

## CASE ISSUE STATEMENTS - FEBRUARY 2021

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, FEBRUARY 9*

#### **CIT Bank v Schiffman (No. 11)**

CQ 2020-01

Where a foreclosure plaintiff seeks to establish compliance with RPAPL [Real Property Actions and Proceedings Law] § 1304 through proof of a standard office mailing procedure, and the defendant both denies receipt and seeks to rebut the presumption of receipt by showing that the mailing procedure was not followed, what showing must the defendant make to render inadequate the plaintiff's proof of compliance with § 1304? (2) Where there are multiple borrowers on a single loan, does RPAPL § 1306 require that a lender's filing include information about all borrowers, or does § 1306 require only that a lender's filing include information about one borrower?

#### **Matter of Estate of Youngjohn v Berry Plastics (No. 12)**

APL-2019-231

Workers' Compensation—Award--Whether 2009 amendments to Workers' Compensation Law authorizing full payment of Schedule Loss Use (SLU) awards in one lump sum at the request of the injured employee altered rule that where injured employee dies without leaving a surviving spouse, child under 18 years old, or dependent, only that portion of claimant's SLU award that had accrued at the time of death is payable to claimant's estate, along with reasonable funeral expenses.

#### **Matter of People Care Incorporated v CNY Human Resources (No. 13)**

APL 2019-172

Social Services—Recoupment of Overpayments—Whether respondent The City of New York Human Resources Administration Department of Social Services has the authority to audit and recover overpayments of funds provided pursuant to the Health Care Reform Act from petitioner, a personal care service provider.

### *WEDNESDAY, FEBRUARY 10*

#### **Herkimer County IDA v Village of Herkimer (No. 14)**

APL-2019-222

Municipal Corporations--Water Supply--Whether county industrial development agency assented to village supplying water to agency owned property and tenant using that water, thereby giving rise to implied contract for water services between agency and village; application of Village Law § 11-1116 and local regulations.

**People v Marina Y. Viviani (No. 15)**

APL 2019-211

District and Prosecuting Attorneys—Special Prosecutor--Whether Executive Law § 522 allows special prosecutor to prosecute individuals accused of crimes against vulnerable persons where the special prosecutor obtains the knowing, written consent of a district attorney to do so and the district attorney retains ultimate responsibility for the prosecution; constitutionality of Executive Law § 522.

**People v Justin Hope (No. 16)**

APL 2019-212

District and Prosecuting Attorneys—Special Prosecutor--Whether Executive Law § 522 allows special prosecutor to prosecute individuals accused of crimes against vulnerable persons where the special prosecutor obtains the knowing, written consent of a district attorney to do so and the district attorney retains ultimate responsibility for the prosecution; constitutionality of Executive Law § 522.

**People v Nicole Hodgdon (No. 17)**

APL 2019-213

District and Prosecuting Attorneys—Special Prosecutor--Whether Executive Law § 522 allows special prosecutor to prosecute individuals accused of crimes against vulnerable persons where the special prosecutor obtains the knowing, written consent of a district attorney to do so and the district attorney retains ultimate responsibility for the prosecution; constitutionality of Executive Law § 522.

***THURSDAY, FEBRUARY 11***

**Toussaint v Port Authority (No. 18)**

APL 2019-198

Labor—Safe Place to Work— Whether the requirement in the Industrial Code that a "designated person" operate a power buggy is sufficiently specific to support a claim under Labor Law § 241 (6).

**People v Epakchi (Daria) (No. 19)**

APL-2019-233

Crimes—Accusatory Instrument--Whether a simplified traffic information may be re-filed after another simplified traffic information alleging the same offense was dismissed for failure to timely provide a supporting deposition.

**People v Olds (Leslie K.) (No. 20)**

APL 2019-175

Crimes—Sentence—Whether the sentence imposed was vindictive; whether defendant preserved for appellate review the issue of vindictiveness.