

**CASE ISSUE STATEMENTS – APRIL-MAY 2018**

**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, APRIL 24***

**Andino v Mills (No. 56)**

APL-2017-00067

Damages--Collateral Source of Payment--Whether the Appellate Division correctly held that, under Oden v Chemung County Indus. Dev. Agency (87 NY2d 81 [1995]), the jury's award for future loss of pension benefits should have been offset by the total amount that plaintiff was projected to receive under her accidental disability pension.

**2138747 Ontario v Samsung (No. 57)**

APL-2017-00129

Conflict of Laws -- Law Governing Contract Action -- in breach of contract action brought by nonresident alleging economic claim that accrued outside New York, whether a contract provision specifying that the agreement is to be "governed by, construed and enforced" in accordance with New York law renders inapplicable New York's borrowing statute, CPLR 202.

**Matter of the People v Juarez; Robles (No. 58)**

APL-2017-00057

Appeal--Matters Appealable--Whether an order resolving a nonparty's motion to quash a subpoena in a pending criminal action is appealable; crimes--disclosure--Shield Law-- whether the People made a clear and specific showing that disclosure sought from reporter is critical and necessary to the People's proof of a material issue so as to overcome the qualified protection for the reporter's nonconfidential material; application of Civil Rights Law section 79-h(c).

***WEDNESDAY, APRIL 25***

**White v Schneiderman (No. 59)**

APL-2017-00029

Taxation--Whether New York State's imposition through Tax Law § 471 of a tax on cigarettes sold on Indian reservations to nonmembers of the tribe conflicts with state law; claimed violations of Indian Law § 6, federal treaty provisions, and state and federal constitutional protections; declaratory judgment.

**People v Bryan Henry (No. 60)**

APL-2017-00073

Crimes--Right to Counsel--Representation on Unrelated Matter--Where defendant's right to counsel was violated when he was questioned by officers with regard to a robbery after he had been assigned counsel in connection with an arrest for marijuana possession, whether his right to counsel also was violated when he was questioned by officers on a homicide that was "factually interwoven" with the robbery charge; application of People v Cohen (90 NY2d 632 [1997]) and People v Grant (91 NY2d 989 [1998]).

**People v Roque Silvagnoli (No. 61)**

APL-2017-00178

Crimes-- Right to Counsel--Representation on Unrelated Matter--whether defendant's right to counsel was violated when detective, while questioning defendant on a homicide investigation, mentioned pending drug charge on which defendant was represented by counsel; whether questioning on drug charge was discrete and fairly separable from questioning on homicide charge.

*THURSDAY, APRIL 26*

**People v Natascha Tiger (No. 62)**

APL-2017-00168

Crimes--Vacatur of Judgment of Conviction-- whether a freestanding claim of actual innocence is cognizable under CPL 440.10(1)(h); whether a defendant who pleads guilty may assert a freestanding actual innocence claim pursuant to CPL 440.10(1)(h); whether defendant made the requisite prima facie showing of actual innocence; Right to Counsel--Effective Representation; whether counsel was ineffective for failing to investigate possible alternative cause of victim's injuries.

**People v Gary Thibodeau (No. 63)**

APL-2017-00162

Crimes--Vacatur of Judgment of Conviction--Whether County Court erred in denying that part of defendant's CPL 440.10 motion alleging a Brady violation; Newly Discovered Evidence -- whether County Court properly denied that part of defendant's CPL 440.10 motion based on newly discovered evidence; Evidence -- whether third-party admissions were admissible hearsay; Claim of Actual Innocence -- whether county court's rejection of defendant's newly discovered evidence claim constituted an implicit rejection of his actual innocence claim.

***TUESDAY, MAY 1***

**Matter of Natasha W. v NYS Office of Children & Family Services (No. 65)**

APL-2017-00008

Social Services--Register of Child Abuse and Maltreatment--Whether the State proved, by a fair preponderance of the evidence, that petitioner maltreated her child by using the child to facilitate committing a crime.

**Brown v State of New York (No. 66)**

APL-2016-00226

Negligence--Proximate Cause--Highway accident at an intersection for which the State had failed to complete a traffic study and upgrade traffic control or warning devices--standard applicable to determination of whether State's action or inaction was a proximate cause of the injuries sustained.

**Brown as Administratrix v State of New York (No. 67)**

APL-2016-00227

Negligence--Proximate Cause--Highway accident at an intersection for which the State had failed to complete a traffic study and upgrade traffic control or warning devices--standard applicable to determination of whether State's action or inaction was a proximate cause of the injuries sustained.

**People v Theodore Wilson (No. 68)**

APL-2017-00138

Crimes--Appeal--Whether legally sufficient evidence supports defendant's conviction for depraved indifference assault; claimed due process violation regarding court's response to a jury note.

***WEDNESDAY, MAY 2***

**Matter of Brookford, LLC v New York State Div. of Housing and Community Renewal (No. 69)**

APL-2016-00211

Landlord and Tenant--Rent Regulation--Denial of landlord's application to deregulate a rent controlled apartment--apportionment of income reported on joint tax return for remaining spouse after husband vacated apartment and entered assisted living facility.

**AD1**

**Matter of Lemma v Nassau County Police Officer Indemnification Board, et al. (No. 70)**

APL-2017-00092

Counties--Defense and Indemnification of Employee--Whether police officer's actions were within the "proper discharge of his duties," thereby entitling him to defense and indemnification under General Municipal Law § 50-1; whether respondent Board's determination denying defense and indemnification was arbitrary and capricious.

**People v Princesam Bailey (No. 71)**

APL-2017-00140

Crimes--Jurors--Repeated use of racial epithet by defendant's counsel as strategy in cross examination of victim affected juror--request for mistrial by defendant's counsel based on allegedly "grossly unqualified" juror--whether trial court erred in failing to conduct an individual inquiry of the juror involved; evidence--whether trial court erred in permitting extensive gang-related testimony.

4/17/18