



# NEWS RELEASE

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## Summary of Cases Accepted During the Week of April 18, 2011

*[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 statement of the issue or issues in each case set out below does not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]*

**#11-39 *People v. Ahmed, S191020.*** (E049932; 191 Cal.App.4th 1407; Riverside County Superior Court; RIF145548.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of a criminal offense. This case presents the following issue: Does Penal Code section 654 apply to enhancements and thereby preclude imposition of the enhancements in this case for both personal use of a firearm and personal infliction of great bodily injury under circumstances involving domestic violence?

**#11-40 *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Assn., S190581.*** (F058434; 191 Cal.App.4th 611; Fresno County Superior Court; 08CECG01416.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case presents the following issue: Does the fraud exception to the parol evidence rule permit evidence of a contemporaneous factual misrepresentation as to the terms contained in a written agreement at the time of execution, or is such evidence inadmissible under *Bank of America National Trust & Savings Association v. Pendergrass* (1935) 4 Cal.2d 258, 263, as “a promise directly at variance with the promise of the writing”?

**#11-41 *People v. Estrada, S191196.*** (B221094; nonpublished opinion; Los Angeles County Superior Court; BA347251.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Branner, S179730* (#10-23), which presents the following

issues: (1) Did this court's opinion in *People v. McGaughran* (1979) 25 Cal.3d 577 survive the passage of Proposition 8? (2) Is defendant entitled to the retroactive application of *Arizona v. Gant* (2009) 556 U.S. \_\_\_ [129 S.Ct. 1710], in which the high court limited vehicle searches incident to the arrest of a recent occupant after the arrestee has been secured and cannot access the interior of the vehicle? (3) If so, did the Court of Appeal err by applying the good faith exception to the exclusionary rule?

**#11-42 *In re Loveless, S190625.*** (C062354; 192 Cal.App.4th 351; Placer County Superior Court; WHC0000894.) Petition for review after the Court of Appeal reversed an order granting relief on a petition for writ of habeas corpus. The court ordered briefing deferred pending decision in *In re Shaputis*, S188655 (#11-15), which presents the following issue: Did the Court of Appeal err in setting aside the denial of parole by the Board of Parole Hearings?

**#11-43 *In re Robert M., S191261.*** (F060094; 192 Cal.App.4th 329; Stanislaus County Superior Court; 512000.) Petition for review after the Court of Appeal affirmed orders in a juvenile wardship proceeding. The court ordered briefing deferred pending decision in *In re C.H.*, S183737 (#10-102), which presents the following issues: (1) Was minor ineligible for commitment to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice, because he was not found to have committed an offense enumerated in Welfare and Institutions Code section 707, subdivision (b), although his offense was enumerated in Penal Code section 290.008, subdivision (c)? (2) Assuming the juvenile court had the statutory authority to order such a commitment, did the court abuse its discretion in doing so on the ground there was no showing that minor would benefit from that commitment and because the court failed to adequately consider alternative placements?

**#11-44 *Villa Vicenza Homeowners Assn. v. Nobel Court Development, LLC, S190805.*** (D054550; 191 Cal.App.4th 963; San Diego County Superior Court; GIC871604.) Petition for review after the Court of Appeal affirmed an order denying a motion to compel arbitration in a civil action. The court ordered briefing deferred pending decision in *Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC*, S186149 (#10-127), which presents the following issues: (1) Is a homeowners association bound by an arbitration provision contained in the covenants, conditions and restrictions for a common interest development that were executed and recorded prior to the time the association came into existence? (2) Did the Court of Appeal err by applying the state law doctrine of unconscionability only to the arbitration provision, and not to other provisions in the covenants, conditions and restrictions, in light of federal law prohibiting the application of state law to treat arbitration provisions differently from other provisions of the same agreement? (See *Allied-Bruce Terminix Cos. v. Dobson* (1995) 513 U.S. 265.)

## **DISPOSITION**

The following case was transferred for reconsideration in light of *Cassel v. Superior Court* (2011) 51 Cal.4th 113:

**#10-85 *Porter v. Wyner*, S182788.**

## **STATUS**

**#10-25 *Howell v. Hamilton Meats & Provisions, Inc.*, S179115.** The court ordered the parties to submit supplemental briefs addressing the following issues, which the court also directed the parties to address at oral argument : (1) Assuming, for sake of argument, that only amounts that have been paid or remain owing to medical providers are recoverable as damages for past medical expenses, what evidence of such expenses is admissible in a jury trial? (2) Given defendant's concession that a jury properly hears evidence of "gross medical bills," should this court for guidance in other cases approve or disapprove the post-trial "*Hanif*" motion procedure used in the trial court?

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