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Question #3

Does Federal District Court of Nevada have personal jurisdiction (PJ) over:

1. The University of Maui (UofM)?

Nevada has a liberal long arm statute and so long as Due Process requirements are met, then the state has the authority to assert jurisdiction.

Personal jurisdiction is the authority of the court over the parties. Historically the courts held that a defendant must be physically present in the forum, or the state had no authority to assert PJ over them (Pennoyer v. Neff). This was expanded under International Shoe v. Washington, where the court held that an out of state defendant may be subjected to PJ if they had sufficient contacts such that maintenance of the suit in the forum would not offend traditional notions of fair play and substantial justice. The court must find that the out of state defendant purposefully availed themselves of the benefits and protections of the states laws, and therefore should reasonably expect that they could be haled into court there (WW Volkswagen v. Woodson).

Here, UofM operates out of Hawaii, however they have a website that is accessible potentially all over the world. The website is not passive (where views of the site merely read information), but is interactive and not solely directed at local residents of Hawaii. The facts show that Nancy and 11 other students from Nevada enrolled in UofM. The court could find that UofM intended effects in the forum by reaching out via their website to find new students for the university, therefore they should not be surprised to be subject to suit in Nevada. One court even found that as little as one contact could be sufficient to support a finding of PJ (McGee). The action arises out of the contacts (specific jurisdiction) and the court could reasonably find that the nature and quality of the contacts between UofM and Nevada are sufficient to support a finding of PJ. The court will also look at whether it is reasonable for them to assert PJ over UofM. They look at the state's interest in providing a forum for Nancy, at the state's interest in regulating the activity, at

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UofM's relative burden of defending in Nevada, if the contacts were systematic and continuous, and the availability of another convenient forum for Nancy to bring her action in. Since Nancy is a resident of Nevada they have a strong interest in providing her with a forum and UofM is a college that reaches out via its website, the court will likely hold that it is reasonable to have UofM defend this action in Nevada.

However, Nancy signed a "Release & Agreement" stating that all claims against UofM would be litigated in Hawaii. This kind of forum selection clause will likely be deemed enforceable, as it was in Shutes v. Carnival Cruise Lines. In Shutes, the plaintiffs purchased cruise tickets, which contained a forum selection clause. Even though the court's found that it would be very inconvenient for them to go all the way from Washington (or Oregon?) to Florida to bring their personal injury action, the clause was enforceable. It is much less burdensome for Nancy (once she is able to travel again) to return to school in Hawaii and bring the action there.

good

Even though the courts may have found the requisite minimum contacts to assert PJ over UofM, Nancy signed a document stating that she would bring all actions against UofM in Hawaii. The court will not hear the case against UofM.

## 2. David Robinson?

David Robinson is an employee of UofM. He is a resident of Hawaii, but owns a condo in Nevada. The ownership of property within a forum could constitute a contact with the forum, however, this action does not arise out of David's contact with Nevada. The court would have to look at general jurisdiction and more contacts are needed to find jurisdiction when the cause of action does not arise out of the contacts with the forum. In Helicol, the company signed contracts in Texas and purchased helicopters, but the court did not find that they had enough contacts to support a claim against them that did not arise out of those contacts. It is unlikely that a resident of Hawaii, who served bad food in Hawaii but owned a condo in Nevada would be found to have the sufficient number of contacts as required to satisfy Due Process. The court will not hear the case against David Robinson.

Additionally, David could argue that since he is an employee of UofM, the theory of respondeat superior would apply and Nancy's signing of the "Release & Agreement" would apply to him as well and any action should be brought in Hawaii.

*v. good point -  
prob. not tho'*

3. Wholesome Provisions?

Wholesome Provisions provided the bad food eaten by Nancy and they only do business in Hawaii. However, their parent company Royal Hotels, Inc. does business in Nevada (as well as California & 25 other mainland states). The contacts of Wholesome Provisions with Nevada are nil, as the facts state that they only do business in Hawaii. The contacts of the parent company with Nevada should not be considered, as Royal Hotels, Inc. is not the party named in the action. The action against Wholesome Provisions should be heard in Hawaii.

4. Dr. Phil

Dr. Phil was served in Nevada. Personal service and physical presence in the forum is enough to support PJ. In Burnham v. Superior Court, the court held that so long as the defendant was physically present in the forum, it did not matter how fleeting his visit was (transient). This would only not be upheld if Dr. Phil was induced by fraud (Wyman v. Newhouse) or forced into the forum. The facts do not support this, as it states Dr. Phil was visiting a patient, so PJ over Dr. Phil will be upheld.

*v. Good*