

Practice Commentaries

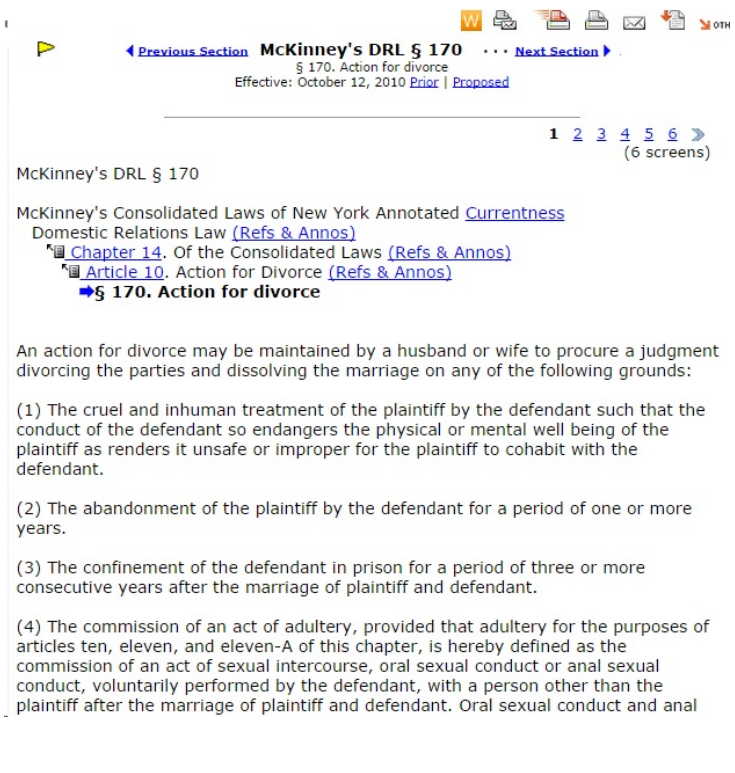
When you are reading the text of a statute, you know that the interpretation and implementation of that statute is dependant on court decisions. In court decisions you will find how the courts have applied the statutes to particular facts.

When you read statutes in Westlaw, you will find not only the text of the decision, but also Practice Commentaries. These commentaries (secondary source of law), are written by practitioners, judges and law professors. Included in these commentaries can be the history of the statute and an explanation of each provision of the statute. Every legal statement in the commentary is supported by law (usually cases). These cases are always hyperlinked so you can go to that case and read it and using either KeyCite or the Digests find more recent cases.

The commentaries are either found in the statute or the beginning of the article.

Example: Domestic Relations Law § 170

Go to Domestic Relations Law § 170 (Find Citation: NY Domestic Relations 170)

 <p>McKinney's DRL § 170</p> <p>McKinney's Consolidated Laws of New York Annotated Currentness Domestic Relations Law (Refs & Annos) Chapter 14. Of the Consolidated Laws (Refs & Annos) Article 10. Action for Divorce (Refs & Annos) § 170. Action for divorce</p> <p>An action for divorce may be maintained by a husband or wife to procure a judgment divorcing the parties and dissolving the marriage on any of the following grounds:</p> <ol style="list-style-type: none">(1) The cruel and inhuman treatment of the plaintiff by the defendant such that the conduct of the defendant so endangers the physical or mental well being of the plaintiff as renders it unsafe or improper for the plaintiff to cohabit with the defendant.(2) The abandonment of the plaintiff by the defendant for a period of one or more years.(3) The confinement of the defendant in prison for a period of three or more consecutive years after the marriage of plaintiff and defendant.(4) The commission of an act of adultery, provided that adultery for the purposes of articles ten, eleven, and eleven-A of this chapter, is hereby defined as the commission of an act of sexual intercourse, oral sexual conduct or anal sexual conduct, voluntarily performed by the defendant, with a person other than the plaintiff after the marriage of plaintiff and defendant. Oral sexual conduct and anal	<p>Scroll down to find the Practice Commentaries</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------

<p>SUPPLEMENTARY PRACTICE COMMENTARIES</p> <p><i>By: Alan D. Scheinkman</i></p> <p>2013</p> <p>C:170:21: Irretrievable Breakdown</p> <p>In Tuper v. Tuper, 98 A.D.3d 55, 946 N.Y.S.2d 719 (4th Dep't 2012), the Appellate Division, Fourth Department, has provided the first appellate analysis of issues arising under the irretrievable breakdown ground for divorce, legislatively created in 2010. In <i>Tuper</i>, the Appellate Division affirmed the Supreme Court's denial of the husband's motion to dismiss the complaint. He argued that the cause of action was time-barred and that the complaint failed to allege the particulars underlying the claim that the marriage was irretrievably broken. On both of these questions, the appellate court gave a liberal reading to the statute.</p> <p>The parties were married in 1973 and separated in November 1996, when the wife moved out of the marital residence and sought a divorce based on cruel and inhuman treatment. The husband successfully opposed the divorce. That apparently did not bring about a reconciliation; instead, over</p>		<p>It starts with the Supplementary Practice Commentaries</p> <p>2013 is the year of the commentary</p> <p>"C: 170:21: Irretrievable Breakdown" means that it is the commentary section</p>
<p>2012</p> <p>C170: 2: Cruel and Inhuman Treatment-Generally</p> <p>In Vahey v. Vahey, 35 Misc.3d 691, 940 N.Y.S.2d 824 (Sup. Ct. Nassau County 2012), the court held that allegations that the wife called the husband vile names and used obscene language, told him that she did not want to be married to him any more, and told him that he was not a good husband, were insufficient to make out a claim for divorce based on cruel and inhuman treatment.</p> <p>C170:7: Abandonment-Generally</p> <p>An allegation that the parties have not engaged in sexual relations, standing alone, is not sufficient to plead a <i>prima facie</i> case for divorce based upon constructive abandonment. Vahey v. Vahey, 35 Misc.3d 691, 940 N.Y.S.2d 824 (Sup. Ct. Nassau County 2012). To be sufficient, there must be allegations that a party has refused, despite request, and without justification, to engage in marital relations for at least one year, with the time and place of the refusal being specified.</p>		<p>Next will be the 2012 commentaries.</p>
<p>2011</p> <p>C170:21: Irretrievable Breakdown</p> <p>There is some disagreement in the trial-level cases as to the proper interpretation and construction of the new divorce ground of irretrievable breakdown. In Strack v. Strack, 31 Misc.3d 258, 916 N.Y.S.2d 759 (Sup. Ct. Essex County 2011), the court ruled that whether a marriage is irretrievably broken is a question of fact to be determined by the trier of fact which, in view of DRL Section 173, could be a jury. Thus, the new ground was not to be viewed as "a panacea for those hoping to avoid a trial". On the other hand, the court ruled that the trier of fact could find a marriage irretrievably broken even though one of the spouses believes that the marriage is so broken or desires to reconcile. In the <i>Strack</i> case, the wife was the plaintiff and she had brought two prior divorce actions, both based on cruel and inhuman treatment, and had discontinued both of them. The husband challenged the sufficiency of the wife's allegations of irretrievable breakdown and the court, giving the pleading a liberal construction, viewed the allegations as sufficient. The wife alleged that, for more than six months, there was no emotion in the marriage the parties had kept largely separate</p>		<p>Next will be the 2011 commentaries.</p>

<p>PRACTICE COMMENTARIES</p> <p>By Alan D. Scheinkman</p> <p>C170:1: Divorce--Generally</p> <p>C170:2: Cruel and Inhuman Treatment--Generally</p> <p>C170:3: Cruel and Inhuman Treatment--Evidentiary Requirements</p> <p>C170:4: Cruel and Inhuman Treatment--Spousal Testimony and Corroboration Requirements</p> <p>C170:5: Cruel and Inhuman Treatment--Defenses</p> <p>C170:6: Cruel and Inhuman Treatment--Effect of Plaintiff's Misconduct</p> <p>C170:7: Abandonment--Generally</p> <p>C170:8: Abandonment--Defenses</p> <p>C170:9: Abandonment--Effect of Plaintiff's Misconduct</p> <p>C170:10: Imprisonment</p> <p>C170:11: Adultery</p> <p>C170:12: Living Separate and Apart Pursuant to Separation Judgment</p>		<p>Eventually you will get to the main Practice Commentaries.</p> <p>Long commentaries will start with a Table of Contents. For some unknown reason these TOC are not hyperlinked, so you have to scroll down for the topic you want.</p>
<p>C170:10: Imprisonment</p> <p>An action for divorce may be maintained on the ground of defendant's confinement in prison for a period of at least three consecutive years. DRL § 170 (subd. 3). While the original version of the statute granted the ground where defendant had been confined "to" prison, the statute was amended in 1968 to change the words to "in prison", thus making it clear that it is actual physical imprisonment that is required. See McKinney's 1968 Session Laws of New York, p. 2308.</p> <p>The critical element is actual confinement. Any consecutive period of confinement of at least three years' duration will suffice, no matter the nature of the place of confinement. Thus, in Cerami v. Cerami, 95 Misc.2d 840, 408 N.Y.S.2d 591 (Sup.Ct. Monroe County 1978), the court, in calculating whether the three year confinement test had been met, included a period defendant spent in a state hospital after he was determined not competent to stand trial as well, a period defendant was in a state prison following a conviction, and a period defendant was in a county jail after his conviction was vacated and before he was found not guilty by reason of insanity at a retrial.</p>		<p>If the ground for divorce you are researching is Imprisonment, you would scroll down until you find it.</p> <p>Here is</p> <ul style="list-style-type: none"> ■ the history of the statute; and ■ the interpretation of the statute <p>Where there are cases, they will be hyperlinked so you can get them with a click.</p>