

**The Association of American Law Schools
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Oral Midterm Examination in Securities Regulation

Joan MacLeod Heminway
College of Law Distinguished Professor of Law
The University of Tennessee
College of Law
1505 W. Cumberland Avenue
Knoxville, TN 37996
865-974-3813 (phone)
865-974-0681 (fax)
jheminwa@tennessee.edu

I. Why an oral midterm?

- a. Observations from course before introduction of oral midterm
 - i. Oral versus written communication skills
 - ii. Mutual dissatisfaction with existing assessment tools (two pass/fail writing assignments and written final examination)

- b. Teaching objectives
 - i. Course objective – “This course is designed to teach the framework and overall content of the key laws and regulations governing (a) the financial investment instruments we know as ‘securities’ and (b) transactions involving those instruments through lecture, discussion, problem-solving, and writing. Assignments and classroom activities focus on preparing students to act as advisors on basic securities law matters and as informed participants in business transaction planning and implementation. Although the course concentrates almost exclusively on federal law (principally, the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended), it also will cover certain basic state securities law issues and principles.”
 - ii. Course objective “in the other”
 - 1. Live, breath, and practice securities regulation in a practice context
 - 2. Engage collaboratively (with each other and me) in the understanding and application of securities law and rules

- c. Overall assessment objectives
 - i. Formative – Test knowledge of foundational elements of the regulatory system and legal analytical and presentation skills in a manner that (1) enables the student to leverage existing basic knowledge into more sophisticated analyses real-time in a simulated practice environment and (2) allows me to make adjustments in instruction
 - ii. Summative – Assign a grade to individual students on the doctrinal material already covered and allow for specialized follow-up remedial work as needed

II. The exam itself

- a. Profile of my Securities Regulation class
 - i. 10-20 students; 2Ls and 3Ls
 - ii. Three credit hours; two 75-minute classes per week
- b. Specific assessment objectives
 - i. Evaluate depth of knowledge of the definition of a “security”
 - ii. Appraise legal reasoning skills in applying the definition to specific facts
 - iii. Offer credit for knowledge shown
- c. Logistics and Structure
 - i. Notification – In course syllabus and reading syllabus
 - ii. Scheduling
 - 1. Students sign up for time slots on TWEN in advance
 - 2. One-week exam period
 - 3. 30-minute slots
 - 4. 20-minute exam
 - iii. Examination structure
 - 1. Exam packet (general instructions and facts) is distributed on TWEN out a week in advance of the start of the examination period
 - 2. Each student is evaluated individually in the exam session, but collaboration is permitted until the beginning of the exam period; quiet during exam period
 - 3. Questions posted to TWEN discussion forum
 - 4. Exam is open book—all written (no electronic) materials
 - 5. Grading done real-time
 - 6. Exam is 20% of final grade

- iv. Fairness
 1. Same questions for all
 2. Same prompts for issue spotters
 3. Limited instructor discretion overall

d. Actual results

- i. Less variance in performance than on the written final exam
- ii. Creation of rich “teaching moments”
- iii. Opportunity for curricular and career advice
- iv. Establishment of closer relationships with and among the students (incl. peer teaching)

III. Up-scaling the exam to a larger doctrinal course

a. Profile of my Business Associations class

- i. Up to 72 students; 2Ls and 3Ls
- ii. Four credit hours; four 50-minute classes per week

b. My overall draft plan for a collaborative oral midterm

- i. Proposed structure and logistics – Same as for the Securities Regulation exam, except
 1. Students prepare for the exam and are examined in groups of three (and they may talk to others until the start of the exam period, but only to each other thereafter)
 2. Three equally weighted questions will be asked, one to each student; after the initial response of the first student, the others will be asked to chime in
 3. All members of a team will earn the same grade
 4. Exam is 30% of final grade (?)
 5. All four classes for the week will need to be canceled
- ii. Potential benefits – Many of the same as for the Securities Regulation exam, and
 1. Mandated group work as a further simulation of law practice
 2. Shorter exam for students at the end of the semester (current written exam is four hours)
 3. Less reading for grading at the end of the semester
- iii. Perceived sacrifices
 1. Mornings and lunches and evenings (weekend?) – up to 12 hours of exams in 5-7 days
 2. Four hours of class time devoted to coverage

SECURITIES REGULATION
Spring 2010

Joan M. Heminway
Room 384
865-974-3813
jheminwa@tennessee.edu

Oral Examination

* * *

CODE OF ACADEMIC CONDUCT

The Code of Academic Conduct forbids any student enrolled in the College of Law from committing an act of academic dishonesty and admonishes that all work should be done in full compliance with both the spirit and letter of the code. Further, students enrolled in the College of Law who know of acts of academic dishonesty committed by another student enrolled in the College of Law are expected to report such acts to the Dean.

* * *

GENERAL INSTRUCTIONS

The facts set forth on the succeeding pages are the subject of your oral mid-term examinations. Please review them and identify possible intersections with federal securities law concepts we have discussed. If you have not already done so, please sign up for a 30-minute appointment with me for next week, during which time I will conduct the examination. A sign-up sheet is available on the class Web site. **The examination is worth 20% of your final grade in this course.**

Until the examination period begins (8:00 am on Monday, March 1st), you may discuss these facts and any issues you identify from them—but only with your classmates and me. Please post any questions you may have to the class Web site. After the examination period begins, you are not permitted to discuss any aspect of this examination with anyone until I notify you that all examinations have been completed.

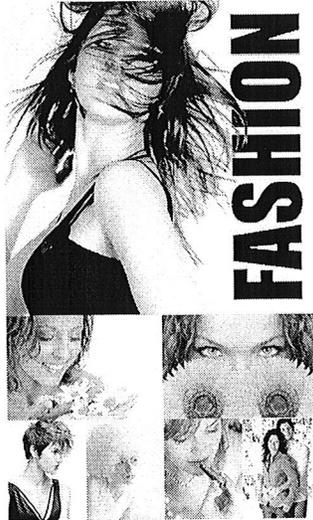
You may (and should) bring a hard copy of these facts, your statutory resource book, and your case book to your oral examination. You also may bring hard copies of any notes prepared by you for class or for the examination. You are not permitted to bring a computer or any other electronic device with you for the examination, so print off anything you think you'll need or want to have with you.

To receive maximum credit in analyzing a legal issue from the fact pattern, you should do four things (in addition to identifying the legal issue): (a) recite or describe any rule under applicable law (statutory or decisional) and/or regulation; (b) cite to that applicable law and/or regulation; (c) apply the rule from that applicable law and/or regulation to the facts; and (d) draw a legal conclusion from that application/analysis. Formal citation style is not required, but any citation form used should clearly identify the law or regulation that you intend to reference. Decisional law (*i.e.*, case law) may be cited or referred to by using a key identifying name (*e.g.*, the *Basic* case).

A violation of any rule set forth in these general instructions constitutes a violation of Chapter Three of the College of Law's Code of Academic Conduct.

* * *

The following information relates to a proposed U.S. business venture for funding fashion designers that has been successful in the United Kingdom.



Runway Funding represents a novel way to finance the collections of up-and-coming fashion designers. Anyone may buy shares in a new fashion collection. The funding collected is used to create a clothing range and the revenues from its sales are shared equally among the designer, supporters and Runway Funding. Supporters are given perks in return for their support, such as signed design sketches or seats at a catwalk show.

Runway Funding is owned and operated by Runway Funding plc, a corporation organized under the laws of the United Kingdom.

Backing a designer

How backing a designer works:

The funding program raises \$100,000 for your favorite designers to use in creating a new collection. When items from that collection sell, the profits are shared between you, the designer and us.

To back a designer, you purchase one or more 'stakes' for \$20 each. When 5,000 stakes are sold, the designer gets to work on the new collection and the funding is used to produce and distribute it.

About 6 months later, when the new collection is on sale, all the profits are shared three ways equally. You can also sign up to our affiliate program and earn 10% of the profits of any items that are sold through advertisements on your personal web pages.

How much does it cost?

It costs \$22; \$20 gets invested, and the extra \$2 covers our processing costs.

What's in it for me?

If your designer hits the target and their new collection goes on sale you get a share of the profits, proportionate to your share of the funding.

If you buy 5 stakes in one designer, you get 10% off all their current products on Runway Funding for the following 6 months.

However, it's mostly about the satisfaction of owning a stake in your own fashion line – since there are no guarantees that your favorite designer will hit the funding target.

Can I buy more than one 'stake' in the same designer?

You can buy as many as you like, up until all 5,000 are sold. The more you buy, the greater your share of profits will be once the collection starts to sell.

Can I buy stakes in more than one designer?

Yes, as many as you want.

Will my credit card details be safe when purchasing stakes?

You pay for the stakes using Paypal. That makes the transaction as secure as any you'll find on the internet.

What happens if I change my mind?

Right up until your designer reaches the funding target, you can switch your stakes to another designer's funding.

Otherwise you can click 'refund' on the same page and ask us to return your cash, which we'll do within 2 weeks of that date. We charge \$2 to process refunds, so you'll get \$18 back for each stake you withdraw.

Once the designer hits the target though, your stakes are locked in and you won't be able to move or withdraw them.

What happens if the designer doesn't reach their funding target?

Nothing - the funding stays where it is indefinitely.

This only changes if the designer withdraws from the program or their account with us becomes inactive. When this happens, we'll contact all their supporters to ask if they'd like to switch or withdraw their stakes.

What do you do with the funds supporters have contributed?

They stay in a deposit account right up until the designer reaches their funding target.

What happens when the designer reaches their funding target?

The funding becomes locked in; no-one else can buy a stake and supporters can't touch the stakes they've purchased.

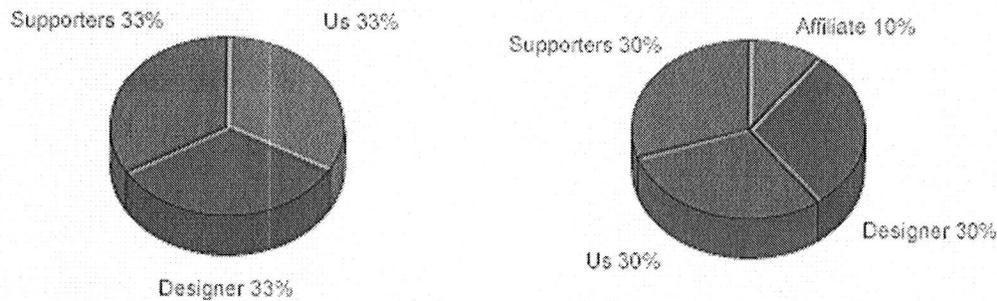
The designer has 6 months to design and commission production of a new collection. They have full creative control of designing 4-7 items – but they must stick to the \$100,000 budget.

They must also produce enough stock to have a good chance of hitting a retail value target that would more than pay back their supporters when sold.

When the new collection starts to sell, the profits are shared equally between the designer, their supporters and us.

There'll also be an affiliate program, where people who advertise the collection's goods on their personal web spaces may earn 10% commission on the profits.

As such, the profit split will take the form of one of the two models below, depending on how the goods are sold:



Sale not generated from an affiliate's advertisement

Sale generated from a click through an affiliate's advertisement

How will I get my share of my chosen designer's profits?

Each month after the collection begins to sell, we will issue each supporter with a statement that shows the value of sales so far and how much of the profits are owed to you.

All of your profits will be listed in your Account's balance. You can request a withdrawal at any point and we will pay you the requested amount within 2 weeks.

How do I make more profit by selling the designer's work on other Internet sites?

If you sign up to our affiliate program, you can earn extra cash by placing an advertisement on your personal web pages and social networking spaces.

For each sale that generates from a click-through on one of your advertisements, you'll earn 10% of the profits.

**Securities Regulation
Spring 2010
Oral Examination
Grading Sheet**

Name: _____

Grade: _____

I. Issue Spotting:

As junior corporate/transaction associate in a firm, senior partner wants to know on behalf of client (RF) whether RF's manner of conducting business raises issues under the federal securities laws
OR

As junior litigation associate in a firm, senior partner wants to know on behalf of client (potential supporter) whether RF's manner of conducting business raises issues under the federal securities laws
OR

As a judicial clerk, judge wants to know in adjudicating related litigation whether RF's manner of conducting business raises issues under the federal securities laws.

What would you respond (spotting issues only—2 pts for spotting on own; 1 pt for responding accurately to FU—follow-up question)?

A. Jurisdiction – Is RF's owner, as a foreign firm, within the reach of U.S. laws where the predicate is interstate commerce (FU – is there an issue created by the fact that RF is organized in a foreign country?) _____ (2)

B. Security definition – Assuming jurisdiction, are designer stakes securities w/in the meaning of the 1933 Act? (FU – how would you classify the stakes that supporter's buy in RF's designers that may implicate issues under the federal securities laws?) _____ (2)

C. Registration (mandatory disclosure) – Assuming jurisdiction and a security, is registration of the offer and sale of designer stakes required, or would we need to find an exemption (FU – if stakes in the designers are securities, how would the offer and sale of those stakes be regulated under federal securities law?) _____ (2)

D. Fraud – Assuming jurisdiction and a security, RF should worry about fraud liability—making material misrepresentations and omitting to state material facts in connection with the sale and purchase of the stakes (FU – other than the mandatory disclosure required in the registration process, what else should RF be concerned about as a liability issue under the federal securities laws in connection with the purchase and sale of designer stakes?) _____ (2)

SEE REVERSE SIDE

II. Are the Stakes Securities under the 1933 Act?

- A. Follows Basic Process – ID’s statute first (identifying investment contract), no rules /regs /SEC guidance, case law (identifying *Howey*); partial credit for analysis as stock/debt (if supported) _____ (2)
- B. Applies *Howey* –
 - 1. Contract / transaction / scheme _____
 - 2. Investment of money – profit motive as opposed to consumption (*Forman*); supporters get a profit share . . . but also may get primo catwalk seating, designer sketches, and a purchase discount _____ (1)
 - 3. Common enterprise – horizontal (supporters all pool their money) and strict vertical (financial rewards of RF /designer and supporters are tied), as well as broad vertical (financial rewards of supporters depend on the efforts of RF /designer (Horiz.: *Infinity Group*; *Lauer*; Strict Vert.: *Alliance Leasing*; *Revak*; Broad Vert.: *Edwards*) _____ (1)
 - 4. Expectation of profits – current earnings or capital appreciation (*Forman*; *Edwards*) _____ (1)
 - 5. Efforts of others –RF’s/designers’ efforts are essential, but do supporters also put in effort (noting that supporters can participate in an “affiliates scheme”—“earn extra cash by placing an advertisement on your personal web pages and social networking spaces. For each sale that generates from a click-through on one of your advertisements, you’ll earn 10% of the profits.”)? Are the supporters more like business partners or passive investors (ability to withdraw capital)? (*Glen W. Turner* (re. “solely”); *Williamson*; *Koscot*; *Edwards*; *Life Partners*; *Miller*) _____ (1)

III. What Violations of the Federal Securities Laws would RF Commit in Offering and Selling the Stakes to Supporters in the U.S. (assuming interests are securities and no safe harbor or exemption)?

- A. Follows the Basic Process – ID’s statute first (identifying Section 5), etc. _____ (2)
- B. Section 5(c) – Offered securities before a registration statement was filed (uses definition of “offer”) _____ (1)
- C. Section 5(a)(1) & (2) – Securities were sold and transmitted over the Internet at a time when a registration statement was *not* in effect _____ (1)
- D. Section 5(b)(1) – Used the Internet to transmit a prospectus that does not conform to Section 10, *but not after a registration statement has been filed* (uses definitions of “prospectus” and written communication,” etc.; mentions Section 10(b)) _____ (1)
- E. Section 5(b)(2) – Securities were carried through the Internet for sale w/o having been accompanied or preceded by a Section 10(a) (final) prospectus _____ (1)

Extra Credit (for good, new ideas): _____

Total: _____

I. Issue Spotting:

As junior corporate/transaction associate in a firm, senior partner wants to know on behalf of client (RF) whether RF's manner of conducting business raises issues under the federal securities laws
OR

As junior litigation associate in a firm, senior partner wants to know on behalf of client (potential supporter) whether RF's manner of conducting business raises issues under the federal securities laws
OR

As a judicial clerk, judge wants to know in adjudicating related litigation whether RF's manner of conducting business raises issues under the federal securities laws.

What would you respond (spotting issues only—2 pts for spotting on own; 1 pt for responding accurately to FU—follow-up question)?

- A. Jurisdiction – Is RF's owner, as a foreign firm, within the reach of U.S. laws where the predicate is interstate commerce (FU – is there an issue created by the fact that RF may be organized in a foreign country?) (*mentions Reg. S – interstate Commerce*) 1 (2)
- B. Security definition – Assuming jurisdiction, are interests in ~~bonds~~ ~~Parts~~ securities w/in the meaning of the 1933 Act? (FU – how would you classify the stakes that supporter's buy in RF's designers that may implicate issues under the federal securities laws?) (*Stakes*) 2 (2)
- C. Registration (mandatory disclosure) – Assuming jurisdiction and a security, is registration of the offer and sale of designer stakes required, or would we need to find an exemption (FU – if stakes in the designers are securities, how would the offer and sale of those stakes be regulated under federal securities law?) 2 (2)
- D. Fraud – Assuming jurisdiction and a security, RF should worry about fraud liability—making material misrepresentations and omitting to state material facts in connection with the sale and purchase of the stakes (FU – other than the mandatory disclosure required in the registration process, what else should RF be concerned about as a liability issue under the federal securities laws in connection with the purchase and sale of designer stakes?) (*Mentions Rule 10b-5*) 2 (2)

SEE REVERSE SIDE

II. Are the Stakes Securities under the 1933 Act?

- dest*
Reves
wants to extrapolate
- to ID money, sep. money*
distinct
(mean test)
- A. Follows Basic Process – ID's statute first (identifying investment contract), no rules /regs /SEC guidance, case law (identifying *Howey*) (mentions §2(a)(1)) 1.5 (2) *~*
- B. Applies *Howey* – (analyzes as "stock") 1 (1) *~*
1. Contract / transaction / scheme *↳ no negotiability*
(but mentions "family resemblance" test)
2. Investment of money – profit motive as opposed to consumption (*Forman*); supporters get a profit share ... *⊕* *sect @ show*
⊕ *discount* 1 (1) *~*
3. Common enterprise – horizontal (supporters all pool their money) and strict vertical (financial rewards of RF / designer and supporters are tied), as well as broad vertical (financial rewards of supporters depend on the efforts of RF / designer (*Horiz.: Infinity Group; Lauer; Strict Vert.: Alliance Leasing; Revak; Broad Vert.: Edwards*)) 1 (1) *~*
4. Expectation of profits – current earnings or capital appreciation (*Forman; Edwards*) 1 (1) *~*
5. Efforts of others – RF's/designers' efforts are essential, but do supporters also put in effort (noting that supporters can participate in an "affiliates scheme" – "earn extra cash by placing an advertisement on your personal web pages and social networking spaces. For each sale that generates from a click-through on one of your advertisements, you'll earn 10% of the profits.")? Are the supporters more like business partners or passive investors (ability to withdraw capital)? (*Williamson; Steinhardt; Koscot; Edwards; Life Partners*) 1 (1)

We will analyze what

III. What Violations of Section 5 would RF Commit in Offering and Selling the Stakes to Supporters (assuming interests are securities and no exemption)?

- (Rule 135)*
- (conditioning the market)* *(Rule 163A)*
- A. Follows the Basic Process – ID's statute first (identifying Section 5), etc. 2 (2)
- B. Section 5(c) – Offered securities before a registration statement was filed (uses definition of "offer") 1 (1)
- C. Section 5(b)(1) – Used the Internet to transmit a prospectus that does not conform to Section 10 (uses definitions of "prospectus" and written communication," etc.; mentions Section 10(b)) 1 (1)
- D. Section 5(a)(1) & (2) – Securities were sold and transmitted over the Internet at a time when a registration statement was not in effect 1 (1)
- E. Section 5(b)(2) – Securities were carried through the Internet for sale w/o having been accompanied or preceded by a Section 10(a) (final) prospectus 1 (1)

Extra Credit (for good, new ideas): _____

Total: 18 (1) *~*
get
curped
2

Use the statute - pick it up
separate statutes + rules