

SUPREME COURT OF KENTUCKY

DISCRETIONARY REVIEW GRANTED
(Pending Cases Only)

DISCRETIONARY REVIEW GRANTED 9/13/06

Chappell v. Kuhlman Electric Corporation, 2006-SC-140-DG and Kuhlman Electric Corporation v. Chappell, 2006-SC-144-DG

Professional Negligence. Damages. In this legal malpractice action, issues include: (1) whether the fiduciary duties of an attorney retained by an insurer to represent an insured employer in the reopening of a prior workers' compensation proceeding also extend to the employer in its current capacity as self-insured; and, if so, (2) whether the insured sustained damages as a result of the attorney's placing the interests of the insurer (or the employer as an insured) ahead of those of the employer in its capacity as self-insured.

Oral argument-October 2008

DISCRETIONARY REVIEW GRANTED 6/13/07

Jenkins v. Commonwealth, 2007-SC-248-DG

Criminal Law. Child Sexual Abuse. KRE 702. Issues include application of KRE 702 to the admissibility of proffered expert testimony from a forensic psychologist concerning interview techniques and their impact upon reliability of allegations of child sexual abuse.

Oral argument-June 2008

DISCRETIONARY REVIEW GRANTED 8/15/07

Commonwealth v. McCombs, 2007-SC-127-DG

Criminal Law. Double Jeopardy. Issues include: (1) whether double jeopardy protection precludes conviction of both first-degree burglary and

fourth-degree assault when the same injury is used to prove both offenses; and (2) whether the physical-injury element of first-degree burglary implies a culpable mental state.

Oral argument-November 2008

DISCRETIONARY REVIEW GRANTED 8/15/07 and CROSS MOTION GRANTED 10/24/07

Rose v. Commonwealth, 2007-SC-123-DG and (Cross Motion)

Commonwealth v. Rose, 2007-SC-603-DG

Criminal Law. Search and Seizure. Search Incident to Arrest. Where automobile passenger was arrested on bench warrants, and her purse and similar personal containers remained in the car, and driver consented to search of car, issues include whether warrantless search of passenger's purse and other items was unlawful, requiring suppression of evidence discovered within containers.

DISCRETIONARY REVIEW GRANTED 1/16/08

Branham v. Stewart, 2007-SC-250-DG

Professional Negligence. Attorney and Client. Infants. Guardian and Ward. Issues include whether malpractice suit may be brought by former infant and ward against attorney who represented former next friend and guardian.

Oral argument-December 2008

DISCRETIONARY REVIEW GRANTED 4/13/07 and CROSS-MOTION GRANTED 2/13/08

Sprint v. Leggett, 2005-SC-1023-DG, and (Cross-Motion) Leggett v. Sprint, 2007-SC-273-DG

Abuse of Process. Eminent Domain. Discovery. Issues include whether telephone company's attempted use of eminent domain statute to acquire building constitutes abuse of process.

Oral argument-December 2008

DISCRETIONARY REVIEW GRANTED 2/13/08 and CROSS MOTIONS GRANTED 4/16/08

Solinger v. Pearson, 2007-SC-389-DG, and Norton Hospital, Inc. v. Pearson, 2007-SC-414-DG and (Cross-Motions) Pearson v. Solinger, 2008-SC-133-DG, and Pearson v. Norton Hospital, Inc., 2008-SC-134-DG Civil Procedure. Summary Judgment. Expert Witnesses. Issues in this medical malpractice action include whether the trial court erred in entering summary judgment in favor of the defendants after the then-*pro se* plaintiff failed to disclose timely her expert witnesses.

Oral argument-April 2009

DISCRETIONARY REVIEW GRANTED 4/16/08

Blue Movies, Inc., d/b/a Love Boutique, et al. v. Louisville/Jefferson County Metro Government, 2007-SC-812-DG

First Amendment. Adult Entertainment. Twenty-First Amendment. Issues include the constitutionality of certain provisions regulating adult entertainment establishments, particularly a provision prohibiting alcohol sales, a provision requiring disclosure of principal owners and a “no touching” provision.

Oral argument-February 2009

DISCRETIONARY REVIEW GRANTED 4/16/08 AND CROSS MOTION GRANTED 6/11/08

Calor v. Ashland Hospital Corp., 2007-SC-573-DG and (cross motion) Ashland Hospital Corp. v. Calor, 2008-SC-317-DG

Defamation. Qualified Privilege. Interference with Contractual Relations. Instructions. Golden Rule Argument. Damages. In this case involving claims of defamation and interference with contractual relations, issues include whether the “common-interest” qualified privilege was abused; whether defendants were entitled to judgment on grounds of “statements of opinion” and “statements of truth”; whether jury was improperly instructed; whether counsel engaged in improper “Golden Rule” argument to jury; and whether damages awarded were excessive.

Oral argument-March 2009

DISCRETIONARY REVIEW GRANTED 08/13/08

Smith v. Commonwealth, 2008-SC-60-DG

Criminal Law. Search and Seizure. Miranda Warnings. Custody Determination. Issues include the admissibility of incriminating statements where the defendant was handcuffed but not Mirandized, and specifically whether the holding in Taylor v. Commonwealth, 182 S.W.3d 521 (Ky. 2006) that handcuffing a suspect does not necessarily constitute "custody" for Miranda purposes should be re-evaluated. Also at issue is the breadth of the safety exception which prevents questions from being deemed "interrogation."

Oral argument-October 2009

Cochran v. Commonwealth, 2008-SC-95-DG

Criminal Law. Maternal Health Act. Prenatal Conduct/Postnatal Injury. The primary issue concerns whether the offense of wanton endangerment may extend to a pregnant woman who ingests drugs during pregnancy, which results in postnatal injury.

Oral argument-December 2009

Hobson v. Commonwealth, 2007-SC-645-DG

Criminal Law. Robbery. Issues include whether escape stage occurs "in the course of committing theft" under KRS 515.020.

Oral argument-October 2009

DISCRETIONARY REVIEW GRANTED 5/14/08 and CROSS MOTION GRANTED 9/10/08

Hill v. Kentucky Lottery Corporation, 2006-SC-748-DG and (Cross Motion) Kentucky Lottery Corporation v. Hill, 2008-SC-380-DG

Defamation. Privilege. Post-Judgment Interest. Civil Procedure. Issues involve the privilege defense to a defamation claim, assessment of a reduced rate of post-judgment interest, and whether the appeal was timely.

Oral argument-June 2009

DISCRETIONARY REVIEW GRANTED 9/10/08

Jewell v. Ky. School Bd. Assoc., 2008-SC-244-DG

Insurance. UIM Coverage. Basic Reparation Benefits. Subrogation. Double Recovery. Workers Compensation. Issues include the proper prioritization of claims against workers' compensation carrier, no-fault carrier, and UIM carrier.

Oral argument-March 2009

DISCRETIONARY REVIEW GRANTED 10/15/08

Haney v. Monskey, 2008-SC-337-DG

Qualified Official Immunity. Issue is whether a counselor for the Louisville Zoo's children's camp was performing ministerial or discretionary function when carrying out the "night hike" activity with a group of children.

Oral argument-May 2009

Kirby v. Commonwealth, 2007-SC-833-DG

Criminal Law. Violent Offenders. KRS 439.3401. KRS 533.060. At issue is application of the domestic violence exemption from violent offender parole eligibility restrictions for a son who killed a cousin who had attacked his mother.

Oral argument-September 2009

DISCRETIONARY REVIEW GRANTED 12/10/08

Watkins v. Commonwealth, 2008-SC-567-DG

Criminal Law. Standing. Search and Seizure. Abandonment. Issues include whether a suspect's immediate flight from a vehicle after being pulled over constitutes abandonment and thereby deprives the suspect of standing to contest the subsequent search of the vehicle.

Oral argument-November 2009

DISCRETIONARY REVIEW GRANTED 1/14/09

Fluke Corp. v. LeMaster, 2008-SC-530-DG

Statute of Limitations. Equitable Tolling. Issues include whether failure to report product safety concerns to federal regulatory agency estops defendant from invoking statute of limitations defense to a claim for injuries caused by the product.

Oral argument-December 2009

Mullins v. Picklesimer, 2008-SC-484-DGE

Child Custody. Issues include whether the biological mother waived her superior right of custody, thus permitting a joint custody award by having acknowledged her same sex partner as a parent of the child, co-parenting

the child prior to separation of the couple and later allowing extensive time-sharing and visitation with the child.

Oral argument-April 2009

James v. James, 2008-SC-163-DG

Civil Procedure. Appeals. CR 60.02. CR 73.02(1)(d). Issues include whether relation forward doctrine applies to prematurely filed notice of appeal.

Oral argument-November 2009

DISCRETIONARY REVIEW GRANTED 11/19/08 AND CROSS-MOTION GRANTED 1/14/09

Commonwealth v. Lake, 2008-SC-129-DG and (Cross-Motion)

Lake v. Commonwealth, 2008-SC-876-DG

Juvenile Code. Youthful Offenders. RCr 11.42. Issues include whether juvenile charged with murder effectively waived preliminary transfer hearing in district court before being transferred to circuit court for indictment and trial as an adult under KRS 640.010; and whether offender is entitled to relief on allegations that trial counsel was ineffective and that witness committed perjury at trial.

Oral argument-January 2010

DISCRETIONARY REVIEW GRANTED 1/14/09 and CROSS-MOTION GRANTED 2/11/09

CSX Transportation, Inc. v. Moody, 2007-SC-548-DG and

(Cross-Motion) Moody v. CSX Transportation, Inc., 2009-SC-48-DG

Personal Injury. Exposure to Toxic Substances. Evidence. Instructions. Issues involve the propriety of (1) admission of a study of similar injuries experienced by other workers exposed to the same substance and (2) refusal to give various substantive FELA instructions. Additional issues raised on cross-motion involve the timeliness of the appeal and the sufficiency of the evidence to support the award for future medical expenses.

Oral argument-January 2010

DISCRETIONARY REVIEW GRANTED 2/11/09

Buck v. Commonwealth, 2008-SC-896-DG

Criminal Law. Ex Post Facto. The issue is whether the 2006 Amendments to the Sex Offender Registration Act violate Ex Post Facto provisions of the United States and Kentucky Constitution.

Oral argument-January 2010

Chipman v. Commonwealth, 2008-SC-895-DG

Juvenile Law. Sentencing. Indictments. This case presents two issues: (1) Must the trial court always sentence youthful offenders as adults where the district court automatically transferred the minor because of a "use of a gun" allegation; and (2) What role do the findings of the Grand Jury in the indictment or some other source determine the basis for transfer?

Oral argument-December 2009

Members Choice Credit Union et. Al. v. Home Federal Savings and Loan Association, 2008-SC-877-DG

Credit Unions. Statutory Construction. The issue is whether KRS 286.6-107(2) permits membership in a credit union predicated on where a person lives ("geographic field of membership.")

Oral argument-November 2009

Commonwealth of Kentucky v. Marshall, 2008-SC-894-DG

Criminal Law. Search and Seizure. Due Process. The issue is whether prior to arrest, subsequent to a *Terry* pat down, a police officer can partially remove a defendant's pants and underwear to retrieve what he believes are drugs.

Oral argument-March 2010

Kentucky Retirement Systems v. Brown, 2008-SC-326-DG and Kentucky Retirement Systems v. Sizemore, 2008-SC-898-DG and (Cross Motion) Sizemore v. Kentucky Retirement Systems, 2009-SC-174-DG

Kentucky Administrative Law. Disability Retirement. Issues include whether courts below improperly shifted burden of proof regarding disability-retirement applicant's alleged pre-existing condition and usurped the role of the fact-finder; and whether applicant's history of cigarette-smoking constituted a pre-existing "condition" for purposes of KRS 61.600(3)

Oral argument-April 2010

CSX Transportation, Inc. v. Begley, 2008-SC-643-DG

Federal Employers' Liability Act. Jury Instructions. Issues include whether defendant employer in FELA action was entitled to have jury instructed on proximate cause; foreseeability; non-taxability of damage award; and discounting award for future pain and suffering to present value.

Oral argument-January 2010

Hollon v. Commonwealth, 2008-SC-618-DG

Criminal Law. Post-Conviction Proceedings. Ineffective Assistance. Issues include whether ineffective assistance of appellate counsel claims should be recognized.

Oral argument-April 2010

Cincinnati Ins. Co. v. Motorists Mutual Ins. Co., 2008-SC-293-DG

Insurance. Property damage. Contractors. At issue is whether contractual recovery may be premised upon a builder's substandard work.

Oral argument-November 2009

Spencer v. Estate of Spencer, 2008-SC-191-DG, and Estate of Spencer v. Spencer, 2008-SC-196-DG

Joint Accounts. Multiple Party Accounts Act. KRS 391.315(1)(a). Issues include whether a joint brokerage account is a joint account for purposes of KRS 391.315(1)(a), which provides the sums remaining on the death of one party go to the surviving party as against the estate.

Oral argument-November 2009

DISCRETIONARY REVIEW GRANTED 3/11/09

Finn v. Commonwealth, 2008-SC-749-DG

Criminal Law. Possession of Cocaine. Possession of Drug Paraphernalia. The issue is whether an amount of cocaine too small to be seen by the naked eye, detected on paraphernalia, is insufficient to support a conviction for possession of "any quantity" of cocaine pursuant to KRS 218A.1415(1).

Oral argument-April 2010

John Hicks, In His Official Capacity as State Budget Director v. American Express Travel Related Services Co., Inc., ET AL., 2008-SC-904-DG

Appellate Procedure. Is listing a party in the Notice of Appeal's caption but including language in the Notice of Appeal's body specifically excluding the

party "as one against whom the appeal is taken" substantial compliance under CR 73.03. Is naming an official's department in the Notice of Appeal's caption sufficient to confer jurisdiction over the official in his official capacity?

Oral argument-December 2009

Commonwealth ex rel. Conway v. Reinhold, 2008-SC-839-DG

Insurance. Does the "Medi-Share" plan constitute "insurance" as defined by KRS 304.1-030 and, if so, is it exempt as a KRS 304.1-120(7) "religious publication"?

Oral argument-January 2010

Sexton v. Commonwealth, 2008-SC-731-DG

Criminal Law. Tampering with Evidence. Sufficiency of Evidence. Prior Bad Acts. Issues include whether evidence-tampering conviction may stand where videotape evidence was allegedly exculpatory rather than inculpatory. Also at issue is the propriety of allowing into evidence prior sexual offense convictions under KRE 404(b).

Oral argument-April 2010

Weird v. Emberton, 2008-SC-372-DG

Appellate Procedure. Filing of Appeal. At issue is whether an otherwise one-day late notice of appeal was rendered timely by the early closure of the Jefferson County Circuit Clerk's Office for the Derby parade on the due date.

DISCRETIONARY REVIEW GRANTED 4/15/09

Commonwealth Cabinet for Health and Family Services v. L.J.P., 2008-SC-950-DGE

Termination of Parental Rights. Intervention. Issues involve an attempt by paternal grandparents to intervene in an involuntary termination of parental rights action.

Oral argument-August 2009

Ky. River Medical Center, et. Al. v. McIntosh, 2008-SC-464-DG

Open and Obvious Doctrine. Slip and Fall. The issue is whether a hospital is liable for injuries to a paramedic who tripped over an unpainted curb while transporting a patient into the hospital.

Oral argument-March 2010

The Kroger Co./Country Oven Bakery v. Buckley, 2008-SC-415-DG
Intentional Infliction of Emotional Distress. Disability Discrimination. Law of the Case doctrine. The issue is whether an appellate court can resurrect a claim dismissed as pre-empted by a previous panel of the appellate court in light of the "law of the case" doctrine.

Oral argument-December 2009

Saiko v. Jefferson County Board of Education., et. Al., 2009-SC-21-DG
Notice. The issue is whether a teacher's fax to general counsel for the school board followed by certified letters mailed on the tenth day but received on the eleventh day complies with the provisions of KRS 161.790 (3) which affords school teachers the right to appeal their termination.

Oral argument-January 2010

Thrasher v. Durham, 2008-SC-809-DG
Evidence. Admissibility and Authentication of Documents. Issues include whether documents produced during discovery are deemed authenticated by virtue of their production or whether additional authentication is required where documents were part of the file compiled by the defendant's former attorney in a prior lawsuit.

Oral argument-December 2009

Coomer v. CSX Transportation, Inc., 2008-SC-784-DG
FELA. Res Judicata. Issue Preclusion. Issues include whether FELA claim is barred by virtue of plaintiff's prior FELA claim against same defendant where different injuries and different mechanisms of injury are asserted.

Oral argument-April 2010

The Public Service Commission of Kentucky v. Commonwealth of Kentucky, 2008-SC-483-DG

AND

The Union Light, Heat, and Power Company, n/k/a Duke Energy Kentucky, Inc. v. Commonwealth of Kentucky, 2008-SC-489-DG

Utilities. Public Service Commission. Tariffs. Issues include whether economic-development riders to utility's rate schedule are lawful under KRS 278.170 and KRS 278.030.

Oral argument-March 2010

Machniak v. Commonwealth, 2008-SC-352-DG

Criminal Law. Sentencing. Finality of Sentences. Double Jeopardy. At issue is plea agreement in which defendant agreed to increasing sentence if probation terms were violated.

Oral argument-April 2010

Louisville Gas and Electric Co. v, Hardin & Meade County Property Owners for Co-location, 2008-SC-348-DG to be heard with Kentucky Public Service Commission v. Hardin & Meade County Property Owners for Co-location, 2008-SC-354-DG

Public Utilities. Civil Procedure. Issues include requirements for enlargement of ten-day time period for designation of record under KRS 278.420.

Oral argument-March 2010

DISCRETIONARY REVIEW GRANTED 5/13/09

Saxton v. Commonwealth of Kentucky, 2008-SC-899-DG

Criminal Law. Trafficking in a Controlled Substance within 1,000 Yards of a School. Culpable Mental State. Entrapment. Issues include whether conviction under KRS 218A.1411 requires proof that defendant knew drug transaction was occurring within 1,000 yards of a school; and whether conviction reflected palpable error and manifest injustice because police informants designated location of transaction, although issue of entrapment was not raised at trial.

Oral argument-January 2010

Bryant v. Pulaski County Detention Center, 2009-SC-36-DG

Qualified Official Immunity. Issues include whether a governmental employee may assert qualified immunity in a lawsuit brought by a prisoner, where the prisoner was physically injured by the governmental employee's acts of "horseplay" or teasing of the prisoner while supervising him on work release detail.

Oral argument-March 2010

Racing Investment Fund 2000 v. Clay Ward Agency, 2009-SC-7-DG

Contempt. Limited Liability Companies. Satisfaction of Judgment. Issues include the trial court's authority to use its contempt power to compel satisfaction of a judgment against an L.L.C., forcing the L.L.C.'s to make a capital call for the amount of the judgment per the Operating Agreement executed by the L.L.C. members.

Oral argument-March2010

Gamble v. Commonwealth, 2008-SC-669-DG

Criminal Law. Robbery, First-Degree. The issue is whether a defendant's written and verbal statements about having a gun, without brandishing it or pointing to unidentifiable bulges on the defendant's person constitutes Robbery, First-Degree.

Oral argument-April 2010

Louisville Metro Health Dept. v. Highview Manor Assoc., LLC., 2008-SC-599-DG

Administrative Law. District Court's Jurisdiction. The issue involves the scope of the district court's authority to review a decision of a local code enforcement board pursuant to KRS 65.8831.

Lichtenstein v. Barbanel, 2008-SC-661-DG

Family Law. Wage Garnishment. The issue is whether the trial court can issue an Income Withholding Order to enforce a judgment based on property division.

Kentucky Retirement Systems v. Sizemore, 2008-SC-898-DG & 2009-SC-174-DG

Disability Claims. Pre-existing Condition. Burden of Proof. Retirement Disability. Total and Permanent Incapacity. The issues are 1. whether the courts below have improperly shifted the burden of proof regarding proof of a pre-existing condition; 2. whether multiple sclerosis qualifies as a pre-existing condition; 3. whether the courts have improperly substituted their judgment as to the weight of the evidence for that of the fact finder, and 4. whether substantial evidence supports the Retirement System's decision that Ms. Sizemore failed to establish total and permanent incapacity as related to her request for retirement benefits based on "relapsing-remitting" multiple sclerosis.

Oral argument-April 2010

Cromwell Louisville Assoc. Limited Partnership v. Commonwealth of Kentucky, Jefferson County Property Valuation Adm. 2008-SC-644-DG
Property Taxes. Administrative Law. The issue is whether the taxpayer loses the right to a refund if he fails to appeal a Property Valuation Administration assessment by failing to conference with PVA during the 13 day inspection period held during the same tax year.

Oral argument-March 2010

DISCRETIONARY REVIEW GRANTED 6/17/09

Davis et al. v. Scott et al., 2009-SC-159-DG

Assignment of proceeds from legal malpractice claim. Summary Judgment. The issues are: 1. whether Kentucky should allow parties to assign a portion of the proceeds from a legal malpractice claim; 2. whether the trial court properly grants summary judgment where the parties present conflicting evidence as to whether the assignment was an assignment of a legal malpractice claim or an assignment of a portion of the proceeds and who controls the litigation, and 3. even if a party cannot assign a portion of the proceeds from the claim, can the party proceed with the malpractice litigation?

Commonwealth of Kentucky v. Wanda Combs, 2009-SC-143-DG

Criminal Law. Complicity. Variance. Can the jury convict a defendant as a principal where the indictment only charges the defendant with complicity?

Oral argument-March 2010

Baston v. County of Kenton, Kentucky, ex rel. Kenton County Airport Board, 2008-SC-319-DG

Eminent Domain. Compensation. Evidence. Issues include whether trial court properly admitted condemnee's evidence regarding change in fair market value of condemned property pursuant to KRS 416.660(2), and whether condemnee presented sufficient evidence to permit jury to award compensation based upon potential industrial use of property.

Oral argument-April 2010

Blackstone Mining Co. v. The Travelers Ins. Co., 2009-SC-15-DG

Workers Compensation. Rejection Notices. Summary Judgment. Burden of Proof. In controversy between employer and workers' compensation insurer concerning payment of premiums, issues include whether employee's filed notice of rejection is presumed to be voluntary, placing on

the insurer the burden to present evidence that it is not, or whether the employer must prove that the notice is voluntary even in the absence of contrary evidence.

Oral argument-April 2010

**DISCRETIONARY REVIEW GRANTED 6/17/09 AND
CROSS-MOTION GRANTED 8/19/09**

Schnuerle v. Insight Communications Company, L.P.,
2008-SC-789-DG and (Cross-Motion) Insight Communications Company,
L.P. v. Schnuerle, 2009-SC-390-DG

Contracts. Arbitration. Issues include the validity of mandatory dispute resolution contract clauses barring consumer class actions.

DISCRETIONARY REVIEW GRANTED 8/19/09

Davis et al. v. Scott et al., 2009-SC-159-DG & 2009-SC-391-DG

Assignment of proceeds from legal malpractice claim. Summary Judgment. The issues are: 1. whether Kentucky should allow parties to assign a portion of the proceeds from a legal malpractice claim; 2. whether the trial court properly grants summary judgment where the parties present conflicting evidence as to whether the assignment was an assignment of a legal malpractice claim or an assignment of a portion of the proceeds and who controls the litigation, and 3. even if a party cannot assign a portion of the proceeds from the claim, can the party proceed with the malpractice litigation? On cross-motion, Scott raised the following issues: 1. did the trial court err by denying summary judgment on "corrective" attorney's fees; 2. did the trial court err by failing to grant summary judgment on Davis's claim for emotional distress damages; 3. did the trial court err by failing to dismiss the case based on the fundamental disagreement between Davis's expert witnesses as to when and how Scott violated the standard of care, and 4. whether one of Davis's expert witnesses can testify Scott violated SCR 3.130 regarding competency.

Kentucky Public Service Comm v. Commonwealth of Kentucky, etc, 2009-SC-134-DG, 2009-SC-150-DG

Public Utilities. Rate Riders. This is a public utilities case concerning the Public Service Commission's authority to approve a rider; the proper

procedure for approving said rider, and the constitutionality of KRS 278.509.

Crouch v. Commonwealth, 2009-SC-129-DG

Criminal Law. Prosecutorial Discretion. Rule of Lenity. Equal Protection. Issues include whether providing a false name to a police officer may be prosecuted as identity theft, a Class D Felony, even though same actions arguably constitute the more specific offense of giving a false name to a peace officer, which is only a Class B misdemeanor.

Taylor v. Commonwealth, 2009-SC-180-DG

Criminal Law. Criminal liability. Issues include whether an individual who knowingly takes contraband into a detention facility has committed a voluntary act despite entering the facility involuntarily.

Woolum v. Hillman, 2008-SC-396-DG

Medical Malpractice. Expert Witnesses. Bias. Issues include whether commonality of malpractice insurance carrier may be admitted to show witness bias.

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT
8/19/09

Reinstedler v. Reinstedler, 2009-SC-88-DG

Dissolution. Nonmarital Property. Gifts. Issue is whether Court of Appeals erred in reversing family court's decision that a gift of property from one spouse's parents was intended as a gift to both spouses.

Kentucky Farm Bureau Ins. Co. v. Young, 2008-SC-333-DG

Automobile Insurance. Underinsured Motorist Coverage. Settlements. Notice. Subrogation. Issues include whether plaintiff insured's KRS 304.39-320 "Coots notice" to UIM carrier was insufficient to preserve UIM claim, where: notice overstated amount plaintiff was to receive from tortfeasor's liability insurer; notice was not sent by registered or certified mail; UIM carrier did not substitute payment of settlement amount within thirty days after notice; and plaintiff proceeded with settlement.

DISCRETIONARY REVIEW GRANTED 10/21/09

Kentucky Farm Bureau Mutual Ins. Co. v. Shelter Mutual Ins. Co., 2008-SC-781-DG

Automobile Insurance. Liability Coverage. Excess Insurance. Issues include the proper apportionment of loss between two insurers whose liability policies cover the same damages arising from an automobile accident, where one company insures the negligent guest driver of the vehicle and the other company insures the owner, and where both policies contain "excess insurance" clauses.

Hazard Coal Corp. v. Knight, 2008-SC-735-DG

Civil Procedure. Right to Trial by Jury. Waiver. Issues include whether plaintiffs, who demanded jury trial in complaint, waived right by failing to object to court's sua sponte order for bench trial and by participating in bench trial to conclusion without objection.

U.S. Bank, N.A. v. Ali, 2008-SC-817-DG

Arbitration. Waiver. Issues include whether defendant retained contractual right to demand arbitration of dispute with plaintiff, or waived right by participating in civil litigation; if right to arbitrate would otherwise be waived, whether prejudice to plaintiff must be shown in order to find waiver in this context.

Fischer v. Fischer, 2009-SC-245-DG

Preservation. Contract Law. Issues include whether Court of Appeals' reversal of jury verdict was appropriate where the grounds for reversal were not raised in the trial court.

Hunt v. Commonwealth, 2009-SC-312-DG

Criminal Law. Probation Revocation. Due Process. The issues are 1. does the trial court deny the probationer due process of law by appointing counsel on the morning of the hearing and then proceeding with the hearing; 2.. does the trial court deny the probation due process of law by requiring the probationer to "show cause" why his probation should not be revoked, and 3. does the trial court deny the probation due process and the right against self incrimination by failing to swear witnesses and requiring the probationer to answer direct questions?

Lee v. Commonwealth, 2009-SC-371-DG

Criminal Law. DUI. The issues are 1. whether an officer's transporting a defendant to a hospital where the attending physician refuses to administer

a blood alcohol test are a sufficient accommodation of a defendant's statutory right to an independent test under KRS 189A.103(7) and 2. if the officer's actions are not a reasonable accommodation, is the remedy suppression of the breathalyzer test or to dismiss the charge?

Hinners v. Robey, 2009-SC-389-DG

Personal Jurisdiction. eBay. The issue is whether a seller – located in another state – who sells a product to a buyer in Kentucky through eBay has significant contacts with the state to establish personal jurisdiction when the buyer sues for fraud and defective product.

Terry v. Commonwealth, 2009-SC-497-DG

Criminal Law. Discovery. Strikes for Cause. The issues include 1. whether a defendant must give notice per RCr. 7.24(3)(B)(i) of his intent to introduce expert testimony concerning false confessions and 2. whether the trial court erred by failing to excuse for cause a juror who said he would “lean toward law enforcement” but “bend over backwards to be fair?”

Hammons v. Hammons, 2009-SC-0155-DG

Wills. Life Estate. Remainders. Issues include whether testator granted vested or contingent remainder and whether remaindermen are entitled to an accounting and to inspect property included in life estate.

DISCRETIONARY REVIEW GRANTED AUGUST 2009 and CROSS MOTION GRANTED 10/21/2009

Department of Revenue v. Wyrick, 2008-SC-468-DG and Wyrick v. Department of Revenue, 2009-SC-0543-DG

Open Records Act. Issues include whether the Party Litigation Limitation to the Open Records Act prohibits discovery of certain documents.

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT 10/21/09

Spurlock v. Begley, 2009-SC-50-DG

Contracts. Limited Liability Corporations. The issue is whether the defendant had a sufficient ownership interest in a limited liability corporation that he could sell to the plaintiff.

Artrip v. Noe, 2009-SC-260-DGE

Child Support. Social Security Benefits. The question presented, involving the interplay between KRS 403.211(3)(d) and (14) (now (15)), is whether a parent is entitled to reduction in a child support obligation relating to a disability entitlement received by the children as a result of the other parent's disability.

DISCRETIONARY REVIEW GRANTED 11/18/09

Commonwealth v. Nicely, 2009-SC-313-DG

Criminal Law. Drug Court Program. Probation. Jail Time Credit. Where defendant was terminated from drug-court program and his probation was revoked, the issue is whether trial court properly denied credit against prison sentence for periods defendant spent in jail for violations of drug-court policies and conditions during his participation in the program.

Ballard v. Commonwealth, 2009-SC-314-DG

Criminal Law. Pretrial Diversion. Appeals. Where trial court ruled that it had lost jurisdiction to grant Commonwealth's motion to revoke pretrial diversion agreement with defendant because period of diversion had expired prior to hearing on motion – although motion had been filed prior to expiration – issues include whether Commonwealth's appeal should have been dismissed as interlocutory and, if not, whether trial court had jurisdiction to grant motion to revoke.

Howard v. Howard, 2009-SC-442-DG

Dissolution of Marriage. Child Support. Discharge in Bankruptcy. Issues include whether family court's determination that party was voluntarily underemployed and not entitled to a reduction in child-support obligation was clearly erroneous; and whether party's bankruptcy subsequent to divorce decree discharged an indebtedness imposed upon him in the decree.

Commonwealth v. Prater, 2009-SC-352-DG

Criminal Law. Reckless Homicide. Evidence. Impeachment on Collateral Facts. Preservation of Error. Where defendant testified that drugs in her system at time of fatal auto accident were taken as aftercare following nasal surgery, issues include whether Commonwealth was properly permitted to later introduce medical records showing that surgery occurred

after the accident; and whether defense objection to Commonwealth's evidence on grounds of relevancy was inadequate to preserve assignment of error on grounds of improper impeachment on collateral facts.

Commonwealth v. Frye, 2008-SC-0956-DG

Criminal Law. Jury. Peremptory Strikes. At issue is propriety of *Batson* challenge to prospective juror.

Payton v. Commonwealth, 2008-SC-0965-DG

Criminal Law. Search and Seizure. Co-tenant Consent. At issue is warrantless police search of home during Cabinet for Families and Children's investigation based upon co-tenant's alleged consent.

Winstead v. Commonwealth, 2009-SC-0019-DG

Criminal Law. Sentencing. At issue is whether sentencing error may be corrected, implicating whether nature of error was judicial or clerical, and whether the error involved an illegal sentence.

Calhoun v. CSX Transportation, 2009-SC-100-DG

Personal Injury. Negligence. Railroad Duty of Care. Extrahazardous Private Crossing. Issues include the proper standard for evaluating whether a crossing is extrahazardous and the general duties owed by railroads at private crossings.

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT
11/18/09

Jones v. Commonwealth of Kentucky, 2009-SC-375-DG

Criminal Law. Drug Offenses. Physical Appearance Test. Issues include whether drug convictions may be sustained where a physical appearance test is the only proof offered to identify the substance as a certain illegal drug.

DISCRETIONARY REVIEW GRANTED 1/13/10

Caesars Riverboat Casino, LLC v. Beach, 2009-SC-634-DG

Personal Jurisdiction. Minimum Contacts. The issue is whether Kentucky long-arm personal jurisdiction extends to include out-of-state casino corporations, in whose Indiana restaurant buffet line a frequent patron from

Kentucky suffered injury after allegedly slipping on butter and falling to the floor.

Nash v. Campbell County Fiscal Court, 2009-SC-152-DG

Real Estate. Zoning. Agricultural Supremacy. Issues include the constitutionality of county ordinances attempting to regulate transfers of agricultural land in order to close perceived subdivision loopholes in KRS 100.203(4) and KRS 100.111(22).

Hospital of Louisa v. Johnson County Fiscal Court, 2009-SC-280-DG

Jails. Costs of Prisoner Medical Treatment. Bail. At issue is a county's liability for medical care of a prisoner released on an unsecured bond and ordered to seek medical care and report back to jail upon its completion.

Cook v. Popplewell, In Her Capacity as County Clerk of Russell County, 2009-SC-341-DG

Constitutional Law. Elections. Employment discrimination. Issues include whether a 1st or 14th Amendment liberty interest protects public employees from being fired for candidacy for public office and whether county officials sued officially are immune from § 1983 actions.

State Farm Mutual Automobile Insurance Co. v. Slusher, 2009-SC-513-DG

Insurance Coverage. UM/UIM Benefits. Workers Compensation. Exclusive Remedy. Issues include whether UM/UIM benefits are available where co-worker tortfeasor is immune from suit pursuant to workers' compensation exclusive remedy provision.