1. Hazards of adjunct teaching –

   a. Full time day job.

   b. Not on premises.

   c. Short grading deadline.

   Planning and execution are therefore critical.

       E.g., students to submit answers before the last weekend of exam period. That gives you a weekend for grading.

2. Steps

   a. Draft exam instructions before first class. Instructions should not exceed one page, including Honor Statement and other mandatory content. Additional guidance should be noted at first class, at review class, and again at last class. E.g.,

       Our exam questions will ask you to write a letter to a client, a bench memorandum, or another practical piece of writing. You’ll want to write precisely and efficiently, and avoid big words, string citations, and other flourishes.

   b. Announce exam instructions at first class. Note any important questions, and incorporate answers into instructions. E.g.,

       Q: If I don’t live in the DC metro area, can I email my answers to the Registrar?

       A: Unfortunately, no.

   c. Draft exam and model answers toward end of semester. This allows you to “road test” your exam questions before submitting them.

   d. Cover exam material in review class. Reiterate exam instructions. Repetition will minimize the chance of noncompliant answers.

3. Drafting essay questions

   a. An essay question can be stated in less than a page. Do not proliferate issues. Write precisely and efficiently, to inspire students to do the same. These will make it easier to grade the exam.
b. Make question broad, to cover a large chunk of important subject matter. Use color facts or details only as required by context, and explain them as necessary (e.g., "a hedge fund’s ‘2 and 20 fee’ means 2 percent of assets under management plus 20 percent of profits.").

c. Ambiguities or omitted facts should be intentional and few.

d. Identify the product, e.g., a law clerk’s bench memo, a letter advising a client, a demand letter to an opponent.

4. Drafting short answer questions.

a. Again, keep them clear and simple.

b. Can address broad policy themes, controversial issues, or technical points. A mix is probably best.

5. "Road testing" the exam.

a. Draft model answers briskly, and soon after completing draft questions. Your memory will be fresh, you will be ruthlessly concise, and you will get all the major writing chores done in one or two sittings.

b. Make a grading matrix, identifying issues and assigning tentative point values. Include blank columns for grading student answers. You will likely end up with a few more issues or sub-issues than these, but start broad and simple.

You may have multiple essay questions or sets of short answer questions. If you are co-teaching, each professor would have a table for his or her half of the exam (with points totaling 50).

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c. Review questions in light of model answers and grading matrix.

- Do they focus on what is important?
- Do they cover enough of the syllabus?
- Do they test what you intend to test?
- Do they test more issues than you can feasibly grade?
- Are they internally consistent? Are computations and dates correct?

d. Revise questions, model answers, and grading matrix as required.

e. Peer review with co-professor or other subject matter/writing expert.

5. Grading

a. Using the grading matrix, jot down tentative points for each student by issue.

b. Note any issues you failed to identify, and adjust point values as necessary. Re-score as needed.

c. Arrange tentative scores in descending order. Review answers closely where scores are similar. Re-score as needed.

d. Fit scores to the recommend curve. Leave room to increase grades for class participation, e.g., top exam grade is A- not A.

Sample exam questions follow.
Exam Number: __________________

GEORGETOWN UNIVERSITY LAW CENTER
EXAMINATION IN ERISA: PLAN TERMINATION AND WITHDRAWAL LIABILITY
TAKE HOME EXAM

Professors Goldowitz and Paliga

INSTRUCTIONS:

1. This is an open book exam. You may use any of the required reading materials, including statutes and regulations, but no other materials. You may use a calculator. If any relevant facts are not provided by the question, identify any factual assumptions you make.

2. You may pick up your exam at any time during exam period. You must return it with your answers within 48 hours, provided that you return it no later than close of business Thursday, May 8, 2008.

3. There are two essay questions, each worth 35 points, one on single-employer plans and one on multiemployer plans. There are also two sets of three short answer questions, each set worth 15 points (and each question worth five points), again, one set on single-employer plans and one set on multiemployer plans.

4. If you type your exam, the page limit is 20 pages, double-spaced, using 12-point type and conventional margins. If you write, the page limit is eight blue books, double-spaced, and single-sided. In either case, any material on the reverse side of a page will be disregarded. And in either case, you must start each essay answer and each set of short answers on a fresh page. As to length of answers, we recommend that you take point values into account, e.g., seven pages for an essay question and three pages for a set of short answer questions. Of course, you need not use the full page allotment. You may cross reference a previous answer, e.g., "See general discussion of _____, supra p. 4."

5. Only hard copy submissions will be accepted. The Registrar’s Office cannot accept e-mail, fax, CD or disk submissions of take home exams. If you type, please submit two copies.

This exam consists of __ pages, including this cover page. Please be sure your exam is complete. Please be sure that you use your exam number (not your student ID number or social security number).

HONOR STATEMENT
ON MY HONOR AND AWARE OF THE STUDENT DISCIPLINARY CODE I SWEAR OR AFFIRM THAT I HAVE NEITHER GIVEN NOR HAVE I RECEIVED ANY UNAUTHORIZED AID FROM ANY OTHER PERSON OR PERSONS, NOR HAVE I USED ANY UNAUTHORIZED MATERIALS IN WRITING MY ANSWERS TO THIS TAKE-HOME EXAMINATION.

Please sign with exam number only) __________________

Essay Question 1 (Single-employer plans) – 35 points

Date __________________
Your client, the Zeus Fund, Inc., manages investments for institutional investors such as university endowments, state and corporate pension funds, and insurance companies. Zeus’s charter permits it to invest in fixed-income and equity investments of all kinds. Zeus has a track record of generating excellent returns for its clients. Zeus does that by having an affiliate, Zeus Research, (a partnership), scout out undervalued companies whose securities the Zeus Fund can buy at a discount. Zeus often buys enough of a company’s common stock to appoint one or more Board members, which enhances the value of the stock (as it carries a so-called "control premium"). Zeus Research also analyzes the securities that the Zeus Fund holds, and advises when they are ripe to sell and at what price.

Given its track record, the Zeus Fund’s clients are happy to pay an industry-standard “2 and 20" fee (2 percent of the value of assets under management, plus 20 percent of all profits). The Zeus Fund pays the lion’s share of those fees over to Zeus Research, which distributes its share to the partners of Zeus Research and its key employees. All of the partners in Zeus Research are also directors of the Zeus Fund.

The Zeus Fund has only recently become aware of the hazard of investing in companies that sponsor defined benefit plans. One of its recent acquisitions had sponsored a plan years ago, and was still paying PBGC $5 million per year under a settlement agreement reached before Zeus had acquired the company. Though the company can afford the payments, the payments put a dent in its cash flow, and ultimately in its value as an investment.

The Zeus Fund is now considering making a bid to purchase General Hydraulics, a debtor in possession in a Chapter 11 bankruptcy. The Zeus Fund has asked your firm to assist with due diligence and negotiation of a purchase offer. The head of the Employees Benefits practice group has designated you as the lead ERISA lawyer on the deal. From General Hydraulics’s latest 10-K filed with the Securities Exchange Commission, you’ve seen that General Hydraulics and its subsidiaries sponsor defined benefit plans with PBO of $746 million and assets of $803 million.

In the course of your work, you provided General Hydraulics’s ERISA counsel with an early draft of your standard ERISA Representations and Warranties. She responded that General Hydraulics could agree to all of them except the one that states: “Seller further warrants that no ERISA Plan has failed to meet the minimum funding requirements.” She explained that during the bankruptcy, General Hydraulics had paid only the “normal cost” portion of the quarterly and catch-up contributions to the defined benefit plans as they came due, on advice of bankruptcy counsel.

Write the Zeus Fund’s General Counsel a brief memorandum outlining the consequences of acquiring control of General Hydraulics in light of the potential liabilities you have discovered in your due diligence, as well as some options for dealing with those potential liabilities.
Short Answer Questions, Set 1 (Single-employer plans) – 5 points each, 15 points total

1. Some commentators say that the limits on PBGC’s guaranty serve a co-insurance function, like the deductible on an auto insurance policy or the co-payment on a health insurance policy. Are these commentators correct? And do their views represent good policy? Explain briefly.

2. Jim and Barbara were participants in the Rockford Wire Salaried Employees Retirement Plan, which terminated in a distress termination effective December 1, 2007. The PBGC maximum guaranteed benefit for plans that terminated in 2007 was $49,500 per year at age 65.

   Jim was 58 years old at the plan termination date and still working. Barbara was 57 years old at the plan termination date and still working.

   Jim has 28 years of service, and Barbara has 30 years. They have the same job title, and the same “final average” compensation (on which Plan benefits are based). Each participant could have retired at age 55 with a benefit of $45,000 per year.

   If he retires now, Jim might be entitled to receive a benefit of $45,000 per year from PBGC. But if Barbara (who has just turned 58) retired now, she would be limited to the age 58 maximum guaranteed benefit of $28,215 per year. Explain briefly.

3. Support or refute this proposition: “PBGC’s assumptions for valuing benefit liabilities are self-serving and lead to inflated claims. Future benefit liabilities should be discounted based on what a prudent investor, including PBGC – and for that matter anyone who has a 401(k) – can earn on a properly diversified investment portfolio.”