ST. MARY'S UNIVERSITY
SCHOOL OF LAW

Fall Term 1998
Exam No.__________

FINAL EXAMINATION
ERISA
PROFESSOR G. FLINT

ESSAY
PLEASE READ CAREFULLY

ALL ANSWERS ARE TO BE WRITTEN ON THE BLUE BOOKS PROVIDED WITH THIS EXAMINATION.

There are two questions of equal value (time and percent indicated). The time for completing the examination is three hours.

1. This examination is "open book." You may use your casebook, statutory supplement, and classnotes. Use of calculators and laptops (without cleansing and ransoming of the administration) are permitted.

2. Be sure to answer the specific question that is asked. Information supplied relating to some unasked question will not increase your score and consumes your time needed to answer the asked questions.

3. If additional facts are necessary to resolve an issue, specify what addition facts you believe to be necessary and why they are significant. You may not make an assumption that changes or contradicts the stated facts.

4. Quality, not quantity, is desired. Think through and briefly outline your answer before you begin to write.

5. Write legibly. Be sure to formulate your answers in complete sentences and paragraphs with proper grammar. Failure to so do will result in an appropriately lower score.

6. Do not seek an interpretation of language in the questions from anyone. If you sense ambiguity or typographical error, correct the shortcoming by shaping the question in a reasonable way and by recording your editorial corrections in your answer.

Under the Honor Code, when you turn in this examination, you affirm that you have neither given, received, nor obtained aid in connection with this examination, nor have you known of any one so doing. If you cannot make this affirmation, you shall note such fact on your examination and must immediately advise the Dean of the reason therefor.

I.
(50% — 90 minutes)

You are a staff attorney for the IRS's pension section operating out of Austin. You have just finished your field audit of the Arunah Hubbell, Inc., Employee's Profit-Sharing Plan (the "Plan") for the Plan Years of 1995 and 1996. You are now preparing your report to your superior.

What actions do you recommend that the IRS take with respect to the Plan? Be sure to support your recommendations with support, including Code sections and relevant case law.

The following is a recitation of the information regarding the Plan that your field audit has gathered.

The Plan was adopted on December 26, 1995, effective as of January 1, 1995. The Plan's first Plan Year ended on December 31, 1995. Arunah Hubbell, Inc. (the "Company"), the sponsoring employer for the Plan, contributed its first contribution, in the amount of $100,000, to the Plan on January 15, 1996, and took a deduction of $100,000 on its 1995 corporate tax return. The Company made its second contribution of $100,000 on January 15, 1997, and took a deduction of $100,000 on its 1996 corporate tax return. The Company's fiscal year begins on January 1. The Company was incorporated on July 25, 1994. Prior to that time Arunah Hubbell operated the business as a sole proprietorship. Arunah Hubbell owns 80% of the Company's stock and Ruth Marie Smith, his wife, owns the rest.

The Company has six employees, Arunah Hubbell, President, Ruth Marie Smith, his wife, Dolly Baker, his mother-in-law, Benjamin Rockwell, Catherine Cary, and Julia Hartt. These individuals began working for the Company or its predecessor and earned compensation as follows:

Name	Employed	1995 Compensation	1996 Compensation
Arunah Hubbell	01/15/1990	$150,000	$160,000
Benjamin Rockwell	01/15/1990	45,000	25,000
Catherine Cary	01/15/1990	45,000	50,000
Ruth Marie Smith	04/20/1994	50,000	55,000
Dolly Baker	05/05/1995	20,000	35,000
Julia Hartt	01/15/1996		25,000

The Plan has a provision that excludes as participants all employees that do not work at the Company's headquarters in San Antonio and all employees with less than One-Year of Service. The Plan is an elapsed time plan. Under this provision the Company excluded Benjamin Rockwell and Catherine Cary for the 1995 and 1996 Plan Years since they run the Company's Dallas and Houston offices, respectively. The Company also excluded under this provision Dolly Baker and Julia Hartt in the 1995 Plan Year, and Julia Hartt in the 1996 Plan Year.

The Plan's vesting schedule is a 4-40, *i.e.*, no vesting until the fourth Plan Year, 40 % in the fourth year, with 5% increases in the fifth and sixth year, and 10% each Plan Year thereafter so 100% vesting occurs in the eleventh Plan Year. Vesting service includes service with the Company's predecessor. The Plan calls for allocation of the Company's contribution in proportion to compensation. The Plan calls for allocation of Plan earnings in proportion to account balances as of the end of the prior Plan Year. The Plan made earnings of $10,000 for the 1996 Plan Year. So for the 1995 and 1996 Plan Years the Plan Administrator made the following allocations:

Name	1995 Allocation	Vested	1996 Allocation	Vested
Arunah Hubbell	$ 75,000	45%	71,500	50%
Ruth Marie Smith	25,000	0	24,500	0
Dolly Baker			14,000	0
Total	100,000		110,000	

Benjamin Rockwell terminated his employment with the Company on May 10, 1996. The Plan provides that a participant does not get a Company contribution allocation unless employed on the last day of the Plan Year. Since the Company determined Benjamin Rockwell was not a participant in the Plan, the Plan Administrator paid him no moneys.

II

(50%--90 minutes)

You are a staff attorney for the trust department of the Joseph Irwin National Bank of San Antonio (the "Bank'). Your superior several days before requested that you conduct a due diligence investigation of the George Lee, Inc., Employee's Defined Benefit Plan (the "Plan"). The Bank is considering serving as a Trustee for the Plan. The Plan has assets of $10,000,000 and the Bank's trust department ordinarily charges 1 1/2 % of the trust assets as an annual fee for managing the trust. You have just finished your due diligence investigation. You are now preparing your report to your superior. What action do you recommend that the Bank take with respect to the Plan? Be sure to support your recommendations with support, including Code sections and relevant case law.

The following is a recitation of the information regarding the Plan that your due diligence investigation has gathered.

The Plan is administered by an Employee Committee consisting of Francis Burpee, Elizabeth Thompson, and Joseph Ferguson, all employees of George Lee, Inc. (the "Company"). The Plan has a fidelity bond to compensate for thefts committed by these Plan Administrators and the Trustee good for the Plan Years 1998, 1999, and 2000, purchased in 1998 in the amount of $300,000. The Plan's assets have increased over the last several years by 20%. In 1995 the Plan bought 10 acres of undeveloped land near Fiesta Texas from Francis Burpee for $50,000. At the time comparable sales nearby sold at $5,500 per acre. Land in this area currently sells for $4,000 an acre due to the slowdown in development of the area. In 1990 Joseph Ferguson was convicted of securities fraud involving another company.

The Plan provides the participants with a annual benefit equal to the average annual compensation over the last three Plan Years before age 65 times 2 1/2 % times the Years of Service up to 40. So an employee with 45 years of service and making $90,000, $100,000, and $1 10,000 the last three years before age 65 has an annual benefit of $100,000. The Plan also provides an optional retirement benefit of a straight life annuity. The Plan administrator has determined life expectancies for calculation of the amount due under this optional benefit from Table I of IRS regulation 1.72-9. This has occurred three times for employees Ananias Carll (aged 85), Stephen Jewell (aged 67), and Bateson Crampton (who died in 1993 at age 90).

The Plan is currently involved in litigation. The Company certified to the Plan Administrator that, when Davis Flint died while in service, his wife was his common law wife, Lucy Holmes. Davis Flint left no beneficiary designation form, but the Plan has a provision stating that in the absence of the beneficiary designation form the beneficiary is the spouse, then the descendants per stirpes, then as directed by the Texas Probate Code. So the Plan paid Lucy Holmes a survivor death benefit, namely an annuity of $10,000. Davis Flint, however, had an earlier wife, Eloise Gasaway, whom he forgot to divorce legally. So the Plan Administrator provided Eloise Gasaway with the $10,000 annuity, cut off Lucy Holmes's payment, and had the Plan sue Lucy Holmes in state court to recover the wrongfully paid benefits under the Texas Trust Act. The Plan has a provision stating that it is subject to the Texas Trust Act.

Another lawsuit involves Angeline Rogers, a former spouse of employee James Madison Rogers. Angeline Rogers was James Madison Rogers's second spouse. She has a Texas divorce decree granting her a 1/2: interest in James Madison Rogers's survivor annuity. Sarah Lynch, James Madison Rogers's first wife, had a Louisiana divorce decree granting her James Madison Rogers's survivor annuity. So the Plan Administrator indicated to Angeline Rogers that the Plan would not abide by her divorce decree. Angeline Rogers has sued in state court to enforce her divorce decree.