ST. MARY'S UNIVERSITY
SCHOOL OF LAW

Spring 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 six 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 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 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.
(16 2/3% — 30 minutes)

Davis Flint Corporation hired John Hartt Life Insurance Company to administer David Flint Corporation's ERISA plan. Under the Administrative Services Agreement that John Hartt Life Insurance Company had Davis Flint sign, David Flint Corporation was to establish a bank account and keep enough money in it to cover benefit checks that John Hartt Life Insurance Company would write against the account. John Hartt Life Insurance Company "shall pay all claims it determines payable under the agreement, except all contested or doubtful claims shall be referred to Davis Flint Corporation for determination and instruction."

The contract also included a number of clauses designed to limit John Hartt Insurance Company's liability in the event of error. John Hartt Life Insurance Company was "acting only as agent of Davis Flint Corporation" and would "not be liable for any mistake or any loss unless resulting from gross negligence." The agreement provided that "under no circumstances shall John Hartt Life Insurance Company be considered the named fiduciary under the Plan." It also said that "Each individual administrative act, decision, and interpretation by John Hartt Life Insurance Company shall be binding on Davis Flint Corporation."

John Hartt Life Insurance Company was to conduct "verification of employee eligibility" and provide "claim control practices." John Hartt Life Insurance company was to "consult with Davis Flint corporation in claim matters that are beyond ordinary" and to "investigate the validity of each claim and compute the benefits payable." Davis Flint Corporation reserved the right to "resolve any disputes that may arise with regard to the rights of persons covered under the Plan."

John Hartt Life Insurance Company paid out $600,000 for medical expenses relating to a Davis Flint Corporation employee's dependent child. According to the Plan, the child was ineligible. The President of Davis Flint Corporation has marched into your associate's office a Suem and Stickem, P.C., to determine whether Davis Flint Corporation can recover the $600,000 on behalf of the Plan. What is your advice? Explain your reasoning.

II.
(16 2/3% — 30 minutes)

Arunah Hubbell was president and sole owner of Arunah Hubbell Associates, Inc., which established a defined benefit plan in 1976 to provide retirement, death, and disability benefits to the employees of Arunah Hubbell Associates, Inc. Arunah Hubbell was the plan administrator and trustee of the plan, and his account in the plan amounted to 20% of the Plan's assets.

Before 1985, Arunah Hubbell invested the Plan assets in short-term bank certificates of deposit, short-term U.S. Treasuries, and cash equivalents. In April, 1985, Arunah Hubbell paid $1,700,000 on behalf of the Plan (63% of the Plan's assets) for 24.251 acres of undeveloped land in the Chauncy Smith Industrial District. The remaining 37% of the Plan's assets were invested as

before. Arunah Hubbell personally owned an interest in two parcels adjacent to the property and in another parcel nearby.

Before this purchase, Arunah Hubbell obtained an independent appraisal valuing the land at $2,100,000, discussed the purchase with the Plan's accountant, lawyers, actuary, and major Plan participants, who also had considerable experience in commercial real estate development in the area. One reason for the land purchase was to increase the return on the Plan's investments in an era when short-term rates had declined considerably. Another reason was to protect against the possibility of high inflation returning, land being a recognized inflation hedge. Arunah Hubbell was very knowledgeable in industrial warehouse property, particularly those located in the Chauncy Smith Industrial District.

At the end of 1985 a different independent appraiser valued the land at $2,900,000. Arunah Hubbell believed the land was undervalued and originally intended to sell the land in 1986, but did not. So the Plan has paid maintenance fees and taxes on the land, but has not earned any income from it. Since that time the land has maintained its value. Also, since the average age of the participants is 37 years, the short-term and cash equivalent investments remaining in the Plan are sufficient to cover project payouts for the next 20 years. Consequently, no Plan participant has lost any benefits as a result of the purchase. These facts have been reported on the Plan's annual report to the Internal Revenue Service and Department of Labor. The Undersecretary of Labor has marched into your associate counsel's office at the Department of Labor to inquire whether the Department of Labor should take any action to attack this land purchase. What is your advice? Explain your reasoning.

III.

(16 2/3% — 30 minutes)

Thomas Gasaway married Rebecca Turner in 1985. In 1992 Thomas Gasaway divorced Rebecca Turner after a bitter struggle. The divorce decree granted Rebecca Turner a 50% interest in two pension plans in which Thomas Gasaway had an interest during the years of marriage. In January, 1993, the Family Court issued an order implementing this decree. On May 17, 1993, the plan administrator of the two plans determined that the order was not a qualified domestic relations order and refused to comply with the order until amended as a qualified domestic relations order.

Thomas Gasaway saw this predicament as an opportunity to save his retirement moneys from the clutches of his despised wife, Rebecca Turner. On November 15, 1993, he filed for bankruptcy under Chapter 7 for liquidation. In the bankruptcy court he sought a declaratory judgment that Rebecca Turner's award under the divorce decree was a dischargeable debt under the Bankruptcy Code's definition of a dischargeable debt as including a "right to payment."

You are the bankruptcy judge. What is your response to this declaratory judgment petition? Explain your reasoning.

IV.
(16 2/3% — 30 minutes)

In 1993, Draper Voshell withdrew $6,800 from his retirement plan. In 1994, Draper Voshell withdrew an additional $7,000. These constituted early withdrawals, so Draper Voshell paid the federal 10% early withdrawal penalties on these amounts in 1993 and 1994.

Draper Voshell lives in a state that has an income tax. That state income tax law also has an early withdrawal penalty in the amount of 33% of the federal penalty. Draper Voshell wrote the state taxing authority in 1993 that he would not pay the state early withdrawal fee. In January, 1995, Draper Voshell brought a declaratory action in federal district court that he did not owe the state tax penalty and an injunction to prevent its enforcement against him.

You are the federal district judge. What is your response to this petition? Explain your reasoning.

Ignore the Eleventh Amendment to the United States Constitution, or assume the state has consented to the lawsuit.

Note that your enterprising law clerk has found the Federal Tax Injunction Act, which provides "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in courts of such state."

V.
(16 2/3% — 30 minutes)

Marcelino Villarreal is a participant in the Abraham Milstead Drilling, Inc.,'s defined benefit plan. Marcelino Villarreal, now aged 64, has worked for Abraham Milstead Drilling, Inc., since he was aged 22. The defined benefit plan, adopted in 1976, provides a formula benefit of $100 per month for each of service with Abraham Milstead Drilling, Inc., up to a maximum of 33 years of service. The defined benefit plan also has an optional form of benefit, the lump sum.

Marcelino Villarreal, who is married to Petra Gonzalez, aged 54, is about to reach the defined benefit plan's retirement age of 65 and has approached the plan administrator, Maria Cavazos, about what his options are for benefits from the defined benefit plan when he retires next year.

Maria Cavazos has marched into your associate counsel's office at Abraham Milstead Drilling, Inc. She wants you to tell her how she should respond to this request. What is your advice? Explain your reasoning.

VI.

(16 2/3% — 30 minutes)

Dr. Basilio Alfaro recently finished his residency and has purchased the medical practice of Juan Moreno. Dr. Basilio Alfaro is aged 30 and the purchased medical practice has three employees, a receptionist, aged 25, and two nurses, aged 62 and 55. These three employees make $15,000, $25,000, and $21,000 annually, respectively. The purchased medical practice nets about $200,000 per year.

Dr. Basilio Alfaro despises paying any more in income taxes than is absolutely necessary. So he has marched into your office at Blue Stocking Law Firm, P.C., for advice on a tax shelter he might invest in to shelter as much as possible. What is your advice? Explain your reasoning.