

## 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, SEPTEMBER 8, 2015

#### **Nomura Asset Capital Corp. v Cadwalader, Wickersham & Taft, LLP (Cal. No. 122)**

APL-2014-00171

Attorney and client--Malpractice--Action against law firm alleging failure to provide appropriate legal advice and the rendering of a legal opinion without performing the necessary due diligence, in connection with the securitization of a pool of commercial mortgage loans; Summary judgment

#### **People v Anthony Barksdale (Cal. No. 123)**

APL-2014-00180

Crimes--Arrest--Probable cause--Whether the police had an objective credible reason under step one of the DeBour inquiry to approach defendant and ask him to explain his presence in the lobby of an apartment based upon the reputation of the area and the fact that the building was so prone to trespassing that the landlord had executed a "trespass affidavit" requesting police assistance in removing intruders from the building.

#### **Matter of Linares v Evans (Cal. No. 124)**

APL-2014-00076

Proceeding against body or officer--Certiorari--CPLR article 78 proceeding challenging a determination of the Parole Board denying request for parole release--Whether the Parole Board's failure to promulgate regulations pursuant to Executive Law § 259-c(4) prior to petitioner's parole hearing makes the Board's determination improper; Aggrievement; Whether the Board's determination is supported by the record; Propriety of the Board's submission of documents to Supreme Court for in camera review.

#### **People v Jennifer Jorgensen (Cal. No. 179)**

APL-2014-00208

Crimes--Evidence--Sufficiency of Evidence--Defendant, while pregnant, crashed into another car--Defendant's child, born in emergency C-section, died days after the accident--Whether evidence was legally sufficient to convict defendant of manslaughter in the second degree concerning the child; Admission of evidence--Whether the trial court erred in permitting admission of evidence of drugs taken by defendant during her pregnancy; Claimed inflammatory comments by prosecutor during summation; Claimed due process violations.

**People v Jose Martinez Baxin (Cal. No. 180)**

APL-2014-00243

Crimes--Sex offenders--Sex Offender Registration Act (SORA)--Whether the SORA hearing court committed reversible error by considering Grand Jury minutes that were not disclosed to defendant and over defense counsel's objection.

**WEDNESDAY, SEPTEMBER 9, 2015**

**People v Sprint Nextel Corp. (Cal. No. 127)**

APL-2014-00152

Taxation--Sales and use taxes--Complaint alleging violation of New York False Claims Act (State Finance Law § 189[1][g]), Executive Law § 63 (12) and Tax Law, article 12, by knowingly making false statements material to an obligation to pay sales tax pursuant to Tax Law § 1105(b)(2)--Sales tax on interstate voice service sold by a mobile provider; Preemption by Federal Mobile Telecommunications Sourcing Act (4 USC § 116, et seq.)-- Whether ex post facto clause of the U.S. Constitution (art. I, § 10) bars retroactive effect of civil penalties sought under New York False Claims Act.

**People v James R. Poleun (Cal. No. 128)**

APL-2014-00246

Crimes--Sex Offender Registration Act (SORA) (Correction Law art. 6-c)--Whether defendant was denied due process of law when the hearing court accepted his waiver of appearance and held a hearing to assess his risk level in his absence, although he expressed his desire to be present at the hearing and proffered an excuse for his inability to attend.

**Remet Corp. v Estate of Pyne (Cal. No. 129)**

APL-2014-00163

Indemnity--Contractual indemnification--Environmental remediation costs--New York State Department of Environmental Conservation (DEC) letter identifying plaintiff as a potentially responsible party, requesting plaintiff to develop, implement and finance a remedial program for a hazardous waste site, and stating that, if plaintiff did not act, DEC would perform the remediation and seek recovery from plaintiff--Whether the Appellate Division correctly held that DEC's letter did not require plaintiff to take action and, thus, that plaintiff was not entitled to indemnification pursuant to an agreement that limits indemnification to losses arising out of or resulting from actions that plaintiff "is required to take under or in connection with any environmental law or environmental permit."

**People v Raymond Denson (Cal. No. 130)**

APL-2014-00124

Crimes--Kidnapping--Attempt--Restraint of child less than 16 years old--Whether the evidence was legally sufficient to establish that defendant committed attempted kidnapping in the second degree; Proof of prior convictions--Whether the trial court properly exercised its discretion in permitting testimony regarding defendant's prior conviction of a sex crime committed against a child over twenty years ago, and the facts underlying that conviction, on the issue of defendant's

intent; Whether the attempted kidnapping charge should have been dismissed under the merger doctrine; Confession--Whether defendant's statements to police were admissible as noncustodial statements and post-Miranda statements; Right to counsel--Alleged ineffective assistance of trial counsel in allowing the defense expert to testify under the premise that defendant was a pedophile and in failing to object when the prosecution's expert based her conclusions on that premise.

#### **THURSDAY, SEPTEMBER 10, 2015**

##### **The Ministers and Missionaries Benefit Bd. v Snow (Cal. No. 131)**

CTQ-2015-00001

Whether a governing-law provision that states that the contract will be governed by and construed in accordance with the laws of the State of New York, in a contract not consummated pursuant to New York General Obligations Law section 5-1401, requires the application of New York Estates, Powers & Trusts Law section 3-5.1(b)(2), a New York statute that may, in turn, require application of the law of another state? If so, whether a person's entitlement to proceeds under a death benefit or retirement plan, paid upon the death of the person making the designation, constitutes 'personal property . . . not disposed of by will' within the meaning of New York Estates, Powers & Trusts Law section 3-5.1(b)(2)?

##### **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 Terrance L. Mack (Cal. No. 132)**

APL-2014-00175

Crimes--Jurors--Whether County Court committed reversible error by accepting the jury verdict without first responding to three notes from the jury.

##### **People v Kenneth Nealon (Cal. No. 133)**

APL-2014-00219

Crimes--Appeal--Preservation of issue for review--Meaningful notice of jury notes--Failure to object--Whether the trial court committed a mode of proceedings error when, according to the original trial record, it read the contents of the three jury notes requesting charge clarifications for the first time in front of the jury and immediately responded and, if so, whether the Appellate Division properly refused to consider the resettled trial record.

**People v Rhian Taylor (Cal. No. 134)**

APL-2015-00005

Crimes--Jurors--Notice of substantive jury inquiry--Where the parties agreed that the court could provide the jury with any "requested exhibits" without consulting counsel, whether the trial court committed an O'Rama error where it did not consult counsel before responding to a jury note asking "to see the benefits offered" to the People's two cooperating witnesses by providing the jury with the written cooperation agreement as to one of the witnesses, which was in evidence, where the benefits offered to the other witness were reflected only in testimony and not in any exhibit; Identification of defendant--Photographic array--Whether defendant "opened the door" to a witness testifying to an extrajudicial identification of a photograph of defendant; Whether the trial court erred in allowing a detective to testify that defense counsel was present at a lineup observed by a witness.

**FRIDAY, SEPTEMBER 11, 2015**

**Matter of Bottom v Annucci (Cal. No. 135)**

APL 2014-00142

Prisons and prisoners--Discipline of inmates--Whether a prison disciplinary determination can be based upon a local facility rule that was not filed with the Secretary of State.

**People ex rel. DeLia, o/b/o SS. v Munsey (Cal. No. 136)**

APL-2014-00112

Habeas corpus--Involuntary commitment--Patient's right to immediate release where hospital files an involuntary retention application after expiration of the initial retention period--Whether Mental Hygiene Law § 33.15(b) requires Supreme Court to conduct an examination into patient's alleged mental disability and retention before granting writ of habeas corpus in a proceeding brought pursuant to CPLR article 70.

**People v Dupree Harris (Cal. No. 137)**

APL-2014-00184

Crimes--Proof of other crimes--In case where defendant was charged with bribing and tampering with three witnesses to a homicide, whether the trial court erred in admitting evidence that a different witness to the homicide was murdered shortly before the homicide trial and that defendant had sought to contact him.

**People v Vincent Izzo (Cal. No. 138)**

APL 2014-00218

Crimes--Sex offenders--Sex Offender Registration Act--Level II sex offender--Challenge to assessment of 30 points under risk factor 3 (number of victims) due to three or more victims--Challenge to assessment of 20 points under risk factor 7 (relationship between offender and victim) for engaging in "grooming" behavior with his victims for the primary purpose of victimization--Defendant's entitlement to a downward departure from the presumptive risk level classification--Effect of county court's failure to expressly reference in its opinion defendant's request for a downward departure.

**WEDNESDAY, SEPTEMBER 16, 2015**

**Matter of Carver v State of New York (Cal. No. 139)**

APL-2014-00157

Social services--Public assistance--State's entitlement to reimbursement from former public assistance recipient's lottery winnings--Work Experience Program (WEP) participant--Whether a public assistance beneficiary who was statutorily required to participate in New York City's WEP as a condition of continued receipt of benefits (Social Services Law § 336[1][d]), was an "employee" entitled to the minimum wage protections of the Federal Fair Labor Standards Act (29 USC § 201, et seq.).

**People v Michael Sans (Cal. No. 140)**

APL-2014-00181

Crimes--Possession of weapon--Sufficiency of accusatory instrument--Misdemeanor complaint charging criminal possession of a weapon in the fourth degree based upon defendant's possession of a gravity knife--People v Dreyden (15 NY3d 100 [2010]).

**People v Thomas Barnes (Cal. No. 141)**

APL-2014-00179

Crimes--Trespassing--Whether an individual may be prosecuted for second-degree criminal trespass in a public housing apartment building, or if such conduct can only be prosecuted as third-degree criminal trespass; Penal Law §§ 140.10 (e) and (f), 140.15 (1).

**Matter of Texeira v Fischer (Cal. No. 142)**

APL-2014-00168

Prisons and prisoners--Discipline of inmates--Violation of prisoner's right to call a witness at a disciplinary hearing--Whether the proper remedy for such a violation is expungement or remittal for a new hearing.

**Tipaldo v Lynn (Cal. No. 143)**

APL-2014-00132

Labor--Whistleblower Law (Civil Service Law § 75-b)--Retaliatory personnel action against City Department of Transportation (DOT) employee who reported to the Department of Investigation (DOI) that two of his superiors violated bidding rules--Whether the Appellate Division correctly determined that it was futile for plaintiff to first report the alleged violation to the Internal DOT "appointing authority," as required by the statute, because the same people who committed the alleged violation were the "appointing authority," and that plaintiff's informal report to his immediate supervisors and his formal report to the DOI "satisfactorily met" the statutory requirement; Interest--Interest on award--Pre-determination interest--Whether the Appellate Division correctly held that pre-determination interest is available to a prevailing plaintiff in an action brought under Civil Service Law § 75-b.

**THURSDAY, SEPTEMBER 17, 2015**

**Hutchinson v Sheridan Hill House Corp. (Cal. No. 144)**

APL-2014-00045

Negligence--Sidewalks--Trip and fall on metal screw or other object protruding from the sidewalk--Summary judgment granted to defendant based upon trivial nature of defect, lack of notice, and speculative and conclusory nature of plaintiff's expert report.

**Zelichenko v 301 Oriental Boulevard, LLC (Cal. No. 145)**

APL-2014-00242

Negligence--Maintenance of premises--Trip and fall on stairs due to chip on edge of step-- Whether summary judgment was properly granted to defendant upon the ground that, as a matter of law, the chip was a trivial defect and did not constitute a trap or nuisance.

**Adler v QPI-VIII, LLC (Cal. No. 146)**

APL-2015-00087

Negligence--Maintenance of premises--Trip and fall on step--Whether summary judgment was properly granted to defendant upon the ground that, as a matter of law, the defect was trivial.

**People v Christopher E. Walker (Cal. No. 147)**

APL-2014-00200

Crimes--Justification--Proper jury charge--Whether the Pattern Jury Instruction on the "initial aggressor" exception to the justification defense misstates the applicable law where the defendant claimed he used force to shield another person from attack in an ongoing altercation.