ST. MARY'S UNIVERSITY
SCHOOL OF LAW

Fall 2009
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. BE SURE TO NUMBER EACH RESPONSE.

There are three questions (percent indicated).

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. No question asks for a general recitation about a topic from your notes.** Information supplied relating to general material from your notes or 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 %)

Davis Flint operates three cotton compresses in Central Texas in three different towns, Waco, Calvert, and Athens. Two of the cotton compress companies provide their administrative employees with a profit-sharing plan. The third does not because the three highest paid employees are not owners of the company. Ananias Carll, an IRS auditing agent has been auditing the plan in Waco. Ananias Carll has indicated to Davis Flint that the Waco plan is not qualified for last year since it does not include at least 40 employees and the sponsoring employer will be assessed a tax with penalties amounting to $100,000.

With respect to the company located in Waco, Calvert, and Athens, the voting share ownership follows:

	Waco	Calvert	Athens
Davis Flint	55%	30%	40%
Arunah Hubbell	30%		
Moses Smith	7.5%		
Michael Sweetman	7.5%		
Samuel Davis		30%	
Bateson Crampton		40%	
Stephen Jewell			40%
John Hartt			7.0%
Joseph Baker			7.0%
Benjamin Rockwell			6.0%

The companies in Waco and Athens have a profit-sharing plan. None of the companies has any employees making over $110,000, except for Henry Adams, Cornelius Waldo, Lucy Holmes and Catherine Cary who all work for the Calvert company and make $115,000 each. Some data with respect to the plans follows:

	Waco	Athens
Davis Flint account/salary	$300,000/$90,000	$200,000/$85,000
Arunah Hubbell account/salary	$250,000/$60,000	
Moses Smith account/salary	$200,000/$50,000	
Stephen Jewell account/salary		$200,000/$85,000
John Hartt account/salary		$150,000/$55,000
Total account balances of Admin. Employees	$3,000,000	$5,000,000

Additional data on the companies follows:

	Waco	Athens	Calvert
Total employees excluding Shareholders	110	165	55
Employees under age 21	10	15	5

Administrative employees	30	50	20
Michael Sweetman salary	$0		
Davis Flint salary			$40,000
Samuel Davis salary			$60,000
Bateson Crampton salary			$55,000
Joseph Baker salary		$0	
Benjamin Rockwell salary		$0	

Davis Flint has entered your associate's office at The Blue Blood Law Firm. Davis Flint wants to know how his plan is in non-compliance and what can be done to rectify the situation, i.e., prevent the penalty and/or insure that the problem does not happen in the future. What is your advice? Be sure to provide support.

II. (33.3%)

Otha Gasaway, the senior member of Gasaway & Rogers, P.C., a law firm, is nearing a time when he desires to retire from the practice of law and is considering his estate planning options. Otha Gasaway, age 64, is married to Gladys Christian, age 63. Otha Gasaway's main concern lies with his only daughter Eloise Gasaway, who married George Flint, a well-known profligate. Eloise Gasaway is age 30. To make sure that Otha Gasaway's estate will benefit Eloise Gasaway and not George Flint, Otha Gasaway plans to create an irrevocable trust for Gladys Christian and Eloise Gasaway under which the Trustee has the discretion to pay Gladys Christian or Eloise Gasaway or any lineal descendant of Eloise Gasaway. The trust ends when the latter of Gladys Christian and Eloise Gasaway dies at which time the trust pays the remaining amounts to Eloise Gasaway's descendants per stirpes.

Otha Gasaway has entered your associate's office at the Silk Stocking Law Firm, P.C. Otha Gasaway is concerned about how to minimize the income tax on the distribution from his account in The Gasaway & Rogers, P.C., Employee's Profit Sharing Plan and Trust, if names the Trust as the beneficiary of his profit-sharing account. The profit-sharing plan has a provision that states:

> "The entire interest of each employee will be distributed over a period not extending beyond the life of such employee or the lives of such employee and a designated beneficiary. If an employee dies before the distribution of the employee's interest has begun, the entire interest of the employee will be distributed within 5 years after the death of such employee.

What is your advice? Be sure to provide your support.

III. (33.3 %)

George Justice, an employee of Obadiah Voshell Incorporated, serves as the plan administrator of Obadiah Voshell Incorporated Employees' Profit-Sharing Plan and Trust. On May 1 of this year, George Justice handled the claim of Angeline Rogers. Angeline Rogers claim to benefits was as the spouse of James Madison Rogers, who died while employed with Obadiah Voshell Incorporated on April 1 of this year. George Justice examined the request for a lump sum payment of $100,000, the then value of James Madison Rogers' account. Documentation reviewed consisted of a marriage certificate of James Madison Rogers to Mary Angeline Rogers, the ID for Mary Angeline Rogers, and the beneficiary designation form of James Madison Rogers naming Mary Angeline Rogers. George Justice authorized the payment to Mary Angeline Rogers. The Trustee of the plan paid the amount of the account to Mary Angeline Rogers on June 1 of this year.

On October 15 of this year, Sarah Rogers submitted a claim for the same account as wife of James Madison Rogers to George Justice as plan administrator of the Obadiah Voshell Incorporated Employees' Profit-Sharing Plan and Trust. In support of her claim, she submitted her marriage certificate to James Madison Rogers, dated later than the earlier marriage certificate of Mary Angeline Rogers. When the claim was denied as the account had already been paid by the plan to Mary Angeline Rogers, Sarah Rogers threatened to sue George Justice individually, the plan, and Obadiah Voshell Incorporated. A little investigation by George Justice revealed a divorce decree between Mary Angeline Rogers and James Madison Rogers dated between the two marriage certificates.

George Justice has entered your office at Staid and True Law Firm, P.C. George Justice wants to know what is liability to Sarah Rogers might be. What is your advice? Be sure to include support.