



NEWS

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SUMMARY OF CASES ACCEPTED DURING THE WEEK OF NOVEMBER 29, 2004

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The description or descriptions set out below do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#04-132 *Adams v. Los Angeles Unified School Dist.*, S127961. (B159310; unpublished opinion; Los Angeles County Superior Court; BC235667.) Petition for review after the Court of Appeal affirmed the judgment in a civil action.

#04-133 *Carter v. California Dept. of Veterans Affairs*, S127921. (E030908; 121 Cal.App.4th 840; San Bernardino County Superior Court; BCV03693.) Petition for review after the Court of Appeal reversed the judgment in a civil action.

Adams and *Carter* include the following issues: (1) Prior to its amendment by Statutes 2003, chapter 671, did the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.) impose a duty on an employer to take reasonable steps to prevent hostile environment sexual harassment of an employee *by a client* with whom the employee is required to interact? (2) If not, did the Legislature intend the 2003 amendment to apply retroactively to incidents that occurred prior to the effective date of the amendment? (3) If so, would application of the 2003 amendment to such cases violate the due process clause of the state or federal Constitution?

#04-134 *Copley Press, Inc. v. Superior Court*, S128603. (D042251; 122 Cal.App.4th 489; San Diego County Superior Court; GIC807922.) Petition for review after the Court of Appeal granted in part and denied in part a petition for peremptory writ of mandate. This case includes the following issue: When a request for information

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regarding a peace officer disciplinary proceeding is made under the California Public Records Act (Gov. Code. § 6250 et seq.), what information is protected from disclosure under Penal Code section 832.7 as a “personnel record”?

#04-135 *In re Marriage of Fellows*, S127874. (C044636; 121 Cal.App.4th 607; Shasta County Superior Court; 146580.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case includes the following issue: Does Family Code section 4502, subdivision (c), which was enacted in 2002 and provides that the defense of laches in an action to enforce a judgment for child support may be asserted only against the portion of the judgment owed the state, apply retroactively?

#04-136 *Ordlock v. Franchise Tax Bd.*, S127649. (B169465; 120 Cal.App.4th 1366, mod. 121 Cal.App.4th 973a; Los Angeles County Superior Court; BC278386.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issue: Does the four-year statute of limitations for issuing a notice of a proposed deficiency assessment (Rev. & Tax. Code, § 19057) preclude the Franchise Tax Board from imposing a deficiency assessment upon a taxpayer after the four-year period when the deficiency assessment is based upon a change in the taxpayer’s federal tax liability for the relevant tax year and the taxpayer failed to notify the Franchise Tax Board of the change? (See Rev. & Tax. Code, §§ 18622, 19059, 19060.)

#04-137 *People v. Wright*, S128442. (G031061; 121 Cal.App.4th 1356; Orange County Superior Court; 01WF2416.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. This case includes the following issue: Does the Compassionate Use Act (Health & Saf. Code, § 11362.5) afford a defense to a charge of transporting, as well as possessing, marijuana, and if so, under what circumstances?

#04-138 *People v. Butler*, S128657. (B167710; unpublished opinion; Los Angeles County Superior Court; MA023026.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses.

#04-139 *People v. Herod*, S128835. (B167962; unpublished opinion; Los Angeles County Superior Court; YA051893.) Petition for review after the Court of

Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses.

#04-140 *People v. Lemus*, S128771, (D042549; 122 Cal.App.4th 614; San Diego County Superior Court; SCS170426.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses.

#04-141 *People v. Sample*, S128561. (C044445; 122 Cal.App.4th 206; Sacramento County Superior Court; 01F07726.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

The court ordered briefing in *Butler*, *Herod*, *Lemus*, and *Sample* deferred pending decision in *People v. Black*, S126182 (#04-83) and *People v. Towne*, S125677 (#04-75), which include the following issues: (1) Does *Blakely v. Washington* (2004) __ U.S. __, 124 S.Ct. 2531, preclude a trial court from making findings on aggravating factors in support of an upper term sentence? (2) What effect does *Blakely* have on a trial court's imposition of consecutive sentences?

#04-142 *Grahn v. Exxon Mobil Corporation*, S128826. (A098818; unpublished opinion; San Francisco County Superior Court; 922682.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. The court ordered briefing deferred pending decision in *Kinsman v. Unocal Corporation*, S118561 (#03-132), which includes the following issue: Is a landowner's liability under *Rowland v. Christian* (1968) 69 Cal.2d 108 with respect to a concealed hazardous condition on its property limited by the principles of *Privette v. Superior Court* (1993) 5 Cal.4th 689 and its progeny where the concealed condition allegedly causes injury to an employee of an independent contractor hired by the landowner?

#04-143 *People v. Oates*, S128181. (E029354; 121 Cal.App.4th 1414; San Bernardino County Superior Court; FWV 018708.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Smith*, S123074 (#04-46), which presents the following issue: Was defendant properly convicted of two counts of attempted murder for firing a single shot toward two victims

on the theory that both victims were within the so-called “kill zone” at the time of the shooting? (See *People v. Bland* (2002) 28 Cal.4th 313.)

DISPOSITIONS

#04-112 *Blair v. Superior Court*, S126541, was dismissed in light of the decision of the Executive Committee of the Superior Court of Santa Barbara County to abandon the system of jury selection at issue in the litigation.

#04-114 *Grace v. eBay Inc.*, S127338, was dismissed on motion of plaintiff and appellant.

STATUS

#03-140 *City of Burbank v. State Water Resources Control Bd.*, S119248. The court limited the issues to be argued to the following issue: Does California’s Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) require a Regional Water Quality Control Board to take into account compliance costs when it sets specific pollutant limitations in a wastewater discharge permit issued to a publicly owned wastewater treatment facility?

#04-52 *People v. Seijas*, S123790. The court directed the parties to file supplemental briefs addressing the following issue: Did defendant preserve for appeal the claim that the trial court improperly permitted Jonathan G. to assert the privilege against self-incrimination?

#04-57 *Koebke v. Bernardo Heights Country Club*, S124179. The court directed the parties to file supplemental briefs addressing the following issue: What impact does Family Code section 297.5, operative January 1, 2005, have on plaintiffs’ claim of marital status discrimination under the Unruh Act?

#04-126 *John B. v. Superior Court*, S128248. The court directed the parties to brief the following issues in this case: (1) Under California law, must one actually know one has a sexually transmissible disease before one can be liable for failing to disclose that fact to a sexual partner (see *Doe v. Roe* (1990) 218 Cal.App.3d 1538)? (2) If actual knowledge is not the exclusive basis for liability, what circumstances short of actual knowledge—for example, willful, conscious, or reckless disregard, or absence of due

care in obtaining such knowledge—may constitute such a basis? (3) Did the discovery permitted by the Court of Appeal in the present case violate either traditional standards of discovery (e.g., relevance) or constitutionally protected rights of privacy, assuming that liability is (a) limited to actual knowledge or (b) is not limited to actual knowledge, but can be premised on such circumstances as willful, conscious, or reckless disregard, or absence of due care in obtaining such knowledge?