



# NEWS

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## **SUMMARY OF CASES ACCEPTED DURING THE WEEK OF OCTOBER 11, 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.]

#04-110 *People v. Adams*, S127373. (C040891; 120 Cal.App.4th 1065; Sacramento County Superior Court; 00F09421.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses.

#04-111 *People v. Cage*, S127344. (E034242; 120 Cal.App.4th 770; Riverside County Superior Court; RIF097168.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense.

*Adams* and *Cage* include the following issue: Are *all* statements made by an ostensible crime victim to a police officer in response to general investigative questioning “testimonial hearsay” within the meaning of *Crawford v. Washington* (2004) 541 U.S. \_\_\_, 14 S.Ct. 1354 and inadmissible in the absence of an opportunity to cross-examine the declarant, or does “testimonial hearsay” include only statements made in response to a formal interview at a police station?

#04-112 *Blair v. Superior Court*, S126541. (B171673; 119 Cal.App.4th 532, mod. 119 Cal.App.4th 1217d; Santa Barbara County Superior Court; 1074699.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case includes the following issues: (1) What is the proper test for determining whether defendant made a prima facie showing that Hispanic residents were not fairly represented on jury venires in Santa Barbara County? (2) Can the county’s facially race-

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neutral practice of permanently deeming unqualified for jury service any presumptively eligible person who fails to return a single jury questionnaire be found to constitute systematic exclusion of Hispanic residents of the county based on evidence that the practice results in disproportionate exclusion of such residents from jury service? (3) Is the local jury selection procedure at issue in this case consistent with the provisions of Code of Civil Procedure section 203, which set forth the permissible grounds for finding an individual ineligible for jury service?

#04-113 *General Motors Corp. v. Franchise Tax Bd.*, S127086. (B165665; 120 Cal.App.4th 114, mod. 120 Cal.App.4th 881e; Los Angeles County Superior Court; BC269404.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case includes the following issues: (1) In calculating the proportion of a unitary business group's income that is subject to California income tax under the Uniform Division of Income for Tax Purposes Act (Rev. & Tax. Code, § 251310 et seq.), are the "gross receipts" of sales of securities measured by the total sales price (including return of principal) or the net proceeds (not including return of principal)? (2) Is the credit allowed a taxpayer for research expenses available to offset the tax liability of any member of a unitary business group or only the tax liability of the particular corporate member of the group that incurred the expense?

#04-114 *Grace v. eBay Inc.*, S127338. (B168765; 120 Cal.App.4th 984; Los Angeles County Superior Court; BS288836.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issue: Does the Communications Decency Act (47 U.S.C. § 230) confer immunity on interactive computer services, such as eBay, from liability for publishing or distributing defamatory statements posted by third parties?

#04-115 *People v. Pokovich*, S127176. (C043253; 120 Cal.App.4th 436; Shasta County Superior Court; 02F2465.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the following issue: May a defendant be impeached at trial with statements made during a compelled competency examination?

#04-116 *In re Marriage of Rosendale*, S126908. (G031925; 119 Cal.App.4th 1202; Orange County Superior Court; 00D000542.) Petition for review after the Court of Appeal affirmed in part and reversed in part an order in a marital dissolution action. This case includes the following issue: May a waiver of spousal support in a premarital agreement be found unenforceable on the ground that enforcement of the waiver would be unconscionable at the time enforcement of the waiver is sought, when (1) the waiver is contained in an agreement entered into before the effective date of the recently enacted Family Code section 1612, subdivision (c), (2) the waiver was negotiated by the parties, and (3) both parties to the premarital agreement were represented by counsel?

#04-117 *People v. Pok*, S127007. (B166394; unpublished opinion; Los Angeles County Superior Court; SA043631.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Lopez*, S119294 (#03-136), which presents the following issue: Is a defendant who is convicted of first degree murder with a finding that the crime was committed for the benefit of a criminal street gang within the meaning of Penal Code section 186.22 subject to an enhancement of 10 years under section 186.22, subdivision (b)(1)(C) or instead to a minimum parole eligibility term of 15 years under section 186.22, subdivision (b)(5), which applies where the defendant is convicted of “a felony punishable by imprisonment in the state prison for life”?

## **DISPOSITIONS**

#03-37 *People v. Hilger*, S113526, , was transferred to the Court of Appeal for reconsideration in light of *People v. Arnold* (2004) 33 Cal.4th 294 and *People v. Jeffrey* (2004) 33 Cal.4th 312.

#03-131 *People v. Valdez*, S117778, was transferred to the Court of Appeal for reconsideration in light of *People v. Taylor* (2004) 32 Cal.4th 863.

#03-139 *Finke v. Walt Disney Co.*, S118936, was dismissed in light of the settlement of the action.

The following cases were dismissed:

#01-119 *In re Walter S.*, S099120.

#02-183 *People v. Sanchez*, S110263.

#02-195 *In re Rene O.*, S110636.  
#03-08 *People v. Ayele*, S111522.  
#03-18 *In re Adrian R.*, S111812.  
#03-19 *People v. Walters*, S112291.  
#03-21 *Trumble v. Superior Court*, S112339.  
#03-22 *Whatley v. Superior Court*, S112361.  
#03-24 *People v. Garcia*, S112688.  
#03-74 *People v. Campbell*, S115020.  
#04-06 *People v. Cantu*, S120585.

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