

CASE ISSUE STATEMENTS- NOVEMBER 2024

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 Appeal Public Access and Search System (Court-PASS), which is accessible from the home page on the Court's website.

TUESDAY, NOVEMBER 19

Matter of NYC Organization of Public Service Retirees v Campion (No. 93)

APL-2023-86

Civil Service—Retirement and Pension Benefits—Whether Administrative Code of the City of New York § 12-126 (b) (1) requires respondents to pay the entire cost, up to the statutory cap, of any health insurance plan a retiree selects.

Matter of Bodenmiller v DiNapoli (No. 105)

APL 2023-140

Civil Service—Retirement Pension and Benefits—Whether *Matter of Kelly v DiNapoli*, 30 NY3d 674 (2018), permits the denial of an application for accidental disability retirement benefits upon a finding that a condition should have been “reasonably anticipated”; whether a determination that an applicant should have “reasonably anticipated” the hazard resulting in injury supports a denial of an application when the record otherwise fails to demonstrate that the hazard was an inherent risk of the applicant’s job or that the application had actual or direct knowledge of the hazard.

Matter of Compagnone v DiNapoli (No. 106)

APL 2023-83

Civil Service—Retirement Pension and Benefits—Whether substantial evidence supports respondent's determination that petitioner failed to establish that the incident involving petitioner was an accident within the meaning of Retirement and Social Security Law § 363.

Jones v Cattaraugus-Little Valley Central School District (No. 107)

CTQ 2024-1

The Second Circuit certified the following question to this Court: Whether the six-month waiting period for claims filed pursuant to the claim-revival provision of New York Child’s Victims Act, N.Y. CPLR § 214-g, establishes a statute of limitations, a condition precedent to bringing suit, or some other affirmative defense.

People v Jason Brisman (No. 108)

APL 2023-117

Crimes—Sentence—Whether Appellate Division erred in requiring a showing of extraordinary circumstances or an abuse of discretion to invoke its interest of justice jurisdiction to reduce a sentence; whether the Appellate Division properly held that defendant failed to preserve his

claim that the sentence imposed served to punish him for exercising his right to a trial; whether the evidence at trial was legally sufficient to establish that defendant committed the crime of promoting prison contraband in the first degree.

WEDNESDAY, NOVEMBER 20

Matter of 160 E. 84th v DHCR and 7 Other Appeals (Nos. 109-116)

APL-2023-147 through 154

Landlord and Tenant-Rent Regulation—Whether respondent New York State Division of Housing and Community Renewal (DHCR) had the authority to issue explanatory addenda to prior rent deregulation orders; whether the Housing Stability and Tenant Protection Act of 2019 (HSTPA)’s repeal of luxury deregulation provisions applies to luxury deregulation orders issued prior the enactment of the HSTPA, regardless of whether such application is denominated retroactive or not; whether a DHCR order deregulating an apartment, with implementation to occur at the end of the lease then in effect, may be nullified due to the lease expiring after an intervening change in law.

Matter of 160 E. 84th v DHCR (No. 117)

APL-2024-03

Landlord and Tenant—Rent Regulation—Whether respondent New York State Division of Housing and Community Renewal (DHCR) has the authority to issue explanatory addenda to prior rent deregulation orders; whether the Housing Stability and Tenant Protection Act of 2019 (HSTPA)’s repeal of luxury deregulation provisions applies to luxury deregulation orders issued prior the enactment of the HSTPA, regardless of whether such application is denominated retroactive or not; whether a DHCR order deregulating an apartment, with implementation to occur at the end of the lease then in effect, may be nullified due to the lease expiring after an intervening change in law.

Sabine v State of New York (No. 118)

APL-2023-96

Appeal—Preservation of Issue for Review—Whether exception to preservation requirement applies to reach claimant's prejudgment interest claim; State—Claim Against State—Whether prejudgment interest award ran from date of decision establishing serious injury and damages rather than date on which common law liability was found.

People v Kenneth Garcia (No. 119)

APL 2023-82

Crimes—Identification of Defendant—Whether defendant’s motion to suppress identification evidence from a showup identification procedure was properly denied; whether the evidence was legally sufficient to establish defendant’s guilt of the crimes of which he was convicted beyond a reasonable doubt; whether defendant was denied a fair trial based on certain of the court’s statements.

People v Rufus (Parris) (No. 120)

APL 2023-188

Motor Vehicles—Operating Vehicle Under Influence of Alcohol or Drugs—Whether the police officer lawfully stopped defendant's car for crossing the white fog line; whether the evidence was legally sufficient to establish that defendant was intoxicated.

People v Watkins (Jerry) (No. 121)

APL 2024-28

Crimes—Unlawful Search and Seizure—Whether the courts below should have suppressed the loaded firearm that defendant was charged with possessing because police officers unlawfully pursued and arrested him; whether defendant's contentions are preserved; whether the people failed to establish a lawful predicate for the frisk or search of defendant by failing to call the officer who found the firearm.

THURSDAY, NOVEMBER 21

People v Edward Mero (No. 122)

APL 2024-7

Crimes—Consolidation and Severance—Whether the courts below abused their discretion in denying defendant's motion to sever the counts related to each victim; whether defendant was denied a fair trial by the courts' denial of his motion to sever; whether defendant was denied his right to counsel and his right to a fair trial when the courts below denied defendant's motion to vacate the judgment of conviction based on a conflict of interest founded on an undisclosed business relationship between defense counsel and one of the assistant district attorneys.

People v Cleveland Lawson aka Emmanuel Marks (No. 123)

APL 2023-157

Crimes—Suppression Hearing—Whether the trial court has the authority to revisit its suppression ruling and grant suppression based on a new legal theory that was not litigated at the suppression hearing.

Hobish v AXA (No. 124)

APL 2024-30

Insurance—Whether plaintiff may seek breach of contract damages based on the contract's loss in value cause by a breach after receiving funds due on termination of the contract; whether plaintiff may seek damages under General Business Law § 349 without showing plaintiff is entitled to breach of contract damages; whether punitive damages are recoverable under General Business Law § 349; whether punitive damages are recoverable for breach of contract when defendant allegedly deceived a state regulator and plaintiff; whether an insurance contract must be construed based on the reasonable expectations of the average insured.

Calabrese v City of Albany (No. 125)

APL 2024-27

Municipal Corporations—Notice of Street Defect—Whether an electronic communication sent through the City of Albany's online public communication portal may serve as prior written notice of a road defect for the purpose of the prior written notice rule; whether expert testimony that a road defect came about due to pavement settling which occurred in the months following

an emergency road excavation created a triable issue of fact as to the affirmative creation exception to the prior written notice rule; whether the City's response to a subterranean water main break was in furtherance of a governmental function entitled to governmental tort immunity.