

**SUPREME COURT OF KENTUCKY**

**DISCRETIONARY REVIEW GRANTED**  
(Pending Cases Only)

**DISCRETIONARY REVIEW GRANTED 6/11/14**

Patton v. Bickford, 2013-SC-560-DG

Torts. Negligence. Causation. Qualified Immunity. Issues include whether summary judgment was properly granted based on qualified immunity of school officials and whether suicide is a superseding cause which extinguishes tort liability.

Oral argument-March 2015

**DISCRETIONARY REVIEW GRANTED 3/25/15**

Martin v. O'Daniel, 2014-SC-373-DG and

Sapp v. O'Daniel, 2014-SC-389-DG and

Motley v. O'Daniel, 2014-SC-394-DG

Torts. Malicious Prosecution. Issues involve availability of an immunity defense as well as evidentiary sufficiency, including applicability of federal malicious prosecution standards to this state action filed against three state police troopers following acquittal of a forgery charge.

Oral argument-October 2015

Burke v. Commonwealth, 2014-SC-472-DG

Criminal Law. Hate Crimes. In this prosecution for four assaults, issues include the constitutionality and applicability of "hate crime" statute KRS 532.031.

Oral argument-June 2016

Philadelphia Indemnity Insurance v. Tryon, 2014-SC-354-DG

Encompass Indemnity Company v. Tryon, 2014-SC-357-DG  
Contract. Automobile Insurance. Underinsured Motorist Coverage.  
Whether the “owned but not scheduled for coverage” exclusion in the policies covering the insured’s cars was enforceable and prevented the insured from stacking UIM coverage when he was injured on his motorcycle.

Oral argument-September 2015

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT**  
**3/25/15**

Kentucky Properties Holding, LLC v. Sproul, 2014-SC-368-DG  
Property Law. Public and Private Roads. KRS 178.116. Did the lower courts conduct a proper analysis of: (1) whether the road crossing the plaintiff’s property was public or private; and (2) whether any public portion of the road had been discontinued under KRS 178.116?

**DISCRETIONARY REVIEW GRANTED 5/6/15**

Jones v. Bennett, 2014-SC-425-DG  
Negligence. Qualified Official Immunity. Law Enforcement. Issues include whether a police officer is entitled to qualified official immunity when his failure to prevent a reportedly drunk driver from re-entering his vehicle and turning onto a busy highway resulted in a car accident that seriously injured an innocent motorist.

Oral argument-February 2016

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT**  
**5/6/15**

Barber v. Bradley, 2014-SC-424-DG  
Family Law. Dissolution. Division of Property. KRS 403.190. Issues include whether the trial court correctly concluded that: (1) the husband gifted one-half of the equity in the marital residence to the wife; (2) the husband presented insufficient proof that certain items of personal property were his non-marital property; and (3) the parties’ marital personal property could be equitably divided by random drawing.

**DISCRETIONARY REVIEW GRANTED 6/3/15**

AEP Industries, Inc. v. B.G. Properties, Inc., 2014-SC-512-DG

Contracts. Specific Performance. Material Breach by a Non-Binding Appraisal. The first issue is whether appeal of an order granting specific performance on an option to purchase property is moot where the party ordered to specifically perform transfers the property in exchange for payment, does not seek a stay while on appeal of the order granting specific performance, or does not post a supersedeas bond. A second issue is whether a non-binding appraisal may constitute a “material breach” of an option to purchase agreement which would suspend performance of the agreement for sale of property.

Oral argument-August 2016

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT**  
**6/3/15**

Commonwealth v. Miles, 2014-SC-558-DG

Criminal Procedure. Ineffective Assistance of Counsel. Cumulative Error. The issue is whether it is proper to evaluate an RCr 11.42 motion on the basis of cumulative error given the requirement that there must exist a reasonable probability that the outcome would have been different if not for counsel’s multiple errors.

Story v. Kentucky Court of Justice Dismissal Appeal Board,  
2014-SC-626-DG

Administrative Law. Evidentiary Sufficiency. Issues involve the discharge of a court designated worker for insubordination in the form of divulging to a judge the contents of an e-mail from the CDW’s immediate supervisor regarding a policy change involving the judge’s work.

Commonwealth v. Tapp, 2014-SC-607-DG

Criminal Law. Probation Revocation. KRS 533.020(4). Issues include whether the defendant’s probation automatically discharged prior to his revocation hearing when the circuit court issued an arrest warrant upon which the defendant was arrested several days *before* the probationary period was set to expire, but the revocation hearing was not held until several days *after* the probationary period was set to expire.

**DISCRETIONARY REVIEW GRANTED 8/12/15**

Newkirk v. Commonwealth, 2014-SC-749-DG

Criminal Law. Unavailable Surveillance Videotape. Issues involve the Court of Appeals reversal of the trial court's dismissal without prejudice after a pretrial ruling deeming inadmissible proof of the contents of unavailable surveillance videotape.

Oral argument-March 2016

McAbee v. Chapman, 2014-SC-555-DG

Evidence. KRE 615(3). Separation of Witnesses. Experts. Issues include whether the trial court properly exempted the defendant's expert from the separation of witnesses rule based on counsel's statement that the expert's presence was essential to management of the case.

Oral argument-February 2016

Furlong Development Company v. Georgetown Scott County Planning and Zoning Commission, 2014-SC-594-DG

Mutual Release. Performance Bond. The main issue is whether a planning commission may call for payment on a performance bond where a developer on whose behalf the bond was issued in favor of the planning and zoning commission, defaults on its loan obligation to the bank and executes a deed in lieu of foreclosure to the bank and its property management company. And if so, specifically, what is the effect of the language of the mutual release which absolves the developer's surety of any further liability upon execution of the deed in lieu of foreclosure, and its effects on the bond obligations and the developer's duty to indemnify the surety?

Oral argument-February 2016

Brown-Forman Corporation v. Merrick, 2014-SC-717-DG

Nuisance. Trespass. State Law Tort Claims. Preemption. The issue to be determined is whether the federal Clean Air Act preempts state law tort claims.

Oral argument-March 2016

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT**  
**8/12/15**

Grubb v. Smith, 2014-SC-641-DG

Premises Liability. The issue in this premises liability case is the application of the *McIntosh* and *Shelton* cases to a case involving a depressed area of the pavement in a parking lot. The trial court, following a bench trial, found the condition to be “unreasonably dangerous,” and found the landowner and the business manager liable. The Court of Appeals reversed this decision, finding the condition to be “open and obvious.” A second issue is that of the joint and several liability of the business manager. The trial court found the manager jointly and severally liable. The Court of Appeals reversed that finding, on the grounds that the manager did not have sufficient control of the premises to be held jointly and severally liable.

Cassetty v. Commonwealth, 2014-SC-716-DG

Recusal of Judge. Application of Judicial Ethics Opinion. The issue is whether a trial judge who is also the drug court judge may recuse himself upon request when determining whether to revoke diversion and sentence a defendant who has failed the drug court program. A judicial ethics opinion which indicates that a trial judge may participate in such a determination unless there is a basis to disqualify them has been interpreted by trial judges as ethically precluding recusal upon a request to do so.

Hollaway v. Direct General Insurance Company of Mississippi, Inc.,  
2014-SC-758-DG

Insurance. Bad Faith. Discovery. Expert Opinions. The issue to be resolved is whether the Movant created an issue of fact in regard to the alleged bad faith conduct of the insurer by submitting a summary of the opinions of her expert witness who would testify that the insurer had engaged in bad faith by its delay in settling the Movant’s personal injury claim. If so, then the trial court’s summary judgment in favor of the insurer was premature and should be reversed.

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT**  
**9/16/15**

Stone v. DuBarry, 2015-SC-40-DG

Attorney Fees. Does KRS 376.460 permit filing and enforcing an attorney's lien to recover unpaid fees pursuant to the contract for representation in a marital dissolution proceeding involving division of marital assets?

Unifund CCR Partners v. Harrell, 2015-SC-117-DG

Prejudgment interest. Rights of third party assignee of a debt. Violation of Fair Debt Collection Practices Act. The issue is whether a third party assignee of a debt can claim prejudgment interest at the statutory rate of 8% where the original creditor had charged off the debt and had stopped assessing the contractual rate of interest on the debt for several months prior to the sale of the debt to the third party. Is a claim for recovery of prejudgment interest at the statutory rate by a third party assignee a violation of the Fair Debt Collection Practices Act?

**DISCRETIONARY REVIEW GRANTED 10/21/15**

The Estate of Christina Wittich v. Flick, 2015-SC-114-DG

Wrongful Death. Statute of Limitations. Issues involve whether the statute of limitations for a wrongful death action should be tolled until a defendant's homicide conviction.

Oral argument-June 2016

Commonwealth v. Mitchell, 2015-SC-21-DG

Criminal Law. First-Degree Assault. Non-Relative Caregiver. Issues include whether a non-relative caregiver can be found guilty of first-degree assault when she allowed the disabled adult, for whom she was the primary caregiver, to live in life-threatening squalor.

Oral argument-August 2016

Indiana Insurance Company v. Demetre, 2015-SC-107-DG

Insurance. Bad Faith. Damages. Emotional Distress. The primary issue on this review is whether expert testimony is necessary to substantiate damages for emotional distress in a bad faith case.

Oral argument-June 2016

McCain v. The Sullivan University System, 2015-SC-144-DG

KRS 337.385. Statutory interpretation. Class Action Certification. The issue is whether the language of KRS 337.385 prohibits the bringing of claims by employees for wage and hour violations under Kentucky state law as a class action.

Oral argument-June 2016

Samuels v. Commonwealth, 2015-SC-180-DG

Criminal Law. Attorneys. Conflict of Interest. The issues presented are (1) whether it is a conflict of interest for a criminal attorney in a local DPA office to represent a defendant in a case where another criminal attorney in the same DPA office represents the victim of that defendant's actions on other criminal charges; and (2) whether it is reversible error for the trial court to conclude that there was no conflict of interest and to proceed to trial with the DPA attorney representing the defendant, who has refused to waive the conflict of interest.

Oral argument-September 2016

Murphy v. Commonwealth, 2015-SC-235-DG

Juvenile Law. Sex Offender Registration Act. Non-resident adjudication. The issue presented is whether a juvenile adjudicated guilty of a sex offense requiring registration as a sex offender in another state, is required to register after moving to Kentucky.

Oral argument-June 2016

Superior Steel v. The Ascent at Roebling's Bridge, LLC, 2015-SC-204-DG

Contracts. Unjust Enrichment. Implied Contract. Attorney Fees. The issues are (1) whether a project owner who directs that extra work be performed on the project, and where the owner receives the benefit of that extra work, may a subcontractor, who performed the extra work but does not have a contract with the owner recover on a claim for the cost of the extra work under the theory of unjust enrichment; (2) whether the subcontractor may recover against the general contractor for the extra work performed on the theory of implied contract as a matter of law; (3) whether the Court of Appeals erred in vacating a judgment in favor of the subcontractor on its contract claim with the general contractor for the extra work performed; and (4) whether the subcontractor who had no contract with the owner or the general contractor is entitled to attorney fees.

**DISCRETIONARY REVIEW GRANTED 12/10/15**

Kentucky Occupational Safety and Health Review Commission v. Estill County Fiscal Court, 2015-SC-256-DG

Administrative Law. Occupational Safety and Health. Issues include whether KRS 338.121 provides protection against discrimination regarding employee complaints to employers absent a specific state regulation characterizing such complaints as protected activity.

Oral argument-August 2016

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT 12/10/15**

Hammond v. Hammond, 2015-SC-205-DG

Real Property. Constructive Trusts. Issues include the propriety of an appellate panel's decision to impose a constructive trust when the trial court declined such imposition following a bench trial with conflicting evidence.

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT 6/3/15 and CROSS MOTION GRANTED WITHOUT ORAL ARGUMENT 12/10/15**

Commonwealth v. Miles, 2014-SC-558-DG and (Cross Motion) Miles v. Commonwealth, 2015-SC-321-DG

Criminal Procedure. Ineffective Assistance of Counsel. Cumulative Error. On the cross-motion, the Movant submits that in review of the propriety of granting an RCr 11.42 motion on the basis of cumulative error, all of the errors originally submitted with the motion should be considered, and not simply those errors which formed the basis for the Court of Appeals' decision to grant the motion.

**DISCRETIONARY REVIEW GRANTED 2/10/16**

Riehle v. Riehle, 2015-SC-679-DG

Marital Dissolution. The issue is whether a party adjudicated incompetent may petition for dissolution of a marriage to a spouse also serving as the petitioner's guardian and conservator.

Oral argument-August 2016

Thiele v. Kentucky Growers Insurance, 2015-SC-158-DG

Contract. Homeowner's Insurance. Collapse. Issues include whether the structural damage to the insured's home was sufficient to meet the policy's definition of collapse.

Oral argument-October 2016

Weber v. Lambe, 2015-SC-173-DG

Family Law. Maintenance. Unemployed Spouse. Reasonable Expenses. Issues include whether the family court correctly included expenses that are fully or partially attributable to the parties' children in the unemployed spouse's reasonable expenses when calculating maintenance.

Oral argument-October 2016

Kentucky CATV Association v. City of Florence, 2015-SC-178-DG

Flanery v. City of Florence, 2015-SC-181-DG

Taxation. Kentucky Constitution. Telecommunications. Franchise Fees. KRS 136.660. Issues include whether the Telecommunications Tax, which bars localities from collecting franchise fees from telecommunications service providers, violates Sections 163 and 164 of the Kentucky Constitution.

Oral argument-September 2016

Kentucky River Foothills Developm't Council v. Phirman, 2015-SC-244-DG

Governmental Immunity. Negligence. *Comair* Analysis. Issues include whether Kentucky River, the Community Action Agency for four counties, is entitled to governmental immunity from a wrongful death claim.

Oral argument-September 2016

Louisville Gas and Electric Company v. Kentucky Waterways Alliance,

2015-SC-461-DG and Energy and Environment Cabinet v. Kentucky Waterways Alliance, 2015-SC-462-DG

Clean Water Act. Best Practice Judgment (BPJ) Analysis. The first issue is whether the Cabinet was required, as a matter of law, to impose best practice judgment (BPJ) analysis, in addition to effluent limitation guidelines (ELG) when issuing a permit to LG&E for the discharge of its wastewaters into the Ohio River when the Cabinet's initial interpretation of

the provisions governing the issuance of this permit did not require the Cabinet to do so. The second issue was whether the reviewing court should defer to the Cabinet's interpretation of the provisions and regulations governing the issuance of a permit for the discharge of wastewaters.

Oral argument-September 2016

Champion v. Commonwealth, 2015-SC-570-DG

Freedom of Speech. Criminal Penalties. City Ordinances. The first issue is whether a city ordinance banning the practice of begging or soliciting upon the public streets or at the intersection of public streets constitutes a violation of free speech. The second issue is whether such an ordinance can impose criminal penalties for its violation.

Oral argument-October 2016

Argotte v. Harrington, 2015-SC-465-DG

Medical Malpractice. Informed Consent. Expert Testimony. Directed Verdict. The first issue is whether a directed verdict dismissing the case is appropriate in a medical malpractice claim when the plaintiff states during opening argument that she will introduce no expert testimony regarding the adequacy of the informed consent provided to her prior to the procedure. The second issue is whether expert testimony is necessary for the plaintiff to sustain her burden of proof with regard to the adequacy of the informed consent.

Oral argument-October 2016

## **DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT** **2/10/16**

Pace v. Commonwealth, 2015-SC-399-DG and Collins v. Commonwealth, 2015-SC-400-DG

Criminal Procedure. Search and Seizure. The first issue is whether a police officer conducts an illegal search when he ostensibly enters a person's patio, while investigating individuals who were possibly about to engage in violent behavior, and then observes illegal drugs through an open back door. The second issue is whether these circumstances are governed by the "protective sweep" or "emergency aid" exceptions to warrantless searches. The third issue is whether the officer can obtain a belated consent to search the premises after police had already entered and observed illegal drugs.

Goodwin v. Al J. Schneider Company d/b/a Galt House and Galt House East, 2015-SC-380-DG

Torts. Premises Liability. Slip and Fall. Issues involve injury suffered in a fall in a hotel bathtub.

**DISCRETIONARY REVIEW GRANTED 3/9/16**

Hughes and Coleman, PLLC v. Chambers, 2015-SC-435-DG

Attorney Fees. Issues involve whether, despite the circuit court's award (following a bench trial and supported by expert testimony) of a partial fee on a quantum meruit basis to a law firm terminated by a personal injury plaintiff, that firm's handling of basic and added reparation benefits created "good cause" for the termination and therefore defeated the claim for any portion of the fee.

Oral argument-October 2016

Wright v. LP Pikeville, LLC, 2014-SC-238-DG

Guardianship. Contract. Arbitration Agreements. KRS 387.660. Issues include whether a legal guardian has the authority to enter into a binding pre-litigation arbitration agreement on behalf of her ward.

Garrard County, Kentucky v. Middleton, 2015-SC-581-DG

KRS 441.245(3). Authority of Fiscal Court. Establishment of Jailers' Salary. The issue in this case is whether a fiscal court may decrease the salary of a jailer who does not operate a full service jail, from term to term pursuant to KRS 441.245(3).

Oral argument-September 2016

Jefferson v. Eggemeyer, 2015-SC-625-DG

Civil Procedure. Admonitions. Mistrial. Motion for New Trial. Sanctions for Mistrial. There are three issues in this case: (1) whether the Court of Appeals erred in setting aside the trial court's denial of the motion for a new trial, claiming that the lower court abused its discretion due to a misunderstanding of the facts underlying the motion; (2) whether a party who requests and receives admonitions, but does not object to the form of the admonition nor asks for a mistrial, has preserved for appeal a challenge to the events which brought about the admonition; and (3)

whether the trial court erred in levying sanctions against the defendant physician for conduct allegedly unrelated to the initial acts for which the trial court found him in contempt, arising out of the mistrial of the first trial.

Oral argument-October 2016

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT**  
**3/9/16**

Commonwealth v. Fugate, 2015-SC-597-DG

Criminal Law. Suppression of prior convictions. Collateral attack of prior convictions involving enhanceable crimes. Use of blanket discussions of constitutional rights waived by guilty pleas. Effect of absence of testimony from defendant that he did not understand effect of prior guilty plea. The issue is whether the Court of Appeals erred in vacating and remanding a case to the trial court, which had denied a motion to suppress two prior convictions which had been used to enhance a penalty on a third conviction.

Kirilenko v. Kirilenko, 2015-SC-661-DG

Domestic relations. Conflict of Laws. Application of § 188 of Restatement (Second) of Conflict of Laws to domestic cases. The issue in this case is whether the Court of Appeals erred in its reversal of the trial court's application of Kentucky law rather than Connecticut law in the classification and distribution of disability benefits from a fund maintained in Connecticut.

Isaacs v. Caldwell, 2015-SC-265-DG

Civil Procedure. Notice of Appeal. Summons. CR 3.01. Issues include whether the plaintiffs' appeal from a decision of the planning commission was properly dismissed for improper service of process.

**DISCRETIONARY REVIEW GRANTED 4/27/16**

Nami Resources Company v. Asher Land and Minerals, Ltd,  
2015-SC-489-DG

Oil and Gas. Contracts. Fraud. Punitive Damages. Issues involve alleged fraud and/or breach of contract in underpayment of oil and gas royalties pursuant to lease plus the propriety of imposing punitive damages.

State Farm v. Adams, 2015-SC-366-DG

Auto Accidents. Insurance. MVRA. Examination Under Oath. Issues include whether an injured passenger is obligated to comply with a driver's insurance policy provision requiring an examination under oath as a prerequisite to uninsured motorist or basic reparations benefits.

University of Kentucky v. Carpenter, 2015-SC-384-DG

Sex Discrimination. Retaliation. Kentucky Civil Rights Act. Kentucky Whistleblower Act. Issues include: (1) whether the circuit court properly ordered separate trials for each of the female police officers; (2) whether the female police officers presented sufficient evidence of discrimination and retaliation to survive summary judgment or a directed verdict; and (3) whether the female police officers' supervisors are subject to individual liability under the Kentucky Whistleblower Act.

Dugan & Meyers Construction Company v. The Ascent at Roebing's Bridge, LLC, 2015-SC-635-DG, and The Ascent at Roebing's Bridge, LLC v. Superior Steel, 2015-SC-636-DG (cross-motions with Superior Steel v. The Ascent at Roebing's Bridge, LLC, 2015-SC-204-DG)

Contracts. Indemnity. Extra Work. Attorney Fees. Unjust Enrichment. Jury Instructions. These cross-motions for discretionary review seek review of those portions of the Court of Appeals' decision which granted the general contractor indemnity against the owner and construction manager, and their insurer for amounts owed by the general contractor to the subcontractors for extra work performed and for attorney fees awarded. In addition, review is sought of the Court of Appeals' decision which vacated the jury verdict and judgment in favor of the construction manager against the general contractor. Review is also sought of the jury instructions under which the trial court found unjust enrichment against the owner of the property.

Paducah Independent School District v. Putnam & Sons, LLC, 2015-SC-711-DG

Eminent Domain. Fair Market Value. Stand Alone Use of Property. Highest and Best Use. Expert Testimony. The issue is whether the Court of Appeals erred in its application of the highest and best use test in this eminent domain proceeding, and in doing so, whether the Court of Appeals usurped the role of the trial court as the finder of fact in such proceedings.

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT**  
**4/27/16**

Cobb v. Commonwealth, 2016-SC-63-DG

Warrantless Search of Impounded Vehicle. Suppression of Evidence. Public Safety Exception. The first issue in this case is whether there was reasonable basis to impound a vehicle which was parked in a driveway prior to the arrest of its driver. The second issue is whether the public safety exception to the requirement for a search warrant applies to permit the inventory search of an impounded vehicle of a driver arrested by the police for driving on a suspended license.

**DISCRETIONARY REVIEW GRANTED 6/8/16**

Collins v. Commonwealth Transportation Cabinet, 2015-SC-675-DG  
Administrative Law. Board of Claims. Issues involve the scope of duty owed by the Transportation Cabinet Bureau of Highways in enforcing regulation regarding length and width of motor vehicles on a “non-designated” highway.

Utility Management Group, LLC v. Pike County Fiscal Court,  
2015-SC-680-DG

Open Records. KRS 61.870(1)(h) “Public Agency.” Issues, including a constitutional challenge, involve whether a private for-profit entity contracting for operational and management services with a public entity is a “public agency” for purposes of the Kentucky Open Records Act.

Traft v. Commonwealth, 2015-SC-470-DG

Criminal Law. 4<sup>th</sup> Amendment. Traffic Stop. License Plate Reader. Issues include whether the police have reasonable suspicion to conduct a traffic stop based solely on a license plate reader alert indicating that the owner of a vehicle has a pending warrant.

**DISCRETIONARY REVIEW GRANTED WITHOUT ARGUMENT 6/8/16**

Murrell v. Bottom, 2016-SC-76-DG

Criminal Law. Habeas Corpus. Transfer of Prisoner. Issues include whether paroling a convict to the authorities of another jurisdiction in 2001

waived the Commonwealth's right to recommit the convict for violation of the terms of his parole in 2013.

### **DISCRETIONARY REVIEW GRANTED 8/17/16**

#### Adams v. Sietsema, 2015-SC-483-DG

Negligence. Medical Malpractice. Jail Healthcare. Expert Testimony. Issues include whether an inmate who claims that the jail's medical director and nurse practitioner caused his illness to become life threatening by inadequately supervising and communicating with the jail's nursing staff was required to present expert testimony to establish the standard of care for jail medical staff.

#### Armfield v. Kentucky Farm Bureau Mutual Insurance Company, 2016-SC-148-DG

Insurance. MVRA. Underinsured Motorists Coverage. Motorcycle Exclusion. Issues involve whether loss of consortium claims are barred by the UIM policy exclusion regarding bodily injuries sustained while occupying and operating a motorcycle.

#### Talley v. Paisley, 2016-SC-92-DG

Real Estate. Partition. Joint Tenancy with Right of Survivorship. Issues involve division of proceeds of sale of realty owned by unmarried cohabiting couple in joint tenancy with right of survivorship.

#### Majestic Oaks Homeowners Association, Inc. v. Majestic Oaks Farms, Inc., 2016-SC-213-DG

Easements. Expiration of easement. The issue in this case is whether the original roadway easement given to the developer of property was extinguished automatically after conveyance of developer's lots and after conveyance of the common areas to the homeowners' association, such that the developer was denied access to another property owned by the developer via roadways in the original development.

#### Riffe v. Commonwealth, 2016-SC-219-DG

Criminal Law. Suspension of driver's license for refusal to take breathalyzer. Subsequent acquittal on DUI charge. The issue in this case is whether the trial court erred in suspending the driver's license for 36 months following his acquittal on a DUI-third offense, where the driver had refused a breathalyzer on advice of counsel.

Moss v. Commonwealth, 2016-SC-165-DG

Criminal Law. Evidence. Adoptive admissions. Pre-arrest silence. The primary issue in this case is whether a defendant's failure to respond to a witness' statement made during a police investigation constitutes an adoptive admission, which may be introduced into evidence, or whether this failure to respond to the witness' statement is pre-arrest silence which may not be introduced as evidence against the defendant.

**DISCRETIONARY REVIEW GRANTED 4/27/16 and CROSS MOTION GRANTED 8/17/16**

Nami Resources Company, LLC v. Asher Land and Minerals, Ltd, 2015-SC-489-DG and (Cross Motion) Asher Land and Minerals, Ltd v. Nami Resources Company, LLC, 2016-SC-235-DG

Oil and Gas. Contracts. Fraud. Punitive Damages. Issues involve alleged fraud and/or breach of contract in underpayment of oil and gas royalties pursuant to lease plus the propriety of imposing punitive damages.

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT 8/17/16**

Commonwealth v. Hughes, 2016-SC-137-DG

Criminal Law. CR 60.02. Issues involve application of CR 60.02 to repeatedly rejected ineffective assistance of counsel contentions.

Hawkins v. Commonwealth, 2015-SC-639-DG

Criminal Law. First-Degree Trafficking in a Controlled Substance. KRS 218A.1412. Issues include whether the provisions of the first-degree trafficking statute that enhance a defendant's felony class based on the

weight of the drug trafficked are intended to refer to the aggregate weight of the entire substance, i.e., pure drug plus filler substances, or solely to the portion of the substance's total weight that consists of the pure drug itself.

Commonwealth v. Copley, 2015-SC-584-DG

Criminal Law. RCr 11.42. Ineffective Assistance of Counsel. Issues include whether the defendant's trial counsel provided ineffective assistance by failing to adequately explain the possibility of an EED defense.

Morrison v. Commonwealth, 2015-SC-712-DG

Criminal Law. Jury selection. Strikes for cause. Familial relation to county attorney. Abuse of discretion. The issue in this case is whether the trial court abused its discretion in refusing to strike for cause a potential juror who is the mother of the county attorney who had conducted the preliminary hearing in this case.

**DISCRETIONARY REVIEW GRANTED 9/15/16**

University of Louisville v. Lillard, 2016-SC-64-DG

Sovereign Immunity. Contract. Employment. KRS 45A.245. Issues include whether the University is immune from a former employee's claim for breach of his written employment contract.

Big Sandy Regional Jail Authority v. Lexington-Fayette Urban County Government, 2016-SC-8-DG

Sovereign Immunity. KRS 441.025. At issue in this matter is whether sovereign immunity bars an action by a regional jail against a county to recover the costs of housing that county's prisoners, after they were arrested and held pursuant to a warrant from courts of that county. In addition, at issue is whether KRS 441.025 obligates a county to pay for the incarceration of prisoners arrested and held on warrants issued by the courts of that county which are served in the county where the prisoner is incarcerated.











