## SECURITIES REGULATION Professor Burch Sample Final Exam Essay Question (25 points)

## <u>USE NO MORE THAN THREE (DOUBLE-SPACED, ONE-INCH MARGINS, 12-POINT FONT)</u> <u>PAGES FOR ALL OF THIS QUESTION</u>

Ellen has created a website business known as MyPersonalTrainer.com ("MPT"). MPT collects information from subscribers, who complete a very extensive biographical questionnaire. Subscribers update the questionnaire weekly. Based upon the information collected, MPT provides daily advice to its subscribers on exercise, fitness, nutrition and other physical health enrichment areas.

MPT is capitalized by the subscription fee paid by each subscriber. Further, current subscribers receive a small credit towards the subscription fee for each new subscriber referred by a current subscriber. MPT derives revenues from advertising income and commissions paid on products and services procured by subscribers through MPT. Revenues are paid into an escrow account, managed by Ellen, and invested in short term instruments. The investment return was retained in an MPT account, managed by Ellen and utilized to redeem CO's presented by subscribers. By written agreement with subscribers, MPT retained a first right of refusal on the redemption of all CO's.

Subscribers are issued ownership interests in the form of a certificate of ownership ("CO"). Ownership is in proportion to the subscription fee paid and the amount of revenue generated by the subscriber. The value of the CO is based roughly on the current net earnings (expenses less revenues less distributions) of the website.

Having a poor opinion of attorneys, Ellen has not yet consulted an attorney. No Securities Act of 1933 or Securities Exchange Act of 1934 forms have been filed on behalf of MPT.

Concerned about threatened legal action from the Securities and Exchange Commission, Ellen has sought your legal advice. Please advise Ellen on her rights and liabilities. Limit your discussion to federal securities laws, regulations and rules. Omit state blue-sky concerns.