NOTE: There are questions to be answered for each class that will help you understand the degree of technical knowledge about the 1933 Act you need to master for this course.

(1) August 30  The Statute From 1933 to 2006: The Capital Formation Process; Recent Reforms to the Statute. In 2005, the Securities and Exchange Commission effectively “rewrote” significant sections of the 1933 Act. Read Chapters 1 and 2 of the text to get an overview of the statute, the related Securities Exchange Act of 1934, and the process of registering securities for sale to the public. Review Tabs 1 and 2 of the coursepack. Focus on Sections I, II, III and IV of Tab 3 of the coursepack. Tab 3, in its entirety, summarizes all elements of the major reforms to the 1933 Act achieved by rulemaking in 2005. Sections I, II, III and IV of Tab 3 and the related new rules will be crucial to understanding the heart of the 1933 Act. Read the Blackboard materials for Class I and be prepared to answer and discuss the questions set forth on the Blackboard for Class I.

September 6  No class! Legislative Monday.

(2) September 13  The Pre-Offering Period in a Public Offering and Conditioning the Market. Study carefully Sections 5(a), 5(c), 2(10) and 2(3) of the ‘33 Act, Rule 135, pages 22 to 53 of the text. Also study Rules 163, 163A, 168 and 169 which were added by the 2005 Reform to build on the ideas expressed in Securities Act Release No. 5180 (pp. 46-48 in the text) and to reflect the fact that the marketplace has so evolved since 1933, that public communications made by an issuer when it is selling securities should not be viewed as invariably capable of pre-conditioning investor sentiment. Be prepared to answer and discuss the questions posed on pages 33-34 of the text. Keep in mind the relevant sections of Tab 3.

(3) September 20  The Waiting Period: The Post-Offering Period. Most of the real selling activity takes place during the waiting period,
although no sales can actually be made. Study carefully Sections 5(a), (b), (c), 4(3), 10(a) and 10(b) of the Act, Rules 134, 163, 164, 430, 433, 460 and the definition of “free writing prospectus,” “graphic communications” and “written communications” found in Rule 405. All but Rules 430 and 460 are new, or in the case of Rule 134, revised by the 2005 Reform to “open up” what information, in addition to a statutory prospectus, can be used during the waiting period. Also study pages 53-76 of the text. Be prepared to answer and discuss the questions posed on pages 53-55 and 67-68 of the text. Keep in mind the relevant sections of Tab 3.

(4) September 27

The Registration Process: Section 8 and Acceleration; Principles of Disclosure. First time issuers are in for a surprise. Developing the information required to be disclosed is a daunting task and the Securities and Exchange Commission is heavily involved in critiquing that disclosure. Study carefully pages 77-111 of the text. Review Section 8 and Rules 460, 461 and Rule 473. Review S-K item 512(h). Be prepared to answer and discuss the questions set forth on Blackboard for Class IV.

(5) October 4

Disclosure Philosophy. Can an investor understand a 1933 Act prospectus? At the nitty gritty level, what disclosures does the Securities and Exchange Commission require? Study pages 111-125 of the text. Read carefully the prospectus placed on the Blackboard against the requirements of Form S-1 and Regulation S-K. Annotate the prospectus to indicate compliance with the Form S-1 (and S-K) requirements. Be prepared to debate whether the prospectus disclosure was informative and to whom: who are today’s buyers?

(6) October 11

Materiality. The ’33 Act seeks disclosure of all material facts, a subjective standard. Read the cases set forth under Tab 4. Be prepared to answer and discuss the questions found on Blackboard for Class VI.

(7) October 18

What is a Security? The Securities and Exchange Commission, plaintiffs and defendants fight over whether the issuer is selling a security because it matters: if the sale of interest in orange groves are a sale of land and orange trees and not the sale of a security, the 1933 Act is not applicable. That deprives the Securities and Exchange Commission of jurisdiction and plaintiffs of important statutory causes of action. Study Chapter 5 of text, pages 126-135, 139-148,
and 150-167. Review the material under Tab 5 and be prepared to answer and discuss the questions also found under Tab 5. Note: The cases as printed in the text are not in chronological order. Since subsequent Supreme Court decisions “trump” their earlier decisions, you should reorder them chronologically so that you can see how the definition of investment contract and common stock evolved with this Court.

(8) October 25  
**Exemptions from Registration In General: Private Placements.**  
Not every offering of securities has to be registered. Study the wording of the many exemptions from registration found in Sections 3 and 4 of the ’33 Act, especially Section 3(a)(2), 3(a)(8), 3(a)(9), 3(a)(11), 4(1) and 4(2). Focus on Section 4(2), a provision that permits issuers to “privately place” securities without registration. Read Chapter 6 of the text, pages 177-193. Study the materials set forth under Tab 6. Read “Historical Treatment of Institutions” Tab 7, beginning on what is marked as page 89,534 through page 89,539. Be prepared to answer and discuss the questions found on Blackboard for Class VIII.

(9) November 1  
**Exemptions from Registration; Reg D.** Reg D is a workhorse. It permits sales of unregistered securities to persons the Securities and Exchange Commission deems not to need a prospectus meeting the 1933 Act registration requirements and it is widely used to raise very significant amounts of capital from sophisticated investors. Study Reg D, including the preliminary note to this regulation. Read Chapter 6 of the text, pages 208-213. Be prepared to answer and discuss the questions found on Blackboard for Class IX.

(10) November 8  
**Resales of Restricted Securities: “Rule 4 1/2” Rule 144, Rule 144A.** These rules deal with providing a means whereby unregistered securities can be sold by initial investors to others without registration. Without these rules, investors would have great difficulty in ever selling unregistered securities. Rule 144 also provides a means by which investors who are affiliates of an issuer can sell securities without registration of that sale to the public. Study Rule 144, including the preliminary note, and Sections 4(1) and 4(2) of the Act. Review Chapter 7 of text, pages 217-243. Read the entire Tab 8, giving notice of adoption of Rule 144A and the amendment of Rule 144. Study Rule 144A. Be prepared to answer and discuss the questions on Blackboard for Class X.
(11) November 15  Regulation S. This rule rationalizes the territorial scope of the 1933 Act in a global marketplace. Study Regulation S and the related excerpts from SEC Releases posted on the Blackboard. Be prepared to answer and discuss the questions set forth on the Blackboard for Class XI.

(12) November 22  The Role of the Underwriter - Section 11 and Section 12(a)(2) Liability. The 1933 Act relies importantly on making underwriters responsible for materially misleading prospectuses and other sales literature. It is in the self interest of these underwriters, as a result, to curb false statements and police material omissions. It also holds the feet of company directors to the fire. Study Section 11 with a focus on the liability of underwriters and their defenses; read Tab 9. As to Tab 9, focus on that part of the case which deals with underwriter liability and the liability of directors. Review critically the Underwriting Agreement and the related Agreement Among Underwriters found on the Blackboard. Keep in mind the cases set forth under Tab 4. Study Rule 159 and note the new focus on Section 12(a)(2) liability as a result of Rule 159 which is a key component of the 2005 Reform. See Tab 3, Part IV, Discussion of Liability. Be prepared to answer and discuss the questions found on Blackboard for Class XII.

(13) November 29  Wrapping It Up. Be prepared to discuss your solution to the questions found on Blackboard for Class XIII.

(14) December 6  Responsibility of Lawyers. Securities and Exchange Commission lawyers play a crucial role in enforcing the Securities Act of 1933 and the other federal securities laws. It is not an easy task and careers have been destroyed. Study Tabs 10, 11, and 12 and pages 624-627, 629-639, 645-654, and 658-662 of the text; be prepared to answer and discuss the questions found on Blackboard for Class XIV.