

have not protested against such representations, the creditors should be classed prior to these holders. Since some creditors would not have relied on the representations and since some holders would not have known of them, this test also would lead to considerable confusion. Generally, courts have been unfavorable to hybrid securities and have called them stocks unless they were clearly certificates of indebtedness.

The possible combinations of stock or bond characteristics seem almost unlimited. No adequate test by which the status of holders can be determined in advance has been suggested. One solution of the problem would require a simplification of corporate structure and financing. The present trend seems to be in this direction, but to provide for such simplification by general law is almost impossible. Mr. Hansen suggests that the courts might arbitrarily class all hybrids as credit items. If this were done, it would be more difficult for the corporation to obtain credit from other firms, and, as a result, the use of hybrids would be discouraged. On the other hand, the Yale comment suggests that some aid may come through state Blue Sky laws, the Securities Act of 1933, and the Securities Exchange Act of 1934. If the status of hybrids is not clear, the Commission may require that the registration statement make it clear. The status indicated therein could be considered as a highly important factor in any controversy which might arise.

LIABILITY OF THE LAWYER FOR BAD ADVICE — Nathan Isaacs
— Harvard Graduate School of Business Administration,
24 California Law Review 39 (November 1935).

The lawyer's liability to his client has been affected by the nineteenth century prejudice for contract making. The result is a theory of implied contract, both historically and analytically unsound. He is said to represent himself as having "the ordinary legal knowledge and skill common to his profession." But average facts do not conclude specific cases, even if the average were ascertainable. Moreover, the courts are thus thrust back to a standardized conception of the lawyer's skill which the contractual approach sought to avoid.

Further, liability is not based upon a money consideration. The form of action is generally in tort. If the lawyer warrants his advice as true his function is destroyed, for he must tell his client to concede all doubtful points to save himself.

Except for fraud or other tortious act, liability is owed solely to the client; that is, it is determined by privity of contract. This conception

should be modified. Investors often rely on the names of counsel appended to an abstract of title or to a registration statement for stock for the soundness of the whole transaction. The federal securities legislation of 1933 and 1934 might be interpreted as changing the rule. Section eleven provides accountants, engineers, or appraisors "or any other person whose profession gives authority to any statement made by him" shall be liable for misstatements or omissions of fact in a registration statement to which their names are appended.

The author concludes that the contractual theory is not adequate for the twentieth century. He foresees a return to an emphasis of the lawyer's professional status, a reminder that he is not an ordinary employee of his client.