

CASE ISSUE STATEMENTS –JANUARY 2022

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, JANUARY 4

Hunters for Deer v Town of Smithtown (No. 1)

APL-2020-165

Local Laws—Preemption—Whether Smithtown Town Code § 160-5 is preempted by Environmental Conservation Law § 11-0931(4)(a)(2) with regard to minimum setback limits for the discharge of a bow and arrow.

People v Easley (Levan) (No. 2)

APL 2020-144

Crimes—Identification of Defendant—Frye Hearing—Whether defendant was entitled to a Frye hearing (*see Frye v United States*, 293 F 1013 [DC Cir 1923]) to challenge the admissibility of the People's DNA evidence based on the use of the forensic statistical tool (FST) to derive a likelihood ratio regarding the presence of defendant's DNA on the trigger of a firearm; Whether materials underlying the FST were required to be disclosed pursuant to *Brady v Maryland* (373 US 83 [1963]).

People v Wakefield (John) (No. 3)

APL 2020-146

Crimes—Evidence—DNA Identification Tests—Whether the trial court's *Frye* ruling was erroneous because defendant was not provided the opportunity to review the source code underlying the software program that was used to arrive at DNA probability statistics used as evidence against him; Crimes—Right of Confrontation—Whether defendant's right to confront witnesses was violated by not having access to the source code.

WEDNESDAY, JANUARY 5

Matter of Callen v NYC Loft Board (No. 4)

APL-2020-127

Landlord and Tenant—Loft Law—Whether respondent Loft Board has the authority to deny a tenant's request to withdraw an application for the legal conversion of a loft from commercial use to residential use pursuant to the Loft Law (*see Multiple Dwelling Law 7-C*).

Donohue v Cuomo (No. 6)

CQ-2020-8

The Second Circuit certified the following questions to this Court: “Question 1: Under New York state law, and in light of *Kolbe v. Tibbetts*, 22 N.Y.3d 344, 980 N.Y.S.2d 903, 3 N.E.3d 1151 (2013), *M & G Polymers USA, LLC v. Tackett*, 574 U.S. 427, 135 S.Ct. 926, 190 L.Ed.2d 809 (2015), and *CNH Indus. N.V. v. Reese*, — U.S. —, 138 S. Ct. 761, 200 L.Ed.2d 1 (2018), do §§ 9.13 (setting forth contribution rates of 90% and 75%), 9.23(a) (concerning contribution rates for surviving dependents of deceased retirees), 9.24(a) (specifying that retirees may retain NYSHIP coverage in retirement), 9.24(b) (permitting retirees to use sick-leave credit to defray premium costs), and 9.25 (allowing for the indefinite delay or suspension of coverage or sick-leave credits) of the 2007-2011 collective bargaining agreement between the Civil Service Employees Association, Inc. and the Executive Branch of the State of New York (“the CBA”), singly or in combination, (1) create a vested right in retired employees to have the State’s rates of contribution to health-insurance premiums remain unchanged during their lifetimes, notwithstanding the duration of the CBA, or (2) if they do not, create sufficient ambiguity on that issue to permit the consideration of extrinsic evidence as to whether they create such a vested right? Question 2: If the CBA, on its face, or as interpreted at trial upon consideration of extrinsic evidence, creates a vested right in retired employees to have the State’s rates of contribution to health-insurance premiums remain unchanged during their lives, notwithstanding the duration of the CBA, does New York’s statutory and regulatory reduction of its contribution rates for retirees’ premiums negate such a vested right so as to preclude a remedy under state law for breach of contract?”

THURSDAY, JANUARY 6

Matter of Aurora Associates v Locatelli (No. 5)

APL-2021-04

Landlord and Tenant—Loft Law—Whether the Appellate Division properly held that the loft unit at issue remained subject to rent regulation because the apartment was located in a pre-1974 building containing six or more residential units, notwithstanding that the predecessor owner’s purchase of a prior tenant’s rights under Multiple Dwelling Law § 286 (12); Whether respondent’s motion for summary judgment on the counterclaim for attorneys’ fees was properly granted.

Matter of Endara-Caicedo v NYSDMV (No. 7)

APL-2020-133

Motor Vehicles—Revocation or Suspension of Operator's License—Whether Vehicle and Traffic Law § 1194 (2) permits the refusal of a motorist arrested for operating a motor vehicle while under the influence of alcohol or drugs to submit to a chemical test to be used against the motorist in administrative license revocation hearings even if the chemical test is offered, and the refusal occurs, more than two hours after the motorist's arrest.

Konkur v Utica Academy of Science Charter School (No. 8)

APL 2020-151

Labor—Hours and Wages—Whether the Appellate Division erred in dismissing plaintiff's cause of action pursuant to Labor Law § 198-b on the ground that the statute does not provide for a private right of action.

People v Duarte (Vladimir) (No. 9)

APL 2021-37

Crimes—Right to Representation Pro Se—Whether defendant made a clear and unequivocal request to proceed pro se that would trigger the need for a fully inquiry by the court (*see People v McIntyre*, 36 NY2d 10 [1974]); whether defendant abandoned his request to represent himself.