

**EMPLOYEE BENEFITS
AND EXECUTIVE
COMPENSATION**
CASES AND MATERIALS

ANDREW W. STUMPF

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EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION

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For Matthew and Abigail

PREFACE

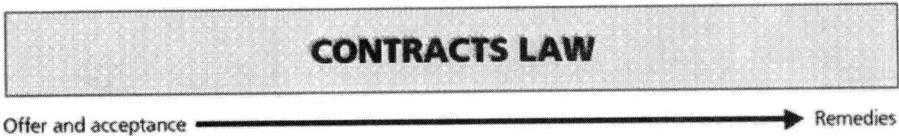
This text derived from unmet needs I found when I began teaching, for, first, a very introductory treatment of employee benefits law, written at a sufficiently basic level to permit coverage of the entire subject within a reasonable time; and, second, any casebook at all covering executive compensation.

Every effort has been made in this book to present both subjects as accessibly as possible, an emphasis that extends as far as to choice of font size and graphics. Employee benefits law in particular has a reputation as impenetrably obscure—a reputation that often seems to alienate both students and lawyers (and, in fact, judges), despite the subject's importance as a legal specialty and its public policy significance. A number of reasons could probably be identified for that, but several that directly affected the organization and structure of this casebook are:

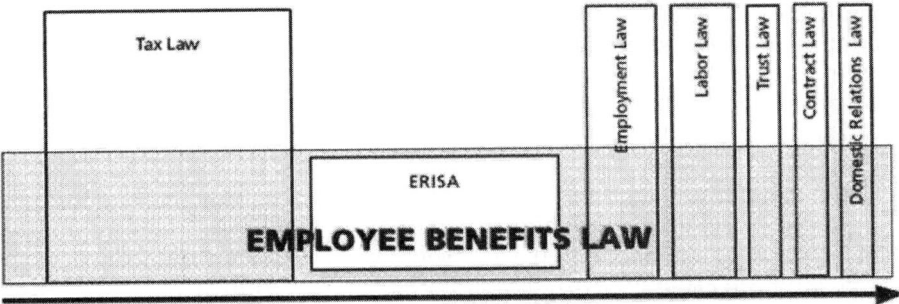
1. Students generally do not come to the study of benefits law having background familiarity with the underlying subject matter. This could be contrasted with the case, say, of criminal law, where beginning students will already at least have an idea of what “crime” is (from watching television, if nothing else), and most of the various types of crimes, and thus be ready more or less immediately to begin exploring the *law of crime*. By comparison it is the unusual student who has ever previously heard, for example, of a “defined benefit” as opposed to a “defined contribution” retirement plan; or of plan vesting, or actuarial equivalence. These are not legal concepts, they are economic and benefit plan design concepts, but they must be understood before the “law of employee benefits” can be meaningfully discussed.
2. Benefits law is not characterized by a particularly coherent overall analytic framework. This field—having developed incrementally and somewhat accidentally over time—is harder to identify “deep structure” in American employee benefits law than it is in some other areas, such as (arguably, and at least in part) income tax. A great deal of attention has therefore been paid in the book to the question of the best and most intuitive order of presentation, to make acquisition of concepts as natural and cumulative as possible under the circumstances.
3. Not unrelated to the previous point, employee benefits law is not even really a single subject: It is, rather, largely a collection of the relevant parts of other subjects (with the exception of ERISA,¹ which falls in whole under the rubric of benefits law). For example, at some risk of oversimplification, you could conceptualize a contracts law

1. The Employee Retirement Income Security Act of 1974.

course as a roughly continuous, unitary progression, that might be graphically represented as follows:



The corresponding graph of an employee benefits law course might look more like the following:



This situation is reflected in the book’s order and approach to discrete subjects and chapter organization.

4. American employee benefits law is dominated by massive, and massively detailed and specific, statutes and regulations. The only hope for conveying the subject during the course of a single semester is to generalize and simplify these rules, almost (but one hopes not actually) to the point of distortion. For the same reason, the subject is less usefully approached than other legal subjects by reading court cases, as opposed to narrative and other materials (although case law has an important role to play, especially under ERISA).

Executive compensation, meanwhile, is a natural extension of employee benefits law, and the two specialties are frequently practiced by the same lawyers in American law firms. The same foundational tax doctrines of constructive receipt and economic benefit informed the development of both. Executive compensation law is presented here as a discrete group of chapters at the end of the book (before the final chapter, which covers mergers and acquisitions and implicates both employee benefits and executive compensation).

The text is designed to be adaptable for use for a single survey course covering both employee benefits and executive compensation; or alternatively for a separate course covering either employee benefits alone (leaving out Chapters 11–13), or executive compensation alone (using only Chapters 1–4 and 11–14). Where the book is to be used for a course covering only executive compensation, the statutes and regulations reproduced in the

appendix are intended to permit the book to be used on a stand-alone basis. On the other hand if the text is to be used to cover employee benefits law (whether separately or as part of a combined course, with executive compensation), an additional statutory/regulatory supplement will be needed. (David Pratt, *Selected Sections: Pension and Employee Benefit Statutes and Regulations* (Foundation Press), is recommended.) The appendix also adds some other supplementary materials relevant to employee benefit discussion in the text, such as the Department of Labor's "plan asset" regulations.

A number of the topics discussed in this book are in states of extreme flux, and it is expected that supplementary material will be made available as new legal developments warrant. Vigorous national policy debates are presently under way regarding health insurance (as the book goes to press, federal district courts have nearly split on the question of whether the national health insurance reform legislation enacted in 2010 is constitutional, and the book excerpts from both sides of this argument); levels of executive compensation; and both Social Security and state/municipal public pension plan funding. I have tried to include sufficient background materials and arguments to permit exploration of these and other public policy questions, in addition to presenting the law itself.

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