EXECUTIVE COMPENSATION LAW 1. A, the Chief Executive Officer of X Corporation has an employment contract with X that was signed in 1982, when he was hired as the director of Marketing for X. Since 1982, A has worked his way up in X. In 2015, A became the CEO of X. Since that time, A and B have been working on a long-term contract for A, but A has been too busy guiding X to get anything in final. B has not worked as an employee of X since A became CEO of X. B tells you that the success of X is directly attributed to A’s guidance, and B feels that she has underpaid A for many years. B calls you because she wishes to reward A’s loyalty. She wants a long-term employment contract with A. That contract should: (a) Take care of A’s retirement financially; (b) Reward A for years of working for less than A should have received; and (c) Provide an incentive for A to continue to grow X and possible take X to a publicly traded company. What do you recommend to B? First Question Response is Worth 50 Points 2. C, the Chief Financial Officer of Y Corporation has been presented a non-qualified deferred compensation plan by Y. The general counsel of Y tells him that C’s plan has a provision that states, “All benefits under the Plan will be provided solely from the general assets of the Company. It is intended that the Plan be exempt from Parts II, III and IV of Title I of ERISA pursuant to ERISA Sections 201(2), 301(a)(3) and 401(a)(1). Additionally, the Plan is intended to comply with all of the provisions of §409A of the Internal Revenue Code.” The general counsel informs C that because C’s plan is not subject to the Employee Retirement Income Security Act of 1974, there are no reporting requirements for the plan and C need not worry about ERISA compliance. C is concerned that it cannot be that simple to provide for such a valuable benefit. How would you advise C? Second Question Response is Worth 5 Points 3. D manages the sales force for Z Corporation. D has been awarded an option to purchase 100 shares of Z for $10 a share under the three way plan that Z has for its employees. The plan allows Z to grant up to 1,000 shares of Z Corporation stock in either the form of Incentive Stock Options under Internal Revenue Code (“Code”) Section 422, Stock Appreciation Rights under Code Section 422 or non-qualified stock options. D tells you that when he received his reward, Z stock had a fair market value of $50 a share. D also tells you that Z has a very hot new product, Le Shoe, that he believes will escalate the value of Z stock to $1,000 per share. D manages the sales staff so he knows the increase in value is a “no brainer.” D. tells you that he loves his job and that he has no plans to leave Z and management is well satisfied with D’s performance. D tells you that he is worried about taxes on his benefit and wants to delay the taxation as long as possible and would prefer to pay capital gains instead of ordinary income tax rates on any gain. How would you advise D? Third Question Response is Worth 10 Points 4. E, who is the general counsel for R Corporation, calls you to inform you that R is buying S Corporation in a stock deal. R will purchase 100% of the stock of S and will operate S after the deal as a wholly owned subsidiary. E tells you that R’s staff has conducted due diligence on S’s benefit plans and she has a number of concerns. (a) First of all, E tells you that the CEO and CFO of S have “some sort of phantom stock plan,” and each will get a payment of $500,000 under the terms of the plan. E asks you who pays those amounts and are those payments deductible by R? (b) E also tells you that S has a qualified defined benefit pension plan that is funded, but the assets held by the plan represent less than 80% of the benefits promised by the plan to S’s employees. E asks you should they be concerned about this plan? (c) S has a number of medical plans that cover their 1,000 employees. E does not know what to do with these plans, but their corporate goal is to put all of those employees on the R corporate health care plans, which are not as generous as the S plans. 3 With respect to E’s three concerns above, how would you advise her? If you do not have enough information, what would you request and what issues do you see to concern the purchase of S? Each Response to (a), (b) and (c) Worth 5 Points for a Total of 15 Points 5. F is the Chief Operations Officer for T Corporation. T is a start-up company and, due to a lack of money, it has under-paid F for her services, but not enough to have to reward her for the past. While other employees of T have also helped T grow, F believes that they cannot get to the level of a top performer in the marketplace without her. G is the 70% owner of T. While funds are more readily available to T today, T needs to continue to grow in order to either go public or sell to another company in the industry. Both of those options seem likely to G, but not in less than ten years by G’s estimate, G tells you that he wants to work with F to create a long term incentive plan to help incentivize F over the next ten years. G tells you that he is willing to put together a phantom stock plan for F, but F and her lawyer have some specific demands and G would like your input. (a) F has three children and they will all be in college in five years, so she needs some of the benefit payable in five years. (b) F needs protection in the event she dies or becomes disabled before the corporate event anticipated in ten years. (c) G wants the fair market value to be computed by T’s accountants. F would rather an independent third party be hired to calculate the valuation of T. (d) F requests a vesting schedule that pays her a portion of the benefit should she leave the company because she is fired by T. G believes that would provide a disincentive for F to stay the full ten years and is against any partial benefit. Please provide G on each of the four options identified by F’s counsel.