



Supreme Court of California
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NEWS RELEASE

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FOR IMMEDIATE RELEASE

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Summary of Cases Accepted and Related Actions During Week of March 20, 2017

[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.]

#17-96 *Moalem v. Gerard, S239434*. (B268963; nonpublished opinion; Los Angeles County Superior Court; BC583236.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issues: (1) Is negligent or intentional action a necessary element of a cause of action for abatement of a natural condition-private nuisance based on a failure or omission to act and, if so, should tree encroachment cases be exempted from this rule? (2) Assuming negligence is required, can negligence be demonstrated under the circumstances of this case? Does it matter that defendant owned both parcels of land when the tree was maturing? (3) Who should bear the expense of tree removal when it is infeasible to remove only the encroaching parts of an otherwise healthy tree that overhangs a neighbor's premises? Should the tree owner be compensated for the loss of an otherwise healthy tree that is found to create a nuisance? (4) When, if ever, is it proper for a defendant to raise the issue of comparative negligence in a private nuisance action? (See *Tint v. Sanborn* (1989) 211 Cal.App.3d 1225; *Kafka v. Bozio* (1923) 191 Cal. 746, 748.) Is the fact that part of the subject tree was encroaching on the property before plaintiffs purchased it a relevant consideration?

#17-97 *National Shooting Sports Foundation, Inc. v. State of California, S239397*. (F072310; 6 Cal.App.5th 298; Fresno County Superior Court; 14CECG00068.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) Can a statute be challenged on the ground that compliance with it is allegedly impossible? (2) If so, how is the trial court to make that determination?

#17-98 *Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism, S239777*. (G052660; 6 Cal.App.5th 1207; Orange County Superior Court; 30-2013-

00665314.) Petition for review after the Court of Appeal affirmed an order denying a special motion to strike. This case presents the following issues: (1) May a motion to strike under the anti-SLAPP statute be brought against any claim in an amended complaint, including claims that were asserted in prior complaints? (2) Can inconsistent claims survive an anti-SLAPP motion if evidence is presented to negate one of the claims?

#17-99 *Pitzer College v. Indian Harbor Ins. Co.*, S239510. (9th Cir. No. 14-56017; 845 F.3d 993; Central District of California; 2:13-cv-05863-GW-E.) Request under California Rules of Court, rule 8.548, that this court decide questions of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. As restated by the court, the questions presented are: (1) Is California's common law notice-prejudice rule a fundamental public policy for the purpose of choice-of-law analysis? (2) If the notice-prejudice rule is a fundamental public policy for the purpose of choice-of-law analysis, can the notice-prejudice rule apply to the consent provision in this case?

#17-100 *People v. Bennett*, S240053. (F071015; nonpublished opinion; Kern County Superior Court; SF015228A.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence.

#17-101 *People v. Campbell*, S240025. (B264913; nonpublished opinion; Los Angeles County Superior Court; BA183776.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence.

The court ordered briefing in *Bennett* and *Campbell* deferred pending decision in *People v. Chaney*, S223676 (#15-13), and *People v. Valencia*, S223825 (#15-14), which present the following issue: Does the definition of "unreasonable risk of danger to public safety" (Pen. Code, § 1170.18, subd. (c)) under Proposition 47 ("the Safe Neighborhoods and Schools Act") apply on retroactivity or other grounds to resentencing under the Three Strikes Reform Act of 2012 (Pen. Code, § 1170.126)?

#17-102 *People v. Corder*, S239594. (B261370; nonpublished opinion; Los Angeles County Superior Court; PA073839.) Petition for review after the Court of Appeal affirmed judgments of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Mateo*, S232674 (#16-147), which presents the following issue: In order to convict an aider and abettor of attempted willful, deliberate and premeditated murder under the natural and probable consequences doctrine, must a premeditated attempt to murder have been a natural and probable consequence of the target offense? In other words, should *People v. FAVOR* (2012) 54 Cal.4th 868 be reconsidered in light of *Alleyne v. United States* (2013) ___ U.S. ___ [113 S.Ct. 2151] and *People v. Chiu* (2014) 59 Cal.4th 155?

#17-103 *People v. Garcia, S239826.* (B259708; nonpublished opinion; Los Angeles County Superior Court; YA080092.) 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. Canizales*, S221958 (#14-134), which presents the following issue: Was the jury properly instructed on the “kill zone” theory of attempted murder?

#17-104 *People v. Lopez, S239567.* (B267494; 6 Cal.App.4th 494, mod. 7 Cal.App.5th 179a; Los Angeles County Superior Court; KA109301.) 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. Maita*, S230957 (#16-40), which presents the following issue: In light of an amendment to Health and Safety Code section 11379 defining “transports” as transportation for sale (Stats. 2013, ch. 504, § 2), was defendant’s sentence improperly enhanced with a prior conviction for transporting a controlled substance?

#17-105 *People v. Martinez, S239744.* (B263067; nonpublished opinion; Los Angeles County Superior Court; LA077972.) 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. Page*, S230793 (#16-28), which presents the following issue: Does Proposition 47 (“the Safe Neighborhoods and Schools Act”) apply to the offense of unlawful taking or driving a vehicle (Veh. Code, § 10851), because it is a lesser included offense of Penal Code section 487, subdivision (d), and that offense is eligible for resentencing to a misdemeanor under Penal Code sections 490.2 and 1170.18?

#17-106 *People v. Mendoza, S239436.* (F070324; nonpublished opinion; Kern County Superior Court; BF149024A, BF153404A.) 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. Ruiz*, S235556 (#16-312), which presents the following issue: May a trial court properly impose a criminal laboratory analysis fee (Health & Saf. Code, § 11372.5, subd. (a)) and a drug program fee (Health & Saf. Code, § 11372.7, subd. (a)) based on a defendant’s conviction for conspiracy to commit certain drug offenses?

#17-107 *People v. Meraz, S239442.* (B245657; 6 Cal.App.5th 1162; Los Angeles County Superior Court; PA065446.) Petition for review after the Court of Appeal modified and affirmed judgments of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Arzate*, S238032 (#17-32) and *People v. Padilla*, S239454 (#17-34), which present issues as to the requirements under *Montgomery v. Louisiana* (2016) 577 U.S. ___, 136 S.Ct. 718, 193 L.Ed.2d 599, *Miller v.*

Alabama (2012) 567 U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407, for imposing a sentence of life imprisonment without possibility of parole on a juvenile offender.

#17-108 *People v. Sandoval*, S240119. (H041939; nonpublished opinion; Santa Clara County Superior Court; C1481874.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *In re Ricardo P.*, S230923 (#16-41), which presents the following issue: Did the trial court err imposing an “electronics search condition” on minor as a condition of his probation when it had no relationship to the crimes he committed but was justified on appeal as reasonably related to future criminality under *People v. Olguin* (2008) 45 Cal.4th 375 because it would facilitate his supervision?

#17-109 *Stand Up for California! v. State of California*, S239630. (F069302; 6 Cal.App.5th 686; Madera County Superior Court; MCV062850.) Petition for review after the Court of Appeal reversed the judgment in a action for writ of administrative mandate. The court ordered briefing deferred pending decision in *United Auburn Indian Community of Auburn Rancheria v. Brown*, S238544 (#17-35), which presents the following issue: May the Governor concur in a decision by the Secretary of the Interior to take off-reservation land in trust for purposes of tribal gaming without legislative authorization or ratification, or does such an action violate the separation of powers provisions of the state Constitution?

DISPOSITIONS

Review in the following case, which was granted and held for *People v. Financial Casualty & Surety, Inc.* (2016) 2 Cal.5th 35, was dismissed:

#15-194 *People v. Accredited Surety & Casualty Co., Inc.*, S229271.

The following case was transferred for reconsideration in light of *Kesner v. Superior Court* (2016) 1 Cal.5th 1132:

#15-10 *Beckering v. Shell Oil*, S223526.

The following case was transferred for reconsideration in light of *People v. Hall* (2017) 2 Cal.5th 494:

#16-366 *In re Ana C.*, S237208.

Review in the following cases, which were granted and held for *People v. Hall* (2017) 2 Cal.5th 494, was dismissed:

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| <i>#14-111 In re A.S., S220280.</i> | <i>#16-140 People v. Moore, S232851.</i> |
| <i>#15-178 People v. Fisch, S227665.</i> | <i>#16-234 In re R.C., S234295.</i> |
| <i>#15-187 People v. Guzman, S229205.</i> | <i>#16-243 In re E.N., S234928.</i> |
| <i>#15-206 People v. Endicott, S229265.</i> | <i>#16-302 People v. Nice, S235635.</i> |
| <i>#15-230 In re Jonathan L., S230301.</i> | <i>16-329 In re Larry N., S236327.</i> |
| <i>#16-03 People v. Chiang, S230961.</i> | <i>#16-419 In re D.W., S238034.</i> |
| <i>#16-55 People v. Gaines, S231723.</i> | <i>#17-04 People v. Bishop, S238344.</i> |
| <i>#16-96 People v. Schneider, S232382.</i> | <i>#17-05 People v. Perez, S238688.</i> |

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The Supreme Court of California is the state's highest court and its decisions are binding on all other California state courts. The court's primary role is to decide matters of statewide importance and to maintain uniformity in the law throughout California by reviewing matters from the six districts of the California Courts of Appeal and the fifty-eight county superior courts (the trial courts). Among its other duties, the court also decides all capital appeals and related matters and reviews both attorney and judicial disciplinary matters.