ST. MARY'S UNIVERSITY
SCHOOL OF LAW

Fall 2002
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 EXAM

There are three questions (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 class notes. Use of calculators and cleansed laptops is 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 you time needed to answer the asked questions.

3. If additional facts are necessary to resolve an issue, specify what additional 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 do so will result in an appropriately lower score.

6. Do not seek an interpretation of language in the question 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 correction in your answer.

Under the Honor Code, when you turn in this examination, you affirm that you have neither given, received, not 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 therefore.

I. (33.3 %--1 hour)

Chauncy Hubbell, aged 71, is retiring this year. Chauncy Hubbell has $1,000,000 in his three-person firm's profit-sharing plan. Chauncy Hubbell has outstanding from the profit-sharing plan a loan in the amount of $75,000 and bearing 8 % interest, which he received this year and does not plan to repay. Chauncy Hubbell has contributed over the years $50,000 of his own moneys to the profit-sharing plan. Chauncy Hubbell is married to the former Sarah Gilmore, aged 65. They have one daughter Ruth Ann Hubbell, aged 45.

Chauncy Hubbell has entered your associate's office at Blue Blood Law Firm, P.C. You are tax counsel for Chauncy Hubbell. Chauncy Hubbell wants you to minimize this year's taxes with respect to any distributions he makes from the plan. What is your recommendation? Be sure to give support of code sections and relevant case law.

II. (33.3%--1 hour)

Marion Gasaway is President of Kidd Turner Insurance Co., Inc. (the "Insurance Company"). They sold a group deposit insurance contract to James Madison Rogers & Assoc., P.C., Employee's Retirement Plan (the "Plan") last year. James Madison Rogers & Assoc., P.C. (the "Company"), did no appreciate the return made on the contract last year. This year they had the Plan terminate the contract. The contract provided that, if the contract was discontinued anytime during the first five years, the Insurance Company would only return 60 % of the principal. So the Insurance Company only returned 60 %. The Company made a special contribution to the Plan to make up for the 40 % and has filed suit in state court for contribution and indemnity from the Insurance Company.

Marion Gasaway has entered your associate's office at Silk Stocking Law Firm, P.C. You are the litigator for the Insurance Company. Marion Gasaway seeks an evaluation concerning this lawsuit and recommendation on how to proceed. What is your advice? Be sure to give support of code sections and relevant case law.

III. (33.3 %--1 hour)

Ezekiel Solomon, age 33, wants to adopt a retirement plan for Ezekiel Solomon & Assoc., P.A. (the "Firm") to obtain the maximum tax shelter for his profits. Ezekiel Solomon wants to require that no employee can join the plan until they have completed three year's of service and reached age 25, that no participant becomes vested until the fourth year and then at 40 % and 10 % per year thereafter, and that no one with less than 1200 hours during the year can be in the plan. Ezekiel Solomon also wants to the ability to direct the investment of his account, but the other employees will not have that ability.

The three associates of the firm make $90,000 and Ezekiel Solomon makes $200,000. The staff consists of 10 persons making less than $20,000 annually, but only the four legal assistants are long-time employees. The rest of the staff generally last only two years.

Ezekiel Solomon has entered your associate's office at Readem & Weap, P.C., to set up the plan. What is your recommendation? Be sure to give support of code sections and relevant case law.

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