

DEFERRED COMPENSATION
UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW
SPRING 2024 SYLLABUS – LAW 7632 – 2 CREDITS

Professor Michael Laing

Office: Virtual

Office Phone: (513) 357-9385

Email: laing@taftlaw.com; Michael.Laing@law.ufl.edu

Office Hours: Tuesdays 12:00 pm-1:00 pm; Wednesday 12:00 pm – 1:00 pm; I am also available most weekdays, except when traveling. It is best to send me an email in advance if possible to coordinate a conference call.

MEETING TIME: Wednesday 4:00 pm – 6:00 pm

LOCATION: Virtual

COURSE DESCRIPTION AND OBJECTIVES: This course will provide an overview of the taxation of deferred compensation arrangements, both in the qualified and nonqualified context, as well some aspects of the labor law side of such arrangements as prescribed by the Employee Retirement Income Security Act of 1974, as amended. Students should develop a sound grasp of the basic principles of deferral and of the technical requirements for qualified and nonqualified plans.

STUDENT LEARNING OUTCOMES: At the end of this course, students should be able to understand the major components of employee retirement benefits law, focusing on the major areas of taxation, including (for qualified plans) eligibility, vesting, nondiscrimination, maximum contributions and benefits, including those in the §401(k) context, and distributions, as well as some areas of the labor law aspects of ERISA.

Students will also learn the major components of nonqualified deferred compensation arrangements for executives, for both cash and stock-based incentive plans.

In all of these areas, students will gain an understanding of the basic building blocks of the various plans, and most importantly will develop the analytical and research tools to learn additional information in areas we don't have time to cover, in order to serve their future clients' needs.

Through the use of class discussion of cases and statutes, and of problems requiring careful reading and application of the statutes, regulations, and other guidance, students will develop and practice skills in statutory and regulatory interpretation that are the bedrock skillset of every tax practitioner. Students will also, thru reading and class discussion, further develop their analytical skills to enable them to identify the tax and employee benefit issues presented by clients and accurately apply the law to develop strategies to deal with those issues.

These objectives will be accomplished through:

- Review and study of the relevant authorities, particularly the Internal Revenue Code and Treasury Regulations.
- Discussion of the operation of the processes created by those authorities.
- Working and discussion of hypothetical problems posed by examples.

REQUIRED READING MATERIALS: All students must have access to the United States Internal Revenue Code of 1986, and the relevant Income Tax Regulations. (Note that this information also is available via the web using the RIA, CCH, or LEXIS Tax Research Services.)

Textbook: John Langbein, Pension and Employee Benefits Law, West Academic, 6th Edition.

Materials (PowerPoint decks, cases, rulings, and other interpretive material) will be supplied for particular topics by Professor Laing. These readings, lecture slides, cases, and other handouts are available from the Canvas course web page with postings announced via the class email list.

Materials not marked as “Skim” or “Helpful Supplementary Reading” in the Reading Assignments set forth below are required reading.

Please be sure to register for the Canvas course and have any required materials with you in print or easily accessible electronic form in class. You are responsible for checking your Canvas page and the email connected to the page on a regular basis for any class announcements or adjustments.

COURSE EXPECTATIONS AND GRADING EVALUATION: Come to class having completed the assignments to the best of your ability and prepared to discuss the assignment.

Students should expect to spend, on average, approximately two hours preparing for every hour of class. Reading assignments are posted on the “Modules” link on the Canvas site. It is anticipated that you will spend approximately 2 hours out of class reading and/or preparing for in class assignments for every 1 hour in class. You will have about 60 pages of reading each week. Because the course includes statutory and regulatory excerpts that require careful reading, as well as discussion problems that require thoughtful advance written preparation, you should spend at least one hour on every 10-15 pages of reading.

Participation is important to you, your classmates, and me. Below-average participation means no contributions to class and/or comments that detract from the discussion; average participation includes comments that contribute positively to the discussion; above-average participation means comments that contribute positively to the discussion and display some insight, analysis, creativity, and/or synthesis; and excellent participation means comments that contribute positively to the discussion and display significant insight, analysis, creativity, and/or synthesis.

Repeated lack of preparedness may be counted as an unexcused absence. Repeated class disruption (e.g., excessive noise, texting, personal internet use, arriving late, leaving early) may be counted as an unexcused absence.

There will be a 4-hour take home final exam that will be open to limited materials (see discussion below). We will discuss the permissible materials in class. The format of the exam will be essay and problems. Your grade will be based approximately 80% on the final exam and 20% on attendance and class participation.

The final examination will be four hours in length, and will consist of either three essay-type questions or two essay-type questions and a number of short answer questions. Each of the essay questions will be weighted equally (and the short answer questions will be weighted the same as one essay) for grading purposes. Each essay question will include a statement of facts followed by some specific questions based on the facts. I will expect you to answer each question and provide a summary of what you considered in reaching your answer. I do not want an essay addressing everything you know about what you think the subject of the question is. I will give you credit for your answer only if it correctly relates the facts to the law in reaching the answer.

The Exam instructions will state:

This is an OPEN book exam. Users are permitted to access other documents, outlines, notes, files, etc. on their hard drives, or other materials in their possession. iPads, e-readers and other electronic devices that store information may be used. Calculators may be used.

Notwithstanding the foregoing, students may not access the Internet, except as necessary to use Examplify, during the examination and to submit their examination. Doing so is a disciplinary violation of the Honor Code. Students may not consult one another or any other person by computer or other electronic device or otherwise, and may not consult any materials not specifically permitted.

The final exam will be given as a remote examination during the examination period specified by the College of Law.

Grade Scale & Grading Policies:

<u>Grade</u>	<u>Points</u>
A)	4.0
A-	3.67
B+	3.33
B	3.00
B-	2.67
C+	2.33
C	2.00
C-	1.67
D+	1.33
D)	1.00
D-	0.67
E (Failure)	0.00

The law school grading policy is available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>. **Note that the mandatory mean does not apply to LL.M. students.**

CLASS ATTENDANCE POLICY: Attendance in class is required by both the ABA and the Law School. Attendance will be taken at each class meeting. Students are allowed two (2) absences during the course of the semester. Students are responsible for ensuring that they are not recorded as absent if they come in late. A student who fails to meet the attendance requirement will be dropped from the course. The law school's policy on attendance can be found [here](#).

UF LEVIN COLLEGE OF LAW STANDARD SYLLABUS POLICIES: Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link: <https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>.

ABA OUT-OF-CLASS HOURS REQUIREMENTS: ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every "classroom hour" of in-class instruction. Each weekly class is approximately 2 hours in length, requiring at least **4 hours of preparation** outside of class including reading the assigned materials and writing critical analyses.

COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS

This syllabus is offered as a guide to the direction of the course. Our pace will depend in part on the level of interest and the level of difficulty of each section and is subject to change.

Class	Date	
		I. Background and Basic Principles (Classes One and Two) Origins and Fundamentals of the US Pension and Retirement System, focusing on private sources of retirement income Basics of Tax Deferral and Timing Typology of Retirement Plans – Defined Benefit and Defined Contribution Plans Origins of ERISA
1	Jan 17	For the first class read the Halperin article on Employer-Based Retirement Income, and the JCT Enron report materials (2 items) both available on the web site (this is just for background, so you can skim it). We will discuss the context of executive deferred compensation against the backdrop of plans available to rank-and-file employees during the first class, using the Enron plans as a case study. We will then start discussing the basics of deferral - in the Unit I Reading Materials, read pp. 4-44 - the JCT description of nonqualified deferred comp (again, this is for background, so you can skim it), the posted rulings, especially Rev. Rul. 60-31, which we will spend quite a bit of time on, and the first Albertsons' 9th Circuit decision - also review the Code and Regulation sections cited in Rev. Rul. 60-31. There are no problems for the first class. READING: Skim Chapters 1, 2 and 3 of text (background). Read the first two rulings in the supplemental course materials posted at the course website. Code and Reg Assignment: Basics of Deferral: Code: §§451; 83(a), (h); 402(b)(1), (3); 403(c); 404(a)(1)(A), (a)(3), (a)(4), (a)(5) Regs: §§1.83-3(a), -3(c), -3(e); -6(a) §§1.402(b)-1(b)(1) §§1.404(a)-1(c), -12(a), (b)(1) and (2); §§1.404(b)-1T Q&A 1&2; 1.404(d)-1T §§1.451-1(a); -2(a), (b) Basics of Qualified Plans Code: §§ 401(a)(1), (2), (3), (4), (5), (7), (8), (9), (11), (13), (14), (16), (17), (26), (27); §72(t)(1), (2)(A); §4975(a),(b),(c), (e)(2)

2	Jan 24	We will continue on the material previously assigned, finishing the rulings up to the Minor case, and then looking at Minor and Albertsons. We will finish the Unit One materials by doing Problems I-1 through I-4. These problems involve most of the remaining materials in Unit One, so do a close reading of the rulings in developing your answers. For our purposes at the moment, ignore the existence of Section 409A, as we want to lay the foundation for examining that by looking at what the law required prior to the passage of 409A.
		II. Tax Treatment of Qualified Pension and Profit Sharing Plans; Selected ERISA-Based Plan Requirements (Classes Three – Nine) A. Definitions; Qualification Rules and Agency Administration B. Minimum Age and Service Rules C. Vesting D. Nondiscrimination in Coverage E. Nondiscrimination in Benefits and Allocations F. Deductibility of Employer Contributions G. Distributions Overview
3	Jan 31	Minimum Age and Service Rules READING: Rev Rul. 80-360 Code: section 410(a) Regs: sections 1.410(a)-1, -3, -3T, -4, -5; -8T
4	Feb 7	Vesting and Accrual READING: Casebook - Chapter 4. Code: Sections 411(a)(1)-(3)(A), (G); (4); (5)(A); (6)(A), (E); (7)(A), (8) - (11)(A); Sections 411(b)(1)(A), (C) (skim this); (2)(A); (3); (4)(A) & (C); Sections 411(c)(1); (2)(A); 411(d)(1), (6)(A), (B); 414(q), (s); 415(c)(3) Regs: Read carefully Sections 1.411(a)-7(d); 411(c)-1; Sections 1.411(a) -3T (a), (c), (f); -4T; 1.411(b)-1(b) (skim)

5	Feb 14	Coverage Nondiscrimination. READING: Sections A and B of Chapter 9 of Casebook Code: Sections 410(b); 401(a)(26)(A), (B); 414(q) Regs: Sections 1.410(b)-2(a), (b); 1.410(b)-3(a)(1), 1.410(b)-4(a), (b), (c); 1.410(b)-5(a), (b), (c), (d)(4), (d)(5)(i), 1.410(b)-6(a), (b)(1), (c), (d)(1), (d)(2)(i), (f); 1.410(b)-7(a), (c)(3); 1.410(b)-8(a); 1.410(b)-9 Read Rev Rul 83-58 and determine how to apply section 410(b) Code and regs to determine if the plan would meet the current coverage nondiscrimination requirements. Assume, for this purpose, that the 4 most highly compensated employees are highly compensated as defined in Section 414(q). Also assume that each employee is allocated 10% of pay in the profit-sharing plan's allocation formula. We will be walking through this step by step in class, so you don't need to have it completely prepared ahead of time - but spend some time looking at the Code and regs to see if you can outline a structure.
6	Feb 21	Benefit Nondiscrimination We will continue and finish the coverage nondiscrimination discussion applying current law and regs to the facts of Rev Rul 83-58. We will then turn to benefit nondiscrimination. READING: Section C of Chapter 8 in the Casebook. Code: Secs 401(a)(4) Regs: Secs 1.401(a)(4)-1(a), -1(b)(1), (2)(i), (ii)(A), (3), (4) -1(c)(1), (2), (3), (4), (8), (10), (11) 1.401(a)(4)-2 (except skip 2(b)(2)(ii), and 2(b)(4)(vi)). 1.401(a)(4)-4(a), (b), (c), (e) 1.401(a)(4)-5(a)(1), (4) Examples 1-5 1.401(a)(4)-9(a) 1.401(a)(4)-12 Definitions as you need them in the other assigned reg sections.
7	Feb 28	Aggregation Rules and Separate Lines of Business We will now discuss aggregated employers and plans, including the affiliated service group rules. We will also discuss the family attribution rules. We will then move on to the separate line of business material. I will cover permitted disparity (“integration with Social Security”), limits on contributions and benefits, mainly section 415, and the top-heavy rules. READING: Section D of Chapter 8 of Casebook, Subsections 4-6 of Section B of Chapter 9 of Casebook; Section A of Chapter 10 of Casebook. Code: §§ 414(b), (c), (m), (n), and (o); 414(r), 415, 416 Regs: §§ 1.414(b)-1; 1.414(c)-1, -2, -3, -4, -5; 1.414(r)-0 (including flow chart), -1(a), (b), (c)(1), -2(a), (b)(2)(i), -3(a), (b), -4, -5(a), (b), (c); 1.415; 1.416

8	Mar 6	We will finish our discussion of aggregated employers and plans, including the affiliated service group rules. We will then move on to the separate line of business material previously assigned. We will cover permitted disparity (“integration with Social Security”), limits on contributions and benefits, mainly section 415, and the top-heavy rules.
9	Mar 13	ERISA Fiduciary Rules and Prohibited Transactions READING: Chapters 12, 13, and 14 of the Casebook.
		III. Employer-Sponsored Tax Favored Savings Plans – 401(k) (Classes Ten and Eleven)
10	Mar 20	Cash or Deferred Arrangements – 401(k) We will then turn to cash-or-deferred arrangements (“CODAs”) under 401(k) and (m). READING: Paragraph 3 of Susection B of Chapter 2 of the Casebook. Code: Sections 401(k), 401(m) Regs: Reg 1.401(k)-0; 1.401(k)-1, -2(a), (b), -3(a), (b), (c), -4, -6; Reg 1.401(m)-1, -2(a), (b), -3(a)-(d), -5
11	Mar 27	Distributions (including anti-alienation) We will start distributions, including vehicles for receipt of distributions, principally IRAs. READING: Chapter 11 of the Casebook Code: §§ 72(a), (b), (c), (d), (e), (m), (o), (p), (q), (s), (t); 219; 401(a)(9); 402(a), (b), (c), (d), (e)(3), (4)(A), (B), (C), (D), (6), (f); 408; 408A; 3405; 4975(c)(1), (3), (d)(1), (e)(1), (2), (3), (f)(6)(A) Regs: §§ 1.402(c)-2 Q&A 1, 2, 3, 4, 7, 11, 12; 1.408-1, -2, -4, -8; 1.408A-1, -2, -3. Code: §§ 414(p), 401(a)(11), (13). Regs: §§1.401-1(b)(1)(i), (ii); 1.401(a)-11; 1.401(a)-13 We will touch on IRAs primarily as rollover destinations. I am not going to hold you responsible for IRAs, other than as rollover vehicles, on the exam.
		IV. Nonqualified Deferred Compensation (Classes Twelve and Thirteen) A. Cash Nonqualified Deferred Compensation – Rabbi Trusts, etc. B. Stock-Based Deferred Compensation C. Section 409A

12	Apr 3	We will discuss cash NQDC before passage of 409A. We will then turn to section 409A in the cash NQDC context. READING: Code sections: 409A Reg sections: 1.409A-1, -2, -3, -4 (proposed), -5, -6
13	Apr 10	This week we discuss stock as compensation - Restricted Stock, Stock Options and other varieties of stock-based arrangements. We'll discuss the Martin cases in particular, as well as reviewing Minor, and the rest of the rulings assigned. We will continue looking at Section 409A, which was enacted in 2004, taking effect in 2005 and later (although that was delayed by the IRS while they were drafting regulations). READING: Please review the 409A materials assigned above, focusing on discussions of how 409A has affected stock options, SARs, etc. Code and Regs: IRC Section 83 and accompanying regulations; section 409A and regulations addressing compensatory stock arrangements.
		V. Miscellaneous Issues
14	Apr 17	Miscellaneous issues (including 280G, 457, 403(b), 4958, 4960) READING: Code sections: 280G, 4999, 457, 403(b), 4958, 4960