

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 three 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 and laptops (without cleansing and ransoming of the administration) are 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.

(33 ½ %--1 hour)

Ruth Marie Smith has entered your associate's office at Suem & Stickem, P.C. Ms. Smith suffers from a bad back. Her employer's insurance carrier refuses to pay for the surgery her doctor says she needs to correct for the problem. Ms. Smith wants advice concerning what legal action she might take. With respect to the following facts 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.

In April 1998 Ruth Marie Smith's husband, Arunah Hubbell, was laid off from his employment with Michael Sweetman, Inc. Michael Sweetman, Inc. provide health insurance for its employees through a plan provided by Bateson Crampton Insurance Company. Arunah Hubbell participated in this plan, which provided coverage for him, his spouse, and children. In June 1998 Ruth Marie Smith was involved in an automobile accident in San Antonio. Ms. Smith suffered injuries to her back in this accident. Dr. Ananias Carll, her doctor, recommended corrective surgery. Michael Sweetman, Inc. recalled Arunah Hubbell in September 1998 and he currently works for Michael Sweetman, Inc. Surgery for Ruth Marie Smith was scheduled for November 1998 after contacting Bateson Crampton Insurance Company concerning coverage. The initial report was the insurance would cover the surgery. However, before the scheduled surgery began, the Bateson Crampton Insurance Company contacted Dr. John Hartt, the surgeon, and denied coverage on the grounds that the surgery was not covered by the health plan. 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. Ruth Marie Smith 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. John Hartt had indicated in his statement that the surgical method he would use was not the standard accepted method.

II

(33 ½ %--1 hour)

Mary Lucy Peltier, Ph.D., is a psychologist in San Antonio. Her practice has produced quite a lot of income and pushed her into the high tax brackets. Dr. Peltier's accountant, Ezra Roswell Flint, has suggested that she needs a tax shelter. The first type of shelter Mr. Flint has recommended is a retirement plan. Dr. Peltier has entered your associate's office at Blue Stocking Law Firm, P.C., seeking advice on the type of plan she should adopt. What do you recommend. Be sure to provide reasons and support

Mary Lucy Peltier operates her practice as a sole proprietorship and has no employees,

keeping her own records. Dr. Peltier is aged 40 and desires to retire at age 65.

III

(33 ½ %--1 hour)

Otha Albert Gasaway, an elderly real estate developer, has entered your associates office at Silk Stocking Law Firm, P.C. Mr. Gasaway soon will be retiring from his employment and seeks advice on how he should handle his retirement moneys. What is your advice. Be sure to provide reason and support.

Otha Albert Gasaway is aged 69. Mr. Gasaway's wife, Gladys Etta Christian, is age 67 and his daughter Eloise Maxine Gasaway is age 40. Mr. Gasaway has \$3,000,000 in the James Madison Rogers, Inc., Employees Profit-Sharing Plan and Trust, of which amount he contributed as nondeductible contributions \$100,000. Mr. Gasaway 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. Mr. Gasaway's birthday is August 24.