

CASE ISSUE STATEMENTS – AUGUST/SEPTEMBER 2021

The calendar is subject to change. Please contact the Clerk's Office for any updated information.

If available, briefs, records and appendices can be viewed and downloaded from the Court of Appeals Public Access and Search System (Court-PASS), which is accessible from the homepage on the Court's website.

TUESDAY, AUGUST 31

Adar Bays v GeneSYS ID

CQ 2020-5

Actions—Second Circuit Court of Appeals certified the following questions: 1) Whether a stock conversion option that permits a lender, in its sole discretion, to convert any outstanding balance to shares of stock at a fixed discount should be treated as interest for the purpose of determining whether the transaction violates N.Y. Penal Law § 190.40, the criminal usury law; and 2) If the interest charged on a loan is determined to be criminally usurious under N.Y. Penal Law § 190.40, whether the contract is void ab initio pursuant to N.Y. Gen. Oblig. Law § 5-511.

People v Carlos Torres

APL-2020-20

Constitutional Law—Validity of Statute--Whether Administrative Code of the City of New York § 19-190 is unconstitutional because it criminalizes an act committed without "due care," a civil negligence standard rather than a criminal negligence standard; whether Administrative Code § 19-190 is preempted by state law.

People v Dave Lewis

APL 2020-21

Motor Vehicles--Injuries to Bicyclist--Whether New York City Administrative Code § 19-190(b) and New York State Vehicle and Traffic Law § 1146(c)(1) impose a civil negligence standard of care rather than a criminal negligence standard; whether New York City Administrative Code § 19-190(b) and New York State Vehicle and Traffic Law § 1146(c)(1), if interpreted to impose a civil negligence standard, are unconstitutional for using a civil negligence standard as a basis for criminal liability; Whether New York City Administrative Code § 19-190(b), if interpreted to impose a civil negligence standard, is preempted by state law; Crimes--Verdict-Sufficiency of Evidence--Whether the evidence was legally sufficient to support the verdict.

People v Richard Gaworecki

APL-2019-179

Crimes--Indictment--Sufficiency of Evidence before Grand Jury--Whether the evidence presented to the grand jury was legally sufficient to establish that defendant committed manslaughter in the second degree or the lesser included offense of criminally negligent homicide; indictment alleged that defendant sold victim heroin, which resulted in victim's subsequent overdose and death.

WEDNESDAY, SEPTEMBER 1

Aybar v Aybar; Ford Motor Company

APL 2019-239

Courts—Jurisdiction--Whether the Appellate Division improperly ignored this Court's ruling in *Bagdon v Philadelphia & Reading Coal & Iron Co.* (217 NY 432 [1916]) and the United State Supreme Court's ruling in *Neirbo Co. v Bethlehem Shipbuilding Corp.* (308 US 165 [1939]), by holding that a foreign corporation's voluntary registration to do business in New York and its designation of New York's Secretary of State as its agent for the service of process was insufficient as a consent to general jurisdiction in New York.

Sassi v Mobile Life Support Servs.

APL-2020-45

Pleading—Sufficiency of Pleading—Whether plaintiff stated a claim under section 296(15) of the Human Rights Law and Article 23-A of the Correction Law.

People v Ibarguen (Eric)

APL 2019-224

Crimes--Unlawful Search and Seizure--Standing--Whether the trial court erred in summarily denying defendant's motion to suppress evidence obtained following police officers' entry and search of the apartment where defendant was arrested when defendant alleged standing based on his status as a social guest; Crimes--Instructions--Whether the trial court's failure to instruct the jury on cross-racial identification constituted reversible error; Whether defendant was deprived of a fair trial by the court's charge regarding flight as consciousness of guilt.

THURSDAY, SEPTEMBER 2

Lividini v Goldstein

APL 2019-235

Courts--Transfer or Removal to Other Courts--Residency--Whether, for purposes of a motion to change venue, venue was properly placed in Bronx County under CPLR 503 (a) or (d) when an individual defendant listed a Bronx County address with a licensing agency but it was undisputed that the address was not his principal place of business.

People v Shanks (Bradford L.)

APL 2019-246

Crimes—Appeal--Whether the Appellate Division properly upheld the waiver of appeal--Crimes--Right to Counsel--Whether the Appellate Division erred in holding that defendant properly forfeited his right to counsel at trial--Whether the Appellate Division erred in holding that defendant's claim of pervasive judicial bias was precluded by the appeal waiver.