



# NEWS

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## **SUMMARY OF CASES ACCEPTED DURING THE WEEK OF MARCH 1, 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.]

#04-14 *In re Marriage of Benson*, S122254. (B165252; 114 Cal.App.4th 835; Santa Barbara County Superior Court; 1043139.) Petition for review after the Court of Appeal affirmed the judgment in a marital dissolution action. This case presents the following issue: Although Family Code section 852, subdivision (a), requires an express declaration in writing to effect a transmutation of community property into the separate property of one spouse, may this statutory requirement be satisfied by proof of partial performance of an oral agreement to effect such a transmutation?

#04-15 *People v. Cole*, S121724. (D040475; 113 Cal.App.4th 956; San Diego County Superior Court; GIC783135.) Petition for review after the Court of Appeal affirmed in part and reversed in part an order issuing a preliminary injunction in a civil action. The court limited review to the following issue: Does the Knox-Keene Health Care Service Plan Act of 1975 (Health & Saf. Code, § 1340 et seq.) exempt approved providers under the Act from the limitations that Business and Professions Code sections 665 and 2556 otherwise impose on business and financial relationships between dispensing opticians and optometrists or ophthalmologists?

#04-16 *McClung v. State of California Employment Development Dept.*, S121568. (C034110; 113 Cal.App.4th 335; Sacramento County Superior Court; 98AS00092.) Petition for review after the Court of Appeal affirmed in part and reversed in part the

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judgment in a civil action. The court limited review to the following issue: Does Government Code section 12940, subdivision (j)(3)—a provision of the California Fair Employment and Housing Act (FEHA) enacted in 2000, which imposes personal liability on nonsupervisory coworkers who engage in harassment in violation of the FEHA—apply retroactively, despite the decision in *Carrisales v. Department of Corrections* (1999) 21 Cal.4th 1132, which held that FEHA, prior to the 2000 amendment, did not provide for such liability?

#04-17 *Varian Medical Systems, Inc. v. Delfino*, S121400. (H024214; 113 Cal.App.4th 273, mod. 113 Cal.App.4th 1103a; Santa Clara County Superior Court; CV780187.) Petition for review after the Court of Appeal affirmed modified and affirmed the judgment in a civil action. The court limited review to the following issue: Does an appeal from the denial of a special motion to strike under the anti-SLAPP statute (Code Civ. Proc., § 425.16) effect an automatic stay of the trial court proceedings?

#04-18 *Arakelian v. Conquest*, S121911. (B161037; unpublished opinion; Los Angeles County Superior Court; PC026575.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action.

#04-19 *Martinez v. Combs*, S121552. (B161773; unpublished opinion; San Luis Obispo County Superior Court; CV001029.) 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 in *Arakelian* and *Martinez* deferred pending decision in *Reynolds v. Bement*, S115823 (#03-95), which includes the following issue: Can the officers and directors of a corporate employer personally be held civilly liable for causing the corporation to violate the statutory duty to pay minimum and overtime minimum wages, either on the ground such officers and directors fall within the definition of “employer” in Industrial Welfare Commission Wage Order 9 or on another basis?

#04-20 *People v. Johnson*, S121712. (B163472; unpublished opinion; Los Angeles County Superior Court; TA065809.) 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. Mosby*, S104862 (#02-73), which presents the following issue: Was the trial court’s

failure to expressly advise defendant of his constitutional rights and to obtain a waiver of those rights before accepting his admission to a prior conviction allegation reversible error?

## STATUS

#03-159 *People v. Modiri*, S120238. The court directed the parties to address the following issue in their briefs: Is the so-called “group beating exception” (see *People v. Corona* (1989) 213 Cal.App.3d 589), as embodied in CALJIC No. 17.20, to the requirement of a finding of personal infliction of great bodily injury for purposes of enhancing a present or future sentence (see Pen. Code, §§ 667, subds. (a), (c), (d)(1), 1170.12, subds. (a), (b)(1), 1192.7, subd. (c)(8), 12022.7) inconsistent with *People v. Cole* (1982) 31 Cal.3d 568?

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