

## 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 21

#### **Griffin v Sirva, Inc. (Case No. 35)**

CTQ-2016-00002

Civil Rights--Discrimination Based on Previous Criminal Prosecution--Whether section 296(15) of the New York State Human Rights Law limits liability to an aggrieved party's "employer"--if so, whether the statute includes a party who is not the aggrieved party's "direct employer," but who, through an agency or other means, exercises a significant level of control over the discrimination policies and practices of the aggrieved party's "direct employer"--whether an out-of-state principal corporation that requires its New York State agent to discriminate in employment on the basis of a criminal conviction may be held liable for the employer's violation of section 296(15).

#### **Kimmel v State of New York (Case No. 36) (Reargument - first argued 10/20/16)**

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.

#### **Matter of Loehr v Administrative Bd. of the Courts of the State of New York (Case No. 37)**

APL-2015-00310

Judges--Certification of Justice for judicial service beyond the mandatory retirement age of 70--Whether policy of Administrative Board of the Courts of the State of New York that "no Judge henceforth certificated for service as a Justice of the Supreme Court pursuant to Judiciary Law § 115 may receive, concurrent with receipt of a salary for such service, a retirement allowance for prior judicial service within the Unified Court System" violates NY Constitution, Article V, § 7, Judiciary Law § 115(3) and Retirement and Social Security Law § 212.

## **WEDNESDAY, MARCH 22**

### **People v Shawn J. Sivertson (Case No. 3) (Reargument - first argued 1/3/17)**

APL-2016-00010

Crimes--Unlawful search and seizure--Warrantless entry into residence--Whether exigent circumstances justified the warrantless entry into defendant's apartment where the subject weapon was a knife, not a gun; Right to counsel--Effective representation--Whether trial counsel provided ineffective assistance of counsel by failing to object to certain comments made by the prosecutor during summation, including that defendant's silence upon his arrest evidenced his guilt.

### **People v John Stone (Case No. 38)**

APL-2015-00174

Crimes--Trial--Mistrial--Whether motion for mistrial was properly denied where the trial court struck and instructed the jury to disregard testimony by investigating detective that, after interviewing defendant's wife, a witness to the crime who did not testify at trial, the detective conducted several computer checks on defendant, "the person that had been indicated as a suspect"--Prejudicial effect of testimony; Verdict--Setting verdict aside--Alleged jury misconduct--Whether the trial court erred in denying motion to set aside verdict based upon statements made between complainant and a juror without holding a hearing--CPL 330.40 (2) (c-e).

### **Nomura Home Equity Loan, Inc. v Nomura Credit & Capital, Inc. (Case No. 39)**

APL-2016-00024

Contracts--Breach or performance of contract--Residential mortgage-backed securities--Whether the "sole remedy" provision requiring defendant to cure or repurchase mortgage loans not conforming to representations and warranties prohibits plaintiffs from seeking money damages for breach of a contractual provision providing that the contract contains no untrue statements.

## **THURSDAY, MARCH 23**

### **M/O Acevedo v NYS Dept. of Motor Vehicles (Case No. 40)**

APL-2015-00248

Motor Vehicles--Operator's License--Denial of driver's license--regulations governing treatment of relicensing applications by persons with at least three alcohol or drug-related convictions (15 NYCRR 136.5)--whether Supreme Court properly dismissed as nonjusticiable petitioner's challenges to provisions imposing a lifetime license revocation and requiring the issuance of a restricted license and installation of an ignition interlock device--alleged violation of the separation of powers doctrine--whether challenged regulations conflict with the Vehicle and Traffic Law--whether denial of relicensing application constituted an impermissible retroactive application of challenged regulations and a violation of the ex post facto clause of the U.S. Constitution--challenge to regulations as being arbitrary and capricious--necessity for a hearing.

**M/O Carney v NYS Dept. of Motor Vehicles (Case No. 41)**

APL-2016-00021

Motor Vehicles--Operator's License--Application for new license after license revocation for alcohol-related driving offense--new regulations adopted during review of petitioner's application for relicensing of persons with multiple alcohol- or drug-related driving offenses (15 NYCRR 136.5 [b][1])--whether the regulatory imposition of a permanent lifetime ban against a driver with five or more alcohol-related convictions during his lifetime exceeds the Commissioner's administrative authority.

**M/O Matsen v NYS Dept. of Motor Vehicles (Case No. 42)**

APL-2016-00054

Administrative Law--Delegation of Legislative Power--Validity of regulation--regulation governing treatment of relicensing of persons with multiple alcohol or drug-related driving offenses and one or more "serious driving offenses " (15 NYCRR 136.5)--whether 15 NYCRR 136.5(a)(2) arbitrarily designates a "conviction of two or more violations for which five or more points are assessed on a violator's driving record" to be a serious driving offense--challenge to regulation as violating the separation of powers doctrine, ultra vires, conflicting with existing statutes, violating the ex post facto clause, arbitrary and capricious and effecting an excessive penalty as applied to petitioner.

**People v Omar Smalling (Case No. 43)**

APL-2015-166

Crimes--Instructions--Supplemental instruction--Whether Supreme Court erred when it gave a supplemental instruction regarding constructive possession of a weapon in response to a note from the jury.

**Coffed v McCarthy (Case No. 44)**

APL-2016-00202

Negligence--Proximate cause--Action seeking damages for fatal injuries sustained by decedent when the bicycle he was riding collided with a dump truck--Whether the Appellate Division erred in granting summary judgment to defendants upon the ground that decedent's failure to stop at a red light was the sole proximate cause of the accident.

**TUESDAY, MARCH 28**

**People v Jose Valentin (Case No. 45)**

APL-2016-00049

Crimes--Agency Defense in Narcotics Prosecution--Right of rebuttal--Whether the People are permitted to introduce evidence of a prior conviction when a defendant asserts an agency defense by adopting portions of the People's evidence that support that defense, rather than by testifying or otherwise eliciting evidence from defense witnesses; Whether defendant was deprived of the effective assistance of counsel.

**Connaughton v Chipotle Mexican Grill (Case No. 46)**

APL-2016-00036

Fraud--Fraud in the inducement--Whether plaintiff, a chef who entered into an at-will employment relationship with defendants, adequately alleged a cause of action for fraudulent inducement based upon defendants' "superior knowledge" of previous business dealings that they withheld from plaintiff to induce him to accept their offer of employment, and whether he sufficiently alleged damages.

**Carlson v AIG (Case No. 47)**

APL-2016-00041

Whether the appellate division erred in holding that the insurance policy was not "issued or delivered" in New York, thus precluding plaintiff from bringing suit against tortfeasor's insurance company under insurance law § 3420 (a) (2); automobile insurance--cartage agreement between defendant DHL express (USA) and defendant MVP Delivery and Logistics, Inc.--whether MVP vehicle driven by tortfeasor during the underlying motor vehicle accident was a vehicle "hired" by DHL and thus covered under its automobile insurance.

**WEDNESDAY, MARCH 29:**

**People v Everett McMillan (Case No. 48)**

APL-2015-00304

Crimes--Unlawful Search and Seizure--After defendant was arrested inside a building on a parole warrant, his car was searched without a warrant based on a tip received earlier in the day about a gun in the vehicle--whether gun should have been suppressed; rights of parolees; whether trial court made erroneous ruling about defense counsel's reason for striking a prospective juror.

**People v Stanley Hardee (Case No. 49)**

APL-2015-00170

Crimes--Unlawful Search and Seizure--Whether limited search of car stopped for traffic violations was justified after defendant had been removed from the car and frisked-- People v Torres (74 NY2d 224 [1989]).

**People v Andrew R. Bushey (Case No. 50)**

APL-2016-00032

Crimes--Unlawful Search and Seizure--Whether County Court erred in determining that the plate check of defendant's vehicle and the ensuing stop were lawful.