

Becker Practice Questions

Business Law Chapter 분류자료

※ 문제풀이 강의 관련 주의사항

1. 촬영된 강의는 최신문제집의 문제순서와는 차이가 있기 때문에 해당문제자료는 별도로 학원에 요청하셔서 수강하시기 바랍니다.
2. 최근 개정으로 시험범위에서 제외된 다음 파트의 문제는 수강하지 않으셔도 됩니다.

(1) Negotiable instruments

Becker R2 Part

Q1~Q46 제외

(2) Federal securities regulation

Becker R4 Part

Q1~Q3, Q6~Q8, Q11~Q20, Q24~Q40,

Q50, Q56, Q57, Q60, Q64, Q65 제외

3. 파산법 문제풀이에 적용된 기준금액은 정기적으로 인상되기 때문에 최근 개정된 기준금액을 반영하여 정리하시기 바랍니다..

(Becker R1) Chapter 1 Contracts

1. Introduction of Contracts

- 1) Contract - Legally binding agreement
- 2) Common Law vs. Uniform Commercial Code (UCC)
 - ① Common Law ⇨ Real estate / Insurance / Service / Employment
 - ② Uniform Commercial Code (UCC) ⇨ Sale of good
- 3) Types of contracts
 - ① Express contract or Implied contract
 - ② Unilateral contract or Bilateral contract
 - ③ Executory contract or Executed contract
 - ④ Valid contract, Voidable contract, or Void contract

2. Formation of Contracts

1) Offer

- ① Seriously intended
 - a. Objective test (Reasonable person)
 - b. Offer X ⇨ Apparent jest / Invitation / Statement of opinion
 - ❖ Advertisement ⇨ Invitation / Exception (Offer O) - Reward
 - ❖ Auction ⇨ With reserve - Invitation / Without reserve - Offer
- ② Communicated - Received
- ③ Definite & certain in essential term (Price, time, etc.) / UCC - Only quantity
- ❖ Termination
 - a. Revocation
 - a) Anytime before acceptance, even if open for definite time / Direct or indirect
 - b) Exception - Option contract under common law / Firm offer under UCC
 - b. Rejection
 - c. Counteroffer (Rejection + New offer) - Mere inquiry or request for additional X
 - d. End of stated time / Death or insanity / Changed circumstance

2) Acceptance

- ① Written, oral or by action / Accepted only by offeree / Silence X
- ② Unconditional (Mirror Image Rule)
- ③ Mailbox Rule ⇨ Sent (dispatched) - By method specified or By same method

3) Consideration - Legal value & Bargain for exchange

- ① Preexisting legal duties, Past consideration, Moral obligation - Consideration X
- ② Agreement to accept from liquidated debtor lesser sum - Consideration X
- ③ Modification ⇨ Common law - With consideration / UCC - Without consideration
- ④ Requirement contract & Out-put contract - Consideration O
- ⑤ Gift - Not enforceable (Exception - Donation to charity / Promissory estoppel)

Q40

Q67

Q47

Q63, Q68

Q17, Q26

Q46, Q56

Q30

Q11

Q69

4) Legal capacity

- Q53 ① Minor - Voidable by minor
 Q38 ❖ Ratification - Within reasonable time after majority
 Q22 ② Incompetent person (Insanity) - Void
 ③ Intoxicated person - Generally valid

5) Illegality - Void

- ① Agreements to commit crime or tort
 ② Agreements to not press criminal charge for consideration
 ③ Services rendered without required license
 Regulatory licensing statute - Void / Revenue-seeking statute - Valid
 ④ Usurious contract

6) Reality of assent

- ① Fraud
 Q64 Fraud in inducement - Voidable / Fraud in execution - Void
 Q27, Q49 ❖ Prerequisite
 Q42 a) Misrepresentation of material fact - Opinion X (Expert's opinion O)
 b) Intent to mislead (Scienter) or Gross negligence
 c) Reasonable reliance by injured party
 d) Resulting in injury (damage) to other
 Q28, Q55 ② Mistake
 Q43 Mutual mistake - Voidable / Unilateral mistake - Valid
 Q48 ③ Duress - Unlawful use of force or threat (Poor financial condition X)
 Q62 Ordinary duress - Voidable / Extreme duress Void
 ④ Undue influence (Abuse of a position or fiduciary relationship) - Voidable

7) Statute of frauds

- ① General - In writing & signed / Noncompliance - Unenforceable
 Q61 ② Types - MY LEGS
 Q52 a. Contract for the sale of interest in land
 ❖ Exception (Oral O) - Part performance (Possession / Payment or improvement)
 Q58 b. Contract that are not capable of being performance within one year
 c. Surety contract
 Q5 d. Contract for the sale of good (UCC) for \$500 or more
 Q70, Q80 ❖ Exception - Specially manufactured / Written confirmation / Admission / Performed
 e. Contract relating to marriage
 f. Contract by executor to pay estate debt out of personal fund
 Q29 ③ Electronic document O
 ④ Parol evidence rule
 a. Final written agreement - Evidence O
 Q36, Q44 b. Exception ⇨ Previous oral or written & Contemporaneous oral - Evidence O
 To explain ambiguous term / To show invalidity / To show condition precedent
 Subsequent modification

3. Operation of Contracts

- Q51 1) Assignment of right & Delegation of duty
- Q2 ① Requirement - Without consent of other party & No consideration
- Q31, Q32 ❖ Exception (With consent)
- Materially change obligor's risk / Specialized personal service / Prohibition
- Q39 ② Assignment of right ⇒ Assignee has exclusive right / Step into shoes of assignor
- ③ Delegation of duty ⇒ Both delegator & delegatee are liable (Exception - Novation)
- Q60 2) Third-party beneficiary contract - Promisee, Promisor & Beneficiary
- ① Intended beneficiary ⇒ Right O
- Q50 Creditor - To promisor or promisee / Donee - To promisor only
- ② Incidental beneficiary ⇒ Right X

4. Termination of Contracts

- 1) Performance of contracts
- ① Condition - Condition precedent / Condition concurrent / Condition subsequent
- Q37 ② Substantial performance - Deviation is minor & Good faith
- 2) Discharge of contracts
- ① By agreement
- Q24, Q33, Q45, Mutual rescission / Novation / Accord and satisfaction
- Q59
- Q34 ② By objective impossibility - Performance becoming costly X
- Q23 ③ Breach of contract
- Prevention or Non-acceptance of tender O
- ④ Anticipatory breach (Repudiation)
- a. Non-repudiating party's option - Cancel / Immediate breach / Await time specified
- b. Repudiator's right - Withdraw repudiation until other party relies
- Q1, Q3, Q35, 3) Statute of limitation - Void contract X, but Merely bar legal action
- Q41 4) Remedies
- ① Monetary damage
- Q25 a. Determination - Compensatory / Incidental - Related / Consequential - Foreseeable
- b. Punitive damage - Generally not allowed
- c. Liquidated damage - Not enforceable if punitive
- d. Duty to mitigate
- Q57 ② Specific performance - Used only when land or unique item (Personal service X)
- ③ Other remedies - Injunction / Waiver / Arbitration

(Becker R1) Chapter 2 Sales

1. Contracts for sale of goods

1) Article 2 of UCC

- ① Good - All tangible & movable thing
- ② Not limited to merchant / Merchant - Deal & have special knowledge
- ③ In good faith

2) Article 2 of UCC vs. Common law

Q8, Q82

❖ Shipment of non-conforming good with accommodation

- ① Unilateral contract - Counteroffer
- ② Bilateral contract - Breach of contract

2. Risk of loss and Title

Q74

1) Risk of loss

① Non-carrier case

- a. Seller is merchant - Actual delivery
- b. Seller is not merchant - Tender of delivery

Q75, Q85

Q12,13

② Carrier case

- a. Shipment contract - Actual delivery to carrier
- b. Destination contract - Tender of delivery at destination

Q71

❖ Special case

Q65, Q81

Q78

Q21

- a. Sale on approval - Seller / Sale or return - Buyer
- b. Shipment term - COD (Pay prior to inspecting)
- c. UN Convention for International Sale of Good - Delivery to first carrier

2) Title

Q9, Q19

Q7

- ① Passage of title - After existence & identification > Agreement or Delivery requirement
- ② Justified rejection - Revert title to seller

❖ Bona Fide Purchaser (BFP) - Good faith / No notice / Value

Q86

❖ Entrustment - Void title ⇒ Valid title

3. Warranty liability and Tort liability

1) Warranty liability ⇔ Perfect tender

- ① General - Negligence X / Privity X ⇒ Buyer's family or guest O

Q6, Q14, Q16,

Q83

Q18, Q66

Q72, Q79, Q87

② Types of warranty

Express warranty	By affirmations or samples No intent and no reliance	Any sellers	Cannot be disclaimed
Implied warranty of title	By sales of goods	Any sellers	By specific language or circumstances (General disclaimer X)

Q89, Q91

Implied warranty of merchantability	By sales of goods Regular sales by merchants	Merchants only	By general disclaimers or mentioning "merchantability" (oral or written)
Implied warranty of fitness for particular purpose	By sales of goods Sellers have reason to know and buyers' reliance	Any sellers	By general disclaimers (written only)

2. Tort liability

- ① Negligence - Privity X but Difficult to prove negligence
 - a. Burden of proof - Plaintiff
 - Duty of care / Breach of duty / Damage / Causation
 - b. Defense - Contributory or Comparative negligence / Assumption of risk
- ② Strict liability (Product liability) - Privity X / Need not prove negligence
 - a. Burden of proof - Plaintiff
 - Seller is merchant / Defective product / Unreasonable danger / Injury
 - b. Defense - Contributory or comparative negligence X

Q73, Q84

4. Performance and remedies

Q4, Q20

1) Seller's remedies

- ① Right to demand assurance
- ② Right to cure non-conformity
- ③ Right to stop delivery
- ④ Right to resell and sue for damage
 - Damage - Difference between contract price & resale price + Incidental damage
- ⑤ Right to cancel and sue for damage
 - a. Recover full contract price
 - Unable to resell / Seller's acceptance & breach of contract / Risk of loss
 - b. Liquidated damage O, even if no agreement - \$500 or 20% of contract price

Q90

Q15, Q88

Q76

2) Buyer's remedies

Q77

- ① Right to demand assurance
- ② Right to reject non-conforming good
 - a. Buy substitute good and sue for damage
 - b. Duty to mitigate - Follow reasonable instructions of seller
- ③ Right to accept non-conforming good and sue for damage
- ④ Right to revoke acceptance
 - Expecting to be cured / Difficulty of discovering defect / Seller's assurance
- ⑤ Right to replevin good - Unique or Buyer cannot reasonably cover
- ⑥ Right to cancel and sue for damage

Q10

(Becker R2) Chapter 3 Negotiable Instruments

Q1 ~ Q46

1. Introduction of negotiable instruments

1) Types

- ① Types of Note ⇒ Two party (Maker & Payee)
 - a. Promissory notes
 - b. Certificates of deposit: Maker - Financial institution
- ② Types of Draft ⇒ Three party (Drawer, Drawee & Payee)
 - a. Drafts or Bills of exchange
 - b. Checks: On demand / Drawee - Bank
 - ❖ Postdated checks
 - ❖ Cashier's checks: Drawer & Drawee - Same bank
 - c. Trade acceptances: Drawer & Payee - Seller / Drawee - Buyer
 - ❖ Banker's acceptances: Drawer & Drawee - Same bank

2) Terminologies

- ① Commercial papers ⇒ Negotiable instruments (Article 3)
- ② Documents of title (Article 7)
- ③ Investment securities (Article 8)

2. Formal requirements of negotiability (Formation)

1) General: Negotiability ⇒ Face

2) Requirements

- ① Writing & signed by maker or drawer
 - a. Writing - Printing, typing or any other form O
 - b. Signature - Trade name, initial or assumed name O / Rubber stamp O
- ② Unconditional promise or order to pay
 - ❖ Permissible terms
 - Stating instrument's purpose
 - Reference of transaction or contract
 - Showing that instrument is secured by collateral
 - Containing promise to provide extra collateral
 - Limiting payment out of particular fund
- ③ Fixed amount in money
 - a. Fixed amount - Principle O / Interest X
 - ❖ Permissible terms
 - Interest rate is not stated ⇒ Legal or judgment rate
 - Variable interest rates / Different interest rates
 - With discounts or additions / With attorney's fees or collection costs
 - b. In money - Property or service X / Foreign currency O

- ④ Payable on demand or at definite time
 - a. On demand - At sight / On presentation / No stated
 - b. At definite time - On certain date / At fixed period after sight or acceptance / At fixed period after certain date / Within certain time
 - ❖ Acceleration or extension clauses
 - Permissible But Extension - Holder without limitation / Maker or drawer with limitation
- ⑤ Payable to order or to bearer
 - a. Order paper - Order of A / Payable to A or order
 - ❖ Check - Pay to A without magic word O
 - b. Bearer paper - To bearer / To order of bearer / To A, or bearer / To cash / To order of cash / To order of __
 - ❖ Other formation issues
 - a. Contradictory term - Words > Figures / Handwritten > Typewritten or printed
 - b. Omission - Permissible unless necessary to determine when payable
 - c. Postdated or antedated - Permissible

3. Negotiation (Operation) ⇔ Holder in Due Course

- 1) General: Negotiation ⇔ Back
- 2) Methods of negotiation
 - ① Order paper - Delivery & Endorsement
 - ② Bearer paper - Only delivery
- 3) Types of endorsement
 - ① Special endorsement ⇔ Order paper (Magic word is not needed)
 - ② Blank endorsement ⇔ Bearer paper
 - ③ Restrictive endorsement - For deposit only / Pay to A only / Pay to A only if A does something (No effect on negotiability)
 - ④ Qualified endorsement - Without recourse (Contract liability X / Warranty liability O)
- 4) Holder in Due Course (HDC)
 - ① Elements of HDC ⇔ By negotiation / For value / In good faith / Without notice
 - ❖ Value (≠ Consideration) - For antecedent debt O / For full amount X
 - ❖ Notice - Overdue or Dishonored O / Default in payment of interest X
 - ② HDC is free of personal defenses but not real defenses
 - a. Personal defenses
 - Unauthorized completion / Lack of consideration / Breach of contract / Non-delivery of instrument / Prior payment / Voidable cases (but Minor - Real defense)
 - b. Real defenses
 - Forgery / Material alteration (Partially defense) / Discharge in bankruptcy / Void cases
 - ③ Shelter rule
 - a. Not HDC But obtain from HDC ⇔ HDC O
 - b. Exception (HDC X) - Fraud or illegality / Reacquisition

4. Liabilities of parties

1) Contractual liability ⇒ Signature appear on negotiable instrument

① Primary liability - Maker or Drawee after acceptance

② Secondary liability - Drawer or Endorser

❖ Requirement - Timely demand + Timely notice + Without qualified endorsement

2) Warranty liability

① Transfer warranty

② Presentment warranty

❖ Liability with forged signatures

① Maker's or Drawer's signature ⇒ Negotiation O

② Payee's signature ⇒ Negotiation X

Exception (Negotiation O) - Imposter rule / Fictitious payee rule / Negligence rule

❖ Bank's liabilities ⇒ Stop payment of order

① Oral stop order - 14 days / Written stop order - 6 months

② Bank is not automatically liable to drawer

❖ Accommodation party's liabilities ⇒ Maker or Endorser

❖ Singing by authorized agents ⇒ Principal O / Agent X

5. Discharge of liabilities

1) Payment / Accord and satisfaction

2) Cancellation

3) Intentional destruction or Material alteration of the instrument

4) Reacquisition

5) Renunciation - Written is effective / Oral is not effective

6) Impairment of collateral or right of recourse

7) Certification of check ⇒ Discharges drawer and all endorsers

6. Documents of title

1) Bill of lading

2) Warehouse receipt

(Becker R2) Chapter 4 Secured Transactions

1. Introduction of secured transactions

- Q59
- 1) Article 9 of UCC
 - ① Contractual security interests in personal property or fixtures
 - ② Not apply ⇒ Mortgage / Involuntary (statutory or judicial) lien
 - 2) Types of security interest
 - ① Tangible personal property (goods)

By how debtor uses goods ⇒ Consumer good / Inventory / Equipment
 - ② Documentary personal property
 - ③ Intangible personal property
 - 3) Special types of security interest
 - ① After acquired property clauses - SI attaches as soon as acquire
 - ② Purchase Money Security Interest (PMSI) - Priority
 - a. Seller retain SI in same goods sold on credit to secure payment
 - b. Creditor provide loan and retain SI in property purchased by debtor

Q54 2. Formation of secured transactions

- 1) Attachment

Q47, Q49, Q56 Attachment will be effective when all three elements are satisfied

Q72, Q74

 - ① Security agreement ⇔ Authenticated record or Pledge
 - ② Value given by secured party - Preexisting debt O
 - ③ Debtor's right in collateral - Need not title / Possessory right O
 - 2) Perfection
 - ① Constructive notice to 3rd parties
 - ② Timing of perfection - Attachment & Perfection
 - ③ Methods of perfection
 - a. By filing - Financing statement / Effective for 5 years and can be renew
 - b. By possession - Attachment & Perfection / Duty of reasonable care

Q62 ❖ Types of collateral

 - Tangible personal property ⇒ Filing or Possession
 - Documentary personal property ⇒ Possession only
 - Intangible personal property ⇒ Filing only (cannot be pledged)
 - c. Automatic perfection ⇒ PMSI in consumer goods

Q50

 - ❖ Exception - Automatic perfection is not effective against BFP
 - ❖ PMSI in non-inventory (equipment) ⇒ 20-day grace period
 - ❖ Interstate shipments ⇒ Four-month grace period
- Q61, Q65, Q73
- Q55, Q64, Q70
- Q51

Q67, Q69, Q71

3. Operation of secured transactions ⇒ Priorities

Q48

- 1) Buyers in the ordinary course of business - even if know SI
- 2) Statutory lien holders
- 3) Properly perfected PMSI
- 4) Perfected SI, Judicial lien, Trustee in bankruptcy, or BFP from consumers
 - ❖ Priorities between perfected SI
 - By filing vs. By filing ⇒ First to file
 - By filing vs. By possession / By possession vs. By possession ⇒ First to perfect
- 5) Unperfected security interests
- 6) General creditors
- 7) Debtor

4. Termination of secured transactions

Q60

- 1) Upon satisfaction - Remove financing statement from public records

Q57, Q58

- 2) Upon default - Sell or Retain collateral

❖ Repossession

Q66

① Creditor's rights

- a. Foreclosure sale (Disposition) - Notice & Commercially reasonable sale
 - a) Distribution: Expense > Creditors > Debtor
 - b) Insufficient - Deficiency judgment
 - c) Good faith purchaser of collateral - Wipe out all subordinate interests
- b. Retention - Permissible but Notice requirement

Q52, Q53

❖ Exception (Must sell) - Consumer good & Debtor has paid at least 60%

- c. Judicial action

② Debtor's right - Right of redemption

(Becker R3) Chapter 5 Debtor and Creditor Relationships

1. Introduction of Bankruptcy

1) Types of bankruptcy

- ① Chapter 7 Liquidation
- ② Chapter 9 Municipal debt adjustment
- ③ Chapter 11 Reorganization
- ④ Chapter 12 Family farmers with regular income
- ⑤ Chapter 13 Adjustment of debts of individuals with regular income

2) Process of bankruptcy

Formation	⇒	Operation	⇒	Termination
① Petition		Trustee		Discharge
② Automatic stay		① Administration		① Objections
③ Order of relief		② Distribution		② Exceptions

Q34

2. Formation of Bankruptcy under Chapter 7

1) Petition

- ① Voluntary petition ⇒ By debtor
 - a. Need not be insolvent
 - b. Individual (Spouses-jointly) O / Partnership or Corp. O (Railroad, financial institution X)
- ② Involuntary petition ⇒ By creditors
 - a. Must show insolvent
 - b. Creditors - at least \$15,775 in unsecured & undisputed debts
 - a) Creditors < 12 ⇒ 1 or more owned \$15,775
 - b) Creditors ≥ 12 ⇒ 3 or more owned \$15,775
 - c. Farmer, fisher, not-for-profit organization, and financial institution X
 - d. Improper petition - Damage O (Bad faith - Punitive damage O)

Q11

Q15

Q33, Q43

Q32

Q19

Q7

2) Automatic stay

- ① Stop - Most collection & legal proceedings
- ② Exception (not stop) - Collection of alimony or perfected SI & criminal proceeding

Q10, Q23, Q38

Q22

3) Order of relief

- ① Voluntary petition ⇒ Automatically
- ② Involuntary petition ⇒ Not automatically
 - a. Uncontested - Order of relief / Contested - Must prove insolvent
 - b. Gap (middle) claim - High priority

❖ Abuse test ⇒ Conversion (Chapter 13) or Dismissal

- ① Specific means test - Conversion
 - a. 1st step ⇒ Debtor's current monthly income vs. State's median income
 - a) Debtor's current monthly income ≤ State's median income ⇒ Petition O
 - b) Debtor's current monthly income > State's median income ⇒ To means test

- b. 2nd step ⇒ Means test
 - a) Adjusted amount < \$7,700 ⇒ Petition O
 - b) $\$7,700 \leq \text{Adjusted amount} < \$12,850$ ⇒ Petition O or Conversion
 - c) Adjusted amount $\geq \$12,850$ ⇒ Presumption of abuse (Conversion)
- c. 3rd step ⇒ Rebutting presumption of abuse
- ② General abuse test - Dismissal
 - Even if qualified specific means test, petition can be denied
 - ⇐ Bad faith or Abuse under totality of circumstances
- ❖ Mandatory credit counseling
 - ① Individual - Before petition
 - ② Waived if unable to comply due to disability, active military duty, etc.

3. Operation of Bankruptcy under Chapter 7

- Q41 1) Trustee ⇒ Agent of the bankruptcy estate
- ① Role - Administration and Distribution
 - ② Right - To receive compensation / To employ professionals
- Q20 ❖ To serve as professional and receive compensation in addition
- 2) Creditor's meeting
- ① Notice to all interest parties
 - ② Debtor's duties - Furnishes lists or schedules / Must attend
 - ③ Examination - Grounds for objection (improper disposition or concealment)
 - ④ Creditor - File proof of claims within 6 months after meeting
- 3) Administration of bankruptcy estate - Trustee has hypothetical lien when petition is filed
- ① Bankruptcy estate
 - a. All of debtor's property at time of filing
 - Q31 a) Income generated from estate after filing
 - Q16, Q21, Q30 b) Property received within 180 days after filing from inheritance, etc.
 - b. Exemption - Residence, Social security benefits, etc.
 - ② Assume or reject executory contracts - Injured 3rd party become unsecured creditor
 - ③ Set aside fraudulent or preferential transfers
 - a. Fraudulent transfers within 2 years prior to filing
 - Q4, Q42 a) Transfers with intent - Need not be insolvent
 - Q13, Q28 b) Transfers less than reasonable value - Need be insolvent
 - b. Preferential transfers within 90 days prior to filing
 - a) Condition - To certain creditor / Received more / Preexisting debt / Insolvent
 - b) If creditor is insider (relative, officer, controlling shareholder, etc.) - 1 year
 - c) Transfer - Payment & Giving of security interests
 - Q2, Q3, Q9, d) Exception (set aside X) - Contemporaneous exchange / In ordinary course of
 - Q12, Q29, Q39 business / Consumer payment / Properly perfected PMSI / Alimony / Gift to charity

- Q35~37, Q40
Q8, Q14, Q25
- 4) Distribution of bankruptcy estate
- ① Secured claims
 - ② Unsecured claims with priority
 - ③ Unsecured claims without priority
- Q26, Q27
- ❖ Unsecured claims with priority
 - ① Support obligations to spouse and children
 - ② Administrative expenses
 - ③ Middle claims (gap claims)
 - ④ Wage claims up to \$12,850 arising within 180 days prior to filing
 - ⑤ Employee benefit plans up to \$12,850 arising within 180 days prior to filing
 - ⑥ Grain farmers or fishermen up to \$6,325
 - ⑦ Consumer deposits up to \$2,850
 - ⑧ Tax claims
 - ⑨ Personal injury claims arising from intoxicated driving

4. Termination of Bankruptcy under Chapter 7

- Q18
Q1, Q24
- 1) Fresh start by discharging most debts (But Partnership & Corp. - Discharge X)
- 2) Objections to discharge ⇒ Bar discharge of all debts
- ① Previous discharge within 8 years
 - ② Destroying or removing property within 12 months with intent
 - ③ Unjustifiably failing to keep books and records
 - ④ Failing to satisfactorily explain any loss of assets
 - ⑤ Failing to answer correctly material questions in creditor's meeting or court
 - ⑥ Not obeying to court orders
 - ⑦ Making false claims against bankruptcy estate
 - ⑧ Making any false document relating to bankruptcy's affairs
- Q17
- 3) Exceptions to discharge ⇒ Bar discharge of an individual debt
- ① Taxes within 3 years before filing and debts incurred to pay taxes
 - ② Governmental fines and penalties
 - ③ Alimony, Education loans
 - ④ Debts not unscheduled or listed by the debtor
 - ⑤ Debts incurred by fraud or embezzlement
 - ⑥ Debts incurred for luxury goods, within 90 days of order of relief, more than \$600
 - ⑦ Cash advances incurred within 70 days of order of relief, more than \$875
 - ⑧ Debts incurred by intoxicated driving
 - ⑨ Debts incurred by intentional torts (willful and malicious injuries, theft, etc.)
- 4) Reaffirmation
- ① Before granting of discharge
 - ② Approved by bankruptcy court & Inform legal effect of reaffirmation
 - ③ Right to rescind any time prior to discharge or within 60 days after reaffirmation

5. Reorganization under Chapter 11

1) General

- ① Goal - To keep in business by reorganization
- ② Debtor generally remains in possession ⇒ Trustee generally is not appointed

Q6

2) Process of reorganization

- ① Petition by debtor (voluntary) or creditors (involuntary)

Q5

Individual, partnership, and corporation O (Financial institution X / Railroad O)

- ② Submission of reorganization plan

a. Debtor - Exclusive right to file plan for 120 days

b. Others – Right to file plan, if trustee appointed or debtor not filed within 120 days

- ③ Approval of plan - By creditors (creditors' committee)

- ④ Confirmation by court - If fail to approve, plan can still be approved by court

6. Adjustment of debts of individuals with regular income under Chapter 13

- 1) Only individual with regular income O

- 2) Only voluntary petition O ⇒ Composition or Extension (3~5 years) plan

- 3) Court must appoint trustee

7. Creditor's rights

1) Lien

- ① Voluntary lien - Mortgage (Real property) or Security interest (Personal property)

- ② Involuntary lien

a. Statutory lien - Mechanic's lien / Artisan's lien / Materialman's lien / Innkeeper's lien

b. Judgment lien

❖ Attachment (Pre-judgment remedy)

Q52, Q61

❖ Garnishment - To seize money owed to debtor by 3rd parties / Legal limitation O

2) Rights on fraudulent conveyance

- ① General - Set aside

Q62

- ② Types of fraudulent conveyance

a. Debtor retains possession or control of property after conveyance

b. Debtor retains equitable benefits in property after conveyance

c. Debtor is insolvent at conveyance or becomes insolvent shortly after conveyance

d. Debtor secretly transfers or hides property

- ❖ Legal remedies for debtors

Q48

- ① Creditors' composition - Agreement between creditors & debtor ⇒ Discharge O

- ② Assignment for the benefit of creditors - without creditor's consent ⇒ Discharge X

- ③ Related laws

Q47, Q64

a. Fair Debt Collection Practices Act ⇒ Breach - Discharge X / Damage by civil lawsuit

Q63

b. Homestead exemption ⇒ Exception - Mortgage or IRS tax lien

c. Credit Card Fraud Act / Fair Credit Reporting Act / Fair Credit Billing Act / Equal Credit Opportunity Act / Truth in Lending Act

Q59	8. Suretyship
	1) Suretyship contract
	① Consideration
	a. Contemporaneous with primary contract - No need separate consideration
	b. Subsequent to primary contract - Separate consideration / Need not to surety
Q53, Q57	② Statute of Frauds O (Exception - Main purpose rule)
	③ Types - Suretyship (primarily liable) vs. Guaranty (secondarily liable)
	2) Surety's rights
Q45	① To principal debtor ⇒ Exoneration / Subrogation / Reimbursement
Q50	② To creditor ⇒ No right to compel collection from principal debtor / No right to notice
	3) Surety's defenses
Q49	① Suretyship contract's defenses
	② Primary contract's defenses
	a. Breach of contract by creditor / Creditor's fraud or duress ⇒ Defense O
	b. If surety was aware ⇒ Defense X
	③ Modification of primary contracts - Increase surety's risk
	a. Non-compensated surety ⇒ Completely discharged for modification
	b. Compensated surety
	a) Risk is increased materially - Completely discharged
	b) Risk is increased immaterially - Reduced by amount of loss
Q60	④ Discharge of principal debtor's obligation - Payment or Tender of payment / Release
Q44	❖ No defense
Q46	a. Principal debtor's fraud or duress upon surety (If creditor was aware - Defense O)
	b. Incapacity, death, bankruptcy of principal debtor / Set-off by principal debtor
Q55	4) Special type ⇒ Cosureties - Two or more sureties for same debt
	① Jointly and severally liable to creditor
Q58	② Special right - Right of contribution
Q54, Q56	❖ Contributive share = Default amount X (Individual amount / Total amount)
	❖ Surety's death or bankruptcy - Recalculate contributive share
	③ Special defense - Release of surety by creditor
Q51	Remaining cosureties is discharged to extent of released surety's pro rata share

(Becker R3) Chapter 6 Agency

1. Introduction of agency

- Q69, Q78, Q129
 - 1) General - By appointment, agent can bind principal in contract
 - ❖ Employment - Type of agency / Doctrine of respondeat superior
 - ❖ Power of attorney - Written instrument / Signed by principal only / Restriction O
 - 2) Principal - Legal capacity O ⇒ Minor can appoint but may disaffirm
 - ① Disclosed principal (A as an agent of B)
 - ② Partially disclosed principal (A as an agent)
 - ③ Undisclosed principal (A)
 - Q66, Q74, Q123
 - 3) Agent - Legal capacity X ⇒ Minor O
 - ① General agent
 - a. Implied authority ⇒ Routine tasks (Purchase, Pay debts, Hire/Fire employee)
 - b. Non-implied authority ⇒ Non-routine tasks (Sell/Mortgage property, Borrow money)
 - Q72
 - ② Special agent - Real estate broker, attorney, etc.
 - Q121
 - ❖ Subagent

2. Formation (Creation) of agency

- Q68, Q70
 - 1) Appointment (Actual authority)
 - ① Requirement - Meeting of mind ⇒ No contract requirement (Consideration X)
 - ② Appointment can be written or oral
 - a. Agency agreement cannot be completed within one year - In writing
 - Q71
 - b. If agent is to sell or buy real estate - Generally in writing
 - ③ Express appointment or Implied appointment
 - 2) Estoppel (Apparent authority)
 - ① Principal's conduct or representation ⇒ 3rd party rely to his detriment
 - Q132
 - ② Secret limitation - No effect on 3rd parties
 - 3) Ratification
 - ① Requirement
 - Principal - in existence & competent / Prior to 3rd party's repudiation / Entire contract
 - ② Undisclosed principal cannot ratify

3. Operation of agency

- Q126
 - 1) Principal's duties to agent - Compensation / Reimbursement
 - 2) Agent's duties to the principal
 - ① Fiduciary duty - Duty of due care / Duty of loyalty (No self-dealing & secret profit)
 - ② Duty of obedience (Exception - Independent contractor)

3) Principal's liabilities

- Q76 ① Contractual liability O
- ❖ Undisclosed principal & Beyond scope of actual authority - Liability X
- ❖ Defenses to contractual liability - Agent's personal defenses X
- Q75, Q133 ② Tort liability within scope of business O - even if agent violated principal's instruction
- Q130, Q134 ❖ Independent contractor - Principal is not liable for torts of independent contractor
- ③ Criminal liability - Generally not liable

4) Agent's liabilities

- Q128, Q131 ① Contractual liability - Disclosed X / Partially disclosed or undisclosed O
- ② Tort liability O
- ③ Criminal liability O

4. Termination of agency

1) Termination by Acts of parties (Voluntary termination)

- Q122 ① Generally terminable at will (Power O) / Violation (Right X) - Damage O
- Q77 ❖ Exception ⇨ Agency coupled with interest - termination by agent only
- Q127 ② Notice is required - Actual notice or Constructive notice

2) Termination by Operation of law (Involuntary termination)

- Q67, Q73 ① Case
- Q125 Incapacity or bankruptcy of principal / Death of principal or agent / Failure to acquire
- Q124 necessary license / Destruction of subject matter / Impossible or illegal
- ② Notice is not required to terminate apparent authority

(Becker R3) Chapter 7 Business Structures

1. General Partnership

1) General

Q80, Q82

① Definition - Two or more / Carry on as co-owners / For profit

Q83

② Legal entity - UPA X (Aggregate theory) / RUPA O (Entity theory)

2) Formation - By agreement or estoppel

① Intent - Sharing of profits

Q88, Q94

② Not in writing ⇒ Exception (Writing O) - For longer than one year

③ Partner - Legal capacity O (Individual, Partnership, Corporation)

④ Filing X ⇒ Exception (Filing O) - Fictitious name

3) Operation

① Partner's rights - Agreement > (R)UPA

a. Right in management - Equal right (Majority consent)

Q87, Q146

❖ Silent partner - Not manage but Unlimited liability

Q89, Q107

❖ Unanimous consent - Admission / Amending / Liability↑ / Property↓

Q150

b. Right in profit or loss allocation - Equally

❖ Agreement ⇒ Only profit - Loss: Same as profit / Only loss - Profit: Equally

c. Right in partnership's property

Q149

Use or possess O / Sell, assign, or attach for individual purpose X

❖ Partnership's property - With partnership fund / In partnership's name
/ In partner's name with indication of capacity as partner

d. Right in partnership's interest

Q92

a) Interest in profits and surplus - Assign O

Q148

b) Assignee - Partner X (Right to inspect books and records X)

e. Other rights

a) Right to indemnification O / Right to receive compensation X

b) Partner - Partnership's creditor O

Q102, Q105

② Partner's duties ⇒ Agent of partnership & other partners - Fiduciary duty O

③ Partner's liability ⇒ Unlimited liability - Jointly and severally / After partnership

4) Termination

① Dissociation

Q103

a. Rightful (Partnership at will) vs. Wrongful (Partnership for term)

Q100

b. Withdrawal, death or bankruptcy ⇒ Not automatically termination

a) Majority consent within 90 days - Continue O

b) Withdrawing partner's liability and New partner's liability

② Dissolution - Termination X

Dissociation ⇒ Not continue / By partnership's agreement / By court order

③ Winding up - Termination O

Creditors > Partner's capital contribution > Partner's share of profit

- Q114 **3. Limited Partnership**
- Q145 1) General - General partner(s) + Limited partner(s)
- 2) Formation
- Q84 ① Filing O (Certificate) - Partnership name / GP (LP X) / Registered agent
- ② Contribution - Cash, property, services, promise O
- 3) Operation - Limited partner
- Q112 ① Limited partner's rights
- a. Voting right - Amending / Dissolution / Sale of substantial assets / Loans
- ❖ Admission of new partners - GP X / LP O
- b. Right in management - No right / Agent by separate agreement O
- c. Right in profit or loss allocation - In proportion to contribution (Equally X)
- d. Other rights - Derivative action O / Inspect books and records O
- ② Limited partner's duty - Agent X (Fiduciary duty X)
- ③ Limited partner's liability
- ❖ Exception (Unlimited liability) - Participate / Use of name / Defective formation
- ❖ LP & GP at same time - Liability as GP / Contribution as GP & LP
- 4) Termination
- Q111 ① Dissolution - By agreement / Withdrawal, etc. of GP (LP X) / By court order
- Q147 ② Winding up - Creditors > Unpaid distribution > Contribution > Share of profit
- 4. Joint Venture, LLP and LLC**
- 1) Joint venture
- ① Association of joint venturers - Single transaction or project
- ② Special form of general partnership ⇒ Filing X
- 2) Limited Liability Partnership (LLP)
- ① Generally for professionals (accounting firms, etc.) ⇒ Filing O
- ② Not personally liable - Wrongful acts committed by another partner
- (Wrongful partner & supervising partner - Personally liable O)
- Q93 3) Limited Liability Company (LLC)
- Q81, Q115 ① Hybrid type - Limited liability / Participate in management / Taxed as partnership
- ② Formation
- a. One or more members - No legal limit
- Q151 b. Filing O (Articles of organization) - LLC name / Registered agent
- ③ Operation
- a. Member's rights ⇒ Right in management & in profit or loss allocation - Equally
- Q99 ❖ Manager-managed LLC ⇒ Manager - Agent O / Member - Agent X
- b. Member's duty - Fiduciary duty
- ④ Termination - Not perpetual (Usually to 30 years)

5. Corporation

1) General

- Q79 ① Advantages - Legal entity / Perpetual life / Freely transferable
/ Centralized management / One shareholder O / Financing
- Q116 ② Disadvantage - Double taxation / High costs / Governmental supervision
- ③ Types of corporation
- a. Foreign corporation ⇔ Domestic corporation
 - ❖ Doing business - Certificate of authority (Incorporation X)
 - b. De facto corporation ⇔ De jure corporation
 - ❖ Small errors in formation - Challenged by state (Corporation & 3rd party X)
 - c. Closely held corporation - Restriction on transfer of stock
 - d. Professional corporation - Personally liable for professional act
 - e. S corporation ⇔ C corporation
 - ❖ Requirement (Double taxation X)
 - Domestic / One class of stock / Shareholder - Individual, estate, trust O
(Partnership or corporation X), Limited 100, Non-resident alien X
- Q119

2) Formation

- ① Capitalization by promoter
- a. Promoter (⇔ Incorporator) - Agent X but Fiduciary duty O
 - a) Role - Pre-incorporation contract / Promoting stock subscription / Draw up AOI
 - b) Liability - Personally liable for contract ⇔ Adoption - Both Corp. & Promoter
 - b. Initial subscription - Irrevocable for usually 6 months
- Q139
- ② Appointment of management
- a. First organization meeting ⇔ Appointment of BOD / Approval for AOI
 - b. First BOD meeting ⇔ Appointment of officers / Approval for bylaw / Adoption
- ③ Filing of Article of incorporation (Charter)
- a. Mandatory provisions - Name / Authorized share / Incorporator / Registered agent
 - b. Optional provisions - Purpose, duration, directors, types of stock, etc.
 - ❖ Some optional provision may be elected only in AOI - Preemptive right
- Q85

3) Operation

- ① Shareholders' rights, duties, liability
- a. Voting right - Appointment or removal of director / Fundamental changes
 - ❖ Cumulative voting - Protection of minority shareholders
 - ❖ Voting techniques - Proxy voting / Voting agreement / Voting trust
 - b. Right to inspect book and record - Inspect & copy / Not limited or abolished
 - ❖ Requirements - Written notice at least five days & Proper purposes
 - c. Preemptive right - To purchase proportional shares to maintain voting right
 - ❖ Right X - AOI does not provide / Preferred stock / Treasury stock
 - d. Appraisal right - To request corporation to repurchase shares at FMV
 - ❖ Right O - M&A / Share exchange / Amendment of AOI - Materially & adversely
 - ❖ Requirements - Written notice of dissent > Voting against > Written demand
- Q86, Q91
- Q118, Q138
- Q97
- Q144
- Q101

	e. Right to sue - Derivative action (Recovery go to corporation)
Q95, Q110	f. Right in interest - Freely assignable / Restriction O
Q90, Q96, Q108	g. Right in distribution (dividend) - No right / Declared by BOD - Unsecured creditor
	h. Shareholder's duty - Fiduciary duty X (Exception - Majority shareholder)
	i. Shareholder's liability - Limited up to capital contribution
Q104, Q120	❖ Unlimited liability - Piercing corporation veil / Watered stock
	② Management's rights, duties, and liability
	a. Director's right - Overall management as board (Agent X)
Q106, Q137	Appointment of officer / Bylaw / Fixing compensation / Dividend / Issuance
	b. Officer's right - Day-to-day management (Agent O)
	c. Management's duty - Fiduciary duty O
Q141	❖ Duty of loyalty - Self-dealing X (Exception - Fair & reasonable / Disclosed)
Q65	d. Management's liability - Agent's liability
Q113	❖ Ultra Vires Act - Liability O / Business judgment rule - Liability X
	❖ Liability for improper dividends
	❖ Indemnification for management's liability - Any judgment (win or lose)
	③ Corporation's power and liability
	a. Corporation's power ⇒ General power of legal entity
	❖ Acquire treasury stocks / Charitable contribution / Authorized to indemnify O
	❖ Make loan to director (with S/H's approval) or employee (without S/H's approval)
Q140	b. Corporation's liability ⇒ Agency rule (Principal's liability)
Q142, Q143	④ Financing
Q109	a. Debt securities ⇒ Secured bond, unsecured bond (debenture), convertible bond
Q117	b. Equity securities ⇒ common or preferred stock, stock warrant, stock option
	❖ Treasury stock - Voting right, Preemptive right, Dividend X
	5) Termination
	① Voluntary dissolution - BOD & Shareholders' approval / Filing article of dissolution
	② Involuntary dissolution - By shareholder / By state / By creditors
Q135	③ Merger and consolidation
Q98	a. Process - Resolution of BOD > Approval of shareholder (Notice & Meeting > Filing
Q136	b. Short-form merger - 90%† / Without approval / Appraisal right to subsidiary

(Becker R4) Chapter 8 Federal Securities Regulation

1. Introduction of Federal Securities Regulation

- 1) Security - To make profits through effort of others (CD or GP interest X)
- 2) Interested parties
 - ① Issuer - Entity / Controlling person / Underwriter / Dealer
 - ② Security Exchange Commission
 - a. Power - Subpoena / Suspend or revoke / Seek injunction (Prosecute or Assess X)
 - b. Not evaluate merit or value of security & Not guarantee accuracy of information
 - ③ Investor - Unaccredited investor / Sophisticated investors / Accredited investor
- 3) Federal law (1933 & 1934) vs. State law (Blue Sky Law)

Issuer must comply with both ⇒ Registration must be separately

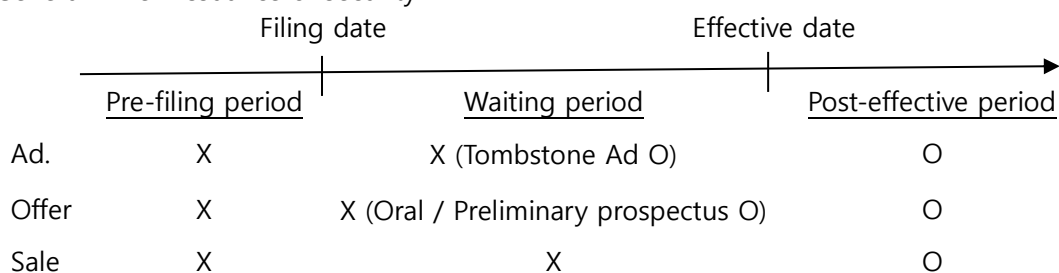
Q1

Q27

2. Securities Act of 1933

Q14, Q15

- 1) General - New issuance of security



- 2) Registration statement

Q19

- ① Part 1. Prospectus (Written offer) - All investors must receive
- ② Part 2. Detailed information about security
 - a. Audited F/S - B/S not more than 90 days before filing & I/S for preceding 5 years
 - b. Other material facts - Management, etc. / Principal purpose / Risk

- 3) Relax regulation

- ① Shelf registration - One registration for all securities that will issue in future
- ② Form S-2 and S-3 (Integrate information) / Form SB-1 and SB-2 (Small business)

Q18, Q34

- 4) Exemption (Registration X)

Q11, Q35

- ① Securities exemption - Government / Common carrier / NFP organization / Bank, etc.
- ② Transactions exemption

- a. Short-term commercial paper - 9 months or less / Operation (Investment X)
- b. Sales by any persons other than the issuer ⇒ By individual investor
- c. Exchanges with existing shareholders - Stock dividend, stock split, etc.

Q7, Q39

Q31, Q38

- d. Intrastate sale - Safe-harbor (80% business, Only to resident, Not resell for 9 month)
- e. Simplified offering (Regulation A)

- a) See Update

Q36

- b) Offering statements - Offering circular & Notification

- Q25, Q26, Q29
Q30, Q37
- f. Private offerings (Regulation D) ⇒ Rule 504, 506
- a) General requirement - Advertisement X / Restriction to resell / Notice to SEC
- b) Requirement of 504 ⇒ Limitation - Amount O / Investor X / Disclosure X
- c) Requirement of 506 ⇒ Limitation - Amount X / Investor O / Disclosure △
- Q17
- g. Crowdfunding: See Update
- 5) Liabilities under Securities Act of 1933
- ① General - Anti-fraud provision ⇒ To all securities, even if exempt from registration
- ② Section 11 (Civil liability) – Investor recover damage by private action
- a. Defendant - Anyone who signs registration statement (CPA O)
- Q28
- b. Within 1 year after discovery & within 3 years from offering date
- Q8
- c. Burden of proof ⇒ Defendant (Intent or negligence / Reliance / Privity X)
- Q2
- d. Defendant's defense - Due diligence / Lack of causation
- ③ Section 12 (Civil liability) - Registration X / Prospectus - Not given to investor, etc.
- ④ Section 17 (Criminal liability) - Intentional acts
- 3. Securities Act of 1934**
- 1) General - Exchange of securities after issuance
- 2) Registration provision
- Q12, Q40
- ① Type - National Securities Exchange / OTC - \$10,000,000 assets & 2,000 (or 500 who not accredited) shareholders ↑
- ② Registration statement - Audited F/S, management's name, financial structure, etc.
- ③ Exemption - Government, NFP, Financial institution, etc.
- Q13
- 3) Reporting provision
- ① Periodic reporting - Form 10-K / Form 10-Q / Form 8-K
- Q32
- ② Insider trading reporting ⇒ Short-swing profits
- Q20
- ❖ Insider - Management, more than 10% shareholder, Professional
- ③ 5% rule reporting
- Q33
- ④ Tender offer reporting
- Q24
- ⑤ Proxy reporting - Proxy statement
- 4) Anti-fraud provisions ⇒ Section 10b (Rule 10b-5)
- ① To all interstate exchanges of security, even if exempt from registration
- ② Violation - Fraudulent activity / Misleading statement / Insider information (Negligence X)
- ③ Civil or Criminal liabilities
- ④ Burden of proof ⇒ Plaintiff (Intent or gross negligence / Reliance O)
- ⑤ Defendant's defense - Lack of scienter, causation, or materiality O / Due diligence X

Chapter 9 Other Regulations

1. Property law

- 1) Lease
 - ① Lessee's rights - Right to possession / Quiet enjoyment / Fitness for use
 - ② Lessor's right - Terminate & evict, if tenant use for illegal purpose
 - ③ Generally assign or sublease without lessor's consent
 - ④ Termination - Tenant's purchase / Expiration / Death of tenant (not landlord)
- 2) Intellectual property - Copyright / Patent / Trademarks

2. Employment Law

- 1) Federal Insurance Contribution Act (FICA) - Death, disability or retirement
- 2) Federal Unemployment Tax Act (FUTA)
- 3) Other employment acts
 - ① Worker's Compensation Act - To recover for injury in scope of employment
 - ② Regulation of employment discrimination
 - ③ Occupational Safety and Health Act (OSHA)
 - ④ Fair Labor Standard Act
 - ⑤ National Labor Relations Act
 - ⑥ Employee Retirement Income Security Act (ERISA)
 - ⑦ Consolidated Omnibus Budget Reconciliation Act (COBRA)

3. Antitrust Law

- 1) Sherman Act
- 2) Clayton Act
- 3) Robinson-Patman Act
- 4) Federal Trade Commission Act

4. Environment

(Becker R4) Chapter 10 Accountant's Legal Liabilities

- Q78 **1. Accountant's liabilities under Common law**
- Q71 1) Contractual liability (Breach of contract) - Privity O
- ① Compensatory damage - Client, 3rd-party beneficiary or assignee O
- ② Punitive damage X / Contractual defense O
- 2) Tort liability - Privity X
- Q9, Q48, Q63 ① Negligence - Fail to act with due care
- Q46, Q69, Q75 a. Only to client & foreseen parties ⇒ Not liable to foreseeable parties
- Q47 ❖ Ultramares decision (Minority view) - More narrowly (Foreseen parties X)
- b. Punitive damage X
- Q59, Q62, Q66 c. Elements (Burden of proof - Plaintiff)
- Q81 Duty of care / Breach of duty / Damage / Causation
- Q5, Q23, Q76, Q80 d. Defense - Due diligence (GAAS) / Lack of causation
- Q54 ❖ Ultramares decision - Privity O
- Q67, Q74 ② Fraud & Constructive fraud (Gross negligence)
- Q22, Q55, Q58 a. Liable to anyone
- b. Punitive damage O
- c. Elements (Burden of proof - Plaintiff)
- Q10, Q45 Misrepresentation / Scienter or Reckless disregard for truth / Reliance / Damage
- Q4, Q49, Q61, Q82 d. Defense - Lack of scienter / Plaintiff's knowledge (Contributory or comparative X)

2. Accountant's liabilities under Federal securities law

- Q3, Q6 1) Accountant's liability under 1933 Act & 1934 Act

	1933 Act (Section 11)	1934 Act (Rule 10b-5)
Applicability	Issuance of securities	Exchange of securities
Plaintiffs	Any person acquiring the security and SEC	Any person trading the security and SEC
Defendants	Any person who signed the registration statement	Any person responsible for the trading
Remedies	Monetary damage only	Rescission or monetary damage
< Burden of proof >		
Transactions	Plaintiff must prove	Plaintiff must prove
Damages	Plaintiff must prove	Plaintiff must prove
Misrepresentation	Plaintiff must prove	Plaintiff must prove
Scienter	Plaintiff need not prove	Plaintiff must prove
Reliance	Plaintiff need not prove	Plaintiff must prove
< Defenses >		
Lack of materiality, etc.	O	O
Due diligence	O (Following GAAS or GAAP)	X (Good faith O)

2) Accountant's liability under PSLRA of 1995 - Guideline for accountant to disclose

- ① Audit required procedures
To detect illegal act / To identify related party transaction / To evaluate going concern
- ② Reporting responsibility for fraud
Accountant ⇒ Audit committee or BOD ⇒ SEC
(If BOD fails to notify SEC - Accountant report directly to SEC within one day)
- ③ Accountant's liability - Civil penalties for non-compliance

3. Accountant's liability under Sarbanes-Oxley Act

- 1) Public Company Accounting Oversight Board (PCAOB)
- 2) Main provisions
 - ① Independence - Top official during last year X / Rotate off / Non-audit service X
 - ② Corporate responsibility ↑
 - ③ Enhanced financial disclosure
 - ④ Corporate and criminal fraud accountability
Criminal penalty ↑ / Statute of limitation ↑ - 2 after discovery or 5 after action

4. Accountant's duties of Non-disclosure

- 1) Working papers
 - ① General - Belong to accountant or accountant's firm (not client)
 - ② Duty of non-disclosure - Confidentiality
 - ❖ Exception (Disclosure O)
Subpoena / Client's consent / Voluntary quality review / Compliance
- 2) Privileged communication
 - ① Federal law and most states - Not grant privilege
 - ② Exception (A few states) ⇒ Purpose - To protect client (Waive O)

Q21, Q42, Q43

Q51, Q68, Q72

Q44, Q53, Q73

Q79

Q52, Q70

5. Licensing and Disciplinary Systems

- 1) State boards of accountancy ⇒ Sole power to license
- 2) Regulatory agencies
 - ① American Institute of Certified Public Accountants (AICPA)
 - ② Securities Exchange Commission (SEC)
 - ③ Public Company Accounting Oversight Board (PCAOB)
 - ④ Internal Revenue Service (IRS)