

Syllabus  
New York Civil Practice  
Professor Schepard

This Syllabus lists key concepts that you should be able to understand after each assignment. If you are able to answer the questions (which I encourage you to do with your classmates in study groups) you are making progress in understanding New York Practice and civil procedure concepts.

If past experience is any guide, we will not complete the entire syllabus, although I would like to. The syllabus is for a four credit course, at least at the rate I travel through it. How far we get depends on many variables and I don't give any guarantees. You will, however, only be responsible for what we cover in class on the final examination. An announcement of what you are responsible for will be made towards the end of the semester.

The topics listed below do not correspond to any particular number of class hours. Some topics cover several assignments; others only one. I try to cover one assignment in a class but do not always make it. Announcements will be made in class as to how far ahead you should read and confirmation will be posted on the course web site.

I suggest you read the material in the order that it is assigned. There tends to be a method to my madness.

Topic 1: Court Organization and Structure

Topic 1: Overview of the Organization, Structure and Subject Matter Jurisdiction of the New York State Courts in Civil Cases

Key concepts to understand in this topic:

1. What kinds of cases can be heard in the state court system?
2. What is the difference between subject matter and personal jurisdiction?
3. Why is the supreme court called a court of general jurisdiction, and what that term means in relationship to the subject matter jurisdiction of New York's specialized jurisdiction trial courts like the family court?
4. What is the policy justification for creating limited subject matter trial courts like the family court or the district court?
5. Why is the subject matter jurisdiction of the Court of Claims an "exception" to the general jurisdiction of the supreme court?
6. What an administrative agency is and what the supreme court's relationship to an

administrative agency is?

7. What cases can be heard in which New York trial court?
8. How are judges chosen in each of the trial courts?
9. What benefits and problems does the current structure of the trial courts creates for litigants?
10. What alternatives are there to the current trial court structure, including Chief Judge Kaye's proposal to "unify" the trial courts. What are the advantages and disadvantages of the alternatives?
11. What are the political and practical obstacles to "unifying" the New York State trial courts.
12. How are judges selected in New York State Supreme Court and the other courts of New York State? What advantages and disadvantages are there for this selection process? What alternatives are there?

Topic 2: CPLR, Court Rules and Sanctions

**Topic 2: Sanctions for "Frivolous Conduct" in the New York State Courts: A Case Study in the Division of Authority for Regulating Civil Practice in New York State Courts.**

There are two purposes to covering this topic. It will help you understand what the CPLR is and the division of authority between the court system and the legislature for the regulation of civil practice in New York. The second purpose is to understand the purposes and scope of the sanctions rules, a subject which pervades all aspects of civil litigation in New York (and every where else).

**Key concepts you should be able to understand after these assignments.**

1. What is the CPLR and what are its scope and purposes?
2. Who enacts amendments to the CPLR? How does that process compare with the process of amending the Federal Rules of Civil Procedure?
3. What is the relationship between the CLPR and the specialized court acts such as the Surrogate's Court Act and the Family Court Act?
4. What is the relationship between the CPLR and Court Rules of the New York State Court system such as Rule 130? Who enacts and amends the Court Rules?
5. How and why was Rule 130 enacted and what is its relationship to CPLR 8303 (a)?
6. How does Rule 130 define "frivolous conduct"? How does that definition relate to the torts of malicious prosecution and the rules of professional responsibility?

7. What kind of conduct in litigation is subject to Rule 130?
8. What is the relationship between "frivolous conduct" and harassment and malice?
10. What degree of factual and legal research are lawyers required to do before signing a court paper subject to Rule 130?
11. What are the competing social policies at stake in defining "frivolous conduct"?
12. How much can a lawyer defend him or her self against a charge of frivolous conduct by arguing I was just relying on what my client told me?
13. What are the available sanctions are for frivolous conduct under Rule 130?
14. What are the procedures for initiating and establishing sanctions under Rule 130?

### Topic 3: Arbitration and Judicial Review Thereof

#### A. The arbitration agreement

Key concepts you should be able to discuss after this assignment.

1. What is arbitration and how does it differ from litigation and mediation?
2. What are the advantages and disadvantages of including arbitration clauses in contracts?
3. What role do courts play in enforcing agreements to arbitrate? What policies lie behind that role?
4. What is an arbitration award? How does it differ from a judgment in court? What is the difference between a court enforcing an agreement to arbitrate and an arbitration award?
5. Why and when should a court enforce a private agreement to arbitrate?
6. What kind of "writing" is required to create an enforceable arbitration agreement? Must the writing be in a single document? Signed?
7. What kind of "intent" to arbitrate do parties have to have to make an arbitration agreement enforceable?

8. What characteristics make an agreement to arbitrate unconscionable?
9. What is the scope of the public policy exception to judicial enforcement of agreements to arbitrate? What types of disputes cannot be arbitrated because of it?
10. What is a notice of intention to arbitrate? What is its significance?
11. What is a special proceeding?
12. Why did the Legislature create a special proceeding to enforce agreements to arbitrate?
13. What are the procedural circumstances under which the proponent and opponent of arbitration have to commence a special proceeding to enforce/oppose the agreement to arbitrate?  
The arbitration award and attacks on it  
Key concepts you should be able to understand after this assignment.

1. What is the standard of review that courts apply to enforcement of arbitration awards?  
How does it differ from judicial review of a jury verdict?

2. What public policy considerations support that standard of review?

3. What is the nature of the proceeding for judicial review of arbitration awards?

4. What are the procedures and time limits for judicial review of an arbitration award?  
The interplay between state and federal arbitration law  
Key concepts you should be able to understand after this assignment.

1. What is the Federal Arbitration Act (FAA) and why did Congress enact it?

2. To which agreements to arbitrate does the FAA apply?

3. What are the most important differences between the FAA and CPLR article 75? Why?

4. Can the parties to an agreement that is covered by the FAA opt instead to be governed by the CPLR and vice versa? Under what circumstances?

5. Is the FAA applicable in state court? When and why?

6. Is CPLR Article 75 applicable in federal court? When and why?

### "Compulsory" arbitration

Key concepts you should be able to understand after this topic.

1. What is compulsory arbitration?
2. How does compulsory arbitration differ from the kind of arbitration that we have been discussing so far?
3. Why has the Legislature enacted more and more compulsory arbitration provisions? What are their advantages and disadvantages?
4. Does a compulsory arbitration provision violate the constitutional right to jury trial? Why and when?
5. Does a compulsory arbitration statute improperly intrude on the general jurisdiction of the supreme court? Why and when?

### Personal Jurisdiction- General Jurisdiction Over Individuals

Key concepts you should be able to understand after this

General jurisdiction over individuals:

1. What is general jurisdiction (as opposed to specific, sometimes called "long arm" jurisdiction)? How does general jurisdiction relate to the allegations of the events giving rise to the lawsuit in a complaint?
2. How does general jurisdiction relate to the idea of a defendant's physical presence in New York? What establishes a defendant's physical presence in New York for purposes of general jurisdiction? What is the key date and time physical presence is measured to establish general jurisdiction.
3. Do all exercises of personal jurisdiction over a defendant have to be authorized by statute? Where in the CPLR is general jurisdiction codified?
4. What are the bases on which New York can exercise general jurisdiction over a defendant?
5. What is tag personal jurisdiction and how does it relate to general jurisdiction?

6. What are the purposes of serving a summons on a defendant? How do they differ if the jurisdictional base is general versus specific?

7. What defenses at common law exist to New York's exercise of tag jurisdiction over a defendant?

8. Is tag jurisdiction subject to the due process/minimum contacts test?

9. Are all exercises of general jurisdiction subject to the due process/minimum contacts test?

#### General Jurisdiction Over Partnerships

Key concepts you should be able to understand after this assignment.

1. Can tag jurisdiction be achieved over a partnership in New York State? How?

2. If the summons is served on a partner outside of New York, what is the basis of jurisdiction over the partnership?

3. What section of the CPLR authorizes tag jurisdiction over a partnership?

4. What is the difference between service of process under CPLR 310 and CPLR 308?

5. What assets of the partnership and of the individual partners are available to satisfy a judgement if the basis of jurisdiction over the partnership is tag jurisdiction? Why?

6. What is the purpose of CPLR 1501 and 1502 and 5201(b)?

7. What are the due process/minimum contacts constraints on the exercise of tag jurisdiction over a partnership in New York?

#### General Jurisdiction Over Partnerships

Key concepts you should be able to understand after this assignment.

1. Can tag jurisdiction be achieved over a partnership in New York State? How?

2. When tag jurisdiction is established over a partnership, what assets are subject to a judgment- the partnerships? the individual partner's assets?

3. What section of the CPLR authorizes tag jurisdiction over a partnership?

4. What is the difference between service of process under CPLR 310 and CPLR 308?
5. What is the purpose of CPLR 1501 and 1502 and 5201(b)?
6. What are the due process/minimum contacts constraints on the exercise of tag jurisdiction over a partnership in New York?

#### General Jurisdiction Over Partnerships

Key concepts you should be able to understand after this assignment.

1. Can tag jurisdiction be achieved over a partnership in New York State? How?
2. When tag jurisdiction is established over a partnership, what assets are subject to a judgment- the partnerships? the individual partner's assets?
3. What section of the CPLR authorizes tag jurisdiction over a partnership?
4. What is the difference between service of process under CPLR 310 and CPLR 308?
5. What is the purpose of CPLR 1501 and 1502 and 5201(b)?
6. What are the due process/minimum contacts constraints on the exercise of tag jurisdiction over a partnership in New York?

#### General Jurisdiction over Corporations

##### Corporations and Corporate Presence

Key concepts you should be able to understand after this assignment.

1. Does New York attain tag jurisdiction over a corporation if the plaintiff serves a summons on the president of the corporation in New York? Why or why not?
2. What is the difference between a foreign and a domestic corporation for jurisdictional purposes?
3. If a corporation is incorporated in New York, can it be sued in New York for all purposes?
4. If a corporation is authorized to do business in New York, can it be sued in New York for all purposes?

5. What kind of corporations do a lot of business in New York, but are not incorporated in New York or authorized to do business in New York?
6. What is the judicial test for establishing “corporate presence” in New York?
7. If a corporation is found to be present in New York is it subject to general or specific jurisdiction?
8. What social purposes are served by the “corporate presence” doctrine?
9. How does the test for establishing corporate presence relate to the “minimum contacts” test of the due process clause?
10. What is the basis for establishing that a parent corporation is “present” in New York based on the activities of its subsidiary in New York? Its agents? What social policies are served by these rules?
11. Does a corporate bank account in a New York bank establish corporate “presence”? Why or why not? What other jurisdictional basis might be created by a corporate bank account?

#### Domicile as a Basis of Jurisdiction

Key concepts you should be able to understand after this assignment.

1. If a defendant is a New York domiciliary does the plaintiff have to serve the defendant with a summons within the state of New York to acquire personal jurisdiction over him or her?
2. What is the significance of CPLR 313 for domiciliaries?
3. Can New York obtain general jurisdiction over a defendant even though service occurs out of state? When?
4. What is an individual’s domicile? How do you determine it? How many domiciles can an individual have?
5. At what time is an individual's domicile's determined for purposes of determining personal jurisdiction?
6. Can an individual change his or her domicile? How?



7. How does an individual's domicile the same as or different than an individual's residence in New York? How many residences can an individual have?
8. Does New York have general jurisdiction over all domiciliaries? All residents? Why?

Jurisdiction based on Consent  
Key concepts you should be able to understand after this assignment.

1. What do we mean by "consent" to personal jurisdiction?
2. Why does consent create jurisdiction over a defendant?
3. Why would anyone ever consent to jurisdiction in New York?
4. Can a defendant consent to general jurisdiction? Specific jurisdiction?
5. What is the difference between: a forum selection clause, a choice of law clause, a choice of dispute resolution clause and a service of suit clause?
6. What purposes does including such clauses in contracts serve?
7. Why were courts initially hostile to enforcement of forum selection clauses?
8. When should a court enforce a forum selection clause and when should such a clause be deemed unconscionable?

Long-arm jurisdiction based on the defendant's transacting business in New York: CPLR 302(a)(1) (first clause)  
Key concepts you should be able to understand after this assignment.

1. Why did New York enact a long-arm statute? Why not just rely on general jurisdiction? What policy considerations went into the drafting of the long-arm statute? How is New York's long arm statute different than California's long arm statute?
2. What defendants are potentially subject to long-arm jurisdiction?
3. When do the events giving rise to long arm jurisdiction occur? Before or after the summons is served? Where are those events alleged?
4. What is the relationship between the activities of the defendant and the activities of the defendant's agent in establishing acts that create long arm jurisdiction?

5. What kinds of cases in general terms are covered by the “transacting business” clause of 302(a)(1)?
6. Why should a defendant who transacts business in New York be subject to personal jurisdiction here for claims arising out of that transaction of business?
7. What is the difference between a corporation's “doing business” in New York (general jurisdiction) and “transacting business in New York” (specific jurisdiction)?
8. What are the tests that determine whether a defendant has transacted business in New York? Physical entry into the state? One phone call to the plaintiff in New York? One e mail?
9. Why are defendants who do a number of transactions with a plaintiff which do not give rise to a lawsuit (though not enough to “do business” in New York to create general jurisdiction) more likely to be found to transact business in New York?
10. What are the policy consideration behind the “arising from” requirement for long-arm jurisdiction (applicable to all sections of the long arm statute)?
11. When is it possible that a defendant transacts business in New York, but the plaintiff's claim does not “arise from” that transaction of business?
12. What are the constitutional limits on the exercise of “transacting business” long-arm jurisdiction?

Long arm jurisdiction based on the defendant's contracting to supply goods and services in New York: CPLR 302(a)(1)(second clause).

Key concepts you should be able to understand after this assignment.

1. Why did the Legislature add the “contracts anywhere to supply goods or services in New York” language to 302(a)(1) in 1979? What kinds of cases is this section of the long arm statute aimed at?
2. What is the difference between a defendant “transacting business” in New York and “contracting anywhere to supply goods or services” in New York?
3. Should the exercise of personal jurisdiction by New York turn on the physical place where the parties entered into a contract for the sale of goods to the New Yorker?

4. Should jurisdiction over the defendant seller of goods in a dispute arising out of the sale of goods to a New Yorker turn on whether title to the goods passed to the buyer in New York?
5. Should jurisdiction over the defendant seller turn on whether the goods were physically delivered to the buyer plaintiff in New York?
6. What are “goods and services” which the defendant can supply that will make the defendant potentially subject to long-arm jurisdiction under this section?

Long arm jurisdiction based on 302(a)(2)

Key concepts you should be able to understand after this assignment.

1. Be sure that you understand the Feathers case, and the Legislature's reaction to it. You can't understand CPLR 302(a)(3) unless you do.
2. When a truck manufactured out-of-state blows up in New York, where does the “tort” occur? Where the truck was negligently designed and manufactured (out of state) or where the harm occurs (in New York)? What are the arguments for and against each conclusion? And what are the social policy considerations in favor of one result of the other?

Long arm jurisdiction when the defendant commits a tortious act without the state causing injury within it: CPLR 302 (a)(3)

Key concepts you should be able to understand after this assignment.

1. Where are torts "committed"? Where the negligence took place? Where the harm occurred? Can we isolate elements of a tort by place?
2. Why shouldn't all defendants who commit a tort outside of New York and cause injury in New York be subject to long arm jurisdiction?
3. Why did the Legislature add the conditions in CPLR 302(a)(3)(i) and (ii) as prerequisites to long arm jurisdiction under CPLR 302(a)(3)? What social policies do these conditions advance?
4. Is LaMarca consistent with Asahi?
5. What is the test for determining “substantial revenue” for purposes of CPLR 302 (a)(3)(i) and (ii)?

6. Where did the injury to the plaintiff occur in Ingraham, in Vermont where the negligent diagnosis occurred or in New York where the patient died? What difference does the conclusion make?

7. Under what conditions should an out-of-state doctor (or lawyer or accountant) who takes referrals from a fellow professional in New York be subject to long arm jurisdiction under CPLR 302(a)(3)?

Long arm jurisdiction based on ownership of real property in state (CPLR 302 (a)(4))  
Key concepts you should be able to understand after this assignment.

1. What kinds of cases does CPLR 302(a)(4) apply to?

2. Why did the Legislature enact CPLR 302(a)(4)?

3. What is the distinction between long arm jurisdiction over the defendant based on the defendant's ownership of real property in the state (personal jurisdiction) and jurisdiction over property in the State?

4. Ask yourself whether jurisdiction in Tebedo was "in personam", "in rem" or "quasi in rem" and what difference these distinctions make. Could the plaintiffs in Tebedo have gotten jurisdiction over the property, as opposed to jurisdiction over the sellers of the property? What remedy could the plaintiffs get if they won in Tebedo, as the defendants had sold the property that was in contention to a third party?

Jurisdiction over property interests

Key concepts you should be able to understand after this assignment.

1. For what purposes can New York assume power to adjudicate interests in property located in the State even if it does not have personal jurisdiction over the owner of the property?

2. What social functions do the different categories of jurisdiction over property listed on CB 90 serve?

3. Why, in particular, is quasi in rem attachment appropriate in an era of expansive long-arm jurisdiction over out of state defendants? Why do plaintiffs employ it?

4. What assets can be used to satisfy a judgment whose jurisdiction is founded on property based in New York? How does the answer to this question differ if the basis of jurisdiction over the defendant is the long-arm statute or general jurisdiction?

5. What sections of the CPLR authorize New York courts to assume jurisdiction over property located in the State?
6. What kind of jurisdiction over property was involved in Shaffer?
7. Ask yourself how the bank account in Banco Ambrosiano (CB 99) differs from the bank account in the second Landoil Resources case (CB 42) to justify a finding that jurisdiction exists in Banco but not in Landoil? How is the basis of jurisdiction different in Banco and the second Landoil Resources case? Were the plaintiff's claims different? How?
8. Is Banco consistent with Shaffer?

Matrimonial and related jurisdiction  
Key concepts you should be able to understand after this assignment.

1. Can New York grant a plaintiff in a divorce action a divorce even if it does not have personal jurisdiction over the defendant?
2. If the answer is "yes" what is the jurisdictional basis upon which New York grants the plaintiff in a divorce action a divorce without personal jurisdiction over the defendant? If New York does not have jurisdiction over the defendant, what does it have jurisdiction over?
3. What determines the domicile of a marriage (as opposed to a person) the "matrimonial domicile"?
4. What sections of the CPLR authorize jurisdiction to grant a divorce even if there is no personal jurisdiction over the defendant?
5. Is granting a divorce to the plaintiff without having personal jurisdiction over the defendant consistent with due process/minimum contacts?
6. What social policy sense does allowing New York to grant a divorce to a plaintiff without personal jurisdiction over the defendant make?
7. What is the difference between the residency requirement of DRL 230, the matrimonial domicile requirement to have jurisdiction to dissolve a marriage, and the need to have personal jurisdiction over the defendant?

8. Does a New York domiciliary satisfy the residency requirement even if the domiciliary does not reside in New York for the required period of time? Why?
10. Can New York grant a plaintiff in a divorce action economic relief (e.g. maintenance, child support or an equitable distribution of marital property) without personal jurisdiction over the defendant? Why or why not?
11. What are the preconditions to long arm jurisdiction over non-resident defendants in matrimonial action or family court proceedings described in CPLR 302(b)?
12. What “family court proceedings” does CPLR 302(b) refer to? What is the difference between a “family court proceeding” and a “matrimonial action”?
13. Why is one of the conditions of CPLR 302(b) that the plaintiff be a resident or domiciled in New York?
14. What is the meaning of the phrase “matrimonial domicile of the parties before their separation” in CPLR 302(b)?
15. What is the meaning of the phrase “claim ... accrued under the laws of this state” in CPLR 302(b)?
16. What influence does the minimum contacts test have on the interpretation of CPLR 302(b)? Social policy?
17. How is jurisdiction over a child custody dispute determined? What relevance is the domicile or residence of the parents? The child? What social policies are at stake in answering this question?

#### Venue

Key concepts you should be able to understand after this assignment.

Venue is governed by mechanical statutory provisions and rules, which you must become familiar with. I have assigned the most important venue statutes for you to read. New York's venue statutes are fully described on CB 167-74. You are responsible for this material even though it will not be discussed in class, except in connection with Martin (CB 116). Martin will be discussed under the topic of both venue and forum non conveniens.

#### Forum Non Conveniens: Judicial Discretion to Decline Jurisdiction

Key concepts you should be able to understand after this assignment.

1. Why should New York courts ever resolve a dispute between a foreign plaintiff and foreign defendant?
2. How did the plaintiff originally set venue in New York County in Martin (CB 116)?
3. What is the difference between a change of venue and a dismissal for forum non conveniens?
4. Why can't the defendant simply make a motion to transfer a case from a state court in New York to a state court in Massachusetts (or any other state)?
5. Why should a court ever be able to dismiss a case where the plaintiff has chosen a forum which has subject matter jurisdiction, personal jurisdiction over the defendant and venue is proper?
6. What are the conditions that courts typically put on forum non conveniens dismissals? Why?
7. What is the difference between a dismissal for forum non conveniens and a motion to transfer from one federal district court to another under 28 U.S.C. 1404(a)?
8. Can a New York State court dismiss a case for forum non conveniens without a motion from a party? Why? What sense does this result make? How does this practice compare with practice in the federal court?
9. What standards does a court use to determine whether a motion to dismiss for forum non-conveniens should be granted?
10. Can a forum non conveniens motion be granted if either the plaintiff or defendant is a New York resident? Why or why not?
11. What is the difference between the standards a court uses to determine personal jurisdiction over a defendant and whether the forum chosen by plaintiff is an inconvenient forum?
12. What is the relationship between a forum selection clause (discussed in The Bremen and Carnival Cruise Line) and a motion to dismiss a case for forum non-conveniens?
13. What is the effect of CPLR 327(b)? What cases does it apply to? What is its relationship to choice of law clauses in a contract? To forum selection clauses? Does it

mean that other contracts not covered by the statute cannot include enforceable forum selection clauses?

### Commencing an Action

Key concepts you should be able to understand after this assignment.

1. Why does anyone care how an action is commenced? How does the statute of limitations and the need for the government to raise revenue fit into your answer?
2. What are the differences between a commencement by filing system and a commencement by service system?
3. Which New York State courts require commencement by filing and which require commencement by service? (Note the new legislation which extends the commencement by filing system to most of the "lower" court).
4. What documents have to be filed with whom to commence an action under the commencement by filing system? What fees have to be paid?
5. How does New York State's commencement by filing system compare to the commencement system in the federal courts?
6. Under a commencement by filing system is commencement complete before the plaintiff serves the summons and complaint (or summons with notice) on the defendant?
7. What is the time period for plaintiff to complete service of the summons on the defendant in a commencement by filing system?
8. Can that time period for service of process be extended? What are the tests that the courts apply to make this determination? Why?
9. How is a special proceeding commenced?
10. What is the time period for the petitioner in a special proceeding to serve the notice of petition on the respondent? Can the time period be extended? How? Why?
11. Does proof of service have to be filed with the clerk to complete commencement of action? When does proof of service have to be filed?

### Motion Practice

Key concepts you should be able to understand after this assignment.



1. What papers must be filed with the court to bring on a noticed motion?
2. What should and should be included in supporting affidavits and memoranda?
3. What is the the difference between service of process and service of motion papers?
4. What are the various options for scheduling service of motion papers?
5. How are the options for serving motion papers affected by their method of service?
6. What is an order to show cause, how is it different than a noticed motion, and when should it be employed?
7. What is the difference between a "decision" on a motion and an "order"? Who drafts orders resolving motions and what happens when the court asks the parties to "settle" an order?
8. What is a motion for renewal, a motion for reargument and what is the difference between them? How long does the losing party have to make a motion for renewal or reargument? What is the difference in appealability if the motion for reargument is denied and the motion for renewal is denied?

## Appeals

Key concepts you should be able to understand after this assignment.

1. What orders are appeal able to the Appellate Division?
2. How does appeal ability to the Appellate Division differ from appeal ability to the United States Court of Appeals? What the policy arguments for and against those differences?
3. What is the standard of review that the Appellate Division applies to determine appeals before it?
4. What orders are appeal able to the Court of Appeals?
5. What is the standard of review that the Court of Appeals applies to review orders of the lower courts?
6. What is taking an appeal?

7. What is perfecting an appeal?

The writs of Article 78 and their functions  
Assignment 25

Key concepts you should be able to understand after this assignment.

1. What is Article 78 and what functions does it perform in regulating judicial review of state administrative action?

2. Why is Article 78 a special proceeding?

3. What "bodies or officers" are subject to Article 78 proceedings?

4. What is the writ of mandamus to compel? How must a question raised under Article 78 be framed in order to seek a mandamus to compel? What function does it perform for the citizens of New York? What are the procedural prerequisites to filing an action under Article 78 in the nature of a writ of mandamus to compel? What standards does a court use in determining whether to issue a writ of prohibition?

5. What is a writ of prohibition? How must a question raised under Article 78 be framed in order to seek a writ of prohibition? What function does it perform for the citizens of New York? What are the procedural prerequisites to filing an action under Article 78 in the nature of prohibition? What standards does a court use in determining whether to issue a writ of prohibition?

6. What is a writ of certiorari? How must a question raised under Article 78 be framed in order to seek a writ of certiorari? What function does it perform for the citizens of New York? What are the procedural prerequisites to filing an action under Article 78 in the nature of certiorari? What standards does a court use in determining whether to issue a writ of certiorari?

7. What is a writ of mandamus to review? How must a question raised under Article 78 be framed in order to seek a writ of mandamus to review? What function does it perform for the citizens of New York? What are the procedural prerequisites to filing an action under Article 78 in the nature of mandamus to review? What standards does a court use in determining whether to issue a writ of mandamus to review?

8. Why did the petitioner in Hampton Hospitals seek the writ that he did? What were his alternatives? Why did he choose the one he did?

## Limitations on Article 78 and Alternate Remedies Assignment 26

Key concepts you should be able to understand after this assignment.

1. What is the distinction between an Article 78 action and an action for breach of contract against a government entity?
2. What is the statute of limitations for Article 78 proceedings? When does it begin to accrue?
3. What are the tests for determining when an administrative action is final for purposes of seeking review under Article 78?
4. What is the meaning of exhaustion of administrative remedies? What social purpose does this doctrine serve?
5. What is the doctrine of futility? What are its limitations? What social purpose does it serve?
6. Does the statute of limitations change depending on the form of the action used to challenge government activity?
7. What are the similarities and differences between an action challenging unlawful government action brought as an Article 78 proceeding, an action for damages, an action for a declaratory judgment and an action for an injunction?
8. Are there some forms of government action that must be challenged in an action in a form other than Article 78 proceeding? What are they? What form must be used to challenge them? Why?
9. In what court must an Article 78 action be brought? In what County?
10. What are the limitations on a monetary judgment in an article 78 proceeding?

## Bills of Particular

Key concepts you should be able to understand after this assignment.

1. What is the purpose of the demand for a bill of particulars?

2. How does a bill of particulars differ from allegations in a complaint?
3. How does a bill of particulars differ from responses to interrogatories or requests for admission?
4. Why did the drafters of the Federal Rules of Civil Procedure abolish the demand for a bill of particulars? Why did the Legislature retain it? Which is the better view?
5. When can a party serve a demand for a bill of particulars?
6. What can be demanded and what cannot?
7. What procedure should the party who objects to a portion of a bill of particulars follow?
8. What procedures should a party seeking compliance with a demand for a bill of particulars follow?
9. What sanctions can a court impose on a party who does not comply with a demand for a bill of particulars?

#### Disclosure

I will post key questions about the disclosure assignments later in the semester if we get to them.