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ARBITRATION

In the Matter of Associated Metals and Mining Corp., 10 N.Y.2d 298, 178 N.E.2d 715, 222 N.Y.S.2d 313 (1961). *Held*: under an arbitration clause arbitration of an undisputed claim could be compelled.

In the Matter of Rosenbaum, 11 N.Y.2d 310, 183 N.E.2d 667, 229 N.Y.S.2d 375 (1962). *Held*: the question of whether an alleged tortfeasor was in fact an uninsured motorist was triable to the court as a condition precedent to arbitration, where arbitration of liability and damages was provided for under an insurance indorsement indemnifying against injuries arising from collisions caused by uninsured motorists.

CIVIL PROCEDURE

Gutin v. Frank Mascali & Sons, 11 N.Y.2d 97, 181 N.E.2d 449, 226 N.Y.S.2d 434 (1962). *Held*: the exercise of discretion by the Appellate Division in reviewing a trial court's order for a new trial in a negligence case is not reviewable by the Court of Appeals.

Kuniholm v. Kuniholm, 11 N.Y.2d 358, 183 N.E.2d 692, 229 N.Y.S.2d 412 (1962). *Held*: summary judgment should be granted where a defense alleging an issue of fact does not establish a bona fide issue of fact.

CONFLICTS OF LAWS

Davenport v. Webb, 11 N.Y.2d 392, 183 N.E.2d 913, 230 N.Y.S.2d 17 (1962). *Held*: prejudgment interest is a substantive question and will be controlled by the *lex loci delicti* since no strong public policy dictates substitution of the law of the forum. The Court clarifies *Kilberg v. Northeast Airlines*, 9 N.Y.2d 34, 172 N.E.2d 526, 211 N.Y.S.2d 133 (1961), by stating that when this Court invokes its public policy to defeat the substantive law of the *lex loci delicti*, the substantive nature of the law remains, but the laws of the forum control.

CONSTITUTIONAL LAW

I.L.F.Y. Co. v. Temporary State Housing Rent Comm'n, 11 N.Y.2d 259, 183 N.E.2d 220, 228 N.Y.S.2d 814 (1962). *Held*: a two and one-half month rent freeze to facilitate change over from the state rent control agency to a newly established city agency is constitutionally acceptable as a reasonable exercise of state police power.

Pennsylvania R.R. v. State, 11 N.Y.2d 504, 184 N.E.2d 588, 230 N.Y.S.2d 1004 (1962). *Held*: a statute enacted specifically for the benefit of a

particular railroad allowing it to raise its rates does not preclude a subsequent amendment decreasing those rates on the ground that this was an impairment of the constitutional right to contract.

People ex rel. Stock v. Terrence, 11 N.Y.2d 362, 183 N.E.2d 752, 229 N.Y.S.2d 737 (1962). *Held*: failure to give the petitioner notice of a decision concerning his permanent commitment to a mental institution did not violate the petitioner's constitutional rights. However, time to appeal from this decision did not begin to run until the petitioner received notice.

CRIMINAL LAW

Nolan v. Court of General Sessions, 11 N.Y.2d 114, 181 N.E.2d 751, 227 N.Y.S.2d 1 (1962). *Held*: where a stipulation was entered into by the parties agreeing that a trial for attempted burglary was to be based solely on the record of a former trial, jeopardy attached upon the admission of the record into evidence and the trial court could not thereafter vacate the stipulation or order a trial de novo.

People v. Boundy, 10 N.Y.2d 518, 180 N.E.2d 565, 225 N.Y.S.2d 207 (1962). *Held*: on a petition for a writ in the nature of *coram nobis* evidence of insanity at the time of the plea based upon the prior and subsequent history of the accused's mental health was sufficient to require a hearing.

People v. Fasano, 11 N.Y.2d 436, 184 N.E.2d 289, 230 N.Y.S.2d 689 (1962). *Held*: the trial court's refusal to amplify its charge to specify that the jury had to find beyond a reasonable doubt that the defendant was a principal was not error, since the Court in its main charge amply discussed reasonable doubt and the requirements necessary for finding that defendant was a principal.

People v. Guilanti, 10 N.Y.2d 433, 179 N.E.2d 850, 224 N.Y.S.2d 4 (1962). *Held*: it was error to reverse a conviction under section 156 of the Vehicle and Traffic Law, which requires that trailers be licensed, where a question of fact existed as to whether or not a mobile field office be considered a trailer, although the field office was not used primarily as a trailer.

People v. Moore, 11 N.Y.2d 271, 183 N.E.2d 225, 228 N.Y.S.2d 822 (1962). *Held*: evidence obtained in an unlawful arrest is inadmissible as a violation of defendant's constitutional freedom from unwarranted search and seizure, where arrest was merely based upon police observation of an exchange of monies.

People v. Powell, 11 N.Y.2d 1, 181 N.E.2d 396, 226 N.Y.S.2d 359 (1962). *Held*: the remarks of the prosecutor in summation explaining why the deceased's statement had not amounted to a dying declaration did not constitute prejudicial error, nor could defendant raise this alleged error where he had failed to object to the remarks at trial.

People v. Rosenfeld, 11 N.Y.2d 290, 183 N.E.2d 656, 229 N.Y.S.2d 360 (1962). *Held*: where a prosecutor repeatedly attempted to introduce inaudible recordings which he claimed were proof of the defendant's crime, and where he alluded to the same in his summation, his attempts and comments denied defendants a fair trial, in spite of other determinative evidence.

People v. Rossi, 11 N.Y.2d 379, 183 N.E.2d 895, 230 N.Y.S.2d 7 (1962). *Held*: where a doctor was convicted on second degree larceny charges in falsifying insurance claims, an instruction to the jury given on the question of fact whether his patients were accomplices, was not prejudicial error, since the patients were not accomplices as a matter of law; moreover there was corroborative evidence, so that an instruction as to the testimony of accomplices was not prejudicial.

People v. Roth, 11 N.Y.2d 80, 181 N.E.2d 440, 226 N.Y.S.2d 421 (1962). *Held*: the report of a psychiatrist made to determine the ability of the accused to defend himself which also contained admissions of the crime would not properly be admitted into evidence when not *specifically* offered into evidence by the defendant.

People ex rel. Siegal v. Dros, 11 N.Y.2d 167, 182 N.E.2d 106, 227 N.Y.S.2d 431 (1962). *Held*: an unsworn information was insufficient to confer jurisdiction upon the court in the trial of a violation of the New York City Multiple Dwelling Code.

People v. Williams, 10 N.Y.2d 382, 179 N.E.2d 487, 223 N.Y.S.2d 474 (1961). *Held*: a criminal complaint was sufficient to inform defendant of the crime with which he was charged where it specified that he had possession of a document "representing and being a record" for a game called "policy," since from it the defendant knew that he was being charged with possession of comptroller's ribbons rather than policy slips.

DECEDENTS' ESTATES AND TRUSTS

In the Matter of the Will of Brener, 11 N.Y.2d 423, 184 N.E.2d 283, 230 N.Y.S.2d 681 (1962). *Held*: an assignment stating that the assignor relinquished all "right, title, and interest in and to any and all claims . . . against an estate" effectively passed both his testamentary rights and his rights as next of kin to a deceased legatee to the assignee.

EMINENT DOMAIN

Fifth Avenue Coach Lines, Inc. v. City of New York, 11 N.Y.2d 342, 183 N.E.2d 684, 229 N.Y.S.2d 400 (1962). *Held*: although a statute authorizing a city condemnation of bus companies did not provide for notice before the taking, it did not deprive the defendant of due process, since the required

hearing provided sufficient opportunity to permit objection to the condemnation and establish proper compensation.

New Rochelle Water Co. v. State, 10 N.Y.2d 287, 177 N.E.2d 771, 220 N.Y.S.2d 809 (1961). *Held*: where the state in the performance of a sovereign pursuit appropriated the facilities of a utility company which lay in the public right of way, the state was not liable for facilities which the company abandoned but was liable for those facilities which the company was prevented from recovering.

INSURANCE

Jefferson v. Sinclair Ref. Co., 10 N.Y.2d 422, 179 N.E.2d 706, 223 N.Y.S.2d 863 (1961). *Held*: where the plaintiff was not a named beneficiary in an indemnity insurance contract, the tacit purpose of which was to save the plaintiff free of liability for personal injury claims and where such liability had not been judicially determined or admitted, the plaintiff could not directly sue the insurer.

Sincoff v. Liberty Mut. Fire Ins. Co., 11 N.Y.2d 386, 183 N.E.2d 899, 230 N.Y.S.2d 13 (1962). *Held*: the word "vermin," as used in a personal property floater insurance policy, to except the insurer from liability, did not preclude recovery for damages done by carpet beetles.

PROPERTY

Denker v. 20th Century-Fox Film Corp., 10 N.Y.2d 339, 179 N.E.2d 336, 223 N.Y.S.2d 193 (1961). *Held*: a grant of exclusive rights in a screen play by co-owners of the play could not subsequently be rescinded by the unilateral action of one co-owner.

DeGomez-Mena v. Coe, 11 N.Y.2d 493, 184 N.E.2d 582, 230 N.Y.S.2d 995 (1962). *Held*: where a security broker was informed by an account holder, also a security broker, that its account was the sole property of an individual, the individual's claim on the account was entitled to recognition by the broker holding the account.

Lord Management Corp. v. Weaver, 11 N.Y.2d 180, 182 N.E.2d 267, 227 N.Y.S.2d 654 (1962). *Held*: where residential housing, subject to rent control, was leased for non-housing use, control was not suspended, so that when changed back to housing use, the premises were again subject to rent administration.

Speelman v. Pascal, 10 N.Y.2d 313, 187 N.E.2d 723, 222 N.Y.S.2d 324 (1961). *Held*: a letter confirming a gift of a certain percentage of the profits from the musical version of *Pygmalion* was held to be a valid assignment of future profits since there was a complete delivery and a present intent to make the gift despite the non-existence of the play at the time of the giving.

TORTS

Lane v. Epstein's Edco Process Dry Cleaners Co., 11 N.Y.2d 255, 183 N.E.2d 217, 228 N.Y.S.2d 811 (1962). *Held*: where the evidence showed one door was raised two inches above the other door of a delivery chute on the sidewalk in front of defendant's business, this defect was of sufficient magnitude to permit a finding of negligence.

McLaughlin v. Mine Safety Appliance Co., 11 N.Y.2d 62, 181 N.E.2d 430, 226 N.Y.S.2d 407 (1962). *Held*: the manufacturer of a safety appliance was entitled to have the jury instructed that the failure on the part of the purchaser of a safety device to instruct one applying the device in his presence in the proper manner of application was gross negligence, which superseded the negligence of the manufacturer.

ZONING

Thomas v. Town of Bedford, 11 N.Y.2d 428, 184 N.E.2d 285, 230 N.Y.S.2d 684 (1962). *Held*: where a town board after conducting studies and hearings adopted a comprehensive zoning ordinance which permitted occupancy of certain land by a research laboratory, in spite of the fact that an allegedly adequate comprehensive plan had been adopted several years prior prohibiting such use, the board's action was not arbitrary.

Town of Greenburgh v. Bobandal Realties, Inc., 10 N.Y.2d 414, 179 N.E.2d 704, 223 N.Y.S.2d 857 (1961). *Held*: town zoning ordinances which were enacted pursuant to the 1922 enabling act rather than the 1926 enabling act, which, earlier act required personal service as the only method of making the ordinance operative were not open to a construction that the 1926 legislation permitted an alternate procedure for service, so that prior non-conforming uses were valid because of the failure to serve personally owners of the subject property.

Wiltwyck School for Boys, Inc. v. Hill, 11 N.Y.2d 182, 182 N.E.2d 628, 227 N.Y.S.2d 655 (1962). *Held*: a private school for emotionally disturbed, delinquent, dependent, or neglected boys, working in cooperation with the City of New York, was a "school" within the language of the Yorktown Zoning Ordinance, and it was held arbitrary and unreasonable for the Town Board to prevent the school's operation.