

CASE ISSUE STATEMENTS

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 home page on the Court's website.

TUESDAY, APRIL 28, 2015

McGovern v Mt. Pleasant Central School District (Cal. No. 74)

APL-2014-00115

Schools--teachers--notice of claim (Education Law § 3813 [1])--CPLR article 78 proceeding to review a Board of Education determination denying petitioner tenure and terminating her employment as a probationary teacher--whether petitioner was exempt from the Education Law notice of claim requirement.

Viviane Etienne Medical Care v Country Wide Insurance (Cal. No. 75)

APL-2014-00089

Insurance--no-fault automobile insurance--whether plaintiff medical services provider carried its prima facie burden, on a motion for summary judgment, of establishing the merits of its claim for payment of no-fault insurance benefits--effect of insurance carrier's failure to timely deny the claim.

People v Gonzalez (Richard) (Cal. No. 76)

APL-2014-00091

Crimes--possession of weapon--whether the trial court erred in instructing the jury that, to be guilty of possessing a "gravity knife" (Penal Law § 265.01 [1]), defendant had to know only that he had a knife in his possession, and not that the knife had the characteristics of a "gravity knife" (Penal Law § 265.00 [5])--whether police stop and search of defendant was justified.

People v Lynch (Ricky A.) (Cal. No. 77)

APL-2014-00235

Crimes--double jeopardy--whether defendant's prosecution in Suffolk County for forgery and other crimes arising from his filing of a fraudulent application for a non-driver identification card issued in Suffolk County is barred by statutory double jeopardy where defendant was caught with the fake card in Westchester County and pleaded guilty in that County to criminal possession of a forged instrument in the third degree--whether the crimes were "so closely related in criminal purpose or objective as to constitute elements or integral parts of a single criminal venture" (CPL 40.10 [2])--application of CPL 40.30 (2) (a).

WEDNESDAY, APRIL 29, 2015

People v Sanders (Rasuan) (Cal. No. 78)

APL-2014-00061

Crimes--appeal--waiver of right to appeal--whether defendant's waiver of his right to appeal was knowing and voluntary where County Court did not indicate that the appeal subject to waiver was to a higher court; prosecutor asked defendant if he understood that he was he was waiving his right to appeal to the Appellate Division, Second Department--significance of defendant's background and familiarity with criminal justice system; suppression hearing--whether County Court properly denied suppression of certain statements made after an FBI agent informed defendant he might be a candidate for the federal death penalty.

DeLeon v NYC Sanitation Department (Cal. No. 79)

APL-2014-00190

Motor vehicles--collision--whether a street-sweeping vehicle is a hazard vehicle for purposes of applying the "reckless disregard" standard.

Matter of Shannon (Family Services Society v Westchester DSS) (Cal. No. 80)

APL-2014-00244

Incapacitated and mentally disabled persons--guardian for personal needs or property management--priority of claims upon death of person who had received Medicaid--competing claims of Social Services Department and skilled nursing facility--whether nursing facility's claim as a general creditor against a guardianship account, which claim arose during an incapacitated person's lifetime, has priority over a claim asserted by a Department of Social Services with preferred creditor status--Social Services Law §§ 104 and 369.

Matter of Delroy S. (Cal. No. 81)

APL-2014-00167

Infants--juvenile delinquents--whether, in light of the Appellate Division holding that the 11-year-old respondent gave inculpatory statements while subjected to custodial interrogation without the benefit of Miranda warnings, the Appellate Division properly determined that Family Court's error in failing to suppress the statements was harmless beyond a reasonable doubt--justification defense.

People ex rel. Bourlaye T. v Connolly (Cal. No. 82)

APL-2014-00224

Civil commitment or supervision--denial of writ of habeas corpus--whether petitioner is a "detained sex offender" as defined in Mental Hygiene Law § 10.03 (g) (5) and thus the proper subject of a petition for civil management where petitioner was on "immigration parole" awaiting deportation by U.S. Immigration and Customs Enforcement and serving a period of parole supervised by the New York State Department of Corrections and Community Supervision when, without committing a parole violation, he was arrested and transported back to a state correctional facility, and the Mental Hygiene Law article 10 proceeding was not commenced until after petitioner's reincarceration.

THURSDAY, APRIL 30, 2015

Aurora Loan Services v Taylor (Cal. No. 83)

APL-2014-00138

Mortgages--foreclosure--standing to commence action--whether plaintiff demonstrated physical possession of the mortgage note at the time of commencement of the action--assignment of the mortgage by Mortgage Electronic Registration Systems, Inc. (MERS)--summary judgment.

Flushing Savings Bank, FSB v Bitar (Cal. No. 84)

APL-2014-00074

Mortgages--foreclosure--deficiency judgment--whether affidavit of plaintiff's appraiser was too conclusory to establish a prima facie showing of the fair market value of the property as of the foreclosure sale date--denial of plaintiff's unopposed application for a deficiency judgment without express finding as to property value, hearing on valuation or opportunity for plaintiff to cure alleged insufficiency of proof.

ACE Securities v DB Structured Products (Cal. No. 85)

APL-2014-00156

Limitations of actions--when cause of action accrues--contract cause of action arising from breach of representations and warranties contained in agreements related to the securitization of residential mortgages--timeliness of contract cause of action under six-year statute of limitation.

TUESDAY, MAY 5, 2015

Elmaliach v Bank of China Limited (Cal. No. 86)

APL-2014-00030

Conflict of Laws--what law governs--action against Chinese bank by Israeli nationals--negligence claim arising out of alleged acts that enabled two terrorist organizations to plan, prepare, and undertake acts of terrorism in Israel--interest analysis--whether the Appellate Division erred in determining that the substantive law of Israel applied; banks and banking--negligence--Israeli law--prohibition against aiding terrorist organizations.

Cooperatieve Centrale Raiffeisen-Boerenleenbank, B. A. v Navarro (Cal. No. 54)

APL-2014-00021

Contracts--guarantee to pay obligations of company arising under a purchase agreement--whether default judgment obtained against company can be a valid "obligation" subject to the guarantee if the judgment was obtained by collusion--whether waiver of defenses in guarantee precludes guarantor from arguing that no valid obligation existed because of collusion--summary judgment in lieu of complaint.

People v Scott (Hakim B.) (Cal. No. 87)

APL-2014-00093

Crimes--manslaughter--whether the evidence was sufficient to support the conviction of defendant for manslaughter in the first degree--whether there was evidence of a "community of purpose" with the co-defendant, who retrieved and used the baseball bat to strike the victim while defendant chased another victim; jury instructions--whether defendant was deprived of the right to be present for all material stages of the trial where jury instructions correcting dates of the crime were given without counsel or defendant in the courtroom.

WEDNESDAY, MAY 6, 2015

People v Middlebrooks (William) (Cal. No. 88)

APL-2014-00174

Infants--youthful offenders--whether sentencing court is required to determine if defendant convicted of "armed felonies" is eligible for youthful offender status pursuant to Penal Law § 720.10 (3)--People v Rudolph (21 NY3d 497 [2013]).

People v Lowe (Fabrice) (Cal. No. 89)

APL-2014-00213

Infants--youthful offenders--where a youth who is ineligible for youthful offender status because of the nature of the crime requests such status, whether sentencing court is required to make particularized finding of no mitigating circumstances under Penal Law § 720.10 (3) before rejecting the request--People v Rudolph (21 NY3d 497 [2013]).

El-Dehdan v El-Dehdan (Cal. No. 90)

APL-2014-00127

Contempt--civil contempt--in a matrimonial action, whether plaintiff met her burden of proof regarding defendant's violation of an order directing him to deposit with plaintiff's attorney the proceeds of a real estate transaction--whether Supreme Court improperly drew an adverse inference against defendant for invoking his constitutional privilege against self-incrimination--whether willfulness is an element of civil contempt.

People v Inoa (Jose) (Cal. No. 91)

APL-2014-00077

Crimes--witnesses--expert witness--whether the trial court erred in permitting a police detective to testify as an expert witness with regard to coded or unexplained language in recorded telephone conversations between defendant and his co-defendant.

Brown & Brown, Inc. v Johnson (Cal. No. 92)

APL-2014-00103

Employment relationships--restrictive covenant in employment contract--claimed breaches of nonsolicitation and noninducement clauses of employment contract--whether the Florida choice-of-law clause in the employment agreement is "truly obnoxious" to New York public policy and therefore unenforceable--whether nonsolicitation clause could be partially enforced.

THURSDAY, MAY 7, 2015

Branch v Sullivan County (Cal. No. 93)

APL-2014-00143

Colleges and universities--community college--wrongful death action by administrator of the estate of a student who had a fatal heart attack in a college dormitory based on college's failure to provide an automated external defibrillator on campus--whether the County owed a duty of care to decedent based on its status as a local sponsor of the community college pursuant to Education Law article 63.

People v Lashway (Steven) (Cal. No. 94)

APL-2014-00075

Crimes--Sex Offenders--Sex Offender Registration Action (SORA)--defendant's right to discovery under SORA--access to documents upon which the Board of Examiners of Sex Offenders based its report recommending that defendant remain a risk level three sex offender; County Court's denial of adjournment of proceeding so that requested documents could be obtained; alleged due process violation.

Universal American Corp. v National Union Fire (Cal. No. 95)

APL-2014-00133

Insurance--construction of policy--computer fraud policy--whether the courts below properly determined that the policy at issue is not ambiguous and that the insured's losses were not covered by the policy--construction of the term "fraudulent . . . entry of electronic data."

Shipley v City of New York (Cal. No. 96)

APL-2013-00345

Dead bodies--right of sepulcher--release of decedent's body by Medical Examiner's Office without notification to next of kin that decedent's brain had been removed and retained for further examination.