

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, MARCH 22, 2016

Beck Chevrolet Co., Inc. v General Motors LLC (Case No. 48)

CQ-2015-00002

Is a performance standard that requires "average performance based on statewide sales data in order for an automobile dealer to retain its dealership "unreasonable, arbitrary or unfair" under New York Vehicle & Traffic Law section 463 (2) (gg) because it does not account for local variations beyond adjusting for the local popularity of general vehicle types? Does a change to a franchisee's Area of Primary Responsibility or AGSSA constitute a prohibited "modification" to the franchise under section 463 (2) (ff), even though the standard terms of the Dealer Agreement reserve the franchisor's right to alter the Area of Primary Responsibility or AGSSA in its sole discretion?

Matter of Highbridge Broadway, LLC v Assessor of the City of Schenectady (Case No. 49)

APL-2015-00158

Taxation--Assessment--Failure to file annual challenge to each assessment pending determination of original assessment challenge--Whether the Appellate Division correctly held that petitioner was required to commence separate, annual tax certiorari proceedings while its 2008 challenge was pending, in order for the 2011 judgment to be binding as to subsequent years.

Finerty v Abex Corp. and Ford Motor Company (Case No. 1)

APL-2015-00162

Products liability--Exposure to toxic substances--Asbestos--Whether the Appellate Division erred in holding that Ford Motor Company is subject to liability for injuries resulting from asbestos-containing auto parts manufactured and distributed in Ireland by its wholly owned subsidiary, upon the ground that Ford Motor Company "acted as the global guardian of the Ford brand, having a substantial role in the design, development, and use of the auto parts distributed" by its subsidiary, "with the apparent goal of the complete standardization of all products worldwide that carried the signature Ford logo."

People v Bobby Wallace (Case No. 51)

APL-2014-00296

Crimes--Suppression Hearing--Statements made by defendant to police prior to his arrest--Whether defendant was "in custody" for purposes of the Miranda rule--Whether the "public safety" exception to the Miranda rule applies here, where the officers were not concerned for their safety and the pipe defendant used was not an inherently dangerous item like a gun or knife.

WEDNESDAY, MARCH 23, 2016

Larabee v Governor of the State of New York (Case No. 52)

APL-2014-00217

Judges--Judicial Salaries--Separation of Powers--Whether plaintiffs demonstrated that the Legislature failed to abide by this Court's ruling in Matter of Maron v Silver (14 NY3d 230 [2010]) by establishing a Commission on Judicial Compensation to make recommendations for prospective-only salary adjustments; Whether plaintiffs are entitled to damages for past constitutional violations.

Silverman v Silver (Case No. 53)

APL-2014-00199

Judges--Judicial Salaries--Separation of Powers--Remedy for violation of Separation of Powers Doctrine--Whether legislation that created a Commission on Judicial Compensation to recommend prospective-only adjustments to judicial pay violates Matter of Maron v Silver (14 NY3d 230 [2010]), because it does not provide for consideration of retroactive compensation--Entitlement to damages for back pay based upon retroactive pay increases.

Matter of Kenneth Cole Prods., Inc. Shareholder Litigation (Case No. 54)

APL-2015-00155

Corporations--Merger--"Going-Private" Merger--Fairness to minority shareholders--Whether the entire fairness standard applies to going private mergers; Business judgment doctrine--Pre-discovery dismissal--Whether the courts below correctly dismissed the complaint under the business judgment rule.

Sadek v Wesley (Case No. 30)

APL-2015-00058

Witnesses--Expert Witness--Preclusion of Testimony--Trial court granted motion to preclude neurological expert from testifying upon the ground that expert's first report, which stated there was a probable causal relationship between motor vehicle accident and plaintiff's embolic stroke, was negated by expert's supplemental report because that report did not sufficiently establish causation--Whether the Appellate Division erred in holding that expert's first report provided a sufficient basis to allow the expert to testify as to the cause of plaintiff's embolic stroke and the supplemental report only provided grounds to impeach expert's anticipated trial testimony; Whether the Appellate Division correctly determined that new expert's proposed testimony should not have been precluded because it did not entirely concern a new theory of causation to the extent he was prepared to testify that the accident was a probable cause of dislodging the blood clot that caused plaintiff's stroke; Necessity for a Frye hearing--Whether evidence at the Frye hearing sufficiently established the reliability of expert's assertions as to causation; Timing of in limine motions.

THURSDAY, MARCH 24, 2016

Friends of Thayer Lake LLC v Brown (Case No. 55)

APL-2015-00051

Navigable Waters--Public Right of Use--Navigability--Capacity for transport--Summary judgment--Whether the Appellate Division correctly held as a matter of law that mud pond waterway is navigable-in-fact.

Sherman v NYS Thruway Authority (Case No. 56)

APL-2015-00122

Negligence--Snow and Ice--Storm in Progress--Whether defendant was entitled to summary judgment dismissing the claim upon the ground that there was a storm in progress when plaintiff slipped and fell on ice--Application where there is no longer any appreciable accumulation of ice or snow when accident occurs.

Plotch v Citibank, N.A. (Case No. 57)

APL-2015-00119

Condominiums and Cooperatives--Liens--Priority--Whether two mortgages, consolidated prior to the filing of a lien for unpaid condominium common charges, qualify as the first mortgage of record for purposes of Real Property Law Article 9-B.

People v Wayne Henderson (Case No. 58)

APL-2014-00324

Crimes--Right to Counsel--Effective Representation--Single error standard--Whether trial counsel's claimed deficient preparation of an expert witness deprived defendant of meaningful representation.

TUESDAY, MARCH 29, 2016

Viking Pump, Inc. v TIG Insurance Company (Case No. 59)

CQ-2015-00003

Under New York law, is the proper method of allocation to be used all sums or pro rata when there are non-cumulation and prior insurance provisions? Given the Court's answer to the first question, under New York law and based on the policy language at issue here, when the underlying primary and umbrella insurance in the same policy period has been exhausted, does vertical or horizontal exhaustion apply to determine when a policyholder may access its excess insurance?

Millennium Holdings LLC v Glidden Company (Case No. 38)

APL-2015-48

Antisubrogation rule--Whether the courts below correctly held that the antisubrogation rule bars the insurers from recovering certain payments made to their insured, Millennium Holdings LLC, for the defense and indemnification of nonparty claims that resulted from lead-based paint exposure litigation.

People v Andre Harrison (Case No. 60)

APL-2015-00014

Crimes--Appeal--Absence of Defendant--Involuntary Deportation--Whether the Appellate Division erred in dismissing defendant's appeal on the ground that he had been deported and was no longer available to obey the mandate of the court--Whether the Appellate Division correctly held that this case is distinguishable from People v Ventura (17 NY3d 675 [2011])--Application of Ventura to other than direct appeals.

People v Marino Serrano (Case No. 61)

APL-2015-00074

Crimes--Appeal--Absence of Defendant--Involuntary Deportation--Whether the Appellate Division erred in dismissing defendant's appeal on the ground that he had been deported and was no longer available to obey the mandate of the court -Whether the Appellate Term correctly held that this case is distinguishable from People v Ventura (17 NY3d 675 [2011])--Application of Ventura to other than direct appeals.

WEDNESDAY, MARCH 30, 2016

Matter of Kent v Lefkowitz (Case No. 63)

APL-2014-00229

Civil Service--Public Employment Relations Board--Improper Practice Charge--Whether the duty of the State Racing and Wagering Board to negotiate wages for seasonal track employees was satisfied by the execution of a side letter agreement between the union and the State.

Jiannaras v Alfant (Case No. 64)

APL-2015-00135

Actions--Class Actions--Settlement purporting to extinguish rights of out-of-state class members to litigate damages claims without ability to opt-out--Whether Supreme Court abused its discretion in denying a motion to approve a settlement of the proposed action because it did not afford nonresident class members the opportunity to opt-out and pursue individual claims for damages--Application of Matter of Colt Indus. Shareholders Litig. (77 NY2d 185 [1991]).

People v Quanaparker Howard (Case No. 65)

APL-2015-00124

Crimes--Sex Offenders--Sex Offender Registration Act--Whether the Courts below erred in declining to depart from the serious physical injury override's presumptive level three risk designation.

People v Elliot Parrilla (Case No. 99)

APL-2015-00224

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])--Mens rea; Right to impartial jury--Trial court's refusal to discharge a

juror who reported that living near defendant's ex-girlfriend could affect her judgment in the case.

THURSDAY, MARCH 31, 2016

People v Joel Joseph (Case No. 67)

APL-2015-00001

Crimes--Arrest--Probable Cause--Drug Transaction--Circumstantial evidence of ongoing drug activity--Whether the police had probable cause to arrest defendant when some of the information upon which the police relied came from a confidential informant several months earlier.

People v Jonathan J. Connolly (Case No. 68)

APL-2015-00006

Crimes--Sentence--Restitution--Evidentiary basis for amount--Whether the procedures used at defendant's restitution hearing comported with Penal Law § 60.27 and CPL 400.30, where County Court relied on the transcript and exhibits from a hearing previously conducted by a judicial hearing officer; Whether the delay in imposing restitution divested the Court of jurisdiction; Whether defense counsel provided ineffective assistance.

People v Ronald D. Rossborough (Case No. 69)

APL-2014-00255

Crimes--Waiver--Validity of defendant's waiver of his right to be present during sentencing and whether his waiver of the right to appeal includes his contention that County Court erred in sentencing him in absentia.

People v Tyrone D. Manor (Case No. 62)

APL-2015-00069

Crimes--Plea of Guilty--Withdrawal of Plea--Purported intoxication of defendant--Defendant allegedly coerced into making plea by his family; Sufficiency of allocution--intent and justification in homicide prosecution; Whether County Court abused its discretion in denying defendant's motion to withdraw his guilty plea without a hearing; Whether defendant was deprived of the effective assistance of counsel at the plea proceeding.