

**UNIVERSITY OF BALTIMORE SCHOOL OF LAW  
SUMMER 2016**

**Course:** Executive Compensation  
LAWT/975/491 - LL.M.  
TAXA/664/185 - M.S.  
LAW/975/512 - J.D.

**Instructor:** Scott C. Moeves, Smith & Downey  
Direct Dial: 410-321-6747  
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**Days/Time:** Wednesday 6:00 – 9:10 pm

**Location:** TBD

**Course Description:** Methods of providing tax-free and tax-deferred compensation to employees, including section 83 tax planning, stock option tax planning, incentive compensation arrangements, and methods of funding nonqualified plans.

**Course Materials:** Suggested Text: Nonqualified Deferred Compensation, Eighth Edition (as supplemented) - By Downey, Smith and Connors; Wolters Kluwer Publishers.

**Other Materials:** Students will need access to, but need not purchase, ERISA, ERISA Regulations, Internal Revenue Code, Treasury Regulations.

**Grades:** The final exam will determine your grade.

**Assignments/Participation:** You are expected to complete all reading assignments and to consistently participate in class discussion in order to demonstrate that you have read and reflected on the issues raised in the assignment.

**Attendance:**

Class attendance is a primary obligation of each JD student whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor. A student who exceeds the maximum allowable absences may be compelled to withdraw from the course, or may be barred from sitting for the final exam. A student who is compelled to withdraw or is barred from sitting for the final exam may receive an "F" in the course. Attendance will be taken at the beginning of each class. A student who is present but unprepared for class may be treated as absent.

While LL.M. and M.S. students should endeavor to attend each class, there is no attendance policy applying to these students.

**Course Web Page:** I understand that this course has a LEXIS or TWEN webpage that links to this syllabus, announcements, the class assignments, helpful treatises, overheads, and other class materials. You are responsible for self-enrolling in the webcourse and you should check the webcourse regularly.

### **Computers**

Students may use laptop computers for class-related purposes.

### **Class Cancellation**

If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. If there is inclement weather, students should visit the University of Baltimore web page or call the University's Snow Closing Line at (410) 837-4201. If the University is not closed, students should presume that classes are running on the normal schedule.

## **ASSIGNMENTS**

May 18

### **Course Overview**

Qualified Plans v. Nonqualified Plans--Code sections 401(a)/457(b) v. 451/457(f), Constructive Receipt, Economic Benefit, Code section 83

ERISA's Impact on Nonqualified Plans - The Top-Hat Plan Concept

Nonqualified Plans of Governments and Tax-Exempt Entities--ERISA/Non-ERISA and 457(f) and 457(e)(11)

In General, Code section 409A and its guidance

### **Assignment:**

Chapters 1, 2 and 15

Suggested Background Reading: Code Sections 61, 83, 401(a), 409A, 451, 457; IRS Regs. Sections 1.61-1, 1.61-2, 1.61-11, 1.83-1 through 1.83-8, 1.451-2, 1.457-2(h)(4) and (5), 1.457-3; IRS Regs. Sections 1.409A-1; ERISA Sections 3(2), 201(2), 301(a)(3), 401(a)(1); DOL Regs. Sections 2520.104-23, 2520.104-24, 2530.201-2.

May 25

### **Excess Benefit Plans; Funding Nonqualified Plans**

-- Rabbi Trusts

-- Secular Trusts

-- Heavenly Trusts

-- 402(b) Trusts

**Assignment:**

Chapters 3, 4 and 5

Suggested Background Reading: Code Sections 83, 402(b), 401(a)(17), 404(a)(5), 415(b)(c) and (e); IRS Regs. Sections 1.404(a)-12(b)(1) and (3) and IRS Regs. Sections 1.409A-1 through 1.409A-6; ERISA Sections 3(36), 4(b)(5), 201(7), 301(a)(9); Notice 2008-113; Notice 2010-6 and 2010-80.

June 1

**Use of Life Insurance in Executive Compensation**

-- COLI

-- SDLI and its variations

**Assignment:**

Chapters 6 and 7

Suggested Background Reading: Code Sections 56(g), 72(e), 72(v), 264(a), 7702, 7702A; and IRS Regs. Section 1.56(g)-1.

June 8

**Stock-Based Executive Compensation Plans**

-- ISOs

-- NSOs

-- DSOs

-- Restricted Stock

-- SARs

-- Phantom Stock

-- ESPPs

-- Securities Law Issues.

**Assignment:**

Chapter 8

Suggested Background Reading: Code Sections 421, 422; IRS Regs. Sections 1.61-15, 1.421-1 through 1.421-8, 1.422-5, 14a.422A-1, IRS Regs. Section 1.409A-1 through 1.409A-6 (dealing with stock options).

June 15

**Government and Tax-Exempt Entity Nonqualified Plans**

- 457(b)
- 457(f)
- 457(e)(11)
- Governmental Excess Plans
- Mutual Fund Option Plans

**Assignment:**

Chapters 10, 14 and 16

Suggested Background Reading: Code Section 457 and Related IRS 457 Regulations; IRS Notice 2007-62; IRS Notice 2008-62

June 22

**Parachutes; Taxes and Withholding; Miscellany**

- 419 Trusts
- Life-Cycle of a Nonqualified Plan
- Investment Fundamentals
- Etc.

**Assignment:**

Chapters 9, 11, 12 and 13

Suggested Background Reading: Code Sections 280G, 3121(v), 3121(a)(4), 3401, 3402, 3405, 3306(b)(15), 3306(b) and (r), 4999, 419, 419A; IRS Regs. Sections 1.280G-1, 31.3401(a)-1, 35.3405-1

June 29

**Parachutes; Taxes and Withholding; Miscellany Continued**

- 419 Trusts
- Life-Cycle of a Nonqualified Plan
- Investment Fundamentals
- Etc.

**Assignment:**

Chapters 9, 11, 12 and 13

Suggested Background Reading: Code Sections 280G, 3121(v), 3121(a)(4), 3401, 3402, 3405, 3306(b)(15), 3306(b) and (r), 4999, 419, 419A; IRS Regs. Sections 1.280G-1, 31.3401(a)-1, 35.3405-1

July 6

**Catch-Up and Review of Course**

July 13

**Final Exam**

**Academic Integrity:** Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or the School of Law. Violations of academic integrity include, but are not limited to: cheating; plagiarism; misuse of library materials; use of another's book or study materials without consent; unapproved multiple submissions; material misrepresentation of one's academic history or standing; misrepresentation of any academic matter; intentionally giving another student false or inaccurate information about class requirements; inappropriate discussion of exams; and misrepresenting or falsifying class attendance reports. [Reference to School of Law Honor Code <http://law.ubalt.edu/template.cfm?page=477> ]

### **Disability Policy**

If you are a student with a documented disability who requires an academic accommodation, please contact Leslie Metzger, Director for Student Support in the Office of Academic Affairs at 410-516-5623 or via email at [lmetzger@ubalt.edu](mailto:lmetzger@ubalt.edu).