ST. MARY'S UNIVERSITY SCHOOL OF LAW

ERISA, LW 8714
Professor G. Flint

FINAL EXAMINATION
Spring, 1996

<u>Instructions</u>

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

There are four questions of equal value (time and percent indicated). The time for completing the examination is two hours. This examination consists of five (5) pages, including this as the first, and four (4) problems. **<u>BEFORE YOU BEGIN, MAKE SURE YOU ARE IN POSSESSION OF A COMPLETE AND LEGIBLE COPY.</u>**

1. This examination is "open book." You may use your casebook, statutory supplement, and classnotes. Use of calculators is permitted (but be sure to write the formula down, indicate what numbers are being inserted into the formula, and what manipulations you are making). When using code sections and regulations, be sure to specify them by number.

2. Be sure to answer the specific question that is asked. Information supplies 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 additional facts you believe to be necessary and why they are significant. You man not make an assumption that changes or contradicts the stated facts.

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

5. Write legibly. Be sure to formulate your answers in complete sentences and paragraphs with proper grammar.

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.

<u>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, not 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.</u>

I.

[25% -- 30 minutes]

Daniel and Mary Alfaro were granted a divorce on May 16, 1993. At the time of the divorce Daniel Alfaro was a staff attorney for Minnesota Mining and Manufacturing Company and a participant in the Minnesota Mining and Manufacturing Company Employee's Pension. The divorce decree divided the accrued benefits as follows:

This Decree of Divorce shall be a "qualified domestic relations order" pursuant to Section 414(p) of the Internal Revenue Code. In compliance with that provision, the following is ORDERED and specified:

> This qualified domestic relations order assigns a portion of the benefits payable in the 3-M Pension Plan ("the Plan") at 3-M to MARY ALFARO in recognition of the existence of her marital rights in DANIEL ALFARO'S retirement benefits as defined by Texas law in *Berry v. Berry*, 647 S.W. 2d 945 (Tex. 1983).
> Participant in the Plan is DANIEL ALFARO. . . .
> Alternate Payee is MARY ALFARO. . . .
> On the date of this divorce, Participant's present accrued benefit for retirement at normal retirement age under the Plan is $1,387.00 per month.
> As part of a just and right division of the estate of the parties, the Court awards, assigns, and grants to Alternate Payee 45 percent of the present value of Participant's accrued benefits as of October 21, 1988.
> Alternate Payee may elect any form of payment of her portion of the available benefits, being 45% of Participant's accrued benefits as of October 21, 1988, and shall have the right to elect to receive said benefit payments on or after the earliest date on which benefits are available, so long as the election is not contrary to the terms of the Plan. . . . In the event Participant elects to retire from the Plan prior to normal retirement age and by reason of such early retirement the Plan provides an early retirement subsidy, the Alternate Payee is entitled to 45% of any early retirement subsidy paid to Participant.
>
> All benefits payable under the 3-M Pension Plan other than those payable to MARY ALFARO shall be payable to DANIEL ALFARO in such manner and form as DANIEL ALFARO may elect in his sole and undivided discretion, subject only to Plan requirements.

You are the ERISA attorney for Minnesota Mining and Manufacturing Company. This divorce decree has been submitted to you by Mary Alfaro's attorney, Jose Villarreal, for determination that this decree meets the requirements of a qualified domestic relations order. What is your determination and its reasoning?

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II.

[25% -- 30 Minutes]

Davis Flint was a participant in the Maryland Retirement System, created in 1927. In the late 1980's actuarial projections showed that the Maryland Retirement System was grossly under funded. In response, the state closed eligibility for participation in the Maryland Retirement System and created a new Maryland Employee's Pension System for those employees hired after January 1, 1990. Both plans were qualified under IRC Sec. 401.

After further reform in 1993, a member in the Maryland Retirement System had a choice:

1. Make employee contributions of 2% of salary and remain in the Maryland Retirement System.
2. Make no employee contributions, remain in the Maryland Retirement System, and receive a reduced benefit.
3. Transfer to the new Maryland Employee's Pension System.

Davis Flint chose the third option. Upon the transfer, Davis Flint is to receive a refund of his contributions made to the Maryland Retirement System. Davis Flint is to receive $80,465.32 of which $21,235.00 represents previously taxed employee contributions. Davis Flint is 56 years old.

John Hartt, the plan administrator handling the Davis Flint matter, has entered your associate counsel's office at the Maryland Employee's Pension System Administration seeking advice on what, if anything, needs to be disclosed to Davis Flint. What is your advice and its reasoning?

III.

[25% -- 30 Minutes]

Dr. Arunah Hubbell under reported his income to the Internal Revenue Service in 1990. Upon audit the Internal Revenue Service assessed a deficiency of $148,823.05 in 1993. Dr. Arunah Hubbell did not pay the deficiency, so the Internal Revenue Service filed suit in federal district court and obtained a judgment.

In February 1994 the judgment remained unpaid, so the Internal Revenue Service filed an application for a writ of garnishment. The district court issued a writ of continuing garnishment to the garnishee, Chauncy Smith Bank, requesting Chauncy Smith Bank to indicate whether Dr.

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755-6
774-5
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Arunah Hubbell had in its custody any moneys of Dr. Arunah Hubbell. Chauncy Smith Bank responded it had $300,000 of Arunah Hubbell & Assoc., P.A., Profit-Sharing Plan funds in which Arunah Hubbell had a vested interest. Dr. Arunah Hubbell requested a hearing regarding this garnishment.

Dr. Arunah Hubbell has entered your associate's office at Kickem, Brunem, and Stompem, P.C. seeking assistance in protecting his retirement moneys. What is your advice and its reasoning?

Note that your ever trusty law clerk has found Sec. 42.0021 of the TEX. PROP. CODE, which exempts tax qualified plans and individual retirement accounts from attachment, execution, and seizure for the satisfaction of debts.

Competition investment

IV.

[25% -- 30 Minutes]

In 1990, John Gilmore, President of John Gilmore & Assoc., P.C., a law firm, served as trustee of the John Gilmore & Assoc., P.C., Employee's Profit-Sharing Plan. John Gilmore also invested his law practice riches in various investments around the town of Waco, Texas. One of his investment partnerships, S & G Limited Partnership, involved ownership and operation of an apartment complex near Baylor University. John Gilmore owned 50% of S & G Limited Partnership while his good buddy James Stilley owned the other 50% and served as its general partner.

James Stilley also served as general partner in Stilley Investments Limited Partnership, which owned and operated a racquet ball court and health club. In 1990, the health club purchased land on which to build its new clubhouse. The moneys for this purchase came from a $3,000,000 loan from the John Gilmore & Associ., P.C., Employee's Profit-Sharing Plan. The loan was secured by a deed of trust on the land in favor of the plan.

In 1992, John Gilmore and James Stilley had a falling out and decided to separate their investments. The S & G Limited Partnership was left alone. However, as part of the restructuring agreement between John Gilmore and James Stilley, the John Gilmore & Associ., P.C., Employee's Profit-Sharing Plan loan was assigned to John Gilmore and John Gilmore as plan trustee had the deed of trust released. No payments on the plan loan have been made either by Stilley Investments Limited Partnership of John Gilmore.

A disgruntled associate at John Gilmore & Associ., P.C., has reported this transaction to the Department of Labor Office in Dallas, Texas. Andrew MacClannachan, the Department of

Labor investigator, has entered your associate counsel's office at the Department of Labor seeking whether there are any violations under ERISA involving this transaction, and if so, who should the Department of Labor sue? What is your advice and its reasoning?