

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 a "take home exam" issued on the last day of class. You may use your casebook, statutory supplement, and class notes. Use of calculators and cleansed laptops is permitted. You must return the exam to my office by noon Thursday, December 18, 2004.
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, 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 therefore.

I. (33.3 %--1 hour)

In May 2004 Julia Hartt's husband, Roswell Flint, was laid off from his job as a carpenter with Christian Reade Corporation. Christian Reade Corporation provides health insurance for its employees through a plan provided by Samuel Davis Insurance Company. Roswell Flint participated in this plan, which provided coverage for him, his spouse, and children. In August 2004 Julia Hartt had an automobile accident in San Antonio, suffering injuries to her back. Dr. Arunah Hubbell, her doctor, recommended corrective surgery. Christian Reade Corporation recalled Roswell Flint in September 2004, a job he has retained to date. Surgery for Ruth Marie Smith was scheduled for October 2004 after Dr. Arunah Hubbell had contacted Samuel Davis Insurance Company to ensure Julia Hartt's coverage. Employees at Samuel Davis Insurance Company assured Dr. Arunah Hubbell the insurance would cover the surgery. So, Dr. Arunah Hubbell got the usual assignment of benefits from Julia Hartt, leaving Julia Hartt liable for the medical fees if not paid by the insurance company, and performed the surgery. Upon sending in the insurance claim, the Samuel Davis Insurance Company sent it back to Dr. Arunah Hubbell. When Julia Hartt submitted a request for benefits from the plan, the plan administrator denied coverage stating the plan did not cover the surgery. The plan provides an exclusion for medical problems that arose prior to the participant's participation. The plan also provides that upon layoff, a break in service occurs after 60 days. Reentry after the break in service commences on the rehire date. Julia Hartt appealed this decision to the employer, the Plan Administrator of the plan. Again coverage was denied. The reason given by the Plan Administrator was an exclusion for experimental procedures. Dr. Arunah Hubbell had indicated in his statement supporting Julia Hartt's appeal that the surgical method he used was not the standard accepted method.

Dr. Arunah Hubbell has entered your associate's office at Suem & Stickem, P.C., for advice concerning what legal action he might take. What is your advice and the chances of success? Be sure to provide reasons and support such as relevant code sections, regulations, and case law.

II. (33.3%--1 hour)

Otha Gasaway is a investment advisor in San Antonio. His practice has produced quite a lot of income and pushed him into the high tax brackets. Otha Gasaway operates his practice as a sole proprietorship and has one employee, a woman age 30 who keeps the records and executes the trades. Otha Gasaway is aged 45 and desires to retire at age 65. Otha Gasaway's accountant, James Madison Rogers, has suggested that he needs a tax shelter. The first type of shelter James Madison Rogers has recommended is a retirement plan.

Otha Gasaway has entered your associate's office at Blue Stocking Law Firm, P.C., seeking advice on the type of plan he should adopt. What do you recommend? Be sure to provide reasons and support such as relevant code sections, regulations, and case law.

III. (33.3 %--1 hour)

Isadore Peltier, an elderly university professor, soon will retire from his employment. Isadore Peltier is aged 69. Isadore Peltier's wife, Sophia Salomon, is age 67 and his daughter Mary Lucy Peltier is age 30. Isadore Peltier has \$4,000,000 in the Augustine Rivard Corporation Employees Profit-Sharing Plan and Trust, of which amount he contributed as nondeductible contributions \$200,000. Isadore Peltier has been living on an income of \$60,000 per year. He expects to receive \$1000 per month from social security and \$2000 per month from a military pension. Isadore Peltier's birthday is August 24.

Isadore Peltier has entered your associate's office at Silk Stocking Law Firm, P.C., seeking advice on how he should handle his retirement moneys. What is your advice? Be sure to provide reason and support such as relevant code sections, regulations, and case law.