Preparation hints for the Midterm Exam

General Hints

1. The Midterm Exam will be given in class on Tuesday, May 16, 2017. It will cover chapters 1, 3, 4, 5, 6, and 7, plus the associated lectures. It is a closed-book, closed-note exam.

2. Reviewing the Catalyst quizzes you took in preparation for this exam, and especially studying the questions you missed, would be an extremely worthwhile activity.

3. You must bring a ParSCORE answer form, and a number 2 pencil to the exam. Please make sure your ParSCORE answer form is not three-hole punched, folded, or wrinkled, or torn on any of the edges, because I won’t accept it if it is. I will have a few for sale for 50 cents immediately prior to the exam, but I would prefer everyone to bring their own.

Specific Hints

Not everything that is listed below will be on the exam, and there will be questions on the exam on topics that are not listed below. However, this document together with the “Midterm Preparation Hints Supplement” document will give you about 95%-98% coverage of what will be on the exam; so to be fully prepared for the exam, you will need to know everything in both documents.

The following items are from chapter 1:

1) Know the meaning of the following terms and expressions: precedent, common law, statute, Court of Chancery, equity, federalism, statutory law, stare decisis, injunction, executive order, criminal law, civil law, substantive law, procedural law, jurisprudence, legal positivism, sovereign, natural law, legal realism, plaintiff, defendant, facts, decision (a.k.a. holding), and reasoning.

2) Know that every society of which we have any historical record has had some system of laws.

3) Know that the Iroquois Native Americans played a role in the creation of our government, and what that role was.

4) Know that it is not possible to look up the law in a single book.

5) Know that the Federal Constitution means the same thing as the United States Constitution.

6) Know that the Federal Constitution does three basic things: 1) Establishes the national government of the United States, with its three branches. 2) Ensures that the states retain all power not given to the national government, and 3) Guarantees many basic rights to the American people.

7) Know that the U.S. Congress consists of the House of Representatives and the Senate.

8) Know that in the areas of family law, criminal law, and property law, the states do most of the legislating and regulating. The amount of federal government regulation in those areas is relatively small.
9) Know that most federal administrative agencies are created by Congress.
10) Know that most state administrative agencies are created by the state legislatures.
11) Know that the President makes all treaties with foreign nations, but that after the president signs the treaty, the treaty must be ratified by a 2/3 vote in the U.S. Senate to go into effect.
12) Know that statutory law is one of the four main sources of law, most new laws are statutes, and most criminal laws are statutes.
13) Know that a district attorney or prosecutor or assistant prosecutor employed by the district attorney will bring a criminal case to court. Neither a policeman nor the victim may do so.
14) Know how legal positivism answers the question “What is law?”
15) Know how a natural law adherent would answer the question “How can we tell if a law should be obeyed?”
16) Know who the jury, the trial court judge, and the Appellate Court of New Jersey each declared as the winner in Kuehn v. Pub Zone.

The following items are from chapter 3:

17) The meaning of the following terms and expressions: litigator, litigation, alternative dispute resolution, negotiation and settlement, mediation, mediator, arbitration, arbitrator, arbitration clause, trial court, jurisdiction, trial court of limited jurisdiction, trial court of general jurisdiction, probate court, appeals courts, error of law, federal question case, diversity jurisdiction, diversity case, United States District Courts, United States Supreme Court, writ of certiorari, petition for a writ of certiorari, pleadings, complaint, answer, default judgment, counter-claim, reply, class action, motion, motion to dismiss, discovery, interrogatories, depositions, deponent, motion for a protective order, motion to compel answers to interrogatories, in camera inspection, summary judgment, motion for summary judgment, essential fact (lecture only), voir dire, challenges for cause, peremptory challenges, preponderance of the evidence, beyond a reasonable doubt, direct examination, cross-examine, cross examination, directed verdict, motion for a directed verdict, judgment non obstante verdicto (JNOV), precedent, modify, affirm, reverse, reverse and remand, and harmless error.

18) Know the two things the jury, if there is one, must decide in a civil trial. Also, know that deciding whether the defendant is guilty or not guilty is not one of those things.
19) Know that three or more judges (often called justices) hear each appeals case in all U.S. jurisdictions.
20) Know that there are no juries, ever, in an appeals hearing in any U.S. jurisdiction.
21) Know that, generally, appeals courts accept the facts given to them by trial courts and review the trial record to see if the court made errors of law only.
22) Know that appeals courts generally accept the factual findings of the trial court unless there was no evidence at all to support it.
23) Know that in most states, including California, seven justices sit on the state Supreme Court, and all seven justices hear each case.
24) Know that Janet Booker could have filed Smiles v. Coastal Insurance Company in United States District Court based on diversity jurisdiction, and why; but chose instead to file in Oregon state court. Know that she could not have filed the case in United States District Court based on federal question jurisdiction, and why.
25) Know that the president of the United States nominates all federal court judges, even U.S. District Court judges, and the U.S. Senate confirms all those nominations.

26) Know that the U.S. Courts of Appeals are divided into 13 circuits, 11 of which have numbers in their names and two of which do not. Know that California is in the Ninth Circuit. Know that the two circuits that do not have numbers in their names are called “the Federal Circuit” and “the D.C. circuit.”

27) Know that the U.S. Supreme Court receives about 8,000 petitions for a writ of certiorari each year, but issues fewer than 100 writs of certiorari each year.

28) Be able to place these steps in civil procedure in chronological sequence: complaint, answer, reply (if there is one), discovery, trial, and finally, judgment.

29) Know that a judge should only grant a motion for summary judgment if no matter what the jury finds on the remaining factual issues, the law says that the moving party must win the case. The judge should use the following rules:
   a) If the defendant filed the motion, grant the motion only if there is at least one essential fact that is not in dispute, and that fact has been resolved in favor of the defendant.
   b) If the plaintiff filed the motion, grant the motion only if there are no essential facts in dispute, and all essential facts have been resolved in favor of the plaintiff.

30) Know that well over 90% of all civil lawsuits filed in the United States each year are settled or dropped before the first day of trial.

31) Know that the parties to a civil lawsuit have a right to a jury trial when the plaintiff is asking for money damages of at least one dollar, and do not have a right to a jury trial when the plaintiff is asking for an equitable remedy only.

32) Know that each side will have an unlimited number of challenges for cause but only a limited number of peremptory challenges (typically 2, 3, or 4 depending on the jurisdiction and the type of case) during voir dire.

33) Know that the burden of proof in a criminal trial is beyond a reasonable doubt, but that the burden of proof in a civil trial is by a preponderance of the evidence.

34) Know that the burden of proof is generally on the plaintiff to prove the case, and that each type of case has a different number of required elements, and that the plaintiff must prove each of these elements by a preponderance of the evidence in order to win their case.

35) Know what two types of questions ordinary witnesses may not answer, and what one type of question an expert witness may answer that ordinary witnesses may not. (Lecture only)

36) Know that a judge should only grant a motion for a directed verdict if the evidence regarding the remaining factual issues so clearly favors the moving party that reasonable minds could not disagree regarding the facts, and the law requires that, under those facts, the moving party must win.

The following items are from chapter 4:

37) Know the meaning of the following terms and expressions: common law, stare decisis, precedent, bystander, bill, veto, statutory interpretation, plain meaning rule, congressional override, administrative law, enabling legislation, legislative rules, interpretive rules, informal rulemaking, formal rulemaking, subpoena, subpoena duces tecum, search and seizure operation, adjudicate, administrative law judge (ALJ), and de novo decision.

38) Know the bystander rule.
39) Know the facts and the holding in each of the 6 bystander cases described on pages 77-79:
   a) Union Pacific Railway Co. v. Cappier
   b) Carey v. Davis
   c) Osterlind v. Hill
   d) Tarasoff v. Regents of the University of California
   e) Soldano v. ODaniels
   f) Parra v. Tarasco

40) Know what Senator Tower was concerned about regarding section 703(2) of Title VII of the 1964 Civil Rights Act, which led to section 703(h) being added to the bill.

41) Know and understand the three steps a court is supposed to proceed through in performing statutory interpretation, and that they are not supposed to proceed to the next step unless there is still something about the law that is unclear:
   a) The plain meaning approach (and the associated “plain meaning rule”)
   b) Legislative history and intent, and
   c) Public policy

42) Know that the following quote from the United States Supreme Court is one way to express the “plain meaning rule” of statutory interpretation: "In determining the scope of a statute, we look first to its language, giving the words used their ordinary meaning."

43) Know the U.S. Supreme Court’s decision in the case Griggs v. Duke Power Co., which is that employment tests and other job requirements that exclude blacks at higher rates than whites must test for job-related skills and knowledge that are a “business necessity.”

44) Know the three kinds of power granted to administrative agencies:
   a) Rulemaking
   b) Investigation
   c) Adjudication

45) Know the two kinds of rules administrative agencies promulgate:
   a) Legislative rules, which create new substantive or procedural legal rules, and
   b) Interpretive rules, which put the world on notice how the agency intends to interpret one or more words or phrases in a statute they are responsible for implementing.

46) Know the two basic methods of rulemaking used by administrative agencies to create new rules:
   a) Formal rulemaking, and
   b) Informal rulemaking.

47) Know the three limits on the power of administrative agencies to issue subpoenas to help them in their ongoing investigations:
   a) Must be relevant to a lawful agency investigation
   b) Must not be unreasonably burdensome
   c) Must not demand privileged information

48) Know that the doctrine of exhaustion of remedies is a rule that says before a party may appeal the decision of an administrative agency to a trial court of general jurisdiction, they must first exhaust all possible appeals within the agency itself. Typically this means bringing
the appeal to an appellate board within the agency, and pursuing that appeal to its conclusion.

49) Know the “standard on review” in cases where a losing party appeals a case from the appellate board of an administrative agency to a state or federal court. Specifically, know that the court will:
   a) Defer to the agency’s findings of fact as long as there is substantial evidence to support each finding, and
   b) Defer to the agency’s interpretation of the law as long as that interpretation was reasonable.

50) Know what the Freedom of Information Act (FOIA) is designed to do, and what two types of data are available under it. Know that the FOIA only gives us power to compel federal agencies to give us information. It does not apply to state agencies.

51) Know what the Privacy Act of 1974 prohibits.

The following items are from chapter 5:

52) Know the meaning of the following terms and expressions: the Framers of the Constitution, the Articles of Confederation, federalists, antifederalists, the Bill of Rights, the power of the purse, the Commerce Clause, international commerce, exclusive power, domestic commerce, concurrent power, positive aspect (of the Commerce Clause), negative or dormant aspect (of the Commerce Clause), interstate commerce, the substantial effect rule, the aggregation argument (Lecture only), the Supremacy Clause, preempts, the power of judicial review, judicial activism, judicial restraint, political speech, time place and manner restrictions, obscenity, commercial speech, procedural due process, the Takings clause, a neutral factfinder, (the power of) eminent domain, substantive due process, fundamental rights, economic and social regulation, Equal Protection Clause, minimal scrutiny, intermediate scrutiny, and strict scrutiny.

53) Know what the federalists advocated for and what the antifederalists feared during the Constitutional Convention of 1787.

54) Know that Article I of the Constitution created the U.S. Congress (the legislative branch of our federal government), Article II created the office of the president (the executive branch), and Article III created the Supreme Court (the judicial branch.)

55) Know that our federal government is a government of enumerated powers because of the words in the Tenth Amendment to our federal constitution. (Lecture only.)

56) Know that, based on the United States Supreme Court’s interpretation of it, the Commerce Clause gives the federal government:
   a) Exclusive power to regulate international commerce.
   b) Concurrent power to regulate domestic intrastate commerce, and
   c) Exclusive power (close enough for our purposes) to regulate domestic interstate commerce.

57) Know that the primary source of federal power to regulate business is the Commerce Clause, and that this power was substantially broadened in about 1937, when the Supreme Court began using the Substantial Effect Rule and the Aggregation Argument to justify federal regulation of purely intrastate business activities. (Lecture only)
58) Know the U.S. Supreme Court’s decision (also known as its holding) in the case of *United States v. Lopez*, and the effect of that holding on the federal statute called the *Gun-Free School Zones Act*.

59) Know that in *Kennedy v. Louisiana*, the U.S. Supreme Court struck down a death penalty conviction for an aggravated rape conviction (where an 8 year old girl was the victim) as a violation of the Eighth Amendment’s ban against cruel and unusual punishment.

60) Know that constitutional rights generally protect only against governmental acts. Know that for example common interest developments (CID) are generally exempt from the requirements of the Fourteenth Amendment.

61) Know that the Constitution established a federal government of *checks and balances*. (See Exhibit 5.1) Know that five of those check and balance powers are: 1. the ability of the President to veto a bill proposed by Congress, 2. the ability of Congress to override that veto, 3. the ability of the President to nominate all federal judges and administrative agency heads, 4. the ability of Congress to confirm those nominations, and 5. the judicial branch’s power of judicial review.

62) Know that the First Amendment protects not only written and oral speech, but also silent non-verbal forms of communication such as burning a flag as part of a political protest, or displaying a work of art in a museum. (See for example *Texas v. Johnson*.)

63) Know that your book says that political speech cannot be abridged or outlawed by government unless it is *intended and likely to cause imminent lawless action*, but this is an oversimplification. Political speech that is obscene, or that completely frustrates a government’s efforts to achieve important and valid public policy goals, can also be abridged.

64) Be able to classify most statements, real or hypothetical, as either political speech, commercial speech, or all other speech.

65) Know the facts, issue, and decision in the U.S. Supreme Court case of *Texas v. Johnson*.

66) Know that the Miller test is a three-part test devised by the U.S. Supreme Court to determine if a creative work is obscene. Know that a trial court may only judge a work obscene if they can answer *all three questions* in the Miller test with a “yes”.

67) Know the facts that led to the case of *Barnes v. Glen Theater*, the central legal issue the Supreme Court faced in hearing the case, the Supreme Court’s decision in the case, and a brief statement of their reasoning.

68) Know that commercial speech that is false or misleading is in general prohibited, and the courts are OK with that.

69) Know that besides being allowed to ban commercial speech that is false or misleading, the government can regulate other commercial speech provided that *the rules are reasonable and directed to a legitimate government goal*; but regulations that limit commercial speech more than necessary to achieve the goal will be overturned.

70) Know that in Arizona, for regulations on commercial speech that is not false or misleading to survive First Amendment scrutiny, they must pass a three-part test:

   a) The government has a *substantial interest* something, meaning there is an important goal they are trying to achieve.

   b) The regulations will *materially advance* that interest, and
c) The restriction on commercial speech is narrowly-tailored and therefore restricts speech no more than necessary to achieve the goal.

71) Know the facts that led to the Arizona Court of Appeals case of Salib v. City of Mesa, the issue before the Arizona Court of Appeals, and their decision.

72) Know that the sort of hearing the government must offer (how lengthy and formal it is) when proposing to take liberty or property from someone depends upon how important or valuable the property or liberty interest in question is.

73) Know that, regardless of how lengthy and formal the hearing must be, one requirement of procedural due process is constant: the factfinder must be neutral.

74) Know that in Ward v. Monroeville, a traffic offense (moving violation) went all the way to the Supreme Court. Know also that Mr. Ward won this case at the Supreme Court level, and that this decision illustrates the principle that regardless of how lengthy and formal the hearing must be, one requirement of procedural due process is constant: the factfinder must be neutral.

75) Know that, ever since the Supreme Court decided Dolan v. City of Tigard, before a government may require an owner to dedicate land to a public use, it must show that this land is needed to achieve the public purpose the government has in mind.

76) Know the facts that led to the case of the Kelo v. City of New London, Connecticut, the key legal issue before the Supreme Court, and their decision.

77) Know that statutes that regulate economic or social conditions by authorizing differential treatment of groups defined on any basis other than race, ethnicity, or gender will receive minimal scrutiny by the courts. This means they will usually be found constitutional (under the Fourteenth Amendment) because all they have to do is rationally relate to a legitimate government goal. Know that examples of such regulations include laws requiring people less than 18 years of age (but not older persons) to attend school (age discrimination), laws prohibiting people under 21 from buying alcoholic beverages but not older persons (age discrimination), laws requiring that you be at least 15 years old to drive a car (age discrimination), and Internal Revenue Service regulations that require persons with higher incomes to pay a higher percentage of their incomes in federal taxes (income discrimination). These are forms of age and income discrimination by the government that have been deemed to be rationally related to a legitimate government goal.

78) Know that any law that infringes upon a fundamental right will be presumed invalid, and will be struck down as unconstitutional under the Fifth Amendment’s Due Process Clause unless the government can persuade the court that it is necessary to promote a compelling government interest.

79) Know that any law that provides citizens with different rights and/or duties based on their gender will receive an intermediate level of scrutiny from the courts, and will be struck down as a violation of the Fourteenth Amendment unless they substantially relate to an important government objective.

80) Know that the U.S.’s historical policy of exempting women from the (military) draft is an example of differential treatment of citizens based on gender that passes the substantially relates to an important government objective test and therefore is deemed constitutional under the Fourteenth Amendment. (Lecture only)

81) Know that any law or other governmental practice or action that distinguishes between citizens based on their race or ethnicity and provides different rights and/or responsibilities to
the groups thereby created will receive\textit{strict scrutiny} from the courts, and will be struck down as a violation of the Fourteenth Amendment unless they are\textit{necessary} to promote a\textit{compelling} state (i.e. government) objective.

82) Know that the state and federal governments can place many restrictions on speech in the United States despite the presence of the First Amendment in the Constitution.

83) Know the answers to additional questions 2, 7, and 8 found on pages 128-129 at the end of chapter 5.

The following items are from chapter 6:

84) The meaning of the following terms and expressions: tort, intentional tort, negligence, strict liability, libel, slander, element, defamation, defamatory statement, opinion, public figure, public official, actual malice, absolute privilege, qualified privilege, false imprisonment, intentional infliction of emotional distress, battery, assault, fraud, compensatory damages, the single-recovery principle, punitive damages, tortious interference with a contract, intrusion (on solitude or seclusion), commercial exploitation, duty of due care, factual cause, dram shop laws, negligent hiring, negligence per se, foreseeable type of harm, res ipsa loquitur, assumption of the risk, and ultrahazardous activity.

85) Know that a tort case must be heard in civil court. It can never be heard in criminal court.

86) Know that opinion is generally a valid defense in a defamation lawsuit.

87) Know the facts and the outcome of the chapter 6 “chapter opener” case,\textit{Mashburn v. Collins}, in which Donald Mashburn sued the author of a New Orleans States-Item newspaper article for defamation. Know also\textit{why} that party won.

88) Know the facts that led to the case of\textit{Yeagle v. Collegiate Times}, who won the case at the Virginia Supreme Court level, and why.

89) Know the facts that led to the case of\textit{Zeran v. America Online}, who won the case at the U.S. Supreme Court level, and why.

90) Know and understand the three required elements of the tort of libel, the four required elements of the tort of slander, and the additional (fourth or fifth) element which only public officials and public figures must prove in such cases. Know that one of these elements – that the statement made by the defendant was false – means that if the defendant can prove the statement they made was true, they will be found\textit{not liable} for defamation.

91) Know that the requirement that the statement was “communicated,” which is a required element in both slander and libel, means that if the defendant can prove the statement was made only to the plaintiff and to no one else, he or she will be found not liable.

92) Know that a qualified privilege against a defamation lawsuit exists\textit{when two people have a legitimate need to exchange information}.

93) Know that a person with a qualified privilege against a defamation lawsuit will retain that privilege if and only if they

a) \textit{act in good faith}, and

b) speak (about the matter) only to persons who have a\textit{need to know}.

94) Know that generally, a store may detain a customer or worker for alleged shoplifting without becoming liable for false imprisonment provided that:

a) there is a reasonable basis for the suspicion, and

b) the detention is\textit{done reasonably}.
Know that in order for a store’s detention to have been done reasonably it generally must be the case that the detention was both:
   a) Done in a reasonable way, and
   b) Done for no longer than a reasonable amount of time. (Lecture only)

Know that the two required elements of the tort of intentional infliction of emotional distress are:
   a) Defendant engaged in behavior which was extreme and outrageous, and
   b) This behavior caused serious emotional harm to plaintiff.

Know the facts that led to the case of Ford Motor Credit Co. v. Sheehan, and who won the case at the Florida Appeals Court level.

Know the facts that led to the case of Midas Muffler Shop v. Ellison, who won the case at the Arizona Appeals Court level, and why.

Know the facts that led to the case of Jane Doe and Nancy Roe v. Lynn Mills, who won the case at the Michigan Court of Appeals level, and why.

Know the three required elements of the tort of assault. Know the four requirement elements of the tort of battery, and what each one means.

Know that one of the guidelines issued by the United States Supreme Court regarding punitive damages is that a trial court generally should not permit a punitive award more than nine times higher than the compensatory damages.

Know that the Court of Appeals of Oregon reinstated the $79.5 million punitive damages award found by the jury in the case of Williams v. Philip Morris Incorporated, even though it greatly exceeded the “no more than nine-times compensatory” guideline issued by the Supreme Court, arguing that the award was reasonable and proportionate given the appalling conduct of Philip Morris Incorporated and the length of time over which they engaged in that conduct.

Know that, in the Exxon Valdez case, the jury decided that Exxon had been reckless by allowing Captain Hazelwood to pilot the ship when the company knew he was an alcoholic.

Know the four required elements of the tort of interference with a contract.

Know the facts that led to the case of Texaco v. Pennzoil, who won the case at the Texas Court of Appeals level, and why.

Know the five elements a plaintiff must prove to win a negligence case.

Know when negligence per se occurs.

Know the facts that led to the Arizona Supreme Court case of Hernandez v. Arizona Board of Regents, who won at the Arizona Supreme Court level, and why.

Know that dram shop laws generally make liquor stores, bars, and restaurants liable for serving drinks to intoxicated customers who later cause harm, but exclude social hosts from such liability.

Know the facts that led to the case of Wiener v. Southcoast Childcare Centers Inc., who won the case when it reached the Supreme Court of California, and why.

Know the facts that led to the case of Gaines v. Monsanto, who won at the Missouri Court of Appeals level, and why.
112) Know that in negligent hiring cases, companies have generally been found liable for the criminal acts of their employees whenever they failed to check both the driving record and the criminal record of the employee, even if the employee has not demonstrated any threatening behavior since being hired.

113) Know that, in the context of negligence law, a defendant breaches his duty of due care by failing to behave the way a reasonable person (with similar training) would under similar circumstances.

114) Know the rule of contributory negligence: if the plaintiff is even slightly negligent himself (in a contributory negligence state,) he recovers nothing in a negligence lawsuit.

115) Know that in a comparative negligence state, a jury will multiply the defendant’s percentage responsibility times the dollar amount that would make the plaintiff whole in order to determine the award in a negligence lawsuit.

116) Know that, whereas 150 years ago it was very popular, very few states follow the rule of contributory negligence today; most use the rule of comparative negligence.

The following items are from chapter 7:

117) The meaning of the following terms and expressions: white-collar crime, street crime, criminal law, guilty, restitution, acquit, felony, misdemeanor, specific deterrence, general deterrence, retribution, beyond a reasonable doubt, actus reus, mens rea, general intent, specific intent, criminal recklessness, criminal negligence, strict liability, the M’Naghten Rule, entrapment, entrapment defense, larceny, fraud, arson, embezzlement, the Computer Fraud and Abuse Act, the Access Device Fraud Act, the Identity Theft and Assumption Deterrence Act, the Wire and Electronic Communications Intercept Act, an agent of a corporation, Federal Sentencing Guidelines, compliance program, Racketeer Influenced and Corrupt Organizations Act (RICO,) racketeering acts, money laundering, criminal procedure, informant, affidavit, search warrant, probable cause, arrest warrant, booking, bail hearing, grand jury, indictment, arraignment, plea bargain, exclusionary rule, motion to suppress, protection against double jeopardy, protection against self-incrimination, custodial interrogation, and forfeiture.

118) Know that white-collar crime costs society much more each year than street crime.

119) Know that the local prosecutor will decide whether or not to charge a criminal suspect with a crime and whether to enter into a plea bargain with him or take him to trial – not the police and not the victim.

120) Know that if a person convicted of a crime is sentenced to a fine, the fine is always paid to the government, and never to the victim of the crime.

121) Know the four goals of or rationales for criminal punishment: restraint, deterrence, retribution, and rehabilitation, and what each one means.

122) Know the four types of mens rea requirements that a prosecutor may be required to prove, depending on the crime: general intent, specific intent, reckless or negligent conduct, and strict liability.

123) Know the M’Naghten Rule.

124) Know what the prosecution must prove if the plaintiff has proven that the government induced him to break the law in order to prevent the defendant from being acquitted based on an entrapment defense: namely, that the defendant was predisposed to commit the crime.
125) Know the three elements the prosecution must prove in order to meet the mens rea requirement if a corporation is accused of a crime other than a strict liability crime:
   a) An agent of the corporation committed a crime, and
   b) The agent was acting within the scope of their employment at the time, and
   c) It is reasonable for the jury to conclude that the agent’s actions were intended by the agent to benefit the corporation, for example by increasing their revenues or decreasing their expenses.

126) Know the facts that led to the case of Commonwealth v. Angelo Todesca Corp., who won when the case reached Supreme Court of Massachusetts, and why.

127) Know that the most common punishment for a corporation found guilty of a crime is a fine.

128) Know the facts that led to the case of People v. O’Neill, and what the verdicts were for each of the defendants at the Illinois trial court level.

129) Know what RICO was “originally aimed at”.

130) Know what RICO prohibits.

131) Know that a search warrant must specify with reasonable certainty the place to be searched and the items to be seized.

132) Know that a magistrate will issue a search warrant only if there is probable cause.

133) Know that in a criminal trial, the jury (if there is one) must decide whether the defendant was guilty or not guilty. They will never be asked to decide whether the defendant was liable or not liable in a criminal trial.

134) Know what the Fourth Amendment prohibits.

135) Know the six exceptions to the general rule that the police must obtain a search warrant before conducting a search.

136) Know the three conditions under which a search conducted with a search warrant still violates the Fourth Amendment.

137) Know the three important protections for criminal defendants found in the Fifth Amendment.

138) Know the two additional requirements imposed by the due process clause of the Fifth Amendment in the context of criminal law:
   a) If the prosecution has in its possession evidence favorable to the defendant’s case, it must disclose that evidence.
   b) If a witness says a tall white male robbed the liquor store, it would violate due process for the police to place the male suspect in a lineup with four short women and two black men.

139) Know that the Fifth Amendment’s protection against self-incrimination applies only to living persons. It does not apply to corporations, who in certain other respects are treated by the law as legal “persons.”

140) Know the effect of the U.S. Supreme Court’s decision in Miranda v. Arizona on custodial interrogations by the police.

141) Know that the Sixth Amendment guarantees the right to have a lawyer present at all important stages of the criminal process.
Know that the Eighth Amendment prohibits cruel and unusual punishment of an individual by the government, and excessive fines.

Know the facts that led to the case of *Ewing v. California*, the issue before the U.S. Supreme Court in that case, and the Court’s decision.

Know that the Eighth Amendment bars some, *but by no means all*, forfeitures. (p. 187)

Know that a criminal defendant has a right to a trial by jury for “serious crimes,” which as a first approximation in most jurisdictions corresponds to crimes that could result in a sentence of six months or longer; but that criminal defendants accused of more minor crimes, including all criminal *infractions* and many misdemeanors, do not have that right.

Know that under the federal sentencing guidelines, a *compliance program* is a plan that a company develops and puts into action to detect, prevent and deter criminal conduct within itself, and that such a program can qualify a company for a substantial reduction of the fine they would otherwise have paid if they as a company are found guilty of a federal crime.

Be able to deduce from the definition of felony found on page 162 of your text that if a criminal defendant is sentenced to more than a year in prison, they must have been convicted of a felony. The definition is "A serious crime, for which a defendant can be sentenced to one year or more in prison."

Know what the Computer Fraud and Abuse Act prohibits.