Exam Number

UNIVERSITY OF KENTUCKY

COLLEGE OF LAW

EMPLOYEE BENEFITS LAW PROFESSOR MOORE

FINAL EXAMINATION SPRING 1994

TIME LIMIT: 3 HOURS

INSTRUCTIONS

This is an open book examination. You may use a hand-held calculator, the casebook, statutory supplements, any materials distributed in class (including problems and cases), your class notes, and any other materials you personally prepared - with or without the assistance of your classmates - prior to the exam. You may not consult any commercial treatises or outlines - or your classmates - during the examination.

The exam consists of 5 questions. The point allocation for each question is as follows:

Question 1 60 points
Question II 40 points
Question III 25 points
Question IV 25 points
Question V 30 points

The number of points allocated to each question indicates how much time you should spend on it.

For purposes of this examination, assume that inflation does not exist. Thus, ignore any cost-of-living adjustments that may have been made to statutory dollar amounts.

This is not a test of your mathematical ability. A correct description of how an answer should be calculated is likely to earn more credit than simply giving the correct number.

Write your answers in pen in the blue books. Only write on the front side of each page of the blue book(s). Be sure to put your exam number on this page and the cover of each blue book. At the end of the examination, please number your blue books, e.g., 1 of 2, 2 of 2, and turn in your exam, your blue book(s), and any scratch paper you have used. These materials should be collected and turned in together inside one blue book.
All academic endeavors of the students of the University of Kentucky College of Law are governed by the Honor Code. The Honor Code prohibits lying, cheating, stealing, and interference with academic pursuits. In addition, the Honor Code places an affirmative duty to report a breach of the Code on all students. A failure to report is a violation of the Honor Code.

QUESTION ONE

(SUGGESTED TIME: 1 HOUR)

Richardson Corp. has a total of 21 employees. All of the employees are over 21 years of age and have worked for the corporation for at least two years. Thirty of the employees work full-time. Gail works 15 hours per week. Anna is, and always has been, the sole owner of Richardson Corp.

The corporation has a profit-sharing plan which authorizes the employer to allocate up to 8% of compensation in a particular year. You are given the following information with respect to the corporation's 8 highest paid employees:

<table>
<thead>
<tr>
<th>Employee</th>
<th>Title</th>
<th>Salary</th>
<th>Allocation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anna</td>
<td>Vice President</td>
<td>100,000</td>
<td>5%</td>
</tr>
<tr>
<td>Belle</td>
<td>Treasurer</td>
<td>60,000</td>
<td>4%</td>
</tr>
<tr>
<td>Corrine</td>
<td>Secretary</td>
<td>76,000</td>
<td>6% - 5%</td>
</tr>
<tr>
<td>Evelyn</td>
<td>Salesperson</td>
<td>54,000</td>
<td>6%</td>
</tr>
<tr>
<td>Faye</td>
<td>Salesperson</td>
<td>52,000</td>
<td>8%</td>
</tr>
<tr>
<td>Gail</td>
<td>Salesperson</td>
<td>58,000</td>
<td>5%</td>
</tr>
<tr>
<td>Hannah</td>
<td>Salesperson</td>
<td>48,000</td>
<td>4%</td>
</tr>
</tbody>
</table>

Of the remaining 13 employees, 11 are covered by the plan. Eight have allocations at 5%, and the remaining 3 employees have allocations at 4%.

Does the plan satisfy IRC sections 401 (a)(26), 410(b), and 401 (a)(4)?

QUESTION TWO

(SUGGESTED TIME: 40 MINUTES)
This summer you will clerk for the IRS. You have been assigned the task of reviewing the Covington Defined Benefit Plan. Among the provisions are:

1. Eligibility to Participate

Every employee who has attained the age of 20 and completed two Years of Service for Participation will be eligible to participate in the Plan on the first day of the Plan Year or the first day of the seventh month of the Plan Year which first occurs on or after such completion, provided that he is an Employee on such date.

II. Vesting on Termination

If a Participant's employment is terminated, except for death, on or after Normal Retirement Age, or Total and Permanent Disability, the following percentages of the Accrued Benefit of the Participant shall vest in the Participant and shall be distributed to him or his Beneficiary in accordance with the provisions of Article IX:

Vesting Percentage of
Total Years of Participation Accrued Benefits

1 Year or less 0%
2 Years 0%
3 Years 0%
4 Years 33%
5 Years 66%
6 Years 100%

111. Accrual of Benefits

[This section of the plan provides that benefits will accrue over 30 years at the rate of 2.5% of compensation for the first 10 years, 3.5% of compensation for years 11-20, and 4.5% of compensation for years 21-30.]
IV. Distribution of Benefits

Except as described below, any Participant with 15 or more years of service may elect to receive distribution of his Vested Accrued Benefit as (a) an annuity (including a Qualified Joint and Survivor Annuity or a Qualified Pre-Retirement Annuity) or (b) a lump sum distribution. Except as described below, any Participant with less than 15 years of service may only elect to receive distribution of his Vested Accrued Benefit in the form of an annuity (including a Qualified Joint and Survivor Annuity or a Qualified Pre-Retirement Annuity). Notwithstanding the above, any Participant with an account balance of less than $5,000 will be cashed out of the Plan upon termination of service with the Employer.

Identify any substantive changes you would require to be made to the plan and explain why you would require those changes.

QUESTION THREE

(SUGGESTED TIME: 25 MINUTES)

Dinaldi, Inc. is selling one of its divisions to Riverfest Corp. Some of Dinaldi's employees will become employees of Riverfest in connection with the sale transaction. As an accommodation to Riverfest, Dinaldi agrees to continue to cover the employees who transfer to Riverfest under Dinaldi's health benefits plan for a period of six months after completion of the sale. Approximately three months after the sale is completed, the state insurance commission of the state in which Riverfest is located issues an order to show cause to Dinaldi claiming that Dinaldi has failed to provide opthalmological coverage which must be provided under state insurance law. The applicable state statute applies to all "individuals residing in this state receiving benefits under any contract issued by an insurance company or similar organization." Must Dinaldi provide the opthalmological coverage?

QUESTION FOUR

(SUGGESTED TIME: 25 MINUTES)

Rainbow, Inc. is a large retailer that sponsors a defined benefit pension plan with $5 million in assets. As named fiduciary of the plan, you are responsible for directing the plan's trustee with respect to all of the plan's investments. Savvy Investors, Inc. has approached you with an opportunity for the plan to invest in a portfolio of "troubled loans." Although the loans are all outstanding to financially troubled manufacturing companies, Savvy Investors believes that there are unusual opportunities for unusual gains because (1) the owner of the portfolio is willing to sell the portfolio for $250,000, a substantial discount from its fair market value, (2) Savvy Investors is confident that most, if not all, of the loans in the portfolio will be repaid in full, and (3) all of the companies in the portfolio have agreed to use Rainbow, Inc. as their exclusive retailer if the plan purchases the portfolio. Savvy Investors is so confident of the soundness of the investment that it proposes to indemnify you for any ERISA liability that you may incur in connection with directing the trustee to purchase the portfolio.
What liability, if any, would you face if you were to advise the trustee to purchase the portfolio?

QUESTION FIVE

(SUGGESTED TIME: 30 MINUTES)

You are a legislative assistant to U.S. Senator Peter Browne. He is concerned about several aspects of our pension law. First, he wants to prevent employers from terminating their pension plans in order to recover excess assets. In addition, he is concerned that the current fiduciary rules are too vague and do not provide enough guidance. Finally, he believes that the social security integration rules encourage employers to discriminate in favor of highly compensated employees.

He is considering introducing legislation that addresses these problems. With respect to the reversion of excess assets issue, he is considering two alternatives:

1) prohibiting employers from terminating their qualified plans except in the case of bankruptcy or insolvency; or

2) eliminating the tax qualification of defined benefit plans so as to discourage defined benefit plans and thus eliminate the problem of overfunded plans.

With respect to the fiduciary rules, he is considering introducing legislation which makes it clear that plan assets should be invested with the sole and exclusive goal of attaining the highest investment return.

With respect to social security integration, he is considering introducing legislation which would disqualify plans which integrate with social security.

Please prepare a memorandum for the Senator discussing the extent to which each of the various proposals will enhance or hinder the goals of the retirement income system. Be sure to discuss the advantages and disadvantages of each of the proposals.