

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.

FRIDAY, OCTOBER 14 (in Rochester):

People v Phillip Couser (2 appeals)(Cal. Nos. 166 & 167)

APL-2015-00178 and 00179

Crimes--Sentence--Concurrent and consecutive terms--Robbery and attempted robbery--whether the Appellate Division erred in concluding that the sentence for robbery was properly made consecutive to the sentences for attempted robbery; plea of guilty--withdrawal of plea--whether the Appellate Division erred in concluding that the modification of defendant's aggregate sentence did not entitle him to vacatur of the plea; right to counsel--effective representation--alleged ineffectiveness for purportedly failing to recognize that defendant was not subject to a consecutive sentence for the attempted murder count.

Matter of Diegelman v City of Buffalo (Cal. No. 168)

APL-2015-00316

Municipal Corporations--Notice of claim--late notice--whether the Appellate Division erred in concluding that the General Municipal Law section 205-e claim was patently without merit; Whether a police officer's entitlement to General Municipal Law section 207-c benefits precludes the officer from bringing a General Municipal Law section 205-e claim against the municipal employer.

People v Matthew A. Davis (Cal. No. 169)

APL-21015-00240

Crimes--Murder--Felony murder--whether People failed to prove that defendant caused the death of an obese victim who died after suffering a heart attack during or after the robbery; corroboration of accomplice testimony--burglary and robbery prosecution--whether the trial court erred in admitting into evidence surveillance video footage tending to corroborate the testimony of defendant's accomplice.

People v John Gayden (Cal. No. 170)

APL-2016-00006

Crimes--Suppression hearing--Whether trial court erred in refusing to suppress gun defendant discarded while he was being pursued by police--whether radio dispatch based on an anonymous tip provided basis for reasonable suspicion of criminal activity warranting pursuit of defendant.

FRIDAY, OCTOBER 14 (in Rochester)(cont.):

People v Harvert Stephens (Cal. No. 171)

APL-2015-00262

Constitutional law--Validity of ordinance--Whether a Syracuse noise control ordinance was unconstitutionally vague under *People v New York Trap Rock Corp.* (57 NY2d 371 [1982]).

TUESDAY, OCTOBER 18:

Flo & Eddie, Inc. v Sirius XM Radio, Inc. (Cal. No. 172)

CTQ-2016-00001

Pleading--Complaint--Whether there is a right of public performance for creators of sound recordings under New York law--If so, what is the nature and scope of that right.

People v Jose Aviles (Cal. No. 186)

APL-2015-00208

Constitutional law—Equal protection of laws—whether the failure of police to administer a physical coordination test to a non-English speaking driving-while-intoxicated suspect violates equal protection or due process where such tests are routinely administered to English-speaking suspects.

Newman v RCPI Landmark Properties, LLC (Cal. No. 174)

APL-2015-00247

Negligence--Proximate cause--Whether the Appellate Division erred in granting summary judgment to defendants on the ground tht plaintiff's choice to use stacked milk crates to climb down from a loading dock, rather than a ladder, was the sole proximate cause of his injuries.

People v Timothy Brewer (Cal. No. 175)

APL-2015-00256

Crimes--Evidence--Defendant's sexual proclivities--Corroboration of child sexual assault victims' testimony--Whether the trial court committed reversible error by granting the People's Molineux application to allow evidence at trial of defendant's drug use and sexual proclivities.

Matter of Leo (Cal. No 176)

APL-2015-00232

Attorney and client--Reinstatement--Denial--whether due process of law requires the Appellate Division to articulate the reasons for denying motion for reinstatement to the bar--alleged incorrect findings of fact--movant's reliance on advice of counsel when undertaking certain actions.

WEDNESDAY, OCTOBER 19:

Ace Fire Underwriters Ins. Co. v Special Funds Conservation Committee (Cal. No. 177)

APL-2015-00250

Workers' compensation--Special funds--Where the Workers' Compensation insurance carrier approves the settlement of a third-party personal injury action without first obtaining the consent of the Special Funds Conservation Committee (SFCC) to such settlement, and the SFCC thereafter denies retroactive consent for the settlement, does the court in which the underlying personal injury action was commenced have the power to compel the SFCC to consent to the settlement nunc pro tunc, or must the carrier seek such relief from the Workers' Compensation Board.

People v Earl Jones (Cal. No. 178)

APL-2015-00220

Crimes--Evidence--Whether the trial court erred in admitting into evidence as an excited utterance or a present sense impression an out-of-court statement made by an unidentified bystander to a police officer--alleged due process and Confrontation Clause violations; sufficiency of the evidence supporting defendant's conviction of burglary in the third degree.

Matter of Entergy Nuclear Operations v New York State Dept. of State (Cal. No. 179)

APL-2015-00152

Environmental conservation--Environmental quality review--Whether petitioner's license renewal application to the Nuclear Regulatory Commission triggers consistency review under the Coastal Zone Management Act and New York's Coastal Management Program (CMP)--whether certain generating plant units were grandfathered pursuant to the State Environmental Quality Review Act; whether qualifying final environmental impact statements were prepared for the units; whether subsequent changes to units have triggered a consistency review under the CMP.

Al Rushaid v Pictet & Cie (Cal. No. 180)

APL-2015-00268

Courts--Jurisdiction--Long-arm jurisdiction--foreign bank's alleged transfer of kickbacks and bribes to New York accounts--whether the Appellate Division erred in determining that defendants' alleged conduct (using New York correspondent bank accounts to effect wire transfers on behalf of certain individuals) was insufficient to confer personal jurisdiction.

People v Wilson J. Tardi (Cal. No. 181)

APL-2015-00209

Crimes--Suppression hearing--Evidence seized from vehicle which was impounded after defendant's arrest and subjected to inventory search pursuant to police department's written policy--claimed unconstitutionality of search and police policy.

THURSDAY, OCTOBER 20:

Matter of ACME Bus Corp. v Orange County (Cal No. 182)

APL-2015-00251

Municipal corporations--Procurement--CPLR article 78 proceeding to review a County determination awarding other companies contracts to provide bus transportation--Whether the County acted irrationally by failing to follow the proposal evaluation procedures set forth in its request for proposals.

Odunbaku v Odunbaku (Cal. No. 183)

APL-2015-00317

Parent and child--Support--Service of findings of fact and order on party rather than attorney--whether, in light of this Court's decision in Bianca v Frank (43 NY3d 168 [1977]), a statute of limitations or other time period for submitting objections to a Family Court fact-finding order, pursuant to Family Court Act § 439 (e), begins to run when court papers have been mailed by the clerk of the court only to a party, not to the party's attorney.

People v Harold L. Petke (Cal. No. 184)

APL-2015-00129

Crimes--Jurors--Selection of jury--improper denial of challenge for cause--whether harmless error analysis should be applied where the trial court failed to discharge a juror for cause, defendant used a peremptory challenge on that juror, the one additional juror selected after defendant exhausted his peremptory challenges did not participate in deliberations due to a medical situation, defendant had been given additional peremptory challenges when selecting alternate jurors, and defendant chose not to exercise a peremptory challenge on the alternate juror who replaced the ill juror.

Kimmel v State of New York (Cal. No. 185)

APL-2014-00108

State--Equal Access to Justice Act--(EAJA) (CPLR article 86)--whether prevailing party in a sex discrimination action for money damages against the state is eligible to recover attorneys' fees and expenses under the EAJA.

8/8/16