

**Civil Procedure Final Exam**  
**Professor Sternlight**  
**May 15, 2008**

**Exam # \_\_\_\_\_**

**INSTRUCTIONS**

This is an open book exam. You may consult any notes, commercial or personal outlines, hornbooks, etc. However, you may not share your materials with any other person during the exam nor access substantive information on a computer or from a live person.

Check this exam for completeness at this time. It should be 4 pages long. You should also have been provided the Complaint document which is 4 pages long, and a copy of the Nevada Longarm statute, which is 1 page long. Write your Exam number on this exam and make sure the Exam number also appears on any blue book or printed exam answer you turn in. Please also number the blue books if you use more than one.

Read (don't skim) each of the questions carefully before drafting your answers. Also, be sure to provide me with the reasoning underlying your answers. That is, tell me why you came to the conclusions you did. If you consider but ultimately reject certain options or arguments, please explain why. In general you should not add or make up any facts. However, if you find a particular question is ambiguous, or if you believe that I have omitted essential information, then explain any such ambiguity or problem and supply any additional information or assumptions you believe to be necessary to permit you to answer the question.

Put all of your answers in a blue book or in your printed exam answer. I will not give credit for information written on the exam itself. Also, I ask that you write only on one side of the page. You may use abbreviations so long as they are obvious or you define them. I will look at outlines if you ask me to. However, it is difficult to thoroughly set forth reasoning in an outline.

Please use only your Exam number to identify yourself. Do not attempt to identify yourself by, for example, referring to personal characteristics or to remarks made in class. Also, please refrain from including any personal notes in your exam.

You have three hours to complete the exam. I have indicated the point value for each question and you should allocate your time accordingly. The exam totals 100 points. Given my scoring system you will be sharply penalized for failing to thoroughly address any portion of the essay questions.

**Question 1 True false questions (33 points total; 3 points each)**

With respect to each of the following propositions, state whether the proposition is true or false. Then, explain in at most two sentences why you believe the proposition is either true or false. The questions are all independent of one another. You will receive no credit at all unless you provide an explanation for why the statement is true or false. You will also receive no credit unless you come to a conclusion as to whether the statement is true or false. I will not read any material in excess of two sentences. You will also do yourself a disservice by writing extremely long “sentences” because these questions are each only worth three points.

A. Assume that the Complaint (provided) was filed in state court in Nevada. Defendants are trying to decide whether to request removal to federal court. In making their decision they should know that while there may be some differences between federal and state court, both will apply the same substantive law and both will apply the same test to determine whether a jury trial is available to the parties.

B. Assume that the Complaint (provided) was filed in state court in Oklahoma, and that it was properly served by May 1, 2008. Defendant QCC Inc. would like to remove the case to federal court today, May 15, 2008. Assume that the requirements of diversity jurisdiction would have been met had this matter initially been filed in federal court. Nonetheless, removal is not proper.

C. Assume that the Complaint (provided) was filed in federal court in the District of Oklahoma. If defendants preferred that the lawsuit be heard in Nevada they likely could have the matter moved to Nevada.

D. Assume that the Complaint (provided) was filed in federal court in the District of Oklahoma. Defendant QCC Inc. decides it would like to implead QCC of Nevada, a citizen of Nevada. Even assuming that the test for R. 14 (impleader) is met this impleader should not be permitted because personal and subject matter jurisdiction will not exist with respect to the impleader.

E. Assume that the Complaint (provided) was filed in federal court. Plaintiffs have submitted a motion for partial summary judgment asking the court to find that defendants frequently re-used syringes and that this practice was inconsistent with safe medical practice. In support of their motion plaintiffs have submitted depositions and affidavits from ten former employees and patients citing particular instances in which they saw syringes being re-used, during the period January 1, 2006 though February 27, 2008. Plaintiffs have also submitted an affidavit from an expert epidemiologist stating that the re-use of syringes is inconsistent with safe medical practice. In response to the motion defendants have written a brief denying they re-used syringes, and denying that the re-use is unsafe. To support their brief defendants attached an affidavit from defendants’ attorney stating that the defendants never engaged in any unsafe medical practices. The court should grant the motion for partial summary judgment.

F. Assume that the Complaint (provided) was filed in federal court. Defendants have filed a motion for partial summary judgment arguing that plaintiffs' claims for punitive damages should be denied, because plaintiffs have failed to present adequate evidence of willful or reckless behavior. Defendants submit a brief supporting their position. The only materials defendants supply to support their motion is excerpts from two of the plaintiffs' depositions stating that their evidence to support punitive damages is the conduct engaged in by the defendants. The court must deny the motion for summary judgment because defendants have failed to submit sufficient evidence to disprove plaintiffs' claim of punitive damages.

G. Assume that the Complaint (provided) was filed in federal court in the District of Nevada. Assume that defendants file a partial motion for summary judgment arguing that plaintiffs' claims for punitive damages should be denied. Assume that under the Nevada Rules of Civil Procedure, which would have governed had the matter been filed in state court in Nevada, partial motions for summary judgment are prohibited. As the Complaint is in federal court based on diversity jurisdiction, the federal court must follow the Nevada Rules of Civil Procedure and deny defendants' motion for partial summary judgment.

H. Assume that the Complaint (provided) was filed in federal court. Assume further that the judge has ordered all the parties and all the attorneys involved in the case to attend a settlement conference held at the courthouse. The attorney for QCC Inc. attends the conference but explains that his client (company CEO) can only be available by phone due to her busy schedule. The court would be justified in sanctioning both QCC Inc. and the attorney for QCC Inc. for the non-appearance, and the sanction could include placing both attorney and client in contempt and also requiring them to pay attorney fees and costs accrued by the other parties in the case.

I. Assume that the Complaint (provided) was filed in federal court. Assume that the district court grants defendants' motion for partial summary judgment with respect to plaintiffs' claims for punitive damages. It would be appropriate for plaintiffs to file an immediate appeal seeking reversal of the judge's ruling.

J. Assume that the Complaint (provided) was filed in federal court. Assume that the case goes to trial, in front of a jury, and that the jury finds in favor of defendants on all claims. Plaintiffs can file a motion seeking judgment as a matter of law, and can also file a motion seeking a new trial, but both motions must be filed with the appellate court within thirty days of issuance of the judgment, and both motions can only be filed if plaintiffs, earlier, had made a motion for judgment as a matter of law at the close of all the evidence.

K. Assume that the Complaint (provided) was filed in federal court. Assume that the case goes to trial, in front of a jury, and that the jury finds in favor of defendants on all claims. Two months after plaintiffs lose their case a doctor formerly employed by QCC of Nevada contacts plaintiffs' attorney and provides her with new evidence providing substantial support for plaintiffs' claims, and showing that one of defendants' key witnesses lied on the witness stand. Although plaintiffs cannot bring this evidence up to support their pending appeal, plaintiffs can use the new evidence to support the new case they will now file in state court.

## **Question 2 (28 points)**

Assume that the Complaint (provided) was filed in federal district court for the District of Nevada. The judge has certified the case as a R. 23(b)(3) class action, and has defined the class to include all Nevada citizens who received colonoscopies at QCC of Nevada during the period January 1, 2006 through February 27, 2008. You are a law clerk working for the judge to whom the case was assigned. Although neither party has raised any question about the court's subject matter jurisdiction, the judge has asked you to write a memo (informal style is fine) discussing the following:

- (a) If the parties don't raise an issue of subject matter jurisdiction is it appropriate for the judge to raise this issue on his/her own? (this should be discussed only very briefly)
- (b) Is there a problem with amount in controversy? The judge is particularly concerned about the claim of Annabelle Archer, and any similarly situated members of the plaintiff class, who fear they were exposed to a disease but have not tested positive for any disease. The judge wonders whether the claims of all such persons should be dismissed for failing to meet the amount in controversy requirement.

## **Question 3 (39 points)**

Assume that the Complaint (provided) was filed in federal district court for the District of Nevada. You are an associate working for the firm that represents the plaintiff class. Defendant QCC Inc. was served under FRCP 4(d) at its corporate office in Delaware, and subsequently signed a R. 4(d) waiver of its right to a different type of service of process. QCC Inc. has since filed a motion to dismiss for lack of personal jurisdiction.

The partner for whom you work has told you to do the legal and factual research necessary to support your brief in opposition to defendant's motion to dismiss. As background, the partner has explained to you that QCC Inc. and QCC of Nevada are two legally separate entities, and that the actions of QCC of Nevada cannot necessarily be attributed to QCC Inc. (Indeed, your firm deliberately sued the parent company, and not QCC of Nevada, because you think that it has much deeper pockets and because you wanted to be able to bring this action in federal court). In particular, your assignment right now is to write a memo (informal format is fine) explaining what legal test the court will apply in deciding defendant's motion, and what facts you will hope to find to support your position. That is, you are to describe what kinds of factual support you will look for to support your memorandum in opposition to defendant's motion to dismiss. Use the relevant doctrine and caselaw to explain why the particular facts you will look for might be important.

Annabelle Archer,	:
	:
Benjamin Bariz,	:
	:
& Cindy Chin,	:
	:
Named Plaintiffs	:
	:
On behalf of a class of similarly situated persons	:
	:
-vs-	:
	:
Dr. Sandy Sleaze,	:
	:
& Quickie Colonoscopy Clinic Inc.,	:
	:
Defendants	:
	:

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**COMPLAINT**

Introduction

1. Plaintiffs Annabelle Archer, Benjamin Bariz & Cindy Chin all had colonoscopies performed on them at the Quickie Colonoscopy Clinic of Nevada (“QCCN”) at some point during the period January 1, 2006 through February 27, 2008. Plaintiffs allege that they and other similarly situated persons were exposed to the risks of HIV/AIDS, hepatitis and other serious diseases due to the negligent practices of defendants at QCCN during that period of time, and therefore seek compensatory and punitive damages and injunctive relief.

Parties

2. Annabelle Archer is a 52 year old woman, and the mother of one adult child, Louanne, who is mentally disabled and relies on Archer for monetary and other support. Archer is employed as a legal secretary. Archer is and at all relevant times was a citizen of Las Vegas Nevada. She has not yet been found to test positive for any communicable disease such as HIV or hepatitis, but is extremely fearful that she may be found positive for such diseases in the future, due to the negligence of defendants.

3. Benjamin Bariz is a 63 year old man. He is employed as an electrician. He is the husband of Amelia Bariz and father to twelve year old Miguel Bariz. Bariz is a citizen of North Las Vegas,

NV. Mr. Bariz suffers from HIV due to the negligence of defendants.

4. Cindy Chin is an 87 year old woman. She is a citizen of Henderson Nevada and where she currently resides in a nursing home. Ms. Chin is infected with hepatitis C due to the negligence of defendants.

5. Dr. Sandy Sleaze is a doctor who directs the Quickie Colonoscopy Clinic of Nevada and directed that Clinic at all times relevant to this Complaint. Dr. Sleaze is and at all relevant times has been a citizen of Palm Springs CA.

6. Quickie Colonoscopy Clinic Inc. ("QCCI") is a corporation that owns a chain of twenty-five colonoscopy clinics across the country. QCCI is incorporated in Delaware and has its principal place of business in Norman, Oklahoma. One of the clinics owned by QCCI, Quickie Colonoscopy Clinic of Nevada, is located in Las Vegas NV at 5203 South Maryland Parkway.

### Facts

7. On January 18, 2006, upon the advice of her doctor, Annabelle Archer obtained a colonoscopy at QCC of Nevada.

8. On April 27, 2007, upon the advice of his doctor, Benjamin Bariz obtained a colonoscopy at QCC of Nevada.

9. On June 7, 2007, upon the advice of her doctor, Cindy Chin obtained a colonoscopy at the QCC of Nevada.

10. On February 27, 2008, the Southern Nevada Health District held a news conference to announce that approximately 40,000 patients and former patients of QCC of Nevada would soon be sent notices informing them that due to questionable practices employed by QCC of Nevada, those patients should have themselves tested for HIV and hepatitis.

11. Upon information and belief, from January 1, 2006 through February 27, 2008, persons employed by and/or associated with QCC of Nevada used unsafe and/or questionable safety practices when conducting colonoscopies. These unsafe and/or questionable safety practices included re-using syringes and liquid anesthetic administered to patients in connection with their colonoscopies.

12. Dr. Sandy Sleaze, as Director of the QCC of Nevada, is personally responsible for all actions and inactions that caused or permitted unsafe practices at the QCC of Nevada. In particular Dr. Sleaze failed to adequately supervise the employees of QCC of Nevada.

13. QCC Inc., through its acts and omissions, failed adequately to supervise the practices at QCC of Nevada. QCCI is responsible for the questionable and unsafe practices that took place at QCC of Nevada.

14. On March 15, 2008 Annabelle Archer was tested for HIV and hepatitis. Although both tests came back negative she remains very fearful that a future test may reveal that she suffers from a terrible disease as a result of the unsafe practices employed at QCC of Nevada. The fear Ms. Archer is suffering is causing her severe emotional distress and is negatively impacting her performance at work and her family life.

15. On August 1, 2007 Benjamin Bariz learned that he had tested positive for HIV. Mr. Bariz had never in his life previously tested positive for HIV. Bariz has never used illegal drugs nor engaged in homosexual sex. He became exposed to HIV during his colonoscopy at QCC of Nevada.

16. As a result of testing positive for HIV Mr. Bariz will now need to take anti-HIV drugs for the rest of his life. To the extent these drugs are not effective Mr. Bariz will suffer pain and possibly death as a result of AIDS. Mr. Bariz is already suffering substantial emotional distress as a result of having tested positive for HIV. His sexual and emotional relationship with his wife has also been negatively affected.

17. On November 1, 2007 Cindy Chin learned she had tested positive for hepatitis C. Ms. Chin had never in her life previously tested positive for hepatitis C. Ms. Chin became exposed to hepatitis C during her colonoscopy at QCC of Nevada.

18. As a result of testing positive for hepatitis C Ms. Chin is enduring substantial pain and suffering and diminished quality and length of life. As a result of being ill with hepatitis C she is also at substantial risk of falling prey to other serious diseases such as liver cancer.

**Count I: Negligence Committed by Defendant Sandy Sleaze Against Plaintiffs**

19. Plaintiffs incorporate by reference paragraphs 1-18 of the foregoing complaint.

20. Defendant Sleaze acted negligently, in violation of state common law, in that she failed to comply with the standards of care that would be expected of a reasonable person.

21. Defendant Sleaze's negligence caused Plaintiffs harm.

22. Defendant Sleaze's actions were also willful or reflected wanton recklessness and disregard for the value of human life.

Wherefore Plaintiffs request the following relief from Defendant Sleaze:

compensatory damages, punitive damages, attorneys fees, reasonable costs, injunctive relief, and such other relief as the court deems appropriate.

**Count II: Negligence Committed by Defendant Quickie Colonoscopy Clinic Inc. Against Plaintiffs**

23. Plaintiffs incorporate by reference paragraphs 1-18 of the foregoing complaint.
24. Defendant QCC Inc. acted negligently, in violation of state common law, in that it failed to comply with the standards of care that would be expected of a reasonable person.
25. Defendant QCC Inc.'s negligence caused Plaintiffs harm.
26. Defendant QCC Inc.'s actions were also willful or reflected wanton recklessness and disregard for the value of human life.

Wherefore Plaintiffs requests the following relief from Defendant QCC Inc.:

compensatory damages, punitive damages, attorneys fees, reasonable costs, injunctive relief, and such other relief as the court deems appropriate.

\_\_\_\_\_ Date: April 15, 2008

Stanley Slugger  
Attorney for Plaintiffs