirement.....	875
14-9	ATTORNEYS' FEES.....	876
14-9:1	Requirement of Judgment in Class' Favor	876
14-9:2	Source of Payment.....	876
14-9:3	Awards to Objectors and Non-Class Representatives	877
14-9:4	Reasonableness of Award	877
14-9:5	Awards to Class Representatives.....	879
	Chapter 15: Judgment Enforcement	881
15-1	DEBT OR PROPERTY SUBJECT TO ENFORCEMENT	881
15-1:1	Debts Against Which a Money Judgment May Be Enforced	882

Table of Contents

	15-1:2 Property Against Which a Money Judgment May Be Enforced	883
	15-1:3 Proper Garnishee	885
15-2	TRANSFEREES OF PERSONAL PROPERTY OR DEBT OWED TO JUDGMENT DEBTOR.....	886
	15-2:1 Judgment Lien Based Upon Delivery of Execution to Sheriff	887
	15-2:2 Judgment Lien Based Upon Turnover Order or Receivership.....	888
	15-2:3 Meaning of Fair Consideration	888
15-3	PRIORITIES AND LIENS ON REAL PROPERTY	889
	15-3:1 Judgment Lien on Real Property Arising from Docketing of Judgment	889
	15-3:2 Judgment Lien on Real Property Arising from Filing of Notice of Levy	891
	15-3:3 Effect of Judgment Lien on Transfer of Real Property.....	891
	15-3:4 Cooperative Apartment Shares	892
	15-3:5 Exceptions to Real Property Judgment Lien	893
	15-3:6 Extension of Judgment Lien	896
	15-3:7 Limited Priority Against Bankruptcy Filing	897
15-4	RELEASE OF LIEN OR LEVY UPON APPEAL	897
15-5	PERSONAL PROPERTY EXEMPTION	898
	15-5:1 Necessities and Personal Items.....	898
	15-5:2 Damages for Taking or Injuring Exempt Property.....	899
	15-5:3 Trust Exemption	899
	15-5:3.1 Qualified Domestic Relations Order (QDRO) and Spousal/Child Support Exception.....	901
	15-5:3.2 Exception for Transfers Made to Exempt Trust Within 90 Days of Claim or Subsequently, or Fraudulent Transfers	901
	15-5:4 Income Exemptions	902
	15-5:5 Armed Forces Exemption	904
	15-5:6 Unpaid Milk Proceeds Exemption.....	904
	15-5:7 Security Deposit Exemption	904
	15-5:8 Medical and Dental Equipment Exemption.....	904
	15-5:9 Life Insurance Policy Exemption	905
	15-5:10 College Tuition Savings Program Exemption.....	905
	15-5:11 Exemption for Funds of Convicted Person.....	906

Table of Contents

15-5:12 Exemption for Direct Deposit of Exempt Funds 906

15-6 REAL PROPERTY EXEMPTION 907

15-6:1 Nature of the Exemption 907

15-6:2 Homestead Exemption After Owner’s Death 908

15-6:3 Suspension of Occupation as Affecting Homestead Exemption 908

15-6:4 Sale of Homestead 909

15-6:5 Burial Ground Exemption 910

15-7 JUDGMENT ENFORCEMENT INVOLVING THE STATE 911

15-8 ENFORCMENT OF JUDGMENT AFTER DEATH OF JUDGMENT DEBTOR 911

15-9 DISCHARGE OF GARNISHEE’S OBLIGATION 913

15-10 POWER OF COURT TO PUNISH CONTEMPT 914

15-11 GRANT OF IMMUNITY FOR JUDGMENT ENFORCEMENT TESTIMONY 915

15-12 WHERE ENFOREMENT PROCEEDINGS MAY BE COMMENCED 916

15-13 RESTRAINING NOTICES 918

15-13:1 Issuance and Service 918

15-13:2 Contents and Form 918

15-13:3 Effect of Restraining Notice 919

15-13:4 Duration and Service of Subsequent Restraining Order 921

15-13:5 Notice to Judgment Debtor 922

15-13:6 Additional Requirements for Banking Institutions 922

15-13:6.1 Service of Exemption Notice and Exemption Claim Forms 922

15-13:6.2 Claim of Exemption 923

15-13:6.3 The Separate Entity Rule 925

15-14 DISCLOSURE IN AID OF JUDGMENT ENFORCEMENT 925

15-14:1 Subpoena ad Testificandum 927

15-14:2 Subpoena Duces Tecum 927

15-14:3 Information Subpoenas 928

15-15 TURNOVER ORDERS — PROPERTY OF THE JUDGEMENT DEBTOR 929

15-15:1 Money or Property in Judgment Debtor’s Possession 930

15-15:2 Money or Property in Third Party’s Possession 931

Table of Contents

15-15:3	Execution or Delivery of Documents.....	932
15-16	INSTALLMENT PAYMENT ORDER.....	932
15-17	PAYMENT OF DEBTS OWED TO JUDGMENT DEBTOR	933
15-18	APPOINTMENT OF RECEIVER.....	935
15-19	ENFORCEMENT BEFORE JUDGMENT IS ENTERED.....	937
15-20	PROPERTY EXECUTIONS.....	937
15-20:1	Form of Property Execution.....	937
15-20:2	Issuance of Execution.....	940
15-20:3	Return of Execution	941
15-20:4	Duties of Sheriff or Support Collection Unit	942
15-21	INCOME EXECUTION	943
15-21:1	Form of Income Execution.....	943
15-21:2	Limits on Amount of Income that Can be Collected.....	944
15-21:3	Sheriff's Duties	945
15-21:3.1	Service	945
15-21:3.2	Levy.....	945
15-21:3.3	Accounting	946
15-21:3.4	Poundage.....	946
15-21:4	Withholding of Income by Garnishee.....	946
15-21:5	Required Statement on Income Execution	947
15-21:6	Levy Upon Money Payable by State or Municipal Corporation.....	947
15-21:7	Modification	947
15-21:8	Priority Between Income Executions	948
15-21:9	Income Execution for Support Enforcement.....	948
15-21:10	Income Deduction Order for Support Enforcement	949
15-22	LEVY UPON PERSONAL PROPERTY	949
15-22:1	Property that is Capable of Delivery.....	950
15-22:2	Levy Upon Property Not Capable of Delivery	950
15-22:3	Levy by Seizure.....	953
15-22:4	Notice to Judgment Debtor	953
15-22:5	Executions and Levies on Bank Accounts	954
15-22:6	Sale of Personal Property	955
15-22:7	Garnishee's Set-Off Rights	956
15-23	DISTRIBUTION OF PROCEEDS OF PERSONAL PROPERTY	957
15-24	PRIORITIES AMONG CREDITORS IN PROCEEDS OF PERSONAL PROPERTY	957

Table of Contents

15-24:1	Priority Among Execution Creditors	957
15-24:2	Priority Based Upon Filing of Turnover Order.....	958
15-24:3	Rights of Secured Parties.....	960
15-25	SALE OF REAL PROPERTY	960
15-25:1	Time of Sale; Public Auction	960
15-25:2	Mortgage Debt Exception.....	961
15-25:3	Notice of Sale	961
15-25:4	Notice of Postponement of Sale	963
15-25:5	Effect of Notice on Judgment Creditors	964
15-25:6	Delivery of Property and Proofs of Notice	964
15-25:7	Disposition of Proceeds of Sale	965
15-26	FAILURE OF TITLE TO PROPERTY SOLD.....	965
15-27	DIRECTIONS TO THE SHERIFF	966
15-28	PROCEEDING TO DETERMINE ADVERSE CLAIMS	966
15-29	MODIFICATION OR PROTECTIVE ORDER	968
15-30	ARREST OF JUDGMENT DEBTOR	969
	Appendix of Forms	971
	Table of Cases.....	1185
	Table of Statutes and Rules	1389
	Index	1415