

Question 1 (33 points total, 3 points each)

- (a) ___ False. It probably will be true that the same substantive law will apply in both jurisdictions, as both the Nevada state court and the Nevada federal court to which the case would be removed will apply Nevada's choice of law principles to select that substantive law. However, whereas the Seventh Amendment of the U.S. Constitution will be used to determine the availability of a jury trial in federal court, state constitutional law will be used to determine the availability of a jury trial in state court.
- (b) ___ True. Although the timing is not problematic, per 28 U.S.C. 1441(b) diversity cases such as this one are removable only if none of the defendants are a citizen of the state in which the claim was brought. Because QCC Inc. is a citizen of Oklahoma (where the claim was brought) as well as Delaware, the claim is not removable even assuming both defendants agree to removal. (JS: But note that 28 USC 1453(b), which we did not study, allows removal of class actions despite this problem).
- (c) ___ True. For transfer of venue to be appropriate, per 28 U.S.C. 1404, defendants would need to be able to show that the matter could have been heard in Nevada, as a matter of personal jurisdiction & venue, and that the interests of justice are served by the transfer. Here, since venue appears proper in Nevada under 28 U.S.C. 1391 (a) in that a substantial part of the events transpired in Nevada, and since defendants will be able to show most of the witnesses and evidence is in Nevada, and can waive any personal jurisdiction problems, transfer of venue would likely be allowed.
- (d) ___ False. The impleader is permitted, as a matter of subject matter jurisdiction, because there is diversity of citizenship between QCCI (citizen of Delaware & Okla.) and QCCN (citizen of Nevada), and the claim would clearly be for more than \$75,000. As to personal jurisdiction, the answer is not clear, but a court could well find as in Burger King that QCCN should have foreseen the possibility of litigation in Oklahoma when it entered into a business relationship with QCCI, a citizen of Oklahoma.
- (e) ___ True. Under FRCP 56(c) a federal court should grant a motion for partial or total summary judgment where "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Here, because the only "evidence" submitted by defendants is an attorney affidavit which is not based on personal knowledge, all the evidence favors plaintiff and the court should grant the motion.
- (f) ___ False. Although, in Adickes, the Supreme Court initially stated that the moving party has a high burden of production in order to prevail on a motion for summary judgment, in Celotex the Supreme Court subsequently interpreted FRCP 56 to require a court to grant

summary judgment so long as the moving party has made an argument sufficient to “show” the court that the responding party lacks proof to prevail on the point in question. Here, although the court may see fit for other reasons to deny the motion for partial summary judgment, defendants have clearly met the relatively low burden of production set out in Celotex.

- (g) ___ False. Because this matter is in federal court based on diversity jurisdiction it is true that the Supreme Court’s Erie decision and its progeny require that the federal court apply state substantive law to resolve the claim. However, employing the analysis set out in Hanna v. Plumer it seems clear that this case will be governed by the directly-on-point federal rather than state rule of procedure, in that R. 56 is clearly authorized as procedural under the Rules Enabling Act and in that using R. 56 in this case does not impinge on Nevada’s regulation of substantive law.
- (h) ___ True. Under R. 16(c)(1) a federal court may order both attorney and client to be present at a settlement conference. Where the court’s order is disobeyed R. 16(f) authorizes the court to impose sanctions on both attorney and client, and these sanctions can include contempt or an order that the party and/or attorney pay reasonable expenses incurred because of noncompliance with the court’s order.
- (i) ___ False. A court’s grant of partial summary judgment with respect to a claim for punitive damages is an interlocutory rather than final decision, and under 28 U.S.C. Secs. 1291 & 1292 cannot typically be appealed until the entire case has been resolved on motion or at trial. Under 1292(b) the issue could however be appealed, on an interlocutory basis, if the district and appellate courts both agreed to allow the immediate appeal. (JS: 54(b) is another exception).
- (j) ___ False. It is true that plaintiffs, having lost their case, can potentially file motions for a new trial (R. 59) and for judgment as a matter of law (R. 50), but these motions are filed with the trial court within ten days after entry judgment and not with the appellate court within thirty days. Also, whereas the post-trial JMOL can only be filed if the plaintiffs had previously made a motion for JMOL at the close of the evidence, (R. 50(b)), R. 59 motions for new trial can be made even if plaintiffs did not previously make a motion for JMOL.
- (k) ___ False. It is true that the new evidence cannot be used to support a pending appeal, in that appeals must be based on evidence and arguments previously made to the court. However, if plaintiffs were to try to use the new evidence in a state court action they in all likelihood would be held foreclosed by claim preclusion (final judgment, on the merits, same parties & same claim), and thus a better approach would be to use the new evidence to support a motion for relief from judgment under R. 60(b)(2) and/or (3). (JS: alternatively could argue that fraud may be an exception to claim preclusion.)

Question2 (28 points)

JS: Note, I did not expect you to discuss the special class action jurisdiction provisions contained in the Class Action Fairness Act, as I told you I would not test on these. 28 USC 1332(d). It allows sm jurisdiction, even where it would not normally exist, for class actions where total claims exceed \$5 million.

- ___ (3) Yes. It is always appropriate for federal courts to guard their own smj (the super-favored defense) and the Supreme Court did just this in the Mottley case. It would violate the Constitution for the court to hear cases over which it lacks smj.
- ___ (2) Intro/conclusion. The court is wise to be concerned with the AIC, and would be well-advised to ask the parties to brief this issue before making a final ruling. It appears that both independent and supplemental jurisdiction over such claims may be lacking, though possibly the court may be convinced that it does have either independent or supplemental jurisdiction.
- ___ (3) Per 28 USC 1332 a matter such as this based solely on diversity jurisdiction, is allowed only if each plaintiff states a claim exceeding 75k, exclusive of interests and costs. Not only the named-plaintiffs but also every member of the plaintiff class must be able to assert such a claim. Aggregation of class claims is not allowed. Snyder, Zahn
- ___ (1) To decide if a particular person's claim exceeds 75k the court should look to whether a claim for that amount was stated "in good faith". St. Paul Mercury
- ___ (3) Here, while we don't have the pleadings or any evidence, certainly it seems questionable whether persons such as Annabelle Archer who fear exposure but have not tested positive for any disease can in good faith state claims exceeding 75k. To make this determination the court should ask the attorneys to address this issue with evidence and briefs setting out what kind of harm such plaintiffs have suffered, and how similarly situated plaintiffs have been compensated in other cases.
- ___ (2) Even absent independent subject matter jurisdiction for those claims, possibly this court would have supplemental jurisdiction to hear the claims of persons such as Annabelle Archer. (Clearly B & C meet AIC.) Supplemental smj can exist where it is permitted by both the Constitution and a relevant statute such as 28 USC Section 1367.
- ___ (2) Here the Constitution would permit AA's claim so long as it arose out of the same t&o as the claims brought by persons such as BB & CC, who were actually infected by diseases. While the court should permit both sides to argue the issue, here it would seem that there will be a substantial evidentiary overlap in terms of witnesses and documents with respect to the two sets of claims. So, they would seem to meet the Gibbs test for "common nucleus of operative fact."

- ___ (1) Given that the Constitutional test is met, the test for 28 USC 1367(a) is also met.
- ___ (6) 28 USC 1367(b) probably excludes these claims. The potential supplemental claims are claims by plaintiffs in a case based only on diversity, and that is the situation in which 1367(b) often excludes claims. It is true that the Supreme Court, in Exxon, allowed additional plaintiffs to bring claims as supplemental, where they did not meet the AIC requirement. The claim was allowed because technically 1367(b) did not apply where plaintiffs, as opposed to defendants, were joined together under R. 20. Here, however, as both plaintiffs and defendants are joined under R. 20, probably the claim is excluded.
- ___ (5) 28 USC 1367(c), in any case, would require the court to use its discretion to decide whether to exercise supplemental jurisdiction. If the court were to conclude that the supplemental claims for example predominated over the claims of persons who are known to have received diseases, or were novel and complex, it might not want to accept supplemental jurisdiction over those claims. Although the claims of infected persons are brought for a lot more damages than the claims of persons like AA, it would seem that most members of the class have claims like AA's, and that perhaps those claims will require novel forms of relief. So, the court might decide supplemental jurisdiction would not be appropriate.
- ___ Other

Question 3 (39 points)

- ___ (2) Intro/conclusion
- ___ (1) Legal test for PJ. Need longarm + Constitution.
- ___ (1) Because Nevada longarm goes to Constitutional maximum, the two tests conflate, and remainder of memo will discuss Constitution, and how it might apply here.
- ___ (2) Basically, PJ can be asserted based on consent, citizenship, minimum contacts, or being present and served in the jurisdiction.
- ___ (2) The facts do not support our basing PJ on citizenship, as QCC Inc. is a citizen only of Delaware and Oklahoma. (We might just double check those facts that we asserted in the Complaint).
- ___ (1) The facts do not support our basing PJ on transient jurisdiction, as service was not

accomplished in Nevada.

- ___ (2) Conceivably we could base PJ on consent. We should research whether, in setting up an arm of its business here in Nevada, QCC Inc. took any actions or can be deemed under any Nevada law to have consented to PJ in Nevada.
- ___ (1) The most likely means of securing PJ over QCC Inc. in Nevada would seem to be the minimum contacts analysis enunciated by the Supreme Court in International Shoe and subsequent cases.
- ___ (2) The court will use a three-part test of whether QCC Inc. “purposefully availed” itself of the forum, whether the “fairness factors” either support or oppose Nevada PJ, and whether any contacts QCCI had in Nevada gave rise to the cause of action.
- ___ (5) Purposeful availment has been defined as reaching out – taking sufficient actions with respect to a forum such that the defendant should reasonably have foreseen being haled into court into court in that jurisdiction. To support PA look for benefits, to oppose cite unilateral activity, isolated contacts, attenuated benefits. For example, in Shoe ... and in Burger King... By contrast in WW Volkswagen no PA where.. and in Asahi a 4-1-4 split on meaning of PA as applied to stream of commerce.
- ___ (9) Apply PA – to show benefits and foreseeability would look for nature of relationship between QCC Inc. and QCC of Nevada – who is calling the shots? PA is more likely as QCC Inc. is more actively controlling QCCN. Get financial info, corporate documents, interview/depose witnesses e.g. re: who sets standard of care. Are there persons from QCCI who monitor what goes on in Nevada? What is the quantity/quality of contacts? How much money does QCCI make in Nevada as compared to other 24 locations? Does QCCI do any direct advertising in Nevada? Does QCCI tailor its product specifically for Nevada in any way?
- ___ (2) define fairness factors (interests of P, D, forum, interstate efficiency, shared policy)
- ___ (6) apply fairness factors (show importance to P of suing in Nevada, show QCCI can afford to defend in Nevada, and that most evidence is in Nevada, show Nevada interest based on related regulation/legislation, research whether any ongoing similar litigation in other locations)
- ___ (2) contacts give rise - seems to be easy to show so long as QCCI has some control in Nevada
- ___ (1) Thus, seems undesirable to try to use general jurisdiction, which would require lots more contacts.
- ___ Other