GENERAL FACTS

Zerlina Zoologica loves hamburgers. Indeed, she can’t get enough of them. She has developed a special fondness for Scuzzburgers, the latest taste sensation at Yaya’s, a chain of fast food restaurants which is operated as a division of Xyro Corp. Xyro itself does not operate any business under it’s own name. Instead it operates a large number of businesses as independent divisions under their own names. All correspondence to the divisions is routinely copied to the appropriate officer at Xyro. The customary practice is to send all complaints to the Xyro general counsel, Peter Principle. Yaya is managed by a division manager who works in a building down the block from the building housing the corporate offices of Xyro. Wayne Wacko is the division manager of Yaya, and has been the manager for the last twenty years.

Not all is well at Yaya. Wacko has been acting strangely lately. He has changed a number of routines and practices which has begun to affect the way each Yaya restaurant is operated. In particular, Wacko has begun to severely change the way the restaurants are cleaned. It used to be that each store was responsible for cleanup after closing. Six months ago Wacko sent a memo to all Yaya restaurants indicating that from now on the firm of Viege Viudes would handle all cleaning at the restaurants. Sadly VV has been doing a terrible job and the managers of the individual restaurants have begun to complain. What they do not know is that, in an effort to increase his income in order to send his daughter to the University of Tulsa College of Law, Wacko has begun accepting large kick backs from firms he hires to do work for Yaya, including but not limited to VV. This is particularly distressing with respect to VV because none of the employees is younger than 85 years old, none of them are completely ambulatory without assistance and most of them are legally blind. They are also not paid more than minimum wage, though each Yaya restaurant is charged for their services as if they are paid $10.00/hour. Wacko, of course, is pocketing the difference.

All of this comes to a head one fine July day. On the evening of July 15, 1998, Ted Turner, the manager of the Yaya’s at the Woodland Hills Mall threw out a large package of ground beef, the “use by” date had long expired. He placed it is the garbage receptacle and went home. Sewagia Swill, the VV employee in charge of clean up that night noticed the meat in the trash after dumping a pail full of debris into the garbage can. Always one to “waste not want not,” Sewagia took the meat out of the garbage, wiped it off with her apron and put it back in the refrigerator. The next day, Zerlina, craving a hamburger, stopped by the Woodland Hills Yaya’s for lunch. She ordered a Scuzzburger, which, sadly, was made of the meat that Sewagia retrieved from the
garbage. That evening Zerlina became violently ill. She thought she had a stomach ache. The next day her husband took her to the doctor. She was rushed to the hospital and remained incapacitated for the next three weeks.

Unless the question provides otherwise, DO NOT USE THE FACTS OF ONE QUESTION TO ANSWER ANOTHER. THE ONLY FACTS WHICH CARRY OVER FROM ONE QUESTION TO ANOTHER ARE THE GENERAL FACTS SET FORTH ABOVE.

Question 1
(50 minutes; 50 points)

Assume that the statute of limitations for all actions in tort is one year. Assume further that there is absolutely no problem with personal or subject matter jurisdiction.

On July 14, 1999 Queenie Quay, Esq., Zerlina’s lawyer, filed a complaint in the federal district court in Tulsa County naming as defendants Yaya, Wacko, and “an unknown cleaning person.” Queenie seeks, on behalf of Zerlina, compensatory damages of $1,000,000, and punitive damages against all defendants of $30,000,000.

On August 1, 1999, Queenie seeks to amend the complaint to substitute Xyro for Yaya, and to substitute Sewagia for “an unknown cleaning person.” Xyro and Sewagia have each filed an opposition to the motion and each has moved to dismiss the complaint on the grounds that it was filed after the statute of limitations had run.

You are the judge.

Part A (20 minutes):

Draft an opinion in which you decide all the motions. Please be sure to discuss all arguments which could be made in support of or opposition to the motion.

Part B (10 minutes):

How would your answer change if the original complaint had been filed on August 1, 1998?

Part C (20 minutes):

Are punitive damages appropriate in this case? Discuss the means by which you would determine how you determine what can be the maximum amount of punitive damages which might be assessed.
Question 2
(50 minutes; 50 points)

Assume that during the three weeks that Zerlina was in the hospital, her employer, Rowdy Rustlers (RR), sent her the following letter: “Dear Zerlina: You are fired effective immediately.”

Assume further that Zerlina included in her original action a cause of action against RR for unlawful termination and breach of her employment agreement, seeking damages for lost wages and an injunction ordering RR to reinstate her to her former job.

Assume further that while Zerlina was in the hospital, she was interviewed by a local newspaper, and was quoted in the newspaper as saying, “Boy, I used to like those Scuzzburgers, but the place is now not fit for pigs to eat in; those folks at Yaya’s are a bunch of crooks and cheats and part of the worldwide conspiracy of criminal elements. They are a bunch of hooligans who ought to be behind bars.” Xyro has responded to this by including a counterclaim for defamation as part of its answer to the complaint filed on behalf of Zerlina.

RR has moved to sever the action against him from the other actions. Zerlina has moved to sever the counterclaim asserted by Xyro.

Part A (25 minutes):

You are the judge. Draft an opinion in which you decide the motions. Please be sure to discuss all arguments which could be made in support of or opposition to the motions.

Part B (25 minutes):

What would Zerlina have to show to successfully obtain a preliminary injunction requiring RR to reinstate her to her job?

Question 3
(25 minutes; 25 points)

Assume that 20 days after Zerlina files her complaint, Xyro files a motion to dismiss the complaint on the grounds that it fails to state a claim for which relief can be granted. Xyro attaches to the motion an affidavit from the CEO of Xyro attesting that Xyro performs no cleaning functions in the Yaya restaurants, and attaching a contract between Xyro and VV in which it is clearly stated that VV assumes all risk and liability
for any damages arising under or relating to the actions of its employees. Zerlina responds by dismissing her complaint. On the morning of the hearing Xyro’s counsel serves Zerlina and files with the court an “amended motion to dismiss” which seeks dismissal of Zerlina’s complaint on the grounds that (i) it fails to state a claim for which relief can be granted, and (ii) improper venue.

You are the judge. At the hearing Zerlina argues that the “amended motion to dismiss” is ineffective and that Xyro cannot raise a defense of improper venue. At the same hearing, Xyro argues that Zerlina may not dismiss her complaint without leave of court and asserts that it is willing to agree to a dismissal – with prejudice. Decide the motions. Please be sure to discuss all arguments which could be made in support of or opposition to the motions.

Question 4
(20 minutes; 20 points)

You are married to the legislative assistant to Senator Blowhard of the Oklahoma legislature. Senator Blowhard is the brother of the CEO of Xyro. The good senator is seeking to introduce legislation which would codify Celotex in the State courts of Oklahoma. You are the legislative assistant to Senator Dimwittie. Senator Dimwittie is no lawyer and wants to try to understand all of the arguments for and against Senator Blowhard’s proposal. Dimwittie is especially interested in the practical effect of adopting the approach Blowhard is advocating. This is particularly important in a state like Oklahoma where judges are elected and cannot operate effectively without the support of the local bar.

Write a memo to Dimwittie suggesting the position Dimwittie should take and the reasons therefor. Be sure to provide the Senator with all the explanation he sought as described above.
During the course of preparation for trial, Xyro consulted with the following people:

1. Gratuitous Gladiola was consulted over the telephone about the reputation of Humbert Humbert. The call was between Cool and Xyro’s counsel. Gladiola will not testify at trial and has not otherwise helped in the preparation of the case. She is, however, a personal friend of Wacko, and on that basis was chosen to be called on for the reference on Humbert. She received no compensation.

2. Humbert Humbert was consulted in connection with the case. He will testify at a hearing and at the trial, if necessary. He is an expert on bad meat. He will be paid $400 per hour.

3. Peter Principle is counsel for Xyro. Immediately after he received a copy of Zerlina’s complaint, he had a series of conversations with Wacko. Several of these conversations were reduced to writing by Principle’s secretary, a number of others were summarized by Principle in a series of strategy memos he wrote in connection with the defense of the action. Principle also talked to Sewagia and summarized his conversations with her in a series of memos. In the summaries of Sewagia’s memos Principle also included sections entitled “Analysis of case against Xyro” in which he set forth his thoughts about the posture of the case and the way it should be litigated. In all his conversations, Principle was careful to tell Wacko and Sewagia that their conversations were confidential and held in connection with a legal matter and he identified himself as counsel for Xyro. On the day after she last talked to Principle, Sewagia dies.

You work for Queenie. Queenie wants to depose Gladiola, Humbert, and Wacko, and to obtain all written work prepared by them as well as by Principle which relates to or discusses the Zerlina litigation, especially any writings involving conversations with Sewagia. Write a memo to Queenie, discussing the extent to which Queenie may be entitled to depose each of these people and to obtain the information she seeks.