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March 11, 2020

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- Waters—Water Rights—Priority—Minimum Instream Flows—Determination—Instream Values—Protection of Fish—Consideration of Other Values—Necessity.
- Witnesses—Privileges—Attorney-Client Privilege—Scope—Corporate Client—Ex Parte Communication with Nonemployee Physician—Ex Parte Communication with Employee Social Worker or Nurse—Validity.

Cases Not Yet Set

Arbitration—Enforcement—Superior Court Jurisdiction—Scope—Claim of Breach of Arbitration Contract Based on Acts During Arbitration

Whether in connection with an action that went to contractual arbitration, the superior court had jurisdiction to address the plaintiff’s motion to terminate arbitration and rescind the arbitration agreement on the basis the arbitrator and the defendant breached the agreement during the course of arbitration.

No. 98083-7, *Burgess* (petitioner) v. *Lithia Motors* (respondent).

Certified from Division III of the Washington State Court of Appeals

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***Building Regulations—Conditional Use Permit—Decision of Board of County Commissioners on Appeal of Conditional Use Permit—Judicial Review—Land Use Petition Act—21-Day Limitation Period—Commencement—Adoption of Resolution by Board of County Commissioners—Quasi-Judicial Decision—Written Decision**

Whether a Yakima County Board of Commissioners resolution rejecting an appeal of a conditional use permit constituted a quasi-judicial decision, triggering the 21-day time limit for filing a land use petition upon adoption of the resolution pursuant to [RCW 36.70C.040\(4\)\(b\)](#), or whether under Yakima County Code [16B.09.050\(5\)](#) the board’s decision was a final decision triggering the time limit only when it issued and gave notice of a written decision within the meaning of [RCW 36.70C.040\(4\)\(a\)](#).

No. 97910-3, *Confederated Tribes & Bands of the Yakama Nation* (petitioner) v. *Yakima County, et al.* (respondent).

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Consumer Protection—Action for Damages—Unfair Trade Practice—Automobile Dealer and Manufacturer Regulations—False or Deceptive Statements—Materiality—Necessity

Whether in this consumer lawsuit stemming from a new vehicle sale in which the vehicle window sticker mistakenly stated that the vehicle was equipped with a certain inexpensive feature, the plaintiff had to prove the misstatement was material in order to prove a deceptive act or practice for purposes of the Consumer Protection Act.

No. 97576-1, *Young, et al. (petitioner) v. Toyota Motor Sales, USA (respondent)*.

[9 Wn. App. 2d 26 \(2019\)](#).

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Controlled Substances—Possession—Unwitting Possession—Affirmative Defense—Validity—Due Process

Whether requiring a defendant charged with possession of a controlled substance to prove the affirmative defense of unwitting possession violates due process principles.

No. 96873-0, *State (respondent) v. Blake (petitioner)*.

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Courts—Powers—Conduct of Litigation—Sanctions—Bad Faith—Express Finding—Absence

Whether the trial court in a criminal prosecution erred in sanctioning the State for moving to amend the information despite the court's ruling that the State acted within its rights in doing so.

No. 96365-7, *State* (respondent) v. *Numrich* (petitioner). (See also: [Criminal Law—Statutes—Construction—General and Specific Crimes—Manslaughter—Violation of Safety Regulation with Death Resulting; Indictment and Information—Amendment—Additional Charge—Broadening of Charge—Different Felony Levels and Penalties—Improper Purpose—Effect on Pending Discretionary Review](#)).

Consolidated with No. 96566-8, *State* (respondent) v. *Numrich* (plaintiff).

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Criminal Law—Former Jeopardy—Multiple Convictions—Same Offense—Merger Doctrine—Felony Murder—First Degree Robbery

Whether in a prosecution for felony murder predicated on first degree robbery, the robbery conviction merges into the felony murder conviction for double jeopardy purposes even if the killing may have had a purpose independent of the robbery.

No. 97066-1, *In re Pers. Restraint of Knight* (respondent). (See also: [Criminal Law—Former Jeopardy—Multiple Convictions—Same Offense—Merger Doctrine—First Degree Robbery—Second Degree Assault](#)).

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Criminal Law—Former Jeopardy—Multiple Convictions—Same Offense—Merger Doctrine—First Degree Robbery—Second Degree Assault

Whether in this prosecution for first degree robbery predicated on second degree assault and a separate second degree assault charge, the assault conviction merged into the robbery conviction for double jeopardy purposes on the basis that the jury's guilty verdict did not indicate whether separate assaultive acts supported each conviction.

No. 97066-1, *In re Pers. Restraint of Knight* (respondent). (See also: [Criminal Law—Former Jeopardy—Multiple Convictions—Same Offense—Merger Doctrine—Felony Murder—First Degree Robbery](#)).

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Criminal Law—Right to Confront Witnesses—Statement of Nontestifying Witness—Statements Made To Sexual Assault Nurse Examiner—Testimonial or Nontestimonial Statement—Harmless Error

Whether in this prosecution for second degree rape by forcible compulsion, the admission of statements made by the nontestifying victim to a sexual assault nurse examiner violated the defendant's right to confront witnesses, and if so, whether the violation was harmless.

No. 96783-1, *State* (petitioner) *v. Burke* (respondent).

[6 Wn. App. 2d 950 \(2018\)](#).

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Criminal Law—Security—Physical Restraint of Defendant—Deference to Jail Policy—Harmless Error—Test

Whether in this criminal prosecution the shackling of the defendant in pretrial proceedings and at trial without an individualized inquiry into the need for shackling may be deemed harmless error.

No. 97681-3, *State (respondent) v. Jackson (petitioner)*. (See also: [Criminal Law—Security—Physical Restraint of Defendant—Freedom from Restraint—Pretrial Proceedings—Individualized Assessment or Evidence in Support—Necessity](#)).

[10 Wn. App. 2d 136 \(2019\)](#).

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Criminal Law—Security—Physical Restraint of Defendant—Freedom from Restraint—Pretrial Proceedings—Individualized Assessment or Evidence in Support—Necessity

Whether in this criminal prosecution the trial court was constitutionally required to conduct an individualized inquiry into the need for shackling before permitting the defendant to be shackled during pretrial hearings.

No. 97681-3, *State (respondent) v. Jackson (petitioner)*. (See also: [Criminal Law—Security—Physical Restraint of Defendant—Deference to Jail Policy—Harmless Error—Test](#)).

[10 Wn. App. 2d 136 \(2019\)](#).

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Criminal Law—Statutes—Construction—General and Specific Crimes—Manslaughter—Violation of Safety Regulation with Death Resulting

Whether in a prosecution stemming from a construction worker's death, the State was precluded under the general-specific rule from charging both manslaughter and the offense of violation of a safety regulation with death resulting.

No. 96365-7, *State* (respondent) *v.* *Numrich* (petitioner). (See also: [Indictment and Information—Amendment—Additional Charge—Broadening of Charge—Different Felony Levels and Penalties—Improper Purpose—Effect on Pending Discretionary Review](#); [Courts—Powers—Conduct of Litigation—Sanctions—Bad Faith—Express Finding—Absence](#)).

Consolidated with 96566-8, *State* (respondent) *v.* *Numrich* (plaintiff).

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Declaratory Judgment—Summary Judgment—Equitable Relief—Review—Standard of Review

Whether in this action for a declaratory judgment in which the trial court granted equitable relief on summary judgment, the standard of appellate review of the relief is de novo or abuse of discretion.

No. 97690-2, *Borton & Sons, Inc.* (respondent) *v.* *Burbank Properties, LLC* (petitioner). (See also: [Vendor and Purchaser—Option to Purchase—Exercise of Option—Time of Performance—Equitable Grace Period—Inequity of Forfeiture—Significant Improvements to Land—Necessity](#)).

9 Wn. App. 2d 599 (2019).

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Elections—Fair Campaign Practices Act—Citizen Action—Action Not Commenced by State—Timeliness of Citizen Action

Whether under former RCW 42.17.765(4)(a)(iii), a citizen's lawsuit challenging an alleged campaign practices violation is time-barred unless it is filed within 10 days after the citizen gives notice to the attorney general and the county prosecuting attorney of the citizen's intent to file suit unless those agencies commence an enforcement action.

No. 97109-9, *Freedom Found.* (appellant) v. *Teamsters Local 117, et al.* (respondents/cross-appellants).

Consolidated with

No. 97111-1, *Freedom Found.* (appellant) v. *Serv. Emps. Int'l Unio Political Education & Action Fund* (respondent/cross-appellant).

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Government Liability—Negligence—Negligent Investigation—Common Law Duty—Mistaken Raid of Home

Whether in this action for negligence against the city of Tacoma and others, the defendants owed the plaintiff a common law and actionable duty of care where city police officers attempting to effectuate an arrest mistakenly broke into the plaintiff's home and kept her in handcuffs even after realizing they were in the wrong home.

No. 97583-3, *Mancini* (petitioner) v. *City of Tacoma, et al.* (respondents).

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Indictment and Information—Amendment—Additional Charge—Broadening of Charge—Different Felony Levels and Penalties—Improper Purpose—Effect on Pending Discretionary Review

Whether the State in a criminal prosecution was entitled to amend the information to add a first degree manslaughter charge despite the trial court’s determination that the amendment’s purpose was to gain a tactical advantage as to the defendant’s then-pending motion for discretionary review of the propriety of the original second degree manslaughter charge.

No. 96365-7, *State* (respondent) *v.* *Numrich* (petitioner). (See also: [Criminal Law—Statutes—Construction—General and Specific Crimes—Manslaughter—Violation of Safety Regulation with Death Resulting](#); [Courts—Powers—Conduct of Litigation—Sanctions—Bad Faith—Express Finding—Absence](#)).

Consolidated with No. 96566-8, *State* (respondent) *v.* *Numrich* (plaintiff).

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Insurance—Personal Injury Protection—Construction of Policy—Insured—“Pedestrian”—What Constitutes—Bicyclist—State Insurance Law Definition of “Pedestrian”—Applicability to Policy

Whether a bicyclist injured in a collision with a motor vehicle fell within his insurance policy’s personal injury protection (PIP) for “pedestrians” struck by motor vehicles, given that the policy does not define the term “pedestrian” and an insurance statute defines “pedestrian” in the PIP context as anyone “not occupying a motor vehicle.” [RCW 48.22.005\(11\)](#).

No. 97652-0, *McLaughlin* (petitioner) *v.* *Travelers Commercial Ins. Co.* (respondent).

[9 Wn. App. 2d 675 \(2019\)](#).

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Juveniles—Parental Relationship—Termination—Adoption—Degree of Proof—Clear, Cogent, and Convincing Evidence—What Constitutes—Parental Unfitness—Findings—Sufficiency

Whether in proceedings involving a petition by a potential adoptive parent to terminate a biological father’s parental rights to a child, the trial court relied on improper factors and lacked clear, cogent, and convincing evidence that the father failed to perform parental duties in a manner that showed a substantial lack of regard for his parental obligations.

No. 97390-3, *In re the Adoption of K.M.T.*

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Medical Treatment—Taxation—Business and Occupation Tax—Health Organizations—Income Deductions—Government Funding—Medical Assistance or Children’s Health Programs—Limitation to State Programs—Validity—Dormant Commerce Clause

Whether under [RCW 82.04.4311](#), the business and occupation tax deduction for compensation that health care organizations receive through serving Medicaid and Child Health Insurance Program patients is limited to Washington-administered programs, and if so, whether the deduction discriminates against interstate commerce in violation of the commerce clause of the United States Constitution.

No. 97557-4, *Peacehealth St. Joseph Med. Ctr., et al. (petitioners) v. State, Dep’t of Revenue (respondent)*.

[9 Wn. App. 2d 775 \(2019\).](#)

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Negligence—Res Ipsa Loquitur—Elements—Presence of Negligence—Proof—Result Not be Expected Without Negligence—Injury or Injury-Causing Act or Occurrence as Relevant “Result.”

Whether in a negligence action seeking to establish breach of a duty of care in a roller coaster accident on the basis of res ipsa loquitur, proof that the “result” is one that would not be expected in the absence of negligence must consist of proof that the injury-causing act or occurrence is a result not expected or may also consist of proof that the injury suffered would not be expected without negligence.

No. 97503-5, *Brugh (respondent) v. Fun-Tastic Rides Co., et al. (petitioners)*.

[8 Wn. App. 2d 176 \(2019\)](#).

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Open Government—Public Meetings—“Public Agency”—What Constitutes—Washington State Bar Association

Whether, in this lawsuit claiming that the Washington State Bar Association violated the Open Public Meetings Act, the trial court correctly determined that the bar association is a “public agency” for purposes of the act.

No. 97249-4, *Beauregard (respondent) v. Wash. State Bar Ass’n (petitioner)*.

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Personal Restraint—Grounds—Punishment—Sentence—Indeterminate Sentence—Conditional Release—Geographical Restriction—Validity—Right to Travel

Whether in conditionally releasing an offender serving an indeterminate prison term for a sex offense, the Indeterminate Sentence Review Board violated the offender’s constitutional right to travel by prohibiting him from traveling to or through Clark County without prior written permission of his community custody officer and the board.

No. 97452-7, *In re Pers. Restraint of Winton (respondent)*.

[Unpublished](#).

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***Personal Restraint—Petition—Timeliness—“Placeholder Petition”—Validity**

Whether the Court of Appeals had discretion to treat a personal restraint petition as timely filed when the petitioner filed a “placeholder” petition without substantive claims just before the one-year time limit on collateral review expired and then after the time limit expired filed a substantive amendment to the petition asserting an otherwise untimely claim of ineffective assistance of counsel.

No. 97456-0, *In re Pers. Restraint of Fowler* (petitioner). (See also: [Personal Restraint—Petition—Timeliness—Statutory Limits—Equitable Tolling—Test](#)).

[9 Wn. App. 2d 158 \(2019\)](#).

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***Personal Restraint—Petition—Timeliness—Statutory Limits—Equitable Tolling—Test**

Whether equitable tolling may be applied to an otherwise untimely personal restraint petition when the petitioner’s first attorney failed to communicate with him and resigned from the Washington State Bar Association in lieu of discipline, and the petitioner learned of this fact only two weeks before the one-year time limit on collateral review expired.

No. 97456-0, *In re Pers. Restraint of Fowler* (petitioner). (See also: [Personal Restraint—Petition—Timeliness—“Placeholder Petition”—Validity](#)).

[9 Wn. App. 2d 158 \(2019\)](#).

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***Sexual Offenses—Victim Testimony—Corroboration—Instruction—Validity**

Whether in a prosecution for a sex offense, an instruction to the jury that it is not necessary that the alleged victim’s testimony be corroborated in order to convict the defendant constitutes an impermissible comment on the evidence in violation of article IV, section 16 of the Washington Constitution.

No. 96034-8, *State (respondent) v. Svaleson (petitioner)*.

[Supplemental Petition for Review.](#)

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Torts—Immunity—Communication to Government Agency—“Person”—Government Contractor

Whether in this lawsuit stemming from a law firm’s independent investigation of a government employee under a contract with the employing agency, the firm is a “person” for purposes of immunity against liability for communications to government agencies under [RCW 4.24.510](#).

No. 97734-8, *Leishman (respondent) v. Ogden Murphy Wallace, PLLC, et al. (petitioner)*.

[10 Wn. App. 2d 826, 451 P.3d 1101 \(2019\).](#)

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***Trial—Due Process—Fair Trial—Implicit Bias—Motion for New Trial—Evidentiary Hearing—Necessity**

Whether in this personal injury action, the trial court should have held an evidentiary hearing after the plaintiff, who is African American, moved for a new trial claiming that defense counsel, the court, and the jury displayed implicit racial bias.

No. 97672-4, *Henderson (petitioner) v. Thompson (respondent)*.

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Vendor and Purchaser—Option to Purchase—Exercise of Option—Time of Performance—Equitable Grace Period—Inequity of Forfeiture—Significant Improvements to Land—Necessity

Whether it is necessary for a forfeiture to be inequitable to justify granting an equitable grace period to allow a late exercise of an option to purchase land, and if so, whether significant improvements must have been made to the land to establish that a forfeiture would be inequitable.

No. 97690-2, *Borton & Sons, Inc. (respondent) v. Burbank Properties, LLC (petitioner)*.
(See also: [Declaratory Judgment—Summary Judgment—Equitable Relief—Review—Standard of Review](#)).

[9 Wn. App. 2d 599 \(2019\)](#).

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Waters—Water Rights—Priority—Minimum Instream Flows—Determination—Instream Values—Protection of Fish—Consideration of Other Values—Necessity

Whether the Department of Ecology exceeded its statutory authority or acted arbitrarily or capriciously by setting the minimum instream flow of the lower Spokane River based primarily on the needs of fish and fish habitat without considering other instream values listed in [RCW 90.54.020\(3\)\(a\)](#) to the fullest extent possible.

No. 97684-8, *Ctr. for Env'tl. Law & Policy, et al. (respondents) v. State, Dep't of Ecology (petitioner)*.

[9 Wn. App. 2d 746 \(2019\)](#).

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**Witnesses—Privileges—Attorney-Client Privilege—Scope—Corporate Client—
Ex Parte Communication with Nonemployee Physician—Ex Parte
Communication with Employee Social Worker or Nurse—Validity**

Whether in a lawsuit alleging that a hospital or its employees improperly released a patient's medical records to police, counsel for the hospital is entitled under the attorney-client privilege to have ex parte communications with a physician who works at the hospital and treated the patient but is not employed by the hospital, and whether counsel is entitled under the privilege to have ex parte contact with nonphysician hospital employees.

No. 97783-6, *Hermanson* (respondent) v. *MultiCare Health Sys.* (petitioner).

10 Wn. App. 2d 343, 448 P.3d 153 (2019).

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Appeal—Notice of Appeal—Timeliness—Late Filing—Court Rule—Summary Judgment—Finality of Judgment

Whether a signed summary judgment order expressly dismissing all of a party’s claims constitutes a “final judgment” under [RAP 2.2\(a\)\(1\)](#), triggering the 30-day time limit on filing a notice of appeal, when the order provides that the prevailing party “may present judgment” without limitation to the issue of costs and fees, and in light of [CR 54\(e\)](#), which directs that the prevailing party “shall prepare and present” a judgment after entry of the court’s decision.

No. 97494-2, *Denney* (petitioner) v. *City of Richland* (respondent). (Oral argument 3/12/20).

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Arbitration—Contractual Agreement—Validity—Procedural and Substantive Unconscionability

Whether in this labor and employment lawsuit brought by a former pizza delivery employee, the employer was entitled to compel arbitration under the terms of an agreement located in an employee handbook, and whether that agreement is procedurally and substantively unconscionable.

No. 97429-2, *Burnett, et al.* (respondents) v. *Pagliacci Pizza, Inc.* (petitioner). (Oral argument 1/23/20).

[9 Wn. App. 2d 192 \(2019\)](#).

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Arbitration—Public Employment—Action Against Employer—Collective Bargaining Agreement—Right to Arbitrate—Waiver—By Conduct

Whether in this lawsuit for statutory wage and hour violations brought by a public employee, the employer waived its right to compel arbitration under the collective bargaining agreement by its delay in asserting the right to arbitrate after the commencement of the lawsuit.

No. 97201-0, *Lee, et al. (petitioners) v. Evergreen Hosp. Med. Ctr. (respondent)*. (Oral argument 2/20/20). (See also: [Arbitration—Public Employment—Collective Bargaining Agreement—Arbitration Clause—Applicability—Statutory Claims](#)).

[7 Wn. App. 2d 566 \(2019\)](#).

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Arbitration—Public Employment—Collective Bargaining Agreement—Arbitration Clause—Applicability—Statutory Claims

Whether in this lawsuit brought by a public employee, the employer was entitled to compel arbitration under the collective bargaining agreement for statutory wage and hour claims.

No. 97201-0, *Lee, et al. (petitioners) v. Evergreen Hosp. Med. Ctr. (respondent)*. (Oral argument 2/20/20). (See also: [Arbitration—Public Employment—Action Against Employer—Collective Bargaining Agreement—Right to Arbitrate—Waiver—By Conduct](#)).

[7 Wn. App. 2d 566 \(2019\)](#).

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Attorney and Client—Conflict of Interest—Prior and Present Clients— “Substantially Related” Matters—Rules of Professional Conduct—Scope

Whether [Rule of Professional Conduct 1.9](#) prohibits a law firm from representing the plaintiffs in a bad faith insurance case on the basis the case is “substantially related” to the firm’s prior representation of the defendant insurance company in other cases.

No. 97563-9, *Plein (petitioners) v. USAA Cas. Ins. Co. (respondent)*. (Oral argument 2/25/20).

[9 Wn. App. 2d 407 \(2019\)](#).

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Automobiles—Theft—Motor Vehicles—What Constitutes—Snowmobile

Whether a snowmobile constitutes a “motor vehicle” for purposes of the crime of theft of a motor vehicle under [RCW 9A.56.065](#).

No. 97283-4, *State (petitioner) v. Tucker (respondent)*. (Oral argument: 1/21/20).

[8 Wn. App. 2d 705 \(2019\)](#).

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Civil Rights—Law Against Discrimination—Public Accommodations—School District—Acts of Agents and Employees—Strict Liability—Unlawful Discrimination—Intentional Sexual Misconduct

Whether a school district may be subject to strict liability for discrimination committed by its employees in violation of the Washington Law against Discrimination and if so, whether “discrimination” for purposes of this cause of action encompasses intentional sexual misconduct including physical abuse and assault.

No. 97630-9, *W.H., et al. (plaintiffs) v. Olympia Sch. Dist., et al. (defendants)*. (Oral argument 3/12/20).

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Constitutional Law—Gift or Loan of Money or Credit—Consideration—Sufficiency—Donative Intent—Receipt of Significant Benefit—Private Benefit—Consideration—Sufficiency

Whether the Port of Benton County violated the prohibition against gifts of public funds under article VIII, section 7 of the Washington Constitution by permitting a private railroad company to use port-owned railroad tracks without paying rent or leasehold taxes when, before transfer of ownership of the tracks to the port, the railroad company had a contract with the federal government allowing it to use the tracks rent-free in exchange for making a payment toward construction of the track and a one-time payment toward maintenance of the track.

No. 97410-1, *Peterson (petitioner) v. Port of Benton, et al. (respondent)*. (Oral argument: 1/21/20).

[9 Wn. App. 2d 220 \(2019\)](#).

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Contempt—Civil Contempt—Action for Contempt for Violating Injunction—Vacation of Injunction—Effect—Mootness—Availability of Monetary Relief

Whether this civil contempt action based on the violation of an injunction became moot when the injunction was vacated as to the movant even though the civil contempt statute authorizes additional remedies in the form of recovery for any losses suffered as a result of the contempt and costs and attorney fees incurred in connection with the contempt proceedings. *See* [RCW 7.21.030\(3\)](#).

No. 97277-0, *Gronquist (respondent) v. King County Prosecutor Daniel Satterburg (petitioner)*. (Oral argument: 1/14/20).

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Controlled Substances—Punishment—Enhancement—Second or Subsequent Offense—Doubling of Maximum Penalty—Automatic or Discretionary

In this prosecution for sale of heroin for profit, [RCW 69.50.410\(1\)](#), whether [RCW 69.50.408](#) automatically doubled the maximum sentence for a second violation of chapter [69.50 RCW](#) and eliminated the sentencing court’s discretion to apply the 60-month limitation set forth in [RCW 69.50.410\(2\)\(a\)](#).

No. 97323-7, [State \(respondent\) v. Cyr \(petitioner\)](#). (Oral argument 2/25/20).

[8 Wn. App. 2d 834 \(2019\)](#).

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Criminal Law—Advisement of Rights—Necessity—Custody—Detention While Border Agents Search Automobile

Whether in this prosecution for possession of a controlled substance, a defendant who was kept nearly five hours in the waiting room of an international border crossing station while border patrol agents searched the van in which he was riding was “in custody” for purposes of *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), thus requiring suppression of statements he made in response to questioning conducted without *Miranda* warnings.

No. 97268-1, [State \(respondent\) v. Escalante \(petitioner\)](#). (Oral argument 2/20/20).

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Criminal Law—Crimes—Elements—Authority of Legislature—Transfer of Powers—Validity

Whether the legislature unconstitutionally transferred its powers when it amended the statute defining the crime of failure to register as a sex offender to include as a sex offense any “offense for which the person would be required to register as a sex offender while residing in the state of conviction.” [RCW 9A.44.128\(10\)\(h\)](#).

No. 97617-1, *State (petitioner) v. Batson (respondent)*. (Oral argument 3/12/20). (*See also: Statutes—Validity—Constitutionality—Equal Protection—Ex Post Facto—Double Jeopardy*).

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Criminal Law—Plea of Guilty—Advisement of Rights—Consequences of Plea—Misunderstanding of Consequences—Felony Firearm Offender Registration Requirement—Direct or Indirect Consequence

Whether in this criminal prosecution resulting in a guilty plea, the plea was rendered involuntary when the defendant was misinformed that he had no obligation to register as a felony firearm offender as result of his conviction.

No. 97517-5, *State (respondent) v. Gregg (petitioner)*. (Oral argument 2/25/20). (*See also: Criminal Law—Punishment—Sentence—Juvenile Offender—Youthfulness of Offender—Presumption—Necessity—Burden of Proof—State Constitution*).

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Criminal Law—Punishment—Sentence—Criminal History—Offender Score—Misdemeanors—Vacation—Statutory Requirements—Dismissal

Whether in this criminal prosecution the defendant’s 2010 misdemeanor disorderly conduct conviction prevented prior felony convictions from “washing out” under [RCW 9.94A.525\(2\)\(c\)](#) for purposes of calculating the offender score on subsequent arson and burglary convictions where the misdemeanor conviction was vacated pursuant to [RCW 3.66.067](#) after the defendant completed a deferred sentence.

No. 97375-0, *State (respondent) v. Haggard (petitioner)*. (Oral argument: 1/14/20)

[9 Wn. App. 2d 98, 442 P.3d 628 \(2019\)](#).

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Criminal Law—Punishment—Sentence—Juvenile Offender—Youthfulness of Offender—Presumption—Necessity—Burden of Proof—State Constitution

Whether under the prohibition against cruel punishment in article I, section 14 of the Washington Constitution, the State is required to rebut a presumption that youth is a mitigating factor when a juvenile offender is sentenced as an adult.

No. 97517-5, *State (respondent) v. Gregg (petitioner)*. (Oral argument 2/25/20). (*See also*: [Criminal Law—Plea of Guilty—Advisement of Rights—Consequences of Plea—Misunderstanding of Consequences—Felony Firearm Offender Registration Requirement—Direct or Indirect Consequence](#)).

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Criminal Law—Trial—Misconduct of Prosecutor—Argument—Prejudice— “War on Drugs”

Whether in this controlled substances prosecution, the prosecutor’s references in opening statements and closing arguments to a “war on drugs” constituted prejudicial misconduct.

No. 97443-8, *State (respondent) v. Loughbom (petitioner)*. (Oral argument 3/19/20).

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Decent and Distribution—Intestate Succession—Death of Spouse During Pending Dissolution Proceedings—Surviving Spouse—Waiver of Intestate Rights— Separation Agreement

Whether in a case where a spouse died intestate before the completion of pending dissolution proceedings, a settlement agreement previously entered into by the spouses that divided the community assets into separate property constituted a waiver of the surviving spouse’s intestate succession rights.

No. 97463-2, *In re the Matter of the Estate of Petelle, Deceased (respondent)*. (Oral argument 1/23/20).

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Employment—Conditions of Labor—Meal Periods—Denial of Meal Periods—Withholding of Wages—Right of Action—Labor Union—Associational Standing

Whether the Washington State Nurses Association has associational standing to sue on behalf of its members for unpaid wages and missed meal breaks.

No. 97532-9, *Wash. State Nurses Ass'n* (respondent/cross appellant) v. *Yakima HMA, LLC d/b/a Yakima Reg'l Med. & Cardiac Ctr.* (appellant/cross respondent). Oral argument 1/23/20). (See also: [Parties—Standing—Organizational Standing—Claim for Damages for Denial of Meal Periods and Withholding of Wages—Certainty of Damages—Representative Testimony—Sufficiency](#)).

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Intoxicating Liquors—Negligence—Contributory Fault—Intoxication Defense—Extent of Intoxication Bearing on Proximate Cause—Blood Alcohol Content—Evidence—Plaintiff's Admission to Having Been Intoxicated—Effect—Evidence—Opinion Evidence—Expert Testimony

Whether in this negligence action stemming from a fall from an apartment balcony, evidence of the plaintiff's blood alcohol content was relevant to proving the affirmative defense of involuntary intoxication under [RCW 5.40.060\(1\)](#) and establishing a plaintiff's contributory fault even though the plaintiff admitted she was intoxicated, and if so, whether expert testimony on the biomechanical effects of an injury and how the level of intoxication affects judgment and psychomotor skills was admissible.

No. 97325-3, *Gerlach* (petitioner) v. *The Cove Apts., et al.* (respondent). (Oral argument 2/20/20). (See also: [Landlord and Tenant—Defects in Premises—Liability of Landlord—Noncommon Areas—Nontenants—Implied Warranty of Habitability](#)).

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Juveniles—Parental Relationship—Termination—Imprisoned Parent—Absence From Trial—Validity—Due Process

Whether in this proceeding to terminate parental rights, the trial court violated the imprisoned father's due process rights by conducting most of the termination trial in his absence.

No. 97731-3, *In re the Termination of Parental Rights to M.B.* (Oral argument 3/19/20).

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Juveniles—Parental Relationship—Termination—Improvement of Parent—State Services—Necessary Services—Timeliness

Whether in this proceeding involving a termination of parental rights based largely on the biological mother's mental health problems, the State failed to timely offer the mother necessary services tailored to her needs and failed to allow sufficient time to evaluate her mental health improvements following the administration of critical mental health treatment, particularly one treatment initiated one month prior to the termination trial.

No. 97311-3, *In re the Termination of Parental Rights to: D.H., S.T., L.L., & T.L.* (Oral argument 2/13/20).

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Landlord and Tenant—Defects in Premises—Liability of Landlord—Noncommon Areas—Nontenants—Implied Warranty of Habitability

Whether a nontenant injured in a fall from an apartment balcony may sue the landlord for breach of the implied warranty of habitability under *Restatement (Second) of Property: Landlord and Tenant* section 17.6 (1977).

No. 97325-3, *Gerlach (petitioner) v. The Cove Apts., et al.*, (Oral argument 2/20/20). (See also: [Intoxicating Liquors—Negligence—Contributory Fault—Intoxication Defense—Extent of Intoxication Bearing on Proximate Cause—Blood Alcohol Content—Evidence—Plaintiff’s Admission to Having Been Intoxicated—Effect—Evidence—Opinion Evidence—Expert Testimony](#)).

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Municipal Corporations—Annexation—Void Order—What Constitutes—Jurisdiction—Subject Matter Jurisdiction

Whether a 1985 King County Superior Court order annexing an area in Snohomish County to the Ronald Wastewater District was void when issued on the basis that the court lacked subject matter jurisdiction or statutory authority to order the annexation.

No. 97599-0, *Ronald Wastewater Dist., et al. (petitioners) v. Olympic View Water & Sewer Dist., et al. (respondents)*. (Oral argument 3/19/20).

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Negligence—Rescue—Rescue Doctrine—Professional Rescuer—Nature of Doctrine—Implied Primary Assumption of Risk

Whether in this tort action brought by a firefighter who was injured fighting a forest fire, this court should abandon or limit the affirmative defense of the “professional rescuer doctrine,” such that the firefighter may bring negligence or gross negligence claims against the power companies allegedly responsible for starting the fire.

No. 97826-3, *Lyon* (appellant) v. *Okanogan County Electric Cooperative, Inc. & Pub. Util. Dist. No. 1 of Douglas County* (defendants). (Oral argument: 1/21/20).

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Parties—Standing—Organizational Standing—Claim for Damages for Denial of Meal Periods and Withholding of Wages—Certainty of Damages—Representative Testimony—Sufficiency

Whether in this action by a nurses’ labor union seeking damages for the denial of meal periods and the withholding of wages, the testimony of nurse witnesses was sufficiently representative and was properly used to establish liability and damages.

No. 97532-9, *Wash. State Nurses Ass’n* (respondent/cross appellant) v. *Yakima HMA, LLC d/b/a Yakima Reg’l Med. & Cardiac Ctr.*(appellant/cross respondent). (Oral argument 1/23/20). (See also: [Employment—Conditions of Labor—Meal Periods—Denial of Meal Periods—Withholding of Wages—Right of Action—Labor Union—Associational Standing](#)).

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Personal Restraint—New Principle of Law—Retroactivity—Appellate Holding—*Houston-Sconiers* Case

Whether the supreme court’s decision in *State v. Houston-Sconiers*, [188 Wn.2d 1, 391 P.3d 409 \(2017\)](#), holding that a trial court sentencing a juvenile offender in the adult criminal justice system has discretion to depart from sentencing guidelines and mandatory sentence enhancements in light of the particular circumstances surrounding a defendant’s youth, applies retroactively to this offender seeking resentencing by personal restraint petition.

No. 97205-2, *In re Pers. Restraint of Domingo-Cornelio* (petitioner). (Oral argument 2/13/20).

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Personal Restraint—Petition—Timeliness—Statutory Limits—Exceptions—Significant Change in Law—Appellate Decision—Retroactivity—*Houston-Sconiers* Case

Whether the supreme court’s decision in *State v. Houston-Sconiers*, [188 Wn.2d 1, 391 P.3d 409 \(2017\)](#), holding that a trial court sentencing a juvenile offender in the adult criminal justice system has discretion to depart from sentencing guidelines and mandatory sentence enhancements in light of the particular circumstances surrounding the offender’s youth, constitutes a “significant change in the law” that applies retroactively, exempting this personal restraint petition from the one-year limit on collateral relief under [RCW 10.73.100\(6\)](#).

No. 95578-6, *In re Pers. Restraint of Ali* (petitioner). (Oral argument 2/13/20).

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Personal Restraint—Petition—Timeliness—Statutory Limits—Exceptions—Significant Change in Law—Appellate Decision—Retroactivity—*O’Dell* Case

Whether this court’s decision in *State v. O’Dell*, [183 Wn.2d 680, 696, 358 P.3d 359 \(2015\)](#), or the United States Supreme Court’s decision in *Miller v. Alabama*, 567 U.S. 460, 469-70, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), constitutes a significant, material, and retroactive change in the law under RCW [10.73.100\(6\)](#), exempting from the time limit on collateral relief a personal restraint petition challenging a sentence of life without release for aggravated first degree murder brought by a petitioner who was 19 years old when he committed the offense.

No. 96772-5, *In re Pers. Restraint of Monschke*, (petitioner). (Oral argument 3/17/20).

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96773-3, *In re Pres. Restraint of Bartholomew*, (petitioner).

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Public Assistance—Medical Care—Medicaid—Benefits—Determination—State Rules—“Shared Benefit” Rule—“Informal Support” Rule—Validity

Whether “shared benefit” and “informal support” regulations employed by the Department of Social and Health Services to calculate the amount of Medicaid benefits available to pay in-home long-term personal care workers violate state and federal wage laws and were enacted in excess of statutory authority and arbitrarily and capriciously.

No. 97216-8, *SEIU 775* (petitioner) *v. State, et al.* (respondents). (Oral argument 3/17/20).

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Sexual Offenses—Evidence—Hearsay—Exception—Hue and Cry—Continued Validity—Timeliness After Crime

Whether in sexual offenses prosecutions, the “fact of complaint” or “hue and cry” hearsay exception should be abandoned as antiquated, and if not, whether the complaint in this case was timely made after a series of alleged offenses occurring over a period of years.

No. 97496-9, *State (respondent) v. Martinez (petitioner)*. (Oral argument: 3/17/20).

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Statutes—Validity—Constitutionality—Equal Protection—Ex Post Facto—Double Jeopardy

Whether the statute defining the crime of failure to register as a sex offender violates the constitutional ex post facto clause, double jeopardy principles, or equal protection principles in requiring a Washington resident to register for a sex offense committed in a foreign jurisdiction that would not qualify as a sex offense in this state if registration for that offense is required in the foreign jurisdiction.

No. 97617-1, *State (petitioner) v. Batson (respondent)*. (Oral argument 3/12/20). (*See also*: [Criminal Law—Crimes—Elements—Authority of Legislature—Transfer of Powers—Validity](#)).

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Taxation—Local Tax—Excise Tax—Authority—City Tax on Utility District Water and Sewer Services—Governmental Immunity Doctrine—Due Process—Privileges and Immunities

Whether the city of Federal Way as a municipal corporation has authority under [RCW 35A.82.020](#) to impose an excise tax on a utility district's water and sewer services despite governmental tax immunity, and if so, whether the excise tax otherwise violates state constitutional due process or privileges and immunities principles.

No. 96585-4, *Lakehaven Water & Sewer Dist., et al.* (appellant) v. *City of Federal Way* (respondent). (Oral argument: 1/16/20).

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