Case Name	Summary of the Case	Call for Legislative Action	Statute
Rutherford v. Talisker Canyons Finance, Co., 2019 UT 27, 445 P.3d 474	Minor was injured when he skied into machine-made snow at Canyons Ski Resort. Minor's parents brought claims for negligence against Canyons Ski Resort. In the district court, Canyons Ski Resort argued that the claims were barred by the machine-made snow exemption in Utah's Inherent Risks of Skiing Act ("the Act"). The district court decided that, under the Utah Supreme Court's decision in *Clover v. Snowbird Ski Resort*, 808 P.2d 1037 (Utah 1991), there was still a question of whether the claims were barred by the Act. In *Clover*, the Utah Supreme Court concluded that the list of risks in the Act did not categorically bar injuries caused by a listed risk. Rather, the Court held that a court must determine: 1) whether an injury was a result of a risk that the skier wished to confront; and 2) if the injury is not a risk that the skier wished to confront, whether the ski resort took reasonable care to remedy the risk. Canyons Ski Resort appealed the district court's decision. The Utah Supreme Court agreed to hear Canyon Ski Resort's appeal on two issues, one of those issues was whether the Court should continue to follow *Clover's* interpretation of the Act. In *Rutherford*, the Utah Supreme Court clarifies *Clover*, holding that a court should make an objective determination of whether a skier reasonably expects to encounter a risk while skiing. If the skier expects to encounter the risk, then the risk is an integral part of the sport of skiing and is an inherent risk of skiing. Justice Thomas Lee dissented, arguing that the case law has distorted the terms of the Act. He stated that he would read the listed risks in the Act as categorically included as inherent risks. Justice Lee states, " I would credit the text of the Inherent Risks of Skiing Act. I would overrule *Clover,* and in so doing affirm that our job is to interpret statutes, not rewrite them. *Rutherford*, 2019 UT 27, ¶ 198.	In the majority decision, Justice Deno Himonas states: "The legislature, of course, retains the power to amend the Act and overrule our interpretation, which it has thus far declined to do. To the extent our current holding is not in line with the legislature's actual intent, 'we [continue to] invite the Utah Legislature to revisit the [Act] to provide clarity in this area.'" *Rutherford v. Talisker Canyons Finance, Co.*, 2019 UT 27, ¶ 84.	Title 78B, Chapter 4, Part 4, Inherent Risks of Skiing

Utah Office of Consumer Services v. Public Service Commission of Utah, 2019 UT 26, 445 P.3d 464**.**	The Public Service Commission sets rates for public utilities, including PacifiCorp (a.k.a. Rocky Mountain Power). The process for setting a rate is governed by the Utah Code. To establish a general rate, the Commission estimates what it will cost PacifiCorp to provide electricity to its customers. However, PacifiCorp's actual power costs can vary from these estimated costs. In 2009, the Legislature created energy balancing accounts (EBA) to allow electrical corporations to account for variations between estimated and actual costs. *See* Utah Code § 54-7-13.5. An EBA tracks incurred power costs and becomes effective when there is a finding that the EBA is: (1) in the public's interest; (2) for prudently-incurrent costs; and (3) implemented at the conclusion of a general rate case. *See* Utah Code § 54-7-13.5(2)(b). If an EBA is approved by the Commission, the electrical corporation must file annually a reconciliation for the EBA, which allows the electrical corporation to either seek a recovery from customers or a refund to customers. *See* Utah Code § 54-7-13.5(2)(d). An audit is then conducted by the Division of Public Utilities to determine whether the recovery or refund is appropriate. When PacifiCorp was approved for an EBA, the Commission allowed for an "interim rate" procedure. Under this procedure, PacifiCorp could file its annual EBA report and then propose a new "interim" rate based on the difference between estimated and actual costs in the annual report. This rate would go into effect while the Division completed the full audit of PacifiCorp's annual EBA report. Under this process, the Commission authorized PacifiCorp to recover $2.8 million in costs. Consumer groups challenged the Commission's orders and argued that the Commission lacked authority to impose interim rates in the EBA process. The Utah Supreme Court agreed that the Commission lacked authority, concluding that while an interim rate is allowed in the process of setting a general rate, it is not permitted by statute for the EBA process. Furthermore, the Court set aside the Commission's orders because the Commission's interim rate process provided a different burden of proof than in statute for the EBA process.	In the majority opinion, Justice Thomas Lee stated, "We decide only that the current statutory scheme does not condone the interim rate process as it now stands. And we leave it to the legislature, if it so chooses, to reopen the governing statutes to expressly authorize an interim rate procedure as an element of the EBA process." *Public Serv. Comm'n*, 2019 UT 26, ¶ 49.	Section 54-7-13.5

State v. Newton, 2020 UT 24, -- P.3d --.	Defendant was charged with rape. At trial, the district court gave the following jury instruction: "Rape as defined in the law means the actor knowingly, intentionally, or recklessly has sexual intercourse with another without that person's consent." *Newton*, 2020 UT 24, ¶ 10. Defendant's counsel did not object to this jury instruction and Defendant was convicted of aggravated sexual assault. On appeal, Defendant argued that his counsel failed to make sure that the jury was "clearly and accurately instructed about consent" in the jury instruction. *Newton*, 2020 UT 24, ¶ 22. The Utah Court of Appeals held that the jury instruction on rape accurately identified each element of rape and correctly stated each mental state. However, the Utah Supreme Court stated that the jury instruction was more ambiguous than the Court of Appeals held because the jury instruction could have more clearly stated that the defendant acted with intent, knowledge, or recklessness that the victim did not consent. Regardless, the Court held that Defendant did not establish that the ambiguous jury instruction would have led a jury to acquit him of the charges. Justice Paige M. Petersen concurred, but wrote separately. In general, the rape statute does not specify a required mental state or a specific mental state for as to a victim's nonconsent. Utah Code section 76-2-102 provides "when the definition of the offense does not specify a culpable mental state and the offense does not involve strict liability," then "intent, knowledge, or recklessness shall suffice to establish criminal responsibility." Justice Petersen explained that knowledge and recklessness are compatible with victim consent because a prosecutor must prove either that: "(1) the defendant knew that the victim did not consent"; or "(2) the defendant was reckless as to whether the victim did not consent." Newton, 2020 UT 24, ¶ 53. But intent is not compatible with the element of victim nonconsent because victim nonconsent requires the prosecution to prove that the victim did not consent, and that the defendant was aware that the victim did not consent.	Justice Paige M. Petersen, concurring: "I agree with the committee that "intent" is incompatible with the mens rea for the victim's nonconsent. However, I concur with the majority opinion on this point because I conclude that Utah Code section 76-2-103(2) does not give us the freedom to exclude "intent" of our own accord in element four. I write separately to raise this issue, however, for possible refinement by the legislature if it so chooses." *Newton*, 2020 UT 24, ¶ 57.	Subsection 76-2-103(2) (Mens Rea); Section 76-5-402 (Rape)

State v. Bridgewaters, 2020 UT 32, -- P.3d --.	Defendant was charged with violating a protective order, which had been mailed to Defendant's last known address. The district court found that there was a probable cause for the charges and bound Defendant over for trial. Defendant filed a motion to overturn this decision, arguing that he had not been properly served with the protective order in accordance with Rule 4 of the Utah Rules of Civil Procedure and that a previously issued ex parte protective order had expired. The district court denied Defendant's motion. Defendant appealed the district court's decision. One of the issues before the Utah Supreme Court was whether Rule 4 of the Utah Rules of Civil Procedure governs service of a protective order. The Court determined that, given the use of the phrase, "service of process," for protective orders in the Cohabitant Abuse Act, the Legislature intended protective orders to be served in accordance with Rule 4. However, even though the Court determined that the protective order was not served in accordance with the Act, the Court determined that there was an ex parte protective order still in effect, which had been personally served on Defendant. In a footnote, the Court explains that Article VIII, Section 4, of the Utah Constitution grants the Utah Supreme Court authority to adopt rules of procedure and the Legislature authority to amend those rules upon a 2/3rds vote of both houses. The Court states that the Cohabitant Abuse Act contains unique procedure rules that "purport to supersede the Utah Rules of Civil Procedure where applicable," but the Legislature did not enact those provisions in accordance with the Utah Constitution. *Bridgewaters*, 2020 UT 32, ¶ 24 n.9. Although the State had not challenged the constitutionality of the Act, the Court stated that there is a "practical concern" with the Act taking precedence over the rules. Essentially, "[i]n protective order proceedings, litigants and courts are faced with two sets of procedural rules running on parallel tracks and are required to make judgment calls about which rule should apply in a given circumstance." *Bridgewaters*, 2020 UT 32, ¶ 24 n.9.	In the majority opinion, Justice Petersen states: "Aside from any constitutional concerns, the Legislature could increase clarity for the bar and the bench if it were to enact rule changes through joint resolutions that specifically amend the relevant rule of procedure." *Bridgewaters*, 2020 UT 32, ¶ 24 n.9.	Subsection 78B-7-106(13); Section 78B-7-118

State v. Bowden, 2019 UT App 167, 452 P.3d 503**.**	Defendant was convicted by a jury of five felony discharge-of-a-firearm charges and one attempted aggravated murder charge. Defendant filed a motion to merge his felony discharge-of-a-firearm convictions with his attempted aggravated murder conviction. The district court only allowed one of his felony discharge-of-a-firearm convictions to merge with the attempted aggravated murder conviction. Utah's merger statute has two tests. Under the first test, if the same act of a defendant within a single criminal episode can be punished in different ways under different provisions of the Utah Code, the act can only be punished under one of those provisions. *See* Utah Code § 76-1-402(1). While the second test provides that if an offense is a lesser included offense of another offense for which the defendant is charged, the defendant cannot be charged for both offenses. *See* Utah Code § 76-1-402(3). On appeal, Defendant argued that the district court erred in merging only one of the felony discharge-of-a-firearm convictions with his attempted aggravated murder conviction. And the question before the Utah Court of Appeals was whether Defendant's convictions merged because, under the first test, they were part of the same act under the same criminal episode. Utah's aggravated murder statute expressly provides certain aggravating circumstances that do not merge with aggravated murder. *See* Utah Code § 76-5-202(5)(a). Because a felony discharge of a firearm is only an aggravating circumstance when a defendant was previously convicted of a felony discharge of a firearm, the Court of Appeals concluded that all remaining discharge-of-a-firearm convictions should have merged with the attempted aggravated murder conviction. In a concurring opinion, Judge Ryan Harris pointed out that the outcome was different for non-aggravated murder in *State v. Martinez*, 2019 UT App 166, 452 P.3d 496. In *Martinez*, the Court held that a defendant who commits non-aggravated murder through the use of a firearm is not entitled to having the defendant's discharge-of-a-firearm convictions merged with the conviction for murder or attempted murder. Judge Harris explained that outcomes of the cases were different because the language of the two statutes are different. *See* Utah Code §§ 76-5-202(1)(j)(xvii), (5)(a), (5)(b); 76-5-203(1)(v), (5)(a), (5)(b).	In a concurring opinion, Judge Ryan Harris states: "Although I fully agree with the lead opinions' conclusions that the plain language of the statutory text dictates these outcomes, I wonder whether the Legislature truly intended this result. In the event that it did not, the legislature may wish to consider amending these statutes in a future legislative session." *Bowden*, 2019 UT App 167, ¶ 30.	Section 76-5-202; Section 76-5-203

Waterfall v. Retirement Board, 2019 UT App 88, 443 P.3d 1274.	Waterfall was previously employed as a justice court judge for South Ogden City. At the time Waterfall stopped working for the City in 2012, the City's director of finance reported to the Utah Retirement System (URS) that Waterfall had always been part-time while working for the City. Based on this report, URS calculated Waterfall's benefits on a part-time employment status with the City. Waterfall disputed the calculation of his benefits, arguing that the part-time determination was incorrect, and he was a full-time employee for the City. At a hearing in 2015, the hearing officer was presented with the 2012 report and a 2015 letter from the city manager that stated that Waterfall was actually a full-time employee. However, the Utah State Retirement Board concluded that Retired Judge was a part-time employee. In 2016, Waterfall retired. He attached the 2015 letter from the city manager and a 2017 letter that reaffirmed he was a full-time employee. URS contacted the City and the city attorney responded that the City's position was that Waterfall was a part-time employee. Based on the Board's previous determination and the city attorney's response, URS calculated Waterfall's benefits based on his part-time certification. Waterfall filed a petition challenging this determination and the petition was dismissed by the Board. Waterfall appealed to the Utah Court of Appeals, arguing that the petition should not have been dismissed because the City considered him a full-time employee and URS did not have the authority to change that certification. The Court of Appeals determined that URS has the authority to fix errors and resolve disputes in the calculation of benefits even after an employee retires. It concluded that URS s was able to correct the error and resolve the dispute over Waterfall's status by contacting the City over the conflicting reports. Therefore, the Court of Appeals upheld the Board's decision.	In the majority opinion, Judge Kate Appleby explains that Utah Code section 49-13-406 provides that "[a] justice court judge who has service of more than participating employer shall be considered full-time by the office for a period of service in which the judge is certified as full-time by: (i) a participating employer; or (ii) the Administrative Office of the Courts . . . ." Utah Code § 49-13-406(3)(a). In an accompanying footnote, Judge Appleby provides: "The statute does not make clear who is authorized to speak for the judge's "employer." It also does not articulate guidelines for what constitutes full-time and part-time employment. It may be advisable for the legislature to specify exactly who is authorized to speak for a justice court judge's municipal employer in this context, and to set out clear guidelines for what constitutes full-time and part-time employment." *Waterfall*, 2019 UT App 88, ¶ 11 n. 4.	Section 49-13-406