§ 5701. Appeals to appellate division from supreme and county courts.

(a) Appeals as of right. An appeal may be taken to the appellate division as of right in an action, originating in the supreme court or a county court:

1. from any final or interlocutory judgment except one entered subsequent to an order of the appellate division which disposes of all the issues in the action; or

2. from an order not specified in subdivision (b), where the motion it decided was made upon notice and it:

(i) grants, refuses, continues or modifies a provisional remedy; or

(ii) settles, grants or refuses an application to resettle a transcript or statement on appeal; or

(iii) grants or refuses a new trial; except where specific questions of fact arising upon the issues in an action triable by the court have been tried by a jury, pursuant to an order for that purpose, and the order grants or refuses a new trial upon the merits; or

(iv) involves some part of the merits; or

(v) affects a substantial right; or

(vi) in effect determines the action and prevents a judgment from which an appeal might be taken; or

(vii) determines a statutory provision of the state to be

unconstitutional, and the determination appears from the reasons given for the decision or is necessarily implied in the decision; or

(viii) grants a motion for leave to reargue made pursuant to subdivision (d) of rule 2221 or determines a motion for leave to renew made pursuant to subdivision (e) of rule 2221; or

3. from an order, where the motion it decided was made upon notice, refusing to vacate or modify a prior order, if the prior order would have been appealable as of right under paragraph two had it decided a motion made upon notice.

(b) Orders not appealable as of right. An order is not appealable to the appellate division as of right where it:

1. is made in a proceeding against a body or officer pursuant to article 78; or

2. requires or refuses to require a more definite statement in a pleading; or

3. orders or refuses to order that scandalous or prejudicial matter be stricken from a pleading.

(c) Appeals by permission. An appeal may be taken to the appellate division from any order which is not appealable as of right in an action originating in the supreme court or a county court by permission of the judge who made the order granted before application to a justice of the appellate division; or by permission of a justice of the appellate division in the department to which the appeal could be

taken, upon
refusal by the judge who made the order or upon direct application.